

BAK95NAZ

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENT AGREEMENT

NAME OF AGENCY OR CONTRACTOR: CARL N. BAKER, PRESIDENT OF
FIRST CHURCH OF THE NAZARENE

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: FIRST CHURCH
OF THE NAZARENE

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1995

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. Parties: The parties to this Development Improvements Agreement ("the Agreement") are The First Church of the Nazarene of Grand Junction, ("the Developer") and The City of Grand Junction, a Colorado home rule municipality ("the City").

2. Effective Date: The Effective Date of this Agreement is the date this Agreement is signed and sealed by both parties.

RECITALS

The Developer seeks permission to develop that certain real property situate within the limits of the City of Grand Junction, which property is more particularly described on Exhibit "A" which is attached hereto and incorporated herein by reference. The City seeks to protect the health, safety and general welfare of the community by requiring the completion of parking lot improvements in the development and limiting the harmful effects of substandard developments. The purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself and is not executed for the benefit of materialmen, laborers, or others providing work, services or material to the development or for the benefit of the purchasers or users of the development. The mutual promises, covenants and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and the City's land development ordinances.

THEREFORE, for valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

3. Improvements: The Developer will design, construct and install, at its own expense, those on-site parking lot improvements listed on Exhibit "B" attached hereto and incorporated herein by reference ("the Improvements"). The Developer's obligation to complete the Improvements is and will be independent of any obligations of the City contained herein and is not conditioned upon the commencement of improvements within the development.

4. Security: To secure the performance of its obligations under this Agreement (except its obligations for warranty under paragraph 6), the developer will execute and deliver a promissory note secured by a deed of trust encumbering that certain real property described on Exhibit "C" attached hereto and incorporated herein by reference ("the Secured Property").

5. Standards: The Developer will construct the Improvements according to the standards and specifications required by the City Engineer or as adopted by the City.

6. Warranty: The Developer warrants that the Improvements will be free from defects for a period of twelve (12) months from the date that they are installed.

7. Commencement and Completion Periods: The Developer will commence work on the Improvements on or before March 1, 1998, and the Improvements will be completed on or before June 1, 1998.

8. Compliance with Law: The Developer will comply with all relevant federal, state and local laws, ordinances and regulations in effect at the time of final development when fulfilling its obligations under this Agreement.

9. Inspection and Certification: The City will inspect the Improvements as they are completed and, if acceptable to the City Engineer, certify the Improvements as being in compliance with applicable standards and specifications. Such inspection and certification, if appropriate, will occur within 14 days of notice by the Developer that it desires the City to inspect the Improvements. Before obtaining certification of the Improvements, the Developer will present to the City valid lien waivers from all persons providing materials or performing work on the Improvements. Certification by the City Engineer does not constitute a waiver by the City of the right to proceed against the Developer and/or any security caused by defects in or failure of the Improvements which is detected or which occurs following such certification.

10. Approval of Improvements: Approval of the Improvements by the City does not constitute a waiver by the City of any rights it may have caused by any defect in or failure of the Improvements which is detected or which occurs after the approval and/or acceptance.

11. Notice of Defect: The Developer's engineer will provide timely notice to the Developer, contractor, issuer of security and the City engineer whenever inspection reveals, or the Developer's engineer otherwise has knowledge, that the Improvements, or any portion thereof, do not conform to City standards and any specifications approved in the development application or is otherwise defective. The Developer will have thirty (30) days from the issuance of such notice to correct or substantially correct the defect(s).

12. Use of Proceeds: The City will use funds obtained by action on the security for the purpose of recovering the City's fees and costs, including attorneys fees, and completing the Improvements or correcting defects in or failure of the Improvements.

13. Events of Default: The following conditions, occurrences or actions will constitute a default by the Developer during the Completion Period:

- a. The Developer's failure to complete the Improvements in conformance with the agreed upon time schedule; the City may not declare a default until a fourteen (14) calendar day notice has been given to the Developer;
- b. The Developer's failure to correct defective construction of the Improvements within the applicable correction period; in such event the City may immediately declare a default without further notice to the Developer;
- c. The Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy connected with the Developer; in such event the City may immediately declare a default without

prior notification to the Developer;

- d. Notification to the City, by any lender with a lien on the Secured Property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Secured Property or a portion of the Secured Property or assignment or conveyance of the Secured Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer;

14. Measure of Damages: The measure of damages for breach of this Agreement by the Developer will be the reasonable costs of satisfactorily completing the Improvements plus reasonable City administrative expenses and any costs of collection, pursuant to the deed of trust. For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit "B" will be prima facie evidence of the minimum costs of completion; however, neither that amount nor any other financial commitment by the Developer shall serve to establish the maximum amount of the Developer's obligations.

15. City's Rights Upon Default: When any event of default occurs, the City may declare the note due in full ("acceleration"), and proceed to foreclose upon the Secured Property. The City will have the right to complete the Improvements itself or it may contract with or assign to a third party for completion, and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the property for the purposes of constructing, reconstructing and repairing the Improvements. Alternatively, the City may assign the promissory note and deed of trust to a subsequent third party who will then have the same rights of completion as the City if and only if the subsequent third party agrees in writing to complete the unfinished, damaged or sub-standard Improvements and provides reasonable security for the obligation. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

16. Improvements Guarantee: The Improvements Guarantee required by the City Code to ensure that the Improvements are constructed to City standards is in the form of a promissory note and secured by a deed of trust. In any event, the Developer promises to construct the Improvements to the satisfaction of the City Engineer in accordance with the City approved plans and specifications.

17. Indemnification: The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the development or the Property pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance

If to Developer:

First Church of the Nazarene of Grand Junction
1000 North 9th Street, Suite 8
Grand Junction, CO 81501

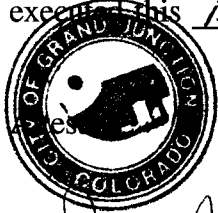
25. Scope: This Agreement constitutes the entire agreement between the parties and no statement(s), promise(s) or inducement(s) that is/are not contained in this Agreement will be binding upon the parties.

26. Recordation: The Developer shall pay for all costs to record this Agreement in the office of the Mesa County Clerk and Recorder.

27. Immunity: Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under any applicable state law.

28. Personal Jurisdiction and Venue: Personal jurisdiction and venue for any civil action commenced by either party to this Agreement whether arising out of or relating to this Agreement or any action to collect security will be deemed to be proper only if such action is commenced in Mesa County, Colorado. The Developer expressly waives its right to bring such action in or to remove such action to any other court whether state or federal.

IN WITNESS WHEREOF, the parties to this agreement this Agreement has been executed this 13th day of December, 1995, the Effective Date.



Stephanie Nye
Stephanie Nye, City Clerk

The City of Grand Junction,
a Colorado home rule municipality

By: Mark K. Achen BN
Mark K. Achen, City Manager

Attest:

The First Church of the Nazarene
of Grand Junction

Curtis Sexton
Curtis Sexton, Secretary

By: Carl N. Baker
Carl N. Baker, President

EXHIBIT "A"

A tract of land located in the West 1/2 of Lot 7 in Section 6, Township 1 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado, being more particularly described as follows:

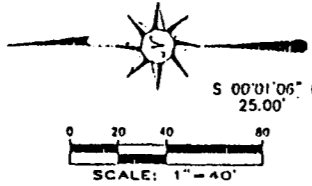
Commencing at the Southwest corner of said Section 6 from whence the Northwest Corner of said Lot 7 bears N 00°03'19" E for a basis of bearings with all bearings contained herein being relative thereto; thence N 00°03'19" E along the West line of said Lot 7 a distance of 686.19 feet; thence S 89°59'07" E a distance of 40.00 feet to the True Point of Beginning; thence S 89°59'07" E a distance of 596.09 feet to a point on the East line of the West 1/2 of said Lot 7; thence S 00°01'54" W along the East line of the West 1/2 of said Lot 7 a distance of 636.03 feet to a point on the North right-of-way for F Road as described in Book 1557 at Pages 154-155 in the office of the Mesa County Clerk and Recorder; thence N 90°00'00" W a distance of 588.33 feet; thence N 45°00'00" W a distance of 11.33 feet to a point on the East right-of-way for 28 Road; thence N 00°03'19" E along the East right-of-way for 28 Road a distance of 628.17 feet to the True Point of Beginning,

EXCEPTING THEREFROM the following described tract of land, to wit:

Commencing at the Southwest corner of said Section 6 from whence the Northwest Corner of Lot 7 in said Section 6 bears N 00°03'19" E for a basis of bearings with all bearings contained herein being relative thereto; thence N 00°03'19" E along the West line of said Lot 7 a distance of 686.19 feet; thence S 89°59'07" E a distance of 40.00 feet True Point of Beginning; thence S 89°59'07" E a distance of 596.09 feet to a point on the East line of the West 1/2 of said Lot 7; thence S 00°01'54" W a distance of 165.00 feet; thence N 89°59'07" W a distance of 187.19 feet; thence S 00°01'06" E a distance of 25.00 feet; thence N 89°59'07" W a distance of 409.0 feet to a point on the East right-of-way for 28 Road; thence N 00°03'19" E a distance of 190.0 feet to the True Point of Beginning.

