

**TOWN OF GRAND LAKE
RESOLUTION 44-2023**

**A RESOLUTION GRANTING AN ENCROACHMENT LICENSE FOR
RETAINING WALL A INTO THE TOWN'S RIGHT OF WAY
LOCATED AT A METES AND BOUNDS PROPERTY COMMONLY
REFERRED TO AS 1204 WEST PORTAL ROAD**

WHEREAS, relevant portions of Grand Lake Municipal Code 11-6-1 Public Property Encroachments states:

- (A) *Encroachment Defined - An encroachment is any item that is placed, erected or built on the public right-of-way by a private property owner. A property owner shall seek permission from the Town to encroach onto Rights of Ways or municipal property prior to the encroachment occurring. Where an encroachment exists without Town approval, the owner shall be required to remove the encroachment at his own expense or seek permission from the Town for the encroachment to remain.*
- (B)1. *Major Encroachments are considered encroachments that are more permanent in nature. Examples include, but are not limited to: buildings or structures, driveways, fences and retaining walls, decks and patios, some components of public utilities, as well as other immovable objects other than minor landscaping.*
- (G) *Indemnification and Insurance Requirements
The property owner is required to indemnify and save harmless The Town of Grand Lake against any and all damages which may result from the encroachment. Insurance may be required. The certificate of insurance shall be submitted to the Town prior to the execution or issuance of the Encroachment License or Agreement.*

WHEREAS, Cynthia A. Biersdorfer and Keith Nichols (collectively the “Applicants”) are the owners of 1204 West Portal Rd., Town of Grand Lake (hereinafter the “Property”); and

WHEREAS, the Town of Grand Lake (hereinafter the “Town”) received an Encroachment Permit Application from the Applicants; and

WHEREAS, the Applicants have proposed construction of a retaining wall which will encroach into the Town’s right-of-way; and

WHEREAS, the Town caused certified letters to all utilities to be mailed 15 days prior to the hearing.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF GRAND LAKE, COLORADO:

1. In granting said Encroachment License (hereinafter the “License”), the Town reserves to itself the right to construct, reconstruct and maintain all municipal utilities and permanent improvements, and further reserves the same right to all utility companies operating under a Town franchise or paying utility occupation tax to the Town.
2. Applicant expressly acknowledges and accepts any liability for any damaged caused by the Town to any improvement within the encroachment or attached structure within the encroachment in the course of utilizing the encroachment area for the purposes of snow removal and or storage.

3. A License is hereby granted to the Applicants (hereinafter the “Licensee”) for the purpose of allowing certain encroachments into the public right-of-way, as depicted on Exhibit A, attached hereto and incorporated herein, subject to the following conditions:

1. The License is limited to the encroachments as shown in the attached Exhibit A (hereinafter the “Encroachment”); and
2. The Encroachment complies with the requirements of Municipal Code; and
3. The Licensee must maintain the Encroachment at its sole expense; and
4. This License shall remain in full force and effect for the benefit of the Licensee, their heirs, successors and assigns, until such time as the Town, in its sole determination, determines that this license should end. At such time, within 45 days of the Town providing notice to the Licensee, Licensee shall remove the Encroachment and restore that portion of the Town right of way to pre-existing condition or better at Licensee’s expense. The Licensee may perform normal maintenance and repairs to the Encroachment; and
5. The granting of this License shall not be considered a precedent for any future encroachments; and
6. The granting of this License does not limit any Town use of the right of way; and
7. The Licensee agrees to pay the License fee to the Town in the amount of One Hundred Dollars (\$100.00); and
8. The Licensee agrees to maintain public liability insurance in an amount not less than \$300,000 per person and \$900,000 per accident to protect Licensee and the Town from any liability to the public as a result of the encroachment onto the Town’s right-of-way and to furnish the Town proof of such insurance upon request. Said insurance shall be maintained at all times during the term of this easement.
9. The Licensee delivers the Town a fully executed Encroachment License and Agreement attached as Exhibit B; and,
10. In the unlikely event a utility company contacts the Town, in a reasonable period of time from notification, with justifiable objections to this License; Board review may be required.

