



**AN ORDINANCE OF THE TOWN COUNCIL OF BASALT, COLORADO,
REAPPROVING THE 216 EAST HOMESTEAD DRIVE LICENSE AGREEMENT, WITH
MODIFICATIONS, TO MAINTAIN AND USE AN EXISTING GARAGE AND
GREENHOUSE IN THE TOWN'S RIGHT-OF-WAY AT 216 EAST HOMESTEAD
DRIVE, BASALT, COLORADO**

**Ordinance No. 1
Series of 2010**

9+11/51

RECITALS

1. Gerald Terwilliger and Anna Naeser ("Applicants"), submitted a request in January of 2010, for a license agreement to continue occupying the Homestead Drive Right-of-Way with an existing garage and greenhouse on the property located at 216 E. Homestead Drive.
2. The Applicants received Board of Zoning Adjustment (BOZA) approval in February of 2000 for a zero foot front yard setback for the construction of a replacement garage and a greenhouse pursuant to BOZA Resolution No. 1, Series of 2000.
3. The Applicants also obtained a 10-year license agreement on March 28, 2000 from the Town to encroach into the Homestead Drive Right-of-Way for the construction of the replacement garage and greenhouse at 216 E. Homestead Drive.
4. At a public meeting on January 26, 2010, the Basalt Town Council approved this ordinance on first reading and scheduled second reading for February 9, 2010, 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 Applicants, Staff and members of the public.
5. At a public meeting and second reading on February 9, 2010, the Town Council heard evidence and testimony from the Applicants, Town Staff, and members of the public.
6. The Basalt Town Council finds and determines the Applicants' request described herein to be consistent with the applicable provisions of the Town Code.

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

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

1. The 10-year License Agreement attached hereto as Exhibit A is hereby approved and the Mayor of the Town of Basalt is hereby authorized to execute the License Agreement on behalf of the Town Council.
2. The Applicants shall continue to comply with all of the provisions established in BOZA Resolution No. 1, Series of 2000.
3. 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.
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 February 9, 2010 by a vote of 6 to 0 on January 26, 2010.

READ ON SECOND READING AND ADOPTED, by a vote of 5 to 0 on February 9, 2010.

TOWN OF BASALT, COLORADO

By: Leroy Duroux
Leroy Duroux, Mayor

ATTEST:

By: Pam Schilling
Pam Schilling, Clerk

CouncilOrd 1- 216HomesteadLicenseAgreement



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First Publication: Thursday, February 4, 2010
Final Publication: Thursday, February 18, 2010
Effective date: Thursday, March 4, 2010

(EXHIBIT A TO ORDINANCE NO. 01, SERIES OF 2010)

LICENSE AGREEMENT

This LICENSE AGREEMENT is made Feb. 22, 2010 between GERALD TERWILLIGER and ANNA M. NAESER (collectively "Grantee") and the Town of Basalt, a municipality of the State of Colorado ("Owner").

RECITALS

A. Owner is the owner of the property known as the Homestead Drive Right of Way ("ROW").

B. Grantee is the owner of property known as 216 East Homestead Drive, Basalt, Colorado, as described in Deed recorded in Book 0272 at Page 0241 of the real estate records of Eagle County, Colorado.

C. The parties have agreed to a 10-year license of a portion of the ROW for the benefit of Grantee. The purpose of this License Agreement is for Owner to grant Grantee a license for the use, maintenance and repair of an existing Garage and Greenhouse in the ROW.

AGREEMENT

1. Grant of License. Owner hereby licenses to Grantee a 10-year license over and across the lands described in Exhibit "A" attached hereto and made a part hereof (the "License Area"). The License Area shall be used by the Grantee for use and maintenance of the existing garage and greenhouse and a maintenance license over and across the lands that are five feet around the License Area and within the Town ROW ("Maintenance License Area"). The Grantee shall have the right to use the land underneath the Maintenance License Area for maintenance of the Garage and Greenhouse. The Grantee shall be responsible for and shall pay the costs for all maintenance and repair of the License Area and Maintenance License Area and shall keep the Garage and Greenhouse in good repair and condition. No exterior signage or lighting shall be installed within the License Area without the prior written consent of Owner, which consent shall not be unreasonably withheld. 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 Owner, 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.

business day after the same is deposited in the United States mail as certified matter, addressed as above provided, with postage prepaid. Notice by facsimile transmission shall be deemed given upon receipt of a confirmation by sender.

5. Miscellaneous.

5.1 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, give the party alleged to be in default written notice of such default together with right for a period of ten 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 days to cure said 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 days), the non-defaulting party shall then and thereafter be free to terminate this agreement and pursue any right or remedy allowed by this Agreement or otherwise by law.

5.2 Remedies. Either party shall have the right and power to bring suit in its 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 prevailing party shall be entitled to reimbursement of its costs and expenses, including reasonable attorneys' fees, in connection therewith.

5.3 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.

5.4 Amendments in Writing. This 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.

5.5 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.

5.6 Run With the Land. 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.

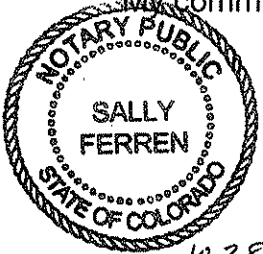
5.7 Correction Documents. In the event any clerical or other errors are found in this Agreement or any legal descriptions or other exhibits hereto, or in the event any exhibit shall be missing, the parties agree to promptly execute, acknowledge, initial

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

Subscribed, sworn to and acknowledged before me Feb. 22, 2010, by Gerald R. Terwilliger and Anna M. Naeser.

Witness my hand and official seal.

My commission expires 10.28.2011.



Sally Ferren
Notary Public

My Commission Expires 10.28.11

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.