

**RESOLUTION NO. 1762**

**A RESOLUTION OF THE GOLDEN CITY COUNCIL  
APPROVING THE KINNEY'S ADDITION BLOCK I AND  
JOHNSONS ADDITION REPLAT NO. 1 SUBDIVISION  
INCLUDING APPROVAL OF LOT WIDTH, SETBACK AND  
LOT AREA VARIANCES**

WHEREAS, Henry Holt Fuller (subdivider) has submitted a proposed final subdivision plat for property within the City of Golden, State of Colorado, entitled Kinney's Addition Block I and Johnson's Addition Replat No. 1; and

WHEREAS, the proposed subdivision is a subdivision of the parcel into three lots for single household detached dwellings.

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

Section 1. City Council finds that the lot width and area variance component of the subdivision request complies with the criteria in Chapter 18.12.030 of the Golden Municipal Code pertaining to a hardship in complying with the current code, said hardship being related to the fact that the steep topography of the lot and location of the existing improvements prevents the owner from dividing the property in a more uniform manner. Council further finds that the historic preservation goals for the property necessitate a less than standard side setback for the existing garage structure to be retained.

Section 2. City Council finds that, based upon the retention of the two existing structures and location of the only new dwelling on the south end of the parcel, such relief may be granted without substantial detriment to public good, without altering the essential character of the neighborhood, and without substantially impairing the intent and purpose of this zoning title or the growth plan of the city, and that by granting the requested variances and subdivision, the continued neighborhood character and historic preservation goals of the Comprehensive Plan will be furthered.

Section 3. Based upon the above findings, the lot width, setback, and lot area variances for the three lots in the proposed subdivision are hereby approved, and the final subdivision plat for Kinney's Addition Block I and Johnsons Addition Replat No. 1 is hereby approved subject to the following conditions:


- a. The subdivider shall pay applicable fees incurred as a result of the application approval, including, but not limited to, utility, remapping, legal notice and legal review, and recording fees.
- b. The final plat document shall be revised to incorporate requirements for dedication of a drainage and non disturbance easement for the Welch Ditch, as voluntarily committed to by the subdivider in public hearing on July 26, 2007.
- c. The subdivider shall submit, within ninety (90) days of the date of this approval, all documents required by the City of Golden Municipal Code for finalization of the subdivision plat.

Section 4. The Mayor and City Clerk are hereby authorized and directed to certify upon the final subdivision plat, the city's approval and acceptance thereof. The City Clerk is hereby authorized and directed to file the subdivision plat with the Jefferson County Clerk and Recorder's office upon

fulfillment of all conditions as indicated herein.

Section 5. Unless otherwise extended by City Council, the approval of the Kinney's Addition Block I and Johnsons Addition Replat No.1 final plat shall be null and void if the conditions are not complied with within ninety (90) days of the date of this Resolution.

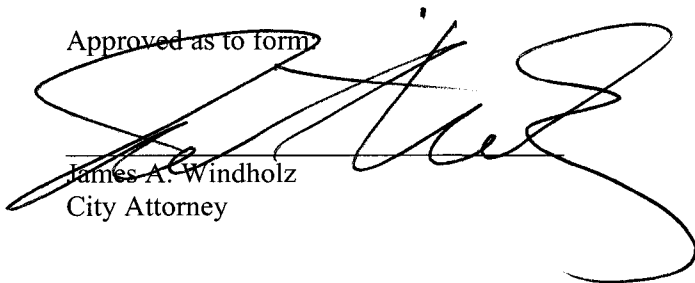
Adopted this 26th day of July, 2007.

  
\_\_\_\_\_  
Charles J. Baroch  
Mayor

ATTEST:

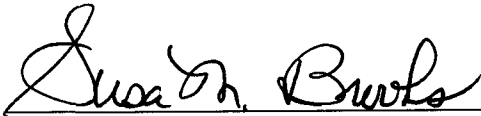
  
\_\_\_\_\_  
Susan M. Brooks, MMC  
City Clerk

Approved as to form

  
\_\_\_\_\_  
James A. Windholz  
City Attorney

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 regular meeting thereof held on the 26th day of July, A.D., 2007.

