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TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	GRAND VALLEY ATRIUM RETIREMENT VILLAGE
PROJECT/SUBDIVISION:	ATRIUM PHASE I
ADDRESS:	2707 F 1/2 ROAD
TAX PARCEL NO:	2945-013-13-002
FILE #:	PDR - 1993-042
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	1994
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

**DEVELOPMENT IMPROVEMENTS AGREEMENT**1673091 02:14 PM 03/03/94  
MONIKA TODD CLK&REC MESA COUNTY CO

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement") are Grand Valley Atrium Retirement Village, a Colorado general partnership ("the Developer") and THE CITY OF GRAND JUNCTION, Colorado ("the City").

2. **Effective Date:** The Effective Date of the Agreement will be the date that this agreement is recorded which is not sooner than recordation of the final plat and plan of Hilltop Minor Subdivision.

**RECITALS**

The Developer seeks permission to develop property within the City to be known as Grand Valley Atrium Retirement Village, which property is more particularly described on Exhibit "A" attached and incorporated by this reference (the "Property"). The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the development and limiting the harmful effects of substandard developments. The purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself and is not executed for the benefit of materialmen, laborers, or others providing work, services or material to the development or for the benefit of the purchasers or users of the development. The mutual promises, covenants, and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and the City's land development ordinances.

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

**DEVELOPER'S OBLIGATION**

3. **Improvements:** The Developer will 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 (the "Improvements"). The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. The City estimates that \$400.00 will be required for City inspection of the required Improvements. The Developer's obligation to complete the improvements is and will be independent of any obligations of the City contained herein.

4. **Security:** To secure the performance of its obligations under this Agreement (except its obligations for warranty under paragraph 6), the Developer will enter into a disbursement agreement which complies with paragraph 30, or other written agreement between the City and the Developer.

5. **Standards:** The Developer will construct the Improvements according to the standards and specifications required by the City Engineer or as adopted by the City.

6. **Warranty:** The Developer warrants that the Improvements, each and every one of them, will be free from defects for a period of twelve (12) months from the date that the City Engineer accepts or approves the Improvements completed by the Developer.

7. **Commencement and Completion Periods:** Except as provided in a Deferred Improvement Agreement entered in to between Developer and the City, the Improvements, each and every one of them, will be completed by November 30, 1994 (the "Completion Period").

8. **Compliance with Law:** The Developer will comply with all relevant federal, state and local laws, ordinances, and regulations in effect at the time of final approval associated with the development when fulfilling its obligations under this Agreement.

9. **Dedication:** The Developer will dedicate to the City those Improvements and rights-of-way required by the City Engineer. The Developer shall present a policy of title insurance, where appropriate, and conveyancing documents for the benefit of the City showing that the developer owns the improvement in fee simple and that there are no liens, encumbrances or other restrictions on the improvement unacceptable to the City in its reasonable judgment. Acceptance of the dedication of any improvement does not constitute a waiver by the City of the right to proceed against any security or the Developer on account of any defect in or failure of the improvement that is detected or which occurs after the acceptance of the dedication.

10. **Inspection and Certification:** The City will inspect the Improvements as they are completed and, if acceptable to the City Engineer, certify such improvement as being in compliance with the standards and specifications. Such inspection and certification, if appropriate, will occur within 14 days of notice by the Developer that he desires to have the City inspect an improvement. Before obtaining certification of any such improvement, the Developer will present to the City valid lien waivers from all persons providing materials or performing work on the improvement for which certification is sought. Certification by the City Engineer does not constitute a waiver by the City of the right to proceed against a bank to draw funds or on account of defects in or failure of any improvement that is detected or which occurs following such certification.

11. **Notice of Defect:** The Developer's engineer will provide timely notice to the Developer, contractor, issuer of security and the City Engineer whenever inspection reveals, or the Developer's engineer otherwise has knowledge, that an Improvement does not conform to City standards and any specifications approved in the development application or is otherwise defective. The Developer will have thirty

(30) days from the issuance of such notice to correct or substantially correct the defect.

