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Jefferson County, Colorado

RESOLUTION NO. 1729

**A RESOLUTION OF THE GOLDEN CITY COUNCIL APPROVING
A HISTORIC PRESERVATION EASEMENT AGREEMENT
PERTAINING TO THE EAST STREET BARN AT 423 16TH STREET**

1-10

Step 2

WHEREAS, the Golden City Council approved a final plat for the property at 423 16th Street on October 12, 2006, by Resolution 1712; and

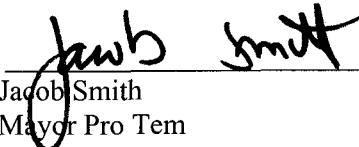
WHEREAS, City Council's approval of the plat was conditioned on an agreement with the land owners to preserve the East Street Barn, an undesignated local historic structure; and

WHEREAS, the Deed of Conservation Easement in Gross has been reviewed and recommended for approval by the Golden Historic Preservation Board in meetings on November 6th and 20th, 2006.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

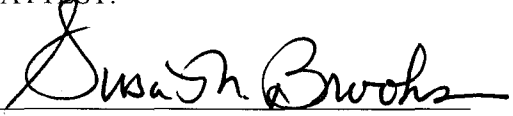
Section 1. The Deed of Conservation Easement in Gross for the East Street Barn is hereby approved substantially in the form attached. The Mayor is authorized to execute the Easement Agreement on behalf of the City.

Adopted this 7th day of December, 2006.



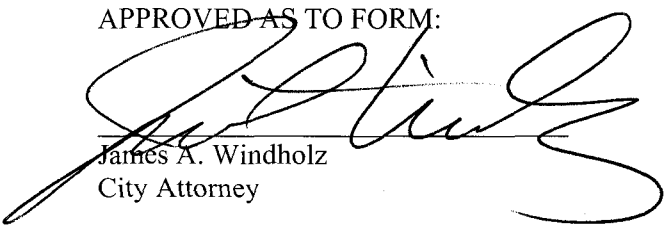
Jacob Smith
Mayor Pro Tem

ATTEST:



Susan M. Brooks, MMC
City Clerk

APPROVED AS TO FORM:



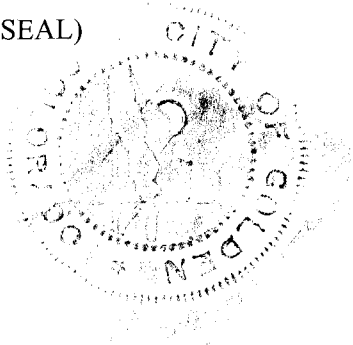
James A. Windholz
City Attorney

Resolution No. 1729

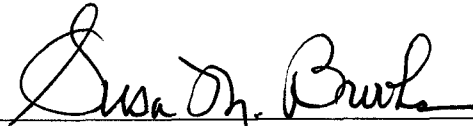
Page 2

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a rescheduled regular meeting thereof held on the 7th day of December, A.D., 2006.

(SEAL)



ATTEST:


Susan M. Brooks, City Clerk of the City of
Golden, Colorado

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DEED OF CONSERVATION EASEMENT IN GROSS

This Deed of Conservation Easement In Gross ("Conservation Easement") is effective as of 12, 20, 2006, between Tom Rich, ("Grantor") and The City of Golden, Colorado, a municipal corporation, ("Grantee").

RECITALS

A. The Grantor is the owner in fee simple of certain real property located at 423 16th Street, Golden, Colorado, ("Property") which is more particularly described on Exhibit A hereto. The Property includes a structure known as the East Street Barn ("Barn"), which is the subject of this Conservation Easement.

B. The Grantor and Grantee recognize the historical, architectural, cultural, and aesthetic value and significance of the Barn, and have a common purpose of conserving and preserving such value and significance of the Barn.

C. The grant and the acceptance of this Conservation Easement will assist in preserving and maintaining the historical, architectural, cultural, and aesthetic value and significance of the Barn.

D. Grantor recently applied to subdivide the Property into individual lots for three single household detached dwellings. As a part of such application, the Grantor voluntarily offered to enter into an appropriate contract that provides for the preservation of the Barn.

