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TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**

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

PROJECT/SUBDIVISION: MEADOWLARK GARDENS PLANNED
DEVELOPMENT - PHASE I

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

1949861 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 Bank of Grand Jct. & Ed Del Duca & 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 {04/28/00} (mm/dd/yy).

RECITALS

The Developer seeks permission to develop property within the City to be known as Meadowlark Gardens Planned Development - Phase I, 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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ENGINEERING 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 ~~2~~ ¹² month from the Effective Date of this Agreement { 64/28/10 (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.

8/13/98

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: Bob Johnson, Ed Del Duca & Ann Barrett
c/o Bank of Grand Junction
2415 Patterson Road
Grand Junction, CO 81505

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 Carl 5/7/00
Community Development date
Development Services Supervisor



Deputy *A. Martinez* 5-16-00
date

Developer: Bank of Grand Junction

Ed Del Duca ANN Barnett

By: *Carey B. Horton, VP* 4-28-00
date

Ed Del Duca 4/28/00
Angeline Barnett 4/28/00

Print name: *Carey B. Horton, VP*
Bank of Grand Junction

Ed Del Duca ANN Barnett

Attest: *Julia L. Leland* 4-28-00
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 One

LOCATION: State Hwy. 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.	1005	\$ 16.00	\$ 16,080.00
4. Sewer Services (incl. Trenching bedding & backfill)	L.F.	415	\$ 15.00	\$ 6,225.00
5. Sanitary sewer manhole(s)	ea.	8	\$ 1,500.00	\$ 12,000.00
6. Connection to existing manhole(s)	ea.	1	\$ 1,000.00	\$ 1,000.00
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.	365	\$ 18.00	\$ 6,570.00
3a. Fire Hydrant	ea.	2	\$ 1,500.00	\$ 3,000.00
4. Water services (incl. excavation, bedding, backfill, valves and appurtenances)	L.F.	240	\$ 16.00	\$ 3,840.00
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.	2	\$ 250.00	\$ 500.00
III. STREETS				
1. Clearing and grubbing	L.S.	1	\$ 5,000.00	\$ 5,000.00
2. Earthwork, including excavation and embankment construction	C.Y.	1210	\$ 5.00	\$ 6,050.00
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.	1620	\$ 5.00	\$ 8,100.00
6. Sub-grade stabilization	Ton			\$ -
7. Asphalt or concrete pavement (square yard)	S.Y.	1620	\$ 10.00	\$ 16,200.00
8. Curb, gutter & sidewalk (linear feet)	L.F.			\$ -
9. Driveway sections (square yard)	S.Y.			\$ -
10. Crossspans & fillets	S.F.	640	\$ 6.50	\$ 4,160.00
11. Retaining walls/ structures	L.F.			\$ -
12a. Storm drainage -core existing inlets	ea.	1	\$ 250.00	\$ 250.00
12b. Storm drainage -inlet structure	ea.	1	\$ 1,500.00	\$ 1,500.00
12c. Storm drainage -outlet structure	ea.	1	\$ 1,500.00	\$ 1,500.00
12d. Storm drainage -12" RCP incl.exc. ,bkfl	L.F.			\$ -
12e. Storm drainage -12" HDPE incl.exc. ,bkfl	L.F.	40	\$ 25.00	\$ 1,000.00
12f. Storm drainage -15" RCP incl.exc. ,bkfl	L.F.	105	\$ 35.00	\$ 3,675.00
12g. Storm drainage -15" CMP incl.exc. ,bkfl	L.F.	30	\$ 30.00	\$ 900.00
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.	1	\$ 1,500.00	\$ 1,500.00
IV. LANDSCAPING				\$ -
1. Design/Architecture	L.S.			\$ -
2. Earthwork (incl. top soil, fine grading, & berming)	C.Y.	220	\$ 10.00	\$ 2,200.00
3. Hardscape features (includes wall, fencing, and paving)	L.F.	350	\$ 16.00	\$ 5,600.00
4. Street trees and planting	ea.	9	\$ 250.00	\$ 2,250.00
5. Irrigation system	L.S.	1	\$ 5,000.00	\$ 5,000.00
6. Other features (incl. statues, water displays, park equipment, and outdoor furniture)	L.S.	1	\$ 6,000.00	\$ 6,000.00
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.			\$ -
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: \$ 147,700.00

