

MUN06FRD

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	ERASMO MUNIZ AND SANDRA MUNIZ
PROJECT / SUBDIVISION:	MUNIZ AUTO SALES
LOCATION:	2385 F ROAD
TAX PARCEL #:	2945-054-09-002
FILE #:	SPR-2005-150
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2006
EXPIRATION DATE:	NONE
DESTRUCTION DATE	NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are **Erasmio Muniz and Sandra Muniz**, ("Developers") and the **City of Grand Junction**, Colorado ("City").

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

2. **Effective Date:** The effective date of this Agreement shall be the date that it is signed by the Community Development Director ("Director"), which shall be no sooner than recordation of the final plat or final plan approval whichever first occurs ("Effective Date").

RECITALS

The Developers seek permission to develop property, described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The Property, known as **Muniz Auto Sales** has been reviewed and approved under Community Development file # **SPR-2005-150** ("Development" or "the Development").

The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements to the Property and limiting the harmful effects of substandard development.

A further purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself; this Agreement is not executed for the benefit of materialmen, laborers or others providing work, services or material to the Developers and/or the Property or for the benefit of the owner(s), purchaser(s) or user(s) of the Property.

The mutual promises, covenants and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and City's land development ordinances and regulations.

DEVELOPERS' OBLIGATION

3. **Improvements:** The Developers shall 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 ("Improvements" or "the Improvements").

3a. On and after the Effective Date of this Agreement the Developers agree to pay the City for its Administration and Inspection of the Development. The hourly rate for those services is \$45.00/hour. Administration and Inspection includes but is not limited to the time expended by the City's planner, engineer, and construction inspector in directing, advising, correcting and enforcing by means other than litigation, this agreement and/or the approved development plan. The Administrative and Inspection costs described in this paragraph shall not exceed \$500.00.

3b. The scope of this project is such that the City may have to engage independent consultants(s) to adequately provide inspection services; Developers agree to pay such costs, in addition to all others for which Developers are responsible hereunder.

3c. The Developers' obligation to complete the Improvements is and shall be independent of any obligations of the City contained herein.

[Handwritten signature]
or the City's agents or independent consultants hired by the City

[Handwritten initials]

DIA
[Handwritten signature]

*SW
E.M.*

which Developers shall sign over to the City.

4. **Security:** To secure the performance of its obligations under this Agreement the Developers shall execute a promissory note in the amount of **\$45,235.20** (120% of the amount for the Improvements) which shall be secured by ~~promissory note attached hereto, and sign over~~ the check issued to Developers by the City in the amount of **\$2,898.00** ("Guarantee"). The Guarantee specific to this Agreement is attached as Exhibit C and is incorporated by this reference as if fully set forth.

5. **Standards:** The Developers shall construct the Improvements according to the City's standards and specifications.

6. **Warranty:** The Developers shall warrant the Improvements for one year following Acceptance by the City. "Warrant" or "Warranty" as used herein means the Developers shall take such steps and incur such costs as may be needed so that the Improvements or any portion or phase thereof as repaired and/or replaced, shall comply with the Development's construction plans and/or site plan, City standards and specifications at the end of the warranty period. The Developers shall warrant each repaired and/or replaced Improvement or any portion or phase thereof for one year following Acceptance of such repair and/or replacement.

7. **Commencement, Completion and Abandonment Periods:** The Developers shall commence work on the Improvements within 30 days from the Effective Date of this Agreement; that date is known as the "Commencement Date."

7a. The Developers shall complete the Improvements within 2 years from the effective date of this Agreement ("Completion Date").

8. **Compliance with Law:** The Developers shall comply with all applicable federal, state and local laws, ordinances and regulations when fulfilling its obligations under their Agreement. When necessary to protect the public health, safety or welfare, the Developers shall be subject to laws, ordinances and regulations that become effective after the Effective Date.

9. **Notice of Defect:** The Developers by and through their engineer shall provide timely written notice to the Director when the Developers and/or their engineer has knowledge, that an Improvement or any part or portion of any Improvement either does not conform to City standards or is otherwise defective.

