

Grand Junction, Colorado

October 1, 1980

The City Council of the City of Grand Junction, Colorado, convened in regular session at 7:30 p.m. the first day of October, 1980, in City Council Chambers at City Hall. Those present were Council members Louis Brach, Frank Dunn, Robert Holmes, Dale Hollingsworth, Karl Johnson, Bill O'Dwyer, and Jane Quimby, a quorum. Also present were City Attorney/Acting City Manager Gerald Ashby and City Clerk Neva Lockhart.

Council President Quimby called the meeting to order and led in the Pledge of Allegiance.

INVOCATION

Council President Quimby.

MINUTES

Upon motion by Councilman Dunn, seconded by Council O'Dwyer and carried, the minutes of the regular meeting September 17, 1980, were approved as written.

BOARD OF ADJUSTMENT AND APPEALS - RESIGNATION OF KELVIN HARR ACCEPTED - NAMES TO FILL VACANCY REQUESTED

President Quimby accepted the resignation of Kelvin Harr from the Board of Adjustment and Appeals whose term was to expire in 1982, and requested names of people who are interested in filling the vacancy.

HOUSING AUTHORITY

President Quimby announced the nominations to the Housing Authority will close Monday, October 6th. Appointments to fill the two vacancies will be made October 15.

AIR QUALITY ADVISORY COMMITTEE REPORT

Dr. Francis Hutto, Chairman of the Air Quality Advisory Committee, reported on the progress of the Air Quality Advisory Committee in its program that it is hoped will bring the City into compliance with the EPA's requirements for particulate pollution. Of particular concern to Doctor Hutto and the Advisory Committee was the matter of smoking vehicles. It is felt that there is a danger that since the Eastern Slope is taking action on this and as a result of three regulations that have been imposed in that metropolitan area the Western Slope Grand Junction area will become the dumping ground for vehicles that cannot pass in Denver. Submitted for review was a proposed smoking vehicle ordinance. The gist of the proposed ordinance is basically similar to those that have been imposed on the Eastern Slope. A vehicles that smokes, be

it diesel, be it gasoline powered or what have you, will be reported, and when it is reported, a letter will be written and the owner will be given a period of time in which to respond, hopefully by having the vehicle repaired and put into condition so it does not smoke. Dr. Hutto said the proposed ordinance has guidelines as to reporting and cajoling people into compliance. If they do not, then they are fined at the end of the line and they would have to pay. He stated that pretty soon, if the people have to pay a three or four hundred dollar fine, they will realize that it not worth keeping a twenty-year old vehicle and letting it smoke. His group has been asked by others, including the County Commissioners, whether this procedure is discriminatory against people who cannot afford to fix their car anyhow. In response, the group built into the ordinance the possibility that a review board could grant mercy in the case of real extenuating circumstances. He noted that, of course, the exact details of the proposed ordinance and of the proposal submitted to the County were up to the elected bodies to finalize. His group offered to work with Council to make any changes, corrections, improvements, but most of all the group wants to see something get on the books in Grand Junction soon so this area does not become a dumping ground for the Eastern Slope.

Councilman Dunn stated that the proposed ordinance appears to him unworkable. He noted that there are a lot of two-cycle motorcycles around--that's the way they run and they smoke. They cannot be forced off the road because the City is encouraging conservation, and when oil and gas is mixed, it smokes.

Doctor Hutto stated that the details are up to the City Council. The Council has the power to make exceptions. He stated there is one point they have left tighter than Denver and that is that there should be no smokey emissions from gasoline powered vehicles.

Councilman Dunn countered that in the wintertime it cannot be determined. The weather is such that there is a lot of condensation.

Doctor Hutto stated that it is written into the proposal that warmup is not a problem. If it is a cold warmup problem, it is acceptable.

Councilman Dunn stated that for a large part of the year, there will be no enforcement. Additionally, Councilman Dunn did not buy the statement that this area will be the dumping ground for the old cars from Denver.

Councilman O'Dwyer commented that recently the City passed a blowing dust ordinance which he feels is totally unenforceable, and he thinks this proposal resembles that one. He does not feel that the Council should put an ordinance on the books just to have an ordinance on the books so it can be shown EPA with the statement "look, we've passed this ordinance." Also, if Council

should pass this ordinance he asked what kind of "police force" would be required for enforcement five years or so down the road. He did not feel the City would have the money to staff a force necessary to enforce the ordinance, and it doesn't appear that the ordinance as written would be self-sufficient. Councilman O'Dwyer stated that in most cases of the smoking vehicle it is the elderly or the poor. He commented on his conversation with a garage mechanic. He asked the mechanic if a tune-up would solve the problem, and the response was that if it is smoking badly enough a tune-up would not solve the problem. It would require a valve job or a ring job or more. The mechanic estimated a valve job at \$200 or more with a ring job costing up to \$500, \$600, \$800 or more. Councilman O'Dwyer noted that many of these smoking vehicles are not worth putting in that kind of money, but yet, this is the only transportation that some of these people have. He noted the appeals board and said that they must drive the smoking vehicle down to the hearing by the appeals board as there is no public transportation to the board of appeals, and where the enforcement officer is sitting there writing out another summons. He did not feel that fifteen days gives one very much time to work out financial problems or even to make arrangements to get the vehicle into a repair shop to take care of the problem. Councilman O'Dwyer stated that he is opposed to passing any ordinance just for the sake of passing an ordinance just to satisfy "Big Brother" up in Washington.

Doctor Hutto pointed out that Council has seen the view toward Grand Mesa in the wintertime whenever there is an inversion in the valley. In his opinion the view can only become worse as more and more people come into the valley.

Another concern to Councilman O'Dwyer was the proposal does not address engines on the railroad. He lives near the railroad and he sees those engines put out an awfully lot of smoke. He is also a member of the Airport Authority, and he has seen some of the airplanes come in and leave and has noted the smoke from them. His questions was, does the Council say "hey, you can't smoke in this valley."

Doctor Hutto pointed out they did address diesel-powered engines which does include the railroad.

Councilman O'Dwyer commented that it will be real interesting to drag them into court and see what will happen.

Ten years ago, according to Councilman Johnson, while he was in law enforcement his Department was enforcing the smoking vehicles provisions using almost identically the same procedures that are outlines in this proposal. What it involved was a call to the Health Department giving a license number of the vehicle, and it was the responsibility of the Health Department then to follow up and find out who the registered owner was, give notification that the vehicle had been observed in violation of the smoking ordinance, and to show proof within a specified period of time

that corrections had been made. He sees no point in adopting an additional ordinance for one that is already available. He noted that the proposed ordinance states that the ordinance shall be enforced by qualified observers and then it defines a qualified observer to be one that is certified by the Colorado Health Department in Air Pollution Control after completing a course on observing, grading, and recording visible emissions in terms of opacity. He continued that this means an army of observers must be trained to be certified in order to make these reports to the Health Department for follow-up. Councilman Johnson thinks there are so many problems involved that it will be impossible to enforce. He stated, however, that the objective is admirable. He said that when there is talk about the "brown cloud" in this valley today in the wintertime, many residents who have lived in this valley as long as he has can recall the time when the railroads were burning coal and every household was burning coal and all the industries were burning coal--that was when there was a smoke and a pollution problem. There is nothing today to compare with the situation then. In addition, the State has passed a State law that is going to require every vehicle to pass an emission test within the next year or so. This law will then take care of a lot of these problems. Councilman Johnson noted that the new engineering in automobile industry is correcting many of the existing problems, and these older cars will be phased out that can't meet the fail/safe ratio.

Doctor Hutto stated that the Advisory Committee's job was to recommend. They have a genuine concern for where the Valley is going. They recommend adoption of this proposal as they feel it will do a better job than what is presently being done on the State level. He noted the total disregard for present notification of a violation. Doctor Hutto believes that with the adoption of the proposed ordinance, the enforcement procedure would have teeth, in that the fines are written in on the local level that would push people into compliance rather than ignoring them.

Councilman Johnson was advised several years ago that the State law was being enforced in that the local Health Department had the authority to file a complaint through the District Attorney's Office and bring those people into Court if there was non-compliance.

Mr. Ashby clarified that apparently they do not fine them. They get a Civil Order.

Councilman Johnson responded that correcting the problem is the whole objective, not to impose penalties. So it appears the procedure is already in place. It sounded to Councilman O'Dwyer as though the mechanism for enforcement is also in place.

According to Doctor Hutto, the other overriding problem is that there are only a few years left to come within compliance with EPA's primary standards of 75 micrograms per cubic meter. Doctor Hutto warned that sanctions by the Federal Government may be

imposed if compliance is not reached in the allotted time. Those sanctions may be the cutoff of funds such as the sewer funds.

Councilman Johnson responded that he is willing to take that chance. He thinks somebody has to stand up some time and challenge the Federal Government in its authority to do those kinds of things, as there is no relationship between air pollution and water quality, and if necessary, he believes the City should stand up and challenge them on that basis.

Doctor Hutto agreed one hundred percent.

