

MCG04MCG

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **CONTRACT (PURCHASE AGREEMENT)**

NAME OF CONTRACTOR: MCGOVERN ENTERPRISES, GS AND PD LIVING TRUST

SUBJECT/PROJECT: 705 HORIZON DRIVE, ADJACENT TO THE PIZZA HUT PROPERTY IS AN AREA OF FORMER CITY RIGHT-OF-WAY THAT IS NOT PRESENTLY USED BY THE CITY BECAUSE OF THE RECONSTRUCTION OF HORIZON DRIVE, G ROAD AND 24 ½ ROAD, IN ORDER TO ENHANCE THE PIZZA HUT PROPERTY.

CITY DEPARTMENT: PUBLIC WORKS AND UTILITIES

YEAR: 2004

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT dated ¹⁴³ ~~April 27~~ ^{May}, 2004, is by and between the City of Grand Junction ("Seller" or "the Seller"), McGovern Enterprises as the Tenant of the Pizza Hut property ("Tenant"), and the GS and PD Living Trust ("Buyer" or "the Buyer").

The Seller is the owner of the real property located at the NW corner of Horizon Drive and G Road in the City of Grand Junction, Mesa County, Colorado, which is more particularly described as real property in the City of Grand Junction, County of Mesa, State of Colorado, to wit: Commencing at the Southwest Corner of the SE ¼ SW ¼ of Section 36, Township 1 North, Range 1 West of the Ute Meridian, City of Grand Junction, County of Mesa, State of Colorado, and considering the South line of the SE ¼ SW ¼ of said Section 36 to bear N 89°59'57" E with all bearings contained herein being relative thereto; thence N 89°59'57" E along the South line of the SE ¼ SW ¼ of said Section 36 a distance of 635.52 feet; thence leaving the South line of said SE ¼ SW ¼, N 00°00'03" W a distance of 1.31 feet to the True Point of Beginning; thence N 36°59'12" E a distance of 48.45 feet; thence S 89°59'57" E a distance of 143.62 feet; thence S 00°13'00" W a distance of 16.01 feet; thence 99.21 feet along the arc of a non-tangent curve concave to the Northwest, having a radius of 1839.02 feet, a central angle of 03°05'28", and a long chord bearing S 41°43'47" W a distance of 99.20 feet; thence N 82°55'39" W a distance of 29.53 feet; thence N 46°12'13" W a distance of 8.17 feet; thence S 42°58'40" W a distance of 6.00 feet; thence 82.14 feet along the arc of a non-tangent curve concave to the Southwest, having a radius of 280.00 feet, a central angle of 16°48'28", and a long chord bearing N 55°25'34" W a distance of 81.84 feet to the Point of Beginning, Containing 10,408.80 square feet, more or less (.239 acres, more or less), as described herein and depicted on **Exhibit "A"** attached hereto and incorporated herein by reference

The Tenant leases from the Buyer property owned by the Buyer located at the approximate intersection of G Road and Horizon Drive referred to herein as "the Pizza Hut Property."

Adjacent to the Pizza Hut Property is an area of former City right-of-way that is not presently used by the City because of the reconstruction of Horizon Drive, G Road and 271/2 Road, hereinafter referred to as "the City Property." The Buyer desires to purchase the City Property in order to enhance the Pizza Hut Property.

The Buyer desires to purchase the City Property on the terms set forth herein. The Tenant agrees to the terms herein as they affect its current lease with the Buyer, and Tenant specifically agrees to assume all maintenance for the City Property as required by this Agreement during the term of Tenant's Lease.

