

ENCROACHMENT LICENSE AND AGREEMENT

THIS ENCROACHMENT LICENSE AND AGREEMENT (“the Agreement”) is entered into this 28th day of August 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: _____