

IN THE DISTRICT COURT OF DOUGLAS COUNTY NEBRASKA

CITY OF RALSTON, a City and Political)
Subdivision of the State of Nebraska, and)
the COMMUNITY REDEVELOPMENT)
AUTHORITY OF THE CITY OF)
RALSTON, a Nebraska Municipal)
Corporation,)

Plaintiffs,)

vs.)

J & M RALSTON GRANARY, LLC, a)
Nebraska Limited Liability Company, and)
JOHN A. HAUSCHILD, an individual,)

Defendants.)

CASE NO. CI 13-_____

COMPLAINT

COME NOW Plaintiffs, CITY OF RALSTON and COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF RALSTON (collectively, "Plaintiffs"), and for their causes of
action against Defendants, J & M RALSTON GRANARY, LLC ("Defendant J & M") and
JOHN A. HAUSCHILD ("Defendant Hauschild"), state and allege as follows:

Parties

1. Plaintiff City of Ralston ("City of Ralston") is a City of the First Class and
Political Subdivision of the State of Nebraska.

2. Plaintiff the Community Redevelopment Authority of the City of Ralston
("Ralston CRA") is a Nebraska Municipal Corporation organized pursuant to the Community
Development Law found at Neb. Rev. Stat. § 18-2101 et seq. There are 5 members of the
Ralston CRA.

3. Defendant J & M Ralston Granary is a limited liability company organized and
existing under the laws of the State of Nebraska.

4. Defendant John A. Hauschild is an individual and resident of the State of Iowa.

Jurisdiction and Venue

5. The District Court has subject matter jurisdiction pursuant to Neb. Rev. Stat. § 24-
302.

6. Venue is proper in Douglas County District Court pursuant to Neb. Rev. Stat. § 25-403.01 because the cause of action arose in Douglas County, Nebraska.

The Façade Loan

7. On or about November 22, 2004, in Douglas County, Nebraska, Defendant J & M, for value received, executed and delivered to Plaintiffs a Promissory Note (the "Note") in the principal amount of \$50,000.00, and, with interest computed thereon at the rate of 3.50% per annum. Defendant J & M promised to fulfill the obligations contained in the Note. A true and accurate copy of the Note is attached hereto as Exhibit "A" and incorporated herein by this reference.

8. In connection with the Note, Defendant J & M also executed a "Façade Improvement Program Loan Agreement," specifying that the purpose of the subject loan from Plaintiffs to Defendant J & M was for improvement of the façade of the Olde Granary in substantially the manner shown in Defendant J & M's Façade Improvement Program Application.

9. The Note provided for Defendant J & M to pay monthly installments in satisfaction of the outstanding principal, all interest, and other costs of the money advanced to Defendant J & M pursuant to the Note.

10. Although Plaintiffs disbursed the funds to Defendant J & M pursuant to the Note, Defendant J & M has failed and refused to pay monthly installments under the terms of the Note when due, and thus Defendant J & M is in default of the Note.

11. The Note provides that an uncured default in paying monthly installments by Defendant J & M shall render the entire unpaid principal balance under the Note at once due and payable together with all accrued unpaid interest thereon. Furthermore, the interest rate on the unpaid principal balance increases to 10% per annum until paid.

12. Under the Note, Defendant J & M owes to Plaintiffs no less than \$26,274.67, plus interest at allowable rates under the Note, and said sum continues to increase.

13. Plaintiffs have demanded payment of the outstanding amount under the Note, but Defendant J & M has failed and refused to make payment as demanded.

Defendant Hauschild's Personal Guaranty of the Note

14. On November 22, 2004, Defendant Hauschild signed a Guaranty agreeing to personally guarantee to Plaintiffs payment and performance of the debt liability or obligation of

Defendant J & M to Plaintiffs evidenced by or arising out of the Note, and any extensions, renewals, or replacements thereof ("Guaranty"). A true and correct copy of the Guaranty is attached hereto as Exhibit "C" and incorporated herein by this reference.

15. The Note is now payable in full.

16. Defendant J & M has failed and refused to make full and final payment of the Note.

17. Defendant Hauschild has failed and refused to make full and final payment of the Note pursuant to his obligations under his Guaranty.

COUNT I – Breach of Contract (Note) – Against Defendant J & M

18. Plaintiffs incorporates the allegations contained in paragraphs 1 through 17 as though fully set forth herein.

19. The Note is a contract.

20. Plaintiffs performed all conditions precedent to the Note.

21. Defendant J & M breached the terms of the Note by failing and refusing to pay Plaintiffs the amounts due and owing under the Note, and has breached the terms of the Note in other ways.

22. As a direct and proximate result of Defendant J & M's breach, Plaintiffs were damaged.

23. Defendant J & M owes Plaintiffs not less than \$26,274.67, plus interest at allowable rates under the Note. Interest continues to accrue on the principal balance from and after the filing of this Complaint, as specified by the terms of the Note.