DULY MOVED, SECONDED, AND ADOPTED BY THE BOARD OF TRUSTEES OF THE TOWN OF GRAND LAKE, COLORADO THIS 27TH DAY OF NOVEMBER, 2023.

Votes Approving:
Votes Opposing:
Absent:
Abstained:

ATTEST:

TOWN OF GRAND LAKE

Alayna Carrell,
Town Clerk

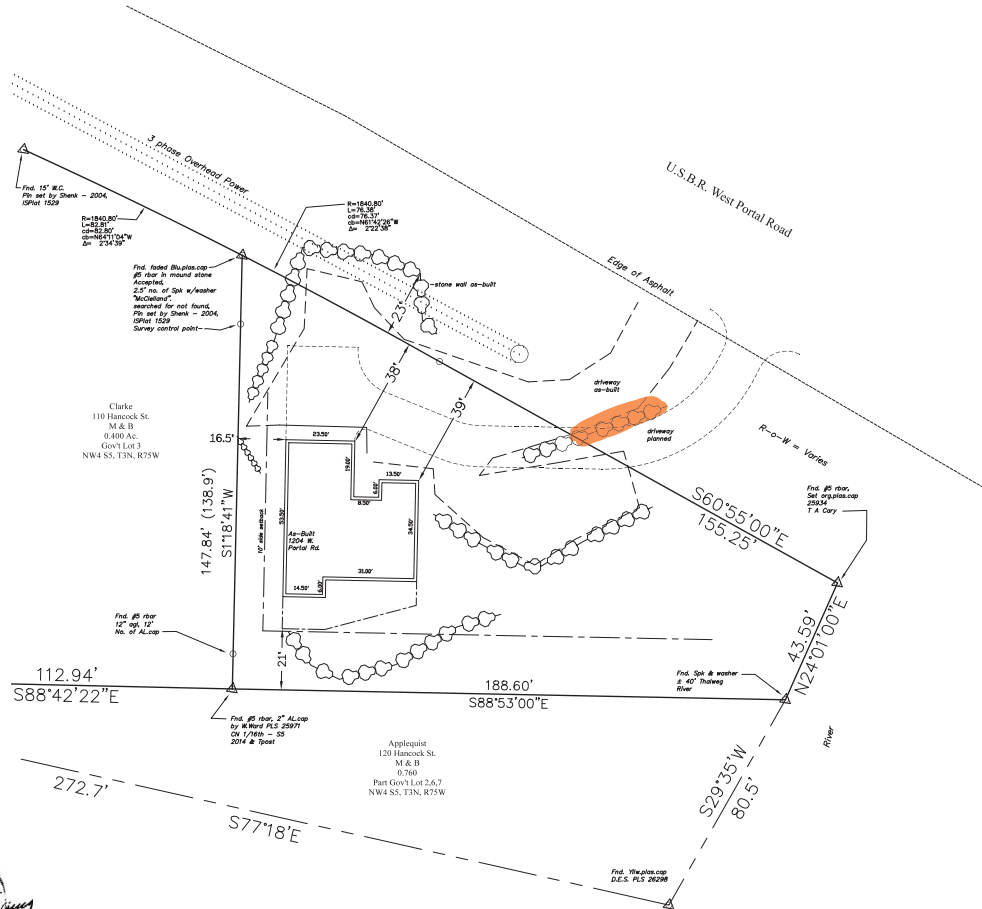
Stephan Kudron,
Mayor

Exhibit A- Encroachment A

Legal Description:
 A tract of land lying South of the tunnel road and West of the North inlet to Grand Lake, located in Lot 2, Section 5, T3N, R75W of the 6th PM, described as follows: beginning at the SW corner of said lot 2, whence the N 1/4 corner of said Sec.5 bears N1°E for a distance of 1336.8 feet;
 Thence along the N-S 1/4 line, N1°12'E for a distance of 138.9 feet to a point on the Southerly R-o-W line of the U.S.B.R. Tunnel Road;
 Thence along said Tunnel Road R-o-W line and on a curve to the right with a radius 1,844.0 feet for 72.3 feet to a point of tangency;
 Thence along said U.S.B.R. R-o-W line S60°55'E for a distance of 155.9 feet to a point on the West bank of the North inlet to Grand Lake;
 Thence along the West bank S24°01'W for a distance of 35.9 feet to a point on the South line of said Lot 2;
 Thence along said South line of said Lot 2, N88°53'W for a distance of 188.6 feet to the point of beginning.
 County of Grand, State of Colorado.

