

ETL97RPK

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENTS AGREEMENT

NAME OF AGENCY OR CONTRACTOR: ENTRADA TOWNHOUSES, LTD.

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: RIDGE
PARK, ENTRADA TOWNHOUSES II, MAINTENANCE AGREEMENT

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1997

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement") are ENTRADA TOWNHOUSES, LTD. ("the Developer") and THE CITY OF GRAND JUNCTION, Colorado ("the City").

THEREFORE, 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 recorded which is not sooner than recordation of the PLAT

RECITALS

1806237 0923AM 07/18/97
MONIKA TODD CLK&REC MESA COUNTY Co

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

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 Developer agrees to pay the City the actual amount for inspection services performed by the City. The estimated amount is shown in Exhibit B. The Developer's obligation to complete the improvements is and will be independent of any obligations of the City contained herein.

4. **Security:** To secure the performance of its obligations under this Agreement (except its obligations for warranty under paragraph 6), the Developer will enter into an agreement which complies with either option identified in paragraph 28, or other written agreement between the City and the Developer.

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 improvements completed by the Developer.

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

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

9. **Notice of Defect:** The Developer's Engineer shall provide timely notice to the Developer, contractor, issuer of security and the City Engineer whenever inspection reveals, or the Developer's Engineer otherwise has knowledge, that an improvement does not conform to City standards and any specifications 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.

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

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

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

13. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. For improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit "B" will be prima facie evidence of the minimum cost of completion; however, neither that amount nor the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow establish the maximum amount of the Developer's liability.

14. **City's Rights Upon Default:** When any event of default occurs, the City may draw on the letter of credit, 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 a lender) who has acquired the development by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished improvements and provides reasonable security for the obligation. In addition, the City may also enjoin the sale, transfer, or conveyance of lots within the development, until the improvements are completed or accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

15. **Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees and assigns harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained, or alleged to be received or sustained, by any person or entity in connection with, or on account of, any act or failure to act concerning the performance of work at the development or the Property pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named in an action concerning the performance of work or the failure to perform work pursuant to this Agreement. The Developer is not an agent or employee of the City.

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

17. **Amendment or Modification:** The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or his authorized officer. Such amendment or modification shall be properly notarized before it shall be deemed effective.

18. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party; any City obligation under this section shall be subject to the overriding provisions of section 15, above. If the court awards relief to both parties, the attorney's fees may be equitably divided between the parties by the decision maker, subject to the overriding provisions of section 15, above.

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

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

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

22. **Severability:** If any part, term, or provision of this Agreement is held by 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.

23. **Benefits/burdens:** 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 shall be binding on the heirs, successors, and assigns of the Developer, and shall be a covenant(s) running with the Property. There is no prohibition on the right of the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations under the improvements disbursement agreement if it accepts new security from any developer or lender who obtains the Property. However, no other act of the City will constitute a release of the original Developer from his liability under this Agreement.

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

If to Developer:

ENTRADA TOWNHOUSES, LTD.
200 E. MAIN ST.
ASPEN, CO 81611

If to City:

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

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

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

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

28. **Improvements guarantee.** The improvements guarantee required by the City to ensure that the improvements described in the improvements agreement are constructed to City standards may be in one of the following forms: (If I or II, then attach as Exhibit C.)

(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 under the following terms:

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

(b) The Finance Department of the City will disburse any deposit or any portion thereof, with no more than three checks, at no charge. If disbursements are made in excess of three checks, the developer will be charged \$100 per transaction for every transaction in excess of three.

29. **Conditions of Acceptance.**

a. The City shall have no responsibility or liability with respect to any street, or other improvement(s), notwithstanding the use of the same by the public, unless the street or other improvements shall have been accepted by the City. "Acceptance by the City" means a separate writing wherein the City specifies which improvements have been accepted and the date from which warranty(ies) shall run.

b. 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 specifications; (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 Engineer that the title to lands underlying the improvements are merchantable and free and clear from all liens and encumbrances, except those liens and encumbrances which may be approved in writing by the City Engineer.