Councilman Holmes expressed a sympathetic understanding to Doctor Hutto and his group, but he concurred with much of his colleagues' statements. He discussed wood and wood burning stoves and the resultant smoke polluting the air.

Councilman Johnson expressed appreciation to Doctor Hutto and his committee for the time and effort expended on the study of this problem and the recommendations they have made.

LIQUOR AND BEER

Upon motion by Councilman Brach, seconded by Councilman Hollingsworth and carried with Councilman HOLMES voting No, the following applications to renew licenses, change ownership, and change in corporate structure were approved:

1. Santy's Stop, 337 S. First Street (Renewal)
2. El Escondido, 509 28 1/2 Road (Renewal)
3. Freeway Bowl - Night Gallery, Inc.

President: Robert J. Stack

Sec/Treas: Linda M. Stack

Mgr/Dir: William Hindley

(Change of Ownership)

4. Ogelvie's Bar & Grille, 759 Horizon Drive

(Renewal and change in corporate structure by adding James Arias as Secretary/Treasurer).

ORDINANCE NO. 1912 - EASEMENT VACATION IN LOT 6, APPLECREST SUBDIVISION

Upon motion by Councilman Johnson, seconded by Councilman Holmes and carried, the Proof of Publication to the following entitled proposed ordinance was accepted for filing: AN ORDINANCE VACATING AN EASEMENT IN THE CITY OF GRAND JUNCTION.

Upon motion by Councilman Dunn, seconded by Councilman O'Dwyer and carried, the proposed ordinance was called up for final passage and read.

There were no comments. Upon motion by Councilman Brach, seconded by Councilman Johnson and carried by roll call vote, the Ordinance was passed, adopted, numbered 1912, and ordered published.

ORDINANCE NO. 1913 - SETTING UP LIQUOR HEARING OFFICER PROCEDURE

Upon motion by Councilman Dunn, seconded by Councilman Johnson and carried with Councilman HOLMES voting NO, the Proof of Publication to the following entitled proposed ordinance was accepted for filing: PROVIDING FOR THE USE OF A HEARING OFFICER TO HEAR MATTERS OF ALLEGED VIOLATIONS OF THE LIQUOR AND BEER CODES.

Upon motion by Councilman Johnson, seconded by Councilman Dunn and carried with Councilman HOLMES voting NO, the proposed ordinance was called up for final passage and the title only was read.

Upon motion by Councilman Brach, seconded by Councilman Dunn and carried by roll call vote with Council members HOLMES and O'DWYER voting NO, the Ordinance was passed, adopted, numbered 1913, and ordered published.

Councilman Holmes stated that he believes that adopting this ordinance is the end of direct and responsible representation on the part of the elected officials for the people that elected them as far as it relates to this particular matter. He feels there will not be the type of coverage and the type of handling of this matter in the future under this hearing officer as there has been in the past under the direct involvement of all of the members of the City Council.

President Quimby said she understands the concerns expressed by Councilman Holmes and assured him that as far as she is concerned she is looking at this bill as something that will improve the situation. If it does not, she will be the first to join Councilman Holmes in a bill to rescind the action.

ORDINANCE NO. 1914 - TAMERLANE ANNEXATION NW OF 15TH STREET AND F 1/4 ROAD

Upon motion by Councilman Dunn, seconded by Councilman Johnson and carried, the Proof of Publication to the following entitled proposed ordinance was accepted for filing: AN ORDINANCE ANNEXING TERRITORY TO THE CITY OF GRAND JUNCTION, COLORADO.

Upon motion by Councilman O'Dwyer, seconded by Councilman Dunn and carried, the proposed ordinance was called up for final passage and read.

There were no comments. Upon motion by Councilman O'Dwyer,

seconded by Councilman Holmes and carried by roll call vote, the Ordinance was passed, adopted, numbered 1914, and ordered published.

AUTHORIZATION TO EXECUTE TRANSFER AGREEMENT AUTHORIZING TRANSFER OR LAND TO THE HOUSING AUTHORITY - AUTHORIZATION TO EXECUTE GRANT AGREEMENT

Mr. Ashby advised that, as previously discussed at the noon luncheon, somebody in Washington or somewhere became concerned that the Housing Authority was not a proper entity to hold the land and, apparently, to participate in the grant authorization. So they ask that the land on Main Street that had been purchased by the Housing Authority be transferred to the City of Grand Junction. That will be done by deed by the Housing Authority, but in return then they want the Agreement that the City of Grand Junction would deed the property back to the Housing Authority after the grant has been made. The Agreement was briefly reviewed.

Upon motion by Councilman Johnson, seconded by Councilman Brach and carried, the President of the Council was authorized to execute the transfer agreement authorizing transfer of land to the Housing Authority.

Upon motion by Councilman Holmes, seconded by Councilman Johnson and carried, the President of the Council was authorized to execute the Grant Agreement.

ASSIGNMENT OF OIL AND GAS LEASE DATED JULY 18, 1980, FROM CARL BURLEY AND CHARLES SHEAR TO COLORADO-PACIFIC PETROLEUM CORPORATION - 250 ACRES PLUS OR MINUS IN KANNAH CREEK AREA

After review, and upon motion by Councilman Dunn, seconded by Councilman Brach and carried, the President of the Council was authorized to execute the assignment of oil and gas lease dated July 18, 1980, from Carl Burley and Charles Shear to Colorado-Pacific Petroleum Corporation on approximately 250 acres in the Kannah Creek area.

PROPOSED ORDINANCE ADOPTING BY REFERENCE THE 1979 EDITION OF THE UNIFORM BUILDING CODE AND SETTING HEARING THEREON FOR NOVEMBER 5, 1980

The title only of the following proposed ordinance was read: AN ORDINANCE RELATING TO THE REGULATION OF CONSTRUCTION, ALTERATION, MOVING, DEMOLITION, REPAIR AND USE OF ANY BUILDING OR STRUCTURE WITHIN THE CITY OF GRAND JUNCTION, COLORADO; ADOPTING BY REFERENCE THERETO THE UNIFORM BUILDING CODE OF THE INTERNATIONAL CONFERENCE OF BUILDING OFFICIALS, 1979 EDITION, TOGETHER WITH THE APPENDIX THERETO, WITH CERTAIN AMENDMENTS THERETO, AND TOGETHER WITH THE UNIFORM BUILDING CODE STANDARDS, 1979 EDITION, OF THE INTERNATIONAL CONFERENCE OF BUILDING OFFICIALS; PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES THEREFOR; DECLARING AND ESTABLISHING FIRE DISTRICTS; PROVIDING PENALTIES FOR THE VIOLATION

THEREOF; AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH. Upon motion by Councilman Johnson, seconded by Councilman Brach and carried, the proposed ordinance was passed for publication and authorized publication of the following notice setting the hearing on November 5, 1980:

NOTICE OF PUBLIC HEARING

PUBLIC NOTICE is hereby given that a public hearing will be held before the City Council of the City of Grand Junction, Colorado, on the 5th day of November, 1980, at 7:30 o'clock P.M. at the City Council Chambers, 250 North Fifth Street, Grand Junction, Colorado, on a proposed ordinance entitled: AN ORDINANCE RELATING TO THE REGULATION OF CONSTRUCTION, ALTERATION, MOVING, DEMOLITION, REPAIR AND USE OF ANY BUILDING OR STRUCTURE WITHIN THE CITY OF GRAND JUNCTION, COLORADO; ADOPTING BY REFERENCE THERETO THE UNIFORM BUILDING CODE OF THE INTERNATIONAL CONFERENCE OF BUILDING OFFICIALS, 1979 EDITION, TOGETHER WITH THE APPENDIX THERETO WITH CERTAIN AMENDMENTS THERETO AND TOGETHER WITH THE UNIFORM BUILDING CODE STANDARDS, 1979 EDITION, OF THE INTERNATIONAL CONFERENCE OF BUILDING OFFICIALS; PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES THEREFOR; DECLARING AND ESTABLISHING FIRE DISTRICTS; PROVIDING PENALTIES FOR THE VIOLATION THEREOF; AND REPLACING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH.

Certified true copies of the Uniform Building Code, 1979 Edition, including the Appendix thereto, with certain amendments thereto, and together with the Uniform Building Code Standards, 1979 Edition, are on file along with the proposed Ordinance adopting same by reference in the Office of the City Clerk of the City of Grand Junction, Colorado, and may be inspected by any interested person between the hours of 8:00 o'clock A.M. and 5:00 o'clock P.M., Monday through Friday, up to 5:00 o'clock P.M. on November 5, 1980.

Dated at Grand Junction, Colorado, this 1st day of October, 1980.

