

**Town of Basalt, Colorado
Ordinance No. 13
Series of 2020**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BASALT,
COLORADO, GRANTING SITE PLAN APPROVAL, SOUTHSIDE
FLOODPLAIN REACH II ESA REVIEW APPROVAL, COMMUNITY HOUSING
REVIEW APPROVAL AND A LICENSE AGREEMENT FOR AN AUTOMATED
CARWASH LOCATED AT 115 SOUTHSIDE DRIVE, LOT 1, OF THE BASALT
BUSINESS CENTER WEST SUBDIVISION, BASALT, COLORADO**

RECITALS

A. The Town of Basalt ("Town"), acting by and through its Town Council ("Town Council"), has the power to grant approvals for Site Plan Review, Reach II Southside Floodplain Review, Community Housing Review to pay cash-in-lieu of providing affordable housing, and licenses.

B. The van Rooyen Group, LLC ("Applicant") on behalf of the Property Owner, the Aspen Skiing Company, submitted an application to the Town requesting approval of Site Plan Review, Reach II Southside Floodplain Review, Community Housing Review to pay cash-in-lieu of providing affordable housing, and a license agreement to construct an automated carwash at 115 Southside Drive, Basalt, Colorado (the "Application"), as the property is more specifically described on **Exhibit "A"** hereto (the "Property").

C. The Basalt Affordable Community Housing Commission (BACH) reviewed the request for Community Housing Review and recommended approval.

D. The Planning and Zoning Commission considered the Application at a public hearing held on June 2, 2020. Throughout the meeting, evidence and testimony was offered by the Applicant, Staff and members of the public. The Planning and Zoning Commission recommended that the Town Council approve the Application, subject to conditions.

E. At a public hearing held on June 23, 2020, the Town Council heard evidence and testimony as offered by the Town Staff, the Applicant, and members of the public. At the public hearing held on June 23, 2020, the Town Council considered this Ordinance on first reading and continued and set a public hearing and second reading for this Ordinance for July 14, 2020 for a meeting beginning no earlier than 6:00 pm at the Basalt Town Hall, 101 Midland Avenue, Basalt, Colorado.

F. At a public hearing and second reading on July 14, 2020, the Town

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TOWN OF BASALT
101 Midland Avenue
Basalt, CO 81621

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Council heard evidence and testimony as offered by the Town Staff, the Applicant, and members of the public.

G. The Town Council finds and determines it is in the best interests of the Town to approve this Ordinance. The Town Council finds and determines this Ordinance is reasonable and consistent with the Town Code. 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 TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO AS FOLLOWS:

- A. FINDINGS. The Town Council hereby incorporates by reference and conclusively makes the findings provided herein.
1. Based on the evidence, testimony, exhibits, and comments from the public, Applicant, and Town Staff, the Town Council finds and determines in accordance with Article VI, Chapter 16 of the Town Code, as follows:
 - a. The Town Council finds that the Applicant's request is consistent with the applicable provisions of the Town Code, provided the Applicant adheres to the conditions identified in this Ordinance.
 - b. The Application satisfies the requirements of Article VI, Chapter 16 of the Town Code, provided the Applicant adheres to the conditions herein, because the Application is in general compliance with the Town Code; the proposed use is compatible with the character of the surrounding area; the proposed use is generally desirable and needed in this area; the proposed use does not create significant potential for adverse environmental influences; the proposed use is compatible with the Town Master Plan; and the proposed use is compatible with the natural characteristics and constraints of the Property.
 - c. The Application satisfies the requirements of the Southside Reach II Floodplain Review pursuant to Section 16-464(e) of the Town Code as the Development will not increase the 100-year floodplain elevations by more than 0.0 feet (up to 0.05 of a foot allowed) as measured at the closest adjacent land areas not owned by the Applicant or under the Applicant's control and not including Town street rights of way. Additionally, the development will not have an adverse impact on adjacent properties or impede the construction of a floodplain improvement included in an adopted Town of Basalt Capital Improvement Plan designed to carry flows back to the Roaring Fork River.

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- d. The Town Council finds and determines pursuant to C.R.S. 29-20-301 that there is adequate water supply.

