



TOWN OF ELIZABETH

PATRICK G. DAVIDSON, TOWN ADMINISTRATOR

TO: Honorable Mayor, Mayor Pro Tem, and Board of Trustees
FROM: Patrick Davidson, Town Administrator
DATED: January 28, 2025
SUBJECT: 525 Dale Court Easement / Encroachment

BACKGROUND

On September 29, 1997, the Town of Elizabeth entered into an Agreement with Norman and Myra Ullom regarding a garage that had inadvertently been constructed on the Town's property, namely Spruce Street. The Agreement provided that the garage could remain, until such time as it was either removed from the property or more than 50% of the garage was destroyed. To date, neither event has occurred.

In 2001, the land was subject to an Amendment to the Phillips Addition which created "Tract A" - the vacated portion of Spruce Street [caused by the garage]. Further, the Amendment appears to have conveyed Tract A to the Town without the reservation for the garage. Arguably, it could mean that these two documents are at odds with one another for purposes of ownership of the land and the status of the garage.

The owner of 525 Dale Court seeks to sell their property, and the garage is now at issue. The owner and prospective buyer need assurances that the Town will not force the removal of the garage. The Town's Attorney has worked with the owner's attorney to reach a potential agreement which maintains the status quo for the garage. Namely, the garage may remain in place, subject to *either* (1) the removal of the garage; or (2) the destruction of more than 50% of the garage. After which, the land located on Tract A reverts to being a portion of Spruce Street.

ANALYSIS

The proposed transaction provides the most reasonable means to maintain the status quo and allow for the sale of the property.

STAFF RECOMMENDATION

Staff supports the transaction, and the documents have been approved by the Town Attorney as to form.

BUDGET CONSIDERATIONS

N/A

ATTACHMENTS

Easement Agreement between the Town of Elizabeth and Quartzville Limited Partnership, LLLP

RESOLUTION 25R06

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT AGREEMENT FOR THE BENEFIT OF THE REAL PROPERTY COMMONLY KNOWN AS 525 DALE COURT, ELIZABETH COLORADO

WHEREAS, the Town of Elizabeth previously entered into an *Agreement Regarding Conveyance*, dated September 29, 1997 authorizing and allowing the encroachment of a garage on the Town's property; and

WHEREAS, the Town of Elizabeth, and the successor in interest of the *Agreement Regarding Conveyance* find it necessary and proper to reaffirm the terms of said encroachment.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ELIZABETH, COLORADO AS FOLLOWS:

SECTION 1. The Board of Trustees hereby authorizes the Mayor to execute an *Easement Agreement* for the benefit of the real property commonly known as 525 Dale Court, Elizabeth, Colorado.

PASSED, APPROVED, and ADOPTED this 28th day of January 2025, by the Board of Trustees of the Town of Elizabeth, Colorado, on first and final reading, by a vote of _____ for and _____ against.

Angela Ternus, Mayor

ATTEST:

Michelle M. Oeser, Town Clerk

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made and executed effective this _____ day of _____, 2025, by and between THE TOWN OF ELIZABETH, COLORADO (the “Grantor”), and QUARTZVILLE LIMITED PARTNERSHIP LLLP, a Colorado limited liability limited partnership (the “Grantee”).

WITNESSETH:

WHEREAS, the Grantor is the owner of a parcel of real estate located in the Town of Elizabeth, County of Elbert, State of Colorado, identified as Parcel No. 84181-21-008, and more particularly described as follows, to wit:

Section: 18 Township: 8 Range: 64 Subdivision: ELIZABETH PHILLIPS ADD Block: 26 Tract: A –
AMEND 1

which land is located on and within Town of Elizabeth right-of-way generally known as East Spruce Street (the “Burdened Land” or the “Easement Property”); and

WHEREAS, the Grantee is the owner of a parcel of real estate located in the Town of Elizabeth, County of Elbert, State of Colorado, identified as Parcel No. 84181-21-006, more particularly described as follows, to wit:

Section: 18 Township: 8 Range: 64 Subdivision: ELIZABETH PHILLIPS ADD Block: 26 Lot: 11A –
AMEND 1

