

EDB00MDL

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**

NAME OF APPLICANT OR DEVELOPER: ED DEL DUCA AND ANN
BARRETT

PROJECT/SUBDIVISION: MEADOWLARK GARDENS PLANNED
DEVELOPMENT - PHASE II

LOCATION: STATE HIGHWAY 340 AND REDLANDS
PARKWAY

FILE NO.: FPP-2000-021

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2000

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

1949864 05/16/00 0115PM
MONIKA TODD CLK&REC MESA COUNTY CO
REC FEE \$55.00

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement" or "Agreement") are Ed Del Duca and Ann Barrett ("the Developer") and **THE CITY OF GRAND JUNCTION, Colorado** ("the City" or "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 is {09/26/00} (mm/dd/yy).

RECITALS

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

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer will design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit B attached and incorporated by this reference ("the Improvements" or "Improvements"). The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. The hourly rate of "in-house" inspection services is \$45.00 per hour. The scope of this project is such that the City may have to engage independent consultant(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others. The Developer's obligation to complete the improvements is and will be independent of any obligations of the City contained herein.

4. **Security:** To secure the performance of its obligations under this Agreement (except its obligations for warranty under paragraph 6), the Developer shall supply a financial guarantee, in a form and with terms acceptable to the City as indicated below:

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MESA COUNTY

PLANNING DEPARTMENT

(I) disbursement agreement between a bank doing business in Mesa County and the City,
or

 (II) a good and sufficient letter of credit acceptable to the City, or

 (III) depositing with the City cash equivalent to the estimated cost of construction of the improvements, or

 (IV) other: _____

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

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

7. **Commencement, Completion and Abandonment Periods:** The Developer will commence work on the Improvements within _____ days from the Effective Date of this Agreement ("the Commencement Period") and the Improvements, each and every one of them, shall be completed by the end of the 60th month from the Effective Date of this Agreement { 4/28/05 (mm/dd/yy) } (the "Completion Period"). The Developer shall not cease construction activities for any period of more than 60 consecutive days ("the Abandonment Period").

8. **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 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 final development approval.

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

10. **Acceptance of Improvements:** The City's final acceptance and/or approval of Improvements will not be given or obtained until the Developer presents a document or documents, for the benefit of the City, showing that the Developer owns the Improvements in fee simple and that there are no liens, encumbrances or other restrictions on the Improvements. Approval and/or acceptance of any Improvements does not constitute a waiver by the City of any rights it may have

on account of any defect in or failure of the Improvement that is detected or which occurs after approval and/or acceptance.

11. **Reduction of Security:** After the acceptance of any Improvement, the amount which the City is entitled to draw on the guarantee will be reduced by an amount equal to 90 percent of the estimated cost of the Improvement as shown in Exhibit B. At the written request of the Developer, the City will execute a certificate verifying the acceptance of the Improvement and waiving its right to draw on the guarantee to the extent of such amount. A Developer in default under this Agreement will have no right to such certification. Upon the acceptance of all of the Improvements the remaining balance that may be drawn under the guarantee shall be available to the City for 90 days after the expiration of the warranty period.

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

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

- a. Developer's failure to complete each portion of the Improvements in conformance with the time schedule provided in paragraph number seven (7.), above;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvement within the applicable correction period;
- c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; in such event the City may immediately declare a default without prior notification to the Developer;
- d. Notification to the City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer.

Unless specifically provided herein the City may not declare a default until written notice has been sent 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.

14. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. Administrative 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 will be prima facie evidence of the minimum cost of completion, however, neither that amount or the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow establish the maximum amount of the Developer's liability.

15. **City's Rights Upon Default:** When any event of default occurs, the City may draw on the letter of credit, escrowed collateral, or collect any other security to the extent of the face amount of the credit or full amount of escrowed collateral, cash, or security less ninety percent (90%) of the estimated cost (as shown on Exhibit B) of all improvements previously accepted by the City or may exercise its rights to disbursement of loan proceeds or other funds under the improvements disbursement agreement. The City will have the right to complete improvements itself or it may contract with a third party for completion, and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining and repairing such Improvements. Alternatively, the City may assign the proceeds of the letter of credit, the improvements disbursement agreement, the escrowed collateral, cash, or other funds or assets to a subsequent developer (or lender) who has acquired the Property by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished improvements and provides to the City reasonable security for the obligation. In addition, the City may also enjoin the sale, transfer, or conveyance of lots within the development, until the improvements are completed or accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

16. **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 or the Property being developed 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 Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance of work pursuant to this Agreement except where such suit is brought by the Developer against the City. The Developer is not an agent or employee of the City.

17. **No Waiver:** No waiver of any provision of this Agreement by the City will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing

waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and the Developer; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any Improvement.

18. **Amendment or Modification:** The parties to this Agreement may amend or modify the Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or his authorized officer. Such amendment or modification 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, 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.

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

21. **Integration:** This Agreement, 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.

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

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

24. **Severability:** If any part, term, or provision of this Agreement is held by 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 rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.

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

There is no prohibition on the right of the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations 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. When the Improvements are completed and approved by the City, the City agrees to state same in writing, with appropriate acknowledgments. The City will 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 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: Ed Del Duca and Ann Barrett
641 N. 16th Street
Grand Junction, CO 81501

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

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

28. **Immunity:** Nothing contained in this Agreement constitutes a waiver of the City's sovereign 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, letter of credit, improvements disbursements agreement, or cash escrow agreement or any action to collect security will be deemed to be proper only if such action is commenced in Mesa County, 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.

