

JDA97JPK

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENTS AGREEMENT

NAME OF AGENCY OR CONTRACTOR: JOHN DAVIS

STREET ADDRESS/PARCEL NAME/SUBDIVISION: JAMES PARK FP-96-55
WITH DISBURSEMENT AGREEMENT

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1997

EXPIRATION DATE: PERMANENT

DESTRUCTION DATE: PERMANENT

JAMES PARK
17-96-55

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement") are John Davis ("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 this Agreement

RECITALS

The Developer seeks permission to develop property within the City to be known as 28 1/2 Rd. & Gunnison Ave. adjacent to Lot 2*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.

*Darwin Sub.

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.

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.

SR Katherine M. Porter 2-12-97
Director of Community Development Date

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

Alvin Adams 2-5-97
Developer Date
(If Corporation, to be signed by President and attested to by Secretary together with the Corporate seals)

EXHIBIT "A"

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

LOT 2, DARWIN SUBDIVISION

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL
(Page 1 of 3)

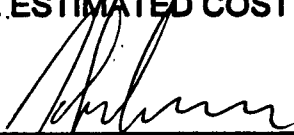
DATE: 1-23-97
 NAME OF DEVELOPMENT: JAMES' PARK
 LOCATION: 482 28th ROAD
 PRINTED NAME OF PERSON PREPARING: JOHN DAVIS'

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
I. SANITARY SEWER				
1. Clearing and grubbing	<u>Completed</u>			
2. Cut and remove asphalt				
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)				
4. Sewer Services (incl. trenching, bedding, & backfill)				
5. Sanitary sewer manhole(s)				
6. Connection to existing manhole(s)				
7. Aggregate Base Course				
8. Pavement replacement				
9. Driveway restoration				
10. Utility adjustments				
II. DOMESTIC WATER				
1. Clearing and grubbing	<u>Completed</u>			
2. Cut and remove asphalt				
3. Water Main (incl. excavation, bedding, backfill, valves and appurtenances)				
4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances)				
5. Connect to existing water line				
6. Aggregate Base Course				
7. Pavement Replacement				
8. Utility adjustments				
III. STREETS				
1. Clearing and grubbing	} <u>Completed</u>			
2. Earthwork, including excavation and embankment construction				
3. Utility relocations				

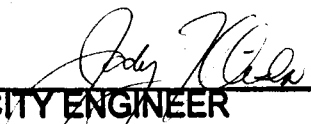
4. Aggregate sub-base course (square yard)	}	_____	_____	_____	_____
5. Aggregate base course (square yard)		Completed	_____	_____	_____
6. Sub-grade stabilization		_____	_____	_____	_____
7. Asphalt or concrete pavement (square yard)		3" MAT	2100 /sy	4.50 /sy	13,950-
8. Curb, gutter & sidewalk (linear feet)		Completed	_____	_____	_____
9. Driveway sections (square yard)		INSPECTED by CITY AT FINAL INSPECTION			
10. Crosspans & fillets	}	_____	_____	_____	_____
11. Retaining walls/structures		Completed	_____	_____	_____
12. Storm drainage system		_____	_____	_____	_____
13. Signs and other traffic control devices		2 STOP	6	80	480-
		4. NO PARKING	_____	_____	_____
14. Construction staking	}	_____	_____	_____	_____
15. Dust control		Completed	_____	_____	_____
16. Street lights (each)		_____	_____	_____	_____
IV. LANDSCAPING					
1. Design/Architecture		Completed	_____	_____	_____
2. Earthwork (includes top soil, fine grading, & berming)		Completed	_____	_____	_____
3. Hardscape features (includes walls, fencing, and paving)		See ATTACHED Item # 3	_____	_____	11,740-
4. Plant material and planting		See ATTACHED Item # 4	_____	_____	8,648-
5. Irrigation system		See ATTACHED	_____	_____	3,200-
6. Other features (incl. statues, water displays, park equipment, and outdoor furniture)		NONE	_____	_____	_____
7. Curbing		Completed	_____	_____	_____
8. Retaining walls and structures		See ATTACHED # 5	_____	_____	1,000-
9. One year maintenance agreement		N/A	_____	_____	_____
V. MISCELLANEOUS					
1. Design/Engineering	}	_____	_____	_____	_____
2. Surveying		_____	_____	_____	_____
3. Developer's inspection costs		_____	_____	_____	_____
4. Quality control testing		Completed	_____	_____	_____
5. Construction traffic control		_____	_____	_____	_____
6. Rights-of-way/Easements		_____	_____	_____	_____


7. City inspection fees				250-
8. Permit fees				
9. Recording costs				
10. Bonds				
11. Newsletters				
12. General Construction Supervision				
13. Other				
14. Other				

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 39,268⁰⁰

 2-5-97
SIGNATURE OF DEVELOPER DATE
(If corporation, to be signed by President and attested to by Secretary together with the corporate seals.)

