

**AN ORDINANCE OF THE TOWN COUNCIL OF BASALT, COLORADO, APPROVING
AN EASEMENT AGREEMENT FOR INSTALLATION OF UTILITIES IN A PUBLIC
SNOW STORAGE EASEMENT ON LOT 2, BASALT RIDGE SUBDIVISION, 105
RIDGE ROAD, BASALT, COLORADO**

**Ordinance No. 13
Series of 2017**

RECITALS

1. Iain Whitaker ("Applicant"), submitted a request in March of 2017, for an Easement Agreement to install utilities in a public snow storage easement at 105 Ridge Road.

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 June 13, 2016, the Basalt Town Council approved this ordinance on first reading and scheduled second reading for June 27, 2017, 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.

4. At a public hearing on June 27, 2017, 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 105 Ridge Road 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 Applicant shall pay development review fees assessed by the Town prior to execution of the final easement agreement.

3. 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.

4. 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.

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

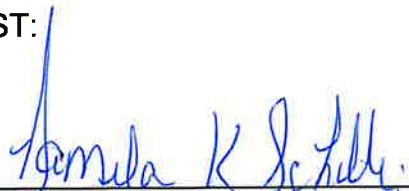
READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR SECOND READING TO BE HELD ON June 27, 2017 by a vote of 6 to 0 on June 13, 2017.

READ ON SECOND READING AND ADOPTED, by a vote of 5 to 0 on June 27, 2017.

TOWN OF BASALT, COLORADO

By: 
Jacquie R. Whitsitt, Mayor

ATTEST:

By: 
Pamela K. Schilling, Town Clerk



Basalt Town Council
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First Publication: Thursday, June 22, 2017
Final Publication: Thursday, July 6, 2017
Effective date: Thursday, July 20, 2017

105 RIDGE ROAD EASEMENT AGREEMENT

This EASEMENT AGREEMENT is made this 18 day of AUGUST, 2017 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 **Iain Whitaker**, whose address is 105 Ridge Road, Basalt, CO 81621 ("Grantees").

WITNESSETH

- A. Grantees are the owners of the property known as 105 Ridge Road, as described as Lot 2, Basalt Ridge Subdivision in the Town of Basalt according to the plat thereof recorded on August 2, 1988 at Reception No. 384460 in the Eagle County Clerk and Recorder's records.
- B. Town is the beneficiary of a public snow storage easement that was granted on the Basalt Ridge Subdivision Plat referenced above.
- C. The Grantees desire move an existing phone pedestal and electric transformer into the public snow storage easement and have requested an agreement to permit such utilities in the snow storage easement.

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. Easement for Construction, Maintenance, and Repair. Town hereby grants to Grantees the right to use snow storage easement ("Easement Area") as shown on Attachment 1, in order for the Grantees to install a phone pedestal and electric transformer and associated underground utilities and to conduct reasonable maintenance and repair on said improvements. Grantees shall be responsible for the maintenance, cleaning, and repair of the Easement Area and shall keep the utility pedestals in good repair and condition. The scope of Grantees' use of the Easement Area, as set forth above, shall be complaint with all applicable zoning regulations.

2. Indemnification. Grantees hereby indemnify Town and hold Town harmless from and against any loss, damage, or claims, including reasonable attorneys' fees and costs, caused by: (1) use of the Easement Area by Grantees or Grantees' invitees, which indemnity shall include, but not be limited to, injury or loss to persons or property; (2) any mechanic lien claims brought against Grantees for unpaid labor, services or materials affecting the Easement Area; and (3) any and all costs associated with repair or removal of Grantees' improvements located in the Easement Area in the event that the Town requires use of the Easement Area for its originally intended purpose of accommodating public snow storage as determined necessary by the Town.

This Easement Agreement preserves the right for the Town to continue using the easement for snow storage and shall not preclude Town from the ability to use the snow storage easement for snow storage in the future if deemed appropriate. If the Town makes improvement to the snow storage easement or uses it for its intended purpose of public snow storage, the Town will make every effort not to damage the Grantees' Improvements. However, in the case that the Town damages the Grantees' Improvements, including the utility facilities that are proposed in the

easement, the Grantees shall be responsible for the entire cost of repairing or removing said Improvements and shall indemnify and hold harmless the Town for any claims or damages, including attorney's fees, occasioned by any damage to the utility facilities located within the easement arising out of the Town's authorized use.

3. Insurance. The Grantees shall obtain, at their expense, and keep in full force and effect throughout the term of this Easement Agreement, with an insurer licensed in the State of Colorado, general public liability insurance for the Easement 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 Grantees' contractor to maintain) workmen's compensation and builder's risk insurance in amounts reasonably satisfactory to Town. Grantees shall provide Town proof of such insurance within a reasonable time upon Town's request of proof of coverage. This indemnification shall inure to the benefit of and shall be binding upon the parties' respective heirs, successors, and assigns, but it does not create any third party beneficiary rights or status in other individuals not expressly named as a party to this Easement Agreement.

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 may be terminated by the Town at any time. The Easement granted hereby is effective through January 1, 2027 and shall remain in full force and effect, unless vacated and released pursuant to the terms and conditions established herein. This Easement Agreement may be renewed by the Town for periods agreed upon by the Town and Grantees.

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 Grantees: Iain Whitaker
PO Box 4245
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 parted 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 Area, 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: Jacque R. Whitsitt, Mayor

GRANTEES:

ATTEST:

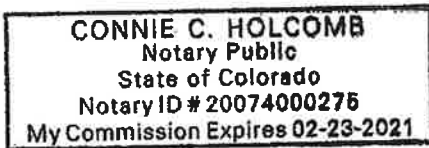
By: Pamela K. Schilling, Clerk

By: Iain Whitaker

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

Subscribed, sworn to, and acknowledged before me on July 6, 2017, by
Jacque R. Whitsitt, as Mayor of the Town of Basalt, and by _____

Witness my hand and official seal.
My commission expires: 02/23/2021

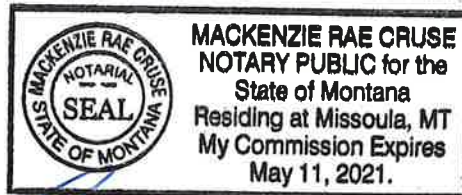


By: Connie C. Holcomb
Notary Public

Montana
STATE OF ~~COLORADO~~)
) ss.
Missoula
COUNTY OF ~~EAGLE~~)

Subscribed, sworn to, and acknowledged before me on 08-18-17, 2017, by Iain
Whitaker.

Witness my hand and official seal.
My commission expires: 05-11-21



By: Mackenzie Rae Cruse
Notary Public