30. a. **Conditions of Acceptance:** The City shall have no responsibility or liability with respect to any street, or other improvement(s), notwithstanding the use of the same by the public, unless the street or other improvements shall have been finally accepted by the City.

b. **Phased Development:** If the City allows a street to be constructed in stages, the Developer of the first one-half street opened for traffic shall construct the adjacent

curb, gutter and sidewalk in the standard location and shall construct the required width of pavement from the edge of gutter on his side of the street to enable an initial two-way traffic operation without on-street parking. That Developer is also responsible for end-transitions, intersection paving, drainage facilities, and adjustments to existing utilities necessary to open the street to traffic.

- c. Prior to requesting final acceptance of any street, storm drainage facility, or other required improvement(s), the Developer shall: (i) furnish 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) provide 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 improvements have been constructed, or which are necessary for the improvements, are free from toxic, hazardous or other regulated substances or materials; (iii) provide 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.

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

Pat Cowl 5/2/00
Community Development date
Development Services Supervisor



Debra J. Martinez 5-16-00
Deputy Clerk date

Developer: Angeline Barrett 4/28/00

By: Ed Del Duca 4/28/00
date

Print name: Ann BARRETT
Ed DEL DUCA

Attest: _____
Secretary date

8/13/98

EXHIBIT "A"

TYPE LEGAL DESCRIPTION BELOW, USING ADDITIONAL SHEETS AS NECESSARY. USE SINGLE SPACING WITH A ONE (1) INCH MARGIN ON EACH SIDE.

DESCRIPTION OF MEADOWLARK GARDENS SUBDIVISION

A tract of land located in the SW ¼ of the SE ¼ of Section 7, and the NE ¼ of the NW ¼ and the NW ¼ of the NE ¼ of Section 18, all of Township 1 South, Range 1 West of the Ute Meridian, Mesa County, Colorado, more particularly described as follows:

Beginning at the northerly corner of Meadowlark Gardens Subdivision, whence the N ¼ corner of the Section 18, Township 1 South, Range 1 West of the Ute Meridian bears S 58° 26' 18" W, 324.02 feet and considering the north line of the NW ¼ of the NE ¼ of said Section 18 to bear N 89° 41' 00" E, with all other bearings contained herein relative thereto:

1. Thence southeasterly 153.48 feet along the arc of a non-tangent circular curve to the left, the radius point of which bears N 43° 28' 15" E, 1512.50 feet, a delta of 05° 48' 50" and a chord bearing S 49° 26' 10" E, 153.41 feet;
2. Thence southeasterly 118.95 feet along the arc of a non-tangent circular curve to the left, the radius point of which bears N 36° 36' 53" E, 1512.50 feet, a delta of 04° 30' 22" and a chord bearing S 55° 38' 18" E, 118.92 feet;
3. Thence N 89° 41' 00" E, 24.74 feet;
4. Thence S 54° 12' 35" E, 94.94 feet;
5. Thence S 11° 19' 17" W, 235.28 feet;
6. Thence N 82° 56' 00" W, 87.39 feet;
7. Thence S 73° 45' 00" W, 148.60 feet;
8. Thence S 52° 18' 52" W, 130.41 feet;
9. Thence S 18° 38' 00" W, 143.00 feet;
10. Thence S 65° 25' 00" W, 181.03 feet;
11. Thence S 50° 24' 32" W, 166.85 feet;
12. Thence N 43° 29' 20" W, 214.53 feet;
13. Thence N 39° 17' 02" E, 128.46 feet;
14. Thence N 58° 18' 59" W, 29.91 feet;
15. Thence northeasterly 305.46 feet along the arc of a non-tangent circular curve to the left, the radius point of which bears N 48° 24' 48" W, 2050.00 feet, a delta of 08° 32' 15" and a chord bearing N 37° 19' 05" E, 305.18 feet;
16. Thence northeasterly 420.42 feet along the arc of a circular curve to the right, the radius of 1950.00 feet, a delta of 12° 21' 10" and a chord bearing N 39° 13' 33" E, 419.60 feet;
17. Thence N 45° 24' 08" E, 60.00 feet to the point of beginning.

The Meadowlark Gardens Subdivision as described above contains 7.541 acres more or less.

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL

(PAGE 1 OF 3)

DATE: 3/2/00

NAME OF DEVELOPMENT: Meadowlark Gardens, Phase Two

LOCATION: State Hw. 340 and Redlands Parkway

PRINTED NAME OF PERSON PREPARING: Brad Rickard

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
I. SANITARY SEWER				
1. Clearing and grubbing	L.S.			\$ -
2. Cut and remove Asphalt	S.Y.			\$ -
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	L.F.			\$ -
4. Sewer Services (incl. Trenching bedding & backfill)	L.F.			\$ -
5. Sanitary sewer manhole(s)	ea.			\$ -
6. Connection to existing manhole(s)	ea.			\$ -
7. Aggregate Base Course	S.Y.			\$ -
8. Pavement replacement	S.Y.			\$ -
9. Driveway restoration	S.Y.			\$ -
10. Utility Adjustments	ea.			\$ -
II. DOMESTIC WATER				
1. Clearing and grubbing	L.S.			\$ -
2. Cut and remove Asphalt	S.F.			\$ -
3. Water Main (incl. excavation, bedding, backfill, valves and appurtenances)	L.F.	915	\$ 18.00	\$ 16,470.00
3a. Fire Hydrant	ea.	1	\$ 1,500.00	\$ 1,500.00
4. Water services (incl. excavation, bedding, backfill, valves and appurtenances)	L.F.	130	\$ 16.00	\$ 2,080.00
5. Connect to existing water line	ea.	1	\$ 2,500.00	\$ 2,500.00
6. Aggregate Base Course	S.Y.			\$ -
7. Pavement replacement	S.Y.			\$ -
8. Utility Adjustments	ea.			\$ -
III. STREETS				
1. Clearing and grubbing	L.S.	1	\$ 7,500.00	\$ 7,500.00
2. Earthwork, including excavation and embankment construction	C.Y.	3460	\$ 5.00	\$ 17,300.00
3. Utility relocations	ea.			\$ -
4. Aggregate sub-base course (square yard)	S.Y.			\$ -

