

GAU94NBE

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENTS AGREEMENT

NAME OF AGENCY OR CONTRACTOR: GAUMER REALTY, INC. BY LYLE GAUMER

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: NEW BEGINNINGS
SUBDIVISION, 29 ¼ ROAD TO F ROAD, DEED OF TRUST, PROMISSORY NOTE

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1994

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement") are Gaurmer Realty, Inc., CG Construction and Lyle Gaurmer ("the Developer") and **THE CITY OF GRAND JUNCTION, Colorado** ("the City").

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2. **Effective Date:** The Effective Date of this Agreement is the earlier of: the date it is signed, the date that this agreement is recorded, or than recordation of the plat for any portion of New Beginnings Subdivision.

RECITALS

1703489 03:57 PM 12/09/94
MONIKA TODD CLK&REC MESA COUNTY CO

The Developer seeks permission to develop property within the City to be known as New Beginnings Subdivision, 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, including premature subdivision which leaves property undeveloped and unproductive. 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:

DEVELOPER'S OBLIGATIONS

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 Improvements"). 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 and is not conditioned on the commencement of improvements within the development nor on the sale of any lots.

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.

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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, 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, in writing, the Improvements and the dedication of the last improvement completed by the Developer.

7. Commencement and Completion Periods: The Developer will commence work on the Improvements within 20 days of the effective date of this Agreement, and each and every one of the Improvements will be completed within one year of the date this agreement is signed (the "Completion Period").

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 City approval associated with the development when fulfilling its obligations under this Agreement.

9. Dedication: The Developer will dedicate to the City those Improvements and rights-of-way required by the City Engineer. The Developer shall present a policy of title insurance, where appropriate, and conveyancing documents for the benefit of the City showing that the Developer owns the improvement in fee simple and that there are no liens, encumbrances, or other restrictions on the improvement unacceptable to the City in its reasonable judgment. Acceptance of the dedication of any improvement does not constitute a waiver by the City of the right to proceed against any security or the Developer on account of any defect in or failure of the improvement that is detected or which occurs after the acceptance of the dedication.

10. Inspection and Certification: The City will inspect the Improvements as they are completed and, if acceptable to the City Engineer, certify such improvement as being in compliance with the standards and specifications. Such inspection and certification, if appropriate, will occur within 14 days of notice by the Developer that he desires to have the City inspect an improvement. Before obtaining certification of any such improvement, the Developer will present to the City valid lien waivers from all persons providing materials or performing work on the improvement for which certification is sought. 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 on account of defects in or failure of any

improvement that is detected or which occurs following such certification.

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 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 or substantially correct the defect.

12. **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 and until Developer tenders executed conveyancing documents. Approval and/or Acceptance of any Improvement 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 the approval and/or acceptance.

13. **Use of Proceeds:** The City will use funds obtained by action on the promissory note and/or the deed of trust only for the purpose of recouping the City's fees and costs, including attorneys fees, and completing the Improvements or correcting defects in or failure of the Improvements.

14. **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 or if no such schedule has been agreed upon, within 12 months of final plat approval; 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 correct defective construction of any Improvement within the applicable correction period; in such event the City may immediately declare a default without further notice 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.
- f. Loss or threatened loss of security described in the deed of trust encumbering Lot 4, Block 1 of Sierra Vista Subdivision, Mesa County, Colorado.

15. **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 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 cost of completion; however, neither that amount or the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow establish the maximum amount of the Developer's liability.

16. **City's Rights Upon Default:** When any event of default occurs, the City may declare the note due in full (acceleration), draw on any letter of credit, escrowed collateral, and/or proceed to collect or foreclose upon any other security to the extent of the face amount of the credit or full amount of escrowed collateral, cash, or security, plus fees and costs, 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 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, 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, including promissory note(s) and deed(s) of trust, 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 and accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

17. The **improvements guarantee** required by the City Code to ensure that the Improvements described in the improvements agreement are constructed (to City standards) is in the form of a promissory note secured by a deed of trust. In any event, the Developer promises to construct the required Improvements to the satisfaction of the City Engineer, in accordance with the City approved plans and specifications.

18. **Conditions of Acceptance:** The City shall have no responsibility or liability with respect to any street, or other Improvement(s), notwithstanding the use of the same by the public, unless the street or other Improvements shall have been accepted by the City, and then only after the expiration of the last applicable warranty period.

Prior to requesting final acceptance of streets, storm drainage facilities, or other required Improvements, the Developer shall furnish to the City Engineer as-built drawings in reproducible form and copies of results of all construction control tests required by City specifications.

