CHERRY HILLS VILLAGE
COLORADO

2450 E. Quincy Avenue
Cherry Hills Village, CO 80113
www.cherryhillsvillage.com

Village Center
Telephone 303-789-2541
FAX 303-761-9386

City Council Agenda
Tuesday, February 2, 2016

6:30 p.m.

1. Call to Order

2. Roll Call of Members

3. Pledge of Allegiance

4. Audience Participation Period (limit 5 minutes per speaker)

5. Consent Agenda
   a. Approval of Minutes – January 19, 2016
   b. Approval of Minutes – January 25, 2016

6. Items Removed From Consent Agenda

7. Unfinished Business
   a. Public Hearing - Council Bill 10, Series 2015; Repealing and Reenacting Municipal Code Section 16-16-40 Concerning Fences (*Public Hearing, second and final reading*)
   b. Council Bill 3, Series 2016; Amending Article VII of Chapter 7 Concerning Unmanned Aircraft Systems (*second and final reading*)

8. New Business
   a. Public Hearing – Resolution 3, Series 2016; Approving a New Hotel and Restaurant Liquor License for Cherry Hills Sushi Co at 1400 E. Hampden Avenue Suite 110
   b. Transportation Assessment Proposal - FHU

9. Reports
   a. Mayor
      (i) March 1, 2016 Council Meeting – Caucus Night – Quorum
   b. Members of City Council
   c. Reports from Members of City Boards and Commissions
   d. City Manager and Staff
   e. City Attorney

10. Adjournment

Notice: Agenda is subject to change.
If you will need special assistance in order to attend any of the City's public meetings, please notify the City of Cherry Hills Village at 303-789-2541, 48 hours in advance.

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, January 19, 2016 at 6:30 p.m.
At the Village Center

Mayor Laura Christman called the meeting to order at 6:30 p.m.

ROLL CALL

Mayor Laura Christman, Councilors Earl Hoellen, Mike Gallagher, Klasina VanderWerf, and Katy Brown were present on roll call. Also present were Interim City Manager and Public Works Director Jay Goldie, City Attorney Linda Michow, Finance Director Karen Proctor, Community Development Director Rob Zuccaro, Police Chief Michelle Tovrea, Human Resource Analyst Kathryn Ducharme, and City Clerk Laura Smith.

Absent: Councilors Mark Griffin and Alex Brown

PLEDGE OF ALLEGIANCE

The Council conducted the pledge of allegiance.

AUDIENCE PARTICIPATION PERIOD

None

CONSENT AGENDA

Councilor VanderWerf moved, seconded by Councilor Hoellen to approve the following items on the Consent Agenda:

a. Approval of Minutes – January 5, 2016
b. Highway User Tax Funds (HUTF) Mileage Certification

The motion passed unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

Council Bill 2, Series 2016; Authorizing a Supplemental Appropriation for Grant Fund Expenditures for the John Meade Park Master Plan (*second and final reading*)

Director Proctor presented Council Bill 2, Series 2016 on final reading. She explained that the proposed council bill would authorize a supplemental appropriation for the

expenditure of $29,130 in grant funds that were carried over from 2014 to 2015 for the John Meade Park Master Plan. She noted that no changes had been made since first reading.

Councilor Hoellen moved, seconded by Councilor VanderWerf to approve Council Bill 2, series 2016 on final reading; A bill for an ordinance of the City of Cherry Hills Village, authorizing a supplemental appropriation in the 2015 budget for grant fund expenditures for the John Meade Park Master Plan.

The following votes were recorded:

Gallagher	yes
VanderWerf	yes
K. Brown	yes
Hoellen	yes

Vote on the Council Bill 2-2016: 4 ayes. 0 nays. The motion carried.

NEW BUSINESS

Resolution 2, Series 2016; Amending the City Council Rules of Procedure

City Clerk Smith presented Resolution 2, Series 2016, amending the City Council Rules of Procedure. She explained that the proposed amendments to the Rules included removing the first Tuesday in July as a regular meeting and noted that from 2000 to 2015 only two of the meetings scheduled for the first Tuesday in July were not cancelled; clarifying that comments left on the City's Facebook page and other social media were not guaranteed to be entered into the public record of a public hearing; and other clarifications as suggested by City Attorney Michow.

Councilor Hoellen questioned the proposed amendment to Article 1 of the Rules, which stated "Deviation from these Rules that do not violate the Charter or any law may be permitted at the discretion of the Mayor."

City Attorney Michow explained that would give the Mayor flexibility for slight deviations from normal procedures during a Council meeting.

Mayor Christman directed staff to include an article in the Crier to advise the public of the change regarding comments submitted to the City's Facebook page or other social media.

Councilor VanderWerf moved, seconded by Councilor K. Brown to approve Resolution 2, Series 2016; amending the City Council Rules of Procedure as submitted in Exhibit A of the January 19, 2016 staff memorandum.

The motion passed unanimously.

Council Bill 3, Series 2016; A Bill for an Ordinance Amending Article VII of Chapter 7 concerning Unmanned Aircraft Systems (*first reading*)

City Clerk Smith presented Council Bill 3, Series 2016 to amend Article VII of Chapter 7 on first reading. She explained that based on Council direction at the January 5th meeting staff was suggesting several amendments including mirroring the federal registration threshold of 0.55 pounds and clarifying that the City would accept the federal registration certificate with the City's contact information form. The proposed bill also included the addition of a definition for 'Recreational or hobby use' as recommended by City Attorney Michow.

Councilor K. Brown noted her general objection to regulation of drones. She expressed concern with the proposed additional definition for 'Recreational and hobby use' and suggested it might form a loophole for drones operated for commercial use in violation of the FAA. She suggested removing the new definition.

City Attorney Michow replied that the proposed definition was intended to assist in the distinction between hobby drone operators versus owners related to the City's registration requirement.

Councilor K. Brown indicated that the intention was to require anyone not exempted by Section 7-7-30 to register with the City and the additional definition was not needed. She suggested removing the definition and wording from Sections 7-7-40(a) and 7-7-40(a)(1).

City Attorney Michow suggested further wording amendments to Section 7-7-40.

Councilor Hoellen stated that the reference to "hobby operator" was not needed because all operators not exempted under Section 7-7-30 were required to register.

Mayor Christman asked about the City's current registration process.

City Clerk Smith explained that currently the City was accepting a copy of the federal registration certificate along with the City's contact information form and not charging drone owners a City registration fee. She noted that if in the future the FAA stopped its registration program the City would have the option of resuming the City registration program including the $10 registration fee.

Councilor K. Brown suggested clarifying that the City may waive the registration fee in Section 7-7-40(1)(3).

Councilor K. Brown moved to approve Council Bill 3, Series 2016; amending Article VII of Chapter 7 concerning Unmanned Aircraft Systems on first reading, with the following amendments:

- Section 7-7-20 Definitions: Remove the new definition for "Recreational or hobby use"
- Section 7-7-40 General requirements for Hobby Operators and Owners: correct the title to read "Owners" instead of "Own"
- Section 7-7-40(a) Registration required: amend the section to read "Registration of UAS is required for all owners of UAS operating within City Airspace unless exempted under Section 7-7-30."
- Section 7-7-40(a)(1) Registration: amend the section to read "The required registration must occur prior to operating an unmanned aircraft system within City Airspace. The City registration requirements set forth in subsections (a)(2) through (a)(4) shall apply if no federal registration is required for UAS. The City shall accept a federal registration and waive the registration fee upon owner's presentation to the City of a certificate of federal registration and submission of owner contact information on a City-issued form. The City Council may establish other registration requirements by resolution."
- Section 7-7-40(a)(3) Registration fee: add the sentence "The City shall waive the registration fee upon owner's presentation to the City of a certificate of federal registration and submission of owner contact information on a City-issued form."

Mayor Christman suggested that Section 7-7-40(a)(3) could read "The registration fee shall be ten dollars ($10.00) for each UAS unless waived pursuant to Section 7-7-40(a)(1) above…" instead of the duplication of the sentence.

Councilor K. Brown accepted the amendment.

Councilor Gallagher seconded the motion as amended.

The following votes were recorded:

VanderWerf	yes
K. Brown	no
Hoellen	yes
Gallagher	yes

Vote on the Council Bill 3-2016: 3 ayes. 1 nays. The motion carried.

REPORTS

Mayor's Report

Mayor Christman had no report.

Members of City Council

Councilor Gallagher reported that staff had presented the Trail Inventory Project at the last Parks, Trails and Recreation Commission and would present the Project at the February 16th Council meeting. He noted that the project was well done, thorough, and included pertinent next steps and a wealth of knowledge.

Councilor VanderWerf expressed deep sorrow at the loss of Public Art Commissioner Teresa Harbaugh. She thanked the staff members who were able to attend the memorial service. She noted that the Public Art Commission (PAC) was not meeting in January but that lights would be installed on *Charlo* shortly.

Councilor K. Brown noted that the latest Colorado Municipal League newsletter included an article about tree tracking software that staff might be interested in, and an article about a poster contest for Colorado 5th graders with the theme "Celebrate Trees in Our Community." She suggested the contest information be relayed to St. Mary's Academy and Cherry Hills Village Elementary School.

Mayor Christman asked staff to communicate the poster contest to the City's schools.

Councilor Hoellen reported that he had met with Interim City Manager/Director Goldie to review and discuss the Public Works Facility Plan.

Members of City Boards and Commissions

None

City Manager & Staff

Interim City Manager/Director Goldie reported that department monthly reports and unaudited financial statements were available in Council packets. He noted that the City had a vacancy on the PAC and would advertise the position to solicit applications. He reported that he had met with Councilor Hoellen regarding the Public Works Facility Plan and they had conducted site visits, reviewed operational needs, and evaluated current space versus proposed square footage. He added that he had researched pre-fabricated steel building manufacturers in an effort to reduce costs. After this review the estimated price for the new facility was currently $2 to $3 million and the heated square footage had been reduced from 14,000 to 7,000.

Mayor Christman noted that estimate did not include land costs.

Interim City Manager/Director Goldie agreed the estimate did not include the lease of Englewood land or the shared use of Englewood facilities.

Councilor VanderWerf noted that the new facility should be built to last 30 years as was the normal expectation for public buildings.

Interim City Manager/Director Goldie agreed and noted that staff was taking future growth into account when planning the facility. He indicated that due to a short timeline staff may not be able to have paper copies of the City Manager search consultant's packet available for Council on Friday in preparation for Council's special meeting on Monday. He stated that staff would pass on the consultant's packet electronically to Council and would have paper copies available on Friday if time allowed and no later than at the Monday meeting.

Public Art Commission Vacancy

City Clerk Smith asked Council to appoint two members to assist with the PAC recruitment process.

Council appointed Councilor VanderWerf and Mayor Christman to assist with the PAC recruitment process.

City Attorney

City Attorney Michow noted that it was too early in the state legislative session to report on potential legislation but that she would report at future meetings.

ADJOURNMENT

Councilor Hoellen moved, seconded by Councilor K. Brown to enter into Executive Session pursuant to CRS 24-6-402(4)(b) for the purpose of seeking legal advice concerning the Cooper v. Cherry Hills Village litigation, and adjourn immediately thereafter.

The following votes were recorded:

K. Brown	yes
Hoellen	yes
Gallagher	yes
VanderWerf	yes

Vote on the Executive Session: 4 ayes. 0 nays. The motion carried.

The executive session began at 7:05 p.m.

The meeting adjourned at 7:15 p.m.

_____

Laura Christman, Mayor

_____

Laura Smith, City Clerk

DRAFT DRAFT DRAFT

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Special Meeting
Held on Monday, January 25, 2016 at 3:30 p.m.
At the Village Center

Mayor Christman called the meeting to order at 3:12 p.m.

ROLL CALL

Mayor Laura Christman, Councilors Mark Griffin, Earl Hoellen, Alex Brown, Mike Gallagher, Klasina VanderWerf, and Katy Brown were present on roll call. Also present were Human Resources Analyst Kathryn Ducharme and City Clerk Laura Smith.

EXECUTIVE SESSION AND ADJOURNMENT

Mayor Pro Tem A. Brown moved, seconded by Councilor Griffin to enter into Executive Session pursuant to CRS 24-6-402(4)(c) for the purpose of discussing matters required to be kept confidential by CRS 42-72-204(3)(a)(XI)(A) and upon completion of the Executive Session to stand adjourned.

The following votes were recorded:

Gallagher	yes
Griffin	yes
A. Brown	yes
VanderWerf	yes
K. Brown	yes
Hoellen	yes

Vote on the Executive Session: 6 ayes. 0 nays. The motion carried.

The executive session began at 3:14 p.m.

The meeting adjourned at 5:12 p.m.

_____
Laura Christman, Mayor

_____
Laura Smith, City Clerk

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Item: 7a

MEMORANDUM

TO: HONORABLE MAYOR CHRISTMAN AND MEMBERS OF THE CITY COUNCIL

THROUGH: ROBERT A. ZUCCARO, COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: COUNCIL BILL 10, SERIES 2015; REPEALING AND REENACTING MUNICIPAL CODE SECTION 16-16-40 CONCERNING FENCES (SECOND READING, PUBLIC HEARING)

DATE: FEBRUARY 2, 2016

ISSUE:

Should the City Council approve Council Bill 10, Series 2015 (Exhibit A) on second reading, updating the Village's fencing regulations under Municipal Code Section 16-16-40? The proposal includes new regulations for fences adjacent to public trails, parks and open spaces; front-yard fences; fences adjacent to public roads; fences adjacent to designated arterial roads; and provisions for when the repair of a non-conforming fence triggers full conformance with current regulations.

Changes since First Reading

City Council approved "Version 2" of Council Bill 10, Series 2015 on first reading at the January 5, 2016 meeting with the following amendments (see Exhibit B for minutes). All amendments were incorporated into Council Bill 10, Series 2015 as noted below:

- Revise the definition of *public trail* to exclude on-street trails (see Subsection (b) for revision).
- Further define the 25% repair criteria to clarify that it applies to a single lot line and not the entire property boundary (see Subsection (i) for revision).
- Change the height of fences parallel to public trails, parks or open space in all residential zone districts to be 6 ft. maximum height and less than 40% solid (see table in Subsection (c) for revision).
- For fences in rear and side yards add a separate category for the R-1 zone district allowing 6 ft. maximum height and less than 50% solid, and in other zone districts 6 ft. maximum height and up to 100% solid (see table in Subsection (c) for revisions).

- For fences in rear or side yards adjacent to public roads add a distinction in the R-1, R-2, R-3 and R-3A zone districts to allow 6 ft. maximum height and less than 25% solid or 4 ft. maximum height and less than 60% solid; and a category in the R-4 and R-5 zone districts allowing 6 ft. maximum height and up to 100% solid and subject to the landscaping and setback standards (see table in Subsection (c) for revisions).

Staff has incorporated and recommends the following additional amendments:

- The definition of *public trail* was amended to exclude trails and sidewalks located in road rights of way (see Subsection (b) for revisions). Fences adjacent to roads will generally contain more restrictive regulations than the restrictions proposed for fences along trails. This change in the definition will help clarify which fence regulation will govern.
- Language was added providing authority to the Community Development Director to determine the applicable standard based on whichever standard is the most restrictive if more than one fence requirement applies (see Subsection (c) for revisions).
- Language was added to the regulations for fences located between front façade line and front property line and fences located adjacent to public roads clarifying that fences adjacent to State Highways and fences adjacent to S. Clarkson Street and E. Happy Canyon Road fall under a separate regulation (see table in Subsection (c) for revisions).
- Language was added to the regulations for fences located adjacent to a public road in the R-4 and R-5 zone districts and adjacent to S. Clarkson Street and E. Happy Canyon Road to clarify and reflect the current regulation that fences less than four feet in height may be solid and fences up to six feet in height and 50% open may be allowed, all in addition to allow six-foot tall solid fences subject to the minimum setback and landscaping standards (see table in Subsection (c) for revisions).
- Both E. Quincy Avenue and S. Colorado Boulevard were removed from the exception for fences adjacent to designated arterials. This was inadvertently included in "Version 2" of the ordinance that was approved on first reading and staff's understanding of Council's direction from the meeting was that only S. Clarkson Street and E. Happy Canyon Road should be subject to the special allowance (see table in Subsection (c) for revisions).
- The allowance for vehicular gates was changed from a maximum height allowance of 10 feet to a maximum height allowance of 4 feet greater than the otherwise applicable height limitation for the fence. This would allow gates up to 8 feet in height for vehicular access to front yards and gates up to 10 feet in height for vehicular access to side or rear yards (see Subsection (e) for revisions).

BACKGROUND:

Purpose and Intent

The proposed fence ordinance is intended to update the code to be consistent with the Village Master Plan, including the promotion and preservation of the semi-rural character of the Village, open space and view corridors. More specifically, concerns have been expressed over the types of fences that could be constructed under the current ordinance adjacent to trails, parks and open spaces, adjacent to public roads, and within front yards. The concern is that these fences may compromise the semi-rural, pastoral, and open character of the Village, disrupt view corridors, create tunnel like effects along trail systems, create potential safety hazards, and lead to the loss of a community atmosphere. (See Exhibit C for current fence regulations under Section 16-16-40.)

P&Z and PTRC Review Summary

The P&Z and PTRC held several joint study sessions and review sessions to develop the final recommendations. The following is a summary of each study session and review session:

- June 9, 2015: P&Z and PTRC held a joint study session to review fence ordinances from other jurisdictions and provide staff direction on drafting an ordinance amendment. Direction was provided to address fencing along trails, parks and open spaces and fences within front yard areas of residential lots.
- August 25, 2015: P&Z reviewed a draft fence code amendment that that provided regulations for fencing along trails, parks and open spaces and fences within front yard areas of residential lots (see Exhibit D for minutes).
- September 10, 2015: PTRC reviewed the draft fence code as amended by the P&Z at their August 25, 20125 meeting. The PTRC recommended additional restrictions for the R-1 Zone District and for fencing along shared front yard and rear or side yard lot boundaries (see Exhibit E for minutes).
- October 8, 2015: P&Z and PTRC held a joint study session to discuss the proposed fence code for the R-1 Zone District and fencing for shared front yard and rear or side yard lot boundaries. The commissioner's present provided general staff direction on revisions to the draft ordinance.
- November 10, 2015: The P&Z reviewed the updated draft fence ordinance resulting from the October 8, 2015 joint study session. The P&Z voted to recommend to the City Council approval of the draft with amendments (see Exhibit F for draft minutes).
- November 12, 2015: The PTRC reviewed the updated draft fence ordinance as recommended by the P&Z at their November 10, 2015 meeting. The PTRC voted to recommend to the City Council approval of an alternate draft (see Exhibit G for draft minutes).

Both Commissions considered whether required or prohibited materials or design elements of a fence should be addressed in the code. The recommendation from both was that materials and design should not be regulated.

History of Current Code

Prior to 1989, the zoning ordinance allowed 6-foot tall fences on a legally established residential lots without restriction on the location or design of the fence. In 1989, Council adopted Ordinance 8, Series 1989 and Ordinance 15, Series 1989. These ordinances were intended to address residents' concerns for safety and aesthetics over the placement of six foot tall solid fencing along street rights of way. The ordinances established that fences parallel and adjacent to public roadways that are greater than 48" in height and less that 50% open must comply with specific setback and landscape buffering options (see Exhibit H and I).

In 2007, Council adopted Ordinance 1, Series 2007, which is the most recent fence code revision, addressing the construction of gates. It allows gates to be constructed to a height of no more than ten feet provided that each gate is not more than 25% solid when viewed perpendicular. Gates six feet in height or less may be solid (see Exhibit J).

Review of Codes from Other Jurisdictions

For further background and reference, staff has provided fence codes from other local jurisdictions in Colorado (see Table 1 below) and from other local jurisdictions across the country that specifically address fences located along trails, parks, and open spaces, as staff was not able to identify any Colorado jurisdictions with similar codes (see Table 2 below).

Table 1: Local Communities: General Fencing Codes

Community	Height, Openness, and Locational Standards	Material/Design	Other Comments
Greenwood Village (Exhibit K)	6' Fences prohibited from midpoint of principal structure to front property line with some exceptions: In 0.1 and .25 acre districts, fence allowed 5 feet back from the front of the principal structure. In 2.5 Acre District fences up to 4 feet and gates up to 6 feet in height, up to 25% opacity allowed in front yard. In 2.5 Acre District if front yard is used as a horse pasture then a fence up to 6 feet in height with 25% opacity allowed in front. No set openness requirements	High quality, approved materials (as set forth in Sec. 16-21-340.)	Discourages the use of fencing and encourages use of berms, shrubbery, and/or trees
Vail (Exhibit L)	3' front 6' all other areas No set openness requirements	Compatible with the site and existing structures on the site	Fence shall respect existing landforms and not arbitrarily follow site boundary lines
Aspen (Exhibit M)	4' front 6' all other areas No set openness requirements	Fences visible from a public right of way must be constructed out of a list of acceptable materials (Sec. 26.575.050).	Within public space areas, fencing must permit views from the street into and throughout the public space

Bow Mar (Exhibit N)	5′ Must be Open Face Fencing (unless located along major street thoroughfares) Front yard fencing is prohibited	Harmonious with the style and color of the house	Discourages the use of fences to preserve the feeling of open space and sharing of views
Columbine Valley (Exhibit O)	3′ or less, or 6′ with a max of 50 linear feet at this height Front yard fencing is prohibited	Fences must be constructed out of wood	

Table 2: Example Communities: Fencing Codes along Trails, Parks, and Open Space

Community	Height	Openness	Material/Design	Other comments
Portola Valley, CA (Exhibit P)	4′	At least 50% open	Blend with the natural environment; fence colors may not exceed 40% reflectivity	
Keller, TX (Exhibit Q)	6′	Open Face Fencing	Masonry, Ornamental Metal, Tubular steel or similar open face material	
Flower Mount, TX (Exhibit R)	Minimum 4′	Open Face Fencing	Wrought iron or Tubular steel, Consistent color throughout a development	Has an allowance for approved masonry screening not to exceed 50% of the lot width or screening plants. Masonry screening must be set back 10 feet from the open face fencing.
Queen Creek, AZ (Exhibit S)	6′	4′ solid, 2′ open view at top	6″ interlocking blocks, with open view fencing at top	

DISCUSSION AND ANALYSIS:

Table 3 summarizes the main provisions of the current and proposed fencing code.

Table 3: Summary of Current Fence Code and Proposed Fence Codes

Fence Location	Current Code	Proposed Code
Parallel to public trails, parks, or open space • All Residential Zone Districts	6 ft. max. height and up to 100% solid	6 ft. max. height and less than 40% solid
Front yards/Beyond Front Façade • R-1, R-2, R-3, and R-3A districts	6 ft. max. height if less than 50% solid; or 4 ft. max. height if more than 50% solid; or 6 ft. max. height and more than 50% solid subject to setback/landscape standards*	4 ft. max. height and less than 50% solid (beyond front façade line)
• R-4 and R-5 districts	6 ft. max. height if less than 50% solid; or 4 ft. max. height if more than 50% solid; or 6 ft. max. height and more than 50% solid subject to setback/landscape standards*	No fence allowed (beyond front façade line)
Rear or side yards • R-1 district	6 ft. max. height and up to 100% solid	6 ft. max. height and less than 50% solid
• R-2, R-3, R-3A, R-4 and R-5 districts	6 ft. max. height and up to 100% solid	No Change
Rear and side yards adjacent to public road • R-1, R-2, R-3, and R-3A districts	6 ft. max. height if less than 50% solid; or 4 ft. max. height if more than 50% solid; or 6 ft. max. height and more than 50% solid subject to setback/landscape standards*	Exceeding 4 ft. up to a max. of 6 ft. if less than 25% solid. or Up to 4 ft. and less than 60% solid
• R-4 and R-5 districts	6 ft. max. height if less than 50% solid; or 4 ft. max. height if more than 50% solid; or 6 ft. max. height and more than 50% solid subject to setback/landscape standards*	No Change
Any fence adjacent to State Highway	8 ft. max. height and up to 100% solid subject to setback/landscape standards*	No Change
Any fence adjacent to other select arterial roads	N/A	6 ft. max. height if less than 50% solid; or 4 ft. max. height if more than 50% solid; or 6 ft. max. height and more than 50% solid subject to setback/landscape standards*

*Setback and Landscape Buffer Requirements (choice of A or B):

A. Pick any two of the following three:
   1. Setback 25 ft. from edge of paved road or 40 ft. from centerline of unpaved road.
   2. Landscape with minimum of 1 tree every 20-30 ft.
   3. Landscape with planting to cover 25% of fence surface

B. Indent every 15-25 ft. and plant indents with 2 trees or evergreen shrubs

In addition to the items addressed in Table 3 and the other revisions made since first reading, the proposed codes include the following provisions and clarifications:

- Replacement fencing would need to be brought into compliance with the new code, and any repair that exceeds 25% of the fence area along a single lot boundary within a 24-month period would constitute a replacement and need to be brought into full compliance.
- Clarification is provided that sport court fences could be up to 10 feet in height. The current code does not have a maximum height for these types of fences and states that fences are limited to six feet in height "except where reasonably required for tennis courts or other uses reasonably requiring higher fences." The Village has historically allowed 10-foot tall fences under this code provision.
- Fencing in the C-2, commercial zone district would require approval under a Conditional Use Permit.
- Fencing for a nonprofit institution, private club or private recreation facility would require approval under an Expanded Use Permit.

BUDGET IMPACT STATEMENT:

Staff notes that the proposed code is considerably more complex than the current fencing code. Because of this complexity, staff anticipates that additional staff time will be needed to administer the code. This will include additional time in reviewing permits and conducting inspections to verify compliance, assisting contractors and home owners in making applications and understanding the new code and updating application forms and application review procedures. Additional code enforcement actions on non-conforming fences are also anticipated. If Council Bill 10, Series 2015 is approved, staff will evaluate the impact to staff and City resources and may recommend a change to the City's fence permit fee structure to ensure the cost of implementing the code is adequately covered.

PUBLIC HEARING:

Prior to any amendment to the zoning code being enacted by the City Council a public hearing must be held. Notice of the public hearing for this meeting was published in the January 14, 2016 edition of The Villager and on the City's website and notice board. Staff has not received any public comments on the proposal.

RECOMMENDED MOTION:

"I move to approve Council Bill 10, Series 2015 repealing and replacing Section 16-16-40 of the Cherry Hills Village Municipal Code concerning fences, as proposed in Exhibit A of the February 2, 2016 staff memorandum (with the following amendments…)."

ATTACHMENTS:

Exhibit A: Council Bill 10, Series 2015
Exhibit B: January 5, 2016 City Council Minutes
Exhibit C: Municipal Code Section 16-16-40, Fences
Exhibit D: August 25, 2015 Planning and Zoning Commission Minutes
Exhibit E: September 10, 2015 Parks, Trails and Recreation Commission Minutes
Exhibit F: November 10, 2015 Draft Planning and Zoning Commission Minutes
Exhibit G: November 12, 2015 Draft Parks, Trails and Recreation Commission Minutes
Exhibit H: Ordinance 8, Series 1989
Exhibit I: Ordinance 15, Series 1989
Exhibit J: Ordinance 1, Series 2007
Exhibit K: Greenwood Village Fence Code (Article 21, Division 3)
Exhibit L: Vail Fence Code (sec. 14-10-9)
Exhibit M: Aspen Fencing Standards (Sec. 26.575.020 E-5-p; Sec. 26.575.030 F-3; Sec. 26.575.050)
Exhibit N: Bow Mar Fence Standards (Design Guidelines Ch. X)
Exhibit O: Columbine Valley Fence Code
Exhibit P: Portola Valley Ordinance No. 2005-360
Exhibit Q: City of Keller Fencing Requirements (Sec. 9.06)
Exhibit R: Flower Mound Walls and Fences (Sec. 98-1143)
Exhibit S: Queen Creek Zoning Ordinance (Sec. 5.2)

EXHIBIT A

COUNCIL BILL NO. 10
SERIES OF 2015

INTRODUCED BY:_____
SECONDED BY:_____

**A BILL FOR AN ORDINANCE
OF THE CITY OF CHERRY HILLS VILLAGE
REPEALING AND REENACTING SECTION 16-16-40 OF THE
CHERRY HILLS VILLAGE CONCERNING FENCES**

WHEREAS, the City of Cherry Hills Village ("City") is a home rule municipal corporation organized in accordance with Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority and Article 23, Title 31 of the Colorado Revised Statutes, the City has broad authority to regulate the development of land within the City for the purposes of promoting the public health, safety, convenience, and the general welfare of the community; and

WHEREAS, the City has adopted zoning regulations codified in Chapter 16 of the Municipal Code that, in relevant part, establish requirements for fences; and

WHEREAS, the City Council has determined that in order to be consistent with the Master Plan, fencing regulations need to be established that preserve the semi-rural character of the Village, including the preservation of open space and view corridors.

NOW, THEREFORE, THE CITY COUNCIL FOR THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

Section 1. Section 16-16-40 of the Cherry Hills Village Municipal Code, entitled "Fences," is hereby repealed and replaced as follows:

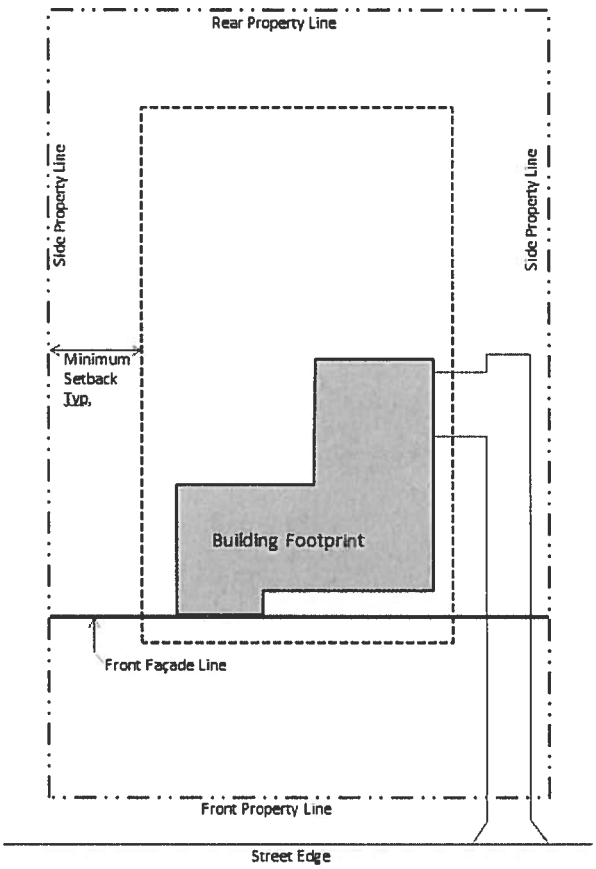
Sec. 16-16-40. - Fences.

Fences are permitted on legally established lots as defined in Section 16-1-10 of this Chapter, and are permitted on legally established nonconforming lots as defined in Section 16-1-10 and in Article XIV of this Chapter subject to compliance with the following regulations:

(a) Purpose. The purpose and intent of this section is to accommodate the reasonable fencing needs of residents in a manner that preserves the semi-rural character of the Village, including the preservation of open space and view corridors.

(b) Definitions. For the purpose of this Section, the following definitions shall be applicable:

Front façade line means a line generally perpendicular to the side property lines emanating from the outer wall of the façade of the house at the point closest to the front property line.



Public trail, for the purpose of this Section, means any area included in a publicly dedicated bridle path, trail or similar pedestrian easement ~~or right of way,~~ but excludes trails or sidewalks located within road rights of way and on-street designated trails ~~any developed trail or path located within a road right of way and any on-street trails as shown on the Cherry Hills Village Parks and Trails Map adopted by resolution of the City Council~~.

(c) Height and Opacity. Fences in residential zone districts shall be subject to the following height and opacity standards. Standards that apply are indicated by an "X". If more than one fence requirement applies, the more restrictive shall apply as determined by the Community Development Director.

Fence Location/Height and Opacity Standard	*R-1*	*R-2*	*R-3*	*R-3a*	*R-4*	*R-5*
1) **In Building Envelope**: Fences located outside of the minimum yard areas except for fences located between the front property line and front façade line.						
• 6 ft. maximum height and up to one-hundred percent (100%) solid.	X	X	X	X	X	X
2) **Between Front Façade Line and Front Property Line**[1]: Fences located between the front property line and the front façade line, except fences located adjacent and generally parallel to highways owned by the state or designated arterial roads which may be alternatively constructed as provided in sections 5 or 6 of this table.						

• 4 ft. maximum height and no more than fifty percent (50%) solid when viewed at an angle perpendicular to the fence.	X	X	X	X		
• No fence allowed.					X	X
3) Minimum Rear or Side Yards Not Adjacent to Public Roads: Fences located between a rear or side property line and the minimum rear or side yard setback line~~ and not~~, except fences located adjacent to a public trail, public park, or public open space.						
• 6 ft. maximum height and up to one-hundred percent (100%) solid.	~~X~~	X	X	X	X	X
• 6 ft. maximum height and no more than fifty percent (50%) solid when viewed at an angle perpendicular to the fence.	X					
4) Minimum Rear or Side Yards Adjacent to Public Roads: Fences located between a rear or side property line and the minimum rear or side yard setback line except fences located adjacent and generally parallel to highways owned by the state or designated arterial roads~~, or 3) a public trail, public park, or public open space~~ which may be alternatively constructed as provided in sections 5 or 6 of this table.						
• *Generally parallel to a public road:* ~~1) Fences exceeding 4 ft. in height shall be no more than twenty five percent (25%) solid when viewed at an angle perpendicular to the fence, or 2) Fences up to 4 ft. in height shall be no more than 25% solid when viewed at an angle perpendicular to the fence or if greater than 25% solid when viewed at an angle perpendicular to the fence shall be subject to the setback and landscaping requirements of Subsection (d) below.~~ 4 ft. maximum height and up to 100% solid; or greater than 4ft. in height up to a maximum height of 6 ft. if no more than fifty percent (50%) solid when viewed at an angle perpendicular to the fence; or greater than 4 ft. in height up to a maximum of 6 ft. and greater than fifty percent (50%) solid when viewed at an angle perpendicular to the fence subject to setback and landscaping requirements of Subsection (d) below.	X	X	X	X	~~X~~	~~X~~
• *Generally parallel to a public road:* 4 ft. maximum height and up to 100% solid; or greater than 4ft. in height up to a maximum height of 6 ft. if no more than fifty percent (50%) solid when viewed at an angle perpendicular to the fence; or greater than 4 ft. in height up to a maximum of 6 ft. and greater than fifty percent (50%) solid when viewed at an angle perpendicular to the fence subject to setback and landscaping requirements of Subsection (d) below.					X	X
• *Generally perpendicular to public road:* 6 ft. maximum height and up to one-hundred percent (100%) solid.	~~X~~	X	X	X	X	X
• *Generally perpendicular to public road:* 6 ft. maximum height and no more than fifty percent (50%) solid when viewed at an angle perpendicular to the fence.						
5) Fences Adjacent to State Highways: Fences located in the minimum yard areas that are generally parallel to highways owned by the State.						
• 8 ft. maximum height and up to one-hundred percent (100%) solid subject to setback and landscaping requirements of Subsection (d) below.	X	X	X	X	X	X
6) Fences Adjacent to Designated Arterial Roads: Fences located in the minimum yard areas that are generally parallel to South Clarkson Street~~, East Quincy Avenue, South Colorado Boulevard~~ or East Happy Canyon Road.						
• 6 ft. maximum height and up to one-hundred percent (100%) solid subject to the setback and landscaping requirements of Subsection (d) below.	X	X	X	X	X	X

7) Parallel to Public Trails, Parks, or Open Space: Fences located within the minimum yard area generally parallel and adjacent to a public trail, public park, or public open space, except fences located between and front façade line and front property line.						
• 6 ft. maximum height and no more than ~~twenty five percent (25%)~~ forty percent (40%) solid when viewed at an angle perpendicular to the fence.	X	X	X	X	X	X
8) Surrounding Sports Courts, Tennis Courts, and Other Outdoor Recreational Uses: Fences associated with a legally established sport court, tennis court or other outdoor recreational use.						
• 10 ft. maximum height and no more than twenty five percent (25%) solid when solid when viewed at an angle perpendicular to the fence, except that a wind screen and other similar barriers may be applied to the fence.	X	X	X	X	X	X

[1]*On lots bordering two or more streets the front property line shall be determined pursuant to Paragraph 16-5-30 (h) or based on the orientation of the front of the house as determined by the Community Development Director.*

(d) Fence setback and landscape requirements. Fencing subject to minimum setback and landscaping requirements in Subsection C above must comply with either Subsection a. or b. below:

(1). Select any two (2) of the following:

a. Set back at least twenty-five (25) feet from the edge of pavement of an adjacent paved roadway or forty (40) feet from the center line of any adjacent unpaved roadway.

b. Landscape the area between the roadway and the fence with trees of a size set forth in Paragraph 16-16-10(d)(6) above and at a density of one (1) tree for every twenty (20) feet to thirty (30) feet of fence as determined by the City Manager given the type and planting size proposed. Any area of City right-of-way proposed to be utilized for tree planting must be approved by the City Manager.

c. Cover at least twenty-five percent (25%) of the fence roadside surface area with vegetation immediately adjacent to the fence surface. A planting plan submitted to the City Manager showing how the twenty-five-percent requirement will be met after three (3) growing seasons will be required.

(2). Indent areas of the fence and plant at least two (2) trees or evergreen shrubs of a size set forth in Paragraph 16-16-10(d)(6) above in each such areas. These indentations shall be fifteen (15) feet to twenty-five (25) feet in width and at least four (4) feet in depth, and must comprise at least twenty-five percent (25%) of the total fence length.

(e) Gates. Not more than two (2) gates that provide for ingress and egress from a vehicular right-of-way to a front yard may exceed the otherwise applicable height limitations for the fence so long as the height of each gate ~~does not exceed ten (10) feet~~ is not more than four (4) feet greater than the applicable height limitations for the fence, each gate is not more than eighteen (18) feet in width, and each gate is not more than twenty-five percent (25%) solid when viewed from an angle that is perpendicular to the gate. A gate that provides for ingress and egress to a yard other than a front yard may exceed the otherwise applicable height limitations for the fence so long as the height of the gate is not more than two (2) feet greater than the ~~otherwise~~ applicable height limitations for the fence and the gate is not more than four (4) feet in width and not more than one (1) such gate exists on or along any single property line.

(f) Utility Stations. Fences may be constructed for utility stations as permitted in this Chapter, provided that such fences do not exceed eight (8) feet in height and are not more than fifty percent (50%) solid.

(g) Measurement of height. When measuring the height of a fence, it shall be the vertical distance between the natural grade, or from the grade of an approved overlot grading plan, to the height of the fence. Neither a column nor a light fixture attached to a column shall be included within the calculation of the height of a fence so long as the height of the column, or combination of the height of the column and the light fixture, is not more than two (2) feet greater than the otherwise applicable height limitations for the fence. Where fences and berms are constructed one (1) upon the other, the height of such fences or berms shall be measured as the sum of the individual units.

(h) Visibility at intersections. Fencing and associated landscaping must conform with Section 16-16-30 above concerning visibility at intersections. Landscaping must be maintained in a neat, clean and healthy condition by the owner of the property as provided in Paragraph 16-16-10(d)(7) above.

(i) Replacement of nonconforming fences. Any existing fence that is replaced shall comply with the regulations as set forth in this section. Any repair of more than twenty-five percent (25%) of a fence along any individual front, side or rear lot line of a property within a twenty-four-month period shall constitute a replacement.

(j) Fencing for retail, office or medical or dental clinics in the C-2 zone district shall be subject to the Conditional Use review and approval procedures in Article XVIII of this Chapter.

(k) Fencing for nonprofit institutions, private clubs or private recreational facilities shall be subject to the review and approval procedures in Article XX of this Chapter.

Section 2. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion would be declared invalid.

Section 3. Effective Date. This Ordinance shall become effective ten (10) days after publication on second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

Adopted as Ordinance No. ___, Series 2016, by the City Council of the City of Cherry Hills Village, Colorado this _____ day of _____, 2016.

_____

Laura Christman, Mayor

ATTEST:

Laura Smith, City Clerk

APPROVED AS TO FORM:

Linda C. Michow, City Attorney

Mayor Christman asked about water from Greenwood Village related to the June 2015 flood event.

City Engineer Carmann replied that a field report shortly after the event documented damage to Greenwood Gulch at the High Line Canal crossing that indicated overflow.

Mayor Christman thanked City Engineer Carmann for a thorough and accessible report. She added that the report would be helpful to residents and directed staff to post the report on the City website.

Council Bill 10, Series 2015; Repealing and Reenacting Municipal Code Section 16-16-40 Concerning Fences (*first reading, tabled from December 9, 2015 meeting*)

Director Zuccaro explained that Council Bill 10, Series 2015 had been tabled from the December 9, 2015 meeting. He noted that the proposed bill would revise the City's fence code specifically as it related to parks, trails and open space, as well as front yards and public roads in certain cases. He added that the proposed bill required that any fence that is replaced be brought into compliance with the new code, and any repair that exceeds 25% of the fence area within a 24-month period would constitute a replacement and would need to be brought into full compliance. He explained that there were two versions of the proposed bill, one from the Planning and Zoning Commission and the other from the Parks, Trails and Recreation Commission. Table 3 from the staff memo summarized the two recommendations compared to the current City Code.

Fence Location	Current Code (Exhibit C)	Proposal - Version 1 P&Z (Exhibit A)	Proposal - Version 2 PTRC (Exhibit B)
Parallel to public trails, parks, or open space • All Residential Zone Districts	6 ft. max. height and up to 100% solid	6 ft. max. height and less than 25% solid	6 ft. max. height and less than 25% solid
Front yards • R-1, R-2, R-3, and R-3A districts	6 ft. max. height if less than 50% solid; or 4 ft. max. height if more than 50% solid; or 6 ft. max. height and more than 50% solid subject to setback/landscape standards*	4 ft. max. height and less than 50% solid (between front property line and front façade line)	4 ft. max. height and less than 50% solid (between front property line and front façade line)
• R-4 and R-5 districts	6 ft. max. height if less than 50% solid; or 4 ft. max. height if more than 50% solid; or 6 ft. max. height and more than 50% solid subject to setback/landscape standards*	No fence allowed (between front property line and front façade line)	No fence allowed (between front property line and front façade line)
Rear or side yards • All Residential Zone Districts	6 ft. max. height and up to 100% solid	6 ft. max. height and up to 100% solid	6 ft. max. height and up to 100% solid
Rear and side yards adjacent to public road • All Residential Zone Districts	6 ft. max. height if less than 50% solid;	6 ft. max. height if less than 50% solid;	6 ft. max. height and less than 25% solid

	or 4 ft. max. height if more than 50% solid; or 6 ft. max. height and more than 50% solid subject to setback/landscape standards*	or 4 ft. max. height if more than 50% solid; or 6 ft. max. height and more than 50% solid subject to setback/landscape standards*	or Up to 4 ft. maximum height and more than 25% solid subject to setback/landscape standards*
Any fence adjacent to State Highway	8 ft. max. height and up to 100% solid subject to setback/landscape standards*	8 ft. max. height and up to 100% solid subject to setback/landscape standards*	8 ft. max. height and up to 100% solid subject to setback/landscape standards*
Any fence adjacent to other select arterial roads	N/A	Adjacent to S. Clarkson St., E. Happy Canyon Rd., S. Colorado Boulevard, & E. Quincy Avenue: • 6 ft. max. height and up to 100% solid subject to setback/landscape standards*	Adjacent to S. Clarkson St., E. Happy Canyon Rd: • 6 ft. max. height and up to 100% solid subject to setback/landscape standards*

*Setback and Landscape Buffer Requirements (choice of A or B):

A. Pick any two of the following three:
   1. Setback 25 ft. from edge of paved road or 40 ft. from centerline of unpaved road.
   2. Landscape with minimum of 1 tree every 20-30 ft.
   3. Landscape with planting to cover 25% of fence surface

B. Indent every 15-25 ft. and plant indents with 2 trees or evergreen shrubs

Councilor Gallagher asked to see the photos of various fences throughout the City with differing percentages of openness.

Director Zuccaro noted that the PTRC had not had the benefit of the photos during their discussions.

Mayor Pro Tem A. Brown indicated that a shorter, more solid fence was less objectionable to a taller, more solid fence and suggested a sliding scale.

Councilor VanderWerf noted that a very low fence or wall could be considered a landscape feature.

Councilor K. Brown noted that Version 2 of the council bill did not agree with Table 3 in the staff memo.

Director Zuccaro confirmed there was an error in Version 2 of the council bill.

Councilor K. Brown indicated that the repair trigger of 25% should be amended in the proposed bill in order to clarify the 25% threshold referred to a single lot line of a single property. She asked about a single fence that spanned multiple properties along Quincy Avenue and wondered if the Homeowners Association owned the fence or had regulations regarding fence styles. She questioned the consequence the proposed regulations would have on the continuity of the multi-property fence along Quincy.

Councilor Hoellen replied that the purpose of the proposed bill was to drive the community towards standards in support of the Master Plan, and before the ultimate desired result was achieved there would be an interim period of discontinuity.

Mayor Christman noted that HOAs could have further restrictions beyond the City's regulations.

Councilor K. Brown added that HOAs may have to revise their rules based on the new regulations approved by Council.

Councilor VanderWerf suggested that rear/side yard fences on smaller lots should be treated differently than larger lots.

Councilor Gallagher and Councilor K. Brown agreed.

Councilor Hoellen asked if the concern was privacy or security, since privacy could be accomplished with landscaping instead of solid fencing.

Councilor K. brown replied that landscaping encroached into the property and that would have a more significant effect on smaller lots. She indicated that she supported Mayor Pro Tem A. Brown's idea of a sliding scale for fence height and solidness.

Mayor Pro Tem A. Brown asked about the current Code.

Director Zuccaro replied that the current Code for front yard fences allowed 4 ft. maximum height if more than 50% solid, 6 ft. maximum height if less than 50% solid, or 6 ft. maximum height and more than 50% solid subject to setback/landscape standards.

Councilor K. Brown agreed with Councilor VanderWerf that very low fences or walls could be landscape features.

Mayor Christman noted that allowing front yard fences in neighborhoods that currently did not have them would change the feel of the neighborhood. She added that she would support solid fencing in backyards along Quincy if landscaping were increased.

Councilor K. Brown replied that property owners could not plant trees outside of their fences along Quincy.

Director Zuccaro indicated that property owners would have to move their fences farther into their properties in order to allow room for landscaping.

Mayor Christman noted that landscaping did not have to mean trees.

Councilor K. Brown asked about the current landscaping requirements.