	UNITS	TOTAL QUANTITY	UNIT PRICE	TOTAL AMOUNT
5. Aggregate base course (square yard)	S.Y.	2135	\$ 5.00	\$ 10,675.00
6. Sub-grade stabilization	Ton			\$ -
7. Asphalt or concrete pavement (square yard)	S.Y.	2135	\$ 10.00	\$ 21,350.00
8. Curb & gutter (linear feet)	L.F.	950	\$ 14.50	\$ 13,775.00
9. Driveway sections (square yard)	S.Y.	25	\$ 50.00	\$ 1,250.00
10. Crosspans & fillets	S.F.			\$ -
11. Retaining walls/ structures	L.F.	135	\$ 65.00	\$ 8,775.00
12a. Storm drainage -core existing inlets	ea.	1	\$ 250.00	\$ 250.00
12b. Storm drainage -inlet structure	ea.	1	\$ 1,400.00	\$ 1,400.00
12c. Storm drainage -outlet structure	ea.	1	\$ 1,500.00	\$ 1,500.00
12d. Storm drainage -12" RCP incl.exc. ,bkfl	L.F.	30	\$ 30.00	\$ 900.00
12e. Storm drainage -12" HDPE incl.exc. ,bkfl	L.F.	40	\$ 22.00	\$ 880.00
12f. Storm drainage -15" RCP incl.exc. ,bkfl	L.F.			\$ -
12g. Storm drainage -15" CMP incl.exc. ,bkfl	L.F.			\$ -
13. Signs and other traffic control devices	L.S.	1	\$ 2,500.00	\$ 2,500.00
13a. Striping and Pavement Marking	L.S.	1	\$ 3,500.00	\$ 3,500.00
14. Construction staking	L.S.	1	\$ 3,000.00	\$ 3,000.00
15. Dust Control	L.S.	1	\$ 1,000.00	\$ 1,000.00
16. Street lights (each)	ea.	3	\$ 1,200.00	\$ 3,600.00
IV. LANDSCAPING				\$ -
1. Design/Architecture	L.S.			\$ -
2. Earthwork (incl. top soil, fine grading, & berming)	C.Y.	300	\$ 10.00	\$ 3,000.00
3. Hardscape features (includes wall, fencing, and paving)	L.F.	900	\$ 5.50	\$ 4,950.00
4. Street trees and planting	ea.	24	\$ 250.00	\$ 6,000.00
5. Irrigation system	L.S.	1	\$ 2,500.00	\$ 2,500.00
6. Other features (incl. statues, water displays, park equipment, and outdoor furniture)	L.S.			\$ -
7. Curbing	L.F.			\$ -
8. Retaining walls and structures	S.Y.			\$ -
9. One year maintenance agreement	L.S.	1	\$ 2,500.00	\$ 2,500.00
V. MISCELLANEOUS				\$ -
1. Design/Engineering	L.S.	1	\$ 2,500.00	\$ 2,500.00
2. Surveying	L.S.	1	\$ 2,000.00	\$ 2,000.00
3. Developer's inspection costs	L.S.	1	\$ 1,500.00	\$ 1,500.00
4. Quality control testing	L.S.	1	\$ 1,500.00	\$ 1,500.00
5. Construction traffic control	L.S.	1	\$ 500.00	\$ 500.00
6. Rights-of-way/Easements	L.S.			\$ -
7. City inspection fees	L.S.	1	\$ 1,600.00	\$ 1,600.00
8. Permit fees	L.S.	1	\$ 500.00	\$ 500.00

	UNITS	TOTAL QUANTITY	UNIT PRICE	TOTAL AMOUNT
9. Recording costs	L.S.	1	\$ 1,500.00	\$ 1,500.00
10. Bonds	L.S.			\$ -
11. Newsletters	L.S.			\$ -
12. General Construction Supervision	L.S.	1	\$ 1,000.00	\$ 1,000.00
13. Other	L.S.			\$ -
14. <u>Other: As Built Drawings</u>	L.S.	1	\$ 2,500.00	\$ 2,500.00

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 155,755.00

SCHEDULE OF IMPROVEMENTS

- I SANITARY SEWER May 1, 2000
- II DOMESTIC WATER May 15, 2005
- III STREETS July 15, 2005
- IV LANDSCAPING August 30, 2005
- V MISCELLANEOUS September 30, 2005

I have reviewed the estimated costs and time schedule shown above and based on the plans and the current costs of construction agree to construct and install the Improvements as required above

Ed Del Duca / Angeline Barrett 9/28/00
 SIGNATURE OF DEVELOPER DATE
 (If corporation, to be signed by President and attested to by Secretary together with corporate seals.)

Reviewed and approved

Rob Davis 5-1-2000
 CITY ENGINEER DATE

Pat Cowl 5/2/00
 COMMUNITY DEVELOPMENT DATE
 Development Services Supervisor

January 27, 1997

MAY 24 2000

DISBURSEMENT AGREEMENT
(Improvements Guarantee)

MESA COUNTY
PLANNING DEPARTMENT

DEVELOPER: ED DEL DUCA AND ANN BARRETT

Book 2709 PAGE 20

1949885 05/16/00 0115PM
MONIKA TODD CLK REC'D MESA COUNTY CO
REC FEE \$20.00

BANK: THE BANK OF GRAND JUNCTION

PROPERTY: MEADOWLARK GARDENS PLANNED DEVELOPMENT-PHASE 2

DISBURSEMENT AMOUNT: For the construction of improvements to the Property in an amount not to exceed \$ 155,755.00.

ED DEL DUCA

This Agreement is entered into by and between AND ANN BARRETT ("Developer"), THE BANK OF GRAN JCT ("Bank") and the City of Grand Junction, Colorado ("City").

