

**AN ORDINANCE OF THE TOWN COUNCIL OF BASALT, COLORADO, APPROVING  
A LICENSE AND INDEMNITY AGREEMENT FOR THE INSTALLATION AND  
MAINTENANCE OF A FENCE IN THE RIGHT-OF-WAY ALONG SPUR LANE FOR  
THE PROPERTY AT 105 WEST SOPRIS DRIVE, BASALT, COLORADO (BARBARA  
REESE PROPERTY)**

**Ordinance No. 12  
Series of 2020**

**RECITALS**

WHEREAS, Barbara Reese ("Applicant"), submitted a request on May 1, 2020 for a License and Indemnity Agreement to install protective fencing around apricot trees in the Right-of-Way adjacent to Spur Lane for the property known as 105 West Sopris Drive; and

WHEREAS, the Town of Basalt ("Town"), acting by and through its Town Council ("Town Council"), has the power to grant approval of a License Agreement to permit use of the Town's right-of-way by an individual property owner; and

WHEREAS, the Applicant previously received approval by Town Council through Ordinance No. 08, Series of 2018 for the development of an accessory dwelling unit on the parcel; and

WHEREAS, Item 4 of Ordinance No. 08, Series of 2018 requires the Applicant to erect tree protection fencing around the dripline of the apricot trees prior to construction and to maintain the apricot trees; and

WHEREAS, at a public meeting on May 26, 2020 the Basalt Town Council approved this ordinance on first reading and scheduled second reading for June 9, 2020, 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 Applicant, Staff and members of the public; and

WHEREAS, 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:

Please return to:  
TOWN OF BASALT  
101 Midland Avenue  
Basalt, CO 81621

1. The License and Indemnity Agreement attached hereto as **Exhibit A** is hereby approved and the Mayor of the Town of Basalt is hereby authorized to execute the License and Indemnity 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 Applicant 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 June 9, 2020 by a vote of 7 to 0 on May 26, 2020.

READ ON SECOND READING AND ADOPTED, by a vote of 7 to 0 on June 9, 2020.

TOWN OF BASALT, COLORADO

By:   
William G. Kane, Mayor

ATTEST:  
By:   
Pamela K. Schilling, Town Clerk

Ord 12- 105WSopris-LicenseAgreement

First Publication: Thursday, June 4, 2020  
Final Publication: Thursday, June 18, 2020  
Effective date: Thursday, July 2, 2020

**Exhibit "A"**

**LICENSE AND INDEMNITY AGREEMENT FOR LICENSEE IMPROVEMENTS  
RELATED TO INSTALLATION OF A FENCE IN THE TOWN'S RIGHT-OF-WAY ON  
SPUR LANE, ADJACENT TO 105 W. SOPRIS DRIVE**

This LICENSE AND INDEMNITY AGREEMENT (the "**Agreement**") is made effective as of July 2, 2020 (the "**Effective Date**"), between Barbara Reese ("**Licensee**"), and the Town of Basalt Colorado, a home rule municipal corporation (the "**Town**").

RECITALS

- A. The Town owns certain rights of way in the vicinity of 105 West Sopris Drive (the "**Town Property**").
- B. Barbara Reese (Licensee), as owner of the residential property at 105 West Sopris Drive, wishes to install a fence that will encroach into the Town Property as shown on Exhibit A, (the "**License Area**")
- C. 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 a fence and related improvements, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for 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. This grant of a revocable license is expressly limited to and for the sole purpose of the encroachment of the Licensee's fence on the Town Property. The Town is granting this revocable license as an accommodation and without monetary consideration. Licensee shall be responsible for all improvements and other items located in the License Area. 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 license granted herein shall be revocable at the Town's sole discretion at any time.
- 3. 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 seven (7) days after Licensee's actual knowledge of any matter giving rise to the obligation contained in this paragraph.

4. Insurance. Licensee shall obtain, at its expense, and keep in full force and effect throughout the term of this Agreement, with a reputable insurer, general public liability insurance for the License Area with a limit of not less than \$500,000.00 and, during times of construction of any improvements, repairs, or replacements, shall maintain (or cause its contractor to maintain) workmen's compensation and builder's risk insurance in amounts reasonably satisfactory to the Town. The Town shall be named as an additional insured on all said policies and Licensee shall provide to the Town proof of insurance. The Town shall have the right to require Licensee to review and increase the limits of insurance coverage hereunder based on prevailing limits then carried by like or similar risks.

5. Maintenance and Repair. Licensee shall be responsible for and pay all costs associated with installing the fence and conducting all maintenance and repair to the fence in the License Area. The Town shall not be held liable for any injury to the fence as a result of plowing during snowfall events. The Town shall make every reasonable effort to minimize disturbance to the fence in the instance where the Town needs to make improvements or do repairs to the improvements to the Town Property.

6. Permits. The Licensee shall obtain all necessary permits from the Town prior to installation of the fence.

7. 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 license granted herein shall be revocable at the Town's sole discretion at any time. Upon such revocation, Licensee shall remove the fence and related improvements from the Town Property within 30 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. Additionally, if the fence is not installed within three (3) years of the execution date of this agreement, this agreement shall be null and void.

8. Notice of Default, Right to Cure. In the event of any default under the provisions of this Agreement, the non-defaulting party shall, prior to the exercise of any right or remedy given the party alleged to be in default, provide written notice of such default together with right for a period of seven (7) days after receipt of such notice to

cure said 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 all due diligence, have up to an additional twenty-one (21) days to cure said default. If a default is not cured within the time provided or any extension thereof, the non-defaulting party shall then and thereafter be free to pursue any right or remedy allowed by this Agreement or otherwise by law. The terms of the paragraph shall not apply to the Town's right to revoke the license granted hereunder.

9. Notices. Written notices required under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the Town:	Town Manager 101 Midland Avenue Basalt, CO 81621
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If to Licensee:	Barbara Reese P.O. Box 777 Snowmass, CO 81654
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10. Remedies. The parties hereto shall have the right and power to bring suit in their own name for any legal or equitable relief due to lack of compliance with any provisions of this Agreement. If any court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Agreement, the court shall award 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.

11. 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.

12. 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.

13. 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.

14. 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.

**IN WITNESS WHEREOF**, the parties have signed this Agreement to be effective as of the Effective Date.

TOWN OF BASALT:

By:   
William G. Kane, Mayor

ATTEST:

  
Town Clerk

LICENSEE:

\_\_\_\_\_  
Barbara Reese

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020 by Barbara Reese.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

**Exhibit A**

# Exhibit A Site Plan Showing Area of License Agreement