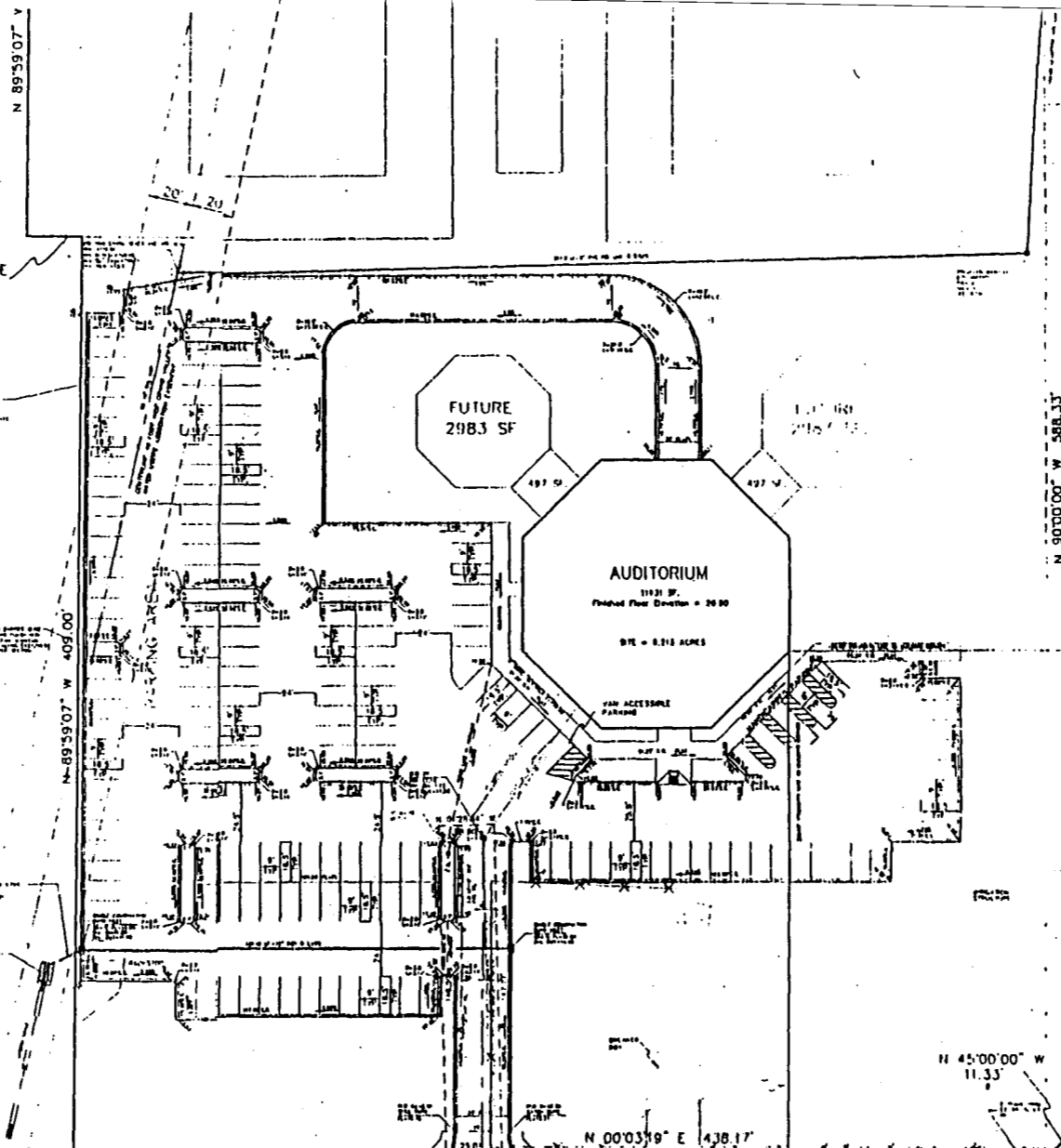
EXHIBIT "B"

S 89°59'07" E 596.09'



LOCATION OF
AREA WIDE DETENTION
POND BY CITY OF
GRAND JUNCTION
2.93 ACRES

MAXIMUM DEPTH OF BARRION SHALL BE LIMITED TO AN ELEVATION
OF 2.0 FEET ABOVE THE EXISTING GROUND WATER TABLE



N 90°00'00" W 588.33'

F ROAD R.O.W.

N 00°03'19" E 190.00'

N 00°03'19" E 438.17'

N 45°00'00" W
11.33'

28 ROAD R.O.W.

SPECIAL NOTE

1. THE PARKING AREA SHALL BE CONSTRUCTED TO SUBGRADE ELEVATIONS AROUND WITH THE INSTALLATION OF STORM SEWER AS SHOWN. PARKING LOT PAVING SHALL BE COMPLETED AT A LATER DATE.
2. EXCAVATION OF THE BARRION AREA SHALL BE OF UNIFORM DEPTH AND WIDTH FOR ITS ENTIRE LENGTH AND WIDTH. THE MAXIMUM DEPTH OF BARRION SHALL BE LIMITED TO AN ELEVATION OF 2.0 FEET ABOVE THE EXISTING GROUND WATER TABLE.

GENERAL NOTES

1. EXISTING UTILITIES (WATER, GAS, SEWER, AND POWER) SHALL BE SHOWN AS PLACED IN PLANS AND CONTRACTOR TO VERIFY.
2. ALL WORK AND EXISTING STRUCTURES SHALL BE ON GRADE UNLESS OTHERWISE NOTED.
3. ALL EXISTING PAVEMENT SHALL BE REMOVED FOR PARKING AND EXCAVATION. EXISTING PAVEMENT SHALL BE REPAIRED AS SHOWN.
4. ALL EXISTING UTILITIES SHALL BE PROTECTED AND DEPTHS SHALL BE AS SHOWN.
5. SEE PLAN SHEET FOR ALL PIPE SIZES, SPACES AND SPACING.
6. ALL WORK SHALL BE IN ACCORDANCE WITH APPLICABLE PLANS AND CITY ORDINANCES.

CONVICTION INTERVAL = 1
BENCH MARK:
MESA COUNTY SURVEY MARK #2
F ROAD AND 28 ROAD INTERSECTION
ELEVATION = 4123.61

ADDENDUM TO EXHIBIT "B"

Parking lot and ancillary improvements to be developed in conjunction with a new church facility at the northeast corner of Patterson Road and 28 Road. The site will be graded with subbase and aggregate materials pursuant to civil engineering plans submitted to the City of Grand Junction by the First Church of the Nazarene. All parking lot improvements will be completed on or before June 1, 1998. Costs to complete the parking lot improvements are as follows:

| <u>Item</u> | <u>Quantity</u> | <u>Cost</u> |
|----------------------|----------------------------------|------------------|
| Paved Parking Lot | 3316 square yards | \$54,607.89 |
| Paved Roadway | 500 square yards | \$ 7,033.40 |
| 4-inch wide striping | 150 lineal + 65 spaces + symbols | \$ <u>495.65</u> |
| | Total | \$62,136.94 |

EXHIBIT "C"

Parcel No. 1: Lot 63 of Mantey Heights Subdivision in Section 7, Township 1 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado,

EXCEPT,

beginning at the Northwest corner of said Lot 63;
thence N 77°56' E 104.9 feet;
thence S 31°15' E 111.8 feet;
thence N 07°46'17" E 27.0 feet;
thence N 58°28' E 115.15 feet;
thence N 77°56' E 30.0 feet to the Northeast corner of said Lot 63;
thence S 13°34' E 158.39 feet;
thence S 82°14'43" W 262.81 feet;
thence N 00°11' E 125.74 feet to the Point of Beginning,
also known by Mesa County Tax Schedule Number 2943-072-01-023.