Director Zuccaro replied that the landscaping requirement could be accomplished with trees, bushes or vines so long as it covered 25% of the fence surface.

Councilor K. Brown asked about the setback requirement in regards to the fences along Quincy.

Director Zuccaro guessed that those fences were set back at least 25 ft. from the road.

Mayor Pro Tem A. Brown expressed concern with creating a double standard for fences within a single neighborhood if some properties were adjacent to an on-street trail and others were not.

Councilor K. Brown agreed and noted that the original concern of a tunneling effect on trails caused by solid fencing was not an issue for on-street trails.

Mayor Christman asked about the history of on-street trails.

Councilor VanderWerf explained that on-street trails had been designated by PTRC in an effort to identify routes through the City. She indicated that on-street trails were somewhat arbitrary and should not be punitive.

Mayor Christman asked about the Buell neighborhood.

Interim City Manager/Director Goldie replied that the dedicated trail easement through the Buell had been part of the subdivision agreement.

Mayor Christman agreed that regulating fences adjacent to on-street trails was unnecessary.

Councilor K. Brown asked how on-street trails could be excluded from the proposed regulations.

Director Zuccaro replied that they could be excluded from the definition of public trails in the ordinance.

Mayor Christman asked about the legal definition of on-street trails.

Director Zuccaro explained that on-street trails were not currently designated in the Municipal Code and that the original recommendation associated with the proposed regulations had been to adopt the Parks and Trails map by resolution in order to designate on-street trails. He noted that the trails along Quincy, Colorado and Holly were considered off-street trails in the current version of the proposed bill and asked Council if they wanted to change that designation.

Council agreed that the trails along Quincy, Colorado and Holly should be considered off-street trails.

Councilor Hoellen agreed that a sliding scale was worthy of consideration. He added that he believed the 25% solid restriction for fences adjacent to public parks, trails and open spaces could be raised to 35% or 40%.

Councilor Gallagher reiterated that R1 lots should have more restrictive regulations than smaller lots.

Councilors K. Brown and VanderWerf agreed.

Councilor Hoellen reiterated that landscaping could be used for privacy.

Councilor K. Brown reiterated that landscaping required relatively more space on smaller lots. She noted that R4 and R5 neighborhoods were already more suburban than semi-rural because of the smaller lot sizes.

Mayor Christman agreed that rear and side yards in the smaller lot zone districts could be treated differently than larger lots, but front yards should be kept open.

Councilor Hoellen questioned how the proposed regulations would be applied to a proposed fence that fell into more than one category, such as a rear or side and adjacent to a public trail.

Director Zuccaro replied that fence would be subject to 6 ft. maximum height and less than 25% solid under the proposed regulations.

Councilor Griffin asked if tennis court fences would be affected by the proposed regulations.

Director Zuccaro replied that the proposed regulations would specify that tennis court or any other sport court fencing would be allowed up to a height of 10 ft.

Councilor K. Brown asked what percentage solid Council would like for fences parallel to public trails, parks or open space.

Councilor VanderWerf suggested 40%.

Mayor Christman agreed.

Councilor Hoellen agreed if the measurement would be precise. If it was not precise then he preferred 35%.

Councilor K. Brown noted that a 40% solid fence would be too solid for someone trying to escape the trail due to a pack of coyotes.

Mayor Christman agreed that the security risk existed on narrow trails. She added that horses reacted differently to a tunnel versus a trail where they can see to either side.

Councilor K. Brown asked if Council wanted to regulate rear/side yard fences adjacent to public roads differently in the various zone districts.

Mayor Christman suggested that for that category fences up to 4 ft. high had to be less than 60% solid.

Councilor Hoellen agreed with 4 ft. high and less than 60% or 75% solid.

Councilor K. Brown clarified that no solid fences would be allowed in rear/side yards adjacent to public roads.

Mayor Christman suggested removing that category of regulations in the R4 and R5 zone districts.

Councilor K. Brown clarified that in the R4 and R5 zone districts, 6 ft. high and 100% solid fences would be allowed in rear/side yards adjacent to public roads. She added that under Version 2 of the proposed regulations any fence adjacent to S. Clarkson St. or E. Happy Canyon Rd. would be allowed to be 6 ft. high and up to 100% solid with setback/landscape standards.

Councilor K. Brown moved, seconded by Mayor Pro Tem A. Brown to approve Council Bill 10, Series 2015 repealing and replacing Section 16-16-40 of the Cherry Hills Village Municipal Code concerning fences, as proposed in Exhibit B of the January 5, 2016 staff memorandum with the following amendments:

1. Revise the definition of Public Trail to exclude on-street trails
2. Further define the 25% repair criteria
3. Change the height of fences parallel to public trails, parks or open space in all residential zone districts to be 6 ft. maximum height and less than 40% solid
4. For fences in rear and side yards add a separate category for the R1 zone district allowing 6 ft. maximum height and less than 50% solid, and in other zone districts 6 ft. maximum height and up to 100% solid
5. For fences in rear or side yards adjacent to public roads add a distinction in the R1, R2, R3 and R3A zone districts to allow 6 ft. maximum height and less than 25% solid or 4 ft. maximum height and less than 60% solid; and a category in the R4 and R5 zone districts allowing 6 ft. maximum height and up to 100% solid

Councilor Hoellen questioned if rear/side yard fences adjacent to public roads in the R4 and R5 zone districts 6 ft. maximum and up to 100% solid would be subject to setback and landscape standards.

Councilor K. Brown and Mayor Pro Tem A. Brown accepted that amendment to the motion.

Councilor VanderWerf asked how the new regulations would affect gates.

Director Zuccaro replied that there were no new regulations proposed for gates.

The following votes were recorded:

Gallagher	yes
Griffin	yes
A. Brown	yes
VanderWerf	yes
K. Brown	yes
Hoellen	yes

Vote on the Council Bill 10-2015: 6 ayes. 0 nays. The motion carried.

Discussion Regarding Ordinance 13, Series 2015; Concerning Regulations Applicable to the Operation of Unmanned Aircraft Systems

City Attorney Michow explained that staff was seeking direction from Council on the registration of hobby drones in the City following the FAA's establishment of the federal registration program. She noted that the federal program required hobby drones over 0.55 pounds to be registered while the City's ordinance required all hobby drones to be registered.

City Clerk Smith explained that staff's current process was to have owners who had registered federally to submit a copy of their registration certificate and also provide contact information which was not included on the certificate. She noted that owners of drones smaller than 0.55 pounds would not have registered federally and would currently be required to complete the City's registration process including the $10 per drone fee.

Councilor K. Brown questioned the need for federally registered drone owners to provide contact information if that information was available to the City from the FAA.

Chief Tovrea replied that if that information was available to the City it was likely only during regular business hours.

Councilor K. Brown indicated that the FAA prohibited any local municipality from imposing registration regulations without permission from the FAA.

Councilor Hoellen suggested that the City should consult with the FAA on the City's ordinance to determine the FAA's controlling legal statute and authority in prohibiting the City's regulations. He added that it was the job of governing bodies to eliminate ambiguity.

Mayor Christman noted that the FAA was understaffed and dealing with larger issues.

Mayor Pro Tem A. Brown indicated that it was not clear the FAA had the authority they claimed.

Mayor Christman replied that the hobby drone association claimed the FAA did not have authority to regulate hobby drones.

EXHIBIT C

Sec. 16-16-40. - Fences.

Fences are permitted on legally established lots as defined in Section 16-1-10 of this Chapter, and are permitted on legally established nonconforming lots as defined in Section 16-1-10 and in Article XIV of this Chapter, subject to compliance with the following regulations:

(1) No fence, except where reasonably required for tennis courts or other uses reasonably requiring higher fences, may exceed six (6) feet in height; provided however, that fences that are parallel and adjacent to highways owned by the State may not exceed eight (8) feet in height. The foregoing limitations notwithstanding: (i) not more than two (2) gates that provide for ingress and egress from a vehicular right-of-way to a front yard may exceed the otherwise applicable height limitations for the fence so long as the height of each gate does not exceed ten (10) feet and each gate is not more than twenty-five percent (25%) solid when viewed from an angle that is perpendicular to the gate and not more than eighteen (18) feet in width; and (ii) a gate that provides for ingress and egress to a yard other than a front yard may exceed the otherwise applicable height limitations for the fence so long as the height of the gate is not more than two (2) feet greater than the otherwise applicable height limitations for the fence and the gate is not more than four (4) feet in width and not more than one (1) such gate exists on or along any single property line.

(2) Where fences generally parallel an adjacent public roadway within the minimum yard area and are greater than forty-eight (48) inches in height and less than fifty percent (50%) open in their vertical surface as viewed perpendicular to the fence, such fences constructed after the effective date of the initial ordinance codified herein shall comply with either of the following design criteria options in Subparagraph a or b below:

a. Select any two (2) of the following:

1. Set back at least twenty-five (25) feet from the edge of an adjacent paved roadway or forty (40) feet from the center line of any unpaved right-of-way.
2. Landscape the area between the roadway and the fence with trees of a size set forth in Paragraph 16-16-10(d)(6) above and at a density of one (1) tree for every twenty (20) feet to thirty (30) feet of fence as determined by the City Manager given the type and planting size proposed. Any area of City right-of-way proposed to be utilized for tree planting must be approved by the City Manager.
3. Cover at least twenty-five percent (25%) of the fence roadside surface area with vegetation immediately adjacent to the fence surface. A planting plan submitted to the City Manager showing how the twenty-five-percent requirement will be met after three (3) growing seasons will be required.

b. Indent areas of the fence and plant at least two (2) trees or evergreen shrubs of a size set forth in Paragraph 16-16-10(d)(6) above in each such areas. These indentations shall be fifteen (15) feet to twenty-five (25) feet in width and at least four (4) feet in depth, and must comprise at least twenty-five percent (25%) of the total fence length.

(3) Fencing and associated landscaping must conform with Section 16-16-30 above concerning visibility at intersections and must be maintained in a neat, clean and healthy condition by the owner of the property as provided in Paragraph 16-16-10(d)(7) above.

(4) When measuring the height of a fence, it shall be the vertical distance between the natural grade, or from the grade of an approved overlot grading plan, to the height of the fence. Neither a column nor a light fixture attached to a column shall be included within the calculation of the height of a fence so long as the height of the column, or combination of the height of the column and the light fixture, is not more than two (2) feet greater than the otherwise applicable height limitations for the fence. Where fences and berms are constructed one (1) upon the other, the height of such fences or berms shall be measured as the sum of the individual units.

(5) Any existing fence that is replaced shall comply with this regulation. Any repair of more than twenty-five percent (25%) of the fence along a public right-of-way within a twenty-four-month period shall constitute a replacement.

(6) Paragraph (2) above shall be inapplicable to fences existing on the effective date of the ordinance codified herein except as specified in Paragraph (5) above.

(7) Fences may be constructed for utility stations as permitted in this Chapter, provided that such fences do not exceed eight (8) feet in height and are not more than fifty percent (50%) solid.

(Prior code 6-15-4; Ord. 8, 1989; Ord. 15, 1989; Ord. 12, 2000; Ord. 6 §1, 2003; Ord. 9 §1, 2003; Ord. 03 §1, 2006; Ord. 01 §2, 2007)

Minutes of the
Planning and Zoning Commission of the City of Cherry Hills Village, Colorado
Held on Tuesday, August 25, 2015 at 6:30 p.m.
At the Village Center

CALL TO ORDER

Chair Savoie called the meeting to order at 6:30 p.m.

ROLL CALL

Present at the meeting were the following Planning and Zoning Commissioners: Chair Peter Savoie, Vice Chair Jim Rubin, Commissioner Al Blum, Commissioner Peter Niederman and Commissioner Mike LaMair.

Present at the meeting were the following staff members: Rob Zuccaro, Community Development Director and Cesarina Dancy, Community Development Clerk.

Absent from the meeting were Commissioner David Wyman and Commissioner Doris Kaplan.

APPROVAL OF MINUTES

Vice Chair Rubin made a motion, which was seconded by Commissioner Blum, to accept the June 9, 2015 and July 14, 2015 minutes as written.

The motion passed unanimously.

AGENDA ITEMS

a. *Proposal for Amendments to Municipal Code Section 16-16-40 Concerning Fences.*

Mr. Zuccaro stated that in July, the Planning and Zoning Commission had a joint study session with the PTRC to discuss the issue of solid fencing along trails. He continued to say as a result of this study session, staff was given direction for draft amendments to the current fencing code.

Mr. Zuccaro displayed photos of several types of fences which are currently located along city trails. He stated that the concern over solid fencing along trails stems from concerns over safety, protection of views, protection of rural character, and a tunneling effect that solid fencing on both sides of a trail can create.

Mr. Zuccaro displayed a table showing the current fence code. He stated that properties along state highways are allowed to increase their fence height to 8 feet, and that any legally nonconforming fence can be repaired at a rate of 25% repairs every two years without having to bring the entire fence into conformance.

Mr. Zuccaro stated that currently there are very few front yard fences in the City, and that the majority of those are located in the R-1 Zone District.

Mr. Zuccaro displayed a table of the proposed fence code amendments. He stated that the proposal for fences adjacent to trails is to allow a maximum height of 4 feet with a 50% openness requirement.

Commissioner Blum asked about the fence that is on the property adjacent to Kent Denver.

Mr. Zuccaro replied that if the amendments were adopted, it would be considered legally nonconforming.

Vice Chair Rubin asked if a fence 4 feet in height would keep coyotes out.

Mr. Zuccaro replied that a coyote could jump over a fence higher than 4 feet. He stated that some owners have put coyote rollers on the tops of their fences.

Chair Savoie asked what the requirement would be for a front yard along a trail.

Mr. Zuccaro replied that there are some on-street trails, and that depending on zone district, fences could be 4 or 6 feet in height as well as 50% open.

Vice Chair Rubin stated that 4 feet seems low, and that if a fence is 50% open, 6 feet would not make that much of a difference.

Chair Savoie asked what the recommendation of the PTRC was.

Mr. Zuccaro stated that he would be presenting this at a later date to the PTRC. He continued to say that open rail fences are often 4 feet in height.

Commissioner Niederman stated that fences 6 feet in height would provide more security and privacy along the trails.

Mr. Zuccaro stated that landscaping can also be planted for more security and privacy.

Commissioner LaMair asked what the front yard setbacks are.

Mr. Zuccaro replied that in the R-1 and R-2 Zone Districts there is a 75 foot front setback, and in the R-3 and R-4 Zone Districts there is a 50 foot front setback. He continued to say that fences do not have setback requirements; fences can be located on the property lines.

Vice Chair Rubin asked what would the fence requirements be on a corner lot.
Mr. Zuccaro replied that currently a 6 foot solid fence is allowed all around the property. He continued to say that under this new amendment, an exception could be made for a rear yard that is adjacent to a side yard in the front setback area to allow for a 6 foot fence.

Mr. Zuccaro stated that in addition to the amendments, the only design requirement would be to no longer allow chain link fence.

Commissioner LaMair stated that he was concerned about security and the ability of a 4 foot fence to keep dogs and horses on their respective sides.

Mr. Zuccaro stated that the PTRC has found that fences 4 feet in height are adequate for the equestrian community.

Commissioner LaMair asked what the next steps in the process are.

Mr. Zuccaro replied that the PTRC would have a chance to review the amendments, and then it may possibly come back before the Planning and Zoning Commission. He stated that City Council would have two readings of the amendments, with one being a public hearing.

Commissioner LaMair stated that a 6 foot fence that is 75% open would still provide security.

Commissioner Blum stated that with a backyard facing a side yard the backyard would need privacy and this could be clarified in the ordinance.

Chair Savoie stated that a fence that is 6 feet in height that is 75% open with a maximum height of 4 feet in front yards would be suitable.

Vice Chair Rubin asked if HOA covenants would allow these changes.

Mr. Zuccaro replied that homeowners are obligated to follow whichever is more restrictive of the HOA covenants and City codes.

Lucinda Greene, resident, stated that the equestrian community feels that 4 feet is an acceptable height to provide safety to both horses and dogs. She continued to say that an area of concern to the equestrian community is areas that freeze on the trails due to shade from fencing and vegetation.

Chair Savoie stated that the privacy of residents overrides freezing areas on the trails.

Mr. Zuccaro stated that if the PTRC has differing recommendations from the Commission, the proposal could come back before the Commission in the future.

b. Draft Master Plan Implementation Plan

Mr. Zuccaro stated that at the joint study session of the PTRC and the Planning and Zoning Commission, both commissions, as well as City Council, stated that no major changes were needed to the Master Plan. He continued to say that all the parties involved agreed that what was needed was a formal implementation plan for the Master Plan.

Mr. Zuccaro stated that many of the items in the draft implementation plan are administrative. He stated that each item was given a priority, status, and action items where applicable. He continued to say that all of the goals and strategies are identical to the Master Plan; the only new item in this document is the implementation.

Commissioner LaMair stated that a table of contents would be useful.

The Commission discussed the following items:

1. Page 3, item 1a. Mr. Zuccaro stated that many questions come up regarding higher density residential facilities, such as a senior living facility. He stated that staff strongly discourages these types of applications.

   Commissioner Niederman stated that many in the Denver Metro area are aware of the strict zoning requirements and allowances in the City. He continued to ask if there was any City recreational use for the property located at the intersection of University and Quincy.

   Mr. Zuccaro replied that the property is divided into 4 one acre parcels with a private access road. He continued to say that the City currently does not have any active recreational areas.

   Chair Savoie stated that traffic at the intersection would make it difficult to have any kind of recreation facility in this location.

EXHIBIT E

Minutes of the Parks, Trails & Recreation Commission
City of Cherry Hills Village, Colorado
Thursday, September 10, 2015
at the Village Center

Commission members in attendance: Bill Lucas, Robert Eber, John Kokish, Rob Ganger, Joshua DiCarlo and Councilor Mike Gallagher. Employees present: Ryan Berninzoni, Parks, Trails and Recreation Administrator, Matt Krebsbach, Parks Crew Chief, Pamela Broyles, Administrative Assistant.

Absent: Colleen Dougherty, Nina Itin

CALL TO ORDER
Chair Bill Lucas called the PTRC meeting to order at 6:30 p.m.

APPROVAL OF THE JULY 9, 2015 MINUTES
Mr. Robert Eber moved to approve the July 9, 2015 minutes as presented. Mr. John Kokish seconded the motion. Motion passed unanimously.

AUDIENCE PARTICIPATION
There was no audience participation.

FENCE CODE PRESENTATION – ROB ZUCCARO (Intern Nate Silverstein)
Mr. Silverstein presented the proposed amendments to the City's fencing code to the Parks, Trails and Recreation Commission (PTRC) for review and recommendation to City Council. Amendments are being pursued to address concerns due to construction of a new six foot tall fence along the City's trail system. The proposed amendments are based on feedback from the joint study session on July 9, 2015 between the Planning and Zoning Commission (P&Z) and PTRC. The amended fencing code was presented to the P&Z Commission on August 25, 1015. P&Z's recommended changes have been incorporated into the new proposed fencing code. Amendments include increasing the allowed height of fencing along trails, parks and open spaces and further restricting fencing along the front yard area when constructed along the side property line. The current code does not address these issues.

Mr. Silverstein reviewed the proposed amendments from the August 25th study session and compared them to the proposed changes from the P&Z Commission. Changes include increasing the minimum height along public trails, parks or open spaces to 6 feet and 75% open versus 4 feet and 50% open. Language was also included to preclude chain link fencing around the perimeter. New language for front yard fencing was introduced after P&Z's recommendation that side yard fences in the general area of the front yard should also be restricted in height. Staff established a front façade line as a line perpendicular to the side property lines. Any fence within the front façade line would be designated as a front yard fence and would have to comply with the openness and height restrictions. The newest fencing code proposed by P&Z is as follows:

1. Parallel to public trails, parks, or open spaces:
   6 ft. and minimum 75% open.
2. Front yard for the R-1 District:
   4 ft. if less than 50% open or
   6 ft. if more than 50% open.
3. Front yards for R-2, R-3, R-3A, C-1 and C-2 Districts
   4 ft. and minimum 50% open.
4. Front yards for the R-4 and R-5 Districts
   No fence allowed in front yard.

The PTRC discussed whether there is a need for front yard fencing with the exception of horse properties and properties along main streets. The concern is that fences are detrimental to the character of the Village and the rural feel of the Community. The current code calls for 6 foot solid fences.

The Commission discussed limiting front yard fences along public trails and specifying the type of fencing that can be installed when it affects the view corridor. An example was wrought iron fences that give an open feel and still provide security to the homeowner.

Mr. Zuccaro presented two scenarios for the PTRC. First, the PTRC could agree with P&Z's proposal with minor adjustments and go before City Council. Second, if PTRC is recommending significant changes then a joint study session between the two commissions could be scheduled to establish a consensus.

The PTRC agreed to move forward with P&Z's recommendation that fences parallel to public trails, parks or open spaces will be a maximum of 6 feet with a minimum 75% open and to further study the front yard fencing recommendations.

Mr. Eber moved, seconded by Mr. Ganger to move forward with Planning and Zoning's recommendation that fences parallel to public trails, parks or open spaces will be a maximum of six feet with a minimum of 75% openness to be presented to City Council and to schedule an additional study session with the Planning and Zoning Commission to study front yard fencing.

The motion carried unanimously.

MASTER PLAN IMPLEMENTATION – ROB ZUCCARO

Mr. Zuccaro presented a draft Implementation Plan for the Cherry Hills Village Master Plan for review and recommendation to the City Council. The Commission reviewed each section of the Master Plan and recommended minor changes that Mr. Zuccaro will incorporate before presenting to City Council.

SUBCOMMITTEE DISCUSSIONS

a. Summary Sheet

Trail Enhancement Update

1. Signs for Highline Canal

Mr. Lucas proposed adding minimal signage on the City's section of the Highline Canal similar to Greenwood Village to establish a hierarchy for horses, pedestrians and bicyclists. The purpose is for the City to be proactive and establish expectations, rules and guidelines as traffic increases along the Highline Canal.

Mr. Ganger recommended that signage be placed at the beginning and end of the trail as opposed to adding signage along the City's section of the Highline Canal.

2. Trail Connection – 4501 South Monroe

A parcel of land recently purchased at 4501 South Monroe could provide a trail connection if the property owner is open to an easement along the west side of their property. The Commission will continue to pursue a contact to discuss an easement.

Mr. Kokish suggested the Commission could pursue permissive use for an extended period of time if the family is opposed to a permanent easement.

Special Events Update

Mr. Berninzoni reported that movie night was a great success. The Cherry Hills Village car show is scheduled for Sunday, September 27th and the Holiday Tree Lighting is scheduled for Friday, December 11th.

Open Space Update

There was nothing to report on this subject.

Communications/Crier Article

Mr. Eber reported that the Village Crier will now be printed monthly. He questioned whether the PTRC would like a presence in the Village Crier every month. The Commission agreed that it is important to have a presence in each issue even if it is a minor article.

b. Parks, Trails and Recreation Enhancement

John Meade Park and Alan Hutto Memorial Commons

Mr. Lucas reported that the John Meade Park Master Plan was approved by City Council. The next step is to solicit funds and discuss uses for John Meade Park. The floodplain development study can go simultaneously in preparation for the next step.

Mr. Zuccaro reported that the first phase will include an expanded use permit and development plan documents such as, final grading, layout of the park, restroom facility, users of the park and final amphitheater design. The next step would include the FEMA approval process, construction level design documents and work on permits that will be needed. This process is expected to take a full year to accomplish before any construction can start.

Mr. Berninzoni reported that the City will also be pursuing grant opportunities to assist with these projects.

PTRC CHAIR REPORT

The City received a trail inventory grant and a consultant has been hired. The Commission will be updated and involved throughout the process. The study is expected to be complete in March 2016.

The temporary pad and walkway for the Alan Hutto Memorial amphitheater is complete.

REPORTS

a. Parks Division Maintenance Log

There was nothing to report on this subject.

b. PTRC Parks Fund Budget and Priority list update: October Presentation

Mr. Berninzoni reported that the October 2015 PTRC meeting is an important meeting for the Commission. Mr. Berninzoni will present a draft of the 2016 budget. The Commission will also be asked to work on a priority list for 2016. The City Engineer is preparing a cost estimate for the completion of John Meade Park and the Alan Hutto Amphitheater for the 2016 budget.

b. City Council Report

Councilor Gallagher thanked the Commission for their work on the fence issue. He encouraged the Commission to continue their efforts as this is an important part of the aesthetics of the City.

Councilor Gallagher also reported that City Council is not pursuing the Construction Use Tax at this time due to short notice. City Council continues to work on an Agreement with the City of Englewood to move the Public Works facility.

ADJOURNMENT

The meeting was adjourned at 8:45 p.m.

The next scheduled PTRC meeting is October 8, 2015.

_____

Bill Lucas
Chairman

_____

Ryan Berninzoni
Parks, Trails and Recreation Administrator

_____

Pamela Broyles

Administrative Clerk

EXHIBIT F

---DRAFT---

Minutes of the
Planning and Zoning Commission of the City of Cherry Hills Village, Colorado
Held on Tuesday, November 10, 2015 at 6:30 p.m.
At the Village Center

CALL TO ORDER

Chair Savoie called the meeting to order at 6:30 p.m.

ROLL CALL

Present at the meeting were the following Planning and Zoning Commissioners: Chair Peter Savoie, Commissioner Al Blum, Commissioner David Wyman, Commissioner Peter Niederman, Commissioner Dori Kaplan, Commissioner Mike LaMair, and Commissioner Bill Lucas.

Present at the meeting were the following staff members: Rob Zuccaro, Community Development Director; Emily Kropf, Special Projects Coordinator; and Cesarina Dancy, Community Development Clerk.

APPROVAL OF MINUTES

Commissioner Wyman stated that on page 2, paragraph 5 of the minutes, the word "and" should be removed.

Commissioner Niederman made a motion, which was seconded by Commissioner Blum, to approve the October 13, 2015 minutes with this correction.

The motion passed unanimously.

AGENDA ITEMS

a. *Review of Amendments to Fencing Code*

Mr. Zuccaro stated that Staff is presenting for review and recommendation to the City Council a draft ordinance amending the Village's fencing regulations (Exhibit A). He continued to say that the ordinance is intended to address concerns over fencing adjacent to trails and within front yards that may compromise the semi-rural, pastoral, and open character of the Village, disrupt view corridors, create tunnel like effects along trail systems, create potential safety hazards, and lead to the loss of a community atmosphere.

Mr. Zuccaro gave a summary of the review process to date.

Mr. Zuccaro stated that Table 1 in the staff memorandum summarized the proposal found in Exhibit A as compared to the existing fencing code. He continued to say that in the current proposal, all fencing parallel to a public trail, park or open space would need to be a minimum of 75% open and could not exceed 6 feet in height. He stated that typical fences that would be allowed include 3 and 4-foot split rail or open rail fences and 4, 5 or 6-foot ornamental iron fences. Fences in front yards beyond the front façade line of the house in the R-1, R-2, R-3, and R-3A districts would be limited to 4 feet in height and a minimum of 50% open. Fences in front yards beyond the front façade line of the house in the R-4 and R-5 districts would be prohibited.

Commissioner Kaplan asked if the openness requirement also entailed a style or design requirement.

Mr. Zuccaro replied that the code currently does not place any restrictions on design or material, only openness.

Commissioner Niederman asked how many properties that would be affected by this change currently do not have a fence.

Mr. Zuccaro replied that there is not an exact count of how many properties do not currently have fences.

Commissioner Wyman stated that along Colorado Boulevard all the properties adjacent to the trail were fenced.

Mr. Zuccaro stated that it is a mix throughout the City because some trails have all properties adjacent that are fenced while others do not.

Commissioner Niederman asked if an existing fence needed to be repaired or replaced could the same style of fence be kept.

Mr. Zuccaro replied that there is a provision in the code that 25% of a fence can be repaired or maintained every two years but any repair or replacement in excess of this would require the entire fence to be brought into conformity with current zoning codes.

Commissioner Wyman asked if a tree limb falling or other unforeseen damage would require the fence to be brought into conformity.

Mr. Zuccaro replied that if 75% of the value of the fence is going to be put into rebuilding the fence then the entire fence would have to be brought into conformance. He continued to say that a natural disaster did not exempt a property owner from this provision.

Mr. Zuccaro stated that there is a higher standard for nonconforming fences in relation to other nonconforming structures and this is purposeful in order to bring the fences into compliance faster.

Chair Savoie asked if the PTRC feels strongly about this issue.

Mr. Zuccaro replied that the PTRC wants the current fencing code to change to allow additional regulations along streets and trails.

Chair Savoie asked why was the issue of the rear and side yards being adjacent was not addressed in the proposed amendments.

Mr. Zuccaro replied that the consensus from the study session was that privacy in the backyard was more important that restricting the height for a neighbor's side yard.

Chair Savoie stated that whole fence damage only may occur twice a year. He asked if the new changes would apply only to new construction.

Mr. Zuccaro replied that a nonconforming fence could in theory be maintained forever but the code amendments would apply to all new fences being constructed and to those that have crossed the threshold of maintenance and would need to be replaced in their entirety.

Commissioner Niederman stated that possibly the City could allocate some funds to encourage property owners along trails to bring their fences in compliance.

Commissioner Blum replied that it would be hard to convince City Council to allocate funds for this purpose.

Commissioner Lucas stated that the fence along the property behind Kent Denver started the conversation for the PTRC regarding fencing along trails. He stated that the PTRC views this particular fence as a scar on the landscape.

Commissioner LaMair stated that the trail will stay icy all winter as the fence is totally solid.

EXHIBIT G

Minutes of the Parks, Trails & Recreation Commission
City of Cherry Hills Village, Colorado
Thursday, November 12, 2015
at the Village Center

Commission members in attendance: Robert Eber, John Kokish, Nina Itin, Joshua DiCarlo and Councilor Klasina VanderWerf. Employees present: Ryan Berninzoni, Parks, Trails and Recreation Administrator, Matt Krebsbach, Parks Crew Chief, Pamela Broyles, Administrative Assistant.

Absent: Rob Ganger, Colleen Dougherty

STUDY SESSION – 6:00 P.M.
Mr. Berninzoni introduced John Altschuld with Stanley Consultants for a presentation on the City's Trail Inventory and Long-Range Maintenance and Repair Program. Stanley Consultants will continue to update the Commission as the project progresses.

Mr. Altschuld reviewed the proposed project schedule and preliminary work that has already been accomplished. The program goal is to produce an online WebGIS map that can be easily accessed by City staff and the public. The program identifies 4 trail types including:

- Paved Mixed use
- Unpaved (soft surface) Mixed Use
- Bridle Trails
- Street Side (paved)

Mr. Altschuld reviewed the guidelines for each trail type.

Stanley Consultants will begin the next steps that include:

- Continue legal research and GIS mapping
- Create Existing Conditions Analysis Report
- Continue WebGIS platform creation
- Create New Parks and Trails Map

Mr. Altschuld presented examples of the layers that will be available on the map. The study will include recommendations for improvements to existing trails, new connections, and new amenities.

CALL TO ORDER
Chair Robert Eber called the PTRC meeting to order at 6:30 p.m.

APPROVAL OF THE OCTOBER 8, 2015 MINUTES
Mr. John Kokish moved to approve the October 8, 2015 minutes as presented. Ms. Nina Itin seconded the motion. Motion passed unanimously.

AUDIENCE PARTICIPATION
There was no audience participation.

BILL LUCAS – THANKYOU PRESENTATION
Chair Eber and the Commission thanked Mr. Lucas for his service on the PTRC over the past 5 years. Chair Eber shared several accomplishments that Mr. Lucas achieved throughout his term.

ARTS COMMISSION PRESENTATION
Klasina VanderWerf and Teresa Harbaugh addressed the Commission regarding a location for the Emmett Culligan art sculpture that the Art Commission will receive in early 2016. The Art Commission would like to put the piece in the Alan Hutto Memorial Park. The Commission shared their concerns regarding the timing of placing an art piece in this location because of future planning and development that will begin in 2016. The Art Commission agreed to find a temporary location for the piece and will consider moving the piece to the Alan Hutto Memorial Park at a future date.

FENCE CODE PRESENTATION
Mr. Zuccaro presented the latest draft of the fence code amendment. The fence code amendment is intended to be for review and recommendation to City Council as drafted or with recommended changes.

The draft includes the following changes:

1. Parallel to public trails, parks, or open space (R-1, R-2, R-3, R-3A, R-4, R-5)
   Current: 6 feet and solid
   Proposed: A maximum of 6 feet high and a minimum of 75% open

2. Front Yards (R-1, R-2, R-3, R-3A)
   Current: 4 ft. if less than 50% open or
   6 ft. if more than 50% open or
   6 ft. if less than 50% open and complies with setback and landscape buffer requirements
   Proposed: A maximum of 4 feet high and a minimum of 50% open

   Front Yards (R-4, R-5)
   Current: 4 ft. if less than 50% open or
   6 ft. if more than 50% open or
   6 ft. if less than 50% open and complies with setback and landscape buffer requirements
   Proposed: No fence allowed in front yard

3. Rear and side yards (R-1, R-2, R-3, R-3A, R-4, R-5)
   Current: 6 ft. and up to 100% solid
   Proposed: No Change

   Rear and side yards adjacent to public road (R-1, R-2, R-3, R-3A

Current: 4 ft. if less than 50% open or
6 ft. if more than 50% open or
6 ft. if less than 50% open and complies with setback and landscape buffer requirements
Proposed: No Change

4. Front, side or rear yards adjacent to State Highway
Current: 8 ft. and up to 100% solid subject to setback and landscape buffer requirements.
Proposed: No Change

5. C-2 District
Current: 6 ft. and up to 100% solid
Proposed: Subject to Conditional Use Permit

Fence permits will be subject to the most restrictive code allowance.

The Planning and Zoning Commission (P&Z) placed the following 3 conditions on the proposed fence code recommendation to City Council.

1. Administrative issue of defining trails. Define what a trail is in the code and develop a map as a companion document. As changes occur City Council would have to readopt a new map version. The concern is that there needs to be official documentation on file to support a regulation that affects property rights.

2. Include clarification that the more restrictive fence code will govern when there is a conflict. The most restrictive fence code would be 4 ft. maximum height and a minimum of 50% open.

3. The P&Z Commission has concerns about the impact of traffic along arterial streets including Colorado Boulevard, Quincy Avenue, Clarkson Street and Happy Canyon Drive. They believe a 6 foot solid fence should be allowed to create a buffer from noise, traffic and the negative impact of living adjacent to these roads. P&Z is recommending an exception to the fence code for properties that front Colorado Boulevard, Quincy Avenue, Clarkson Street and Happy Canyon Drive. The exception would allow a maximum 6 foot solid fence with landscape buffering. The Commission agreed to exclude Holly Street from the exception because of the significant view corridors and the rural character along Holly. Properties adjacent to the Holly Street Trail would be required to have a 6 foot maximum and 75% minimum open fence.

The Parks, Trails and Recreation Commission (PTRC) voiced their concern that the exception to these 4 streets could potentially create solid walls or fences along the entire street.

The PTRC questioned if the work that was done to create the fencing agreement for the subdivision on the Calkins property would be affected by the proposed exception along

Quincy Avenue. Mr. Zuccaro confirmed that the Calkins fencing agreement is part of the subdivision agreement and will override the zoning code as more restrictive.

The PTRC Commission discussed the inability for the City to purchase large open lots to protect view corridors. The purpose of establishing fence codes is not to stop property rights, but to protect view corridors and maintain the semirural character of the Village. The Commission agreed that other alternatives should be considered to address the noise and traffic problems such as lower speed limits.

The PTRC is recommending the following changes to the fence code:

1. Parallel to public trails, parks, or open space (R-1, R-2, R-3, R-3A, R-4, R-5)

Nina Itin moved, seconded by Joshua DiCarlo to adopt the proposed code for a 6 foot maximum and 75% minimum open fence parallel to public trails, parks, or open space with an exception along the exterior streets including Clarkson Street and Happy Canyon Drive, but excluding Colorado Boulevard and Quincy Avenue.

The Motion carried unanimously.

2. Front Yards (R-1, R-2, R-3, R-3A, R-4 and R-5)

John Kokish moved, seconded by Nina Itin to approve a 4 foot maximum height with a minimum 50% open fence in the front yard of R-1, R-2, R-3 and R-3A districts with no fencing allowed in the front yards of R-4 and R-5 districts.

The Motion carried unanimously.

3. Rear and side yards (R-1, R-2, R-3, R-3A, R-4, R-5)

Joshua DiCarlo moved, seconded by Nina Itin to adopt the code as written to allow 6 foot maximum and up to 100% solid fencing in the R-1, R-2, R-3, R-3A, R-4 and R-5 districts.

The Motion carried unanimously.

4. Rear and side yards adjacent to public road (R-1, R-2, R-3, R-3A)

Robert Eber moved, seconded by John Kokish, to recommend that fences in rear and side yards adjacent to public roads in the R-1, R-2, R-3, R-3A districts can be solid if under 4 feet, but must comply with the setback and buffer landscape requirements. Any fence over 4 feet and up to a 6 foot maximum must be at least 75% open.

The Motion carried unanimously.

5. Front, side or rear yards adjacent to State Highway

DRAFT

Robert Eber moved, seconded by Joshua DiCarlo to adopt the existing code to allow up to an 8 foot maximum and up to 100% solid fence subject to setback and landscape buffer requirements adjacent to state highways.

The Motion carried unanimously.

6. C-2 District

Robert Eber moved, seconded by Nina Itin to adopt the existing code to allow a 6 foot maximum and up to 100% solid fence in the C-2 District subject to a Conditional Use Permit.

The Motion carried unanimously.

The PTRC reported that their recommendations for fencing restrictions are to preserve the semi-rural character of the Village.

SUBCOMMITTEE DISCUSSIONS

a. Summary Sheet

Trail Enhancement Update
There was nothing to report on this subject.

Special Events Update
The Holiday Tree Lighting event is scheduled for Friday, December 11, 2015.

Open Space Update
There was nothing to report on this subject.

Communications/Crier Article
Mr. Eber will include discussions on the fence code proposal in the Village Crier.

b. Parks, Trails and Recreation Enhancement

PTRC CHAIR REPORT

Chair Eber asked for a motion to approve the 2016 PTRC meeting schedule.

Joshua DiCarlo moved, seconded by Nina Itin to adopt the 2016 PTRC meeting schedule. The Motion carried unanimously.

REPORTS

a. Parks Division Maintenance Log
There was nothing to report on this subject.

b. City Council Report
There was nothing to report on this subject.

ADJOURNMENT

John Kokish moved, seconded by Nina Itin to adjourn at 8:45 p.m.

DRAFT

Robert Eber
Chairman

Ryan Berninzoni
Parks, Trails and Recreation Administrator

Pamela Broyles
Administrative Clerk

DRAFT

ORDINANCE NO. 8

SERIES OF 1989

March 21, 1989: Public Hearing held on this Ordinance. Introduced as Council Bill No. 7, Series of 1989, by George Secor, seconded by Forrest McGrath, and considered in full on first reading. Passed unanimously.

April 4, 1989: Considered in full text on second reading. Passed unanimously. Designated as Ordinance No. 8, Series of 1989.

AN ORDINANCE AMENDING TITLE 6, CHAPTER 15, SECTION 4 OF THE CHERRY HILLS CITY CODE RELATING TO FENCES AND WALLS.

WHEREAS, safety and aesthetic concerns have been expressed by citizens about the placement of six-foot, solid fences along street rights of way; and

WHEREAS, said safety and aesthetic concerns relate to traffic visibility, snow removal problems and visual openness; and

WHEREAS, the subject has been thoroughly researched and reviewed by the Planning and Zoning Commission and, as a result, they have recommended certain amendments to the existing fence and wall regulations; and

WHEREAS, it is the opinion of the City Council that the recommended amendments are necessary in the interest of public safety and to protect property values in the City of Cherry Hills Village.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

Section 1. Title 6, Chapter 15, Section 4 be repealed in its entirety and replaced with the following:

"6-15-4: Fences and Walls: Notwithstanding any other provisions of this Title, fences and walls are permitted, subject to compliance with the following regulations:

1. No fence or wall, except where reasonably required for tennis courts or other uses reasonably requiring higher fences, may exceed six feet in height.

2. Where fences or walls generally parallel an adjacent public roadway and are greater than 48" in height and less than 50% open in its vertical surface as viewed perpendicular to the fence or wall, such fences or walls constructed after the effective date of this ordinance shall comply with either (A) or (B) of the following design criteria options:

   (A) Select any two of the following:

      1) Set back at least 25 feet from the edge of an adjacent paved roadway or 40 feet from the centerline of any unpaved right of way.

      2) Landscape the area between the roadway and the fence or wall with trees of a size set forth in Section 6-15-1E* and at a density of one tree for every 20-30 feet of fence or wall as determined by the City Manager given the type and planting size proposed. Any area of City right of way proposed to be utilized for tree planting must be approved by the City Manager.

      3) Cover at least 25% of the fence or wall roadside

ABJ087

surface area with vegetation immediately adjacent to the fence or wall surface. A planting plan submitted to the City Manager showing how the 25% requirement will be met after three growing seasons will be required.

(B) Indent areas of the fence or wall and plant at least two trees or evergreen shrubs of a size set forth in Section 6-15-1E* in each such areas. These indentations shall be 15' to 25' in width, at least four feet (4') in depth, and must comprise at least 25% of the total fence length.

3. Fencing and associated landscaping must conform with Section 6-15-3 of this Code concerning visibility at intersections and must be maintained in a neat, clean and healthy condition by the owner of the property as provided in Section 6-15-1F of this Code.

4. When measuring the height of a fence or wall, it shall be the vertical distance between the natural grade, or from the grade of an approved overlot grading plan, to the dominate height of the fence or wall. Generally, a sporadic post or support structure is not considered in the calculation. Where fences, walls and berms are constructed one upon the other, the height of such fences, walls or berms shall be measured as the sum of the individual units.

5. Any existing fence or wall which is replaced shall comply with this regulation. Any repair of more than 25 percent of the fence or wall along a public right of way within a 24-month period shall constitute a replacement.

6. Paragraph 2 of this section shall be inapplicable to fences and walls existing on the effective date of this ordinance except as specified in Paragraph 5 above.

*Minimum size of trees and shrubs

Size & Type of Plant	Minimum Allowable Plant Size for New Landscaping
Ornamental Trees	1.5" caliper
Deciduous Trees	2" caliper
Evergreen Trees	6 feet tall
Shrubs	5 gallon container

Section 2. Severability. Should any sentence, section or part of the ordinance be adjudged by any court to be unconstitutional or invalid, such judgment shall not affect or impair or invalidate the ordinance as a whole or any part thereof not so declared to be unconstitutional or invalid.

Section 3. Declaration of Public Interest. In the opinion of the City Council, this ordinance is necessary for the preservation of the public health, safety and welfare.

Adopted as Ordinance No. 8, Series of 1989, by the City Council of the City of Cherry Hills Village, Colorado, and signed and approved by its Mayor and Presiding Officer this 4th day of April, 1989.

Joan R. Duncan
Joan R. Duncan
Mayor

ATTEST:

Elizabeth N. Noel
Elizabeth N. Noel
City Clerk

ORDINANCE NO. 15
SERIES OF 1989

October 17, 1989: Introduced as Council Bill No. 12, Series of 1989, by Merle Chambers, seconded by George Secor. Considered in full text on first reading as amended. Passed unanimously.

November 21, 1989: Public hearing held on this Council Bill, then considered in full text on second reading. Passed unanimously. Designated as Ordinance No. 15, Series of 1989.

AN ORDINANCE AMENDING SECTION 6-15-4 OF THE CITY CODE CONCERNING FENCES AND WALLS.

ABJ087

WHEREAS, on April 4, 1989, the City Council adopted Ordinance No. 4, Series of 1989, that repealed and re-enacted the fence and wall regulations of the City of Cherry Hills Village; and

WHEREAS, after six months of experience with said new fence and wall regulations, the City Council desires to clarify the wording concerning fences and walls which parallel an adjacent public roadway; and

WHEREAS, this proposed modification has been reviewed by the Planning and Zoning Commission at a public hearing.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

Section 1. That the first paragraph of Section 6-15-4:2 of the City Code be deleted and replaced with the following regulation:

> "2. Where fences and walls generally parallel an adjacent public roadway within the minimum yard area, and are greater than 48" in height and less than 50% open in its vertical surface as viewed perpendicular to the fence or wall, such fences and walls constructed after the effective date of this ordinance shall comply with either (A) or (B) of the following design criteria options:"

Section 2. In the opinion of the City Council, this ordinance is necessary for the immediate preservation of the public health, safety and welfare.

Adopted as Ordinance No. 15, Series of 1989, by the City Council of the City of Cherry Hills Village, Colorado, and signed and approved by its Mayor and Presiding Officer this 21st day of November, 1989.

Joan R. Duncan
Joan R. Duncan
Mayor

ATTEST:

Elizabeth N. Noel
Elizabeth N. Noel
City Clerk

ORDINANCE NO. 01
Series 2007

November 21, 2006: Introduced as Council Bill 07, Series 2006 by Councilmember Doug Tisdale, seconded by Councilmember Klasina VanderWerf, and considered by the title only on first reading. Passed unanimously.

January 16, 2007: Considered in full text on second reading. Passed unanimously.

A BILL FOR AN ORDINANCE
OF THE CITY OF CHERRY HILLS VILLAGE
AMENDING CHAPTER 16 OF THE CHERRY HILLS VILLAGE MUNICIPAL CODE, CONCERNING ZONING, BY AMENDING SECTIONS 16-1-10, CONCERNING DEFINITIONS, AND 16-16-40, CONCERNING FENCES AND WALLS

WHEREAS, the City of Cherry Hills Village is a home rule municipal corporation organized in accordance with Article XX of the Colorado Constitution; and

WHEREAS, the City of Cherry Hills Village is authorized to regulate land uses for property within the boundaries of the City; and

WHEREAS, the current requirements for fencing set forth in Section 16-16-40(1) of the Municipal Code limit the height of a gate, as a part of a fence, to either six (6) or eight (8) feet in height, depending upon the location of the fence; and

WHEREAS, the City Council has determined that it is reasonable and appropriate, in certain instances and subject to certain conditions, to allow gates to exceed the height of the remainder of the fence of which they are a part.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

Section 1. That definitions of the terms "Column," "Fence" and "Gate" be added to Section 16-1-10 of the City of Cherry Hills Village Municipal Code to read as follows:

Column means a sporadic structural support pillar used in the construction of a fence, each of which pillars, if more than one, is not closer than six (6) feet from another if such column exceeds the height limit of the fence.

Fence means a structure that serves as an enclosure, barrier, screen or boundary, or that serves to mark a boundary, enclose a piece of land, or divide a piece of land into distinct portions, and that usually consists of wood, metal, wire, vinyl, masonry, stone, or other manufactured material.