SCHEDULE OF IMPROVEMENTS

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

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

Bank of Grand Junction
by Carey B. Horton, VP

Angeline Barrett 4/28/00
Ed Del Duca 4/28/00

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

Reviewed and approved

[Signature]
CITY ENGINEER

5-1-2000
DATE

[Signature]
COMMUNITY DEVELOPMENT
Development Services Supervisor

5/2/00
DATE

January 27, 1997

4 PAGE DOCUMENT

DISBURSEMENT AGREEMENT **BOOK 2709 PAGE 1**
(Improvements Guarantee)

DEVELOPER: ED DEL DUCA AND ANN BARRETT

1949862 05/16/00 0115PM
MONIKA TODD CLK&REC MESA COUNTY CO
REC FEE \$20.00

RECEIVED

BANK: BANK OF GRAND JUNCTION

MAY 24 2000

PROPERTY: MEADOWLARK GARDENS PLANNED DEVELOPMENT-PHASE 1

MESA COUNTY
ENGINEERING DEPARTMENT

DISBURSEMENT AMOUNT: For the construction of improvements to the Property in an amount not to exceed \$ 73,850.00.

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

RECITALS

MEADOWLARK GARDENS PLANNED

Developer has been required by the City to construct certain improvements to DEVELOPMENT-PHASE 1 ("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 \$ 73,850.00, 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.

(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 AND *ed*

3. **DEVELOPER CONSENT:** The Developer, by the signature of ANN BARRETT *AB* (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, ~~1992~~2000

(BANK) THE BANK OF GRAND JUNCTION

By: Carey 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 Ceil
~~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)

BANK-PHASE RECEIVED

DISBURSEMENT AGREEMENT
(Improvements Guarantee)

MAY 24 2000

MES. COUNTY
PLANNING DEPARTMENT

Book 2709

1949863 05/16/00 0115PM

MONIKA TODD CLK&REC MESA COUNTY CO
RESFEE \$20.00

DEVELOPER: THE BANK OF GRAND JUNCTION

BANK: THE BANK OF GRAND JUNCTION

PROPERTY: MEADOWLARK GARDENS PLANNED DEVELOPMENT-PHASE 1

DISBURSEMENT AMOUNT: For the construction of improvements to the Property in an amount not to exceed \$ 73,850.00.

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

RECITALS

MEADOWLARK GARDENS PLANNED DEVELOPMENT-PHASE 1

Developer has been required by the City to construct certain improvements to MEADOWLARK GARDENS PLANNED DEVELOPMENT-PHASE 1 ("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 \$ 73,850.00, 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.

3. **DEVELOPER CONSENT:** The Developer, by the signature of CAREY B. HORTON, VICE PRES. (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 ~~XIX~~

(BANK) THE BANK OF GRAND JUNCTION

By: Marlene M. Haase, V.P.
Title
2415 F ROAD
GRAND JUNCTION, COLO. 81505
Address

(DEVELOPER) THE BANK OF GRAND JUNCTION

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

CITY OF GRAND JUNCTION

By: Just Cecil
~~Director of Community Development~~
Development Services Supervisor

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between _____ Developer, _____ 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) CAREY B. HORTON

Carey B. Horton, VP
(signature)

(name) ROGER L. MARTIN

Roger L. Martin, SUP
(signature)

(name) MARLENE M. HAASE

Marlene M. Haase v.p.
(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 2708 / 2709, Page 987-997 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 Meadowpark Gardens, Ph. I (Project).

Legal Description: See recorded DIA, Exhibit A.

2085576 11/05/02 0331PM
MONIKA TODD CLK&REC MESA COUNTY CO
REC FEE \$5.00 SURCHG \$1.00

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 11/5/02
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: N/A Date _____

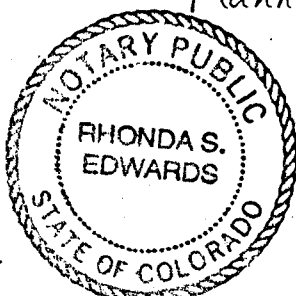
In accordance with the above signatures, I hereby certify that the Improvements Agreement & Guarantee and the recording evidencing the agreement and guarantee, at Book 2708 / 2709, Page 987-997 / 1-8 of the Mesa County land records, have been completed and accepted and in accordance with the provisions of the Grand Junction Zoning and Development Code are hereby released, subject to the required warranty period.