Parcel No. 2: Lot 65 of Mantey Heights Subdivision in Section 7, Township 1 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado,

EXCEPT,

beginning at a point which is 313.84 feet West of the Southeast corner of said Subdivision;
thence N 17°44' W 520.13 feet;
thence N 31°40' W 274.33 feet;
thence N 13°12' W 179.62 feet;
thence West 179.62 feet;
thence S 31°25' W 170.0 feet;
thence S 57°33' E 86.0 feet;
thence S 11°09' E 37.0 feet;
thence S 27°08' E 478.1 feet;
thence N 46°31' W 138.0 feet;
thence S 17°44" E 350.0 feet to a point on the South line of said Subdivision;
thence East 125.0 feet to the Point of Beginning,
also known by Mesa County Tax Schedule Number 2943-072-01-011.

PROMISSORY NOTE

U.S. \$62,136.94
Mesa County, Colorado

Grand Junction,

December 13, 1995

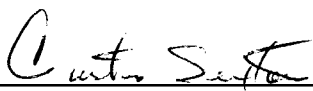
1. FOR VALUE RECEIVED, the undersigned First Church of the Nazarene of Grand Junction, Colorado (Borrower), promises to pay to the City of Grand Junction, or order, (Note Holder), the principal sum of Sixty Two Thousand One Hundred Thirty Six and 94/100 U.S. Dollars (\$62,136.94), with interest thereon from December 13, 1995, until paid, at the rate of ten percent (10%) per annum; however, if the Development Improvements Agreement terms and work is/are satisfactorily completed as set forth in the Development Improvements Agreement, then the City will waive accrued interest and principal. If the Development Improvements Agreement terms and work is/are not satisfactorily completed, principal and interest shall be payable at City Hall, 250 North 5th Street, Grand Junction, CO 18501, or at such other location as Holder may designate, in one payment of \$62,136.94 due on June 1, 1998.
2. Borrower shall pay to the Note Holder a late charge of ten percent (10%) of principal if payment is not received by the Note Holder when payment is due.
3. Payments received for application to this Note shall be applied first to the payment of late charges, if any, second to the payment of accrued interest specified above, and the balance applied in reduction of the principal amount hereof.
4. Borrower and all other makers, sureties, guarantors, and endorsers hereby waive presentment, notice of dishonor and protest, and they hereby agree to any extensions of time of payment and partial payments before, at, or after maturity. This Note shall be the joint and several obligation of Borrower and all other makers, sureties, guarantors and endorsers, and their successors and assigns.
5. Any notice to Borrower provided for in this Note shall be in writing and shall be given and be effective upon (1) delivery to Borrower or (2) mailing such notice by first-class U.S. mail, addressed to Borrower at the Borrower's address stated below, or to such other address as Borrower may designate by notice to the Note Holder. Any notice to the Note Holder shall be in writing and shall be given and be effective upon (1) delivery to Note Holder or (2) by mailing such notice by first-class U.S. mail, to the Note Holder at the address stated in the first paragraph of this Note, or to such other address as Note Holder may designate by notice to Borrower.

6. The indebtedness evidenced by this Note is secured by a Deed of Trust dated December 13, 1995, and until released said Deed of Trust contains additional rights of the Note Holder. Such rights may cause Acceleration of the indebtedness evidenced by this Note. Reference is made to said Deed of Trust for such additional terms. Said Deed of Trust grants rights in the property described in the attached Exhibit labeled "Nazarene/City" owned by the Borrower as of the date of execution hereof.

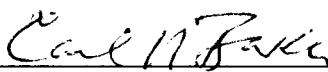
Borrower's address is The First Church of the Nazarene of Grand Junction, 1000 North 9th Street, Suite 8, Grand Junction, CO 81501.

Attest:

The First Church of the Nazarene
of Grand Junction, Colorado



Curtis Sexton, Secretary

By: 

Carl N. Baker, President

EXHIBIT "NAZARENE/CITY"

Parcel No. 1: Lot 63 of Mantey Heights Subdivision in Section 7, Township 1 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado,

EXCEPT,

beginning at the Northwest corner of said Lot 63;
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thence S 31°15' E 111.8 feet;
thence N 07°46'17" E 27.0 feet;
thence N 58°28' E 115.15 feet;
thence N 77°56' E 30.0 feet to the Northeast corner of said Lot 63;
thence S 13°34' E 158.39 feet;
thence S 82°14'43" W 262.81 feet;
thence N 00°11' E 125.74 feet to the Point of Beginning,
also known by Mesa County Tax Schedule Number 2943-072-01-023.

Parcel No. 2: Lot 65 of Mantey Heights Subdivision in Section 7, Township 1 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado,

EXCEPT,

beginning at a point which is 313.84 feet West of the Southeast corner of said Subdivision;
thence N 17°44' W 520.13 feet;
thence N 31°40' W 274.33 feet;
thence N 13°12' W 179.62 feet;
thence West 179.62 feet;
thence S 31°25' W 170.0 feet;
thence S 57°33' E 86.0 feet;
thence S 11°09' E 37.0 feet;
thence S 27°08' E 478.1 feet;
thence N 46°31' W 138.0 feet;
thence S 17°44" E 350.0 feet to a point on the South line of said Subdivision;
thence East 125.0 feet to the Point of Beginning,
also known by Mesa County Tax Schedule Number 2943-072-01-011.

DEED OF TRUST

THIS DEED OF TRUST is made this 19th day of December, 1995, between The First Church of the Nazarene of Grand Junction, the grantor herein, whose address is 1000 North 9th Street, Suite 8, Grand Junction, Colorado 81501, and the PUBLIC TRUSTEE of the County of Mesa, State of Colorado.

WITNESS:

The Grantor, to secure a promissory note, for the total principal sum of \$62,136.94 payable to the order of the City of Grand Junction, the beneficiary herein, whose address is 250 North 5th Street, Grand Junction, Colorado 81501, after the date thereof, with interest thereon on the principal balance of \$62,136.94 from the date thereof, said principal amount to accrue interest at the rate of ten (10) percent per annum; principal and interest payable in full on June 1, 1998, does hereby grant and convey unto said Public Trustee the property described on the attached Exhibit labeled "Nazarene/City" situate in the County of Mesa, State of Colorado, **TO HAVE AND TO HOLD** the same together with all appurtenances, in trust nevertheless, that in case of default in the payment of said note or any part thereof or interest thereon, or in the performance of any covenants hereinafter set forth, then upon the beneficiary (note holder's) filing notice of election and demand for sale, said Public Trustee, after advertising notice of said sale weekly, for not less than four weeks, in some newspaper of general circulation in said County, shall sell said property in the manner provided by law in effect at the time of filing said notice and demand, at public auction for cash, at any proper place designated in the notice of sale. Out of the proceeds of said sale said Trustee shall retain or pay first all fees, charges and costs and all monies advanced for taxes, insurance and assessments, or on any prior encumbrance, with interest thereon, and pay the principal and interest due on said note, rendering the overplus (if any) unto the grantor; and after the expiration of the time of redemption, said Trustee shall execute and deliver to the purchaser a deed to the property sold. The beneficiary may purchase said property or any part thereof at such sale.

The grantor covenants that at the time of delivery of these presents, it is seized of said property in fee simple, and that said property is free of encumbrances.

Should the beneficiaries hereunder be made a party to any action affecting this deed of trust property, the grantor agrees that all court costs and a reasonable attorney's fee paid by the beneficiaries shall become additional indebtedness due hereunder. Grantor agrees that it will pay the reasonable attorney's fees of the beneficiary in the event of foreclosure and any and all actions taken or required to initiate foreclosure.

It is agreed that in case of default in payment of said principal or interest or a breach of any of the covenants herein, or any breach in the Development Improvement Agreement signed even date herewith, then said principal sum hereby secured and interest thereon may at the option of the beneficiary become due and payable at once, anything in said note to the contrary notwithstanding and the possession of said property will thereupon be delivered to the beneficiary.

Whenever used herein the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. All of the covenants herein shall be binding upon the respective heirs, personal representatives, successors and assigns of the parties hereto.

Executed this 13th day of December, 1995.

Attest:

The First Church of the Nazarene
of Grand Junction, Colorado

Curtis Sexton
Curtis Sexton, Secretary

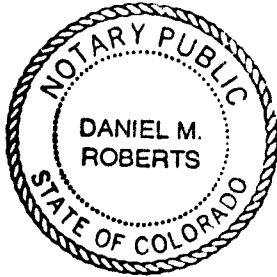
By: Carl N. Baker
Carl N. Baker, President

State of Colorado)
)ss.
County of Mesa)

The foregoing instrument was acknowledged before me this 13th day of December, 1995, by Carl N. Baker as President and attested to by Curtis Sexton as Secretary of the First Church of the Nazarene of Grand Junction.