If the City allows a street to be constructed in stages, the Developer of the first one-half street opened for traffic shall construct the adjacent curb, gutter and sidewalk in the standard location and shall construct the required width of pavement from the edge of gutter on his side of the street to enable an initial two-way traffic operation without on-street parking. The Developer is also responsible for end-transitions, intersection paving, drainage facilities, and adjustments to existing utilities necessary to open the street to traffic.

19. **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 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 of work pursuant to this Agreement except where such suit is brought by the

Developer against the City. The Developer is not an agent or employee of the City.

20. **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.

21. **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 will be properly notarized before it is effective.

22. **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. If the court awards relief to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.

23. **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.

24. **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.

25. **Time:** For the purpose of computing the time for completion, 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.

26. **Severability:** If any part, term, or provision of this Agreement is held by the courts 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.

27. **Benefits:** 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 will 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 agreement if it accepts new security and assumption of the duties and obligations hereof 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.

28. **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: CG Construction Attn: Lyle Gaurmer
2906 F. Road
Grand Junction, CO 81504

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

29. **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 on the parties.

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

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

32. **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. The

Developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.



Witness:

City of Grand Junction
250 North Fifth Street
Grand Junction CO 81501

Stephanie Nye
Stephanie Nye
City Clerk

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



Lyle Gaurmer, d/b/a CG Construction
Gaurmer Realty, Inc.

12/2/94

By: Lyle Gaurmer
Lyle Gaurmer
President

dw:cl:NewBegIm.Agr 12/1/94

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

Exhibit A

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New Beginnings Subdivision as recorded in
Plat Book - 14, Page 165, Mesa County
Clerk and Recorder

Exhibit B

IMPROVEMENTS LIST/DETAIL


(Page 1 of 2)

DATE: 11-18-98
 NAME OF DEVELOPMENT: New Beginnings Subd 01015107 BOOK 2116 PAGE 180
 LOCATION: 29th F Rds
 PRINTED NAME OF PERSON PREPARING: Lyle GAURMER

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
I. SANITARY SEWER				
1. Clearing and grubbing				
2. Cut and remove asphalt	<u>SFT</u>	<u>200</u>	<u>.80</u>	<u>160.00</u>
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	<u>LFT</u>	<u>300</u>	<u>8.00</u>	<u>2400.00</u>
4. Sewer Services (incl. trenching, bedding, & backfill)	<u>LFT</u>	<u>120</u>	<u>6.00</u>	<u>720.00</u>
5. Sanitary sewer manhole(s)	<u>EA</u>	<u>2</u>	<u>1100.</u>	<u>2200.00</u>
6. Connection to existing manhole(s)	<u>EA</u>	<u>1</u>	<u>300.</u>	<u>300.00</u>
7. Aggregate Base Course	<u>Cyd</u>	<u>49.5</u>	<u>6.</u>	<u>297.00</u>
8. Pavement replacement				
9. Driveway restoration				
10. Utility adjustments				
II. DOMESTIC WATER				
1. Clearing and grubbing				
2. Cut and remove asphalt	<u>SFT</u>	<u>90</u>	<u>2.</u>	<u>180.00</u>
3. Water Main (incl. excavation, bedding, backfill, valves and appurtenances)	<u>LFT</u>	<u>400</u>	<u>4.7</u>	<u>1880.00</u>
4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances)	<u>EA</u>	<u>4</u>	<u>300.</u>	<u>1200.00</u>
5. Connect to existing water line	<u>EA</u>	<u>1</u>	<u>1000.</u>	<u>1000.00</u>
6. Aggregate Base Course	<u>Cyd</u>	<u>60</u>	<u>6</u>	<u>360.00</u>
7. Pavement Replacement				
8. Utility adjustments				
III. STREETS				
1. Clearing and grubbing				
2. Earthwork, including excavation and embankment construction	<u>Cyd</u>	<u>1733</u>	<u>3.</u>	<u>5199.00</u>
3. Utility relocations				
4. Aggregate sub-base course (square yard)	<u>SYD</u>	<u>1733</u>	<u>3.</u>	<u>5199.00</u>
5. Aggregate base course (square yard)	<u>SYD</u>	<u>1733</u>	<u>3</u>	<u>7798.00</u>
6. Sub-grade stabilization	<u>Cyd</u>	<u>1000</u>	<u>6</u>	<u>600.00</u>
7. Asphalt or concrete pavement (square yard)	<u>SYD</u>	<u>2255</u>	<u>7.2</u>	<u>16236.00</u>
8. Curb, gutter & sidewalk (linear feet)	<u>LFT</u>	<u>1000</u>	<u>13.75</u>	<u>13750.00</u>
9. Driveway sections (square yard)	<u>SYD</u>			
10. Crosspans & fillets	<u>SFT</u>	<u>2500</u>	<u>3.75</u>	<u>9375.00</u>
11. Retaining walls/structures				
12. Storm drainage system	<u>EA</u>	<u>1</u>	<u>1600</u>	<u>1600.00</u>