BY ORDER OF THE CITY COUNCIL

CITY OF GRAND JUNCTION, COLORADO

Neva B. Lockhart
City Clerk

Published: October 3, 1980

PROPOSED ORDINANCE ADOPTING BY REFERENCE THE 1979 EDITION OF THE UNIFORM FIRE CODE AND SETTING HEARING THEREON FOR NOVEMBER 5, 1980

The title only to the following proposed ordinance was read: AN ORDINANCE PRESCRIBING REGULATIONS CONSISTENT WITH NATIONALLY

RECOGNIZED GOOD PRACTICE FOR THE SAFEGUARDING TO A REASONABLE DEGREE OF LIFE AND PROPERTY FROM THE HAZARDS OF FIRE AND EXPLOSION ARISING FROM THE STORAGE, HANDLING, AND USE OF HAZARDOUS SUBSTANCES, MATERIALS AND DEVICES, AND FROM CONDITIONS HAZARDOUS TO LIFE OR PROPERTY IN THE USE OR OCCUPANCY OF BUILDING OR PREMISES IN THE CITY GRAND JUNCTION, COLORADO, ADOPTING BY REFERENCE THERETO THE UNIFORM FIRE CODE OF THE INTERNATIONAL CONFERENCE OF BUILDING OFFICIALS AND WESTERN FIRE CHIEFS ASSOCIATION, 1979 EDITION, TOGETHER WITH THE APPENDICES THERETO; PROVIDING PENALTIES FOR THE VIOLATION THEREOF; AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH. Upon motion by Councilman Johnson, seconded by Councilman Dunn and carried, the proposed ordinance was passed for publication and authorized the publication of the following notice setting hearing date on November 5, 1980:

NOTICE OF PUBLIC HEARING

PUBLIC NOTICE is hereby given that a public hearing will be held before the City Council of the City of Grand Junction, Colorado, on the 5th day of November, 1980, at 7:30 o'clock P.M. at the City Council Chambers, 250 North Fifth Street, Grand Junction, Colorado, on a proposed ordinance entitled: AN ORDINANCE PRESCRIBING REGULATIONS CONSISTENT WITH NATIONALLY RECOGNIZED GOOD PRACTICE FOR THE SAFEGUARDING TO A REASONABLE DEGREE OF LIFE AND PROPERTY FROM THE HAZARDS OF FIRE AND EXPLOSION ARISING FROM THE STORAGE, HANDLING AND USE OF HAZARDOUS SUBSTANCES, MATERIALS AND DEVICES, AND FROM CONDITIONS HAZARDOUS TO LIFE OR PROPERTY IN THE USE OR OCCUPANCY OF BUILDINGS OR PREMISES IN THE CITY OF GRAND JUNCTION, COLORADO; ADOPTING BY REFERENCE THERETO THE UNIFORM FIRE CODE OF THE INTERNATIONAL CONFERENCE OF BUILDING OFFICIALS AND WESTERN FIRE CHIEFS ASSOCIATION, 1979 EDITION, TOGETHER WITH THE APPENDICES THERETO; PROVIDING PENALTIES FOR THE VIOLATION THEREOF; AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH.

Certified true copies of the Uniform Fire Code, 1979 Edition, including the Appendices thereto, and the proposed Ordinance adopting by reference said Uniform Fire Code, 1979 Edition, including the Appendices thereto, are on file in the Office of the City Clerk of the City of Grand Junction, Colorado, and may be inspected by any interested person between the hours of 8:00 o'clock A.M. and 5:00 o'clock P.M., Monday through Friday, up to 5:00 P.M. on November 5, 1980.

Dated at Grand Junction, Colorado, this 1st day of October, 1980.

BY ORDER OF THE CITY COUNCIL

CITY OF GRAND JUNCTION, COLORADO

Neva B. Lockhart, CMC

City Clerk

Published: October 3, 1980

PROPOSED ORDINANCE CONCERNING BUILDINGS, CONTRACTORS LICENSING,
AND ENERGY REGULATIONS

The following entitled proposed ordinance was read: CONCERNING MOVING OF BUILDINGS, THE LICENSING OF CONTRACTORS FOR THE CONSTRUCTION OF BUILDINGS, AND ENERGY EFFICIENCY CONSTRUCTION AND RENOVATION STANDARDS OF BUILDINGS. Upon motion by Councilman Dunn, seconded by Councilman Brach and carried, the proposed ordinance was passed for publication. This ordinance will come up for final passage on the November 5 City Council meeting agenda.

PROPOSED ORDINANCE CONCERNING THE LICENSING OF BILLIARD AND POOL TABLES AND COIN OPERATED SKILL DEVICES

The following entitled proposed ordinance was read: CONCERNING THE LICENSING OF BILLIARD AND POOL TABLES AND COIN OPERATED SKILL DEVICES. Upon motion by Councilman Johnson, seconded by Councilman O'Dwyer and carried, the proposed ordinance was passed for publication.

RESOLUTION ON ANTONOPOULOS PROPERTY

The following Resolution was read:

R E S O L U T I O N

WHEREAS, SAM AND KAY ANTONOPOULOS are present record owners of Lots 1 through 24, inclusive, in Block 99, and have an option to purchase Lots 9 through 12, inclusive, in Block 100, City of Grand Junction, Mesa County, Colorado (hereinafter referred to collectively as the "real property"); and

WHEREAS, the City of Grand Junction, Colorado (the "City") desires to acquire said real property in its entirety, and solely in its entirety, in order to devote the same to future public use development; and

WHEREAS, Boettcher & Company ("Boettcher") is willing to finance the City's acquisition of said real property by entering into an installment purchase agreement with the City, as is more fully set forth below; and

WHEREAS, the scheduled annual payment of principal and interest to be made by the City for said real property shall be expressly subject to annual appropriations and payment by the City from current funds legally available therefor; and

WHEREAS, the City shall not incur general obligation indebtedness in connection with the method of such real property acquisition proposed; and

WHEREAS, said Lots 1 through 24, inclusive, in Block 99, City of Grand Junction, Mesa County, Colorado (hereinafter referred to as "Parcel A") shall be acquired by the City as of the closing date hereof for a purchase price of \$1,050,000 and said Lots 9 through 12, inclusive, in Block 100, City of Grand Junction, Mesa County, Colorado (hereinafter referred to as "Parcel B") shall be acquired, pursuant to an existing Option Agreement with the City, by February 1, 1981, for a purchase price of \$327,000:

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

Section 1. That for the purpose of acquiring said real property, the City shall accept conveyance of legal title to said real property in the manner set forth below and shall execute its Purchase Money Promissory Note in the principal amount of \$1,850,000; said \$1,850,000 principal amount representing the aggregate purchase price of Parcels A and B, \$1,377,000, capitalized interest in the amount of \$157,250 to be deposited into the "Land Purchase Payment Fund", which Fund is described in Section 3 below, reserve fund allocation in the amount of \$250,000 to be deposited in the "Land Purchase Reserve Fund", which Fund is described in Section 4 below, and underwriter's discount in the amount of \$65,750; the deeds evidencing the City's title to said Parcels A and B shall be held in escrow and shall be expressly conditional upon the payment by the City of all scheduled annual payments of principal and interest under said Note, it being the intent of the parties hereto that the City acquire the real property in its entirety; said Note shall be divisible and payable over a five-year period; the scheduled annual payments to be made by the City under said Note on October _____ of each year shall be appropriated by the City Council during the prior fiscal year of the City and such annual payments shall be deposited in a specially designated account, as is more fully set forth below; if, on the scheduled annual payment dates, the designated annual payment is not made by the City and the designated annual appropriation has not been made by the City for deposit into such designated account, then, in such event, the City shall have no liability of any kind by reason of its failure to make such designated annual payment and/or the designated annual appropriation for deposit for the next ensuing fiscal year.

The parties understand and agree that the purchase price of Parcel B, \$327,000, shall be funded by Boettcher, or its assigns, upon the execution by the City of the Purchase Money Promissory Note; that said funds shall be utilized in the acquisition of said Parcel B by the City, pursuant to an existing Option Agreement with the City, by February 1, 1981; that, prior to such acquisition, said funds shall be invested by a mutually acceptable escrow agent pending such acquisition of Parcel B; that the payment schedules contained infra, in the Purchase Money Promissory Note, Purchase Money Mortgage and Escrow Agreement and Instructions reflect the acquisition of said Parcel B by February

1, 1981; that, upon such acquisition, said escrow agent shall disburse said funds to the Seller of Parcel B, accept delivery of general warranty deed to Parcel B in the City's name, and hold such deed in the same manner as the general warranty deed to Parcel A and in accordance with the instructions of the parties hereto contained in the Escrow Agreement and Instructions, infra; that, notwithstanding any other term, provision, or condition of these proceedings, the parties hereto agree that, in the event, for any reason, said Parcel B shall not be acquired by said escrow agent in the name of the City by February 1, 1981, and said \$327,000 shall not be disbursed to Boettcher, or its assigns on February 1, 1981, as a mandatory prepayment of the then outstanding principal and the City shall, at such time, pay to Boettcher, or its assigns, the accrued interest on said sum; in such event, the parties hereto understand and agree that the terms and conditions contained in these proceedings, including the provisions of the Purchase Money Promissory Note, the Purchase Money Mortgage and the Escrow Agreement and Instructions, shall apply with full force and effect with respect to the conditional acquisition by the City of Parcel A, and that, consistent therewith, the Purchase Money Promissory Note, the Purchase Money Mortgage shall be recalculated and reestablished, by means of the Escrow Agreement and Instructions, to reflect the following amortization of principal and interest:

<u>Payment</u> <u>Date</u> <u>Payment</u> <u>Amount</u> <u>Princi</u> <u>pal</u> <u>Paid</u> <u>Interest</u> <u>Paid</u> <u>Remainin</u> <u>g</u> <u>Principal</u>				
2/1/81*\$ 336,265\$ 327,000 9,265\$1,523, 000				
10/1/81 229,455 100,000 129,455 1,423,000				
10/1/82				

420,955 300,000 120,955 1,123,000				
10/1/83 395,455 300,000 95,455 823,000				
10/1/84 369,955 300,000 69,955 523,000				
10/1/85 567,455 523,000 44,455				
<u>\$2,319,540</u> <u>\$1,850,000</u> <u>\$469,540</u>				

*Denotes mandatory prepayment on such date.