12. **Acceptance of Improvements:** The City's final acceptance and/or approval of Improvements will not be given or obtained until the Developer presents a document or documents, for the benefit of the City, showing that the Developer owns the Improvements in fee simple and that there are no liens, encumbrances, or other restrictions 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 that is detected or which occurs after the approval and/or acceptance.

13. **Use of Proceeds:** The City will use funds deposited with it or drawn pursuant to any written disbursement agreement entered into between the parties only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements.

14. **Events of Default:** The following conditions, occurrences or actions will constitute a default by the Developer during the Completion Period:

- a. Developers failure to complete the Improvements in conformance with the agreed upon time schedule; the City may not declare a default until a fourteen (14) calendar day notice has been given to the Developer;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvement within the applicable correction period; the City may not declare a default until a fourteen (14) calendar day notice has been given to the Developer;
- c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; in such event the City may immediately declare a default without prior notification to the Developer;
- d. Notification to the City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer.

15. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit "B" will be prima facie evidence of the minimum cost of completion; however, neither that amount or the amount of a letter of credit, any subdivision improvements disbursement agreement or cash escrow establish the maximum amount of the Developer's liability.

16. **City's Rights Upon Default:** When any event of default occurs, the City may draw on any letter of credit, escrowed collateral, or proceed to collect any other security to the extent of the face amount of the credit or full amount of escrowed collateral, cash, or security less ninety percent (90%) of the estimated cost (as shown on Exhibit "B") of all Improvements previously accepted by the City or may exercise its rights to disbursement of loan proceeds or other funds under the improvements disbursement agreement. The security shall be used by the City only to complete the Improvements. The City will have the right to complete 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. Alternatively, the City may assign the proceeds of any letter of credit, any improvement disbursement agreement, any escrowed collateral, cash, or other funds or assets to the subsequent developer (or a lender) who has acquired the development by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished Improvements and provides reasonable security for the obligation. In addition, the City may also enjoin the sale, transfer, or conveyance of lots within the development, until the Improvements are completed or accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

17. **Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees 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 of work at the development or the Property pursuant to this Agreement except such injuries or damages which may arise as a result of negligence or fault on the part of the City, its agents or assigns. Subject to the foregoing, and except where such suit is brought by the Developer against the City, the Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance of work pursuant to this Agreement. The Developer is not an agent or employee of the City.

18. **No Waiver:** No waiver of any provision of this Agreement by the City will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both City and Developer; nor will 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 will not constitute the approval of any wrongful act by the Developer or the acceptance of any improvement.

19. **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 authorized officer. Such amendment or modification will be properly notarized before it may be effective.

20. **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, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court awards relief to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.

21. **Vested Rights:** The city does not warrant by this Agreement that the Developer is entitled to other approval(s) required by the City, if any, before the Developer is entitled to commence development or to transfer ownership of property in the development.

22. **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.

23. **Time:** For the purpose of computing the Abandonment and Completion Periods, and time periods for City action, such times in which war, civil disasters, or acts of God occur or exist will not be included if such times prevent the Developer or City from performing its obligations under the Agreement.

24. **Severability:** If any part, term, or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.

25. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. 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 right of the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations under the improvements disbursement agreement 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.

26. **Notice:** Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

If to Developer: Grand Valley Atrium Retirement Village  
2741 12th Street S.E.  
Salem, Oregon 97302

If to City: City of Grand Junction  
Community Development Director  
250 N. 5th Street  
Grand Junction, Colorado 81501

27. **Recordation:** Developer will pay for any costs to record a copy of this Agreement in the Clerk and Recorder's Office of Mesa County, Colorado.

