

AZC06HDC

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	MARTIN AND DONNA AZCARRAGA
PROJECT/SUBDIVISION:	HIGH DESERT COMMERCIAL PARK
ADDRESS:	2262 G ROAD
TAX PARCEL NO:	2701-314-00-390
FILE #:	FP-2006-050
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2006
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

## DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are Martin + Donna Azcaragal ("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 Community Development 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 HIGH DESERT COMMERCIAL PARK has been reviewed and approved under Community Development file # FP-2006-050 ("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.

3b. The scope of this project is such that the City may have to engage independent consultants(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others for which Developer is responsible hereunder.

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

4. **Security:** To secure the performance of its obligations under this Agreement the Developer shall supply a guarantee. The Developer is required to post security in an amount of \$ 738,489.53 (120% of the amount for the Improvements) in a form and with terms acceptable to the City ("Guarantee"). The Guarantee shall be in the form of a cash deposit made to the City, a letter of credit or a disbursement agreement in a form and with content approved by the City Attorney. The Guarantee specific to this Agreement is attached as Exhibit C and is incorporated by this reference as if fully set forth.

Select one: Cash \_\_\_\_\_ Letter of Credit (LOC)  Disbursement Agreement \_\_\_\_\_

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

6. **Warranty:** The Developer shall warrant the Improvements for one year following Acceptance by the City. "Warrant" or "Warranty" as used herein means the Developer shall take such steps and incur such costs as may be needed so that the Improvements or any portion or phase thereof as repaired and/or replaced, shall comply with the Development's construction plans and/or site plan, City standards and specifications at the end of the warranty period. The Developer shall warrant each repaired and/or replaced Improvement or any portion or phase thereof for one year following Acceptance of such repair and/or replacement.

6a. Upon Acceptance the Developer shall provide a Maintenance Guarantee in an amount of \$ 123,081.59 (Line G2, Exhibit B, City Security).

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

7. **Commencement, Completion and Abandonment Periods:** The Developer shall commence work on the Improvements within 30 days from the Effective Date of this Agreement; that date is known as the "Commencement Date."

7a. The Developer shall complete the Improvements by the end of the twelfth month from the Effective Date of this Agreement; that date is known as the "Completion Date."

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

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

Commencement Date: July 14, 2006  
Completion Date: July 14, 2007

**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 \$ 615,427.94 (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 a default by the Developer:

13a. Developer's failure to complete each portion of the Improvements on or before the Completion Date;

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

13c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer. In such event the City may immediately declare a default without prior notification to the Developer;

13d. Notification to the City, by any lender with a lien on the Property, of a default by Developer on any obligation to such lender. In such event, the City may immediately declare a default without prior notification to the Developer.

13e. With regard to the Property or any portion thereof: initiation of any foreclosure action regarding any lien or encumbrance; or initiation of mechanics lien(s) procedure(s); or assignment or conveyance of the Property in lieu of foreclosure. In such event the City may immediately declare a default without prior notification to the Developer.

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

13g. Except as provided, the City may not declare a default until written notice has been sent to the Developer at the address shown in the development file. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

**14. Measure of Damages:** The measure of damages for breach of this Agreement by the Developer shall be the reasonable cost of satisfactorily completing the Improvements, plus reasonable expenses. Expenses may include but are not limited to

contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to the collection/completion of the Improvements. For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit B shall be *prima facie* evidence of the minimum cost of completion; however, the maximum amount of the Developer's liability shall not be established by that amount or the amount of the Guarantee.

**15. City's Rights Upon Default:** When any event of default occurs, the City may draw on the Guarantee or proceed to collect any other security to the extent of the face amount of the Guarantee less eighty percent (80%) of the estimated cost (as shown on Exhibit B) of all Improvements for which the City has given its Acceptance and no warranty work is reasonably required. The City may also exercise its rights to disbursement of loan proceeds or other funds under the City improvements disbursement agreement.