Director of Community Development [Signature] Date 11-5-02
Planning Manager

The foregoing instrument was executed before me this 5th day of November, 2002 (year) by Katherine M. Portner, Director of Community Development for the City of Grand Junction, Colorado. *Planning Manager*

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 The Bank of Grand Junction & Ed Del Duca & 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 I, 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 4/28/01 (set date) ("the Commencement Period") and the Improvements, each and every one of them, shall be completed by the end of the 12th month from the Effective Date of this Agreement 4/28/02 (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:

Bob Johnson, Ed Del Duca & Ann Barrett
c/o Bank of Grand Junction
2415 Patterson Road
Grand Junction, CO 81505

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 Cerr 4/26/01
Director of Community Development date

Attest:

City Clerk date
Carey B. Horton, VP 4/24/01
Bank of Grand Junction
Angeline Barrett 4/23/01
By: Ed Del Duca 04/23/01
Developer date

Name (printed): The Bank of Grand Junction, Ed Del Duca & Angeline Barrett
Its (position): OWNER

Attest:

Secretary date

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 One

LOCATION: State Hwy. 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.	1005	\$ 16.00	\$ 16,080.00
				\$ -
4. Sewer Services (incl. Trenching bedding & backfill)	L.F.	415	\$ 15.00	\$ 6,225.00
				\$ -
5. Sanitary sewer manhole(s)	ea.	8	\$ 1,500.00	\$ 12,000.00
6. Connection to existing manhole(s)	ea.	1	\$ 1,000.00	\$ 1,000.00
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.	365	\$ 18.00	\$ 6,570.00
				\$ -
3a. Fire Hydrant	ea.	2	\$ 1,500.00	\$ 3,000.00
4. Water services (incl. excavation, bedding, backfill, valves and appurtenances)	L.F.	240	\$ 16.00	\$ 3,840.00
				\$ -
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.	2	\$ 250.00	\$ 500.00
III. STREETS				
1. Clearing and grubbing	L.S.	1	\$ 5,000.00	\$ 5,000.00
2. Earthwork, including excavation and embankment construction	C.Y.	1210	\$ 5.00	\$ 6,050.00
				\$ -
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.	1620	\$ 5.00	\$ 8,100.00
6. Sub-grade stabilization	Ton			\$ -
7. Asphalt or concrete pavement (square yard)	S.Y.	1620	\$ 10.00	\$ 16,200.00
8. Curb, gutter & sidewalk (linear feet)	L.F.			\$ -
9. Driveway sections (square yard)	S.Y.			\$ -
10. Crosspans & fillets	S.F.	640	\$ 6.50	\$ 4,160.00
11. Retaining walls/ structures	L.F.			\$ -
12a. Storm drainage -core existing inlets	ea.	1	\$ 250.00	\$ 250.00
12b. Storm drainage -inlet structure	ea.	1	\$ 1,500.00	\$ 1,500.00
12c. Storm drainage -outlet structure	ea.	1	\$ 1,500.00	\$ 1,500.00
12d. Storm drainage -12" RCP incl.exc. ,bkfl	L.F.			\$ -
12e. Storm drainage -12" HDPE incl.exc. ,bkfl	L.F.	40	\$ 25.00	\$ 1,000.00
12f. Storm drainage -15" RCP incl.exc. ,bkfl	L.F.	105	\$ 35.00	\$ 3,675.00
12g. Storm drainage -15" CMP incl.exc. ,bkfl	L.F.	30	\$ 30.00	\$ 900.00
13. Signs and other traffic control deuyices	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.	1	\$ 1,500.00	\$ 1,500.00
IV. LANDSCAPING				\$ -
1. Design/Architecture	L.S.			\$ -
2. Earthwork (incl. top soil, fine grading, & berming)	C.Y.	220	\$ 10.00	\$ 2,200.00
3. Hardscape features (includes wall, fencing, and paving)	L.F.	350	\$ 16.00	\$ 5,600.00
4. Street trees and planting	ea.	9	\$ 250.00	\$ 2,250.00
5. Irrigation system	L.S.	1	\$ 5,000.00	\$ 5,000.00
6. Other features (incl. statues, water displays, park equipment, and outdoor furniture)	L.S.	1	\$ 6,000.00	\$ 6,000.00
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.			\$ -
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

