

DEVELOPMENT IMPROVEMENTS AGREEMENT

Planning File SUB-2012-531

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are **Heritage Estates, LLC**, ("Developer") and the **City of Grand Junction**, Colorado ("City").

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

2. **Effective Date:** The Effective Date of the Agreement shall be the date that it is signed by the Public Works & Planning Director, which shall be no sooner than recordation of the final plat or final plan approval whichever first occurs.

RECITALS

The Developer seeks permission to develop property, described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The Property, known as **Heritage Estates Subdivions - Filing 3** has been reviewed and approved under Planning file number: **SUB-2012-531** ("Development" or "the Development").

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

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

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

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer shall design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit B attached and incorporated by this reference ("Improvements" or "the Improvements").

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

7c. The Commencement date and the Completion Date are as follows:

Commencement Date: 02/01/2013

Completion Date: 02/01/2014

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

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

9a. The Developer shall correct all non-conforming construction and/or defects within thirty (30) days from the issuance of the notice by his/her/its engineer of a/the defect.

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

10a. Approval and/or acceptance of any Improvement(s) does not constitute a waiver by the City of any right(s) that it may have on account of any defect in or failure of the Improvement that is detected or which occurs after approval and/or acceptance.

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

11. Reduction of Security: Upon Acceptance of any Improvement(s) the amount which the City is entitled to draw on the Guarantee shall be reduced by an amount of **\$130,251.63** (Line G1, Exhibit B, Total Improvement Costs).

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

12. Use of Proceeds: The City shall use funds deposited with it, drawn or guaranteed pursuant to this Agreement only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements or paying Administration and Inspection fees.

13. Events of Default: The following conditions, occurrences or actions shall constitute

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

15b. The Developer grants to the City, its successors, assigns, agents, contractors and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining, inspecting and repairing the Improvements.

15c. The City may assign the proceeds of the Guarantee or other funds or assets that it may receive in accordance with this Agreement to a subsequent developer or lender that has acquired the Property by purchase, foreclosure or otherwise.

15d. That developer or lender shall then have the same rights of completion as the City if and only if the subsequent developer or lender agrees in writing to complete or correct the Improvements and provides to the City reasonable security for that obligation.

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

16. Indemnification: The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns ("City") harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with or on account of the performance or non-performance of work at the Property and/or the Improvements and/or the Development that is being done pursuant to this Agreement.

16a. The Developer further agrees to aid and defend the City in the event that the City and/or the Improvements is named as a defendant in an action concerning the performance of work pursuant to this Agreement except for a suit wherein the Developer states claim(s) against the City.

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

17. No Waiver: No waiver of any provision of this Agreement by the City shall be deemed or constitute a waiver of any other provision nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and the Developer; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful or other act by the Developer or the acceptance of any improvement.

18. Amendment or Modification: The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or his/her/its authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

19. Attorney's Fees: Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, shall be entitled to

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

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

If to Developer:	Heritage Estates, LLC	Name/Developer/Company
	2350 G Road	Address (Street and Mailing)
		Address (continued)
	Grand Junction, CO 81505	City, State & Zip Code
	970-255-8853	Telephone Number
	970-245-1452	Fax Number
	kkerk@BlueStarIndustries.com	E-mail Address

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

CC: Public Works & Planning Department
250 North 5th Street
Grand Junction, CO 81501

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

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

29. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any action commenced by either party to this Agreement whether arising out of or relating to the Agreement, the Guarantee, the Maintenance Guarantee or any action based arising out of or under this Agreement shall be deemed to be proper only if such action is commenced in Mesa County, Colorado.

29a. The Developer expressly waives his/her/its right to bring such action in or to remove such action to any other court whether state or federal.

30. **Liability before Acceptance:** The City shall have no responsibility or liability with respect to any street or other improvement(s), notwithstanding the use of the same by the public, unless the street or other improvement shall have received Acceptance by the City.

30a. If the City allows a street to be constructed in stages, the Developer of the first one-half street opened for traffic shall construct the adjacent curb, gutter and sidewalk in the standard location and shall construct the required width of pavement from the edge of gutter on the side of the street nearest the property to enable an initial two-way traffic operation without on-street parking.

Type legal description below.

EXHIBIT A

Heritage Estates, Filing 3, a Replat of Lot 101, Heritage Estates, Filing 2; SE 1/4 NE1/4, SEC.4, T1S, R1W, U.M.

EXHIBIT B

IMPROVEMENTS COST ESTIMATE

DATE:

November 14, 2012

DEVELOPMENT NAME:

HERITAGE ESTATES FILING 3

LOCATION:


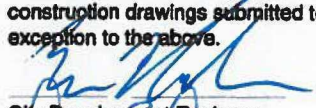

24 3/4 Road, Grand Junction, CO

PERSON PREPARING:

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
A. SANITARY SEWER					
1	8" PVC Sanitary Sewer Main	LF	400	\$ 20.00	\$ 8,000.00
2	" PVC Sanitary Sewer Main	LF			\$ -
3	" PVC Sanitary Sewer Main	LF			\$ -
4	Sewer services	EA	13	\$ 400.00	\$ 5,200.00
5	Sanitary Sewer Manhole	EA	2	\$ 2,500.00	\$ 5,000.00
6	Sanitary Sewer Drop Manhole	EA			\$ -
7	Connection to Existing Manhole	EA		\$ 1,000.00	\$ -
8	Concrete Encasement	LF	20	\$ 20.00	\$ 400.00
Subtotal Part A Sanitary Sewer					\$ 18,600.00
B. DOMESTIC WATER					
1	4" PVC Water Main	LF			\$ -
2	8" PVC Water Main	LF	457	\$ 30.00	\$ 13,710.00
3	" PVC Water Main	LF			\$ -
4	4" Gatevalve	EA			\$ -
5	8" Gatevalve	EA	3	\$ 1,200.00	\$ 3,600.00
6	" Gatevalve	EA			\$ -
7	Water Services (copper)	EA	14	\$ 500.00	\$ 7,000.00
8	Connect to Existing Water Line	EA	2	\$ 1,500.00	\$ 3,000.00
9	Fire Hydrant with Valve	EA	1	\$ 2,500.00	\$ 2,500.00
10	Utility Adjustments	EA			\$ -
11	Blowoff	EA		\$ 500.00	\$ -
12	UTE Water Tap Fee	EA			\$ -
Subtotal Part B - Domestic Water					\$ 29,810.00
C1 STREETS					
1	4" PVC Utility/Irrigation sleeves	LF	440		\$ -
2	Dry Utility Trenching	LF	1,219		\$ -
3	Xcel (Gas & Electric) Services	EA	14		\$ -
4	Qwest and Bresnan Services	EA	14		\$ -
5	Aggregate Base Course (Class 6) (6" Compacted Thickness)	CY		\$ 20.00	\$ -
6	Aggregate Base Course (Class 6) (12" Compacted Thickness)	CY	843	\$ 20.00	\$ 16,860.00
7	Hot Bituminous Paving, Grading (3" thick)	TON	260	\$ 90.00	\$ 23,364.00
8	Hot Bituminous Paving, Grading (" thick)	TON			\$ -
9	Hot Bituminous Paving, Patching (" Thick)	SY			\$ -
10	Geotextile	SY			\$ -
11	Concrete Curb (" Wide by " High)	LF			\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
12	Concrete Curb and Gutter (2' wide)	LF			\$ -
13	Concrete Curb and Gutter (1.5' wide)	LF			\$ -
14	Monolithic, Vertical Curb, Gutter and Sidewalk (6.5' Wide)	LF		\$ 20.00	\$ -
15	Drive Over Curb, Gutter, and Sidewalk (6.5' Wide)	LF	973	\$ 20.00	\$ 19,460.00
16	Concrete Sidewalk (_ ' Wide)	LF			\$ -
17	Concrete Gutter and Driveway Section (6" Thick)	SY			
18	Concrete Drainage Pan (6' Wide, 6" Thick)	LF		\$ 15.00	\$ -
19	Concrete Corner Fillet	EA		\$ 2,500.00	\$ -
20	Concrete Curb Ramp	SY			\$ -
21	8" Comb. Cross pans, Fillets & ADA Ramps	SF	868		\$ -
22	Concrete Driveway (6" Thick)	SY			\$ -
23	Driveway/Concrete Repair	SY			\$ -
24	Retaining Walls	LF			\$ -
25	Street Signs	EA	1	\$ 400.00	\$ 400.00
26	Striping (New, Remove/Replace)	LF			\$ -
27	Street Lights	EA	1		\$ -
28	Signal Construction or Reconstruction	LS			\$ -
29	Flowable Fill	CY			\$ -
30	Sleeves, 8", C-900 PVC	LF		\$ 44.00	\$ -
C2	BRIDGES				
					\$ -
1	Box Culvert Pre-Cast	LS			\$ -
2	Box Culvert Cast-in-Place	LS			\$ -
3	Wingwalls	LS			\$ -
4	Parapet Wall	LS			\$ -
5	Railing (handrail, guardrail)	LS			\$ -
	Subtotal Part C - Streets and Bridges				\$ 60,084.00
D1	EARTHWORK				
1	Mobilization	LS			\$ -
2	Clearing and Grubbing	AC		\$ 1,000.00	\$ -
3	Unclassified Excavation	CY	847	\$ 2.00	\$ 1,694.00
4	Unclassified Embankment	CY	3,688	\$ 3.00	\$ 11,064.00
5	Import Material	CY			\$ -
D2	REMOVALS AND RESETTING				
1	Removal of Asphalt	SY			\$ -
2	Removal of Miscellaneous Concrete	SY			\$ -
3	Remove Curb and Gutter	LF			\$ -
4	Removal of Culverts	LF			\$ -
5	Remove Structures	EA			\$ -
6	Remove Signs	EA			\$ -
7	Remove Fence	LF			\$ -
8	Adjust Manhole	EA	3	\$ 250.00	\$ 750.00
9	Adjust Valvebox	EA	2	\$ 150.00	\$ 300.00
10	Relocate or Adjust Utilities	LS			\$ -
11	House & Garage Demo	LS			\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
D3 EROSION CONTROL, SEEDING, AND SOIL RETENTION					
1	Sod	SY		\$	-
2	Seeding (Native)	AC		\$	-
3	Seeding (Bluegrass/Lawn)	SY or AC		\$	-
4	Hydraulic Seed and Mulching	SY or AC		\$	-
5	Soil Retention Blanket	SY		\$	-
6	Silt Fence	LF		\$ 2.00	\$ -
7	Straw Waddles	LF		\$ 3.00	\$ -
8	Temporary Berms	LF		\$ 2.00	\$ -
9	Inlet Protection	EA		\$ 500.00	\$ -
10	Sediment Trap/Basin	EA		\$	-
11	Monthly Maintenance/Inspection	Month		\$	-
12	Watering (Dust Control)	LS		\$ 2,000.00	\$ -
13	Temporary Irrigation			\$	-
D4 STORM DRAINAGE FACILITIES					
1	Finish Grading (incl. Swales, and Ponds)	LS		\$ 5,000.00	\$ -
2	18" ADS Storm Drain Pipe	LF		\$ 20.00	\$ -
3	15" Storm Drain Pipe	LF		\$	-
4	18" RCP Storm Drain Pipe	LF		\$ 40.00	\$ -
5	12" RCP Storm Drain Pipe	LF		\$ 40.00	\$ -
6	" Storm Drain Pipe	LF		\$	-
7	12" ADS Flared End Section	EA		\$ 1,000.00	\$ -
8	" Flared End Section	EA		\$	-
9	48" Storm Drain Manhole	EA		\$	-
10	60" Storm Drain Manhole	EA		\$	-
11	72" Storm Drain Manhole	EA		\$	-
12	Manhole with Box Base	EA		\$	-
13	Connection to Existing MH	EA		\$	-
14	Single Curb Opening Storm Drain Inlet	EA		\$ 1,500.00	\$ -
15	Double Curb Opening Storm Drain Inlet	EA		\$	-
16	Area Storm Drain Inlet	EA		\$ 1,000.00	\$ -
17	Detention Area Outlet structure	EA		\$ 5,000.00	\$ -
18	Rip-Rap D ₅₀ = 12"	CY		\$ 200.00	\$ -
19	Sidewalk Trough Drain	EA		\$	-
20	Pump Systems including Electrical	LS		\$	-
21	Concrete V-pan (2' wide x 6" thick)	LF		\$	-
Subtotal Part D - Grading and Drainage					\$ 13,808.00
E1 IRRIGATION					
1	Connect to Existing Pipe	LS		\$	-
2	3" PVC Irrigation Pipe	LF		\$	-
3	4" PVC Irrigation Pipe	LF		\$	-
4	Fittings and Valves	LS		\$	-
5	Services	EA	10	\$	-
6	Pump System and Concrete Vault	LS		\$	-
7	Irrigation Structure	EA		\$	-
8	Vacuum Relief and/or Air Release Valve	EA		\$	-
E2 LANDSCAPING					
1	Design/Architecture	LS		\$	-
2	Earthwork	CY		\$	-
3	Hardscape Features	LS		\$	-
4	Plant Material & Planting	LS		\$ 6,000.00	\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
5	Irrigation System	LS			\$ -
6	Curbing	LF			\$ -
7	Retaining Walls & Structures	LF			\$ -
8	1 Year Maintenance Agrmnt.	LS			\$ -
9	Topsoil	CY			\$ -
Subtotal Part E - Landscaping and Irrigation					\$ -
Subtotal Construction Costs					\$ 122,302.00
F. MISCELLANEOUS ITEMS					
1	Construction staking/surveying	%	2.00%	\$ 122,302.00	\$ 2,446.04
2	Developer's inspection cost	%		\$ 122,302.00	\$ -
3	General construction supervision	%		\$ 122,302.00	\$ -
4	Quality control testing	%	2.00%	\$ 122,302.00	\$ 2,446.04
5	Construction traffic control	%	0.00%	\$ 122,302.00	\$ -
6	City inspection fees	%	0.50%	\$ 122,302.00	\$ 611.51
7	As-builts	%	2.00%	\$ 122,302.00	\$ 2,446.04
Subtotal Part F - Miscellaneous Items					\$ 7,949.63
<p>% = Percentage of total site construction costs</p> <p>G. COST SUMMARY</p> <p>1 Total Improvement Costs \$ 130,251.63</p> <p>2 City Security (20%) \$ 26,050.33</p> <p>3 Total Guarantee Amount \$ 156,301.96</p>					
<p>NOTES</p> <ol style="list-style-type: none"> All prices shall be for items complete in place and accepted. All pipe prices shall include excavation, pipe, bedding, backfill, and compaction. Water main shall include pipe, excavation, bedding, backfill, bends, and appurtenances not itemized elsewhere. All concrete items shall include Aggregate Base Course where required by the drawings. Fill in the pipe type for irrigation pipe and sleeves. Reconditioning shall be calculated to at least 6" outside of back of walk on both sides. Units can be changed if desired, simply annotate what is used. Additional lines of items may be added as needed. <p>  _____ <u>12-20-12</u> Signature of Developer Date (If corporation, to be signed by President and attested to by Secretary together with the corporate seals.) </p> <p>I have reviewed the estimated costs and time schedule shown above and, based on the construction drawings submitted to date and the current cost of construction, I take no exception to the above.</p> <p>  _____ <u>6/27/13</u> City Development Engineer Date  _____ <u>6-27-2013</u> Community Development Date </p>					



DISBURSEMENT AGREEMENT
(Improvements Guarantee)

Planning File No. SUB-2013-12

DEVELOPER: Heritage Estates, LLC
BANK: Timberline Bank
PROPERTY: Heritage Estates Subdivision - Filing 3

DISBURSEMENT AMOUNT: For the construction of Improvements to the Property In an amount not to exceed \$ **156,301.96**

This Agreement Is entered into by and between **Heritage Estates, LLC** ("Developer"), **Timberline Bank** ("Bank") and the City of Grand Junction, Colorado ("City").