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

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

15c. The City may assign the proceeds of the 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 costs, including reasonable attorney's fees and expert witness fees, from the opposing party. The City shall be entitled to claim the value of its in-house attorneys at the rate of \$125.00 per hour. If relief is awarded to both parties the attorney's fees may be equitably divided between the parties by the decision maker.

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

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

22. **Third Party Rights:** No person or entity who or which is not a party to this Agreement shall have any right of action under or be a beneficiary of this Agreement.

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

24. **Severability:** If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or

unenforceability shall not affect the validity of any other part, term or provision. The rights of the parties shall be construed as if the part, term or provision was never part of the Agreement.

25. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld but any unapproved assignment is void.

25a. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property.

25b. There is no prohibition on the right of the City to assign its rights under this Agreement.

25c. Upon written request from the Developer the City shall expressly release the original Developer's Guarantee and/or contract obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City shall constitute a release of the original Developer from his liability under this Agreement.

25d. When the City has issued its Acceptance regarding the Improvements, the City agrees to state the same in writing, with appropriate acknowledgments.

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

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

If to Developer: Martin + Donna Azcarragan Name -Developer/Company  
2323 River Road Address (Street and Mailing)  
Grand Junction CO 81505 City, State & Zip Code  
(970) 243-3221 Telephone and Fax Numbers  
(970) 243-9757  
E-mail

Cc:

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

Cc: Community Development Department  
250 North 5<sup>th</sup> 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.

30b. Developer shall also construct and pay for end-transitions, intersection paving, drainage facilities and adjustments to existing utilities necessary to open the street to traffic.

30c. The City shall not issue its written Acceptance with regard to any Improvement(s) including any street, storm drainage facility, sewer, water facility or other required Improvement(s), until the Developer:

(i) furnishes to the City Engineer as-built drawings in reproducible form, blue line stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests required by City specification;

(ii) provides written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon in and under which the Improvement(s) have been constructed or which are necessary for the Improvements are free from toxic, hazardous and other regulated substances or materials;

(iii) provides written evidence to the City Attorney that the title to lands underlying the Improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney; and (iv) provides written evidence, certified by the Developer's engineer, that the work was systematically inspected and tested and that the materials and the compaction of the materials that are required to be compacted, were in conformance with City-approved plans and specifications.

By: Martin Azcarraga 6-29-06  
Donna Azcarraga 6-29-06  
Developer Date  
Donna Azcarraga Martin Azcarraga  
Name (printed)

Corporate Attest:

\_\_\_\_\_  
Name Date

City of Grand Junction  
250 North Fifth Street  
Grand Junction, CO 81501

Linda V. Brown July 17, 2006  
Community Development Dept. Date

6/13/2003

TYPE LEGAL DESCRIPTION BELOW, USING ADDITIONAL SHEETS AS NECESSARY.  
USE SINGLE SPACING WITH A ONE INCH MARGIN ON EACH SIDE.

**EXHIBIT A**

That property located in part of the Southeast Quarter (SE1/4) of Section 31, Township 1 North, Range 1 West of the Ute Meridian, City of Grand Junction, Mesa County, Colorado described in Book 3804 at Pages 443-444 and being more particularly described from a field survey of the same as follows:

Beginning at the Southwest Corner of the Southeast Quarter (SE1/4) of Section 31, Township 1 North, Range 1 West of the Ute Meridian, Mesa County, Colorado whence the Southeast Corner of the SW1/4 SE1/4 of said Section 31 bears S89° 55' 25"E, a distance of 1319.83 feet, for a basis of bearings with all bearings contained herein relative thereto; thence N00°06'09"E, a distance of 1976.01 feet along the West line of the SE1/4 of said Section 31 to a point on the centerline of the Independent Ranchman's Ditch; Thence along said centerline the following three (3) courses:

- (1) S24°33'30"E, a distance of 723.14 feet to the Northwest Corner of the Arrowest Commercial Subdivision;
- (2) S29°51'01"E, a distance of 673.99 feet (also being the Westerly line of the Arrowest Commercial Subdivision);
- (3) S31°01'00"E, a distance of 42.01 feet (also being the Westerly line of the Arrowest Commercial Subdivision); to the intersection with the West line of the NE1/4 SW1/4 SE1/4 of said Section 31; thence S00°06'18"W, a distance of 39.18 feet along the West line of said NE1/4 SW1/4 SE1/4; thence S89°56'09"E, a distance of 23.56 feet along the South line of said NE1/4 SW1/4 SE1/4 to the centerline of the Independent Ranchman's Ditch; thence S30°55'45"E, a distance of 343.27 feet along the centerline of said ditch being the Westerly line of Arrowest Commercial Subdivision; thence N89°56'15"W, a distance of 260.41 feet; thence S00°03'45"W, a distance of 365.00 feet, to the South line of the SW1/4 SE ¼ of Section 31; thence N89°55'25"W, a distance of 600.32 feet, along the South line of the SW1/4 SE1/4 of Section 31 to the POINT OF BEGINNING.

**EXHIBIT B  
IMPROVEMENTS COSTS ESTIMATE**

DATE: 5/22/2006

DEVELOPMENT NAME: HIGH DESERT COMMERCIAL PARK

LOCATION: 2262 G ROAD

PRINTED NAME OF PERSON PREPARING: JIM JOSLYN / MARK AUSTIN

Item#	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>A. SANITARY SEWER</b>					
1	8" PVC Sanitary Sewer Main	LF			\$ -
2	"PVC Sanitary Sewer Main	LF			\$ -
3	"PVC Sanitary Sewer Main	LF			\$ -
4	Sewer Services	LF	430	35	\$ 15,050.00
5	Sanitary Sewer Manhole	EA			\$ -
6	Sanitary Sewer Drop Manhole	EA			\$ -
7	Connection to Existing Manhole	EA			\$ -
					\$ -
					\$ -
<b>Subtotal Part A - Sanitary Sewer</b>					<b>\$ 15,050.00</b>
<b>B. DOMESTIC WATER</b>					
1	8" PVC Water Main	LF	1310	35	\$ 45,850.00
2	"PVC Water Main	LF			\$ -
3	"PVC Water Main	LF			\$ -
4	8" Gatevalve	EA	1	800	\$ 800.00
5	4"Gatevalve	EA	12	350	\$ 4,200.00
6	"Gatevalve	EA			\$ -
7	Water Services	EA	12	600	\$ 7,200.00
8	Connect to Existing Water Line	EA	2	2000	\$ 4,000.00
9	Fire Hydrant with Valve	EA	3	3100	\$ 9,300.00
10	Utility Adjustments	EA			\$ -
11	Blowoff	EA			\$ -
<b>Subtotal Part B - Domestic Water</b>					<b>\$ 71,350.00</b>

Item#	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C1 STREETS</b>					
1	"PVC Utility/Irrigation Sleeves	LF			\$ -
2	"PVC Utility/Irrigation Sleeves	LF			\$ -
3	Reconditioning	SY			\$ -
4	Aggregate Base Course (Class 3)	TN			\$ -
5	Aggregate Base Course (Class 6) 6" Compacted Thickness	SY	5719	12	\$ 68,628.00
6	Aggregate Base Course (Class 9) (10" "Compacted Thickness	SY	5147	8	\$ 41,176.00
7	Hot Bituminous Paving, Grading _____ (3" Thick)	SY			\$ -
8	Hot Bituminous Paving, Grading _____ ( 4" "Thick)	SY	5148	15.21	\$ 78,301.08
9	Hot Bituminous Paving, Patching _____ ( _____ "Thick)	SY			\$ -
10	Geotextile	SY			\$ -
11	Concrete Curb ( _____ "wide by _____ "High	LF			\$ -
12	Concrete Curb and Gutter (2' Wide)	LF	2574	15	\$ 38,610.00
13	Concrete Curb and Gutter (1.5' Wide)	LF			\$ -
14	Monolithic, Vertical Curb, Gutter and Sidewalk (7' Wide)	LF			\$ -
15	Drive Over Curb, Gutter, and Sidewalk ( _____ 'Wide)				\$ -
16	Concrete Sidewalk ( _____ 'Wide)	LF			\$ -
17	Concrete Gutter and Driveway Section (6" Thick)	SY			\$ -
18	Concrete Drainage Pan (6' Wide, (8" Thick)	LF			\$ -
19	Concrete Corner Fillet	SY			\$ -
20	Concrete Curb Ramp	SY			\$ -
21	Complete Concrete Corner	SY			\$ -
22	Concrete Driveway ( _____ "Thick)	SY			\$ -
23	Driveway/Concrete Repair	SY			\$ -
24	Retaining Walls	LF			\$ -
25	Street Signs	EA	1	200	\$ 200.00
26	Striping (New, Remove/Replace)	LF			\$ -
27	Street Lights	EA	4	2100	\$ 8,400.00
28	Signal Construction or Reconstruction	LS			\$ -
29	Stabilization Geotextile	SY	6	1500	\$ 9,000.00
30	Sewer Trench Stabilization w/2-ft Pit Run	CY	350	25	\$ 8,750.00

