

# LYONS

## ADDENDUM TO NEIGHBORHOOD LOT LICENSURE HANDBOOK: LICENSE AGREEMENT SUMMARY

**DRAFT**

SPRING 2017





# INTRODUCTION

Applicants approved to license and use a buy-out lot must enter into a license agreement with the Town of Lyons. This is a legal contract that will serve as a binding agreement between the Town and the applicant. It defines the terms of neighborhood lot licensure and gives the licensee the right to use a licensed lot in a manner approved by Town staff.

This 'Addendum to the Neighborhood Licensure Handbook' summarizes the Sample License Agreement required for use of a license lot. License agreements will be customized for each license applicant to reflect approved site uses on a case by case basis. Any revisions or additions will be explained to an applicant by Town of Lyons staff prior to executing the agreement.

Additional information in regard to licensure may be found in the 'Neighborhood Licensure Handbook'. This resource provides an overview of lot licensure, outlines use restrictions, explains the licensure application, and contains other useful information.

# LEGAL AGREEMENT

## REVOCABLE LICENSE AGREEMENT

### AN AGREEMENT BY AND BETWEEN THE TOWN OF LYONS AND \_\_\_\_\_ FOR THE GRANT OF A REVOCABLE ENCROACHMENT LICENSE TO MAINTAIN AND OCCUPY TOWN- OWNED PROPERTY

1.0 **PARTIES.** The parties to this Revocable License Agreement (the "Agreement") are the TOWN OF LYONS, COLORADO, a Colorado statutory municipal corporation (the "TOWN") and [insert full legal name(s) of owner or owners], the owner(s) of [insert street address], Lyons, Colorado (hereinafter referred to as "LICENSEE"). This Agreement is effective upon execution of the LICENSEE and following execution by the Town Administrator on the date indicated below.

2.0 **RECITALS AND PURPOSE.**

2.1 The TOWN is the owner of certain property known as [insert address of property] located in the Town of Lyons, Boulder County, Colorado, (the "Property"), having acquired the Property, which was substantially damaged in the flood of September 2013, through a federally funded buyout program after the previous owner of the Property elected to accept a buyout rather than attempting to redevelop the Property. Title to the Property passed to the Town following the buyout, and the Town is now generally precluded from building any improvements or otherwise developing the Property for anything other than passive recreational uses.

2.2 The LICENSEE is the owner of property commonly known and addressed as \_\_\_\_\_ ("Licensee's Property") and maintains an existing private residential structure on the Licensee's Property. The Licensee desires to obtain access to, use, and occupy a portion of the Property, as more particularly described and depicted on the attached **Exhibit A** (the "Licensed Premises"), for passive uses that are in accordance with the Use Covenant and any and all restrictions and terms and conditions on the Licensed Premises as referenced in Section 3.1 of this Agreement. A copy of **Exhibit A** is attached and incorporated into this Agreement as if fully set forth herein.

2.3 The TOWN believes that the passive use by the Licensee of the Licensed Premises for uses that are consistent and compatible with the primary residential use, subject to the limitations stated herein, would be in the best interests of the community, would not impair vehicle or pedestrian access to Town-owned park land in the area, and would not affect the integrity of existing utilities located on or under the Licensed Premises.

2.4 The TOWN is willing to grant a revocable license to the Licensee for the Licensed

- 1 *This license agreement is between you, the 'Licensee', and the Town of Lyons.*
- 2 *The property to be licensed is owned by the Town of Lyons. It was purchased with buy-out funds after the 2013 floods, and is subject to certain restrictions that go along with that process. Refer to 'Use Restrictions' on Page 5 of the Neighborhood Licensure Handbook for additional information.*
- 3 *You will be able to use the licensed lot for passive, low-impact uses typical of a residential property as approved by Town staff.*
- 4 *Uses must not impact existing access, utilities, or inconvenience adjacent residents.*
- 5 *The Town of Lyons will grant a license that maybe revoked if certain guidelines are not followed.*

Premises under the terms and conditions as specified herein, provided that nothing in this Agreement shall authorize any use the Town would not be permitted to maintain on the Licensed Premises.

### 3.0 TERMS AND CONDITIONS.

**6**

3.1 The TOWN hereby grants to the LICENSEE a revocable license for the use and occupation of the entirety of the Licensed Premises, as follows: The following uses are ALLOWED on licensed premises: gardening; landscaping; natural areas; and uses approved by the Town of Lyons.

The following uses are PROHIBITED on licensed premises: uses not approved by Town of Lyons; uses that violate Town of Lyons municipal ordinance; uses that violate Town of Lyons floodplain regulations; site regrading; vehicle parking including automobiles, boats, campers/recreational vehicles, tiny homes, or construction equipment; walled structures; unapproved fences; overnight camping; public picnicking; obstructions that may trap debris in a flood event; storage of inventory supporting a commercial operation; storage of construction materials or fill dirt; landfill or storage of hazardous or toxic materials; above or below ground storage tanks, including rain barrels; hydraulic fracturing or horizontal-directional drilling (HDD); paved vehicular access; septic tanks.