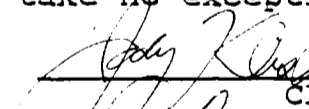
13. Signs and other traffic control devices	<u>Orb</u>	<u>1</u>	<u>700.00</u>	<u>700.00</u>
14. Construction staking	<u>CA</u>	<u>1</u>	<u>1200.00</u>	<u>1200.00</u>
15. Dust control				
16. Street lights (each) <u>INCH IN Public Square</u>				
IV. LANDSCAPING				
1. Design/Architecture				
2. Earthwork (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	<u>CA</u>	<u>1</u>	<u>600.00</u>	<u>600.00</u>
5. Construction traffic control				
6. Rights-of-way/Easements				
7. City inspection fees	<u>CA</u>	<u>1</u>	<u>800.00</u>	<u>800.00</u>
8. Permit fees				
9. Recording costs				
10. Bonds				
11. Newsletters				
12. General Construction Supervision				
13. Other <u>AS BUILT DRAWINGS</u>	<u>CA</u>	<u>1</u>	<u>1000.00</u>	<u>1000.00</u>
14. Other				

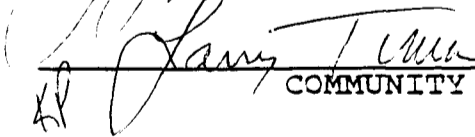
TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 77,000.00

 Lyda GARDNER
 SIGNATURE OF DEVELOPER
 (If corporation, to be signed by President and attested to by Secretary together with the corporate seals.)

11-22-94
 DATE

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.


 CITY ENGINEER


 COMMUNITY DEVELOPMENT

11-22-94
 DATE

11-23-94
 DATE

DEED OF TRUST

THIS DEED OF TRUST is made this 22 day of December, 1994, between Lyle Gaurmer and Gaurmer Realty Inc., a Colorado corporation, the grantor herein, whose address is 2906 F Road, Grand Junction 81504, County of Mesa, State of Colorado, and the PUBLIC TRUSTEE of the County of Mesa.

WITNESS:

The Grantor, to secure a promissory note, for the total principal sum of SEVENTY-SEVEN THOUSAND AND FOUR AND NO/100s Dollars (\$77,004.00) payable to the order of City of Grand Junction, the beneficiary herein, whose address is 250 North 5th Street, Grand Junction, CO 81501, after the date thereof, with interest thereon on the principal balance of SEVENTY-SEVEN THOUSAND AND FOUR AND NO/100 (\$77,004.00) 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 December 31, 1995, does hereby grant and convey unto said Public Trustee the property described on the attached Exhibit labeled "Gaurmer/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 moneys 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, except deed of trust to serve \$14,013.37 recorded in Book 1748 at Page 162 and deed of trust to serve \$25,000.00 recorded in Book 1778 Page 124.

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.

Recorder's Note: No attached exhibit when recorded 12/9/94 J.M.

Grantor agrees that it will pay the reasonable attorney's fees of the beneficiary in the event of foreclosure.

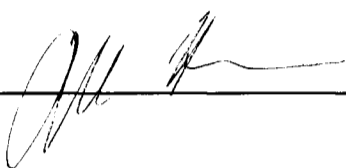
It is agreed that in case of default in payment of said principal or interest or a breach of any of the covenants herein, or any breach in the Development Improvement Agreement signed even date herewith, then said principal sum hereby secured and interest thereon may at the option of the beneficiary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

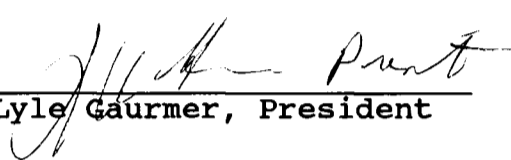
Whenever used herein the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. All of the covenants herein shall be finding upon the respective heirs, personal representatives, successors and assigns of the parties hereto.

Executed December 2, 1994.

