

GLN99GL1

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENTS AGREEMENT

NAME OF AGENCY OR CONTRACTOR: THE GLEN AT HORIZON DRIVE, II, LLC

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: THE GLEN AT HORIZON
DRIVE, FILING 1, DATED AUGUST 8, 1999

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1999

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

1924901 10/22/99 0943AM
MONIKA TODD CLK® MESA COUNTY CO
REC FEE \$50.00

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement" or "Agreement") are THE GLEN @ Horizon Dr. II LLC ("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 {9 / 8 / 99 (mm/dd/yy)}.

RECITALS

The Developer seeks permission to develop property within the City to be known as THE GLEN @ HORIZON DRIVE - FILING 1, 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:

- (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 30 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 4 month from the Effective Date of this Agreement { 1 / 8 / 00 (mm/dd/yy) } (the "Completion Period"). The Developer shall not cease construction activities for any period of more than 60 consecutive days ("the Abandonment Period").

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

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

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

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

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

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

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

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

Unless specifically provided herein the City may not declare a default until written notice has been sent to the Developer at the address on file with the development application. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

14. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. Administrative expenses may include but are not limited to contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to the collection/completion of the Improvements. For improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit B will be prima facie evidence of the minimum cost of completion, however, neither that amount or the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow establish the maximum amount of the Developer's liability.

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

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

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

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

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

19. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If relief is awarded to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.

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

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

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

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

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

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

There is no prohibition on the right of the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City will constitute a release of the original Developer from his liability under this Agreement. When the Improvements are completed and approved by the City, the City agrees to state same in writing, with appropriate acknowledgments. The City will sign a release only after all warranty periods, as extended by litigation, repair or alteration work, have expired.

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

If to Developer: The Glen @ Horizon Dr.
% Rocky Mtn. Const.
418 E. Cooper #204
Aspen, Colorado 81611

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

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

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

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

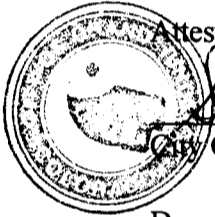
- 30. a. **Conditions of Acceptance:** The City shall have no responsibility or liability with respect to any street, or other improvement(s), notwithstanding the use of the same by the public, unless the street or other improvements shall have been finally accepted by the City.
- b. **Phased Development:** If the City allows a street to be constructed in stages, the Developer of the first one-half street opened for traffic shall construct the adjacent

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

- c. Prior to requesting final acceptance of any street, storm drainage facility, or other required improvement(s), the Developer shall: (i) furnish to the City engineer as-built drawings in reproducible form, blueline stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests required by City specification; (ii) provide written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon, in and under which the improvements have been constructed, or which are necessary for the improvements, are free from toxic, hazardous or other regulated substances or materials; (iii) provide written evidence to the City Attorney that the title to lands underlying the improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney.

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

Katherine M. Pardon 9-9-99
Community Development date



Attest:
Stephanie Kay 9-9-99
City Clerk date

Developer:

By: William Engelman 9-8-99
date

Print name: WILLIAM ENGELMAN

Attest: _____
Secretary date

EXHIBIT "B"
 THE GLEN AT HORIZON
 Filing I
 ENGINEERS OPINION OF COST

DATE: 9/8/99
 NAME OF DEVELOPMENT: THE GLEN, FILING I
 LOCATION: SE/4 SEC.02, T 1 S., R 1 W., UTE PM
 PRINTED NAME OF PERSON PREPARING: JAMES E. LANGFORD

CONSTRUCTION COST ESTIMATE:

Remedial Maintenance:	UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
1 Removal and Replacement of broken sidewalk and curb and gutter	LS	1	\$3,500.00	\$3,500.00
2 Berm maintenance	LS	1	\$2,500.00	\$2,500.00
Sub-Total Remedial Maintenance:				\$6,000.00

William Engelman
 SIGNATURE OF DEVELOPER

9-8-99
 DATE

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 TAKE NO EXCEPTION TO THE ABOVE.

W. J. ...
 CITY ENGINEER

9/10/99
 DATE

Kathleen M. ...
 COMMUNITY DEVELOPMENT

9-9-99
 DATE

- 12. General Construction Supervision _____
- 13. Other _____
- 14. Other _____

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ SEE Exhibit A

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

William Engelman 9-8-99
 SIGNATURE OF DEVELOPER date
 (If corporation, to be signed by president and attested to by secretary together with the corporate seals.)

Reviewed and approved.

[Signature] 9/10/99
 CITY ENGINEER date

[Signature] 9-9-99
 COMMUNITY DEVELOPMENT date

EXHIBIT A

Being that part of the N1/2 SW1/4 SE1/4, and that part of the S1/2 NW1/4 SE1/4, Section 2, Township 1 South, Range 1 West, of the Ute Meridian, lying South and West of the main line of the Grand Valley Irrigation Company Mainline Canal, and Parcel 2 as described in original warranty deed as recorded in book 1033 at page 246 of the Mesa County Records, said tract being more particularly described as follows;