9a. The Developers shall correct all nonconforming construction and/or defects within thirty (30) days from the issuance of the notice by their engineer of a/the defect.

10. **Acceptance of Improvements:** The City shall not accept and/or approve any or all of the Improvements until the Developers present a document or documents for the benefit of the City showing that the Developers own the Improvements in fee simple, or as accepted by the City Attorney, and that there are no liens, encumbrances or other restrictions on the Improvements other than those that have been accepted by the City Attorney.

10a. Approval and/or acceptance of any Improvement(s) does not constitute a waiver by the City of any right(s) that 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.

10b. Acceptance by the City shall only occur when the City Engineer, sends a writing to such effect ("Acceptance").

11. Reduction of Security: Upon Acceptance of any Improvement(s) the amount which the City is entitled to draw on the Guarantee shall be reduced by an amount of **\$45,235.20.00, including the promissory note plus the \$2,898.00.**

11a. At the written request of the Developers, the City shall execute a certificate verifying Acceptance of the Improvement and thereafter waiving its right to draw on the Guarantee to the extent of such amount. A Developer in default under this Agreement has no right to such certification.

12. Use of Proceeds: The City shall use funds deposited with it as the Guarantee only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements or paying Administration and Inspection fees; provided however, the Administration and Inspection fees shall not exceed \$500.00. See paragraph 3a. of this Agreement.

13. Events of Default: The following conditions, occurrences or actions shall constitute a default by the Developers:

13a. Developers' failure to complete each portion of the Improvements on or before the Completion Date;

13b. Developers' failure to demonstrate reasonable intent to correct defective construction of any Improvements within the applicable warranty period;

13c. A Developer's insolvency, the appointment of a receiver for a Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting a Developer;

13d. Notification to the City, by any lender with a lien on the Property, of a default by a Developer on any obligation to such lender;

13e. With regard to the Property or any portion thereof: initiation of any foreclosure action regarding any lien or encumbrance; or initiation of mechanics lien(s) procedure(s); or assignment or conveyance of the Property in lieu of foreclosure;

13f. The City may not declare a default until written notice has been sent to the Developers at the address set forth in paragraph 24. of this Agreement. **Notice shall be deemed effective two days after the mailing by first class prepaid United States mail.**

14. City's Rights Upon Default: This Agreement is hereby incorporated into The Memorandum of Agreement between Erasmo Muniz and Sandra Muniz and the City of Grand Junction for the Purchase of Certain Real Property in Grand Junction, Mesa County, Colorado for the Riverside Parkway Project dated February 3, 2005 ("MOA"). If there are any conflicts between this Agreement and the MOA, the provisions of the MOA shall govern and take priority over the provisions contained in this Agreement.

14a. After any event of default occurs, and the City has provided notice to the Developers as set forth in this Agreement, the City shall engage in the dispute resolution process set forth in paragraph 13 of the MOA.

15. Indemnification: The Developers expressly agree to indemnify and hold the City, its officers, employees, agents and assigns ("City") 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 or nonperformance of work at the Property and/or the Improvements and/or the Development that is being done pursuant to this Agreement.

15a. The Developers further agree to aid and defend the City in the event that the City and/or the Improvements is named as a defendant in an action concerning the performance of work pursuant to this Agreement except for a suit wherein the Developers state claim(s) against the City.

15b. The Developers are not an agent, partner, joint venturer or employee of the City.

16. **No Waiver:** No waiver of any provision of this Agreement by the City or Developers shall be deemed or constitute a waiver of any other provision nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and the Developers; nor shall 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 shall not constitute the approval of any wrongful or other act by the Developers 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 Developers or their authorized officer.

18. **Vested Rights:** This Agreement does not guarantee, represent or certify that the Developers are entitled to any other approval(s) required by the City, before the Developers are entitled to commence development beyond the scope of this Agreement or to transfer ownership of the Property being developed.

