DRIVEWAY EASEMENT AGREEMENT

THIS DRIVEWAY EASEMENT AGREEMENT (the "Agreement") is made and entered into, effective _____, 2016 by and between THE ROARING FORK TRANSPORTATION AUTHORITY ("RFTA"), as the grantor hereunder, and Myers & Associates Properties, LLC, a Colorado limited liability company ("Grantee"), and the Town of Basalt, Colorado, a Colorado home-rule municipality (the "Town") with respect to the following facts:

A. RFTA is the owner of that certain real property described as Lot O of the Final Plat of Basalt Business Center South, Town of Basalt, County of Pitkin, State of Colorado, as such plat has been filed for record in the Office of the Clerk and Recorder of Pitkin County, Colorado on the 4th day of May 1993 as Reception No. 356525 in Book 31 at Page 80 (such Lot O being hereinafter referenced as the "Burdened Parcel").

B. Grantee is the owner of that certain real property described as Lot V and Lot W of the aforementioned Final Plat of Basalt Business Center South (such Lots V and W being hereinafter collectively referenced as the "Benefitted Parcels").

C. RFTA acquired title to and possession of all or a portion of the Burdened Parcel through the use of RFTA's powers of eminent domain in a condemnation action filed by RFTA against Grantee, among others, in December of 2011, which was funded by and pursuant to requirements of the Federal Transit Administration ("FTA"). Such condemnation action was resolved based upon a Stipulation and Consent to Entry of Final Rule and Order agreed upon by all of the parties to the condemnation action and formally approved by the Pitkin County District Court on or about May 22, 2012, as such Rule and Order is more particularly described in paragraph D below.

D. This Agreement is for the purpose of complying with that certain Rule and Order, dated May 22, 2012, of the Pitkin County District Court, Case No. 2011-CV-339, *Roaring Fork Transportation Authority, et al. v. Myers and Associates, et al.* (the "Rule and Order"), which resolved the condemnation action described above in paragraph C.

NOW THEREFORE, in consideration of the premises, the foregoing recitals, the terms and conditions set forth in this Agreement and the agreements and covenants set forth herein, the findings of the court and the requirements of RFTA set forth in the Rule and Order, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, RFTA hereby grants to Grantee the use of certain a non-exclusive easement affecting the Burdened Parcel and in accordance with the obligations of the Town of Basalt as provided herein.

1. Easement for Driveway. RFTA hereby grants and conveys to Grantee a non-exclusive, perpetual easement for access (as such access is defined in the CDOT State Highway Access Permit, Permit No. 314123, attached hereto as Exhibit "A" and made a part hereof) for ingress to and egress from the Benefitted Parcels, over, across, on and through the Burdened Parcel (the "Driveway Easement"). The Driveway Easement is described and depicted

in: (a) the metes and bounds Easement Description; (b) the Map of Lot O, Basalt Business Center South Access Easement; (c) Sheet No. C5 of the Sopris Engineering, LLC plan set; and (d) the copy of the Final Plat of Basalt Business Center South, all of which, when taken together, collectively comprise Exhibit "B" attached hereto and made a part hereof.

The Driveway Easement granted hereby is to facilitate the Town of Basalt's resolution of land use issues involving adjacent property owners. RFTA will improve and construct, at no cost to Grantee, a driveway in accordance with the plans and specifications therefor described in Exhibit "C" (attached hereto and made a part hereof) and located, in part, within the Driveway Easement for the purpose of providing access to Cody Lane from the Benefitted Parcels and from the Benefitted Parcels to Cody Lane. The driveway improvements depicted on Exhibit "C", including the installation of a ditch culvert (collectively, the "Driveway Improvements"), shall be completed and paid for by RFTA; however, Grantee agrees that any paving of the driveway may be reasonably delayed until such paving can be coordinated with other projects in the area.

The Driveway Improvements constructed by RFTA shall all be repaired and maintained by the Town of Basalt, which is made a party to this Agreement for, in addition to any other purposes specifically stated in this Agreement, the express purpose of acknowledging and agreeing to perform such repairs and maintenance at the sole cost and expense of the Town.

The Driveway Easement is granted herein solely for the purposes described in this Paragraph 1, and will terminate if Grantee abandons the Driveway Easement as a driveway, uses the Driveway Easement for a purpose not permitted under this Agreement or in the event the road which is the subject of this Agreement is moved off of Lot O. Grantee also hereby agrees not to unreasonably interfere with RFTA transit operations in exercising any of Grantee's rights under this Agreement.