Item#	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C2 BRIDGES</b>					
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			\$ -
<b>Subtotal Part C - Streets and Bridges</b>					<b>\$ 253,065.08</b>
<b>D1. EARTHWORK</b>					
1	Mobilization	LS		750	\$ -
2	Clearing and Grubbing	LS		800	\$ -
3	Unclassified Excavation	CY	1700	8	\$ 13,600.00
4	Unclassified Embankment	CY	800	10	\$ 8,000.00
5	Silt Fence	LF	1830	5	\$ 9,150.00
6	Watering (Dust Control)	LS	1	800	\$ 800.00
7	Tracking Pad/ Concrete Wash-out	LS	1	1000	\$ 1,000.00
<b>D2. REMOVALS AND RESETTING</b>					
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			\$ -
9	Adjust Valvebox	EA			\$ -
10	Relocate or Adjust Utilites	LS	1	3000	\$ 3,000.00
<b>D3. SEEDING AND SOIL RETENTION</b>					
1	1 Year Maintenance Agreement BMP	LS	1	2000	\$ 2,000.00
2	Seeding (Native)	SY or AC			\$ -
3	Seeding (Bluegrass/Lawn)	SY or AC			\$ -
4	Hydraulic Seed and Mulching	SY	4416	0.75	\$ 3,312.00
5	Soil Retention Blanket	SY			\$ -
6	Sraw Waddles	LF	840	1.5	\$ 1,260.00

Item#	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>D4. STORM DRAINAGE FACILITIES</b>					
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY			\$ -
2	12" HDPE Storm Drain Pipe	LF	102	22	\$ 2,244.00
3	15" HDPE Storm Drain Pipe	LF	0	35	\$ -
4	18" HDPE Storm Drain Pipe	LF	219	40	\$ 8,760.00
5	24" HDPE Storm Drain Pipe	LF	918	45	\$ 41,310.00
6	30" HDPE Storm Drain Pipe	LF	698	47	\$ 32,806.00
7	36" HDPE Storm Drain Pipe	LF	114	50	\$ 5,700.00
8	12" Flared End Section	EA	1	175	\$ 175.00
9	24" Flared End Section	EA	0	300	\$ -
10	CDOT TYPE C INLET	EA	1	4000	\$ 4,000.00
11	60" Storm Drain Manhole	EA	3	3000	\$ 9,000.00
12	72" Storm Drain Manhole	EA	0		\$ -
13	Manhole with Box Base	EA			\$ -
14	Connection to Existing MH	EA			\$ -
15	Single Curb Opening Storm Drain Inlet	EA	4	2000	\$ 8,000.00
16	Double Curb Opening Storm Drain Inlet	EA	1	3000	\$ 3,000.00
17	Area Storm Drain Inlet	EA	5	1450	\$ 7,250.00
18	6" Force Line	LF	380	20	\$ 7,600.00
19	Rip-Rap D <sub>50</sub> = 12"	CY		50	\$ -
20	Sidewalk Trough Drain	EA			\$ -
21	Pump Systems Including Electrical	LS	1	5000	\$ 5,000.00
<b>Subtotal Part D - Grading and Drainage</b>					<b>\$ 176,967.00</b>

