

A RESOLUTION
OF THE CITY COUNCIL
OF THE CITY OF CHERRY HILLS VILLAGE
APPROVING AN AGREEMENT BY AND BETWEEN
THE CITY AND CHERRY HILLS FARM HOMEOWNER'S ASSOCIATION, INC.
FOR THE GRANT OF A REVOCABLE ENCROACHMENT LICENSE
TO INSTALL, CONSTRUCT, USE, MAINTAIN, REPAIR, AND REPLACE
CERTAIN IMPROVEMENTS ON CITY-OWNED RIGHT-OF-WAY

WHEREAS, Cherry Hills Village (the "City") is the owner of certain street right-of-way within the City known as Cherry Hills Farm Drive; and

WHEREAS, the east-west oriented portion of Cherry Hills Farm Drive lying immediately east of University Boulevard (the "Right-of-Way") serves as a primary entry point into the Cherry Hills Farm residential development; and

WHEREAS, Cherry Hills Farm Homeowner's Association, Inc. (the "HOA") previously has installed or caused to be installed certain improvements within the Right-of-Way to serve as enhancements to this entry point into Cherry Hills Farm; and

WHEREAS, the HOA desires to install a limited number of further improvements in the Right-of-Way, including but not limited to a small office/bathroom structure, to better facilitate its provision of services to the residents of Cherry Hills Farm; and

WHEREAS, Section 12.4 of the Cherry Hills Village Home Rule Charter authorizes the City Council to grant permits for the temporary use or occupation of any street, alley, or public place; and

WHEREAS, the Right-of-Way can accommodate the additional improvements contemplated without compromise or detriment to the public functions of the Right-of-Way; and

WHEREAS, the City and the HOA desire to enter into an agreement establishing the terms and conditions by which all such improvements within the Right-of-Way are, as applicable, installed, constructed, used, maintained, repaired, and replaced by the HOA.

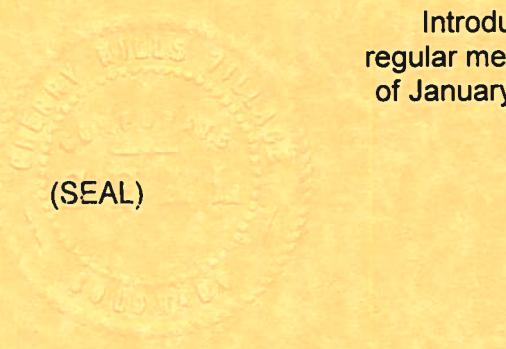
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO THAT:

Section 1. The City Council hereby approves the attached Agreement and authorizes the Mayor to execute said Agreement on behalf of the City.

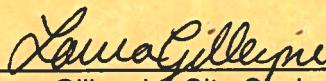
Section 2. This Resolution is effective upon adoption.

Introduced, passed and adopted at the regular meeting of the City Council this 21st day of January, 2020, by a vote of 6 yes and 0 no.

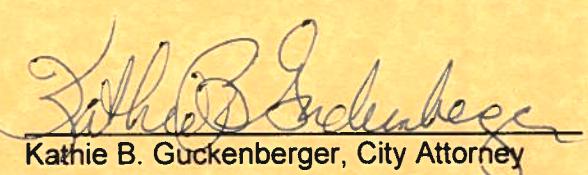
(SEAL)


Russell O. Stewart, Mayor

ATTEST:


Laura Gillespie, City Clerk

APPROVED AS TO FORM:


Kathie B. Guckenberger, City Attorney

ATTACHMENT:

AN AGREEMENT BY AND BETWEEN THE CITY OF CHERRY HILLS VILLAGE, COLORADO AND CHERRY HILLS FARM HOMEOWNER'S ASSOCIATION, INC. FOR THE GRANT OF A REVOCABLE ENCROACHMENT LICENSE TO INSTALL, CONSTRUCT, AND MAINTAIN CERTAIN IMPROVEMENTS ON CITY-OWNED RIGHT-OF-WAY

AN AGREEMENT BY AND BETWEEN THE CITY OF CHERRY HILLS VILLAGE, COLORADO AND CHERRY HILLS FARM HOMEOWNER'S ASSOCIATION, INC. FOR THE GRANT OF A REVOCABLE ENCROACHMENT LICENSE TO INSTALL, CONSTRUCT, AND MAINTAIN CERTAIN IMPROVEMENTS ON CITY-OWNED RIGHT-OF-WAY