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

29. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement whether arising out of or relating to the Agreement, letter of credit, improvements disbursements agreement, or cash escrow agreement or any action to collect security will be deemed to be proper only if such action is commenced in Mesa County. The Developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

30. **Improvements guarantee:** The improvements guarantee required by the City Code to ensure that the Improvements described in the improvements agreement are constructed (to city standards) shall be in the form of a disbursements agreement between a bank doing business in Mesa County and the City. The disbursements agreement between a bank and the City shall provide, among other things, for the bank to guarantee and warrant to the City that it shall:

- a. have available money equal to the estimated costs of the required improvements, in an amount equal to the amount agreed upon in the Improvements Agreement;
- b. only pay such amounts to contractors who have constructed required Improvements;
- c. only pay such amounts after the bank has received the written approval of the City Engineer, or his designee; the City Engineer shall inspect within three (3) working days of request;

- d. in the event the bank disburses without the City Engineer having approved such disbursement, the Bank shall pay, in addition to all other sums it would otherwise be obligated to pay, to the City the amount of the wrongful disbursement if the City Engineer determines that the work is not acceptable, based on the approved plans and specifications. The City shall use such money to cause the work to be constructed in accordance with the approved plans and specifications;

In the alternative, to secure the obligations under this Agreement, Developer may make guarantees sufficient to satisfy the City Code including, but not limited to, a letter of credit, a performance bond, cash or property collateral, or such other security as may be mutually agreed upon between the parties.

31. **Conditions of 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 Improvements shall have been accepted by the City. Prior to requesting final acceptance of streets, storm drainage facilities, or other required Improvements, the Developer shall furnish to the City Engineer as-built drawings in reproducible form and copies of results of all construction control tests required by City specifications.

32. **Phased Development:** 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 his side of the street to enable an initial two-way traffic operation without on-street parking. That Developer is also responsible for end-transitions, intersection paving, drainage facilities, and adjustments to existing utilities necessary to open the street to traffic.

GRAND VALLEY ATRIUM RETIREMENT VILLAGE  
a Colorado general partnership

By: *Dennis Stahl*  
Dennis Stahl, President of Grand Valley  
Atrium, Inc. , a general partner

ATTEST:

CITY OF GRAND JUNCTION, COLORADO,  
a municipal corporation

*Theresa J. Martenay*  
City Clerk *Deputy*

By *David A. Vailley*  
~~Mark K. Achen~~  
Asst City Manager





IMPROVEMENTS LIST/DETAIL

DATE: 9-Oct-98

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NAME OF DEVELOPMENT: Hilltop Manor Subdivision

LOCATION: 12 th. Street & F1/2 Road, Grand Junction, Co.

PRINTED NAME OF PERSON PREPARING: Tony Nichols

Note: Cost for subdivision on-site development for The Atrium not included.

	Units	Total Quantity	Unit Price	Total Amount
<b>I SANITARY SEWER</b>				
1 Clearing and grubbing	LS	1	500	500
2 Cut and remove asphalt	S.Y.	30	5	150
3 PVC sanitary sewer main (incl. trenching, bedding, & backfill)	L.F.	1,518	15	22,740
4 Sewer Services (incl. trenching, bedding, & backfill)	Ea.	0		0
5 Sanitary sewer manhole (s)	Ea.	5	800	4,000
6 Connection to existing manhole (s) ^	Ea.	1	200	200
7 Aggregate Base Course	S.Y.	30	20	600
8 Pavement replacement	S.Y.	30	10	300
9 Driveway restoration	Ea.	0		0
10 Utility adjustments(Drainage & irrigation crossings)	LS	1	3,000	3,000
<b>SUB TOTAL:</b>				<b>31,490</b>
<b>II DOMESTIC WATER</b>				
1 Clearing and grubbing	S.Y.	0	0	0
2 Cut and remove asphalt	Ea.	50	5	250
3 Water Main (incl. excavation, bedding, backfill, valves and appurtenances)	L.F. (8")	1,630	20	32,600
4 Water Services (incl. excavation, bedding, backfill, valves, and appurtenances)	C.Y.	0		0
5 Connect to existing water line	Ea.	2	500	1,000
6 Aggregate Base Course	C.Y.	500	15	7,500
7 Pavement Replacement	S.Y.	50	15	750
8 Utility adjustments		0	0	0
<b>SUB TOTAL:</b>				<b>42,100</b>
<b>III STREETS (Private streets &amp; F1/2 Road Improvements SEE ADDENDUM)</b>				
1 Clearing and grubbing		0	0	0
2 Earthwork, including excavation and embankment construction	C.Y.	100	5	500
3 Utility relocations	Ea.	2	500	1,000
4 Aggregate sub-base course (square yard)	S.Y.	50	20	1,000
5 Aggregate base course (square yard)		50	20	1,000
6 Sub-grade stabilization	Ea.	1	200	200
7 Asphalt or concrete pavement (square yard)	S.Y.	140	15	2,100
8 Curb, gutter & sidewalk (linear feet)	L.F.	0	0	0
9 Driveway sections (square yard)	S.Y.	0	0	0
10 Crosspans and fills		0	0	0
11 Retaining walls/structures		0	0	0



