

JBO96GCS

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENTS AGREEMENT

NAME OF AGENCY OR CONTRACTOR: JACK L BOGART

STREET ADDRESS/PARCEL NAME/SUBDIVISION: GRACE COMMERCIAL  
SUBDIVISION

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1996

EXPIRATION DATE: PERMANENT

DESTRUCTION DATE: PERMANENT

MEMORANDUM OF IMPROVEMENTS AGREEMENT & GUARANTEE  
Grand Junction Community Development Department  
File # MS-96-21

This memorandum relates to an improvements agreement and guarantee dated July 26 1996,  
by and between Jack L. Bogart (Developer) and the City of Grand Junction  
(City) pertaining to Grace Commercial Subd. Replat (Project) in the City of Grand Junction..

Legal Description:

Grace Commercial Subdivision Replat as recorded in Book 15, Page 134  
Mesa County Clerk & Recorder

Whereas, Developer is required to install and construct certain public and private improvements as a  
condition of approval of the Project, which completion is guaranteed by an improvements agreement and  
guarantee in the sum of \$ 228,400, and

Whereas, the City of Grand Junction and other agencies possessing regulatory authority over the Project  
and/or the improvements to be constructed, must inspect the improvements and accept the same before the  
improvements agreement and guarantee are released or if not constructed the City may use the proceeds or  
collateral of the guarantee to install the improvements, and

Whereas, the existence of the improvements agreement and guarantee may affect certain rights,  
responsibilities and actions of the Developer, the City or any other person or entity,

NOW THEREFORE, this memorandum is recorded to be notice to the world of the existence of said  
improvements agreement and guarantee. This memorandum is not a complete summary of the improvements  
agreement and guarantee. Provisions of this memorandum shall not be used to interpret the terms or  
provisions of the improvements agreement and/or guarantee. In the event of conflict between this  
memorandum and the unrecorded improvements agreement and/or guarantee, the unrecorded improvements  
agreement and guarantee shall control. The improvements agreement and guarantee may be inspected at the  
City of Grand Junction Community Development Department, 250 N. 5th Street, Grand Junction, CO.

CITY OF GRAND JUNCTION:

[Signature] for Kathy Portner 7/26/96  
Acting Director of Community Development date

DEVELOPER:

[Signature] 7/26/96  
date

After recording mail to:

Nebeker  
c/o Community Development Department  
City of Grand Junction  
250 N. 5th Street  
Grand Junction, CO 81501

**AGREEMENT**

**Book 2256 PAGE 369**

This agreement is made this 26<sup>th</sup> day of July, 1996 between the City of Grand Junction ("City") and Jack K. Bogart, his heirs, successors and assigns, including those in contract with him ("Bogart") and concerns the proposed Grace Commercial subdivision.

Bogart has offered, and the City has accepted, the following terms:

1. Bogart shall deliver to the City an independent written estimate(s) of the costs associated with demolition of the building which houses Jerry's Outdoor Sports (address of 2524 Highway 6 & 50). The estimate(s) must include the costs to remove any asbestos or other regulated or hazardous substances in the building.
2. After the City has accepted such estimate(s), Bogart shall include the demolition work to the guarantee which he must make to the City before the subdivision plat will be recorded. Bogart agrees to complete the eviction, demolition and facilities construction by February 28, 1997.
3. Bogart agrees that any risks or injuries associated with this agreement and any activities or consequences which arise out of this agreement ("Agreement"), including injuries or claims relating to the failure of Bogart to complete detention or retention facilities prior to platting and construction of any improvements within the Grace Subdivision and injuries or claims relating to the eviction of tenants and demolition of structures, are borne by him. Whether any claim or injury is pursued by or through Bogart or any other person, Bogart agrees to hold harmless the City, and to indemnify the City, concerning this Agreement and as provided in the foregoing sentence.
4. If this Agreement and any other requirement of the City, including Development Improvement agreements, are inconsistent, ambiguous or contradictory, the construction or resolution which is more favorable to the City shall control.
5. Bogart shall pay to have this Agreement recorded as a part of the plat recording. This Agreement shall not be merged into any other transaction or documents but shall survive the recording of the plat and shall be binding on the successors, heirs and assigns of Bogart.
6. Bogart represents that he is the sole owner of the property proposed to be subdivided and that no other person or entity has any interest in the affected lands.
7. The terms herein are supplemental to other City requirements, documents and rules.
8. If the City uses its City attorney or another attorney to enforce the terms of this Agreement or if the City litigates concerning this Agreement or relating to any injuries or damages which are associated with the eviction, the storm drainage facilities or the lack of either, Bogart agrees to pay reasonable attorney's fees to the City.