Gate means a part of a fence that can be readily moved to block an entrance or passageway.

Section 2. That Section 16-16-40 of the City of Cherry Hills Village Municipal Code is hereby amended as follows:

Section 16-16-40. Fences ~~and walls~~.

Fences ~~and walls~~ are permitted on legally established lots as defined in Section 16-1-10, and are permitted on legally established nonconforming lots as defined in Section 16-1-10 and in Article XIV of this Chapter, subject to compliance with the following regulations:

(1) No fence ~~or wall~~, except where reasonably required for tennis courts or other uses reasonably requiring higher fences, may exceed six (6) feet in height; provided, however, that ~~F~~fences that are parallel and adjacent to highways owned by the State may not exceed eight (8) feet in height. The foregoing limitations notwithstanding: (i) not more than two (2) gates that provide for ingress and egress from a vehicular right-of-way to a front yard may exceed the otherwise applicable height limitations for the fence so long as the height of each gate does not exceed ten (10) feet and each gate is not more than twenty-five percent (25%) solid when viewed from a angle that is perpendicular to the gate and not more than eighteen (18) feet in width; and (ii) a gate that provides for ingress and egress to a yard other than a front yard may exceed the otherwise applicable height limitations for the fence so long as the height of the gate is not more than two (2) feet greater than the otherwise applicable height limitations for the fence and the gate is not

more than four (4) feet in width and not more than one such gate exists on or along any single property line.

(2) Where fences ~~or walls~~ generally parallel an adjacent public roadway within the minimum yard area and are greater than forty-eight (48) inches in height and less than fifty percent (50%) open in their vertical surface as viewed perpendicular to the fence ~~or wall~~, such fences ~~or walls~~ constructed after the effective date of the initial ordinance codified herein shall comply with either of the following design criteria options in Subparagraph a or b below:

a. Select any two (2) of the following:

1. Set back at least twenty-five (25) feet from the edge of an adjacent paved roadway or forty (40) feet from the center line of any unpaved right-of-way.

2. Landscape the area between the roadway and the fence ~~or wall~~ with trees of a size set forth in Subsection 16-16-10(d)(6) above and at a density of one (1) tree for every twenty (20) feet to thirty (30) feet of fence ~~or wall~~ as determined by the City Manager given the type and planting size proposed. Any area of City right-of-way proposed to be utilized for tree planting must be approved by the City Manager.

3. Cover at least twenty-five percent (25%) of the fence ~~or wall~~ roadside surface area with vegetation immediately adjacent to the fence ~~or wall~~ surface. A planting plan submitted to the City Manager showing how the twenty-five-percent requirement will be met after three (3) growing seasons will be required.

b. Indent areas of the fence ~~or wall~~ and plant at least two (2) trees or evergreen shrubs of a size set forth in Subsection 16-16-10(d)(6) above in each such areas. These indentations shall be fifteen (15) feet to twenty-five (25) feet in width, at least four (4) feet in depth, and must comprise at least twenty-five percent (25%) of the total fence length.

(3) Fencing and associated landscaping must conform with Section 16-16-30 above concerning visibility at intersections and must be maintained in a neat, clean and healthy condition by the owner of the property as provided in Subsection 16-16-10(d)(7) above.

(4) When measuring the height of a fence ~~or wall~~, it shall be the vertical distance between the natural grade, or from the grade of an approved overlot grading plan, to the ~~dominant~~ height of the fence ~~or wall~~. Neither a column nor a light fixture attached to a column shall be included within the calculation of the height of a fence so long as the height of the column, or combination of the height of the column and the light fixture, is not more than two (2) feet greater than the otherwise applicable height limitations for the fence. ~~Generally, a sporadic post or support structure is not considered in the calculation.~~ Where fences~~, walls~~ and berms are constructed one (1) upon the other, the height of such fences~~, walls~~ or berms shall be measured as the sum of the individual units.

(5) Any existing fence ~~or wall which~~ that is replaced shall comply with this regulation. Any repair of more than twenty-five percent (25%) of the fence ~~or wall~~ along a public right-of-way within a twenty-four month period shall constitute a replacement.

(6) Paragraph (2) above shall be inapplicable to fences ~~and walls~~ existing on the effective date of the ordinance codified herein except as specified in Paragraph (5) above.

(7) Fences may be constructed for utility stations as permitted in this Chapter, provided that such fences do not exceed eight (8) feet in height and are not more than fifty percent (50%) solid. (Prior code 6-15-4; Ord. 8, 1989; Ord. 15, 1989; Ord. 12, 2000; Ord. 6 §1, 2003; Ord. 9 §1, 2003; Ord. 03 §1, 2006)

Section 3. Severability. If any provision of this ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion would be declared invalid.

Section 4. Effective Date. This ordinance shall take effect in accordance with the City of Cherry Hills Village Home Rule Charter.

Adopted as Ordinance No. 01, Series 2007, by the City Council of the City of Cherry Hills Village, Colorado this 16th day of January, 2007.

Michael J. Wozniak, Mayor

ATTEST:

Karen C. Losier, City Clerk

APPROVED AS TO FORM:

Thad W. Renaud, City Attorney

ABF554

Published in the Villager
Published 2/8/07
Legal # 9088

CITY OF CHERRY HILLS VILLAGE
PUBLIC NOTICE

The following Ordinance was passed on second reading by the City Council of Cherry Hills Village, Colorado on Tuesday, January 16, 2007:

ORDINANCE NO. 1, SERIES 2007

A BILL FOR AN ORDINANCE OF THE CITY OF CHERRY HILLS VILLAGE AMENDING CHAPTER 16 OF THE CHERRY HILLS VILLAGE MUNICIPAL CODE, CONCERNING ZONING, BY AMENDING SECTIONS 16-1-10, CONCERNING DEFINITIONS, AND 16-16-40, CONCERNING FENCES AND WALLS

The ordinance is available for inspection at www.cherryhillsvillage.com and at the office of the City Clerk during regular business hours.

Published in The Villager
Published: February 8, 2007
Legal #9088

Greenwood Village

EXHIBIT K

Division 3 - Fences, Decorative Monuments, Decorative Walls and Noise-Attenuating Structures

Sec. 16-21-310. - Intent and applicability.

(a) Intent. It is the City's policy to keep fencing at a minimum and to further the open space feeling. There are areas within the City in which little or no fencing is desired or required, while in other areas the local needs may dictate the use of fences. In lieu of fencing, berms or plantings of shrubbery and trees are encouraged.

(b) Applicability. This Division shall apply to all fences, decorative monuments, decorative walls and noise-attenuating structures except retaining walls and pedestrian protection barricades around construction sites. Any provision of an approved PUD plan, SDP, subdivision plat or floodplain regulation that conflicts with any provision of this Division shall supersede the conflicting provision of this Division.

(Prior code 15.48.010, 15.48.020, 15.48.030, 15.48.080, 15.48.110; Ord. 32 §1, 2011)

Sec. 16-21-320. - Height.

(a) Except as otherwise provided in this Division, no fence, wall or monument shall exceed six (6) feet in height. Where a fence is constructed on a retaining wall or berm, the combined height of the berm, retaining wall and fence shall not exceed six (6) feet.

(b) Fence posts and columns may exceed the maximum allowed height of the fence by no more than nine (9) inches.

(c) When topography or construction requirements so dictate, a fence may exceed any height limitation imposed by this Division by up to six (6) inches.

(Prior code 15.48.080; Ord. 32 §1, 2011)

Sec. 16-21-330. - Location.

(a) No fence shall be located in the area from the midpoint of the principal building to the front property line, with the following exceptions:

(1) In the R-0.25 and R-0.1 Districts, a fence that does not extend beyond a point five (5) feet back from the front of the principal building to the front property line;

(2) In the R-2.5 District, a fence that does not exceed four (4) feet in height and twenty-five percent (25%) opacity;

(3) In the R-2.5 District, a gate that does not exceed six (6) feet in height and twenty-five percent (25%) opacity;

(4) In the R-2.5 zone district, in a front yard which is permanently used as a pasture for horses, a fence that does not exceed six (6) feet in height and twenty-five percent (25%) opacity;

(5) Decorative walls and decorative monuments, pursuant to this Division;

(6) Fencing on commercial properties, pursuant to this Division; and

(7) Noise-attenuating structures, pursuant to this Division.

(b) Chain link fences shall only be located from the midpoint of the principal building to the rear property line.

(5) Any existing fence that is replaced shall comply with this regulation. Any repair of more than twenty-five percent (25%) of the fence along a public right-of-way within a twenty-four-month period shall constitute a replacement.

(6) Paragraph (2) above shall be inapplicable to fences existing on the effective date of the ordinance codified herein except as specified in Paragraph (5) above.

(7) Fences may be constructed for utility stations as permitted in this Chapter, provided that such fences do not exceed eight (8) feet in height and are not more than fifty percent (50%) solid.

(Prior code 6-15-4; Ord. 8, 1989; Ord. 15, 1989; Ord. 12, 2000; Ord. 6 §1, 2003; Ord. 9 §1, 2003; Ord. 03 §1, 2006; Ord. 01 §2, 2007)

(Prior code 15.48.070; Ord. 32 §1, 2011)

Sec. 16-21-340. - Design.

(a) Materials. Permanent fencing or walls used to separate properties or as a landscape accent shall be constructed of high quality materials, such as:

(1) Decorative wood fencing with brick or stone columns;

(2) Wrought iron fencing;

(3) Masonry;

(4) Split face block; or

(5) Concrete with an enhanced surface treatment.

(b) Retaining walls. Retaining walls shall be constructed of stone, brick, split face block or concrete with an enhanced surface treatment. Wall segments over four (4) feet in height shall be tiered and landscaped.

(Prior code 15.43.150; Ord. 32 §1, 2011)

Sec. 16-21-350. - Prohibitions.

(a) The following are prohibited in the City:

(1) Barbed wire fences; and

(2) Fences, decorative monuments or noise-attenuating structures which obstruct the sight distance of traveling motorists at roadway intersections or driveway entrances.

(b) No lighting shall be installed on top of, integrated within or be attached to a fence.

(c) No privately owned fence or decorative monument shall be erected on City-owned property except entry walls and decorative monuments pursuant to this Division.

(Prior code 15.48.090; Ord. 32 §1, 2011)

Sec. 16-21-360. - Fence standards.

(a) Commercial fences. Fences on commercial property which abut a public right-of-way shall be set back at least ten (10) feet from the property line or back of curb, whichever results in the greater setback.

(b) Chain link fences. Chain link fences shall be vinyl-coated and shall not exceed four (4) feet in height; provided that chain link dog run fences and chain link temporary construction fences do not have to be vinyl coated and may exceed four (4) feet in height.

(c) Dog run fences. Dog run fences shall be located within twenty (20) feet of the principal building, shall comply with all applicable principal building setbacks and shall not exceed six (6) feet in height.

(d) Tennis and sport court fences. A fence enclosing a tennis court or sport court shall meet the following requirements:

(1) The fence shall be either dark or earth tone colored with matching fittings and posts;

(2) The fence shall not exceed ten percent (10%) opacity, with the exception of fabric screening material or a retaining wall used to partially or fully enclose a tennis court or sport court;

(3) The fence shall not exceed ten (10) feet in height; and

(4) The fence shall be considered to be a component of the tennis or sport court.

(e) Stallion enclosures. A fence enclosing a stallion shall meet the following requirements:

(1) The fence shall be constructed of a stable and durable material, such as pipe, post and board, post and mesh, post and smooth wire, post and rubber-nylon, post and rail, or PVC fence planking, with all corner posts anchored in concrete.

(2) The fence shall be six (6) feet in height.

(3) The fence shall enclose a minimum area of twenty-four (24) feet by sixty (60) feet.

(f) Temporary construction fences. A temporary fence enclosing a construction site shall meet the following requirements:

(1) The height of the fence shall not exceed eight (8) feet;

(2) The fence shall not be placed in a public right-of-way without a public right-of-way permit;

(3) The fence shall be removed prior to issuance of a Certificate of Occupancy or Completion; and

(4) The fence shall not display commercial speech.

(g) Swimming pools, hot tubs and spas.

(1) Fence or wall enclosures.

a. Every swimming pool, hot tub or spa not equipped with a safety cover meeting the requirements of Paragraph (2) hereof shall be completely enclosed by a fence or wall:

1. Located not less than four (4) feet from the swimming pool, hot tub or spa;

2. With a minimum vertical height of not less than four (4) feet for a single-family residential swimming pool; and not less than six (6) feet for a public pool, community pool, private club pool, homeowners association pool or multi-family complex pool;

3. With a maximum vertical clearance from the ground to the bottom of the fence or wall of two (2) inches;

4. With no gaps or voids which allow passage of a sphere equal to or greater than four (4) inches in diameter;

5. With any pedestrian access gate opening away from the swimming pool, hot tub or spa and equipped with a self-closing, self-latching device placed no lower than four (4) feet above the ground; and

6. With any gates other than pedestrian access gates equipped with lockable hardware or padlocks and locked at all times when not in use.

b. An existing wall or portion of a building may serve as one (1) or more sides of the enclosure.

(2) Safety covers.

a. A swimming pool not enclosed by a fence or wall in compliance with Paragraph (1) hereof shall be equipped with an approved power safety cover that meets or exceeds current ASTM standards.

b. A hot tub or spa not enclosed by a fence or wall in compliance with Paragraph (1) hereof shall be equipped with an approved manual safety cover that meets or exceeds current ASTM standards.

c. Safety covers shall be closed at all times when the swimming pool, hot tub or spa is not in use.

(Prior code 15.48.100, 15.48.104; Ord. 32 §1, 2011)

EXHIBIT L

14-10-9: FENCES, HEDGES, WALLS, AND SCREENING:

A. Placement: The placement of walls and fences shall respect existing landforms and fit into land massing rather than arbitrarily follow site boundary lines. Fences shall not be encouraged except to screen trash areas, utility equipment, etc.

B. Design: Design of fences, walls, and other structural landscape features shall be of materials compatible with the site and the materials of the structures on the site. Retaining walls and cribbing should utilize natural materials such as wood timbers, logs, rocks, or textured, color tinted concrete. No chainlink fences shall be allowed except as temporary construction fences or as required for recreational facilities.

C. Setbacks Observed: All accessory uses and structures except fences, hedges, walls and landscaping, or ground level site development such as walks, driveways, and terraces shall be located within the required minimum setback lines on each site. Recreational amenities may be exempted by the design review board if it determines that their location is not detrimental environmentally and/or aesthetically.

D. Sight Triangle: To minimize traffic hazards at street intersections by improving visibility for drivers of converging vehicles in any district where setbacks are required, no fence or structure over three feet (3') in height shall be permitted within the triangular portion of a corner lot measured from the point of intersection of the lot lines abutting the streets a distance of thirty feet (30') along each lot line.

E. Height Limitations: Fences, hedges, walls and landscaping screens shall not exceed three feet (3') in height within any required front setback area, and shall not exceed six feet (6') in height in any other portion of the site, provided that higher fences, hedges, walls or landscaping screens may be authorized by the administrator when necessary to screen public utility equipment. No barbed wire or electrically charged fence shall be erected or maintained. (Ord., 9-21-1999)

n) Heating and air conditioning equipment and similar mechanical equipment are prohibited in all yards facing a Street. Mechanical equipment may be placed within non-street facing yards but shall not exceed thirty (30) inches above or below finished grade. These features may be up to thirty (30) inches above and below finished grade simultaneously. The

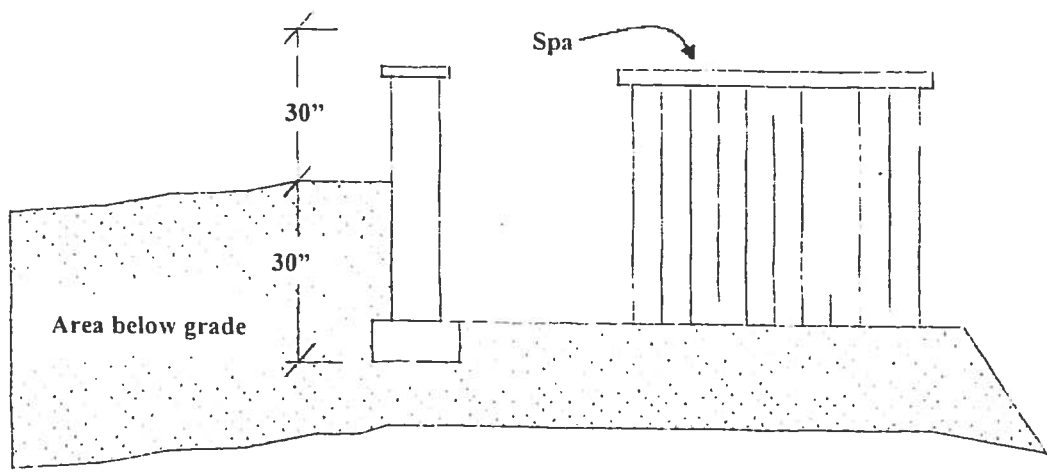


Figure 16: 30" Calculation

Planning and Zoning Commission may consider exceptions to this requirement pursuant to the procedures and criteria of Chapter 26.430 – Special Review.

o) The height and placement of energy efficiency or renewable energy production systems and equipment which are located adjacent to or independent of a building shall be established by the Planning and Zoning Commission pursuant to the procedures and criteria of Chapter 26.430 – Special Review. These systems are discouraged in all yards facing a Street. For energy production systems and equipment located on top of a structure, see sub-section F.4.

p) Fences and hedges less than forty-two (42) inches in height, as measured from finished grade, are permitted in all required yard setbacks. Fences and hedges up to six (6) feet in height, as measured from finished grade, are permitted only in areas entirely recessed behind the vertical plane established by the portion of the building facade which is closest to the Street. This restriction applies on all Street-facing facades of a parcel. (Also see Section 26.575.050 – Supplementary Regulations for limitations on fence materials.)

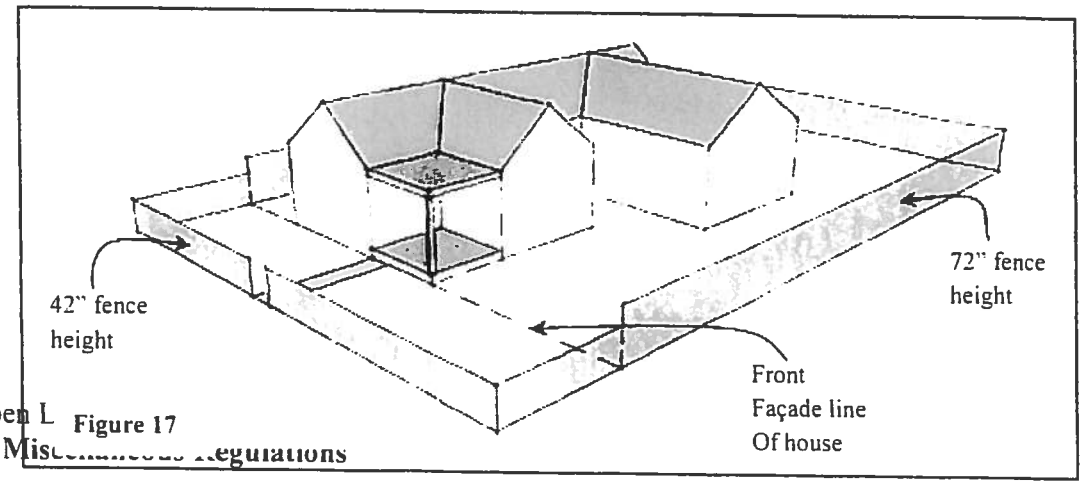


Figure 17

Bow Mar

EXHIBIT N

IX. COLORS

Colors must be approved in advance by the ACC for all new construction and for existing homes/remodels if the proposed colors significantly change the existing colors of the home. An expedited paint approval process is found under "Procedures," below.

In general, subtle colors should be used on the body of the home. Bright, bold or strongly contrasting colors may be used judiciously as an accent color for the trim, front door, or other limited architectural details, if appropriate to the overall style of the home.

The colors used should be complimentary to the style of the home, and to the other exterior materials used on the home (stone, brick, siding, stucco) including the roof.

The use of complimentary colors and materials is encouraged to reduce the mass and scale of larger residences. White and similar light colors tend to emphasize mass and should be avoided on larger residences.

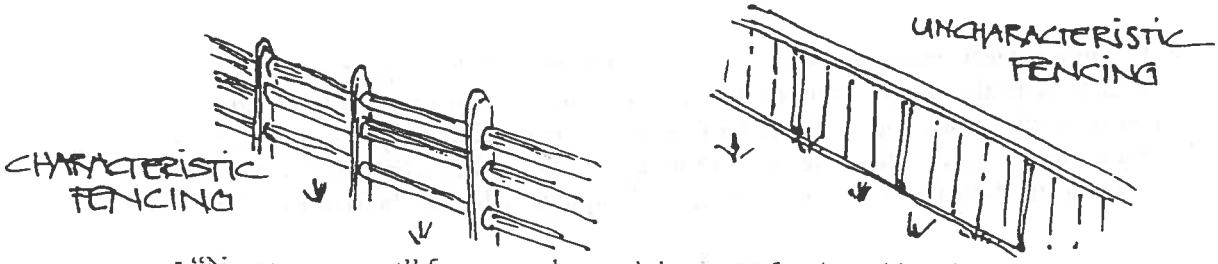
The use of any particular color palette (such as earth tones) is not required, however, certain colors (bright purples, pinks, oranges, turquoise, etc . . .) are objectively out of character with the community and are not permitted.

X. FENCING

All fencing (including dog runs, trash enclosures, etc . . .) requires the prior approval of the ACC and a building permit from the Town of Bow Mar.

Homeowners are strongly encouraged not to fence their yards to preserve the feeling of open space between houses and the sharing of views. However, where fencing is desired by the homeowner for safety or security purposes, the following guidelines apply:

- "Transparent" fences such as decorative wrought iron or 2- or 3-rail cedar split rail fences are allowed.



- "Non-transparent" fences such as solid privacy fencing, skip-a-board fencing, off-set fencing, or picket fencing are not permitted for yard fencing. Such designs may be allowed for trash enclosures or to create a small privacy area within a yard. The ACC is authorized to approve exceptions to this Guideline where additional privacy or sound blockage is required due to the location of the house along major thoroughfares or adjoining neighborhoods.

- The fencing style and color should be harmonious with the style and color of the house.

- White wood or vinyl split rail fences are allowed only if consistent with the style and color of the house.

- Fence heights are limited to 5 feet by Town of Bow Mar Town Ordinance. Any exception requires a variance from the Town. Section 16 -11 (f)

- Front yard fencing, including fencing that is purely decorative is not considered in character with the neighborhood.

- Chain link fencing is not considered in character with the neighborhood.

XI. LANDSCAPING

In reviewing landscaping applications, the ACC shall take into consideration Bow Mar Town Ordinances concerning landscaping on residential lots. Currently, Bow Mar Zoning Ordinance Sec. 16-12, Landscaping and shrubbery limitations, states as follows:

> Landscaping, including planting of shrubs and trees shall not obstruct unreasonably the views of the lake, mountains or city lights from any other lot or lots. It is the intent of this provision to prohibit plantings such as obstructive hedges, heavy shrubs or tree groupings that would, upon predicted maturity, significantly interfere with the view of any other lot or lots. This provision is not intended to discourage realistic and artistic plantings even though the view of other lots may be slightly affected.

Landscaping projects must be approved by the ACC in the following circumstances: 1) in conjunction with the construction of a new residence or major remodel to an existing residence, 2) when the proposed landscaping project may affect neighbors' views (such as the installation of heavy shrub hedges or multiple trees), and 3) when the proposed landscaping substantially alters the existing landscaping, including the removal of mature trees.

Replacement of existing trees does not require ACC approval so long as the replacement is comparable to the original (for example, replacing a deciduous tree with another deciduous tree of a similar size).

Columbine Valley

EXHIBIT O

17.20.040 Lot area. For every dwelling or main building erected or structurally altered there shall be provided a lot area of not less than one-half acre. (Ord. 3-1980 §1(part), 1980: prior code §7-2-10(A)(3)(a))

17.20.050 Building area. The area of a dwelling or main building hereafter erected shall not be less than twenty-two hundred square feet measured on the outside walls exclusive of porches, terraces, garage, carports, basement area, breezeways, guest house and servant quarters. (Ord. 3-1980 §1(part), 1980: prior code §7-2-10(A)(3)(b))

17.20.060 Setback. No structure shall be located nearer than thirty feet to any street right-of-way property line or nearer than forty feet to any rear property line; no structure shall be located nearer than fifteen feet to any side property line. In determining the distance between the property line and the structure, eaves, steps, and open porches shall be considered as part of the structure. (Ord. 3-1980 §1(part), 1980: prior code §7-2-10(A)(3)(c))

17.20.070 Fences, walls and hedges. A. No fence, wall or hedge shall be constructed or maintained on any residential property closer to the front property line or any side property line or any side street property line than the dwelling. A fence, wall or hedge three feet or less in height attached to and forming part of a dwelling may be constructed within the setback regulation for such dwellings, subject to the restrictions of the previous sentence.

B. A privacy fence of not more than six feet in height shall be permitted and such privacy fence shall be no longer than fifty lineal feet in total and shall comply with the restrictions above.

C. A six-foot privacy fence on Platte Canyon Road is permitted.

D. All fences must be of wood construction. (Ord. 3-1980 §1(part), 1980: prior code §7-2-10(A)(3)(d))

17.20.080 Gutters and extension of paving to existing paved portion of roadway. A. All applications for permits to construct buildings shall include plans and specifications for construction of the standard four foot wide cement gutters presently in use in the town as designed and/or approved by the town engineer, except to the subdivisions known as the Villas, Burning Tree and The Village where the cement gutters shall be three feet wide as presently in use in these subdivisions. Such plans for the gutter shall be included on the drawings as a part of the building construction to be accomplished on the owner's property. The construction of this gutter shall be completed prior to the granting of a building permit by the building commissioner of the town, or his designate. All costs for the

EXHIBIT P

Town of Portola Valley
Planning & Building Department
765 Portola Road
Portola Valley, CA 94028
(650) 851-1700
Fax: (650) 851-4677

FENCE REGULATIONS SUMMARY
Zoning Ordinance 2005-360

Zoning District	<1 acre districts	1 acre districts	2+ acre districts
Fence Location	• Domestic fences permitted on all property lines • Domestic fences in riparian corridors to be set back 20′ from the top of the creek bank • Double fencing not permitted in setbacks	• Domestic fences to be set back at least 25′ from the front property line and permitted on all other property lines • Horse fences permitted on all property lines • Fences not permitted on slopes exceeding 20% • Fences in riparian corridors to be set back 20′ from the top of the creek bank • Double fencing not permitted in setbacks	• Domestic fences not permitted in required yards • Horse fences permitted on all property lines • Fences not permitted on slopes exceeding 20% • Fences in riparian corridors to be set back 20′ from the top of the creek bank • Double fencing not permitted in setbacks
Height	• 4′ in front yards • 6′ in side and rear yards • 4′ in side yards along streets	• 4′ for all horse fences • 4′ in front yards and 6′ in side and rear yards for domestic fences • 4′ in side yards along streets • 4′ when adjacent to public trails and paths	4′ for all horse fences
50% Opacity Limit	• Fences in front yards and fences in side yards along streets	• All horse fences • Fences in front yards • Fences adjacent to public trails and paths • Fences in side yards along streets	All horse fences

Opacity, continued:

- Fence members not to exceed a 6" width when viewed perpendicular to the plane of the fence for fences subject to an opacity limit.
- Retaining walls are exempt from opacity limits.

Color Reflectivity:

- Fence colors not to exceed 40% reflectivity, except for naturally weathered wood.

Horse Fence Standards:

- No more than three horizontal wood members, each not to exceed 6" in width or no more than four horizontal wood or wire members, each wood member not to exceed 4.5" in width.
- The cross sections of posts must not exceed 6" x 6"; such posts not to exceed 4' in height and generally spaced no closer than 5' apart.
- 6" x 6" wire mesh may be attached to a horse fence but shall not exceed the height of the horse fence.
- Opacity not to exceed 50%.
- Height not to exceed 4'.
- Gates attached to horse fences must conform to the height and opacity standards for horse fences and be of a similar design.

Entryway Features: Entryway features, including gates, must be setback one-half of the required front yard in districts requiring a minimum parcel area of 1 acre or more.

Permits and ASCC Review: Permits will be required for most fences. Permits will not be required when a fence is no more than 2 feet in height and 20 feet in total length.

Staff to review and act on most applications. ASCC to review applications and existing fences when:

(1) Referred from town planning staff;

(2) A property undergoes ASCC review and there is a substantial modification to an existing residence or site improvements of the property;

(3) The proposed fence cannot conform to the regulations given the conditions on the parcel; or,

(4) The fence will be located in the M-R or O-A districts. Specific requirements for these districts will be determined on a case-by-case basis with input from the Conservation Committee.

Repairs or Replacement to an Existing Fence: When a portion of a fence exceeding twenty five percent of the total length of fencing within required yards is damaged or voluntarily removed, any replacement fencing of that portion shall conform to the fence regulations pursuant to a fence permit.

ORDINANCE NO. 2005- 360

ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PORTOLA VALLEY AMENDING TITLE 18 [ZONING] OF THE PORTOLA VALLEY MUNICIPAL CODE BY AMENDING CHAPTERS 18.04 [DEFINITIONS] AND SECTION 18.42.040 [EXCEPTIONS TO REQUIREMENTS – FENCES AND WALLS] OF CHAPTER 18.42 [ACCESSORY STRUCTURES], ADDING CHAPTER 18.43 [FENCES] AND REPEALING SECTION 18.54.020.C. [MEASUREMENT OF HEIGHT]

WHEREAS, the Town Council of the Town of Portola Valley wishes to revise its Zoning Ordinance to include new provisions for fences.

NOW, THEREFORE, the Town Council of the Town of Portola Valley ("Town") does **ORDAIN** as follows:

1. Amendment of Code. Chapter 18.04 [Definitions] of Title 18 [Zoning] of the Town's Municipal Code is hereby amended to add the following Sections:

18.04.075 Building envelope. "Building envelope" is the three-dimensional space on a parcel within which buildings and most other structures are required to be confined and which is defined by zoning ordinance regulations governing building setbacks and building heights.

18.04.129 Domestic fence. "Domestic fence" is a fence that is not a horse fence as defined in Section 18.04.215.

18.04.155 Fence. "Fence" is a structure made of wire, wood, metal, masonry or other man-made material, or combination thereof, including gates and posts, typically used as a screen, enclosure, retaining wall, or entryway feature, for a parcel of land or portion thereof.

18.04.156 Fence opacity. "Fence opacity" is the surface area of a fence that is impenetrable to light when viewed perpendicularly to the plane of the fence.

18.04.215 Horse fence. "Horse fence" is a fence that complies with the horse fence standards set forth in Section 18.43.060.

18.04.555 Yard, required. "Required yard" means an open space required by Subsections 18.52.010 A., B. or C. located between a parcel line and a building envelope.

2. Amendment of Code. Section 18.42.040 [Exceptions to Requirements – Fences and walls.] of Chapter 18.42 [Accessory Structures] of Title 18 [Zoning] of the Town of Portola Valley Municipal Code is hereby amended to read as follows:

18.42.040 Exceptions to Requirements — Fences. Fences may be located within required yard areas subject to the provisions set forth in Chapter 18.43.

3. Addition to Code. Chapter 18.43 [Fences] is hereby added to Title 18 [Zoning] of the Town of Portola Valley Municipal Code to read as follows:

CHAPTER 18.43
FENCES

Sections:

18.43.010 Purpose.
18.43.020 Location.
18.43.030 Height.
18.43.040 Fence opacity.
18.43.050 Color reflectivity and size.
18.43.060 Horse fences.
18.43.070 Entryway features.
18.43.080 Fence permits and administration.

18.43.010 Purpose. The purpose of the fence regulations is to ensure that fences in required yards in residential zoning districts conform to the following principles:

- Fences should be designed with consideration for the open space tradition of Portola Valley.
- Fences should be used sparingly in order to preserve a sense of the shared scenic resources of the community.
- Fences should be designed with respect for the movement of wildlife and the protection of views.
- Fence designs and materials should blend with the natural environment and maintain the natural and rural ambiance of the Town.

The above principles shall be followed by residents, Town Planning staff and the ASCC when designing or developing fences or considering fence permit applications.

18.43.020 Location.

A. In residential zoning districts fences may be erected in the following locations:

1. In districts requiring a minimum parcel area of less than one acre, domestic fences or fences consistent with the standards of a horse fence are allowed in required yards, including along property lines.

2. In districts requiring a minimum parcel area of one acre, domestic fences or horse fences are allowed in required yards, including along property lines, except that a domestic fence in a front yard must be set back at least twenty five feet from the front property line.

3. In districts requiring a minimum parcel area of two acres or more, only horse fences are allowed in required yards, including along property lines.

4. In addition to the above limitations, in districts requiring a minimum parcel area of one acre or more, domestic fences and horse fences in required yards shall be allowed only on slopes of twenty percent or less.

5. Along riparian corridors, fences shall be set back a minimum of twenty feet from the top of a creek bank The top of the creek bank shall be determined on a case-by-case basis by Town Planning staff or the ASCC based on physical inspection of site conditions.

6. Double fencing (where two or more fences are placed parallel to one another often for the purpose of deterring deer or other animals) must be located within the building envelope of a parcel.

18.43.030 Height.

A. The height of a fence is the vertical distance measured from the surface of the actual adjoining ground to the top of the fence. For the purpose of applying height regulations, the average height of the fence along any unbroken run may be used, provided the height at any point is not more than ten percent greater than that normally permitted.

B. Fences in residential zoning districts are subject to the following height limits:

1. Fence heights shall not exceed four feet in front yards, six feet in side and rear yards, and four feet in side yards along road rights-of-way.

2. Horse fences shall not exceed four feet in height.

3. Fences adjacent to public trails and paths in districts requiring a minimum parcel area of one acre or more shall not exceed four feet in height.

C. A fence of normally permitted height under this section shall not be placed on top of fill designed so as to effectively increase the elevation of the top of the fence.

D. The height of a retaining wall, or a retaining wall with a fence erected on top of it, is measured from the exposed bottom of the wall to the top of the wall/fence.

E. The height of a fence placed on top of a fill supported by a retaining wall is measured from the top of the natural grade directly below the wall to the top of the fence.

18.43.040 Opacity.

A. Fences are subject to the following fence opacity limits:

1. In districts requiring a minimum parcel area of less than one acre, fences in front yards shall not exceed fifty percent opacity.

2. In districts requiring a minimum parcel area of one acre, domestic fences in front yards shall not exceed fifty percent opacity.

3. Fences in side yards adjacent to road rights-of-way shall not exceed fifty percent opacity.

4. Horse fences shall not exceed fifty percent opacity.

5. Fences adjacent to public trails and paths in districts requiring a minimum parcel area of one acre or more shall not exceed fifty percent opacity.

6. Fence members shall not exceed a six inch width when viewed perpendicularly to the plane of the fence for fences subject to an opacity limit.

7. Retaining walls are exempt from opacity limits.

18.43.050 Color reflectivity.

A. The reflectivity value for colors used on fences shall not exceed forty percent, except that naturally weathered wood may exceed such limit.

18.43.060 Horse fences.

A. Horse fences shall conform to the following standards:

1. There shall be no more than three horizontal wood members, each not to exceed six inches in width or no more than four horizontal wood or wire members, each wood member not to exceed four and a half inches in width.

2. The cross sections of posts must not exceed six inches by six inches; such posts shall not exceed four feet in height and shall be spaced no closer than five feet apart.

3. Six inch by six inch wire mesh may be attached to a horse fence but shall not exceed the height of the horse fence. Nothing else shall be attached to a horse fence that would violate the standards set forth in Section 18.43.060A and/or alter the visual characteristics of the horse fence.

4. Horse fence opacity shall not exceed fifty percent. See Section 18.43.040A4.

5. Horse fences shall not exceed four feet in height. See Section 18.43.030B2.

B. Gates attached to horse fences are exempted from Section 18.43.060.A1-3, but shall conform to height and opacity standards for horse fences and be of a similar design as a horse fence.

C. Horse fences that are also used as corral and pasture fences, must, in addition, comply with special requirements as set forth in the Town stable ordinance (Ord. 1988-242 Section 2 (Ex. A) (part), 1988; Ord. 1967-80 Section 1 (6207.4), 1967; Ord. 2001-338 Section 3 (part), 2001).

18.43.070 Entryway features. Entryway features, including gates, must adhere to the setback requirements set forth in Section 18.42.016.

18.43.080 Fence permits and administration.

A. Fence permits are required for construction of all fences built within required yards, except as otherwise specified in this section. Fence permit applications shall be made on a form provided by the Town Planning staff and shall be accompanied by plans demonstrating the design and materials of the proposed fence, the location of the proposed fence and any associated landscaping. A fee shall be paid to cover the cost of review by Town Planning staff, or on referral, by the Town Planner. Prior to approving a fence permit, Town Planning staff shall give written notice to owners of adjoining properties of the permit application. Prior to acting on a permit, Town Planning staff shall review the proposed design and location in the field, review the plans for conformance with the zoning ordinance and Design Guidelines, and consider comments from owner(s) of adjoining properties. Town Planning staff may take action on a permit or refer it to the ASCC. Written notification shall be given to owner(s) of adjoining properties at least six days prior to action by Town Planning staff or the ASCC. Any Town Planning staff decision may be appealed by an applicant or an owner of adjacent property to the ASCC. Any ASCC decision may be appealed by the applicant or an owner of adjacent property to the Board of Adjustment.

B. Fences within required yards that are no more than two feet in height, and no more than twenty feet in total length shall be exempt from this section but shall meet all other provisions of this chapter except Section 18.43.040 regarding Opacity.

C. The ASCC shall have the authority to review existing fences and fence permit applications under the following conditions:

1. Upon referral from Town Planning staff, pursuant to Section 18.43.080.A.

2. When acting on architectural review and site development permits, the ASCC shall consider and may require modifications to existing fencing on a property if the ASCC determines that there is a substantial modification to an existing residence or the site improvements of the property. If, in these situations, the ASCC determines that the existing fencing is not in conformity with current fencing standards, the ASCC may require conformity with the fencing regulations. In requiring conformity, the ASCC shall make the finding that the modified or replacement fencing will not result in an adverse effect on neighboring properties and reasonably adheres to the purposes of this chapter.

3. When a fence permit application demonstrates that the proposed fence cannot conform to the regulations given the conditions on the parcel, the ASCC may grant relief from the fence regulations. In making such determination, the ASCC shall as much as reasonably possible ensure the proposed fence achieves the purpose and principles of this chapter set forth in Section 18.43.010.

4. When a fence permit application is submitted for a proposed fence in the Mountainous-Residential (M-R) or Open-Area (O-A) zoning districts, the ASCC shall, with input from the Conservation Committee, make a determination of compliance based on the purposes of this chapter and the Fence Design Guidelines adopted by the Town Council.

D. When a portion of a fence exceeding twenty five percent of the total length of fencing within required yards on a property is damaged or voluntarily removed, any replacement fencing of that portion shall conform to the fence regulations pursuant to a fence permit.

4. Amendment of Code. Subsection C. of Section 18.54.020 [Measurement of height] of Chapter 18.54 [Building Bulk] of Title 18 [Zoning] of the Town of Portola Valley Municipal Code is hereby amended to read as follows:

C. Fence height measurement is subject to the provisions set forth in Section 18.43.030.A.

5. Repeal of Code. Subsections A and B of Section 18.42.040 [Exceptions to Requirements – Fences and walls] of Chapter 18.42 [Accessory Structures] of Title 18 [Zoning] of the Portola Valley Municipal Code is hereby repealed.

6. Repeal of Code. Subsection C of Section 18.54.020 [Measurement of height] of Chapter 18.54 [Building Bulk] of Title 18 [Zoning] of the Portola Valley Municipal Code is hereby repealed.

7. Environmental Review. This Ordinance is categorically exempt (Class 3) under the California Environmental Quality Act.

8. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance or the applicability of this ordinance to other situations.

9. Effective Date; Posting. This ordinance shall become effective thirty (30) days after the date of its adoption and shall be posted within the Town of Portola Valley in three (3) public places.

INTRODUCED:	October 26, 2005
PASSED:	November 9, 2005
AYES:	Mayor Davis, Vice Mayor Toben, Councilmember Driscoll, Councilmember Comstock and Councilmember Merk
NOES:	None
ABSTENTIONS:	None
ABSENT:	None

By: _____
Mayor

ATTEST

_____
Town Clerk

APPROVED AS TO FORM:

_____
Town Attorney

Section 9.06 - Fencing Requirements in Residential Zoning Districts

A. A fence permit shall be required for any new fence construction or replacement of an existing fence.

B. All fences shall be kept in good repair and shall not create urban blight. Dilapidated fences shall be repaired or replaced in accordance with provisions of this Ordinance. Fences may be painted or stained with natural wood colors. No bright unnatural colors are allowed.

C. Fences shall be constructed of wood, ornamental metal, tubular steel, masonry, or live material. The Director of Community Development or his/her agent may consider alternative fencing material for residential-zoned properties on a case-by-case basis. Chain link fencing is prohibited in all zoning districts unless approved by the Zoning Board of Adjustment (ZBA) as a special exception. Existing chain link fences may be replaced with a permit. All new or replacement chain link fencing shall be vinyl clad in black or green. Chain link fencing may be allowed on a temporary basis for construction purposes or special events. *(Amended by Ord. No. 1515 on July 20, 2010)*

D. Fences for non-residential uses allowed in residential districts such as schools and churches shall be ornamental metal, tubular steel, masonry or a combination thereof. No wood or chain link fencing shall be allowed unless specifically approved on a site plan by the City Council.

E. Chain link fencing shall not be allowed for perimeter fencing and shall not be visible from the street. Chain link fencing may be allowed for fencing of dog runs, tennis courts, etc.

F. No barbed wire, chain link, or electrical fencing shall be allowed except as used for farm or ranching purposes on undeveloped land over two (2) acres in area.

G. The maximum height requirements, as measured from the grade of the property, shall be as follows:

1. Thirty-six inches (36") for front yard or in front of the main structure.

2. Five feet (5') for front yard or in front of the main structure in SF-LD zoning district if constructed of split rail, ornamental metal, tubular steel, or similar open face material. *(Amended by Ord. No. 1515 on July 20, 2010)*

3. Eight feet (8') for side or rear yards not adjacent to any street, park, or trail.

4. Six feet (6') for side or rear yards adjacent to any street, park, or trail.

H. The height of a fence adjacent or perpendicular to a screening wall shall not exceed the height of the subdivision's screening wall or any other fence constructed by the developer at the time of initial development.

I. All fences adjacent to parks, trails or open space areas shall be constructed of masonry, ornamental metal, tubular steel, or similar material. Wood fencing shall not be allowed behind the required open fencing. The DRC may approve cedar wood fencing adjacent to private trail connections or private open spaces within a development.

J. Allowable wood fences adjacent to streets, schools, parks, or other public spaces shall have the finished side facing the public space. All fence posts and structural components shall be placed on the interior of the lot.

K. All replacement wood fences adjacent to a thoroughfare, as shown on the Thoroughfare Plan, shall be constructed of Cedar material with metal posts and Cedar top and bottom caps. The fence shall be stained with Ready Seal or an equivalent wood sealant material. Any new wood fences permitted adjacent to thoroughfares shall comply with this provision (see Section 9.11 - Figure 22).

L. Corner lots or double frontage lots shall comply with the following requirements:

1. The location of fences for double frontage lots or corner lots adjacent to a street shall be in accordance with the building setback line as shown on the final plat. If a property is not platted, the location of fences shall comply with the building setback requirements of the zoning district that the property is located in. The distance may be reduced to eight feet (8') from the property line if the fence is constructed of ornamental metal, tubular steel, or similar material with live screening.

2. If a corner lot is adjacent to a subdivision's screening wall, a fence may be placed outside the required setback line. In such cases, the fence shall meet the above requirements.

3. In subdivisions where a fence has been legally permitted to be five feet (5') from the property line, the immediate adjacent lot may also construct the same type fencing to be flush with the existing fence.

M. Swimming Pool Fences

Swimming pool fences shall comply with the following requirements:

1. Swimming pools shall have a fence of a minimum of four feet (4') in height with self-closing, self-latching gates. Openings in the fence shall not allow passage of a 4-inch-diameter sphere.

2. A dwelling, accessory building, or apartment building may be used as part of a fence enclosure, provided that all entrances into the swimming pool area or court are equipped with gates as described herein, or doors with latches or locks.

3. The fence may be constructed of wood, ornamental metal, tubular steel, or other approved material. Chain link fencing shall not be allowed unless it is completely contained within the lot and is not visible from any street or adjacent property. *(Amended by Ord. No. 1515 on July 20, 2010)*

EXHIBIT R

Flower Mound, TX

Sec. 98-1143. - Perimeter and open space walls and fences.

(a) Subdivision perimeter fences and walls constructed adjacent and parallel to the rights-of-way of arterial and collector streets shall consist of masonry, stone, wrought-iron or tubular steel, or a combination of such materials. The fences and walls shall be a minimum of six feet in height and shall have masonry or stone columns measuring a minimum of 24 inches by 24 inches, with monolithic tops, placed a maximum of 40 feet apart on center. Vertical or horizontal spacing of members of wrought-iron or tubular steel fencing and their attachment to any column shall not allow passage of a four-inch sphere. Wrought-iron and tubular steel fencing shall be used in conjunction with, and further provide for, approved plantings from section 82-277 of this Code, "Screening plant selection list," placed three feet on center adjacent to all wrought-iron and tubular steel fencing. Such perimeter fencing shall be located within a three-foot wide fence easement dedicated to the mandatory homeowners' association for perpetual maintenance by such association. Parallel privacy fences of wood or other construction shall not be allowed between the perimeter fencing and parallel foundation lines on adjacent or contiguous lots. Notwithstanding the foregoing, wrought-iron or tubular steel fencing of a minimum of four feet in height may be allowed at the open end of cul-de-sacs and between parallel streets, provided that such fencing complies with all of the requirements contained in this section other than height.

(b) Fences constructed adjacent and parallel to dedicated park, trail, or open space areas shall consist of wrought-iron or tubular steel. Such fences shall be a minimum of four feet in height and shall be of consistent color throughout a development. Vertical or horizontal spacing of members of wrought-iron or tubular steel fencing shall not allow passage of a four-inch sphere. Parallel privacy screening of masonry construction, not exceeding 50 percent of the lot width, shall be allowed between the wrought-iron or tubular steel fencing and parallel foundation lines on abutting lots. Approved plantings from section 82-277, screening plant selection list, shall be placed three feet on center along the entire length of that side of the masonry screening facing the wrought-iron or tubular steel fencing. Such masonry screening shall be located a minimum distance of ten feet from the wrought-iron or tubular steel fencing. Fences of wood shall not be allowed between such perimeter fencing and parallel foundation lines on adjacent or contiguous lots.

