

**Town of Basalt, Colorado
Ordinance No. 4
Series of 2020**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BASALT,
COLORADO, APPROVING A LICENSE AGREEMENT FOR THE
ENCROACHMENT OF AN EXISTING GARAGE AND GREENHOUSE IN
THE TOWN'S RIGHT-OF-WAY AT 216 EAST HOMESTEAD DRIVE**

RECITALS

- A. The Town of Basalt ("Town") is a Colorado home-rule municipality, duly organized and existing under the Town's Home Rule Charter adopted pursuant to Article XX of the Constitution of the State of Colorado.
- B. Gerald Terwilliger and Anna Naeser ("Applicants") own property located at 216 East Homestead Drive in Basalt (the "Property").
- C. The Applicants received Board of Zoning Adjustment (BOZA) approval in February of 2000 for a front yard setback variance for the construction of a replacement garage and a greenhouse pursuant to BOZA Resolution No. 1, Series of 2000, which resulted in a minor encroachment into the Homestead Driveway right-of-way.
- D. In 2000, the Applicants entered a 10-year license agreement with the Town to encroach into the Homestead Drive Right-of-Way to locate the garage and greenhouse encroachments.
- E. In 2010, the Applicants entered a new license agreement with the Town for an additional 10 years for such encroachment, which is set to expire in March 2020.
- F. The Applicants wish to enter a license agreement to continue to locate and occupy the Homestead Drive Right-of-Way with the existing garage and greenhouse on the Property.
- G. The Town Council finds and determines that entering a license agreement is in the best interests of the public health, safety, and welfare of the citizens of Basalt.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO, THAT:

1. Recitals. The foregoing recitals are incorporated herein as findings of Town

Council.

2. Approve License Agreement. The License Agreement attached hereto as **Exhibit A** is hereby approved and the Mayor is hereby authorized to execute the License Agreement on behalf of the Town Council.
3. Severability. If any provision of this Ordinance is found to be unconstitutional or unlawful, such finding shall only invalidate that part or portion found to violate the law. All other provisions shall be deemed severable and shall continue in full force and effect.
4. Effective Date. This Ordinance shall be effective 14 days after final publication in accordance with the Town of Basalt Home Rule Charter.

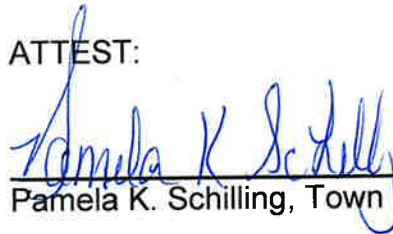
READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON February 11th, 2020, by a vote of 7 to 0 this 28th day of January, 2020.

READ ON SECOND READING AND ADOPTED by a vote of 6 to 0 this 11th day of February, 2020.

TOWN OF BASALT, COLORADO

By: 
Jacquie R. Whitsitt, Mayor

ATTEST:


Pamela K. Schilling, Town Clerk



Date of first publication: Thursday, February 6, 2020
Date of second publication: Thursday, February 20, 2020
Effective date: Thursday, March 5, 2020

Exhibit "A"

LICENSE AGREEMENT

This LICENSE AGREEMENT ("**Agreement**") is made effective as of March 5, 2020 (the "**Effective Date**"), by and between the Town of Basalt Colorado, a home rule municipal corporation ("**Town**") and Gerald Terwilliger and Anna M. Naeser, individuals (collectively, "**Licensee**").

RECITALS

WHEREAS, the Town owns real property known as the Homestead Drive right-of-way (the "**Town Property**");

WHEREAS, Licensee owns real property located at 216 East Homestead Drive, Basalt, Colorado, as described in the Deed recorded in the public records of Eagle County, Colorado in Book 0272 at Page 0241;

WHEREAS, Licensee owns and maintains a garage and greenhouse which encroach into the Town Property, as described in **Exhibit A** (the "**License Area**");

WHEREAS, the encroachment does not interfere with the public use of Homestead Drive, nor does it create a public safety hazard;

WHEREAS, the Town is willing to grant Licensee a revocable license to encroach on the Town Property in the License Area to locate, use, and maintain the existing garage and greenhouse, subject to the terms and conditions of this Agreement.

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

1. Recitals. The foregoing recitals are incorporated by reference herein.
2. Grant of Revocable License/Conditions of Use. The Town hereby grants Licensee a revocable license to encroach and occupy the License Area for the sole purpose of the encroachment of the Licensee's garage and greenhouse on the Town Property. In addition, the Town hereby grants a revocable license over and across the real property five feet around the perimeter of the License Area and within the Town Property (the "Maintenance License Area") for purpose of maintaining and repairing the garage, greenhouse, and License Area. The Town is granting these revocable licenses as an accommodation and without monetary consideration. Licensee shall be responsible for all improvements and other items located on the Town Property. Licensee hereby acknowledges the title of the Town to the Town Property and agrees never to resist or deny such title. Any and all use of the Town Property by Licensee under this License is permissive and not adverse to the interest of the Town. The licenses granted

herein shall be revocable at the Town's sole discretion at any time. In addition, the licenses granted herein are subject to the following conditions:

- A. Licensee shall be responsible for and shall pay all costs for all maintenance and repair of the License Area and Maintenance License Area;
- B. Licensee shall keep the garage and greenhouse in good repair and condition.
- C. No exterior signage or lighting shall be installed within the License Area without the prior written consent of the Town. Any such lighting shall comply with the requirements of Town standards and shall be limited to such lighting as is necessary for safety purposes. Without the express written consent of the Town, which consent may be withheld for any or no reason, the use of this license shall not be expanded or increased. Compliance with the Board of Zoning Adjustment Resolution No. 1, Series of 2000 is a condition of this license agreement.

3. Termination. All the provisions of this Agreement, including the benefits and burdens created thereby, shall run with the land. This Agreement is made subject to any existing easements, reservations, restrictions or rights-of-way. The licenses granted herein shall be revocable at the Town's discretion at any time after determining there is a public purpose for use of the property by the Town. Upon such revocation, Licensee shall removal all improvements except the underground utility conduit from the Town Property within 180 days. In the event the improvements are not removed, the Town may declare the encroachment a public nuisance, undertake removal at Licensee's expense, and attach a lien to Licensee's property for the costs of the removal.

4. Indemnification. Licensee agrees to forever indemnify, defend, and hold harmless the Town, its Town Council, managers, agents, employees, and contractors, against any claim, liability, demand, obligation, loss, damage, assessment, judgment, cost (including attorney fees), or expense whatsoever relating to or arising out of the use of the Town Property or arising out of or related to this Agreement. Licensee shall be solely responsible to defend any such action, proceeding, or claim for which the Town may be entitled to indemnification, and the Town hereby agrees to fully cooperate with Licensee in the defense or settlement, as the case may be, of such action, proceeding or claim, but the Town reserves the right to participate in the defense of any such action, proceeding or claim and shall be indemnified by Licensee from any and all out of pocket expenses, costs, damages, liabilities and fees (including reasonable attorney and expert witness fees). Licensee shall give written notice to the Town within ten (10) days after Licensee's actual knowledge of any matter giving rise to the obligation contained in this paragraph.

to the prevailing party the reimbursement of its costs and expenses, including reasonable attorney fees, in connection therewith and in any subsequent suit to enforce a judgment.

10. No Waiver. The failure of either party to insist upon the strict performance of any provisions of this Agreement or to exercise any right or option available to it, or to serve any notice or to institute any action, shall not be a waiver or a relinquishment for the future of any such provision.

11. Miscellaneous. This Agreement may be executed in one or more counterparts and on separate counterparts; such counterparts will be compiled into one fully-executed Agreement. A signature delivered by e-mail, facsimile or other electronic transmission will be deemed to constitute an original and fully-effective signature. This Agreement contains the entire agreement among the parties and supersedes any prior agreements or understandings (written or oral) with respect to the matters set forth herein. This Agreement may not be amended, nor may any rights hereunder be waived, except by an instrument in writing executed by the parties against whom such waiver or modification is sought to be enforced.

The use of the term "person" should be broadly interpreted to include any corporation, company, partnership, other entity or individual. The terms "include," "including" and similar terms shall be construed as if followed by the phrase "without being limited to." The term "or" has the inclusive meaning represented by the phrase "and/or" (except where otherwise indicated). The words "hereof," "herein," "hereby," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision or section of this Agreement. No inference in favor of, or against, any party shall be drawn from the fact that such party has drafted any portion of this Agreement.

12. Colorado Law. The interpretation, enforcement or any other matters relative to this Agreement shall be construed and determined in accordance with the laws of the State of Colorado. Any litigation involving this Agreement or its subject matter shall be brought and maintained in the District Courts located in Eagle County, Colorado. Each party hereby waives all rights to trial by jury.

13. Binding Effect; Recording; Survival. All provisions of this Agreement inure to the benefit of and are binding upon the parties hereto, their heirs, successors, assigns and personal representatives.

14. Fees and Expenses. Licensee agrees to reimburse the Town promptly upon receipt of a billing for all of the Town's costs and expenses relating to the negotiation, drafting, enforcement, and performance of this Agreement, including but not limited to recording fees, engineering fees, and attorney fees.

EXHIBIT A
(License Area)

Beginning at the Southwest corner of Lot 2b, Block 4, Lucksinger First Addition to the Town of Basalt, monumented with an Aluminum Cap L.S. #12930; Thence S78°19'00" E14.26 feet to the Point of Beginning for said easement:

Thence S78°19'00" E 30 feet along the south line of said lot 2-b;

Thence S12°56'04" W 9.88 feet;

Thence N77°21'56" W 30 feet;

Thence N12°56'04"E 9.4 feet to the Point of Beginning containing 288.9 square feet more or less.