

GWH95VMS

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENTS AGREEMENT

NAME OF AGENCY OR CONTRACTOR: GWHC, INCORPORATED by L.O. GRIFFITH, DONALD G. HAASE, RICHARD C. WATSON AND DAVID V. CHRISTENSEN

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: VALLEY MEADOWS
SUBDIVISION, FILING NO. 2, FILE NO. FPR-95-81

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1995

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

1733295 0923AM 10/16/95
MONIKA TODD CLK&REC MESA COUNTY CO

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement") are GWHC, INC. ("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 FINAL PLAT FOR FILING No. TWO.

RECITALS

The Developer seeks permission to develop property within the City to be known as VALLEY MEADOWS SUBDIVISION, FILING No. TWO, 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 ONE YEAR 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. Developers 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 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.

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 by any person or entity

in connection with, or on account of 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 as a defendant in an action concerning the 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.

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 may 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. If the court awards relief to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.

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:** 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 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: GWHC, INC.
2467 COMMERCE BLVD.
GRAND JUNCTION, CO 81505

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

25. **Recordation:** Developer will 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 sovereign 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. The **improvements guarantee** required by the City Code to ensure that the improvements described in the improvements agreement are constructed to City standards may be in one of the following forms:

- (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.
- (IV) other; see attached.

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.

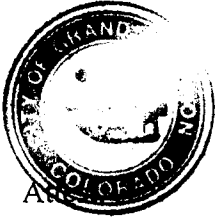
The Finance Department of the City will disburse any deposit or any portion thereof, with no more than three checks, at no charge. If disbursements are made in excess of three checks, the developer will be charged \$100 per transaction for every transaction in excess of three.

Exhibit C, attached hereto and incorporated herein by this reference as if fully set forth, is the City approved and accepted guarantee for this project.

- 29. 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 accepted by the City.

Prior to requesting final acceptance of streets, storm drainage facilities, or other required improvements, the Developer shall 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.

- 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.



Stephanie Nye 10/12/95
Stephanie Nye Date
City Clerk

XL Jammy Tenn 9/25/95
Director of Community Development Date

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

[Handwritten Signature] 9/25/95
Developer Date

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

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

EXHIBIT A

Valley Meadows Subdivision, Filing No. 2
LEGAL DESCRIPTION

Beginning at the Northeast corner of the SE1/4 NW1/4 of Section 3, Township 1 South, Range 1 West of the Ute Meridian; thence South along the East line of the NW1/4 of said Section 3, 650.65 feet; thence N77°38'37"W 833.25 feet; thence N69°02'21"W 97.49 feet; thence North 483 feet; thence N89°29'30"E 904.96 feet to the beginning, EXCEPT Valley Meadows Subdivision, Filing No. 1, and EXCEPT a tract or parcel of land situated in the SE1/4 NW1/4 of said Section 3 being more particularly described as follows:

Beginning at the Northeast corner of said SE1/4 NW1/4, whose East line is assumed to bear S00°00'00"W and all bearings contained herein to be relative thereto; thence S89°29'30"W 25.00 feet to the true point of beginning; thence S00°00'00"W 416.00 feet; thence S89°29'30"W 227.00 feet; thence N00°00'00"E 84.29 feet; thence S89°29'30"W 18.48 feet; thence N00°00'00"E 206.71 feet; thence S89°29'30"W 101.52 feet; thence N00°00'00"E 125.00 feet more or less to the North boundary of the SE1/4 NW1/4 of said Section 3; thence N89°29'30"E 347.47 feet to the true point of beginning, said tract or parcel subject to an additional 8.00 foot right of way along the East side;

All in Mesa County, Colorado.

IMPROVEMENTS LIST/DETAIL

(Page 1 of 3)

DATE: 7-10-95
 NAME OF DEVELOPMENT: VALLEY MEADOWS SUBDIVISION - FILING NO. 2
 LOCATION: 25 1/2 ROAD & WESTWOOD DRIVE
 PRINTED NAME OF PERSON PREPARING: MARK YOUNG (ROLLAND ENGINEERING)