(SEAL)

ATTEST:   
\_\_\_\_\_  
Susan M. Brooks, City Clerk of the City of  
Golden, Colorado

## WELCH DITCH EASEMENT AGREEMENT

THIS WELCH DITCH EASEMENT AGREEMENT is made this 26<sup>th</sup> day of July, 2007, by and between the **City of Golden**, Colorado, 911 10<sup>th</sup> Street, Golden, CO, 80401, a Colorado Home Rule Municipal Corporation, ("**Golden**") and Henry Holt Fuller, ("**Owner**") whose address is 1515 East Street, Golden, Colorado, 80401.

### RECITALS

- A. **Owner** asserts that it holds fee title to that certain real property located in Golden, Colorado, more particularly described in Exhibit A attached hereto. That real property is known by street address as 1515 East Street, Golden, Colorado, as is referenced herein as the "Fuller Parcel."
- B. A portion of the historic Welch Ditch traversed adjacent to, or through the Fuller Parcel.
- C. The Welch Ditch was once a part of an irrigation ditch commonly known as the "Welch Ditch," and represents an historic structure that has existed within the boundaries of **Golden** since the 1870's.
- D. **Golden** claims an ownership interest in the Welch Ditch by virtue of the historic use of the ditch as a part of the City's storm drainage system, and by virtue of a quit claim deed conveying to **Golden** the ownership rights held by the Golden Canal and Reservoir Company.
- E. The parties hereto wish to agree upon rights and restrictions on the use of the Welch Ditch Parcel in order to preserve and maintain the use of the Welch Ditch as a component of the storm drainage system serving Golden as well as certain aspects of the historic character of the ditch corridor.

### EASEMENT

1. Consideration. For and in consideration of \$1.00 and other good and valuable consideration paid by **Golden** to the **Owner**, the receipt of which is hereby acknowledged, **Owner** hereby sell, convey and grant unto **Golden** an exclusive and permanent easement and right of way over, upon, across, through and under the property described in Exhibit B (the "Welch Ditch Easement Parcel") attached hereto and made a part hereof, for the uses and purposes and upon the terms hereinafter set forth.
2. Purposes. This easement and right of way is for the purpose of granting to, and acknowledging **Golden's** right to construct, inspect, maintain, operate and use for

the construction, maintenance, improvement and operation, storm drainage facilities and associated appurtenances (“Improvements”) upon, across, over, under, through and within the Welch Ditch Easement Parcel and to accommodate and control storm drainage run off from upstream property. These facilities and associated appurtenances (“Improvements”) shall exclude buildings, fences and any part of any structure 4 feet above grade unless specifically granted to **Golden**. This easement and right of way is for the further purpose of granting to **Golden** the right to preserve and maintain the character and structures of the historic Welch Ditch as may be located upon the Welch Ditch Parcel to the extent described in paragraph 3 below. City and emergency personnel are hereby authorized to access the entire easement area for only legitimate city or emergency purposes. The general public is not authorized to access the easement area.

3. Representations and Warranties of Grantor. **Owner**, for itself, its successors, assigns and all parties with interest in the Welch Ditch Easement Parcel do hereby covenant and agree as follows with respect to the Welch Ditch Easement Parcel:
  - a. Except as provided herein, it will not, without the prior written consent of **Golden**, construct or allow the construction of improvements (including structures and fences) within the Welch Ditch Parcel which would interfere with **Golden**'s use of the Welch Ditch Parcel, for the purposes herein granted.
  - b. That it will not undertake any type of activities within the Welch Ditch Easement Parcel that would alter, impair or impede the flow of storm drainage water through the storm drainage facility, including the historic ditch.
  - c. That they will not, without the prior written permission of **Golden**, remove, harm, or otherwise alter, any historic ditch structures, such as gates and weirs, that are located within the Welch Ditch Easement Parcel.
  - d. That it will maintain landscaping within the Welch Ditch Easement Parcel, and shall do so in a manner so as not to impede the flow of storm drainage water through the ditch. The required maintenance shall be limited to the removal of landscaping and debris on an as-needed basis so that the flow of storm drainage water is not impeded. No additional landscaping or maintenance is required or implied but is allowed at owner's discretion. Except for irrigation of replacement trees, no irrigation or other watering is required or implied but is allowed at owner's discretion.

MISCELLANEOUS PROVISIONS

1. Survival of Indemnifications and Representations. All representations, obligations, warranties, liabilities, covenants and agreements of the parties in this Easement Agreement shall survive the consummation of the transactions contemplated in this Agreement.

