

KNW941ST

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: CONTRACT

NAME OF AGENCY OR CONTRACTOR: KNOWLTON AUTO SALES, LARRY J.
BADINI,

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: 931 NORTH 1ST
STREET CONDITIONS FOR BUILDING PERMIT AND OCCUPANCY PERMIT
SET FORTH FOR LARRY BADINI AND HIS SUCCESSORS

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1994

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

AGREEMENT

This Agreement is made this 7TH day of June, 1994, between Larry J. Badini ("Badini") and the City of Grand Junction ("City").

RECITALS.

Badini, whose address is 931 North 1st Street, is the owner of property that he has leased which is being operated as Knowlton Auto Sales, street address of 931 North First Street, Grand Junction, Colorado (the "Property"). The City has not issued a building permit for construction of an addition to the existing building but has agreed to do so based on the agreement by Badini to comply with certain regulations and requirements of the City pursuant to the zoning and development code of the City.

Badini and the City have agreed to avoid arguments over fault and how the present circumstances arose in order to instead agree to resolve the matter as provided herein.

NOW, THEREFORE, in consideration of the recitals and the terms set forth which the parties agree are sufficient consideration, the parties agree as follows:

1. The City agrees to issue the planning clearance which is a condition precedent to the issuance of a building permit, subject to the following conditions:
 - A. Badini shall cause to be planted six trees in the locations as shown on the attached Exhibit labeled "Building Addition for Larry Badini" and signed by Larry Badini and dated June 7, 1994. As indicated on the exhibit, Badini shall plant at least 2" caliper deciduous trees of the species ash, honey locust, or golden rain tree, or any combination thereof, or any combination of at least six foot (6') tall evergreens of pinyon pine or Austrian pine species. Throughout the use and occupancy of the Property, Badini agrees to maintain such trees, or replacement trees as required, in a live and growing condition and necessarily therefor, Badini agrees to provide the necessary water, food and soil amendments as may be required to maintain healthy and growing trees.
 - B. Badini shall cause the trees to be planted in the ground as indicated and to accomplish the same will have to remove some existing asphalt; Badini shall be allowed to maintain some barrier (so that the trees shall be safe from vehicular contact) such as a concrete or aggregate planter with the bottom removed.
 - C. Badini shall, at no additional consideration, provide to the City a City-supplied and prepared right-of-way deed for a ten foot addition to North 1st Street right-of-way

along his abutting eastern boundary. Badini has requested that the City not require the conveyance of such right-of-way of him at present, and the City has agreed so long as Badini or his successors or assigns agrees to execute the referenced right-of-way deed within fifteen calendar days of mailing of a deed to Badini or his successors or assigns. Such a requirement to convey shall be a burden on the Property.

- D. Badini agrees to restrict the use of the ten foot (10') wide strip of his property which is subject to the requirement to convey so that there is an available and usable, without obstruction, pedestrian way along the east boundary of his property (where the eight foot wide pedestrian movement would normally occur) immediately adjacent to and behind the curb.
- E. The foregoing conditions shall be conditions of the building permit and occupancy permit.
- F. A memorandum which sets forth Badini's, his successors and assigns requirement to grant the right-of-way deed upon notice from the City will be recorded so that future owners or occupants of the property are aware of the requirement.

This agreement constitutes the full agreement of the parties and any prior representations, oral agreements or other agreements which are not set forth here are merged into this agreement and shall be held for naught.

LARRY J. BADINI

by: Larry J. Badini date: June 7, 1994

CITY OF GRAND JUNCTION

by: Donald A. ... date: 7 JUNE 1994
CITY MANAGER

AGREEMENT

This agreement is made this 15TH day of NOV., 1996 between Larry J. Badini, 931 North 1st Street, Grand Junction, CO, 81501 ("Badini") and the City of Grand Junction, 250 North 5th Street, Grand Junction, CO 81501 ("City").

Recitals

Badini owns certain property described below ("the Property"). Badini presently leases the Property to a third-party for use as a motor vehicle sales lot. On June 7, 1994, Badini and the City signed an agreement regarding the Property, the original of which is on file with the City Clerk, which addressed certain landscaping obligations of Badini, the City's agreement to allow him to make certain improvements to the Property, and Badini's agreement to convey ten feet of additional right-of-way (for purposes of improving First Street in the future) when the City notified him.

Badini represents that he is taking steps to terminate the lease on the Property, or otherwise regain possession of the Property in order that he may comply with the terms of the 1994 Agreement and this Agreement, and require that all lessees do so as well.