19. **Integration:** The MOA into which this Agreement is incorporated, and the exhibits and attachments to the MOA and to this Agreement constitute the entire Agreement between the parties concerning Improvements to the Property being developed by Developers. No statement(s), promise(s) or inducements(s) that is/are not contained in this Agreement shall be binding on the parties.

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

21. **Time:** For the purpose of computing the Commencement Date or other dates contained herein, such times in which war, civil disasters or acts of God occurs or exist shall not be included if such prevents the Developers or City from performing their obligations under the Agreement. A party must notify the other party in writing if/when such party asserts impossibility of performance under this paragraph.

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

23. **Benefits:** The benefits of this Agreement to the Developers 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.

23a. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developers and also shall be binding on the heirs, successors and assigns of the Developers and shall be a covenant(s) running with the Property.

23b. There is no prohibition on the right of the City to assign its rights under this Agreement.

23c. Upon written request from the Developers the City shall expressly release the original Developers' Guarantee and/or contract obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City shall constitute a release of the original Developers from his liability under this Agreement.

23d. When the City has issued its Acceptance regarding the Improvements, the City agrees to provide notice to Developers, stating the same in writing, with appropriate acknowledgments.

23e. The City shall sign a release only after all warranty periods, as extended by litigation, repair or alteration work, have expired.

24. **Notice:** Any notice required or permitted by this Agreement shall be sent first class, postage prepaid, through the United States Postal Service, addressed as follows:

If to Developers: **Erasmo Muniz and Sandra Muniz**
 930 22 Road
 Grand Junction, CO 81505
 (970)243-7880

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

and

Copy to: **Office of the City Attorney**
 250 North 5th Street
 Grand Junction, CO 81501

25. **Recordation:** The City shall pay the costs to record a memorandum of this Agreement (Exhibit D) in the records of the Mesa County Clerk and Recorder's Office. The City may, at its option record the entire agreement.

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

27. **Liability before 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 Improvement shall have received Acceptance by the City.

27a. If the City allows a street to be constructed in stages, the Developers 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 the side of the street nearest the property to enable an initial two-way traffic operation without on-street parking.

27b. Developers shall also construct and pay for end-transitions, intersection paving, drainage facilities and adjustments to existing utilities necessary to open the street to traffic.

27c. The City shall not issue its written Acceptance with regard to any Improvement(s) including any street, storm drainage facility, sewer, water facility or other required Improvement(s), until the Developers:

- (i) furnishes to the City Engineer as-built drawings in reproducible form, blue line stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests required by City specification;
- (ii) provides written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon in and under which the Improvement(s) have been constructed or which are necessary for the Improvements are free from toxic, hazardous and other regulated substances or materials;
- (iii) provides written evidence to the City Attorney that the title to lands underlying the Improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney; and
- (iv) provides written evidence, certified by the Developers' engineer, that the work was systematically inspected and tested and that the materials and the compaction of the materials that are required to be compacted, were in conformance with City-approved plans and specifications.

27d. To the extent any of the provisions contained in this paragraph 27 conflict with the provisions contained in the MOA, the provisions of the MOA shall ~~have~~ govern and take priority.

28. **Ambiguities.** Developers and the City have each obtained the advice of its own legal counsel regarding this Agreement or have knowingly declined to do so. The parties agree that the rule of construing ambiguities against the drafter shall have no application to this Agreement.

By:

Erasmus Muniz 3-24-06
Erasmus Muniz, Date

Sandra Muniz 3-24-06
Sandra Muniz, Date

City of Grand Junction
250 N. 5th Street
Grand Junction, CO 81501

Pat Cant 4/14/06
Community Development Dept. Date

Exhibit A

ESP
E.M.