**ADDENDUM:**

- Street Improvements**  
 1 No. 12 Th Street - 1/2 Improvements  
 2 F.5 Road - 1/2 Improvements  
 3 Looped 8" water line

**SUB TOTAL:**

	Units	Total Quantity	Unit Price	Total Amount
L.F.		660	\$50.00	\$33,000
L.F.		660	\$42.00	\$27,720
				\$60,720
L.F.		1,000	\$20.00	\$20,000

**TOTAL ADDENDUM: \$60,720**

<b>GRAND TOTAL: \$228,298</b>
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ADDENDA TO DEVELOPMENT IMPROVEMENT AGREEMENT AND GUARANTEE

RECITALS.

BOOK 2117 PAGE 876

Pursuant to the certain terms of the Development Improvements Agreement, Disbursements Agreement and Improvements Guarantee all dated March 3, 1994, by and between GRAND VALLEY ATRIUM RETIREMENT VILLAGE as Developer, NORWEST BANK GRAND JUNCTION, N.A. as Bank and the CITY OF GRAND JUNCTION, the parties agreed to terms and conditions to guarantee the construction, placement and improvement of the Property. By this document the parties further agree that to the extent necessary those prior documents are modified to include the Bank and the Developers additional guarantee of the placement and construction of required landscaping and irrigation.

Exhibit B to the Disbursement Agreement, the guaranteed improvements detail sheet, section IV., LANDSCAPING, is and shall be amended to include under item 4., Plant Material and Planting, and item 5., Irrigation System, in the total amount of \$54,066.00

NOW, THEREFORE, in consideration of the recitals, the parties agree as follows:

1. The Bank agrees to set aside, reserve and guarantee an additional \$54,066.00 over and above the existing \$228,298.00 amount in the original agreement. The total amount available and guaranteed is and shall be \$282,364.00.
2. The City has reviewed and accepted the Developer's landscape plan and estimates of values for the installation and maintenance of the required landscaping and irrigation system.
3. This amendment shall be governed by the terms, covenants, conditions and authorizations of the original agreements and guarantees.

NORWEST BANK GRAND JUNCTION, N.A.

by: Wayne Thaler date: 12/30/94  
Wayne Thaler, Vice President

The foregoing instrument was executed before me this 30<sup>th</sup> day of DECEMBER, 1994

Witness my hand and official seal.

My commission expires 12/07/99.  
Laura K. Jordan  
Notary Public



GRAND VALLEY RETIREMENT VILLAGE

by: Dennis Stahl date: 12/30/94  
Dennis Stahl, President  
Grand Valley Atrium Inc., a general partner

The foregoing instrument was executed before me this 30 day of December, 1994

Witness my hand and official seal.



My commission expires 1/31/97

[Signature]  
Notary Public

CITY OF GRAND JUNCTION

by: David A. Varley date: DEC. 30, 1994  
Mark K. Achen, City Manager, ASST.

The foregoing instrument was executed before me this 30 day of December, 1994

Witness my hand and official seal.

My commission expires June 13, 1995



[Signature]  
Notary Public

IMPROVEMENTS AGREEMENT  
(Site Plan)

1. **Parties:** The parties to this Improvements Agreement ("the Agreement") are Grand Valley Atium Retirement Village ("the Developer") and THE CITY OF GRAND JUNCTION, Colorado ("the City").  
*a Colorado general partnership*
2. **Effective Date:** The Effective Date of the Agreement will be the date that this agreement is recorded.