Section 2. That the City will further execute its Purchase Money Mortgage to Boettcher, or its assigns, which Mortgage shall encumber the real property being conveyed to the City until such time as all designated annual payments of principal and interest shall be paid by the City and shall entitle the City, as mortgagor, to a release of mortgage lien in its entirety; in the event the City fails to make a designated annual payment of principal and interest under said Note, then, in such event, the City shall convey to Boettcher, or its assigns, title in fee to said real property and Boettcher, or its assigns, shall be entitled to all right, title, and interest in said real property and shall, as soon as is practicably possible and within an amount of time as is commercially reasonable, sell the subject property in its entirety; the proceeds of such sale shall first be applied by Boettcher, or its assigns, to the payment of the then outstanding principal under said Note, the accrued interest thereon, and the expenses associated with such sale; any and all remaining proceeds shall be disbursed to the City by Boettcher or its assigns; the parties understand and agree that, consistent

with the provisions of Section 1, above, in the event Parcel B is not acquired from the Seller by February 1, 1981, and payment therefor in the amount of \$327,000 is not made by the escrow agent to Seller by February 1, 1981, then, in such event, mandatory prepayment of principal under the Purchase Money Promissory Note in the amount of \$327,000, together with accrued interest thereon, shall be made to Boettcher, or its assigns, on February 1, 1981; the Purchase Money Mortgage shall encumber Parcel A, and the payments to be made pursuant to said Mortgage shall be recalculated and reestablished, by means of the Escrow Agreement and Instruction, to reflect the amortization of principal and interest under the Purchase Money Promissory Note, as set forth in Section 1, above; the Purchase Money Promissory Note and the Purchase Money Mortgage, in such event, shall be in substantially the following form:

PURCHASE MONEY PROMISSORY NOTE

For value received, the City of Grand Junction, a political subdivision of the State of Colorado, acting through its City Council (the "Maker"), promises to pay to the order of Boettcher & Company, or its assigns, (the "Payee"), the sum of One Million Eight Hundred Fifty Thousand Dollars (\$1,850,000), payable in five annual installments of principal, together with interest on the unpaid balance at a rate of eight and one-half percent (8.50%) per annum, as follows:

<u>Payment Date</u>	<u>Payment Amount</u>	<u>Principal</u>	<u>Interest</u>	<u>Remaining Principal</u>
2/1/81*	\$336,265	\$327,000	\$9,265	\$1,523,000
10/1/81	229,455	100,000	129,455	1,423,000

10/1/82 420,955 300,000 120,955 1,123,000				
10/1/83 395,455 300,000 95,455 823,000				
10/1/84 369,955 300,000 69,955 523,000				
10/1/85 567,455 <u>523,000</u> 44,455				
<u>\$2,319,540</u> <u>\$1,850,000</u> <u>\$469,540</u>				

*Denotes mandatory prepayment on such date.

Upon payment of all designated installments of principal and interest, the Maker shall be entitled to release of the real property pledged pursuant to the terms of that certain Purchase Money Mortgage executed of even date herewith wherein the Maker is the mortgagor and Boettcher & Company, or its assigns, is the mortgagee. And all persons to whom these presents may come are referred to the Mortgage for its effect upon the within Note and the application of the aggregate of principal amounts paid pursuant to the Note and Mortgage, for procuring the release of property from its Mortgage lien, upon the indebtedness evidenced hereby. Specifically, reference is made to the fact that, as set forth in said Mortgage, in case of the failure of the Maker hereof to make the designated annual payment of principal and interest hereunder as the same mature and become due, there shall be no further obligation of the Maker to pay the balance then due under the Note and the only recourse of the Payee or its assigns is

against the real property pledged pursuant to the Mortgage, and in accordance with the terms and conditions thereof.

This Note is subject to prepayment in full from funds lawfully available therefor, on any designated annual payment date, upon payment of the par amount of the then outstanding principal, together with accrued interest thereon.

This Note is secured by said Purchase Money Mortgage pledging certain real property located in Mesa County, Colorado this _____ day of _____, 1980.

CITY OF GRAND JUNCTION

By:

Title: _____

ATTEST:

PURCHASE MONEY MORTGAGE

The City of Grand Junction, a political subdivision of the State of Colorado, acting by its City Council, hereinafter referred to as "Mortgagor," in consideration of Ten Dollars and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby sell, grant, bargain and convey to Boettcher & Company, or its assigns, hereinafter referred to as "Mortgagee," in fee simple the real property described in Exhibit A attached hereto and by this reference incorporated herein, comprising two acres more or less, situate in the County of Mesa, State of Colorado.

To have and to hold the same together with all and singular the appurtenances and privileges thereunto belonging or appertaining, and all the estate, right, title, interest and claim whatsoever of the Mortgagor either in law or equity to the proper use, benefit, and behalf of the Mortgagee, its heirs and assigns. And the Mortgagor hereby warrants that it is well and truly seized of good and indefeasible title to the real property described herein, in fee simple, free and clear of liens and encumbrances, except such liens and encumbrances of record.

This Mortgage is given to secure a Purchase Money Promissory Note between the parties of even date herewith in a principal amount of \$1,850,000, bearing interest at the rate of eight and one-half percent (8.50%) per annum, the schedule of payments by the Mortgagor being as set forth below:

<u>Payment</u> <u>DatePayment</u> <u>AmountPrinci</u> <u>pal</u> <u>PaidInterest</u> <u>PaidRemainin</u> <u>g Principal</u>				
2/1/81*\$ 336,265\$ 327,000\$ 9,265\$1,523, 000				
10/1/81 229,455 100,000 129,455 1,423,000				
10/1/82 420,955 300,000 120,955 1,123,000				
10/1/83 395,455 300,000 95,455 823,000				
10/1/84 369,955 300,000 69,955 523,000				
10/1/85 567,455 <u>523,000</u> <u>44,455</u>				

<u>\$2,319,540</u> <u>\$1,850,000</u> <u>\$469,540</u>				
--	--	--	--	--

*Denotes mandatory prepayment on such date.

Mortgagor's Entitlement to Release of Mortgage Lien. Mortgagor shall be entitled to a release of the mortgage lien evidenced hereby upon payment of all designated annual installments of principal and interest set forth above or upon prepayment as set forth in said Purchase Money Promissory Note.

Mortgagee's Rights in the event of Nonpayment by the City. In the event the City fails to make a designated annual payment of principal and interest under said Note, then, in such event, the Mortgagee, or its assigns, shall be entitled to all right, title, and interest in said real property and shall, as soon as is commercially reasonable, sell the subject property in its entirety; the proceeds of such sale shall first be applied by Mortgagee, or its assigns, to the payment of the then outstanding principal under said Note, the accrued interest thereon, and the expenses associated with such sale; any and all remaining proceeds shall be disbursed to the City by Mortgagee, or its assigns.

Escrow Agent. It is hereby understood that _____ will act as escrow agent, pursuant to the terms of this Mortgage and the instructions of the parties, to effectuate the rights and obligations of the parties to this Purchase Money Mortgage. Mortgagor agrees to pay all costs or expenses of the Escrow Agent in acting pursuant to such instructions.

Remedies Available to Mortgagees. No term or language within this Purchase Money Mortgage shall be construed to in any way limit the rights of or remedies available to the Mortgagee, its successors or assigns, as provided by law.

Qualification. Nothing herein shall be construed as creating an obligation or debt of the City of Grand Junction, State of Colorado, and in no event a commitment, liability or obligation thereof as may be prohibited by the State Constitution or statutes. The rights of the Mortgagees under this Mortgage are limited to the real property, two acres in aggregate, which the Mortgage encumbers. No judgment, deficiency or otherwise, may ever be sought or obtained against the Mortgagor.

IN WITNESS WHEREOF, the Mortgagor and the Mortgagee have caused these presents to be executed under seal on this _____ day of _____, 1980.

