

RESOLUTION NO. 7

SERIES 2017

A RESOLUTION APPROVING AN ENCROACHMENT LICENSE AGREEMENT WITH THE GROLL CONDOMINIUM ASSOCIATION, INC., A COLORADO NONPROFIT CORPORATION

WHEREAS, the existing private parking area for The Groll Condominiums is located primarily on the private property of The Groll Condominiums, but also encroaches into the Town's Jefferson Avenue right-of-way; and

WHEREAS, The Groll Condominium Association, Inc., a Colorado nonprofit corporation, has requested that the Town enter into an Encroachment License Agreement; and

WHEREAS, Section 11-6-3 of the Breckenridge Town Code authorizes the Town Council, in its discretion, to approve the granting of a license agreement for the non-public use of Town property; and

WHEREAS, the Town Attorney has prepared a proposed form of Encroachment License Agreement between the Town and The Groll Condominium Association, Inc., a Colorado nonprofit corporation, a copy of which is marked **Exhibit "A"**, attached hereto and incorporated herein by reference; and

WHEREAS, the Town Council of the Town of Breckenridge has reviewed the proposed Encroachment License Agreement, and finds and determines that the proposed agreement should be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO, as follows:

Section 1. The proposed Encroachment License Agreement between the Town and The Groll Condominium Association, Inc., a Colorado nonprofit corporation (**Exhibit "A"**) is approved; and the Town Manager is authorized to execute such agreement for and on behalf of the Town of Breckenridge.

Section 2. This resolution is effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED this 28th day of February, 2017.

TOWN OF BRECKENRIDGE

By 
Eric S. Mamula, Mayor

ATTEST:



Helen Cospolich,
CMC, Town Clerk

APPROVED IN FORM

 2/28/17
Town Attorney Date

ENCROACHMENT LICENSE AGREEMENT

THIS ENCROACHMENT LICENSE AGREEMENT (“**Agreement**”) is dated Feb 28, 2017 and is between THE GROLL CONDOMINIUM ASSOCIATION, INC., a Colorado nonprofit corporation (the “**Licensee**”) and the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (the “**Town**”).

RECITALS

A. The Licensee owns the following real property located within the Town of Breckenridge, Summit County, Colorado:

The common areas of The Groll Condominiums located at 315 South French Street, Breckenridge, Colorado 80424, according to the recorded plat thereof.

(“**Licensee’s Property**”).

B. The Town owns the public right-of-ways known as Jefferson Avenue (the “**Town’s right-of-way**”). The Licensee’s Property abuts the Town’s right-of-way.

C. A portion of the improvements located or to be located upon the Licensee’s Property encroaches, or will encroach, into and on the Town’s right-of-way (the “**Encroachment**”) as shown on the attached Exhibit “A”, which is incorporated herein by reference.

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

1. Grant Of License. The Town grants to the Licensee the personal privilege and permission to enter upon the Town’s right-of-way and to maintain the Encroachment within the Town’s right-of-way subject, however, to the terms, conditions, and limitations of this Agreement. The granted license is 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 the Licensee commences on the date of this Agreement and continues until terminated pursuant to Section 7 or Section 8 of this Agreement.

3. Consideration. The consideration paid by the Licensee to the Town for the privilege granted by this Agreement is \$10.00, receipt of which is acknowledged by the Town, and other good and valuable consideration as herein provided.

4. No Interest In Land. The Licensee understands, acknowledges, and agrees that this Agreement does not create an interest or estate in the Licensee’s favor in the Town’s right-

ENCROACHMENT LICENSE AGREEMENT

of-way. 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 maintain the Encroachment in the Town's right-of-way throughout the term of this Agreement. Notwithstanding the expenditure of time, money, or labor by the Licensee on the improvements constituting the Encroachment, this Agreement does not create an assignment coupled with an interest in favor of the Licensee. Any time, money, or labor expended by the Licensee on the Encroachment is done at its own risk and peril.

