

**AN ORDINANCE OF THE TOWN COUNCIL OF BASALT, COLORADO, APPROVING  
A NEW REVOCABLE LICENSE AGREEMENT REGARDING THE EXISTING FENCE  
IN THE OLD SWINGING BRIDGE LANE RIGHT-OF-WAY AT 176 SWINGING  
BRIDGE LANE, BASALT, COLORADO**

**Ordinance No. 29  
Series of 2011**

**RECITALS**

1. Robert and Julie MacLean (“Applicants”), submitted a revised request in August of 2011, for the Board of Zoning Adjustment (BOZA) to amend their variance approvals set forth in BOZA Resolution No. 1, Series of 2011 to allow for the existing fence in the Old Swinging Bridge Lane Right-of-Way at 176 Swinging Bridge Lane to be maintained in association with developing a garage at 176 Swinging Bridge Lane.

2. The Applicants received Board of Zoning Adjustment (BOZA) approval in April of 2011 for the requested setback variances for the construction of a garage pursuant to BOZA Resolution No. 1, Series of 2011. The Applicants also received approval from BOZA to amend the original setback approvals to eliminate the condition requiring that the fence be moved back to the property line in conjunction with constructing the garage pursuant to BOZA Resolution No. 3, Series of 2011.

3. BOZA Resolution No. 3, Series of 2011, required that the Applicants obtain a revocable license agreement from the Town Council in order to maintain the existing fence in the Town’s Old Swinging Bridge Lane Right-of-Way.

4. At a public meeting on November 22, 2011, the Basalt Town Council approved this ordinance on first reading and scheduled second reading for December 13, 2011, 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 on December 13, 2011, 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 new 176 Swinging Bridge Lane Revocable Fence 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.

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 December 13, 2011 by a vote of 6 to 0 on November 22, 2011.

READ ON SECOND READING AND ADOPTED, by a vote of 5 to 0 on December 13, 2011.

TOWN OF BASALT, COLORADO

By: \_\_\_\_\_  
Leroy Duroux, Mayor

ATTEST:

By: \_\_\_\_\_  
Pamela K. Schilling, Town Clerk

Ord 29- 176SwingingBridgeLaneFenceLicenseAgreement

First Publication: Thursday, December 1, 2011  
Final Publication: Thursday, December 22, 2011  
Effective date: Thursday, January 5, 2012

**(EXHIBIT A TO ORDINANCE NO. 29, SERIES OF 2011)**

**176 SWINGING BRIDGE LANE REVOCABLE LICENSE  
AGREEMENT – FENCE ENCROACHMENT**

This Agreement is made and entered into by and between the Town of Basalt, Colorado, a municipality of the State of Colorado, whose address is 101 Midland Avenue, Basalt, Colorado 81621, hereinafter referred to as “Town,” and Robert MacLean and Julie MacLean, whose address is 260 Prior Lane, Atherton, California 94027, hereinafter referred to as the “Grantee” or the “MacLeans.”

**WITNESSETH**

**WHEREAS**, the Town is the owner of certain property referred to as the Old Swinging Bridge Lane Right-of-Way; and,

**WHEREAS**, Grantee is the owner of certain real property that abuts a portion of the Town’s property described above, which is situated in the County of Eagle, State of Colorado, to wit:

A parcel of land situated in Tract No. 48 of Section 7, Township 8 South, Range 86 West of the 6<sup>th</sup> principal meridian lying Southeasterly of the Southeasterly bank of the Frying Pan River, said parcel being particularly as follows:

Beginning at a point on the Southeasterly bank of said River whence an iron post with a brass cap , found in place and properly marked for Angle Point No. 2 of said Tract No. 48 bears N. 59 degrees 16”22’ W. 685.61 feet:

Thence, S. 35 degrees 36”00’ E 60.00 feet;

Thence, S. 41 degrees 00”00’ W 70.00 feet;

Thence, N. 23 degrees 04”37’ W 78.89 feet to a point on the Southeasterly bank of said River;

Thence, N. 55 degrees 16”57’ E 50.99 feet along the Southeasterly bank of said River, to the point of beginning,

hereinafter referred to as the “MacLean Property;” and

**Whereas**, setback variances were granted to permit the construction of a garage on the MacLean Property pursuant to Town of Basalt Board of Zoning Adjustment Resolution No. 1, Series of 2011 and as a condition of approval of said variances, the Grantee has vacated the ingress and egress easement and the parking license provided under that certain agreement entered into in 1997 between the Town and the MacLeans’ predecessor

in interest and recorded as Reception No. 838421 in the Eagle County Clerk & Recorder's records; and

**Whereas**, there exists a fence on the MacLean Property that partially encroaches into the Town's Old Swinging Bridge Lane right-of-way for which the MacLeans have requested and the Town has agreed to grant this Revocable License.

## **AGREEMENT**

1. Grant of Revocable License for Fence Encroachment. The Town hereby grants and conveys to the MacLeans, a revocable license to maintain, repair and, at Grantee's option, replace an existing fence that encroaches into the Town's Old Swinging Bridge Lane right-of-way as depicted on Exhibit "A" appended hereto, and to use, maintain and care for that portion of the land underlying said right-of-way adjacent to the MacLean Property that is enclosed by the fence. This Revocable License may be revoked and terminated by written notice from either party to the other upon thirty (30) days notification of revocation. In the event of such notification, the MacLeans shall remove the fence from the Town's right-of-way or relocate it to the common boundary between said right-of-way and the MacLean Property.

2. Obligations of MacLean Regarding Encroachment.

2.1 As consideration for the license granted hereunder, the MacLeans shall care for and maintain at their sole expense the fence and the land underlying the Town's right-of-way within the encroachment area depicted on Exhibit "A" in a good and safe condition, free of hazards, waste and debris. The MacLeans shall properly maintain all vegetation, trees and shrubs within the encroachment area and remove and replace, as appropriate, any dead or dying vegetation with comparable healthy native plantings.

2.2 The MacLeans' fence within the Town right-of-way shall be maintained in good condition and repair such that it does not constitute a danger to the health and safety of the public. The MacLeans shall be solely responsible for repairing any damage to the fence at their expense and for maintaining the fence to the reasonable requirements of the Town.

2.3 The MacLeans shall indemnify and hold harmless the Town against any claims or damages resulting from the MacLeans' failure to fulfill their obligation hereunder. The MacLeans shall cause a certificate of insurance to issue from an insurance company authorized to do business in the State of Colorado, naming the Town as an additional insured with respect to the encroachment area and the rights and obligations of this Revocable License with coverage limits reasonably required by the Town from time to time.

3. 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 may be



4.4 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.

4.5 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.

4.6 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.

4.7 Binding Effect. 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 the day and year first written above.

ATTEST:

TOWN OF BASALT

By: \_\_\_\_\_  
Pamela K. Schilling, Town Clerk

By: \_\_\_\_\_  
Leroy Duroux, Mayor

GRANTEE:

\_\_\_\_\_  
Robert G. MacLean

\_\_\_\_\_  
Julie MacLean