MORTGAGOR:

CITY OF GRAND JUNCTION, COLORADO

By:

Title: _____

ATTEST:

MORTGAGEE:

By:

Title: _____

ATTEST:

Section 3. That, assuming the acquisition of Parcel B from the Seller thereof by February 1, 1981, and the payment to Seller by the escrow agent of the sum of \$327,000 by February 1, 1981, the Purchase Money Promissory Note and the Purchase Money Mortgage shall be in substantially the following form:

PURCHASE MONEY PROMISSORY NOTE

For value received, the City of Grand Junction, a political subdivision of the State of Colorado, acting through its City Council (the "Maker"), promises to pay to the order of Boettcher & Company, or its assigns, (the "Payee"), the sum of One Million Eight Hundred Fifty Thousand Dollars (\$1,850,000), payable in five annual installments of principal, together with interest on the unpaid balance at a rate of eight and one-half percent (8.50%) per annum, as follows:

<u>Payment</u> <u>Date</u> <u>Payment</u> <u>Amount</u> <u>Princi</u> <u>pal</u> <u>Paid</u> <u>Interest</u> <u>Paid</u> <u>Remainin</u> <u>g</u> <u>Principal</u>				
10/1/81\$ 257,250\$ 100,000\$157, 250\$1,750,00 0				
10/1/82 448,750 300,000 148,750 1,450,000				
10/1/83 423,250 300,000 123,250 1,150,000				
10/1/84 397,750 300,000 97,750 850,000				
10/1/85 922,250 850,000 <u>72,250</u>				
<u>\$2,449,250</u> \$1 <u>,850,000</u> \$599 <u>,250</u>				

Upon payment of all designated installments of principal and interest, the Maker shall be entitled to release of the real

property pledged pursuant to the terms of that certain Purchase Money Mortgage executed of even date herewith wherein the Maker is the mortgagor and Boettcher & Company, or its assigns, is the mortgagee. And all persons to whom these presents may come are referred to the Mortgage for its effect upon the within Note and the application of the aggregate of principal amounts paid pursuant to the Note and Mortgage, for procuring the release of property from its Mortgage lien, upon the indebtedness evidenced hereby. Specifically, reference is made to the fact that, as set forth in said Mortgage, in case of the failure of the Maker hereof to make the designated annual payment of principal and interest hereunder as the same mature and become due, there shall be no further obligation of the Maker to pay the balance then due under the Note and the only recourse of the Payee or its assigns is against the real property pledged pursuant to the Mortgage, and in accordance with the terms and conditions thereof.

This Note is subject to prepayment in full from funds lawfully available therefor, on any designated annual payment date, upon payment of par amount of the then outstanding principal, together with accrued interest thereon.

This Note is secured by said Purchase Money Mortgage pledging certain real property located in Mesa County, Colorado, this _____ day of _____, 1980.

CITY OF GRAND JUNCTION

By:

Title: _____

ATTEST:

PURCHASE MONEY MORTGAGE

The City of Grand Junction, a political subdivision of the State of Colorado, acting by its City Council, hereinafter referred to as "Mortgagor," in consideration of Ten Dollars and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby sell, grant, bargain and convey to Boettcher & Company, or its assigns, hereinafter referred to as "Mortgagee," in fee simple the real property described in Exhibit A attached hereto and by this reference incorporated herein, comprising two acres more or less, situate in the County of Mesa, State of Colorado.

To have and to hold the same together with all and singular the

appurtenances and privileges thereunto belonging or appertaining, and all the estate, right, title, interest and claim whatsoever of the Mortgagor either in law or equity to the proper use, benefit, and behalf of the Mortgagee, its heirs and assigns. And the Mortgagor hereby warrants that it is well and truly seized of good and indefeasible title to the real property described herein, in fee simple, free and clear of liens and encumbrances, except such liens and encumbrances of record.

This Mortgage is given to secure a Purchase Money Promissory Note between the parties of even date herewith in a principal amount of \$1,850,000, bearing interest at the rate of eight and one-half percent (8.50%) per annum, the schedule of payments by the Mortgagor being as set forth below:

<u>Payment Date</u>	<u>Payment Amount</u>	<u>Princi pal Paid</u>	<u>Interest Paid</u>	<u>Remainin g Principal</u>
10/1/81	\$257,250	\$100,000	\$157,250	\$1,750,000
10/1/82	448,750	300,000	148,750	1,450,000
10/1/83	423,250	300,000	123,250	1,150,000
10/1/84	397,750	300,000		

97,750 850,000				
10/1/85 922,250 <u>850,000</u> 72,250				
\$2,449,250\$1 <u>,850,000\$599</u> <u>,250</u>				

Mortgagor's Entitlement to Release of Mortgage Lien. Mortgagor shall be entitled to a release of the mortgage lien evidenced hereby upon payment of all designated annual installments of principal and interest set forth above or upon prepayment as set forth in said Purchase Money Promissory Note.

Mortgagee's Right in the event of Nonpayment by the City. In the event the City fails to make a designated annual payment of principal and interest under said Note, then, in such event, the Mortgagee, or its assigns, shall be entitled to all right, title and interest in said real property and shall, as soon as is practicably possible and within an amount of time as is commercially reasonable, sell the subject property in its entirety; the proceeds of such sale shall first be applied by Mortgagee, or its assigns, to the payment of the then outstanding principal under said Note, the accrued interest thereon, and the expenses associated with such sale; any and all remaining proceeds shall be disbursed to the City by Mortgagee, or its assigns.

Escrow Agent. It is hereby understood that _____ will act as escrow agent, pursuant to the terms of this Mortgage and the instructions of the parties, to effectuate the rights and responsibilities of the parties to this Purchase Money Mortgage. Mortgagor agrees to pay all costs or expense of the Escrow Agent in acting pursuant to such instructions.

Remedies Available to Mortgagees. No term or language within this Purchase Money Mortgage shall be construed to in any way limit the rights of or remedies available to the Mortgagee, its successors or assigns, as provided by law.

Qualification. Nothing herein shall be construed as creating an obligation or debt of the City of Grand Junction, State of Colorado, and in no event a commitment, liability or obligation thereof as may be prohibited by the State Constitution of statutes. The rights of the Mortgagees under this Mortgage are limited to the real property, two acres in aggregate, which the Mortgage encumbers. No judgment, deficiency or otherwise, may ever

be sought or obtained against the Mortgagor.

IN WITNESS WHEREOF, the Mortgagor and the Mortgagee have caused these presents to be executed under seal on this _____ day of _____, 1980.

MORTGAGOR:

CITY OF GRAND JUNCTION, COLORADO

By:

Title: _____

ATTEST:

MORTGAGEE:

By:

Title: _____

ATTEST:

Section 4. That the Escrow Agreement and Instructions to effectuate the rights and obligations of the parties hereto under the Purchase Money Promissory Note and the Purchase Money Mortgage, shall be in substantially the following form:

ESCROW AGREEMENT AND INSTRUCTIONS

_____, 1980

The City of Grand Junction, Mesa County, Colorado (the "City") and Boettcher & Company, or its assigns (hereinafter collectively referred to as "Boettcher"), herewith submit to you the following

documents together with escrow instructions, pursuant to the agreement of the parties as set forth in Resolution No. _____, Series of 1980, adopted and approved by the City Council of the City of Grand Junction on the _____ day of _____, 1980, as amended by Resolution No. _____, Series of 1980, adopted and approved by the City Council of the City of Grand Junction on _____, 1980. Said Resolution, as amended, concerns the acquisition by the City of certain real property, conditional upon the payment by the City of certain sums annually over a five-year period. The real property is comprised of two parcels: Lots 1 through 24, inclusive, in Block 99, City of Grand Junction, Mesa County, Colorado ("Parcel A") and Lots 9 through 12, inclusive, in Block 100, City of Grand Junction, Mesa County, Colorado ("Parcel B").

The City and Boettcher deliver to you the following items to be held and disposed of by you in accordance with the instructions set forth below:

1. Purchase Money Promissory Note and Purchase Money Mortgage with the City as Maker/Mortgagor and Boettcher as Payee/Mortgagee. The subject of said Note and Mortgage are Parcels A and B, as indicated by the legal description attached to said Mortgage and incorporated by reference therein. As set forth in said Note and Mortgage, annual payments to be made by the City as Maker/Mortgagor, are in accordance with the following schedule:

<u>Payment Date</u>	<u>Payment Amount</u>	<u>Princi pal Paid</u>	<u>Interest Paid</u>	<u>Remainin g Principal</u>
10/1/81	\$257,250	\$100,000	\$157,250	\$1,750,000
10/1/82	448,750	300,000	148,750	1,450,000

10/1/83 423,250 300,000 123,250 1,150,000				
10/1/84 397,750 300,000 97,750 850,000				
10/1/85 922,250 <u>850,000</u> <u>72,250</u>				
<u>\$2,449,250</u> <u>\$1,850,000</u> <u>\$599,250</u>				

2. One Release of Mortgage Lien, executed by Boettcher, as Payee/Mortgagee, with respect to Parcels A and B.

3. General Warranty Deed, executed by the City, as Grantor, granting in fee simple all right, title and interest in Parcels A and B to Boettcher.

