

Exhibit 1

TOWN OF LYONS REVOCABLE ENCROACHMENT LICENSE AGREEMENT

AN AGREEMENT BY AND BETWEEN THE TOWN OF LYONS AND
LYONSHEART LLC FOR THE GRANT OF A REVOCABLE ENCROACHMENT
LICENSE TO CONSTRUCT AND MAINTAIN A PORTION OF THE BUILDING AND
DUMPSTER AT 160 EAST MAIN STREET ON TOWN-OWNED
RIGHT-OF-WAY

- 1.0 **PARTIES.** The parties to this Agreement are the TOWN OF LYONS, COLORADO, a Colorado municipal corporation (hereinafter referred to as the "Town") and LYONSHEART LLC, a Colorado limited liability company (hereinafter referred to as "Licensee") (together, the "Parties"). This Agreement shall be effective upon mutual execution of this Agreement by the Town and Licensee (the "Effective Date").
- 2.0 **RECITALS AND PURPOSE.**
 - 2.1 The Town is the owner of certain right-of-way and utility easements located in the Town of Lyons, Boulder County, Colorado, commonly known as 2ND Ave and associated easements (hereinafter, "Town Property").
 - 2.2 The Licensee is the owner of certain real property legally described in that certain quit claim deed recorded on October 31, 2014 at Reception No. 03410780 in the real property records of Boulder County, Colorado, described as Parcel # 120318419010 and having a street address of 160 East Main Street, Lyons, Colorado ("Licensee's Property"). The Licensee's Property is shown on Exhibit A, a copy of which is attached to this Agreement and is incorporated by reference.
 - 2.3 The Licensee has expressed a desire to encroach upon and occupy the Town Property for the limited purpose of constructing and maintaining a building and dumpster area (hereinafter referred to as the "Encroachment") associated with the Licensee's Property. The Encroachment occupies approximately 50 to 75 square feet of the Town Property and is shown in Exhibit B, a copy of which is attached to this Agreement and is incorporated by reference.
 - 2.4 The Town is willing to grant a revocable license to the Licensee under the terms and conditions as hereinafter specified in this Agreement, provided that nothing in this Agreement shall waive or modify any obligation to seek building permits, variances, or other approvals necessary to meet any obligation imposed by law.

3.0 TERMS AND CONDITIONS.

3.1 The Town hereby grants to the Licensee a revocable license for the encroachment and occupation described as follows:

A portion of the building and dumpster area subject to all height, construction, and location requirements and restrictions imposed by local laws, located approximately as shown on the attached Exhibit B extending along the western and southern side of the Licensee's Property; provided, however, that nothing in this Agreement is intended to waive, alter, modify or permit any violation of any local law applicable to building within the Town of Lyons. To the extent that the location or other specification of Exhibit B conflicts with local laws, the local law shall govern.

Except for the Encroachment identified in this ¶ 3.1, no other encroachment, structure, improvement, vehicle, fence, wall, landscaping, sign, art, or any other real or personal property of Licensee or any other third party shall be erected, installed, constructed, parked, stored, kept, or maintained in any way or fashion on the Town Property.

3.2 The Encroachment shall be authorized to continue from the Effective Date of this Agreement to the time that this Agreement is terminated. The Town may terminate this Agreement at any time without reason or cause by giving written notice to the Licensee ninety (90) days in advance of the effective date of termination and specifying the date of termination therein. The Town may also terminate this Agreement at any time in the case of the declaration by the Board of Trustees for the Town of Lyons that an emergency exists by giving written notice to the Licensee five (5) days in advance of the effective date of termination.

3.3 Licensee expressly agrees to, and shall, to the greatest extent allowed by law, indemnify and hold harmless the Town and any of its officers, agents, or employees from any and all claims, damages, liability, or court awards, including costs and attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of any omission or act of commission by Licensee or any of its employees, agents, partners, or lessees, in encroaching upon the Town Property. In particular and without limiting the scope of the foregoing agreement to indemnify and hold harmless, Licensee shall indemnify the Town for all claims, damages, liability, or court awards, including costs and attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been

sustained by anyone, including but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of any claim in whole or in part that all or any portion of the Encroachment permitted by this Agreement constitutes a dangerous and/or unsafe condition within a public right-of-way.