E. Grantor is applying to the City of Golden for local historic designation for the Barn in conjunction with this application.

F. Grantor is applying for a License Agreement to address the encroachment of the East Street Barn into the East Street right of way.

G. To that end, Grantor desires to grant to Grantee, and Grantee desires to accept this Conservation Easement on the East Street Barn.

THEREFORE, in consideration of Ten Dollars (\$10.00) and the consideration described in this Conservation Easement below, receipt of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1. GRANT OF EASEMENT.

1.1 **Grant.** Upon approval by the City of a License Agreement permitting the continued encroachment of the Barn into the East Street Right of Way, and upon designation of the Barn as a historic structure under Chapter 18.58 of the Municipal

Code, Grantor does hereby irrevocably grant and convey to Grantee forever a conservation easement in gross, to have and to hold in perpetuity, to constitute a binding servitude upon the and the exterior facade of the East Street Barn for the purposes of encapsulation, as more particularly described herein. For purposes of this Conservation Easement "exterior facade" means the exterior surfaces of the Barn including, by illustration, the wall surfaces of the original structure, doors, windows, roofline and decorative elements.

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1.2 Nature of Grantee's Right. Grantee shall forever have and own a full and free right to protect and ensure the preservation and maintenance of the exterior facade of the Barn. This Conservation Easement shall be interpreted to further the intention of the Grantor and Grantee to conserve and preserve the historical, architectural and cultural interest or value of the exterior facade of the Barn.

1.3 Photographs/Present Facade. In order to document the exterior nature of the Barn as of the effective date hereof, attached as Exhibit B hereto are photographs depicting the exterior facade of the Barn and the surrounding property. It is stipulated between Grantor and Grantee that Exhibit B depicts the external nature of the Barn as of the effective date of this Conservation Easement and as of the date this Conservation Easement is recorded in Jefferson County, Colorado. The external nature of the Barn is hereinafter referred to as the "*Present Facade*."

ARTICLE 2. AFFIRMATIVE COVENANTS.

Grantor covenants on behalf of itself, its heirs, successors and assigns, with Grantee, such covenants being deemed to run as a binding servitude, in perpetuity, with real property and structures, to do upon and for the Barn each of the following covenants and stipulations, which contribute to the purposes of this Conservation Easement in that they aid significantly in the preservation of the historic structure, which contributes to the historical, architectural, and cultural integrity of the Barn:

2.1 Restoration, Initial Alterations. Grantor agrees to undertake, and Grantee hereby approves and authorizes the alterations described in Exhibit C hereto, consisting of the following subject, however, to the issuance of all required building, demolition and other permits and approvals as may be required from the City acting through its police powers, and further subject to performance of such alterations in accordance with the standards of the Secretary of the Interior for rehabilitation of historic structures:

- a. Demolition of the existing dwelling and two sheds as shown on exhibit C.
- b. Permanent use of the Barn as a 2 car garage, including renovations as necessary to accommodate the use, including enlargement of the Barn's two garage doors to a width of eight (8) feet, and a height of eight (8) feet for the southern door and seven (7) feet high for the northern door.

c. Reconstruction of the two garage doors replicating the style and pattern of the existing doors. Alternatively, at the option of Grantor, the doors may be reconstructed replicating a typical barn door style of vertical siding with a "Z" shaped surface brace.

d. Repair and installation of the window on the west elevation, and repair of the existing opening on the south elevation to match the style of the surrounding siding, or the reconstructed garage doors.

e. Replacement of the roof with dimensional asphalt shingles.

f. Repair and restoration of the wood siding, and application of clear wood preservative.

g. Construction of the new dwelling and physical connection to the Barn as generally depicted by Exhibit C.

2.2 No Further Alterations Without Permission. Grantor shall not undertake, cause or permit the undertaking, or suffer any demolition, alteration, remodeling, changes of any nature, repairing, repainting or construction affecting the exterior facade of the Barn without the written permission of the Grantee. Notwithstanding the foregoing, the Grantor shall, without permission of Grantee, perform basic maintenance and upkeep activities which do not alter the appearance of the Barn, such as touch-up painting or weatherproofing. Grantor shall also be authorized to make any structural and other interior modifications to the Barn necessary for its future functioning as a garage, provided that there are no resulting changes to the exterior of the structure.

