

**RESOLUTION OF THE TOWN COUNCIL OF BASALT, COLORADO, APPROVING
AN EASEMENT RELOCATION AGREEMENT**

**Town of Basalt, Colorado
Resolution No. 29
Series of 2021**

RECITALS

- A. The Town of Basalt (the "Town") owns water rights decreed to the Frying Pan Ditch (the "Ditch") and the Town holds easement rights related to the Ditch over, upon, in, across, and through the property in the Riverside Meadows development for transport and use of water rights carried in the Ditch.
- B. The Town changed the decreed use of the Frying Pan Ditch water right in District Court, Water Division 5, Case No. 90CW138 to allow the water right to be used as a part of the Town's municipal water supply and, as a result, water is no longer carried through the Ditch.
- C. The Ditch traverses Lot 18 of the Riverside Meadows Addition to the Town of Basalt recorded September 29, 1977 in Book 260 at Page 446, County of Eagle, State of Colorado and with a street address of 410 Meadows Lane, Basalt, Colorado 81621(the "Property"), which is owned by Basalt River House, LLC (the "Owner").
- D. The Owner wishes to relocate the Ditch and appurtenant easement to allow for development of the Property, as set forth in the Easement Relocation Agreement enclosed as **Exhibit A**, and the Town believes that doing so will not diminish any future utility of the Ditch or the Town's interest therein.
- E. The Town Council wishes to approve the Easement Relocation Agreement, and believes it is in the best interests of the Town to do so.

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

- 1. Recitals. The foregoing recitals are incorporated herein as findings of Town Council.
- 2. Project. The Town Council hereby approves the Easement Relocation Agreement in substantially the same form as **Exhibit A**, as determined to be acceptable to the Town Attorney, and authorizes the Town Manager to execute the same.

READ AND ADOPTED on June 22, 2021, by a vote of 6 to 0.

TOWN OF BASALT, COLORADO

By: *William G. Kane*
William G. Kane, Mayor

ATTEST

By: *Pamela K. Schilling*
Pamela K. Schilling, Town Clerk



EXHIBIT A

EASEMENT RELOCATION AGREEMENT

This EASEMENT RELOCATION AGREEMENT (the "Agreement") is entered into on this ____ day of _____ 2021 by and between BASALT RIVER HOUSE LLC, a Colorado limited liability company ("Owner"), whose address is 514 E. Hyman Avenue, Aspen, Colorado 81611 and THE TOWN OF BASALT, COLORADO, a Colorado home-rule municipal corporation ("Town") whose address is 101 Midland, Basalt, Colorado 81621. Owner and the Town are sometimes referred to collectively herein as the "Parties."

Recitals

A. Owner owns the real property described as Lot 18, Riverside Meadows Addition to the Town of Basalt recorded September 29, 1977 in Book 260 at Page 446, County of Eagle, State of Colorado (the "Property") and with a street address of 410 Meadows Lane, Basalt, Colorado 81621.

B. A portion of the ditch structure of the Frying Pan Ditch (the "Ditch") traverses the Property. The Town owns water rights decreed to the Ditch and the Town holds easement rights over, upon, in, across, and through the Property for transport and use of water rights carried in the Ditch. The Final Plat for the Riverside Meadows Addition to the Town of Basalt, a copy of which is attached hereto as Exhibit A, shows the location of the Ditch as it traverses the Property.

C. Owner does not own an interest in any water rights carried in the Ditch.

D. The Town changed the decreed use of the Frying Pan Ditch water right in District Court, Water Division 5, Case No. 90CW138 to allow the water right to be used as a part of the Town's municipal water supply. As a result, water is no longer carried through the Ditch.

E. The Parties have determined that it is in their best interests to enter into this Agreement to define the scope and extent of the Town's easement rights over, upon, in, across, and through the Property.