B. APPROVAL AND CONDITIONS.

Site Plan Review, Southside Floodplain Reach II ESA Review, and Community Housing Review to pay cash-in-lieu of providing affordable housing to construct an automated carwash at 115 Southside Drive is hereby approved subject to the following conditions and the License Agreement included herein as **Exhibit "B"** is approved to permit landscaping in the Cody Lane Right-of-Way associated with the Development:

Representations:

1. The Applicant shall comply with all representations set forth in the Application.
2. The Applicant shall comply with all material representations made in hearings before the Planning and Zoning Commission and Town Council.

Approved Plans:

3. The Applicant shall construct the carwash pursuant to the site improvements plan prepared by Hover Architecture dated 5/27/20 as amended by these conditions and the elevation drawings prepared by Hover Architecture updated on 2/25/20. The Applicant shall submit final civil engineering drawings for review and approval by the Town Planner prior to executing a final site plan for recording. The final civil engineering plans shall comply with Best Management Practices on storm drainage and water quality. A bike washing and repair area shall be added to the final site plan to the satisfaction of the Town Planner prior to execution of the final site plan.
4. The dimensional requirements approved for the carwash are as follows:

Dimensional Requirement	Approved Site Plan
Building Height	28'-7"
# of Stories	1
North Setback	48 Feet
South Setback	80 Feet
East Setback	56 Feet
West Setback	32 Feet
FAR	.11:1
Max Lot Coverage	11%
Off-Street Parking	23 Spaces

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Flood Proofing:

5. The Applicant shall properly floodproof the structure to the satisfaction of the Town Planner and the chemicals for the carwash shall be stored at least one foot above the base flood elevation. No chemicals or other materials shall be stored outside of the building. The Applicant shall also apply for and obtain a Floodplain Development Permit prior to the issuance of a building permit.

Environmental Requirements:

6. The Applicant shall install an efficient water reclamation system that is consistent with the industry standards for water reclamation for a "top of the line" system at the time of installation to the satisfaction of Town Building Official. The water reclamation system shall be properly operating to the satisfaction of the Town Building Official prior to the issuance of certificate of occupancy. If at any time the water reclamation system stops operating properly to reclaim the water used as determined by the Town Building Official (e.g. if there is considerable water usage increase), the Applicant shall have it fixed and operating correctly within 90 days of the date that it stops operating correctly.
7. The Applicant shall install "no idling" signage to the satisfaction of the Town Planner to encourage patrons waiting in the cue for a carwash to turn their vehicles off.
8. The Applicant shall demonstrate compliance with the Town's Sustainable Building Regulations prior to the issuance of a building permit.

Affordable Housing Mitigation:

9. The Applicant shall pay cash-in-lieu of providing affordable housing in the amount of \$23,817.52 prior to the issuance of a building permit.

Traffic Mitigation:

10. Project Transportation Fee: The Applicant shall participate in or contribute on a proportional basis to the future cost of making the transportation improvements that will be necessary to mitigate the cumulative impacts of traffic growth from this and other expected projects. The Applicant shall pay a transportation fee at the time of building permit issuance based on the following schedule:

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Type of Space	Fee (per total square foot)
<i>Commercial/Industrial</i>	\$1.00

11. Basalt Avenue/State Highway 82 Intersection Improvements: The Applicant shall pay its fair share of the traffic improvements selected by the Town to increase traffic flow out of Southside based on the Applicant's fair-share of the trips identified in the Southside Traffic Study conducted by SGM on 10/14/2016 as further described below. The Applicant shall pay a fee in the amount of \$22,594.75 for the industrial floor area at the time of building permit at Cody Lane and Basalt Avenue ("Mini Roundabout Improvement"). This is in addition to the impact fees included in Condition No. 10, above.

The Town is assuming a conservative \$500,000 for the cost of the Mini Roundabout Improvement until final plans and cost estimates are prepared and certified by an engineer for improvement and accepted by the Town Engineer. Therefore, unless the Town Engineer certifies a lower cost, the Applicant's fair share of the cost of the Mini Roundabout Improvement is \$22,594.75.

12. The Applicant shall not commence operations until 8:10 AM or later on weekdays when Basalt High School is holding regular classes so as not to increase traffic during the AM peak traffic. This requirement shall be in effect until a mini-roundabout is constructed at the Basalt Avenue/Cody Lane intersection.
13. Per the Applicant's representation, the Applicant shall advertise while Basalt High School is in session that the best time to get your car washed in order to avoid the Highway 82 late-day rush hour traffic is before 3 PM. This requirement shall be in effect until a mini-roundabout is constructed at the Basalt Avenue/Cody Lane intersection.