2. Limitations on Rights Granted. The Driveway Easement is subject and subordinate to a reservation by RFTA of the prior and continuing right of RFTA to all other uses of the Driveway Easement not inconsistent with the rights granted to Grantee hereby.

3. Environmental Protection. Grantee shall, at its expense, comply with all applicable laws, regulations, rules and orders regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality, and furnish satisfactory evidence of such compliance upon request of RFTA only with regard to Grantee's activities on the Driveway Easement. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or arise from the Driveway Easement solely as a result of Grantee's use, presence, operations or exercise of Grantee's rights granted hereunder, Grantee shall immediately notify RFTA and shall, at Grantee's expense, clean all portions of the Burdened Parcel affected thereby, to the reasonable satisfaction of RFTA (insofar as property owned or controlled by RFTA is concerned) and any governmental body having jurisdiction in the matter. RFTA may, at its option, clean the Burdened Parcel of such discharge referred to above, and Grantee shall indemnify, defend and hold RFTA harmless from and against all claims, liability, costs and expenses (including without limitation, any fines, penalties, judgments, litigation costs and attorneys' and consultants' fees and expenses) incurred by RFTA as a result of any such discharge, leakage, spillage, emission or pollution by Grantee on the Driveway Easement.

4. No Liens to be Filed. Grantee shall pay in full all persons who perform labor on any portion of the Driveway Easement, or any other portion of the real property upon which the Driveway Improvements have been constructed, for Grantee or at Grantee's request and will not allow any mechanics' or materialmen's liens to be enforced against RFTA or the Town for work done or materials furnished thereon at Grantee's request. If any such liens are filed thereon, Grantee agrees to remove the same at Grantee's sole cost and expense and to pay any judgment which may be entered thereon or thereunder. Should Grantee fail, neglect or refuse to do so, RFTA (or the Town, as applicable) may pay any amount required to release any such lien or liens, or to defend any action brought thereon, and to pay any judgment entered therein, and Grantee shall be liable to RFTA (or the Town, as applicable) for the payment of any such liens or judgment and any and all costs, expenses, damages, attorneys' and consultant's fees and expenses, and any other amounts expended by RFTA (or the Town, as applicable) in defending any such proceedings. The Town of Basalt shall either reimburse Grantee or pay directly for any work which is required to be performed by Grantee for which the Town has repair and maintenance responsibility under this Agreement.

5. Grantee's Assumption of Liability. Grantee assumes all liability for damage to or destruction of property, injury to or the death of persons resulting from Grantee's use of the Driveway Easement.

6. Indemnification. Grantee and the Town of Basalt, to the extent permitted by law and to the extent of their duties and obligations herein, shall at all times protect, indemnify, defend and save RFTA harmless from any and all claims, demands, judgments, cost, expenses, and all damage of every kind and nature made, rendered or incurred by or in behalf of any person or corporation whatsoever, in any manner due to or arising out of any claim for injury to or death of any person, or any claim for damage to property of any person or persons whomsoever, including the parties hereto and their officers, families, servants and employees, in any manner arising from the maintenance, operation, repair, extension, renewal, existence, or use by Grantee or the Town of the Driveway Easement as provided or required in this Agreement, or the failure by the Town of Basalt to properly maintain the same as agreed herein, and from all costs and expenses, including attorneys' fees and consultants' fees and expenses, connected in any way with the matters and things which are the specific obligations of Grantee or the Town of Basalt as specifically set forth in this Agreement.

7. Headings. The section headings contained in this Agreement are inserted for convenience only and are not intended to in any way affect the meaning or interpretation of any such section or provision of this Agreement.

8. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

9. Amendments and Waivers. No amendment of any provision of this Easement Agreement shall be valid unless the same shall be in writing and signed by all of the owners of the Burdened Parcel and the Benefitted Parcels. No waiver by RFTA of any default or breach of any covenant or agreement by Grantee or the Town hereunder shall be deemed to extend to any prior or subsequent default or affect in any way any of RFTA's rights arising by virtue of any prior or subsequent default.

10. Severability. Any term or provision of this Agreement that is held by a court of competent jurisdiction to be invalid or unenforceable shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement.

11. Entire Agreement. This Agreement constitutes the entire agreement between RFTA, Grantee and the Town of Basalt and supersedes all prior understandings, agreements or representations among them, written or oral, that may have related in any way to the subject matter hereof, except for the Rule and Order which shall control under all circumstances.

12. No Third Party Beneficiaries. This Agreement defines the rights and duties of the parties hereto and their respective successors and assigns, and may not be relied upon by any third party as the basis of a claim.

