

RESOLUTION NO. 35-24

**A RESOLUTION APPROVING AN AGREEMENT TO DEFER PAYMENT OF
TRANSPORTATION CAPACITY FEES FOR GJ BLACKOUT INC, A COLORADO NOT
FOR PROFIT CORPORATION FOR THE BLACKOUT SPORTS FACILITY LOCATED
AT 715 23 ½ ROAD GRAND JUNCTION, COLORADO**

RECITALS:

Pursuant to the Zoning and Development Code development is required to pay, among other impact fees, a Transportation Capacity Payment ("TCP Fee"). Havlik Blackout QOF LLC ("Developer") has received approval from the City to construct an indoor recreational sports facility ("Development" or "the Development") at 715 23 ½ Road in Grand Junction, Colorado.

The Development is required to pay a TCP Fee in the amount of \$49,398.43. The Developer does not dispute the amount of the TCP Fee, or the requirement that it pay; however, it has requested that the City defer payment of the TCP Fee to be, and as a condition of the issuance of a Certificate of Occupancy ("CO") for occupancy of the building(s) to be constructed with the Development.

The Developer has a business relationship with GJ Blackout Inc., a Colorado nonprofit corporation and a federally recognized 501(c)3 (Corporation), and on behalf of the Developer and the Corporation has requested that the City defer collection of the TCP Fee to the completion of the construction of the building(s) approved for the Development and that a CO shall not issue unless and until the TCP Fee of \$49,398.43, is paid in full to the City.

Section 21.01.0100 of the GJMC authorizes the City Council to modify a fee by adoption of a resolution. The City Council having been duly advised in the premises does hereby authorize the Interim City Manager to execute the attached Agreement.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
GRAND JUNCTION THAT:**

The foregoing Recitals are incorporated herein and in consideration of the same and the execution of the attached Agreement, the City Council does authorize and direct Interim City Manager Phillips to sign the Agreement.

PASSED and ADOPTED this 15th day of May 2024



Abram Herman
President of the City Council



ATTEST:



Selestina Sandoval
City Clerk

FEE DEFERRAL AND CERTIFICATE OF OCCUPANCY HOLD AGREEMENT

This Agreement is made and entered into by and between the City of Grand Junction, a Colorado home rule municipality (City) and Havlik Blackout QOF LLC (Developer). The City and the Developer may be referred to as the Parties.

RECITALS

Developer has received approval from the City (Community Development Department file # SPN 2022-507 (City File) to construct an indoor recreational sports facility ("Development "or "the Development") at 715 23 ½ Road in Grand Junction, Colorado. Pursuant to the City's Zoning and Development Code the Development is required to pay a transportation impact fee ("Transportation Capacity Payment" or "TCP Fee") in the amount of \$49,398.43. The Developer does not dispute the amount of the TCP Fee or the requirement that it pay; however, it has requested that the City defer payment of the TCP Fee to be, and as a condition of the issuance of a Certificate of Occupancy (CO) for occupancy of the building to be constructed with the Development.

The Developer has a business relationship with GJ Blackout Inc., a Colorado nonprofit corporation and a federally recognized 501(c)3 (Corporation), and on behalf of the Developer and the Corporation has requested that the City defer collection of the TCP Fee to the completion of the construction of the building(s) approved for the Development and that a CO shall not issue unless and until the TCP Fee of \$49,398.43, is paid in full to the City.

The City and the Developer have agreed, as evidenced by the City council approval of Resolution 35-24, that the City will defer collection of the TCP Fee to the completion of the construction of the building(s) approved for the Development and that a CO shall not issue unless and until the TCP Fee of no less than \$49,398.43, is paid in full to the City.

NOW THEREFORE, for and in consideration of the Recitals and the promises made herein, the sufficiency of which the Parties hereby acknowledge for the making and enforcement of this Agreement, the Parties agree as follows:


1. Developer will fully and faithfully complete the Development as conditionally approved by the City as the same is shown in the City File. Completion includes but is not limited to the construction of all required improvements and the payment of all fees, charges, costs, and expenses required by the City Zoning and Development Code. One such fee is the transportation impact fee also known as the Transportation Capacity Payment or TCP Fee in the amount of \$49,398.43.
2. Developer agrees that the City will, and has the legal right and authority to, withhold final approval and the issuance of a CO for the building(s) to be constructed with the Development if the TCP Fee is not paid.
3. As provided in the City Code, the payment of the TCP Fee is an obligation that is deemed to run with the land and in the event the Developer defaults on its obligation to pay the TCP Fee the City may record this Agreement, or a memorandum thereof in the Mesa County land title

records for the property on which the Development has been conditionally approved by the City.

4. In the event this Agreement, or a memorandum thereof is recorded in the Mesa County land title records for the property on which the Development has been conditionally approved by the City, the Developer, the Corporation, nor any successor(s) in interest thereto shall make or assert a claim against the City for impairment of title or similar claim(s) and/or for use of the Development unless and until the TCP Fees is paid and a CO is issued.
5. This Agreement does not create a partnership nor a joint venture between the Parties.
6. This Agreement incorporates all prior discussions and agreements of the Parties regarding the deferral of the obligation to pay the TCP Fee and the withholding of a CO, and that the Agreement may not be amended except in writing duly executed by the Parties.
7. Developer may not assign or delegate this Agreement without the City's prior written consent.
8. Developer represents, and by and with the signature of its managing members, agrees that the person(s) signing the Agreement on behalf of the Developer has full authority to sign and bind the Developer to the Agreement.
9. In no event shall the City be liable to the Developer for indirect or consequential damages, including, but not limited to, loss of advantage or profit by virtue of this Agreement and/or the Developer's failure to satisfy the Agreement.
10. Venue for any action arising out of or occurring under this Agreement shall be in the 21st Judicial District Courts in Mesa County, Colorado. The Agreement shall be controlled by, construed, and interpreted in accordance with the law of the City of Grand Junction, Colorado.
11. This Agreement has been made at the request of the Developer and drafted by the City. Because the Agreement is for the benefit of the Developer, the Developer waives and foregoes the customary rule that ambiguities are construed against the drafter.
12. The Parties, individually and collectively, intending to be bound to the terms and conditions hereof do sign and bind the entity for which he/she/they sign.

IN WITNESS WHEREOF, the Parties execute this Agreement:

GJ Blackout QOF LLC



Dean Havlik
Member

Date: 

ACKNOWLEDGED

GJ Black Inc. a Colorado nonprofit corporation

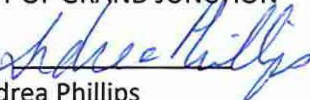

Dean Havlik
President


Kevin Young
Vice President

Date: 5/16/24

Date: 5/16/24

CITY OF GRAND JUNCTION

By: 
Andrea Phillips
Interim City Manager

By: 
Tamra Allen
Director, Community Development Department

Date: 5/20/24

Date: 5/17/24