Section One - Terms. The City Property will be conveyed to the GS and PD Living Trust on condition that the Buyer:

- 1.1) pays for a portion of the cost to landscape the City Property in accordance with the attached Landscape Plan ("Plan" or "the Plan"). The City has received a bid for the work in the amount of \$35,000. The parties agree that the Buyer will pay \$12,500 of this amount and the balance of the cost for the work will be paid by the City. The parties acknowledge that in addition to the \$12,500 to be paid by Buyer hereunder, that Buyer and Teannt have incurred engineering costs for the City Property in excess of \$10,000.00
- 1.2) by no later than June 18, 2004, Buyer shall begin proceeding with the City to "attach" the City Property to the Pizza Hut Property, all as further described or required by this agreement. "Attachment" shall be by plat, re-plat, vacation and/or otherwise lawful method as determined or prescribed by the Seller;
- 1.3) shall bear any and all costs for the maintenance of the improvements, as stated in and limited by this Agreement, and all costs for processing the "Attachment";
- 1.4) shall allow for the extension of a water tap/water line to the City Property for purposes of the installation and maintenance of landscaping in accordance with the Plan, with the cost of construction to be a part of the Landscape Plan;
- 1.5) the Buyer shall maintain the City Property, including but not limited to the appearance and integrity of the landscaping all of which shall be maintained in good order, appearance and condition.
- 1.6) in the event the landscaping on the City Property becomes damaged, destroyed or injured the Buyer shall promptly restore the same;
- 1.7) the Buyer shall pay the cost of utilities used on and for the benefit of the City Property, which include but are not limited to water and electricity;
- 1.8) if the Buyer refuses or neglects to perform maintenance work required under the provisions hereof within fifteen (15) days after written demand the Seller may, without any obligation to do so, enter on the City Property and make such repairs or perform maintenance without liability to the City's operations by reason thereof.
- 1.9) the Seller shall not be liable for any liability or damage claims of, or for injury to persons or property arising from any cause relating to the occupancy of the City Property by the Buyer.

Section Two - Time

- 2.1) The Agreement shall become operative on approval, if at all by the City Council. If the City Council approves this Agreement then the Buyer may exercise the rights conferred by this Agreement to acquire the Property by filing for the attachment no later than June 18, 2004.

- 2.2) If the Buyer performs pursuant to this Purchase Agreement then the City will deliver a Special Warranty deed conveying the City Property to Buyer upon completion of construction of the landscaping in accordance with the Plan and upon satisfaction of the attachment condition(s). The attachment condition(s) specifically requires that the Buyers shall make application for the plat, re-plat, to vacate the existing City right of way upon the City Property, apply for zoning and/or otherwise lawfully attach the City Property to the Pizza Hut Property on or before June 18, 2004.

Section Three - Consideration

- 3.1) By this Agreement the City will convey the City Property to the Buyer on condition that the Buyer pay \$12,500 to the City, as provided by this agreement and that the Buyer satisfy all of the Terms provided for in Section One above and/or as otherwise provided by this agreement.

Section Four - Use of the Property

- 4.1) Upon satisfaction of each and every provision of this Agreement the Buyer may apply to develop the City Property as a part of the Pizza Hut Property in accordance with the Zoning and Development Code and other City regulations in effect at the time of application. If the City Property as attached to the Pizza Hut Property is redeveloped it shall be landscaped in accordance with the requirements of the then existing Code. The City Property shall become a part of the Pizza Hut Property and shall be used exclusively by the Buyer, its Tenants, heirs, successors and assigns, and in connection with the ownership and operation of the Pizza Hut Property.
- 4.2) Because the City Property and any conveyance of it is subject to certain rights, which are being/will be retained by the City, the City makes no representation either express or implied that any redevelopment application (other than the parking allowed by this agreement) will be approved by it or that the City Property is developable for a specific use. The City Property is conveyed subject to any and all utility, drainage and other surface and subsurface encumbrances, easements and claims. The requirement of the Buyers to pay the \$12,500 as provided for in this Agreement is contingent upon the City approving the attachment of the City Property to the Pizza Hut property and vacating the City right-of-way across the City Property as contemplated by this Agreement. No such attachment of the City Property shall require any upgrading, remodeling, rezoning or other modification to the Pizza Hut Property or the improvements on the Pizza Hut Property.
- 4.3) The Buyer has investigated the title to the City Property, including but not limited to the easements and encumbrances of record and are aware that the City Property has been used as right of way and that the City has not vacated the same. The Buyer acknowledges the existence of the same and takes the City Property subject

to the same; provided, however, the City right of way will be vacated as a part of the process of attaching the City Property to the Pizza Hut Property. The City will not be required to provide title insurance to the City Property.