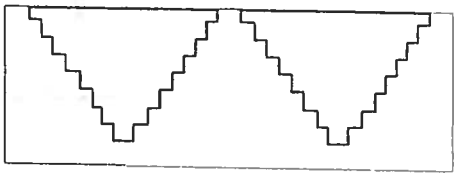
(Code 1989, ch. 12, § 5.06(a)—(e); Ord. No. 03-01, § 1, 1-4-2001; Ord. No. 06-12, § 38, 2-20-2012)

5.2 FENCES.

A. **FENCING REQUIREMENTS AND STANDARDS ALL DISTRICTS.**
The use of solid perimeter fences is not permitted except where indicated below. External orientation of the subdivision to the surrounding collector streets and adjacent subdivisions is encouraged and should limit the need for perimeter fences. A dense hedge row or other vegetative screening is preferred rather than the use of a fence when a commercial and or industrial subdivision is adjacent to a residential subdivision, unless a fence is required by this Ordinance.

1. PROHIBITED FENCES: No interlocking block system shall be permitted in any subdivision except as provided herein.

2. 4-INCH AND 6-INCH WIDE "INTERLOCKING BLOCKS": A 4" or 6" wide concrete masonry block designed in accordance with the approved Town of Queen Creek design specification are permitted for internal lot line and privacy fences.



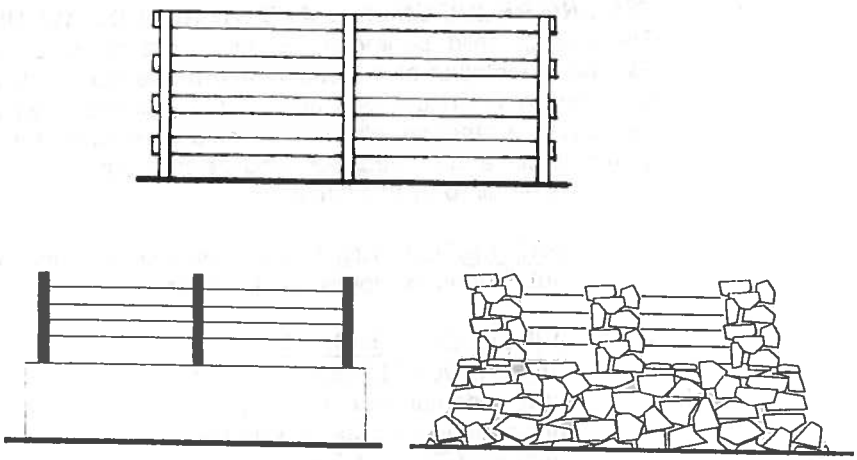
3. 6-INCH WIDE "NON- INTERLOCKING BLOCK": All perimeter subdivision fences adjacent to open space or arterial and collector rights-of-way shall be constructed of a 6" block provided the fence system is designed by an Arizona registered structural engineer and approved by the Town. An 8" block may be used but shall be designed and installed in accordance with the Town of Queen Creek design specification or an Arizona registered structural engineer.

4. 8-INCH WIDE "NON-INTERLOCKING BLOCK": 8" non-interlocking block is permitted in all areas of the subdivision provided it is designed and installed in accordance with the Town of Queen Creek design specification.

5. **ZONING DISTRICTS A-1, R1-190, R1-154, R1-108, R1-54 AND R1-43.**

a. Construction of solid fences shall be limited to the buildable area of the lot (within the building envelope). All fencing along the arterial streets and the perimeter of the subdivisions shall be view fencing (of an open style material). However, any fencing which is adjacent to an arterial or collector road, whether public or private, may be constructed in such a manner as to achieve at least 33% openness overall (4" solid – 2" view). Wire mesh or chain link, no higher than the top rail, may be used when in conjunction with a pipe rail or view fencing but not as a stand alone fencing material. The top of any view fence, if constructed of ornamental iron or a similar material, shall have a rail or horizontal member such that no portion of the view fence protrudes above the top rail or horizontal member. (Refer to **Figure 5A** at the end of Section 5.2 for example of R1-43 and Larger Fence Diagram.)

FIGURE 5.2-2 View Fence Illustration



b. Where solid view obscuring fences may be required, the fences shall be finished on all sides to match the residential product architectural style and design.

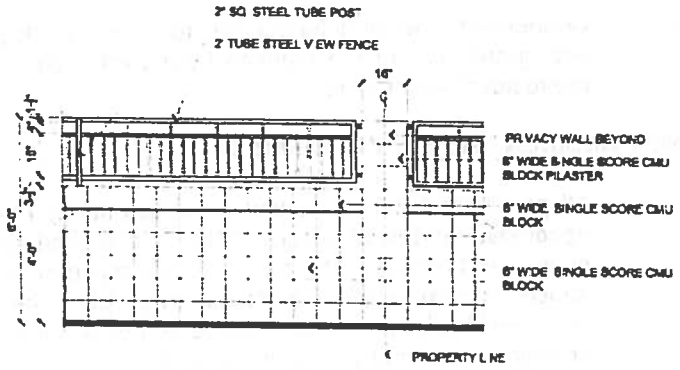
c. Connecting side yard fences are to be set back (minimum distance of one-quarter (1/4) of the required front yard) from the front face plane of the residential structure.

6. **ZONING DISTRICT R1-35, R1-18 and R1-15.**

a. Fences adjacent to streets may be solid fences, regardless of the landscape tract width separating the lots from the street. Openings in the perimeter wall are encouraged at the end of the abutting interior cul-de-sac streets. For use of solid fences – see Section 5.2.D Solid Perimeter Fence Standards.

b. Fences adjacent to a community open space system or trail located in tracts containing a minimum width of ten (10) feet shall be partial view fencing (4' solid – 2' view). The top of any view fence, if constructed of ornamental iron or a similar material, shall have a rail or horizontal member such that no portion of the view fence protrudes above the top rail or horizontal member.

FIGURE 5.2-3 Partial View Fence Illustration



c. Fences along side and rear property lines may be solid fences unless adjacent to a community open space or trail located in tracts containing a minimum width of ten (10) feet. (Refer to Figure 5B at the end of Section 5.2 for example when adjacent to trail system, transition area required open space, or street side yard.).

d. All perimeter fences shall be decoratively treated on all sides to match the residential product architectural style and design.

e. Connecting side yard fences are to be set back (minimum distance of one-quarter (¼) of the required front yard) from the front face plane of the residential structure.

7. **ZONING DISTRICTS R1-12, R1-9, R1-7, R1-8, R1-6, R-4, R-2 and TC (when developed as residential).**

a. Fences adjacent to streets may be solid fences, regardless of the landscape tract width separating the lots from the street. Openings in the perimeter wall are encouraged at the end of the abutting interior cul-de-sac streets. For use of solid fences – see Section 5.2.D Solid Perimeter Fence Standards.

b. Fences adjacent to a community open space system or trail located in tracts containing a minimum width of ten (10) feet shall be partial view fencing (4' solid – 2' view). The top of any view fence, If constructed of ornamental iron or a similar material, shall have a rail or horizontal member such that no portion of the view fence protrudes above the top rail or horizontal member.

c. Fences along side and rear property lines may be solid fences unless adjacent to a community open space or trail located in tracts containing a minimum width of ten (10) feet. (Refer to 5B at the end of Section 5.2 for

example when adjacent to trail system, transition area, required open space, or street side yard.)

d. All perimeter fences shall be decoratively treated on all sides to match the residential product architectural style and design.

e. Connecting side yard fences are to be set back (minimum distance of one-quarter (¼) of the required front yard) from the front face plane of the residential structure.

8. **NON-RESIDENTIAL ZONING DISTRICT.**

a. All perimeter fences adjacent to an arterial or major collector shall be decorative and undulating. A decorative variation shall be provided every one hundred (100) feet. Fences adjacent to the community open space system and/or perimeter trails shall be partial view fences provided that the perimeter fence is not a screen wall for an outside storage area. The top of any view fence shall have a rail or horizontal member such that no portion of the fence protrudes above the top rail or horizontal member.

b. All perimeter fences shall be finished on all sides to match the commercial and/or industrial product architectural style and design.

c. Trash and refuse collection locations shall be screened with a six (6) foot decorative masonry wall; except that a maximum of fifty percent (50%) of the required screening may be composed of live vegetation provided that the vegetation is view obscuring and a minimum of six (6) feet in height. Trash and refuse areas shall be located such that they are not the visual focal point of a driveway or parking area, or can not be viewed from a public street.

d. Outside storage areas shall be screened from the public street view and adjacent residences, office, and commercial uses to a height of at least six (6) feet. Materials shall not be stacked, piled, or stored in such a manner as to project above the screen wall when adjacent to residential areas.

e. Parking areas adjacent to the required front yard shall provide a decorative screen wall or landscape berm or combination thereof to a height not to exceed three (3) feet in order to adequately screen the undercarriages of the parked vehicles.

B. **FENCE STANDARDS**. Fences in all zoning districts shall comply with the following standards:

1. Fence materials shall be durable and consistent with abutting fences.

2. The site plan shall show the method of construction and anchoring the fence, posts, and gate.

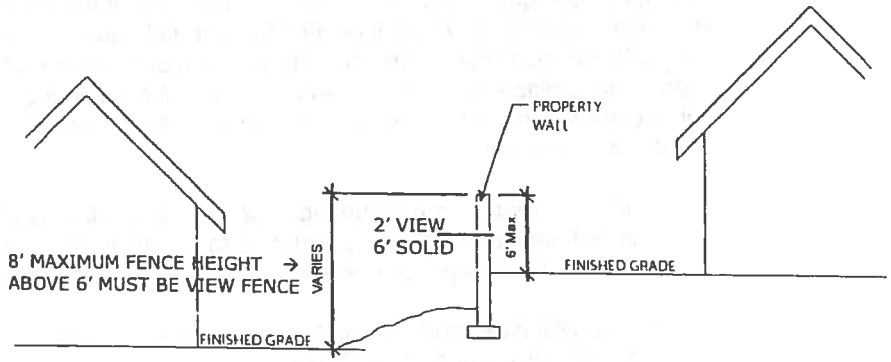
3. The site plan shall clearly show the distance between the fence and the abutting property lines and the distance to the sight line of a street right-of-way intersection. Adequate sight distance shall be maintained.

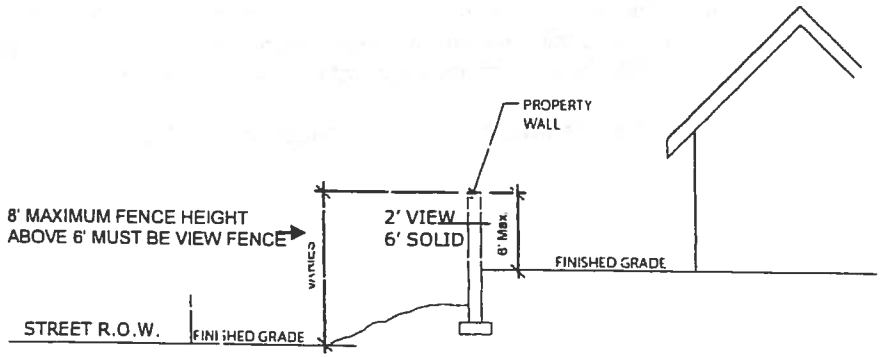
C. **RESIDENTIAL FENCE STANDARDS.** Fences in residential zones shall meet the following standards:

1. Except as otherwise provided in the district regulations, fences in the required front yard setback shall not exceed thirty six (36) inches in height. Such fences may be increased to forty-eight (48) inches maximum height if the fencing material extending above the thirty-six (36) inch height is an open material such as wrought iron or vinyl rail. Parcels that are zoned R1-43 and larger may construct fences up to six (6) feet in height, where the solid portion of the fence, if any, does not exceed thirty-six (36) inches and does not create any visibility conflicts that may be determined by the Town.

2. A fence constructed on a side or rear property line shall not exceed a height of six (6) feet from highest finished grade adjacent to the fence, nor more than eight (8) feet from the lowest grade adjacent to the fence. Any fence of more than six (6) feet height on the low side shall use berming, landscaping, fence offset(s) or similar enhancements to mask height differences, and in no case shall the fence height exceed eight (8) feet. Where the fence height exceeds six (6) feet on the lower side, a view fence shall be required for the portion above six (6) feet (6' solid – 2' view)

FIGURE 5.2-4 – FENCE HEIGHT DETERMINATION





3. On that part of the lot other than the required front yard setback area, fences may be erected to six (6) feet in height.

4. The height of fences shall be determined by measurement from the ground level at all points upon which the fence is located. An increase in height shall be allowed when spacing for drainage under the fence is needed.

5. When a corner lot abuts a key lot, the fence or freestanding wall over three (3) feet six (6) inches but not more than six (6) feet in height on the corner lot shall be set back from the street side property line not less than one-half (1/2) the depth of the required front yard.

6. The height and location requirements of this section may be modified as part of a subdivision, planned development, special use or conditional use approval. For fences on retaining walls, see definition of a retaining wall.

D. **SOLID PERIMETER FENCE STANDARDS**

Solid Fencing use along arterial and collector streets on the perimeter of residential projects addresses individual property concerns regarding noise, light, privacy and safety. Because solid fence use affects the image, character, safety and privacy of the community, design upgrades such as material choices and additional buffering to offset the reduction in project openness and reduce the impact of solid fencing is required.

Solid fence designs shall require use of a minimum of three (3) materials including stone, brick, block or textured block including treated, split-face, single-score or patterned integrally colored block or similar enhancement and may include changes in color or texture. In addition, to create greater variety and achieve the level of design enhancement required for use of solid fences, use of items in three (3) of the categories listed is also required.

1. Landscape materials may be increased in size and/or quantity to give a more mature "finished" look at initial presentation of the project. All trees shall be twenty-four (24) inch box size or larger and al shrubs shall be a minimum 5-gallon size.

2. Use of distinctive landscaping that integrates changes in grade, boulders, accent flowering shrubs and ground covers.

3. Design features may be employed to create additional visual interest and/or variety, such as additional pilasters or lighting, metal highlights including copper, tin or steel, or architectural details such as sculptural, decorative or water elements.

4. Offsets or undulations of solid fencing with a minimum of two (2) feet change to create additional variety. The length of the offset shall be the lesser of three lot widths or a minimum length of one hundred (100) feet; or

5. Buffer area width may be increased five (5) feet.

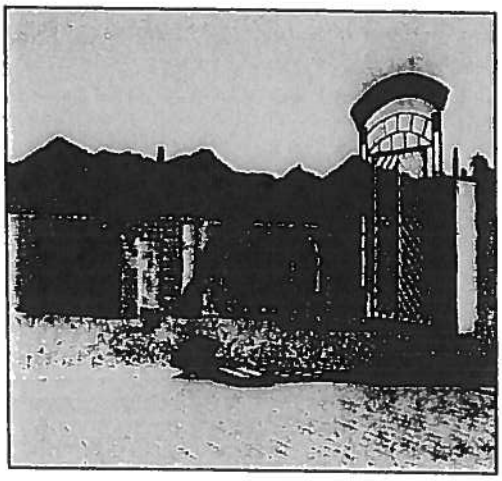


Figure 5.2-6

R1-43 Zoning (and Larger) Fence Diagram

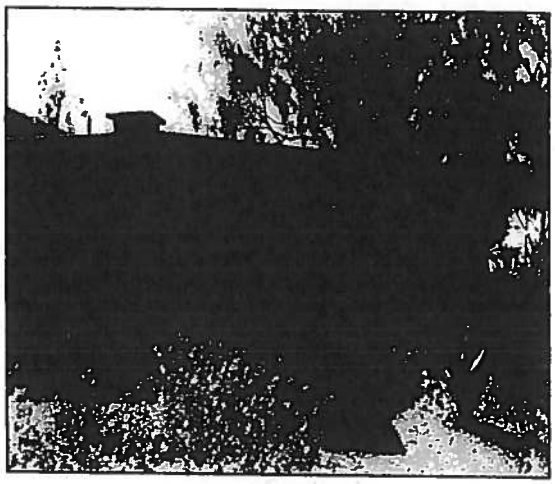
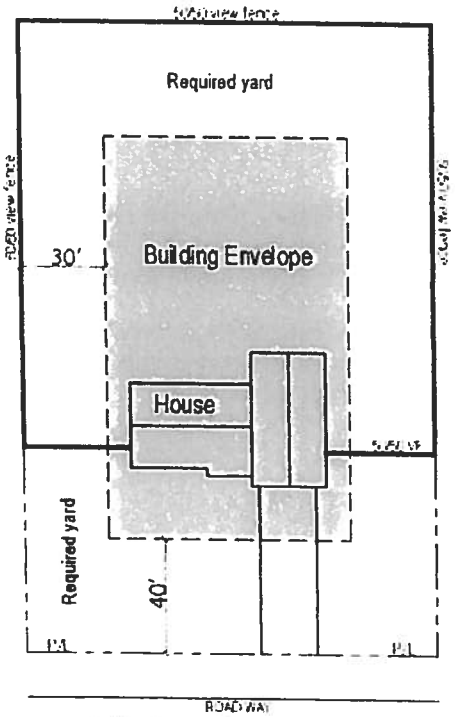
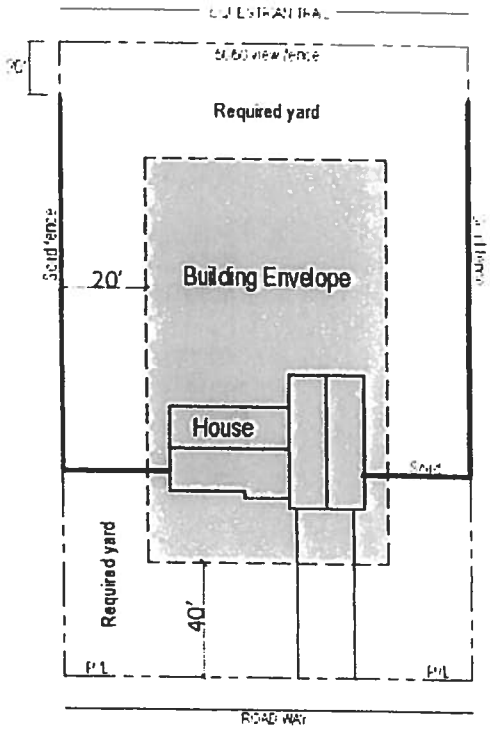


Figure 5.2-7

R1-35 Zoning Fence Diagram





CHERRY HILLS VILLAGE
COLORADO

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Village Center
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ITEM: 7b

MEMORANDUM

TO: HONORABLE MAYOR CHRISTMAN AND MEMBERS OF THE CITY COUNCIL

FROM: LAURA SMITH, CITY CLERK

SUBJECT: COUNCIL BILL 3, SERIES 2016; AMENDING ARTICLE VII OF CHAPTER 7 CONCERNING UNMANNED AIRCRAFT SYSTEMS (SECOND AND FINAL READING)

DATE: FEBRUARY 2, 2016

ISSUE:

Shall City Council approve Council Bill 3, Series 2016, amending Article VII of Chapter 7 concerning Unmanned Aircraft Systems on second and final reading?

DISCUSSION:

Background

City Council passed Ordinance 13, Series 2015 on December 9, 2015 (Exhibit B). The ordinance included registration requirements for all hobby Unmanned Aircraft Systems (UAS), also known as drones, operating in the City.

The FAA began registering hobby drones weighing more than 0.55 pounds on December 21, 2015. Hobby drone owners are issued a federal registration certificate that includes the owner's name and a federal registration number. Contact information for the owner is not included on the federal registration certificate.

Analysis

On January 5, 2016 Council provided direction to staff to amend the City ordinance to mirror the FAA registration requirement threshold of 0.55 pounds. The proposed council bill requires that owners of drones that meet the 0.55 pound threshold submit a copy of their federal registration certificate and complete the City's contact information form (Exhibit C). Those owners would not be required to complete the City's registration form, pay the City's registration fee or be issued a City registration number.

Changes since First Reading
City Council approved Council Bill 3, Series 2016 on first reading at the January 19, 2016 meeting with the following amendments, all of which have been incorporated into Exhibit A.

- Section 7-7-20 Definitions: Remove the new definition for "Recreational or hobby use"
- Section 7-7-40 General requirements for Hobby Operators and Owners: correct the title to read "Owners" instead of "Own"
- Section 7-7-40(a) Registration required: amend the section to read "Registration of UAS is required for all owners of UAS operating within City Airspace unless exempted under Section 7-7-30."
- Section 7-7-40(a)(1) Registration: amend the section to read "The required registration must occur prior to operating an unmanned aircraft system within City Airspace. The City registration requirements set forth in subsections (a)(2) through (a)(4) shall apply if no federal registration is required for UAS. The City shall accept a federal registration and waive the registration fee upon owner's presentation to the City of a certificate of federal registration and submission of owner contact information on a City-issued form. The City Council may establish other registration requirements by resolution."
- Section 7-7-40(a)(3) Registration fee: add the sentence "The City shall waive the registration fee upon owner's presentation to the City of a certificate of federal registration and submission of owner contact information on a City-issued form."

STAFF RECOMMENDATION:
Staff and City Attorney Michow recommend approval of the proposed council bill.

RECOMMENDED MOTION:
"I move to approve Council Bill 3, Series 2016; amending Article VII of Chapter 7 concerning Unmanned Aircraft Systems on second and final reading as submitted in Exhibit A of the February 2, 2016 staff memorandum."

ATTACHMENTS:
Exhibit A – Council Bill 3, Series 2016
Exhibit B – Ordinance 13, Series 2015
Exhibit C – City Contact Information Form

EXHIBIT A

COUNCIL BILL 03 **INTRODUCED BY:_____**

SERIES OF 2016 **SECONDED BY:_____**

A BILL FOR AN ORDINANCE OF THE CITY OF CHERRY HILLS VILLAGE AMENDING SECTIONS 7-7-30 and 7-7-40 OF ARTICLE VII OF CHAPTER 7 OF THE MUNICIPAL CODE CONCERNING REGULATIONS APPLICABLE TO UNMANNED AIRCRAFT SYSTEMS

WHEREAS, the City of Cherry Hills Village ("Village") is a home rule municipal corporation organized in accordance with Article XX of the Colorado Constitution; and

WHEREAS, the City Council approved Ordinance 13, Series 2015 on December 9, 2015 which includes a registration requirement for Hobby Operators of Unmanned Aircraft Systems ("UAS") operating within the Village; and

WHEREAS, since passage of Ordinance 13, Series 2015 the Federal Aviation Administration ("FAA") has established a registration program; and

WHEREAS, the FAA registration program exempts UAS weighing less than 0.55 pounds; and

WHEREAS, the City Council wishes to align the City registration program with the FAA registration program as set forth in this Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

Section 1. Section 7-7-30, titled Exemption from Registration, of Chapter 7 of the Cherry Hills Village Municipal Code is hereby amended to add a new subsection (c) shown in underline text as follows:

Section 7-7-30. Exemption from Registration. The following operations of unmanned aircraft systems are exempt from the registration requirements of this Article:

(a) Any local, state or federal government agency lawfully operating unmanned aircraft systems for a government purpose or function.

(b) Any commercial operator authorized by the FAA to operate a UAS, as evidenced by a valid certificate of authorization or exemption issued by the FAA.

(c) UAS operated by Hobby Operators weighing less than 0.55 pounds at the time of operation, inclusive of equipment, payload and fuel.

Section 2. Section 7-7-40, titled General Requirements for Hobby Operators, of Chapter 7 of the Cherry Hills Village Municipal Code is hereby amended with additions shown in underline and deletions shown in strikethrough to read as follows:

Section 7-7-40. General Requirements for Hobby Operators and Owners.

(a) Registration required. Registration of UAS is required for all owners of UAS ~~Hobby Operators~~ operating ~~a UAS~~ within City Airspace unless exempted under Section 7-7-30.

(1) Registration. ~~A Hobby Operator of an unmanned aircraft system shall register the UAS as provided in this Section~~ The required registration must occur prior to operating an unmanned aircraft system within City Airspace. The City registration requirements set forth in subsections (a)(2) through (a)(4) shall apply if no federal registration is required for UAS. The City shall ~~may~~ accept a federal registration and waive the registration fee upon owner's presentation to the City of a certificate of federal registration and submission of owner contact information on a City-issued form. ~~in lieu of City registration of a specific UAS only if the federal registration program enables the City to confirm a registration number for such UAS and to obtain substantially the same application information as required by the City in subsection (2) below~~. The City Council may establish other registration requirements by resolution.

(2) Application form. Application for registration of an unmanned aircraft system shall be made on a form provided by the City Clerk, which form shall include but not be limited to the following information: (a) name, address and telephone number of owner of UAS; (b) type, model of UAS; and (c) weight of UAS.

(3) Registration fee. The registration fee shall be ten dollars ($10.00) for each UAS unless waived pursuant to Section 7-7-40(a)(1), which fee must be paid to the City at the time of submission of the registration form. The City Council may increase or decrease the registration fee by resolution as codified in the City's comprehensive fee schedule.

(4) Registration Identification. Upon receipt of a completed application, and required registration fee, the City will issue a registration number for each UAS properly registered by the City. The designated City or federal registration number shall be prominently displayed on the UAS before and as a condition of its operation within the City or City Airspace.

Section 3. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid or preempted, such invalidity or preemption shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid or preempted portion, provided that such remaining portions or applications of this ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion would be declared invalid.

Section 4. Effective Date. This Ordinance shall become effective ten (10) days after publication on second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

Adopted as Ordinance No. __ Series ____, by the City Council of the City of Cherry Hills Village, Colorado this 18th day of January, 2016.

_____
Laura Christman, Mayor

ATTEST:

_____
Laura Smith, City Clerk

Approved as to form:

_____
Linda C. Michow, City Attorney

Published in the Villager
Published_____
Legal # _____

EXHIBIT B

ORDINANCE NO. 13
Series 2015

November 17, 2015: Introduced as Council Bill 9, Series 2015 by Councilor Mike Gallagher, seconded by Councilor Mark Griffin and considered in full text on first reading. Passed by a vote of 5 yes and 1 no.

December 9, 2015: Considered in full text on second reading. Passed by a vote of 4 yes and 1 no.

A BILL FOR AN ORDINANCE OF THE CITY OF CHERRY HILLS VILLAGE AMENDING CHAPTER 7 OF THE MUNICIPAL CODE TO ADD A NEW ARTICLE VII CONCERNING REGULATIONS APPLICABLE TO THE OPERATION OF UNMANNED AIRCRAFT SYSTEMS

WHEREAS, the City of Cherry Hills Village ("Village") is a home rule municipal corporation organized in accordance with Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority, the Village may exercise any power and perform any function relating to its government and affairs, including the power to regulate for the protection of the public health, safety and welfare; and

WHEREAS, the City Council has determined that the use of unmanned aircraft systems ("UAS"), commonly known as drones, within the Village may be detrimental to the personal safety, privacy rights, and welfare of the inhabitants; and

WHEREAS, the use of UAS in the Village may cause nuisances to wildlife, livestock and domesticated animals; and

WHEREAS, the use of UAS are no longer limited to military and government uses and there is evolving a wide range of civilian, commercial and recreational uses; and

WHEREAS, the City Council recognizes there is a strong market growth predicted for the use of UAS by hobbyists for recreational purposes as well as by commercial operators; and

WHEREAS, the City Council acknowledges that the United States Government has exclusive sovereignty of navigable airspace of the United States[1]; and

WHEREAS, the Federal Aviation Administration ("FAA") is the ultimate authority on regulating aircraft, including UAS, in navigable airspace; and

WHEREAS, the FAA Modernization and Reform Act of 2012 mandates that the FAA develop a plan for integrating drones into the existing regulatory framework of navigable airspace FAA Modernization and Reform Act of 2012; however, none have been adopted to date; and

WHEREAS, currently, no federal law expressly prohibits or preempts municipalities from establishing laws concerning UAS usage that address nuisance and trespass issues within municipalities' specific borders; and

WHEREAS, in the 2015 Colorado General Assembly, failed House Bill 2015-1115 was introduced to address the privacy concerns arising from public and private use of UAS by creating two separate crimes for the misuse of UAS by private individuals; and

WHEREAS, to date, there is only one Colorado regulation concerning the specific operation of UAS and such regulation prohibits use of UAS for hunting wildlife; and

WHEREAS, the current state laws do not adequately address potential nuisance concerns with unregulated use of UAS; and

WHEREAS, the City Council determines that it is in the best position to regulate and enforce UAS operations within its jurisdiction, subject to the jurisdiction of the FAA; and

WHEREAS, the FAA has recognized that state and local law enforcement agencies are often in the best position to deter, detect, immediately investigate, and as appropriate, pursue enforcement actions to stop unauthorized or unsafe UAS operations[2]; and

[1] 49 U.S.C. § 40103(a).

WHEREAS, City Council further finds that its police department and other local public safety agencies generally will be the first responders to UAS accidents; and

WHEREAS, the City desires to retain and exercise its broad police powers to address the negative impacts arising from the use of UAS within the jurisdiction of Cherry Hills Village, particularly at low altitudes under 400 feet above ground level at which most UAS operate; and

WHEREAS, the regulations adopted herein will be subject to any future state or federal regulations governing UAS through navigable airspace.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

Section 1. A new Article VII of Chapter 7 of the Municipal Code is hereby added to read in full as follows:

Article VII
Regulation of Unmanned Aircraft Systems

7-7-10. Purpose and Intent.

7-7-20 Definitions.

7-7-30 Exemptions.

7-7-40 General Requirements for Hobby Operators.

7-7-50 Enforcement and Penalties.

Section 7-7-10. Purpose and Intent.

The purpose of this Article VII is to establish a registration system for Hobby Operators and regulations pertaining to any unmanned aircraft system operating within the jurisdictional borders of the City of Cherry Hills Village. It is the intent of this Article to be interpreted in conformance with any existing or future federal or state laws or regulations that address the operation of unmanned aircraft systems.

Section 7-7-20. Definitions.

As used in this Article, the following terms shall have the meanings indicated:

Aircraft means any contrivance invented, used, or designed to navigate or fly in the air.

City Airspace means and includes all airspace above the jurisdictional boundaries of the City, to the full extent such airspace can legally be regulated by the City.

Domestic animal shall have the same meaning as set forth in Article V of Chapter 7 of this Code.

Livestock shall have the same meaning as set forth in Article V of Chapter 7 of this Code.

Model Aircraft means an unmanned aircraft that is: (1) capable of sustained flight in the atmosphere; (2) flown within visual line of sight of the person operating the aircraft; and (3) flown for hobby or recreational purposes.

Navigable airspace means airspace above the minimum altitudes of flight prescribed by FAA regulations, including airspace needed to ensure safety in takeoff and landing of aircraft.

Operate means to fly, use, launch, land, employ or navigate an unmanned aircraft system through the air.

Hobby Operator means an individual or entity operating an unmanned aircraft system for strictly recreational or hobby use.

Person shall have the same meaning as set forth in Section 1-2-10 of Chapter 1 of this Code.

---

[2] Law Enforcement Guidance for Suspected Unauthorized UAS Operations, U.S. Department of Transportation, Federal Aviation Administration.

Unmanned aircraft system or UAS means an aircraft, powered aerial vehicle, or other device without a human pilot on board, the flight of which is controlled either autonomously by on board computers or by remote control of a pilot operator on the ground or in another vehicle or aircraft, and all associated equipment and apparatus. It includes model aircrafts and drones.

Section 7-7-30. Exemption from Registration. The following operations of unmanned aircraft systems are exempt from the registration requirements of this Article:

(a) Any local, state or federal government agency lawfully operating unmanned aircraft systems for a government purpose or function.

(b) Any commercial operator authorized by the FAA to operate a UAS, as evidenced by a valid certificate of authorization or exemption issued by the FAA.

Section 7-7-40. General Requirements for Hobby Operators.

(a) Registration required. Registration of UAS is required for all Hobby Operators operating a UAS within City Airspace.

(1) Registration. A Hobby Operator of an unmanned aircraft system shall register the UAS as provided in this Section prior to operating an unmanned aircraft system within City Airspace. The City may accept a federal registration in lieu of City registration of a specific UAS only if the federal registration program enables the City to confirm a registration number for such UAS and to obtain substantially the same application information as required by the City in subsection (2) below. The City Council may establish other registration requirements by resolution.

(2) Application form. Application for registration of an unmanned aircraft system shall be made on a form provided by the City Clerk, which form shall include but not be limited to the following: (a) name, address and telephone number of owner of UAS; (b) type, model of UAS; and (c) weight of UAS.

(3) Registration fee. The registration fee shall be ten dollars ($10.00) for each UAS, which fee must be paid to the City at the time of submission of the registration form. The City Council may increase or decrease the registration fee by resolution as codified in the City's comprehensive fee schedule.

(4) Registration Identification. Upon receipt of a completed application, and required registration fee, the City will issue a registration number for each UAS properly registered by the City. The designated City or federal registration number shall be prominently displayed on the UAS before and as a condition of its operation within the City or City Airspace.

(b) Operating requirements. Except as otherwise provided in this Article VII, persons operating a UAS in City Airspace shall comply with the following operating regulations:

(1) UAS operated by Hobby Operators must weigh no more than fifty-five (55) pounds at the time of operation, inclusive of equipment, payload and fuel.

(2) Hobby Operators must have a visual line of sight of the UAS at all times. Visual line of sight means the UAS must be visible at all times to the Operator, using his or her own natural vision to observe the UAS, including the use of standard eyeglasses or contact lenses.

(3) Without express prior written authorization from the City Manager, no person may operate a UAS on or over any City property inclusive of public streets, alleys, bridle paths, trails, playgrounds, parks, open space, parking lots, and public buildings.

(4) No person shall enter, hover, launch, or land an unmanned aircraft system on or over another person's property without the prior consent of the property owner. Such unauthorized entry onto another's property shall be deemed a trespass.

(5) No person shall operate a UAS in a reckless or careless manner so as to endanger or cause reasonable risk of harm or actual harm to persons, property, or any domestic animal or livestock.

Section 7-7-50. Enforcement and Penalties.

It shall be unlawful to violate any provision of this Article. Any person who is convicted of a violation of any provision of this Article shall be punished in accordance with Section 1-4-20 of this Code. In addition, any UAS operated in violation of this Article may be immediately impounded in the interest of public safety. Law enforcement officers are authorized to disable any UAS operating within the City Airspace that poses an imminent threat to public safety.

Section 2. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid or preempted, such invalidity or preemption shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid or preempted portion, provided that such remaining portions or applications of this ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion would be declared invalid.

Section 3. Effective Date. This Ordinance shall become effective ten (10) days after publication on second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

Adopted as Ordinance No. 13 Series 2015, by the City Council of the City of Cherry Hills Village, Colorado this 9th day of December, 2015.

Laura Christman, Mayor

ATTEST:

Laura Smith, City Clerk

Approved as to form:

Linda C. Michow, City Attorney

Published in the Villager
Published 12-17-15
Legal # 6184

CITY OF CHERRY HILLS VILLAGE

ADOPTION OF ORDINANCE
ORDINANCE 13, SERIES 2015

A BILL FOR AN ORDINANCE OF THE CITY OF CHERRY HILLS VILLAGE AMENDING CHAPTER 7 OF THE MUNICIPAL CODE TO ADD A NEW ARTICLE VII CONCERNING REGULATIONS APPLICABLE TO THE OPERATION OF UNMANNED AIRCRAFT SYSTEMS

Copies of the Ordinances are on file at the office of the City Clerk and may be inspected during regular business hours.

Published in The Villager
Published: December 17, 2015
Legal # 6184

EXHIBIT C

City of Cherry Hills Village

2450 E Quincy Ave, Cherry Hills Village, CO 80113

Hobby Unmanned Aircraft System (UAS) a.k.a. Drone Contact Information Form

Hobby Drone Owner's Name _____

Address _____

City, State, Zip_____

Phone #(s) _____

Attach a copy of your FAA registration certificate to this form.

I hereby attest that all information provided on this form is true and correct to the best of my knowledge, including the attached FAA registration certificate.

Signature _____ **Date**_____

INTERNAL USE ONLY:

Date Accepted/Issued_____ **By**_____

CHERRY HILLS VILLAGE
COLORADO

2450 E. Quincy Avenue
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Village Center
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FAX 303-761-9386

ITEM:8a

MEMORANDUM

TO: HONORABLE MAYOR CHRISTMAN AND MEMBERS OF THE CITY COUNCIL

FROM: LAURA SMITH, CITY CLERK

SUBJECT: PUBLIC HEARING - RESOLUTION 3, SERIES 2016: APPROVING A NEW HOTEL AND RESTAURANT LIQUOR LICENSE FOR CHERRY HILLS SUSHI CO LLC AT 1400 EAST HAMPDEN AVENUE SUITE 110.

DATE: FEBRUARY 2, 2016

Issue
Shall Council approve the application for a new hotel and restaurant liquor license for Cherry Hills Sushi Co LLC, owned by Olivia Maeng, at 1400 East Hampden Avenue Suite 110 in the City of Cherry Hills Village?

Applications for New Licenses
Section 6-2-30(a) of the Municipal Code states that "The City Clerk shall receive all applications for licenses, and shall issue licenses granted by the Licensing Authority in accordance with this Article, upon receipt of such license fees and occupation taxes as are required by law and this Article."

Sections 6-2-30(b)(1) through 6-2-30(b)(8) outline the requirements for a complete application. Staff finds that the applicant has submitted all the necessary information for a complete application. The following is a description of the various submittal requirement specified in this section of the Code as it relates to this liquor license application:

- Section 6-2-30(b)(1) requires submittal of all items required by state statute or the Colorado Department of Revenue regulations. The applicant has submitted the necessary documentation to the State of Colorado for the state's review of the liquor license application. Staff has attached the application as Exhibit B.

- Section 6-2-30(b)(2) states that a complete application must include all items required by state statute or the Colorado Department of Revenue and payment of all license fees. The complete application materials and application fees were received by staff on December

8, 2015 (Exhibit B). Cherry Hills Sushi Co LLC applied for and received a business license in October 2015. They will be required to pay the $1000 occupation tax to the City as a condition of their liquor license approval.

- Section 6-2-30(b)(3) states that a complete application must include "Evidence from the Department of Community Development that the location of the proposed establishment meets the requirements of the applicable City zoning ordinance." The Community Development Department has found no zoning issues with this location and their referral is included in Exhibit C.

- Section 6-2-30(b)(6) states that a complete application must include "An affidavit stating that the proposed licensed premises is not located within five hundred (500) feet of any public or parochial school or the principal campus of any college, university or seminary;". The affidavit confirming this distance can be found in Exhibit B.

- Section 6-2-30(b)(7) states that a complete application must include "any petitions signed by parties in interest that demonstrate the needs of the neighborhood and the reasonable requirements of the neighborhood regarding issuance of the license…such petitions shall be submitted to the City Clerk not less than fifteen (15) days prior to the date of the public hearing on the application." The circulation of a petition is not required and Cherry Hills Sushi Co LLC elected not to circulate a petition.

- Section 6-2-50(a) of the Municipal Code states that the applicant shall present themselves to the Police Department to be fingerprinted. The owner of Cherry Hills Sushi Co LLC was fingerprinted and their fingerprints were sent to the Colorado Bureau of Investigation for background checks. Nothing was produced from the background investigation that would give rise to a character issue, and the Police Department has signed a referral to that effect (Exhibit C).

In addition to the Municipal Code the applicant must comply with State Statute:

- Section 12-47-312(4) of the Colorado Liquor Code states that "No license shall be issued by any local licensing authority after approval of an application until the building in which the business is to be conducted is ready for occupancy with such furniture, fixtures, and equipment in place as is necessary to comply with the applicable provisions of this article and article 46 of this title, and then only after inspection of the premises has been made by the licensing authority to determine that the applicant has complied with the architect's drawing and the plot plan and detailed sketch for the interior of the building submitted with the application." The applicant has completed interior remodeling and all building permits associated with the business have been completed.

- Section 12-47-312(1) of the Colorado Liquor Code states that "Not less than five days prior to the date of hearing, the local licensing authority shall make known its findings based on its investigation in writing to the applicant and other interested parties." Staff sent a letter to Cherry Hills Sushi Co LLC on January 26, 2016.

Public Hearing

Section 6-2-40(a) of the Municipal Code states that "upon the City Clerk's administrative determination that the application is complete, the City Clerk shall schedule a public hearing upon the application to be heard not less than thirty (30) days from the date the application is accepted." The application was accepted on December 8, 2015, and the public hearing was scheduled for February 2, 2016.

Section 12-47-312(2)(a) of the Colorado Liquor Code states that "Before entering any decision approving or denying the application, the local licensing authority shall consider, except where this article specifically provides otherwise, the facts and evidence adduced as a result of its investigation, as well as any other facts, the reasonable requirements of the neighborhood for the type of license for which application has been made, the desires of the adult inhabitants, the number, type, and availability of alcoholic beverage outlets located in or near the neighborhood under consideration, and any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed; except that the reasonable requirements of the neighborhood shall not be considered in the issuance of a club liquor license."

Section 6-2-60(b) of the Municipal Code states that "In the absence of such written procedures [for the conduct of public hearings], the Licensing Authority shall act in accordance with common practices and procedures employed in the conduct of other quasi-judicial public hearings."

Section 12-47-311(1) of the Colorado Liquor Code states that the local licensing authority shall "post and publish the public notice thereof not less than ten days prior to such hearing." Notice of the public hearing was published in the January 14, 2016 issue of The Villager (Exhibit D), on the notice board in front of the Village Center and on the Cherry Hills Village webpage on January 6, 2016.

Section 12-47-311(a) of the Colorado Liquor Code also states that "public notice shall be given by the posting of a sign in a conspicuous place on the premises" and Section 12-47-311(b) states the specific requirements of the sign. Section 6-2-30(d) of the Municipal Code states that "It shall be the obligation of the applicant to post notices required by the Colorado Liquor Code except that, at the applicant's request and upon the applicant's payment of a reasonable administrative fee for posting as established by the City Clerk, the City Clerk may post such notices on behalf of the applicant. The City Clerk shall be responsible for preparing the required

notices for new applications." Cherry Hills Sushi Co LLC requested that staff post the notice and paid the associated fee. Notice was posted at the premises on January 19, 2016.

Section 6-2-40(b) of the Municipal Code states that "The boundaries of the City are hereby declared to establish the neighborhood affected by a proposed liquor license for purposes of the processing of a new license application. An applicant may request in writing that the Licensing Authority administratively consider alternative boundaries of the neighborhood for purposes of a specific application". Cherry Hills Sushi Co LLC was notified of the neighborhood boundaries and declined to request alternative boundaries. Section 6-2-40(c) of the Municipal Code states that "The City Clerk shall prepare an official map showing the location of the proposed outlet and all outlets within the defined neighborhood to be presented at the public hearing." The proposed outlet is at 1400 E. Hampden Ave, Suite 110. The other outlets with current liquor licenses within the City are Cherry Hills Country Club, which has a club liquor license; Glenmoor Country Club, which has a hotel & restaurant liquor license; Pino's Pizzeria, which has a hotel & restaurant liquor license; and South Philly Cheese Steak, which has a hotel & restaurant liquor license (Exhibit E).

Budget Impact
Approval of the application will result in annual revenue in the amount of $1,125.00, which includes the renewal application fee, the liquor license fee, and the City's occupation tax.

Next Steps
Section 6-2-70 of the Municipal Code states that "Following the public hearing on a new application, the Licensing Authority shall render its decision no later than thirty (30) days after the date of the public hearing; provided, however, that the Licensing Authority may continue the hearing from time to time as may be required to gather necessary facts and evidence and to permit witnesses to testify; and the time limit for the decision on a new application shall run from the date of the conclusion of the hearing as continued."

Staff Recommendation
The application has been reviewed by the City Clerk office, the City Attorney office, the Police Department, and the Community Development Department.

Staff is satisfied that the application for a new hotel and restaurant liquor license is complete and that all requirements in Article II of the Municipal Code and Article 47 of the Colorado 3.2% Beer Code regarding new license applications have been met. Staff recommends approval of a hotel and restaurant liquor license for Cherry Hills Sushi Co LLC contingent on payment of the City's annual occupation tax.

Recommended Motion
"I move to approve Resolution 3, Series 2016, Approving a New Hotel and Restaurant Liquor License for Cherry Hills Sushi Co LLC at 1400 East Hampden Avenue Suite 110 in the City of Cherry Hills Village."

Attachments
Exhibit A: Resolution 3, Series 2016
Exhibit B: Application for Hotel and Restaurant Liquor License
Exhibit C: Staff Referrals
Exhibit D: Proof of Publication in The Villager Newspaper
Exhibit E: A map of the neighborhood, defined as the City of Cherry Hills Village, with current liquor licenses designated

EXHIBIT A

RESOLUTION NO. 3
SERIES OF 2016

INTRODUCED BY:
SECONDED BY:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE APPROVING THE APPLICATION FOR A HOTEL AND RESTAURANT LIQUOR LICENSE AS REQUESTED BY CHERRY HILLS SUSHI CO AT 1400 EAST HAMPDEN AVENUE SUITE 110 IN THE CITY OF CHERRY HILLS VILLAGE

WHEREAS, the City Council of the City of Cherry Hills Village, Colorado, acting as Local Liquor Licensing Authority, held a hearing on February 2, 2016 on the application of Cherry Hills Sushi Co LLC for a Hotel and Restaurant Liquor License at 1400 East Hampden Avenue Suite 110, Cherry Hills Village, CO 80113; and,

WHEREAS, the Council, now being fully advised, is prepared to render a decision on said application.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Cherry Hills Village, Colorado that:

Pursuant to the requirements set forth in Title 12, Article 46 and 47, C.R.S., and the City of Cherry Hills Village Municipal Code, the application by Cherry Hills Sushi Co LLC for a Hotel and Restaurant Liquor License at 1400 East Hampden Avenue Suite 110, Cherry Hills Village, CO 80113; be, and the same hereby, is approved contingent on the following conditions being met:

1. Payment of the City's $1000 liquor license occupation tax (Municipal Code Section 6-2-200).

This Resolution shall be in full force and effect upon its passage and adoption.

Introduced, passed and adopted at the
regular meeting of City Council this __ day
of _____, 2016, by a vote of _ yes and _ no.

