

**AN ORDINANCE OF THE TOWN COUNCIL OF BASALT, COLORADO, APPROVING
AN EASEMENT AGREEMENT FOR THE CONSTRUCTION OF A DECK OR SIMILAR
STRUCTURE IN A PUBLIC DRAINAGE EASEMENT ON LOT 5, RIVERSEDGE
ADDITION, 180 RIVERSIDE DRIVE, BASALT, COLORADO**

**Ordinance No. 10
Series of 2016**

RECITALS

1. Brian Rose and Rana Dershowitz ("Applicants"), submitted a request in December of 2015, for an Easement Agreement to construct a deck or similar structure in a public drainage easement at 180 Riverside Drive.

2. The Town of Basalt ("Town"), acting by and through its Town Council ("Town Council"), has the power to grant approval of an Easement Agreement to permit use of the Town's right-of-way or public easements by an individual property owner.

3. At a public meeting on February 23, 2016, the Basalt Town Council approved this ordinance on first reading and scheduled second reading for March 8, 2016, at meeting beginning no earlier than 6:00 PM at the Basalt Town Hall, 101 Midland Avenue, Basalt, Colorado. Throughout the meeting, evidence and testimony was offered by the Applicants, Staff and members of the public.

4. At a public hearing on March 8, 2016, the Town Council heard evidence and testimony from the Applicants, Town Staff, and members of the public.

5. The Town Council finds and determines it is in the best interests of the Town to approve this Ordinance. Further, the Town Council finds and determines this Ordinance is reasonably necessary to promote the legitimate public purposes of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED by the Basalt Town Council of Basalt, Colorado, as follows:

1. The 180 Riverside Drive Easement Agreement attached hereto as **Exhibit A** is hereby approved and the Mayor of the Town of Basalt is hereby authorized to execute the Easement Agreement on behalf of the Town.

2. The approvals and conditions contained herein shall be binding on and inure to the benefit of the heirs, successors and assigns of the Applicants and the owners of the Property.

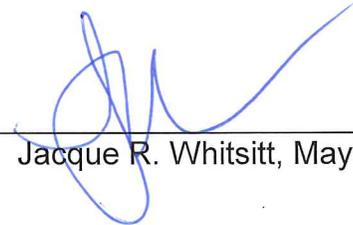
3. If any part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance and the Town Council hereby declares it would have passed this Ordinance and each part, section, subsection, sentence, clause or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

4. This Ordinance shall be effective 14 days after final publication of the Ordinance in accordance with the Town Home Rule Charter.

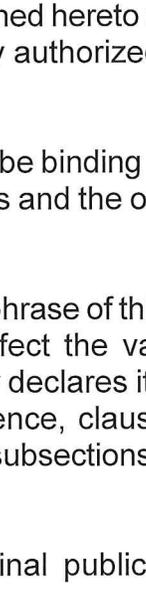
READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR SECOND READING TO BE HELD ON March 8, 2016 by a vote of 6 to 0 on February 23, 2016.

READ ON SECOND READING AND ADOPTED, by a vote of 6 to 0 on March 8, 2016.

TOWN OF BASALT, COLORADO

By: 
Jacquie R. Whitsitt, Mayor

ATTEST:

By: 
Pamela K. Schilling, Town Clerk



Ord10-180RiversideAgreement

First Publication: Thursday, March 3, 2016
Final Publication: Thursday, March 17, 2016
Effective date: Thursday, March 31, 2016

180 RIVERSIDE DRIVE EASEMENT AGREEMENT

This EASEMENT AGREEMENT is made this _____ day of _____, 2016 between the **TOWN OF BASALT**, a home-rule municipality of the State of Colorado, whose address is c/o Town Manager 101 Midland Avenue, Basalt, CO 81621 (“Town”), and **Brian Rose and Rana Dershowitz**, whose address is 180 Riverside Drive, Basalt, CO 81621 (“Owners”).

