

Planning File No. PCR-2014-507

DIA-2014-256

Mtg - 2014-190

1. **Parties:** The parties to this Development Improvements Agreement (Agreement) are

Kristen Grieger (Grieger) Kristen Grieger (Gardner)
(Developer) 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 the Agreement shall be the date that it is signed by the Planning Director.

RECITALS

The Developer seeks approval to develop property described on Exhibit A (Property). The property known as: 3080 F 1/2 Rd

has been reviewed and approved under the above-referenced planning file number. (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 Developer 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.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer shall design, construct and install, at its own expense, those on- and off-site improvements listed on Exhibit B (Improvements).

3a. The Developer agrees to pay the City for its administration of the Development. The hourly rate for those services is \$45.00/hour. Administration includes but is not limited to the time expended by the City's planner, engineer and attorney in directing, advising, correcting and enforcing (by means other than litigation) this agreement and/or the approved development plan. Making disbursements and calling/collecting security are administration services and shall be charged at \$45.00/hour. See paragraph 19 concerning attorneys'/ litigation fees.

3b. The Developer agrees to pay a flat fee of \$ N/A for construction inspection. If in the City's determination the scope of this project is such that the City needs to engage independent consultants(s) to adequately provide inspection services, Developer agrees to pay such costs in addition to all others for which Developer is responsible hereunder.

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

4. **Security:** To secure the performance of its obligations under this Agreement the Developer shall supply a financial guarantee. The Developer is required to post security in an amount of \$ 10,000 (120% of the approved cost estimate for the improvements) in a form and with terms acceptable to the City (Security). The Security shall be in the form of a cash deposit made to the City, a letter of credit, a disbursement agreement or other form approved by the City Attorney. The Security specific to this Agreement is attached as Exhibit C and is incorporated by this reference as if fully set forth.

Form of Security (select one): check # 158059

5. **Standards:** The Developer shall construct the Improvements according to the City's standards, specifications and approved plans.

6. **Warranty:** The Developer shall warrant the Improvements for one year following acceptance of the Improvements by the City. "Warrant" or "Warranty" as used herein means the Developer shall take such steps and incur such costs as may be needed so that the Improvements or any repair or replacement thereof shall comply with the approved construction plans site plan and City standards and specifications at the end of the warranty period. The Developer 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.

6a. Upon acceptance of the Improvements by the City the Developer shall provide a Maintenance Guarantee in an amount of \$ N/A (Line G2, Exhibit B, City Security).

6b. The Maintenance Guarantee shall be secured by a letter of credit, cash escrow or other form acceptable to the City Attorney.

7. **Commencement, Completion and Abandonment Periods:** The Developer 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 Developer shall complete the Improvements by the end of the twelfth month from the Effective Date of this Agreement; that date is known as the Completion Date.

7b. The Developer shall not cease construction for any period of more than 60 consecutive days. If construction is ceased for 60 or more consecutive days the Director may deem the Development abandoned.

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

9. **Notice of Defect:** The Developer shall provide timely written notice to the issuer of the Security and the Director when the Developer and/or his/her/its engineer has knowledge that an Improvement does not conform to City standards or is otherwise defective in whole or in part. The Developer shall correct all non-conforming construction and/or defects within thirty (30) days of such notice.

10. **Acceptance of Improvements:** The City will not accept Improvements until the Developer documents that the Developer owns the Improvements in fee simple and that there are no liens, encumbrances or other restrictions on the Improvements other than those that have been accepted in writing by the City Attorney.

10a. 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 has been accepted in writing by the City.

10b. The City will 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 Developer:

(i) furnishes to the City Engineer as-built drawings in appropriate electronic form, stamped and sealed by a professional engineer 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 Developer's engineer, that the work was systematically inspected and tested and that the materials and construction were in conformance with City-approved plans and specifications.

10c. Acceptance by the City shall only occur when the City's engineer sends a writing to such effect.

10d. Acceptance of Improvements does not constitute a waiver by the City of any right it may have to demand correction of a defect in or failure of Improvements detected or occurring after acceptance.

11. Reduction of Security: Upon acceptance of the Improvements, the City will release \$ 10,000 (Line G1, Exhibit B, Total Improvement Costs) of the Security, except that a developer in default under this Agreement has no right to a release of the Security in any amount.

12. Use of Proceeds: The City shall use Security funds only to complete the Improvements, correct failed or defective improvements or pay administration, inspection development fees or impact fees.

13. Events of Default: The following shall constitute a default by the Developer:

13a. Developer's failure to complete all of the Improvements on or before the Completion date;

13b. Developer's failure to take reasonable actions to correct defective construction of any Improvements within the applicable warranty period;

13c. 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;

13d. Notification to the City, by any lender with a lien on the Property, of a default by 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, initiation of mechanics lien(s) procedure(s) or assignment or conveyance of the Property in lieu of foreclosure;

13f. Notification to the City from the bank issuing the Security that it will not renew the Security during a time when security is still required hereunder and no substitute collateral acceptable to the City has been provided by the Developer.

Except in the event of 13c, 13d and 13e above, in which the City may immediately declare a default without prior notice to the Developer, the City may not declare a default until written notice has been sent to the Developer in accordance with section 26 below.

14. Measure of Damages: The measure of damages for breach of this Agreement by the Developer shall be the reasonable cost of satisfactorily completing the Improvements, plus reasonable expenses. Expenses may include but are not limited to contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to the collection and completion of the Improvements. For Improvements upon which construction has not begun, the estimated costs of the Improvements shown on Exhibit B shall be *prima facie* evidence of the minimum cost of completion; however, the maximum amount of the Developer's liability shall not be established by that amount or by the amount of the Security.