RECITALS

Developer has been required by the City to construct certain Improvements to **Heritage Estates Filing 3** ("Improvements") In accordance with the Zoning and Development Code, Improvements Agreement and subdivision approval.

The Bank has agreed to loan funds to the Developer for construction of the Improvements.

The City Engineer has approved an estimate of the costs of the Improvements and that amount or an amount not to exceed \$ **156,301.96**, whichever Is greater, shall be referred to as the "Funds."

The parties desire to secure the full and complete performance of the Developer's obligations and to secure that the Funds are disbursed only to pay for the Improvements.

NOW, THEREFORE, THE PARTIES AGREE:

1. **BANK PROMISES.** Bank shall dedicate or set aside the Funds on behalf of Developer and for the City's benefit within twenty-four hours of execution of this Disbursement Agreement.

Bank warrants: that the Funds are to be held In trust solely to secure Developer's obligations under the Improvements Agreement; that the Bank shall act as agent of the City in holding the Funds; that the Funds will not be paid out or disbursed to, or on behalf of, the Developer except as set forth in this document and/or as set forth in the Improvements Agreement; and that the Bank may not modify or revoke Its obligation to

disburse funds to or on behalf of the Developer or the City. The Bank warrants that the Funds are and will be available exclusively for payment of the costs of satisfactory completion of the Improvements.

2. **DISBURSEMENT PROCEDURES.** The Funds shall be advanced for payment of costs incurred for the construction of Improvements on the Property in accordance with the Improvements List/Detail attached to the Improvements Agreement, the terms of which are incorporated by this reference. All disbursements must comply with the following procedures:

a) **Request for Advance.** Developer shall deliver to the Bank a written request for the disbursement of funds on forms acceptable to the Bank. Such requests shall be signed by Developer, Developer's General Contractor, Project Engineer and Architect, if applicable, and the City Engineer. By signing the request for disbursement the Developer is certifying: that all costs for which the advance is being requested have been incurred in connection with the construction of the Improvements on the Property; that all work performed and materials supplied are in accordance with the plans and specifications submitted to and approved by the City; that the work has been performed in a workmanlike manner; that no funds are being requested for work not completed, nor for material not installed; the Project Engineer has inspected the Improvements for which payment is requested; and that such improvements have been completed in accordance with all terms, specifications and conditions of the approved plans. Attached hereto is the list of those individuals, and their respective signatures, required to sign the above described request(s) for disbursement of funds.

(b) **Documentation, Waivers and Checks.** Each request for disbursement of funds shall be accompanied by: (i) one original and one copy of each invoice to be paid; (ii) checks drawn on Developer's construction loan account with the Bank, made payable to the payee(s) and for the amount of each invoice presented for payment; (iii) lien waivers in a form approved by the Bank prepared for signature by each payee; and (iv) postage paid envelopes addressed to each payee for the mailing of checks presented to the Bank.

The Bank shall verify its receipt of all lien waivers relating to any prior disbursements, which lien waivers shall be properly executed and contain no alterations or modifications from those lien waivers that have been previously presented to the Bank.

Upon approval by Developer, the Project Engineer and the Bank of the invoices being presented to the Bank, the Bank shall advance funds into the checking account designated for the payment of the invoices and mail the checks to the payee(s) in the envelopes presented to the Bank, together with lien waivers and copies of supporting invoices.

Under no circumstances shall the Bank make a disbursement for the payment of an invoice if it in good faith believes that: (i) the work has not been completed; (ii) the work has not been completed in a workmanlike manner; (iii) written approval has not been received from the Project Engineer; or (iv) any lien waiver has been altered or modified or has not been returned to the Bank.

(c) **Default.** Upon default of the Developer on any obligation to the Bank or under the Improvements Agreement, the Bank shall disburse no funds to, or at the direction of, the Developer except to the City under the terms of the Improvements Agreement. The Bank shall immediately notify the City, in writing, of any event of default or event of default as provided for in the Improvements Agreement and/or as provided herein.

(d) **Disbursement to City.** In the event the Improvements are not satisfactorily and timely constructed, or upon any default or event of default, the City Engineer shall notify the Bank to immediately cease disbursement of funds to the Developer and disburse the full amount of the remaining undisbursed funds to the City. Upon such notice, the Bank shall promptly honor the demand of the City Engineer to disburse the Funds to the City or a third party or parties designated in writing by the City. Upon final completion and acceptance of the performance required under the Improvements Agreement, the City shall refund to the Bank any funds disbursed, if any, which are not actually expended to pay all costs, expenses and liabilities, including attorney fees, incurred in completing the Improvements.

3. **DEVELOPER CONSENT:** The Developer, **L. John Davis** consents to disbursements and other actions authorized and provided for by the terms of this Agreement and/or the Improvements Agreement.

4. **LIABILITY FOR LOSS:** If the Bank fails to disburse funds in accordance with the procedures set forth, and the City suffers loss or damage, the Bank shall be liable to the City for the City's direct and consequential damages and all fees, costs and expenses, including attorney's fees.

5. **BINDING EFFECT:** This Agreement shall be binding on the heirs, successors, receivers and assigns of all parties and shall terminate when the City has accepted the Improvements and has recorded a release of the Improvements Agreement.

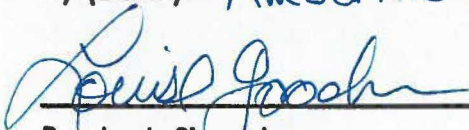
6. **IMMUNITY:** Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under applicable state law.

Dated: 6.25.13

By (Bank): Timberline Bank

Address:

633 24 Road
Grand Junction, CO 81505



Banker's Signature

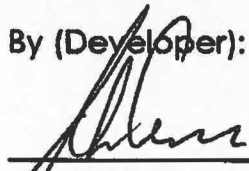
Banker's Name and title:

Louise Goodman Assistant Vice President

By (Developer):

Address:

2350 G Road
Grand Junction, CO 81505



Developer's Signature

Developer's Name and title:

John Davis, President

By (City of Grand Junction):

Director of Public Works & Planning

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between **Heritage Estates, LLC**

Developer, **Timberline Bank**

as Bank

and the City of Grand Junction, the following are the individuals authorized to sign written requests for the disbursement of the Funds:

Developer:

Name: L. John Davis



Signature

Name:

Signature

Name:

Signature

Developer's General Contractor:

Name:

Signature

Developer's Project Engineer:

Name:

Signature

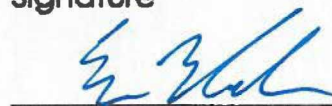
Developer's Architect:

Name:

Signature

City Engineer:

Name: **ERIC HANN**



Signature

RECORDING MEMORANDUM

Exhibit D

City of Grand Junction

Public Works and Planning Department

File Number: **SUB-2013-12**

This memorandum relates to and confirms that certain Development Improvements Agreement and/or Maintenance Guarantee concerning land in Mesa County, Colorado is by and between **Heritage Estates, LLC** (Developer) and the City of Grand Junction (City) pertaining to **Heritage Estates, Filing 3** (Project), located at **24 3/4 and F 3/4 Road, Grand Junction, CO 81505**

The Developer of the Project was required by law to install and construct certain public and private improvements, the completion of which was guaranteed by a Development Improvements Agreement and/or Maintenance Guarantee. The Project is required to be constructed in accordance with the approval by the City pursuant to and in accordance with the Zoning and Development Code all as more fully detailed and described in City of Grand Junction development file number **SUB-2013-12**

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

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

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

DEVELOPER:

By: _____

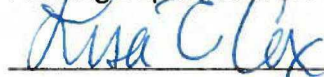


Date: _____

Type Name: **L. John Davis**

CITY OF GRAND JUNCTION:

In accordance with the above, I hereby certify that the Development Improvement Agreement and/or Maintenance Guarantee are made of record by this memorandum and that the same may be inspected and/or copied at the City of Grand Junction, Public Works & Planning Department, 250 North 5th Street, Grand Junction Colorado.



