

TEMPORARY CONSTRUCTION EASEMENT AND AGREEMENT

Georgia, Gordon County

This Temporary Construction Easement and Agreement (the "Agreement") is made this _____ day of _____, 2022 (the "Effective Date"), by and between The Gordon County Board of Commissioners a political body of the State of Georgia (hereinafter "Grantor"), and OWR, LLC, a limited liability Company of the State of Georgia, party of the second part (hereinafter "Grantee"), their respective successors and assigns:

WHEREAS, the Grantor is the owner of certain real property and improvements known as Trimble Hollow Road which is a public road of Gordon County, Georgia. This agreement is intended to authorize the Grantee to make roadway improvements to a portion of Trimble Hollow Road and Right of Way as described on pages 1-6 of "Roadway Improvement Plans" as designed by Mark Shamblin, PE of Civil South, Incorporated dated June 15, 2018 and revised on February 22, 2021. A copy of the "Roadway Improvement Plans" is attached hereto as Exhibit "A" and incorporated herein by reference as if specifically stated herein. (hereinafter sometimes referred to as the "Property");

WHEREAS, the Grantee is the developer of certain real property on Trimble Hollow Road. On February 23, 2021, the Grantor considered an application to re-zone certain property contiguous to Trimble Hollow road from A-1 agricultural to I-2 industrial. As an inducement for re-zoning, the Grantee agreed to make improvements to Trimble Hollow Road as described in Exhibit "A". A copy of the minutes from that meeting are attached hereto as Exhibit "B" and such minutes are ratified and incorporated as part of this agreement as if specifically stated herein.

WHEREAS, Grantee desires non-exclusive temporary access and use of a portion of the Property to perform certain construction activities for the public good and welfare and Grantor is willing to grant the requested access and use on and subject to the terms hereof; and

WHEREAS, upon completion of the construction contemplated herein and final acceptance by the Grantor, said construction easement shall cease; and

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid, the covenants contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. Temporary Construction Easement. Grantor, and for and on behalf of its successors and assigns, does hereby grant unto Grantee, a temporary, non-exclusive temporary construction easement in, on, over, under, across and through that certain portion of the Property shown Exhibit "A".

2. Term of Easement. The parties contemplate that the construction project can be completed in ninety (90) days or less and will be completed prior to May 30, 2021. However, the parties acknowledge that said construction start date may be delayed and the time frame for completion may be delayed due to weather or other conditions. Grantee shall notify Grantor of any reasonable delay in commencement or delay in completion as soon as reasonably possible with time being of the essence.

3. Additional Rights. The Temporary Construction Easement granted herein shall include:

(a) the right of entry into and upon the Property for the purpose of access and ingress to and egress from the Property in order to effect the rights, privileges and easements set forth herein;

(b) the right to cut away, remove and dispose of all trees, undergrowth or other obstructions which exist on the Easement, which removal is necessary for Grantee's construction identified herein;

(c) the right and obligation to install stone rip rap, fabric or other materials for storm water and erosion control within the easement area;

(d) the right, when required by law, governmental regulation or necessity to conduct scientific, geotechnical, archaeological or other studies, investigation or other testing on or below the ground surface of the Property.

4. Reservation of Rights. Except for the rights, privileges, benefits and easements granted herein, Grantor hereby reserves all its right, title and interest in and to the Property.

5. Conditions and Obligations of Easement Use.

(a) The use of the Property by the Grantee shall be in accordance with all laws, ordinances, codes, and regulations of all governmental authorities having jurisdiction over the Easement. Any such use of the Easement by the Grantee shall be undertaken in such a manner as to minimize the disturbance to and interruption of Grantor's use of the Property to the greatest extent practicable.

(b) All construction or activities performed on the Easement by Grantee shall be done in a good workmanlike manner and the Easement shall be left in a clean and orderly condition, with all debris removed therefrom.

(c) If the Grantee determines that Trimble Hollow Road must be closed to public traffic in order to complete the work, the Grantee shall give the Grantor two weeks' notice of the date closure will commence so that notice may be given to the public.

(d) All work contemplated by this agreement shall be paid for by the Grantee. Gordon County has received a commitment of special LMIG funds from the State Department of Transportation to be applied to Grantee's costs. Gordon County will not be accountable for paying the dollar

value of the LMIG funds to the Grantee if those funds are not received by the county from GDOT.

(e) The Grantee will obtain a 100% performance and payment bond for the benefit of the Grantor.

(f) If the Grantee fails to complete the project, the Grantor may complete the project and charge the costs of completion back to the Grantee.

6. Covenants of Grantor.

(a) Grantor waives all right to any compensation for the use and enjoyment of the rights and privileges granted herein and further acknowledge that the use granted herein does not constitute an action of eminent domain or condemnation. by the Grantee. Grantor does not waive any claim for damages that may result from the negligent acts or omissions of the Grantee or its contractors in its use of the Temporary Constructive Easement.

(b) Grantor does hereby covenant with the Grantee that Grantor is lawfully seized and possessed of the Property above described, that Grantor has a good and lawful right to convey said easements, rights and privileges granted herein.

(c) Grantor will pay the special LMIG funds to the Grantee upon actual receipt of the funds, Grantees auditable proof of expenditure for this project, project completion by Grantee and acceptance by Grantor and if not otherwise prohibited by law.

7. The Grantee is an independent contractor of the Grantor.

8. Entire Agreement. This Agreement, the exhibits and commitments and representations of the Grantee constitute the entire agreement between the parties and understanding between Grantor and Grantee relating to the subject matter hereof and may not be amended, waived or discharged except by instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.

9. Severability. The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement, or any portion thereof, shall not affect the remaining portions thereof, or any part thereof, and this Agreement shall be modified to substitute in lieu of the invalid provision, a like and valid provision which reflects the agreement of the parties with respect to the covenant, agreement, condition or provision which has been deemed invalid.

10. Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and upon execution by the Grantor and Grantee.


11. Time of Essence. Time is of the essence with respect to this Agreement.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

IN WITNESS WHEREOF, the Grantor has signed, sealed and delivered this Agreement as of the day and year first set forth above.

Grantee:

OWR, LLC


By: Roger E. Ralston, Member (Seal)


Unofficial Witness

Notary Public

My commission expires: 5/18/2024

[Notary Seal]



Unofficial Witness

Notary Public

My commission expires:

[Notary Seal]

Grantor:

Gordon County

By: (Seal)

Attest: (Seal)