RECITALS

MEADOWLARK GARDENS PLANNED DEVELOPMENT-PHASE 2

Developer has been required by the City to construct certain improvements to ("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 \$ 155,755.00, 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.

DISBURSEMENT AGREEMENT
(page 2 of 4)

(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.

ED DEL DUCA

3. **DEVELOPER CONSENT:** The Developer, by the signature of AND ANN BARRETT (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 attorneys 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.

DISBURSEMENT AGREEMENT
(page 3 of 4)

Dated this 28 day of APRIL, 2000, ~~1999~~

(BANK) THE BANK OF GRAND JUNCTION

By: Cary B. Horton, Vice President
Title
2415 F ROAD
GRAND JUNCTION, COLO 81505
Address

(DEVELOPER) ED DEL DUCA AND ANN BARRETT

By: Ed Del Duca & Angeline Barrett
Title
641 16TH STREET
GRAND JUNCTION, COLO. 81501
Address

CITY OF GRAND JUNCTION

By: Pat Cowl
~~Director of Community Development~~
Development Services Supervisor

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between ED DEL DUCA AND ANN BARRETT Developer, THE BANK OF GRAND JUNCTION as Bank, and the City of Grand Junction, the following are the individuals authorized to sign written requests for the disbursement of the Funds:

DEVELOPER:

(name) ED DEL DUCA Ed Del Duca
(signature)

(name) ANN BARRETT Angeline Barrett
(signature)

(name) _____
(signature)

DISBURSEMENT AGREEMENT
(page 4 of 4)

DEVELOPER'S GENERAL CONTRACTOR:

(name) (signature)

DEVELOPER'S PROJECT ENGINEER:

(name) (signature)

DEVELOPER'S ARCHITECT:

(name) (signature)

CITY ENGINEER:

RICK DORRIS *Rick Dorris* 5-1-2000
(name) (signature)

RELEASE OF IMPROVEMENTS AGREEMENT & GUARANTEE
Grand Junction Community Development Department
FILE # FPP-2000-021

This memorandum relates to a certain recorded Improvements Agreement and Guarantee dated April 28, 2000 (year) and recorded at Book 2709, Page 9-23 of the land records of Mesa County, Colorado, by and between Ed Del Duca and Angeline Barrett (Developer) and the City of Grand Junction (City) pertaining to Meadowlark Gardens, Phase II (Project).

Legal Description: See recorded I/A, Exhibit A.

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

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

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

CITY OF GRAND JUNCTION:

By: City Engineer [Signature] Date 9-24-02
City Utilities Manager N/A Date _____
Fire Marshall N/A Date _____

UTE WATER:

By: N/A Date _____

GRAND JUNCTION DRAINAGE:

By: N/A Date _____

OTHER:

By: _____ Date _____

In accordance with the above signatures, I hereby certify that the Improvements Agreement & Guarantee and the recording evidencing the agreement and guarantee, at Book 2709, Page 9-23 of the Mesa County land records, have been completed and accepted and in accordance with the provisions of the Grand Junction Zoning and Development Code are hereby released, subject to the required warranty period.

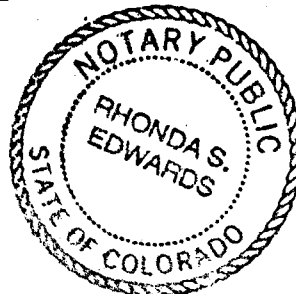
Director of Community Development [Signature] Date 9/25/02

The foregoing instrument was executed before me this 25th day of September, 2002 (year) by [Signature], Director of Community Development for the City of Grand Junction, Colorado.

Witness my hand & official seal.

Notary Public Rhonda S. Edwards

My commission expires November 28, 2005.



DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement" or "Agreement") are ED DEL DUCA AND ANGELINE BARRETT ("the Developer") and THE CITY OF GRAND JUNCTION, Colorado ("the City" or "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 will be the date that this agreement is signed 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 within the City to be known as MEADOWLARK GARDENS PLANNED DEVELOPMENT - PHASE II, which property is more particularly described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Property and limiting the harmful effects of substandard developments. The purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself and is not executed for the benefit of materialmen, laborers, or others providing work, services or material to the 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 Agreement are authorized by state law, the Colorado Constitution and the City's land development ordinances.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer will design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit B attached and incorporated by this reference ("the Improvements" or "Improvements"). The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. The hourly rate of "in-house" City inspection services is \$45.00 per hour. The scope of this project is such that the City may have to engage independent consultant(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others for which Developer is responsible hereunder. The Developer's obligation to complete the improvements is and will be independent of any obligations of the City contained herein.

4. **Security:** To secure the performance of its obligations under this Agreement the Developer shall supply a guarantee in a form and with terms acceptable to the City. A copy of which or a memorandum thereof is attached as Exhibit C.

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

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

7. **Commencement, Completion and Abandonment Periods:** The Developer will commence work on the Improvements within 14 days from the Effective Date of this Agreement 09-10-02 (set date) ("the Commencement Period") and the Improvements, each and every one of them, shall be completed by the end of the 32 month from the Effective Date of this Agreement 04-28-05 (set date) (the "Completion Period"). The Developer shall not cease construction activities for any period of more than 60 consecutive days ("the Abandonment Period").

8. **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 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 final development approval.

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

10. **Acceptance of Improvements:** The City's final acceptance and/or approval of Improvements will not be given or obtained until the Developer presents a document or documents, for the benefit of the City, showing that the Developer owns the Improvements in fee simple or as accepted by the City Attorney and 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 that is detected or which occurs after approval and/or acceptance.