Date: _____

6-27-2013

Public Works and Planning Department

Recording Fee

Date	June 4, 2013
Plan File No.	SUB-2013-12
Project Name	Heritage Estates, Filing 3
Project Location	F 3/4 Road & 23 3/4 Road
Purpose of DIA	Public & Private
Payee Name	Blue Star Industries/ Kim Kerk
Payee Mailing Address	2350 G Road
Payee City, State Zip Code	Grand Junction, CO 81505
Payee Telephone No.	(970) 255-8853 ext. 130
DIA Completion Date	February 1, 2014
Project Planner	Lori Bowers
Project Engineer	Eric Hahn

ACCOUNTING INFORMATION

	AMOUNT	DATE	REFERENCE (Cash or Check)
RECORDING FEE COLLECTED	\$ 22.00	06/04/13	Cash
RECORDING FEE FOR RECORDING RECORDING MEMORANDUM	\$ 11.00	06/04/13	
RECORDING FEE FOR RECORDING RELEASE OF RECORDING MEMORANDUM	\$ -		
BALANCE	\$ 11.00		

Recording Fee Account No.

Mesa County Clerk Escrow Account



Sheila Reiner
 Clerk and Recorder
 200 S. Spruce St.
 Grand Junction, CO 81501
 (970)-244-1679



Print Date:
 6/28/2013 10:05:02 AM

Transaction #: 167434
 Receipt #: 2013061012
 Cashier Date: 6/28/2013 10:05:02 AM

Mailing Address:
 P.O. BOX 20,000-5007
 Grand Junction, CO 81502
 (970)-244-1679

www.mesacounty.us

Customer Information	Transaction Information	Payment Summary
(CITYOFGJ) CITY OF GRAND JCT COM DEVELOP 250 N 5TH ST GRAND JCT, CO 81501 Escrow Balance: \$121.00	Date Received: 06/28/2013 Source Code: Over The Counter Return Code: Filed Trans Type: Recording	Total Fees \$0.00 Total Payments \$11.00 Escrow Deposit \$11.00

1 Payments		
CASH		\$11.00
Escrow Deposit	11	\$11.00

0 Recorded Items		
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0 Search Items		
----------------	--	--

0 Miscellaneous Items		
-----------------------	--	--

*This is \$11.00 deposit
 to escrow acct to release
 the Recording memo
 - later -*

DEED OF TRUST

THIS DEED OF TRUST is entered into this 4th day of December, 2013 between Sonshine IV Construction & Development, LLC, a Colorado limited liability company (Grantor), whose address is 2350 G Road, Grand Junction Colorado 81505, and the Public Trustee of the County of Mesa, State of Colorado, for the benefit of the City of Grand Junction (Beneficiary), whose address is 250 North 5th Street, Grand Junction, Colorado 81501.

Witness that the Grantor, to secure the obligations of Developers Blue Star Industries, LLC and Heritage Estates, LLC under those certain Development Improvements Agreements dated 11/5/12 (SUB-2012-531 Filing 2), 12/4/12 (SUB-2012-399 Filing 1), 6/27/13 (SUB-2012-531 Filing 3), and 8/29/13 (SUB-2013-216 Filing 4) between Blue Star Industries, LLC (Filing 1)/Heritage Estates (Filings 2 through 4) and the City of Grand Junction and to secure said Developer's warranty and maintenance obligations for Filings 1 through 4 of Heritage Estates related to the aforementioned Grand Junction Planning File Numbers, hereinafter referred to as Agreements, in the principle sum of One Hundred Seventy Six Thousand Four Hundred Five and 19/100 Dollars (\$176,405.19), hereinafter referred to as the Secured Indebtedness, payable to the Beneficiary, does hereby grant and convey unto said Public Trustee the following described property situate in the County of Mesa in the State of Colorado, to wit:

Lot 1 and Lot 7, Greystone Estates II

referred to herein as "the Property" or "property."

TO HAVE AND TO HOLD the same, together with all appurtenances, in trust nevertheless, in case of default on the obligations in the Agreements, or any part thereof, or in the performance of any covenants hereinafter set forth, then the Beneficiary may demand the property be sold by filing a notice of election and demand for sale with the Public Trustee. The Public Trustee shall mail and publish a combined notice of sale and grantor's rights in compliance with Colorado law. Such legal notice is to be published as required by law in a newspaper in the county or counties where the property is located. A copy of the combined notice shall be mailed to all persons entitled to receive notice as required by law. It shall then be lawful for the Public

Trustee to sell the property at auction for cash, at any proper place designated in the notice of sale. Out of the proceeds of the sale the Trustee shall retain or pay first all fees, charges and costs and all moneys advanced for taxes, insurance and assessments, or on any prior encumbrance, with interest thereon, and pay the principle sum above referenced to the Beneficiary, rendering the overplus, if any, to the Grantor; and the Trustee shall execute and deliver to the purchaser a confirmation deed to the property no later than nine days after the date of sale, or if later, the expiration of all redemption periods and the receipt by the Trustee of all statutory fees and costs. The Beneficiary may purchase the property or any part thereof at such sale.

The Grantor covenants that at the time of the delivery of these presents, Grantor is seized of the property in fee simple, and that the property is free of encumbrances.

The Grantor also covenants that the Grantor will keep all buildings, whether now existing or hereafter constructed, insured with a company approved by the Beneficiary for fire and extended coverage in an amount equal to the Secured Indebtedness with loss payable to the Beneficiary, will deliver a copy of the policy to the beneficiary and will pay all taxes and assessments against the property and amounts due on prior encumbrances. If Grantor fails to pay insurance premiums, taxes and amounts due on prior encumbrances, the Beneficiary may pay the same and all amounts shall become additional indebtedness due hereunder; and in the case of foreclosure, the Grantor will pay attorney's fees of \$1,500.00 for in-house counsel, or the total reasonable attorney's fees charged to Beneficiary by contracted counsel.

Should the Beneficiary be made a party to any action affecting this deed of trust or the title to the property the Grantor agrees that all court costs and reasonable attorney's fees shall become additional indebtedness due hereunder; and the Grantor does hereby waive and release all claims in the property of a homestead exemption or other exemption now or hereafter provided by law.

If all or any part of the property or an interest therein is sold or transferred by the Grantor without Beneficiary's prior written consent excluding (a) the creation of a lien or encumbrance subordinate to this Deed of Trust, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant, of (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Beneficiary may, at Beneficiary's option, declare all the sums secured by this Deed of Trust to be immediately due and payable. Beneficiary shall have waived such option to accelerate if, prior to the sale or transfer, Beneficiary and the person to whom the property is to be sold or transferred reach agreement in writing that such person will assume all obligations contained in the Agreements secured hereby.