Legal description of Muniz property

Auto Sales

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Lot 2 in
FBFW Simple Subdivision
Mesa County, Colorado

Property address: 2385 F Road, *Grand Junction, Co 81505*

EXHIBIT B

IMPROVEMENTS COST ESTIMATE

DATE: 9/16/2005
 DEVELOPMENT NAME: MUNIZ AUTO
 LOCATION: 2385 F Road
 PRINTED NAME OF PERSON PREPARING: KENT SHAFFER

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
A. SANITARY SEWER					
1	8" PVC Sanitary Sewer Main (on-site)	LF			\$ -
2	8" PVC Sanitary Sewer Main (off-site)	LF			\$ -
3	" PVC Sanitary Sewer Main	LF			\$ -
4	Sewer services	EA			\$ -
5	Sanitary Sewer Manhole (on-site)	EA			\$ -
6	Sanitary Sewer Manhole (off-site)	EA			\$ -
7	Connection to Existing Manhole	EA			\$ -
8	Concrete Encasement	LF			\$ -
9	Boring under Canal	L.S.			\$ -
Subtotal Part A Sanitary Sewer					\$ -
B. DOMESTIC WATER					
1	8" PVC Water Main	LF			\$ -
2	" PVC Water Main	LF			\$ -
3	" PVC Water Main	LF			\$ -
4	8" Gatevalve	EA			\$ -
5	2" Gatevalve	EA			\$ -
6	" Gatevalve	EA			\$ -
7	Water Services	EA			\$ -
8	Connect to Existing Water Line	EA			\$ -
9	Fire Hydrant with Valve	EA			\$ -
10	Utility Adjustments	EA			\$ -
11	Blowoff	EA			\$ -
Subtotal Part B - Domestic Water					\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
C1	STREETS				
1	" PVC Utility/Irrigation sleeves	LF		\$	-
2	" PVC Utility/Irrigation sleeves	LF		\$	-
3	Reconditioning	SY		\$	-
4	Aggregate Base Course (Class 3)	TN		\$	-
5	Aggregate Base Course (Class 6) (10" Compacted Thickness)	SY		\$	-
6	Aggregate Base Course (Class 6) (" Compacted Thickness)	SY		\$	-
7	Hot Bituminous Paving, Grading C (4" thick)	SY		\$	-
8	Hot Bituminous Paving, Grading (" thick)	SY		\$	-
9	Hot Bituminous Paving, Patching	SY		\$	-
10	Geotextile	SY		\$	-
11	Concrete Curb (" Wide by " High)	LF		\$	-
12	Concrete Curb and Gutter (2' wide)	LF		\$	-
13	Concrete Curb and Gutter (1.5' wide)	LF		\$	-
14	Monolithic, Vertical Curb, Gutter and Sidewalk (' Wide)	LF		\$	-
15	Drive Over Curb, Gutter, and Sidewalk (6.5' Wide)	LF		\$	-
16	Concrete Sidewalk (' Wide)	LF		\$	-
17	Concrete Gutter and Driveway Section (" Thick)	SY		\$	-
18	Concrete Drainage Pan (6' Wide,8" Thick)	LF		\$	-
19	Concrete Corner Fillet	SY		\$	-
20	Concrete Curb Ramp	SY		\$	-
21	Complete Concrete Corner	SY		\$	-
22	Concrete Driveway (" Thick)	SY		\$	-
23	Driveway/Concrete Repair	SY		\$	-
24	Retaining Walls	LF		\$	-
25	Street Signs	EA		\$	-
26	Striping (New, Remove/Replace)	LF		\$	-
27	Street Lights	EA		\$	-
28	Signal Construction or Reconstruction	LS		\$	-
29	Flowable Fill	CY		\$	-
30	Sleeves, " , " PVC	LF		\$	-
				\$	-
				\$	-