Badini presently desires to obtain City approval to build an addition onto the building on the Property and has filed an application with the Community Development Department to obtain the necessary permits.

The benefits to Badini under this Agreement include: (a) The City's not requiring that Badini presently construct sidewalks along North First Street, as a condition of the improvements made to the Property; (b) The City's consent that he not be required to provide for automatic irrigation of the required landscaping; (c) The City's agreement not to take action at present to enforce the terms of the 1994 Agreement which have not been complied with (however, the parties agree that the City is waiving no rights on this regard) specifically, compliance with landscaping requirements; (d) The City's willingness to forego present conveyance of the right-of-way described below (which has the effect of allowing additional use of both the Property due to set-back requirements).

Terms

1. The Recitals are material hereto and are intended to be a substantive portion of the Agreement.
2. The parties agree that the terms hereof are the result of negotiation and that the rule that ambiguities shall be construed against the drafter shall not apply. Badini has had the opportunity to obtain such legal advice as he deems appropriate and he agrees to be bound by such decision.

3. This Agreement shall supplement the agreement of June 7, 1994 ("1994 Agreement"), which is amended as provided for herein. However, unless amended herein, the 1994 Agreement shall remain in full force and effect.

4. Property Description:

The Property is described as:

The North 150 feet of the following described property: Beginning 430 feet South of the NE corner of Section 15, Township 1 South, Range 1 West of the Ute Meridian; thence North 89°11'00" West a distance of 267 feet; thence 260 feet South; thence South 89°11'00" East a distance of 267 feet; thence North to the beginning, except the East 30 feet for the road right-of-way in the City of Grand Junction, Mesa County, Colorado; the property has a street address of 931 North First St.

5. Badini represents that he shall regain possession, subject to no leases or tenancies, of the Property, so long as he may do so without breach of contract or tortious conduct, by January 1, 1997. If he is unable to obtain such possession by such date as soon as is legally possible and all times thereafter, he shall impose, pursuant to law, the requirements hereof on any tenant or possessor and he shall diligently enforce the terms of this Agreement and the 1994 Agreement.

6. Badini shall re-plant six trees on the Property, and shall hereafter maintain in a healthy and growing condition, as provided in the 1994 Agreement. This condition shall survive any transfer of title or change of use of the Property, unless an alternative landscaping plan is previously approved by the City.

7. The provisions of paragraph (1)(C) of the 1994 Agreement shall apply to the Property.

8. The City's Public Works staff has viewed the several blocks of North First Street between North Avenue and Ouray Street. The City concludes that no requirement for the construction of sidewalks, nor payment of any assessments pursuant to creation of an improvement district, shall be imposed as a condition of this Agreement, the 1994 Agreement nor due to the construction of the improvements on the Property currently being requested by Badini.

9. Badini agrees to continue to impose with respect to the Property, the ten foot restriction described in the 1994 Agreement to the effect that the use of the Property is limited so that there is continuously available and usable, without obstruction from vehicles or otherwise, an eight foot wide pedestrian way (albeit not otherwise marked or designated on the ground) along the eastern boundary of the Property.

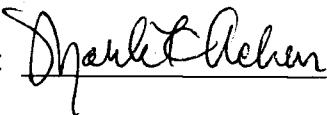
10. The conditions of this Agreement and the 1994 Agreement shall be: conditions of the building permit and the occupancy permit; enforceable by the City by action either in the Municipal Court or in another court of competent jurisdiction, and in such event, Badini agrees to pay the attorney's fees of the City incurred in any such enforcement action(s).

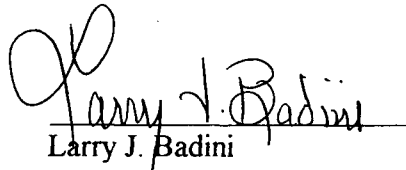
11. Any remedy of the City herein described is in addition to the other remedies of the City under its police powers, the City's Zoning Code, or other applicable law.

12. This agreement and the 1994 Agreement shall be recorded and shall constitute a burden on the Property and shall run with the title to the Property, until released by the City.

13. This Agreement shall form the basis for the Community Development Department ("CDD") to complete the review of Badini's pending application. This Agreement is not a substitute for any such approval; Badini agrees to comply with the other requirements of any permits or approvals issued by CDD or the City. For example, Badini shall contact the City's Industrial Pretreatment Coordinator and comply with the Coordinator's requirements.

CITY OF GRAND JUNCTION

BY: 


Larry J. Badini

Date: 11-18-96

Date: 11. 15. 96.