It is agreed that in the case of default of the Grantor on any of the obligations under the Agreements or a breach of any of the covenants herein, then the Secured Indebtedness may at the

option of the Beneficiary become due and payable at once, anything in the Agreements to the contrary notwithstanding, and possession of the property will thereupon be delivered to the Beneficiary, and on failure to deliver such possession the Beneficiary shall be entitled to a receiver for the property, who may be appointed by any court of competent jurisdiction.

Grantor will continuously maintain its existence as a Colorado Limited Liability Company as currently constituted.

Grantor shall furnish to the Beneficiary copies of all lease forms to be used to lease any portion of the Property. No such lease form shall be effective without the prior written consent of Beneficiary. Such approval shall not be unreasonably withheld.

All the covenants herein shall be binding upon the respective heirs, personal representatives, successors and assigns of the parties hereto.

Executed the day and year first above written.

GRANTOR:

Sonshine IV Construction & Development, LLC,
a Colorado limited liability company

By: Blue Star Construction, Inc., a Colorado
corporation, Member

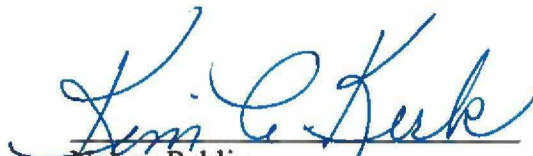
By: 
John Davis, President

STATE OF COLORADO)
) ss
COUNTY OF MESA)

The foregoing instrument was subscribed and sworn to before me this ^{4th} day of December, 2013 by John Davis as president of Blue Star Construction, Inc., a Colorado corporation, a Member of Sonshine IV Construction & Development, LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires:




Notary Public



Sheila Reiner
 Clerk and Recorder
 200 S. Spruce St.
 Grand Junction, CO 81501
 (970)-244-1679



Print Date:
 12/12/2013 4:14:06 PM

Transaction #: 178774
 Receipt #: 2013072047
 Cashier Date: 12/12/2013 4:14:06 PM

Mailing Address:
 P.O. BOX 20,000-5007
 Grand Junction, CO 81502
 (970)-244-1679

www.mesacounty.us

Customer Information	Transaction Information	Payment Summary
(CITYOFGJ) CITY OF GRAND JCT COM DEVELOP 250 N 5TH ST GRAND JCT, CO 81501 Escrow Balance: \$198.00	Date Received: 12/12/2013 Source Code: Over The Counter Return Code: Over The Counter Trans Type: Recording	Total Fees \$21.00 Total Payments \$21.00

1 Payments

CASH	\$21.00
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1 Recorded Items *Heritage Estates # 1 through # 4*

(TD) DEED OF TRUST	BK/PG: 5556/119 Reception Number: 2677168 Date: 12/12/2013 4:14:05 PM From: To:
Recording @ \$10 per page \$1 Surcharge	3 \$21.00

0 Search Items

0 Miscellaneous Items

Ms. Kim Kerk

March 7, 2014

Email address: kkerk@bluestarindustries.com (This letter sent by email only; hardcopy will NOT follow.)

RE: Project Name: Heritage Estates, Filings 3 & 4
Project Number: SSU-2013-12 and SUB-2013-216

Dear Ms. Kerk:

On February 26, 2014, representatives from the Public Works Division conducted an initial inspection of the public improvements at Heritage Estates, Filings 3 & 4. The following items were found to be deficient and must be addressed before the City can issue Initial Acceptance and begin the one-year warranty for these public improvements:

1. Re-caulk the joint in the gutter flowline of Waite Avenue at the boundary between Filing 2 & Filing 3.
2. Verify that grouting around the pipes has been adequately installed in the two storm inlets and storm manhole at the intersection of Chalisa and Waite.
3. Verify that grouting around the pipes has been adequately installed in the storm inlet and storm manhole in 24¾ Road.
4. Repair the paving around the storm manhole in Chalisa. Contact Mark Barslund (201-1362) to discuss the correct way to make this repair.
5. Replace the lid of the storm manhole in Chalisa, using the specified "fish" style manhole lid.
6. The City Planner may have specific requirements regarding the remaining landscaping that must be completed. Please contact Lori Bowers at 256-4033.

In addition to the field items listed above, the following paperwork must also be addressed:

1. If any fees have been deferred, they must be paid.
2. Submit final as-built drawings.
3. Submit a Maintenance Guarantee secured with adequate financial instrument in the amounts of **\$26,050** for Filing 3 and **\$18,841** for Filing 4.

Once the above issues are resolved and you have verified that the Planning Division has no further concerns, City staff will release any remaining DIA security and begin the one-year warranty. Thank you for your efforts in closing this project.

Sincerely,



Eric Hahn, PE
Development Engineer

Electronic copy:

Lori Bowers, Senior Planner
Mark Barslund, Development Inspector
Leslie Ankrum, Senior Admin. Assistant

MAINTENANCE GUARANTEE

Planning File No: SUB-201³_{WB}-12

1. **Parties:** The parties to this Maintenance Guarantee ("the Guarantee" or "Guarantee") are **Blue Star Industries, LLC** ("the Developer") and the City of Grand Junction, Colorado ("the City" or "City"). Collectively the Developer and the City may be referred to as the Parties.

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

2. **Effective Date:** The Effective Date of the Guarantee will be the date that it is signed and accepted by the City.

RECITALS

The Developer has constructed, installed and is required to warrant and maintain certain improvements ("Improvements" or "the Improvements") which were made necessary by virtue of development on property within the City. The Property, known as **Heritage Estates Filing 3** has been reviewed and approved under Planning file number **SUB-201³_{WB}-12** and as necessary or required to construe this guarantee, that file(s) is/are incorporated by this reference.

The City seeks to protect the health, safety and general welfare of the community by requiring that the Improvements, once constructed, be maintained. The purpose of this guarantee is to protect the City from having to repair the Improvements at its cost. The Agreement is not executed for the benefit of materialmen, laborers or others providing work, services or material to the Developer and/or the Property or for the benefit of the owners, purchasers or users of the Property. The mutual promises, covenants and obligations contained in this guarantee are authorized by law, the Colorado Constitution, the Charter and the City's ordinances.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer or its successor(s) or assign(s) shall maintain and guarantee the Improvements, at his/her/its own expense, against defects in workmanship and materials for a period of one year from the date of City acceptance of the Improvements. The Developer's obligation is and will be independent of any obligations of the City.

4. **Security:** To secure the performance of its obligations the Developer is required to post security in an amount of **\$26,050.33** (Line G2, Exhibit B, City Security).

4a. The Developer has posted security to guarantee the Improvements in an amount, form and with terms acceptable to the City.

4b. In addition to that security all warranties and/or guarantees (those incident to construction or as provided by the contractor and/or manufacturer of installed equipment) are hereby assigned to the City.

4c. The Developer shall to the extent necessary or required by the City take whatever action is necessary or required to assign all warranties and/or guarantees (those incident to construction or as provided by the contractor and/or manufacturer of installed equipment) to the City. A copy of those warranties or a memorandum of the same is attached as Exhibit A.

4d. The Developer for itself, its successors and assigns agrees that if the Improvements are not maintained to City standards that the City shall notify the Developer in writing of the defect(s) in accordance with paragraph 8 hereof.

5. **Standards:** The Developer shall maintain the Improvements according to the standards and specifications required by the City or as otherwise established by the City Engineer.

6. **Warranty:** The Developer hereby warrants that the Improvements, each and every one of them, will be maintained in accordance with the Standards in paragraph 5 for the period of this guarantee.

7. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations in effect at the time of final approval when fulfilling its obligations under this guarantee. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after acceptance of the Improvements.

8. **Notice of Defect/Default:** The City shall provide timely notice to the Developer whenever routine inspection reveals that an Improvement and/or maintenance of the same does not conform to City standards and any specifications approved or required in or by the development or that an Improvement(s) is otherwise defective.