(SEAL)

_____
Laura Christman, Mayor

ATTEST:

_____
Laura Smith, City Clerk

APPROVED AS TO FORM:

_____
Linda C. Michow, City Attorney

EXHIBIT B

DR 8404 (12/30/14)
COLORADO DEPARTMENT OF REVENUE
Liquor Enforcement Division
(303) 205-2300

Colorado Liquor Retail License Application

☑ New License ☐ New-Concurrent ☐ Transfer of Ownership

- All answers must be printed in black ink or typewritten
- Applicant must check the appropriate box(es)
- Applicant should obtain a copy of the Colorado Liquor and Beer Code: *www.colorado.gov/enforcement/liquor*
- Local License Fee $_____

1. Applicant is applying as a/an
   - ☐ Corporation
   - ☐ Partnership (includes Limited Liability and Husband and Wife Partnerships)
   - ☐ Individual
   - ☑ Limited Liability Company
   - ☐ Association or Other

2. Applicant If an LLC, name of LLC; if partnership, at least 2 partner's names; if corporation, name of corporation		FEIN Number 47-533
Cherry Hills Sushi Co LLC		47-~~5224~~842
2a. Trade Name of Establishment (DBA)	State Sales Tax Number	Business Telephone
Cherry Hills Sushi Co	30250907	213-304-5378

3. Address of Premises (specify exact location of premises, include suite/unit numbers)			
1400 East Hampton Ave., Suite 110			
City	County	State	ZIP Code
Cherry Hills Village	Arapahoe	CO	80113
4. Mailing Address (Number and Street)	City or Town	State	ZIP Code
1400 E. Hampton Ave. Suite 110	Cherry Hills Village	CO	80113

5. Email Address
hello@cherryhillssushi.com

6. If the premises currently has a liquor or beer license, you must answer the following questions

Present Trade Name of Establishment (DBA)	Present State License Number	Present Class of License	Present Expiration Date
n/a	n/a	n/a	n/a

Section A — Nonrefundable Application Fees

- ☐ Application Fee for New License ..... $ 600.00
- ☑ Application Fee for New License w/Concurrent Review .... $ 700.00
- ☐ Application Fee for Transfer ..... $ 600.00

Section B — Liquor License Fees

- ☐ Add Optional Premises to H & R ..... $100.00 X _____ Total _____
- ☐ Add Related Facility to Resort Complex ..... $ 75.00 X _____ Total _____
- ☐ Arts License (City) $308.75
- ☐ Arts License (County) $308.75
- ☐ Beer and Wine License (City) $351.25
- ☐ Beer and Wine License (County) $436.25
- ☐ Brew Pub License (City) $750.00
- ☐ Brew Pub License (County) $750.00
- ☐ Club License (City) $308.75
- ☐ Club License (County) $308.75
- ☒ Hotel and Restaurant License (City $500.00
- ☐ Hotel and Restaurant License (County) $500.00
- ☐ Hotel and Restaurant License w/one opt premises (City) $600.00
- ☐ Hotel and Restaurant License w/one opt premises(County) $600.00

Section B (Cont.) — Liquor License Fees

- ☐ Liquor Licensed Drugstore (City) $227.50
- ☐ Liquor Licensed Drugstore (County) $312.50
- ☐ Manager Registration - H & R ..... $ 75.00
- ☐ Manager Registration - Tavern ..... $ 75.00
- ☐ Master File Location Fee ..... $ 25.00 X _____ Total _____
- ☐ Master File Background ..... $250.00 X _____ Total _____
- ☐ Optional Premises License (City) $500.00
- ☐ Optional Premises License (County) $500.00
- ☐ Racetrack License (City) $500.00
- ☐ Racetrack License (County) $500.00
- ☐ Resort Complex License (City) $500.00
- ☐ Resort Complex License (County) $500.00
- ☐ Retail Gaming Tavern License (City) $500.00
- ☐ Retail Gaming Tavern License (County) $500.00
- ☐ Retail Liquor Store License (City) $227.50
- ☐ Retail Liquor Store License (County) $312.50
- ☐ Tavern License (City) $500.00
- ☐ Tavern License (County) $500.00
- ☐ Vintners Restaurant License (City) $750.00
- ☐ Vintners Restaurant License (County) $750.00

Questions? Visit: *www.colorado.gov/enforcement/liquor* **for more information**

Do not write in this space - For Department of Revenue use only

Liability Information

License Account Number	Liability Date	License Issued Through (Expiration Date)	Total
			$

Application Documents Checklist and Worksheet

Instructions: This checklist should be utilized to assist applicants with filing all required documents for licensure. **All** documents must be properly signed and correspond with the name of the applicant exactly. **All** documents must be typed or legibly printed. Upon final State approval the license will be mailed to the local licensing authority. Application fees are nonrefundable.

Questions? Visit: *www.colorado.gov/enforcement/liquor* **for more information**

Items submitted, please check all appropriate boxes completed or documents submitted

I. Applicant information

- ☑ A. Applicant/Licensee identified
- ☑ B. State sales tax license number listed or applied for at time of application
- ☑ C. License type or other transaction identified
- ☑ D. Return originals to local authority
- ☑ E. Additional information may be required by the local licensing authority

II. Diagram of the premises

- ☑ A. No larger than 8 1/2" X 11"
- ☑ B. Dimensions included (does not have to be to scale). Exterior areas should show type of control (fences, walls, entry/exit points, etc.)
- ☐ C. Separate diagram for each floor (if multiple levels)
- ☑ D. Kitchen - identified if Hotel and Restaurant
- ☑ E. Bold/Outlined Licensed Premises

III. Proof of property possession (One Year Needed)

- ☐ A. Deed in name of the Applicant (or) (matching question #2) date stamped / filed with County Clerk
- ☑ B. Lease in the name of the Applicant (or) (matching question #2)
- ☐ C. Lease Assignment in the name of the Applicant with proper consent from the Landlord and acceptance by the Applicant
- ☐ D. Other Agreement if not deed or lease. (matching question #2) (Attach prior lease to show right to assumption)

IV. Background information and financial documents

- ☑ A. Individual History Records(s) (Form DR 8404-I)
- ☑ B. Fingerprints taken and submitted to local authority (State Authority for Master File applicants)
- ☐ C. Purchase agreement, stock transfer agreement, and or authorization to transfer license
- ☐ D. List of all notes and loans (Copies to also be attached)

V. Sole proprietor / husband and wife partnership

- ☐ A. Form DR4679
- ☐ B. Copy of State issued Driver's License or Colorado Identification Card for each applicant

VI. Corporate applicant information (if applicable)

- ☐ A. Certificate of Incorporation dated stamped by the Secretary of State
- ☐ B. Certificate of Good Standing
- ☐ C. Certificate of Authorization if foreign corporation
- ☐ D. List of officers, directors and stockholders of Applying Corporation (If wholly owned, designate a minimum of one person as Principal Officer of Parent)

VII. Partnership applicant information (if applicable)

- ☐ A. Partnership Agreement (general or limited). Not needed if husband and wife
- ☐ B. Certificate of Good Standing (If formed after 2009)

VIII. Limited Liability Company applicant information (if applicable)

- ☑ A. Copy of articles of organization (date stamped by Colorado Secretary of State's Office)
- ☑ B. Certificate of Good Standing if organized more than two years
- ☑ C. Copy of operating agreement
- ☐ D. Certificate of Authority if foreign company

IX. Manager registration for hotel and restaurant, tavern licenses when included with this application

- ☐ A. $75.00 fee
- ☐ B. Individual History Record (DR 8404-I)
- ☑ C. If owner is managing, no fee required

	Yes	No
7. Is the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation) or manager under the age of twenty-one years?	☐	☑
8. Has the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation) or manager ever (in Colorado or any other state):		
(a) Been denied an alcohol beverage license?	☐	☑
(b) Had an alcohol beverage license suspended or revoked?	☐	☑
(c) Had interest in another entity that had an alcohol beverage license suspended or revoked?	☐	☑
If you answered yes to 8a, b or c, explain in detail on a separate sheet.		
9. Has a liquor license application (same license class), that was located within 500 feet of the proposed premises, been denied within the preceding two years? If "yes", explain in detail.	☐	☑
10. Are the premises to be licensed within 500 feet of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?	☐	☑
Waiver by local ordinance? or Other:	☐	☐
11. Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a Limited Liability Company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any current financial interest in said business including any loans to or from a licensee.	☐	☑
12. Does the Applicant, as listed on line 2 of this application, **have legal possession of the premises by virtue of ownership**, lease or other arrangement?	☑	☐

☐ Ownership ☑ Lease ☐ Other (Explain in Detail)

a. If leased, list name of landlord and tenant, and date of expiration, **exactly** as they appear on the lease:

Landlord	Tenant	Expires
Centre 3 LLC	Cherry Hills Sushi Co LLC	03/31/2021

b. Is a percentage of alcohol sales included as compensation to the landlord? If yes complete question 13. ~~☑~~ ☒

c. Attach a diagram and outline or designate the area to be licensed (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8 1/2" X 11".

13. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies), will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business. Attach a separate sheet if necessary.

Last Name	First Name	Date of Birth	FEIN or SSN	Interest/Percentage
Maeng	Brian	[redacted]		Giving Gift
~~Centre 3 LLC~~	~~n/a~~	[redacted]		~~Tenant finish allowance~~

Attach copies of all notes and security instruments, and any written agreement, or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.

14. Optional Premises or Hotel and Restaurant Licenses with Optional Premises: Has a local ordinance or resolution authorizing optional premises been adopted? N/A	☐	☐
Number of additional Optional Premise areas requested. (See license fee chart)		
15. Liquor Licensed Drug Store applicants, answer the following: (a) Does the applicant for a Liquor Licensed Drug Store have a license issued by the Colorado Board of Pharmacy? **If "yes" a copy of license must be attached.** N/A	☐	☐
16. Club Liquor License applicants answer the following: **Attach a copy of applicable documentation** N/A		
(a) Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain?	☐	☐
(b) Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain?	☐	☐
(c) How long has the club been incorporated?		
(d) Has applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above?	☐	☐
17. Brew-Pub License or Vintner Restaurant Applicants answer the following: (a) Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached) N/A	☐	☐

18a. For all on-premises applicants.
(If this is an application for a Hotel, Restaurant or Tavern License, the manager must also submit an Individual History Record - DR 8404-I)

Last Name of Manager	First Name of Manager	Date of Birth
Maeng	Olivia Susie	06/13/1980

18b. Does this manager acts as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number.	☐	☑

Type of License	Account Number
n/a	n/a

19. Tax Distraint Information. Does the applicant or any other person listed on this application and including its partners, officers, directors, stockholders, members (LLC) or managing members (LLC) and any other persons with a 10% or greater financial interest in the applicant currently have an outstanding tax distraint issued to them by the Colorado Department of Revenue?	☐	☑

If yes, provide an explanation and include copies of any payment agreements.

20. **If applicant is a corporation, partnership, association or limited liability company, applicant **must list all officers, directors, general partners, and managing members.** In addition, applicant **must list** any stockholders, partners, or members with **ownership of 10% of more in the applicant. All persons listed below** must also attach form DR8404-I (Individual History Record), and submit fingerprint cards to their local licensing authority.

Name	Home Address, City & State	DOB	Position	%Owned
Olivia Susie Maeng	22208 E. Glasgow Place, Aurora, CO 80016	[redacted]	Managing Member	100%
Name	Home Address, City & State	DOB	Position	% Owned
Name	Home Address, City & State	DOB	Position	% Owned
Name	Home Address, City & State	DOB	Position	% Owned
Name	Home Address, City & State	DOB	Position	% Owned

** Limited Liability Companies and Partnerships - 100% of ownership must be accounted for on question #20
** Corporations - The President, Vice-President, Secretary and Treasurer must be accounted for on question #20 (Include ownership percentage if applicable)

Oath Of Applicant

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer Code which affect my license.

Authorized Signature	Printed Name and Title	Date
	Olivia Susie Maeng	12/6/2015

Report and Approval of Local Licensing Authority (City/County)

Date application filed with local authority	Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application 12-47-311 (1) C.R.S.)
12-8-15	1-19-16

The Local Licensing Authority Hereby Affirms that each person required to file DR 8404-I (Individual History Record) has:

☐ Been fingerprinted

☐ Been subject to background investigation, including NCIC/CCIC check for outstanding warrants

That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with, and aware of, liquor code provisions affecting their class of license

(Check One)

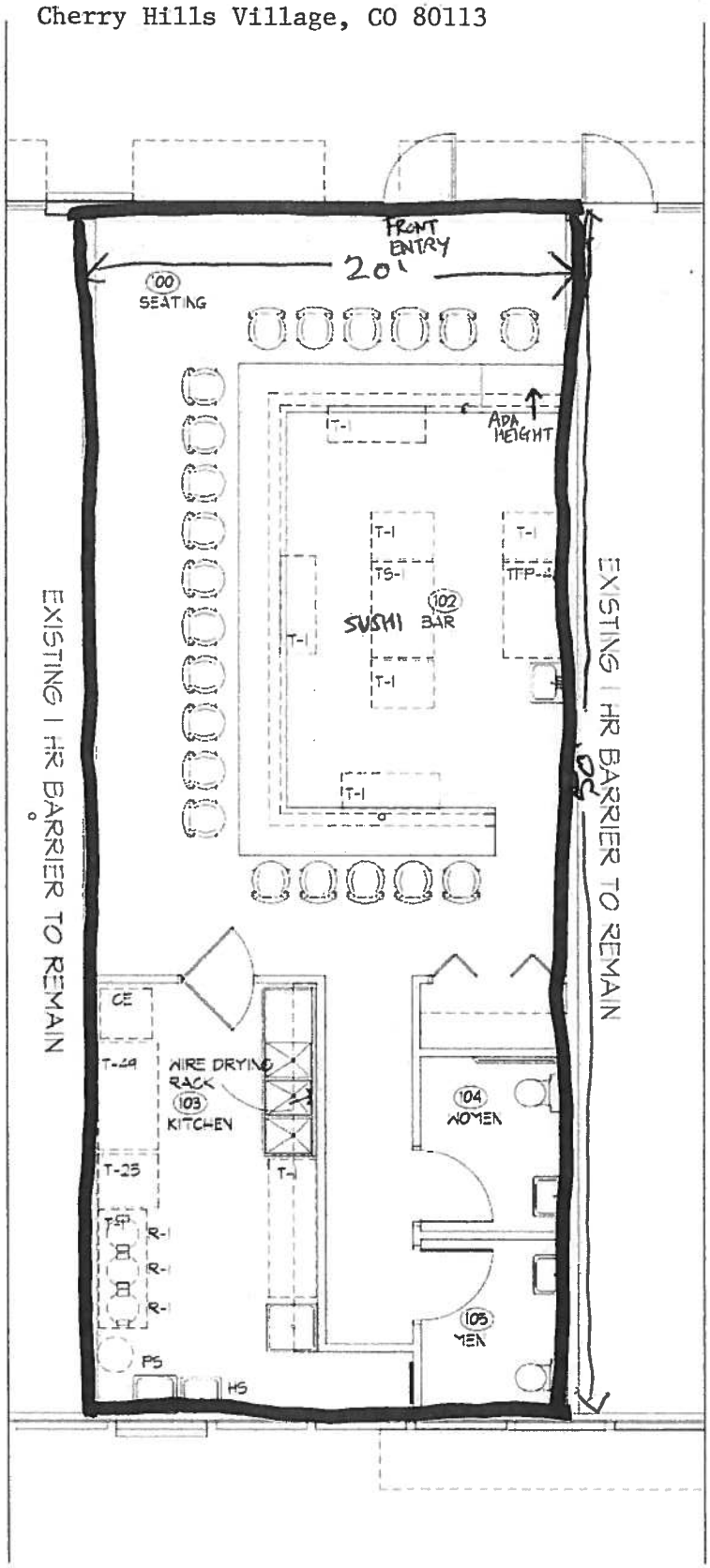
☐ Date of inspection or anticipated date _____

☐ Will conduct inspection upon approval of state licensing authority

The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 12, Article 46 or 47, C.R.S.
Therefore, this application is approved.

Local Licensing Authority for		Telephone Number	☐ Town, City ☐ County
Signature	Print	Title	Date
Signature (attest)	Print	Title	Date

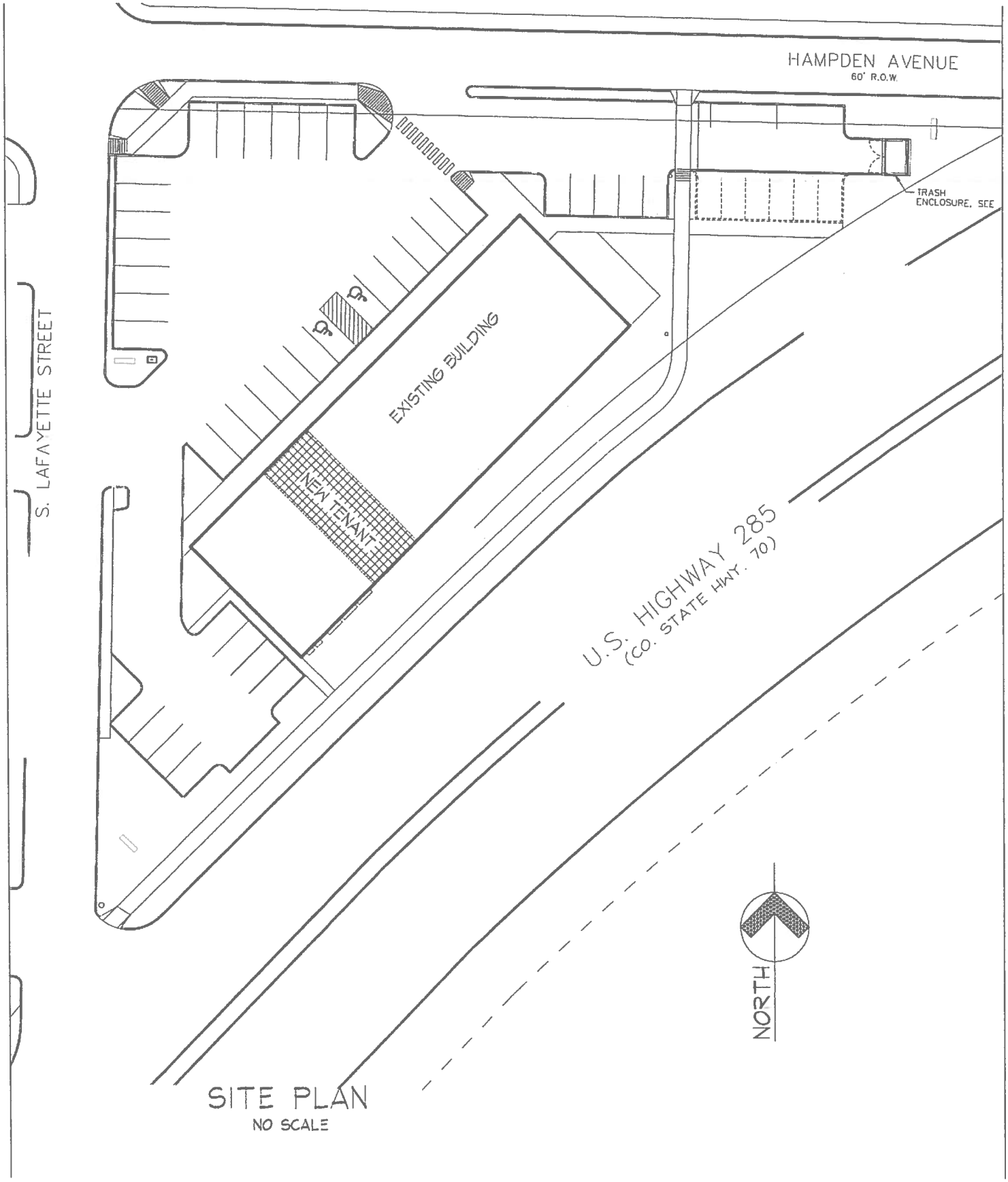
Cherry Hills Sushi Co
1400 E. Hampden #110
Cherry Hills Village, CO 80113



NORTH

SF: 1000

SEATING: 424 SF
KITCHEN: 418 SF
20' X 50'



SITE PLAN
NO SCALE

SCHOOL AFFIDAVIT

STATE OF COLORADO)
)ss
COUNTY OF ARAPAHOE)

(I) (WE) the undersigned do solemnly swear that to the best of (MY) (OUR) knowledge and belief there are no public or parochial schools, or principal campus of any college, university or seminary within 500 feet of the proposed liquor application at (address of place to be licensed)

1400 E. Hampden Ave. #110, Cherry Hills Village, CO 80113

said distance being computed by direct measurement from nearest property line of the land used for school purposes to the nearest portion of the building in which liquor is to be sold, using a route of direct pedestrian access, measured as a person would walk safely and properly, without trespassing, with right angles at crossings and with the observance of traffic regulations and lights.

SIGNATURE OF APPLICANT

STATE OF COLORADO)
)ss:
COUNTY OF ARAPAHOE)

Olivia Susie Maeng being by me first duly sworn, deposes and says: that s/he is the above named person; that s/he has read the foregoing Affidavit, that s/he knows the contents thereof, and that all matters and things therein set forth are true of (his/her) own knowledge and s/he agrees to conform to all rules and regulations promulgated by the State Licensing Authority in connection therewith.

Subscribed and sworn to before me this 6th day of December, 2015.

My Commission Expires: 02/09/2019

Notary Public

KRISTINE A. HOELTGEN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19954001245
MY COMMISSION EXPIRES FEBRUARY 9, 2019

Cherry Hills Sushi Co Menu

Hand Rolls

Cucumber	$3.00	
Salmon	$4.00	
Tuna	$5.00	
Yellowtail	$5.00	
Spicy Tuna	$5.00	
Blue Crab	$6.00	
Toro	$7.00	
*special Uni	$7.00	
*special lobster	$8.00	

Sashimi

yellowtail	$7.00	$12.00
tuna	$7.00	$12.00
salmon	$7.00	$12.00

Combination

3 rolls	$10.00
4 rolls	$15.00
5 rolls (lobster)	$20.00
add sashimi to order	$5.00

Drinks

Bottled Still	$2.00
Bottled Gas	$2.00
Soda	$2.00
Green Tea	$2.00

SHOPPING CENTER LEASE
BY AND BETWEEN

Centre 3 LLC

And

Cherry Hills Sushi Co., LLC

THIS LEASE is entered into as of the 16 day of October, 2015, in Cherry Hills Village, Colorado, by and between Centre 3 LLC (hereinafter referred to as "Landlord"), whose address is 789 Sherman Street, Suite 430, Denver, Colorado, 80202 and Cherry Hills Sushi Co. LLC (hereinafter referred to as ("Tenant"), whose address is1400 East Hampden Avenue, Suite 110, Cherry Hills Village, Colorado 80113.

RECITALS:

In consideration of the premises, the mutual covenants hereinafter contained, and each and every act to be performed hereunder by them, Landlord and Tenant hereby enter into the following Lease pertaining to the hereinafter described premises:

ARTICLE I
LEASED PREMISES.

Landlord hereby lets and demises to Tenant and Tenant hereby leases from Landlord for the "Lease Term" (as that term is defined in Article II) and upon the terms and conditions set forth in this Lease; 1,140 square feet of floor space (the "Leased Premises"), located in a building (the "Building"), constructed on that certain real property located at 1400 E. Hampden Road, Cherry Hills Village, Colorado 80113 (the "Property"). The location of the Leased Premises within the Building is outlined on Exhibit A attached hereto. The Building and Property together with the surrounding "Common Areas" (as that term is defined in Article VI), and may be referred to hereinafter as the "Shopping Center."

The use and occupation by Tenant of the Leased Premises shall include the use in common with others entitled thereto of the Common Areas, parking areas, loading facilities, sidewalks, and other facilities as may be designated from time to time by Landlord, subject, however, to the terms and conditions of this Lease and to reasonable rules and regulations for the use thereof prescribed from time to time by Landlord. However, the areas, roads and facilities described herein shall not be deemed to be a portion of the Leased Premises.

ARTICLE II
TERM

The term of this Lease (the "Lease Term") shall begin 60 days after the date Tenant is given possession, on the date the Leased Premises are available to be occupied, or upon Tenant opening for business, whichever occurs first, the "Lease Commencement Date" and extending until twelve o'clock noon on March 31, 2021; provided, however, if the Lease Commencement Date occurs on a day other than the first day of a month, the Lease Term shall be measured from the first day of the month next following the month in which the Lease Commencement Date occurs. In this event, Minimum Rent, at the rate hereinafter provided, shall be prorated for any partial month, on a per diem basis, and shall be due and payable on the Lease Commencement Date. Subsequent to the Lease Commencement Date, Landlord and Tenant shall execute an Addendum to this Lease setting forth the exact date of the commencement and termination of the Lease Term.

ARTICLE III
MINIMUM RENT

Tenant covenants and agrees to pay a reserved minimum rent ("Minimum Rent") for the Leased Premises for the full Lease Term, not including any options to renew, per the amount on Exhibit D, plus rental payments for any partial month of occupancy prior to the commencement of first "Lease Year," which amount shall be payable in

monthly installments pursuant to Exhibit D attached hereto, without set off or deduction, without notice or demand, in advance, on or before the first day of each month during the Lease Term at the address of Landlord first written above or at the other address or addresses as Landlord may hereafter determine by written notice to Tenant, for the purposes of this Lease, the term "Lease Year" shall mean 12 consecutive months starting with the first day of the Lease Term.

Minimum Rent shall become due three (3) months after Lease Commencement Date

ARTICLE IV
REAL ESTATE TAXES AND ASSESSMENTS

In addition to the rent set forth above, Tenant shall pay to Landlord as additional rent $10.00 per square foot for 2015, at the same time and in the same manner as provided for payment of Minimum Rent in Article III, its estimated pro rata share of all of the real property taxes or any tax levied in lieu thereof on or in addition thereto, or due to the ownership or operation of, the Shopping Center levied, assessed or allocated (including any special assessments created by formation of a special improvement district or created in any other manner) for any period included in the Lease Term or any extensions thereof, and also its pro rata share of all such taxes levied or assessed thereon for any period, part of which is included in the Lease Term or any extensions thereof.

Tenant's pro rata share of the real estate taxes and assessments on the land comprising the Shopping Center shall be equal to the number of square feet included in the Leased Premises divided by the total number of square feet included in buildings built on land which is owned by Landlord in the Shopping Center (at the time such buildings are completed) and which land is included in such tax bill, times the amount of real estate taxes and assessments to be paid by Landlord for land included in the Shopping Center. Tenant's pro rata share of the improvement taxes for the Building shall be equal to the number of square feet included in the Leased Premises, divided by the total number of square feet included in the Building or portion thereof, included in the tax bill, times the amount of real estate taxes and assessments to be paid by Landlord for the Building.

For the tax years in which this Lease commences and terminates, Tenant's obligations pursuant to this paragraph shall be apportioned on a per diem basis in such proportions as Tenant's tenancy of the Leased Premises bears to 365 days. Tenant's pro rata share shall be based upon estimates made by Landlord of projected taxes due for the subject calendar year. The difference between the estimated taxes and assessments and the actual taxes and assessments due shall be accounted for by Landlord within 60 days following notice to Landlord of the actual charges for the subject year, and the necessary refund by Landlord or additional payment by Tenant in the amount of the difference shall be paid within 30 days following notice to Tenant of the amount due, provided, however, no refund shall be paid Tenant should Tenant be in default on any of its leasehold obligations hereunder unless Tenant cures such default within 30 days of receiving notice from Landlord and further provided that if Tenant owes Landlord in excess of $3,000.00 for real property taxes and assessments Tenant shall be permitted to pay the total so owing over three months without interest. This paragraph shall not be deemed or construed to require Tenant to pay or discharge any inheritance or estate taxes or taxes upon inheritance or right of succession which may be levied against any estate or interest of Landlord, even though such taxes shall become a lien against the Leased Premises.

ARTICLE V
CONSTRUCTION AND ACCEPTANCE OF PREMISES

All construction to be completed in the Leased Premises by Tenant, pursuant to Article XII ("Tenant's Work"), must be approved by Landlord prior to commencement of construction. Within ten (10) days after execution of this Lease by Tenant, Tenant shall deliver to Landlord for approval, its drawings, plans, and specifications for Tenant's Work. Landlord shall have seven (7) days after its receipt to approve Tenant's drawings, plans, and specifications or provide written objection thereto. If Landlord fails to respond within seven (7) days, the drawings, plans, and specifications shall be deemed approved and Tenant may complete its work in accordance with the drawings, plans, and specifications submitted to Landlord. If Landlord objects, then Tenant shall have seven (7) days to correct the items objected to and resubmit corrected drawings, plans, and specifications. This process shall continue until the drawings, plans, and specifications are approved.

Landlord agrees to provide Tenant an allowance of $12.00 per square foot ($13,680) for interior

improvements to the Leased Premises.

Upon the date of possession, Tenant agrees to accept delivery of the Leased Premises, to enter upon them, to promptly and diligently thereafter install its furniture, fixtures and equipment, to perform Tenant's work as described on Exhibit A contemporaneously with the remaining Landlord's work, if any.

Landlord shall not be responsible nor have any liability whatsoever at any time for loss or damage to Tenant's Work or to fixtures, equipment or other property of Tenant installed or placed by Tenant on the Leased Premises, except for Landlord's negligence. Any occupancy by Tenant prior to the Lease Commencement Date, even though rent free or for Tenant's Work build-out purposes, shall in all respects be the same as that of a Tenant under this Lease; in addition, Tenant shall not, during any such occupancy, interfere with Landlord's Work either to the Leased Premises or to the Building. By occupying the Leased Premises as a Tenant or to complete Tenant's Work and install fixtures, facilities or equipment, Tenant shall be deemed conclusively to have accepted the same and to have acknowledged that the Leased Premises are in the condition required by Landlord's covenants described hereinabove, except as to incomplete or defective items of Landlord's Work then specified in writing by Tenant. As to any such defects, Landlord shall have a reasonable time following such notification within which to correct the same, so long as such corrective efforts do not delay Tenant's work or Tenant's ability to open for business. In no event shall Landlord be liable to Tenant for latent, non structural defects more than one year after the Lease Commencement Date. In the event of any dispute, the certificate of Landlord's architect or engineer shall be conclusive that the Leased Premises are in the condition required by this Lease and are Ready for Occupancy.

ARTICLE VI
PARKING AND COMMON AREAS

Landlord provides limited area for off-street parking and other "Common Areas" for the non-exclusive use of Tenant, its employees, agents, servants, customers and other invitees, in common with Landlord, other tenants of the Shopping Center, and their respective employees, agents, servants, customers, and invitees, except when such are being repaired, altered or reconstructed, and except as provided hereinafter. As the term is used herein, "Common Areas" shall mean all those areas of the Shopping Center on which buildings have not been built, including, but not limited to, parking areas; Common Areas shall not include, however, any outside sales areas which are segregated from the rest of the Shopping Center or used exclusively by any one tenant. Tenant shall not at any time interfere with the rights of Landlord and others entitled to similar use of Common Areas. Tenant warrants that it has inspected the area and size of the parking areas, and that they are sufficient for its needs. An excessive use of parking areas by another Tenant which cannot reasonably be controlled by Landlord shall not be a default or breach of the Lease, and shall in no way suspend or terminate any of Tenant's obligations under this Lease.

All Common Areas furnished by Landlord shall be subject to the reasonable control and management of Landlord who shall have the right, but not the obligation, from time to time to establish, modify and enforce reasonable rules and regulations with respect thereto. Tenant agrees to abide by all such rules and regulations. Landlord further reserves the right to change the area, to rearrange the area, and to restrict or eliminate the use of any Common Areas, and do such other acts in and to Common Areas to change the location of building areas in the Shopping Center as Landlord shall determine, provided that the number of parking spaces as required hereunder shall remain substantially the same. Such actions may not be deemed an eviction of Tenant or a disturbance of Tenant's use of the Leased Premises. Landlord may, at its sole and exclusive discretion, designate areas for parking by Tenant's employees, and Tenant shall thereafter be responsible to insure that its employees park in the designated areas.

No merchandise and/or services shall be displayed, sold, leased, stored or offered for sale within the Common Area, except for occasional promotions, if any, first approved by Landlord. The foregoing provisions shall not prohibit the installation of minor convenience facilities such as mailboxes, public telephones, benches, or public transportation shelters, as Landlord may from time to time deem appropriate to construct or permit to be constructed on the Common Area (except in any service area), no signed vehicle shall be parked in the common area for longer than two hours, except for loading and unloading purposes. The foregoing provision shall not prohibit the temporary parking of any delivery vehicles (including trailers) within the designated service area, nor shall it prohibit the creation of an outside sales area that is enclosed by a security fence which has been approved by Landlord, in its sole discretion.

Tenant covenants and agrees to pay as additional rent a pro rata share of all costs and expenses incurred or earned by Landlord in operating and maintaining the Common Areas and other areas actually used or available for use by Tenant and its employees, agents, servants, customers and other invitees, including, but not by way of limitation, costs of, gardening and maintaining the landscaping, the cost of replacement of plants and planters, the cost of fire, casualty, public liability and property damage insurance, repairs, replacements, line painting, sealing, resurfacing, lighting, all repair and replacement costs relating to any utility service lines, which utility service lines do not service the Leased Premises exclusively, sanitary control, clearing, removal of snow, trash, rubbish, garbage and other refuse, interest on any funds advanced, depreciation on machinery and equipment used in such maintenance, the cost of personnel to implement such services, to direct parking, to provide security, and to police the Common Areas and parking areas, any property management fees earned by Landlord or charged by any party employed to manage the Shopping Center or the affairs of the shopping center, plus 15% of all of the foregoing costs to compensate Landlord for its administration and overhead expenses. The liability of Tenant for the payment of such costs shall commence on the Lease Commencement Date or any date thereafter when Landlord may cause such services to be retained or performed. Said costs shall be paid as additional rent in advance on the first day of the month at the same time and place stated for the payment of the Minimum Rent. Landlord reserves the right to increase the Common Area maintenance charges in order to create a reserve fund from which Landlord can pay extraordinary Common Area maintenance costs.

Tenant's pro rata share shall be based on Landlord's estimates of said costs, and shall be equal to the number of square feet included in the Leased Premises as defined above in Article I, divided by the total number of square feet included in buildings built on land which is owned by Landlord in the Shopping Center (at the time such buildings are completed) to the extent the premises within such buildings are using the services described herein, times the amount of the above-described costs to be paid by Landlord for the Shopping Center. The difference between the estimated costs and the actual costs shall be accounted for by Landlord at Landlord's office, within 90 days following the end of Landlord's fiscal year or within 90 days following termination of, or Tenant's default under the provisions of this Lease, and the necessary refund by Landlord or additional payment by Tenant, in the amount of the difference shall be paid within 30 days following notice to Tenant of the amount due; provided, however, no refund shall be paid Tenant should Tenant be in default on its leasehold obligations. However, if Tenant cures any such default within 30 days of receiving the notice from Landlord, by setoff or otherwise, Tenant shall be entitled to receive the overpayment of Common Area Maintenance ("CAM") charges.

ARTICLE VII
MAINTENANCE OF THE BUILDING AND REPAIRS

Landlord shall keep the roof, foundation, the four outer walls (excluding all glass windows and window frames and doors), gutters and downspouts of the Building in good repair; provided, however, that if Landlord shall be called upon to make any such repairs occasioned by the negligent act or omission of tenant, its employees, agents, servants, customers and other invitees, the total cost and expense of such repairs shall be borne by Tenant, and such costs shall not be prorated among other tenants of the Shopping Center. Subject to the previous sentence, Tenant shall pay its pro rata share of all costs of roof repair. Landlord shall be paid 10% of such costs to compensate Landlord for its administrative and overhead expenses. Landlord may enter into a mechanical system inspection service contract with a reputable service company and Tenant shall pay its pro rata share of the costs of said service contract plus 10% of said costs to compensate Landlord for its administrative and overhead expenses. Landlord may enter into contracts for the cleaning of all windows in the Shopping Center and for sweeping of and removal of snow from sidewalks adjacent to the Leased Premises, for which Tenant shall similarly pay its pro rata share of the costs thereof, plus 10% of said costs to compensate Landlord for its administrative and overhead expenses. Tenant shall pay its pro rata share of all costs of any replacements or repairs resulting from determinations made by the inspection service (plus 10% of said costs to compensate Landlord for its administrative and overhead expenses), and shall keep the heating, ventilating, and other mechanical appurtenances and equipment in good order, operating condition and repair, including replacement, if necessary. Tenant's pro rata share of costs due under this Article shall be equal to the number of square feet in the Leased Premises, as defined above in Article I, divided by the total number of square feet included in the buildings built on land which is owned by Landlord in the Shopping Center (at the time such buildings are completed) to the extent the premises in such buildings are using the services described herein; however, Tenant's pro rata share of costs for roof replacement and repair shall be equal to the number of square feet in the Leased Premises, as defined above in Article I, divided by the total number of square feet in the Building. Tenant shall maintain, replace, repair and keep all parts of the interior of the Leased Premises (which include but are not limited to, interior wall surfaces, doors, door hardware,

plumbing, electrical, and mechanical equipment within the Lease premises), in good order, operating condition and repair. Tenant shall also keep the Leased Premises in a clean, sanitary and safe condition in accordance with all directions, rules and regulations of any health officers, building inspectors or other proper officers of the governmental agencies having jurisdiction, and shall dispose of all trash and waste materials in outside trash containers. Tenant shall flatten all boxes for dumping of trash. Tenant shall comply with all requirements of laws, ordinances and other rules and regulations that affect the Leased Premises, Tenant shall permit no injury to the Building or Leased Premises, and shall, at its own cost and expense, replace with glass of the same quality any damaged or broken glass, including plate glass or other breakable materials used in structural portions of any interior or exterior windows and doors on the Leased Premises. In addition, Tenant shall, at its own cost and expense, replace any light bulbs, frames, and accessory parts thereof on the Leased Premises that may be broken or damaged during the Lease Term. At the expiration of the Lease Term, Tenant shall surrender the Leased Premises broom clean in as good order as the same is on the day Tenant first opened for business to the public, reasonable wear and tear excepted.

ARTICLE VIII
UTILITIES

Upon the Lease Commencement Date, and at all times during the Lease Term, Tenant, in addition to the rents required hereunder, shall pay, prior to delinquency, the costs of all utilities, including but not limited to gas, propane, electricity, water and sewer used and consumed by Tenant, its employees, agents, servants, customers and other invitees in the Leased Premises, and to the extent possible shall contract for the same in its own name and on separate meters. Throughout the duration of Tenant's occupancy of the Leased Premises, Tenant shall use reasonable efforts to ensure that entities responsible for maintenance keep such meters and installation equipment in good working order and repair at Tenant's sole cost and expense. Failure to do so may allow Landlord to cause such meters and equipment to be replaced or repaired, and collect the cost thereof from Tenant as additional rent. If such utilities charges cannot be separately metered or separately determined, Tenant agrees to pay its pro rata share thereof, which shall be equal to the number of square feet included in the Leased Premises, as defined above in Article I, divided by the total number of square feet included in that portion of the Building utilizing such utilities, and which shall be paid on the first day of the month at the same time and place stated in Article III for the payment of Minimum Rent.

Landlord does not warrant or guarantee the continued availability of any or all of the utility services necessary or desirable for the use of the Leased Premises by Tenant. In no event shall the interruption, diminution or cessation of such availability caused by persons other than Landlord be construed as an actual or constructive eviction of Tenant, nor shall Tenant be entitled to any abatement of its rent obligations under this Lease on account thereof. In the event that a deposit is required by a public or quasi-public organization in order to furnish or agree to furnish any service to the Leased Premises, Tenant agrees and covenants to pay such charge or deposit or its pro rata thereof. Any money so paid shall not entitle Tenant to an offset or reduction of its rent liability under this Lease, nor shall Landlord be obligated to return, repay or credit Tenant for any money so paid.

Landlord reserves the right to stop, for not more than 24 hours if within control of Landlord or for as short a time as possible if due to an accident or reason not within Landlord's control, the service of any or all of the utilities hereinabove described when, in Landlord's sole discretion, such stoppage is necessitated by reason of accident, repairs, inspections, alterations or improvements, until any of the same have been completed. In such event, Landlord shall not be deemed guilty of a breach of this Lease, nor shall Tenant be entitled to any abatement of its rent obligations under this Lease on account thereof.

ARTICLE IX
CARE OF LEASED PREMISES

Tenant agrees to abide by all reasonable rules and regulations adopted by Landlord with regard to its occupancy of the Leased Premises and its use of the Common Areas; not to commit any waste upon the Leased Premises or overload the floors thereof; to keep the Leased Premises well-lighted, and in a neat and clean condition; not to conduct any auction, fire, bankruptcy, liquidation or going-out-of-business sales thereon without the prior written consent of Landlord; and to operate its business thereon continuously during the Lease Term at substantially the same hours as the other tenants unless prevented from doing so by governmental regulations or acts of God. Tenant understands that the Leased Premises constitutes one of a number of stores in the Shopping

Center, and that it is desirable and necessary that as many such stores as possible operate under substantially the same rules and regulations and at the same hours.

ARTICLE X
SIGNS AND ADVERTISING

Tenant shall be obligated to have a sign in accordance with Exhibit B attached hereto. Tenant shall not erect or install any type of storefront, any exterior or interior window or door signs, any paper signs or advertising signs painted on windows, or other types of signs or placards. All signs, placards, fixtures, displays, merchandise and equipment shall conform to the criteria set forth in Exhibit B. Tenant shall pay all costs of causing its signs to be erected, maintained, and removed upon termination of occupancy.

ARTICLE XI
USE OF LEASED PREMISES

The Leased Premises shall be used and occupied by Tenant (and any subtenants and assignees of Tenant) only for the operation of a retail sushi restaurant and for no other purpose, except such use shall not violate any restriction or restrictive use thereto granted by Landlord to any other tenant. Changes to the use of the Leased Premises may be requested of Landlord at any time and Landlord shall approve or disapprove such requested use within 14 days.

EXCLUSIVE USE: Landlord shall not, during the term of this Lease, enter into any other lease with any Tenant allowing the operation within this Shopping Center of a facility that offers sushi, provided the Tenant has not been in default as provided herein. Buildings not owned by the Landlord are excluded from this stipulation.

ARTICLE XII
ALTERATIONS AND ADDITIONS

Tenant shall not, under any circumstances, make alterations or additions to the exterior of the Building. Tenant shall make no alterations or additions to the interior of the Leased Premises, including equipment or appliances installation connection with the transmission or delivery of the utilities, without first procuring Landlord's written consent, after delivering Landlord the plans and specifications therefore. Landlord shall have 14 days from the receipt of a written request to make alterations and additions to the premises to respond to Tenant's request. Tenant shall promptly pay for the costs of all Tenant Work regardless of the cost, and shall indemnify Landlord against liens, costs, damages and expenses incurred by Landlord, if Landlord shall be joined in any action or proceeding involving such work unless the lien is disputed by Tenant in good faith. If not disputed in good faith, Landlord may, at its option, pay sums due in order to release such liens, in which event any such sums paid by Landlord shall be due to Landlord by Tenant, as additional rent, upon demand. Under no circumstances shall Tenant commence any such work until Landlord has been provided with certificates evidencing that all the contractors and subcontractors performing such work have in full force and effect adequate workers' compensation insurance as required by the laws of the state of Colorado, public liability and builders risk insurance in such amounts as required by law and according to terms satisfactory to Landlord.

Within five days after notifying Landlord of any planned erection, construction, alteration, removal, addition, repair or other improvement ("Tenant's Work"), Tenant shall post and keep posted until completion of Tenant's Work, in a conspicuous place upon the doors providing entrance to the Leased Premises, and shall personally serve upon such contractors or subcontractors performing Tenant's Work, a notice stating that Landlord's interests in the Shopping Center shall not be subject to any lien for Tenant's Work.

All alterations, additions, improvements and fixtures, including but not by way of limitation, lighting fixtures, ducts, controls, diffusers, filters or other equipment for distribution of heating and cooling, and other personal property which may be made or installed by, for on behalf of Tenant, upon the Leased Premises, and which in any manner are attached to the floors, walls, or ceilings except Tenant's inventory and trade fixtures shall become the property of Landlord at the time of installation and shall remain upon and be surrendered with the Leased Premises and shall be and become the property of Landlord absolutely upon installation. During the Lease Term, Tenant shall not remove or damage the above described Tenant's Work and fixtures without the written

consent of Landlord. Landlord shall have 14 days from the receipt of a written request to make alterations and additions to the premises to respond to Tenant's request.

ARTICLE XIII
INSURANCE

Effective as of the Lease Commencement Date and continuing throughout the Lease Term, and any extensions thereof, Tenant shall pay to Landlord its pro rata share of estimated insurance premiums for an "all risk" insurance policy, with an endorsement insuring against loss of both Minimum Rent (including Extended Period of Recovery, if applicable) which Landlord shall obtain, insuring the buildings and improvements of the Shopping Center for 100% of their replacement value, and premiums for any other policy of insurance which Landlord or Landlord's mortgagee for the Shopping Center requires to be kept in force. Tenant's pro rata share shall be based upon actual insurance premiums for the prior 12-month period, if any, or if none, based upon Landlord's estimate thereof, and shall be equal to the number of square feet in the Leased Premises divided by the number of square feet included in buildings built and owned by Landlord in the Shopping Center, which buildings are covered by such insurance, times the amount of said premiums paid by Landlord for the Shopping Center. Tenant's pro rata share shall be payable, at Landlord's option, either: (i) one-twelfth (1/12) of Tenant's pro rata share paid monthly through the Lease Term; or (ii) Tenant's pro rata share paid annually, in advance, on each anniversary of the Leased Commencement Date.

Tenant shall, in addition, at its sole cost and expense, maintain the following insurance or pay the following premiums with respect to the Leased Premises: (a) fire and extended overage insurance insuring all alterations and additions made by Tenant to the Leased Premises and all of its fixtures, inventory, furniture and equipment for the full replacement value thereof with the broadest possible coverage ("all risk") on a 100% co-insurance form insuring against all risks of direct physical loss and excluding only such unusual perils as nuclear attack, earth movement, flood and war, (b) public liability, bodily injury and property damage comprehensive insurance coverage insuring against claims of any and all personal injury, death or damage occurring in or about the Leased Premises or the sidewalks adjacent thereto, with a combined single limit coverage of not less than $1,000,000, (c) plate glass insurance sufficient to discharge Tenant's obligations as above provided and (d) in the event liquor is sold on the Leased premises in any form, Liquor Legal Liability insurance. Landlord or Landlord's mortgagee may reasonably require increases in the above-described coverage from time to time, in which event Tenant shall obtain the same and pay the costs thereof.

