



December 13, 2019

VIA E-MAIL: johns@gjcity.org

John Shaver, City Attorney
City of Grand Junction
250 North 5th Street
Grand Junction, Colorado 81501

Gregory K. Hoskin
Terrance L. Farina
Gregg K. Kampf
David A. Younger
David M. Scanga
Michael J. Russell
John T. Howe
Laurie A. Cahill
David M. Doderio
Andrew H. Teske
John P. Justus
Nicholas H. Gower
David A. Price
Anthony F. Prinster
Tammy M. Eret
* L. Richard (Dick) Bratton
** William A. Hillhouse II
** Eliza F. Hillhouse
Michael H. Luedtke
Daniel F. Fitzgerald
Larry B. Beckner
Kellianne Chamberlain
Karoline M. Henning
John T. Pryzgoda
Brent A. Starnes

William H. Nelson
(1926-1992)

Re: Agreement to Defer Payment of Special Assessment dated January 19, 1984

Dear John:

Thank you for looking into and researching the facts surrounding the satisfaction of the Agreement to Defer Payment of Special Assessment between the City of Grand Junction, Kenneth L. Etter, J.L. Etter and Emanuel Epstein dated January 19, 1984 (Agreement).

After receiving title work for the scheduled sale of property owned by the Emanuel Epstein Trust it came to our attention that the Agreement, which is recorded at Book 1475 Page 777 in the Mesa County Clerk and Recorder's records, was never released. Our research showed that the Mesa County Treasurer never showed any record that the special assessment referred to in the Agreement was due or unsatisfied. Also, in checking with the City Clerk, there was no record of amounts being due under the Agreement. I checked with Bruce Phillips who worked with Mr. Etter and Mr. Epstein back in the 90s on land use issues, but he was unaware of the Agreement.

Terry Farina in our office has a distant memory of a meeting with City officials about an obligation that was due to the City in the early 90s on behalf of Mr. Epstein. Under the Agreement, the special assessment would have been due in 1992. It is therefore quite possible that the issue Mr. Farina discussed with the City could have involved the special assessment, although he has no specific memory that the obligation due the City that he was working on arose out of the Agreement.

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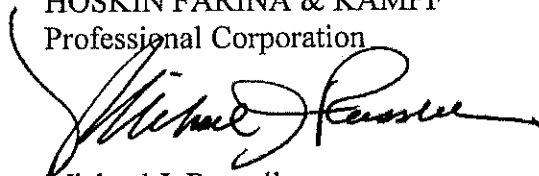
In any event, thereafter when the property used to construct 27½ Road was taken by the City, it is my understanding that the City paid Mr. Epstein and Mr. Etter for the taking. I am sure that if the special assessment had been outstanding at that point in time, the City would have reconciled the issue in connection with the taking compensation paid to Mr. Etter and Mr. Epstein.

We appreciate your efforts to obtain a release of Agreement so that it will no longer be a cloud on title and will allow for the completion of the contemplated transaction on January 2, 2020.

If you have any further questions or concerns regarding this matter, please do not hesitate to contact me.

Sincerely,

HOSKIN FARINA & KAMPF
Professional Corporation



Michael J. Russell

MJR:sf
cc: Debbie Schneide

1351609
JAN 24 1984 11:11 AM
E.SAWYER,CLK&REC HESA CTY,CO

BOOK 1475 PAGE 777

AGREEMENT TO DEFER PAYMENT OF SPECIAL ASSESSMENT

THIS AGREEMENT was entered into to be effective this 19 day of ^{January} ~~December~~, 198⁴~~3~~ between THE CITY OF GRAND JUNCTION, hereafter "City" and KENNETH L. ETTER, J. L. ETTER, and EMANUEL EPSTEIN, hereafter "Owners."

Recitals

The City has constructed certain street improvements on a portion of Horizon Drive more particularly described in Resolution No. 60-82 creating Improvement District No. ST-82, Phase C.

Owners are the legal owners of two parcels of real property within the improvement district abutting a portion of Horizon Drive, which property is more particularly described in Exhibit "A" attached hereto.

The City has proposed to assess the Owners the sum of \$75,836.36, plus interest, for the proportionate share of the Owners of the cost of the street improvements in the improvement district.

Owners have filed an objection to the assessment claiming that the amount of the assessment exceeds the special benefit to their property arising from the street improvements.

The parties have determined to resolve their differences as set forth below.

Agreement

IN CONSIDERATION of the Recitals and the mutual covenants contained below, the parties agree as follows:

1. Withdrawal of Objection. In consideration of the agreement of the City to defer payment of the special assessment, the Owners withdraw their objection to the special assessment imposed against the property described in Exhibit "A", and agree to pay the special assessment as set forth below.

2. Deferral of Payment of Assessment. In consideration of the withdrawal by the Owners of their objection to the

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special assessment, the City agrees to defer the obligation of the Owners to pay the assessment until the Owners develop or sell the property, or until the 1st day of January, 1992, whichever shall first occur. The sale or development of one parcel, shall not affect the deferral of the payment of the assessment on the other parcel, if such other parcel has not been sold or developed as defined below, but shall only require the Owners to commence payment of the assessment against that parcel which has been sold or developed.