4. Certified funds in the amount of \$327,000.

5. Purchase Money Promissory Note and Purchase Money Mortgage with the City as Maker/Mortgagor and Boettcher as Payee/Mortgagee. The subject of said Note and Mortgage is Parcel A, as indicated by the legal description attached to said Mortgage and incorporated by reference therein. As set forth in said Note and Mortgage, annual payments to be made by the City, as Maker/Mortgagor, are in accordance with the following schedule:

<u>Payment</u> <u>Date</u> <u>Payment</u> <u>Amount</u> <u>Princi</u> <u>pal</u>				
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<u>PaidInterest</u> <u>PaidRemainin</u> <u>g Principal</u>				
2/1/81*\$ 336,265\$ 327,000\$ 9,265\$1,523, 000				
10/1/81 229,455 100,000 129,455 1,423,000				
10/1/82 420,955 300,000 120,955 1,123,000				
10/1/83 395,455 300,000 95,455 823,000				
10/1/84 369,955 300,000 69,955 523,000				
10/1/85 567,455 <u>523,000</u> 44,455				
<u>\$2,319,540\$1</u> <u>,850,000\$469</u> <u>,540</u>				

*Denotes mandatory prepayment on such date.

6. One Release of Mortgage Lien, executed by Boettcher as Payee/Mortgagee, with respect to Parcel A.

7. General Warranty Deed, executed by the City, as Grantor, granting in fee simple all right, title and interest in Parcel A to Boettcher.

8. General Warranty Deed, executed by _____, as Seller, granting in fee simple all right, title and interest in Parcel A to the City.

As Escrow Agent you are instructed as follows:

A. Instruction up to and including February 1, 1981:

1. The General Warranty Deed (Item #8) in your possession, with _____, as Grantor, and the City as Grantee, shall be recorded by you in the real property records of the County of Mesa, State of Colorado. You shall then continue to hold said deed in your possession.

2. You shall immediately invest the sum of \$327,000 (Item #4) in an interest bearing account, designated in the name of the City.

3. Subsequent to January 1, 1981, but in no event later than February 1, 1981, and upon notification by the City and Boettcher that said Parcel B is to be conveyed on a designated closing date by _____, as Seller, to the City, you shall, on such designated closing date, accept a General Warranty Deed, executed by _____, as Seller, granting in fee simple all right, title and interest in Parcel B to the City and you shall, simultaneously therewith, disburse to said Seller the sum of \$327,000 as payment in full of the purchase price of said Parcel B. All interest earnings on said sum shall be sent to the City with instructions to deposit the same to the "Investment Earnings Fund". You shall then record the deed to Parcel B in the manner set forth in instruction A.1., above, and hold said deed in your possession. You shall further destroy the Purchase Money Promissory Note (Item #5), the Purchase Money Mortgage (Item #5), the Release of Mortgage Lien (Item #6) and the General Warranty Deed (Item #7), which documents relate solely to Parcel A. The remaining documents in your possession shall be held and disposed of in accordance with the instructions, below, subsequent to February 1, 1981.

4. In the event you are not notified by the City and Boettcher that said Parcel B is to be so conveyed on a designated closing date no later than February 1, 1981, you shall, on February 1, 1981 disburse to Boettcher the sum of \$327,000 and all accrued interest on said sum. You shall then destroy the Purchase Money Promissory Note (Item #1), the Purchase Money Mortgage (Item #1), the Release of Mortgage Lien (Item #2) and the General Warranty Deed (Item #3), which documents relate to Parcels A and B. The

remaining documents in your possession shall be held in accordance with the instructions, below, subsequent to February 1, 1981.

B. Instructions Subsequent to February 1, 1981.

1. Scheduled annual payments of principal and interest under the Purchase Money Promissory Note in your possession will be made in cash or certified funds directly to Boettcher. Boettcher will, within three days subsequent to such date of scheduled payment, notify you of the making of such payment by the City. Upon such notification you shall cause the Purchase Money Promissory Note in your possession to be marked "Paid" as to the applicable principal and interest installment and, in such event, nothing further shall be required. Upon payment in full of all designated annual installments of principal and interest under the Purchase Money Promissory Note, or upon prepayment of such Note as provided therein, you shall, upon notification of the same by Boettcher, deliver to the City the Purchase Money Promissory Note, the Purchase Money Mortgage and the General Warranty Deed(s) (to Parcels A and B or, alternately, to Parcel A), with _____, as Grantor, and the City as Grantee; you shall destroy the General Warranty Deed, with the City as Grantor and Boettcher as Grantee; and you shall deliver the Release of Mortgage Lien, as executed by Boettcher, to the City.

2. If, within three days subsequent to the date of any scheduled annual principal and interest payment under the Purchase Money Promissory Note, you are not notified by Boettcher that such scheduled annual payment has been received, or that prepayment of such Note has been made as provided therein, you shall on such date make written inquiry upon Boettcher and the City to verify the occurrence of non-payment by the City, as Maker under said Note.

Upon verification by Boettcher and the City, of such non-payment by the City, you shall deliver to the City the General Warranty Deed(s) (to Parcel A and B or, alternately, to Parcel A) with _____, as Grantor and the City as Grantee; you shall deliver to Boettcher the Purchase Money Promissory Note, the Purchase Money Mortgage, and the General Warranty Deed, with the City as Grantor and Boettcher as Grantee; and you shall destroy the Release of Mortgage Lien, executed by Boettcher.

Notwithstanding anything to the contrary herein, the Escrow Agent shall have no duty to determine the performance or non-performance of any term or condition of the agreement between the parties hereto, and the duties and responsibilities of the Escrow Agent are limited to those specifically stated herein.

In the event of any disagreement or the presentation of adverse claims or demands in connection with or for any item affected hereto, the Escrow Agent shall be entitled to refuse to comply with any such claims or demands during the continuance of such disagreement and may refrain from delivery of any item affected

hereby, and in so doing the Escrow Agent shall not become liable to the undersigned, or to any other person, due to its failure to comply with any such adverse claim or demand. The Escrow Agent shall be entitled to continue, without liability, to refrain and refuse to act:

a. Until all the rights of the adverse claimants have been finally adjudicated by a court having jurisdiction of the parties and the items affected hereby, after which time the Escrow Agent shall be entitled to act in conformity with such adjudication; or

b. Until all differences shall have been adjusted by agreement and the Escrow Agent shall have been notified thereof and shall have been directed in writing signed jointly or in counterpart by the undersigned and all persons making adverse claims or demands, at which time the Escrow Agent shall be protected in acting in compliance therewith.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement and Instructions to be executed the day and year first above written.

THE CITY OF GRAND JUNCTION, COLORADO

By

Mayor

ATTEST:

City Clerk

BOETTCHER & COMPANY

By

Title _____

ATTEST:

ACCEPTED this _____ day of _____, 1980.

Escrow Agent

By _____

Title _____

Section 5. That for the purpose of effectuating the payment by the City of the designated principal and interest under said Note, there is hereby established the "Land Purchase Payment Fund," which shall be maintained in a special account of the City at a Colorado savings and loan association; in the event the City acquires Parcel B by February 1, 1981, as is more fully set forth in Sections 1-3, supra, then the City shall deposit into such fund the following sums, to the extend appropriated annually by the City Council:

<u>Deposit Date</u>	<u>Amount</u>	
10/1/80	\$257,250.00*	
10/1/81	388,296.42	
10/1/82	361,133.12	
10/1/83	337,797.84	
10/1/84	543,199.11	

* Includes \$157,250 capitalized interest.

In the event the City does not acquire Parcel B by February 1, 1981, as is more fully set forth in Sections 1-3, supra, then the City shall deposit into such fund the following sums, to the extend appropriated annually by the City Council:

<u>Deposit Date</u>	<u>Amount</u>	
10/1/80	\$257,250.00*	
10/1/81	343,326.77	
10/1/82	337,239.64	
10/1/83	312,346.77	

10/1/84 228,246.59	
--------------------	--

* Includes \$157,250 capitalized interest.

Sums deposited into said Fund shall be invested for a period of one year at an interest rate of nine (9%) percent per annum until the next succeeding payment date under the Purchase Money Promissory Note, at which time the sums deposited shall be utilized to pay the designated principal and interest payment under said Note.

Section 6. That for the purpose of securing the payment by the City of the designated principal and interest under said Note, there is hereby established the "Land Purchase Reserve Fund" in the principal amount of \$250,000, which Fund shall be maintained in a special account of the City at a Colorado savings and loan association; the principal amount of said Fund shall be invested at an interest rate of nine (9%) percent per annum; the principal amount of said Fund and the interest thereon shall be utilized by the City to the extent necessary, to make the designated annual payment of principal and interest under said Note; in the event said Fund, in whole or in part, is so utilized by the City to make the designated annual payment of principal and interest under said Note prior to the October 1, 1985 designated payment, then, in such event, the City pledges that it shall reconstitute the principal amount of said Fund, \$250,000, from current funds of the City legally available within the next six months, if in the next annual appropriation, the City, at such time, appropriates funds for the designated annual principal and interest payment for the next succeeding fiscal year; in the event said Fund is not utilized by the City to make the designated annual payment of principal and interest under said Note on October 1, 1984, then, in such event, said Fund shall be utilized by the City to make the final designated payment of principal and interest under said Note on October 1, 1985.

