

DAR05SGS

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**

NAME OF CONTRACTOR: DARTER LLC

SUBJECT/PROJECT: SUMMER GLEN SUBDIVISION

LOCATION: 2835 AND 2837 D ROAD

TAX PARCEL #: 2943-192-00-163

FILE #: FP-2004-199

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2005

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

## DEVELOPMENT IMPROVEMENTS AGREEMENT

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

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

2. **Effective Date:** The Effective Date of the Agreement shall be the date that it is signed by the 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 Summerbler Subdivision has been reviewed and approved under Community Development file # FD 2004-199 ("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 \$919,492 (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 \$ 153,249. (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: June 15, 2005  
Completion Date: June 15, 2006.

**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 ~~\$766,247~~ (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: DARTER L.L.C Name -Developer/Company  
786 Vally Ct Address (Street and Mailing)  
Grand Junction CO, 81506 City, State & Zip Code  
(970) 523-5555 Telephone and Fax Numbers  
( ) 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.

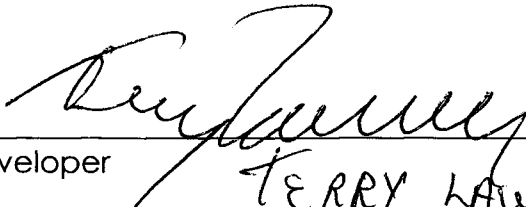
30b. Developer shall also construct and pay for end-transitions, intersection paving, drainage facilities and adjustments to existing utilities necessary to open the street to traffic.

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:  5/24/05  
Developer TERRY LAWRENCE Date  
Name (printed) DARTER, u.h.c.

Corporate Attest:

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

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

 7-18-05  
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**

**PARCEL 1**

A parcel of land situated in the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 19, Township 1 South, Range 1 East of the Ute Meridian, more particularly described as follows:

Commencing at the Northwest corner of the NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of said Section 19;

thence East 60.6 feet for a point of beginning;

thence East along the North line of said Section 19, 200 feet;

thence South to the South line of the SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of said Section 19;

thence West to the Southwest corner of said SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$ ;

thence North along the West line of the SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  to the Northwest corner of the SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$ ;

thence East 60.6 feet;

thence North to the point of beginning,

Mesa County, Colorado.

**PARCEL 2**

Commencing at the Northwest corner of the NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 19, Township 1 South, Range 1 East of the Ute Meridian;

thence East 260.6 feet for a Point of Beginning;

thence East along the North line of said Section 19, 200 feet;

thence South to the South line of the SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$ ;

thence West along the South boundary of the SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$ , 200 feet;

thence North to the point of beginning,

Mesa County, Colorado.

**NOTE: THE ABOVE LEGAL DESCRIPTION IS REAL PROPERTY ONLY AND DOES NOT INCLUDE MANUFACTURED HOUSING.**

**EXHIBIT B****IMPROVEMENTS COST ESTIMATE**DATE: May 23 2005DEVELOPMENT NAME: Summer Glen (Phase I Interior)LOCATION: 2835 & 2837 D RoadPRINTED NAME OF PERSON PREPARING: Grace Homes