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

RECITALS

The Developer seeks permission to develop property within the City, which property is more particularly described on Exhibit A attached and incorporated by this reference hereinafter known as "the Property." The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements and limiting the harmful effects of substandard development. The purpose of this Agreement is to protect the City from the cost of completing improvements itself and is not executed for the benefit to materialmen, laborers, or others providing work, services or materials to the Developer. The mutual promises, covenants and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and the City's land development Code.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer will design, construct and install, at its own expense, those improvements listed on Exhibit B attached hereto and incorporated herein by this reference. The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. The City estimates that \$        will be required for City inspection of the required improvements. The Developer's obligation to complete the improvements is and will be independent of any obligations of the City contained herein.
4. **Security:** To secure the performance of its obligations under this Agreement (except its obligations for warranty under paragraph 6), the Developer will enter into an agreement acceptable to the City to post a good and sufficient letter of credit, or deposit with the City cash equivalent to the estimated cost of construction of the improvements or provide a bank disbursement agreement acceptable to the City.

5. **Standards:** The Developer will construct the Improvements according to the standards and specifications required by the City Engineer or as otherwise adopted by the City.

6. **Warranty:** The Developer warrants that the Improvements, each and every one of them, will be free from defects for a period of twelve (12) months from the date that the City Engineer accepts or approves, in writing, the improvements completed by the Developer.

7. **Commencement and Completion Periods:** The improvements, each and every one of them, will be completed within \_\_\_\_\_ from the Effective Date of this Agreement (the "Completion Period").

8. **Compliance with Law:** The Developer shall comply with all relevant federal, state and local laws, ordinances and regulations in effect at the time of site plan/development approval when fulfilling its obligations under this Agreement.

9. **Notice of Defect:** The Developer's Engineer shall provide timely notice to the Developer, contractor, issuer of security and the City Engineer whenever inspection reveals, or the Developer's Engineer otherwise has knowledge, that an improvement does not conform to City standards and any specifications, or is otherwise defective. The Developer will have thirty (30) days from the issuance of such notice to correct the defect.

10. **Acceptance of Improvements:** The City's final acceptance and/or approval of improvements will not be given or obtained until Developer presents a document or documents, for the benefit of the City, showing that the Developer owns the improvements in fee simple and that there are no liens, encumbrances, or other restrictions 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 that is detected or which occurs after the approval and/or acceptance.

11. **Use of Proceeds:** The City will use funds deposited with it or drawn under the bank disbursement agreement entered into between the parties, only for the purpose of completing the Improvements or correcting defects in, or failure of, the Improvements.

12. **Events of Default:** The following conditions, occurrences or actions will constitute a default by the Developer during the Completion Period:

- a. Developer's failure to complete each portion of the Improvements in conformance with the agreed upon time schedule; the City may not declare a default until a 14 calendar day notice has been given to the Developer;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any improvement within the applicable correction period; the City may not



declare a default until a 14 calendar day notice has been given to the Developer;

- c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; in such event the City may immediately declare a default without prior notification to the Developer;
- d. Notification to City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
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**13. Measure of Damages:** The measure of damages for breach of this Agreement by Developer will be the reasonable cost of satisfactorily completing the Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit B will be prima facie evidence of the minimum cost of completion; however, neither that amount nor the amount of a letter of credit, the disbursement agreement or cash escrow establish the maximum amount of the Developer's liability.

**14. City's Rights Upon Default:** When any event of default occurs, the City may draw on the letter of credit or cash deposit to the extent of the face amount of the credit or full amount of the deposit, less ninety percent (90%) of the estimated cost (as shown on Exhibit B) of all improvements previously accepted by the City, or may exercise its rights to disbursement of loan proceeds or other funds under the disbursement agreement. The City will have the right to complete 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. Alternatively, the City may assign the proceeds of the letter of credit, the disbursement agreement, cash, or other funds or assets to a subsequent developer (or a lender) who has acquired the Development by purchase, foreclosure or otherwise, who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished improvements and provides reasonable security for the obligation. In addition, the City may also enjoin the sale, transfer, or conveyance of the Development, until the Improvements are completed or accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

**15. Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officer, employees and assigns harmless from and against all claims, costs and liability 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 of work at the Development or on 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 of work 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 of work pursuant to this Agreement except where such suit is brought by the Developer. The Developer is not an agent or employee of the City for any purpose whatsoever.