1.0 **PARTIES.** The parties to this Agreement are the CITY OF CHERRY HILLS VILLAGE, COLORADO, a Colorado home rule municipality (the "City"), and CHERRY HILLS FARM HOMEOWNER'S ASSOCIATION, INC. (the "Licensee"). This Agreement is effective upon execution by the Licensee and following execution by the City Manager 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 a portion of the right-of-way of Cherry Hills Farm Drive; more specifically, that portion situated generally in an east-west orientation and lying between South University Boulevard to the west and the north-south oriented portion of Cherry Hills Farm Drive to the east ("City Property"). The City Property serves as a primary entry point into the Cherry Hills Farm development.
- 2.2. Certain improvements, including but not limited to brick street pavers, landscaping (including trees), irrigation systems, and pedestrian walkways previously have been installed upon the City Property to enhance the entry point (collectively, the "Previous Improvements"), and the Licensee now desires to encroach upon and further occupy the City Property for the purpose of installing, constructing, and maintaining certain additional private improvements as more fully described herein (collectively, the "Additional Improvements"). The Previous Improvements and the Additional Improvements are, for the purposes of this Agreement, referred to collectively as the "Improvements."
- 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 (including but not limited to those required to obtain a building permit and water and sewer taps for the hereinafter-defined Comfort Station, which shall constitute an affirmative obligation of the Licensee), 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 Previous Improvements on the City Property, as well as for the

Additional Improvements described as follows:

AN ACCESSORY USE, SINGLE-STORY OFFICE AND BATHROOM ("COMFORT STATION") NO MORE THAN 300 SQUARE FEET, COMPATIBLE WITH THE CHERRY HILLS FARM HOME-OWNER'S ASSOCIATION ARCHITECTURAL STANDARDS AND CONSTRUCTION REGULATIONS (REVISION 5.14) FOR COLOR, MATERIALS AND ROOFING; TOGETHER WITH ASSOCIATED SITE MODIFICATIONS INCLUDING RESTRIPIING THE EXISTING PARKING LOT, AND INSTALLATION OF A CURB CUT, RAMP, AND CONVENIENCE SITE STAIRS;

said Additional Improvements being more specifically described and depicted in the attached **Exhibit A** (consisting of a one-page narrative of the building and site improvements and a two-page "Encroachment Site Plan"). 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 from the date of this Agreement to the time that this Agreement is terminated.

3.2.1. 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 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.

3.2.2. License 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 License shall, at the City's sole discretion, either: (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; or (3) cause such Improvements to be removed at Licensee's cost and expense.

3.3. 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 fee 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 (whether Previous Improvements or Additional Improvements) and encroachments referenced and/or permitted by this Agreement constitutes a dangerous and/or unsafe condition within a public right-of-way.

- 3.4. 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.
- 3.5. The Licensee shall construct, maintain, and repair the Improvements (whether Previous Improvements or Additional 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 previously or pursuant to this Agreement 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 Comfort Station or provide utilities thereto) 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.
- 3.6. 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. In addition to any other maintenance responsibilities pertaining to the Previous Improvements, landscape maintenance responsibilities shall include existing landscaping in the right of way north and south of Cherry Hills Farm Drive currently maintained by the Licensee. Licensee shall also be solely responsible for the maintenance and repair of the afore-referenced parking area, stairs, and ramp including, but not limited to, asphalt and concrete maintenance, repair, and replacement, as well as for all necessary snow removal pertaining to the Improvements (including the parking area, stairs, and ramp, and pedestrian sidewalks), except Cherry Hills Farm Drive itself and the sidewalk situated parallel to University Boulevard.

- 3.7. 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 previously or under this Agreement.
- 3.8. 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 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__.

CITY OF CHERRY HILLS VILLAGE:

By: _____
City Manager, Jim Thorsen

APPROVED AS TO FORM (excluding exhibits):

For City Attorney's Office

LICENSEE:

CHERRY HILLS FARM HOMEOWNER'S ASSOCIATION, INC.

By: _____

Print Name: _____
Address: _____

STATE OF COLORADO)
COUNTY OF ARAPAHOE) SS.
)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, personally by _____.