- 30. **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.

Kathleen M. Portner 7/17/97
 Director of Community Development Date

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

Arvid J. Rish 7/01/97
 Developer Date

(If Corporation, to be signed by President and attested to by Secretary together with the Corporate seals)

EXHIBIT "A"

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

The Fleisher Company, Inc. is the owner of a parcel of land being that tract of land described at Plat Book 12, Page 154 (Entrada Townhouses, a replat of Lot One, Block Nine, The Ridges Filinf No. Two), Mesa County Records, and the perimeter being more particularly described, as a result of survey, by the following:

Commencing at a Mesa County Survey Marker for the S.W. Corner of the SE1/4SE1/4 of Section 17, Township One South, Range One West of the Ute Meridian, from whence a Mesa County Survey Marker for the S.E. Corner of the SE1/4SE1/4 of said Section 17 bears S89°50'27"E 1297.34 feet; thence N00°00'00"E 133.79 feet; thence N80°42'10"E 50.66 feet to the N.W. Corner of said Entrada Townhouses and the point of beginning; thence N80°42'10"E 656.66 feet; thence N47°36'43"E 134.45 feet; thence S00°00'00"W 268.02 feet; thence 98.59 feet on the arc of a 139.39 foot radius curve to the left (the central angle of which is 40°31'34" and the chord of which bears N78°46'53"W 96.55 feet); thence S80°57'20"W 141.04 feet; thence 148.58 feet on the arc of a 243.53 foot radius curve to the left (the central angle of which is 34°57'20" and the chord of which bears S63°28'40"W 146.28 feet); thence S46°00'00"W 39.54 feet; thence 149.57 feet on the arc of a 194.76 foot radius curve to the right (the central angle of which is 44°00'00" and the chord of which bears S68°00'00"W 145.92 feet); thence S90°00'00"W 128.08 feet; thence 25.96 feet on the arc of a 75.00 foot radius curve to the right (the central angle of which is 19°50'00" and the chord of which bears N80°05'00"W 25.83 feet); thence N70°10'00"W 64.04 feet; thence 31.42 feet on the arc of a 20.00 foot radius curve to the right (the central angle of which is 90°00'00" and the chord of which bears N25°10'00"W 28.28 feet); thence 41.31 feet on the arc of a 119.34 foot radius curve to the left (the central angle of which is 19°50'00" and the chord of which bears N09°55'00"E 41.11 feet); thence N00°00'00"E 129.86 feet to the beginning.

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL


DATE: 7/15/97
 NAME OF DEVELOPMENT: ENTRADA TOWNHOUSES II
 LOCATION: _____
 PRINTED NAME OF PERSON PREPARING: CHRISTOPHER CARUSO

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMT.
I. SANITARY SEWER				
1. Clearing and grubbing	_____	_____	_____	_____
2. Cut and remove asphalt	_____	_____	_____	_____
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	_____	_____	_____	_____
4. Sewer Services (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 (excavation, embankment const)	_____	_____	_____	_____
3. Utility relocations	_____	_____	_____	_____
4. Aggregate sub-base course (sq.yd.)	_____	_____	_____	_____
5. Aggregate base course (sq.yd.)	_____	_____	_____	_____
6. Sub-grade stabilization	_____	_____	_____	_____
7. Asphalt or concrete pavement (sq.yd.)	_____	_____	_____	_____
8. Curb, gutter & sidewalk (linear feet)	<u>L.S.</u>	<u>1</u>	<u>\$7,729.50</u>	<u>_____</u>
9. Driveway sections (sq.yd.)	_____	_____	_____	_____
10. Crosspans & fillets	_____	_____	_____	_____
11. Retaining walls/structures	_____	_____	_____	_____

EXHIBIT "C"