**16. 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 City and Developer; nor will 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 will not constitute the approval of any wrongful act by the Developer or the acceptance of any improvement.

**17. 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 its authorized officer. Such amendment or modification shall be properly notarized before it may be effective.

**18. 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, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court awards relief to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.

**19. Vested Rights:** The City does not warrant by this Agreement that the Developer is entitled to any other approval(s) required by the City, if any, before the Developer is entitled to commence development or to transfer ownership of property in the Development.

**20. 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.

**21. Time:** For the purpose of computing the Abandonment and Completion Periods, and time periods for City action, such times in which war, civil disasters or acts of God occur or exist will not

be included if such times prevent the Developer or City from performing its obligations under the Agreement.

**22. Severability:** If any part, term or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term or provision, and the rights of the parties will be construed as if the part, term or provision was never part of the Agreement.

**23. 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 right of 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 this liability under this Agreement.

**24. Notice:** Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested and addressed as follows:

If to Developer: Valleytrium Retirement Village  
2741 12th St SE  
Salem, Oregon 97302

If to City: City of Grand Junction  
Community Development Director  
250 N. 5th Street  
Grand Junction, CO 81501

**25. Recordation:** Developer will pay for any and all costs to record a copy of this Agreement in the Clerk and Recorder's Office of Mesa County, Colorado.

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

**27. 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, letter of credit, disbursement agreement or cash deposit 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.

28. The improvements guarantee required by the City Code to ensure that the improvements described in this Improvements Agreement are constructed (to City standards) may be in the form of a (I) disbursement agreement between a bank doing business in Mesa County and the City, or (II) a good and sufficient letter of credit acceptable to the City, or (III) depositing with the City cash equivalent to the estimated cost of construction of the improvements. Exhibit C attached hereto and incorporated herein by this reference as if fully set forth is the accepted form of guarantee.

The Finance Department of the City may act as disbursing agent for disbursements to Developer's contractor(s) as required improvements are completed and accepted if agreed to in writing pursuant to a disbursement agreement.

29. The City shall have no responsibility or liability with respect to any street, or any other improvement(s), notwithstanding the use of the same by the public, unless the street or other improvement(s) shall have been accepted by the City.

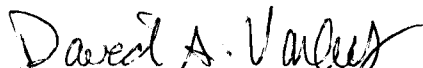
Prior to requesting final acceptance of streets, storm drainage facilities or other required public improvement(s), the Developer shall furnish to the City Engineer as-built drawings in reproducible form and copies of results of all construction control tests required by City specifications.

30. 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 prescribed location and shall construct the required width of pavement from the edge of gutter on the side of the street being developed to enable an initial two-way traffic flow without on-street parking.

The Developer is also responsible for end-transitions, intersection paving, drainage facilities, adjustments to existing utilities and joints necessary to open the street or sidewalk to use.

City of Grand Junction

By:



~~Mark K. Achon~~

ASST. City Manager



Attest:

Stephanie Nye by Juddy Martinez, Dep City Clerk  
Stephanie Nye, City Clerk

Developer GRAND VALLEY ATRIUM Retirement Village  
A COLORADO GENERAL PARTNERSHIP  
By Colson + Colson Const. Co.

By: President By William E. Colson

Attest:

Kate Danwick  
Secretary

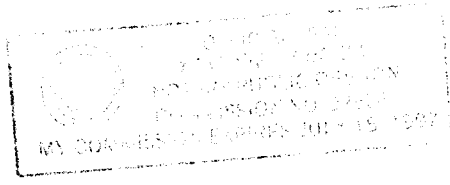


Exhibit A

IMPROVEMENTS LIST/DETAIL

DATE: 12-23-94
NAME OF DEVELOPMENT: Grand Valley Atrium Retirement Village
LOCATION: 3260 12th Street
PRINTED NAME OF PERSON PREPARING: Lyle Borgen

Table with 5 columns: UNITS, TOTAL QTY., UNIT PRICE, TOTAL AMOUNT. Rows are categorized into I. SANITARY SEWER, II. DOMESTIC WATER, and III. STREETS, each with a list of 10-12 items.