My commission expires: 12-20-99

Witness my hand and official seal.



Daniel M. Roberts
Notary Public

EXHIBIT "NAZARENE/CITY"

Parcel No. 1: Lot 63 of Mantey Heights Subdivision in Section 7, Township 1 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado,

EXCEPT,

beginning at the Northwest corner of said Lot 63;
thence N 77°56' E 104.9 feet;
thence S 31°15' E 111.8 feet;
thence N 07°46'17" E 27.0 feet;
thence N 58°28' E 115.15 feet;
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thence N 46°31' W 138.0 feet;
thence S 17°44" E 350.0 feet to a point on the South line of said Subdivision;
thence East 125.0 feet to the Point of Beginning,
also known by Mesa County Tax Schedule Number 2943-072-01-011.

MEMORANDUM OF IMPROVEMENTS AGREEMENT & GUARANTEE

Grand Junction Community Development Department

File # SPR-95-172

BOOK 2194 PAGE 547

This memorandum relates to an improvements agreement and guarantee dated November 27, 1995, by and between 1st Church of the Nazarene (Developer) and the City of Grand Junction (City) pertaining to G.J. 1st Ch of the Nazarene (Project) in the City of Grand Junction..

Legal Description: Exhibit A

Whereas, Developer is required to install and construct certain public and private improvements as a condition of approval of the Project, which completion is guaranteed by an improvements agreement and guarantee in the sum of \$ 62,136.94 , and

Whereas, the City of Grand Junction and other agencies possessing regulatory authority over the Project and/or the improvements to be constructed, must inspect the improvements and accept the same before the improvements agreement and guarantee are released or if not constructed the City may use the proceeds or collateral of the guarantee to install the improvements, and

Whereas, the existence of the improvements agreement and guarantee may affect certain rights, responsibilities and actions of the Developer, the City or any other person or entity,

NOW THEREFORE, this memorandum is recorded to be notice to the world of the existence of said improvements agreement and guarantee. This memorandum is not a complete summary of the improvements agreement and guarantee. Provisions of this memorandum shall not be used to interpret the terms or provisions of the improvements agreement and/or guarantee. In the event of conflict between this memorandum and the unrecorded improvements agreement and/or guarantee, the unrecorded improvements agreement and guarantee shall control. The improvements agreement and guarantee may be inspected at the City of Grand Junction Community Development Department, 250 N. 5th Street, Grand Junction, CO.

CITY OF GRAND JUNCTION:

B.N. Larry Turner 11/28/95
Director of Community Development date

DEVELOPER:

Carl N. Banker 11/27/95
date

After recording mail to:

Bill Nebeker
c/o Community Development Department
City of Grand Junction
250 N. 5th Street
Grand Junction, CO 81501

MEMORANDUM OF IMPROVEMENTS AGREEMENT & GUARANTEE
Grand Junction Community Development Department
File # SPR-95-172

This memorandum relates to an improvements agreement and guarantee dated November 27 1995, by and between 1st Church of the Nazarene (Developer) and the City of Grand Junction (City) pertaining to G.J. 1st Ch of the Nazarene (Project) in the City of Grand Junction..

Legal Description:
Exhibit A

Whereas, Developer is required to install and construct certain public and private improvements as a condition of approval of the Project, which completion is guaranteed by an improvements agreement and guarantee in the sum of \$ 12,437.78, and

Whereas, the City of Grand Junction and other agencies possessing regulatory authority over the Project and/or the improvements to be constructed, must inspect the improvements and accept the same before the improvements agreement and guarantee are released or if not constructed the City may use the proceeds or collateral of the guarantee to install the improvements, and

Whereas, the existence of the improvements agreement and guarantee may affect certain rights, responsibilities and actions of the Developer, the City or any other person or entity,

NOW THEREFORE, this memorandum is recorded to be notice to the world of the existence of said improvements agreement and guarantee. This memorandum is not a complete summary of the improvements agreement and guarantee. Provisions of this memorandum shall not be used to interpret the terms or provisions of the improvements agreement and/or guarantee. In the event of conflict between this memorandum and the unrecorded improvements agreement and/or guarantee, the unrecorded improvements agreement and guarantee shall control. The improvements agreement and guarantee may be inspected at the City of Grand Junction Community Development Department, 250 N. 5th Street, Grand Junction, CO.

CITY OF GRAND JUNCTION:

BN Larry Tumm 11/28/95
Director of Community Development / date

DEVELOPER:

Christa & Steve Callister 11/27/95
date

After recording mail to:

Bill Nebeker
c/o Community Development Department
City of Grand Junction
250 N. 5th Street
Grand Junction, CO 81501

EXHIBIT "A"

A tract of land located in the West 1/2 of Lot 7, Section 6, Township 1 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado, being more particularly described as follows:

Commencing at the Southwest corner of said Section 6 from whence the Northwest Corner of said Lot 7 bears N 00°03'19" E for a basis of bearings with all bearings contained herein being relative thereto; thence N 00°03'19" E along the West line of said Lot 7 a distance of 686.19 feet; thence S 89°59'07" E a distance of 40.00 feet to the True Point of Beginning; thence S 89°59'07" E a distance of 596.09 feet to a point on the East line of the West 1/2 of said Lot 7; thence S 00°01'54" W a distance of 636.03 feet to a point on the North right-of-way for F Road as described in Book 1557 at Pages 154-155 in the office of the Mesa County Clerk and Recorder; thence N 90°00'00" W a distance of 588.33 feet, thence N 45°00'00" W a distance of 11.33 feet to a point on the East right-of-way for 28 Road; thence N 00°03'19" E a distance of 628.17 feet to the True Point of Beginning.

CITY OF GRAND JUNCTION
COMMUNITY DEVELOPMENT DEPARTMENT

MEMORANDUM

DATE: December 18, 1995
TO: Stephanie Nye
FROM: Bill Nebeker ^{BW}
Senior Planner
SUBJECT: Original Agreements for 1st Church of the Nazarene Site
Plan Review #SPR-95-172

.....
Enclosed are the following originals for this project:

1. Development Improvements Agreement for half street improvements on 28 Road; cash deposit in the amount of \$12,437.78 has been made with the city. (9 pages) Improvements due 7-29-96. Note: Original recorded Memorandum of Improvements Agreement & Guarantee will be forwarded when it is received. (Recorded 12-18-95, Book 2194, Page 548 & 549).
2. Development Improvements Agreement for paving of interior parking lot for Church at NEC 28 Road & F Street; deed of trust has been recorded guaranteeing paving by 6-1-98. (12 pages). Estimated amount of paving is \$62,136.94. Note: Original recorded Memorandum of Improvements Agreement & Guarantee will be forwarded when it is received. (Recorded 12-18-95, Book 2194, Page 547 & 549). (You now have both original copies.) Original Deed of Trust will be forwarded when it is received.
3. Original recorded Avigation Easement will be forwarded when it is received.

If you have any questions please call me at 244-1447.

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. Parties: The parties to this Development Improvements Agreement ("the Agreement") are 1st Church of the Nazarene of Grand Junction ("the Developer") and THE CITY OF GRAND JUNCTION, Colorado ("the City").

THEREFORE, for valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

2. Effective Date: The Effective Date of the Agreement will be the date that this agreement is recorded which is not sooner than recordation of the _____

RECITALS

The Developer seeks permission to develop property within the City to be known as 1st Church of the Nazarene of G.J., which property is more particularly described on Exhibit "A" attached and incorporated by this reference (the "Property"). The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the development and limiting the harmful effects of substandard developments. The purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself and is not executed for the benefit of materialmen, laborers, or others providing work, services or material to the development or for the benefit of the purchasers or users of the development. The mutual promises, covenants, and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and the City's land development ordinances.

DEVELOPER'S OBLIGATION

3. Improvements: The Developer will design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit "B" attached and incorporated by this reference. The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. The Developer's obligation to complete the improvements is and will be independent of any obligations of the City contained herein.

4. Security: To secure the performance of its obligations under this Agreement (except its obligations for warranty under paragraph 6), the Developer will enter into an agreement which complies with either option identified in paragraph 28, or other written agreement between the City and the Developer.

5. Standards: The Developer shall construct the Improvements according to the standards and specifications required by the City Engineer or as adopted by the City.

6. Warranty: The Developer warrants that the Improvements, each and every one of them, will be free from defects for a period of twelve (12) months from the date that the City Engineer accepts or approves the improvements completed by the Developer.