**Schedule of Items on the Improvements List/Detail
07/15/97**

- | | | |
|-----------------------------|-------------------------------|---|
| Section III, Item 8: | Curb, Gutter, Sidewalk | Cost: \$7,729.50 |
| | Schedule of Improvement: | Within 3 years, or upon completion of the construction of homes adjacent to paths, whichever comes first. |
| Section IV: | Landscaping | Cost: \$55,462.00 |
| | Schedule of Improvement: | Within 3 years, or on each lot upon completion of the construction of each corresponding home, whichever comes first. |
| Section V, Item 13: | Inspection Checklist | Cost: \$4,000.00 |
| | Schedule of Improvement: | Within 1 year, as contractor is able to schedule work. |

 7/15/97
Signature of Developer Date

DISBURSEMENT AGREEMENT
(Improvements Guarantee)

DEVELOPER: **Entrada Townhouses, LTD, a colorado Limited Partnership, The Fleisher Company, A Corporation, Donald J. Fleisher, President and Donald J. Fleisher, Individually**

BANK: **Alpine Bank, 225 North 5th Street, Suite B, Grand Junction, CO 81501**

PROPERTY: **23 Lots in The Ridges**

All of Entrada Townhouses, A Replat of Lot One, Block Nine, The Ridges, Filing No. Two, Mesa County, Colorado

DISBURSEMENT AMOUNT: For the construction of improvements to the Property in an amount not to exceed \$ 69,000.00

This Agreement is entered into by and between ENTRADA TOWNHOUSES LTD ("Developer"), ALPINE BANK ("Bank") and the City of Grand Junction, Colorado ("City").

RECITALS

Developer has been required by the City to construct certain improvements to LANDSCAPING FOR LOTS 1 THROUGH 23 OF ("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 \$ 69,000.00, 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.

ENTRADA TOWNHOUSES II

(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 DONALD J. FLESHER, ^{GENERAL} ~~PARTNER~~ (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.

January 27, 1997

DISBURSEMENT AGREEMENT
(page 3 of 4)

BOOK 2342 PAGE 764

Dated this 25th day of June, 1997.

(BANK)

By: Tom Frank
Title

225 N. 5th St, Grand Jct, CO
Address 81501

(DEVELOPER)

By: Donald J. Fisher
Title GENERAL PARTNER

ZOO E. MAIN ST., ASPEN CO
Address

CITY OF GRAND JUNCTION

By: Kathleen M. Porter
Director of Community Development

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

DEVELOPER:

(name)

[Signature]
(signature)

(name)

(signature)

(name)

(signature)

DISBURSEMENT AGREEMENT
(page 3 of 4)

Dated this 25th day of June, 1997.

(BANK)

By: [Signature]
Title

225 N. 5th St, Grand Jct, CO
Address 81501

(DEVELOPER)

By: [Signature]
Title GENERAL PARTNER

200 E. MAIN ST., ASPEN CO
Address

CITY OF GRAND JUNCTION

By: [Signature]
Director of Community Development

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between Entrada Townhomes, Ltd Developer, Alpine Bank as Bank, and the City of Grand Junction, the following are the individuals authorized to sign written requests for the disbursement of the Funds:

DEVELOPER:

(name) Donald Fleischer
Cris Caruso _____
(signature)

(name) _____
(signature)

(name) _____
(signature)

DISBURSEMENT AGREEMENT
(page 4 of 4)

DEVELOPER'S GENERAL CONTRACTOR:

ELAM CONSTRUCTION, INC. [Signature]
(name) (signature)

ONLY AS RELATES TO SCOPE OF
WORK PER ELAM'S CONTRACT
WITH DEVELOPER.

DEVELOPER'S PROJECT ENGINEER:

[Signature] RICHARD A. DORRIS
(name) (signature)
for ROLLAND ENGR.

