

ENCROACHMENT AGREEMENT

THIS AGREEMENT is made and entered into this 13TH day of MARCH, _____ by and between the CITY OF NAMPA, a municipal corporation, hereinafter referred to as the "City", and Colorado Commons Holdings, LLC, hereinafter collectively referred to as "Second Party".

WITNESSETH:

WHEREAS, the City has a public rights-of-Fway adjacent to the following described real property located at 1017 South Elder Street, Nampa, Idaho, Canyon County, which is owned by Second Party, described as:

See attached Exhibit "A"

WHEREAS, Second Party desires an encroachment agreement for signs in the right-of-way for South Fern Street and South Elder Street, hereinafter referred to as the "improvement," on Second Party's above described property, which improvement would encroach upon the City's right-of-way.

NOW, THEREFORE, in consideration for the City allowing the Second Party to retain the improvement which will encroach upon the City's right-of-way, the City and the Second Party covenant and agree as follows:

1. The Second Party recognizes that the improvement on the City's right of way is an encroachment.

2. Upon notification from the City that the encroached area must be utilized by the City for maintenance or construction of utilities, sidewalk or roadway, the Second Party agrees that Second Party will, within 30-days of such notification, remove the encroachment from the City's right-of-way at Second Party's expense. In the event the Second Party fails, within such 30-day period to remove the encroachment, the City may cause said encroachment to be removed and the expense of such removal will be borne by the Second Party, who agrees to pay the same. Restoration of the improvement following such maintenance or construction, if practical, shall be the responsibility of Second Party.

3. Notwithstanding anything herein contained to the contrary, the City shall have the right to immediately cancel and terminate this Agreement at any time and without prior notice to Second Party; the City can require the Second Party to permanently remove the improvements, installations or manner of encroachment from the right-of-way at Second Party's own expense, and if Second Party shall fail to do so within 30 days from City's notification to Second Party, the City may cause all improvements, installations or manner of encroachment to be removed from the right of way and the expense of said removal will be borne by the Second Party, who agrees to pay the same.

4. Second Party shall construct, maintain and repair the improvement at Second Party's own cost and expense.

5. In consideration for allowing Second Party to encroach upon its right of way at no charge, Second Party does hereby indemnify and hold the City and its personnel, employees and agents harmless from any and all liability, loss, claim, demand or action, costs or attorneys fees, by any person and/or entity, or any assigns of any claims, arising from the encroachment upon and use of this right-of-way by Second Party or any persons going onto the right-of-way, whether invitees of Second Party or otherwise.

Second Party expressly executes this Agreement with the intent of relieving the City of any and all liability created by or arising from Second Party's encroachment upon and use of the right-of-way and hereby discharges the City and its assigns and legal representatives from all claims, demands, causes of action, liability, loss, costs or attorneys fees, and/or any other claim with respect to which this Agreement is executed, that may arise through Second Party, or anyone claiming under Second Party, against the City or its legal representatives, successors and assigns.

Second Party shall indemnify and hold harmless City from any and all claims, damages or liability, direct or indirect, arising out of the encroachment or the improvement within the City's right of way including, without limitation, i) use of the encroachment or the improvement by Second Party, its customers, employees, agents, assigns, contractors or those persons present at the encroachment for any purpose associated with the Second Party, and ii) damage or loss suffered by Second Party, its encroachment or the improvement, arising from the lawful work of City, its permit-holders, franchisees, agents or contractors, within the right of way.

6. In the event an action is brought to enforce any of the terms or provisions of this Agreement, or enforce forfeiture thereof for default thereof by either of the parties hereto, the successful party to such action or collection shall be entitled to recover from the losing party a reasonable attorney's fee, together with such other costs as may be authorized by law. In case suit shall be brought for an unlawful detainer, Second Party shall pay to City all costs, expenses and attorney's fees which shall be incurred by City in obtaining possession of the right-of-way.

7. This Agreement shall be construed under the laws of the State of Idaho. This Agreement shall inure to and bind the respective heirs, legal representatives, successors and assigns of the parties.

IN WITNESS WHEREOF, the parties hereto execute this Encroachment Agreement the day and year first above written.

CITY OF NAMPA - APPROVED BY:

Deborah Kling, Mayor

ATTEST:

Charlene Tim, City Clerk

AUTHORIZED SIGNATOR(S):
COLORADO COMMONS HOLDINGS,
LLC



Printed name: BRANDON MORGAN

Title: MANAGER

Printed name: _____

Title:

STATE OF IDAHO)
 :ss
County of Canyon)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared the Mayor and Clerk of the City of Nampa, Idaho, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that they executed the same on behalf of the City of Nampa, Idaho, and was so authorized to do so.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

Notary Public for Idaho
Commission Expires: _____