2. Notices. Any notices given under the provisions of this Easement Agreement shall be valid if deposited with the United States Postal Service addressed to **Owner** or to **Golden** at the addresses stated above.

3. Binding Effect. This grant of the Easement shall run with the properties described in Exhibit A and shall be binding upon and inure to the benefit of the parties hereto, their successors, assigns, and all parties in interest, provided nothing contained herein shall be construed to be an abandonment or dedication of such public way to any public entity.

4. Attorneys Fees and Costs. In the event of any litigation between the parties relating to this Easement, the prevailing party shall be entitled to costs and reasonable expert and attorney fees incurred in connection with such litigation.

5. Complete Agreement. This Easement Agreement consists of all the agreements, understandings, and promises between the parties with respect to the subject matter of this Easement, and there are no agreements, understandings or promises between the parties other than those set forth in this Easement.

6. Governing Law. This Easement and all of the terms and provisions hereof shall be governed by and construed in accordance with the laws of the State of Colorado, with venue in Jefferson County.

CITY OF GOLDEN

C. J. Baroch  
Charles J. Baroch, Mayor

OWNER

[Signature]  
\_\_\_\_\_

STATE OF COLORADO )

) ss:


COUNTY OF )

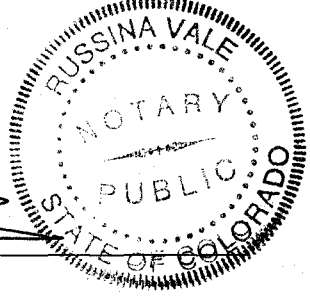
The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of October, 2007,  
by Henry Holt Fuller.

Witness my hand and official seal.

My commission expires:

**Russina Vale, Notary Public**  
**State of Colorado**  
**My Commission Expires 8/3/2010**

  
\_\_\_\_\_  
NOTARY PUBLIC

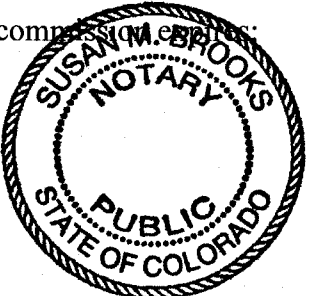


STATE OF COLORADO    )  
  ) ss:  
COUNTY OF            )

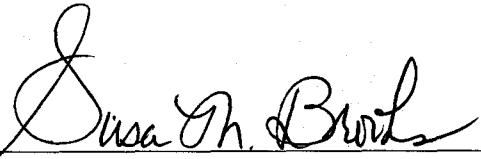
The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of October, 2007,  
by Charles J. Baroch, as Mayor of the City of Golden.

Witness my hand and official seal.

My commission expires: 10/06/09



**My Commission Expires 10/06/09**

  
\_\_\_\_\_  
NOTARY PUBLIC

**Exhibit A**

Lots 1, 2, and 3, of Kinney's Addition Block I and Johnson's Addition Replat No.1.

**Exhibit B**

A parcel of land consisting of the northeasterly 25 feet of Lots 1, 2, and 3, of Kinney's Addition Block I and Johnson's Addition Replat No.1.



2007119494

10/23/2007 09:34:22 AM 2 Page(s)

Jefferson County, Colorado

R \$11.00

D \$0.00

RES

**RESOLUTION NO. 1762**

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APPROVING THE KINNEY'S ADDITION BLOCK I AND  
JOHNSONS ADDITION REPLAT NO. 1 SUBDIVISION  
INCLUDING APPROVAL OF LOT WIDTH, SETBACK AND  
LOT AREA VARIANCES**

CB  
11.00

1-2

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WHEREAS, the proposed subdivision is a subdivision of the parcel into three lots for single household detached dwellings.

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

Section 1. City Council finds that the lot width and area variance component of the subdivision request complies with the criteria in Chapter 18.12.030 of the Golden Municipal Code pertaining to a hardship in complying with the current code, said hardship being related to the fact that the steep topography of the lot and location of the existing improvements prevents the owner from dividing the property in a more uniform manner. Council further finds that the historic preservation goals for the property necessitate a less than standard side setback for the existing garage structure to be retained.

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2

Adopted this 26th day of July, 2007.