5. Limited Scope Of License. The license granted to the Licensee is limited in scope to the following permitted use or uses: the parking by the owners and guests of The Groll Condominiums of not more than seven (7) motor vehicles within the Encroachment. No maintenance or repairs of any motor vehicle parked on the Encroachment is permitted. The Licensee may not: (i) expand the Encroachment or the Licensee's use of the Town's right-of-way; or (ii) alter or change the Licensee's use of the Town's right-of-way, without the prior written consent of the Town Engineer.

6. Transferability Of License. The license granted to the Licensee may be transferred to subsequent owner(s) of the Licensee's Property; provided, however, that such subsequent owner(s) must assume in writing all of the Licensee's obligations under this Agreement (in a form acceptable to Town), and such subsequent owner(s) will acquire nothing more than the personal privilege granted to the Licensee by this Agreement. Further, the rights of any subsequent owner(s) will be subject to termination in accordance with the provisions of Section 8 and Section 9 of this Agreement.

7. Default. If either party defaults in the performance of any of the material covenants or agreements to be kept, done, or performed by such party under this Agreement, the non-defaulting party may notify the defaulting party in writing of the nature of such default. Within five (5) days following receipt of such notice the defaulting party will correct such default or, in the event of a default not capable of being corrected within five days, the defaulting party will commence correcting the default within five (5) days of receipt of notification of default and thereafter correct the default with due diligence. If the defaulting party fails to correct the default as required by this Section 7, the non-defaulting party, without further notice, may declare that this Agreement is terminated pursuant to Section 8(C) effective upon such date as the non-defaulting party designates. The rights and remedies provided for herein may be exercised singly or in combination.

8. Termination. This Agreement and the license granted to the Licensee is fully terminable in accordance with the following terms and conditions:

- A. **Termination Upon Notice To Licensee.** This Agreement and the license granted to the Licensee will terminate one hundred eighty (180) days after written notification of termination is provided by the Town to the Licensee at the Licensee's address as set forth in this Agreement, or in the records of the Summit County Assessor. Such notice may be given by Town at any time if the Town determines it requires the ability to use the Town right-of-way free of this Agreement. The one hundred eighty

ENCROACHMENT LICENSE AGREEMENT

(180) day notice provision established by this Section 8(A) is agreed to be reasonable.

- B. **Destruction Or Removal Of Improvements.** If the Encroachment is ever destroyed or permanently removed, this Agreement, and the license granted to the Licensee, may be terminated by Town upon not less than thirty (30) days' advance written notice to the Licensee.
- C. **Termination Upon Default.** This Agreement and the license granted to the Licensee may be terminated for default in the performance of the material covenants or agreements of this Agreement in accordance with Section 7 of this Agreement.
- D. **Recording Of Notice Of Termination.** Upon termination of this Agreement the Town may cause a written Notice of Termination to be recorded with the Clerk and Recorder of Summit County, Colorado.
- E. **No Compensation To Licensee.** If this Agreement is lawfully terminated for any reason the Licensee will not be entitled to receive a refund of any portion of the consideration paid for this Agreement, nor will the Licensee be compensated for the loss of or any damage to the Encroachment that must be removed from the Town's right-of-way.

9. Permanent Removal Of Encroachment Upon Termination. At such time as this Agreement and the license granted to the Licensee is terminated the Licensee will, at the option of the Town, promptly and expeditiously remove the Encroachment from the Town's right-of-way at the Licensee's expense.

10. Insurance. The Licensee will obtain and maintain at all times during the term of this Agreement, at the Licensee's sole cost, a policy of commercial general liability insurance with limits of coverage of not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) aggregate. The Town will be named as an additional insured on such policy. The Licensee will provide to the Town a certificate of insurance evidencing compliance with the requirements of this Section 10 prior to the effective date of this Agreement, and on each renewal or replacement of such insurance policy or policies throughout the term of this Agreement. Notwithstanding anything contained herein to the contrary, the Town may terminate this Agreement, and the license granted to the Licensee, in accordance with the provisions of Section 8(C) of this Agreement if the Licensee fails to procure and maintain the insurance required by this Section 10.

