

## RESOLUTION NO. 94-19

### A RESOLUTION RELEASING THE 1984 AGREEMENT TO DEFER PAYMENT OF A SPECIAL ASSESSMENT

#### RECITALS:

On August 18, 1982 the City Council approved an assessment for improvements to Horizon Drive. The assessment was for Improvement District No. ST-82, Phase C. The owners of two properties within the District, Kenneth L. and J.L Etter and Emanuel Epstein objected to the formation of the District. In exchange for the owners withdrawing their objections, they and the City entered into an agreement (Agreement) to defer payment of the special assessment for improvements to Horizon Drive. The release and satisfaction of the Agreement are the subject of this Resolution.

The Agreement provided that in exchange for the Owners withdrawing their objection to the District that payment of the special assessment would be deferred until the Owners developed or sold the property or until January 1, 1992. The property has not developed and the City has no records showing whether the special assessment was paid on or before January 1, 1992. In 2001 in case number 00CV73 the City acquired a portion of the property for the current alignment of 27 1/2 Road; the Agreement/special assessment was not an issue in that proceeding and presumptively if the Agreement had not been satisfied it would have been discovered by the City.

Since 1992 the City has taken no action to enforce a lien on the property and was unaware of the existence of the Agreement until being recently contacted regarding the Agreement and the fact that it may preclude the sale of the property.

Because the City has no record that the special assessment was not paid and due to the passage of time without concern for it/attempts at collection of the special assessment, the City Attorney recommends that the Council approve Resolution 94-19 finding that the Agreement is satisfied and released.

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

The *AGREEMENT TO DEFER PAYMENT OF SPECIAL ASSESSMENT*, a copy of which is attached, is released and deemed satisfied and of no further effect.

PASSED and ADOPTED this 18<sup>th</sup> day of December 2019.

*C. E. Steve Witzmann*

President of the City Council *pro tempore*

ATTEST:

*W Winkelmann*

City Clerk



AGREEMENT TO DEFER PAYMENT OF SPECIAL ASSESSMENT

THIS AGREEMENT was entered into to be effective this 19 day of December, 1983 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

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 cumulated 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 cumulated 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

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 Etters 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, City Clerk*  
Neva B. Lockhart, City Clerk  
CITY OF GRAND JUNCTION

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

ACKNOWLEDGEMENT

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STATE OF COLORADO )  
 ) ss.  
COUNTY OF MESA )

The foregoing instrument was acknowledged before me  
this 13<sup>th</sup> day of ~~December~~, 1984 by Kenneth L. Etter and ~~J. L. Etter~~  
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~~, 1984 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. 24-4817432  
Qualified in Kings County  
Commission Expires March 30, 1985