Item#	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>E1. IRRIGATION</b>					
1	Connect to Existing Pipe	LS			\$ -
2	12" C900 Irrigation Pipe	LF			\$ -
3	6" PIP Irrigation Pipe	LF			\$ -
4	Fittings and Valves	LS			\$ -
5	Irrigation System	SF	45360	0.25	\$ 11,340.00
6	Pump System and Concrete Vault	LS	1	4000	\$ 4,000.00
7	Irrigation Structure	EA			\$ -
8	Vacuum Relief and/or Air Release Valve	EA	1	800	\$ 800.00
<b>E2. LANDSCAPING</b>					
1	Design/Architecture	LS			\$ -
2	Earthwork	CY			\$ -
3	Trees	EA	18	300	\$ 5,400.00
4	Shurbs	EA	98	75	\$ 7,350.00
5	Irrigation System	LS			\$ -
6	Curbing	LF			\$ -
7	Retaining Walls & Structures	LS			\$ -
8	1 Year Maintenance Agreement	LS	1	800	\$ 800.00
9	Topsoil	SF	45360	0.02	\$ 907.20
<b>Subtotal Part E - Landscaping and Irrigation</b>					<b>\$ 30,597.20</b>

**RECORDING MEMORANDUM  
Exhibit D**

City of Grand Junction  
Community Development Department Community Development  
File: # FP-2006-050

This memorandum relates to and confirms that certain Development Improvements Agreement and/or Maintenance Guarantee concerning land in Mesa County, Colorado. The Agreement is by and between Martin + Donna Azcarraga (Developer) and the City of Grand Junction (City) pertaining to High Desert Commercial Park (Project), located at 2262 G Road, City of Grand Jet.

(Subject subdivision is more particularly depicted and described in the recording found at Plat Book \_\_\_\_\_, Pages \_\_\_\_\_.)

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 # FP-2006-050.

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: Martin Azcarraga Donna Azcarraga 6-29-06  
Date

(Print Name) Martin + Donna Azcarraga

**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, Community Development Department, 250 N. 5<sup>th</sup> Street, Grand Junction Colorado.

Luis V. Bowen Dec. 18, 2006  
Community Development Department Date

**IRREVOCABLE LETTER OF CREDIT**

**City of Grand Junction**  
c/o Director of Community Development  
250 N. 5<sup>th</sup> Street  
Grand Junction, CO 81501

Irrevocable Letter of Credit No.: NZS574704

Dated: June 29, 2006

Expiration: November 23, 2006 subject to the automatic extensions stated below

Dear Sirs:

We hereby establish our Irrevocable Letter of Credit No.: NZS574704 in favor of the City of Grand Junction at the request and for the account of Martin and Donna Azcarraga, 1058 23 Road, Grand Junction, CO 81505, in the amount of Six Hundred Fifteen Thousand Four Hundred Seven and 94/100's United States Dollars (US\$615,407.94).

This Letter of Credit is subject the following terms and conditions:

- 1) it is effective upon signature;
- 2) it expires on November 23, 2006 subject to the automatic extensions discussed below;
- 3) this Letter of Credit is available with us at our above office by payment of your sight draft(s) drawn on us and marked "Drawn under Wells Fargo Bank, N.A. Letter of Credit No.: NZS574704 dated June 29, 2006.";
- 4) we have been informed but will not independently verify that this Letter of Credit is established for the use and benefit of the City of Grand Junction for the Guarantee on 100% of the Development Costs associated with High Desert Commercial Park, 2262 G Road, Community Development File #SP 2006-050. The preceding sentence is inserted in this Letter of Credit for informational purposes only and will not affect, or become a part of, the terms and conditions of this Letter of Credit);
- 5) the following statement signed by a person identifying himself or herself as an authorized designee of the City of Grand Junction must accompany the sight draft;
- 6) **"The undersigned, an authorized designee of the City of Grand Junction hereby certifies that Martin and Donna Azcarraga (Developer) has failed to comply with the terms, conditions, provisions and requirements of the Grand Junction Zoning and Development Code and/or plans, specifications or agreements relating to the construction of improvements required by the City of Grand Junction. The monies received from this drawing are required to construct those improvements. The City of Grand Junction therefore requests the payment of \$\_\_\_\_\_."**
- 7) this Letter of Credit expires at our above office on November 23, 2006, but shall be automatically and successively extended without written amendment, to each November 23<sup>rd</sup> and May 23<sup>rd</sup> thereafter, unless you have received written notice sent by us to you at your address above by certified mail, return receipt requested **or receipted express courier** that we elect not to renew this Letter of Credit beyond the date specified in such notice, which date will be November 23, 2006 or any subsequent November 23<sup>rd</sup> and May 23<sup>rd</sup> and be at least ninety (90) calendar days after the date you receive such notice, you may release from our obligations under this Letter of Credit prior to any expiration date by returning the original Letter of Credit to us together with your written agreement to its cancellation;

- 8) except as stated above no modifications or revocations may be made by the undersigned to this Letter of Credit without the express written approval of the City's Director of Community Development or his designee;
- 9) this Letter of Credit is neither negotiable or assignable;
- 10) partial and multiple drawings are permitted under this Letter of Credit;
- 11) we hereby agree that draft(s) drawn under and in compliance with the terms of this Letter of Credit will be duly honored on due presentation and delivery of documents, which may be done by first class mail, in person or by any other reasonable business practice on or prior to the expiration or any extension thereof of this Letter of Credit. Fax demands to fax no.: **415 296 8905** are permitted under this Letter of Credit provided however, that you must contact by telephone Well Fargo Bank, N.A.'s Letter of Credit office in San Francisco, California at telephone no. 1 800 798 2815 option 1 to confirm their receipt of the demand.
- 12) this Letter of Credit is subject to the Uniform Customs and Practice For Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500 (the "UCP") and the laws of the State of Colorado, and, in the case of any conflict between such laws and the UCP, the laws of the State of Colorado shall control.
- 13) if any instructions accompanying a drawing under this Letter of Credit request that payment is to be made by transfer to an account with us or at another bank, we and/or such other bank may rely on an account number specified in such instructions even if the number identifies a person or entity different from the intended payee.

Very truly yours

**Wells Fargo Bank, N.A.**

By: 

Name: Eisa Chau

Title: Assistant Vice President

## IRREVOCABLE LETTER OF CREDIT

**City of Grand Junction**  
c/o Director of Community Development  
250 N. 5<sup>th</sup> Street  
Grand Junction, CO 81501

Irrevocable Letter of Credit No.: NZS574700

Dated: June 29, 2006

Expiration: June 23, 2007 subject to the automatic extensions stated below

Dear Sirs:

We hereby establish our Irrevocable Letter of Credit No.: NZS574700 in favor of the City of Grand Junction at the request and for the account of Martin and Donna Azcarraga, 1058 23 Road, Grand Junction, CO 81505, in the amount of One Hundred Twenty Three Thousand Eighty One & 59/100's United States Dollars (US\$123,081.59).

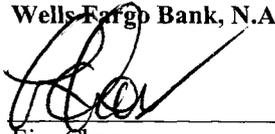
This Letter of Credit is subject the following terms and conditions:

- 1) it is effective upon signature;
- 2) it expires on June 23, 2007 subject to the automatic extensions discussed below;
- 3) this Letter of Credit is available with us at our above office by payment of your sight draft(s) drawn on us and marked "Drawn under Wells Fargo Bank, N.A. Letter of Credit No.: NZS574700 dated June 29, 2006.";
- 4) we have been informed but will not independently verify that this Letter of Credit is established for the use and benefit of the City of Grand Junction for the Guarantee on 20% of the Development Costs associated with High Desert Commercial Park, 2262 G Road, Community Development File #SP 2006-050. The City of Grand Junction requires this to back the improvements for twelve months following the passed inspection. The preceding sentence is inserted in this Letter of Credit for informational purposes only and will not affect, or become a part of, the terms and conditions of this Letter of Credit);
- 5) the following statement signed by a person identifying himself or herself as an authorized designee of the City of Grand Junction must accompany the sight draft;
- 6) **"The undersigned, an authorized designee of the City of Grand Junction hereby certifies that Martin and Donna Azcarraga (Developer) has failed to comply with the terms, conditions, provisions and requirements of the Grand Junction Zoning and Development Code and/or plans, specifications or agreements relating to the construction of improvements required by the City of Grand Junction. The monies received from this drawing are required to construct those improvements. The City of Grand Junction therefore requests the payment of \$\_\_\_\_\_."**
- 7) this Letter of Credit expires at our above office on June 23, 2007, but shall be automatically and successively extended without written amendment, to each June 23<sup>rd</sup> and December 23<sup>rd</sup> thereafter, unless you have received written notice sent by us to you at your address above by certified mail, return receipt requested **or receipted express courier** that we elect not to renew this Letter of Credit beyond the date specified in such notice, which date will be June 23, 2007 or any subsequent June 23<sup>rd</sup> and December 23<sup>rd</sup> and be at least ninety (90) calendar days after the date you receive such notice, you may release from our obligations under this Letter of Credit prior to any expiration date by returning the original Letter of Credit to us together with your written agreement to its cancellation;

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- 10) partial and multiple drawings are permitted under this Letter of Credit;
- 11) we hereby agree that draft(s) drawn under and in compliance with the terms of this Letter of Credit will be duly honored on due presentation and delivery of documents, which may be done by first class mail, in person or by any other reasonable business practice on or prior to the expiration or any extension thereof of this Letter of Credit. Fax demands to fax no.: **415 296 8905** are permitted under this Letter of Credit provided however, that you must contact by telephone Well Fargo Bank, N.A.'s Letter of Credit office in San Francisco, California at telephone no. 1 800 798 2815 option 1 to confirm their receipt of the demand.
- 12) this Letter of Credit is subject to the Uniform Customs and Practice For Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500 (the "UCP") and the laws of the State of Colorado, and, in the case of any conflict between such laws and the UCP, the laws of the State of Colorado shall control.
- 13) if any instructions accompanying a drawing under this Letter of Credit request that payment is to be made by transfer to an account with us or at another bank, we and/or such other bank may rely on an account number specified in such instructions even if the number identifies a person or entity different from the intended payee.

Very truly yours

**Wells Fargo Bank, N.A.**

By:   
Name: Eisa Chau  
Title: Assistant Vice President





July 2, 2009

Mr. Martin Azcarraga  
P.O. Box 1968  
Grand Junction, CO 81502-1968

RE: **Notice of Final Acceptance**  
Project Name: High Desert Commercial Park  
Project Number: FP-2006-050

The City has conducted a warranty inspection of the project and any needed follow-up inspections. The public infrastructure improvements have been found to be in satisfactory condition. All requirements for the final acceptance for the Project have been fulfilled.

The Developer's warranty obligation, for all materials and workmanship, has concluded and all warranty obligations are hereby released.

The following improvements within the public right-of-way are accepted for future maintenance by the City:

**Public streets:**

- All public streets as shown on the Project plans.

**Storm drainage system:**

- Storm drain pipes, inlets and manholes within the public right of way.
- Maintenance of the detention pond and outlet works is the responsibility of the homeowners association.

**Water distribution system:**

- NA Ute Water Conservancy District

**Sanitary sewer:**

- All items shown on the approved set of plans including sewer mains, manholes.

I will contact the Planner for release of the Development Improvements Agreement, the Maintenance Agreement and any financial security attached to the project.

Sincerely,

Ted Eyl  
City of Grand Junction  
Development Inspector

Electronic copy:

Greg Moberg, Planning Services Supervisor  
Ken Fischer, Development Engineer  
Peggy Sharpe, Administrative Assistant  
David Van Wagoner, Street System  
Ed Tolen, Ute Water Conservancy Dist.