Notary Public

(SEAL)

Commission expires: _____

EXHIBIT A
DESCRIPTION/LOCATION PRIVATE IMPROVEMENTS

THE CHERRY HILLS FARM HOMEOWNER'S ASSOCIATION, INC. (HOA) "COMFORT STATION" CONSISTS OF A SMALL OFFICE SPACE AND BATHROOM FOR THE USE OF THE HOA. CURRENTLY, HOA EMPLOYED TRADES DO NOT HAVE RESTROOM FACILITIES OR OFFICE SPACE. ADDITIONALLY, THE HOA HAS NEIGHBORHOOD CAMERAS AND NEEDS A SPACE FOR THE SERVER. THE HOA OWNS "PARCEL E" WITHIN THE MEDIAN ORIGINALLY PLATTED FOR A GUARDHOUSE. IT HAS BEEN DETERMINED THIS COMFORT STATION WOULD BEST BE SITUATED SOUTH AND EAST OF THE ENTRY PARKING LOT SO AS NOT TO BE CONFUSED AS A GATED COMMUNITY GUARD SHACK.
(REFER TO ATTACHMENT A)

BUILDING DESCRIPTION:

THE PROPOSED STRUCTURE IS LESS THAN 300 SQUARE FEET (SEE ATTACHMENTS). THE HOA IS REQUESTING A 22-FOOT BY 18-FOOT PARCEL TO ALLOW FOR FINAL PLACEMENT AND DESIGN ADJUSTMENTS. THE COMFORT STATION WILL BE A SINGLE STORY MASONRY BUILDING WITH SLOPED ROOF. THE ENTRY OF THE COMFORT STATION SHALL FACE SOUTH. THE COLORS AND ALLOWABLE MATERIALS SHALL BE CONSISTENT WITH THE CHERRY HILLS FARM HOA ARCHITECTURAL STANDARDS AND CONSTRUCTION REGULATIONS (ARCH STANDARDS) ADOPTED AT THE TIME OF CONSTRUCTION.

SITE IMPROVEMENTS:

THE EXISTING PARKING AREA SHALL BE RESTRIPIED TO INCLUDE 2 STANDARD PARKING SPACES AND 1 ACCESSIBLE PARKING SPACE. ACCESSIBILITY SHALL BE SERVED THROUGH THE INSTALLATION OF A COMPLIANT CURB CUT AND RAMP TO THE WEST AND UTILIZING OF THE EXISTING SIDEWALKS. ADDITIONAL STRIPING AND A CONVENIENCE SITE STAIR SHALL BE INSTALLED AT THE SOUTHEAST CORNER OF THE PARKING AREA TO SERVE THE COMFORT STATION.

ARCHITECTURAL STANDARDS AND CONSTRUCTION REGULATIONS COMPLIANCE:

IT IS UNDERSTOOD THIS STRUCTURE IS NOT A SINGLE FAMILY RESIDENCE; HOWEVER, IT IS AN ACCESSORY USE OF THE HOA FOR THE BENEFIT OF THE NEIGHBORHOOD. DUE TO THE LIMITED SIZE OF THE STRUCTURE, IMPACT TO EXISTING STORM WATER MANAGEMENT WOULD BE INCONSEQUENTIAL.

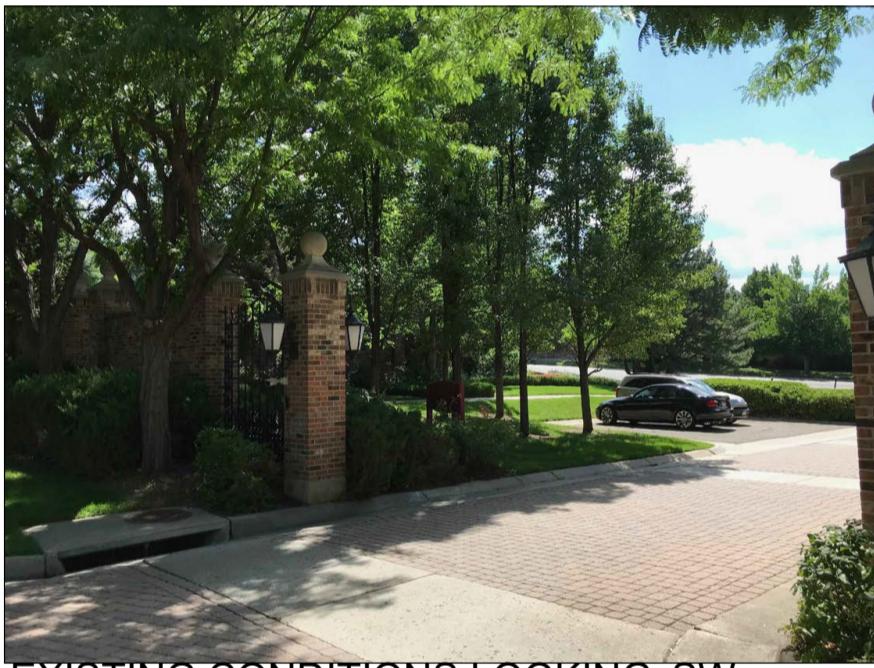
IT IS ANTICIPATED TWO EXISTING TREES SHALL BE REMOVED TO ACCOMMODATE THE COMFORT STATION. CARE WAS MADE TO LIMIT THE IMPACT ON EXISTING ESTABLISHED LANDSCAPING. EXISTING HOA MAINTAINED IRRIGATION SYSTEMS WILL BE MODIFIED TO INCORPORATE THIS STRUCTURE. THIS COMPLIES WITH SITE DRAINAGE AND GRADING REQUIREMENTS OF THE HOA STANDARDS.