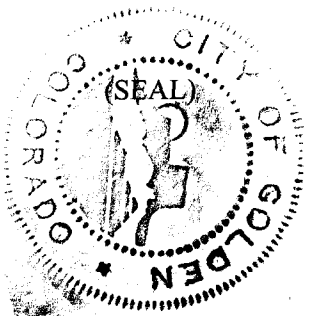
C. J. Baroch  
Charles J. Baroch  
Mayor

Susan M. Brooks  
Susan M. Brooks, MMC  
City Clerk

Approved as to form

James A. Windholz  
James A. Windholz  
City Attorney

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 regular meeting thereof held on the 26th day of July, A.D., 2007.



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



R \$26.00

D \$0.00

EASE

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Jefferson County, Colorado

### WELCH DITCH EASEMENT AGREEMENT

cb  
26.00

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1-5

### RECITALS

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B. A portion of the historic Welch Ditch traversed adjacent to, or through the Fuller Parcel.

C. The Welch Ditch was once a part of an irrigation ditch commonly known as the "Welch Ditch," and represents an historic structure that has existed within the boundaries of **Golden** since the 1870's.

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  - b. That it will not undertake any type of activities within the Welch Ditch Easement Parcel that would alter, impair or impede the flow of storm drainage water through the storm drainage facility, including the historic ditch.
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MISCELLANEOUS PROVISIONS

1. Survival of Indemnifications and Representations. All representations, obligations, warranties, liabilities, covenants and agreements of the parties in this Easement Agreement shall survive the consummation of the transactions contemplated in this Agreement.

3

2. Notices. Any notices given under the provisions of this Easement Agreement shall be valid if deposited with the United States Postal Service addressed to **Owner** or to **Golden** at the addresses stated above.

3. Binding Effect. This grant of the Easement shall run with the properties described in Exhibit A and shall be binding upon and inure to the benefit of the parties hereto, their successors, assigns, and all parties in interest, provided nothing contained herein shall be construed to be an abandonment or dedication of such public way to any public entity.

4. Attorneys Fees and Costs. In the event of any litigation between the parties relating to this Easement, the prevailing party shall be entitled to costs and reasonable expert and attorney fees incurred in connection with such litigation.

5. Complete Agreement. This Easement Agreement consists of all the agreements, understandings, and promises between the parties with respect to the subject matter of this Easement, and there are no agreements, understandings or promises between the parties other than those set forth in this Easement.

6. Governing Law. This Easement and all of the terms and provisions hereof shall be governed by and construed in accordance with the laws of the State of Colorado, with venue in Jefferson County.

CITY OF GOLDEN

OWNER

Charles J. Baroch  
Charles J. Baroch, Mayor

[Signature]  
\_\_\_\_\_

STATE OF COLORADO )  
  ) ss:  
COUNTY OF )

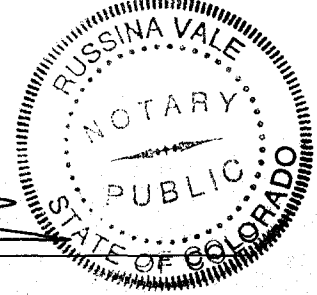
The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of October, 2007,  
by Henry Holt Fuller.

Witness my hand and official seal.

My commission expires:

**Russina Vale, Notary Public**  
State of Colorado  
My Commission Expires 8/3/2010

  
NOTARY PUBLIC



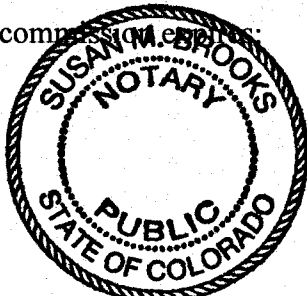
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STATE OF COLORADO    )  
  ) ss:  
COUNTY OF            )

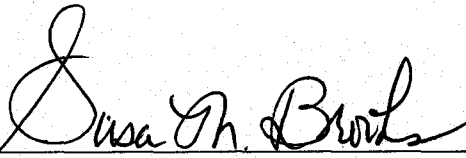
The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of October, 2007,  
by Charles J. Baroch, as Mayor of the City of Golden.

Witness my hand and official seal.

My commission expires:



My Commission Expires 10/06/09

  
NOTARY PUBLIC

**Exhibit A**

Lots 1, 2, and 3, of Kinney's Addition Block I and Johnson's Addition Replat No.1.

5

**Exhibit B**

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