8a. As provided herein the City shall provide written notice to the Developer at the address stated in paragraph 22. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

8b. The Developer will have twelve (12) calendar days from the date of the notice to correct the defect.

8c. The City may grant reasonable extensions in writing to the time for correction of defect(s), however, it is not obligated to do so nor is it obligated to provide any notice of a defect(s) if it becomes aware of the defect(s) in or during an emergency. Furthermore, the City is not obligated to inspect the Improvements but may do so as it would any other improvement.

9. **Acceptance:** Prior to acceptance of any Improvement(s), the Developer shall demonstrate in writing to the satisfaction of the City Attorney that it owns the Improvements in fee simple or that there are no liens, encumbrances or other restrictions other than those that have been accepted by the City Attorney on the Improvements. Approval and/or acceptance of any Improvements does not constitute a waiver by the City of any rights it may have on account of any defect in or failure of the Improvement or maintenance of the same that is detected or which occurs after approval and/or acceptance. All warranties and/or guarantees shall be for a period of no less than 12

months from the date of acceptance of the Improvements.

10. Funds: Funds drawn, guaranteed or collected by the City under this agreement shall be used for the purpose of correcting defects in and/or repairing or replacing failure(s) of the Improvement(s).

11. Defect/Default Events: The following conditions, occurrences or actions will constitute a defect and/or default:

11a. Developer's failure to maintain each and every one of the Improvements in conformance with this guarantee and/or as required by code, law, rule, ordinance or regulation;

11b. Developer's failure to correct defective construction of any Improvement within the applicable guarantee period;

11c. Developer's failure to maintain security in a form and amount required/provided by this guarantee.

11d. As provided herein the City shall provide written notice to the Developer at the address on file with the development application. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

12. Measure of Cost/Expenses: The measure of costs and or expenses chargeable by the City under this guarantee will be the reasonable cost of satisfactorily repairing and/or replacing the Improvements plus reasonable City administrative expenses (in the amount of 20% of the repair, replacement and/or warranty work) all of which may exceed the amount of the security provided for in paragraph 4. The amount of the security provided for in paragraph 4 does not set, limit, establish or provide the Developer's maximum financial obligation.

12a. City administrative expenses for which the Developer is obligated to pay include but are not limited to personnel costs, including benefits, overtime, callback, standby and other extraordinary compensation, materials, equipment, third-party contracting costs, collection costs and the value of engineering, legal and administrative staff time devoted to the repair and/or replacement of the Improvements and/or enforcement of this guarantee and all initial warranty(ies) or guarantee(s) assigned to the City by the Developer.

13. City's Rights: When any defect or default occurs, the City may after notice and the Developer's failure and/or refusal to repair or replace the Improvements, proceed to collect the amount of the cost or expense incidental or necessary to affect the repair or replacement of the Improvements. The City will have the right to reconstruct, rebuild or otherwise maintain Improvements itself or it may contract with a third party for completion and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining and repairing such Improvements. This remedy is cumulative in nature and is in addition to any other remedy the City has at law or in equity.

14. Indemnification: The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance or non-performance of work at the Property pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance or non-performance of work pursuant to this guarantee. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance of work pursuant to this guarantee except where such suit is brought by the Developer against the City. The Developer is, however, not an agent or employee of the City.

15. No Waiver: No waiver of any provision of this Agreement by the City will be deemed to or constitute a waiver of any other provision, nor will it be deemed to or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and the Developer; nor will the waiver of any defect or default under this guarantee be deemed a waiver of any subsequent defect(s) or default(s) of the same type. The City's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any defect(s), defaults(s) or Improvement(s).

16. Amendment or Modification: The Parties may amend or modify the Agreement only by written instrument executed on behalf of the City by the Public Works and Utilities Director or his designee and by the Developer or his authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

17. Attorney's Fees: Should either party be required to resort to litigation to enforce the terms of this guarantee, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If relief is awarded to both parties, the attorney's fees may be equitably divided between the parties by the decision-maker. The value of the City's in-house legal counsel is agreed to be \$125.00 per hour.

18. Integration: This guarantee, together with the exhibits and attachments thereto constitutes the entire agreement between the Parties and no statement(s), promise(s) or inducement(s) that is/are not contained in this agreement will be binding on the parties.

19. Third Party Rights: No person or entity who or which is not a party to this agreement will have any right of action under this agreement.

20. Severability: If any part, term or provision of this guarantee is held by a court or courts of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the right of the parties will be construed as if the part, term or provision was never part of the agreement.

21. Benefits: The benefits of this agreement to the Developer are personal and may not

be assigned without the express written approval of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this agreement are personal obligations of the Developer and also will be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with

the Property. There is no prohibition on the City to assign its rights under this agreement. The City will expressly release the original Developer's guarantee or obligations if it accepts new security from any Developer or lender who obtains the Property; however, no other act of the City will constitute a release of the original Developer from his liability under this agreement.

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

If to Developer:	Blue Star Industries, LLC	Name/Developer/Company (continued)
	2350 G Road	Address (Street and Mailing) Address (continued)
	Grand Junction, CO 81505	City, State & Zip Code
	970-255-8853	Telephone Number
	970-245-1452	Fax Number
	kkerk@bluestarindustries.com	E-mail Address

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

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

23. Recordation: Developer will pay for all costs to record a memorandum of this guarantee in the Clerk and Recorder's Office of Mesa County, Colorado.

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

25. Personal Jurisdiction and Venue: Personal jurisdiction and venue for any action commenced by either party to this agreement whether arising out of or relating to the agreement, will be deemed to be proper only if such action is commenced in Mesa County, Colorado. The Developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

By:



Date: Dec 9, 2013

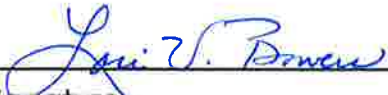
Developer's Signature

Developer's Name: John Davis

Title (position): Manager

Corporate Attest: _____

City of Grand Junction



Date: Dec. 10, 2013

Signature

Project Manager



Date: 7/10/14

Signature

Development Engineer



Date: 7.10.14

Signature

Director or Planning Manager

July 11, 2014

Ms. Kim Kerk
Blue Star Industries, LLC
637 25 Road
Grand Junction, Colorado 81505

RE: Initial Acceptance
Project Name: Heritage Estates, Filing 3
Project Number: SUB-2013-12

Ms. Kerk,

As the Developer of the referenced Project, you are hereby notified that the requirements for Initial Acceptance of the public infrastructure associated with the Project have been fulfilled. The Developer is responsible for all materials and workmanship for the public infrastructure improvements constructed or installed as part of the Project for one year following the Initial Acceptance date. Additionally, any improvements under the jurisdiction of other entities, such as water districts and sewer districts, shall be subject to the warranty requirements of those entities.

The City will conduct a warranty inspection of the above improvements prior to the end of the one-year warranty period. The Developer will be required to correct any deficiencies noted during the warranty period. If a deficient item requires replacement or major repairs under the warranty, the Maintenance Agreement and the full financial guarantee may be extended by one year from the date the item is repaired or replaced.

Initial Acceptance date: **September 1, 2013.**

Amount of financial security for the Maintenance Guarantee: **\$26,050.**

Sincerely,



City of Grand Junction

EC: Shelly Dackonish, Staff City Attorney
Lori Bowers, Senior Planner
Dan Thorne – Street Systems
Chris Spears – Storm Drainage Systems
Peggy Sharpe, Administrative Assistant

Eric Hahn, City Development Engineer
Mark Barslund, Development Inspector
Larry Brown – Sewage Collection Systems
Greg Moberg, Development Services Mgr.
David Priske, Ute Water <dpriske@utewater.org>

DEED OF TRUST

THIS DEED OF TRUST is entered into this 4th day of December, 2013 between Sonshine IV Construction & Development, LLC, a Colorado limited liability company (Grantor), whose address is 2350 G Road, Grand Junction Colorado 81505, and the Public Trustee of the County of Mesa, State of Colorado, for the benefit of the City of Grand Junction (Beneficiary), whose address is 250 North 5th Street, Grand Junction, Colorado 81501.