2.3 Alteration Standards/Purposes. In the event Grantor shall request of Grantee any right to demolish, alter, remodel, repair, repaint, or construct any portion of the exterior facade of the Barn, or to change the same, the Grantee's rights to withhold consent shall be guided by the standards in this paragraph. The Grantee shall consider the Present Facade and the factors of architectural style, design, arrangement, texture, materials and color. The proposed work shall preserve, enhance or restore and shall not damage or destroy the exterior facade architectural features of the Barn. The Grantee shall also consider the compatibility of the proposed changes with the character of the surrounding area, the feasibility of rehabilitation, the economic feasibility, the visibility of the proposed alterations of the Barn from public ways and areas, and other pertinent features deemed reasonable to maintain and preserve the historical integrity, culture, and architectural significance of the Barn. Structural alterations to the Barn which have no visual impact whatsoever shall be allowed.

2.4 Approval. Where permission of the Grantee is required, such permission shall be deemed to have been given upon the failure of the Grantee to respond to a written request therefore within 180 days of actual receipt thereof by the Grantee.

2.5 Inspection. Representatives of the Grantee shall be permitted at reasonable times to come upon the Property to inspect for violation of any of the provisions, agreements or promises contained herein, upon advance notice by the Grantee. If the Grantee has reason to believe that violations are occurring or have

occurred, representatives of the Grantee shall be permitted to come onto the Property without any notice whatsoever.

2.6 Title. Grantee may, at its expense, obtain a survey and/or title of the Barn and insure the title thereto.

2.7 Insurance. Grantor at its expense shall keep the Barn insured by an insurance company acceptable to the Grantee, under a form of full replacement cost insurance policy against risk of physical damage to those aspects of the Barn that are governed by this Conservation Easement. For the period prior to the completion of restoration and construction of the attached dwelling, Grantee acknowledges that replacement coverage in the amount of \$20,000 will satisfy this requirement. The insurance policy shall designate the Grantee as an additional insured or a loss payee and provide for 30 days notice of cancellation by the insurer to Grantee. Grantor shall provide Grantee with a Certificate of Insurance consistent with these requirements. Grantee acknowledges that upon construction of the attached dwelling, coverage of the Barn will be incorporated into insurance coverage for the dwelling.

2.8 Existing Liens. Grantor warrants to Grantee that no lien or encumbrance exists on the Barn as of the date hereof that would be superior to the rights granted herein. Grantor shall immediately cause any lien, claim of lien or mortgage that may hereafter come to exist against the Barn which would have priority over any of the rights, title or interest hereunder of Grantee, to be subordinated to the rights, title and interest of Grantee.

2.9 Notice to Other Persons. Restrictions, stipulations and covenants contained in this Conservation Easement shall be inserted by Grantor in any subsequent deed or other legal instrument by which it divests itself of either the fee simple title to or any lesser estate in the Barn, the Property or any part thereof.

2.10 Recording. Grantee will do and perform at its cost all acts necessary to the prompt recording of this Conservation Easement among the records of the Clerk and Recorder of Jefferson County, Colorado.

2.11 Initial Renovation/Restoration. Grantor shall, within one year of the effective date of this Conservation Easement, initiate or cause the initiation of good faith measures to restore, renovate, refurbish, and preserve the Barn, consistent with the alterations described in Exhibit C.

2.12 Maintenance. After restoration, Grantor will maintain the Barn at a level so as to prevent deterioration.

ARTICLE 3. CASUALTY/EXTINGUISHMENT

3.1 Damage or Destruction. In the event that the Barn or any part thereof shall be damaged or destroyed by casualty, the Grantor shall notify the Grantee of the damage or destruction, such notification including what, if any, emergency work has been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Barn and for safety purposes shall be undertaken without the Grantee's prior approval of the work. The Grantee shall make an assessment of the nature and extent of damage and determine whether to require Grantor to preserve and/or restore the Barn, consistent with this Conservation Easement. 1

3.2 Extinguishment. Grantor and Grantee recognize that an unexpected change in the conditions surrounding the Barn may make impossible or impractical the continued use of same for the purposes of this Conservation Easement and necessitate extinguishment hereof. Such a change in conditions may include, but is not limited to, partial or total destruction of the Barn resulting from casualty. In such event, the Grantee may at its discretion determine to extinguish this Conservation Easement. The parties and/or their heirs, assigns or successors, shall execute and record such documents necessary to effect the extinguishment of this Conservation Easement.