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>A.</b>	<b>SANITARY SEWER</b>				
1	8 " PVC Sanitary Sewer Main	LF	2764	15	\$41,460
2	" PVC Sanitary Sewer Main	LF			\$0
3	" PVC Sanitary Sewer Main	LF			\$0
4	Sewer Services	EA	62	400	\$24,800
5	Sanitary Sewer Manhole	EA	16	1700	\$27,200
6	Sanitary Sewer Drop Manhole	EA			\$0
7	Connection to Existing Manhole	EA			\$0
8	Concrete Encasement	LF	1000	15	\$15,000
	<b>Subtotal Interior Sanitary Sewer</b>				<b>\$108,460</b>
1	1 8 " PVC Sanitary Sewer C 3/4 Rd	LF	568	45	\$25,560
2	Sanitary Sewer T-Lock Manhole C 3/4 Rd	EA	3	5000	\$15,000
					\$0
<b>A-1</b>	<b>Subtotal C 3/4 Rd Sanitary Sewer</b>				<b>\$40,560</b>
<b>A-2</b>	<b>Subtotal Part A Sanitary Sewer</b>				<b>\$149,020</b>
<b>B.</b>	<b>DOMESTIC WATER</b>				
1	8 " PVC Water Main	LF	2381	14.5	\$34,525
2	12 " PVC Water Main	LF	354	20	\$7,080
3	4 " PVC Water Main	LF	369	11	\$4,059
4	8 " Gatevalve	EA	22	450	\$9,900
5	" Gatevalve	EA			\$0
6	" Gatevalve	EA			\$0
7	Water Services	EA	62	120	\$7,440
8	Connect to Existing Water Line	EA	2	250	\$500
9	Fire Hydrant with Valve	EA	7	180	\$1,260
10	Utility Adjustments	EA			\$0
11	Blowoff	EA	3	94	\$282
	<b>Subtotal Part B - Domestic Water</b>				<b>\$65,046</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C1</b>	<b>STREETS</b>				
1	8 " PVC Utility/Irrigation sleeves	LF	196	8	\$1,568
2	6 " PVC Utility/Irrigation sleeves	LF	174	10	\$1,740
3	Reconditioning	SY	15120	1	\$15,120
4	Aggregate Base Course (Class 3)	TN			\$0
5	Aggregate Base Course (Class 6) ( 10 " Compacted Thickness)	TN	5628	14	\$78,792
6	Aggregate Base Course (Class 6) ( " Compacted Thickness)	TN			\$0
7	Hot Bituminous Paving, Grading ( 3 " thick)	TN	1628	30	\$48,840
8	Hot Bituminous Paving, Grading ( " thick)	TN			\$0
9	Hot Bituminous Paving, Grading ( " thick)	TN			\$0
10	Geotextile	SY			\$0
11	Concrete Curb ( " Wide by " High)	LF			\$0
12	Concrete Curb and Gutter (2' wide)	LF			\$0
13	Concrete Curb and Gutter (1.5' wide)	LF			\$0
14	Monolithic, Vertical Curb, Gutter and Sidewalk ( 7 ' Wide)	LF	390	17	\$6,630
15	Drive Over Curb, Gutter, and Sidewalk (	LF	5520	18	\$99,360
16	Concrete Sidewalk ( ' Wide)	LF			\$0
17	Concrete Gutter and Driveway Section ( " Thick)	SY			\$0
18	Concrete Drainage Pan (6' Wide, 8" Thick)	SF	1320	5	\$6,600
19	Concrete Corner Fillet	SY	2520	4.25	\$10,710
20	Concrete Curb Ramp	SY	954	4.25	\$4,055
21	Complete Concrete Corner	SY			\$0
22	Concrete Driveway ( " Thick)	SY			\$0
23	Driveway/Concrete Repair	SY			\$0
24	Retaining Walls	LF			\$0
25	Street Signs	EA			\$0
26	Striping (New, Remove/Replace)	LF			\$0
27	Street Lights	EA	7	800	\$5,600
28	Signal Construction of Reconstruction	LS			\$0
29	Flowable Fill	CY			\$0
30	Sleeves, " , PVC	LF			\$0

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C2</b>	<b>BRIDGES</b>				
1	Box Culvert Pre-Cast	LS			\$0
2	Box Culvert Cast-in-Place	LS			\$0
3	Wingwalls	LS			\$0
4	Parapet Wall	LS			\$0
5	Railing (handrail, guardrail)	LS			\$0
	<b>Subtotal Part C - Streets and Bridges</b>				<b>\$279,015</b>
<b>D1</b>	<b>EARTHWORK</b>				
1	Mobilization	LS	1		\$800
2	Clearing and Grubbing	AC	11.7	190	\$2,223
3	Unclassified Excavation	CY			\$0
4	Unclassified Embankment	CY	14300	5	\$71,500
5	Silt Fence	LF	1988	1	\$1,988
6	Water (Dust Control)	AC or LS			\$0
<b>D2</b>	<b>REMOVALS AND RESETTING</b>				
1	Removal of Asphalt	SY			\$0
2	Removal of Miscellaneous Concrete	SY			\$0
3	Remove Curb and Gutter	LF			\$0
4	Removal of Culverts	LF			\$0
5	Remove Structures	EA			\$0
6	Remove Signs	EA			\$0
7	Remove Fence	LF			\$0
8	Adjust Manhole	EA			\$0
9	Adjust Valvebox	EA			\$0
10	Relocate or Adjust Utilities	LS	1	-	\$200
<b>D3</b>	<b>SEEDING AND SOIL RETENTION</b>				
1	Sod	SY			\$0
2	Seeding (Native)	SY of AC			\$0
3	Seeding (Bluegrass/Lawn)	SY	774	-	\$158
4	Hydraulic Seed and Mulching	SY of AC			\$0
5	Soil Retention Blanket	SY			\$0