11. **Reduction of Security:** After the acceptance of any Improvement, the amount which the City is entitled to draw on the guarantee will be reduced by an amount equal to 90 percent of the estimated cost of such Improvement as shown in Exhibit B. At the written request of the Developer, the City will execute a certificate verifying the acceptance of the Improvement and waiving its right to draw on the guarantee to the extent of such amount. A Developer in default under this Agreement will have no right to such certification. Upon the acceptance of all of the Improvements the remaining balance that may be drawn under the guarantee shall be available to the City for 90 days after the expiration of the warranty period.

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

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

- a. Developer's failure to complete each portion of the Improvements in conformance with the time schedule provided in paragraph number seven (7.), above;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvement within the applicable correction period;
- c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; in such event the City may immediately declare a default without prior notification to the Developer;
- d. Notification to the City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer.

Unless specifically provided herein the City may not declare a default until written notice has been sent 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.

14. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. Administrative 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 will be *prima facie* evidence of the minimum cost of completion, however, neither that amount or the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow or other guarantee establish the maximum amount of the Developer's liability.

15. **City's Rights Upon Default:** When any event of default occurs, the City may draw on the letter of credit, escrowed collateral, or proceed to collect any other security to the extent of the face amount of the credit or full amount of escrowed collateral, cash, or security less ninety percent (90%) of the estimated cost (as shown on Exhibit B) of all Improvements previously accepted by the City or may exercise its rights to disbursement of loan proceeds or other funds under the improvements disbursement agreement. The City will have the right to complete Improvements itself or it may contract with a third party for completion, and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining and repairing such Improvements. Alternatively, the City may assign the proceeds of the letter of credit, the improvements disbursement agreement, the escrowed collateral, cash, or other funds or assets to a subsequent developer (or lender) who has acquired the Property by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished Improvements and provides to the City reasonable security for the obligation. In addition, the City may also enjoin the sale, transfer, or conveyance of lots within the development, until the Improvements are completed or accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

16. **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 or the Property being developed 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 Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance of work pursuant to this Agreement except where such suit is brought by the Developer against the City. The Developer is not an agent or employee of the City.

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

18. **Amendment or Modification:** The parties to this Agreement may amend or modify the Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or his authorized officer. Such amendment or modification 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, 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.

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

21. **Integration:** This Agreement, 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.

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

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

24. **Severability:** If any part, term, or provision of this Agreement is held by 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 rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.

25. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also will be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property. There is no prohibition on the right of the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations 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. When the Improvements are completed and approved by the City, the City agrees to state same in writing, with appropriate acknowledgments. The City will 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 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: **ED DEL DUCA AND ANGELINE BARRETT**
2261 BROADWAY
GRAND JUNCTION CO 81503

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

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

28. **Immunity:** Nothing contained in this Agreement constitutes a waiver of the City's sovereign 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, letter of credit, improvements disbursements agreement, or cash escrow agreement or any action to collect security will be deemed to be proper only if such action is commenced in Mesa County, 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.

30. a. **Conditions of Acceptance:** The City shall have no responsibility or liability with respect to any street, or other improvement(s), notwithstanding the use of the same by the public, unless the street or other improvements shall have been finally accepted by the City.

b. **Phased Development:** If the City allows a street to be constructed in stages, the Developer of the first one-half street opened for traffic shall construct the adjacent curb, gutter and sidewalk in the standard location and shall construct the required width of pavement from the edge of gutter on his side of the street to enable an initial two-way traffic operation without on-street parking. That Developer is also responsible for end-transitions, intersection paving, drainage facilities, and adjustments to existing utilities necessary to open the street to traffic.

c. Prior to requesting final acceptance of any street, storm drainage facility, or other required improvement(s), the Developer shall: (i) furnish to the City engineer as-built drawings in reproducible form, blueline 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) provide 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 improvements have been constructed, or which are necessary for the improvements, are free from toxic, hazardous or other

regulated substances or materials: (iii) provide 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.

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

Pat Carl 9/24/02
Director of Community Development date

Attest:

City Clerk date

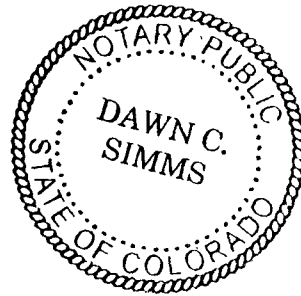
Angeline Barrett 9/10/02
By: Edward Del Duca 9/10/02
Developer date

Name (printed): Edward Del Duca
Angeline BARRETT
Its (position): Owners

Attest:

Dawn C Simms 9-11-02
Secretary date

County of Mesa
State of Colorado



My Commission Expires
July 26, 2005

EXHIBIT "A"

TYPE LEGAL DESCRIPTION BELOW, USING ADDITIONAL SHEETS AS NECESSARY. USE SINGLE SPACING WITH A ONE (1) INCH MARGIN ON EACH SIDE.

DESCRIPTION OF MEADOWLARK GARDENS SUBDIVISION

A tract of land located in the SW ¼ of the SE ¼ of Section 7, and the NE ¼ of the NW ¼ and the NW ¼ of the NE ¼ of Section 18, all of Township 1 South, Range 1 West of the Ute Meridian, Mesa County, Colorado, more particularly described as follows:

Beginning at the northerly corner of Meadowlark Gardens Subdivision, whence the N ¼ corner of the Section 18, Township 1 South, Range 1 West of the Ute Meridian bears S 58° 26' 18" W, 324.02 feet and considering the north line of the NW ¼ of the NE ¼ of said Section 18 to bear N 89° 41' 00" E, with all other bearings contained herein relative thereto:

1. Thence southeasterly 153.48 feet along the arc of a non-tangent circular curve to the left, the radius point of which bears N 43° 28' 15" E, 1512.50 feet, a delta of 05° 48' 50" and a chord bearing S 49° 26' 10" E, 153.41 feet;
2. Thence southeasterly 118.95 feet along the arc of a non-tangent circular curve to the left, the radius point of which bears N 36° 36' 53" E, 1512.50 feet, a delta of 04° 30' 22" and a chord bearing S 55° 38' 18" E, 118.92 feet;
3. Thence N 89° 41' 00" E, 24.74 feet;
4. Thence S 54° 12' 35" E, 94.94 feet;
5. Thence S 11° 19' 17" W, 235.28 feet;
6. Thence N 82° 56' 00" W, 87.39 feet;
7. Thence S 73° 45' 00" W, 148.60 feet;
8. Thence S 52° 18' 52" W, 130.41 feet;
9. Thence S 18° 38' 00" W, 143.00 feet;
10. Thence S 65° 25' 00" W, 181.03 feet;
11. Thence S 50° 24' 32" W, 166.85 feet;
12. Thence N 43° 29' 20" W, 214.53 feet;
13. Thence N 39° 17' 02" E, 128.46 feet;
14. Thence N 58° 18' 59" W, 29.91 feet;
15. Thence northeasterly 305.46 feet along the arc of a non-tangent circular curve to the left, the radius point of which bears N 48° 24' 48" W, 2050.00 feet, a delta of 08° 32' 15" and a chord bearing N 37° 19' 05" E, 305.18 feet;
16. Thence northeasterly 420.42 feet along the arc of a circular curve to the right, the radius of 1950.00 feet, a delta of 12° 21' 10" and a chord bearing N 39° 13' 33" E, 419.60 feet;
17. Thence N 45° 24' 08" E, 60.00 feet to the point of beginning.

The Meadowlark Gardens Subdivision as described above contains 7.541 acres more or less.

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL

(PAGE 1 OF 3)

DATE: 3/2/00

NAME OF DEVELOPMENT: Meadowlark Gardens, Phase Two

LOCATION: State Hw. 340 and Redlands Parkway

PRINTED NAME OF PERSON PREPARING: Brad Rickard

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
I. SANITARY SEWER				
1. Clearing and grubbing	L.S.			\$ -
2. Cut and remove Asphalt	S.Y.			\$ -
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	L.F.			\$ -
4. Sewer Services (incl. Trenching bedding & backfill)	L.F.			\$ -
5. Sanitary sewer manhole(s)	ea.			\$ -
6. Connection to existing manhole(s)	ea.			\$ -
7. Aggregate Base Course	S.Y.			\$ -
8. Pavement replacement	S.Y.			\$ -
9. Driveway restoration	S.Y.			\$ -
10. Utility Adjustments	ea.			\$ -
II. DOMESTIC WATER				
1. Clearing and grubbing	L.S.			\$ -
2. Cut and remove Asphalt	S.F.			\$ -
3. Water Main (incl. excavation, bedding, backfill, valves and appurtenances	L.F.	915	\$ 18.00	\$ 16,470.00
3a. Fire Hydrant	ea.	1	\$ 1,500.00	\$ 1,500.00
4. Water services (incl. excavation, bedding, backfill, valves and appurtenances)	L.F.	130	\$ 16.00	\$ 2,080.00
5. Connect to existing water line	ea.	1	\$ 2,500.00	\$ 2,500.00
6. Aggregate Base Course	S.Y.			\$ -
7. Pavement replacement	S.Y.			\$ -
8. Utility Adjustments	ea.			\$ -
III. STREETS				
1. Clearing and grubbing	L.S.	1	\$ 7,500.00	\$ 7,500.00
2. Earthwork, including excavation and embankment construction	C.Y.	3460	\$ 5.00	\$ 17,300.00
3. Utility relocations	ea.			\$ -
4. Aggregate sub-base course (square yard)	S.Y.			\$ -

	UNITS	TOTAL QUANTITY	UNIT PRICE	TOTAL AMOUNT
5. Aggregate base course (square yard)	S.Y.	2135	\$ 5.00	\$ 10,675.00
6. Sub-grade stabilization	Ton			\$ -
7. Asphalt or concrete pavement (square yard)	S.Y.	2135	\$ 10.00	\$ 21,350.00
8. Curb & gutter (linear feet)	L.F.	950	\$ 14.50	\$ 13,775.00
9. Driveway sections (square yard)	S.Y.	25	\$ 50.00	\$ 1,250.00
10. Crosspans & fillets	S.F.			\$ -
11. Retaining walls/ structures	L.F.	135	\$ 65.00	\$ 8,775.00
12a. Storm drainage -core existing inlets	ea.	1	\$ 250.00	\$ 250.00
12b. Storm drainage -inlet structure	ea.	1	\$ 1,400.00	\$ 1,400.00
12c. Storm drainage -outlet structure	ea.	1	\$ 1,500.00	\$ 1,500.00
12d. Storm drainage -12" RCP incl.exc. ,bkfl	L.F.	30	\$ 30.00	\$ 900.00
12e. Storm drainage -12" HDPE incl.exc. ,bkfl	L.F.	40	\$ 22.00	\$ 880.00
12f. Storm drainage -15" RCP incl.exc. ,bkfl	L.F.			\$ -
12g. Storm drainage -15" CMP incl.exc. ,bkfl	L.F.			\$ -
13. Signs and other traffic control devices	L.S.	1	\$ 2,500.00	\$ 2,500.00
13a. Striping and Pavement Marking	L.S.	1	\$ 3,500.00	\$ 3,500.00
14. Construction staking	L.S.	1	\$ 3,000.00	\$ 3,000.00
15. Dust Control	L.S.	1	\$ 1,000.00	\$ 1,000.00
16. Street lights (each)	ea.	3	\$ 1,200.00	\$ 3,600.00
IV. LANDSCAPING				\$ -
1. Design/Architecture	L.S.			\$ -
2. Earthwork (incl. top soil, fine grading, & berming)	C.Y.	300	\$ 10.00	\$ 3,000.00
3. Hardscape features (includes wall, fencing, and paving)	L.F.	900	\$ 5.50	\$ 4,950.00
4. Street trees and planting	ea.	24	\$ 250.00	\$ 6,000.00
5. Irrigation system	L.S.	1	\$ 2,500.00	\$ 2,500.00
6. Other features (incl. statues, water displays, park equipment, and outdoor furniture)	L.S.			\$ -
7. Curbing	L.F.			\$ -
8. Retaining walls and structures	S.Y.			\$ -
9. One year maintenance agreement	L.S.	1	\$ 2,500.00	\$ 2,500.00
V. MISCELLANEOUS				\$ -
1. Design/Engineering	L.S.	1	\$ 2,500.00	\$ 2,500.00
2. Surveying	L.S.	1	\$ 2,000.00	\$ 2,000.00
3. Developer's inspection costs	L.S.	1	\$ 1,500.00	\$ 1,500.00
4. Quality control testing	L.S.	1	\$ 1,500.00	\$ 1,500.00
5. Construction traffic control	L.S.	1	\$ 500.00	\$ 500.00
6. Rights-of-way/Easements	L.S.			\$ -
7. City inspection fees	L.S.	1	\$ 1,600.00	\$ 1,600.00
8. Permit fees	L.S.	1	\$ 500.00	\$ 500.00