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8/13/98

	UNITS	QUANTITY	PRICE	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: \$ 147,700.00

SCHEDULE OF IMPROVEMENTS

- I SANITARY SEWER May 1, 2000
- II DOMESTIC WATER May 15, 2000

13. Other _____
14. Other _____

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 147,700.00

SCHEDULE OF IMPROVEMENTS:

- I. SANITARY SEWER Completed
- II. DOMESTIC WATER Completed
- III. STREETS Completed
- IV. LANDSCAPING 10/30/01
- V. MISCELLANEOUS N/A

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.

Carey B. Horton, VP Bank of Grand Junction Angeline Barrett 4/22/01
SIGNATURE OF DEVELOPER Ed Del Duca 04/22/01
date

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

Reviewed and approved.

Kech Davis 4-26-01
CITY ENGINEER date

Pat Cecil 4/26/01
COMMUNITY DEVELOPMENT date

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement" or "Agreement") are Edward Del Ossa 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 Phonic I Meadowlark Garden Development, 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 4/12/02 (set date) ("the Commencement Period") and the Improvements, each and every one of them, shall be completed by the end of the 6th month from the Effective Date of this Agreement 10/12/02 (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:

Edward 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, 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 Carl 4/22/02
Director of Community Development date

Attest:

City Clerk date

By: Ed Del Duca / Angeline Barrett 4/12/02
Developer date

Name (printed): Ed Del Duca / Angeline Barrett

Its (position): Owners

Attest:

Secretary date

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

EXHIBIT A

*Lots 1 4 5 and 6 of Meadowlark Garden
Subdivision in Mesa County, Colorado.*

EXHIBIT B

IMPROVEMENTS LIST/DETAIL

(Page 1 of 3)

DATE: 10/12/02
 NAME OF DEVELOPMENT: MEADOWLARK GARDEN Phase 1
 LOCATION: Lots 1, 4, 5 and 6 MEADOWLARK Garden Development
 PRINTED NAME OF PERSON PREPARING: Ed DEL DUCA

	TOTAL UNITS	UNIT QTY.	PRICE	TOTAL AMOUNT
I. SANITARY SEWER				
1. Clearing and grubbing	_____	_____	_____	_____
2. Cut and remove asphalt	_____	_____	_____	_____
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	_____	_____	_____	_____
4. Sewer Services (incl. trenching, bedding, & backfill)	_____	_____	_____	_____
5. Sanitary sewer manhole(s)	_____	_____	_____	_____
6. Connection to existing manhole(s)	_____	_____	_____	_____
7. Aggregate Base Course	_____	_____	_____	_____
8. Pavement replacement	_____	_____	_____	_____
9. Driveway restoration	_____	_____	_____	_____
10. Utility adjustments	_____	_____	_____	_____
II. DOMESTIC WATER				
1. Clearing and grubbing	_____	_____	_____	_____
2. Cut and remove asphalt	_____	_____	_____	_____
3. Water Main (incl. excavation, bedding, backfill, valves and appurtenances)	_____	_____	_____	_____
4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances)	_____	_____	_____	_____
5. Connect to existing water line	_____	_____	_____	_____
6. Aggregate Base Course	_____	_____	_____	_____
7. Pavement Replacement	_____	_____	_____	_____
8. Utility adjustments	_____	_____	_____	_____
III. STREETS				
1. Clearing and grubbing	_____	_____	_____	_____
2. Earthwork, including excavation and embankment construction	_____	_____	_____	_____
3. Utility relocations	_____	_____	_____	_____
4. Aggregate sub-base course (square yard)	_____	_____	_____	_____

