#### CONSENT TO ENCROACHMENT

# STATE OF TEXAS§§KNOW ALL MEN BY THESE PRESENTS:COUNTY OF STEPHENS§

THIS CONSENT TO ENCROACHMENT is made by and between the CITY OF BRECKENRIDGE, a municipal corporation, herein called the "City," and CADDO CREEK INVESTMENTS, LLC, herein called "Owner" and

#### WITNESSETH:

**WHEREAS**, Owner own that certain tract of land described as Lots 10 and 11, Block 9, Roselawn Addition to the City of Breckenridge, Stephens County, Texas, as more particularly described in the survey plat attached hereto as **Exhibit "A"** ("Owner's Property");

**WHEREAS**, a storage building was constructed on the Owner's Property, and the building extends to the South of the Owner's Property and encroaches approximately 22 inches (the "Encroachment Area") onto adjoining property which is dedicated to the City for use as an alley, as shown on the survey plat attached as Exhibit "A" (the "City's Property");

**WHEREAS**, the Owner does not desire to remove the encroachment at this time and has requested that the City not require removal of the structure from the right-of-way and that the City waive the right to require removal of the encroachment until such time as the structure requires modification or replacement;

**WHEREAS**, said right-of-way has never been improved or maintained by the City and such encroachment into the dedicated right-of-way presently pose no problem or risk on any right-of-way currently in use by the public; and

**WHEREAS**, the City, by and through its Mayor and City Commission, has no objection to issuance of such waiver to the present owner and to its successors and assigns until the structure requires modification and replacement, subject to the requirements described herein, which shall be binding upon the Owner and any subsequent owner.

**NOW, THEREFORE**, in consideration of the mutual covenants between the parties and other valuable consideration, the City Commission of the City, by and through its Mayor, does hereby grant, without warranty, unto Owner and its administrators, executors, successors and assigns this Consent to Encroachment upon the City's Property. The execution of this Consent to Encroachment by the City is not to be construed in any manner as a license for further encroachments within the Encroachment Area. This Consent to Encroachment shall automatically terminate and be rendered null and void upon the removal of the Encroachment regardless of whether said removal is caused by voluntary means or an event of force majeure. Changes in the physical shape or size of the Encroachment area shall be considered additional encroachments without authority and in violation of the legal rights and interests of the City.

Owner accepts the Encroachment Area on an "AS IS" basis and in its present condition. Owner acknowledges that its acceptance of an "AS IS" basis forms a material part of the consideration of this Consent to Encroachment.

ITS RESPECTIVE ADMINISTRATORS, **OWNER**, HEIRS, EXECUTORS, SUCCESSORS AND ASSIGNS, SHALL INDEMNIFY AND SAVE HARMLESS THE CITY, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, INSURERS AND ADVISORS FROM ANY AND ALL CLAIMS, DEMANDS, CHARGES, SUITS OR ACTIONS FOR PROPERTY DAMAGE OR LOSS, OR LOSS OF USE THEREOF, AND PERSONAL INJURY AND DEATH, WHETHER AT LAW OR IN EQUITY, BROUGHT BY ANY PERSON, ENTITY, OR AGENCY, INCLUDING BUT NOT LIMITED TO OWNERS AND EMPLOYEES OR AGENTS OF OWNERS, AND ALL EXPENSES OF LITIGATION INCLUDING BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND LITIGATION EXPENSES, ARISING OUT OF OR IN ANY MANNER CONNECTED CARE OR MAINTENANCE WITH THE USE, OF THE ENCROACHMENT AND ENCROACHMENT AREA.

This Consent to Encroachment in no way relieves Owner, its heirs, administrators, executors, successors, and assigns, from the restrictions, if any, to which the City's Property and Owner's Property are made subject by deed or otherwise, and the restrictions contained in all applicable zoning ordinances.

The City retains the right to perform any cleaning, maintenance, alteration or removal of dirt or other matters within the area adjacent to the Encroachment Area for drainage, water or sewer service or other public services as is determined to be necessary by the City during the term of this Consent to Encroachment.

This Consent to Encroachment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

This Consent to Encroachment may be modified, amended or supplemented only by a written instrument executed by both parties.

This Consent to Encroachment was **APPROVED** by the City Commission of the City of Breckenridge on January 4, 2022.

### CITY OF BRECKENRIDGE

Bob Sims, Mayor

ATTEST:

Pamela Wright, Assistant City Secretary

# STATE OF TEXAS§COUNTY OF STEPHENS§

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by Bob Sims, Mayor of the City of Breckenridge, Texas.

Notary Public, State of Texas

## AFTER RECORDING RETURN TO:

Pamela Wright, Asst. City Secretary 105 N. Rose Avenue Breckenridge, Texas 76424