Each such insurance policy shall be issued by an insurance company of recognized standing, authorized to do business in the state of Colorado and with an A.M. Best rating of "A" or better. The policies required in the above paragraph shall name Landlord and Tenant as parties, insured-loss payees, and where applicable, be payable to Landlord and Tenant as their interests may appear. If required by Landlord, such policies shall also contain a loss payable endorsement in favor of the holder of any first mortgage on the Property or portion thereof. All such policies shall provide that no cancellation or termination thereof or any material modification thereof shall be effective except on 60 days prior written notice to Landlord, and, if applicable, said mortgagee. Certificates evidencing such insurance shall be delivered to Landlord upon the Lease Commencement Date and each anniversary thereof.

Without Landlord's prior written consent, Tenant shall not carry any stock of goods, store any hazardous materials or do anything in or about the Leased Premises which would in any way tend to increase insurance rates or invalidate any policy on the Leased Premises or the Building in which the same are located or carried on Landlord's operation of the Building. If Landlord shall consent to such use, Tenant agrees to pay as additional rent any increase in premiums for insurance against loss by standard fire and extended coverage resulting from the business carried on in the Leased Premises by Tenant. If Tenant installs any electrical equipment that overloads the power lines to the Building, Tenant shall at its own expense make whatever changes are necessary to comply with the requirements of insurance underwriters and insurance rating bureaus and governmental authorities having jurisdiction.

The obligations of Tenant, as contained in this Article, shall inure directly to Landlord's first mortgagee and shall not be invalidated by any act, neglect or default of Landlord, nor by any foreclosure or other similar proceeding, nor by any change in title or ownership of the Leased Premises.

ARTICLE XIV
MUTUAL WAIVER OF SUBROGATION

Landlord and Tenant hereby grant to each other, on behalf of any insurer providing fire and extended coverage to either of them covering the Leased Premises or improvements thereon or contents thereof, a waiver of any right of subrogation any such insurer of one party may acquire against the other or as against the Landlord or Tenant by virtue of payments of any loss under such insurance. Such a waiver shall be effective so long as the Landlord and Tenant are empowered to grant such waiver under the terms of their respective insurance policy or policies and such waiver shall stand mutually terminated as of the date either Landlord or Tenant gives notice to the other that the power to grant such waiver has been so terminated.

ARTICLE XV
DESTRUCTION OF OR DAMAGE TO LEASED PREMISES

In case the Leased Premises or the Building in which the Leased Premises are situated shall be partially or totally destroyed by fire or other peril insurable under standard fire and extended coverage insurance so as to become partially or totally untenantable, the same shall be repaired as speedily as possible at the expense of Landlord, to the extent of insurance proceeds available; unless Landlord, shall elect not to rebuild as hereinafter provided; or, if the remainder of the Lease Term is less than 24 months, Landlord shall not be required to rebuild if Tenant fails to exercise (within 15 days following notice from Landlord of demand to do so) the next option, if any, to extend the Lease Term which may be available, and if no such option is available, Landlord may terminate this Lease upon the date of the damage or destruction. Rent and CAM charges abate during repairs.

In case the Leased Premises or the Building in which the Leased Premises are situated shall be destroyed or so damaged by fire or other peril insurable under standard fire and extended coverage insurance as to render more than 33% of the Leased Premises or 33% of the said Building untenantable, Landlord may, at its election to be exercised by notice given to Tenant not more than 30 days after the occurrence of the damage, terminate, this Lease, but if Landlord shall not so elect, Landlord shall, as promptly as may be reasonable, repair, rebuild or restore any such damage suffered in the Leased Premises as in this Article provided; however, Landlord's obligation shall be limited to restore the Leased Premises to their original condition as of the date they are declared ready for occupancy, but only to the extent allowed by available insurance proceeds. Rent and CAM charges abate proportionately during repairs.

In case of casualty to the Leased Premises resulting in damage or destruction which casualty is not insured against, Landlord shall be under no obligation to restore, replace, or rebuild the Leased Premises, and this Lease shall be deemed terminated on the 30th day after such casualty and of no further force and effect as of the date of such casualty, unless Landlord elects to restore, repair, replace and rebuild the Leased Premises and so notifies Tenant in writing within 30 days after such casualty; in that event, this Lease shall continue in full force and effect during the period of such restoration, repairing, replacing or rebuilding. Furthermore, if Landlord so elects to restore, repair, replace or rebuild the premises, Landlord shall proceed with reasonable diligence to do so and place the Leased Premises in substantially the same condition as of the date they are declared ready for occupancy. Rent and cam charges abate proportionately during repairs.

Tenant shall in the event of any such damage or destruction, unless the Lease shall be terminated as provided in this Article, forthwith replace or fully repair all exterior signs, trade fixtures, equipment, display cases and other installations originally installed by Tenant. Landlord shall have no interest in the proceeds of any insurance carried by Tenant, and Tenant shall have no interest in the proceeds of any insurance carried by Landlord. Tenant's Minimum Rent shall abate in that same proportion as the number of square feet rendered untenantable bears to the total number of square feet in the Leased Premises; Tenant agrees during any period of reconstruction,

restoration or repair of the Leased Premises and/or of the Building to continue the operation of its business in the Leased Premises to the extent reasonably practicable from the standpoint of good business.

ARTICLE XVI
EMINENT DOMAIN

If the whole of the Leased Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then the Lease Term shall cease and terminate as of the date of title vesting in such proceeding, all rent shall be paid up to that date, and Tenant shall have no claim against Landlord for the value of any unexpired Lease Term.

If a part of the Leased Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, and in the event that such partial taking shall be so extensive that Tenant is unable to operate in the remainder substantially the business being conducted on the Leased Premises immediately prior to such taking, then from the day of such taking and for a period of ten days thereafter, Tenant shall have the right to either immediately terminate this Lease and declare the same null and void by giving notice thereof within said period to Landlord or, alternatively, to continue in the possession of the remainder of the Leased Premises under the terms herein provided, except that the Minimum Rent and CAM charges shall be reduced in such just proportion as the nature, value and extent of the part so taken bears to the whole of the Leased Premises.

In the event, that Tenant shall terminate this Lease as provided hereinabove, such termination shall be as of the date of Tenant's written notice (but rent shall be due until Tenant's surrender of the Leased Premises), and Tenant shall have no claim against Landlord for the value of the unexpired Lease Term, or for damages of any kind.

In the event of a partial taking which is not extensive enough to render the Leased Premises unsuitable for the business of Tenant, then Landlord shall promptly restore the Leased Premises to a condition comparable to its condition at the time of such taking, less the portion lost in the taking, and this Lease shall continue in full force and effect except that the Minimum Rent and CAM charges shall be reduced in the manner provided hereinabove.

As regards any obligations of Landlord described in this Article, in no event shall Landlord be required to spend an amount in excess of the amount available to Landlord from the award for any part of the Leased Premises or parking area taken.

In the event of any condemnation or taking as aforesaid, whether in whole or in part, Tenant shall not be entitled to an any part of the award paid for such condemnation, and Landlord shall receive the full amount of such award, Tenant hereby expressly waiving any right or claim to any part thereof, including but not limited to, all damages as compensation for diminution in value of the leasehold, reversion, and fee. Although all damages in the event of any condemnation or taking belong to Landlord, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reason of condemnation and for or on account of any cost or loss which Tenant might incur in removing Tenant's merchandise, furniture, fixtures, leasehold improvement and equipment.

ARTICLE XVII
INDEMNIFICATION

Except as concerns losses paid by insurance for which Landlord has waived the right of subrogation, during the term of this Lease the Tenant shall indemnify and save Landlord harmless from any liability for damages to any person or any property in or upon the Leased Premises, including the personal property of Tenant and its employees, agents, servants, customers or other invitees, and further from any loss, cost, damage or expense (including reasonable attorneys' fees) arising out of any accident or other occurrence due directly or indirectly to the negligence of Tenant, its employees, agents, servants, customers or other invitees.

Except as concerns losses paid by insurance for which Tenant has waived the right of subrogation, Landlord shall indemnify and save Tenant harmless from any liability for damages (including reasonable attorneys' fees) arising out of the negligence of Landlord. However, Landlord shall not be responsible to Tenant, nor required to save Tenant harmless from any loss or damage which may be occasioned by or through the acts or omissions of persons occupying portions of the Shopping Center other than the Leased Premises, and Landlord shall not be held

liable hereunder with respect to the repair or maintenance of any portions of the Leased Premises required to be repaired or maintained by Landlord as aforesaid, unless Landlord shall neglect to make such repairs or perform such maintenance after due notice in writing and a reasonable opportunity to correct the same. In addition, and notwithstanding any indemnity given hereunder, Tenant shall not hold or attempt to hold Landlord liable for any injury or damage, unless Landlord is negligent, either proximate or remote, occurring through or caused by fire, water, or any repairs or alterations to the Leased Premises or otherwise; or liable for any injury or damage occasioned by defective wiring or breakage or stoppage of plumbing or sewage upon the Leased Premises, whether said breakage or stoppage results from freezing, or otherwise. All property kept, stored or maintained in the Leased Premises shall be so kept, stored or maintained at the risk of Tenant only.

ARTICLE XVIII
ASSIGNMENT AND SUBLETTING

Tenant shall not assign, sell, pledge, mortgage, encumber or in any manner transfer this Lease or any interest therein, nor sublet the Leased Premises or any part or parts thereof, nor permit occupancy by anyone with, through or under it, nor allow the sale or transfer of any of its capital stock (in the case of a corporation) or partnership interests (in the case of a partnership) to the extent that Tenant loses voting control of the entity existing upon execution of this Lease, nor transfer all or substantially all of Tenant's assets, except inventory, without the prior written consent of Landlord, which shall not be unreasonably withheld. Landlord and Tenant hereby acknowledge that this provision regarding assignment and subletting and Landlord's discretion thereof, has been fully and freely negotiated. Tenant shall pay to Landlord a fee of $500 to compensate Landlord for the time and expense of reviewing any request and documentation regarding assignment or subletting. Landlord shall have 30 days from the date of receipt of the written request of Tenant in which to determine whether or not Landlord's consent shall be granted which consent shall not be unreasonably withheld. Landlord shall have no liability of any kind for not consenting to an assignment or subletting.

In addition to any other reasons, Landlord may withhold its consent to any such assignment, letting or subletting, if such assignment, letting or subletting would result in the assignment, leasing or sublease of:

(a) Any portion of the Leased Premises to any subtenant; or

(b) Less than the entire Leased Premises to any subtenant; or

(c) The Leased Premises for a term of less than three years; or

(d) The Leased Premises to any party, business, or lessee who proposes to conduct a business therein which is not in conformance with the use of the Leased Premises, pursuant to Article XI; or

(e) The Leased Premises to any party, business, or lessee who is then a lessee of the Shopping Center if Landlord has or will have during the ensuing six months, suitable space for rent in the Shopping Center; or

(f) The Leased Premises had a rental rate less than the current prevailing market rate for comparable premises in the Shopping Center; or

(g) The Leased Premises to a party whose financial condition and credit rating is not equal to or better than that of Tenant (as determined in Landlord's sole discretion); or

(h) The Leased Premises to a party whose business is of a character which does not, in Landlord's opinion, comport with the character of the Shopping Center.

Any sublease of the Leased Premises executed by Tenant shall incorporate this Lease (the "Underlying Lease") in its entirety and be subject to its terms. Consent by Landlord to one or more assignments of this Lease or to one or more sublettings of the Leased Premises shall not operate as a waiver of Landlord's rights under this Article as to any guarantor of Tenant of any of its obligations under this Lease, nor be construed or taken as a waiver of any of Landlord's rights or remedies under this Lease.

No interest in this Lease shall pass to any trustee or receiver in bankruptcy, to any estate of Tenant, to any assignee of Tenant for the benefit of creditors, or to any other party by operation of law or otherwise without

Landlord's consent.

Landlord shall receive all increases in Minimum Rents, paid by an assignee or sublessee. Tenant shall not share to any extent in such rents.

ARTICLE XIX
LANDLORD'S SALE

In the event of any sale of the Leased Premises, or real property of which the Leased Premises are a part, by Landlord including sales by foreclosure or a deed in lieu thereof, Landlord shall be, and is, entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act or omission occurring after the consummation of sale or lease; and the purchaser or lessee shall, during the period of its ownership or lease term, be deemed without any further agreement between the parties to have assumed and agreed to carry out any and all of the covenants and obligations of Landlord under this Lease. All subsequent purchasers or lessors shall similarly be freed and relieved of all liability hereunder subsequent to the date of such sale or lease by them. In the event of any such sale or lease, Tenant agrees to attorn to and become Tenant of Landlord's successor-in-interest.

ARTICLE XX
DEFAULT

This Lease is made on the condition also that, if any one or more of the following events (herein referred to as an "Event of Default") shall happen;

(a) Tenant shall default in the timely payment of the Minimum Rent, or any other amounts payable hereunder; and such default shall continue for three days following the receipt of written notice from Landlord: or

(b) Tenant shall neglect or fail to perform or observe any of the other covenants herein contained on Tenant's part to be performed or observed, and Tenant shall fail to remedy the same within 15 days after tenant receives written notice from Landlord specifying such neglect or failure (or within such period, if any, as may be reasonably required to cure such default, if it is of such nature that it cannot be cured within said 15-day period, provided that Tenant shall have commenced to effect such cure and shall proceed with due diligence to complete such cure); or

(c) Tenant shall (i) be adjudicated a bankrupt or insolvent, or (ii) file or threaten to file a petition in bankruptcy or for reorganization or for the adoption of an arrangement under the Bankruptcy

Act (as now or in the future amended), or (iii) make an assignment of its property for the benefit of its creditors: . No consent to assignment or subletting shall be granted if Tenant is then in default under this Lease.

(d) Tenant shall vacate or abandon the Leased Premises: then in any one or more of such events Landlord shall have the right, at its election, provided Landlord has given prior written notice to Tenant then or at any time thereafter and while such Event of Default shall continue, either:

(1) To give Tenant written notice of Landlord's intention to terminate this Lease on the date of such given notice or any later date specified therein, and on such specified date Tenant's right to possession of the Leased Premises shall cease and this Lease shall thereupon be terminated; or

(2) Without further notice, to re-enter and take possession of the Leased Premises, or any part thereof, and repossess the same as of Landlord's former estate, and expel Tenant and those claiming through or under Tenant, and remove the effects of either or both (forcibly, if necessary) without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or preceding breach of covenants. Should Landlord elect to re-enter as provided in this section (2), or should Landlord take possession pursuant to legal proceedings or any notice provided for by law, Landlord may, from time to time, without terminating this Lease, relet the Leased Premises, or any part thereof, on behalf of Tenant for such term or terms, and at such rent or rents, and upon such other

terms and conditions as Landlord may deem advisable (which may include concessions and free rent) with the right to make alterations and repairs to the Leased Premises. No such re-entry or taking of possession of the Leased Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease, unless a written notice of termination, specifically stating Landlord's intention to terminate, be given to Tenant.

In the event Landlord does not elect to terminate this Lease, but on the contrary, elects to take possession, then such repossession shall not relieve Tenant of its obligations and liability under this Lease, all of which shall survive such repossession. In the event of such repossession, Tenant shall pay to Landlord as rent:

(a) The Minimum Rent and other sums as hereinbefore provided, which would be payable hereunder if such repossession had not occurred; less

(b) The net proceeds, if any, of any reletting, or the value of Landlord's use, if any, of the Leased Premises after deducting all of Landlord's reasonable expenses in connection with such reletting, including, but without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys' fees, expenses of employees, necessary alteration costs and expenses of preparation for such reletting.

Tenant shall pay such rent to Landlord on the days on which the Minimum Rent would have been payable hereunder if possession had not been retaken, and Landlord shall be entitled to receive the same from tenant on each such day. If Landlord shall be required to commence any action or proceeding to collect the foregoing amounts, or to enforce any other obligation of Tenant under this Lease, Landlord shall be entitled to a reimbursement of all costs and expenses incurred in said matter, including reasonable attorneys' fees.

After repossession of the Leased Premises, Landlord may procure the appointment of a receiver to take possession and collect rents and profits of the business of Tenant, and, if necessary to collect the rents and profits. The receiver may carry on the business of Tenant, and take possession of the personal property used in the business of Tenant, including inventory, trade fixtures, and furnishings, and use them in the business without compensating Tenant, except for sums lawfully due to Tenant. Proceedings for appointment of a receiver by Landlord, or the appointment of a receiver and the conduct of the business of Tenant by the receiver, shall not terminate and forfeit this Lease, unless Landlord has given written notice of termination to Tenant as provided herein.

If, however, this Lease is terminated by Landlord, by reason of any default by Tenant, or terminated by a court of lawful jurisdiction, Landlord shall be entitled to recover as damages from Tenant the excess, if any, of the Minimum Rent reserved in this Lease for the balance of the Lease Term over the then reasonable rental value of the Leased Premises for the same period, plus all of Landlord's costs of reletting the Leased Premises including, but not limited to, repair, alteration and preparation of said Leased Premises for reletting, and any brokerage commission paid or due to any agent of Landlord, which amounts shall be immediately due and payable by Tenant to Landlord. In addition, Landlord shall also recover from Tenant any rent exemption, free rent or excused rent which Landlord may have granted to Tenant as an inducement to Tenant's execution hereof, it being understood that Landlord's granting of such a rent concession is in consideration of Tenant's compliance with the terms and provisions hereof. It is agreed that the then "reasonable rental value" shall be the amount of rent which Landlord may then reasonably obtain as rent for the remaining balance of the Lease Term (including concessions and free rent, if necessary). In addition, all costs incurred in connection with collecting such sum, including reasonable attorneys' fees and costs, shall be recoverable by Landlord from Tenant. Any such damages payable to Landlord pursuant to this Paragraph shall be payable, at Landlord's option, in a lump sum as aforesaid, in equal monthly installments throughout the remainder of the Lease Term, or at the end of the Lease Term (in which event the "reasonable rental value" shall mean the actual rental received by Landlord). If such sum is collected before the end of the Lease Term, Landlord shall be liable to Tenant for any excess amounts received by Landlord.

In the event that Landlord commences summary proceedings in the nature of a forcible entry and detainer or unlawful detention for non-payment of Minimum Rent, additional rent, or for Tenant's failure to perform its other obligations hereunder, Tenant agrees not to file a counterclaim (except to the extent such counterclaim is "compulsory," or if failing to file the counterclaim may result in its waiver) against Landlord in the summary proceedings, nor to consolidate claims against Landlord in said proceedings; however, Tenant doesn't waive its

right hereunder to bring any later action against Landlord for damages. The commencement of such proceedings (including but not limited to the delivery of notice and process thereof) regardless of whether such proceedings are actually commenced, shall not be deemed to terminate this Lease. If Tenant should contest such summary proceedings, it shall post a bond in favor of Landlord for the amount of rent due and for future damages upon termination of this Lease. Landlord and Tenant hereby waive their respective rights to trial by jury in the event of any proceedings.

Notwithstanding anything contained in this Lease or in the Colorado statutes to the contrary, Tenant hereby waives any and all rights it may have to cure any Event of Default more than twice in any calendar year.

In the event of the occurrence of an "Event of Default," Tenant shall immediately forfeit the benefit of any "free rent" periods and/or any unamortized portion of Landlord's tenant finish costs, whether or not accrued at the time of said default. Minimum Rent for the forfeited period and any unamortized portion of Landlord's tenant finish costs shall be due on the first of the month following such default.

ARTICLE XXI
OPTION TO EXTEND

Subject to the provisions of Article XIX, and upon condition that Tenant (a) is not in default at the time of the exercise of any option and (b) has, during the previous Lease Term and any prior option periods, fulfilled all of Tenant's obligations completely and in a timely manner, Landlord grants to Tenant two separate options to extend the Lease Term for two separate additional five (5) year periods with the minimum rent to be determined by increasing the lease rate in place at the end of the lease term to the then prevailing "market rates" to be negotiated between Tenant and Landlord 210 days prior to the expiration of the proceeding Lease term for any option period. If Landlord and Tenant are not able to agree on the market rate then both parties will split the cost of hiring a third party expert consultant to determine the fair market rate for the Option Period.

If Tenant elects to exercise its option hereunder, it shall do so by giving Landlord written notice of such election at least six months before the beginning of the additional period for which the Lease Term is to be extended by the exercise of such option. If Tenant gives such notice, the Lease Term shall be automatically extended for the additional period of years covered by the option so exercised without execution of any extension or renewal lease. The failure of Tenant to exercise its option for the first additional period shall conclusively waive its option for subsequent additional periods, if any.

ARTICLE XXII
LATE RENT PAYMENT

Any payment of Minimum Rent, additional rent or any obligation hereof which may be satisfied by the payment of money, shall bear interest at the rate of 12% per annum from the date due until paid. Tenant acknowledges that late payments by Tenant to Landlord of such rent and other charges will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any encumbrance and notes secured by any encumbrance covering the Leased Premises. Therefore, if any installment of rent due from Tenant is not received by Landlord by the 5th of every month, Tenant shall pay to Landlord an additional sum of $100 or 5% of the minimum rent amount, whichever is greater, as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Any acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, or prevent Landlord from exercising any of the other rights and remedies available to Landlord. Additionally, Tenant shall pay a $25 charge for any checks written to Landlord which are returned due to insufficient funds.

ARTICLE XXIII
NON-DISTURBANCE AND SUBORDINATION

This Lease shall be subject and subordinate to: (a) any reciprocal easement agreements or any other easements and (b) the lien of any first mortgage or other mortgage in favor of the beneficiary of said first mortgage, which Landlord may now or hereafter place upon the Leased Premises and the Shopping Center, and to all terms,

conditions and provisions thereof, to all advances made, and to any renewals, extensions, modifications or replacements thereof. Provided however, that if this Lease is in full force and effect, the right of possession of Tenant to the Leased Premises and Tenant's rights arising out of this Lease shall not be affected or disturbed by the mortgagee in the exercise of any of its rights under the mortgage or the note secured thereby, nor shall Tenant be named as a party defendant to any foreclosure of the lien of mortgage, nor in any other way be deprived of its rights under this Lease. In the event that the mortgagee shall agree to the sale of the Leased Premises pursuant to the exercise of any rights and remedies under the mortgage, or otherwise, such sale shall be made subject to this Lease and the rights of Tenant hereunder. Tenant agrees to attorn to the Landlord, and the Lease shall continue in full force and effect as a direct lease between Tenant and mortgagee or such other person, upon all the terms, covenants and agreements set forth in this Lease. Tenant shall, without further negotiation, execute or effectuate said subordination, sale, foreclosure, and attornment; should Tenant fail to execute same, Tenant hereby appoints Landlord as its attorney-in-fact to execute such documents in mortgagee of defaults by Landlord hereunder, to make rental payments to the mortgagee upon proper notice, and to allow the mortgagee a reasonable time to cure defaults hereunder, if Landlord has not done so.

ARTICLE XXIV
NOTICES

All notices to be given to the other party shall be in writing. Notices shall be either personally delivered to the recipient with a receipt signed by the recipient or the recipient's agent, sent via certified mail, return receipt requested, sent by same day or overnight courier with receipt by the recipient or recipient's agent, or, to the extent that each party has a facsimile machine or computer, by facsimile or electronic mail transmission if the sending fax machine or computer provides confirmation of successful transmission. The addresses, fax numbers and email addresses for each Party are as set forth below:

Tenant: Cherry Hills Sushi Co., LLC
1400 East Hampden Avenue, Suite 110
Cherry Hills Village, CO 80113
Current email address:

Landlord: Centre 3 LLC
c/o Centre Point Properties, LLC
789 Sherman Street, Suite 430
Denver, CO 80202
Current Number: 303-297-3137
Current email address: tmanion@cpointproperties.com

Notice shall be deemed given in each case as follows: (i) upon personal delivery or same day courier service to the recipient; (ii) Upon the earlier of the date of receipt shown on the certified mail return or three business days after deposit in the United States Mail if delivery is by certified mail provided that a stamped receipt of deposit is obtained from the United States Postal Service; (iii) on the next business day after deposit with an overnight courier service for delivery as reflected on the delivery service receipt; or (iv) on the date shown on the electronic mail transmission confirmation or computer report. Either Party may change its address for receiving notice by giving written notice to the other Party according to the procedures noted above.

ARTICLE XXV
DEPOSIT

Concurrently with the execution of this Lease, Tenant has deposited with Landlord, and will keep on deposit at all times during the Lease Term, the sum of Three Thousand Seven Hundred and no/100 Dollars ($3,700.00), the receipt of which is hereby acknowledged, as security for the payment by Tenant of the rents herein agreed to be paid and for the faithful performance of all other terms, conditions and covenants hereof. If, at any time during the Lease Term, Tenant shall be in default in the performance of any provision of this Lease, Landlord shall have the right to use said deposit, or so much thereof as necessary, in payment of any rent in default as aforesaid, in reimbursement of any expenses incurred by Landlord and in payment of any damages incurred by Landlord by reason of Tenant's default, or at the option of Landlord, the same may be retained by Landlord. In such event, Tenant shall, within five (5) business days of Tenant's receipt of written demand of Landlord,

forthwith remit to Landlord a sufficient amount of cash to restore said deposit to its original amount. In the event said deposit has not been utilized as aforesaid, said deposit or as much thereof as has not been utilized for said purposes, shall be refunded to Tenant, without interest, upon full performance of this Lease by Tenant and within fourteen (14) days after termination of this lease. Landlord shall have the right to commingle said deposit with other funds of Landlord. Landlord may deliver the funds deposited herein by Tenant to the Purchaser of Landlord's interest in the Leased Premises in the event such interest be sold, and, thereupon, Landlord shall be discharged from further liability with respect to such deposit. Said deposit shall not be considered as liquidated damages, and if claims of Landlord exceed said deposit, Tenant shall remain liable for the balance of such claims.

ARTICLE XXVI
MISCELLANEOUS

A. Covenant Dependency. The obligation of Tenant to pay rent hereunder is independent of each and every other covenant, duty or obligation of Landlord herein.

B. Liens. Tenant shall not permit mechanics', materialmen's, or other liens against the Shopping Center in connection with any labor, materials, equipment, or services furnished, or claimed to have been furnished. If any such lien shall be filed against the Shopping Center, Tenant shall cause it to be discharged at its sole cost and expense; provided, however, that if Tenant desires to contest any such lien, it may do so, so long as the enforcement thereof is stayed. In the event such a stay is obtained Tenant shall obtain a bond in the amount of 150% of the disputed amount.

C. Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or a partnership or a joint venture between the parties hereto, it being agreed that neither the method of computation of rents or any other provisions set forth herein nor any acts of the parties herein shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant.

D. Representations. Tenant acknowledges and agrees that it has not relied upon any statements, representations, agreements or warranties, except such as are expressed in this Lease.

E. Amendments or Modifications. No amendment or modification of this Lease or any approvals or permissions of Landlord required under this Lease shall be valid or binding unless reduced to writing and executed by the parties hereto in the same manner as the execution of this Lease.

F. Grammatical Changes. Wherever the words "Landlord" and "Tenant" are used in this Lease, they shall include "Landlords" and "Tenants" and shall apply to persons, both men and women, companies, partnerships and corporations. Wherever the words "mortgage" or "mortgages" are used herein the same shall be deemed to include a deed of trust or trust deed, and the word "lender" shall include a mortgagee of a mortgage or a beneficiary of a deed of trust or trust deed. All references to the Lease Term shall include any extension of the Lease Term, except as otherwise provided. All references to Tenant shall include Tenant's guarantors, assignees or sublessees. All reference to the singular shall include the plural, and vice versa.

G. Section Headings. The section's headings are inserted herein only for convenience of reference and shall in no way define, limit or describe the scope or intent of any provisions of this lease.

H. Binding Effect. Subject to the provisions hereof, the benefits of this Lease and the burdens hereunder shall respectively inure to and be binding upon the heirs, successors, personal representatives and assigns of the parties.

I. Force Majeure. Whenever a period of time is herein provided for either party to do or perform any act or thing, there shall be excluded from the computation of such period of time any delays due to strikes, riots, acts of God, shortages of labor or any cause or causes, whether or not similar to those enumerated, beyond the parties' reasonable control or the reasonable control of their agents, servants, employees and any contractor engaged by them to perform work in connection with this Lease.

J. Personal Property Taxes. Tenant shall pay before delinquency any personal property taxes attributable to the furniture, fixtures, merchandise, equipment, or other personal property situated on the Leased Premises. If any such personal property taxes are levied against Landlord or Landlord's property, and if Landlord pays the same (which Landlord shall have the right to do) or if the assessed value of Landlord's premises is increased by the inclusion therein of a value placed on such property, and if Landlord pays the taxes based on such increased assessment (which Landlord shall have the right to do), Tenant upon demand shall, within 14 days after receiving written notice from Landlord, repay to Landlord the taxes so levied against Landlord or the proportion of such taxes resulting from such increase in assessment.

K. Non-Waiver. No waiver of a condition or covenant of this Lease by either party hereto shall be deemed to imply or constitute a further waiver by such party of the same or any other condition or covenant. No act or thing done by Landlord or Landlord's agents during the Lease Term shall be deemed an acceptance or a surrender of the Leased Premises, and no agreement to accept such surrender shall be valid unless signed in writing by Landlord. The delivery of Tenant's keys to any employee or agent of Landlord shall not constitute a termination of this lease unless a written agreement has been entered into with Landlord to this effect. No payment by Tenant, nor receipt from Landlord, of a lesser amount than the Minimum Rent herein stipulated shall be deemed to be other than on an account of the earliest stipulated rent, nor shall any endorsement or statement on any check of any letter accompanying any check, or payment as rent, be deemed an accord and satisfaction, and Landlord shall accept such check for payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy available to Landlord. If this Lease be assigned, or if the Leased Premises or any part thereof be sublet or occupied by anyone other than Tenant, Landlord may collect rent from the assignee, subtenant or occupant and apply the net amount collected to the rent herein reserved, but no such collection shall be deemed a waiver of the covenant herein against assignment and subletting, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the complete performance by Tenant of the covenants herein contained on the part of Tenant to be performed.

L. Reimbursement of Attorney's Fees and Costs. In the event either party takes legal action against the other in order to enforce the terms of this Lease, the party in whose favor final judgment is entered shall be entitled to recover from the other party its reasonable attorneys' fees and costs.

M. Short Form Lease and Notice to Mortgagee. Landlord and Tenant agree not to place this Lease of record, but upon the request of either party, agree to execute and acknowledge so the same may be recorded a short form lease indicating the names and respective addresses of Landlord and Tenant, the Leased Premises, the Lease Term, the dates of the commencement and termination of the Lease Term and options for renewal, if any, but omitting rent and other terms of this Lease. Tenant agrees to an assignment by Landlord of rents and of Landlord's interest in this Lease to a mortgagee, if the same be made by Landlord. Tenant further agrees that Tenant will give to said mortgagee a copy of any request for performance by Landlord or notice of default by Landlord; and in the event Landlord fails to cure such default, Tenant will give said mortgagee a reasonable period in which to cure the same. Said period shall begin with the last day on which Landlord could cure such default, before Tenant exercises any remedy by reason of such default.

N. Changes in Provisions of Lease; Lender-Insurer Documents. It is understood that in order to construct the Building on the Leased Premises and to complete the improvements thereon, Landlord must obtain financing from a lender. Tenant agrees to make, within five days of Landlord's request, any reasonable modifications in the terms and provisions of this Lease, if not relating to amounts of monies to be paid by Tenant or Leased Premises, in order to comply with any reasonable request of such lender, and to execute such documents as are necessary to obtain financing and insurance.

O. Status Statement of Lease. Tenant agrees, within three days of request by Landlord from time to time, to execute the tenant estoppel agreement, substantially in the form attached hereto as Exhibit C, and incorporated herein by this reference, to the extent that the facts set forth therein are true.

P. Easements. Landlord shall have the right to grant any easements on, over, under and above the Leased Premises for such purposes as Landlord determines, provided that such easements will not materially interfere with Tenant's business.

Q. Holding Over. In the event that Tenant remains in possession after the expiration of this Lease, without

execution of a new Lease, Tenant shall be deemed to occupy the Leased Premises as a tenant from month to month, subject to all conditions, provisions and obligations set forth herein insofar as the same are applicable to a month-to-month tenancy, except that Minimum Rent shall increase to 125% of Minimum Rent for the last year of the Lease Term or any extension thereof. In addition, Tenant shall pay any damages and hold Landlord harmless from any liability incurred in connection with any claims made by any succeeding occupant based on delay of possession.

R. Time is of the Essence. Time is of the essence hereof, and each party shall perform its obligations and conditions hereunder within the time hereby required.

S. Unenforceability. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the Lease Term, then and in that event it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, thereby added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

T. Provisions Negotiated and Independent; Attorney Disclaimer. Each and every provision of this Lease has been independently, separately, and freely negotiated by the parties as if this Lease were drafted by both Landlord and Tenant. The parties, therefore, waive any statutory or common law presumption which would serve to have this document construed in favor of, or against, either party.

In executing this Lease Agreement, Tenant acknowledges and agrees that it has not relied on any statements or representations of the Landlord, his agents, employees or representatives as to the character, type, identity or number of future tenants who may occupy the center. Tenant further acknowledges and agrees that no promises have been made by Landlord as to the character, type, identity or number of tenants who may eventually occupy the center.

U. Rights and Remedies. The remedies of Landlord shall be cumulative, and not one of them shall be construed as exclusive of the other, or any remedy provided by law or equity. The rights and remedies provided hereunder shall survive the termination of this Lease.

V. Corporate Authority. Tenant represents and warrants that it has full corporate power and authority to enter into this Lease Agreement and has taken all corporate action necessary to carry out the transaction contemplated hereby, so that when executed this Lease Agreement constitutes a valid and binding obligation enforceable in accordance with its terms. Tenant shall provide Landlord its corporate resolution authorizing execution of the lease at the time of said execution and said resolution shall be incorporated herein as Exhibit E.

W. Financial Statements. Tenant and any guarantors of Tenant's obligations hereunder shall provide their most recent financial statement(s) including statements of income and expense and statements of net worth prior to or at the time of execution of this lease document. Landlord may request said statements when any option period, lease extension, or modification is requested by Tenant, or Landlord is refinancing or selling the Shopping Center, but not more often than annually. Said statements shall be verified as being true and correct.

Landlord's obligations hereunder are contingent upon Landlord's approval of said financial statements.

X. Limitation of Landlord Liability. In no event shall Landlord be liable to Tenant for any failure of any other tenant in the Shopping Center to operate its business. Notwithstanding anything to the contrary provided in this Lease, it is specifically understood and agreed, such agreement being primary consideration for the execution of this Lease by Landlord, that there shall be absolutely no personal liability on the part of the Landlord, or any owners of an interest in Landlord's business, their successors, assigns, legally appointed representatives, or any mortgagee in possession (for the purposes of this paragraph collectively referred to as "Landlord") with respect to any of the terms, covenants and conditions of this Lease, and that Tenant shall look solely to the equity of Landlord in the Shopping Center of which the Leased Premises are a part for the satisfaction of each and every remedy of Tenant in the event of any breach by Landlord of any of the terms, covenants and conditions of this Lease to be performed by Landlord, such exculpation of liability to be absolute and without any exception whatsoever.

Y. Interpretation and Venue. The terms of this Lease shall be interpreted according to the laws of the State

of Colorado. Tenant consents to the enforcement by Landlord of Tenant's obligations hereunder in the District Court in and for the City and County of Denver, Colorado.

AA. Exhibits and Agenda. The following Exhibits and Addenda attached to this Lease are incorporated herein and made a part hereof by this reference:

Exhibits:

A. Work Letter
B. Sign Criteria
C. Tenant Estoppel and Status Statement of Lease
D. Minimum Rent Payment Schedule
E. Guarantor Agreement
F. Rules and Regulations

BB. Tenant Representation. In the event Tenant is an entity, the owners of such entity hereby covenant that it is duly authorized by the entity to execute this Lease, that the entity is duly organized under the laws of its state of organization and that the entity has the full right and authority to enter into this Lease for the full term hereof.

In the event that any Exhibits or Addendum mentioned in this Lease are not attached hereto, the intention to omit them shall be conclusively presumed and their absence shall not vitiate this Lease.

CC. Tenant's Estoppel Statement. Tenant shall, at any time and from time to time, upon not less than seven (7) days prior written notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of the modification and certifying that this Lease as so modified is in full force and effect), and the date to which the rental and other charges are paid in advance, if any; (ii) acknowledging that there is not, to Tenant's knowledge, any uncured defaults on the part of the Landlord hereunder, or specifying such defaults if any are claimed; and (iii) setting forth the date of commencement of rents and expiration of the term hereof. Any such statement may be relied upon by the prospective purchaser or encumbrancer of the Lease Premises.

DD. CONFIDENTIALITY Tenant hereby agrees to keep all terms and conditions of this lease confidential with the exception of Tenant's legal counsel, contractor, accountant and lender.

[SIGNATURES ON NEXT PAGE]

AGREED AND ACCEPTED:

LANDLORD:

Centre 3 LLC

By: _____
Property Manager, Manager

Date: October ___, 2015

TENANT:

Cherry Hills Sushi Co, LLC

By: _____
Olivia Maeng, Member

Date: October 16, 2015

EXHIBIT "A"
WORK LETTER

I. Landlord's Work:

Landlord will deliver the premises demised to approximately 1,140 sq. ft.; Tenant will occupy Suite 110.

II. Tenant's Work:

Landlord's Work shall be limited to that described in the foregoing paragraphs. All other items of work not therein provided for to be done by Landlord shall be provided by Tenant at Tenant's expense and are referred to as "Tenant's Work," including:

1. Electrical Fixtures and Equipment. All electrical work for the Premises not specifically stated under Landlord's Work.

2. Gas Connection. All gas connections, if any, within the Premises.

3. Telephones. All conduits for telephone wires in the Premises. Tenant shall make all arrangements for telephone service.

4. Walls. All interior partitions and curtain walls within the Premises except as provided by Landlord under Landlord's Work.

5. Coves and Ceilings. All special coves and ceilings.

6. Furniture and Fixtures. All store fixtures, cases, wood paneling cornices, etc.

7. Show Window Background, Floors, Etc. All show window floors, show window backgrounds, show window lighting fixtures and show window doors.

8. Floor Coverings. All floor covering and floor materials other than concrete.

9. Ornamental Stairs. All ornamental or other stairs not required by governing building codes.

10. Alarm Systems. All alarm systems or other protective devices.

11. Special Plumbing. All extra plumbing, either rough-in or fixtures, required for Tenant's special needs.

12. Special Ventilation. All ventilation and related equipment, including show window ventilation.

13. Storm and Screens. All storm and screen doors or storm enclosures.

14. Special Equipment. All special equipment such as conveyors, elevators, escalators, dumb waiters, etc., including installation and connection.

15. Interior painting. All interior painting and wall coverings.

16. Signs. Tenant's signs, both interior and exterior, including power from Tenant's panel. All signs shall be designed, constructed and located in accordance with the procedures established by the Project Architect and shall be subject to the approval of the Project Architect and Landlord.

17. Concrete Floors. Any special reinforcing, raised areas or depression.

[SIGNATURES ON NEXT PAGE]

AGREED AND ACCEPTED:

LANDLORD:

Centre 3 LLC

By: _____
Manager

Date: October 16, 2015

TENANT:

Cherry Hills Sushi Co. LLC

By: _____
Olivia Maeng, Member

Date: October 16, 2015

EXHIBIT "B"
CENTRE 3 LLLC
SIGN CRITERIA

GENERAL INTENT

These rules and regulations have been established with the intent of assuring visual harmony and uniformity for the mutual benefit of all Tenants. Conformance to this criteria will be enforced by the Landlord and any non-conforming or unapproved storefronts or signs will be brought into conformance at the expense of the Tenant.

STOREFRONTS

General Requirements:

A. Tenant shall not, without Landlord's prior written consent:

1. Make changes to or paint the storefront or exterior walls, including glass windows; or install any exterior lighting, decorations, or paintings; or

2. Install any drapes, blinds, shades, awnings, canopy, or other coverings on the exterior windows or doors, except with Landlord's prior written approval; or

3. Erect or install any window treatment or door decorations of any type which can be viewed from the exterior of the demised Premises, excepting only dignified displays of customary type for its display windows and then subject to Landlord's written consent and right to require removal in its discretion.

B. Manufacturer's decals, hours of business, telephone numbers, etc. are limited to a total of 144 square inches per single door entrance.

C. No advertising devices such as "SALE" signs, "SPECIAL ANNOUNCEMENTS," attraction boards, advertising placards, posters, banners, flags, pennants, balloons, names, insignia, trademarks, or other descriptive materials shall be affixed or maintained upon the exterior or interior glass panes and supports of the display windows and doors, the storefront wall, the exterior walls or the sidewalks of the building. Such advertising material must be set back 24" from the interior glass surface. Tenant will be allowed to hang a small lit box sign (~30"x 42") and a lit box sign in the windows.

FASCIA SIGNS General
Requirements:

A. In case of a conflict with the sign criteria established herein, local municipal sign regulations shall supersede.

B. All tenants are obligated to have a sign on the front and back of the building. All signs shall be reviewed for conformance with this criteria and over all design quality. All signs shall be subject to the prior written approval of Landlord as to construction, method of attachments, size, shape, height, lighting, color and general appearance. Approval and disapproval of sign submittal based on aesthetics of design shall remain the sole right of Landlord.

C. Tenant shall submit or cause to be submitted within three (3) weeks of the date of execution of this Lease, or within three (3) weeks of receipt by Tenant of construction documents from Landlord, whichever occurs last, to Landlord for approval before fabrication four (4) copies of detailed drawings indicating the location, size and style of lettering, material, type of illumination, installation details, color selection and sign face design. Landlord will respond to this submission within 14 days.

D. All permits for signs and their installation shall be obtained by Tenant or its representative and comply with all appropriate governmental requirements. All signs must also be approved by the City Staff prior to fabrication.

E. All signs shall be constructed and installed, including electrical hook-ups, at Tenant's expense. Tenant shall cause his sign to be installed no later than thirty (30) days after Tenant opens for business to the public.

F. All signs shall be kept in good condition and in proper operating order at all times.

G. Landlord reserves the right to designate a uniform type of sign for the Shopping Center to be installed and paid for by the Tenant.

H. Tenant, upon vacating the demised Premises, or the removal or alteration of its sign for any reason, shall be responsible for the cost of repair, painting, and/or replacement of the building fascia surface where signs are attached. All such work to be done by Landlord or Landlord's contractor.

Tenant shall be responsible for the fulfillment of all requirements and specifications.

RESTRICTIONS:

A. Vertical copy or signs projecting perpendicular to the building are not permitted.

B. Flashing, animated, audible, revolving signs, or signs that otherwise create the illusion of animation are not permitted.

C. Exposed bulb signs are not permitted.

D. Floodlighting of signs will not be permitted.

E. No labels will be permitted on the exposed surface of signs except those required by local ordinance which shall be applied in an inconspicuous location.

F. Luminous, vacuum-formed type plastic letters, panels or logos and reverse channel type letters with silhouette illumination will not be permitted.

G. Exterior restaurant menus or changeable letters or signs will not be permitted.

H. Legal name of Tenant will not be permitted. Copy of Tenant's sign shall not include the product sold except as part of Tenant's name or insignia. Advertising copy of any kind will not be permitted. *This restriction is for fascia of building exclusively.*

I. No exposed junction boxes, ballast boxes, supports, transformer, transformer boxes, lamps, tubing, conduits, wiring, or neon crossovers of any type are permitted. All wiring to be housed within the established surface and properly mounted. All other equipment shall be concealed.

J. Landlord reserves the right to modify the criteria above.

DESIGN REQUIREMENTS:

A. Fascia signs within the sign band shall be made up of individual flush mounted letters (24" maximum height) and internally illuminated. In the case of a sign exceeding one line of copy, the combination of all letters and spaces shall not exceed 24 inches in height. B. The color of the face of the sign can be selected by the Tenant but must be in keeping with the overall color scheme of the adjoining tenants and must be approved by the Landlord. Caution should be taken when selecting sign lettering colors so as to maximize sign visibility.

C. In no case shall the overall length of the sign exceed 2/3 the width of the storefront.

D. Signage to appear on the stucco portion of the fascia or within the sign band.

E. Total area of sign to be centered both vertically and horizontally within Tenant's storefront area.

F. All exterior sign lettering shall be controlled within the house meter and will be illuminated from dusk until 6:00 AM as minimum hours of illumination.

G. Square footage of logo not to exceed 16 square feet.

FABRICATION REQUIREMENTS:

A. Letter faces to be fabricated from flat, smooth acrylic.

B. Returns and backs to be fabricated from 22 gauge PAINTLOC steel.

C. Retainers to be 1" Trimcap or equivalent and to match bronze return color or acrylic face color.

D. Wireway or raceway to be fabricated from 22-gauge PAINTLOC steel. Wireway or raceway to match the fascia of building.

E. Illumination to be internal by neon with a maximum of one double tube of 60 milliamp mercury (6500 degree Kelvin) or one double tube of 30 milliamp red neon.

F. Depth of letter not to exceed 5" nor less than 4 1/2"

G. Color of returns to be DUREPOX BRONZE #71313 with a finish that will last the life of the lease of the particular Tenant.

H. Tenant shall submit the name of the sign contractor who will fabricate and install the sign for Landlord's approval prior to commencement of the fabrication.

INSTALLATION REQUIREMENTS

A. Wireway to be projected 1/2 inch from exterior fascia surface. Wireway to be attached top and bottom at a minimum of every 48 inches, through the structural steel studs of sign band framing, using 1 inch galvanized spacers.

B. Electric service to all signs will be off the house electric meter.

C. Tenant's sign contractor will repair to the satisfaction of Landlord any and all damage to all in-place construction caused by its work. All penetrations of the building structure required for sign installation must be sealed neatly in a watertight condition and match the finish of the fascia.

D. All signs must bear the U. L. Label and the installation must comply with all applicable building and electrical codes.

E. Landlord must be notified upon completion of the installation of the sign and the Landlord will perform a final inspection to insure that all requirements of this sign criteria have been met. Tenant shall not light the sign until Landlord has made such inspection and approved the installation.

MAINTENANCE REQUIREMENTS:

A. All tenants are obligated to maintain their sign(s) in proper working order. All repairs and replacements shall be made within fourteen (14) days at Tenant's expense.

B. To the discretion of the Landlord, all tenants are required to maintain their signs) in satisfactory appearance, to be clean and free of debris. All cleaning shall be at Tenant's expense.

REMEDIES

A. Tenant acknowledges that its failure to comply with this sign criteria shall constitute a material breach of the Lease and that actual damages resulting from the failure to conform with the provisions of this sign criteria cannot be reasonably ascertained. Accordingly, Tenant agrees that, in the event of a breach or default as to any of these terms, Tenant shall be liable to Landlord in the amount of $15.00 per day for each day Tenant has failed to conform to this criteria and without necessity of Landlord's notice or demand therefore. Said amount is a reasonable approximation of the actual damages which would be sustained by Landlord.

