

**ONSAGER, STAE LIN & GUYERSON, LLC**

Attorneys at Law

Christian C. Onsager (consager@osglaw.com)
Earl H. Staelin (estaelin@osglaw.com)
Michael J. Guyerson (mguyerson@osglaw.com)
David M. Rich (drich@osglaw.com)
J. Brian Fletcher (jbletcher@osglaw.com)
Andrew D. Johnson (ajohnson@osglaw.com)

1873 South Bellaire Street
Suite 1401
Denver, Colorado 80222
Tel: (303) 512-1123
Fax: (303) 512-1129
www.osglaw.com

May 4, 2010

RECEPTION #: 2533464, BK 5012 PG 962 05/19/2010 at
11:24:16 AM, 1 OF 9, R \$45.00 S \$1.00
Janice Rich, Mesa County, CO CLERK AND RECORDER

Shelly Dackonish, Esq.
Office of the City Attorney
250 North 5th Street
Grand Junction, Colorado 81501

Re: High Desert Properties, LLC – Reimbursement Agreement

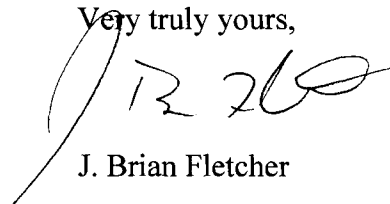
Dear Ms. Dackonish:

Enclosed please find an executed original of the document titled Jobsite – 21.5 Road Sewer Extension Reimbursement Agreement (the “Reimbursement Agreement”). I am pleased to report that the Bankruptcy Court approved execution of the Reimbursement Agreement by Order entered on May 4, 2010. A copy of the Court’s Order is also enclosed for your records.

It is my understanding that the Reimbursement Agreement will be executed by the City Manager and the City Clerk. Please send me a fully-executed copy. Please also let me know whether you will file and record the Reimbursement Agreement in the appropriate records. If you prefer that we record the agreement, please simply let me know.

We are pleased to have this matter resolved and, frankly, we will be further pleased once the Reimbursement Agreement is fully-executed and recorded. Please let me know any questions or comments. Thank you for your continuing cooperation.

Very truly yours,



J. Brian Fletcher

Encl.

cc: Bond Jacobs

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re:)
) Case No. 09-21533 SBB
HIGH DESERT PROPERTIES, LLC)
a Colorado limited liability company,) Chapter 11
)
EIN: 26-0018837)
)
Debtor.)

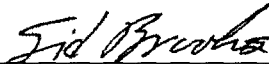
**ORDER APPROVING SETTLEMENT WITH THE CITY OF GRAND JUNCTION AND
AUTHORIZING REIMBURSEMENT AGREEMENT**

THIS MATTER comes before the Court on the Motion for Order Approving Settlement with the City of Grand Junction and Authorizing Reimbursement Agreement (the "Motion"), filed by the Debtor, High Desert Properties, LLC, the Court having reviewed the Motion and being otherwise fully advised in the premises, it is hereby

ORDERED that the Motion is granted. The Court approves the settlement between Debtor and the City of Grand Junction through execution of The Jobsite – 21.5 Road Sewer Extension Reimbursement Agreement.

DATED May 4, 2010

BY THE COURT:



Sidney B. Brooks,
United States Bankruptcy Judge

21.5 Road SEWER EXTENSION REIMBURSEMENT AGREEMENT

This agreement ("Agreement") is made and entered into this 18th day of May, 2010, by and between the City of Grand Junction, a Colorado home rule municipality ("City"), and High Desert Properties, LLC, a Colorado limited liability company (hereinafter referred to as "Developer").

RECITALS:

The City is the manager of the Persigo Wastewater Treatment Facility ("regional sewer") and in such capacity controls the use of and tapping into the sewer facilities located within the 201 Service Area. Developer represents that it is the owner of property as shown on Exhibit 1, attached hereto, more particularly described as Jobsite Subdivision Book 4316, Pages 120 and 121 of the records of Mesa County, State of Colorado (hereinafter, the "Property"). Developer is required to dispose of its sewage waste through the regional sewer system. Developer desires to recoup some of its costs incurred in construction of a sewer line extension, along with appurtenant facilities such as manholes, ("System") from the owners of property who connect to and receive a benefit from use of the System paid for and installed by the Developer. Such property owners are termed "Future Users" and are those persons who develop within the area shown on the attached Exhibit 1 and who are deemed to benefit from their connection to and use of the System.

