

GLN97H0R

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	THE GLEN AT HORIZON DRIVE, LLC.
PROJECT/SUBDIVISION:	THE GLEN AT HORIZON DRIVE, FILING II
ADDRESS: HORIZON DRIVE	SE CORNER OF 7 TH STREET AND
TAX PARCEL NO:	2945-024-00-048
FILE #:	FPP-1996-240
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	1997
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement") are The Glen @ Horizon Drive, LLC ("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 The Plat, Filings I through IV, The Glen @ Horizon Drive, Grand Junction, Colorado

RECITALS

The Developer seeks permission to develop property within the City to be known as The Glen @ Horizon, 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 for inspection services performed by the City, in addition to amounts shown on 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 26 months from the Effective Date of this Agreement (the "Completion Period").

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: The Glen @ Horizon Drive, LLC
c/o Cunningham Investment Co., Inc.
605 W. Main Street, Suite 002
Aspen, Colorado 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.

 4/15/97
Director of Community Development Date

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

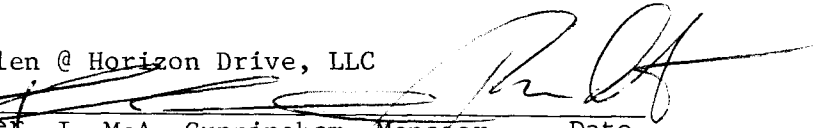
The Glen @ Horizon Drive, LLC
by:  _____
Developer I. McA. Cunningham, Manager Date
(If Corporation, to be signed by President and attested to by Secretary together with the Corporate seals)

EXHIBIT "A"

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

See Attached Exhibit "A"

EXHIBIT "A"

TAX SCHEDULE #: 2945-024-00-048

Being a tract of land situate in the Southwest Quarter of the Southeast Quarter (SW¼ SE¼) and in the Northwest Quarter of the Southeast Quarter (NW¼ SE¼) of Section 2, Township 1 South, Range 1 West, of the Ute Meridian and being further described as follows:

COMMENCING at the Southwest Corner of the Southwest Quarter of the Southeast Quarter (SW¼ SE¼) of Section 2, Township 1 South, Range 1 West, of the Ute Meridian, from whence the Northwest Corner of said SW¼ SE¼ bears North 00°00'00" East, a distance of 1314.68 feet for a basis of bearing, with all bearings contained herein relative thereto; thence North 00°00'00" East, a distance of 657.34 feet; thence South 89°54'45" East, a distance of 40.00 feet to a point on the easterly right-of-way line of North 7th Street as described in Book 885, Page 100 of Mesa County Records; thence along said right-of-way line North 00°00'00" East, a distance of 100.13 feet to the POINT OF BEGINNING; thence North 00°00'00" East, a distance of 197.66 feet; thence North 11°28'10" East, a distance of 70.37 feet; thence North 45°28'10" East, a distance of 70.00 feet; thence North 38°30'00" West, a distance of 71.32 feet; thence North 00°00'00" East, a distance of 73.35 feet; thence with a curve to the right having a delta angle of 53°56'00", a radius of 185.50 feet, with an arc length of 174.61 feet, a chord bearing of North 26°58'00" East, and a chord distance of 168.24 feet; thence North 53°56'00" East, a distance of 207.81 feet; thence North 48°36'04" East, a distance of 120.52 feet; thence North 36°32'36" East, a distance of 19.41 feet; thence North 53°56'00" East, a distance of 25.89 feet; thence South 61°04'00" East, a distance of 31.66 feet; thence North 28°56'00" East, a distance of 25.00 feet; thence South 57°21'48" East, a distance of 44.87 feet; thence with a curve to the right having a delta angle of 40°14'37", a radius of 460.00 feet, with an arc length of 323.10 feet, a chord bearing of South 36°28'53" East, and a chord distance of 316.50 feet; thence South 16°21'34" East, a distance of 51.93 feet; thence with a curve to the right having a delta angle of 20°27'39", a radius of 435.00 feet, with an arc length of 155.34 feet, a chord bearing of South 06°07'45" East, and a chord distance of 154.52 feet; thence South 04°06'05" West, a distance of 79.36 feet; thence with a curve to the right having a delta angle of 12°16'55", a radius of 385.00 feet, with an arc length of 82.53 feet, a chord bearing of South 10°14'32" West, and a chord distance of 82.37 feet; thence South 16°22'59" West, a distance of 142.05 feet; thence South 12°37'36" West, a distance of 50.25 feet; thence South 06°55'49" East, a distance of 108.46 feet; thence North 89°54'45" West, a distance of 35.26 feet; thence North 06°55'49" West, a distance of 110.19 feet; thence North 12°37'36" East, a distance of 57.43 feet; thence North 81°53'58" West, a distance of 111.62 feet; thence South 75°37'02" West, a distance of 79.19 feet; thence South 43°29'56" West, a distance of 49.75 feet; thence South 80°08'30" West, a distance of 49.10 feet; thence South 83°31'53" West, a distance of 86.77 feet; thence South 89°22'31" West, a distance of 83.88 feet; thence South 87°58'50" West, a distance of 149.43 feet to the POINT OF BEGINNING, Mesa County, Colorado.

