

RESOLUTION NO. 13
SERIES OF 2022

INTRODUCED BY: KATY BROWN
SECONDED BY: MIKE GALLAGHER

**A RESOLUTION
OF THE CITY COUNCIL
OF THE CITY OF CHERRY HILLS VILLAGE
APPROVING A REVOCABLE ENCROACHMENT LICENSE AGREEMENT
BETWEEN ADAM H. WRITER AND ADRINE S. WRITER
AND THE CITY OF CHERRY HILLS VILLAGE
FOR THE INSTALLATION, CONSTRUCTION, AND MAINTENANCE OF
CERTAIN IMPROVEMENTS ON CITY-OWNED PROPERTY**

WHEREAS, the City of Cherry Hills Village ("City") has the general authority, in accordance with Section 31-15-101(1)(d), Colorado Revised Statutes, to acquire, hold and dispose of real property; and

WHEREAS, Section 12.4 of the Cherry Hills Village Home Rule Charter provides that City Council may grant permits for the temporary use or occupation of any street, alley or public place, and establish conditions and compensation to be paid the City therefor; and

WHEREAS, the sanitary sewer service line servicing the property located at 6 Cherry Lane Drive (the "Service Line") has historically run through City-owned property known as Volunteer Park, but the City has no record of authorizing such encroachment on its property; and

WHEREAS, the Service Line needs to be replaced because it is no longer serviceable, and the City desires to authorize the replacement of the Service Line in its present location subject to certain terms and conditions; and

WHEREAS, the City Council desires to approve and enter into the attached Agreement for the Grant of a Revocable Encroachment License (the "License Agreement") according to the terms and conditions set forth therein.

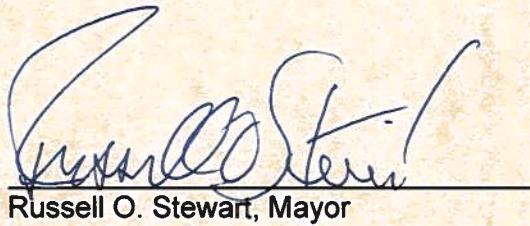
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO THAT:

Section 1. The City Council accepts and approves the License Agreement with Adam H. Writer and Adrine S. Writer, as set forth in Attachment A, attached hereto and incorporated herein by reference, subject to minor modifications and revisions approved by the City Manager and City Attorney that do not increase the City's financial obligations, and authorizes the Mayor to execute the same.

Section 2. This Resolution is effective upon adoption.

Introduced, passed and adopted at the regular meeting of City Council this 21st day of June, 2022, by a vote of 5 yes 0 no.

(SEAL)



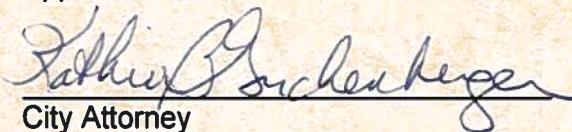
Russell O. Stewart, Mayor

ATTEST:



Laura Gillespie, City Clerk

Approved as to form:



Kathy Porcher-Heger
City Attorney



RESOLUTION
07/25/2022 08:35 AM RF: \$63.00 DF: \$0.00
Arapahoe County Clerk, CO
Page: 1 of 11
Joan Lopez, Clerk & Recorder

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ATTACHMENT A

**AGREEMENT BY AND BETWEEN THE CITY OF CHERRY HILLS VILLAGE,
COLORADO AND ADAM H. WRITER AND ADRINE S. WRITER FOR THE GRANT
OF A REVOCABLE ENCROACHMENT LICENSE TO INSTALL, CONSTRUCT, AND
MAINTAIN CERTAIN IMPROVEMENTS ON CITY-OWNED PROPERTY**

**AN AGREEMENT BY AND BETWEEN THE CITY OF CHERRY HILLS VILLAGE,
COLORADO AND ADAM H. WRITER AND ADRINE S. WRITER FOR THE GRANT OF A
REVOCABLE ENCROACHMENT LICENSE TO INSTALL, CONSTRUCT, AND MAINTAIN
CERTAIN IMPROVEMENTS ON CITY-OWNED PROPERTY**

1.0 **PARTIES.** The parties to this Agreement are the CITY OF CHERRY HILLS VILLAGE, COLORADO, a Colorado home rule municipality (the "City"), and ADAM H. WRITER AND ADRINE S. WRITER (collectively, the "Licensee"). This Agreement is effective upon execution by the Licensee and the City on the date indicated below.

2.0 **RECITALS AND PURPOSE.**

- 2.1. The City is the owner of certain property located in the City of Cherry Hills Village, Arapahoe County, Colorado, commonly known as Volunteer Park ("City Property").
- 2.2. The Licensee desires to encroach upon and occupy the City Property for the purpose of installing, constructing, and maintaining certain private improvements as more fully described herein, including but not limited to (Sanitary Sewer Service Line).
- 2.3. The City 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 approval necessary to meet any obligation imposed by law. The Licensee remains obligated to apply for and obtain all necessary permits and approvals and pay all required fees and comply with all applicable local laws, including but not limited to the provisions of Article II, Chapter 11 of the Cherry Hills Village Municipal Code.