15. City's Rights Upon Default: Upon default the City may draw on or proceed to collect the Security up to the full face amount. The City may also exercise its rights to disbursement of loan proceeds or other funds under the disbursement agreement.

15a. The City shall have the right to complete Improvements itself or it may contract with a third party for completion.

15b. 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, inspecting and repairing the Improvements.

15c. The City may assign the proceeds of the Security or other funds or assets that it may receive in accordance with this Agreement to a subsequent developer or lender that has acquired the Property by purchase, foreclosure or otherwise. That developer or lender shall then have the same rights of completion as the City hereunder if and only if the subsequent developer or lender agrees in writing to complete or correct the Improvements and provides to the City reasonable security for that obligation.

15d. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

16. 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 or non-performance of work at the Property and/or the Improvements and/or the Development that is being done pursuant to this Agreement.

16a. 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 in a suit in which the Developer states claim(s) against the City.

16b. The Developer is not an agent, partner, joint venturer or employee of the City.

17. No Waiver: No waiver of any provision of this Agreement by the City shall be deemed to a waiver of any other provision nor shall it be deemed a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and the Developer; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same or different 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 Developer or the acceptance of any Improvement.

18. 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/her/its authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

19. Attorney's Fees: Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party shall be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. The City shall be entitled to claim the value of in-house attorney time at the rate of \$125.00 per hour. If relief is awarded to both parties the attorney's fees may be equitably divided between the parties by the decision maker.

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

21. Integration: This Agreement, together with the exhibits and attachments thereto constitutes the entire Agreement between the parties. No statement, promise or inducements that are not contained in this Agreement shall be binding on the parties.

22. 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.

23. Time: For the purpose of computing an abandonment period, completion date or other date hereunder and such times in which war, civil disasters or acts of God occurs or exist shall not be included if such prevents the Developer or City from performing its obligations under the Agreement. The Developer must notify the City in writing if/when it asserts impossibility of performance under this paragraph. The City may reject the Developer's assertion in writing if it finds that the condition(s) that the Developer asserts do not exist.

24. 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.

25. 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.

25a. 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 covenants running with the Property.

25b. The City may assign its rights under this Agreement.

25c. The City shall expressly release the Security and/or contract obligations if it accepts new security from any developer or lender who subsequently acquires the Property; however, no other act of the City shall constitute a release of the original Developer from his liability under this Agreement.

25d. The City agrees to state acceptance of the Improvements in writing with appropriate acknowledgments.

25e. The City shall sign a release only after all warranty periods, as extended by litigation, repair or alteration work, have expired.

26. **Notice:** Any notice required or permitted by this Agreement shall be deemed effective two calendar days after deposit with the United States Postal Service, first class, postage prepaid and addressed as follows:

If to Developer: *Kristen Grieger (Garner)*
Name/Developer/Company: *Kristen Grieger (Garner)*
Address (Street and Mailing): *3080 F 1/2 Road*
City, State and Zip Code: *Grand Junction, CO 81504*
Telephone and Fax Number:
E-mail Address:

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

CC: **Planning Division
250 North 5th Street
Grand Junction, CO 81501**

27. **Recordation:** Developer 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 Developer may record the entire agreement.

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

29. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any action commenced by either party to this Agreement whether arising out of or relating to the Agreement, the Security or the Maintenance Guarantee shall be deemed to be proper only in Mesa County, Colorado. The Developer expressly waives his/her/its right to bring such action in or to remove such action to any other court whether state or federal.

By:

Kristen Garner (Grieger)

Developer's Signature

Date

Developer's Name: Kristen Garner (Grieger)

City of Grand Junction

Liz U. Bowen

July 2, 2014

Project Manager's Signature

Date

Development Engineer's Signature

Date

[Signature]

7.2.14

Director or Planning Manager's Signature

Date

Development Improvements Guarantee Recap Sheet

Check One:	<input checked="" type="checkbox"/> Cash Deposit	<input type="checkbox"/> Letter of Credit (LOC)
	<input type="checkbox"/> Cash Refund	<input type="checkbox"/> LOC Release

Date	July 2, 2014
Project File No.	PCR-2014-507 DIA-2014-256
Project Name	3080 F 1/2 Road
Project Location	Grand Junction, CO 81504
Purpose of DIA	Building a new home, older home will be removed.
Payee Name	Kristen Grieger (Garner)
Payee Mailing Address	3080 F 1/2 Road
Payee City, State Zip Code	Grand Junction, CO 81504
Payee Telephone No.	
DIA Expiration Date	June 16, 2006
Project Planner	Lori Bowers
Project Engineer	N/A

ACCOUNTING INFORMATION

CASH				LETTER OF CREDIT			
	AMOUNT	DATE	REFERENCE		AMOUNT	DATE	REFERENCE
DEPOSIT	\$10,000.00	07/02/14	Check# 158059	LOC Amount	\$ -		
Refund	\$ -			Release	\$ -		
Refund	\$ -			Release	\$ -		
Refund	\$ -			Release	\$ -		
BALANCE	\$10,000.00			BALANCE	\$ -		

DIA Cash Fund/Account No.	207-2090
----------------------------------	----------



Membership Service Since 1940
Main Branch
760 ROOD AVENUE
GRAND JUNCTION, CO 81501

AMERICAN NATIONAL BANK

NO

158059

82-123/1070

Jun 16, 2014

Pay Exactly **\$10,000.00**

\$10,000.00

Void After 90 Days

**PAY
TO
THE
ORDER
OF**

City Of Grand Junction
re: Kristen Grieger (Garner)

[Handwritten Signature]
AUTHORIZED SIGNATURE

Security features. Details on back

MP
MP

⑈ 158059⑈ ⑆ 107001232⑆ 70782497⑈