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>D4</b>	<b>STORM DRAINAGE FACILITES</b>				
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY			\$0
2	15" IV RCP Storm Drain Pipe	LF	101	50	\$5,050
3	30" II RCP Storm Drain Pipe	LF	1438	55	\$79,090
4	18" III RCP Storm Drain Pipe	LF	19.5	53	\$1,034
5	" RCP Storm Drain Pipe	LF			\$0
6	" RCP Storm Drain Pipe	LF			\$0
7	" Flared End Section	EA			\$0
8	" Flared End Section	EA			\$0
9	48" Storm Drain Manhole	EA	7	1400	\$9,800
10	60" Storm Drain Manhole	EA			\$0
11	72" Storm Drain Manhole	EA			\$0
12	Manhole with Box Base	EA			\$0
13	Connection to Existing MH	EA			\$0
14	Single Curb Opening Storm Drain Inlet	EA	2	1320	\$2,640
15	Double Curb Opening Storm Drain Inlet	EA	1	1500	\$1,500
16	Area Storm Drain Inlet	EA			\$0
17	Detention Area Outlet Structure	EA			\$0
18	Rip-Rap D <sub>50</sub> = "	CY			\$0
19	Sidewalk Trough Drain	EA	3	120	\$360
20	Pump Systems including Electrical	LS			\$0
21	Area Inlet - 12"x12" Catch Basin	EA	62	57	\$3,534
22	Backyard Drain - 6" PVC Pipe	LF	800	10	\$8,000
	<b>Subtotal Part D - Grading and Drainage</b>				<b>\$187,877</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>E1</b>	<b>IRRIGATION</b>				
1	Connect to Existing Pipe	CY			\$0
2	" Irrigation Pipe	LF			\$0
3	" Irrigation Pipe	LF			\$0
4	Fittings and Valves	LF			\$0
5	Services	LF			\$0
6	Pump System and Concrete Vault	LF			\$0
7	Irrigation Structure	EA			\$0
8	Vacuum Relief and/or Air Release Valve	EA			\$0
	Total System	LS	1	25000	\$25,000
<b>E1</b>	<b>LANDSCAPING</b>				
1	Design/Architecture	LS			\$0
2	Earthwork	C			\$0
3	Hardscape Features	LS			\$0
4	Plant Material & Planting	LS			\$0
5	Irrigation System	LS			\$0
6	Curbing	LF			\$0
7	Retaining Walls & Structures	LS			\$0
8	1 Year Maintenance Agrmnt.	LS			\$0
9	Topsoil	LS			\$0
	<b>Subtotal Part E - Landscaping and Irrigation</b>				<b>\$25,000</b>
	<b>Total A-E</b>				<b>\$705,957</b>




Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>F. Miscellaneous Items</b>					
1	Construction staking/surveying	%	2.00%		\$14,119
2	Developer's inspection cost	%			\$0
3	General construction supervision	LS	1	10000	\$10,000
4	Quality control testing	%	2.00%		\$14,119
5	Construction traffic control	LS	1	4400	\$4,400
6	City inspection fees	%	0.50%		\$3,530
7	As-builts	%	2.00%		\$14,119
<b>Subtotal Part F - Miscellaneous Items</b>					<b>\$60,287</b>

% = Percentage of total site construction costs

<b>G. COST SUMMARY</b>					
1	<b>Total Improvement Costs</b>				<b>\$766,244</b>
2	<b>City Security (20%)</b>				<b>\$153,249</b>
3	<b>Total Guarantee Amount</b>				<b>\$919,492</b>

- NOTES**
1. All prices shall be for items complete in place and accepted.
  2. All pipe prices shall include excavation, pipe, bedding, backfill, and compaction.
  3. Water main shall include pipe, excavation, bedding, backfill, bends, and appurtenances not itemized elsewhere.
  4. All concrete items shall include Aggregate Base Course where required by the drawings.
  5. Fill in the pipe type for irrigation pipe and sleeves.
  6. Reconditioning shall be calculated to at least 6" outside of back of walk on both sides.
  7. Units can be changed if desired, simply annotate what is used.
  8. Additional lines or items may be added as needed.

 5/23/05  
 Signature of Developer Date  
 (If corporation, to be signed by President and attested to by

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

 7/18/05  
 City Development Engineer Date

 7-18-05  
 Community Development Date

**DISBURSEMENT AGREEMENT**  
(Improvements Guarantee)

DEVELOPER: Darter, LLC

BANK: Commercial Federal

PROPERTY: Summer Glen Subdivision

**DISBURSEMENT AMOUNT:** For the construction of improvements to the Property in an amount not to exceed \$ 919,492<sup>00</sup>.