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

 2-11-97
CITY ENGINEER DATE

 2-12-97
COMMUNITY DEVELOPMENT DATE

BRADSHAW-BISHARD ENTERPRISES, INC.

D.B.A.

SEEKAMP SEED CO. - WESTERN DIVISION

520 SOUTH 9TH STREET

GRAND JUNCTION, CO 81501

970-241-0979

This is not a bid for work.
These prices are based on last years
prices. This years may be a little higher
or lower. Surf Star Perennial Rye sells
for 1.20[#] or 60.00 per 50[#] bag.

Kathy Wear
2/6/97



BOOKCLIFF GARDENS, L.L.C.

6 February, 1997

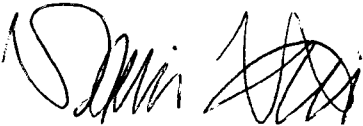
John Davis
James Park Mobile Home Park
Grand Jct., Co.

Quote to provide 110 6' to 8' Globe Willows:

Globe Willows 110 at \$45.00 ea = **\$4950.00**

Please call me if you have any questions.

Thanks for the opportunity to quote this to you,



Dennis Hill
Nursery Manager

Proposal

FROM R D Sprinklers

Proposal No. 20

Sheet No.

Date 1-22-77

Proposal Submitted To

Work To Be Performed At

Name John Davis
Street 1023 24 Rd
City G. J.
State CO
Telephone Number 250-0720

Street 482 28 1/4 Rd.
City Grand Junction State CO
Date of Plans
Architect

We hereby propose to furnish all the materials and perform all the labor necessary for the completion of
Sprinkler System Installation Complete, James park 3200.00
Includes Parts + Labor.

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of Dollars (\$3200.00).

with payments to be made as follows: (N 30)

Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance upon above work. Workmen's Compensation and Public Liability Insurance on above work to be taken out by _____

Respectfully submitted Ronald A Davis

Per _____

Note — This proposal may be withdrawn by us if not accepted within _____ days

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Accepted _____ Signature _____

Date _____ Signature _____





618 Dike Road, P.O. Box 3609
 Grand Junction, CO 81502
 (303) 243-4900
 FAX: (303) 243-5945

PROPOSAL SUBMITTED TO:	FAX# PHONE#	250-0720	DATE DATE	7/17/96
John Davis	Four Subdivisions			
1023 - 24 Road	JOB NAME			
Grand Junction, CO 81505	Various Locations			
CITY, STATE & ZIP CODE	ARCHITECT		DATE OF PLANS	

We propose to provide the following items in connection with the paving of your upcoming projects: (1) Palace Estates (2) Dawn Subdivision (3) Valley Meadows East (4) James Subdivision:

Place and Compact a 3" Mat of Hot Bituminous Pavement Over the Prepared Areas:

A. Palace Estates

(3" Mat) 6,066 S.Y. @ \$4.50/S.Y.	\$27,297.00
Mobilization (Lump Sum)	350.00
	<u>\$27,647.00</u>

B. Dawn Subdivision

(3" Mat) 6,330 S.Y. @ \$4.50/S.Y.	\$28,485.00
(5" Mat) 890 S.Y. @ \$8.35/S.Y.	7,431.50
Mobilization (Lump Sum)	350.00
	<u>\$36,266.50</u>

C. Valley Meadows East

(3" Mat) (Phase 1 & 2) 4,510 S.Y. @ \$4.50/S.Y.	\$20,295.00
(5" Mat) 510 S.Y. @ \$8.35/S.Y.	4,258.50
Mobilization (Lump Sum)	350.00
	<u>\$24,903.50</u>

D. James Subdivision

(3" Mat) 5,002 S.Y. @ \$4.50/S.Y.	\$22,509.00
(5" Mat) 1,575 S.Y. @ \$8.35/S.Y.	13,151.25
Mobilization (Lump Sum)	350.00
	<u>\$36,010.25</u>

subject, however, to the prior rights of the holder of any mortgage covering the Premises. No other assets of Landlord shall be subject to levy, execution or other judicial process for the satisfaction of Tenant's claim, and Landlord shall not be liable for any such default or breach except to the extent of Landlord's estate in the Premises.

Section 18.11. The submission of this Lease by Landlord to Tenant for examination shall not be deemed to constitute an offer by Landlord or a reservation to Tenant of an option to lease, and this Lease shall become effective as a binding instrument only upon the execution and delivery thereof by both Landlord and Tenant.

Section 18.12. The parties hereby waive trial by jury in any action, proceeding or counterclaim brought by either party against the other on any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant hereunder, and Tenant's use and occupancy of the Premises.