**Improvement Survey Plat
 1204 Portal Road
 Metes & Bounds,
 0.447 Acres,
 Located in a portion of the
 NE 1/4 of of Section 5,
 Township 3 North,
 Range 75 West of the 6th P.M.
 County of Grand,
 State of Colorado
 Conveyance to the Owner
 is recorded at Reception
 No. 2018007380**

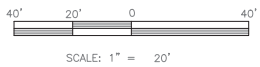
10' utility Easement -
 established by Revised Plat
 Bk. 47 & 48,
 Herb Richard, 25 May 1969,
 rec.no.111130



- PLAT NOTES:**
1. Basis of Bearings is based upon the North-South 1/4 Line of Sec. 5, T3N, R75W of the 6th PM, as outlined in Legal description Book 266 Page 463 which bears N 1°12' E .
 2. Survey based on Legal description Brown to Thonheim, 12 October 1979 at rec.no. 167543 (also in Book 266 Page 462-463); WD Carbone to Kinder, 24 September 2001 at rec.no. 2001009487; WD Kinder to Biersdorfer, 14 September 2018 at rec.no. 2018007380; 15Pat Lot 1, Bk. 1 Sunnyside addition, 10 August 2004 deposited at LS 1529;.
 4. This Improvement Survey Plat was performed without the benefit of a Title Commitment.
 - 5.
 6. Notice: According to Colorado law, you MUST commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any legal action based upon any defect in this survey be commenced more than ten years after the date of certification shown hereon.

Land Surveyor's Certificate:
 I, Thomas Arthur Cary, being a duly licensed professional land surveyor in the State of Colorado, do hereby certify that this plat and survey of Improvement Survey Plat of 1204 Portal Rd. was made by me and under my supervision and that said survey complies with title 38, article 51, C.R.S., 1973, and that the monuments required by statutes and by the Grand County subdivision regulations have been placed on the ground
 Dated this 12 day of July, 2023 (year)
 (SEAL)

Colorado registration number: 25934



On PDF drawing, scale may be distorted
 Scaled original drawing = 24" x 36"
 any other printed size will not match



Prepared For: Cynthia Biersdorfer Keith Nichols 7283 S. Harrison Way Centennial, CO. 80122-1834	Drawn/Revised: Thomas A. Cary 300 GSK 1933 PO Box 122 Herrington, Colorado 80459 1.970.724.2912 / 970.509.0185	Field Work: 11 July 2023 Drawing: 10 Aug. 2023 File: MSCAD 2022 Sheet 1 of 1 PLS 25934 Scale 1" = 20' Lcoperse56@gmail.com
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ENCROACHMENT LICENSE AND AGREEMENT

THIS ENCROACHMENT LICENSE AND AGREEMENT (“the Agreement”) is entered into this 27th day of November 2023, by and between the Town of Grand Lake, a Colorado municipal corporation, (“the Town”) and Cynthia A. Biersdorfer and Keith Nichols (collectively the “Licensee”).

WHEREAS, Licensee is the owner of, 1204 West Portal Rd., Town of Grand Lake, Colorado, and has proposed to construct certain structures that encroach on the Town’s right of way adjacent to the Licensee’s property; and

WHEREAS, the Licensee’s encroachment into the Town’s right of way may not interfere with the Town’s current use of the right of way at this time, and

NOW THEREFORE, in consideration of the promises and agreements hereinafter set forth it is agreed as follows:

1. The Town hereby grants to Licensee, its successors and assigns, a license to encroach on and into the Town’s right-of-way to the degree and in the manner that the Licensee’s improvements encroach as of the date of this Agreement, as follows:
 - A. The Town may, upon determining that the Town intends to use the Town’s right of way for Town purposes, give 45 days written notice to Licensee, requiring that the portion of the deck and pier be removed from the Town’s right of way be returned to its natural condition.
 - B. Under no circumstances shall the deck and pier be altered or moved in a manner that increases the amount of encroachment onto the Town’s right of way.
 - C. The right to use and occupy a portion of the Town’s right of way under the provisions of this Agreement is specifically limited to the improvements currently located thereon.
 - D. The use of the improvements shall be consistent with the zoning district in which it is located as defined by the Town’s zoning code.
 - E. All repairs to the property shall comply with the Town’s building code and all other applicable codes.
2. The Town expressly reserves to itself the right to construct, reconstruct and maintain all municipal utilities and permanent improvements, and further reserves the same

right to all utility companies operating under a Town franchise or paying utility occupation tax to the Town.

3. In consideration for the Town granting this license to Licensee, Licensee agrees:
 - A. This Agreement shall remain in full force and effect for the benefit of the Licensee, their heirs, successors and assigns, until such time as the Town, in its sole determination, determines that this Agreement should end. At such time, within 45 days of the Town providing notice to the Licensee, Licensee shall remove the encroachment, shown on Exhibit A, attached hereto. Licensee shall return the area where the encroachment is currently located to its natural condition and to clean up and remove all debris associated with the encroachment or its removal.
 - B. Within 30 days of the date of this Agreement, to clean up all areas of the Town's right of way shown on Exhibit A, attached hereto, as well as the Licensee's adjacent property, and thereafter to keep such areas neat and free from trash, debris or dead growth.
 - C. To maintain public liability insurance in an amount not less than \$300,000 per person and \$900,000 per accident to protect Licensee and the Town from any liability to the public as a result of the encroachment onto the Town's right-of- way and to furnish the Town proof of such insurance upon request. Said insurance shall be maintained at all times during the term of this easement. In addition, Licensee, its heirs, successors and assigns, agree to indemnify and hold harmless the Town from any loss or liability whatsoever, including defense costs and attorney's fees arising out of damage to person or property attributable to the encroachment. Licensee further agrees to indemnify the Town against any and all license asserted or established against the Town's right of way.
4. In the event the Licensee fails to remove all improvements from the Town's right of way as provided herein, then and in that event, the Town shall be entitled to take all reasonable steps to remove such improvements and Licensee agrees to reimburse the Town for all costs and expenses incurred in removing such improvements. In the event the Licensee fails to pay the Town for all costs and expenses incurred in removing the improvements from the Town's right-of-way, then the Town shall be entitled to (1) record such costs and expenses as a lien against the Licensee's property and certify such costs to the Grand County Treasurer to be collected in the same manner as delinquent taxes, and (2) recover all such costs and expenses through all legal and equitable remedies available to the Town.

- 5. Subject to the conditions set forth herein, this Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto, their heirs, successors in interest, personal representatives, and assigns.
- 6. The Town is a Colorado municipal corporation and is entitled to certain rights and protections under the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., C.R.S. (“the Act”). By entering into this Agreement the Town does not waive and does not intend to waive any of its rights or protections under the Act.
- 7. By entering into this Agreement, Licensee expressly acknowledges that its interest in the Town’s right of way is limited to a license to encroach thereon with the permission of the Town and that neither Licensee’s use of any portions of the Town’s right of way or use of portions of such right of way by any of Licensee’s predecessors or successors shall be used as the basis for any claim to use such right of way except as provided herein, whether such claim is based on estoppel or waiver or adverse possession or any other basis, and that the sole basis for Licensee’s right and claim to use the portions of the Town’s right of way shall be this Agreement.

ATTEST:

**BOARD OF TRUSTEES OF THE
TOWN OF GRAND LAKE, COLORADO**

Alayna Carrell, Town Clerk

By: _____
Stephan Kudron, Mayor

LICENSEE:

Cynthia A. Biersdorfer

Keith Nichols

STATE OF COLORADO)
) SS
COUNTY OF GRAND)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by _____.

Witness my hand and official seal.

Notary Public
My Commission Expires: _____