This Agreement is entered into by and between Darter, LLC ("Developer"), Commercial Federal ("Bank") and the City of Grand Junction, Colorado ("City").

**RECITALS**

Developer has been required by the City to construct certain improvements to Summer Glen Subdivision ("Improvements") in accordance with the Zoning and Development Code, Improvements Agreement and subdivision approval.

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

The City Engineer has approved an estimate of the costs of the Improvements and that amount or an amount not to exceed \$ 919,492<sup>00</sup>, whichever is greater, shall be referred to as the "Funds."

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

NOW, THEREFORE, THE PARTIES AGREE:

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

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

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

procedures:

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

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

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

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

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

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

(d) **Disbursement to City.** In the event the Improvements are not satisfactorily and timely constructed, or upon any default or event of default, the City Engineer shall notify

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

3. **DEVELOPER CONSENT:** The Developer, by the signature of Terry Lawrence, member (name & title), consents to disbursements and other actions authorized and provided for by the terms of this Agreement and/or the Improvements Agreement.

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

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

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

Dated this 26 day of June, 2005

(BANK)  
By: [Signature]  
Title ASST. VICE PRESIDENT

633 17TH ST. STE 2100  
DENVER, CO 80202  
Address

(DEVELOPER)  
By: Terry Lawrence  
Title Manager, Daily, Inc

286 Valley Ct  
Address  
Grand Junction, Co  
81505

CITY OF GRAND JUNCTION  
By: [Signature] 8/8/05  
Director of Community Development

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

**DEVELOPER:**

TERRY LAWRENCE  
Darter LLC (name) Terry Lawrence (signature)

\_\_\_\_\_  
(name) (signature)

\_\_\_\_\_  
(name) (signature)

**DEVELOPER'S GENERAL CONTRACTOR:**

MAY'S - CONCRETE (name) ROY CATTI (signature) RC

**DEVELOPER'S PROJECT ENGINEER:**

ATKINS ENGINEERS (name) Richard Allen (signature)

**DEVELOPER'S ARCHITECT:**

\_\_\_\_\_  
(name) (signature)

**CITY ENGINEER:**

ERIC HAHN (name) Eric Hahn (signature)

revised: February 18, 2004

**RECORDING MEMORANDUM  
Exhibit D**

2291690 BK 4055 PG 578  
12/08/2005 03:31 PM  
Janice Ward CLK&REC Mesa County, C  
RecFee \$5.00 SurChs \$1.00

City of Grand Junction  
Community Development Department Community Development  
File: # FP - 2004 - 199

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 Darter LLC (Developer) and the City of Grand Junction (City) pertaining to Summerglen Subdivision (Project), located at 2835 & 2837 D Road.

(Subject subdivision is more particularly depicted and described in the recording found at Plat Book 4055, Pages 547-548.)

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-2004-199.

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: Terry Lawrence 12/7/05  
Date

(Print Name) Terry Lawrence DARTER L.L.C  
MANAGER

**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. Boman 12-8-05  
Community Development Department Date

September 26, 2007

Commercial Federal  
633 17<sup>th</sup> Street, Ste. 2100  
Denver, CO 80202

Re: Cancellation of Disbursement Agreement for Darter, LLC

Gentlemen and Ladies:

Enclosed is a copy of the Disbursement Agreement (Improvement Guarantee) entered into between the City of Grand Junction, Darter, LLC ("Developer"), and Commercial Federal for improvements to the development referred to as Summer Glen Subdivision under the City's Planning File #FP-2004-199. As beneficiary of the security for a Development Improvements Agreement ("DIA"), the City of Grand Junction ("City") informs you that the terms of the improvements have been completed by the Developer and the improvements have been initially accepted by the City. With the provision of a Maintenance Guarantee and new security the City hereby releases its interest in the disbursement agreement security. This letter is being provided at the direction of the Director of Public Works and Planning.

If you have any questions, please inform me.