- 3.4 Licensee agrees that it will never institute any action or suit at law or in equity against the Town or any of its officers or employees, nor institute, prosecute, or in any way aid in the institution or prosecution of any claim, demand, or compensation for or on account of any damages, loss, or injury either to person or property, or both, known or unknown, past, present or future, arising as a result of or from the revocable license granted to Licensee by this Agreement.
- 3.5 Licensee agrees to construct, maintain, and repair the Encroachment placed or located on the Town Property by the Licensee or its lessees, agents, employees, or other persons under the control or direction of the Licensee pursuant to this Agreement at the cost and expense of the Licensee and at no cost or expense to the Town. Licensee agrees to remove or cover graffiti or other damage caused to the Encroachment within a reasonable time following notice or knowledge of such damage or within forty-eight (48) hours of delivery to the Licensee of a written demand by the Town, whichever is earlier. Except as otherwise provided in this Agreement, Licensee shall not erect, cause to be erected, or permit the erection of any sign, advertising object, or illustration upon the Encroachment placed or located on the Town Property pursuant to this Agreement and shall promptly remove any such sign or advertising.
- 3.6 Licensee agrees that the Town is not assuming and will not assume any liability, responsibility, or costs for any damage, maintenance or repair of any structures or objects being erected or maintained by Licensee under this Agreement.
- 3.7 Licensee agrees to repair and reconstruct any damage to the Town Property upon termination of this Agreement or removal of the Encroachment described in ¶ 3.1 and any other improvements erected by Licensee on the Town Property and Licensee shall return the Town Property to its original condition at the sole cost and expense of Licensee and at no cost or expense to the Town.
- 3.8 Licensee is advised and encouraged to take such steps as may be necessary to modify his or her property owner's or other insurance to extend and provide coverage for damage or injury occurring on the Licensee's Property and that portion of the Town Property occupied by the Encroachment specifically authorized by this Agreement. However, the Licensee's failure to take such steps to insure the Licensee's Property and Town Property on which the Encroachment is

situate shall not waive, affect, or impair any obligation of the Licensee to indemnify or hold the Town harmless in accordance with this Agreement.

- 3.9 Licensee shall be deemed to have intentionally and irrevocably abandoned and relinquished any and all rights and interest in the Encroachment in the event that the Licensee conveys all the Licensee's interest in the Licensee's Property. The Town shall be entitled to rely upon the public records of ownership maintained by the office of either the Boulder County Clerk and Recorder or the Boulder County Assessor in determining that the Licensee has abandoned and relinquished the Licensee's rights and interest as provided by this paragraph. In such event, the Town may remove or demolish the Encroachment without notice to the Licensee or the Licensee's successor(s) or assign(s).
- 4.0 **ASSIGNMENT.** This Agreement shall not be assigned by Licensee without the prior written consent of the Town which may withhold its consent for any reason; provided that the Town encourages the Licensee to inform any purchaser of the Licensee's Property of the existence of this Agreement and the Town will promptly consider any request by the Licensee for assignment of this Agreement to such subsequent purchaser.
- 5.0 **NOTICES.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if personally served or if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing, to the other party or parties. Such notice shall be deemed to have been given when deposited in the United States Mail.
- 6.0 **INTEGRATION AND AMENDMENT.** This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.
- 7.0 **GOVERNING LAW AND VENUE.** This Agreement shall be governed by the laws of the State of Colorado and venue for any action arising under this Agreement shall be in the appropriate court for Boulder County, Colorado.
- 8.0 **WAIVER OF BREACH.** A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

9.0 **BINDING EFFECT.** Subject to ¶ 3.9 above, this Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective legal representatives, successors, heirs, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

10.0 **UNDERLYING INTENT AND SCOPE.** It is the intent of this Agreement that the Town shall incur no cost or expense attributable to or arising from the construction, maintenance, or operation of the Encroachment permitted by this Agreement and that, in all instances, the risk of loss, liability, obligation, damages, and claims associated with the Encroachment shall be borne by the Licensee. This Agreement does not confer upon the Licensee any other right, permit, license, approval, or consent other than that expressly provided for herein and this Agreement shall not be construed to waive, modify, amend, or alter the application of any other federal, state, or local laws, including laws governing zoning, land use, property maintenance, or nuisance.