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL

DATE: MARCH 31, 1997

NAME OF

DEVELOPMENT: GLEN AT HORIZON PHASE 1

LOCATION: 7TH & HORIZON

PRINTED NAME OF PERSON

PREPARING: PETER CARBOM

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMT.
I. SANITARY SEWER				
1. Clearing and grubbing	<u>BID FROM</u>	<u>BEN DOWD</u>		<u>\$47740.04</u>
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	<u>BID FROM</u>	<u>BEN DOWD</u>		<u>\$33272.80</u>
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	<u>BID FROM</u>	<u>ELAM CONSTR.</u>		<u>\$60239.10</u>
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>BID FROM</u>	<u>MAYS CONCRETE</u>		<u>\$22619.07</u>
9. Driveway sections (sq.yd.)	_____	_____	_____	_____
10. Crosspans & fillets	_____	_____	_____	_____
11. Retaining walls/structures	_____	_____	_____	_____
<u>7TH ST. DECEL. LANE</u>				<u>\$7445.00</u>

12. Storm drainage system	<u>BID FROM BEN DOWD</u>			<u>\$17365.40</u>
13. Signs and other traffic control devices	_____	_____	_____	_____
14. Construction staking	_____	_____	_____	_____
15. Dust control	_____	_____	_____	_____
16. Street lights (each)	_____	_____	_____	_____
IV. LANDSCAPING				
1. Design/Architecture	_____	_____	_____	<u>\$15000.00</u>
2. Earthwork (top soil, fine grading, berming)	_____	_____	_____	_____
3. Hardscape features (walls,fencing,paving)	_____	_____	_____	_____
4. Plant material and planting	_____	_____	_____	_____
5. Irrigation system	_____	_____	_____	_____
6. Other features (statues, water displays, park equipment, and outdoor furniture)	_____	_____	_____	_____
7. Curbing	_____	_____	_____	_____
8. Retaining walls and structures	_____	_____	_____	_____
9. One year maintenance agreement	_____	_____	_____	_____
V. MISCELLANEOUS				
1. Design/Engineering	_____	_____	_____	_____
2. Surveying	<u>LANDESIGN BID</u>			<u>\$4050.00</u>
3. Developer's inspection costs	_____	_____	_____	_____
4. Quality control testing	_____	_____	_____	_____
5. Construction traffic control	_____	_____	_____	_____
6. Rights-of-way/Easements	_____	_____	_____	_____
7. City inspection fees	_____	_____	_____	<u>\$1500.00</u>
8. Permit fees	_____	_____	_____	<u>\$ 60.00</u>
9. Recording costs	_____	_____	_____	_____
10. Bonds	_____	_____	_____	_____
11. Newsletters	_____	_____	_____	_____
12. General Construction Supervision	_____	_____	_____	_____
13. Other <u>As-BUILTS</u>	_____	_____	_____	<u>\$2000.00</u>
14. Other _____	_____	_____	_____	_____

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 211,291.41

Peter Cant 3/31/97
 SIGNATURE OF DEVELOPER DATE
 (If corporation, to be signed by President and attested to by Secretary together with the corporate seals.)