13. Attorneys' Fees. If any action or proceeding is instituted for enforcement or interpretation of any term of this Agreement, the prevailing party or parties shall be entitled to recover from the other non-prevailing party or parties all reasonable costs and expenses incurred by the prevailing party or parties in said action and any appeal therefrom, including court costs, reasonable attorneys' fees and costs of suit as determined by the court.

14. Notices. All notices required or permitted hereunder shall be given by certified mail, postage prepaid, return receipt requested, or by overnight express delivery by a nationally recognized overnight courier directed as follows:

GRANTEE:

Myers & Associates Properties, LLC
c/o Robert H. Myers
555 Basalt Ave.
Basalt, CO 81621

RFTA:

Roaring Fork
Transportation Authority
2307 Wulfsohn Road
Glenwood Springs, CO 81601
Attn: CEO

TOWN OF BASALT:

Basalt Town Hall
101 Midland Avenue
Basalt, CO 81621
Attn: Town Manager

Such notice delivered by (a) certified mail in accordance with the foregoing procedures shall be deemed to have been duly given three (3) business days after such notice is deposited with the United States Post Office, or (b) overnight express delivery by a nationally recognized overnight courier shall be deemed to have been duly given one (1) business day after such notice is deposited with such overnight courier with instructions to deliver such notice the next following business day. Any party may specify a different address for notices by delivery of written notice to the other party.

15. Representations and Warranties. RFTA, Grantee and the Town of Basalt each warrant and represent to the other parties hereto that each, respectively, has the power and authority to execute and deliver this Agreement and to perform their respective obligations under this Agreement, this Agreement has been duly authorized by all actions of each such party, and the person (or persons) signing for each party has (have) been duly and legally authorized by such party to do so. RFTA hereby represents and warrants to Grantee that RFTA has record fee simple title to the Burdened Parcel and has the legal right to grant the Driveway Easement to Grantee along with the other rights given to Grantee pursuant to the terms of this Agreement. The Town of Basalt hereby represents and warrants to Grantee that the Town has sufficient title to the real property over and upon which the Driveway Improvements are being constructed to permit the Driveway Improvements to be used by Grantee as required under the Rule and Order.

16. Governmental Immunity Act. Notwithstanding anything to the contrary herein, RFTA and the Town of Basalt shall not be deemed to have waived in any manner the rights, obligations, and protections afforded or imposed on RFTA or the Town of Basalt by law including the Colorado Governmental Immunity Act or the Colorado Constitution.

17. Construction. Whenever appropriate from the context, the use of any gender (including, but not limited to, neuter) shall include any other or all genders, and the singular number shall include the plural, and the plural shall include the singular. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

19. Recording. This Agreement, when fully executed, shall be recorded in the Office of the Pitkin County Clerk and Recorder.

20. Permitted Assignees of Grantee. Grantee shall be permitted to lease or assign, as applicable, the rights and obligations of Grantee under this Agreement to any tenant or purchaser of the Benefitted Parcels; provided however, that the lessee's/assignee's use of the Driveway Easement does not exceed (and will not be permitted to exceed) the scope of the Driveway Easement and Grantee's prior use thereof as defined in Exhibit "A" in accordance with the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and year first set forth above.

GRANTOR:

ROARING FORK TRANSPORTATION AUTHORITY

By: _____
Dan Blankenship
Title: CEO

GRANTEE:

MYERS & ASSOCIATES PROPERTIES, LLC, a Colorado limited liability company

By: _____
Name printed: _____
Title: _____

TOWN OF BASALT:

BY: _____
MAYOR

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by Daniel Blankenship, CEO for the **Roaring Fork Transportation Authority**.

Witness my hand and official seal.

My commission expires: _____. _____
Notary Public

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by _____, as _____ of **Myers & Associates Properties, LLC**, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: _____. _____
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by _____, **Mayor of the Town of Basalt**.

Witness my hand and official seal.

My commission expires: _____. _____
Notary Public

EXHIBIT A

CDOT State Highway Access Permit, Permit No. 314123

[See attached pages.]

EXHIBIT B

Depiction and Description of Driveway Easement

[See attached pages.]

EXHIBIT C

Description of Plans and Specifications for Driveway Improvements

Project and Standard Special Provisions; Meyer's [sic] Access Road to East Cody Lane; RFTA Solicitation No. 16-030, dated February 5, 2016; consisting of 30 pages (inclusive of CDOT Notice to Proceed Drawings for Myers Access Road to East Cody Lane, Permit No. 314123, Hwy 82, MP 23.22 Right, Town of Basalt, Pitkin County, Colorado, Sopris Engineering, LLC., Job #14112).