- 4.4) If any of the City Property is used for parking, the Buyer shall enforce parking restrictions made applicable by the design, layout, signing and/or striping of the City Property. The City shall not be responsible for any enforcement. The Buyer and its agents are authorized to enforce only those laws, rules or regulations that are incident to ownership.
- 4.5) The Buyer shall neither use nor permit the City Property to be used in any fashion or in any manner contrary to the laws, ordinances or regulations of the City or any governmental agency exercising jurisdiction over the City Property if other than the Seller.
- 4.6) With the approval of the Seller, which approval shall be granted if the sign(s) conform(s) to ordinances and zoning laws imposed by the City, the Buyer may install and maintain appropriate sign(s) on the City Property associated with the operations conducted thereon.

Section Five - Pledges and Assignments

- 5.1) The Buyer shall not pledge or attempt to pledge or grant or attempt to grant as collateral or security its interest in the Property without the prior written consent of the Seller until after closing.
- 5.2) The Buyer shall not assign prior to closing the obligations arising out of this Agreement without first obtaining the written consent of the Seller. Any consent given by the Seller shall not be consent to a subsequent assignment. The City reserves the right to reject assignees.
- 5.3) The Buyer shall not assign any rights arising out of this Agreement without first obtaining the written consent of the Seller. Any consent given by the Seller shall not be consent to a subsequent assignment. The City reserves the right to reject assignees. The prohibition against assignment does not extend to the contractors hired to perform work.

Section Six - Integration

- 6.1) This Agreement contains the entire agreement between the Parties and cannot be changed or terminated except by a written instrument subsequently executed by all the Parties hereto. The terms and conditions hereof apply to and are binding upon the heirs, successors and authorized assigns of the Parties as limited by the provisions of section Five.

- 6.2) In order that the terms of this Agreement are fully known and applicable to any successor in interest, this Agreement or a memorandum thereof shall be recorded in the Mesa County land records.

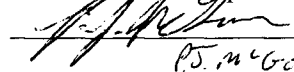
Section Seven - Applicable Law

- 7.1) This Agreement shall be governed by and construed in accordance with the laws of the City of Grand Junction, State of Colorado.
- 7.2) Any action arising out of or under this Agreement shall be brought in a court of competent jurisdiction in Grand Junction, Mesa County, Colorado.
- 7.3) The Tenant, by signing below, agrees to the terms and conditions of this Agreement as the same may affect the current lease on the Pizza Hut Property.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

TENANT:

McGovern Enterprises:



P. S. McGovern, President

BUYER:

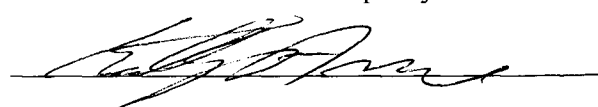
GS and PD Living Trust



George S. DeWitt TTEE

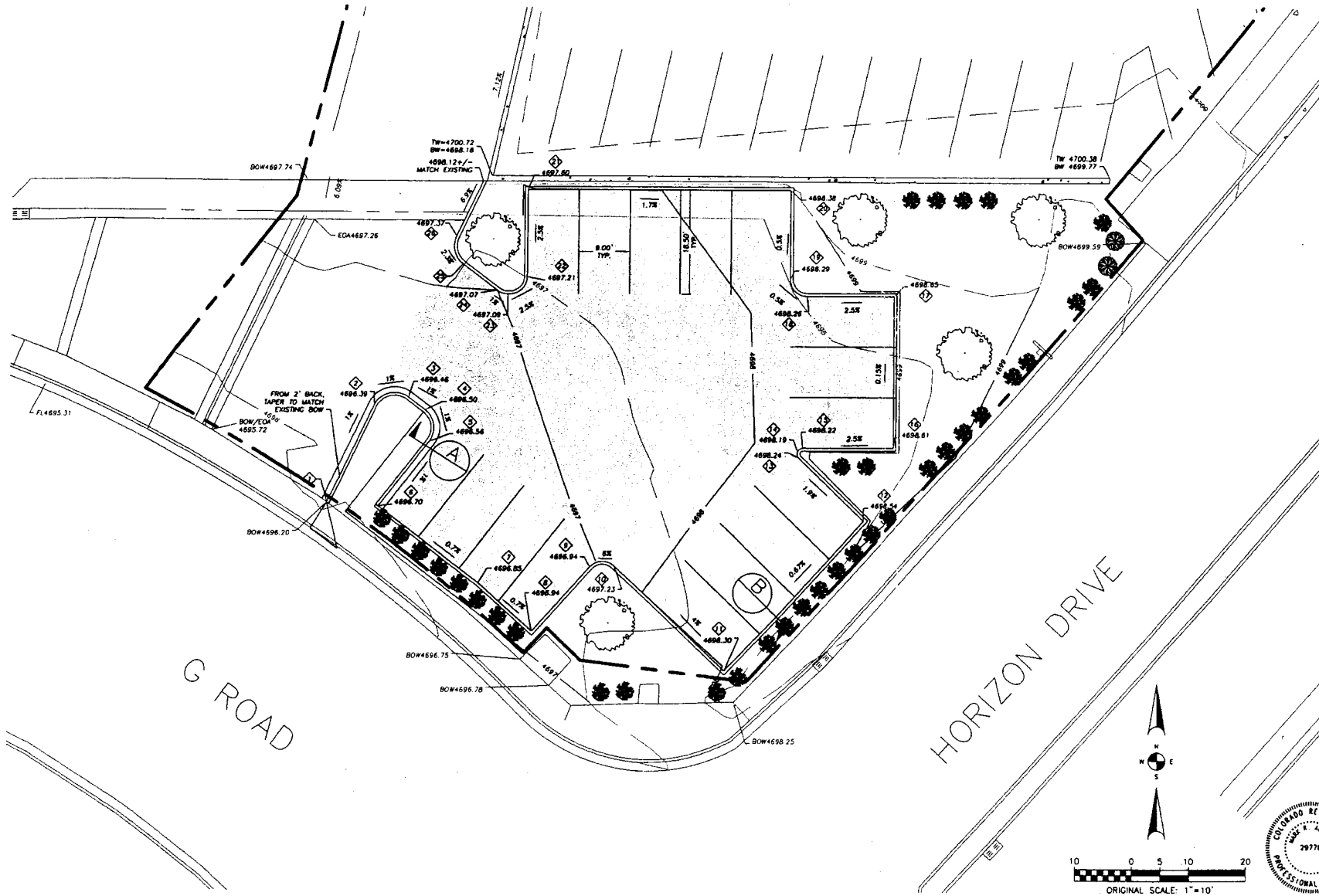
SELLER:

THE CITY OF GRAND JUNCTION, a
Colorado home rule municipality

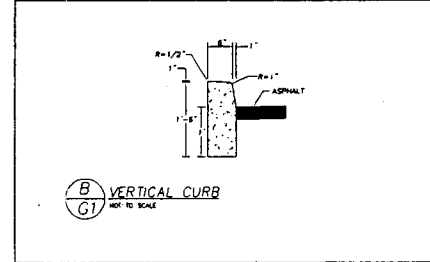
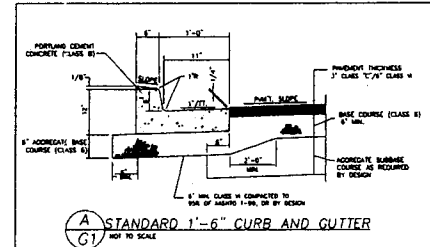


NOTE: ALL ELEVATIONS ARE FLOWLINE UNLESS NOTED OTHERWISE.