24. Plaintiffs' damages are continuing.

WHEREFORE, Plaintiffs pray for judgment on Count I as follows:

A. Against Defendant J & M in an amount not less than \$26,274.67; plus prejudgment interest at the rate of 10% per annum from May 1, 2013, until the outstanding amount is paid, pursuant to the Note;

B. Post-judgment interest as provided by law;

C. Plaintiffs' court costs expended herein; and

D. For such other and further relief as the Court deems just and equitable.

COUNT II – Breach of Contract (Guaranty) – Against Defendant Hauschild

25. Plaintiffs incorporate the allegations contained in paragraphs 1 through 17 as though fully set forth herein.

26. The Guaranty is a contract.

27. Plaintiffs performed all conditions precedent to the Note and Guaranty.

28. Plaintiffs demanded that Defendant Hauschild repay the full amount due and owing under the Note and Guaranty.

29. Defendant Hauschild breached the Guaranty by failing and refusing to pay Plaintiffs the amounts due and owing under the Note and Guaranty.

30. As a direct and proximate result of Defendant Hauschild's breach, Plaintiffs were damaged.

31. Defendant Hauschild owes Plaintiffs the amount of \$26,274.67, plus interest at allowable rates under the Note. Interest continues to accrue on the principal balance from and after the filing of this Complaint, as specified by the terms of the Note.

32. Plaintiffs' damages are continuing.

WHEREFORE, Plaintiffs pray for judgment on Count II as follows:

- A. Against Defendant Hauschild in an amount not less than \$26,274.67; plus prejudgment interest at the rate of 10% per annum from May 1, 2013, until the outstanding amount is paid, pursuant to the Note and Guaranty;
- B. Post-judgment interest as provided by law;
- C. Plaintiffs' court costs expended herein; and
- D. For such other and further relief as the Court deems just and equitable.

COUNT III – Unjust Enrichment – Against Both Defendants

33. Plaintiffs incorporate the allegations of paragraphs 1 through 17 above as if fully set forth herein.

34. Defendants knowingly accepted the loan from Plaintiffs under the Note and Guaranty.

35. Defendants knew that Plaintiffs were not providing said loan as a volunteer and/or without expectation of repayment from Defendants.

36. Defendants received a benefit from Plaintiffs' loan and, upon information and belief, have used the proceeds of the loan to Defendants' benefit.

37. Defendants retained the benefits of the loan, and in failing to repay the loan to Plaintiffs pursuant to the Agreement, have unjustly enriched themselves at the expense of Plaintiffs.

38. Therefore, and alternatively in the event that the Court determines the Note and/or Guaranty unenforceable as respects Defendants' obligation to repay the loan, Plaintiffs are entitled to recover not less than \$25,961.69, by which Defendants have unjustly enriched themselves at the expense of Plaintiffs.

WHEREFORE, Plaintiffs prays for judgment on Count III as follows:

- A. Against Defendants in an amount not less than \$25,961.69;
- B. Pre-judgment and Post-judgment interest as provided by law;
- C. Plaintiffs' court costs expended herein; and
- D. For such other and further relief as the Court deems just and equitable.

DATED this 28th day of August, 2013.

CITY OF RALSTON, a City of the First Class and
Political Subdivision of the State of Nebraska, and
COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF RALSTON, a
Nebraska Municipal Corporation, Plaintiffs

By: /s/ Luke J. Klinker

Luke J. Klinker, #23419
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Omaha, Nebraska 68102
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ATTORNEYS FOR PLAINTIFFS

PROMISSORY NOTE

November 22, 2004

\$50,000.00

FOR VALUE RECEIVED, the undersigned, J&M RALSTON GRANARY LLC, a Nebraska Limited Liability Company, hereinafter ("Borrower") promises to pay to the order of the COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF RALSTON, a Nebraska political subdivision, hereinafter ("Lender") at 5500 South 77th Street, Ralston, Nebraska 68127, or at such other place or places as the holder hereof, may from time to time designate, the principal sum of FIFTY THOUSAND DOLLARS (\$50,000.00), pursuant to the Loan Agreement of even date herewith, together with interest on the outstanding and unpaid principal balance at a fixed rate per annum of three and one-half percent (3.50%), with interest computed thereon on the basis of a 365 day year for the actual number of days lapsed.

Borrower shall commence making amortized monthly installment payments of principal and interest in the amount of THREE HUNDRED FIFTY-SEVEN AND 44/100 DOLLARS (\$357.44) commencing January 1, 2005, and on the same day of each month thereafter until December 1, 2020, inclusive, (15 years from the date hereafter) when all unpaid principal and interest shall be due and payable.

All payments and any notice to Lender will be made at Ralston City Hall, 5500 South 77th Street, Ralston, Nebraska 68127, or such other address as designated to the Borrower in writing. Any notice to the Borrower will be given to the Borrower at: # 4 Westlake, Council Bluffs, Iowa 51501, or at such other address as the Borrower will have designated to the Lender in writing.

This debt may be prepaid in whole or in part at any time, without penalty or fee, by prepayment of all or part of the unpaid principal balance of this debt, the accrued interest and any charges or other sums, including costs of collection, which may then be due under the terms of this Note or the Security Agreement. Any partial prepayment will be applied against payments due in the inverse order of their maturity and not postpone the date of, nor change the amount of, any subsequent monthly installment.