The City has determined that it is in the best interest of the regional sewer to install the System in a manner so that it will serve the Developer's property and Future Users who later tie into the System constructed by Developer. The City recognizes that Future Users will receive some benefit from this Developer's construction because Future Users will not have to construct as long of a line in order to receive sewer service.

The Developer wants the City to collect payments/reimbursement from Future Users when/if such Future Users connect to the System as provided for herein. However, the City is only willing to collect money for reimbursement to the Developer if the City is not at risk, even for its own negligence and if the City is paid as provided herein.

THE PARTIES AGREE AS FOLLOWS:

1. The above Recitals are intended to state the intent of the parties, and shall constitute substantive terms of this agreement. In addition, the Recitals shall form a basis to construe the several provisions hereof in the event that there is an ambiguity or the intent of the parties is otherwise unclear. Any rule such that any ambiguities shall be construed against the drafter shall not apply to this agreement; the parties agree that each is fully capable of engaging its own attorneys and other experts to understand and negotiate the language hereof.
2. Developer agreed to construct the System to serve its development along with surrounding properties, and agreed to connect such System with the regional sewer, at such location as is required by the City. The System has been constructed in accordance with the engineering standards then applicable, as required by the City Engineer.

3. The City accepted, by letter to Bond Jacobs, principal of Developer, dated May 7, 2009, which is attached hereto and incorporated herein by this reference, the sewer facilities installed in 21 ½ Road on **June 5, 2008**. For purposes of this Agreement, this shall be the date of “**Substantial Completion**” of the system. This acceptance was subject to the Developer's agreement to forever: (1) hold harmless and indemnify the City, its officers, agents and employees from and with respect to any and all claims arising out of this agreement and/or the construction of the System or connection to the regional system, excepting only causes of action or claims resulting from the sole misconduct of the City; (2) hold harmless from and indemnify the City for all reasonable attorneys' fees incurred by the City, or the value thereof, including experts, fees and costs; (3) with respect to the matters provided for in, or reasonably arising out of, this Agreement, indemnify and hold harmless the City, from claims by the Developer, any successor of the Developer, and any third party, whether or not any such claim or cause of action is frivolous.

4. The Developer is entitled to be reimbursed by Future Users, identified on Exhibit #1 and Exhibit #2, for some of the reasonable and necessary costs incurred by the Developer for actual construction costs, as approved by the City Engineer, as follows:
 - (a) Reimbursable costs are those costs actually paid which may include reasonable engineering fees, but not legal or other consulting fees, paid by the Developer and actually required to design, construct, and inspect the System. In no event shall reimbursable costs exceed **\$413,073.52**.

 - (b) For a period of ten years following the Substantial Completion of the system, as evidenced by this Agreement, or until the Developer is reimbursed for those costs set forth in (5a) above, whichever first occurs, the City agrees that it will not authorize any other person to use the System unless each Future User first pays, in addition to all other applicable charges and fees, a Reimbursement Amount (“RA”) which sum is calculated as follows:

$$RA = \frac{(RC)}{A} + \frac{RC \times i}{A} + B$$

where:

RC = actual reimbursable costs incurred by Developer and approved by the City Utility Engineer as shown on Exhibit #2. RC= **\$413,073.52**

i = 0.67% per month simple interest (8% annually) times the number of complete months (up to a maximum of 120 months) following the date of this Agreement.

B = \$100.00 (this represents the amount to be paid to the City for administration of this agreement and will be paid by each Future User to the City).

x = multiply.

A = Number of lots/EQUs that could be served by the System as determined by the City Utility Engineer. A= **94.17 EQUs**

Once the reimbursable costs have been approved by the City Utility Engineer, the reimbursement amount established by the above formula, plus any interest as provided, will be calculated and paid by each Future User (other than those users who have purchased the Developer's lots or are Developer's successors). Thus, the Developer's property and lots/EQUs created from the Developer's property will be allowed to connect to the System without payment of the amounts/charges provided for in this Agreement.