13. Signs and other traffic control devices				
14. Construction staking				
15. Dust control				
16. Street lights (each)				
<b>IV. LANDSCAPING</b>				
1. Design/Architecture				
2. Earthwork (includes top soil, fine grading, & berming)				10,451
3. Hardscape features (includes walls, fencing, and paving)				
4. Plant material and planting				19,447
5. Irrigation system				21,736
6. Other features (incl. statues, water displays, park equipment, and outdoor furniture)				2,432
7. Curbing				
8. Retaing walls and structures				
9. One year maintenance agreement				
<b>V. MISCELLANEOUS</b>				
1. Design/Engineering				
2. Surveying				
3. Developer's inspection costs				
4. Quality control testing				
5. Construction traffic control				
6. Rights-of-way/Easements				
7. City inspection fees				
8. Permit fees				
9. Recording costs				
10. Bonds				
11. Newsletters				
12. General Construction Supervision				
13. Other				
14. Other				

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 54,066.<sup>00</sup>

*Colson & Colson*  
*by Kyle Bergen*  
\_\_\_\_\_  
SIGNATURE OF DEVELOPER

12-23-94  
\_\_\_\_\_  
DATE

(If corporation, to be signed by President and attested to by Secretary together with the corporate seals.)

I have reviewed the estimated costs and time schedule shown above and, based on the plan layouts submitted to date and the current costs of construction, I take no exception to the above.

*J. Don Newton*  
\_\_\_\_\_  
CITY ENGINEER

12-23-94  
\_\_\_\_\_  
DATE

*Sam Koehl*  
\_\_\_\_\_  
COMMUNITY DEVELOPMENT

12-23-94  
\_\_\_\_\_  
DATE



MEMORANDUM OF IMPROVEMENTS AGREEMENT & GUARANTEE  
Grand Junction Community Development Department  
File # 85-93

This memorandum relates to an improvements agreement and guarantee dated December 23 1994, by and between The Atrium Retirement (Developer) and the City of Grand Junction (City) pertaining to Village (Project) in the City of Grand Junction.

Whereas, Developer is required to install and construct certain public and private improvements as a condition of approval of the Project, which completion is guaranteed by an improvements agreement and guarantee in the sum of \$ 54,066, and

Whereas, the City of Grand Junction and other agencies possessing regulatory authority over the Project and/or the improvements to be constructed, must inspect the improvements and accept the same before the improvements agreement and guarantee are released or if not constructed the City may use the proceeds or collateral of the guarantee to install the improvements, and

Whereas, the existence of the improvements agreement and guarantee may affect certain rights, responsibilities and actions of the Developer, the City or any other person or entity,

NOW THEREFORE, this memorandum is recorded to be notice to the world of the existence of said improvements agreement and guarantee. This memorandum is not a complete summary of the improvements agreement and guarantee. Provisions of this memorandum shall not be used to interpret the terms or provisions of the improvements agreement and/or guarantee. In the event of conflict between this memorandum and the unrecorded improvements agreement and/or guarantee, the unrecorded improvements agreement and guarantee shall control. The improvements agreement and guarantee may be inspected at the City of Grand Junction Community Development Department, 250 N. 5th Street, Grand Junction, CO.

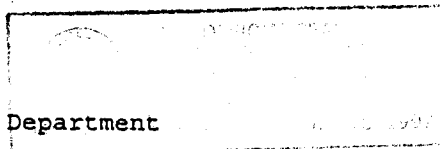
CITY OF GRAND JUNCTION:

Jan Kosh Acting Director 12-23-94  
Director of Community Development date

DEVELOPER:

William E. Colson 12-28-94  
date

After recording mail to:



c/o Community Development Department  
City of Grand Junction  
250 N. 5th Street  
Grand Junction, CO 81501

245-3289  
Lyle

RELEASE OF IMPROVEMENTS AGREEMENT & GUARANTEE  
Grand Junction Community Development Department

FILE # 85-93 BOOK 2120 PAGE 940

This memorandum relates to a certain recorded Improvements Agreement and Guarantee dated 3/5 1994, and recording at Book 2052, Page 458-470 of the land records of Mesa County, Colorado, by and between GRAND Valley Atrium Retirement Village a Colorado geospatial (Developer) and the City of Grand Junction (City) pertaining to The Atrium, phase I (Project).