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

Jody Klesch 3-31-97
 CITY ENGINEER DATE

Bill [Signature] 4-7-97
 ACTING COMMUNITY DEVELOPMENT DIRECTOR DATE

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7. City inspection fees	_____	_____	_____	_____
8. Permit fees	_____	_____	_____	_____
9. Recording costs	_____	_____	_____	_____
10. Bonds	_____	_____	_____	_____
11. Newsletters	_____	_____	_____	_____
12. General Construction Supervision	_____	_____	_____	_____
13. Other _____	_____	_____	_____	_____
14. Other _____	_____	_____	_____	_____

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ _____

 *Manage* 4/3/97

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

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

 CITY ENGINEER DATE

 COMMUNITY DEVELOPMENT DATE

**DISBURSEMENT AGREEMENT
(Improvements Guarantee)**

DEVELOPER: The Glen @ Horizon Drive, LLC

BANK: Alpine Bank, Grand Junction

PROPERTY: The Glen @ Horizon Drive

DISBURSEMENT AMOUNT: For the construction of improvements to the Property in an amount not to exceed \$ 211,291.

This Agreement is entered into by and between The Glen @ Horizon Drive, LLC ("Developer"), Alpine Bank, Grand Junction ("Bank") and the City of Grand Junction, Colorado ("City").

RECITALS

Developer has been required by the City to construct certain improvements to The Glen @ Horizon Drive ("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 \$ 211,291, 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

DISBURSEMENT AGREEMENT

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in connection with the construction of the Improvements on the Property; that all work performed and materials supplied are in accordance with the plans and specifications submitted to and approved by the City; that the work has been performed in a workmanlike manner; that no funds are being requested for work not completed, nor for material not installed; the Project Engineer has inspected the Improvements for which payment is requested; and that such improvements have been completed in accordance with all terms, specifications and conditions of the approved plans. Attached hereto is the list of those individuals, and their respective signatures, required to sign the above described request(s) for disbursement of funds.

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

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

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

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

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

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

3. **DEVELOPER CONSENT:** The Developer, by the signature of I. McA. Cunnigham, Cunningham Investment Co., Inc. Manager (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.

DISBURSEMENT AGREEMENT

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

Dated this 14th day of April, 1997.

(BANK)

By: Norm Franke
Title President
Alpine Bank, Grand Junction
225 North 5th Street, Grand Junction, Colorado 81501
Address

(DEVELOPER)

By: [Signature]
Title I. McA. Cunningham, President
Cunningham Investment Co, Inc., Manager, The Glen @ Horizon Drive, LLC
605 W. Main Street, Suite 002, Aspen, Colorado 81611
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 The Glen @ Horizon Drive, LLC 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]
(signature)
(name) _____
(signature)

DEVELOPER'S GENERAL CONTRACTOR:

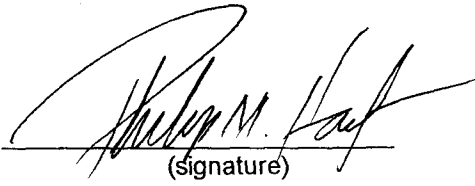
Horizon Builders, of Grand Junction, LLC
(name) _____ (signature)

[Signature]

DISBURSEMENT AGREEMENT
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DEVELOPER'S PROJECT ENGINEER:

LanDesign, LLC
(name)


(signature)

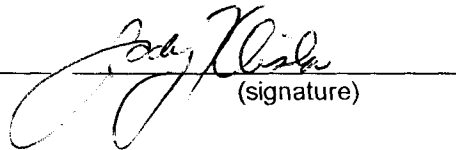
DEVELOPER'S ARCHITECT:

LanDesign, LLC
(name)

N.A. P.P.C. 
(signature)

CITY ENGINEER:

JODY KLISKA
(name)


(signature)

July 19, 1996