7. Commencement and Completion Periods: The improvements, each and every one of them, will be completed within 8 months from the Effective Date of this Agreement (the "Completion Period").

8. Compliance with Law: The developer shall comply with all relevant federal, state and local laws, ordinances, and regulations in effect at the time of final approval when fulfilling its obligations under this Agreement.

9. Notice of Defect: The Developer's Engineer shall provide timely notice to the Developer, contractor, issuer of security and the City Engineer whenever inspection reveals, or the Developer's Engineer otherwise has knowledge, that an improvement does not conform to City standards and any specifications approved in the

development application or is otherwise defective. The developer will have thirty (30) days from the issuance of such notice to correct the defect.

10. **Acceptance of Improvements:** The City's final acceptance and/or approval of improvements will not be given or obtained until the Developer presents a document or documents, for the benefit of the City, showing that the Developer owns the improvements in fee simple and that there are no liens, encumbrances, or other restrictions on the improvements. Approval and/or acceptance of any improvements does not constitute a waiver by the City of any rights it may have on account of any defect in or failure of the improvement that is detected or which occurs after approval and/or acceptance.

11. **Use of Proceeds:** The City will use funds deposited with it or drawn pursuant to any written disbursement agreement entered into between the parties only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements.

12. **Events of Default:** The following conditions, occurrences or actions will constitute a default by the Developer during the Completion Period:

- a. Developer's failure to complete each portion of the Improvements in conformance with the agreed upon time schedule; the City may not declare a default until a fourteen (14) calendar day notice has been given to the Developer;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any improvement within the applicable correction period; the City may not declare a default until a fourteen (14) calendar day notice has been given to the Developer;
- c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; in such event the City may immediately declare a default without prior notification to the Developer;
- d. Notification to the City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer.

13. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. For improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit "B" will be prima facie evidence of the minimum cost of completion; however, neither that amount nor the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow establish the maximum amount of the Developer's liability.

14. **City's Rights Upon Default:** When any event of default occurs, the City may draw on the letter of credit, escrowed collateral, or proceed to collect any other security to the extent of the face amount of the credit or full amount of escrowed collateral, cash, or security less ninety percent (90%) of the estimated cost (as shown on Exhibit "B") of all improvements previously accepted by the City or may exercise its rights to disbursement of loan proceeds or other funds under the improvements disbursement agreement. The City will have the right to complete improvements itself or it may contract with a third party for completion, and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes

of constructing, reconstructing, maintaining, and repairing such improvements. Alternatively, the City may assign the proceeds of the letter of credit, the improvements disbursement agreement, the escrowed collateral, cash, or other funds or assets to a subsequent developer (or a lender) who has acquired the development by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished improvements and provides reasonable security for the obligation. In addition, the City may also enjoin the sale, transfer, or conveyance of lots within the development, until the improvements are completed or accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

15. **Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees and assigns harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained, or alleged to be received or sustained, by any person or entity in connection with, or on account of, any act or failure to act concerning the performance of work at the development or the Property pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named in an action concerning the performance of work or the failure to perform work pursuant to this Agreement. The Developer is not an agent or employee of the City.

16. **No Waiver:** No waiver of any provision of this Agreement by the City will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both City and Developer; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any improvement.

17. **Amendment or Modification:** The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or his authorized officer. Such amendment or modification shall be properly notarized before it shall be deemed effective.

18. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party; any City obligation under this section shall be subject to the overriding provisions of section 15, above. If the court awards relief to both parties, the attorney's fees may be equitably divided between the parties by the decision maker, subject to the overriding provisions of section 15, above.

19. **Vested Rights:** The City does not warrant by this Agreement that the Developer is entitled to any other approval(s) required by the City, if any, before the Developer is entitled to commence development or to transfer ownership of property in the development.

20. **Third Party Rights:** No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.

21. **Time:** For the purpose of computing the Abandonment and Completion Periods, and time periods for City action, such times in which war, civil disasters, or acts of God occur or exist will not be included if such times prevent the Developer or City from performing its obligations under the Agreement.

22. **Severability:** If any part, term, or provision of this Agreement is held by a court or courts of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.

23. **Benefits/burdens:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors, and assigns of the Developer, and shall be a covenant(s) running with the Property. There is no prohibition on the right of the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations under the improvements disbursement agreement if it accepts new security from any developer or lender who obtains the Property. However, no other act of the City will constitute a release of the original Developer from his liability under this Agreement.

24. **Notice:** Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

If to Developer: First Church of the Nazarene
1000 N. 9th Street #8
Grand Junction, CO 81501

If to City: City of Grand Junction
Community Development Director
250 N. 5th Street
Grand Junction, Colorado 81501

25. **Recordation:** Developer shall pay for all costs to record a copy of this Agreement in the Clerk and Recorder's Office of Mesa County, Colorado.

26. **Immunity:** Nothing contained in this Agreement constitutes a waiver of the City's immunity under any applicable law.

27. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement whether arising out of or relating to the Agreement, letter of credit, improvements disbursements agreement, or cash escrow agreement or any action to collect security will be deemed to be proper only if such action is commenced in Mesa County, Colorado. The Developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

28. **Improvements guarantee.** The improvements guarantee required by the City to ensure that the improvements described in the improvements agreement are constructed to City standards may be in one of the following forms: (If I or II, then attach as Exhibit C.)

- (I) disbursement agreement between a bank doing business in Mesa County and the City, or
- (II) a good and sufficient letter of credit acceptable to the City, or
- (III) depositing with the City cash equivalent to the estimated cost of construction of the improvements under the following terms:

(a) The Finance Department of the City may act as disbursing agent for disbursements to Developer's contractor(s) as required improvements are completed and accepted if agreed to in writing pursuant to a disbursement agreement; and

(b) The Finance Department of the City will disburse any deposit or any portion thereof, with no more than three checks, at no charge. If disbursements are made in excess of three checks, the developer will be charged \$100 per transaction for every transaction in excess of three.

EXHIBIT "A"

TYPE LEGAL DESCRIPTION BELOW, USING ADDITIONAL SHEETS AS NECESSARY. USE SINGLE SPACING WITH A ONE (1) INCH MARGIN ON EACH SIDE.

A tract of land located in the West 1/2 of Lot 7, Section 6, Township 1 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado, being more particularly described as follows:

Commencing at the Southwest corner of said Section 6 from whence the Northwest Corner of said Lot 7 bears N 00°03'19" E for a basis of bearings with all bearings contained herein being relative thereto; thence N 00°03'19" E along the West line of said Lot 7 a distance of 686.19 feet; thence S 89°59'07" E a distance of 40.00 feet to the True Point of Beginning; thence S 89°59'07" E a distance of 596.09 feet to a point on the East line of the West 1/2 of said Lot 7; thence S 00°01'54" W a distance of 636.03 feet to a point on the North right-of-way for F Road as described in Book 1557 at Pages 154-155 in the office of the Mesa County Clerk and Recorder; thence N 90°00'00" W a distance of 588.33 feet, thence N 45°00'00" W a distance of 11.33 feet to a point on the East right-of-way for 28 Road; thence N 00°03'19" E a distance of 628.17 feet to the True Point of Beginning.