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
I. SANITARY SEWER				
1. Clearing and grubbing	<u>INCLUDED IN STREETS</u>			
2. Cut and remove asphalt	N/A			
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	LF	1090	12.00	13,080.00
4. Sewer Services (incl. trenching, bedding, & backfill)	LF	810	10.00	8,100.00
5. Sanitary sewer manhole(s)	EA	4	1100.00	4,400.00
6. Connection to existing manhole(s)	EA	1	500.00	500.00
7. Aggregate Base Course	N/A			
8. Pavement replacement	N/A			
9. Driveway restoration	N/A			
10. Utility adjustments	N/A			
II. DOMESTIC WATER				
1. Clearing and grubbing	<u>INCLUDED IN STREETS</u>			
2. Cut and remove asphalt	N/A			
3. Water Main (incl. excavation, bedding, backfill, valves and appurtenances)	LF	1185	14.00	16,590.00
4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances)	EA	21	350.00	7,350.00
5. Connect to existing water line	EA	1	500.00	500.00
6. Aggregate Base Course	N/A			
7. Pavement Replacement	N/A			
8. Utility adjustments	N/A			
III. STREETS				
1. Clearing and grubbing	LS	1	1500.00	1,500.00
2. Earthwork, including excavation and embankment construction	CY	2980	1.50	4,470.00
3. Utility relocations	N/A			
4. Aggregate sub-base course (square yard)	N/A			

5. Aggregate base course (6" THICK) (square yard)	SY	5950	2.60	15,470.00
6. Sub-grade stabilization PREP.	SY	4845	0.80	3,876.00
7. Asphalt or concrete pavement (3" HBP) (square yard)	SY	3960	4.20	16,632.00
8. Curb, gutter & sidewalk (6.5' WIDE) (linear feet)	LF	2340	14.60	34,164.00
9. Driveway sections (square yard)	N/A			
10. Crosspans & fillets	SF	1270	3.15	4,000.00
11. Retaining walls/structures	N/A			
12. Storm drainage system	LS	1	5,000.00	5,000.00
13. Signs and other traffic control devices	LS	1	1,500.00	1,500.00
14. Construction staking	LS	1	2,000.00	2,000.00
15. Dust control	INCLUDED IN OTHER ITEMS			
16. Street lights (each)	EA	2	250.00	500.00
IV. LANDSCAPING				
1. Design/Architecture	N/A			
2. Earthwork (includes top soil, fine grading, & berming)	INCLUDED IN STREETS			
3. Hardscape features (includes walls, fencing, and paving)	N/A			
4. Plant material and planting	N/A			
5. Irrigation system	N/A			
6. Other features (incl. statues, water displays, park equipment, and outdoor furniture)	N/A			
7. Curbing	N/A			
8. Retaining walls and structures	N/A			
9. One year maintenance agreement	N/A			
V. MISCELLANEOUS				
1. Design/Engineering	N/A			
2. Surveying	LS	1	1,000.00	1,000.00
3. Developer's inspection costs	LS	1	2,000.00	2,000.00
4. Quality control testing	INCLUDED IN OTHER ITEMS			
5. Construction traffic control	N/A			
6. Rights-of-way/Easements	N/A			
7. City inspection fees	LS	1	1,000.00	1,000.00
8. Permit fees				
9. Recording costs				
10. Bonds				

11. Newsletters	N/A			
12. General Construction Supervision	LS	1	4,000.00	4,000.00
13. Other FIRE HYDRANTS	EA	3	1,000.00	3,000.00
14. Other 4" THICK CONCRETE HANDICAP RAMPS	EA	4	400.00	1,600.00

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 152,232.00

X [Signature]
 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.

[Signature] 9-19-95
 CITY ENGINEER DATE

[Signature] 9/25/95
 COMMUNITY DEVELOPMENT DATE

RECORDER NOTE: POOR QUALITY DOCUMENT PROVIDED FOR REPRODUCTION

**DISBURSEMENT AGREEMENT
(Improvements Guarantee)**

DEVELOPER: GWHC, INC.
2467 Commerce Blvd.
Grand Junction, CO 81505

BANK: Colorado National Bank - Grand Junction
422 White Avenue
Grand Jct., CO 81501

PROPERTY: Valley Meadows Subdivision
Mesa County, Colorado

DISBURSEMENT AMOUNT: For the construction of improvements to the Property in an amount not to exceed \$152,232.00.

This Agreement is entered into by and between GWHC, INC.
("Developer"), Colorado National 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 Valley Meadows Subdivision ("Improvements") in accordance with the Zoning and Development Code, Improvements Agreement and subdivision approval.

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

The City Engineer has approved an estimate of the costs of the Improvements and that amount or an amount not to exceed \$152,232.00, whichever is greater, shall be referred to as the "Funds."