*Jack K. Bogart*  
Jack K. Bogart

530. 25 Rd.  
(Address)

Grand Junction, Colo. 81505

CITY OF GRAND JUNCTION

*Mark K. Achen*

Mark K. Achen, City Manager  
250 North Fifth Street  
Grand Junction, CO 81501

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement") are JACK BOGART ("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 REPLAT

RECITALS

The Developer seeks permission to develop property within the City to be known as GRACE COMMERCIAL SUBDIVISION REPLAT 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 12 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:

JACK BOGART  
530 25 Rd.  
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 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.

Acting  for Kathy Purtner 7/26/96  
Director of Community Development Date

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

 7-26-96  
Developer Date

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



EXHIBIT A

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

\*\*\*\*\*

Grace Commercial Subdivision Replat as recorded in Book 15  
Page 134 Mesa County Clerk & Recorder.

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL

(Page 1 of 3)

DATE: 7/11/96  
 NAME OF DEVELOPMENT: Grace Commercial Park  
 LOCATION: Faith Street  
 PRINTED NAME OF PERSON PREPARING: TED MUNKRES

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
<b>I. SANITARY SEWER</b>				
1. Clearing and grubbing				
2. Cut and remove asphalt				
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	LF	1260	21.00	26,712.00
4. Sewer Services (incl. trenching, bedding, & backfill)	EA	6	90.00	540.00
5. Sanitary sewer manhole(s)	EA	5	1,190.00	5,950.00
6. Connection to existing manhole(s)		1	1,140.00	1,140.00
7. Aggregate Base Course				
8. Pavement replacement				
9. Driveway restoration				
10. Utility adjustments				
				Subtotal 34,342.00
<b>II. DOMESTIC WATER</b>				
1. Clearing and grubbing				
2. Cut and remove asphalt				
3. Water Main (incl. excavation, bedding, backfill, valves and appurtenances)	LF	1420	29.48	41,860.00
4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances)	EA	6	835.00	5,010.00
5. Connect to existing water line	EA	2	490.00	980.00
6. Aggregate Base Course				
7. Pavement Replacement				
8. Utility adjustments				
				Subtotal 47,850.00
<b>III. STREETS (Lump Sum Contract w/ELAM)</b>				
1. Clearing and grubbing				
2. Earthwork, including excavation and embankment construction	CY	3600		
3. Utility relocations				

Total this Page 82,192-

4. Aggregate sub-base course (square yard)				
5. Aggregate base course (square yard)	TN	1265		
6. Sub-grade stabilization	SY	4000		
7. Asphalt or concrete pavement (square yard)	TN	620		
(Curb & Gutter)	LF	848		
8. Curb, gutter & sidewalk (linear feet)	LF	768		
9. Driveway sections (square yard)	SF	2016		
10. Crosspans & fillets				
11. Retaining walls/structures				
12. Storm drainage system <i>Separate Contract</i>	LF	310	40.39	12,521.-
13. Signs and other traffic control devices	N/A			
14. Construction staking * <i>By ERM</i>	*			
15. Dust control	*			
16. Street lights (each)	N/A			
IV. LANDSCAPING				
1. Design/Architecture	N/A			
2. Earthwork (includes top soil, fine grading, & berming)	N/A			
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)				
7. Curbing				
8. Retaining walls and structures				
9. One year maintenance agreement				
V. MISCELLANEOUS				
1. Design/Engineering	LS	1	3,305	3,305.-
2. Surveying	LS	1	3,855	3,855.-
3. Developer's inspection costs	LS	1	2,753	2,753.-
4. Quality control testing				
5. Construction traffic control				
6. Rights-of-way/Easements				