Witness that the Grantor, to secure the obligations of Developers Blue Star Industries, LLC and Heritage Estates, LLC under those certain Development Improvements Agreements dated 11/5/12 (SUB-2012-531 Filing 2), 12/4/12 (SUB-2012-399 Filing 1), 6/27/13 (SUB-2012-
-(also referred to as SUB-2013-12) sd
531 Filing 3), and 8/29/13 (SUB-2013-216 Filing 4) between Blue Star Industries, LLC (Filing 1)/Heritage Estates (Filings 2 through 4) and the City of Grand Junction and to secure said Developer's warranty and maintenance obligations for Filings 1 through 4 of Heritage Estates related to the aforementioned Grand Junction Planning File Numbers, hereinafter referred to as Agreements, in the principle sum of One Hundred Seventy Six Thousand Four Hundred Five and 19/100 Dollars (\$176,405.19), hereinafter referred to as the Secured Indebtedness, payable to the Beneficiary, does hereby grant and convey unto said Public Trustee the following described property situate in the County of Mesa in the State of Colorado, to wit:

Lot 1 and Lot 7, Greystone Estates II

referred to herein as "the Property" or "property."

TO HAVE AND TO HOLD the same, together with all appurtenances, in trust nevertheless, in case of default on the obligations in the Agreements, or any part thereof, or in the performance of any covenants hereinafter set forth, then the Beneficiary may demand the property be sold by filing a notice of election and demand for sale with the Public Trustee. The Public Trustee shall mail and publish a combined notice of sale and grantor's rights in compliance with Colorado law. Such legal notice is to be published as required by law in a newspaper in the county or counties where the property is located. A copy of the combined notice shall be mailed to all persons entitled to receive notice as required by law. It shall then be lawful for the Public

Trustee to sell the property at auction for cash, at any proper place designated in the notice of sale. Out of the proceeds of the sale the Trustee shall retain or pay first all fees, charges and costs and all moneys advanced for taxes, insurance and assessments, or on any prior encumbrance, with interest thereon, and pay the principle sum above referenced to the Beneficiary, rendering the overplus, if any, to the Grantor; and the Trustee shall execute and deliver to the purchaser a confirmation deed to the property no later than nine days after the date of sale, or if later, the expiration of all redemption periods and the receipt by the Trustee of all statutory fees and costs. The Beneficiary may purchase the property or any part thereof at such sale.

The Grantor covenants that at the time of the delivery of these presents, Grantor is seized of the property in fee simple, and that the property is free of encumbrances.

The Grantor also covenants that the Grantor will keep all buildings, whether now existing or hereafter constructed, insured with a company approved by the Beneficiary for fire and extended coverage in an amount equal to the Secured Indebtedness with loss payable to the Beneficiary, will deliver a copy of the policy to the beneficiary and will pay all taxes and assessments against the property and amounts due on prior encumbrances. If Grantor fails to pay insurance premiums, taxes and amounts due on prior encumbrances, the Beneficiary may pay the same and all amounts shall become additional indebtedness due hereunder; and in the case of foreclosure, the Grantor will pay attorney's fees of \$1,500.00 for in-house counsel, or the total reasonable attorney's fees charged to Beneficiary by contracted counsel.

Should the Beneficiary be made a party to any action affecting this deed of trust or the title to the property the Grantor agrees that all court costs and reasonable attorney's fees shall become additional indebtedness due hereunder; and the Grantor does hereby waive and release all claims in the property of a homestead exemption or other exemption now or hereafter provided by law.

If all or any part of the property or an interest therein is sold or transferred by the Grantor without Beneficiary's prior written consent excluding (a) the creation of a lien or encumbrance subordinate to this Deed of Trust, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant, or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Beneficiary may, at Beneficiary's option, declare all the sums secured by this Deed of Trust to be immediately due and payable. Beneficiary shall have waived such option to accelerate if, prior to the sale or transfer, Beneficiary and the person to whom the property is to be sold or transferred reach agreement in writing that such person will assume all obligations contained in the Agreements secured hereby.

It is agreed that in the case of default of the Grantor on any of the obligations under the Agreements or a breach of any of the covenants herein, then the Secured Indebtedness may at the

option of the Beneficiary become due and payable at once, anything in the Agreements to the contrary notwithstanding, and possession of the property will thereupon be delivered to the Beneficiary, and on failure to deliver such possession the Beneficiary shall be entitled to a receiver for the property, who may be appointed by any court of competent jurisdiction.

Grantor will continuously maintain its existence as a Colorado Limited Liability Company as currently constituted.

Grantor shall furnish to the Beneficiary copies of all lease forms to be used to lease any portion of the Property. No such lease form shall be effective without the prior written consent of Beneficiary. Such approval shall not be unreasonably withheld.

All the covenants herein shall be binding upon the respective heirs, personal representatives, successors and assigns of the parties hereto.

Executed the day and year first above written.

GRANTOR:

Sonshine IV Construction & Development, LLC,
a Colorado limited liability company

By: Blue Star Construction, Inc., a Colorado
corporation, Member

By: *[Signature]*
John Davis, President

STATE OF COLORADO)
) ss
COUNTY OF MESA)

The foregoing instrument was subscribed and sworn to before me this 4th day of December, 2013 by John Davis as president of Blue Star Construction, Inc., a Colorado corporation, a Member of Sonshine IV Construction & Development, LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires:



[Signature]
Notary Public

Mary Sparks - Heritage Estates - Filing 3 - Warranty Inspection Checklist

From: Eric Hahn
To: Kim Kerk
Date: 8/13/2014 2:32 PM
Subject: Heritage Estates - Filing 3 - Warranty Inspection Checklist
CC: Barslund, Mark; Bowers, Lori; Mary Sparks; Moberg, Greg
Attachments: Heritage Estates - Filing 3 - Warranty Inspection Checklist.pdf

Kim,

Please see the attached punchlist. A hardcopy will NOT follow.

Eric Hahn, PE
Public Works & Planning Dept.
City of Grand Junction
(970) 244-1443

Warranty Inspection Checklist

Date: August 13, 2014
Project Number: SUB-2013-12
Project Name: Heritage Estates, Filing 3
Developer / Rep.: Bluestar (Kim Kerk)
Development Engineer: Eric Hahn

The one-year warranty period for this filing expires on September 1, 2014. A warranty inspection was conducted on August 12, 2014. The following deficiencies were noted during the inspection and shall be corrected by the Developer:

1. Mill and overlay the sunken asphalt in Waite Avenue at the east filing boundary. This repair will extend across the entire width of street, and across the subdivision boundary. Contact Mark Barslund (201-1362) to discuss the scope of the work and work out the details.
2. Place and compact fill material along the east side of the valley pan that runs along the east boundary of the filing.
3. Check rubber-neck in all sewer manholes, trim as necessary.

The Developer shall notify the Development Engineer when all of the deficiencies have been corrected. The Development Engineer and/or the Development Inspector will conduct a follow up inspection.



July 15, 2014

Timerline Bank
633 24 Road
Grand Junction, CO 81505

**RE: Cancellation of Disbursement Agreement: Heritage Estates, LLC
Heritage Estates Subdivision - Filing 3: SUB-2012-531; DIA-2013-308**

To Whom It May Concern:

Enclosed is a copy of the Disbursement Agreement (Improvement Guarantee) entered into between the City of Grand Junction ("City"), **Heritage Estates, LLC** ("Developer"), and **Timberline Bank** for improvements to the development referred to as **Heritage Estates Subdivision – Filing 3** under **SUB-2012-531**. As beneficiary of the security for a Development Improvements Agreement ("DIA"), the City informs you that the terms of the improvements have been completed by the Developer and the improvements have been accepted by the City. The City hereby releases its interest in the disbursement agreement security. This letter is being provided at the direction of the Manager of Development Services for the Community Development Division.