DEVELOPER'S ARCHITECT:

NA _____
(name) (signature)

CITY ENGINEER:

[Signature] JODY KLISKA
(name) (signature)

MAINTENANCE AGREEMENT

This Agreement is made between the CITY OF GRAND JUNCTION, COLORADO ("City") and ENTRADA TOWNHOUSES LIMITED, a Colorado limited liability company, ("Owner") this 17th day of July, 1997.

Recitals

- A. Owner has applied to the City for approval of a subdivision of land owned by Owner located in The Ridges in the City. A plat drawing of the Property ("Property") is attached hereto as Exhibit "A" and incorporated by this reference.
- B. Owner desires to subdivide the Property into 23 lots as depicted on Exhibit A.
- C. Under the existing Ordinances of the City, the act of subdividing the Property requires that certain street improvements be paid for or constructed by the property owner.
- D. In satisfaction of the requirement to provide street access, Owner proposes to construct private streets within the proposed subdivision.
- E. Owner and City staff have informed the Grand Junction City Council ("Council") that, in the particular circumstances of the Property, and in light of the terms of this agreement, that private streets are acceptable and adequately serve to protect the health, safety and welfare of the community. Furthermore, the Council is persuaded that the City's requirement that the streets be constructed and maintained to City standards is an essential requirement for the acceptance of private streets within the City.
- F. Owner has duly considered the requirements of the City and by this agreement does agree to construct and maintain the streets to city standard in accordance with the following terms and conditions.

NOW, THEREFORE, in witness of the foregoing, and the mutual waivers and promises set forth herein, **THE PARTIES AGREE:**

1. The foregoing recitals, and the minutes of the public hearing on this subject at the City Council meeting held June 18, 1996, are incorporated into this Agreement and form the basis for the agreement of the parties.
2. Owner hereby agrees for itself and for any successors in interest to the Property, be they an owner or owners of single or multiple lots and/or a home owners or property owners association, that the street(s) shown on Exhibit A shall be maintained and kept in good repair, to the standard established herein, at the sole and exclusive cost of Owner or its successor.
3. Maintenance shall include, but not be limited to, upkeep, repair and replacement of all improvements (including but not limited to street surfaces, subcourses, utilities and installations within the street(s), entrance features and the gate or gates at entrances to and/or exits from the property if any.

4. With respect to the maintenance of the street(s) within the property, Owner or its successor shall contract for the performance of such maintenance functions as are set forth on the maintenance schedule attached hereto as Exhibit B, incorporated by this reference as if fully set forth. Such contract may be with any person or entity qualified to perform the work provided however that Owner or its successor shall provide the City, no less frequently than annually, with evidence of the maintenance performed on the street(s) within the property during the previous year.

5. In the event that Owner or its successor does not maintain or repair the street(s) as set forth in Exhibit B, and Owner or its successor fails to cure such failure within ninety (90) days (or such longer period as is reasonable under the circumstances) after receipt of notice of such failure from the City, the City may cause maintenance and/or repair to be performed and charge Owner or its successor the amounts set forth on Exhibit B for the services performed. Failure to pay for the services performed by the City shall give the City the right to lien the lots within the property. The City may also bring an action at law against Owner and/or any successor to enforce the obligations created by this agreement.

6. This Agreement shall be recorded with the Mesa County Clerk and Recorder and the covenants described herein shall run with the title to the Property.

7. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be personally delivered with receipt taken therefore, or sent by certified mail, postage prepaid and return receipt requested, directed to the party intended at the address set forth below, or at such other addresses as may be designated by notice given to the other party in the manner set forth above, and shall be effective upon receipt:

TO OWNER: Entrada Townhouses, Ltd.
 200 East Main Street
 Aspen, CO 81611

TO CITY: Public Works Manager
 City of Grand Junction
 250 North Fifth Street
 Grand Junction, CO 81501-2668

8. All provisions of this Agreement shall apply to and bind the parties hereto, and their agents, successors and assigns, including successors in title. In the event that Owner forms a home owners or property owners association which assumes the obligations created hereunder, the covenants creating such association shall adopt the maintenance standards provided for herein and furthermore shall provide that the maintenance obligation can not and shall not be amended, waived or modified by the association through amendment of the covenants.