WITNESSETH

- A. Owners are the owners of the property known as 180 Riverside Drive, as described as Lot 5, Riversedge Addition to the Town of Basalt according to the plat thereof recorded September 29, 1977 at Reception No. 156799 in the Eagle County Clerk and Recorder’s records (“the Property”).
- B. Town is the beneficiary of a twenty (20) foot wide public drainage easement on the northern line of the Property (the “Easement”) that was granted on the Riversedge Addition referenced above.
- C. The Owners desire to construct a deck, patio or similar improvement on their Property within the Easement and have requested an agreement to confirm the parties’ rights and obligations regarding such deck, patio, or similar improvement.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, the parties agree as follows:

- 1. Use of Easement. Town hereby grants permission to install a deck, patio, or similar improvement on the Easement (the “Improvements”) and to conduct maintenance and repair on said Improvements, provided that the Improvements do not frustrate the purpose of the easement and the Improvements are in compliance with the Town Code.
- 2. Indemnification. Owners hereby indemnify Town and hold Town harmless from and against any loss, damage, or claims, including reasonable attorneys’ fees and costs, caused by use of the Improvements by Owners or Owners’ invitees, which indemnity shall include, but not be limited to, injury or loss to persons or property.
- 3. This Easement Agreement shall not preclude Town from the ability to install public drainage improvements in the drainage easement if deemed necessary in the future. The Town will provide Grantee with reasonable advanced written notice as soon as possible if Town desires to use the drainage easement and shall consult with Owners in advance regarding Town’s plans and desired timing. If the Town makes improvements in the drainage easement, the Town will make every effort not to damage the Owners’ Improvements. However, in the case that, notwithstanding Town’s efforts not to damage

the Owner's Improvements, the Town damages the Owners' Improvements, the Owners shall be responsible for the entire cost of repairing or removing the Owners' Improvements.

4. Term. This Easement Agreement shall be effective upon approval by Town Council and by signature of the Mayor of the Town of Basalt, as required by the Town Home Rule Charter. This Easement Agreement is effective for ten (10) years from the effective date of this Agreement and is automatically renewed for an additional ten (10) years unless the Town provides the Owners sixty (60) days written notice of intent to terminate prior to the expiration date. Termination of this Agreement shall not obligate Owners to remove or in any way alter the Improvements. Additionally, both parties may mutually agree in writing to terminate this Agreement. This Agreement shall also automatically terminate if the underlying drainage easement is legally vacated. This Agreement shall be automatically assigned to any new owner of the Property.

5. Notices. Any notice, demand, or document which either party is required or may desire to give, deliver, or make to the other party shall be in writing and shall be served upon the party entitled thereto either by personal delivery to such party or by United States certified mail, with postage fully prepaid and return receipt requested, addressed as follows:

To Town: Town Manager
 Town of Basalt
 101 Midland Avenue
 Basalt, CO 81621

To Owners: Owner
 180 Riverside Drive
 Basalt, CO 81621

Any notice, demand or document so given, delivered or made by United States mail shall be deemed to have been received on the earlier of the date actually received or the third business day after the same is deposited in the United States mail as certified matter, addressed as above, provided with postage prepaid.

6. Miscellaneous.

- 6.1 Notice of Default, Right to Cure. In the event of any default under the provisions of this Easement Agreement, the non-defaulting party shall, prior to the exercise of any right or remedy, give the party alleged to be in default written notice of such default together with the right for a period of ten (10) days after receipt of such notice to cure the alleged default. If an alleged default by its nature is not

capable of being cured within the time provided, the party alleged to be in default shall, provided such party is proceeding with due diligence, have up to and through an additional twenty (20) days to cure such default. If a default is not cured within the time provided or any extension thereof (which right to cure period shall not under any circumstances exceed in the aggregate, thirty (30) days), the non-defaulting party shall then and thereafter be free to terminate this agreement and pursue any right or remedy allowed by this Easement Agreement or otherwise by law.