Sincerely,

OFFICE OF THE CITY ATTORNEY

By: Jamie B. Beard

Jamie B. Beard  
Assistant City Attorney

pc: Tim Moore, Public Works and Planning Director  
Lori Bowers, Senior Planner  
Planning File #FP-2004-199



September 27, 2007

Darter, LLC  
C/O Terry Lawrence  
786 Valley Ct.  
Grand Junction, CO 81505

RE: Initial Acceptance – Summer Glen Sub. (FP-2004-199)

Mr. Lawrence,

A final inspection of the public improvements for the referenced project was conducted and a list of items to be corrected and/or repaired was given to your project representative. Subsequent inspections have revealed that these items have been satisfactorily completed. It has been at least a year since the improvements for this subdivision were substantially completed, and you requested that the previous year be treated as the required warranty period even though Initial Acceptance of the improvements was never requested or issued during the previous year. Due to the significant scope of the repair punchlist established during the initial inspection, the City is not willing to grant this request. However, the City is willing to allow the required security for the Maintenance Guarantee associated with the one-year warranty period to be reduced to \$6000, the cost of the necessary repairs.

Your warranty obligation, for all materials and workmanship performed within the public right-of-way or otherwise dedicated to the City of Grand Junction, is for a period of one year beginning with the date of initial acceptance. The date of initial acceptance is August 1, 2007. The City will re-inspect the project prior to the end of the warranty period. Any defects discovered during this re-inspection must be corrected. The City will then establish a new acceptance date and an extended warranty period. The warranty period will expire and the Maintenance Guarantee will be released upon final acceptance by the City.

Thank you for your cooperation in the completion of the work on this project.

Sincerely,

Eric Hahn, P.E.  
City Development Engineer

Cc: Doug Cline  
Walt Hoyt  
Jamie Beard  
Lori Bowers  
file



## **MAINTENANCE GUARANTEE**

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

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

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

## **RECITALS**

The Developer has constructed, installed and is required to warrant and maintain certain improvements ("Improvements" or "the Improvements") which were made necessary by virtue of development on property within the City. The Property, known as Summer Glen has been reviewed and approved under Community Development file # ~~12-100-149~~ and as necessary or required to construe this guarantee, that file(s) is incorporated by this reference.

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

## **DEVELOPER'S OBLIGATION**

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

4. **Security:** To secure the performance of its obligations the Developer is required to post security in an amount of \$ 6,000 (20% of the DIA amount for the Improvements that the Developer has completed and for which the City has given its Final Acceptance.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If to Developer: Darter LLC Name - Developer/Company  
786 Valley Court Address - Street and Mailing if different  
Grand Junction, CO 81505 City, State & Zip Code  
970-248-8535 Telephone and Fax Numbers  
970-245-4006  
development@gracehomercolorado.com E-mail

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

Cc: Public Works and Utilities Department  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501

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

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

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

By:  Date 8/21/07

Name (printed): Terry Lawrence

Its (position): Manager Member

Attest:

Joan Lowe 8/21/07  
Secretary Date

City of Grand Junction

[Signature] 9/7/07  
Director of Public Works and Utilities Date

GUARANTEE2003

# Improvements Guarantee

<b>X</b>	<b>Deposit</b>		<b>Request to Release Funds</b>
<b>Date</b>		September 11, 2007	
<b>File No.</b>		FP-2004-199	
<b>Purpose</b>		Guarantee for Maintenance Guarantee	
<b>Project Name</b>		Summer Glen	
<b>Payee</b>		Darter, LLC	
<b>Mailing Address</b>		786 Valley Court Grand Junction, CO 81505	
<b>ACCOUNTING INFORMATION</b>			
	<b>Amount</b>	<b>Receipt/PA No.</b>	
<b>DEPOSIT</b>	<b>\$6,000.00</b>		
<b>Refund Amount</b>	<b>\$0.00</b>		
<b>Refund Amount</b>	<b>\$0.00</b>		
<b>Refund Amount</b>	<b>\$0.00</b>		
<b>BALANCE</b>	<b>\$0.00</b>		
<b>Fund-Account No.</b>	207-21090		
<b>Planner's Name</b>	Lori V. Bowers		



## City of Grand Junction Accounts Payable Edit Listing

Vendor/Remittance Address	Number	Description	Invoice Date	G/L Date	Due Date	Confirming EFT G/L Date	Notes	Amounts
4468 - Darter, LLC	RFD/DIA/6-2009	DIA Refund/Summer Glen Subdivision FP-2004-199	06/18/2009	06/18/2009	06/24/2009		No	Gross: 6,000.00
								Freight: 0.00
<b>Invoice Department:</b> 06-630 PW&P,Planning		Check Sort Code:	Bank Account: Accounts Payable Clearing			State Tax:		0.00
786 Valley Court		Check Code:	Invoice Terms:			County Tax:		0.00
786 Valley Court		Manual Check: No						Local/City Tax: 0.00
GRAND JUNCTION, CO 81505		Check Number:						Discount: 0.00
								Retainage: \$0.00
								Net Amount: \$6,000.00