9. This Agreement supersedes any and all prior agreements, written and oral, between the parties and constitutes the complete and entire agreement of the parties. This Agreement shall be governed under, and construed pursuant to, the laws of the State of Colorado.

10. The effective date of this Agreement shall be the date on which this Agreement is fully executed by Owner and by the City.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first written above.

ATTEST: CITY OF GRAND JUNCTION

By: Christine English
for Stephanie Nye
City Clerk

By: James Achen
for Mark K. Achen
City Manager

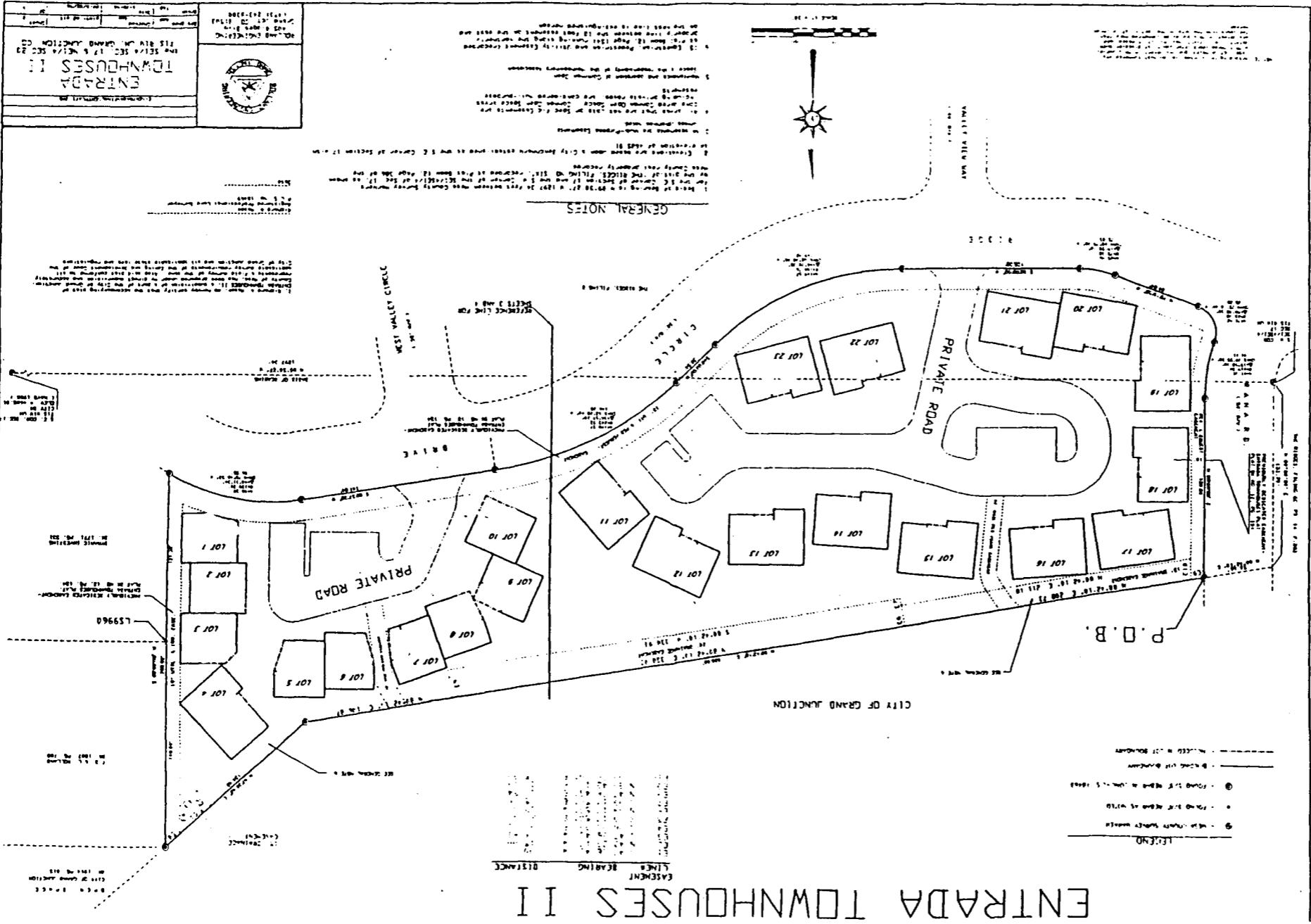
Date: 7/17/97

OWNER: ENTRADA TOWNHOUSES, LTD.

By: Cristopher Caruso
Cristopher Caruso

Date: 7/15/97

RECORDER NOTE: POOR QUALITY DOCUMENT
PROVIDED FOR REPRODUCTION



ENTRADA TOWNHOUSES I I

EASEMENT BEARING DISTANCE

LEGEND

- FOUND STREET NAME AS SHOWN
- FOUND STREET NAME AS NOTED
- UNDEVELOPED LOT BOUNDARY
- UNDEVELOPED LOT BOUNDARY

ENTRADA TOWNHOUSES I I

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Exhibit "B"
Private Street(s) Maintenance Agenda for Entrada Townhouses, Ltd.

- 1) Crack filing and seal coating shall be performed once every 10 years.
- 2) Asphalt overlay shall be 3 inches in thickness and shall be performed once every 15 years.
- 3) Patching shall be performed annually.
- 4) All maintenance services shall be performed by person(s) or entities possessing sufficient skills and proficiencies to complete the work to a standard equivalent to that of the City of Grand Junction.
- 5) Materials used to perform maintenance shall be of first quality and consistent and compatible with, and no less than equivalent to, the quality of materials used by the City of Grand Junction.