- (c) Developer has presented to the City Utility Engineer adequate documentation and the City Utility Engineer has determined the actual costs of construction.
- 6.
- (a) If the City makes any collections pursuant to this Agreement, the City shall be obligated only to mail a check to the Developer, or his properly designated assignee, to the last known address of the Developer or assignee. The City has no duty or obligation to locate a proper payee.
 - (b) In the event that any claim is made or cause of action is filed by any person alleging that this Agreement is unconstitutional, unenforceable, or otherwise contrary to law, or that any interest or other money payable to the Developer hereunder from any Future User or other person is excessive, improper or is not enforceable, the City is not obligated to defend or to resist any such claim or cause of action; rather, the City may settle any such matter regarding any City interest or obligation. Developer agrees that it shall be bound by any settlement of such claim or cause of action, whether or not Developer or his assigns is a party hereto if Developer has reasonable notice thereof. If the City makes any collections pursuant to this Agreement, the City shall be obligated only to mail a check to the Developer, or his properly designated assignee, to the last known address of the Developer or assignee. The City has no duty or obligation to locate a proper payee.
 - (c) Developer agrees to waive and hold the City (including its officers, employees and other agents, hereinafter "City") harmless from, and indemnify the City with respect to any claims the Developer, or Developer's heirs, successors or assigns, may have with regard to the act or failure to act of the City regarding any collection of any such fee, charge or reimbursement amount; provided, however, that nothing herein shall affect Developer's claim against any Future Users who have failed to pay applicable charges and fees for use and/or hook-up to the System prior to the date of this Agreement. Except as set forth herein, Developer hereby waives and releases the City, its officers, agents and employees from any claims or causes of action Developer may have due to the failure of the City to abide by or enforce this Agreement.
 - (d) In the event that the City fails to collect the fee from any Future User, the Developer has the right to sue such Future User. The City agrees to cooperate, without expense to the City, in any such collection efforts of the Developer.

7. Upon request from the Developer during the term of this Agreement which request shall not occur more than once every twelve months, the City shall provide an accounting. Said accounting shall consist of a listing of each RA collected during the preceding twelve months, the name and address of the remitter of said RA, the property address for which the RA was paid, a current balance of the RC, and total interest credited to the Developer's account. The City shall pay all fees collected within the preceding twelve months at the time of each accounting, less amounts paid to or retained by the City for costs of administration and less any other amounts which may be retained by the City pursuant to law or this agreement.
8. In the event that the Developer is in default with regard to any other obligation of the Developer as it relates to this Agreement and the several rights and duties of the parties reasonably related hereto, the City shall have the right to set off any reimbursements that may be due hereunder to satisfy in whole or in part any such default, expense or cost, in addition to any other remedy which the City may have.
9. In the event that the Developer receives any RA directly from any Future User, owner or developer of any property the Developer shall immediately notify the City Utility Engineer in writing of the amount collected, the name and address of the person from whom collection was made, and the property to which the collection is applicable.
10. This Agreement shall bind the signatory parties and their respective heirs, successors and assigns.
11. Upon nonperformance by the City pursuant to this Agreement, the Developer shall give written notice of default specifying the action giving cause to said default to the City Engineer and to the City Attorney. The City shall have thirty (30) days from receipt of the later of the two notices to correct the alleged default. If the City does not correct the default within the prescribed time, Developer may sue to enforce its rights hereunder; in no event shall the Developer have a claim, no matter how it is stated, for damages or the payment of money against the City (except for RA amounts in the possession of the City). Upon the correction of said default as provided, this Agreement shall be restored and all terms and conditions will be in full force and effect.
13. Developer may assign its rights pursuant to this Agreement; however, any such assignment shall not be effective until notice of such assignment, with the address of the assignee, is made by certified mail to the City, in care of the City Utility Engineer.
14. The Developer agrees that the construction of the System, and/or the acceptance by the City of said System, does not waive or limit the payment by the Developer, or any successor of the Developer, of any costs, fees or charges (*e.g.*, plant investment fees, trunk extension fees, inspection fees, monthly sewer service charges) which the City is now, or may be in the future, entitled to charge or collect from the Developer or any user or person connected to or benefiting from the System.
15. This Agreement, together with the exhibits and attachments hereto and documents incorporated herein by reference, constitutes the entire agreement between the parties and

no statement(s), promise(s) or inducement(s) that is/are not contained in this Agreement will be binding on the parties.

- 16. Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under applicable law.
- 17. No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.