Notwithstanding any other term, condition, or provision of these proceedings, in the event the City fails to make a designated annual payment of principal and interest under said Note, then, in such event, the City shall, as soon as practicably possible, remit to Boettcher, or its assigns, the principal amount of said Fund, \$250,000.

Section 7. That for the purpose of effectuating the payment by the City of the designated principal and interest under said Note, there is hereby established the "Investment Earnings Fund" which shall be maintained in a special account of the City at a Colorado savings and loan association; the City shall deposit into such fund the interest earnings from the Land Purchase Payment Fund and the Land Purchase Reserve Fund; said deposits shall be reinvested at an interest rate of nine (9%) percent per annum for a period of

one year (1), at which time said deposits and the interest earnings thereon shall be utilized by the City to make the then applicable designated payment of principal and interest under said Note.

Section 8. That, in the event of nonpayment by the City Council with respect to any scheduled annual payment under said Note, the City covenants that it shall not purchase, lease, or rent real property for similar governmental purposes until after October 1, 1985, the date of the final scheduled annual payment under said Note. This covenant shall not apply to existing authorized, general obligations of the City for similar governmental real property acquisitions, entered into prior to the date hereof.

Section 9. That, with respect to the acquisition by the City of Grand Junction of said real property, the City shall pay all of the following costs during the scheduled term of its Purchase Money Promissory Note: all property taxes due and payable on said real property, all normal and customary closing expenses of the escrow agent in effectuating the rights and duties of the City and Boettcher, or its assigns, under the Purchase Money Promissory Note and Mortgage, and all surveying costs with respect to said real property, in the event the City fails to make an annual payment of principal and interest under said Note.

Section 10. That, recognizing that Boettcher, or its assigns, will finance the City's acquisition of the subject real property, and recognizing that the security of Boettcher, or its assigns, in this instance is limited solely to the real property which is the subject of the Purchase Money Promissory Note and Mortgage, and recognizing that the City may terminate payments to Boettcher, or its assigns, without further liability pursuant to the terms of such Note and Mortgage, and recognizing that, having no recourse against the City, Boettcher, or its assigns, shall require mortgage security adequate to cover the outstanding principal under said Note, the City hereby expresses its intent to make no changes in the zoning applicable to said real property so long as any principal and interest are outstanding under the Purchase Money Promissory Note.

Section 11. That the City expresses its firm intent not to impose covenants on the real property until all principal and interest under said Note has been fully paid and discharged.

Section 12. That the City does not intend that this instrument should create a general obligation or debt in any constitutional or statutory sense, and that the City may terminate the payment of designated principal and interest installments under said Note at any time without incurring additional liability.

Section 13. That the Mayor of the City and the City Clerk are hereby authorized to take any and all action necessary and appropriate toward the execution of any and all documents in connection with the conveyance of title and execution of the

Purchase Money Promissory Note and Mortgage and the establishment of an appropriate Escrow Agreement between the City, Boettcher, or its assigns, and a mutually agreeable escrow agent to act and perfect the respective rights and obligations set forth in the Mortgage.

Section 14. That if any portion of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such portion or provision shall not affect any of the remaining provisions of this Resolution, the intention being that the same are severable.

Section 15. That all acts, orders, and resolutions and parts thereof in conflict with this Resolution are hereby rescinded.

ADOPTED and APPROVED this 1st day of October, 1980.

CITY OF GRAND JUNCTION, Mesa County, Colorado

By

Mayor

ATTEST:

City Clerk

Upon motion by Councilman Brach, seconded by Councilman Hollingsworth and carried by roll call vote, the Resolution was passed and adopted as read.

N 12TH STREET ENCLAVE ANNEXATION, E OF 12TH, BETWEEN F 1/4 ROAD AND HORIZON DRIVE - RESOLUTION GIVING NOTICE OF INTENT TO ANNEX AND SETTING HEARING ON NOVEMBER 5, 1980

The following Resolution was read:

R E S O L U T I O N

DECLARING THE INTENT OF THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION TO ANNEX CERTAIN LANDS TO THE CITY.

WHEREAS, the following described land, situate in Mesa County, Colorado, to wit:

Beginning at a point 66 feet North and 30 feet East of the Southwest Corner of the Northwest Quarter of the Southwest Quarter, Section 1, Township 1 South, Range 1 West, Ute Meridian; thence East along the North line of the South one acre of the Southwest Quarter of the Northwest Quarter of the Southwest Quarter of said Section 1 to the West line of the Southeast Quarter of the Northwest Quarter of the Southwest Quarter of said

Section 1, thence North to the Northwest Corner of said Southeast Quarter of the Northwest Quarter of the Southwest Quarter, Section 1, thence East to the East line of the Northwest Quarter of the Southwest Quarter of said Section 1, thence North to the Northeast of said Northwest Quarter of the Southwest Quarter of Section 1, thence East to the Southwest Corner of Bell Ridge Subdivision, thence North to the Northwest Corner of Lot 25, Jaynes Subdivision, thence East to the East line of the Northwest Quarter of said Section 1, thence North along said East line to a point 782.5 feet South of the Northeast Corner of said the Northwest Quarter of said Section 1, thence West 408 feet, thence South 82 deg. 49 min. West 220 feet, thence South 55 deg. 57 min. West 596 feet, thence West 190 feet, thence South 176 feet, thence West to the Southeasterly right of way line of Horizon Drive, thence Southwesterly along said line to the East right of way line of 12th Street, thence South along said East right of way line to the point of beginning; Together with all adjacent road rights of way;

is an incorporated area which, along with other lands, has had a two-third boundary contiguity with the City of Grand Junction for over three years; and

WHEREAS, it is desirable under the purpose of the Municipal Annexation Act of 1965 that said land be annexed to the City;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION:

1. That is the intent of the City to annex said territory to the City of Grand Junction.

2. That a hearing is set for the 5th day of November, 1980, at 7:30 o'clock PM in the Council Chambers before the Council to determine whether or not land in identical ownership has been divided by the proposed annexation; whether or not any land in identical ownership in the territory proposed to be annexed comprises twenty acres or more and has an assessed valuation in excess of Two Hundred Thousand Dollars; and whether or not said territory is subject to a petition for annexation to another municipality.

PASSED and ADOPTED this 1st day of October, 1980.

President of the Council

Attest:

City Clerk

Upon motion by Councilman O'Dwyer, seconded by Councilman Dunn and

carried by roll call vote, the Resolution was passed and adopted as read.

RESOLUTION AMENDING JOINT SEWERAGE SERVICE AGREEMENT BETWEEN THE CITY OF GRAND JUNCTION AND THE COUNTY OF MESA, COLORADO

The following Resolution was read:

R E S O L U T I O N

AMENDING JOINT SEWERAGE SERVICE AGREEMENT BETWEEN THE CITY OF GRAND JUNCTION AND THE COUNTY OF MESA, COLORADO.

WHEREAS, under date of May 1, 1980, the City of Grand Junction and the County of Mesa entered into a "JOINT SEWERAGE SERVICE AGREEMENT"; and

WHEREAS, in Paragraph 1 of that Agreement there is certain language concerning the levying of charges and fees for the use of the system contemplated by the Agreement, which language may be unclear as to the setting of those charges and fees;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION:

1. That Paragraph 1 of said Agreement, which now reads:

"1. The Parties agree that the Utility Department of the City (referred to herein as the Manager) will establish the joint annual charges in amounts that will be fair and reasonable for the carriage and treatment of the joint sewage and will raise sufficient annual revenue to meet the requirement set out in the resolutions of the County authorizing the issuance of Sewerage Revenue Bonds. The Manager will, prior to the 1st day of October of each year, submit to both the Board of County Commissioners of Mesa County and the City Council of the City of Grand Junction, its anticipated budget for the following year, including its recommended user charges, tap fees and plant investment fees to be charged within the system. Such charges or fees shall be sufficient to meet the needs of the total costs for the operation, maintenance, principal and interest on Bonds, and will be uniform for those similarly situated within the system. The Board and Council shall approve such charges and fees. This provision is not intended to prevent the City, County or one of the special districts or organizations which provide sewerage systems within a neighborhood from charging, in addition to the charges and fees mentioned, such additional charges or fees to accomplish an effective sewerage system within their communities and under the laws covering their activities. This provision is not intended to authorize any other entities with authority to provide sewer services to areas being served or to be served by the City or County."

shall be amended to read:

"1. The Parties agree that the Utility Department of the City (referred to herein as the Manager) will establish the joint annual charges in amounts that will be fair and reasonable for the carriage and treatment of the joint sewage and will raise sufficient annual revenue to meet the requirement set out in the resolutions of the County authorizing the issuance of Sewerage Revenue Bonds. The Manager will, prior to the 1st day of October of each year, submit to both the Board of County Commissioners of Mesa County and the City Council of the City of Grand Junction, its anticipated budget for the following year, including its recommended user charges, tap fees and plant investment fees to be charged within the system. Such charges or fees shall be sufficient to meet the needs of the total costs for the operation, maintenance, principal and interest on Bonds, and will be uniform for those similarly situated within the system. The Board shall adopt and the Council shall affirm such charges and fees. This provision is not intended to prevent the City, County or one of the special districts or organizations which provide sewerage systems within a neighborhood from charging, in addition to the charges and fees mentioned, such additional charges or fees to accomplish an effective sewerage system within their communities and under the laws covering their activities. This provision is not intended to authorize any other entities with authority to provide sewer service to areas being served or to be served by the City or County."