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL
(Page 1 of 3)

DATE: 11-27-95
 NAME OF DEVELOPMENT: First Church of the Nazarene
 LOCATION: NEC 28 & Patterson Roads
 PRINTED NAME OF PERSON PREPARING: Clark A. Childers (243-3125)
 (REF: 1995 Nat'l Construction Estimator)

| | UNITS | TOTAL QTY. | UNIT PRICE | TOTAL AMOUNT |
|--|-------|---------------|---------------|-----------------|
| I. SANITARY SEWER | | | | |
| 1. Clearing and grubbing | _____ | _____ | _____ | _____ |
| 2. Cut and remove asphalt | _____ | _____ | _____ | _____ |
| 3. PVC sanitary sewer main (incl. trenching, bedding & backfill) | _____ | _____ | _____ | _____ |
| 4. Sewer Services (incl. trenching, bedding, & backfill) | _____ | _____ | _____ | _____ |
| 5. Sanitary sewer manhole(s) | _____ | _____ | _____ | _____ |
| 6. Connection to existing manhole(s) | _____ | _____ | _____ | _____ |
| 7. Aggregate Base Course | _____ | _____ | _____ | _____ |
| 8. Pavement replacement | _____ | _____ | _____ | _____ |
| 9. Driveway restoration | _____ | _____ | _____ | _____ |
| 10. Utility adjustments | _____ | _____ | _____ | _____ |
| II. DOMESTIC WATER | | | | |
| 1. Clearing and grubbing | _____ | _____ | _____ | _____ |
| 2. Cut and remove asphalt | _____ | _____ | _____ | _____ |
| 3. Water Main (incl. excavation, bedding, backfill, valves and appurtenances) | _____ | _____ | _____ | _____ |
| 4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances) | _____ | _____ | _____ | _____ |
| 5. Connect to existing water line | _____ | _____ | _____ | _____ |
| 6. Aggregate Base Course | _____ | _____ | _____ | _____ |
| 7. Pavement Replacement | _____ | _____ | _____ | _____ |
| 8. Utility adjustments | _____ | _____ | _____ | _____ |
| III. STREETS | | | | |
| 1. Clearing and grubbing | _____ | _____ | _____ | _____ |
| 2. Earthwork, including excavation and embankment construction | _____ | _____ | _____ | _____ |
| 3. Utility relocations | _____ | _____ | _____ | _____ |

| | | | | |
|--|-------|-------|-------|-------|
| 4. Aggregate sub-base course (square yard) | _____ | _____ | _____ | _____ |
| 5. Aggregate base course (square yard) | _____ | _____ | _____ | _____ |
| 6. Sub-grade stabilization | _____ | _____ | _____ | _____ |
| 7. Asphalt or concrete pavement (square yard) | _____ | _____ | _____ | _____ |
| 8. Curb, gutter & sidewalk (linear feet) | _____ | _____ | _____ | _____ |
| 9. Driveway sections (square yard) | _____ | _____ | _____ | _____ |
| 10. Crosspans & fillets | _____ | _____ | _____ | _____ |
| 11. Retaining walls/structures | _____ | _____ | _____ | _____ |
| 12. Storm drainage system | _____ | _____ | _____ | _____ |
| 13. Signs and other traffic control devices | _____ | _____ | _____ | _____ |
| 14. Construction staking | _____ | _____ | _____ | _____ |
| 15. Dust control | _____ | _____ | _____ | _____ |
| 16. Street lights (each) | _____ | _____ | _____ | _____ |
| IV. LANDSCAPING | | | | |
| 1. Design/Architecture | _____ | _____ | _____ | _____ |
| 2. Earthwork (includes top soil, fine grading, & berming) | _____ | _____ | _____ | _____ |
| 3. Hardscape features (includes walls, fencing, and paving) | _____ | _____ | _____ | _____ |
| 4. Plant material and planting | _____ | _____ | _____ | _____ |
| 5. Irrigation system | _____ | _____ | _____ | _____ |
| 6. Other features (incl. statues, water displays, park equipment, and outdoor furniture) | _____ | _____ | _____ | _____ |
| 7. Curbing | _____ | _____ | _____ | _____ |
| 8. Retaining walls and structures | _____ | _____ | _____ | _____ |
| 9. One year maintenance agreement | _____ | _____ | _____ | _____ |
| V. MISCELLANEOUS | | | | |
| 1. Design/Engineering | _____ | _____ | _____ | _____ |
| 2. Surveying | _____ | _____ | _____ | _____ |
| 3. Developer's inspection costs | _____ | _____ | _____ | _____ |
| 4. Quality control testing | _____ | _____ | _____ | _____ |
| 5. Construction traffic control | _____ | _____ | _____ | _____ |
| 6. Rights-of-way/Easements | _____ | _____ | _____ | _____ |

| | | | | |
|---|----|---|-------------|-------------|
| 7. City inspection fees | LS | 1 | \$ 500.00 | \$ 500.00 |
| 8. Permit fees | | | | |
| 9. Recording costs | | | | |
| 10. Bonds | | | | |
| 11. Newsletters | | | | |
| 12. General Construction Supervision | | | | |
| 13. Other $\frac{1}{2}$ Street Improvements | LS | 1 | \$11,937.78 | \$11,937.78 |
| 14. Other <u>28th Road</u> | | | | |

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ \$12,437.78

Curtis R. Sertan Carl H. Bole 11/27/95
SIGNATURE OF DEVELOPER DATE
(If corporation, to be signed by President and attested to by Secretary together with the corporate seals.)

I have reviewed the estimated costs and time schedule shown above and, based on the plan layouts submitted to date and the current costs of construction, I take no exception to the above.

Jay Kola 11-28-95
CITY ENGINEER DATE

BN James Timm 11/28/95
COMMUNITY DEVELOPMENT DATE

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. Parties: The parties to this Development Improvements Agreement ("the Agreement") are The First Church of the Nazarene of Grand Junction, ("the Developer") and The City of Grand Junction, a Colorado home rule municipality ("the City").

2. Effective Date: The Effective Date of this Agreement is the date this Agreement is signed and sealed by both parties.

RECITALS

The Developer seeks permission to develop that certain real property situate within the limits of the City of Grand Junction, which property is more particularly described on Exhibit "A" which is attached hereto and incorporated herein by reference. The City seeks to protect the health, safety and general welfare of the community by requiring the completion of parking lot improvements in the development and limiting the harmful effects of substandard developments. The purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself and is not executed for the benefit of materialmen, laborers, or others providing work, services or material to the development or for the benefit of the purchasers or users of the development. The mutual promises, covenants and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and the City's land development ordinances.

THEREFORE, for valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

3. Improvements: The Developer will design, construct and install, at its own expense, those on-site parking lot improvements listed on Exhibit "B" attached hereto and incorporated herein by reference ("the Improvements"). The Developer's obligation to complete the Improvements is and will be independent of any obligations of the City contained herein and is not conditioned upon the commencement of improvements within the development.

4. Security: To secure the performance of its obligations under this Agreement (except its obligations for warranty under paragraph 6), the developer will execute and deliver a promissory note secured by a deed of trust encumbering that certain real property described on Exhibit "C" attached hereto and incorporated herein by reference ("the Secured Property").

5. Standards: The Developer will construct the Improvements according to the standards and specifications required by the City Engineer or as adopted by the City.

6. Warranty: The Developer warrants that the Improvements will be free from defects for a period of twelve (12) months from the date that they are installed.

7. Commencement and Completion Periods: The Developer will commence work on the Improvements on or before March 1, 1998, and the Improvements will be completed on or before June 1, 1998.

8. Compliance with Law: The Developer will comply with all relevant federal, state and local laws, ordinances and regulations in effect at the time of final development when fulfilling its obligations under this Agreement.

9. Inspection and Certification: The City will inspect the Improvements as they are completed and, if acceptable to the City Engineer, certify the Improvements as being in compliance with applicable standards and specifications. Such inspection and certification, if appropriate, will occur within 14 days of notice by the Developer that it desires the City to inspect the Improvements. Before obtaining certification of the Improvements, the Developer will present to the City valid lien waivers from all persons providing materials or performing work on the Improvements. Certification by the City Engineer does not constitute a waiver by the City of the right to proceed against the Developer and/or any security caused by defects in or failure of the Improvements which is detected or which occurs following such certification.

10. Approval of Improvements: Approval of the Improvements by the City does not constitute a waiver by the City of any rights it may have caused by any defect in or failure of the Improvements which is detected or which occurs after the approval and/or acceptance.

11. Notice of Defect: The Developer's engineer will provide timely notice to the Developer, contractor, issuer of security and the City engineer whenever inspection reveals, or the Developer's engineer otherwise has knowledge, that the Improvements, or any portion thereof, do not conform to City standards and any specifications approved in the development application or is otherwise defective. The Developer will have thirty (30) days from the issuance of such notice to correct or substantially correct the defect(s).

12. Use of Proceeds: The City will use funds obtained by action on the security for the purpose of recovering the City's fees and costs, including attorneys fees, and completing the Improvements or correcting defects in or failure of the Improvements.

13. Events of Default: The following conditions, occurrences or actions will constitute a default by the Developer during the Completion Period:

- a. The Developer's failure to complete the Improvements in conformance with the agreed upon time schedule; the City may not declare a default until a fourteen (14) calendar day notice has been given to the Developer;
- b. The Developer's failure to correct defective construction of the Improvements within the applicable correction period; in such event the City may immediately declare a default without further notice to the Developer;
- c. The Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy connected with the Developer; in such event the City may immediately declare a default without

prior notification to the Developer;

- d. Notification to the City, by any lender with a lien on the Secured Property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Secured Property or a portion of the Secured Property or assignment or conveyance of the Secured Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer;

14. Measure of Damages: The measure of damages for breach of this Agreement by the Developer will be the reasonable costs of satisfactorily completing the Improvements plus reasonable City administrative expenses and any costs of collection, pursuant to the deed of trust. For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit "B" will be prima facie evidence of the minimum costs of completion; however, neither that amount nor any other financial commitment by the Developer shall serve to establish the maximum amount of the Developer's obligations.