- 6) The length of the street(s) within the property have been measured to be 810 feet, or 0.199 lane miles, including no cul-de-sacs. The City's cost for services are typically measured per lane mile of street as follows. The cost of services for the property is shown assuming the City is contracted to perform those services or in the event of performance of services by virtue of default of this agreement. The cost may vary if services are performed by others.

Maintenance services

a. crack filling 0.199 lane mile x \$235.00/lane mile =	\$46.77
b. seal coating 0.199 lane mile x \$664.00/lane mile =	\$132.14
c. asphalt overlay 0.199 lane mile x \$2710.00/lane mile =	\$539.29
d. patching 0.199 lane mile x \$1807.00/lane mile =	\$359.59

Other services

a. street sweeping 0.199 lane mile x \$1312.00/lane mile =	\$261.09
b. leaf pickup and spring cleanup for 23 households @ \$6.08 per household =	\$158.08

The total maintenance services if contracted to be performed by the City or if services are performed by virtue of default of this agreement is \$1,496.96. in 1997 dollars. For each successive year after 1997, the cost of maintenance services if performed by the City shall be increased to reflect the then prevailing unit cost of materials together with increases in the Denver-Boulder CPI index over the Annual 1997 index. For purposes of this exhibit the annual cost of providing services has been estimated by taking the total cost of completing the service divided by the frequency of the service in years.

RELEASE OF IMPROVEMENTS AGREEMENT & GUARANTEE

Grand Junction Community Development Department

FILE # FPP-1996-174 BOOK 3240 PAGE 934

This memorandum relates to a certain recorded Improvements Agreement and Guarantee dated July 17, 97 (year) and recorded at Book 2342, Page 752 thru 766 of the land records of Mesa County, Colorado, by and between ENTRADA TOWNHOUSES LTD (Developer) and the City of Grand Junction (City) pertaining to RIDGE PARK (Project).