The LICENSEE acknowledges and agrees that in addition to the restrictions on the use of the Licensed Premises set forth herein, the LICENSEE'S use and occupancy of the Licensed Premises is subject to the terms and conditions of the Federal Emergency Management Agency's (FEMA) Hazard Mitigation Assistance Guidance Addendum, FEMA Model Deed Restrictions, the HMGP Use Restrictions, CDBG Deed Restrictions, and/or the terms and conditions of the Department of Housing & Urban Development's requirements], as applicable, all of which are attached hereto as **Exhibit B** and incorporated into this Agreement as if fully set forth herein.

The Town reserves the right to use the Property for municipal purposes and to exercise fully its police powers with regard to the Property. Further, the Town reserves the right to inspect the Licensed Premises at any time and for any reason, and LICENSEE specifically consents to such inspection.

**7**

3.2 The uses specified in ¶ 3.1 above may continue from the effective date of this Agreement to the time that this Agreement is terminated. The TOWN may

6

*There are specific allowed and prohibited uses on licensed lots. Theses uses are listed in the agreement and may be amended on a case by case basis. Refer to 'Use Restrictions' on Page 5 of the Neighborhood Licensure Handbook for additional information.*

7

*The Town can terminate this agreement at anytime. If the Town terminates the agreement, you will no longer have the Town's permission to use the property. Ordinarily, the Town will give notice of termination 30 days in advance. However, under the three circumstances listed, the Town only needs to give notice of the termination as soon as it can. Refer to 'Frequently Asked Questions' on Page 7, Question #6 of the Neighborhood Licensure Handbook for additional information.*

terminate and revoke this Agreement at any time without reason or cause by giving written notice to the LICENSEE thirty (30) days in advance of the effective date of termination and specifying the date of termination therein. Except in the case of a public safety emergency or where a shorter period of time is justified, the Licensee shall customarily not be required to remove any improvements from the Licensed Premises within less than thirty (30) days of notice to the Licensee.

The TOWN may also terminate and revoke this Agreement at any time without giving written notice to the LICENSEE thirty (30) days advance of the effective date of termination under the following circumstances: (1) in the case of a declaration by the Town Board of Trustees that an emergency or other public need exists; (2) if the LICENSEE has violated any provision of the Lyons Municipal Code with regard to use or maintenance of the Licensed Premises; or (3) if the Licensee has violated this Agreement, provided that the TOWN shall provide advance written notice to the Licensee of such termination as soon as is practicable.

In the event this Agreement is revoked by the Town either because of a public safety emergency or other public need or for any reason, the Town shall reserve all available remedies for taking possession of the Licensed Premises. The LICENSEE acknowledges and agrees that its status as a licensee shall terminate upon the passage of the period of time indicated in this Section following the written notice described in this Section.

LICENSEE may terminate this Agreement at any time by delivering written notice of termination to the Town Administrator, which notice shall state the effective date of such termination.

- 3.3 Notwithstanding the provisions of Section 3.2, the License approved by this Agreement is personal to the Licensee, shall not run with the land, and shall terminate immediately upon the sale or transfer of the Licensee's Property. Nothing in this provision shall prohibit the Town from negotiating or entering into a similar agreement with a future owner of the LICENSEE's Property.
- 3.4 LICENSEE expressly agrees to, and shall, 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 attorneys' 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 Licensed Premises.
- 3.5 LICENSEE agrees that it will never institute any action or suit at law or in equity

8

*This agreement is with you, not your property/address. If a new owner takes over they will have to create a new agreement if they want to use the buy-out lot or a portion of it. Refer to 'Frequently Asked Questions' on Page 6, Question #2 of the Neighborhood Licensure Handbook for additional information.*

9

*You will be responsible for any damages or claims for damages that result from your actions or inactions on the licensed lot, and agree to reimburse the Town for any expenses it incurs defending or paying for those claims.*

**10**

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.

3.6

LICENSEE agrees to maintain all buildings and other improvements on the Licensee's Property, and to maintain the Licensed Premises at the cost and expense of the Licensee and at no cost or expense to the Town, provided that the Town shall maintain the portion of the property that is not part of any Licensed Premises pursuant to a revocable license agreement.

3.7

LICENSEE agrees that the TOWN is not assuming and will not assume any liability, responsibility, or costs for any damage, maintenance or repair of the Licensed Premises, regardless of whether the damage, maintenance or repair is the result of any action of the Town and/or its employees.

3.8

LICENSEE agrees to repair and reconstruct any damage to the Licensed Premises upon termination of this Agreement and Licensee shall return the Licensed Premises to its original condition at the cost and expense of Licensee and at no cost or expense to the Town by the earlier of the date on which this Agreement is terminated or the date by which all improvements must be removed pursuant to the terms of this Agreement.