3.3 Condemnation. If all or any part of the Barn is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the Barn that are subject to the taking and all incidental and direct damages resulting from the taking. All expenses reasonably incurred by Grantor and Grantee in connection with such taking shall be paid out of the recovered proceeds.

ARTICLE 4. GRANTS/TAX CONSIDERATIONS

4.1 Grants/Tax Benefits. The Grantor may apply for and seek grants, financial assistance and tax benefits related to the preservation, restoration and/or renovation of the Barn, consistent with the provisions of this Conservation Easement. Grantee will cooperate with such applications, but shall not be required to contribute economically to such applications.

ARTICLE 5. GENERAL PROVISIONS

5.1 Binding Effect. This Conservation Easement shall extend to and be binding upon Grantor, its heirs, successors and assigns, and all persons hereafter claiming under or through Grantor. The word "Grantor" shall include all such persons, whether or not such persons have signed this Conservation Easement or then have an interest in the Barn.

5.2 Assignment. Grantee may, at its discretion and without prior notice to Grantor, convey and assign this Conservation Easement to a similar local, state, or national organization whose purposes are to promote historic preservation, and which is a qualified organization under Section 170(h)(3) of the Internal Revenue Code and Internal Revenue Service Regulation §1.170A-14(c)(1), C.R.S. §38-30.5-101 et seq., or any other applicable laws, rules or regulations; provided that any such conveyance or assignment requires that the conservation purposes for which this Conservation Easement was granted will continue to be carried out. 8

5.3 Amendment. This Conservation Easement may be amended by the Grantor and the Grantee in writing.

5.4 Default/Remedies/Liquidated Damages.

a. In the event of any violation of any promise, provision, agreement or restriction contained in this Conservation Easement, the Grantee may, following written notice to the Grantor and upon the refusal of the Grantor, its heirs, successors and assigns, to provide adequate assurances to the Grantee that such violations or restrictions shall be brought into compliance within a reasonable time, institute a suit to enjoin such violation and to require the restoration of the Barn to its prior condition. In the alternative, representatives of the Grantee may enter upon the Barn, correct any such violation and hold the Grantor, its heirs, successors and assigns responsible for the cost thereof.

b. In the event that, as a result of the negligent or intentional acts or failure to act by Grantor, the Barn is partially or totally destroyed, abandoned, or allowed to go into a state of significant disrepair, and Grantee determines that it is impossible or economically impracticable to restore the Barn to its historical condition, the parties agree that the extent of the damages to Grantee are not readily ascertainable and Grantor will pay as liquidated damages to Grantee \$25,000.00.

c. The Grantee shall also have all available legal and equitable remedies which are provided by the laws of the State of Colorado.

d. In the event that the Grantor, its heirs, successors or assigns are found to have violated any of the promises, provisions, agreements or restrictions contained in this Conservation Easement, the Grantor shall reimburse the Grantee for all costs or expenses incurred, including reasonable attorney's fees and expert fees.

5.5 Indemnification. This agreement shall not be construed to grant any possessory right to the Grantee for the use of the Barn except as provided in this Conservation Easement. The Grantor agrees to fully indemnify, save, protect and hold harmless the Grantee, and agrees to pay all reasonable attorney's fees incurred by Grantee arising from any and all claims asserted by anyone on any basis which may arise out of the grant of this Conservation Easement or the use of the Barn.

5.6 Covenants. The Grantor shall specifically refer to and/or insert these promises, agreements, provisions, and restrictions in any subsequent deed or other

Exhibit "A"

The southeasterly 42 ± feet of Lot 1, Kinney's Addition Block J to Golden Minor Replat No.1 also known as proposed Lot 3, Kinney's Addition Block J to Golden City Replat No.2.

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