On-street Parking:

14. The Applicant shall dedicate property as Right-of-Way of sufficient width to accommodate the twenty-one (21) direct head-in parking along Southside Drive (the number of spaces could be reduced by 1-2 spaces depending on whether the turning radius into the parking lot needs to be adjusted based on the Fire District's comments) as shown on the site plan prepared by Hover Architecture dated 5/27/20. Additionally, the Applicant shall adjust their site plan to accommodate an additional five (5) foot of public pedestrian easement outside of the Right-of-Way to be dedicated and dedicate such public pedestrian easement to the Town for purposes of constructing a future sidewalk or transportation improvement (including the southside underpass). The Right-of-Way

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dedication shall occur prior to or concurrently with executing and recording a final site plan. Minimum setbacks for future redevelopment on the property shall be calculated based on the current property line before dedication of the Right-of-Way.

15. The on-street parking shall be constructed prior to the issuance of certificate of occupancy. The Town approves of the Alternative "A" parking scenario for the Southside Drive head-in, parking as represented in the agenda packet materials for the Council's July 14th meeting with the additional provision that the Town Staff seek to charge a rental rate of \$350 per month for seven (7) parking spaces to each of the auto-related businesses desiring to rent the head-in parking spaces once the spaces are constructed to more fully recoup the Town's cost for right-of-way and construction of the parking spaces. The Town Manager is authorized to enter into a contract for purchase and license agreement(s) after review and approval by the Town Attorney. On-street parking adjacent to this property on Cody Lane will be removed upon construction of the Southside Drive head-in parking.

Signage and Lighting:

16. The signage shall comply with the requirements of the BBCW PUD. The Applicant shall obtain approval of a sign permit application prior to installing any signage.
17. The Applicant shall comply with the Town's exterior lighting requirements.

Technical Considerations:

18. The Applicant shall demonstrate compliance with the Roaring Fork Fire Protection Authority comments dated 5/14/20 to the satisfaction of the Town Planner prior to the issuance of a building permit.
19. The Applicant shall demonstrate compliance with the Basalt Sanitation District comments dated 5/18/20 to the satisfaction of the Town Planner prior to the issuance of a building permit. The Applicant shall also pay all applicable Sanitation District fees prior to the issuance of a building permit.
20. The Applicant shall pay all applicable water tap and usage fees for a carwash as set forth in the Town's fee schedule prior to the issuance of a building permit. The Applicant may conduct a third-party audit of water usage after twelve months of operation for review by the Town's Public Works Director. If the audit determines that the Applicant is using less water

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EQRs than is predicted for a carwash on the Town's EQR schedule, the Applicant shall be rebated for the EQR fees associated with the difference in water usage between the Town's EQR schedule and the actual usage. The Applicant shall also be responsible for maintaining the irrigation infrastructure and landscaping in the Town Right-of-Way adjacent to the Property as is required by the Town Code.

21. The Applicant shall initially install seasonal angled curb stops in the end parking space on each side of the on-street parking spaces on Southside Drive. The angled curb stops may be removed in the non-winter months by the Town and re-installed by the Town. The Town will store the seasonal curb-stops when they are seasonally removed.
22. The Applicant shall enter into a maintenance agreement with the Town for the Applicant to maintain the portion of the Williams Ditch that the Applicant is proposing to pipe on the subject property to the satisfaction of the Town Attorney. The Agreement shall be executed prior to or concurrent to executing and recording the final site plan.
23. The Applicant shall demonstrate to the reasonable satisfaction of the Town Attorney that the Applicant has either; a) secured permission to pipe the ditch from the ditch owner, or b) made a documented diligent effort to identify the owner of the ditch and failed to obtain permission because the owner of the ditch could not be identified. This shall occur prior to execution and recording of a final site plan and prior to commencing construction activities associated with piping the ditch. The Applicant shall enter into an agreement indemnifying the Town against claims for damages resulting from the piping of the ditch prior to execution and recording of a final site plan and prior to commencing construction activities associated with piping the ditch.

Tree Removal and Landscape Plan:

24. The Applicant shall obtain approval of a tree removal permit for the trees to be removed. The Applicant shall mitigate for trees removed by planting the trees identified on the Landscaping Plan prepared by Hover Architecture dated 5/27/20 prior to the issuance of certificate of occupancy. The Applicant shall submit a final landscaping plan for review and approval by the Town Planner prior to the issuance of a building permit.

