

RESOLUTION NO. 31

SERIES 1997

A RESOLUTION ESTABLISHING A POLICY CONCERNING THE PLACEMENT OF PRIVATE FENCES AND LANDSCAPING MATERIALS IN RIGHT-OF-WAYS OWNED BY THE TOWN OF BRECKENRIDGE

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. Intent. From time to time owners of lands which abut easements or right-of-ways owned by the Town of Breckenridge (collectively, "Town right-of-ways") have expressed to the Town a desire to fence off and/or use a portion of the Town right-of-way for placement of landscaping materials. The Town Council recognizes that such uses of the Town right-of-ways will enhance the perceived size of the owners' properties, and may also improve the appearance of such owners' properties. Further, the Town Council further believes the such uses of the Town's right-of-ways may also enhance the overall appearance of the Town. The purpose of this Resolution is to establish an administrative policy by which the Town will conditionally allow for the use of some of its right-of-ways for the installation and maintenance of fencing and/or landscaping materials by the owners of real property which abuts such right-of-ways. The Town Council finds and determines that the policy established in this Resolution represents a reasonable balance between the right of the Town to have complete control over its right-of-ways and the desire of an abutting property owner to use a Town's right-of-way to enhance and beautify his or her property.

Section 2. Town Manager Authority. The Town Manager shall have the authority, on behalf of the Town, to enter into a revocable License Agreement ("License Agreement") with the owner(s) of real property which abuts Town right-of-ways upon the following terms and conditions:

1. A License Agreement shall be for the limited purpose of permitting the installation and maintenance of fencing and/or landscaping materials within the Town right-of-way, and for no other purpose. As used in this Resolution "landscaping materials" includes, but is not limited to, grass, trees, shrubs, and flowers.

2. A License Agreement may only be issued to the owner(s) of real property abutting a Town right-of-way which is located within the Town's Conservation District.

3. Any fence constructed pursuant to a License Agreement shall be constructed in compliance with the recommendations (both Design Standards and Policies [whether denominated as a "priority policy" or not]) of the Handbook of Design Standards, as well as any other applicable ordinances of the Town.

4. If a License Agreement is requested in order to permit the erection of a fence within the Town right-of-way (as opposed to simply authorizing the placement of landscaping materials), such License Agreement shall only be issued in connection with the issuance of a Class C Development Permit (for fences constructed within the Historic District) or a Class D Development Permit (for fences constructed outside the Historic District). The execution of a License Agreement may be a condition of approval of the required Development Permit.

5. Any fence erected within the Town right-of-way pursuant to a License Agreement shall be placed no closer than eighteen (18) inches from the sidewalk. No License Agreement shall be issued where no sidewalk exists within the portion of the Town right-of-way for which the License is issued, unless the Town Manager determines that such a sidewalk will be constructed within a reasonable period of time following the issuance of the License Agreement.

6. There shall be a one-time fee of One Hundred Dollars (\$100.00) paid by the Licensee in connection with the issuance of a License Agreement. Such fee is intended to compensate the Town for the staff time spent in connection with the issuance of such License Agreement. In addition, the Licensee shall reimburse the Town for any actual and necessary costs incurred by the Town in having the Town Attorney prepare or revise a License Agreement.

7. The form of a License Agreement shall be substantially as provided on the attached Exhibit "A", which is incorporated herein by reference. The Town Manager, in his discretion, may modify the form of the License Agreement as may be necessary or appropriate; provided, however, that any License Agreement entered into by the Town Manager pursuant to this Resolution shall include provisions acceptable to the Town Attorney which provide:

A. The License Agreement shall be fully revocable upon written notice to the Licensee.

B. The License Agreement is fully transferable to subsequent owner's of the Licensee's property which abuts the Town right-of-way so long as the subsequent owner assumes the obligations of the Licensee under the License Agreement in a form acceptable to the Town Attorney.

C. The Town shall not be liable for the damage, destruction or loss of any fence or landscape materials erected, installed or placed within the Town right-of-way pursuant to a License Agreement.

