

**AN ORDINANCE OF THE TOWN COUNCIL OF BASALT, COLORADO, APPROVING  
A NEW EASEMENT AND A CONSTRUCTION LICENSE AGREEMENT AT 240  
COTTONWOOD DRIVE IN ORDER TO WIDEN THE SIDEWALK ON THE EAST SIDE  
OF COTTONWOOD DRIVE**

**Ordinance No. 11  
Series of 2017**

RECITALS

1. Town of Basalt would like to obtain an easement and construction license at 240 Cottonwood Drive in order to widen the existing sidewalk along the east side of Cottonwood Drive.
2. The owner of 240 Cottonwood Drive, Telio Cerise, has agreed to grant an easement for widening the sidewalk in exchange for the Town paying Cerise the amount of the lowest bid to make the following improvements to Cerise's Property:
  - a. Replace Cerise's cracked concrete driveway at his garage; and,
  - b. Construct a retaining wall adjacent to the new sidewalk to level out Cerise's sloping landscaped area between his asphalt driveway and the sidewalk; and,
  - c. Cut existing asphalt driveway back far enough to re-grade so that it is less steep.
3. At a public meeting on May 23, 2017, the Basalt Town Council approved this ordinance on first reading and scheduled second reading for June 13, 2017, at a 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 Town Staff and members of the public.
4. At a public hearing on June 13, 2017, the Town Council heard evidence and testimony from Town Staff, and members of the public.
5. The Basalt Town Council finds and determines the easement and license agreement described herein to be consistent with the applicable provisions of the Town Code.

6. 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 240 Cottonwood Drive Easement Agreement and Construction License, 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 Council.

2. 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.

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.

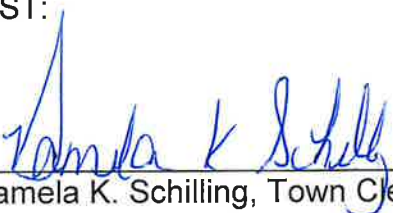
READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR SECOND READING TO BE HELD ON June 13, 2017 by a vote of 5 to 1 on May 23, 2017.

READ ON SECOND READING AND ADOPTED, by a vote of 6 to 0 on June 13, 2017.

TOWN OF BASALT, COLORADO

By:   
Jacqué R. Whitsitt, Mayor

ATTEST:

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

Ord11\_240CottonwoodEasementAgreement

First Publication: Thursday, June 1, 2017  
Final Publication: Thursday, June 22, 2017  
Effective date: Thursday, July 6, 2017

(EXHIBIT A TO ORDINANCE NO. \_\_, SERIES OF 2017)

## Exhibit A

### EASEMENT AGREEMENT AND CONSTRUCTION LICENSE

This EASEMENT AGREEMENT is made this \_\_\_ day of June, 2017 between Telio Cerise, whose address is P.O. Box 305, Basalt, CO 81621 (“Grantor”) and the Town of Basalt, Colorado, a home rule municipality (“Grantee”)

#### **RECITALS**

A. Grantor is the owner in fee title of the property located at 240 Cottonwood Drive, Basalt, Colorado, 81621, more particularly described on **EXHIBIT A** and shown on **EXHIBIT B** attached hereto and incorporated herein by this reference (the “Easement Area”).

B. The Grantee is the holder of a public sidewalk easement recorded at Book 474, Page 991 of the records of the Eagle County, Colorado, adjacent to the Easement Area.

C. The Grantee desires to expand the sidewalk improvements in the interest of public safety, which requires use of the Easement Area.

D. The parties have agreed to an easement and construction license for the benefit of the Grantee across the Easement Area and adjacent thereto. The purpose of this agreement is to grant the Grantee a permanent non-exclusive easement for ingress and egress for construction and maintenance of the sidewalk and related improvements.

