

RESOLUTION NO. 1992

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GOLDEN ACCEPTING FEES IN LIEU OF A PORTION OF PARKING REQUIRED FOR A CHANGE OF USE AT 1224 WASHINGTON AVENUE, SUITE 135

WHEREAS, the City of Golden City Council on October 23, 2003 adopted Ordinance No. 1623 amending the provisions of Chapter 18.52 of the Golden Municipal Code (GMC) pertaining to the acceptance of cash fees in lieu of providing on site parking; and

WHEREAS, the City of Golden City Council on September 11, 2008 adopted Ordinance No. 1821 further amending the provisions of Chapter 18.52 of the Golden Municipal Code (GMC) pertaining to cash fees in lieu of providing on site parking for changes of use; and

WHEREAS, City Council has been asked to accept a cash fee in lieu of certain parking spaces required to satisfy the parking requirement for a change of use from a retail store to a restaurant at 1224 Washington Avenue, Suite 135.

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

Section 1. City Council accepts the proposal from Johnson Enterprises Inc. to substitute an annual contribution for the provision of 21 additional parking spaces at 1224 Washington Avenue, Suite 135 to satisfy the parking requirement for conversion of a retail space into a restaurant.

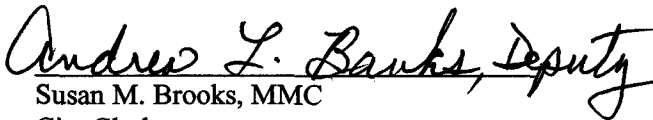
Section 2. The City Manager is authorized to execute on behalf of the City an agreement, substantially in the form attached hereto as Exhibit A.

Adopted this 24th day of September, 2009.



Jacob Smith
Mayor

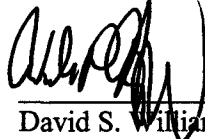
ATTEST:



Susan M. Brooks, MMC
City Clerk



APPROVED AS TO FORM:



David S. Williamson
City Attorney

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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 regular business meeting thereof held on the 24th day of September, A.D., 2009.



ATTEST:

Andrea L. Parks, Deputy
Susan M. Brooks, City Clerk of the City of
Golden, Colorado

PARKING AGREEMENT

This Agreement is effective the ___ day of September, 2009, by and between Johnson Enterprises Inc, (Tenant) and the City of Golden, a Colorado home rule municipal corporation (City).

WHEREAS, Tenant has leased space at 1224 Washington Avenue, Suite 135 for the operation of a restaurant (the "Premises"); and

WHEREAS, Pursuant to Chapter 18.5 2 of the Golden Municipal Code, Tenant applied for and secured approval from the Golden City Council of a cash contribution in lieu of the provision of twenty-one (21) additional parking spaces that would otherwise be necessary to meet the City's current zoning requirement to convert a retail use space into a restaurant; and

WHEREAS, The financial contribution set forth below is calculated based upon the provisions of Chapter 18.52 of the Municipal Code; and

WHEREAS, Tenant agrees that such a contribution is appropriate under the circumstances; and

WHEREAS, The parties desire to include in this Agreement certain provisions, understandings and agreements regarding the parking variance and annual financial contribution; and

THEREFORE, In consideration of the recitals, premises, mutual covenants and agreements herein contained, the parties agree as follows:

1. Parking. So long as Tenant is in compliance with the terms and conditions of this Agreement, and as authorized by City Council Resolution 1992, approved on September 24, 2009, Tenant is authorized to utilize the lease space at 1224 Washington Avenue, Suite 135 for restaurant seating of up to 125 persons without providing additional on-site parking.

2. Financial Contribution. In order to assist the City of Golden's effort to provide public parking in the downtown area, Owner shall make an annual financial contribution to the City for the period that the Tenant occupies the business at 1224 Washington Avenue, Suite 135, as a restaurant seating up to 125 persons, according to the following terms and schedule:

- | | | |
|----|--|----------|
| a. | Calendar year 2010 payment | \$ 0 |
| b. | Calendar year 2011 payment | \$ 0 |
| c. | Calendar years 2012 thru 2019 payment due each January 31 st | \$ 5,355 |
| d. | Subsequent calendar years, payment due January 31 Recalculated per GMC 18.52 | |

3. Failure to Make Payments. Failure to timely make the required financial contribution in any year shall be grounds for termination of this agreement, and revocation of the certificate of occupancy for the lease space, in addition to any other remedy in law available to the City, including without limitation, enforcement of any zoning violation by reason of providing insufficient parking.

4. **No Guaranty of Parking.** This agreement shall not be construed as conveying a right to Tenant to have available for its exclusive use any parking spaces in the parking lots or structures owned and operated by the City or the Golden Urban renewal Authority.

5. **Term/Termination.** This Agreement shall remain in full force and effect so long as the associated parking is required for the operation of Tenant's business. Tenant may terminate this Agreement by providing the City with 30 days advance written notice that the nature of their business operations at 807 13th Street has changed so that the additional parking is no longer required to operate the business. The City may terminate this agreement, upon 90 days notice to Tenant, if the City Council in its sole and absolute discretion, determines that there is insufficient public parking in the vicinity of the Premises. Termination of this Agreement pursuant to this paragraph shall not relieve Tenant of its obligation to make financial contributions for the calendar year of the date of such termination, provided however, that Tenant's financial contributions may be pro-rated for the calendar year of termination.

6. **Assignment.** The rights, duties and obligations of Tenant hereunder may be assigned to another person or entity operating the same restaurant use. The assignment of the rights, duties, and obligations of tenant hereunder may be assigned to another person or entity for a different use only with the consent of the City. In such event, the assignee shall assume all of the rights, duties, and obligations of the Tenant hereunder and the Tenant shall be correspondingly relieved from all such liabilities, duties, and obligations.

7. **Notices.** All notices, demands or other documents required or desired to be given to either party under this Agreement shall be made in writing and shall be deemed effective upon receipt and shall be personally delivered or mailed by certified mail as follows:

City: City Manager
 City of Golden
 911 - 10th Street
 Golden, CO 80401

Tenant:

8. **Entire Agreement.** This Agreement contains the entire agreement between the parties and shall not be amended except by written agreement executed with the same formality of this Agreement.

9. **Venue/ Attorney's Fees.** This Agreement shall be governed by the laws of the State of Colorado with venue in the County of Jefferson. In the event of default of the obligations under this Agreement, the non-defaulting party shall be entitled to recover its reasonable attorney's fees and expenses.

Tenant:

By: _____