Greg Moberg, Development Services Manager

EC: SUB-2012-531
DIA-2013-308
Mary Sparks, Senior Administrative Assistant

Developer:
Ms. Kim Kerk
Blue Star Industries, LLC
637 25 Road
Grand Junction, CO 81505



DISBURSEMENT AGREEMENT

(Improvements Guarantee)

Planning File No. SUB-2013-12

DEVELOPER: Heritage Estates, LLC

BANK: Timberline Bank

PROPERTY: Heritage Estates Subdivision - Filing 3

DISBURSEMENT AMOUNT: For the construction of improvements to the Property in an amount not to exceed \$ **156,301.96**

This Agreement is entered into by and between **Heritage Estates, LLC** ("Developer"), **Timberline Bank** ("Bank") and the City of Grand Junction, Colorado ("City").

RECITALS

Developer has been required by the City to construct certain improvements to **Heritage Estates Filing 3** ("Improvements") in accordance with the Zoning and Development Code, Improvements Agreement and subdivision approval.

The Bank has agreed to loan funds to the Developer for construction of the improvements.

The City Engineer has approved an estimate of the costs of the Improvements and that amount or an amount not to exceed \$ **156,301.96**, whichever is greater, shall be referred to as the "Funds."

The parties desire to secure the full and complete performance of the Developer's obligations and to secure that the Funds are disbursed only to pay for the Improvements.

NOW, THEREFORE, THE PARTIES AGREE:

1. **BANK PROMISES.** Bank shall dedicate or set aside the Funds on behalf of Developer and for the City's benefit within twenty-four hours of execution of this Disbursement Agreement.

Bank warrants: that the Funds are to be held in trust solely to secure Developer's obligations under the Improvements Agreement; that the Bank shall act as agent of the City in holding the Funds; that the Funds will not be paid out or disbursed to, or on behalf of, the Developer except as set forth in this document and/or as set forth in the Improvements Agreement; and that the Bank may not modify or revoke its obligation to

disburse funds to or on behalf of the Developer or the City. The Bank warrants that the Funds are and will be available exclusively for payment of the costs of satisfactory completion of the Improvements.

2. **DISBURSEMENT PROCEDURES.** The Funds shall be advanced for payment of costs incurred for the construction of Improvements on the Property in accordance with the Improvements List/Detail attached to the Improvements Agreement, the terms of which are incorporated by this reference. All disbursements must comply with the following procedures:

a) **Request for Advance.** Developer shall deliver to the Bank a written request for the disbursement of funds on forms acceptable to the Bank. Such requests shall be signed by Developer, Developer's General Contractor, Project Engineer and Architect, if applicable, and the City Engineer. By signing the request for disbursement the Developer is certifying: that all costs for which the advance is being requested have been incurred in connection with the construction of the Improvements on the Property; that all work performed and materials supplied are in accordance with the plans and specifications submitted to and approved by the City; that the work has been performed in a workmanlike manner; that no funds are being requested for work not completed, nor for material not installed; the Project Engineer has inspected the Improvements for which payment is requested; and that such improvements have been completed in accordance with all terms, specifications and conditions of the approved plans. Attached hereto is the list of those individuals, and their respective signatures, required to sign the above described request(s) for disbursement of funds.

(b) **Documentation, Waivers and Checks.** Each request for disbursement of funds shall be accompanied by: (i) one original and one copy of each invoice to be paid; (ii) checks drawn on Developer's construction loan account with the Bank, made payable to the payee(s) and for the amount of each invoice presented for payment; (iii) lien waivers in a form approved by the Bank prepared for signature by each payee; and (iv) postage paid envelopes addressed to each payee for the mailing of checks presented to the Bank.

The Bank shall verify its receipt of all lien waivers relating to any prior disbursements, which lien waivers shall be properly executed and contain no alterations or modifications from those lien waivers that have been previously presented to the Bank.

Upon approval by Developer, the Project Engineer and the Bank of the invoices being presented to the Bank, the Bank shall advance funds into the checking account designated for the payment of the invoices and mail the checks to the payee(s) in the envelopes presented to the Bank, together with lien waivers and copies of supporting invoices.

Under no circumstances shall the Bank make a disbursement for the payment of an invoice if it in good faith believes that: (i) the work has not been completed; (ii) the work has not been completed in a workmanlike manner; (iii) written approval has not been received from the Project Engineer; or (iv) any lien waiver has been altered or modified or has not been returned to the Bank.

(c) **Default.** Upon default of the Developer on any obligation to the Bank or under the Improvements Agreement, the Bank shall disburse no funds to, or at the direction of, the Developer except to the City under the terms of the Improvements Agreement. The Bank shall immediately notify the City, in writing, of any event of default or event of default as provided for in the Improvements Agreement and/or as provided herein.

(d) **Disbursement to City.** In the event the Improvements are not satisfactorily and timely constructed, or upon any default or event of default, the City Engineer shall notify the Bank to immediately cease disbursement of funds to the Developer and disburse the full amount of the remaining undisbursed funds to the City. Upon such notice, the Bank shall promptly honor the demand of the City Engineer to disburse the Funds to the City or a third party or parties designated in writing by the City. Upon final completion and acceptance of the performance required under the Improvements Agreement, the City shall refund to the Bank any funds disbursed, if any, which are not actually expended to pay all costs, expenses and liabilities, including attorney fees, incurred in completing the Improvements.

3. **DEVELOPER CONSENT:** The Developer, **L. John Davis** consents to disbursements and other actions authorized and provided for by the terms of this Agreement and/or the Improvements Agreement.

4. **LIABILITY FOR LOSS:** If the Bank fails to disburse funds in accordance with the procedures set forth, and the City suffers loss or damage, the Bank shall be liable to the City for the City's direct and consequential damages and all fees, costs and expenses, including attorney's fees.

5. **BINDING EFFECT:** This Agreement shall be binding on the heirs, successors, receivers and assigns of all parties and shall terminate when the City has accepted the Improvements and has recorded a release of the Improvements Agreement.

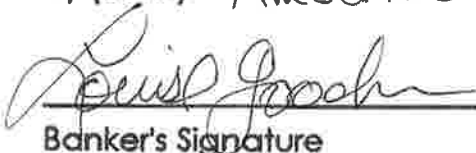
6. **IMMUNITY:** Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under applicable state law.

Dated: 6-25-13

By (Bank): Timberline Bank

Address:

633 24 Road
Grand Junction, CO 81505


Banker's Signature

Banker's Name and title:

Louise Goodman Assistant Vice President

By (Developer):

Address:

2350 G Road
Grand Junction, CO 81505


Developer's Signature

Developer's Name and title:

John Davis, President

By (City of Grand Junction):

Director of Public Works & Planning

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between **Heritage Estates, LLC** Developer, **Timberline Bank** as Bank and the City of Grand Junction, the following are the individuals authorized to sign written requests for the disbursement of the Funds:

Developer:

Name: L. John Davis



Signature

Name:

Signature

Name:

Signature

Developer's General Contractor:

Name:

Signature

Developer's Project Engineer:

Name:

Signature

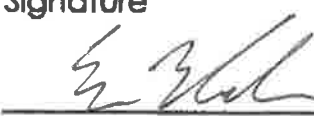
Developer's Architect:

Name:

Signature

City Engineer:

Name: ERIC HAWN



Signature