The parties desire to secure the full and complete performance of the Developer's obligations and to secure that the Funds are disbursed only to pay for the Improvements.

NOW, THEREFORE, THE PARTIES AGREE:

1. **BANK PROMISES.** Bank shall dedicate or set aside the Funds on behalf of Developer and for the City's benefit within twenty-four hours of execution of this Disbursement Agreement.

Bank warrants: that the Funds are to be held in trust solely to secure Developer's obligations under the Improvements Agreement; that the Bank shall act as agent of the City in holding the Funds; that the Funds will not be paid out or disbursed to, or on behalf of, the Developer except as set forth in this document and/or as set forth in the Improvements Agreement; and that the Bank may not modify or revoke its obligation to disburse funds to or on behalf of the Developer or the City. The Bank warrants that the Funds are and will be available exclusively for payment of the costs of satisfactory completion of the Improvements.

2. **DISBURSEMENT PROCEDURES.** The Funds shall be advanced for payment of costs incurred for the construction of Improvements on the Property in accordance with the Improvements List/Detail attached to the Improvements Agreement, the terms of which are incorporated by this reference. All disbursements must comply with the following procedures:

(a) **Request for Advance.** Developer shall deliver to the Bank a written request for the disbursement of funds on forms acceptable to the Bank. Such requests shall be signed by Developer, Developer's General Contractor, Project Engineer and Architect, if applicable, and the City Engineer. By signing the request for disbursement the Developer is certifying: that all costs for which the advance is being requested have been incurred in connection with the construction of the Improvements on the Property; that all work performed and materials supplied are in accordance with the plans and specifications submitted to and approved by the City; that the work has been performed in a workmanlike manner; that no funds are being requested for work not completed, nor for material not installed; the Project Engineer has inspected the Improvements for which payment is requested; and that such improvements have been completed in accordance with all terms, specifications and conditions of the approved plans. Attached hereto is the list of those individuals, and their respective signatures, required to sign the above described request(s) for disbursement of funds.

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

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

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

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

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

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

3. **DEVELOPER CONSENT:** The Developer, by the signature of Richard L. Watson, Sec. (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.

Dated this 17 day of July, 1995.

(BANK) Colorado National Bank

By: Darlyn Uden

Title

422 White Ave.
Address

(DEVELOPER)

By: Richard L. Watson

Title Richard L. Watson, Sec.

2467 Commerce Blvd., Grand Jct., CO 81505
Address

CITY OF GRAND JUNCTION

By: Larry Timm 10/12/95
Larry Timm, Director of Community Development

Disbursement Agreement
page 5 of 5

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between GWHC, INC. Developer, Colo Nat'l Bank- G J 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) Richard L. Watson

(name) _____
(signature) Donald G. Haase

(name) _____
(signature) _____

* DEVELOPER'S GENERAL CONTRACTOR:

(name) _____

(signature) RICHARD WATSON

** DEVELOPER'S PROJECT ENGINEER:

(name) THOMAS D. ROCCANTO

(signature) _____

DEVELOPER'S ARCHITECT:

(name) _____

(signature) _____

CITY ENGINEER:

(name) Jody Kluski

(signature) JODY KLUSKI

17P-95-81

2431002 PLEASE FAX TO DICK WATSON

INDEMNIFICATION AGREEMENT

THIS AGREEMENT is made and entered into this 5th day of October, 1995, by and between GWHC, INC. Development Corporation, a Colorado corporation ("Developer"), Valley Meadows Homeowners a Colorado not-for profit property owners corporation ("Association"), A. O. Griffin, Arnold Chase, Richard C. Wilson and David V. Christensen ("Individuals") collectively hereinafter referred to as the "Indemnitors" and the City of Grand Junction Colorado, hereinafter referred to as the "City".

Book 2179 Page 635

This agreement specifies terms, conditions, responsibilities and duties of the Indemnitors to and in their indemnifying and holding harmless of the City, pertaining to the development, use and placement of drainage in and pertaining to the Valley Meadows subdivision.