B. Further, Landlord may, upon Tenant's failure to remedy any violation of this criteria, dismantle, replace, remove

or modify Tenant's sign, window blinds, and/or window film, or act in any other manner reasonably related to cure such continuing default, all at Tenant's expense, without notice or liability for trespass or otherwise, but, rather with Tenant's express consent as is herein provided. Nothing herein provided imposes upon Landlord any duty to remedy Tenant's violation.

C. All rights and remedies herein provided shall be cumulative and in addition to such other remedies as are elsewhere conferred to Landlord. Nothing provided herein shall be construed as an election of remedy which Landlord may have against Tenant in the event of such nonconformance, breach, or default.

EXHIBIT "C"
TENANT ESTOPPEL AND STATUS STATEMENT OF LEASE

TO: _____

Re: Cherry Hills Sushi Co., LLC (the "Premises")

Ladies and Gentlemen,

The undersigned is the Tenant and Guarantor under that certain Lease of the Leased Premises (the "Lease") dated as of _____, 2015, covering 1,140 Square Feet in the building located at 1400 East Hampden Avenue, Cherry Hills Village, Colorado. Centre 3 LLC is the Landlord and record owner of the Property. The undersigned hereby certifies, at the date hereof, as follows:

1. The Lease identified above is the Lease with Centre 3 LLC, as the Landlord. A true, correct and complete copy of the Lease and all amendments, guaranties, security agreements, subleases and other related documents are attached hereto and incorporated herein by this reference. _____

2. The Lease sets forth the entire agreement between the undersigned Tenant and Landlord with respect to the leasing of the Leased Premises, including but not limited to all understandings and agreements relating to the construction or installation of any leasehold improvements by the Landlord and to the conditions precedent to occupancy of the premises by the undersigned.

3. Tenant entered into occupancy of the Premises described in the Lease on or about _____, 2015, and is in possession of and occupies those Leased Premises for purposes permitted under the Lease.

4. The commencement date under the Lease was on or about _____, 2015.

5. The Lease Term will expire on or about March 31, 2021. Tenant has rights to renew the lease for two five year terms as set forth in the Lease.

6. Tenant has deposited with Landlord the sum of _____($_____) as security deposit or for other purposes stated in the Lease.

7. No rents or charges have been paid in advance.

8. The current Minimum Rent is _____($_____) per month, and is scheduled to increase over the term of the Lease.

9. The undersigned certifies that Tenant is required to pay its pro rata share of operating expenses as set forth in the Lease. Moreover, Tenant is required to pay for all utilities, including water and sewer, used in and upon the Premises and is responsible for all repairs and maintenance to the HVAC/mechanical systems.

10. All Minimum Rent and other rentals under the Lease including the payment of any taxes, utilities, common area maintenance payments or other charges that are currently due have been paid; all such rentals are being paid on a current basis without any claims for offsets or deductions.

11. The Lease (including all exhibits) and all related agreements and documents listed above are duly authorized, executed and delivered by Tenant and/or Guarantor and are in full force and effect and have not been assigned, modified, supplemented or amended except as indicated in Paragraph 1 above; nor have the undersigned Tenant's rights in or under such Lease been assigned.

12. The Lease and the other agreements listed above represent the entire agreement between the parties as to the Premises.

13. No person or firm other than the undersigned is in possession of the Premises and to the best of the undersigned's knowledge, no person or firm other than the Landlord has a future right to the Premises.

14. The undersigned is not the subject of any pending, bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

15. Except as may be specifically set forth in the Lease, Tenant does not have any right to renew or extend the Lease Term nor any option or preferential right to purchase all or any part of the Property or all or any part of the building of which the Premises are a part, nor any right, title or interest with respect to the Property other than as Tenant under the Lease.

16. There are no uncured defaults by Landlord under the Lease or any of the related agreements described above, and Tenant knows of no events or conditions which if uncured shall with the passage of time or notice or both, would constitute a default by Landlord under the Lease or any of the related agreements described above. There are no existing defenses or offsets which the undersigned has against the enforcement of the Lease by Landlord.

17. The undersigned represents that the improvements and space required to be furnished according to the Lease have been duly delivered by the Landlord and accepted by the Tenant and the Premises are in good condition and not in need of repair as of the date of this Certificate.

18. All conditions of the Lease to be performed by Landlord and necessary to the enforceability of the Lease have, to the undersigned Tenant's knowledge, been satisfied.

19. As of the date hereof, the condition of the Premises is satisfactory and adequate.

20. The undersigned represents that the Landlord has not guaranteed the Lease or any of the Tenant's obligations thereunder or otherwise provided Tenant with inducement that the Landlord will pay for Tenant's obligations(s) in the event that Tenant fails to pay any obligation that Tenant is required to pay under the terms of the Lease.

21. The undersigned has not dumped, spilled or in any other manner deposited any hazardous waste substances on the Property. The undersigned has received no notice of and has no knowledge of any violation or claimed violation of a law, rule or regulation related to hazardous waste substances. The undersigned has not used, and the undersigned has no knowledge of any use of, the project for the storage of oils, other products of petroleum distillation or other hazardous material.

It is understood that you require this Certificate from the undersigned as a condition to the purchase of the Property from the Landlord, and that you are relying on this Certificate. After receipt of notice from Landlord that the sale has been completed, the undersigned will honor the assignment of Landlord's interest in the Lease.

TENANT:

Cherry Hills Sushi Co, LLC

By: _____
Olivia Maeng, Member

Date: October 16, 2015

EXHIBIT "D"
MINIMUM RENT PAYMENT SCHEDULE

Following Lease Commencement Date

Months	$ PSF	Monthly	Annual
1 through 3	Free	Free	Free
4 though 15	$29.00	$2,755.00	$33,060.00
16 though 27	$29.87	$2,837.65	$34,051.80
28 though 39	$30.77	$2,922.78	$35,073.35
40 through 51	$31.69	$3,010.46	$36,125.55
52 though 63	$32.64	$3,100.78	$37,209.32

EXHIBIT "E"
GUARANTOR AGREEMENT

GUARANTOR:

This Guaranty is dated as of October 16, 2015 by Olivia Maeng and Bradford Kim, each in their singular individual capacity (hereinafter, whether singular or plural, referred to as "Guarantor").

Guarantor has received a copy of the lease dated October 16, 2015, (the Lease) between Centre 3 LLC (hereinafter referred to as "Landlord"), whose address is 789 Sherman Street, Suite 430, Denver, Colorado, 80202 and Cherry Hills Sushi Co., LLC, hereinafter referred to as ("Tenant"), whose address is 1400 east Hampden, Suite 110, Cherry Hills Village, Colorado 80113. Guarantor has examined the Lease and is familiar with all the terms, covenants and provisions contained therein, and as an inducement to Landlord to enter into the foregoing Lease, does hereby unconditionally guarantee that all fixed minimum rent, taxes, insurance, utilities, common area maintenance charges, management fees, merchants' association dues, additional rent and all other sums, attorney's fees, costs, expenses, charges, payments and deposits (including sums payable as damages upon defaults under the Lease) which are at any time payable by Tenant under the Lease will be paid in full when due (whether on their stated due dates or by acceleration or otherwise) in accordance with the Lease and that Tenant will faithfully perform and observe each covenant and condition of the Lease to be performed or observed by Tenant. This Guaranty is an unconditional, irrevocable, and absolute guarantee of payment and performance.

Guarantor's obligations under this Guaranty shall in no way be affected or impaired by reason of the happening from time to time of any of the following with respect whether to the Lease or to the Guaranty, even without notice to or the further consent of Guarantor:

A. The extension by Landlord of the time for payment by Tenant of any sums owing or payable under the Lease.

B. The modification, amendment or alteration of the Lease.

C. The assignment, subletting or mortgaging of all or part of Tenant's interest in the Lease.

D. The waiver, failure, omission or delay of Landlord to enforce, assert, or exercise any right, power or remedy conferred on Landlord in the Lease or by law or any action on the part of Landlord granting indulgence or extension in any form.

E. The voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets of Tenant, a receivership, an insolvency, a bankruptcy, an assignment for the benefit of creditors, a reorganization, or any other similar proceeding affecting Tenant or any of its assets, or the disaffirmance of the Lease in any such proceeding.

F. Any other cause, whether similar to or dissimilar from the foregoing.

Notice of acceptance of this Guaranty and any obligations or liabilities contracted or incurred by Tenant are all hereby waived by Guarantor.

This Guaranty shall be governed by and construed in accordance with the laws of the State of Colorado.

No waiver by Landlord of the payment by Guarantor of any of its obligations contained in this Guaranty, nor any extension of time of the payment by Guarantor of any such obligations, shall affect or impair this Guaranty or constitute a waiver or relinquishment of any rights of Landlord hereunder for the future. No action brought under this Guaranty against Guarantor and no recovery had in pursuance thereof shall be any bar or defense to any further action or recovery which may be brought or had under this Guaranty by reason of any other default or default by tenant.

All provisions of this Guaranty shall inure to the benefit of Landlord and its grantees, successors and

assigns, and shall inure to the benefit of any future owner of the fee title of which the Leased Premises (as defined as the Lease) are a part, and all the provisions of this Guaranty shall be binding upon the Guarantor and its heirs, legal representatives, successors and assigns.

If the Guaranty is signed by more than one Guarantor, each such Guarantor shall be jointly and severally liable hereunder. Each Guarantor waives any rights which guarantor may otherwise have under Colorado Revised Statute Section 13-50-102 or 13-50-103 (or under any corresponding future statute or rule of law) related to the release of any obligor on this Lease.

All of Landlord's rights and remedies under the Lease and under this Guaranty shall be distinct, separate and cumulative and no such right or remedy shall be exclusive or a waiver of any of the others. Guarantor waives presentment for payment, notice of non-payment, protest, notice of protest, and all other notice of any kind to which Guarantor may be entitled, and not by way of limitation, any right to require suit against the Tenant, any Co-Guarantors, or any other person obligated under the Lease, and foreclosure of any security for the obligations in the Lease, as a prerequisite to commencement of action on this Guaranty. Furthermore, Guarantor waives any and all duty or obligation of the Landlord to perfect, protect, retain or enforce any security for the payment of the obligations of the Tenant.

The liability under this Guaranty shall continue until all obligations of the Tenant or any successor or assign under the Lease are set aside, notwithstanding the death, incapacity or disability of the Guarantor.

To the extent Tenant makes a payment or payments to, or is credited for any payment or payments made for or on the behalf of Tenant to Landlord, which payment or payments, or any part thereof, are subsequently invalidated, determined to be fraudulent or preferential, set aside, required to be paid to any trustee, receiver, assignee or any other party, whether under bankruptcy, state or federal law, common law or equitable cause or otherwise, then, to the extent thereof, the obligation or part thereof intended to be satisfied thereby shall be revived, reinstated, and continued in full force and effect as if said payment or payments had not originally been made by or on behalf of Tenant.

If any law or judicial interpretation thereof has the effect of rendering any provision in this Guaranty unenforceable, in whole or in part, such invalid, inapplicable or unenforceable terms shall be severed from this Guaranty without affecting the remaining legally enforceable terms and provisions of this Guaranty.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty this 16 day of October, 2015.

Name: Olivia Maeng
Social Sec. No. 523633103
Address: 22208 E. Glasgow Pl.
Aurora, CO 80016
Phone: 2138206510
Fax:
Email: susiemaeng@gmail.com

By:

Name: Bradford Kim
Social Sec. No. 610-78-3588
Address: same
Phone: 217-304-5370
Fax:
Email: jbekimmel@gmail.com

By:

EXHIBIT "F"
RULES AND REGULATIONS

A. The sidewalks, parking lots, entrances, halls, passages, elevators and stairways shall not be obstructed by any of the Tenants or used by them for any other purpose than for ingress and egress to and from their respective Leased Premises.

B. Tenants, their agents, employees or visitors, shall not make or commit any improper noises or disturbances of any kind in the Shopping Center, or mark or defile the water closets, toilet rooms, windows, elevators or doors of the Shopping Center or interfere in any way with other Tenants or those having business with them.

C. The toilet rooms, water closets, and other water apparatus shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, ashes, chemicals or the refuse from electric batteries or other unsuitable substances, shall be thrown therein. Any damage from such misuse or abuse shall be borne by the Tenant by whom or by whose employees or visitors it shall be caused.

D. No carpet, rug or other article shall be hung or shaken out of any window or placed in corridors as a door mat, and nothing shall be thrown or allowed to drop by the Tenants, their agents, employees or visitors out of the windows or doors, or down the passages or shafts of the Shopping Center, and no Tenants shall sweep or throw or permit to be thrown from the Leased Premises, any dirt or other substance into any of the corridors or halls, elevators, shafts or stairways of said Shopping Center.

E. No linoleum or oil cloth, or rubber or other airtight coverings shall be laid on the floors, nor shall articles (except for interior artwork, inventory items, display or store fixtures) be fastened to or holes drilled or nails or screws driven into walls, windows, partitions, nor shall the walls or partitions be painted, papered or otherwise covered, or in any way marked or broken, without the prior written consent of the Landlord.

F. Nothing shall be placed on the outside of the Shopping Center, or on the windows, window sills or projections.

G. The only window treatment permitted for the windows in the Leased Premises is that approved in writing by the Landlord.

H. No sign, advertisement or notice shall be inscribed, painted or affixed on any part of the outside or inside of said Shopping Center, except those approved in writing by Landlord. Landlord shall have the right to remove all nonpermitted signs without notice to Tenant, at the expense of Tenant.

I. After permission to install telephones, call boxes, telegraph wires or other electric wires shall have been granted, Landlord shall approve their location before installation. No wires shall be run in any part of the Shopping Center excepting by or under the direction of Landlord. Attaching of wires to the outside of the Shopping Center is absolutely prohibited. It is understood that telephones are installed solely for the use and benefit of Tenant and accordingly, Tenant will defend and save Landlord harmless from any damages thereto.

J. The Landlord shall in all cases have the right to prescribe the weight and proper position of safes or other heavy objects in the Shopping Center; and the bringing in of said safes, all furniture, fixtures or supplies, the taking out of said articles and moving about of said articles within the Lease Premises, shall only be at reasonable times and in a reasonable manner. Any damage caused by any of the before-mentioned operations or by any of the said articles during the time they are in the Lease Premises, shall be repaired by Tenant at Tenant's expense.

K. No bicycles or similar vehicles will be allowed in the Shopping Center. No animals or birds shall be brought into or kept upon the Leased Premises.

L. No Tenant shall do or permit anything to be done in said Shopping Center, or bring or keep anything therein which will in any way increase the rate of fire insurance on the Shopping Center or on property kept therein, or obstruct or interfere with the rights of other Tenants, or in any way injure or annoy them, or conflict with the laws relating to fires, or with the regulations of the Fire Department or with any insurance policy upon said Shopping Center or any part thereof, or conflict with any of the rules and ordinances of the Department of Health.

M. Landlord shall not be responsible to Tenants for loss of property or for any damage done to the furniture or other

effects of Tenants by the Landlord or any of its employees or agents or any other persons or firms unless proof of Landlord's act or negligence for such damage or loss of property is established.

N. Tenants shall see that windows in the Leased Premises are closed and the doors securely locked before leaving the Leased Premises.

O. No machinery of any kind, other than normal office machines (i.e., electric typewriters, dictating or adding machines, or similar desk-type equipment only), shall be allowed to be operated on the Leased Premises without prior written consent of Landlord.

P. No interference with the heating apparatus will be permitted. Tenants shall maintain minimum heating requirements.

Q. The use of the Leased Premises as sleeping apartments, for the preparation of foods, or for any immoral or illegal purpose is absolutely prohibited.

R. No Tenant shall conduct, or permit any other person to conduct, any auction upon its Leased Premises, or store goods, wares, or merchandise upon its Leased Premises without the prior written approval of the Landlord, except for the usual supplies and inventory to be used by the Tenant in the conduct of its business.

S. All glass, locks and trimmings, in or about the doors and windows of the Leased Premises and all electric fixtures on the Leased Premises, which belong to the Shopping Center, shall be kept whole and whenever broken by Tenants or Tenants' employees, agents, guests, invitees or licensees, Tenants shall immediately notify Landlord of such breakage. All such breakage shall be repaired by Landlord at Tenants' expense or may be repaired by Tenant at Tenants' own expense at the option of the Landlord.

T. Any and all damage to floors, walls or ceilings due to Tenant or Tenants' employees' failure to shut off running water or other liquid, shall be paid by Tenants.

U. All furniture or fixtures in carpeted areas shall have carpet casters, carpet shields, or other similar protective devices.

V. No additional locks shall be placed upon any doors without the written consent of the Landlord.

W. If Tenants do not keep their Leased Premises in a good state of preservation and cleanliness during the continuance of this Lease, the Superintendent of Landlord or contractor designated by Landlord may take charge of and clean the said Premises at Tenants' costs.

X. Tenants will not conduct any auction, fire, bankruptcy or close-out sales without first obtaining Landlord's written consent; or utilize any unethical method of business operation, provided, however, that this provision shall not preclude the conduct of periodic seasonal, promotional or clearance sales; will not use or permit the use of any apparatus for sound reproduction or transmission of any musical instrument or device in such manner that the sounds so reproduced, transmitted or produced shall be audible beyond the interior of the Leased Premises; will not cause or permit objectionable odors to emanate or be unreasonably dispelled from the Leased Premises; and will not unreasonably load or unload or permit the loading or unloading of merchandise, supplies or other property outside the areas designated; therefore and will comply with Landlord's reasonable rules for the delivery and shipping of merchandise, and will use its best efforts to prevent the parking or standing outside of said area, of trucks, trailers or other vehicles or equipment engaged in such loading or unloading; and will not solicit business in the parking lots or other Common Areas or distribute handbills or other advertising matter in said areas.

Y. Smoking in the building is permitted in designated areas only and is strictly forbidden in any common areas, including, but not limited to hallways, restrooms, lobbies and elevators. Tenants are responsible for posting the appropriate smoking areas within their leased premises and complying with all statutes and ordinances pertaining thereto.

Z. Tenants understand and agree that the vehicle of any Tenant, their employees, agents or guests, parked in an unauthorized area, and particularly in areas designated as visitor parking, handicapped parking or fire lanes, may be towed away at owner's risk and expense.

CONSENT OF MEMBERS

OF

Cherry Hills Sushi Co LLC LLC

Pursuant to the Colorado Limited Liability Company Act (C.R.S.) and the Articles of Organization, the undersigned, being the Members of Cherry Hills Sushi Co LLC, a Colorado limited liability company (the "Company"), hereby consent to, vote in favor of and adopt the following resolutions without a meeting:

I.

RESOLVED, that the Managers are hereby authorized and directed to open a bank account for the Company.

II.

RESOLVED, that the Company shall establish a restaurant to be known as "Cherry Hills Sushi Co? to be located at 1400 E. Hampden Ave., #110, Cherry Hills Village, CO 80113 (the "Business").

III.

RESOLVED, that the Company shall borrow such funds from Olivia Susie Meang from time to time to establish and operate the Business as deemed necessary or appropriate on such terms which are reasonable and prudent under the circumstances.

IV.

RESOLVED, that the Manager is hereby authorized and directed to apply to the City of Cherry Hills Village for such licenses and permits which are necessary to establish and operate the Business, including making application for a new hotel & restaurant liquor license.

V.

RESOLVED, that the Manager is hereby authorized and directed to take all actions which are necessary and proper to carry out the intentions of the foregoing resolutions.

EXECUTED this 16th day of Octoer, 2015.

Managing Member

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Wayne W. Williams, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

Cherry Hills Sushi Co LLC

is a

Limited Liability Company

formed or registered on 10/16/2015 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20151666030 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 12/02/2015 that have been posted, and by documents delivered to this office electronically through 12/06/2015 @ 12:04:09 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 12/06/2015 @ 12:04:09 in accordance with applicable law. This certificate is assigned Confirmation Number 9402137 .

Secretary of State of the State of Colorado

**********End of Certificate**********

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site, http://www.sos.state.co.us/biz/CertificateSearchCriteria.do entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, http://www.sos.state.co.us/ click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."

OPERATING AGREEMENT
OF
Cherry Hills Sushi Co LLC
A Colorado Limited Liability Company

THIS OPERATING AGREEMENT is made and entered into this 16th day of October, 2015, by and among the Members of Cherry Hills Sushi Co LLC.

ARTICLE I - DEFINITIONS

Section 1.1. Definitions. As used in this Agreement:

A. "Act" shall mean the Colorado Limited Liability Company Act at C.R.S. Section 7-80-101, et seq.

B. "Agreement" shall mean this Operating Agreement.

C. "Bankruptcy" shall mean the filing by a Member of a petition commencing a voluntary case under the Bankruptcy Code; a general assignment by a Member for the benefit of creditors; an admission in writing by a Member of his, her or its inability to pay debts as they become due; the seeking or acquiescence by a Member in the appointment of any trustee, receiver, or liquidator for the Member or for any part of the Member's property; or the commencement against a Member of an involuntary case under the Bankruptcy Code, or a proceeding under any receivership, composition, readjustment, liquidation, insolvency, dissolution or similar law or statute, if not dismissed or vacated within sixty (60) days.

D. "Company" shall mean Cherry Hills Sushi Co LLC.

E. "Dissolution" shall mean, in the case of a Member that is a corporation or limited liability company, the filing of a certificate of dissolution, the revocation of its charter, or its involuntary dissolution by a nonappealable order of a court of competent jurisdiction.

F. "Distributable Cash" means all cash, revenue, and funds received by the Company from Company operations, less the sum of the following to the extent paid or set aside by the Company: (i) all cash expenditures incurred incident to the normal operation of the Company's business; (ii) such Reserves as the Board of Managers deems reasonably necessary to the proper operation of the Company's business.

G. "Economic Interest" shall mean a Member's or Economic Interest Owner's share of one or more of the Company's Net Profits, Net Losses and distributions of the Company's assets pursuant to this Agreement and the Act, but shall not include any right to participate in the management or affairs of the Company, including the right to vote on, consent to or otherwise participate in any decision of the Members or Managers.

H. "Economic Interest Owner" shall mean the owner of an Economic Interest who is not a Member.

I. "Entity" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization.

J. "Member" shall mean each of the persons identified in this Agreement, as well as any other person who may subsequently be designated as a Member pursuant to the terms of this Agreement.

K. "Membership Interest" shall mean the share of profits and losses, gains, deductions, credits, cash, assets, and other distributions of a Member.

L. "Membership Rights" shall mean the rights of a Member, including both the Member's (i) Membership Interest and (ii) right to participate in the operation of the Company.

M. "Persons" shall mean individuals, partnerships, corporations, limited liability companies, unincorporated associations, trusts, estates and any other type of entity.

N. "Reserves" shall mean, with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which shall be maintained in amounts deemed sufficient by the Members to pay costs or expenses incident to the ownership or operation of the Company's business.

O. "Resignation" shall mean the decision of a Member not to continue as Member.

ARTICLE II - FORMATION OF COMPANY

Section 1.1. Articles of Organization. The Articles of Organization of the Company, as filed with the Colorado Secretary of State, are hereby adopted and incorporated by reference into this Agreement. In the event of any inconsistency between the Articles of Organization and this Agreement, the terms of the Articles of Organization shall control.

Section 1.2. Term. This Agreement shall continue for the life of the Company and shall terminate upon the voluntary or involuntary dissolution of the Company or the expiration of its term as provided herein.

Section 1.3. Purposes and Powers.

(a) Principal Purpose. The principal purpose of the Company is to own the business to be known as Cherry Hills Sushi Co. and to conduct such other related and unrelated business as the Members may agree from time to time.

(b) Powers. The Company may conduct its business, carry on its operations and have and exercise all powers set forth herein and all powers granted by the Act in any state of the United States and in any foreign jurisdiction; and may make and alter this Agreement, not inconsistent with its Articles of Organization or with the Act, for the administration and regulation of its affairs.

ARTICLE III - MEMBERS

Section 1.1. Initial Members. The initial Members of the Company are:

Name: Olivia Susie Maeng
Address: 22208 E. Glasgow Place
Aurora, CO 80016

The address of any Member may be changed by notice in writing to the other Members.

ARTICLE IV – CONTRIBUTIONS

Section 1.1. Capital Contributions. The capital contributions to the Company of each of the Members are in the form of services rendered to the Company.

Section 1.2. Capital Accounts. An individual capital account shall be maintained for each Member as increased by the Member's share of Company gains and profits, and as decreased by any distributions of profits or capital to the Member and by the Member's share of Company losses.

Section 1.3. No Withdrawal. No Member will be entitled to withdraw all or any part of such Member's capital from the Company or to demand a distribution of property other than money.

Section 1.5. No Interest on Capital. No Member will be entitled to receive interest on such Member's capital contributions or Capital Account.

Section 1.7. No Drawing Accounts. The Company will not maintain a drawing account for any Member. All Distributions to Members will be governed by Article VI and by Article XVI.

ARTICLE V - PROFIT AND LOSS

Section 1.1. Membership Rights and Membership Interests. The percentage of Membership Rights and Membership Interest of each of the Members of the Company shall be as follows:

Member	Percentage
Olivia Susie Maeng	100%

If the above Members are husband and wife, their Membership Rights and Membership Interests shall be held in Joint Tenancy With Right of Survivorship.

Section 1.2. Allocation of Taxable Items. For purposes of Sections 702 and 704 of the Internal Revenue Code of 1986, or the corresponding provisions of any future federal Internal Revenue law, or any similar tax law of any state or jurisdiction, the determination of each Member's distributing share of all items of income, gain, loss, deduction, credit, or allowance of the Company for any period or year shall be made in accordance with, and in proportion to, such Member's percentage of Membership Interest as it may then exist.

ARTICLE VI - DISTRIBUTIONS

Section 1.1. Cash. All cash of the Company (less bank and other charges incurred in the distribution and less reasonable and ordinary administrative expenses) shall be distributed on or before five (5) business days after receipt into the Company bank account. In no event shall the Managers make cash distributions which would prevent the Company from discharging its debts. All cash distributions shall be made to the Members in proportion to their respective percentages of Membership Interest.

Section 1.4. Distributions Upon Withdrawal. A withdrawing Member shall be entitled to receive only the distributions to which that Member is entitled under Section 1.1 of this Article VI to the date of withdrawal.

Section 1.5. Distributions in Kind. A Member, regardless of the nature of its contribution, has no right to demand or receive any Distribution from the Company in any form other than cash.

ARTICLE VII - RESPONSIBILITIES AND AUTHORITY OF MEMBERS

Section 1.1. Management of the Company. The business and affairs of the Company shall be managed by the Members who shall take actions as are necessary to manage the business operations of the Company in accordance with the Act and this Agreement. The initial Manager(s)/Member(s) shall be Olivia Susie Maeng.

Section 1.2. Limitation of Liability. Each Members' liability shall be limited as set forth in this Agreement, the Act or other applicable law.

Section 1.3. Company Debt Liability. A Member shall not be liable for any debts or losses of the Company beyond his or her respective Capital Contribution, except as otherwise required by law.

Section 1.4. Members' Responsibilities. Each Member will devote such time and effort to the affairs of the Company as such Member determines to be necessary or desirable to promote the successful operation of the Company.

Section 1.5. Compensation. Each Member shall pay its own expenses which are incurred in carrying out this Agreement.

Section 1.6. Required Member Approval. All decisions of the Company require the affirmative vote of all Members, except the continuance of the Company by remaining Members under Section 1.3 of Article XIV upon an event of withdrawal under Section 1.2 of Article XIV.

ARTICLE VIII - MEETINGS OF MEMBERS

Section 1.1. Annual and Other Meetings. Meetings of Members shall be held at such date, time and place, either within or without the State of Colorado, as may be determined by the Members from time to time.

Section 1.2. Action by Consent of Members. Any action required or permitted to be taken at any annual or special meeting of the Members may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the Members holding the Membership Interests requisite for such a vote. Telephonic voting is specifically permitted.

ARTICLE IX - BANKING

All revenues of the Company shall be deposited in the Company checking accounts at such bank or banks as shall be selected by the Members and which shall require such signatures as the Manager deems prudent.

ARTICLE X - BOOKS; FISCAL YEAR

Accurate and complete books of account shall be kept for the Company which shall be open at all times for inspection and examination by the Members. The books shall be kept on the basis of accounting selected by the accountant regularly servicing the Company. The fiscal year of the Company shall be the calendar year.

ARTICLE XI - MEMBERSHIP INTEREST AND MEMBERSHIP RIGHTS OF A DECEASED, INCOMPETENT OR DISSOLVED MEMBER

If a Member who is an individual dies or if a court of competent jurisdiction adjudges him or her to be incompetent to manage his or her person or property, the Member's executor, administrator, guardian, conservator, or other legal representative may exercise all the Member's rights and receive the benefits of the Member's Membership Interest for the purpose of settling the Member's estate or administering the Member's property. If a Member is a corporation, trust, partnership, limited liability company, or other entity and is dissolved or terminated, the powers of that Member may be exercised by its legal representative or successor.

ARTICLE XII - TRANSFER RESTRICTIONS

Section 1.1. General Restrictions. No Member shall Transfer all or any part of such Member's Interest in any manner whatsoever except: to a Permitted Transferee as set forth in Section 1.2 of this Article. In such case, such Transfer may be made only if the requirements of Section 1.3 of this Article have also been satisfied. No Member has the power to grant any Transferee the right to become a Member.

Section 1.2. Permitted Transferees. Subject to Section 1.3 of this Article, a Member may Transfer all or any part of such Member's Membership Interest to one or more of the following Permitted Transferees:

A. Any lineal descendant of an individual Member;

B. The surviving spouse of an individual Member or the surviving spouse of any lineal descendent of an individual Member (other than a spouse to whom such interest is to be transferred in connection with a dissolution of marriage);

C. The executor or personal representative of an individual Member.

Section 1.3. General Conditions on Transfers. No Transfer of a Membership Interest shall be effective unless all of the conditions set forth below are satisfied:

A. Unless waived by the Company, the Transferor signs and delivers to the Company an undertaking in form and substance satisfactory to the Company to pay all reasonable expenses incurred by the Company and its Members in connection with the Transfer (including reasonable fees of counsel and accountants and the costs to be incurred with any additional accounting required in connection with the Transfer, and the cost and fees attributable to preparing, filing and recording such amendments to the Articles of Organization of the Company or such organizational documents or filings as may be required by law);

B. Unless waived by the Company, an opinion of counsel for the Transferor satisfactory in form and substance to the Company will be delivered to the Company to the effect that the Transfer of the Membership Interest is in compliance with the applicable federal and state securities laws, and a statement of the Transferee in form and substance satisfactory to the Company making appropriate representations and warranties with respect to compliance with the applicable federal and state securities laws;

C. The Transferor has signed and delivered to the Company a copy of the assignment of the Membership Interest to the Transferee, in form and substance satisfactory to the Company;

D. The Transferee signs and delivers to the Company an agreement to be bound by this Agreement; and,

E. The Transfer is in compliance with the other provisions of this Section.

Notwithstanding the above, only the last two requirements will apply to a Transfer to the personal representative of a Member and only the last three requirements will apply to a Transfer without monetary consideration to any Permitted Transferee. Except for Transfers at death or as otherwise agreed in writing by the Transferor, Transferee and the Company, the Transfer of a Membership Interest will be effective as of 11:59 p.m. (local time) on the last day of the month in which all the above conditions have been satisfied. Upon the effective date, the Company will amend Section 1.1 of Article V to reflect the new Membership Interest of all Members.

Section 1.4. Rights of Transferee. Any Transferee of a Membership Interest will, on the effective date of the Transfer, have only those rights of an assignee as specified in the Act (entitling the Transferee to receive, to the extent of the Membership Interest transferred, only the Distribution to which the Transferor would be entitled) unless and until such Transferee is admitted as an additional Member (or unless such Transferee is already a Member). For purposes of any provision of this Agreement relating to any vote, consent or agreement of the Members, a Transferee who has not become an additional Member will not be entitled to any vote with respect to such transferred Membership Interest. Notwithstanding any Transfer of a Membership Interest, such interest in the hands of the Transferee will remain subject to all of the restrictions contained in this Agreement (including the restrictions on Transfer contained in this Section). A Transferee of a Membership Interest will, on the effective date, become an additional Member if all Members (other than the Transferor Member) in their sole discretion, agree in writing to admit such Transferee as a Member in the Company. Only Persons admitted to the Company as initial or additional Members in accordance with this Agreement will have the voting rights specified in Article VIII, and any rights otherwise owed to a Member by the other Members as a fiduciary. The term "Member" as used in this Agreement also includes any immediate or remote Transferee of such Member's Membership Interest (to the extent of the Membership Interest transferred).

Section 1.5. Security Interest. A Member or Economic Interest Owner may not grant a security interest in such Member's Interest or such Economic Interest Owner's Economic Interest without the unanimous consent of all Members.

Section 1.6. No Dissolution. No Transfer made pursuant to this Article XIII shall dissolve or terminate the Company or cause the Company to be dissolved, but, instead, the business of the Company shall be continued as if such Transfer had not occurred.

Section 1.7. Death of a Member. Upon the death of any Member (the "Decedent"), the Company shall neither be dissolved nor wound up, but, instead, the business of the Company shall be continued as if such death had not occurred. Each Member shall have the right by testamentary disposition to bequeath all or any portion of his or her percentage of Membership Interest and Membership Rights in the Company to one or more member(s) of his or her immediate family or to any trust in which one or more member(s) of his or her immediate family retains the full beneficial interest. "Immediate family" for the purposes of this Section 1.7 shall include only a spouse and lineal descendants of the Decedent. In the case of any such bequest, the legatee or legatees shall hold the percentage of Membership Interest and Membership Rights received as a result of such bequest subject to the terms of this Agreement and, if the other Members unanimously consent in writing, shall be required to join in and execute, acknowledge, seal and deliver a copy of this Agreement as a substituted Member.

ARTICLE XIII - BUY/SELL UPON DEADLOCK

Section 1.1. Deadlock. Upon the deadlock of the Managers of the Company (the "Deadlock") as defined below, each Member shall, within ten (10) days after termination of the Deadlock Period (as defined below), submit to the Company a sealed bid (the "Sealed Bid"") in writing containing the price at which such Member is willing to purchase all, but not less than all, of the Membership Interest (the "Deadlock Interest") owned by the other Member (the "Deadlock Member"). On the date of the expiration of such ten (10) day period (the "Original Deadlock Closing Date"), the Sealed Bids shall be opened and the Member submitting the Sealed Bid containing the highest price for the purchase of the Interest shall purchase, and the Deadlock Members shall sell to such Member at the price submitted to the Company in the Sealed Bid, all, but not less than all, of the Deadlock Interest. In the event that two (2) or more Members submit equal Sealed Bids that are the highest Sealed Bids submitted to the Company pursuant to this Section 1.1, each such Member shall have an additional ten (10) day period from the Original Deadlock Closing Date to submit a second sealed bid (the "Second Sealed Bid") in writing containing a price (the "Second Bid Price") at which each such Member is willing to purchase the Deadlock Interest of the Deadlock Members. On the date of the expiration of such additional ten (10) day period (the "Second Deadlock Closing Date"), the sealed bids shall be opened and the Member submitting the Second Sealed Bid containing the highest price for the Deadlock Interest shall purchase and the Deadlock Members shall sell to such Member at the Second Bid Price all, but not less than all, of the Deadlock Interest. In the event that two (2) or more Members of the Company shall submit equal Second Sealed Bids, then all of the Members of the Company shall petition a court of equity to dissolve the Company on grounds that the Members and Managers are so divided respecting the management of the Company's affairs that the vote for action by the Directors cannot be obtained.

Section 1.2. Payment of the Price. The Bid Price or Second Bid Price, as the case may be, shall be payable in cash on the Original Deadlock Closing Date or the Second Deadlock Closing Date, as the case may be.

Section 1.3. Deadlock Defined. The "deadlock" of the Managers of the Company, for purposes of this Section 1.1 is hereby defined as being when the Managers are so divided respecting the management of the Company's affairs that the votes required for action by the Managers cannot be obtained for a continuous period equal to or exceeding sixty (60) days (the "Deadlock Period").

Section 1.4. Price and Terms For Purchase and Sale of Membership Interest. Unless modified according to this Agreement, and except as otherwise provided, the price to be paid upon the purchase and sale of a Membership Interest will be the Value of the Business as determined by the Corporation's independent accountant divided by the Membership Interest as of the date of valuation. The event giving rise to a purchase and sale hereunder shall be (i) the date on which the transferor Member's notice is given to the Members under paragraph 2 above.

Section 1.5. Terms. The purchase price to be paid for any purchase and sale of a Membership Interest pursuant to this Agreement shall, except as expressly provided otherwise, be paid by the purchaser to the seller at the closing in cash or by bank cashier's check, or, at the sole option of the purchaser, as follows:

A. The purchasing party or parties shall deliver to the seller an amount of cash at closing equal to 25% of the total purchase price.

B. Any balance of the purchase price not paid in cash at closing shall be represented by a negotiable promissory note (the "Note") in the original principal amount of the balance. The Note shall require payment of the principal amount in equal consecutive monthly installments of principal and

interest, amortized over five (5) years, with interest at a rate per annum equal to the minimum rate necessary to avoid additional interest being imputed to this transaction for federal income tax purposes. The Note shall allow the prepayment of all or any part of the principal amount at any time without penalty. As security for the Note, the purchasing party or parties shall execute a pledge of the Membership Interest being purchased and sold in favor of any holder of the Note. The Note shall be executed by all purchasing parties as makers, and all purchasing parties shall be jointly and severally liable for full payment according to its terms.

Section 1.6. Liens. The selling party shall transfer and convey the Membership Interest to the purchasing party or parties at closing free and clear of all encumbrances except those arising out of this Agreement.

Section 1.7. Death Following Sale of Interest. If a living Member sells his or her Membership Interest pursuant to this Agreement, and if such selling Member dies before receiving the entire purchase price, then the purchasing party or parties shall pay to the estate of such Member an amount equal to the remaining principal amount owed by the purchasing party or parties to the Member as a result of the purchase of said Membership Interest. Such payment shall be credited as a principal prepayment of any note given by the purchasing party or parties pursuant to this Section 1.7. To the extent of any remaining principal balance, such note shall continue in effect according to its terms.

ARTICLE XIV - INDEMNIFICATION

Section 1.1. Indemnification. The Company shall indemnify and hold harmless each Member and the Manager from any loss, liability or damage actually and reasonably incurred or suffered by any such Member or Manager by reason of any act performed or omitted to be performed, or alleged to have been performed or omitted, by such Member or Manager in connection with the business of the Company; provided that, no Member or Manager whose action or omission to act caused the loss, liability or damage incurred or suffered, may receive indemnification or avoid liability with respect to any claim, issue or matter as to which there is a final determination that such Member acted in bad faith, gross negligence or willful misconduct. A final determination means an order of any court or arbitration panel that is not appealed. This right of indemnification includes any judgment, award, settlement, cost, expenses and reasonable attorney's fees incurred in connection with the defense of any actual or threatened claim or action based on any such act or omission.

Section 1.2. Payment. Any such indemnification will only be paid from the assets of the Company, and will be made promptly following the fixing of the loss, liability, or damage incurred or suffered by final judgment of any court, arbitration, settlement, contract, or otherwise (provided that attorneys' fees and costs may be paid as incurred).

Section 1.3. Liability Limitation. A Member or Manager will not be liable to the Company for any loss, liability or damage suffered or incurred by the Company, directly or indirectly, because of any act or omission made by such Member in good faith and in the absence of willful misconduct.

ARTICLE XV - DISSOLUTION OF THE COMPANY

Section 1.1. Dissolution. The Company will be dissolved upon the happening of any of the following events:

A. Twenty years after the date of filing of Articles of Organization, unless its existence is legally extended;

B. The written consent of all Members; or,

C. An event of withdrawal of a Member (as defined in Section 1.2 of this Article), unless the Company is continued as provided in Section 1.3 of this Article.

Section 1.2. Event of Withdrawal. An event of withdrawal of a Member occurs when any of the following occurs:

A. With respect to any Member who is an individual, upon either the death of the individual or the entry by a court of competent jurisdiction of an order adjudicating the individual to be incompetent to manage such individual's person or estate;

B. With respect to any Member that is an estate, upon final distribution of the estate's Membership Interest;

C. With respect to any Member that is a partnership or a limited liability company, upon dissolution and liquidation of such entity;

D. With respect to any Member that is a corporation, upon filing of articles of dissolution of the corporation;

E. With respect to any Member, the bankruptcy of the Member; or

F. Any other event which terminates the continued membership of a Member in the Company.

ARTICLE XVI - LIQUIDATION

Section 1.1. Liquidation. Upon Dissolution of the Company, the Company shall immediately wind up its affairs and liquidate. A reasonable time shall be allowed for the orderly liquidation of the Company and the discharge of liabilities to creditors so as to enable the Company to minimize any losses attendant upon Liquidation.

Section 1.2. Priority of Payment. The assets of the Company shall be distributed in Liquidation of the Company in the following manner:

A. To creditors by the payment or provisions for payment of the debts and liabilities of the Company (other than any loans or advances that may have been made by any of the Members to the Company) and the expenses of Liquidation;

B. To the setting up of any reserves that are reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company;

C. To the repayment of any loans or advances that may have been made by any Member to the Company (proportionally if the amount available for such repayment is insufficient for payment in full);

D. To the payment to the Members of their respective Capital Accounts as adjusted for their respective shares of liquidating Profits and Losses; and,

F. The balance, if any, to the Members in the ratio of their Membership Interests.

Section 1.3. Articles of Dissolution. When all debts, liabilities and obligations of the Company have been provided for or paid, and all remaining assets distributed to the Members as provided in Section 1.3 of this Article, the Company shall file Articles of Dissolution with the Colorado Secretary of State pursuant to the Act. At such time, the Company shall also file an application for withdrawal of its certificate of authority with the Colorado Secretary of State pursuant to the Act.

ARTICLE XVII - MISCELLANEOUS PROVISIONS

Section 1.1. Inurement. This Agreement shall be binding upon and inure to the benefit of all parties hereto, their personal and legal representatives, guardians, successors and assigns to the extent, but only to the extent, that assignment is provided for in accordance with, and permitted by, the provisions of this Agreement.

Section 1.2. No Limit on Personal Activities. Nothing herein contained shall be construed to limit in any manner the Members, or their respective agents, servants and employees, in carrying out their own respective businesses or activities.

Section 1.3. Gender and Headings. Throughout this Agreement, where such meanings would be appropriate, the masculine gender shall be deemed to include the feminine and the neuter and the singular shall be deemed to include the plural. The headings herein are inserted only as a matter of convenience and reference, and in no way define or describe the scope of the Agreement or the intent of any provisions thereof.

Section 1.4. Entire Agreement. This Agreement sets forth all (and is intended by all parties hereto to be an integration of all) the promises, agreements, conditions, understandings, warranties and representations among the parties hereto with respect to the Company; and there are no promises, agreements, conditions, understandings, warranties, or representations, oral or written, express or implied, among them other than as set forth herein.

Section 1.5. Severability. Nothing contained in this Agreement shall be construed as requiring the commission of any act contrary to law. In the event there is any conflict between any provision of this Agreement and any statute, law, ordinance, or regulation contrary to which the Members or the Company have no legal right to contract, the latter shall prevail, but in such event, the provisions of this Agreement thus affected shall be curtailed and limited only to the extent necessary to conform with said requirement of law. In the event that any part, article, section, paragraph, or clause of this Agreement shall be held to be indefinite, invalid, or otherwise unenforceable, the entire Agreement shall not fail on account thereof, and the balance of the Agreement shall continue in full force and effect.

Section 1.6. Wills. Each Member agrees to insert in his or her will or to execute a codicil thereto directing and authorizing his or her personal representatives to fulfill and comply with the provisions hereof and to sell and transfer his or her percentage of Membership Interest and Membership Rights in accordance herewith.

Section 1.7. Waiver of Certain Rights. The Members agree that irreparable damage would occur if any Member should bring an action in court to dissolve the Company. Accordingly, each Member accepts the provisions under this Agreement as such Member's sole entitlement on Dissolution and Liquidation of the Company and hereby waives and renounces (to the fullest extent permitted by law) such Member's right to seek a court decree of dissolution or to seek the appointment by a court of a liquidator for the Company. Each Member further waives and renounces any alternative rights which might otherwise be provided by law upon the happening of an event of withdrawal under Section 1.2 of Article XV with re-

spect to such Member and accepts the provisions under this Agreement as such Member's sole entitlement upon the happening of such event.

Section 1.8. Waiver of Partition Right. Each Member hereby waives and renounces any right that such Member may have, prior to the Dissolution and Liquidation of the Company, to maintain any action for partition with respect to the Company's property.

Section 1.9. Specific Performance. If any Member proposes to transfer all or any part of such Member's Membership Interest in violation of the terms of this Agreement, the Company or any Member may apply to any court of competent jurisdiction for an injunctive order prohibiting such proposed disposition except upon compliance with the terms of this Agreement, and the Company or any other Member may institute and maintain any action or proceeding against the Member proposing to make such Transfer to compel the specific performance of this Agreement. Any attempted Transfer in violation of this Agreement will be null and void and of no force and effect. Similar injunctive relief and specific performance may be obtained by the Company or any Member against any third party to compel compliance with the terms of this Agreement. The Person against whom such action or proceeding is brought hereby waives the claim or defense that an adequate remedy at law exists, and such Person agrees not to urge in any such action or proceeding the claim or defense that such remedy at law exists.

Section 1.10. Arbitration. If any controversy or claim arising out of this Agreement cannot be settled by the Members, the controversy or claim will be settled by an individual or entity selected by the written agreement of the Members or, if they cannot agree, by arbitration in accordance with the then applicable provisions of the Commercial Arbitration Rules of the American Arbitration Association and pursuant to the Colorado Uniform Arbitration Act, as it may be amended and held in Denver, Colorado, and judgment on such arbitration award may be entered in any court having jurisdiction.

Section 1.11. Time and Notices. Unless otherwise herein provided, all notices will be made in writing, and all periods of time will begin or end on the day such notice is personally delivered to any recipient or will be deemed fully made and delivered on the earlier of five (5) days after being sent by registered or certified mail, return receipt requested, postage prepaid, addressed to the Company or any Member at the address indicated for such Member in the Company records (or at such other address as such Member may give to the others in writing) or the date of actual receipt as indicated on the return receipt. In computing the period of days, the date of personal delivery or date of deemed receipt of such notice will be included. Any Member may waive, in writing, any notice required to be given pursuant to this Agreement, whether before or after such required notice.

Section 1.12. Further Assurances. Without additional consideration, each Member hereby agrees to sign, acknowledge and deliver any further instruments and documents as the Company determines to be necessary or desirable from time to time (i) to effect the provisions or intent of this Agreement, (ii) to ensure its status as a limited liability company in any jurisdiction where it owns property or transacts business or (iii) to comply with any law, rule or regulation applying to the Company.

