

**AN AGREEMENT BY AND BETWEEN THE CITY OF ARVADA
AND JASON AND CHRISTIEVE GILLIS FOR THE GRANT OF A
REVOCALE ENCROACHMENT LICENSE TO ACCOMMODATE
RETAINING WALLS FOR A DRIVEWAY TO SERVE 4403 WEST 68TH
AVENUE WITHIN PUBLIC RIGHT OF WAY**

1.0 **PARTIES.** The parties to this Agreement are the City of Arvada, a Colorado municipal corporation ("Arvada") at 8101 Ralston Road, Arvada, Colorado 80002 and Jason and Christieve Gillis, owners of the adjacent property ("Licensee") at 4403 West 68th Avenue, Westminster, Colorado 80030.

2.0 **RECITALS AND PURPOSE.**

2.1 Licensee is the owner of property addressed as 4403 West 68th Avenue in the City of Arvada, although the mailing address is listed as Westminster; more particularly described as Lot 40, Block 2, The Yacht Club Reception No. B475235 ("Licensee's Property").

2.2 Arvada is the owner of properties, or has some interest in properties, located adjacent to Licensee's Property at the intersection of West 68th Avenue and Tennyson Street, as more particularly described in Exhibit A, attached and incorporated herein ("Arvada's Property").

2.3 The Licensee has expressed a desire for Arvada to recognize, accommodate, and permit certain minor encroachments upon a specific and limited portion of Arvada's Property; to wit, retaining walls along the driveway proposed upon the Arvada's Property described in Exhibit B.

2.4 Arvada is willing to grant an encroachment license to the Licensee under the terms and conditions as hereinafter specified in this Agreement.

3.0 **TERMS AND CONDITIONS.** In consideration of Arvada's agreement to permit the Licensee to encroach upon Arvada's Property, and in consideration of the mutual promises and covenants contained herein, the sufficiency and adequacy of consideration being acknowledged by the parties, Arvada and Licensee agree as follows:

3.1 Arvada hereby grants to the Licensee a License for the encroachments as described above, with such limitations as are set forth herein, including, but not limited to:

3.1.1 Any improvements allowed by this Agreement to be kept upon Arvada's Property shall be so kept at Licensee's sole expense and Licensee agrees to maintain any such improvement in good repair during the period of this License.

3.1.2 Licensee understands and agrees that Arvada shall not be liable or responsible for any costs related to any damage, maintenance, repair, or removal of any structures kept upon Arvada's Property pursuant to this Agreement.

3.2 The license as granted in paragraph 3.1 above shall continue from the date of this Agreement to the time that this Agreement is terminated. Arvada may terminate this License at any time by giving written notice to the Licensee ten (10) days in advance of the effective date of termination and specifying the date of termination therein and, in the event this License is terminated as to such encroachments, Licensee expressly agrees to remove such from Arvada's Property and to return Arvada's Property to as close to its original condition as reasonably possible, within 30 days of said date of termination.

3.3 Licensee expressly agrees to indemnify and hold harmless Arvada and any of its officers 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, arising out of, or related to the issuance of this License or any omission or act of commission by Licensee or any of its employees, agents, representatives, or contractors in encroaching upon Arvada's Property.

3.4 Licensee agrees that it will never institute any action or suit at law or in equity against Arvada 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 from the license granted to Licensee herein.

3.5 Licensee agrees to provide, secure, and maintain at all times during the term of this License commercial general liability insurance of at least \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000, naming Arvada as an additional insured on the policy. Failure to maintain sufficient insurance shall not terminate, modify, preclude or limit the obligations of Licensee under this License or limit in any way Licensee's liability to or indemnification of Arvada for any reason. Arvada does not waive, nor shall anything herein be construed as a waiver of, any of the rights, privileges, or immunities granted to it under the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S., as amended.

3.6 Licensee agrees to repair and reconstruct any damage to Arvada's Property prior to or immediately upon termination of this Agreement for any reason and return Arvada's Property to its original condition at the expense of Licensee and at no expense to Arvada.

4.0 **ASSIGNMENT.** Except as may be the legal consequence, pursuant to paragraph 10 hereof, of a conveyance of Licensee's Property, this Agreement shall not be assigned by Licensee without the prior written consent of Arvada which may withhold its consent for any reason.

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 facsimile transmission or by U.S. 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 and parties. Notice shall be deemed to have been given when deposited in the United States mail.

6.0 **EXHIBITS.** All exhibits, if any, referred to in this Agreement are, by reference, incorporated herein for all purposes.

7.0 **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.

8.0 **GOVERNING LAW AND VENUE.** This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising under this Agreement or for the enforcement of this Agreement shall be in the appropriate court for Jefferson County, Colorado.

9.0 **WAIVER OF BREACH.** A waiver by any party of 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 of either party.

10.0 **BINDING EFFECT.** This Agreement shall inure to the benefit of, and be binding upon, the parties, their respective legal representatives, successors, heirs, and assigns and shall constitute covenants running with Licensee's Property. Either party may record this Agreement with the Clerk and Recorder's Office of Jefferson County, Colorado.

11.0 **NO THIRD PARTY BENEFICIARIES.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Arvada and the Licensee, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of Arvada and the Licensee that any person other than Arvada or the Licensee receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

DATED this _____ day of _____, 2023.

CITY OF ARVADA, a Colorado municipal corporation

Marc Williams, Mayor
8101 Ralston Road
Arvada, CO 80002

ATTEST:

City Clerk

APPROVED AS TO FORM:

Rachel A. Morris, City Attorney

By: _____

LICENSEE:

Jason Gillis

LICENSEE:

Christieve Gillis

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2023, by Jason and Christieve Gillis, in their capacity as owners of the property at 4403 West 68th Avenue.

Witness my hand and official seal.

Notary Public

My commission expires: _____