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
C2	BRIDGES				
					\$ -
1	Box Culvert Pre-Cast	LS			\$ -
2	Box Culvert Cast-in-Place	LS			\$ -
3	Wingwalls	LS			\$ -
4	Parapet Wall	LS			\$ -
5	Railing (handrail, guardrail)	LS			\$ -
					\$ -
					\$ -
	Subtotal Part C - Streets and Bridges				\$ -
D1	EARTHWORK				
1	Mobilization	LS			\$ -
2	Clearing and Grubbing	LS			\$ -
3	Unclassified Excavation	CY			\$ -
4	Unclassified Embankment	CY			\$ -
5	Silt Fence	LF			\$ -
6	Watering (Dust Control)	LS			\$ -
D2	REMOVALS AND RESETTING				
1	Removal of Asphalt	SY			\$ -
2	Removal of Miscellaneous Concrete	SY			\$ -
3	Remove Curb and Gutter	LF			\$ -
4	Removal of Culverts	LF			\$ -
5	Remove Structures	EA			\$ -
6	Remove Signs	EA			\$ -
7	Remove Fence	LF			\$ -
8	Adjust Manhole	EA			\$ -
9	Adjust Valvebox	EA			\$ -
10	Relocate or Adjust Utilities	LS			\$ -
D3	SEEDING AND SOIL RETENTION				
1	Sod	SY			\$ -
2	Seeding (Native)	SY or AC			\$ -
3	Seeding (Bluegrass/Lawn)	SY or AC			\$ -
4	Hydraulic Seed and Mulching	SY or AC			\$ -
5	Soil Retention Blanket	SY			\$ -


Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
D4	STORM DRAINAGE FACILITIES				
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY			\$ -
2	8" PVC Storm Drain Pipe	LF			\$ -
3	12" PVC Storm Drain Pipe	LF			\$ -
4	12" RCP Storm Drain Pipe	LF			\$ -
5	15" RCP Storm Drain Pipe	LF			\$ -
6	" Storm Drain Pipe	LF			\$ -
7	12" Flared End Section	EA			\$ -
8	" Flared End Section	EA			\$ -
9	48" Storm Drain Manhole	EA			\$ -
10	60" Storm Drain Manhole	EA			\$ -
11	72" Storm Drain Manhole	EA			\$ -
12	Manhole with Box Base	EA			\$ -
13	Connection to Existing MH	EA			\$ -
14	Single Curb Opening Storm Drain Inlet	EA			\$ -
15	Double Curb Opening Storm Drain Inlet	EA			\$ -
16	Area Storm Drain Inlet	EA			\$ -
17	Detention Area Outlet structure	EA			\$ -
18	Rip-Rap D ₅₀ = "	CY			\$ -
19	Drain Pan (detention area)	L.F.			\$ -
20	Pump Systems including Electrical	LS			\$ -
	Subtotal Part D - Grading and Drainage				\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
E1	IRRIGATION				
1	Connect to Existing Pipe	LS			\$ -
2	" Irrigation Pipe	LF			\$ -
3	" Irrigation Pipe	LF			\$ -
4	Fittings and Valves	LS			\$ -
5	Services	EA			\$ -
6	Pump System and Concrete Vault	LS			\$ -
7	Irrigation Structure	EA			\$ -
8	Vacuum Relief and/or Air Release Valve	EA			\$ -
E2	LANDSCAPING				
1	Design/Architecture	LS			\$ -
2	Earthwork	LS	1	\$ 1,500.00	\$ 1,500.00
3	Hardscape Features (Cobble)	LS	1	\$ 4,500.00	\$ 4,500.00
4	Plant Material & Planting	LS	1	\$ 11,500.00	\$ 11,500.00
5	Irrigation System	LS	1	\$ 4,500.00	\$ 4,500.00
6	Curbing	LS	1	\$ 1,150.00	\$ 1,150.00
7	Retaining Walls & Structures	LS	1	\$ 6,500.00	\$ 6,500.00
8	1 Year Maintenance Agmnt.	LS	1	\$ 1,500.00	\$ 1,500.00
9	Topsoil	LS	1	\$ 750.00	\$ 750.00
10	Landscaping in ROW area including: prep., irrigation & seeding	LS	1	\$ 5,796.00	\$ 5,796.00
					\$ -
Subtotal Part E - Landscaping and Irrigation					\$ 37,696.00


Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
F. Miscellaneous Items					
1	Construction staking/surveying	2%	0	\$ 37,696.00	\$ -
2	Developer's inspection cost	0.50%	0	\$ 37,696.00	\$ -
3	General construction supervsn	0.50%	0	\$ 37,696.00	\$ -
4	Quality control testing	2%	0	\$ 37,696.00	\$ -
5	Construction traffic control	0.50%	0	\$ 37,696.00	\$ -
6	City inspection fees	1.00%	0	\$ 37,696.00	\$ -
7	As-builts	2%	0	\$ 37,696.00	\$ -
Subtotal Part F - Miscellaneous Items					\$ -
% = Percentage of total site construction costs					
G. COST SUMMARY					
1 Total Improvement Costs					\$ 37,696.00
2 City Security (20%)					\$ 7,539.20
3 Total Guarantee Amount					\$ 45,235.20

NOTES

1. All prices shall be for items complete in place and accepted.
2. All pipe prices shall include excavation, pipe, bedding, backfill, and compaction.
3. Water main shall include pipe, excavation, bedding, backfill, bends, and appurtenances not itemized elsewhere.
4. All concrete items shall include Aggregate Base Course where required by the drawings.
5. Fill in the pipe type for irrigation pipe and sleeves.
6. Reconditioning shall be calculated to at least 6" outside of back of walk on both sides.
7. Units can be changed if desired, simply annotate what is used.
8. Additional lines or items may be added as needed.


4-13-06 Erasmo Muniz
 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 construction drawings submitted to date and the current cost of construction, I take no exception to the above.


4-14-06
 City Development Engineer Date


4/14/06
 Community Development Date

PROMISSORY NOTE

\$45,235.20

Grand Junction, Colorado
March 24, 2006

1. FOR VALUE RECEIVED, the undersigned, ERASMO MUNIZ and SANDRA MUNIZ, as joint tenants ("Borrower") promise to pay the City of Grand Junction, ("Note Holder") the principal sum of FORTY-FIVE THOUSAND, TWO HUNDRED THIRTY-FIVE and 20/100 U.S. DOLLARS (U.S. \$45,235.20) with interest at the rate of eight percent (8%) per annum if Borrower fails to comply with the terms of the Development Improvement Agreement entered into between Borrower and Note Holder, dated March 24, 2006 ("DIA"). If, and only if, Borrower fails to comply with the terms of the DIA, principal and interest under this Note shall be payable at City Hall, Grand Junction, CO 81501, or such other place as the Note Holder may designate, two years from the date of this Note, on March 23, 2008.

2. Payments received for application to this Note shall be applied first to the payment of accrued interest specified above and the balance applied in reduction of the principal amount hereof.

3. Borrower may prepay the principal amount outstanding under this Note, in whole or in part, at any time without penalty. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date of any subsequent payments or change the amount of such payments.

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. THIS IS A NON-NEGOTIABLE INSTRUMENT.

Erasmus Muniz
Erasmus Muniz
Sandra Muniz
Sandra Muniz

Borrower's Address:
930 22 Road
Grand Junction, CO 81505

Exhibit "C"

**RECORDING MEMORANDUM
Exhibit D**

2312879 BK 4139 PG 721
04/21/2006 11:52 AM
Janice Ward CLK&REC Mesa County, CO
RecFee \$5.00 SurChg \$1.00

City of Grand Junction
Community Development Department Community Development
File: # **SPR-2005-150**

This memorandum relates to and confirms that certain Development Improvements Agreement concerning land in Mesa County, Colorado. The Agreement is by and between **Erasmu Muniz and Sandra Muniz** (Developers) and the City of Grand Junction (City) pertaining to **Muniz Auto Sales** (Project), located at **2385 F Road, Grand Junction, Colorado, regarding Lot 2 of the FBFW Simple Subdivision recorded with the Mesa County Clerk and Recorder in Plat Book 19, Page 85.**

The Developers of the Project are required by law to install and construct certain public and private improvements, the completion of which was guaranteed by a Development Improvements Agreement. The Project is required to be constructed in accordance with the approval by the City pursuant to and in accordance with the Zoning and Development Code all as more fully detailed and described in City of Grand Junction development file # **SPR-2005-150**.

