

TOWN OF LYONS ENCROACHMENT LICENSE AGREEMENT

**AN AGREEMENT BY AND BETWEEN THE TOWN OF LYONS AND
5930 WASHINGTON AVE LLC, A WISCONSIN LIMITED LIABILITY COMPANY,
FOR THE GRANT OF A REVOCABLE ENCROACHMENT LICENSE TO ALLOW A
PORTION OF THE EXISTING ONE-STORY BUILDING AND ATTACHED DECK TO
REMAIN WITHIN TOWN-OWNED PROPERTY**

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 5930 WASHINGTON AVE LLC, A WISCONSIN LIMITED LIABILITY COMPANY (hereinafter referred to as "Licensee"). This Agreement is effective upon execution of the Licensee and following execution by the Mayor or Mayor Pro Tem on the date indicated below.

2.0 **RECITALS AND PURPOSE.**

2.1 The Town is the owner of certain property located in the Town of Lyons, Boulder County, Colorado, commonly known as ~~2ND AVENUE RIGHT-OF-WAY~~ ("Town Property").

2.2 The Licensee has expressed a desire to encroach upon and occupy the Town Property for the purpose of maintaining a portion of the eastern exterior wall and constructing and maintaining an attached DECK (hereinafter referred to as the "Encroachment") associated with the Licensee's property commonly addressed as 216 E. MAIN STREET.

2.3 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 concrete and flagstone deck built where the pre-existing wooden deck now sits and was burned during the fire on March 21, 2017. The new deck will not exceed the dimensions of the previous deck which extends out 10 feet from the building and runs 20 feet along the side of the building. The deck will be built in compliance with Town of**

Lyons building codes and will feature a metal railing for safety.

- **A portion of the eastern exterior wall encroaching approximately 5.5' into the Town Property.**

(together, the "Encroachment"). The Encroachment described in this paragraph 3.1 is generally shown in the Improvement Location Certificate attached to this Agreement as **Exhibit A**, attached hereto and incorporated herein by reference.

Except for the Encroachment identified in this paragraph 3.1, no other encroachment, structure, improvement, vehicle, fence, wall, landscaping, sign, art, or any other real or personal property shall be erected, installed, constructed, parked, stored, kept, or maintained in any way or fashion on the Town Property or Town of Lyons Utilities easement, including but not limited to storage sheds, dumpster(s) or dumpster enclosures, carports, playground equipment, motor vehicles, or any other equipment related to the Licensee's business operations.

- 3.2 The Encroachment as specified in ¶ 3.1 above shall continue from the 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 license 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 paragraph 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 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 homeowner's or other insurance for 216 E. MAIN STREET to extend and provide coverage for damage or injury occurring on the licensed premises. However, the Licensee's failure to take such steps to insure the premises 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 rights and interest in the Encroachment in the event that the Licensee conveys all the Licensee's interest in the property or properties obtaining access or receiving benefit from the

- 3.10 Encroachment described in this Agreement. 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 rendering a determination 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 and demolish the Encroachment without notice to the Licensee.
- 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. This Agreement shall inure to the benefit of, and be binding upon, the parties, 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 _____, 2017.

TOWN OF LYONS:

By: _____
Town Administrator

ATTEST:

Town Clerk

LICENSEE:

OWNER: 5930 WASHINGTON AVE LLC, a
Wisconsin limited liability company

BY: _____

Print Name: Michael Ty Hammes

TITLE: Member

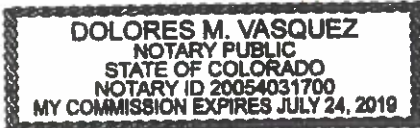
Address: 4222 S. Circle Drive
Racine, WI 53405

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing Encroachment License Agreement was acknowledged before me this
25th day of April, 2017, by Michael Ty Hammes,
as Member (Title) of 5930 WASHINGTON AVE LLC, a Wisconsin limited
liability company.

Witness my hand and official seal.

My commission expires: July 24, 2019

(SEAL) 

Dolores M. Vasquez
Notary Public

Exhibit A