Section 18.13. Execution of this Lease by Guarantor below shall obligate and bind said Guarantor in the same manner as Tenant herein. Guarantor represents and warrants that Guarantor has read all of the provisions of the Lease and accepts the terms of the Lease and agrees to be bound thereby.

Section 18.14. Cahoots Crossin Bar and Lounge, located at the northwest corner of the Park, is a night club that plays loud music during evening and night hours. A sound barrier wall has been installed between the Park and Cahoots to reduce the noise level but residents may still experience unwanted noise. Cahoots was in business for many years prior to the construction of James Park. By signing this Lease you acknowledge the presence of the night club, the likelihood of noise.

THIS AGREEMENT is executed on the date first indicated above.

SUNDANCE PROPERTIES LEASING INC.

TENANT:

GYARANTOR:

TENANT:

February 5, 1997

Bill Nebeker:

Re: James Park-Development Improvements Agreement Revisions

Item # 1: Add 110 Globe Willow trees @ \$45/ tree = \$ 4950.00

2: Area to be grass seeded = 171,358 sq. ft.
50 lb bag of seed covers 5000 sq.ft
50 lb bag costs \$60/ bag
labor is \$10/bag = \$ 350.00
171,358 / 5000 = 34.3 bags @ \$60/bag = \$ 2058.00
Total = \$ 2408.00

#3: Irrigation is for park and right of way only = \$ 3200.00

#4: 370 sq yd for paved off street parking (cul-de-sacs)
@ \$4.50 / sq yd = \$ 1665.00

500 ft of fencing plus 50 ft for screening dumpsters @ \$13/ft = \$ 7150.00

Added 1 stop sign

5: The finished surface proposed for the wall is paint.
8400 sq ft /168 sq ft /gal = 50 gal paint @ \$10 /gal = \$500.00
labor is \$10/gal x 50 gal = \$500.00
Total = \$ 1000.00

#6: light s are already installed.

IV LANDSCAPING

item 3: paved off street parking (cul-de-sac) 20 spaces
9 x 18.5 x 20 = 3330 sq ft/9 = 370 sq yd @ \$4.50/yd =\$1665.00

fencing 500' plus 50' for screening dumpsters @ \$13/ft =\$7150.00
gravel in storage areas is completed
dumpster pads 200 sq ft @ \$100/yd =\$ 260.00
city's BERLIN WALL 8400 sq ft (see above) =\$1000.00
Total = \$ 11740.00

item 4: Grass area 171,358 sq ft (see above) = \$2408.00

Trees 33 cottonwood	\$2475.00	
110 Globe Willow	\$4950.00	
49 5 gal juniper	\$1223.00	
Total		= \$8648.00

MEMORANDUM OF IMPROVEMENTS AGREEMENT & GUARANTEE

Grand Junction Community Development Department

File # FP-96-55

BOOK 2301 PAGE 336

This memorandum relates to an improvements agreement and guarantee dated 2-12- 1997, by and between John Davis (Developer) and the City of Grand Junction (City) pertaining to James Park (Project) in the City of Grand Junction..

Legal Description: Lot 2, Darwin Subdivision as recorded in Plat Book 12, Page 303
Mesa County Clerk & Recorder

1788211 0121PM 02/13/97
MONIKA TOOD CLK&REC MESA COUNTY CO

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 \$ 39,268, 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:

BN Katherine M. Portman 2-12-97
Director of Community Development date

DEVELOPER:

[Signature] 2-5-97
date

After recording mail to:

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

DISBURSEMENT AGREEMENT
(Improvements Guarantee)

JAMES PARK
IP-96-55

DEVELOPER: John Davis

BANK: Bank of Grand Junction

PROPERTY: James Park

DISBURSEMENT AMOUNT: For the construction of improvements to the Property in an amount not to exceed \$ 39,268.

This Agreement is entered into by and between JOHN DAVIS ("Developer"), THE BANK OF GRAND JUNCTION ("Bank") and the City of Grand Junction, Colorado ("City").

RECITALS

Developer has been required by the City to construct certain improvements to James Park ("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 \$ 39,268, 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 John Davis
_____ (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 11 day of FEB., 1997.

(BANK)

By: Marlene M. Haase, V.P.
Title

2415 F Rd, GR Jct, CO 81505
Address

(DEVELOPER)

By: [Signature] owner
Title

Address

CITY OF GRAND JUNCTION

By: [Signature]
Director of Community Development

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

DEVELOPER:

(name) [Signature]
(signature)

(name) _____
(signature)

(name) _____
(signature)

DEVELOPER'S GENERAL CONTRACTOR:

John Davis [Signature]
(name)

[Signature]
(signature)

DEVELOPER'S PROJECT ENGINEER:

(name) (signature)

DEVELOPER'S ARCHITECT:

(name) (signature)

CITY ENGINEER:

Jody Kliska _____ *Jody Kliska*
(name) (signature)

July 19, 1996