	UNITS	TOTAL QUANTITY	UNIT PRICE	TOTAL AMOUNT
9. Recording costs	L.S.	1	\$ 1,500.00	\$ 1,500.00
10. Bonds	L.S.			\$ -
11. Newsletters	L.S.			\$ -
12. General Construction Supervision	L.S.	1	\$ 1,000.00	\$ 1,000.00
13. Other	L.S.			\$ -
14. <u>Other: As Built Drawings</u>	L.S.	1	\$ 2,500.00	\$ 2,500.00

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 155,755.00

SCHEDULE OF IMPROVEMENTS

- I SANITARY SEWER May 1, 2000
- II DOMESTIC WATER May 15, 2005
- III STREETS July 15, 2005
- IV LANDSCAPING August 30, 2005
- V MISCELLANEOUS September 30, 2005

I have reviewed the estimated costs and time schedule shown above and based on the plans and the current costs of construction agree to construct and install the Improvements as required above

Ed Det Owen / Angeline Barrett 9/12/02
~~*Ed Det Owen / Angeline Barrett 9/28/00*~~
 SIGNATURE OF DEVELOPER DATE

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

Reviewed and approved

Rick Davis
 CITY ENGINEER

9-17-02
 DATE

Pat Cant
 COMMUNITY DEVELOPMENT

9/24/02
 DATE

Returned 9/26/03 to
Ed Del Duca in favor of a
replacement LOC.

 **WestStar Bank**

Grand Junction
2448 F Road
Grand Junction, CO 81505

Phone 970-256-1200 Fax 970-263-8020

Irrevocable Letter of Credit - Performance/Standby

Effective Date: **September 4, 2002** Expiration Date: **April 28, 2005** LOC #: **712**

To: **City of Grand Junction**
250 North 5th Street
Grand Junction, CO 81501

Re: **Angeline Barrett / Edward Del Duca**
2261 Broadway
Grand Junction, CO 81503

To Whom It May Concern:

We hereby open our Irrevocable Letter of Credit in your favor. It is available to you by drafts at sight drawn on WestStar Bank for any sum or sums not exceeding in total the sum of **\$155,755.00 (One hundred fifty-five thousand seven hundred fifty-five dollars)** for the account of **Angeline Barrett and Edward Del Duca**.

Each draft must bear upon its face the clause, "Drawn under Letter of Credit number **712**, dated **September 4, 2002**, WestStar Bank, Grand Junction, Colorado". This Letter of Credit is requested by **Angeline Barrett and Edward Del Duca**.

The amount of each draft, which is negotiated pursuant to the credit, together with the date of negotiation, must be endorsed on the reverse side of the Letter of Credit.

We hereby agree that drafts drawn under this Letter of Credit and in compliance with its terms, shall be promptly honored if presented at the counters of WestStar Bank no later than 3:00 pm, **April 28, 2005**.

This Letter of Credit shall expire, or right with option to extend on **April 28, 2005**. Notification of request to extend must be received 30 days prior to maturity.

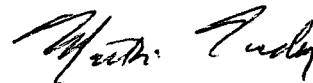
WestStar Bank represents and warrants to **the City of Grand Junction** that full authority and power to issue this Letter of Credit in the total amount and for the period of time stated herein: said authority being pursuant to the laws of the United States, or to the State or territory which governs the establishment and regulation of WestStar Bank, and the WestStar Bank's Charter, bylaws, and other applicable rules and regulations adopted pursuant thereto. This credit is subject to the "Uniform Custom and Practice for Documentary Credits (1993 revision), International Chamber of Commerce Publication No.500".

Should it be necessary for **the City of Grand Junction** to file suit in an effort to enforce this Irrevocable Letter of Credit, WestStar Bank hereby waives all venue rights and submits to the jurisdiction of the District Court in and for the County of Mesa, State of Colorado.

Sincerely,



Rick Brown
Sr. Vice President - Northwestern Region



Martin Tutor
Assistant Vice President

Tuesday, September 09, 2003
2261 Broadway
Grand Junction, CO 81503
242-3379

Lisa Cox
Community Development

Lisa,

Attached is a Letter of Credit that we want to use to replace the existing Letter of Credit for Phase Two of Meadowlark Gardens. WestStar Bank Also wants to have the original Letter of credit returned to them. I can pick it up when this attached letter is accepted

Thank you.



Ed

By the way, the grass area in phase one is looking pretty good.
You might look it over when you are driving by this way.

RECEIVED
SEP 09 2003
COMMUNITY DEVELOPMENT
DEPT.

RECEIVED
~~SEP 08 2003~~
COMMUNITY DEVELOPMENT
DEPT.