D. The Licensee shall provide general liability insurance insuring against losses, damages or claims arising from the Licensee's use of the Town right-of-way pursuant to a License Agreement. Such insurance shall have limits of liability of not less than the limits of liability established for municipalities under the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S. The Town shall be named as an additional insured under such insurance policy.

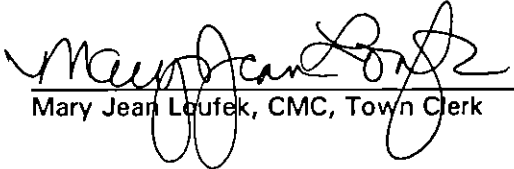
E. The Licensee shall be required to indemnify the Town from all losses, claims and damages arising from the Licensee's use of the Town right-of-way pursuant to the License Agreement.

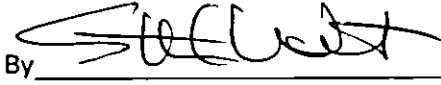
Section 3. Effective Date. This Resolution shall become effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED THIS 9TH DAY OF SEPTEMBER, 1997.

TOWN OF BRECKENRIDGE

ATTEST:


Mary Jean Loufek, CMC, Town Clerk

By 
Stephen C. West, Mayor

APPROVED IN FORM


Town Attorney

9/9/97
date

EXHIBIT "A"

Form of License Agreement

LICENSE AGREEMENT

(Fencing/Landscaping in Town Right-Of-Way)

THIS LICENSE AGREEMENT ("Agreement") is made and entered into at Breckenridge, Colorado this ____ day of _____, 199__, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town") and _____ ("Licensee").

Recitals

A. Town is the owner of a public easement or right-of-way described as: _____ ("Town's right-of-way").

B. Licensee is the owner of real property which abuts the Town's right-of-way, which property is located within the Town of Breckenridge, County of Summit and State of Colorado and is more particularly described as follows:

[LEGAL DESCRIPTION TO BE INSERTED]

(Licensee's Property).

C. Licensee desires to obtain a revocable license across a portion of Town's right-of-way for the erection of a private fence and/or the placement and maintenance of landscaping materials in order to enhance the perceived size of the Licensee's Property, and to improve the appearance of Licensee's Property.

D. The Town has agreed to grant Licensee a personal privilege to use a portion of the Town's right-of-way, all in accordance with, and subject to, the terms, conditions and limitations to this Agreement.

NOW, THEREFORE, it is agreed as follows:

1. Grant Of License. The Town hereby grants to the Licensee the personal privilege and permission to enter upon the following portion of the Town's right-of-way, to wit:

[LEGAL DESCRIPTION TO BE INSERTED]

("Licensed Premises"). The Licensed Premises are depicted on the attached Exhibit "A", which is incorporated herein by reference.

The license herein granted shall be subject to all existing utility easements, if any, located within the Town's right-of-way.

2. Term. This Agreement and the license granted to Licensee hereunder shall commence as of the date of this Agreement and shall continue from time to time until terminated in accordance with the terms of this Agreement.

3. Consideration. The consideration to be paid by the Licensee to the Town for the privilege granted by this Agreement shall be One Hundred Dollars (\$100.00), receipt of which is hereby acknowledged by the Town. In addition, the Licensee shall reimburse the Town for any legal costs incurred by the Town in connection with the preparation or review of this Agreement.

4. No Interest In Land. Licensee understands, acknowledges and agrees that this Agreement does not create an interest or estate in Licensee's favor in the Town's right-of-way, including the Licensed Premises. The Town retains legal possession of the full boundaries of its right-of-way and this Agreement merely grants to the Licensee the personal privilege to use the Licensed Premises in strict accordance with the terms of this Agreement.

This Agreement shall in no event be construed to create an assignment coupled with an interest in favor of the Licensee. Licensee shall expend any time, money or labor within the Licensed Premises at Licensee's own risk and peril.

5. Limited Scope Of License. The license granted to the Licensee is limited in scope to the following use or uses: [] erection of a fence with the Town's right-of-way pursuant to Development Permit No. _____, [] installation and maintenance of landscaping materials within the Town right-

of-way, and for no other purpose. As used in this Agreement "landscaping materials" includes, but is not limited to, grass, trees, shrubs, and flowers.