	TOTAL UNITS	UNIT QTY.	TOTAL PRICE	TOTAL AMOUNT
5. Aggregate base course (square yard)				
6. Sub-grade stabilization				
7. Asphalt or concrete pavement (square yard)				
8. Curb, gutter & sidewalk (linear feet)				
9. Driveway sections (square yard)				
10. Crosspans & fillets				
11. Retaining walls/structures				
12. Storm drainage system				
13. Signs and other traffic control devices				
14. Construction staking				
15. Dust control				
16. Street lights (each)				
IV. LANDSCAPING				
1. Design/Architecture				
2. Earthwork (includes top soil, fine grading, & berming)				
3. Hardscape features (includes walls, fencing, and paving)				
4. Plant material and planting				
5. Irrigation system				
6. Other features (incl. statues, water displays, park equipment, and outdoor furniture)				
7. Curbing				
8. Retaining walls and structures	1	Trash Container		2,445.54
9. One year maintenance agreement				
V. MISCELLANEOUS				
1. Design/Engineering				
2. Surveying				
3. Developer's inspection costs				
4. Quality control testing				
5. Construction traffic control				
6. Rights-of-way/Easements				
7. City inspection fees @\$45./hr				
8. Permit fees				
9. Recording costs				

See Attached list 6923.96

Exhibit B

Meadowlark Garden Landscape

Estimate & Contract

Job Name: Meadowlark Garden Street Scape Phase 1 Highway 340
 Job Location: 2259 Broadway
 Phone: 241-8003

Description	Size	Quantity	Price Each	Total	Labor	Total
General						
			\$ -	\$ -		
Sub Total				\$ -	\$ -	\$ -
Site Preparaton						
	Complete					
Sub Total				\$ -	\$ -	\$ -
Grading						
final grade	Complete each	1		\$ -		
Sub Total				\$ -	\$ 485.02	\$ 485.02
Irrigation:						
Grass Area	Complete			\$ -		
Shrubs	sf	124	\$ 2.74	\$ 339.76		
Trees	Drip	16	\$ 4.11	\$ 65.76		
Sub Total				\$ 405.52	\$ 509.27	\$ 914.79
Trees:						
Autumn Purple Ash	1 1/2"	3	\$ 94.19	\$ 282.56		
Russian Hawthorn	1 1/2"	1	\$ 94.19	\$ 94.19		
Pinion Pine	6"	1	\$ 113.03	\$ 113.03		
Hackberry	1 1/2"	3	\$ 90.42	\$ 271.26		
Bur Oak	1 1/2"	3	\$ 90.42	\$ 271.26		
Cannadian cherry	1 1/2"	5	\$ 90.42	\$ 452.10		
Sub Total				\$ 1,484.40	\$ 388.01	\$ 1,872.41
Shrubs:						
Large						
Cardinal Dogwood	5 gal	5	\$ 21.06	\$ 105.30		
Apache Plum	5 gal	8	\$ 21.06	\$ 168.48		
Pfitzer Juniper	5 gal	9	\$ 21.06	\$ 189.54		
Medium						
Threadleaf Sagge	5 gal	14	\$ 18.80	\$ 263.20		
Blue Mist Spirea	5 gal	5	\$ 18.80	\$ 94.00		
Western Sand cherry	5 gal	5	\$ 18.80	\$ 94.00		
Shrub Rose	2 gal	16	\$ 12.77	\$ 204.35		
Small						
Dwarf Rabbit Brush	5 gal	10	\$ 18.84	\$ 188.38		
Russian Sage	1 gal	21	\$ 9.76	\$ 204.91		
Potentilla	5 gal	5	\$ 17.33	\$ 86.65		
Low Gro Sumac	5 gal	8	\$ 11.26	\$ 90.12		
Accents						
Soapweed	1 gal	7	\$ 11.26	\$ 78.85		
Maiden Grass	1 gal	11	\$ 11.26	\$ 123.91		
Sub Total				\$ 1,891.70	\$ 460.77	\$ 2,352.47
Other Plants:						
Ground covers						
Seed Mix	sf	24000	\$ 0.02	\$ 493.20		
Sub Total				\$ 493.20	\$ 378.92	\$ 872.12
Specialty Work						
Trash Enclosure	4x18	1	\$ 1,233.00	\$ 1,233.00		
Sub Total				\$ 1,233.00	\$ 1,212.54	\$ 2,445.54
TOTAL				\$ 5,508	\$ 3,435	\$ 8,942
						\$ 427
						\$ 9,369