ENTITY DESCRIPTION							
DESCRIPTION	REPRESENTATIVE LINES	DESCRIPTION	REPRESENTATIVE LINES	LIST OF SYMBOLS	LIST OF SYMBOLS	LIST OF SYMBOLS	
PROPERTY OR TRACT LINE		EXISTING BURIED TELEPHONE CABLE		PULL BOX		EXISTING STORM MANHOLE	
EXISTING CHAIN LINK FENCE		EXISTING OVERHEAD ELECTRIC CABLE		TRAFFIC SIGNAL POLE		PROPOSED STORM MANHOLE	
PROPOSED BARBED WIRE FENCE		EXISTING GAS LINE		PROPOSED SIGN		EXISTING SANITARY MANHOLE	
PROPOSED CULVERT W/ END SECTION		PROPOSED GAS LINE		TELEPHONE MANHOLE		EXISTING FIRE HYDRANT	
EXISTING SIDEWALK		EXISTING IRRIGATION DITCH		TELEPHONE PEDISTAL		EXISTING WATER VALVE	
PROPOSED SIDEWALK		PROPOSED IRRIGATION LINE		POWER POLE		EXISTING WATER METER	
EXISTING CURB		EXISTING WATER LINE		GUY WIRE ANCHOR		PROPOSED INLET	
EXISTING CURB		EXISTING SANITARY SEWERS		LIGHT STANDARD		EXISTING INLET	
EXISTING CURB		EXISTING STORM SEWERS		EXISTING LIGHT POLE		SURVEY MARKER	
EXISTING CURB, GUTTER		PROPOSED STORM SEWERS		PROPOSED LIGHT POLE		EXISTING MAILBOX	
PROPOSED CURB & GUTTER		CONTROL LINE				EXISTING SIGN	
						EXISTING ASPHALT	
						EXISTING CONCRETE	
						EXISTING CONCRETE TO BE REMOVED	
						TRAFFIC FLOW DIRECTION	



POINT NUMBER	NORTHING	EASTING	E ELEVATION
49984.2951	96707.1104		MATCH EXISTING
50001.5343	96715.2995		4696.39
50002.9942	96721.3441		4696.46
50000.7512	96724.2740		4696.50
49995.1436	96725.0187		4696.56
49983.6300	96716.2048		4696.70
49972.1072	96733.7911		4696.85
49961.6792	96743.2852		4696.94
49973.0286	96753.4318		4696.94
49973.1940	96757.7453		4697.23
49954.8891	96777.2833		4698.30
49981.2580	96801.7860		4698.54
49992.4457	96790.2926		4698.24
49993.5386	96790.0637		4698.19
49994.1622	96790.9900		4698.22
49994.1641	96807.0294		4698.61
50021.1641	96807.0263		4698.65
50021.1623	96791.5263		4698.26
50024.1619	96788.5260		4698.29
50039.9656	96788.5242		4698.38
50039.9603	96741.9250		4697.60
50024.4603	96741.9267		4697.21
50021.4599	96738.5446		4697.09
50022.0778	96736.7206		4697.07
50026.7302	96730.6432		4697.20
50031.6053	96729.4534		4697.37



CITY OF GRAND JUNCTION ENGINEERING
 APPROVED FOR CONSTRUCTION FOR ONE YEAR FROM THIS DATE.

BY: _____ DATE: _____

ACCEPTED AS CONSTRUCTED

BY: _____ DATE: _____

"All details, construction, inspections, and testing shall conform to the City of Grand Junction Standard Contract Documents for Capital Improvements Construction. Contractor shall have a copy of the accepted plans and current City of Grand Junction Standard Documents for Capital Improvements Construction on site and available at all times."

1-800-922-1987

REVISIONS

DATE

DESCRIPTION

U.S. GEOLOGICAL SURVEY OF GRAND JUNCTION, COLORADO 81501
 155 4th Street, Suite 203 • Grand Junction, Colorado 81501
 (970) 242-7540

PIZZA HUT PARKING LOT
 LOT 1 PIZZA HUT SUBDIVISION
 706 HORIZON DRIVE
 VERTICAL CURB AND GRADING PLAN

P. J. McOWEN

DATE: _____

SCALE: 1" = 10'

515.0002

AUGUST 2003