3. Develop - Defined. For the purposes of this Agreement, the term "develop" means the construction or installation of any improvement or improvements upon either parcel which requires a building permit and concerning which the construction cost is in excess of \$200,000. The construction cost of any development of the parcel to be assessed from and after the date of this Agreement shall be cummulated for the purpose of calculating the cost threshold.

4. Sale - Defined. For the purposes of this Agreement, the term "sale" means the conveyance by any means of any portion of either parcel for a consideration valued at in excess of \$100,000. The consideration received in exchange for the conveyance of any portion of the parcel to be assessed will be cummulated for the purpose of calculating the consideration threshold as set forth above. A sale shall not be deemed to have occurred upon the conveyance of the property to the heirs or devisees of any of the Owners as a result of the death any of the Owners, or in the event of a conveyance without consideration of any portion of either parcel of the property to a member of the family of any Owner. Owners shall give prompt notice to the City of any sale of any portion of either parcel.

5. Payment of Assessment. Upon the sale of a parcel as above defined, the Owners shall pay to the City within ten days of the date of conveyance a sum equal to the amount of the special assessment which would have been due and payable by them through the date of conveyance had they elected to pay the

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special assessment over a period of ten years. The remainder of the special assessment shall be due and payable by the Owners annually in the same manner as is paid by the remainder of the owners of property specially assessed in Improvement District No. ST-82, Phase C, who have elected to pay the assessment over ten years. Upon the development of a parcel as above defined, the Owners shall pay to the City within sixty days after the issuance of a building permit a sum equal to the amount of the special assessment which would have been due and payable by them through the date of the building permit had they elected to pay the special assessment over a period of ten years. The remainder of the special assessment shall be due and payable by the Owners annually in the same manner as is paid by the remainder of the owners of property specially assessed in Improvement District No. ST-82, Phase C, who have elected to pay the assessment over ten years. In the event that the Owners have not sold or developed either or both parcels by January 1, 1992, the entire amount of the special assessment against the parcel or parcels, together with interest in the amount imposed against the owners of other property specially assessed in Improvement District No. ST-82, Phase C, shall be due and payable in full on that date. Notices of any assessment due under this paragraph shall be sent to the Owners at their respective addresses as shown on the records of the City, with one-half of each assessment being charged to the Eppers and one-half being charged to Epstein.

6. Reservation of Rights as to Future Assessments.

Both the City and the Owners acknowledge that the City plans to construct additional street improvements along that portion of Horizon Drive abutting the property described in Exhibit "A", as well as other real property owned within the city by the Owners. The City expressly agrees that neither this Agreement nor the payment by the Owners of the special assessment shall in any way prejudice the right of the Owners to contest any future assessment against their property; neither shall this Agreement nor the payment by the Owners of the special assessment be deemed an

admission by the Owners that their property is specially benefited to the extent of special assessment levied against them in Improvement District No. ST-82, Phase C.

7. Assessment Lien. The assessment imposed against the property of the Owners pursuant to Improvement District No. ST-82, Phase C, shall constitute a lien on such property effective the date of this Agreement in accordance with the provisions of Section 18-30 of the Ordinances of the City of Grand Junction. This Agreement, or a memorandum hereof, shall be executed in a form appropriate for recording.

8. Remedy Upon Default. The remedy of the City in the event of the default of the Owners in their obligations under this Agreement shall be limited to the acceleration of the special assessment and foreclosure of the assessment lien against the parcel concerning which the Owners are in default. The Owners do not by entering into this Agreement accept any personal liability for the payment of the special assessment.

9. Binding Effect. The rights and obligations set forth in this Agreement shall inure to the benefit of, and be binding upon, the heirs, successors and assigns of the parties, specifically including without limitation future owners of the property.

ATTEST:

Neva B. Lockhart, CMC
Neva B. Lockhart, City Clerk

CITY OF GRAND JUNCTION

By *Gary Lucero*
Gary Lucero, Mayor

OWNERS:

Kenneth L. Etter
Kenneth L. Etter

J. L. Etter
J. L. Etter

Emanuel Epstein
Emanuel Epstein

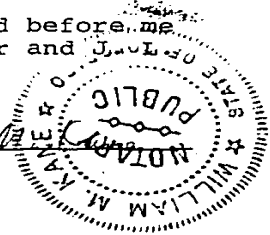
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ACKNOWLEDGEMENT

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me
this 12th day of ~~December~~, 1987 by Kenneth L. Etter and ~~J. L. L.~~
Etter. Witness my hand and official seal.

William M. K...
Notary Public



My Commission Expires: 5/25/85
Notarial Address: 315 North Third St.
Grand Junction, Colorado

STATE OF NEW YORK)
) ss.
COUNTY OF Kings)

The foregoing instrument was acknowledged before me
this 19 day of ~~December~~, 1983 by Emanuel Epstein. Witness my
hand and official seal.

Marianne Loffredo
Notary Public

My Commission Expires: 3/30/85
Notarial Address: 1627 E 37th
Bklyn NY 11234

MARIANNE LOFFREDO
Notary Public, State of New York
No. 24-4617432
Qualified in Kings County
Commission Expires March 30, 1985