Known and numbered as 525 Dale Court (the “Benefited Land”); and

WHEREAS, the Town as Grantor and Grantee’s predecessor in interest entered into that Agreement Regarding Conveyance dated September 29, 1997, and recorded on September 29, 1997 at Book 569, Page 417 of the records of the Elbert County Clerk and Recorder’s Office (the “Original Conveyance Agreement”), which Original Conveyance Agreement has been determined to have been merged into Town ownership by operation of law; and

WHEREAS, the Town as Grantor is amenable to memorializing the encroachment of the garage on the Town’s property consistent with the Original Conveyance Agreement by execution of this Easement Agreement, and

WHEREAS, the Grantor is willing to convey to the Grantee an easement on and across the Burdened Land for the existence of a garage (the “Encroachment”) attached to the house existing on the Benefited Land, serving the Benefited Land on the Burdened Land, which Encroachment is located on the eastern portion of the Burdened Land, and as further depicted on the diagram attached hereto as Exhibit A (“Encroachment Area”); and

WHEREAS, the Grantee is desirous of acquiring a formal easement from the Grantor to benefit the Benefited Land.

NOW, THEREFORE, in consideration of the foregoing and other consideration, the receipt and sufficiency of which is hereby acknowledged by the grantor, the Grantor and Grantee agree as follows:

1. The Grantor grants, transfers, and conveys to the Grantee an exclusive easement upon the Encroachment Area of the Burdened Land for the purposes of keeping, using, maintaining and repairing (but expressly excluding replacing as set forth below) the Encroachment.
2. This Easement acknowledges the existence and location of Encroachment on the Burdened Land and authorizes the Grantee the right of access on the Burdened Land to use, repair and maintain the Encroachment; provided, however, in the event (a) the Encroachment is moved off of the Burdened Land, or (b) more than fifty percent (50%) of the Encroachment is destroyed, then such Encroachment may not be reconstructed or replaced by the Grantee and this Easement Agreement shall then automatically terminate.
3. The Grantor covenants with the Grantee that the easement hereby granted and the terms of this Easement Agreement shall benefit and burden, and run with, the Benefited Land for the purposes herein set forth and be binding upon the Grantee, their heirs, successors, and assigns, and shall burden and run with the Burdened Land and be binding upon the Grantor, their heirs, successors and assigns until terminated as provided herein.
4. Grantee further covenants and represents in favor of Grantor, and its successors and assigns, as follows:
 - a. Grantee shall protect the Easement Property from damage caused, in whole or in part, by acts or omissions of Grantee, its agents, assigns, and successors in interest.
 - b. The maintenance of the Easement Property shall be the sole responsibility of the Grantee.
 - c. Grantee shall not cause or permit to be caused by any of its agents, assigns, and successors in interest, any hazardous substances, as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), pollutants or contaminants, as defined by CERCLA, or hazardous waste, as defined by the Resource, Conservation and Recovery Act ("RCRA"), including, but not limited to, asbestos and/or urea formaldehyde or any pollutants or toxic pollutants as defined by the Clean Water Act, and any amendments thereto, to be dumped, spilled, released, permanently stored or deposited on, over or beneath the Easement Property.
 - d. Grantee shall indemnify and hold harmless the Town as Grantor, including its officers, employees, agents or servants from any and all suits, actions, and claims of every nature and description caused by, arising from or on account of any act or omission of the Grantee, or of any other person or entity for whose act or omission the Grantee is liable, with respect to the Easement Property.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Easement Agreement the day and year first above written.

GRANTOR:

THE TOWN OF ELIZABETH, COLORADO

Angela Ternus, Mayor

ATTEST:

Michelle M. Oeser, Town Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, Town Attorney

The foregoing Easement Agreement was acknowledged before me this _____ day of _____, 2025, by Angela Ternus, as Mayor of the Town of Elizabeth, Colorado.

Witness my hand and official seal.

My commission expires: _____

Notary Public

GRANTEE:

QUARTZVILLE LIMITED PARTNERSHIP LLLP

By: _____
Name: _____
Title: _____

The foregoing Easement Agreement was acknowledged before me this _____ day of _____
_____, 2025, by _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A
ELBERT STREET