Construction Management Plan:

25. The Applicant shall submit a final construction management plan for review and approval by the Town Planner and Town Building Official

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prior to commencing construction activities on the site. The construction management plan shall include construction parking and dust mitigation measures and a representation that the Applicant will comply with the allowable construction hours as established in the Town Code. The construction parking and staging shall be completely on the site. To the extent possible, the Applicant shall try and accommodate the existing amount of Southside Drive parking throughout the construction process.

Development and Building Fees:

26. The Applicant shall pay all applicable development review and development impact fees as calculated by the Town Planner, prior to building permit issuance and through construction, which in addition to the fees outlined in this ordinance also include the Town's Special Improvement Fee, the Southside Water Tank Surcharge, and any outstanding Development Review Account balances. The Applicant shall also pay all applicable building permit fees as calculated by the Town Building Official prior to building permit issuance, which would include the building permit review fees and sustainable building and any associated mitigation fees.

Approval Documents:

27. The Applicant shall prepare a final site plan for review and approval by the Town Planner and Town Attorney. The final site plan shall be recorded at the Pitkin County Clerk and Recorder's Office prior to the issuance of a building permit.
28. The Applicant shall prepare and submit any additional approval documents deemed necessary by the Town Planner and Town Attorney to effectuate the approvals, including a public improvements agreement and financial security for the public improvements to be completed by the Applicant in a form determined acceptable by the Town Attorney. Any such documents shall be executed and recorded prior to the earlier of the issuance of a building permit or 180 days after the effective date of the final approval ordinance or the approvals granted herein shall be null and void. The Town Planner may extend the deadline for executing and recording the approval documents.

Vested Rights:

29. Vested property rights shall be granted as approved herein for a period of three (3) years from the effective date of the ordinance approving these land use requests. The Applicant may request an extension of vested rights pursuant to the process for extending vested rights as

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established in the Town Code. If a building permit is not issued within the three (3) year vested rights period or as it may be extended, the approvals granted by this approval shall expire.

Insubstantial Amendments:

30. The Town Planner may review and approve minor amendments to this approval to effectuate the intent of the final development approvals. The Applicant shall have the ability to appeal a Town Planner's decision on a minor amendment to the Town Council pursuant to the appeals process established in Town Code Section 16-11, *Procedures for Code Interpretations and Appeals*.

C. MISCELLANEOUS.

1. 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 owner of the Property.

2. This Ordinance, after fully executed, shall be recorded in the office of the Clerk and Recorder of Pitkin County.

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.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON July 14, 2020 by a vote of 6 to 0 on June 23, 2020.

READ ON SECOND READING AND ADOPTED, by a vote of 5 to 1 on July 28, 2020.

TOWN OF BASALT, COLORADO

By:


William G. Kane, Mayor

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ATTEST:



Pamela K. Schilling, Town Clerk

First Publication: July 2, 2020
Final Publication: July 23, 2020
Effective Date: August 6, 2020

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Exhibit "A"

Legal Description

Lot 1 of the Basalt Business Center West Subdivision and shown on the plat recorded at Reception No. 345113 in the Pitkin County Clerk and Recorder's Records

Exhibit "B"

LICENSE AND INDEMNITY AGREEMENT FOR LICENSEE IMPROVEMENTS RELATED TO INSTALLATION OF LANDSCAPING IN THE TOWN'S RIGHT- OF-WAY ON CODY LANE, ADJACENT TO 115 SOUTHSIDE DRIVE

This LICENSE AND INDEMNITY AGREEMENT ("**Agreement**") is made effective as of _____, _____ (the "**Effective Date**"), between the Von Rooyen Group ("**Licensee**"), and the Town of Basalt Colorado, a home rule municipal corporation ("**Town**").

RECITALS

- A. The Town owns certain rights of way in the vicinity of 115 Southside Drive (the "**Town Property**").
- B. The Von Rooyen Group (Licensee), has a contract to purchase the property 115 Southside Drive, and wishes to install landscaping that the will encroach into the Town Property and Licensee would be responsible for maintaining, Exhibit A (the "**License A**").
- 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 landscaping and related improvements, subject to the terms and conditions of this Agreement.

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

5. 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 land 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.

6. 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.

7. 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

If to Licensee:

8. 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.

9. 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.

10. 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.

11. 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.

12. 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:

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Agreement was acknowledged before me this ____ day of _____, _____ by _____.

Witness my hand and official seal.

Notary Public