CITY OF GRAND JUNCTION

BY: *Tom Madril* Date: 5-18-10
City Manager

Attest: *Stephanie Tuin* Date: 5-18-10
City Clerk



DEVELOPER

BY: *Baus Jacobs* Date: 5/5/10

BY: _____ Date: _____

Address: 841 21 & 1/2 Road
Grand Junction, Co. 81505

Attest: _____ Date: _____

Exhibit # 2

Project: Jobsite 21.5 Road Sewer Reimbursement Agreement
 Subject: Summary and Allocation of Costs

This project was completed and was initially found to be unacceptable by the City. The developer then secured the services of a second contractor to re-install the sewer extension along 21.5 Road. The second installation was found to be acceptable by the City. Both projects were time and materials based and neither project effort was competitively bid. The Utility Engineer specifically asked for bid schedule type documentation of the project costs. Proper cost documentation of the sewer line construction was not provided. This reimbursement will be based on a similar City sewer extension project that was competitively bid the previous year. **This reimbursement does not apply to the properties hi-lited below that make up the Job Site Development.**

City of Grand Junction
 Dept of Public Works and Utilities
 Utilities Division

	Length \$/foot	Total
Project: Jobsite Sewer Reimbursement Agreement	2636.9 \$	\$ 413,073.52
Subject: Summary and Allocation of Costs		

Item	Firm	Cost
Design Engineering/Inspection Estimated		\$ 27,160.28
Easement		\$ -
Materials/labor Estimated		\$ 385,913.24
Total Cost		\$ 413,073.52

Parcel ID	Address	EQU/parcel	Acres	Zone	EQU/Ac.
2697-253-00-113		4.72	3.748	I1	1.26
2697-253-00-114		5.86	4.653	I1	1.26
2697-253-02-001	817 21 1/2 RD	4.20	4.667	CI	0.9
2697-253-02-002	815 21 1/2 RD	2.93	3.259	CI	0.9
2697-253-06-001	825 21 1/2 RD	8.50	9.449	CI	0.9
2697-253-06-002	821 21 1/2 RD	2.68	2.98	CI	0.9
2697-253-12-001	841 21 1/2 RD	7.20	5.716	I1	1.26
2697-253-12-002	2138 BOND ST	1.28	1.016	I1	1.26
2697-253-12-003	2136 BOND ST	1.28	1.016	I1	1.26
2697-253-12-004	2134 BOND ST	1.28	1.016	I1	1.26
2697-253-12-005	2132 BOND ST	1.28	1.016	I1	1.26
2697-253-12-006	2130 BOND ST	1.28	1.016	I1	1.26
2697-253-12-007	2128 BOND ST	1.28	1.016	I1	1.26
2697-253-13-001	839 21 1/2 RD	1.35	1.07	I1	1.26
2697-253-13-002	2145 BOND ST	2.56	2.028	I1	1.26
2697-253-13-003	2143 BOND ST	7.20	5.716	I1	1.26
2697-253-13-004	2141 BOND ST	1.26	1.001	I1	1.26
2697-253-13-005	2139 BOND ST	1.26	1.001	I1	1.26
2697-253-13-006	2137 BOND ST	1.26	1.001	I1	1.26
2697-253-13-007	2133 BOND ST	2.52	2.001	I1	1.26
2697-253-13-008	2131 BOND ST	1.26	1.001	I1	1.26
2697-253-13-009	2129 BOND ST	1.26	1.001	I1	1.26
2697-253-13-010	2127 BOND ST	1.26	1.001	I1	1.26
2697-254-00-019	802 21 1/2 RD	0.69	0.763	CI	0.9
2697-254-00-102	830 21 1/2 RD	1.70	1.892	CI	0.9
2697-254-03-004	842 21 1/2 RD	3.62	2.871	I1	1.26
2697-254-03-007	836 21 1/2 RD	2.68	2.976	CI	0.9
2697-254-03-008	834 21 1/2 RD	2.39	2.651	CI	0.9
2697-254-03-009	832 21 1/2 RD	2.09	2.32	CI	0.9
2697-254-03-010	838 21 1/2 RD	5.03	5.59	CI	0.9
2697-254-05-001	826 21 1/2 RD	1.01	1.123	CI	0.9
2697-254-05-002	806 21 1/2 RD	1.74	1.928	CI	0.9
2697-254-07-001	844 21 1/2 RD	3.85	4.281	CI	0.9
2697-361-00-047	798 21 1/2 RD	0.66	0.738	CI	0.9
2697-362-00-004	799 21 1/2 RD	2.02	2.247	CI	0.9
2697-253-00-036	2150 H Road	1.71	1.901	CI	0.9

Total Benefiting EQUs	94.17
Cost per EQU	\$ 4,386.52
Interest Start Date	June 5, 2008
Proposed Payment Date	June 5, 2018
Number of months	120
Interest Due (8% interest since 6/5/08)	\$ 345.17
City Admin Fee	\$ 100.00
Total Reimbursement Per EQU assuming 2009 connection	\$ 4,831.69

Exhibit # 1

Project: Jobsite 21.5 Road Sewer Reimbursement Agreement
Subject: Benefiting Areas