RECITALS

1733297 0923AM 10/16/95
MONIKA TODD CLK&REC MESA COUNTY CO

WHEREAS, the Indemnitors have designed and developed or are residents of Valley Meadows subdivision which subdivision was designed and developed such that surface water from the subdivision is discharged into the Grand Valley Irrigation Canal, (GVIC) and

WHEREAS, the GVIC has agreed to accept the surface water from the Property in to its canal and irrigation system from the point of discharge on the subdivision, and

WHEREAS, the subdivision does not have surface and storm water detention or retention drainage facilities constructed to City standards, and

WHEREAS, as a condition of approval of the subdivision indemnification of the City was to be provided and the Indemnitors by and through this agreement have provided appropriate indemnification,

NOW, THEREFORE, in consideration of the recitals the obligations, benefits, duties and promises, the Indemnitors agree as follows:

- 1. In 1995 Valley Meadows subdivision filing 2 was designed, approved and developed. As a condition of the approval of the development the City of Grand Junction required that surface and storm water drainage be provided. Rather than constructing surface and storm water detention or retention facilities the drainage was piped to the Grand Valley Irrigation Canal (GVIC).
- 2. The proposed storm and surface water drainage design and construction was not and is not in compliance with the design and engineering standards adopted and in effect in the City of Grand Junction at the time of development of the subdivision.
- 3. Due to the historic drainage of the property prior to development to the GVIC and the proximity of the GVIC to the subdivision, at the request of the Developer the subdivision was approved by the City without the construction of detention or retention facilities.

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4. By virtue of the deviation from established standards, the Indemnitors hereby agree to indemnify and hold harmless the City of Grand Junction and its officers, agents and employees from and against any and all claims, suits, damages, costs, expenses, liabilities, actions or proceedings arising from bodily injury, loss, or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the design, construction, use, or failure of the drainage system and/or drainage conveyance described herein.

5. The Indemnitors agree to indemnify, defend and hold the City of Grand Junction, its officers and employees, harmless from any and all loss, liability, claims or damages arising from or in any way related to the approval of the subdivision and/or development plan(s) of and for the Valley Meadows subdivision. Such indemnity shall specifically include but not necessarily be limited to all of the City's losses, damages, costs, expenses, expert witness fees and attorney fees paid, incurred or resulting from or arising out of claims or demands made as a result of drainage related damage, including but not limited to flooding and any and all other drainage and surface water discharge problems, to homes, structures or improvements or the value thereof. The Indemnitors shall indemnify and hold harmless the City of Grand Junction, its officers and employees, from any and all loss, liability, claims, damages, fines, or penalties asserted, assessed or imposed by any Federal, State or local agency concerning a discharge or approval of the subdivision and/or development of the Property with the drainage and discharge of surface water proposed, contemplated or performed by the Indemnitors. The indemnities provided for in this paragraph shall be joint and several among and between the Developer, the Individuals and the Association.

6. The indemnification provided for herein shall include but not necessarily be limited to, property damage and/or personal injury occasioned by floods, backups, soil subsidence, collapse, or any and all other failure of the drainage, drainage system, conveyance, structures and all appurtenances.

7. The Indemnitors shall bear all costs and expenses of the indemnification provided for herein including but not necessarily limited to, court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false or fraudulent. The Indemnitors may retain legal counsel of their choosing so long as any such counsel retained to defend the Indemnitors and/or the City is licensed by and in good standing with the Colorado Supreme Court and is competent and experienced in defending claims, suits, actions or proceedings arising from bodily injury, loss, or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the design, construction, use, or failure of the drainage system and/or drainage conveyance referred to herein.

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8. This agreement shall be recorded with the Clerk and Recorder in Mesa County, Colorado, shall run with the land, and shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto. The persons signing this Agreement, whether as individuals or in a representative capacity, represent and otherwise shall have authority and be authorized to sign the agreement and bind themselves or the entity on whose behalf they sign. This Agreement shall be perpetual and shall not be terminated.

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

Attest:

GWHC, INC
Developer
2467 Commerce Blvd
Grand Junction CO 81505

Frances Latchaw

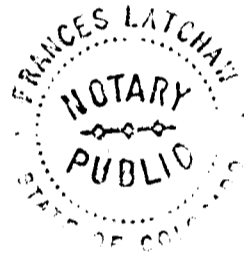
By: Phil A. Wot

Attest:

Valley Meadows
Homeowners Assoc
Association
2467 Commerce Blvd
GRAND JCT, CO 81505

Frances Latchaw

By: Phil A. Wot



Individuals

[Signature]
[Signature]
[Signature]
[Signature]

State of Colorado
Mesa County

The above named individuals appeared before me this ___ day of October 1995 and acknowledged before me the foregoing Indemnification Agreement.

Witness my hand and official seal this 12th day of October 1995.

Frances Latchaw
Notary Public 2467 Commerce Blvd
Grand Jct., Co 81505

My commission expires May 2, 1999