

KAT97MRM

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	STEVE AND SHERRI KATZ
PROJECT/SUBDIVISION:	MR. MOTOR SERVICE CENTER
ADDRESS:	539 BOGART LANE (539 FAITH STREET)
TAX PARCEL NO:	2945-103-27-006
FILE #:	SPR-1996-227
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	1997
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

FUNDS RELEASED 5-16-97

IMPROVEMENTS INSTALLED

IMPROVEMENTS AGREEMENT

(Site Plan)

1. **Parties:** The parties to this Improvements Agreement ("the Agreement") are STEVE & SHERI KATZ, ("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.

RECITALS

The Developer seeks permission to develop property within the City, 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 and limiting the harmful effects of substandard development. The purpose of this Agreement is to protect the City from the cost of completing improvements itself and is not executed for the benefit to materialmen, laborers, or others providing work, services or materials to the Developer. 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 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 will 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, in writing, the improvements completed by the Developer.
7. **Commencement and Completion Periods:** The improvements, each and every one of them, will be completed within 6 MOS. 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 site plan/development 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, 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 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 the approval and/or acceptance.
11. **Use of Proceeds:** The City will use funds deposited with it or drawn under the bank 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 (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 (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 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 or cash deposit to the extent of the face amount of the credit or full amount of the deposit, 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 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 disbursement agreement, 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 en-join the sale, transfer, or conveyance of 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 officer, 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 on 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 to or constitute a waiver of any other provision, nor will it be deemed to 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 its 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 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 this 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:

STEVE & SHERRI KATZ
MIZ. MOTOR SERVICE CENTER
744 CENTAURI
GRAND JCT, CO

If to City:

City of Grand Junction
Community Development Director
250 N. 5th Street
Grand Junction, CO 81501

25. **Recordation:** Developer will pay for any and 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 state 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, disbursement agreement, cash deposit 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 this 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.

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 any 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 copies of results of all construction control tests required by City specifications.

b. 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 prescribed location and shall construct the required width of pavement from the edge of gutter on the side of the street being developed to enable an initial two-way traffic operation without on-street parking.

The Developer is also responsible for end-transitions, intersection paving, drainage facilities, and adjustments to existing utilities and joints necessary to open the street or sidewalk to use.

EXHIBIT "A"

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

LOT 3, AMENDED GRACE COMMERCIAL
SUBDIVISION REPLAT

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL

DATE: 3-13-97
 NAME OF DEVELOPMENT: MIZ MOTOR SERVICE CENTER
 LOCATION: 539 ~~FR~~ BOGAZI LANE (SPR-96-227)
 PRINTED NAME OF PERSON PREPARING: BILL NEBERGER / STEVE KATZ

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMT.
I. SANITARY SEWER				
1. Clearing and grubbing	_____	_____	_____	_____
2. Cut and remove asphalt	_____	_____	_____	_____
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	_____	_____	_____	_____
4. Sewer Services (trenching, bedding, backfill)	_____	_____	_____	_____
5. Sanitary sewer manhole(s)	_____	_____	_____	_____
6. Connection to existing manhole(s)	_____	_____	_____	_____
7. Aggregate Base Course	_____	_____	_____	_____
8. Pavement replacement	_____	_____	_____	_____
9. Driveway restoration	_____	_____	_____	_____
10. Utility adjustments	_____	_____	_____	_____
II. DOMESTIC WATER				
1. Clearing and grubbing	_____	_____	_____	_____
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	_____	_____	_____	_____
2. Earthwork (excavation, embankment const)	_____	_____	_____	_____
3. Utility relocations	_____	_____	_____	_____
4. Aggregate sub-base course (sq.yd.)	_____	_____	_____	_____
5. Aggregate base course (sq.yd.)	_____	_____	_____	_____
6. Sub-grade stabilization	_____	_____	_____	_____
7. Asphalt or concrete pavement (sq.yd.)	_____	_____	_____	_____
8. Curb, gutter & sidewalk (linear feet)	_____	_____	_____	_____
9. Driveway sections (sq.yd.)	_____	_____	_____	_____
10. Crosspans & fillets	_____	_____	_____	_____
11. Retaining walls/structures	_____	_____	_____	_____

- 12. Storm drainage system _____
- 13. Signs and other traffic control devices _____
- 14. Construction staking _____
- 15. Dust control _____
- 16. Street lights (each) _____

IV. LANDSCAPING *SEE ATTACHED CONTRACT FROM CLARKE & CO INC.*

- 1. Design/Architecture _____
- 2. Earthwork (top soil, fine grading, berming) _____
- 3. Hardscape features (walls,fencing,paving) _____
- 4. Plant material and planting _____
- 5. Irrigation system _____
- 6. Other features (statues, water displays, park equipment, and outdoor furniture) _____
- 7. Curbing _____
- 8. Retaining walls and structures _____
- 9. One year maintenance agreement _____

V. MISCELLANEOUS

- 1. Design/Engineering _____
- 2. Surveying _____
- 3. Developer's inspection costs _____
- 4. Quality control testing _____
- 5. Construction traffic control _____
- 6. Rights-of-way/Easements _____
- 7. City inspection fees _____
- 8. Permit fees _____
- 9. Recording costs _____
- 10. Bonds _____
- 11. Newsletters _____
- 12. General Construction Supervision _____
- 13. Other _____
- 14. Other _____

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 3,100

Steve [Signature] 3-12-97
 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.

N/A
 CITY ENGINEER DATE

[Signature] 3/13/97
 COMMUNITY DEVELOPMENT DATE



CLARKE & CO., INC.

2336 N. Road
Grand Junction, CO 81505
(970) 241-5317
(970) 241-2874

PROPOSAL

Page No. _____ of _____ Pages

JOB NAME/NO.	
LOCATION LANDSCAPE / IRRIGATION	
FAITH STREET, MISTER MOTOR.	
PHONE FAX: 242-8114	DATE 1/7/97
242-8035	

To: _____

 McGLEESON, INC.

 576 25 ROAD UNIT #1-A

 GRAND JUNCTION, CO 81505

ATTN: MERLIN UNRUH

We hereby submit specifications and estimates for:

PROPOSAL IS WITH TOPSOIL IN AND TO GRADE AND ALL DEBRIS REMOVED BY OTHERS.
 GENERAL CONTRACTOR TO PROVIDE WATER TAP FOR IRRIGATION IN LANDSCAPED AREA,
 ELECTRICAL SERVICE TO THE CONTROLLER LOCATION, AND SLEEVE UNDER DRIVE AS
 NECESSARY. PROPOSAL PER CLAVONNE & ASSOCIATES LANDSCAPE PLAN 10/9/96.

Lump Sum Bid.....\$3,100.00

\$3,100.00

ON COMPLETION

WE PROPOSE hereby to furnish material and labor -- complete in accordance with these specifications, for the sum of:

Payable as follows: _____ dollars (\$ _____).

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. 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. Our workers are fully covered by Workmen's Compensation Insurance.

Authorized Signature Mary E Clarke

NOTE: This proposal may be withdrawn 45 by us if not accepted within _____ days.

ACCEPTANCE OF PROPOSAL -- The 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.

Signature Steve KET Date 3-1-97 Signature _____ Date _____

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

BN Kathleen M. Porten 3/13/97
Director of Community Development Date

Attest:

Stephanie Nye, City Clerk Date

Steve WJF 3-13-97
Developer Date

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