City of Grand Junction
C/O Director of Community Development
250 N. 5th Street
Grand Junction, CO 81501

Irrevocable Letter of Credit No. 712

Dated: April 8, 2003

Expiration: April 28, 2005 subject to the automatic extensions stated below:

Dear Sir or Madam:

We hereby establish our Irrevocable Letter of Credit No. 712 in favor of the City of Grand Junction at the request of and for the account of Angeline Barrett, Edward Del Duca in the amount of \$155,755.00 (One hundred fifty-five thousand seven hundred fifty-five U. S. dollars).

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

- 1) It is effective upon signature;
- 2) It expires on April 28, 2005 subject to the automatic extensions discussed below;
- 3) This Letter of Credit is available by sight draft (s) drawn and marked "Drawn under WestStar Bank Letter of Credit No. 712 dated April 8, 2003";
- 4) This Letter of Credit is established for the use and benefit of the City of Grand Junction by reason of the Angeline Barrett, Edward Del Duca being obligated to pay or perform in accordance with the provisions of the Grand Junction Zoning and Development Code;
- 5) The following statement signed by an authorized designee of the City of Grand Junction must accompany the sight draft;
- 6) **"Angeline Barrett, Edward Del Duca 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 \$155,755.00".**
- 7) It is a condition of this Letter of Credit that it will be automatically extended for a period of six (6) months from the present or any future expiration date unless: (a) the underlying obligation has been performed, released or satisfied, (b) this Letter of Credit has been called in full or (c) the Bank notifies the City of Grand Junction at 250 N. 5th Street Grand Junction, CO 81501, by certified mail return receipt requested, at least ninety (90) days prior to such expiration date that we elect not to further extend this Letter of Credit.
- 8) Except as stated above no modification 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 of his designee;
- 9) This Letter of Credit is neither negotiable nor assignable;
- 10) Partial drawings are permitted;



- 11) We hereby agree that drafts 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, facsimile, in person or by any other reasonable business practice on or prior to the expiration or any extension thereof of this Letter of Credit;
- 12) Except as otherwise stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) and to the extent that it does not conflict with Article 5 of the Uniform Commercial Code of the State of Colorado.

Acknowledged and accepted on

9/24/02

By:

Tant E. Howard

Authorized Signer for:

Title:

[Signature]

WestStar Bank

Rick Brown, Senior Vice President

WestStar Bank Grand Junction

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are **Ed Del Duca and Angeline Barrett**, ("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.

RECITALS

The Developer has permission to develop property, described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The Property, known as **Meadowlark Gardens Subdivision, including the portion now known as Meadowlark Development Condominiums** has been reviewed and approved under Community Development file # **FPP-2000-021** ("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, landscaping with native grass for on-site and off-site improvements ("Improvements" or "the Improvements"). The estimated total cost of those Improvements is \$750.00.

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 culling/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 **\$750.00** 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. The Guarantee specific to this Agreement is attached as Exhibit C and is incorporated by this reference as if fully set forth.

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.

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 **December 31, 2005**; 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: **Date signed by Community Development**

Completion Date: **December 31, 2005**

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 the Improvement(s) the amount which the City is entitled to draw on the Guarantee shall be reduced by an amount of **\$750.00**.

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:	Ed Del Duca and Angeline Barrett _____ _____ _____ _____	Name -Developer/Company Address (Street and Mailing) City, State & Zip Code Telephone and Fax Numbers E-mail
------------------	---	--

Cc:

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

Cc: Community Development Department
250 North 5th Street
Grand Junction, CO 81501

27. **Recordation:** Upon the request of the City, 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.

DIA

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.

31. Ambiguities. Developer and the City have each obtained the advice of its own legal counsel regarding this Agreement or have knowingly declined to do so. The parties agree that the rule of construing ambiguities against the drafter shall have no application to this Agreement.

By: **Ed Del Duca**

 8/16/05
Date

By: **Angeline Barrett**

Angeline Barrett 8/18/05
Date

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

Robert E. Barlow 8/19/05
Community Development Dept. Date

ADDENDUM TO THE DEVELOPMENT IMPROVEMENTS AGREEMENT

On or about September 24, 2002, Ed Del Duca and Angeline Barrett ("Developer") and the City of Grand Junction ("City"), a home rule municipality, entered into a Development Improvements Agreement ("original DIA"). By the terms of the agreement the Developer was to complete all Improvements for the property being developed known as Meadowlark Gardens Planned Development - Phase II on or before April 28, 2005. The Developer has not completed all of the Improvements.

The Parties have agreed to modify the original agreement and for valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

The Developer will enter into a new Development Improvements Agreement ("new DIA") with the City on the terms required by the City for the remaining landscaping to be completed. The new DIA for the landscaping set forth as the Improvements to be completed in the new DIA will be separate and apart from the original DIA entered into on or before September 24, 2002. The landscaping yet to be completed is the native grass for the project. The only modification to the original DIA regarding the landscaping is concerning the native grass.

The terms of the original DIA allow for the City to retain ten percent (10%) of the estimated costs of the Improvements as shown in Exhibit B. The City has agreed that it will retain only Five Thousand Five Hundred Seventy-two 00/100 Dollars (\$5,572.00) for a warranty period of six months commencing May 1, 2005. With the signing of this Agreement, the Developer has provided cash as security in the amount of Five Thousand Five Hundred Seventy-two 00/100 Dollars (\$5,572.00).

All other terms of the original DIA not specifically modified herein shall remain in full force and effect.

Ed Del Duca
Ed Del Duca, Developer

Angeline Barrett
Angeline Barrett, Developer

State of Colorado :
:ss
County of Mesa :

Acknowledged before me on this the 18th day of August 2005 by Ed Del Duca and Angeline Barrett.

Witness my hand and seal.
My commission expires on June 10, 2006

Erin K. Nipper
Notary Public