11. Maintenance. During the term of this Agreement the Licensee will, at the Licensee's expense, maintain the Encroachment in good condition. Licensee will further provide at its sole cost any required snow and ice plowing and removal within the Encroachment.

12. Licensee's Waiver Of Claims Against Town. As a part of the consideration paid by the Licensee to the Town for this Agreement, Licensee forever waives all claims that the

ENCROACHMENT LICENSE AGREEMENT

Licensee may hereafter have or acquire against Town for loss or damage to the Encroachment arising from the use by the Town, or the general public, of the Town's right-of-way for any lawful purpose including, but not limited to, the construction, maintenance, or repair of any Town improvements within the Town's right-of-way. This provision will survive the termination of this Agreement, and will continue to be fully effective even though this Agreement has been terminated.

13. Indemnification. The Licensee will indemnify and defend the Town, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, arising out of or in any manner connected with the use of the Town's right-of-way pursuant to this Agreement, to the extent that such injury, loss, or damage is caused by the negligence or intentional wrongful act of the Licensee, any contractor or subcontractor of the Licensee, or any units owner, tenant, or other occupant of The Groll Condominiums, any guest at The Groll Condominiums, or any officer, agent, employee, contractor, or representative of the Licensee, or of any person permitted or allowed to use the Town's right-of-way by the Licensee; except to the extent such liability, claim, or demand arises through the negligence of the Town, its officers, employees, or agents. The Licensee will investigate, handle, respond to, and provide a defense for and defend against any such liability, claims, or demands at the sole expense of the Licensee. The Licensee will also bear all other costs and expenses related thereto, including court costs and attorney fees. This provision will survive the termination of this Agreement, and will continue to be fully effective thereafter, subject to any applicable statute of limitation.

14. Mechanics' Liens. The Licensee will not allow any mechanics' or similar liens to be filed against the Town's right-of-way arising from any work done by the Licensee in the Town's right-of-way, and the Licensee will indemnify and defend the Town with respect to such lien or claim, including any attorney's fees incurred by Town in connection with any such lien or claim. If a mechanics' or other lien is created or filed against the Town's right-of-way by reason of labor performed or materials furnished for the Licensee, the Licensee will, within ten (10) days thereafter, at the Licensee's own cost and expense, cause such lien or liens to be satisfied and discharged of record. Failure to do so will entitle the Town to terminate this Agreement in accordance with the provisions of Sections 7 and 8(C) of this Agreement.

15. Notices. Any notice required or permitted under this Agreement must be in writing and will be sufficient if personally delivered or mailed by certified mail, return receipt requested, addressed to the following:

If to the Town:

Town Manager
Town of Breckenridge
P. O. Box 168
Breckenridge, CO 80424

If to the Licensee:

The Groll Condominium Association, Inc.
P.O. Box 1384

ENCROACHMENT LICENSE AGREEMENT

Notices mailed in accordance with the provisions of this Section 15 will be effective on the third day after mailing. Notices personally delivered will be effective upon delivery. Either party may change their address by giving notice thereof to the other party in the manner provided in this Section

16. Attorney's Fees. If any action is brought in a court of law by either party to this Agreement concerning the enforcement, interpretation, or construction of this Agreement, the prevailing party, either at trial or upon appeal, will be entitled to reasonable attorney's fees as well as costs, including expert witness's fees, incurred in the prosecution or defense of such action. In addition, the Licensee will reimburse the Town for the actual and necessary costs incurred by the Town in having the Town Attorney prepare this Agreement as required by Section 11-6-9 of the Breckenridge Town Code.

17. Waiver. The failure of either party to exercise any of its rights under this Agreement will not be a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving its rights.

18. Governmental Immunity. In entering into this Agreement the Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as from time to time amended, or any other law or limitation otherwise available to the Town, its officers, or its employees.

19. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties and supersedes any prior agreement or understanding relating to the subject matter of this Agreement.

20. Modification. This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto. Oral modifications or amendments to this Agreement are not permitted.

21. Section Headings. Section headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

22. Terminology. Wherever applicable, the pronouns in this Agreement designating the masculine or neuter apply equally to the feminine, neuter, and masculine genders. Furthermore, wherever applicable within this Agreement, the singular includes the plural, and the plural includes the singular.