Legal Description: See attached

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 Judy Kliska by PSE Date 12/20/02
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 2342, Page 752 thru 766 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.

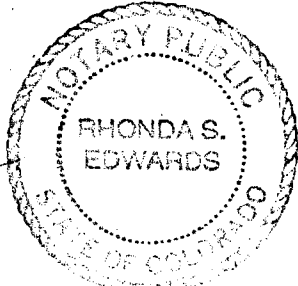
~~Director~~ of Community Development Pat Cecil Date 12/20/02

The foregoing instrument was executed before me this 20th day of December, 2002 (year)

by Pat Cecil, Director of Community Development for the City of Grand Junction, Colorado.

Witness my hand & official seal.

Notary Public Rhonda S. Edwards



My commission expires November 28, 2005

EXHIBIT "A"

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

The Fleisher Company, Inc. is the owner of a parcel of land being that tract of land described at Plat Book 12, Page 154 (Entrada Townhouses, a replat of Lot One, Block Nine, The Ridges Filinf No. Two), Mesa County Records, and the perimeter being more particularly described, as a result of survey, by the following:

Commencing at a Mesa County Survey Marker for the S.W. Corner of the SE1/4SE1/4 of Section 17, Township One South, Range One West of the Ute Meridian, from whence a Mesa County Survey Marker for the S.E. Corner of the SE1/4SE1/4 of said Section 17 bears S89°50'27"E 1297.34 feet; thence N00°00'00"E 133.79 feet; thence N80°42'10"E 50.66 feet to the N.W. Corner of said Entrada Townhouses and the point of beginning; thence N80°42'10"E 656.66 feet; thence N47°36'43"E 134.45 feet; thence S00°00'00"W 268.02 feet; thence 98.59 feet on the arc of a 139.39 foot radius curve to the left (the central angle of which is 40°31'34" and the chord of which bears N78°46'53"W 96.55 feet); thence S80°57'20"W 141.04 feet; thence 148.58 feet on the arc of a 243.53 foot radius curve to the left (the central angle of which is 34°57'20" and the chord of which bears S63°28'40"W 146.28 feet); thence S46°00'00"W 39.54 feet; thence 149.57 feet on the arc of a 194.76 foot radius curve to the right (the central angle of which is 44°00'00" and the chord of which bears S68°00'00"W 145.92 feet); thence S90°00'00"W 128.08 feet; thence 25.96 feet on the arc of a 75.00 foot radius curve to the right (the central angle of which is 19°50'00" and the chord of which bears N80°05'00"W 25.83 feet); thence N70°10'00"W 64.04 feet; thence 31.42 feet on the arc of a 20.00 foot radius curve to the right (the central angle of which is 90°00'00" and the chord of which bears N25°10'00"W 28.28 feet); thence 41.31 feet on the arc of a 119.34 foot radius curve to the left (the central angle of which is 19°50'00" and the chord of which bears N09°55'00"E 41.11 feet); thence N00°00'00"E 129.86 feet to the beginning.

RELEASE OF IMPROVEMENTS AGREEMENT & GUARANTEE

Grand Junction Community Development Department

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CITY OF GRAND JUNCTION:

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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 _____

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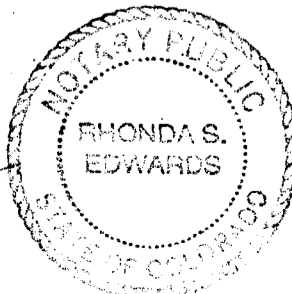
~~Director~~ of Community Development Pat Cecil Date 12/24/02

The foregoing instrument was executed before me this 20th day of December, 2002 (year)

by Pat Cecil, Director of Community Development for the City of Grand Junction, Colorado.

Witness my hand & official seal.

Notary Public Rhonda S Edwards



My commission expires November 28, 2005