Subtotal Streets 98,000.-  
Subtotal Drainage 12,522.-

Subtotal 9,913.00

Total this Page 120,435.00

7. City inspection fees	LS	1	1,101	1,101
8. Permit fees				
9. Recording costs	LS	1	100	100
10. Bonds				
11. Newsletters				
12. General Construction Supervision	LS		20,262	20,262
13. Other				
14. Other	BUILDING DEMOLITION	1		4,400
			Subtotal	21,463
				25,863
				1 WITH
				7-25-96

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ ~~224,090~~ 228,490

  
SIGNATURE OF DEVELOPER

7/11/96  
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

7-17-96  
DATE

  
Acting COMMUNITY DEVELOPMENT

for Kathy Portner  
Director

7/20/96  
DATE

EXHIBIT B2

Jack Bogart  
The Art Depot  
530 25 Road  
Grand Junction, CO 81505

July 24, 1996

Dear Jack,

This is a proposal for the demolition of the structure known as Jerry's Outdoor Sports located at 2524 Hwy. 6 & 50, Grand Junction, CO. All organic material will be removed from the premises and all hard material will be used for fill. This estimate includes the removal and proper disposition of all asbestos, hazardous and regulated materials. This service is expected to be performed February 15th, 1997 and completed no later than February 28th, 1997

This service will be performed for \$4,400. Payment is due upon completion.

If this proposal is agreeable, please so indicate with your signature.

Respectfully Submitted,

FreeStyle, Inc.

by:

Ted Munkres, President

Accepted this 26<sup>th</sup> day of July, 1996

Owner:

by

Jack Bogart

*Free style*  
DESIGN & BUILDING

121 Chipeta Avenue  
Grand Junction CO 81501  
303 / 243-0929  
FAX 243-9940  
Effective April '95 - Area Code 970

DISBURSEMENT AGREEMENT  
(Improvements Guarantee)

DEVELOPER: Jack L. Bogart  
530 25 Road  
Grand Junction, CO 81501

BANK: Grand Valley National Bank  
925 N. 7th Street  
Grand Junction, CO 81501

PROPERTY: See attached Exhibit "A"

DISBURSEMENT AMOUNT: For the construction of improvements to the Property in an amount not to exceed \$ ~~224,090.00~~  
228,400

This Agreement is entered into by and between Jack L. Bogart  
("Developer"), Grand Valley National  
Bank ("Bank") and the City of Grand Junction,  
Colorado ("City").

RECITALS

Developer has been required by the City to construct certain improvements to GRACE COMMERCIAL SUBD. REPT ("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 \$ ~~224,090.00~~ /, whichever is greater, shall be referred to as the "Funds." 228,400

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 JACK L. BOGART (name & title), consents to disbursements and other actions authorized and provided for by the terms of this Agreement and/or the Improvements Agreement.

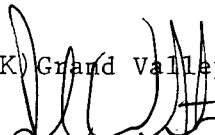


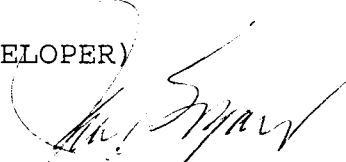
4. **LIABILITY FOR LOSS:** If the Bank fails to disburse funds in accordance with the procedures set forth, and the City suffers loss or damage, the Bank shall be liable to the City for the City's direct and consequential damages and all fees, costs and expenses, including attorneys fees.