23. "Will" or "Will Not" Defined. The terms "will" or "will not" in this Agreement indicate a mandatory obligation to act or to refrain from acting as specifically indicated in the context of the sentence in which such word is used.

24. Authority Of Town. This Agreement has been approved by the Town Council of the Town of Breckenridge pursuant to Section 11-6-3 of the Breckenridge Town Code.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation



By: Rick G. Holman
Rick G. Holman, Town Manager

ATTEST:

Helen Cospolich
Helen Cospolich, CMC,
Town Clerk

THE GROLL CONDOMINIUM ASSOCIATION,
a Colorado nonprofit corporation

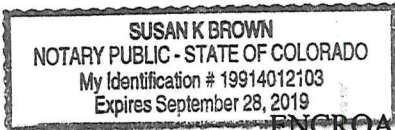
By: John G. Montepare
Title: President

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 2nd day of February, 2017, by Rick G. Holman, Town Manager, and Helen Cospolich, CMC, as Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.

My commission expires: 9/28/19



Susan K Brown
Notary Public

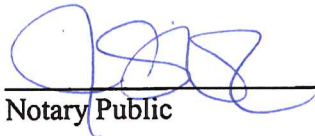
ENCROACHMENT LICENSE AGREEMENT

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 2nd day of March, 2017 by John Montepare, as President, of The Groll Condominium Association, Inc., a Colorado corporation.

WITNESS my hand and official seal.

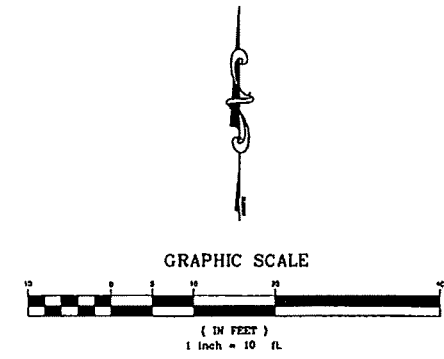
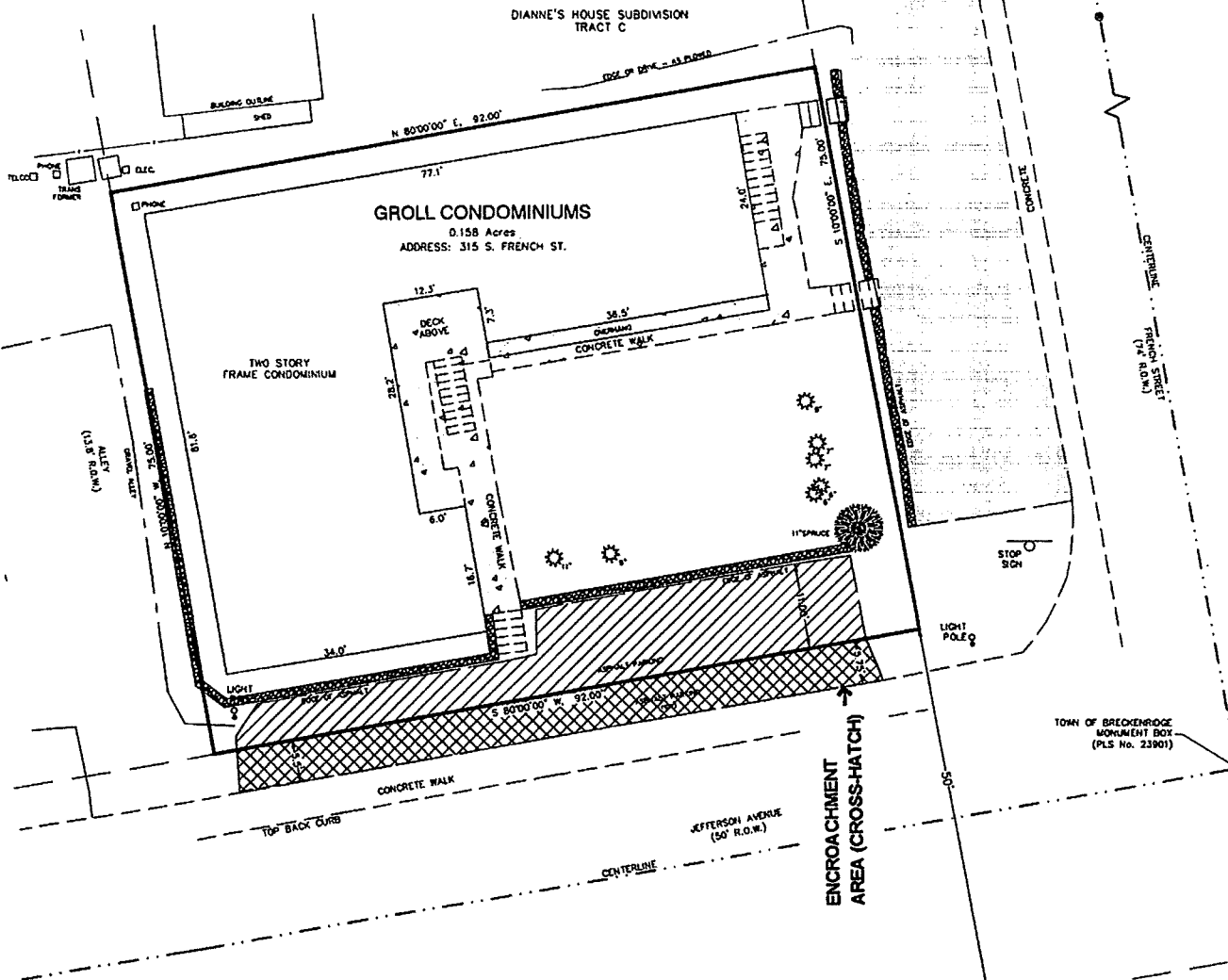
My commission expires: 3/13/19