Whereas, Developer has installed and constructed certain public and private improvements at and for the Project, which completion was guaranteed by the execution of an Improvements Agreement and Guarantee, and

Whereas, the City of Grand Junction and all other agencies possessing regulatory authority over the Project and/or the improvements have inspected the improvements and have accepted the same,

BOOK 2232 PAGE 2

NOW THEREFORE, officials of the City of Grand Junction and other officials duly representing their agencies, possessing and representing by their signatures, affixed thereto, that they possess sufficient authority to accept improvements and release the portion of the guarantee pertaining to the improvements under their jurisdiction, do accept, sign and release said improvements agreement and guarantee.

CITY OF GRAND JUNCTION:

By: Don Newton 12-29-94  
City Engineer Date  
Gregory T. Timm 1/3/95  
City Utilities Manager Date  
Hank Masterson (ATRIUM PHASE I) 12-20-94  
Fire Marshall Date

UTE WATER:

By: Ralph W. Olson (Atrium Phase I) 12-20-94  
Date

GRAND JUNCTION DRAINAGE:

By: John L. Balogh 12/29/94  
Date

In accordance with the above signatures, I hereby certify that the Improvements Agreement & Guarantee and the recording evidencing the agreement and guarantee, at Book 2052, Page 458-470 of the Mesa County land records, have been completed and accepted and in accordance with the provisions of the Grand Junction Zoning and Development Code are hereby released.

Larry Timm 1-6-95  
Director of Commurity Development Date

The foregoing instrument was executed before me this 6 day of January, 1995 by Larry Timm, Director of Community Development for the City of Grand Junction, Colorado.

Witness my hand & official seal.



Theresa J. Martinez  
Notary Public

My commission expires June 13, 1995

MEMORANDUM OF IMPROVEMENTS AGREEMENT & GUARANTEE  
Grand Junction Community Development Department  
File # 85-93(2)

This memorandum relates to an improvements agreement and guarantee dated 10/3/95 1995,  
by and between Grand Valley Atrium Retirement Village (Developer) and the City of Grand Junction  
(City) pertaining to Phase II (Project) in the City of Grand Junction.

Legal Description:

Lot 2, Hilltop Minor Subdivision

1732539 0253PM 10/05/95  
MONIKA TODD CLK&REC MESA COUNTY CO

BOOK 2178 PAGE 71

Whereas, Developer is required to install and construct certain public and private improvements as a condition of approval of the Project, which completion is guaranteed by an improvements agreement and guarantee in the sum of \$ 74,083 . and

Whereas, the City of Grand Junction and other agencies possessing regulatory authority over the Project and/or the improvements to be constructed, must inspect the improvements and accept the same before the improvements agreement and guarantee are released or if not constructed the City may use the proceeds or collateral of the guarantee to install the improvements, and

Whereas, the existence of the improvements agreement and guarantee may affect certain rights, responsibilities and actions of the Developer, the City or any other person or entity,

NOW THEREFORE, this memorandum is recorded to be notice to the world of the existence of said improvements agreement and guarantee. This memorandum is not a complete summary of the improvements agreement and guarantee. Provisions of this memorandum shall not be used to interpret the terms or provisions of the improvements agreement and/or guarantee. In the event of conflict between this memorandum and the unrecorded improvements agreement and/or guarantee, the unrecorded improvements agreement and guarantee shall control. The improvements agreement and guarantee may be inspected at the City of Grand Junction Community Development Department, 250 N. 5th Street, Grand Junction, CO.

CITY OF GRAND JUNCTION:

[Signature] 10/4/95  
Director of Community Development date

DEVELOPER:

Grand Valley Atrium Retirement Village  
By: [Signature] 10/3/95  
Dennis Stahl, President of Grand date  
Valley Atrium, Inc., a general partner

After recording mail to:

c/o Community Development Department  
City of Grand Junction  
250 N. 5th Street  
Grand Junction, CO 81501