Detail:	P.O. Number	C/D/F/T/ A/1099	Description	Quantity	U/M	Amount/Unit	Total Amount
		N/N/N/N/N/N	REFUND - DIA Refund/Summer Glen Subdivision FP-2004-199	1.0000	EA	6,000.0000	6,000.00

G/L Distribution:	G/L Account/Project	Expensed	Unencumbered
	207.2090 ( Transportation Capacity Fund.Deposits Payable)	6,000.00	0.00

Total Invoice Items: 1      Invoice Amount Expensed: \$6,000.00      Invoice Amount Unencumbered: \$0.00

# Development Improvements Guarantee Recap Sheet

<b>Check One:</b>	<input type="checkbox"/> Cash Deposit	<input type="checkbox"/> Letter of Credit (LOC)
	<input checked="" type="checkbox"/> Cash Refund	<input type="checkbox"/> LOC Release

<b>Date</b>	June 16, 2009
<b>Project File No.</b>	FP-2004-199
<b>Project Name</b>	Summer Glen Subdivision
<b>Project Location</b>	2835 & 2837 D Road
<b>Purpose of DIA</b>	DIA/Maintenance Guarantee
<b>Payee Name</b>	DARTER, LLC.
<b>Payee Mailing Address</b>	786 Valley Court
<b>Payee City, State Zip Code</b>	Grand Junction, CO 81505
<b>Payee Telephone No.</b>	(970) 248-8535
<b>DIA Expiration Date</b>	September 7, 2008
<b>Project Planner</b>	Lori Bowers
<b>Project Engineer</b>	Eric Hahn

## ACCOUNTING INFORMATION

CASH				LETTER OF CREDIT			
	AMOUNT	DATE	REFERENCE		AMOUNT	DATE	REFERENCE
<b>DEPOSIT</b>	<b>\$6,000.00</b>	09/12/07	Check #6465	<b>LOC Amount</b>	\$ -		
<b>Refund</b>	\$ 6,000.00	06/17/09		<b>Release</b>	\$ -		
<b>Refund</b>	\$ -			<b>Release</b>	\$ -		
<b>Refund</b>	\$ -			<b>Release</b>	\$ -		
<b>BALANCE</b>	<b>\$0.00</b>			<b>BALANCE</b>	\$ -		

<b>DIA Cash Fund/Account No.</b>	<b>207-2090</b>
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June 12, 2009

Mr. Terry Lawrence  
Darter, LLC  
786 Valley Ct.  
Grand Junction, CO 81505

RE: **Notice of Final Acceptance**  
Project Name: Summer Glen  
Project Number: FP-2004-199

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.

**Water distribution system:**

- NA, Ute Water

**Sanitary sewer:**

- NA, Central Grand Valley Sanitation District

The City Planner will release the Development Improvements Agreement, the Maintenance Agreement and any financial security attached to the project.

Sincerely,

Eric Hahn, PE  
City of Grand Junction  
Development Engineer

Electronic copy:

Greg Moberg, Planning Services Supervisor  
Ted Eyl, Development Inspector  
Peggy Sharpe, Administrative Assistant  
Chris Spears, Storm Drainage System  
Ed Tolen, Ute Water

Mark Barslund, Development Inspector  
Shelly Dackonish, Staff Attorney  
David Van Wagoner, Street System  
Scott Peterson, Senior Planner  
Leslie Ankrum, Sr. Administrative Assistant

**RELEASE OF RECORDING MEMORANDUM**  
**City of Grand Junction**  
**Public Works & Planning Department**  
**FILE: FP-2004-199**

This Release relates to a Recording Memorandum dated December 8, 2005, by and between Darter, LLC (Developer) and the City of Grand Junction, pertaining to Summer Glen Subdivision (Project), located at 2835 & 2837 D Road, recorded at Book 4055, Page 578, Mesa County Clerk and Recorders Office. Project is more particularly described as: Summer Glen Subdivision.

**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: [Signature] Date: 6/17/2009

Planner: [Signature] Date: 6/17/2009

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] Date: 6-17-09  
Public Works & Planning Department

The foregoing instrument was executed before me this 17th day of June, 2009, by Lisa E Coy, of the Public Works & Planning Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

[Signature]  
Notary Public

My commission expires on 10/29/2009