THEREFORE, IN CONSIDERATION of the promises and agreements below, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged in this Agreement, the Parties agree as follows:

Agreement

1. Relocation of Easement. The Town and Owner agree to the realignment and modification of the Ditch, such that: (a) the Owner may fill in the Ditch where it is located on the Property so that the physical and platted location of the Ditch and its appurtenant 10' wide easement (collectively the "Ditch Easement Area") will not hinder development within the platted building envelope for the Property; and (b) in the event the Town or other party ever wishes to carry water decreed to the Frying Pan Ditch in the Ditch, the Ditch Easement Area may be realigned, constructed, and located in the setback on the eastern side of the Property, with the

location to be determined by the parties such that the Ditch Easement Area minimizes the disruption to the Property while allowing for the efficient carriage of water.

2. Use of Ditch Easement Area by Owner. Grantor retains the right to use and enjoy the Property, including the Ditch Easement Area as it may be relocated, so long as such use and enjoyment do not interfere with the Town's rights under this Agreement. Owner's use of the Property shall not unreasonably hinder, conflict, or interfere with the Grantee's rights in the Ditch Easement Area as it may be relocated.

3. Liability to Others. Each Party is responsible for any and all claims, demands, actions, losses, liabilities, and expenses, including attorneys' fees, incurred by any person or entity arising out of or in connection with that person's or entity's access, use or occupation of the Ditch Easement Area, or with the access, use or occupation of the Ditch Easement Area by that person's or entity's agents, employees, contractors, invitees, or licensees. However, nothing in this Agreement abrogates or diminishes any protection or limitation afforded to the Town or any assignee under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.* as amended, or under any other law.

4. Notices. All required notices will be deemed given upon deposit in the U.S. mail, with first class postage prepaid, and properly addressed to the person or entity to whom the notice is directed at the address below, or at any other address given by notice pursuant to this paragraph.

Owner: Basalt River House LLC, a Colorado limited liability company
514 E. Hyman Avenue
Aspen, CO 81611

Town: Town Manager
Town of Basalt
101 Midland
Basalt, CO 81621
Phone: (970) 279-4378
Email: ryan.mahoney@basalt.net

However, any Party may notify the other of an emergency situation or condition via direct delivery of notice to the address above, or by telephone or email to the last known phone number or email address of the Party to whom the notice is directed.

5. Binding Agreement – Recording. This Agreement is binding upon the Parties and their successors and assigns, and any sale of the Property, or of any portion of the Property, is subject to this Agreement. This Agreement will be recorded with the Eagle County Clerk and Recorder, and will impose an easement and covenants running with the land upon the Property. Owner may assign this Agreement, and all of its rights and obligations under the Agreement, to successor owners of the Property.

6. Governing Law; Venue; Attorney's Fees. This Agreement, and the rights and obligations of the Parties under this Agreement, will be governed by and construed in accordance

with the laws of the State of Colorado. The venue for all actions arising under the Agreement is Eagle County, Colorado. In the event that the Parties must pursue legal remedies to resolve any dispute or conflict regarding the terms of this Agreement, or the rights and obligations of the Parties under the Agreement, the prevailing Party is entitled to recover its costs, including expert witness fees and reasonable attorney's fees.

7. Authorization of Signatures. The Parties acknowledge and represent that all procedures necessary to validly contract and execute this Agreement have been performed and that the person signing for each Party has been duly authorized to do so.

8. Counterparts. This Agreement may be signed using counterpart signature pages with the same force and affect as if all parties signed on the same signature page.

IN WITNESS WHEREOF, the Parties executed this Agreement on the date above.

BASALT RIVER HOUSE LLC,
a Colorado limited liability company

By: _____
Chris Souki, Member

STATE OF COLORADO)
)
COUNTY OF _____)

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2021, by Chris Souki, member of Basalt River House LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

Notary Public

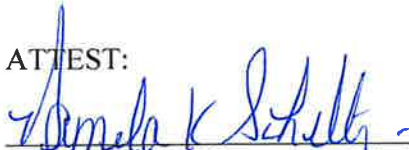
My commission expires: _____

TOWN OF BASALT, COLORADO



William G. Kane, Mayor

ATTEST:



Pamela K. Schilling, Town Clerk