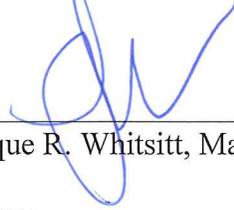
- 6.2 Remedies; Attorneys' Fees. Either party shall have the right and power to bring suit in its own name for any legal or equitable relief due to the breach of any provision of this Easement Agreement. If any court proceedings are instituted in connection with the rights and enforcement of the remedies provided in this Easement Agreement, the prevailing party, as determined by the court, shall be entitled to reimbursement of its costs and expenses, including reasonable attorneys' fees incurred as a result of bringing such suit.
- 6.3 No waiver. The failure of either party to insist upon the strict performance of any provisions of this Easement Agreement or to exercise any right or option available to it shall not be a waiver or a relinquishment for the future of any such provision.
- 6.4 Entire Agreement; Amendments in Writing. This Easement Agreement, including all exhibits attached hereto and incorporated herein by this reference, constitute the entire agreement between the parties and supersedes any prior agreement or understanding, whether oral or written, that may have been made with respect to the subject matter of this Easement Agreement. This Easement Agreement may not be amended, nor may any rights hereunder be waived, except by an instrument in writing executed by the parties hereto and duly recorded in the real estate records of Eagle County, Colorado.
- 6.5 Run with the Land. All the provisions of this Easement Agreement, including the benefits and burdens created thereby, are intended to and shall run with the Easement, as described herein. This Easement Agreement is made subject to any existing easements, reservations, restrictions, or rights of way. This Easement Agreement shall be recorded in the records of the Clerk and Recorder of Eagle County, Colorado.
- 6.6 Correction Documents. In the event any clerical or other errors are found in this Easement Agreement or any legal descriptions or other exhibits attached hereto, or in the event any exhibit shall be missing, the parties agree to promptly execute, acknowledge, initial and deliver as necessary any documentation in order to

correct the erroneous document, description, exhibit, or to provide any missing exhibit.

- 6.7 Binding Effect. All provisions of this Easement Agreement shall inure to the benefit of and are binding upon the parties hereto, their heirs, successors, assigns, and personal representatives.
- 6.8 Authority. The persons signing this Easement Agreement represent that they have the right, authority, and power to execute this Easement Agreement on behalf of the parties for whom they are signing.
- 6.9 Governing law. Venue and jurisdiction for any litigation arising out of or related to this Agreement shall lie in the District Court for Eagle County. The parties hereby submit to the personal jurisdiction of such court with regard to any action relating to this Agreement. This Agreement shall be construed according to the laws of the State of Colorado.
- 6.10 Severability. If any part or section of this Easement Agreement shall be found void or invalid by a court of competent jurisdiction, such findings shall not affect any remaining part or section, and all remaining parts or sections shall continue in full force and effect. The parties shall renegotiate in good faith any matter addressed by a part or section that is found void or invalid.

IN WITNESS WHEREOF, the parties have signed this Easement Agreement the day and year first written above.

TOWN OF BASALT:

By: 

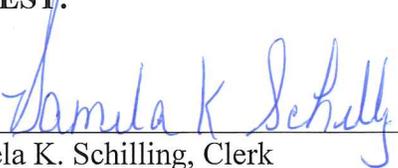
Jacques R. Whitsitt, Mayor

OWNERS:

By: _____
Brian Rose

By: _____
Rana Dershowitz

ATTEST:

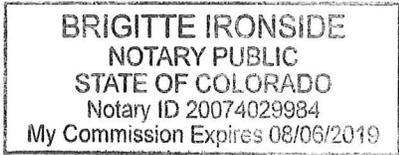
By: 

Pamela K. Schilling, Clerk

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

Subscribed, sworn to, and acknowledged before me on March 11, 2016, by Jacque R. Whitsitt, as Mayor of the Town of Basalt and by _____.

Witness my hand and official seal.
My commission expires:



By: Brigitte Ironside
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

Subscribed, sworn to, and acknowledged before me on _____, 2016, by Brian Rose and Rana Dershowitz.

Witness my hand and official seal.
My commission expires:

By: _____
Notary Public