Licensee shall not have the right to alter or change the Licensee's use of the Licensed Premises.

6. Transferability Of License. The license granted to the Licensee by this Agreement may be transferred to subsequent owner(s) of Licensee's Property; provided, however, that such subsequent owner(s) shall be required to assume in writing all of Licensee's obligations hereunder (in a form acceptable to Town) and such subsequent owner(s) of Licensee's Property shall acquire nothing more than the personal privilege herein granted to Licensee. Further, the rights of any subsequent owner(s) shall be subject to termination in accordance with the provisions of Paragraph 7 of this Agreement.

7. Revocation. This Agreement and the license herein granted to Licensee is fully terminable by the Town in accordance with the following terms and conditions:

a. Termination Upon Notice To Licensee. This Agreement and the license herein granted to Licensee shall terminate one hundred eighty (180) days after written notification is provided by the Town to Licensee at Licensee's address as set forth in this Agreement. The one hundred eighty (180) day notice provision established by this Paragraph 7(a) shall conclusively be deemed to be reasonable. Such notice may be given at any time by the Town when, in the Town's sole discretion, it is determined that termination is necessary for the public safety or welfare or is necessary to the Town's right to unrestricted use of its right-of-way.

b. Termination Upon Default. This Agreement and the license herein granted to Licensee may be terminated by Town in the event of a material default by Licensee.

c. Recording Of Notice Of Town Termination. Upon termination of this Agreement the Town may cause to be recorded with the Clerk and Recorder of Summit County, Colorado a written Notice of Termination.

d. No Compensation To Licensee. In the event of termination of this Agreement for any reason, Licensee shall not be entitled to receive a refund of any portion of the consideration paid for this Agreement, nor shall Licensee be compensated for any improvements which must be removed from the Town's right-of-way.

e. Permanent Removal Of Improvements Upon Termination. At such time as this Agreement and the license herein granted to Licensee is terminated, the Licensee shall, at the option of the Town, remove, at Licensee's expense, any and all improvements or landscaping installed, placed, erected or maintained by Licensee in the Town's right-of-way pursuant to this Agreement.

8. Insurance. Licensee shall obtain and maintain at all times during the term hereof, at Licensee's sole cost, a policy or policies of comprehensive general liability insurance with limits of coverage of not less than the limits of liability for Colorado municipalities established from time to time by the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S. ("Act"). At the time of the execution of this Agreement, such limits are One Hundred Fifty Thousand Dollars (\$150,000) for any injury to one person in any single occurrence, and Six Hundred Thousand Dollars (\$600,000) for any injury to two or more persons in any single occurrence. The Town shall be named as an additional insured on all such policies and Licensee shall furnish the Town with copies of such policy or policies prior to the execution of this Agreement and at the time of each renewal of such policies thereafter during the term of this Agreement. Notwithstanding anything contained herein to the contrary, Town may immediately terminate this Agreement, and the license herein granted to Licensee, if Licensee fails to procure and maintain the insurance required by this Paragraph.

9. Indemnification. The Licensee agrees to indemnify, defend and save the Town harmless from any claim, loss or damage to any person or property (including Town's attorney's fees) which is caused, in whole or in part, by the use of the Licensed Premises or the Town's right-of-way pursuant to this Agreement; provided, however, Licensee shall not be required to indemnify Town from any claim, loss or damage arising through the negligence or fault of Town.

10. Maintenance. During the term of this Agreement the Licensee shall, at Licensee's expense, maintain the fencing and/or landscaping materials (as applicable) which are placed within the Licensed Premises in good condition, free from noxious weeds as defined in §35-5.5-103, C.R.S., or any successor statute, and in accordance with the landscaping plan approved by the Town in connection with the issuance of the Development Permit referred to in Paragraph 5 of this Agreement. If a fence is erected by Licensee pursuant to this Agreement, as additional consideration to be received by Town for the granting of this Agreement Licensee shall also have the responsibility for maintaining any

