

RESOLUTION NO. 1757

**A RESOLUTION OF THE GOLDEN CITY COUNCIL
AUTHORIZING THE EXECUTION OF A LICENSE
AGREEMENT FOR USE OF EAST STREET RIGHT OF WAY AT
423 16TH STREET AND 1607 AND 1611 EAST STREET**

WHEREAS, Christopher Viets, Tommy N. Rich, and Carlos Burbano, owners of 423 16th Street, and 1607 and 1611 East Street, propose to reconstruct and utilize a retaining wall structure, which structure is located upon the City right of way for East Street; and

WHEREAS, the City of Golden, Colorado is the owner of the East Street right of way; and

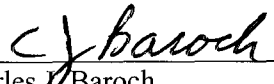
WHEREAS, the portion of East Street requested for continuation of the existing private use is not being used for public municipal purposes; and

WHEREAS, Christopher Viets, Tommy N. Rich, and Carlos Burbano wish to agree as to certain conditions and provisions under which a portion of the public right-of-way of East Street may continue to be utilized for a retaining wall structure.

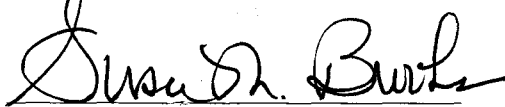
THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

The Mayor is authorized to execute on behalf of the City of Golden, a license agreement with Christopher Viets, Tommy N. Rich, and Carlos Burbano substantially in the form attached hereto as Exhibit A.

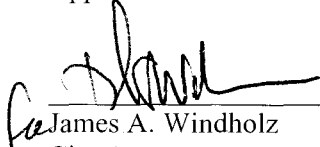
Adopted this 8th day of March, 2007.


Charles J. Baroch
Mayor

ATTEST:


Susan M. Brooks, MMC
City Clerk

Approved as to form:



James A. Windholz
City Attorney

Resolution No. 1757
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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 22nd day of February, A.D., 2007.

(SEAL)

ATTEST:

A handwritten signature in black ink, appearing to read "Susan M. Brooks", is written over a horizontal line.

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

Exhibit A
LICENSE AGREEMENT

THIS AGREEMENT is entered into the ____ day of ____, 2007 by and between the City of Golden, Colorado, a municipal corporation organized under the laws of the State of Colorado (the "City"), with offices at 911 Tenth Street, Golden, Colorado 80401 and Christopher Viets, Tommy N. Rich, and Carlos Burbano, (collectively referred to as "Owner") whose address is 3870 Tennyson Street, Denver, CO 80212.

- A. Christopher Viets, Tommy N. Rich, and Carlos Burbano are the owners of certain property located at 423 16th Street, and 1607 and 1611 East Street more particularly described as Lots 1,2,and 3, Kinney's Addition Block J to Golden City Replat No.2, ("Lots 1,2, and 3,") and the City of Golden is the owner of the East Street right of way.
- B. Owner desires to make certain improvements to his property, which includes restoration, reconstruction, and continued use of a retaining wall, located within the East Street Right of Way.
- C. The parties hereto wish to agree as to the nature, terms and conditions under which the Owner may restore, reconstruct, and continue to use the existing improvements within the East Street right of way.

THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES HEREIN, THE CITY AND GOLDEN DEVELOPMENT LLC AGREE AS FOLLOWS:

- 1. License. The City grants to Owner a non-exclusive revocable license to locate, construct and maintain a retaining wall ("improvement"), similar to the wall in existence in the right of way for several decades, within the affected right of way area as show in the attached Exhibit A.
- 2. Construction. Plans for the reconstruction of the retaining wall improvements shall be submitted to and approved by the City prior to commencement of construction activity. The design, construction and maintenance of the improvements shall be the sole responsibility of Owner.
- 3. Maintenance. Owner shall, at his expense, maintain the improvements in good condition including the landscape within the above described area.
- 4. General Obligations with Respect to Restoration, Preservation, and Maintenance Work.
 - a. All work performed by Owner pursuant to this Agreement shall be done:
 - 1) In a good workmanlike manner; and
 - 2) In a timely and expeditious manner; and
 - 3) In a manner which minimizes inconveniences to the public and individuals; and
 - 4) In accordance with all applicable codes, rules and regulations of the City.
 - b. Inspection. All work performed by Owner within the right-of-way shall be subject to inspection by the City. Owner shall promptly perform reasonable remedial action as required by the City pursuant to the inspection.

5. Indemnification and Release. Owner shall hold harmless, indemnify and defend the City from and against all liabilities, damages and claims that result from the design, initial construction or maintenance of the improvements.

6. Compliance with laws. This Agreement relates only to permission to encroach onto a public right-of-way under the terms and conditions set forth. The execution of this license agreement shall not relieve Owner from complying with any provision of the Golden Municipal Code, including compliance with zoning ordinances, land use regulations, or building codes, nor shall this Agreement be construed as approval by the City to construct the improvements contemplated by Owner to the extent that City approvals or permits are otherwise required by the Golden Municipal Code or statute. The execution of this license agreement, and the improvements constructed pursuant to this agreement, shall not relieve Owner, or otherwise be construed as a release or waiver, with respect to any obligation of Owner to not interfere with the subjacent lateral support of the City's right-of-way.

7. Police Power Reserved. The rights granted herein shall not limit or otherwise restrict the right of the City to exercise its police power with respect to its control of the right-of-way.