THE STRUCTURE SHALL BE LOCATED NO CLOSER THAN 25-FEET TO THE ADJOINING PROPERTY LINE WHICH COMPLIES WITH CURRENT ARCH STANDARDS. THE STRUCTURE SHALL COMPLY WITH THE 30-FOOT HEIGHT LIMITATIONS.

EXTERIOR LIGHTING SHALL BE COMPATIBLE WITH ESTABLISHED BUILDING CODES AND THE ARCH STANDARDS. GENERALLY IT IS ANTICIPATED A COUPLE ENTRY LIGHTS WILL BE PROVIDED AT THE DOOR AND SOME LOW LEVEL LANDSCAPE LIGHTING FOR THE SITE STAIRS. EXISTING MASONRY AND IRON FENCING SHALL REMAIN.

DESCRIPTION

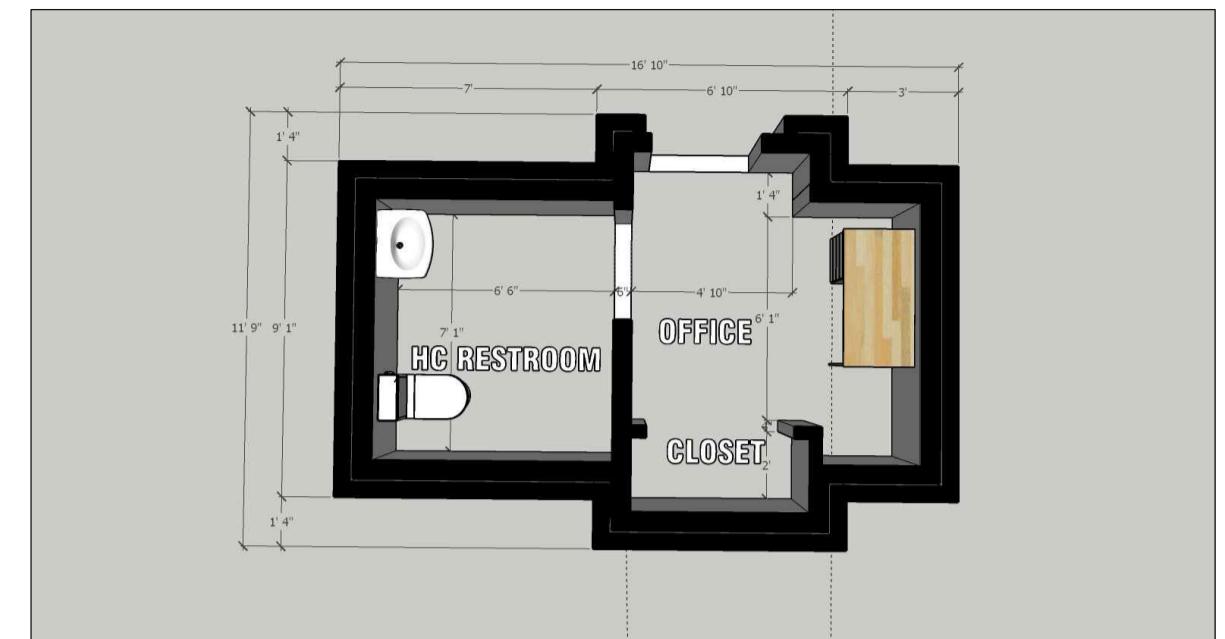
 CHERRY HILLS FARM HOA
CHERRY HILLS VILLAGE, COLORADO
ENCROACHMENT SITE PLAN

 EXISTING CONDITIONS LOOKING SE
NTS

 EXISTING CONDITIONS LOOKING SW
NTS

 EXISTING CONDITIONS LOOKING EAST
NTS

 ENTRY DRIVE VIEW - LOOKING SOUTHEAST
NTS

 ENTRY DRIVE VIEW - LOOKING EAST
NTS

 EXIT DRIVE VIEW - LOOKING SOUTHWEST
NTS

 PLAN CONCEPT
NTS

 SIDEWALK VIEW - LOOKING NORTHEAST
NTS

 BIRDSEYE VIEW - LOOKING NORTHWEST
NTS