The Developers and the City of Grand Junction by and through the signatures of the undersigned have determined and agreed to the type, quality and amount of improvements required and/or necessitated by the approval of the Project and that the improvements are guaranteed by and through the Development Improvements Agreement. Furthermore, the Developers and the City agree that the Development Improvements Agreement is contractual in nature and that the obligations under the Development Improvements Agreement shall not be assigned except as provided in the agreement(s).

By virtue of this notice being recorded in the land records of the Mesa County Clerk and Recorder, subsequent owners and/or those that claim by, through or under the Developers are on notice of the Developer's obligations under the agreement(s).

NOW THEREFORE, the Developers and an official of the City of Grand Junction, both possessing and representing by their signatures that they possess sufficient authority, do hereby memorialize the relative, rights and obligations contained in the Development Improvement Agreement herein characterized.

DEVELOPERS:

By: Erasmu Muniz 4-13-06
Erasmu Muniz Date
Sandra Muniz 4-13-06
Sandra Muniz Date

CITY OF GRAND JUNCTION:

In accordance with the above, I hereby certify that the Development Improvements Agreement is made of record by this memorandum and that the same may be inspected and/or copied at the City of Grand Junction, Community Development Department, 250 N. 5th Street, Grand Junction, Colorado.

Pat Curt 4/14/06
Community Development Department Date



City Attorney

October 28, 2008

Erasmo Muniz and Sandra Muniz
930 22 Road
Grand Junction, CO 81505

Re: Cancellation of: Promissory Note Agreement
Developer: Erasmo Muniz and Sandra Muniz
Internal Reference: **Muniz Auto Sales SPR-2005-150**

Dear Sirs:

Enclosed please find a copy of Promissory Note Agreement for Muniz Auto Sales. The improvements have been accepted and the City no longer asserts any claim to the funds for \$45,235.20 described therein. As beneficiary, the City of Grand Junction informs you that it is releasing its claims to monies under this Agreement dated March 24, 2006. This letter is being provided at the direction of the Director of Public Works and Planning Department for the City.

If you have any questions, or need additional information, please inform me.

Sincerely,

OFFICE OF THE CITY ATTORNEY



Jamie Beard, City Attorney

Encl. Promissory Note Agreement

Pc: Lisa Cox, Planning Division Manager
Rick Dorris, Development Engineer
Peggy Sharpe, Planning

PROMISSORY NOTE

\$45,235.20

Grand Junction, Colorado

March 24, 2006

1. FOR VALUE RECEIVED, the undersigned, ERASMO MUNIZ and SANDRA MUNIZ, as joint tenants ("Borrower") promise to pay the City of Grand Junction, ("Note Holder") the principal sum of FORTY-FIVE THOUSAND, TWO HUNDRED THIRTY-FIVE and 20/100 U.S. DOLLARS (U.S. \$45,235.20) with interest at the rate of eight percent (8%) per annum if Borrower fails to comply with the terms of the Development Improvement Agreement entered into between Borrower and Note Holder, dated March 24, 2006 ("DIA"). If, and only if, Borrower fails to comply with the terms of the DIA, principal and interest under this Note shall be payable at City Hall, Grand Junction, CO 81501, or such other place as the Note Holder may designate, two years from the date of this Note, on March 23, 2008.

2. Payments received for application to this Note shall be applied first to the payment of accrued interest specified above and the balance applied in reduction of the principal amount hereof.

3. Borrower may prepay the principal amount outstanding under this Note, in whole or in part, at any time without penalty. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date of any subsequent payments or change the amount of such payments.

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. THIS IS A NON-NEGOTIABLE INSTRUMENT.

Erasmus Muniz
Erasmus Muniz
Sandra Muniz

Borrower's Address:
930 22 Road
Grand Junction, CO 81505

Exhibit "C"