3.0 **TERMS AND CONDITIONS.**

- 3.1. The City hereby grants to the Licensee a revocable license for the encroachment and occupation by the following Improvements on the City Property, described as follows:

(Sanitary Sewer Service Line for 6 Cherry Lane Drive):

being more specifically described and depicted in the attached **Exhibit A-1 and A-2** ("Improvements"). Nothing in this Agreement is intended to waive, alter, modify, or permit any violation of any state or local law applicable within the City of Cherry Hills Village. To the extent that the location or other specifications of this License or any exhibit conflicts with state or local laws, the more restrictive of the state or local law shall govern.

Except for the encroachment and occupation of the Improvements identified in this paragraph 3.1, no other encroachment, structure,

improvement, vehicle, fence, wall, landscaping, or any other real or personal property shall be erected, installed, constructed, parked, stored, kept, or maintained in any way or fashion on the City Property.

- 3.2. The encroachment and occupation by the Improvements as specified in paragraph 3.1 above shall continue for a period of (20) twenty years from the date of this Agreement to the time that this Agreement is terminated. This Agreement shall automatically renew for additional (20) twenty-year periods unless otherwise terminated in accordance with this agreement.
- 3.3. **City Termination:** The City may terminate this Agreement at any time if the City Manager makes, in his or her sole discretion, a written determination that removal of the Improvements is necessary to protect the public health, safety, or welfare or is otherwise in the best interests of the City. At such time as the City Manager makes a determination that removal of the Improvements is necessary, the City Manager shall also determine the reasonable period of time within which the Improvements must be removed by the Licensee. Except in the case of a public safety emergency or where a shorter period of time is justified due to the nature of the Improvements, the Licensee shall customarily not be required to remove the Improvements within less than thirty (30) days of notice to the Licensee. The City may also terminate this Agreement at any time in the case of a declaration by the City Council for the City of Cherry Hills Village that a public safety emergency exists by giving written notice to the Licensee five (5) days in advance of the effective date of termination.
- 3.4. **Licensee Termination:** The Licensee may terminate this Agreement at any time by delivery of written notice of termination to the City which notice shall state an appropriate date of termination consistent with the requirements of this paragraph. Prior to delivery of such notice, the Licensee shall consult with the City to determine whether the City directs that the Improvements be removed as a condition of termination. Should the City direct removal of one or more of the Improvements, the Licensee shall cause such Improvements to be removed at Licensee's cost and expense prior to the effective date of termination stated in the notice of termination. Should the City consent to or permit one or more of the Improvements to remain within the City Property, the Licensee shall cause all other Improvements to be removed at the Licensee's cost and expense prior to the date of termination stated in the Licensee's notice of termination and, as to those Improvements to which the City has consented to their remaining in place, the Licensee agrees to one of the following options, as determined by the City in its sole discretion: (1) convey such remaining Improvements to the City by affirmatively declaring in the Licensee's notice of termination that such Improvements remaining within the City Property following the date of termination are owned by the Licensee and are deemed conveyed

upon the date of termination by the Licensee to the City and that the Licensee neither requests nor desires any additional compensation for the conveyance of such Improvements (the Parties recognizing and agreeing that, by the City's consenting to and or permitting such Improvements to remain within the City Property, the Licensee is relieved of the cost and expense of removal of such Improvements and such relief is sufficient and adequate consideration for conveyance of such Improvements to the City); or (2) enter into a new agreement with the City by which ongoing maintenance of the remaining Improvements and liability with respect to such Improvements are addressed to the City's satisfaction.

- 3.5. The Licensee expressly agrees to, and shall, indemnify and hold harmless the City 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 the Licensee or any of its employees, agents, partners, or lessees, in encroaching upon the City Property. In particular and without limiting the scope of the foregoing agreement to indemnify and hold harmless, the Licensee shall indemnify the City 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 Improvements and encroachments permitted by this Agreement constitutes a dangerous or unsafe condition within a public right-of-way.
- 3.6. The Licensee agrees that it will never institute any action or suit at law or in equity against the City 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 the Licensee by this Agreement. This provision includes but is not limited to claims relating to road maintenance, snow removal or other public works activities performed by or on behalf of the City.
- 3.7. The Licensee agrees to (1) construct, maintain, and repair the Improvements placed or located, or to be placed or located on the City Property by the Licensee or its lessees, agents, employees, or other persons under the control or direction of the Licensee pursuant to this Agreement; and (2) remove or maintain and repair the existing sanitary sewer service line, at the cost and expense of the Licensee and at no cost or expense to the City, and shall return all City Property disturbed by such activities including, but not limited to, ground cuts

or excavation necessary to construct the improvements, to its condition as existed prior to such activities. The Licensee agrees to remove or cover graffiti or other damage caused to the Improvement(s) 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 City, whichever is earlier. The Licensee shall not erect, cause to be erected or permit the erection of any sign, advertising object, or illustration upon any improvement, structure, fence, or wall placed or located by the City Property pursuant to this Agreement and shall promptly remove any such sign or advertising.