	TOTAL UNITS	UNIT QTY.	TOTAL PRICE	TOTAL AMOUNT
10. Bonds	_____	_____	_____	_____
11. Newsletters	_____	_____	_____	_____
12. General Construction Supervision	_____	_____	_____	_____
13. Other _____	_____	_____	_____	_____
14. Other _____	_____	_____	_____	_____

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 9,369

SCHEDULE OF IMPROVEMENTS:

- I. SANITARY SEWER _____
- II. DOMESTIC WATER _____
- III. STREETS _____
- IV. LANDSCAPING _____
- V. MISCELLANEOUS _____

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 4/10/02
 SIGNATURE OF DEVELOPER date

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

Reviewed and approved.

 CITY ENGINEER date

Pat Lewis 4/22/02
 COMMUNITY DEVELOPMENT date



WestStar Bank
2448 F Road
Grand Junction, CO 81505

April 15, 2002

IRREVOCABLE LETTER OF CREDIT

*COPY
(Original returned to
WestStar Bank 10/17/02.)*

Dir Sir or Madam:

We hereby open our irrevocable letter of credit in your favor available by your draft(s) at sight on us for a sum not exceeding \$9,369.00 (nine-thousand-three-hundred-sixty-nine dollars and no/100's) for the account of Angeline Barrett and Edward Del Duca ("Developer") to be accepted by your signed statement that drawing is due to default of failure to perform by Developer with respect to Improvements required on or before October 10, 2002; a development occurring within the City of Grand Junction, Colorado. Acting through the City Attorney you will notify us when either:

1. The Improvements have been timely completed and the warranty period has terminated and the credit may be released; or
2. The Developer has failed to perform or is in default. The City Attorney or the Attorney's designee shall sign notice. Proof of default or a statement from any other party shall not be required.

All drafts drawn hereunder must be by sight draft marked: Drawn under WestStar Bank Credit Number 45990, dated April 15, 2002.

The original of the credit must be presented along with any such draft.

The amount of any draft drawn under this credit must, concurrently with negotiation, be endorsed on the reverse side hereof and the presentment of any such draft will be a warranty by the negotiating bank that such endorsement has been made and that document(s) have been forwarded as herein required.

Except so far as otherwise expressly stated herein, this credit is subject to the Uniform Customs and Practices for Commercial Documentary Credits fixed by the 13th Congress of the International Chamber of Commerce.

We hereby agree with the drawers, endorsers and bona fide holders of drafts under and in compliance with the terms of this credit that the same will be duly honored and payment made no later than 3 (three) days after due presentation of the credit and delivery of document(s) as specified on or before the date written in the first paragraph above or a s the same may be extended.

WestStar Bank

By: 

Authorized Officer Signature

DISBURSEMENT AGREEMENT
(Improvements Guarantee)

DEVELOPER: Edward Del Duca

BANK: WestStar Bank

PROPERTY: Meadowlark Gardens Subdivision

DISBURSEMENT AMOUNT: For the construction of improvements to the Property in an amount not to exceed \$ 9,369.00

This Agreement is entered into by and between Edward Del Duca ("Developer"), WestStar Bank ("Bank") and the City of Grand Junction, Colorado ("City").

RECITALS

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

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

The City Engineer has approved an estimate of the costs of the Improvements and that amount or an amount not to exceed \$ 9,369.00, 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.

3. **DEVELOPER CONSENT:** The Developer, by the signature of Eddie Owen Angeline 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.

*** WestStar Bank agrees to the terms of this Improvements Guarantee and specifically guarantee's this letter until the expiration date of October 28, 2002.**

This Improvements Guarantee Letter will expire on October 28, 2002

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:

(name)

(signature)

File Name: disbursk
revised: May 12, 1997

	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: \$ 147,700.00

SCHEDULE OF IMPROVEMENTS

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

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

Bank of Grand Junction
by Carey B. Horton, VP

4-28-00

Angeline Barrett 4/28/00
Ed Del Duca 4/28/00

SIGNATURE OF DEVELOPER

DATE

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

Reviewed and approved

[Signature]
CITY ENGINEER

5-1-2000
DATE

[Signature]
COMMUNITY DEVELOPMENT

5/2/00
DATE

Development Services Supervisor