Borrower hereby authorizes Lender to either endorse on a schedule to be attached to this Note, hereinafter this ("Note"), or to otherwise maintain as a part of its customary and usual business records an account or accounts including accounts maintained by computer, evidencing the indebtedness of Borrower for each advance made indicating the date of each advance, the amount thereof and the payments made thereon by Borrower. Any such endorsements on a schedule attached hereto or any account or accounts regularly maintained by Lender, in the absence of manifest error, shall be conclusive evidence of the existence and amounts of the obligations of Borrower as therein recorded under this Note and the Loan Agreement.

It is agreed that if there is a default in the payment of any installment hereunder for a period of 10 days, or if there is a default under the terms of the Loan Agreement or the Security Agreement which is not cured within 30 days of Borrower's receipt of written notice thereof from Lender, (including facsimile notice) then at the option of Lender, the entire principal sum, with all accrued interest, will become immediately due, payable and collectible and the interest rate on the unpaid principal balance shall increase to ten per cent (10%) per annum, the ("Default Interest Rate") until paid.

All payments of principal and interest shall be payable in lawful money of the United States of America, which shall be legal tender in the payment of all debts and dues, public and private, at the time of payment.

EXHIBIT "A"

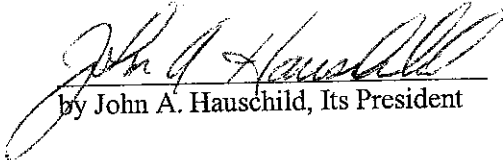
The Borrower hereby agrees to the extent permitted by law, to pay all fees, costs and charges of enforcement and collection, including reasonable attorney fees and legal expenses, incurred by any holder hereof in the event this Note is not duly paid, and hereby waives demand, presentment for payment, notice of nonpayment, protest and notice of protest and diligence in enforcing payment or bringing suit against any party hereto. Any endorsers, sureties or guarantors hereof hereby severally consent that this Note may be extended or renewed in whole or in part for any period (whether or not longer than the original term of this Note), or the rate of interest on this Note may be changed, or any security for this Note may be dealt with from time to time, without notice to them and without affecting their liability hereon. Borrower further hereby waives as to this debt or any renewal or extension, or of any part, all rights of exemption under the Constitution or laws of the State of Nebraska or any other state as to personal property.

This Note and all provisions are binding on the Borrower, its successors and assigns, and will inure to the benefit of Lender, its successors and assigns. The Lender does not by any act, delay, omission or otherwise waive any of its rights or remedies, and no waiver of any kind is valid against the Lender unless in writing and signed by the Lender.

This Note is secured by a Security Agreement and Financing Statements on personal property owned by the Borrower and on a Second Deed of Trust on real property owned by the Borrower and this Note shall be governed and construed according to the laws of the State of Nebraska.

Dated and executed this 22 of November, 2004.

BORROWER: J&M RALSTON GRANARY LLC,
A Nebraska Limited Liability Company


by John A. Hauschild, Its President

GUARANTY

RALSTON, NEBRASKA

November 2, 2004

For the good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce the COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF RALSTON, a Nebraska political subdivision (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of J&M RALSTON GRANARY, LLC (herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned, whether one or more, jointly and severally, hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

- A. If this X is checked, the Undersigned guarantees to lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: BORROWERS Promissory Note dated November 2, 2004 and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").
- B. If this is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several' all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s): _____

The term "Indebtedness" as used in this guaranty shall not include any obligations entered into between the Borrower and Lender after the date hereof (including any extensions, renewals or replacements of such obligations) for which Borrower meets the Lender's standard of creditworthiness based on Borrower's own assets and income without the addition of a guaranty, or for which a guaranty is required but Borrower chooses someone other than the joint Undersigned to guaranty the obligation.

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the undersigned hereunder.
2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancing thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.
3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.
4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$260,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all attorney's fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of principal amount, without affecting or impairing the liability of the Undersigned hereunder, the Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if

EXHIBIT "B"

accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.
6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices of otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution thereof; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under Section 1111(b)(2) of the United States Bankruptcy Code.
7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, incapacity minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff which may be available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharge pursuant to statute or judicial decision. The Undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.
8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay Indebtedness though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharge in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.
9. If any payment applied by Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.
10. The Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, under contract, statute or common law.
11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other

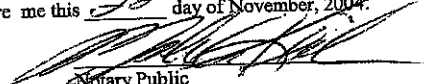
- persons or their properties, or first to enforce, realize upon or exhaust any collateral security or agreement evidencing or creating such other liability specifically provides to the contrary.
- 12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.
 - 13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, and or all of the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The undersigned waives notice of Lender's acceptance hereof.

This guaranty is unsecured; secured by a mortgage or security agreement dated _____; secured by _____.

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.


JOHN A. HAUSCHILD

Subscribed and acknowledged before me this 22nd day of November, 2004:


Notary Public