

## SETTLEMENT AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of the 6th day of January, 2010, *nunc pro tunc, December 16, 2008 (date of waterline break)* by and between 437 Main LLC (hereinafter referred to as the "Owner") and the City of Grand Junction (herein "City").

### RECITALS

The Owner is the owner of real property located at 437 Main Street, Grand Junction, Colorado 81501 ("the Property" or "Property"). On or about December 16, 2008, a City waterline failed causing water to be released and flooding conditions to result. Because of the release of water the Property experienced damage. The Owner and the City disagree about the City's liability for damage that the Property incurred. The City asserts that it is not liable under Colorado law; the Owner asserts that the Property was damaged following and as a result of the City's actions or inaction relative to the waterline.

The fault, if any, of either the City or the Owner, 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 the Owner 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 resorting to litigation. In the interest of being "good neighbors" it is the expectation of the City and of the Owner that neither shall disparage nor unfairly characterize the other.

The Owner discussed, negotiated and agreed with the City, by and through its attorney, the desire to settle all claims by and between the Owner 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 the Owner and the City:

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

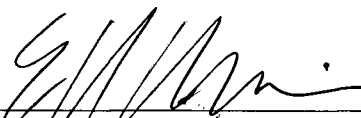
1. The Owner and the City hereby end and resolve the dispute between them. The Owner agrees that upon the payment of \$2,850.00, as a stipulated settlement amount, that the Owner is and will be compensated for its damages. Furthermore, the Owner agrees that adequate consideration exists for the other terms of this Agreement as detailed more fully herein.
2. The Owner 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. The Owner 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 the Owner and/or those persons claiming through him as tenants, may have now or hereafter acquire against the City as the result of 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 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 the Owner 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 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. The Owner 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 the Owner arising out of the repair or restoration of the Property, for which the City may be held to be liable. The Owner agrees to indemnify and hold the City harmless for any and all such claims.
6. The Owner 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 Owner and the City have negotiated and agreed on a sum of money to be paid in full and final settlement and in satisfaction of all the Owner's claims. That sum is \$2,850.00.
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 the Owner or the City shall be a basis for suit, claim or demand against the other.


9. By the signatures below, the Owner acknowledges the foregoing and that any waiver, release and agreement are voluntarily made and are with full knowledge and understanding of the consequences. Furthermore, the Owner acknowledges that it has been represented by or has chosen to be unrepresented by legal counsel prior to execution of this Agreement.
10. The Owner, by and through the signature below, does bind itself and any person claiming by, under or through it, including but not limited to the Owner, to the foregoing terms, conditions, stipulations and agreements. The Owner represents that it has full and complete authority to bind itself 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.

437 MAIN, LLC

By:   
\_\_\_\_\_  
Edward J. Chamberlin

CITY OF GRAND JUNCTION,  
A Colorado home rule municipality,

By:   
\_\_\_\_\_  
John P. Shaver, City Attorney