15. City's Rights Upon Default: When any event of default occurs, the City may declare the note due in full ("acceleration"), and proceed to foreclose upon the Secured Property. The City will have the right to complete the Improvements itself or it may contract with or assign to a third party for completion, and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the property for the purposes of constructing, reconstructing and repairing the Improvements. Alternatively, the City may assign the promissory note and deed of trust to a subsequent third party who will then have the same rights of completion as the City if and only if the subsequent third party agrees in writing to complete the unfinished, damaged or sub-standard Improvements and provides reasonable security for the obligation. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

16. Improvements Guarantee: The Improvements Guarantee required by the City Code to ensure that the Improvements are constructed to City standards is in the form of a promissory note and secured by a deed of trust. In any event, the Developer promises to construct the Improvements to the satisfaction of the City Engineer in accordance with the City approved plans and specifications.

17. Indemnification: The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the development or the Property pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance

If to Developer:

First Church of the Nazarene of Grand Junction
1000 North 9th Street, Suite 8
Grand Junction, CO 81501

25. Scope: This Agreement 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 upon the parties.

26. Recordation: The Developer shall pay for all costs to record this Agreement in the office of the Mesa County Clerk and Recorder.

27. Immunity: Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under any applicable state law.

28. Personal Jurisdiction and Venue: Personal jurisdiction and venue for any civil action commenced by either party to this Agreement whether arising out of or relating to this Agreement or any action to collect security will be deemed to be proper only if such action is commenced in Mesa County, Colorado. The Developer expressly waives its right to bring such action in or to remove such action to any other court whether state or federal.

IN WITNESS WHEREOF, the parties to this agreement this Agreement has been executed this 13th day of December, 1995, the Effective Date.



Stephanie Nye
Stephanie Nye, City Clerk

The City of Grand Junction,
a Colorado home rule municipality

By: Mark K. Achen
Mark K. Achen, City Manager

Attest:

The First Church of the Nazarene
of Grand Junction

* Curtis Sexton
Curtis Sexton, Secretary

By: Carl N. Baker
Carl N. Baker, President

EXHIBIT "A"

A tract of land located in the West 1/2 of Lot 7 in Section 6, Township 1 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado, being more particularly described as follows:

Commencing at the Southwest corner of said Section 6 from whence the Northwest Corner of said Lot 7 bears N 00°03'19" E for a basis of bearings with all bearings contained herein being relative thereto; thence N 00°03'19" E along the West line of said Lot 7 a distance of 686.19 feet; thence S 89°59'07" E a distance of 40.00 feet to the True Point of Beginning; thence S 89°59'07" E a distance of 596.09 feet to a point on the East line of the West 1/2 of said Lot 7; thence S 00°01'54" W along the East line of the West 1/2 of said Lot 7 a distance of 636.03 feet to a point on the North right-of-way for F Road as described in Book 1557 at Pages 154-155 in the office of the Mesa County Clerk and Recorder; thence N 90°00'00" W a distance of 588.33 feet; thence N 45°00'00" W a distance of 11.33 feet to a point on the East right-of-way for 28 Road; thence N 00°03'19" E along the East right-of-way for 28 Road a distance of 628.17 feet to the True Point of Beginning,

EXCEPTING THEREFROM the following described tract of land, to wit:

Commencing at the Southwest corner of said Section 6 from whence the Northwest Corner of Lot 7 in said Section 6 bears N 00°03'19" E for a basis of bearings with all bearings contained herein being relative thereto; thence N 00°03'19" E along the West line of said Lot 7 a distance of 686.19 feet; thence S 89°59'07" E a distance of 40.00 feet True Point of Beginning; thence S 89°59'07" E a distance of 596.09 feet to a point on the East line of the West 1/2 of said Lot 7; thence S 00°01'54" W a distance of 165.00 feet; thence N 89°59'07" W a distance of 187.19 feet; thence S 00°01'06" E a distance of 25.00 feet; thence N 89°59'07" W a distance of 409.0 feet to a point on the East right-of-way for 28 Road; thence N 00°03'19" E a distance of 190.0 feet to the True Point of Beginning.

EXHIBIT "C"

Parcel No. 1: Lot 63 of Mantey Heights Subdivision in Section 7, Township 1 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado,

EXCEPT,

beginning at the Northwest corner of said Lot 63;
thence N 77°56' E 104.9 feet;
thence S 31°15' E 111.8 feet;
thence N 07°46'17" E 27.0 feet;
thence N 58°28' E 115.15 feet;
thence N 77°56' E 30.0 feet to the Northeast corner of said Lot 63;
thence S 13°34' E 158.39 feet;
thence S 82°14'43" W 262.81 feet;
thence N 00°11' E 125.74 feet to the Point of Beginning,
also known by Mesa County Tax Schedule Number 2943-072-01-023.

Parcel No. 2: Lot 65 of Mantey Heights Subdivision in Section 7, Township 1 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado,

EXCEPT,

beginning at a point which is 313.84 feet West of the Southeast corner of said Subdivision;
thence N 17°44' W 520.13 feet;
thence N 31°40' W 274.33 feet;
thence N 13°12' W 179.62 feet;
thence West 179.62 feet;
thence S 31°25' W 170.0 feet;
thence S 57°33' E 86.0 feet;
thence S 11°09' E 37.0 feet;
thence S 27°08' E 478.1 feet;
thence N 46°31' W 138.0 feet;
thence S 17°44" E 350.0 feet to a point on the South line of said Subdivision;
thence East 125.0 feet to the Point of Beginning,
also known by Mesa County Tax Schedule Number 2943-072-01-011.

PROMISSORY NOTE

U.S. \$62,136.94
Mesa County, Colorado

Grand Junction,

December 13, 1995

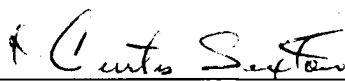
1. FOR VALUE RECEIVED, the undersigned First Church of the Nazarene of Grand Junction, Colorado (Borrower), promises to pay to the City of Grand Junction, or order, (Note Holder), the principal sum of Sixty Two Thousand One Hundred Thirty Six and 94/100 U.S. Dollars (\$62,136.94), with interest thereon from December 13, 1995, until paid, at the rate of ten percent (10%) per annum; however, if the Development Improvements Agreement terms and work is/are satisfactorily completed as set forth in the Development Improvements Agreement, then the City will waive accrued interest and principal. If the Development Improvements Agreement terms and work is/are not satisfactorily completed, principal and interest shall be payable at City Hall, 250 North 5th Street, Grand Junction, CO 18501, or at such other location as Holder may designate, in one payment of \$62,136.94 due on June 1, 1998.
2. Borrower shall pay to the Note Holder a late charge of ten percent (10%) of principal if payment is not received by the Note Holder when payment is due.
3. Payments received for application to this Note shall be applied first to the payment of late charges, if any, second to the payment of accrued interest specified above, and the balance applied in reduction of the principal amount hereof.
4. Borrower and all other makers, sureties, guarantors, and endorsers hereby waive presentment, notice of dishonor and protest, and they hereby agree to any extensions of time of payment and partial payments before, at, or after maturity. This Note shall be the joint and several obligation of Borrower and all other makers, sureties, guarantors and endorsers, and their successors and assigns.
5. Any notice to Borrower provided for in this Note shall be in writing and shall be given and be effective upon (1) delivery to Borrower or (2) mailing such notice by first-class U.S. mail, addressed to Borrower at the Borrower's address stated below, or to such other address as Borrower may designate by notice to the Note Holder. Any notice to the Note Holder shall be in writing and shall be given and be effective upon (1) delivery to Note Holder or (2) by mailing such notice by first-class U.S. mail, to the Note Holder at the address stated in the first paragraph of this Note, or to such other address as Note Holder may designate by notice to Borrower.

6. The indebtedness evidenced by this Note is secured by a Deed of Trust dated December 13, 1995, and until released said Deed of Trust contains additional rights of the Note Holder. Such rights may cause Acceleration of the indebtedness evidenced by this Note. Reference is made to said Deed of Trust for such additional terms. Said Deed of Trust grants rights in the property described in the attached Exhibit labeled "Nazarene/City" owned by the Borrower as of the date of execution hereof.