BOOK 2329 PAGE 13

Commencing at the Southwest corner of the SW1/4 SE1/4 of Section 2, whence the Northwest corner of the SW1/4 SE1/4 of Section 2 bears North 00 degrees 00 minutes 00 seconds East, a distance of 1314.68 feet for a basis of bearings, with all bearings contained herein relative thereto; thence North 00 degrees 00 minutes 00 seconds East, a distance of 657.34, feet along the West line of the SW1/4 SE1/4 to the South line of the N1/2 SW1/4 SE1/4; thence along said line South 89 degrees 54 minutes 45 seconds 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; thence North 00 degrees 00 minutes 00 seconds East, a distance of 100.13 feet along the said right-of-way to the POINT OF BEGINNING; thence, continuing along said right-of-way, North 00 degrees 00 minutes 00 seconds East, a distance of 197.66 feet, to a point on the Easterly right-of-way line of North 7th Street, as described in Book 1489, Page 548; thence North 11 degrees 28 minutes 10 seconds East, a distance of 70.37 feet; thence North 45 degrees 28 minutes 10 seconds East, a distance of 70.00 feet; thence North 38 degrees 30 minutes 00 seconds West, a distance of 71.32 feet; thence North 00 degrees 00 minutes 00 seconds East, a distance of 73.35 feet; thence along a curve to the right, having a delta angle of 08 degrees 06 minutes 33 seconds, with a radius of 185.50 feet, an arc length of 26.25 feet, a chord bearing of North 04 degrees 03 minutes 16 seconds East, and a chord distance of 26.23 feet; thence, leaving said right-of-way, North 90 degrees 00 minutes 00 seconds East, a distance of 85.41 feet; thence South 59 degrees 50 minutes 03 seconds East, a distance of 172.13 feet; thence North 32 degrees 34 minutes 48 seconds East, a distance of 62.92 feet; thence along a curve to the right, having a delta angle of 41 degrees 44 minutes 15 seconds, with a radius of 121.00 feet, an arc length of 88.14 feet, a chord bearing of North 53 degrees 26 minutes 56 seconds East, and a chord distance of 86.21 feet; thence North 74 degrees 19 minutes 03 seconds East, a distance of 86.65 feet; thence along a curve to the right, having a delta angle of 259 degrees 08 minutes 23 seconds, with a radius of 69.00 feet, an arc length of 312.08 feet, a chord bearing of South 23 degrees 53 minutes 16 seconds West, and a chord distance of 106.38 feet; thence South 74 degrees 19 minutes 03 seconds West, a distance of 18.89 feet; thence along a curve to the left, having a delta angle of 41 degrees 44 minutes 15 seconds, with a radius of 39.00 feet, an arc length of 28.41 feet, a chord bearing of South 53 degrees 26 minutes 56 seconds West, and a chord distance of 27.79 feet; thence South 32 degrees 34 minutes 48 seconds West, a distance of 146.81 feet; thence South 64 degrees 09 minutes 08 seconds East, a distance of 123.25 feet; thence South 39 degrees 54 minutes 53 seconds East, a distance of 91.73 feet; thence South 61 degrees 33 minutes 06 seconds East, a distance of 160.74 feet; thence South 16 degrees 22 minutes 59 seconds West, a distance of 4.84 feet; thence North 81 degrees 53 minutes 58 seconds West, a distance of 111.82 feet; thence South 75 degrees 37 minutes 02 seconds West, a distance of 79.19 feet; thence South 43 degrees 29 minutes 56 seconds West, a distance of 49.75 feet; thence South 80 degrees 08 minutes 30 seconds West, a distance of 49.10 feet; thence South 83 degrees 31 minutes 53 seconds West, a distance of 86.77 feet; thence South 89 degrees 22 minutes 31 seconds West, a distance of 83.88 feet; thence South 87 degrees 58 minutes 50 seconds West, a distance of 149.43 feet to the POINT OF BEGINNING.

Said parcel containing 4.154 acres, as described.

96045-23.doc/rsk
04/01/97

Prepared by:
Dennis W. Johnson, PLS 16835
LANDesign, L.L.C.
259 Grand Avenue
Grand Junction, Colorado 81501

RELEASE OF IMPROVEMENTS AGREEMENT & GUARANTEE
Grand Junction Community Development Department
FILE #FPP-96-240

This memorandum relates to a certain recorded Improvements Agreement and Guarantee dated September 8, 1999 and recorded at Book 2644, Page 497-506 of the land records of Mesa County, Colorado, by and between The Glen @ Horizon Dr. II. LLC (Developer) and the City of Grand Junction (City) pertaining to The Glen @ Horizon Drive, Filing 1 (Project).

Legal Description:

The Glen at Horizon Drive, recorded in Plat Book no. 16, Pages 157-158, Mesa County Clerk and Recorder

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 6/8/00
City Utilities Manager NA Date _____
Fire Marshall NA Date _____

UTE WATER:

By: NA Date _____

GRAND JUNCTION DRAINAGE:

By: NA Date _____

OTHER:

By: Katherine M. Portner Date 6/8/00
Community Development

In accordance with the above signatures, I hereby certify that the Improvements Agreement & Guarantee and the recording evidencing the agreement and guarantee, at Book 2644, Page 497-506 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.

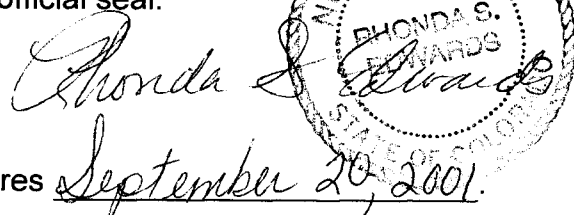
Planning Manager
Director of Community Development Katherine M. Portner Date 6-8-00

The foregoing instrument was executed before me this 8th day of June, 2000

by Katherine M. Portner, Director of Community Development for
the City of Grand Junction, Colorado. *Planning Manager*

Witness my hand & official seal.

Notary Public



My commission expires September 20, 2001.