

AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of the 24th day of November 2009, *nunc pro tunc, June 2, 2009 (date of sewer backup)* by and between Marlo Reimer, managing member of 336 Main LLC (hereinafter referred to as "336 Main LLC") and the City of Grand Junction (herein "City").

RECITALS

The 336 Main LLC is the owner of real property located at 336 Main Street, Grand Junction, Colorado 81501 ("the Property" or "Property"). On June 2, 2009 a sanitary sewer backed up into the basement of the Property. Because of that release 336 Main LLC claims that the Property was damaged. 336 Main LLC and the City disagree about the City's liability for damage to the Property. The City asserts that it is not liable under Colorado law; 336 Main LLC asserts that the Property was damaged following and as a result of the City's actions or inactions relative to the sewer line.

The fault, if any, of either the City or 336 Main LLC or both is not at issue nor relevant to this Agreement. What is instead relevant, important and necessary to this Agreement is that the City and 336 Main LLC agree as a matter of the City's "good neighbor policy" that upon payment of a stipulated sum that the matter will be lawfully and completely ended without the City admitting liability and without resorting to litigation. In the interest of being "good neighbors" it is the expectation of the City and of 336 Main LLC that neither shall disparage nor unfairly characterize the other.

By entering into this agreement 336 Main LLC has agreed with the City to settle all claims by and between 336 Main LLC and the City on the payment of a stipulated sum and the terms and conditions provided for herein.

The following provisions are the mutually agreeable terms negotiated by and between and mutually acceptable to 336 Main LLC and the City:

IN CONSIDERATION of the above recitals and the mutual covenants and agreements contained herein, 336 Main LLC and the City agree as follows:

1. 336 Main LLC and the City hereby end and resolve the dispute between them. 336 Main LLC agrees that upon the payment of \$5,000.00 as a stipulated amount, that 336 Main LLC will be release and forgo its claims for damages. Furthermore, 336 Main LLC agrees that adequate consideration exists for the other terms of this Agreement as detailed more fully herein.

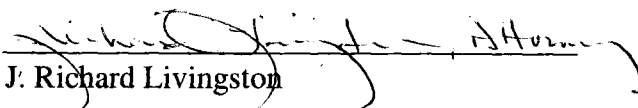
2. 336 Main LLC and the City acknowledge and agree to waive any and all claims and defenses, including but not limited to claims of defenses arising out of under this Agreement. 336 Main LLC and the City agree that such waiver(s) is with and/or that adequate consideration supports the same.
3. The customary rule of construction that ambiguities in an agreement are construed against the drafter is expressly waived.
4. This Agreement shall provide for and be construed to release any and all claims, demands, or causes of action that 336 Main LLC may have now or hereafter acquire against the City as the result of sewer and water damage to the Property that resulted on or before the signing of this Agreement. The release of claims, demands or causes of action include but are not limited to any and all (both for realty and personalty) claims, demands, obligations, actions, liabilities, damages and attorneys' fees, known or unknown, of whatsoever kind and nature arising from or in any way arising out of, any and all known and unknown, foreseen and unforeseen, damages, injuries or losses which 336 Main LLC may have or which may result or be claimed to result, directly or indirectly, from the claim, the dispute and/or this Agreement. Said release specifically includes, but is not limited to, claims, causes of action, demands or suits arising from mold or other organisms that may have grown or resulted from sewage and/or water being in or on the Property, direct or indirect damages which have been discovered or filed or may be discovered or filed arising out of or occasioned by the actions or inactions of the City, including but not limited to claims of lost profit or commercial or financial advantage as well as personal injury or damage claims in whatever form. Claims and damages resulting from negligent acts of the City, its officers, agents and employees that preceded the signing hereof, are specifically included within the scope of this release.
5. 336 Main LLC affirmatively represents that it is aware of no liens of materialmen, laborers, craftsmen or tradesmen, no claims, demands, obligations or causes of action, liabilities or damages filed, pending or accrued against 336 Main LLC arising out of the repair or restoration of the Property, for which the City may be held to be liable. 336 Main LLC agrees to indemnify and hold the City harmless for any and all such claims.
6. 336 Main LLC shall have no claim against the City for stress or mental injury, stress related disorders, personal physical injury or disease for any person for stress or mental injury, stress related disorders or for any and all other claims which have been made or may be made arising out of or occasioned by the circumstances described in, implied by or related to this Agreement.

7. The City has offered and 336 Main LLC has agreed on a sum of money to be paid in full and final settlement and in satisfaction of all 336 Main LLC claims. That sum is \$5,000.00.
8. The representations and agreements of this Agreement are not mere recitals but are contractual in nature. An unjustified breach of this Agreement by either 336 Main LLC or the City shall be a basis for suit, claim or demand against the other.
9. By the signatures below 336 Main LLC acknowledges the foregoing and that any waiver, release and agreement are voluntarily made and are with full knowledge and understanding of the consequences. Furthermore, 336 Main LLC acknowledges that it has been represented by legal counsel prior to execution of this Agreement.
10. 336 Main LLC by and through its managing member, Marlo Reimer, by and through the signature below, does bind itself and any person claiming by, under or through it, including but not limited to 336 Main LLC, to the foregoing terms, conditions, stipulations and agreements. 336 Main LLC represents that it has full and complete authority to bind 336 Main LLC to each and every term of this Agreement.
11. The City, by and through the signature below, does bind itself to the foregoing terms, conditions, stipulations and agreements. The City represents that the signer has full and complete authority to sign this Agreement.

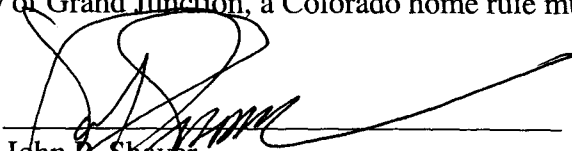
DATED as of the day and year first written above.

336 MAIN LLC

By: 
Marlo Reimer, Managing Member of 336 Main LLC

By: 
J. Richard Livingston

City of Grand Junction, a Colorado home rule municipality,

By: 
John P. Shaver
City Attorney