DATED THIS _____ DAY OF _____, 2016.

TOWN OF LYONS:

By: _____
Victoria Simonsen, Town Administrator,
authorized pursuant to Resolution No.
2016-109

ATTEST:

Town Clerk

Town address:

Town of Lyons
432 5th Avenue
P.O. Box 49
Lyons, CO 80540

LICENSEE:

**LYONSHEART LLC, a Colorado limited
liability company**

By:


Patrick Thomas, Managing Member

STATE OF COLORADO)
)
COUNTY OF BOULDER) SS.

The foregoing instrument was acknowledged before me this 3rd day of December, 2016, by Patrick Thomas as Managing Member of LYONSHEART LLC, a Colorado limited liability company.

Witness my hand and official seal,

My commission expires July 31, 2019

[SEAL] DOLORES M. VASQUEZ
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20054031700
MY COMMISSION EXPIRES JULY 24, 2019

Monica M. Vargas
Notary Public

Licensee's address:

**Lyonsheart LLC
160 East Main Street
P.O. Box 2618
Lyons, CO 80540**

Exhibit A
Licensee's Property
(160 E. Main Street, Lyons, Colorado)

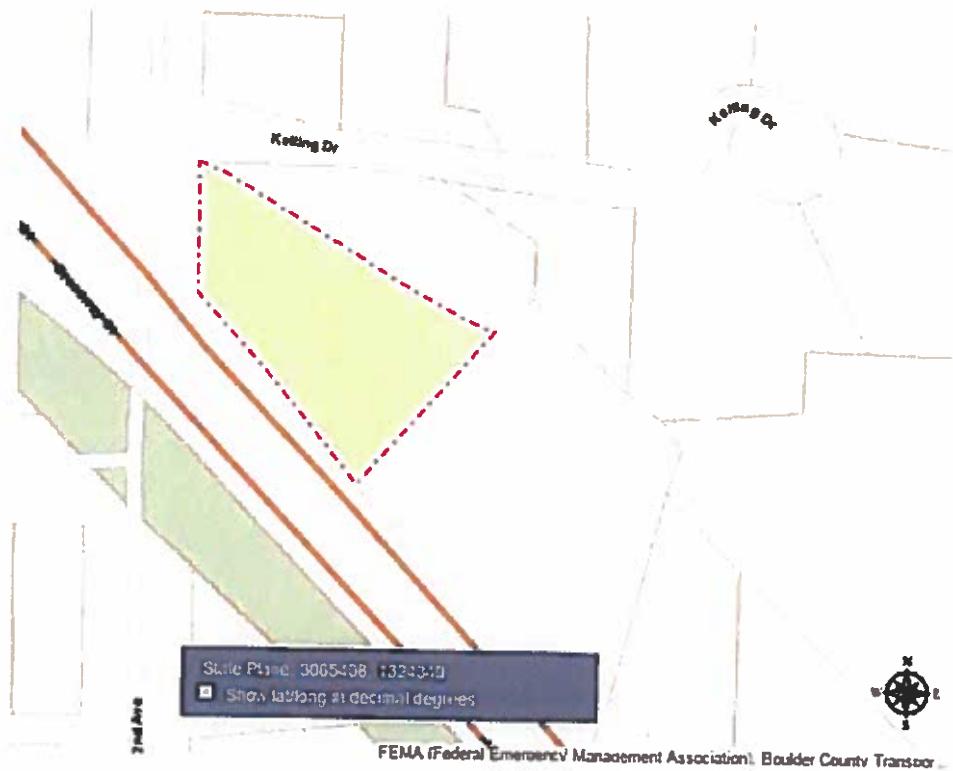


Exhibit B
Area of Encroachment