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.

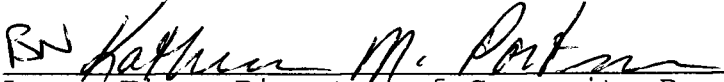
6. **IMMUNITY:** Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under applicable state law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

(BANK) Grand Valley National Bank <sup>7-12-96</sup>  
By:  SAUP  
Title John W. Stevenson-Sr. Vice President  
925 N. 7th Street, Grand Junction, CO 81501  
Address

(DEVELOPER)  
By:   
Title Jack Bogart  
530 25 Road, Grand Junction, CO 81501  
Address

CITY OF GRAND JUNCTION

By:   
~~Larry Timm~~, Director of Community Development

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between Jack L. Bogart Developer, Grand Valley National 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)

(name)


\_\_\_\_\_  
(signature)

(name)

\_\_\_\_\_  
(signature)

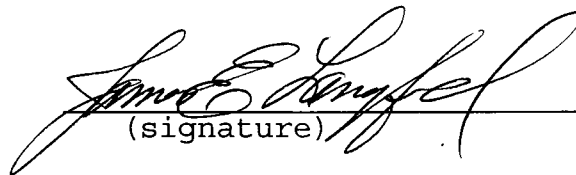
**DEVELOPER'S GENERAL CONTRACTOR:**

Freestyle Inc. Ted Munkers Pres.  
(name)

  
(signature)

**DEVELOPER'S PROJECT ENGINEER:**

Thompson-Langford Corporation  
(name) Jim Langford, S.C.E.

  
(signature)

**DEVELOPER'S ARCHITECT:**

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(signature)

**CITY ENGINEER:**

JODY KLISKA  
(name)

  
(signature)

EXHIBIT "A"

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

\*\*\*\*\*

Grace Commercial Subdivision Replat as recorded in Book 15  
Page 134 Mesa County Clerk & Recorder.

RELEASE OF IMPROVEMENTS AGREEMENT & GUARANTEE  
Grand Junction Community Development Department  
FILE # MS-96-21

This memorandum relates to a certain recorded Improvements Agreement and Guarantee dated JULY 26, 1996, ~~200~~ and recorded at Book 2252, Page 454 of the land records of Mesa County, Colorado, by and between JACK L. BOGART (Developer) and the City of Grand Junction (City) pertaining to GRACE COMMERCIAL SUB. (Project).

Legal Description: GRACE COMMERCIAL SUBDIVISION REPLAT AS RECORDED IN BOOK 15, PAGE 134 MESA CO. 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

BOOK 2739 PAGE 1

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.

1960885 08/11/00 1046AM  
MONIKA TODD CLK&REC MESA COUNTY CO  
REC FEE \$5.00

CITY OF GRAND JUNCTION:

By: City Engineer [Signature] Date 8-10-00  
City Utilities Manager [Signature] Date 8-10-00  
Fire Marshall N/A Date \_\_\_\_\_

UTE WATER:

By: N/A Date \_\_\_\_\_

GRAND JUNCTION DRAINAGE:

By: N/A Date \_\_\_\_\_

OTHER:

By: N/A Date \_\_\_\_\_

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

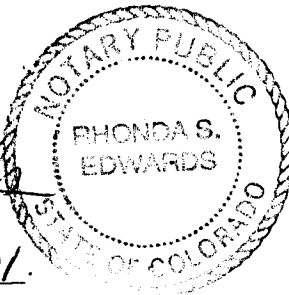
Director of Community Development BN David Varley Date AUG. 10, 2000

The foregoing instrument was executed before me this 10<sup>th</sup> day of August, 2000

by David Varley, Director of Community Development for the City of Grand Junction, Colorado.

Witness my hand & official seal.

Notary Public Rhonda S. Edwards



My commission expires September 20, 2001.