- 3.8. Improvements shall be installed and located such that proper sight distances for vehicle drivers are provided, as determined by the City Traffic Engineer. Mature landscaping shall not interfere with sight distance or street sign visibility, encroach on the sidewalk pedestrian space, or extend over utility boxes, manholes or other public facilities. Landscaping installed by the Licensee shall be maintained in living and healthy condition at the sole expense of the Licensee
- 3.9. The Licensee agrees that the City is not liable, and will not assume any liability, responsibility, or costs for any damage, maintenance, or repair of any Improvements erected or maintained by the Licensee.
- 3.10. The Licensee agrees to repair and reconstruct any damage to the City Property upon termination of this Agreement or removal of the Improvements described in paragraph 3.1 and any other improvements erected by the Licensee on the City Property and the Licensee shall return the City Property to its original condition at the cost and expense of the Licensee and at no cost or expense to the City.
- 3.9 The 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 \$600,000.00 per occurrence. Such policy or policies shall be endorsed to name the City as an "additional insured." 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 City harmless in accordance with this Agreement.
- 4.0 **ASSIGNMENT.** This Agreement shall not be assigned by the Licensee without the prior written consent of the City which may withhold its consent for any reason; provided that the City encourages the Licensee to inform any purchaser of the Licensee's property or interests of the existence of this Agreement and the City will promptly consider any request by the Licensee for assignment of this Agreement to such 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, the address of the registered agent for such party, 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. Invalidation of the Agreement in its entirety shall revoke any authorization, whether explicit or implied, to the continuing use and occupancy of the City Property for the Improvements.
- 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 Arapahoe 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 City shall incur no cost or expense attributable to or arising from the construction, maintenance, or operation of the Improvements and encroachments permitted by or referenced in 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.
- 11.0 **AUTHORITY TO BIND PARTY.** Each of the undersigned persons represents that such person is expressly authorized to execute this Agreement on behalf of his or her respective Party and to bind his or her respective Party and that the other Party may rely upon such representation of authority.

DATED THIS _____ DAY OF _____, 20____.

DATED THIS 21st DAY OF June, 2022.

CITY OF CHERRY HILLS VILLAGE:

By:

Russell O. Stewart, Mayor

ATTEST:

Laura Gillespie
Laura Gillespie, City Clerk

APPROVED AS TO FORM:

Kathie B. Guckenberger
Kathie B. Guckenberger, City Attorney

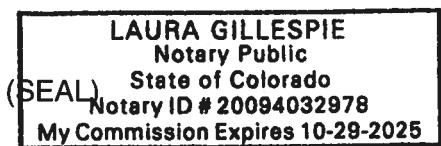
LICENSEES:

Adam H. Writer
Adam H. Writer

Adrine S. Writer
Adrine S. Writer

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

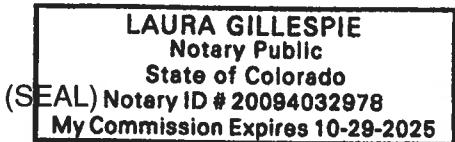
The foregoing instrument was acknowledged before me this 27th day of June, 2022, personally by Adam H. Writer.



Laura Gillespie
Notary Public
My Commission expires: 10/29/25

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 27th day of June, 2022, personally by Adrine S. Writer.



Laura Gillespie
Notary Public
My Commission expires: 10/29/25

EXHIBITS A-1 and A-2

EXHIBIT A-1
REVOCABLE ENCROACHMENT LICENSE

THE REVOCABLE ENCROACHMENT LICENSE IS GENERALLY LOCATED IN THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF CHERRY HILLS VILLAGE, COUNTY OF ARAPAHOE, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WESTERLY CORNER OF LOT 33, CHERRY HILLS ANNEX, AS RECORDED IN RECEPTION NUMBER 457181, IN ARAPAHOE COUNTY RECORDS;
THENCE S 55°04'17" E ALONG THE SOUTHWESTERLY LOT LINE OF SAID LOT 33 AS PLATTED A DISTANCE OF 102.98 FEET TO THE POINT OF BEGINNING;
THENCE S 50°58'41" W ALONG SAID CENTERLINE A DISTANCE OF 168.63 FEET TO THE INTERSECTION OF THE SANITARY SEWER MAIN AND THE POINT OF TERMINUS.

CURTIS LANDRY

CURTIS M. LANDRY, P.L.S. 28275
FOR AND ON BEHALF OF CJ SURVEYING, LLC

Digitally signed by CURTIS
LANDRY
Date: 2022.06.06 17:26:47 -06'00'



EXHIBIT A-2