Lyle Gaurmer

Gaurmer Realty, Inc.

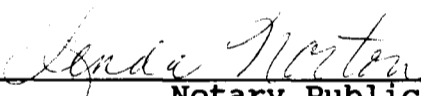


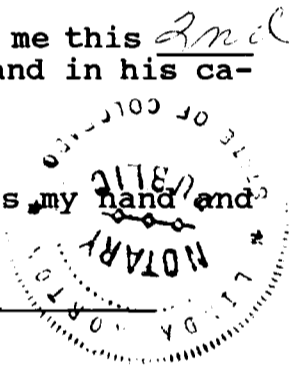
By: 
Lyle Gaurmer, President

STATE OF COLORADO)
) ss.
County of Mesa)

The foregoing instrument was acknowledged before me this 2nd day of December, 1994, by Lyle Gaurmer individually and in his capacity as President of Gaurmer Realty, Inc.

My commission expires 3-24-97. Witness my hand and official seal.


Notary Public



PROMISSORY NOTE

1703490 03:57 PM 12/09/94
MONIKA TODD CLK&REC MESA COUNTY COU.S. \$77,004.00
Mesa County, Colorado

Grand Junction,

December 1, 1994

1. FOR VALUE RECEIVED, the undersigned Lyle Gaurmer, (Borrower) promises to pay to the City of Grand Junction, or order, (Note Holder) the principal sum of SEVENTY-SEVEN THOUSAND AND FOUR AND NO/100 U.S. Dollars, with interest thereon from December 1, 1994, until paid, at the rate of ten percent (10%) per annum; however, if the improvements agreement terms and work is satisfactorily completed as set forth in the Development Agreement, then the City will waive accrued interest and principal. Principal and interest shall be payable at City Hall, 250 North 5th Street, Grand Junction, CO 81501, or at such other location as Holder may designate, in one payment of Seventy-seven thousand and four and no/100 dollars (\$77,004.00) due on December 31, 1995. If not sooner paid, the entire principal amount outstanding and accrued interest thereon, shall be due and payable on December 31, 1995.
2. Borrower shall pay to the Note Holder a late charge of TEN % of principal if any payment is not received by the Note Holder within TEN days after the 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. If any payment required by this Note is not paid when due, the entire principal amount outstanding and accrued interest thereon shall become due and payable at the option of the Note Holder (Acceleration) ten (10) days after notice of Acceleration has been given. Such notice of Acceleration shall specify the amount of the nonpayment plus any unpaid late charges and other costs, expenses and fees due under this Note. Until the expiration of said ten-day period, the Borrower may cure all defaults consisting of a failure to make required payments by tendering the amounts of all unpaid sums due at the time of tender, without Acceleration, as specified by the Note Holder in such notice. In addition to all other amounts due hereunder, the Note Holder shall be entitled to collect all reasonable costs and expense of collection and/or suit, including, but not limited to reasonable attorney's fees.
5. 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.
7. 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,

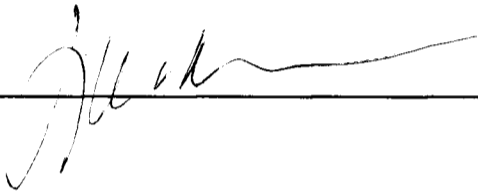
addressed to Borrower at the Borrower's address stated below, or to such other address as Borrower may designate by notice to the Note Holder. Any notice to the Note Holder shall be in writing and shall be given and be effective upon (1) delivery to Note Holder or (2) by mailing such notice by first-class 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.

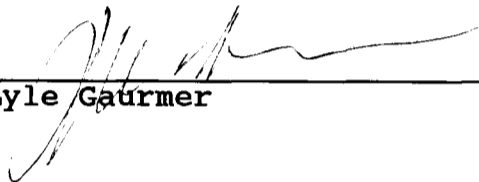
8. The indebtedness evidenced by this Note is secured by a Deed of Trust dated December 1, 1994, and until released said Deed of Trust contains additional rights of the Note Holder. Such rights may cause Acceleration of the indebtedness evidenced by this Note. Reference is made to said Deed of Trust for such additional terms. Said Deed of Trust grants rights in the property described as Lot 4, Block 1 of Sierra Vista Subdivision and the several lots owned or controlled by Developer as of the date of execution hereof in the New Beginnings Subdivision.

Borrower's address is 2906 F Road, Grand Junction, CO, 81504, attention Lyle Gaurmer.

Lyle Gaurmer

CG Construction



By: 

Lyle Gaurmer