#### **AGREEMENT**

NOW THEREFORE, in consideration, of the mutual covenants, terms, conditions, restrictions, and requirements contained herein, the parties do hereby agree as follows:

1. Grant of Easement. Grantor hereby conveys, assigns, transfers and grants to Grantee a permanent easement over and across the Easement Area. The Easement Area shall be used by Grantee for ingress and egress, construction, installation, maintenance, repair and replacement of public sidewalk and related improvements. The Grantee shall pay all costs for construction and maintenance. The Grantee shall have the right to use the land beneath the Easement Area for the installation, maintenance, repair and replacement of the improvements that now or hereafter may traverse the Easement Area. The Grantee shall be responsible for and shall pay the costs for all maintenance and repair of its improvements located on the Easement Area and shall keep the improvements in good repair and condition. The Grantee agrees at all times to maintain its improvements located in the Easement Area so its appearance is compatible with the surrounding property. Without the express written consent of both parties, the Town’s use of the Easement Area shall not be expanded or increased. At any time that the Grantee undertakes work within the Easement Area, it shall restore the surface of the adjacent property to its pre-existing condition.

2. Grant of Construction License. Grantor hereby conveys to Grantee a temporary Construction license as shown on **Exhibit C** hereto, for use and occupancy of additional lands during the construction of the sidewalk.

3. Consideration. In consideration for the easement and construction license granted hereby, Grantee shall design and obtain at Grantee's expense a cost estimate for replacing Grantor's concrete driveway, constructing a retaining wall adjacent to the Easement Area to level out the Grantor's landscaped area between the driveway and the sidewalk, and cut the existing asphalt driveway back far enough for re-grading to reduce the steepness.

Grantee shall pay to Grantor the amount necessary to complete the above-referenced improvements. Grantor shall be solely responsible for the construction of the improvements.

4. Defend and Hold Harmless. To the extent authorized by Sec. 24-30-1510(3)(e), C.R.S., the Grantee shall defend and hold harmless the Grantor against claims arising from the alleged negligent acts or omissions of the Grantee and its employees which occurred or are alleged to have occurred during the performance of their duties and within the scope of their employment, except where such acts or omissions are willful and wanton. Such claims shall be subject to the limitations of the "Colorado Governmental Immunity Act," Sec. 24-10-101 to 24-10-120, C.R.S., as now or hereafter amended.

5. Representations of Grantor. With respect to the lands included in the Easements Area, the Grantor represents that he is well seized of and has good title to such lands, free and clear of all liens or encumbrances and that the Grantee shall have, subject to the terms, provisions, and conditions hereof, the quiet and peaceful possession and use of the Easement Area for the purposes intended.

6. 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 personally delivered or given by facsimile transmission or given by United States certified mail, return receipt requested, addressed as follows:

To Grantor:                      Telio Cerise  
   P.O. Box 305  
   Basalt, CO 81621

To Grantee:                        Town Manager  
   Town of Basalt, Colorado  
   101 Midland Ave  
   Basalt, CO 81621

With copy to:                      Thomas Fenton Smith  
   P.O. Box 3380  
   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. Notice by facsimile transmission shall be deemed given upon receipt of a confirmation by sender.

7. Miscellaneous.

7.1 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 (10) 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 pursue any right or remedy allowed by this Agreement or otherwise by law.

7.2 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.

7.3 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.

7.4 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.

7.5 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.

7.6 Run With the Land. All the provisions of this Agreement, including the benefits and burdens created hereby, shall run with this land. This Agreement is made subject to any existing easements, reservations, restrictions or rights of way.

7.7 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 and/or deliver as necessary any documentation in order to correct the erroneous document, description, and exhibit or to provide any missing exhibit.

7.8 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.

Grantor

By: \_\_\_\_\_  
Telio Cerise

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF EAGLE     )

The foregoing instrument was acknowledged before me this    day of June, 2017 by Telio Cerise.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



GRANTEE:  
TOWN OF BASALT

By:   
Jacque Whitsitt  
Mayor


STATE OF COLORADO    )  
  ) ss.  
COUNTY OF EAGLE     )

The foregoing instrument was acknowledged before me this    day of June, 2017 by Jacquie Whitsitt.

Witness my hand and official seal.

My commission expires 02/23/2021

**CONNIE C. HOLCOMB**  
Notary Public  
State of Colorado  
Notary ID # 20074000275  
My Commission Expires 02-23-2021

  
Notary Public