8. Termination. The Parties acknowledge that the proposed retaining wall is being reconstructed in the same location as a wall in existence for several decades, and that to date the City has not required the use of the affected portion of the right of way for municipal purposes during the existence of the retaining wall. Notwithstanding the foregoing, the City may terminate this agreement with or without cause with ninety (90) days notice to the Owner, unless the preservation of the City's health, safety and welfare requires immediate termination. If the City Council determines that the City's need to utilize the public property necessitates the termination of this Agreement, the Owner will be required to remove all improvements located within the right of way pursuant to this Agreement.

9. This license granted by this agreement shall be appurtenant to Lots 1, 2, and 3 and shall be binding upon, and for the benefit of the subsequent owners of such lots.

CITY OF GOLDEN

Christopher Viets

Charles J. Baroch,
Mayor
Date: _____

Date: _____

ATTEST:

Tommy N. Rich

Susan M. Brooks, MMC
City Clerk

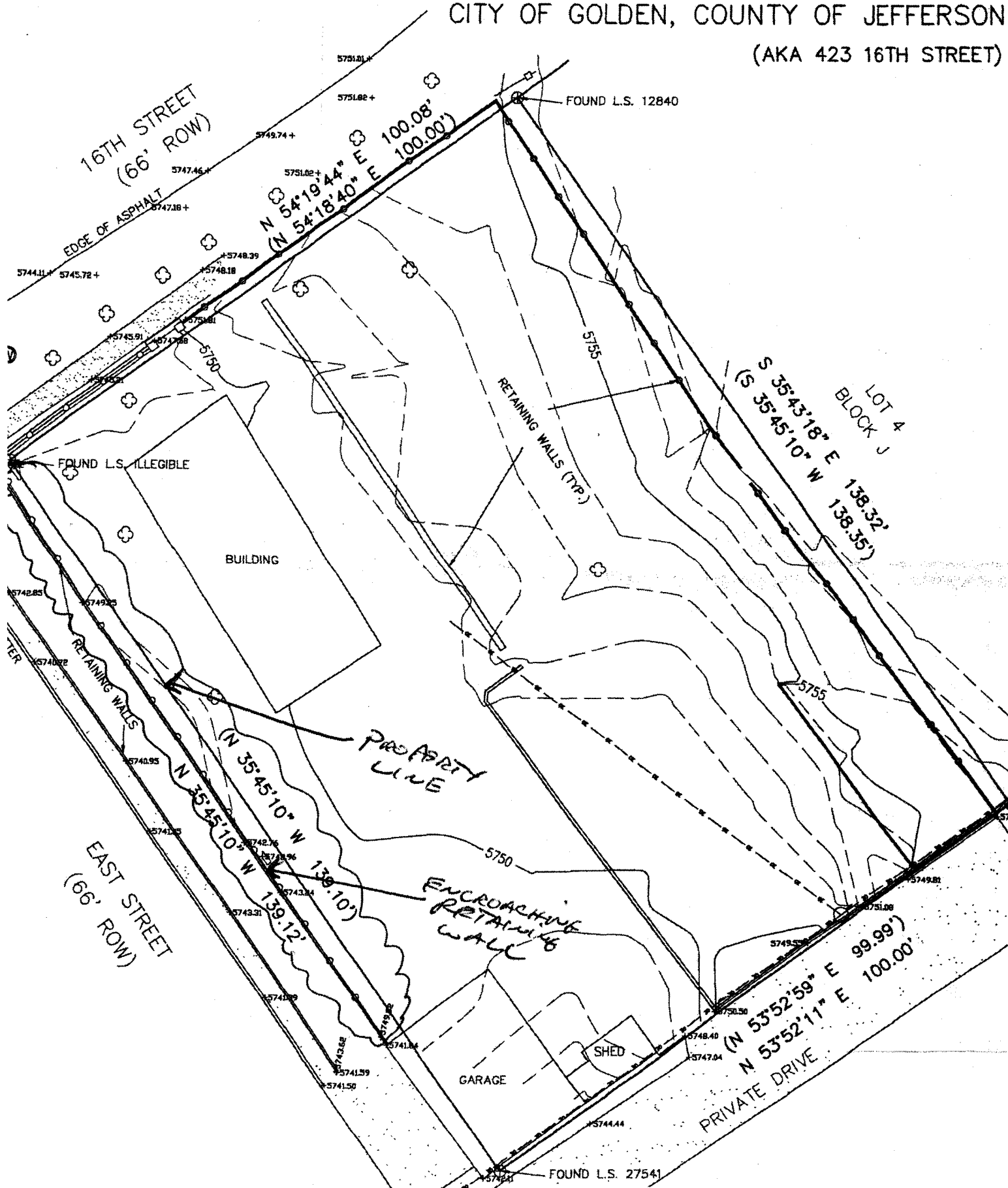
Date: _____

Date: _____

Carlos Burbano

Date: _____

(AKA 423 16TH STREET)





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10/12/2007 09:07:14 AM 3 Page(s)

Jefferson County, Colorado

LICENSE AGREEMENT

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AGR

Res 1757

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RESCANNED DATE 10-15-2007

Seal

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CITY OF GOLDEN

C. J. Baroch
Charles J. Baroch,
Mayor

Date: March 22, 2007

ATTEST:

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

Date: March 22, 2007

Christopher W. Jett
NOTARY PUBLIC
STATE OF COLORADO
Date: 8/17/07
Tommy N. Rich

Tommy N. Rich
Date: 9-25-07

Carlos Burbano

Date: 9-25-07

ADDITIONAL SIGNATURE PAGE
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STATE OF COLORADO

)
)SS
)

COUNTY OF Jefferson

The foregoing instrument was acknowledged before me on September 26th, 2007 by
Tommy N. Rich and Carlos Burbano.

Witness my hand and official seal.

My Commission Expires:

Notary Public