Mark Barslund, Development Inspector  
Shelly Dackonish, Staff Attorney  
Darren Starr, Streets Manager  
Chris Spears, Storm Drainage System  
Leslie Ankrum, Sr. Administrative Assistant

**RELEASE OF RECORDING MEMORANDUM**  
**City of Grand Junction**  
**Public Works & Planning Department**  
**FILE: FP-2006-050**

This Release relates to a Recording Memorandum dated December 18, 2006, by and between Martin & Donna Azcarraga, (Developer) and the City of Grand Junction, pertaining to High Desert Commercial Park (Project), located at 2262 G Road, Grand Junction, CO, recorded at Book 4317, Page 298, Mesa County Clerk and Recorder's Office.

**WHEREAS**, the Developer has installed and constructed certain public and private improvements at and for the Project, which completion was guaranteed by the execution of a Development Improvements Agreement and/or Maintenance Guarantee and provision of a Guarantee, and;

**WHEREAS**, the City of Grand Junction and other agencies possessing authority over the Project, and/or the improvements, have inspected the improvements and have accepted the same.

**NOW THEREFORE**, officials of the City of Grand Junction, duly representing their agencies, possessing and representing by their signatures affixed hereto, that they possess sufficient authority to accept improvements and may release the Development Improvements Agreement and/or Maintenance Guarantee, pertaining to the improvements under their jurisdiction, do accept, sign and release said Development Improvements Agreement and/or Maintenance Guarantee.

CITY OF GRAND JUNCTION:

City Engineer: *Kenneth E. Fischer* Date: 8/11/09

Planner: *Luc V. Bowen* Date: Aug 10, 2009

In acknowledgement with the above signatures, I hereby certify that the improvements as specified in the Development Improvements Agreement and/or Maintenance Guarantee have been completed and accepted in accordance with the provisions of the



City Attorney

August 10, 2009

Wells Fargo  
Trade Services Division, Northern California  
One Front Street, 21<sup>st</sup> Floor  
San Francisco, CA 94111

Re: Cancellation of Letters of Credit Numbers **NZS574700 & NZS574704**  
**Martin & Donna Azcarraga**  
Internal Reference: **High Desert Commercial Park: FP-2006-050**

To Whom It May Concern:

Enclosed please find the original Letters of Credit Numbers **NZS574700 & NZS574704** for **Martin & Donna Azcarraga**. As beneficiary, the City of Grand Junction informs you that the Letters of Credit are being returned to you for cancellation. The letter is being provided at the direction of the Director of Public Works and Planning Department for the City.

If you have any questions, or need additional information, please inform me.

Sincerely,

OFFICE OF THE CITY ATTORNEY

A handwritten signature in black ink, appearing to read "Shelly Dackonish". The signature is written in a cursive, flowing style.

Shelly Dackonish, Senior Staff Attorney

Encl. Letters of Credit Numbers **NZS574700 & NZS574704**

Pc: Planning File FP-2006-050  
Peggy Sharpe, Planning

**Developer:**  
**Martin & Donna Azcarraga**  
**2323 River Road**  
**Grand Junction, CO 81505**

**RELEASE OF RECORDING MEMORANDUM**  
**City of Grand Junction**  
**Public Works & Planning Department**  
**FILE: FP-2006-050**

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CITY OF GRAND JUNCTION:

City Engineer: Kenneth B. Fischer Date: 8/11/09

Planner: Luc V. Bowen Date: Aug 10, 2009

In acknowledgement with the above signatures, I hereby certify that the improvements as specified in the Development Improvements Agreement and/or Maintenance Guarantee have been completed and accepted in accordance with the provisions of the Grand Junction Zoning and Development Code, and are hereby released, subject to the required warranty period.

[Signature] Public Works & Planning Department Date 8.10.09

The foregoing instrument was executed before me this 10<sup>th</sup> day of August, 2009, by Greg Moberg, of the Public Works & Planning Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

Cynthia L. McKee  
Notary Public

My commission expires on 9/2/09