3.9

LICENSEE agrees to procure and maintain, at its own cost, a policy or policies of insurance protecting against injury, damage or loss occurring on the Licensed Premises in the minimum amount of \$990,000.00 per occurrence. Such policy or policies shall name the Town, its elected officials, officers, employees and agents as additional insured parties, and such policy of insurance shall be endorsed to include the Town as a Certificate Holder. The Town may request and LICENSEE shall provide within three (3) business days of such request a current certified copy of any policy of such insurance and any endorsement of such policy. However, the Licensee's failure to take such steps to insure the premises shall not waive, affect, or impair any obligation of LICENSEE to indemnify or hold the Town harmless in accordance with this Agreement.

3.10

LICENSEE shall be deemed to have intentionally and irrevocably abandoned and relinquished rights to use and occupy the Licensed Premises in the event that 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 rendering a determination that the LICENSEE has abandoned and relinquished LICENSEE's rights and interest as provided by this paragraph. In such

**10**

*You agree not to sue or make claims against the Town for any harm that for any reason related to this agreement.*

**11**

*The Town will take care of any portion of the property which is not licensed by you. The portion that you license will be your responsibility to maintain. Refer to 'Public & Private Use' on Page 4 of the Neighborhood Licensure Handbook for additional information.*

**12**

*The Town will not be liable or responsible for any damage or repair to the property, even if the Town or its employees causes such damage or need for repair.*

**13**

*It is your responsibility to return the property to its original condition at the time that your right to have improvements on the property ends, and you must pay for any expenses to do that. The Town will not pay to return the property to its original condition.*

**14**

*You need to get insurance coverage for the additional property that you are licensed to use, and must provide proof of this coverage to the Town upon its request. Refer to 'Frequently Asked Questions' on Page 8, Question #9 of the Neighborhood Licensure Handbook for additional information.*

**15**

*If your property is sold or transferred then this agreement is terminated and the Town can remove any improvements you have made if they choose to and without notifying you in advance.*

event, the Town may remove any improvements LICENSEE has placed on the Licensed Premises 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 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 LICENSEE for assignment of this Agreement to such subsequent purchaser.  
**16**
- 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 have 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.  
**17**
- 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.  
**18**
- 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.  
**19**
- 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.  
**20**
- 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.  
**21**
- 10.0 **NO WAIVER OF IMMUNITY.** The parties understand and agree that the TOWN is relying on and does not waive or intend to waive by any provisions of this Agreement, any immunity provided by, or the monetary limitations of liability provided by, the Colorado Government Immunity Act, C.R.S. §§ 24-10-101, *et seq.* as from time to time amended, or any other immunity that may be otherwise available to Town, its officers, agents or employees.  
**22**

**16** You may be able to assign this agreement to a new owner of your property, but only if and after you receive written approval from the Town.

**17** The Town meets notice requirements when it sends notice by mail or delivers notice to you personally.

**18** This contract represents your entire agreement with the Town. The Neighborhood Licensure Handbook is simply a guide and is not part of the agreement.

**19** This agreement is interpreted according to Colorado law, and any dispute arising out of this agreement will be take place in the appropriate court in Boulder County.

**20** Even if a party waives or forgives compliance with a term of this agreement, that does not mean they have waived compliance with the agreement at any other time.

**21** The agreement is binding and cannot be assigned to others unless the agreement otherwise allows it.

**22** Under Colorado law, governmental immunity restricts the reasons and amounts for which local governments may be sued, and this agreement does not change that.

11.0

**23** **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 encroachments or improvements permitted by this Agreement and that, in all instances, the risk of loss, liability, obligation, damages, and claims associated with the encroachments 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. This Agreement is intended to provide terms and conditions under which the TOWN shall permit occupancy and use of the Licensed Premises and to expressly provide that such occupancy may be terminated at the TOWN's discretion in accordance with this Agreement. This Agreement does not, and shall not be interpreted to, grant any property right to the LICENSEE for continuing occupancy of the Licensed Premises. Any right granted hereunder shall be deemed a revocable license and contractual right only.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY – SIGNATURE PAGE FOLLOWS

23

*The Town will not take on any cost associated with the property except for the maintenance and care for existing trees. No other benefits are being granted to you except for those that are listed in the agreement. The Town is not making any changes to the laws that govern Lyons, CO. The Town is granting use & responsibility but can take that away according to this agreement. You have no property right in the licensed property. Instead, you are authorized by this agreement to access and use the property, which the Town may revoke.*

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

**TOWN OF LYONS**

\_\_\_\_\_, Town Administrator

ATTEST:

\_\_\_\_\_, Town Clerk

**LICENSEE:**

24

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF COLORADO

)

COUNTY OF BOULDER

)  
ss.  
)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_, personally by \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public

Commission expires: \_\_\_\_\_.

24

*Your signature binds you to the terms and conditions of this licensure agreement and allows you, the Licensee, to use a licensed lot as approved by Town of Lyons staff and as stipulated in this agreement.*