Notary Public

JESSICA SNIDER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20074010604
COMMISSION EXPIRES MARCH 13, 2019


EXHIBIT
THE GROLL CONDOMINIUMS
ABBETT ADDITION TO THE TOWN OF BRECKENRIDGE
 SUMMIT COUNTY, COLORADO



- GENERAL NOTES**
- 1 DATE OF SURVEY: TOPOGRAPHY-FEBRUARY 18, 2016. EXHIBIT-FEBRUARY 17, 2017.
 - 2 THE PLAT OF GROLL CONDOMINIUMS, ABBETT ADDITION TO THE TOWN OF BRECKENRIDGE WAS RECORDED DECEMBER 26, 1990 IN THE SUGART COUNTY COURTHOUSE UNDER RECEPTION NUMBER 217336.
 - 3 BASIS OF BEARINGS: THE FOUND TOWN OF BRECKENRIDGE MONUMENTS ALONG THE CENTERLINE OF FRENCH STREET, BEING S09°59'46"E, TOWN OF BRECKENRIDGE LAND SURVEY PLAT NUMBER 783.
 - 4 TWO TO THREE FEET OF SNOW ON PROPERTY AT TIME OF SURVEY. OTHER FEATURES MAY EXIST WHICH WERE NOT VISIBLE NOR SHOWN HEREON.
 - 5 SCHMIDT LAND SURVEYING, INC. DID NOT PERFORM A TITLE SEARCH OF THE SUBJECT PROPERTY TO ESTABLISH OWNERSHIP, EASEMENTS OR RIGHTS-OF-WAY OF RECORD.

- LEGEND**
- ⊙ FOUND REBAR & ALUMINUM CAP (PLS No. 23901) IN MONUMENT BOX CENTERLINE
 - UTILITY PEDESTAL
 - ⊙ ASPEN TREE WITH TRUNK DIAMETER

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2/17/2017	Scale 1" = 10'	Sheet 1 of 1


SCHMIDT
 LAND SURVEYING, INC.
 P.O. Box 5761
 FRISCO, CO 80443 970-409-9963

NOTICE
 ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF CERTIFICATION SHOWN HEREON.

EXHIBIT "A"