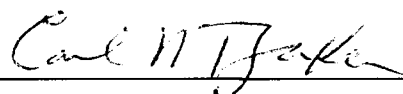
Borrower's address is The First Church of the Nazarene of Grand Junction, 1000 North 9th Street, Suite 8, Grand Junction, CO 81501.

Attest:

The First Church of the Nazarene
of Grand Junction, Colorado



Curtis Sexton, Secretary

By: 

Carl N. Baker, President

EXHIBIT "NAZARENE/CITY"

Parcel No. 1: Lot 63 of Mantey Heights Subdivision in Section 7, Township 1 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado,

EXCEPT,

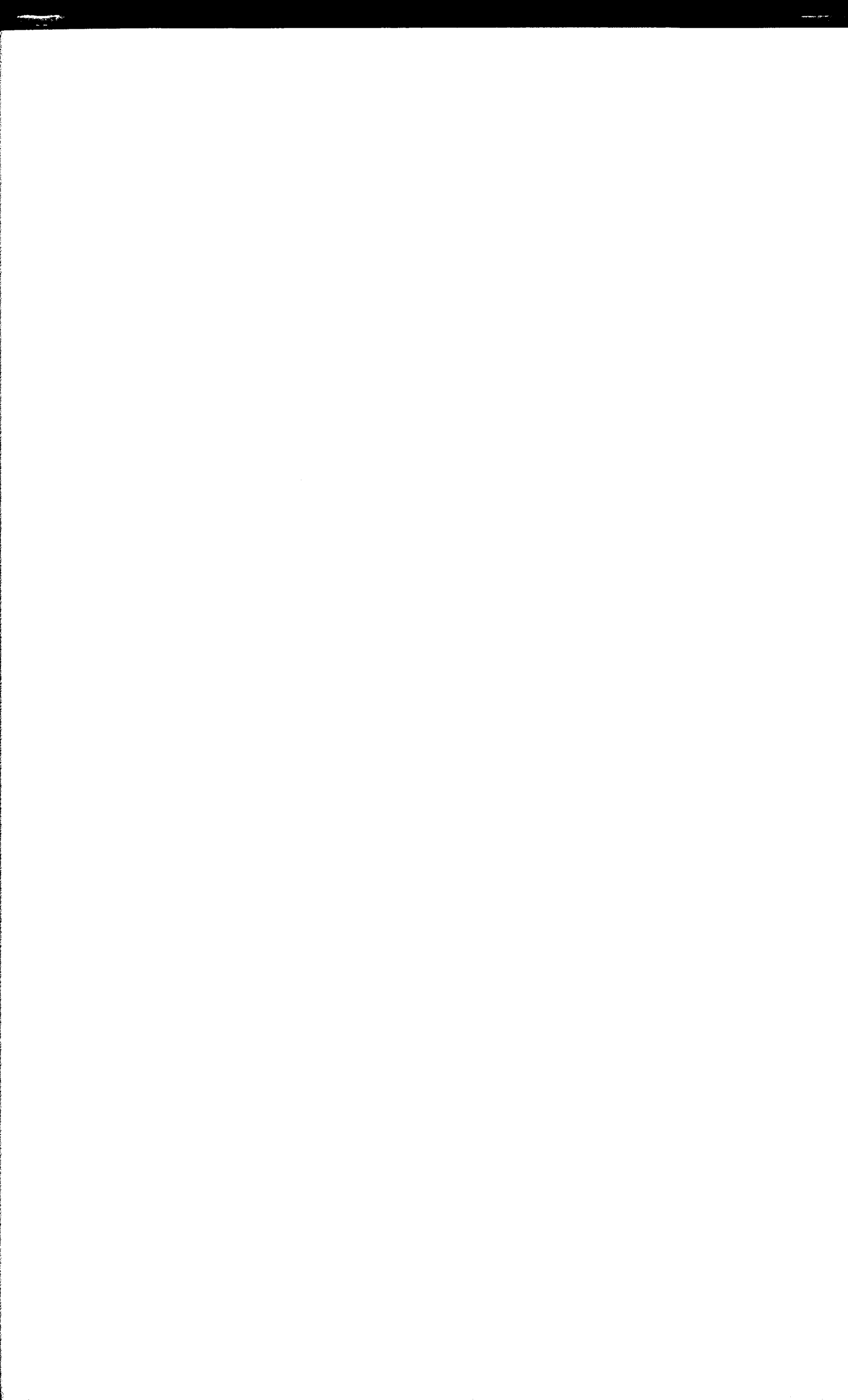
beginning at the Northwest corner of said Lot 63;
thence N 77°56' E 104.9 feet;
thence S 31°15' E 111.8 feet;
thence N 07°46'17" E 27.0 feet;
thence N 58°28' E 115.15 feet;
thence N 77°56' E 30.0 feet to the Northeast corner of said Lot 63;
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Parcel No. 2: Lot 65 of Mantey Heights Subdivision in Section 7, Township 1 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado,

EXCEPT,

beginning at a point which is 313.84 feet West of the Southeast corner of said Subdivision;
thence N 17°44' W 520.13 feet;
thence N 31°40' W 274.33 feet;
thence N 13°12' W 179.62 feet;
thence West 179.62 feet;
thence S 31°25' W 170.0 feet;
thence S 57°33' E 86.0 feet;
thence S 11°09' E 37.0 feet;
thence S 27°08' E 478.1 feet;
thence N 46°31' W 138.0 feet;
thence S 17°44" E 350.0 feet to a point on the South line of said Subdivision;
thence East 125.0 feet to the Point of Beginning,
also known by Mesa County Tax Schedule Number 2943-072-01-011.





REQUEST FOR RELEASE OF DEED OF TRUST AND RELEASE

JANUARY 4, 1999 Date
First Church of the Nazarene of Grand Junction Grantor (Borrower)
The City of Grand Junction Original Beneficiary (Lender)
December 13, 1995 Date of Deed of Trust
December 18, 1995 Recording Date of Deed of Trust
Mesa County of Recording
1740080 Reception and/or Film Nos. of
Reception No. Film No. Recorded Deed of Trust
2194 Book and Page of Deed of Trust
Book No. Page No.

TO THE PUBLIC TRUSTEE OF

Mesa County (The Public Trustee to which the above Deed of Trust conveys the said property.)
Please execute this release, as the indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully satisfied.

The City of Grand Junction, a Colorado home rule municipality
Current Owner and Holder of the Indebtedness Secured by Deed of Trust (Lender)

Mark K. Achen, City Manager

Name and Title of Agent or Officer of Current Owner and Holder

Mark K. Achen

Signature

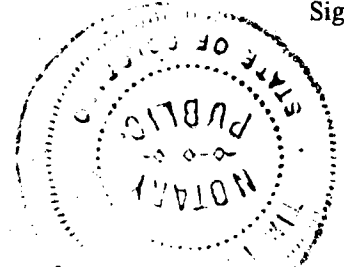
Signature

State of Colorado, County of Mesa

The foregoing request for release was acknowledged before me on

DECEMBER 24, 1998 (date) by
Mark K. Achen as City Manager of the City of Grand Junction,
a Colorado home rule municipality.

5/11/2002 Date Commission Expires



Jim Woodmancee

Notary Public

RELEASE OF DEED OF TRUST

WHEREAS, the above referenced Grantor(s), by Deed of Trust, conveyed certain real property described in said Deed of Trust to the Public Trustee of the County referenced above, in the State of Colorado, to be held in trust to secure the payment of the indebtedness referred to therein; and

WHEREAS, the indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully satisfied as set forth in the written request of the current owner and holder of the said indebtedness.

NOW, THEREFORE, in consideration of the premises and the payment of the statutory sum, receipt of which is hereby acknowledged, I, as the Public Trustee in the County first referenced above, do hereby remise, release and quitclaim unto the present owner or owners of said real property, and unto the heirs, successors and assigns of such owner or owners forever, all the right, title and interest which I have under and by virtue of the aforesaid Deed of Trust in the real estate described therein, to have and to hold the same, with all the privileges and appurtenances thereunto belonging forever; and further I do hereby fully and absolutely release, cancel and forever discharge said Deed of Trust.



Gena M. Harrison

Public Trustee

by _____
Deputy Public Trustee

State of Colorado, County of

Mesa

The foregoing instrument was acknowledged before me on
January 4, 1999 (date) by

Gena M Harrison as the

Public Trustee of

Mesa County, Colorado.

1/31/01 Date Commission Expires



Witness My Hand and Seal

Janet Weishaar

Notary Public