2. This Resolution shall act as an amendment of the Joint Agreement and shall be attached thereto and made a part thereof for future reference.

PASSED and ADOPTED this 1st day of October, 1980.

President of the Council

Attest:

City Clerk

Upon motion by Councilman Dunn, seconded by Councilman Brach and carried by roll call vote with Councilman HOLMES voting NO, the Resolution was passed and adopted as read.

RESOLUTIONS GIVING CITY MANAGER AUTHORIZATION TO SIGN AGREEMENTS WITH MITCHELL ENERGY CORPORATION FOR GRANTING RIGHTS OF WAY AND SETTLEMENT OF SURFACE DAMAGES FOR THREE WILDCAT OIL/GAS WELLS (ANDERSON RANCH)

The following Resolution was read:

R E S O L U T I O N

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION,
COLORADO:

That the City Manager, James E. Wysocki, be authorized and directed on behalf of the City to execute a Right-of-Way and Settlement of Surface Damages Agreement requested by Mitchell Energy Corporation, Denver, Colorado, covering the interest on The City of Grand Junction in the Eats 1/2 of Section 36, Township 12 South, Range 97 West, County of Mesa, State of Colorado, for a term so long as the right-of-way is used for the purposes therein granted, a one-time payment of \$1,000 for a wellsite location and \$2.00 per rod for use of access roads during the drilling, completing, and equipping of the subject well, an additional \$3.00 per rod for a producing right-of-way over and across the access roads should the subject well be commercially productive, a one-time payment of \$750 for the installation, if necessary, of a tank battery or other related facilities at a location other than a wellsite for the subject well, a one-time payment of \$5.00 per rod for any access road to such installation, and a one-time payment of \$2.00 per rod for rights-of-way for construction and installation of electric lines, pipelines, and related facilities at locations not within the land area utilized by the access roads to the subject well (all payments to be payable to the City of Grand Junction, as Grantor, in proportion to its undivided interest in said land).

PASSED and ADOPTED this 1st day of October, 1980.

President of the Council

Attest:

City Clerk

The following Resolution was read:

R E S O L U T I O N

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION,
COLORADO:

That the City Manager, James E. Wysocki, be authorized and directed on behalf of the City to execute a Right-of-Way and Settlement of Surface Damages Agreement requested by Mitchell Energy Corporation, Denver, Colorado, covering the interest of the City of Grand Junction in the Southwest Quarter of the Southwest Quarter of Section 25, Township 12 South, Range 98 West, County of Mesa, State of Colorado, for a term so long as the right-of-way is

used for the purposes therein granted, a one-time payment of \$1,000 for a wellsite location and \$2.00 per rod for use of access roads during the drilling, completing, and equipping of the subject well, an additional \$3.00 per rod for a producing right-of-way over and across the access roads should the subject well be commercially productive, a one-time payment of \$750 for the installation, if necessary, of a tank battery or other related facilities at a location other than the wellsite for the subject well, a one-time payment of \$5.00 per rod for any access road to such installation, and a one-time payment of \$2.00 per rod for rights-of-way for construction and installation of electric lines, pipelines, and related facilities at locations not within the land area utilized by the access roads to the subject well (all payments to be payable to The City of Grand Junction, as Grantor, in proportion to its undivided interest in said land).

PASSED and ADOPTED this 1st day of October, 1980.

President of the Council

Attest:

City Clerk

The following Resolution was read:

R E S O L U T I O N

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

That the City Manager, James E. Wysocki, be authorized and directed on behalf of the City to execute a Right-of-Way and Settlement of Surface Damages Agreement requested by Mitchell Energy Corporation, Denver, Colorado, covering the interest of the City of Grand Junction in Lot 2 of Section 35, Township 12 South, Range 98 West, County of Mesa, State of Colorado, for a term so long as the right-of-way is used for the purposes therein granted, a one-time payment of \$1,000 for a wellsite location and \$2.00 per rod for use of access roads during the drilling, completing, and equipping of the subject well, an additional \$3.00 per rod for a producing right-of-way over and across the access roads should the subject well be commercially productive, a one-time payment of \$750 for the installation, if necessary, of a tank battery or other related facilities at a location other than the wellsite for the subject well, a one-time payment of \$5.00 per rod for any access road to such installation, and a one-time payment of \$2.00 per rod for rights-of-way for construction and installation of electric lines, pipelines, and related facilities at locations not within the land area utilized by the access roads to the subject

well (all payments to be payable to The City of Grand Junction, as Grantor, in proportion to its undivided interest in said land).

PASSED and ADOPTED this 1st day of October, 1980.

President of the Council

Attest:

City Clerk

Upon motion by Councilman Brach, seconded by Councilman Johnson and carried by roll call vote, the foregoing three Resolutions were passed and adopted as read.

Brian Worth of the Mitchell Energy Corporation of Denver advised that the City of Grand Junction owns the surface and the Minerals on this land and that Mitchell Energy does have a lease with the City for those Minerals.

RICO APARTMENTS

Councilman O'Dwyer expressed his concern again about the Rico Apartments on the Antonopoulos property. It was announced that they are in the process of being torn down. Councilman Johnson asked if there was an agreement with Antonopoulos that he was to raze those apartments. Ron Rusky is to check this out and request payment from Mr. Antonopoulos for the razing of the building or withhold this amount from the payment to be made to Mr. Antonopoulos next spring.

COMPLAINT THAT POLICE RESPONSE TIME TO A REQUEST FOR OFFICER VERY SLOW

Councilman O'Dwyer reported that he had a call from a citizen who lives in the 1500 block on Rood Avenue. He said that last Saturday they were having a yard sale, and some drunk or somebody who was under the influence of either alcohol or narcotics approached the complainant's little daughter with an obscene proposal using some pretty rough language and even grabbing the little girl and fondling her. The mother notified the Police. The upshot of the thing was that the man was around there for ten or fifteen minutes but the Police did not arrive. By the time the Police did get there, the person was gone and they could not find him. The father was quite visibly upset about the incident. He mentioned the fact that had he been home they would not have needed the Police, they would have needed the Rescue Squad. Councilman O'Dwyer continued that the father called the Police Department and talked to one of the Sergeants. The Sergeant took the time to go back over the tape of the dispatcher. He said it was some twenty minutes before the

Police arrived on the scene. The dispatcher had done nothing as far as even notifying a patrol car for some thirteen minutes. The information on the card the father saw was pretty incomplete. The father was quite concerned as he thought this would be a high priority item in that the offender threatened one of the children with the statement that he was going to shoot them although no one saw a gun. The father was quite concerned with the time lapse. He thought the whole thing was handled pretty casually. Councilman O'Dwyer noted that there have been other complaints along this line. Councilman O'Dwyer's point is that some of the citizens do not feel the City has quality Police officers here or that procedures are not being followed. Councilman O'Dwyer feels that when a citizen calls him he feels it is his obligation and duty to bring it before the City Council so it can be investigated. If the City is lacking or delinquent in some areas, it should be corrected. He said he would not condemn nor defend the Police Department because he does not know except that the man was quite concerned. Councilman O'Dwyer wanted to share the complaint with the City Council so there is a record, and so no one can say it was swept under the rug.

Mr. Ashby said a full report would be prepared for Council.

RECREATION BOARD

Councilman Dunn reported on the recent meeting of the Recreation Board. The winter recreation program was discussed.

Councilman Dunn expressed concern with the noise from the beer party at Mesa College last Friday night. He reported that most people in his neighborhood could not sleep.

It was noted that the special events permits were for Thursday evening and Saturday afternoon.

AIM

Councilman Johnson said that AIM took it on the chin from a recent Daily Sentinel editorial. For the record, Councilman Johnson pointed out that AIM has done more than just have this one meeting where there was some dissension concerning the oil shale trust fund. He reported that they are moving forward on the development of the park in the Chatfield School area, a concerted effort by the three entities; of the City-County phone system; 911; and the 601 capital improvements projects. According to Councilman Johnson, each one of these projects has been demonstrated to save the participating agencies in the long run a considerable amount of money. He thought the record should reflect that.

LEFT HAND TURNS AT FIFTH AND GRAND - LEFT TURNS AT BANK DRIVE-UP AT FOURTH AND GRAND

Councilman Holmes expressed concern with the left turns at 5th and Grand and at the bank drive-in at Fourth and Grand. He suggested

the traffic engineer look at eliminating this problem by eliminating the left turn lanes where it results in traffic backing up in the two most heavily trafficked north-south one-way streets in Grand Junction.

ADJOURNMENT

Upon motion by Councilman O'Dwyer, seconded by Councilman Brach and carried, the meeting was adjourned.

Neva B. Lockhart

Neva B. Lockhart, CMC
City Clerk