Section 1.13. Waiver. No waiver, express or implied, by any Member with respect to any breach or default by any other Member in the performance of such Member's obligation under this Agreement will be deemed a waiver of any further or other breach or default by such other Member. Failure on the part of any Member to declare any other Member to be in breach or default, regardless of how long such failure continues, will not constitute a continuing waiver.

Section 1.14. Construction. This Agreement shall be construed according to the laws of the State of Colorado.

Section 1.15. Investment Representations. The undersigned Members and Economic Interest Owners, if any, understand (1) that the Membership Interests and Economic Interests evidenced by this Agreement have not been registered under the Securities Act of 1933, the Colorado Securities Act or any other state securities laws (the Securities Acts") because the Company is issuing these Membership Interests and Economic Interests in reliance upon the exemption from registration requirements of the Securities Acts providing for the issuance of securities not involving a public offer, (2) that the Company has relied upon the fact that the Membership Interests and Economic Interests are to be held by each Member or Economic Interest Owner for investment and (3) that exemption from registration under the Securities Acts would not be available if the Membership Interests and Economic Interest were acquired by a Member or Economic Interest Owner with a view to distribution.

Accordingly, each Member and Economic Interest Owner hereby confirms to the Company that such Member and Economic Interest Owner is acquiring the Membership Interests and Economic Interests for such Member's and Economic Interest Owner's account, for investment and not with a view to the distribution thereof. Each Member and Economic Interest Owner agrees not to transfer, sell or offer for sale any or a portion of the Membership Interests or Economic Interests unless there is an effective registration or other qualification relating thereto under the Securities Act of 1933 and under any applicable state securities laws or unless the holder of Membership Interests or Economic Interests delivers to the Company an opinion of counsel, satisfactory to the Company, that such registration or other qualification under such Act and applicable state securities laws is not required in connection with such transfer, offer or sale. Each Member and Economic Interest Owner understands that the Company is under no obligation to register the Membership Interests or Economic Interests or to assist such Member or Economic Interest Owner in complying with any exemption from registration under the Securities Acts if such Member or Economic Interest Owner should at a later date wish to dispose of the Membership Interest or Economic Interest. Furthermore, each Member and Economic Interest Owner acknowledges that the Membership Interests and Economic Interests are unlikely to qualify for distribution under Rule 144 of the Securities and Exchange Commission unless such Member or Economic Interest Owner is not an "affiliate" of the Company and the Membership Interest or Economic Interest has been beneficially owned and fully paid for by such Member or Economic Interest Owner for at least three (3) years.

Section 1.16. Legal Counsel. Each of the undersigned hereby acknowledges and agrees as follows:

A. That he or she has read in full the contents of this Agreement;

B. That before signing this Agreement he or she has had ample opportunity to consult with independent legal counsel; and

C. That he or she has consulted with independent legal counsel, has received legal advice regarding the contents of this Agreement and his or her rights and obligations with respect thereto, accepts the terms and conditions hereof and signs this Agreement of his or her own free will and without undue influence of anyone including any of the parties hereto; or

D. That he or she has chosen not to obtain independent legal advice, understands the contents hereof, acknowledges that certain of the provisions of this Agreement impose obligations on the part of him or her and his or her heirs, representatives and assigns and that by certain of the terms and conditions hereof he or she waives certain of his or her legal rights and, thus, those of his or her heirs, representatives and assigns, accepts the terms and conditions hereof and signs this Agreement of his or her own free will and without undue influence of anyone including any of the parties hereto.

IN WITNESS WHEREOF, the undersigned hereby agree, acknowledge and certify that the foregoing Operating Agreement has been adopted by the Members of the Company.

MEMBERS:

EXHIBIT C

CHERRY HILLS VILLAGE
COLORADO

2450 E. Quincy Avenue
Cherry Hills Village, CO 80113
www.cherryhillsvillage.com

Village Center
Telephone 303-789-2541
FAX 303-761-9386

Liquor License Application Referral Request

December 23, 2015

Re: New Application
Cherry Hills Sushi Co LLC
1400 E. Hampden Ave. Suite 110
Cherry Hills Village, CO 80113

Dear Referral Organization: Cherry Hills Village City Attorney's Office

Please advise the City Clerk of any problems or concerns with this establishment by completing this request and returning to the City Clerk by January 28, 2016. The applicant's public hearing is scheduled for January 19, 2016

✓ We have no objections.

___ Please note the following concerns:

_____

_____

_____

___ See attached letter for detailed comments.

Agency Name: Cherry Hills Village City Attorney's Office

Name: Linda C. Michow

Signature: Linda Michow

Date: January 26, 2016

Sincerely,

Laura Smith
City Clerk

CHERRY HILLS VILLAGE
COLORADO

2450 E. Quincy Avenue
Cherry Hills Village, CO 80113
www.cherryhillsvillage.com

Village Center
Telephone 303-789-2541
FAX 303-761-9386

Liquor Licensing Referral Request

January 6, 2016

Re: New Application
Cherry Hills Sushi Co
1400 E. Hampden Ave. Suite 110
Cherry Hills Village, CO 80113

Dear Referral Organization: Cherry Hills Village Police Department

Please advise the City Clerk of any problems or concerns with this establishment by completing this request and returning to the City Clerk by January 28, 2016.

✓ We have no objections.

___ Please note the following concerns:

_____

_____

_____

___ See attached letter for detailed comments.

Agency Name: Cherry Hills Village Police Department

Name: MICHELLE TOVREA

Signature: [signature]

Date: 1/14/2016

Sincerely,

[signature]

Laura Smith
City Clerk

CHERRY HILLS VILLAGE
COLORADO

2450 E. Quincy Avenue
Cherry Hills Village, CO 80113
www.cherryhillsvillage.com

Village Center
Telephone 303-789-2541
FAX 303-761-9386

Liquor Licensing Referral Request

January 8, 2016

Re: New Application
Cherry Hills Sushi Co LLC
1400 E. Hampden Ave. Suite 110
Cherry Hills Village, CO 80113

Dear Referral Organization: Cherry Hills Village Community Development Department

Please advise the City Clerk of any problems or concerns with this establishment by completing this request and returning to the City Clerk by January 28, 2016.

X We have no objections.

___ Please note the following concerns:

_____

_____

_____

___ See attached letter for detailed comments.

Agency Name: Cherry Hills Village Community Development Department

Name: Robert Zuccaro

Signature: Robert J Zuccaro

Date: Jan. 8, 2016

Sincerely,

Laura Smith

Laura Smith
City Clerk

EXHIBIT D

LEGAL NOTICES

The VILLAGER

January 14, 2016

PUBLISHER'S AFFIDAVIT

STATE OF COLORADO,)
) SS.
COUNTY OF ARAPAHOE)

I Gerri Sweeney, do solemnly affirm that I am the Publisher of THE VILLAGER; that the same is a weekly newspaper published in Greenwood Village, County of Arapahoe, State of Colorado, and has a general circulation therein; that said newspaper has been continuously and uninterruptedly published in said County of Arapahoe for a period of at least 52 consecutive weeks prior to the first publication of the annexed notice, that said newspaper is entered in the post office at Englewood, Colorado, as periodical class mail matter and that said newspaper is a newspaper within the meaning of the Act of General Assembly of the State of Colorado, approved March 30, 1923, and entitled "Legal Notice and Advertisements," with other Acts relating to the printing and publishing of legal notice and advertisements. That the annexed notice was published in the regular and entire issue of said newspaper for a period of ONE consecutive insertions that the first publication of said notice was in the issue of said newspaper dated:

JANUARY 14, 2016

and the last publication of said notice, was in the issue of said newspaper dated:

JANUARY 14, 2016

Gerri Sweeney
Publisher

Subscribed and affirmed to before me, a Notary Public.
This 15 day of January A.D., 2016

Pat McLachlan
Notary Public

My Commission expires:

Pat McLachlan
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20134030748
MY COMMISSION EXPIRES JUNE 1, 2017

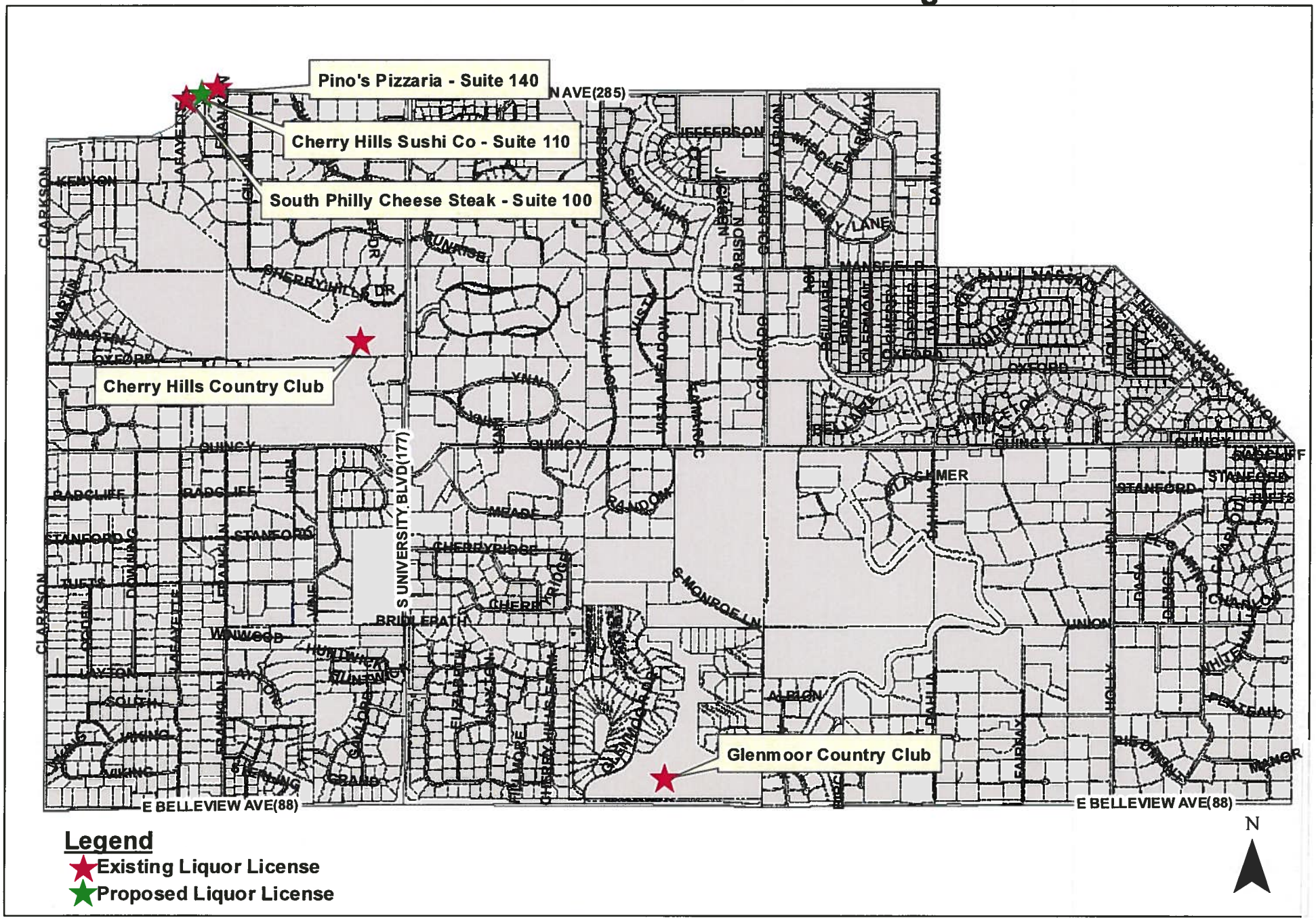
NOTICE OF PUBLIC HEARING

Notice is hereby given that a Public Hearing will be held before the City Council for the City of Cherry Hills Village at the Village Center, 2450 E. Quincy Avenue, on February 2nd, 2016 at 6:30 p.m. for the purpose of receiving written and oral comments from the public concerning the application of Cherry Hills Sushi Co. for a Hotel and Restaurant Liquor License at 1400 East Hampden Avenue, Suite 110 in the City of Cherry Hills Village.

All interested parties are encouraged to attend the hearing and to submit comments. For more information, call 303-783-2732.

Published in The Villager
Published: January 14, 2016
Legal # 6222

City of Cherry Hills Village
Existing and Proposed Liquor License Locations
Within the Established Boundaries of the Neighborhood



Legend

★ Existing Liquor License

★ Proposed Liquor License

EXHIBIT E

CHERRY HILLS VILLAGE
COLORADO

2450 E. Quincy Avenue
Cherry Hills Village, CO 80113
www.cherryhillsvillage.com

Village Center
Telephone 303-789-2541
FAX 303-761-9386

ITEM: 8b

MEMORANDUM

TO: HONORABLE MAYOR CHRISTMAN AND MEMBERS OF THE CITY COUNCIL

FROM: JAY GOLDIE, DEPUTY CITY MANAGER/DIRECTOR OF PUBLIC WORKS

SUBJECT: TRANSPORTATION ASSESSMENT PROPOSAL - FHU

DATE: FEBRUARY 2, 2016

On October 20, 2015 staff presented to City Council the initial Transportation Analysis proposal submitted by Felsburg Holt and Ullevig (FHU). This original proposal was based on the RFQ that was advertised by the City as a Comprehensive Traffic Analysis within the Village. Focused on feedback from City Council, staff has worked with FHU to change the proposal to an intensive data collection project. This program is designed to gather baseline information to be used as a tool to document current traffic issues and give the City the ability to make informed decisions as how to best mitigate future issues and needs.

The System Assessment has three major components as outlined in the revised scope (Exhibit A). These tasks include:

- Task 1: Intersection Data Collection and Analysis
- Task 2: School Evaluation
- Task 3: Cut Through Traffic Assessment

The assessment will give the City the knowledge necessary to address residents' concerns about traffic congestion and the true origin of the vehicles traveling through Cherry Hills Village. Without collecting this data we can only make assumptions as to the effect of cut through and school traffic on the congestion and volume related issues that are occurring in the interior of the Village. Under Task 1, the Consultant will use the data to develop projections for future volumes and patterns that will be helpful for future planning efforts. Under Task 2, the consultant will analyze the collected data to make recommendations to help address safety and traffic flow issues around the school zones as well as document volumes directly related to school traffic. Task 3, will focus on determining how much of the Village's traffic volume is actually generated from motorists trying to avoid congestion and gridlock on the surrounding state highways.

The project being proposed is heavily weighted toward data collection efforts. This information will be needed to make well-informed decisions about necessary improvements or changes to the roadway system in the future. Ongoing efforts and collection will be needed in the future to help make these decisions. Staff has worked with FHU in an effort to design a data collection program that covers the most travelled corridors of the City aiming to ensure that there are no gaps in the information. The cost for the project is $74,040.00. The 2016 budget for this project is $75,000.00.

STAFF RECOMMENDATION

Staff recommends that City Council approve the Contract with Felsburg Holt and Ullevig in the amount of $74,040.00 for the scope of work outlined in the updated proposal by FHU (Exhibit A).

RECOMMENDED MOTION

"I move to approve the contract for services with Felsburg Holt and Ullevig in the amount of $74, 040.00 for the completion of the Traffic Analysis as outlined in the attached proposal and scope of work."

ATTACHMENTS

Exhibit A: Scope of Work for Cherry Hills Village Traffic Analysis
Exhibit B: Detailed Cost Proposal
Exhibit C: Contract for Services

EXHIBIT A

City of Cherry Hills Village
Comprehensive Transportation Analysis
Scope of Work – January 14, 2016

PROJECT MANAGEMENT / PROJECT COORDINATION

Project Team Meetings: Regularly scheduled meetings of the Project Team, consisting of City staff, resident advisors and FHU staff, will occur at major milestones to meet project requirements. Over the course of the project, we anticipate approximately four team meetings. The purpose of these meetings will be to review data and analyses, to update staff on study progress, and to develop and evaluate alternatives.

City Council Updates: FHU will prepare and present study findings and recommendations to City Council. We anticipated attending two meetings.

SCOPE OF WORK

FHU proposes to conduct the transportation system analysis through a series of tasks where each task is defined by two main efforts:

- identifying issues and needs
- developing recommendations to address these issues and needs

The tasks are sequential and after each task the results and recommendations will be discussed and the City will decide whether the project should move on to the next task.

TASK 1: INTERSECTION DATA COLLECTION AND ANALYSIS

This task will focus on operations and needs at key intersections within the City. The following tasks describe the datasets to be collected and the analysis to be conducted in assessing traffic operations throughout the City.

Existing Traffic Counts

FHU will collect peak hour turning movement data at the 12 locations and daily traffic and speed data along key roadways. We will use these data to determine existing delay and level of service at the study intersections during the peak hours. The graphic at the end of this scope of work shows the anticipated locations for traffic data collection.

Traffic Projections and Future Operations

To support the development of future traffic projections and future traffic operations we will collect the following data.

- Current and forecasted socioeconomic and geographic data
- Housing, employment, and commute patterns from census track data
- Regional population and employment growth projections

- Population and employment centers
- Land use patterns and economic development areas
- DRCOG travel demand model data
    - Land use
    - TAZ structure
    - Travel patterns
    - Traffic projections

These data will be the source for developing future traffic volumes along Village roadways and at study intersections. This effort includes the refinement of the DRCOG regional model data and modifications to the model to match Cherry Hills Village land use projections and street classifications.

Analysis and Assessment

FHU will analyze collected data. This analysis will determine the following items:

- Future traffic volumes at study intersections and along study roadways.
- Existing and future traffic operations at study intersections to identify issues and to determine recommendations for improvements or changes
- General assessment using intersection data and travel demand model data to estimate existing and potential future regional travel patterns and their impact on Cherry Hills

Identify Issues and Recommendations

FHU will summarize these analyses and assessments in a transportation assessment report. This report will use graphics and tables to show existing and future traffic volumes, highlight major findings and to explain recommendations.

TASK 2: SCHOOL EVALUATION

Supplemental Data Collection

To conduct an assessment of school operations and their impacts on the transportation system additional traffic data will be needed. The traffic count program will collect some traffic data needed at the school access points. For example, traffic counts along Quincy at Meade and at the Kent Denver access will capture school traffic patterns during the morning drop-off because it coincides with the morning peak period of travel. On the other hand, the evening peak travel period occurs after the afternoon pick up at schools. Therefore, we will need to supplement the traffic data with additional counts at the following locations:

- Quincy & Meade during the afternoon pick up
- Quincy & Kent Denver access during the afternoon pick up
- Saint Mary's three accesses during the morning drop off and the afternoon pick up

These additional count efforts will be focused on the 15 minutes before the 15 minutes after the school's start and end times.

Existing Conditions Assessment

This effort will include identifying and reviewing pedestrian, signage and other accommodations around the schools.

Assessment of Patterns and Issues

Using the traffic data collected at school access points and field observations, FHU will developed an assessment of drop and pick up patterns and the impact these patterns have on the existing transportation system. Based on this evaluation FHU will provide recommendations to address deficiencies and/or issues related to safety and traffic flow.

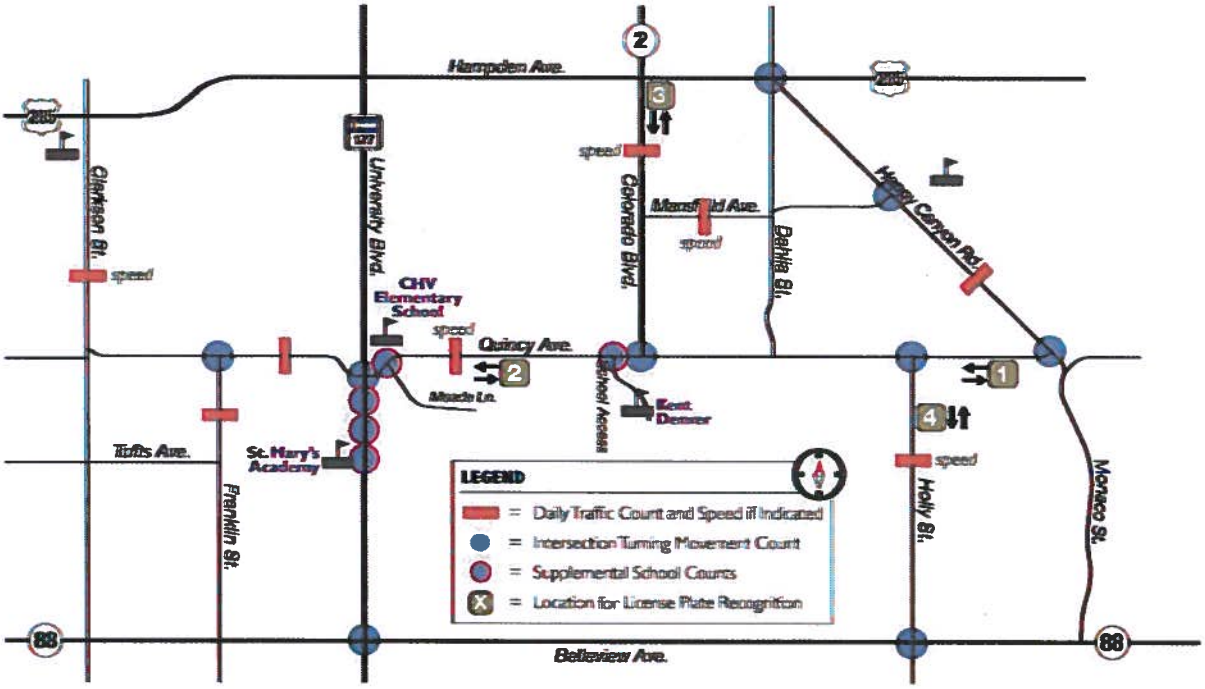
Recommendations and Memo Report

The above efforts will be described and presented in a technical memorandum with graphics. This report will document existing issues and travel patterns and provide recommendations to address these issues.

TASK 3: CUT THROUGH TRAFFIC ASSESSMENT

This task is primarily focused on identifying cut-through traffic in the study area. We will use the following approach for this effort.

- **License plate recognition** – The purpose of license plate recognition (LPR) is to determine cut-through traffic on study area collectors and local streets. In the attached data collection approach graphic, we propose to set up LPR cameras at three locations in the study area during the AM and PM peak hours. The cameras are positioned to record the cut-through traffic on the following roadways by recording license plates on vehicles using the street and then tracking them through the study area.
    - Colorado Avenue - Camera 3 with Cameras 1, 2
    - Quincy West of Happy Canyon – Cameras and 2



PROJECT HOURS AND FEES

The table below shows anticipated hours and fees for each task. It is anticipated that this scope of work and data collection could be completed for a total budget of $74,040.

Task	Jenny Young Principal	Todd Frisbie Sr. Engineer	Tyler Spurlock Engineer I	Shea Suski Planner III	Beverly Frisbie Admin	Graphics	Total Hours	Total Fee	Total Fee (Cumulative)
	$177	$142	$86	$91	$78	$88			
Project Management / Coordination									
Project Coordination		12					12	$1,700	
Meetings with CHV Staff	8	16	8			8	40	$5,082	
City Council Updates	2	8				2	12	$1,664	
Project Management / Coordination							64	$8,446	$8,446
Task 1 - Intersection Data Collection and Analysis									
Intersection Operations Existing		2	8				10	$975	
Future Traffic Projections		8	8				16	$1,825	
Traffic Projections and Future Operations		4	12				16	$1,604	
Travel Pattern Eval. From the model and traffic data	2	8	4	8			22	$2,558	
Identification of Issues / Recommendations	4	8					12	$2,549	
Traffic Operations Memo	4	12	8		8	8	40	$3,724	
Data collection (intersection counts 12 locations @ $450 per location)								$5,400	
Data collection (daily traffic and speed data 5 locations @ $300 per location)								$1,500	
Task 1 - Intersection Data Collection and Analysis Fee							116	$20,134	$28,580
Task 2 - School Evaluation									
Existing conditions assessment		2	4				6	$629	
Assessment of patterns and issues		4	8				12	$1,258	
Recommendations and Memo Report	2	4	8		4	4	22	$2,278	
Supplemental Data Collection (4 locations @ $200 per location)								$800	
Task 2 - Other transportation system evaluations and recommendations Fee							40	$4,965	$33,545
Task 3 - Cut Through Traffic Assessment									
Compile and Analyze Data and Draw Conclusions		12	8				20	$2,391	
Technical Memorandum	2	6	4			4	16	$1,903	
Data collection (license plate surveys 4 locations @$8,750 per location) - Select Locations								$35,000	
Task 3 - Cut Through Traffic Assessment Fee							36	$39,295	$72,840
Other Direct Costs								$1,200	$74,040

EXHIBIT C

PROFESSIONAL SERVICES AGREEMENT BETWEEN CITY OF CHERRY HILLS VILLAGE AND FELSBURG HOLT AND ULLEVIG, INC.

THIS PROFESSIONAL SERVICES AGREEMENT ("***Agreement***") is made and entered into this 2nd of February, 2016, ("***Effective Date***") by and between the **CITY OF CHERRY HILLS VILLAGE**, a Colorado home rule municipal corporation (the "***City***"), and **Felsburg Holt and Ullevig, Inc.**, a Colorado corporation (the "***Consultant***"). The City and the Consultant may be collectively referred to as the "***Parties***" and each individually as "***Party***".

RECITALS AND REPRESENTATIONS

WHEREAS, the Consultant represents to the City that the Consultant has the skill, ability, and expertise to perform the services described in this Agreement; and

WHEREAS, the City desires to engage the Consultant to provide the services described in this Agreement subject to the terms and conditions of the Agreement.

NOW, THEREFORE, inconsideration of the terms and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed by and between the Parties as follows:

1. LINE OF AUTHORITY: Jay Goldie, Interim City Manager, is the City representative responsible for overseeing and coordinating the Transportation Assessment Project (the "***City Authorized Representative***"), and is designated as the City Authorized Representative for the purpose of administering, coordinating, and approving the work performed by the Consultant under this Agreement. For purposes of this Agreement, the Consultant's designated representative is **Jenny Young, Principal** (the ***"Consultant Authorized Representative")***.

2. SCOPE OF SERVICES: Consultant shall perform all services described in **Exhibit A** (the "***Services***") diligently and professionally and in a manner satisfactory to the City Authorized Representative.

The City, from time to time, may request changes to the Services to be performed hereunder. If agreed to by both Parties, Consultant will, within a reasonable time period, provide to the City in writing a price and modification to services for the proposed addition to Services. Such changes, including any increase or decrease in the amount of the Consultant's compensation, when mutually agreed upon between the City and Consultant, shall become an amendment to and part of this Agreement, provided any such change is in writing and signed by the Mayor and by the Consultant Authorized Representative. Unless otherwise stated in the written amendment, Consultant will invoice the City on the next billing cycle after completion of the addition to Services or if the change involves an ongoing new addition to the Services, Consultant will include the associated adjustment to the monthly compensation amount.

If Consultant proceeds without such written change authorization, then the Consultant shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit or implied contract. Except as expressly provided herein, no agent, employee or representative of the City shall have the authority to enter into any changes or modifications, either directly or implied by a course of action, relating to the terms and scope of this Agreement. If Consultant performs any work beyond the Services described in **Exhibit A**, it does so at its own risk.

3. COMPENSATION FOR SERVICES: In consideration for the provision of Services described in **Exhibit A**, the City agrees to compensate the Consultant based on the following:

a. In consideration for the completion of the Services specified herein by Consultant, the City shall pay Consultant a not to exceed amount of seventy four thousand forty dollars and 00 cents ($74,040.00) in accordance with pricing proposal set forth in the Consultant's Proposal, a copy of which is attached and incorporated as part of **Exhibit B**. In accordance with the Scope of Services (**Exhibit A**), the City has the right to terminate this Agreement at the conclusion of each task identified in **Exhibit A** without providing thirty days' advance written notice as required in Section 13 if the City determines in its sole and absolute discretion not to proceed with the next task. Upon City's written notice of termination, the Consultant shall immediately cease work and shall be entitled to receive compensation for any satisfactory work completed pursuant to the terms of this Agreement prior to the date of notice of termination. Except as may be agreed upon by the City and Consultant through written change orders as described in Section 2 above, in no event shall the City be liable for payment under this Agreement in excess of seventy four thousand forty dollars and 00 cents ($74,040.00).

b. The Consultant shall submit invoices to the City in accordance with the terms of this Agreement. Invoices will be billed to the City on a regular basis, but no more frequently than every thirty (30) days. The not to exceed fee specified herein shall include all fees and expenses incurred by Consultant in performing the services hereunder.

c. Consultant's invoice(s) shall be in a format acceptable to the City, shall be supported by information in such detail as may be required by the City and shall be sufficient to substantiate that the Consultant has performed the Services described in **Exhibit A**. The City may withhold payment for work which is not completed as scheduled, or which is completed unsatisfactorily, until completed satisfactorily and may deny payment for such work upon termination by the Consultant.

4. TERM: It is mutually agreed by the Parties that the term of this Agreement shall commence as of the Effective Date and terminate upon completion of the Services, unless earlier terminated in accordance with the terms and conditions of this Agreement. Any extension of the term of this beyond the current fiscal year shall be contingent upon annual funding being appropriated, budgeted and otherwise made available for such purposes and subject to the City's satisfaction with all services received during the preceding term.

5. CONFLICT OF INTEREST: The Consultant agrees that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the Services described herein, and the Consultant further agrees not to hire, pay, or contract for services of any official, officer or employee of the City. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Consultant by placing the Consultant's own interests, or the interest of any party with whom the Consultant has a contractual arrangement, in conflict with those of the City.

6. INDEPENDENT CONTRACTOR: The Consultant shall perform the Services as an independent Contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with the City other than as a contracting party and independent Consultant. The City shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Consultant or the Consultant's employees, sub-consultants, Consultants, agents, or representatives, including coverage or benefits related but not limited to: local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation; disability, injury, or health; professional liability insurance, errors and omissions insurance; or retirement account contributions.

7. INDEMNIFICATION: The City cannot and by this Agreement does not agree to indemnify, hold harmless, exonerate or assume the defense of the Consultant or any other person or entity whatsoever. The Consultant shall defend, indemnify and hold harmless the City, its elected officials, officers, directors, agents, and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever, in any way resulting from or arising from this Agreement; provided, however, that the Consultant need not indemnify or save harmless the City, its officers, agents and employees from damages resulting from the negligence of City's elected officials, officers, directors, agents, and employees. Consultant's defense, indemnification and insurance obligations shall be to the fullest extent permitted by law and nothing in this Agreement shall be construed as requiring the Consultant to defend in litigation, indemnify or insure the City against liability arising out of the death or bodily injury to person or damage to property caused by the negligence or fault of the City or any third party under the control or supervision of the City.

8. INSURANCE: The Consultant shall obtain and maintain the following types and minimum amounts of insurance, which shall remain in full force and effect during the term of this Agreement and for a period of one (1) year after completion of the Services:

a. Commercial General Liability	$1,000,000	each occurrence
	$2,000,000	general aggregate limit
	$2,000,000	products completed operations aggregate limit
	$1,000,000	personal and advertising injury
b. Worker's Compensation	$100,000	per accident
	$500,000	policy limit
c. Automobile Liability	$1,000,000	Combined single limit

The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this Section shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement.

9. NO WAIVER OF GOVERNMENTAL IMMUNITY: The Parties hereto understand and agree that the City, its elected officials, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., as the same may be amended from time to time, or otherwise available to the City.

10. ASSIGNMENT: The Consultant covenants and agrees that it will not assign or transfer its rights hereunder, either in whole or in part without the prior written approval of the City. Any attempt by the Consultant to assign or transfer its rights hereunder shall, at the option of the City Authorized Representative, void the assignment or automatically terminate this Agreement and all rights of the Consultant hereunder.

11. CITY REVIEW OF RECORDS: The Consultant agrees that, upon a reasonable request of the City Authorized Representative, at any time during the term of this Agreement or three (3) years thereafter, will make available for inspection and audit upon request by the City Authorized Representative, the City Finance Director, or any of their authorized representatives, those books and

records of the Consultant's work performed under this Agreement. Nothing construed herein shall be construed as a requirement that Consultant shall provide its financial records determined to be proprietary by the Consultant. The Consultant shall maintain such records until the expiration of the three (3) years following the end of the term of this Agreement.

12. OWNERSHIP OF DOCUMENTS: Working papers, reports and other documents prepared by the Consultant in connection with this Agreement shall be the property of the City. The Consultant shall provide the City with all copies of all reports, data and work product collected or produced by Consultant upon the City's request. The Consultant shall provide the City with copies of any documents produced in association with the Consultant's Services within five (5) business days upon written request of the City.

13. TERMINATION: Either Party shall have the right to terminate this Agreement, with or without cause, by giving written notice to the other Party of such termination and specifying the effective date thereof, which notice shall be given at least thirty (30) calendar days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, and reports which are considered to be documents subject to the Colorado Open Records Act shall become the City's property. The Consultant shall be entitled to receive compensation in accordance with this Agreement for any satisfactory work completed pursuant to the terms of this Agreement prior to the date of notice of termination. Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Consultant. The Consultant's indemnification obligations hereunder shall survive termination of this Agreement

14. NOTICES: Notices concerning termination of this Agreement, notices of alleged or actual violations of the terms or provisions of this Agreement, and all other notices shall be made as follows:

To the City:	City of Cherry Hills Village Attn: City Manager 2450 East Quincy Avenue Cherry Hills Village, CO 80113
with a copy to:	City Attorney for Cherry Hills Village c/o City of Cherry Hills Village 2450 East Quincy Avenue Cherry Hills Village, CO 80113
To the Consultant:	Felsburg Holt and Ullevig Attn: Jenny Young, Principal 6300 South Syracuse Way, Suite 600 Greenwood Village, CO 80111

Said notices shall be delivered personally during normal business hours to the appropriate office above, or by prepaid first class U.S. mail, via facsimile, or other method authorized in writing by the City Authorized Representative and the Consultant Authorized Representative. Mailed notices shall be deemed effective upon receipt or three (3) working days after the date of mailing, whichever is earlier. The Parties may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but such substitutions shall not be effective until actual receipt of written notification.

15. NONDISCRIMINATION: In connection with the performance of work under this Agreement, the Consultant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability.

16. ILLEGAL ALIENS: Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Consultant shall not contract with a subcontractor that fails to certify that the subcontractor does not knowingly employ or contract with any illegal aliens. By entering into this Agreement, Consultant certifies that it has verified, or attempted to verify, through participation in the basic pilot program that the Consultant does not employ any illegal aliens. If the Consultant is not accepted into the basic pilot program, the Consultant shall apply to participate in the basic pilot program every three months until the Consultant is accepted, or this Agreement had been completed, whichever is earlier. The Consultant is prohibited from using the basic pilot program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. If the Consultant obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Consultant shall be required to notify the subcontractor and the City within three (3) days that the Consultant has actual knowledge that a subcontractor is employing or contracting with an illegal alien. The Consultant shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding Consultant's actual knowledge. The Consultant shall not terminate the subcontract if, during such three days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Consultant is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Consultant violates this provision, the City may terminate this Agreement, and the Consultant may be liable for actual and/or consequential damages incurred by the City, notwithstanding any limitation on such damages provided by such Agreement.

17. GOVERNING LAW; VENUE: This Agreement shall be deemed to have been made in, and construed in accordance with the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court, County of Arapahoe, State of Colorado. The Consultant expressly waives the right to bring any action in or to remove any action to any other jurisdiction, whether state or federal.

18. COMPLIANCE WITH ALL LAWS AND REGULATIONS: All of the work performed under this Agreement by the Consultant shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado. The Consultant shall also comply with all applicable ordinances, regulations, and resolutions of the City and shall commit no trespass on any public or private property in the performance of any of the work embraced by this Agreement.

19. SEVERABLITY: In the event any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining provisions shall not be affected, provided that the remaining provisions without the invalidated provisions are consistent with the Parties' intent. Should either party fail to enforce a specific term of this Agreement it shall not be a waiver of a subsequent right of enforcement, nor shall it be deemed a modification or alteration of the terms and conditions contained herein.

20. NO THIRD PARTY BENEFICIARIES: The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement.

21. HEADINGS; RECITALS: The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. The Recitals to this Agreement are incorporated herein.

22. ENTIRE AGREEMENT: The Parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any elected official, officer, director, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications to this Agreement, except those which are expressly reserved herein to the Mayor, the City Authorized Representative and/or the Consultant Authorized Representative, shall be valid unless they are contained in writing and executed by all the Parties with the same formality as this Agreement.

23. FORCE MAJEURE: Neither Party shall be liable for damages, delays, or failure to perform its obligations under this Agreement if performance is made impractical or impossible, or unpredictably and abnormally difficult or costly, as a result of any unforeseen occurrence, including but not limited to fire, flood, acts of God, civil unrest, failure of a third party to cooperate in providing services other than Consultant's subcontractors, or other occurrences beyond the reasonable control of the party invoking this Force Majeure clause. The Party invoking this Force Majeure clause shall notify the other Party immediately by verbal communication and in writing of the nature and extent of the contingency within five (5) business days after its occurrence or discovery of its occurrence, and shall take reasonable measures to mitigate any impact of the event that triggered the invoking of this Force Majeure clause. If the Force Majeure event shall impact schedule or increase the costs incurred by Consultant, such items shall be handled in accordance with Section 2 and 3.

24. INCORPORATION OF EXHIBITS: All exhibits referenced in this Agreement and attached hereto shall be incorporated into this Agreement for all purposes.

IN WITNESS WHEREOF, the City and the Consultant have executed this Professional Services Agreement as of the above date.

CITY:
CITY OF CHERRY HILLS VILLAGE, a Colorado home rule municipal corporation

BY: _____
Laura Christman, Mayor

DATE: February 2nd , 2016

APPROVED AS TO FORM:

_____
Linda Michow, City Attorney

CONSULTANT:
Felsburg Holt and Ullevig, Inc.
a Colorado corporation

BY: _____ **DATE:**_____**, 2016**
Jenny Young, Principal

EXHIBIT A

SCOPE OF SERVICES

City of Cherry Hills Village
Comprehensive Transportation Analysis
Scope of Work – January 14, 2016

PROJECT MANAGEMENT / PROJECT COORDINATION

Project Team Meetings: Regularly scheduled meetings of the Project Team, consisting of City staff, resident advisors and FHU staff, will occur at major milestones to meet project requirements. Over the course of the project, we anticipate approximately four team meetings. The purpose of these meetings will be to review data and analyses, to update staff on study progress, and to develop and evaluate alternatives.

City Council Updates: FHU will prepare and present study findings and recommendations to City Council. We anticipated attending two meetings.

SCOPE OF WORK

FHU proposes to conduct the transportation system analysis through a series of tasks where each task is defined by two main efforts:

- identifying issues and needs
- developing recommendations to address these issues and needs

The tasks are sequential and after each task the results and recommendations will be discussed and the City will decide whether the project should move on to the next task.

TASK 1: INTERSECTION DATA COLLECTION AND ANALYSIS

This task will focus on operations and needs at key intersections within the City. The following tasks describe the datasets to be collected and the analysis to be conducted in assessing traffic operations throughout the City.

Existing Traffic Counts

FHU will collect peak hour turning movement data at the 12 locations and daily traffic and speed data along key roadways. We will use these data to determine existing delay and level of service at the study intersections during the peak hours. The graphic at the end of this scope of work shows the anticipated locations for traffic data collection.

Traffic Projections and Future Operations

To support the development of future traffic projections and future traffic operations we will collect the following data.

- Current and forecasted socioeconomic and geographic data
- Housing, employment, and commute patterns from census track data
- Regional population and employment growth projections

- Population and employment centers
- Land use patterns and economic development areas
- DRCOG travel demand model data
    - Land use
    - TAZ structure
    - Travel patterns
    - Traffic projections

These data will be the source for developing future traffic volumes along Village roadways and at study intersections. This effort includes the refinement of the DRCOG regional model data and modifications to the model to match Cherry Hills Village land use projections and street classifications.

Analysis and Assessment

FHU will analyze collected data. This analysis will determine the following items:

- Future traffic volumes at study intersections and along study roadways.
- Existing and future traffic operations at study intersections to identify issues and to determine recommendations for improvements or changes
- General assessment using intersection data and travel demand model data to estimate existing and potential future regional travel patterns and their impact on Cherry Hills

Identify Issues and Recommendations

FHU will summarize these analyses and assessments in a transportation assessment report. This report will use graphics and tables to show existing and future traffic volumes, highlight major findings and to explain recommendations.

TASK 2: SCHOOL EVALUATION

Supplemental Data Collection

To conduct an assessment of school operations and their impacts on the transportation system additional traffic data will be needed. The traffic count program will collect some traffic data needed at the school access points. For example, traffic counts along Quincy at Meade and at the Kent Denver access will capture school traffic patterns during the morning drop-off because it coincides with the morning peak period of travel. On the other hand, the evening peak travel period occurs after the afternoon pick up at schools. Therefore, we will need to supplement the traffic data with additional counts at the following locations:

- Quincy & Meade during the afternoon pick up
- Quincy & Kent Denver access during the afternoon pick up
- Saint Mary's three accesses during the morning drop off and the afternoon pick up

These additional count efforts will be focused on the 15 minutes before the 15 minutes after the school's start and end times.

Existing Conditions Assessment

This effort will include identifying and reviewing pedestrian, signage and other accommodations around the schools.

Assessment of Patterns and Issues

Using the traffic data collected at school access points and field observations, FHU will developed an assessment of drop and pick up patterns and the impact these patterns have on the existing transportation system. Based on this evaluation FHU will provide recommendations to address deficiencies and/or issues related to safety and traffic flow.

Recommendations and Memo Report

The above efforts will be described and presented in a technical memorandum with graphics. This report will document existing issues and travel patterns and provide recommendations to address these issues.

TASK 3: CUT THROUGH TRAFFIC ASSESSMENT

This task is primarily focused on identifying cut-through traffic in the study area. We will use the following approach for this effort.

- License plate recognition – The purpose of license plate recognition (LPR) is to determine cut-through traffic on study area collectors and local streets. In the attached data collection approach graphic, we propose to set up LPR cameras at three locations in the study area during the AM and PM peak hours. The cameras are positioned to record the cut-through traffic on the following roadways by recording license plates on vehicles using the street and then tracking them through the study area.
    - Colorado Avenue - Camera 3 with Cameras 1, 2
    - Quincy West of Happy Canyon – Cameras and 2

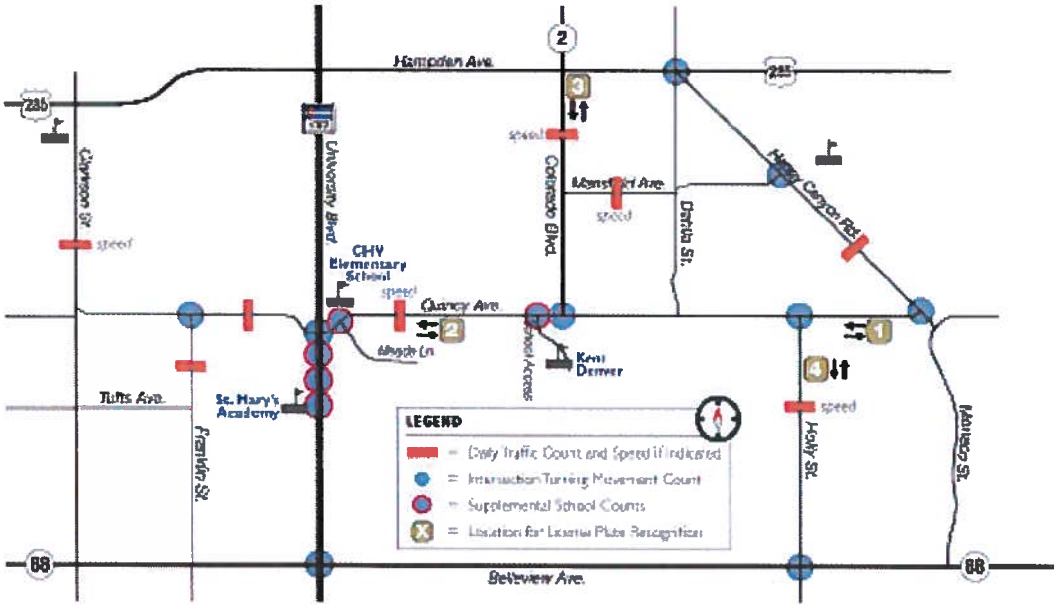


EXHIBIT B

COMPENSATION

PROJECT HOURS AND FEES

The table below shows anticipated hours and fees for each task. It is anticipated that this scope of work and data collection could be completed for a total budget of $74,040.

Task	Jenny Young Principal $177	Todd Frisbie Sr. Engineer $142	Tyler Spurlock Engineer I $86	Shea Suski Planner III $91	Beverly Frisbie Admin $78	Graphics $88	Total Hours	Total Fee	Total Fee (Cumulative)
Project Management / Coordination									
Project Coordination		12					12	$1,700	
Meetings with CHV Staff	8	16	8			8	40	$5,082	
City Council Updates	2	8				2	12	$1,664	
Project Management / Coordination							64	$8,446	$8,446
Task 1 - Intersection Data Collection and Analysis									
Intersection Operations Existing		2	8				10	$975	
Future Traffic Projections		8	8				16	$1,825	
Traffic Projections and Future Operations		4	12				16	$1,604	
Travel Pattern Eval. From the model and traffic data	2	8	4	8			22	$2,558	
Identification of Issues / Recommendations	4	8					12	$2,549	
Traffic Operations Memo	4	12	8		8	8	40	$3,724	
Data collection (intersection counts 12 locations @ $450 per location)								$5,400	
Data collection (daily traffic and speed data 5 locations @ $300 per location)								$1,500	
Task 1 - Intersection Data Collection and Analysis Fee							118	$20,134	$28,580
Task 2 - School Evaluation									
Existing conditions assessment		2	4				6	$629	
Assessment of patterns and issues		4	8				12	$1,258	
Recommendations and Memo Report	2	4	8		4	4	22	$2,278	
Supplemental Data Collection (4 locations @ $200 per location)								$800	
Task 2 - Other transportation system evaluations and recommendations Fee							40	$4,965	$33,545
Task 3 - Out Through Traffic Assessment									
Compile and Analyze Data and Draw Conclusions		12	8				20	$2,391	
Technical Memorandum	2	6	4			4	16	$1,903	
Data collection (license plate surveys 4 locations @$8,750 per location) - Select Locations								$35,000	
Task 3 - Out Through Traffic Assessment Fee							36	$39,295	$72,840
Other Direct Costs								$1,200	$74,040