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TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	LEVEL III
PROJECT/SUBDIVISION:	CHIPETA HEIGHTS
ADDRESS:	203 29 ROAD AND 221 29 ROAD
TAX PARCEL NO:	2943-304-00-138
FILE #:	FP-2006-355
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2007
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

## DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are Level III, ("Developer") and the **City of Grand Junction**, Colorado ("City").

For valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

2. **Effective Date:** The Effective Date of the Agreement shall be the date that it is signed by the Community Development Director, which shall be no sooner than recordation of the final plat or final plan approval whichever first occurs.

### RECITALS

The Developer seeks permission to develop property, described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The Property, known as Chipeta Heights has been reviewed and approved under Community Development file # FP2006-355 ("Development" or "the Development").

The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements to the Property and limiting the harmful effects of substandard development.

A further purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself; this Agreement is not executed for the benefit of materialmen, laborers or others providing work, services or material to the Developer and/or the Property or for the benefit of the owner(s), purchaser(s) or user(s) of the Property.

The mutual promises, covenants and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and City's land development ordinances and regulations.

### DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer shall 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 ("Improvements" or "the Improvements").

3a. On and after the Effective Date of this Agreement the Developer agrees to pay the City for its Administration and Inspection of the Development. The hourly rate for those services is \$45.00/hour. Administration and Inspection includes but is not limited to the time expended by the City's planner, engineer, construction inspector and attorney in directing, advising, correcting and enforcing by means other than

litigation, this agreement and/or the approved development plan. Making disbursements and calling/collecting Guarantees are Administration and Inspection services and shall be charged at \$45.00/hour. See, paragraph 19 concerning attorneys'/ litigation fees.

3b. The scope of this project is such that the City may have to engage independent consultants(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others for which Developer is responsible hereunder.

3c. The Developer's obligation to complete the Improvements is and shall be independent of any obligations of the City contained herein.

4. **Security:** To secure the performance of its obligations under this Agreement the Developer shall supply a guarantee. The Developer is required to post security in an amount of \$ 1,701,657.59 (120% of the amount for the Improvements) in a form and with terms acceptable to the City ("Guarantee"). The Guarantee shall be in the form of a cash deposit made to the City, a letter of credit or a disbursement agreement in a form and with content approved by the City Attorney. The Guarantee specific to this Agreement is attached as Exhibit C and is incorporated by this reference as if fully set forth.

Select one: Cash  Letter of Credit (LOC)  Disbursement Agreement

5. **Standards:** The Developer shall construct the Improvements according to the City's standards and specifications.

6. **Warranty:** The Developer shall warrant the Improvements for one year following Acceptance by the City. "Warrant" or "Warranty" as used herein means the Developer shall take such steps and incur such costs as may be needed so that the Improvements or any portion or phase thereof as repaired and/or replaced, shall comply with the Development's construction plans and/or site plan, City standards and specifications at the end of the warranty period. The Developer shall warrant each repaired and/or replaced Improvement or any portion or phase thereof for one year following Acceptance of such repair and/or replacement.

6a. Upon Acceptance the Developer shall provide a Maintenance Guarantee in an amount of \$ 283,609.60 (Line G2, Exhibit B, City Security).

6b. The Maintenance Guarantee shall be secured by a letter of credit, cash escrow or other form acceptable to the City.

7. **Commencement, Completion and Abandonment Periods:** The Developer shall commence work on the Improvements within 30 days from the Effective Date of this Agreement; that date is known as the "Commencement Date."

7a. The Developer shall complete the Improvements by the end of the twelfth month from the Effective Date of this Agreement; that date is known as the "Completion Date."

7b. The Developer shall not cease construction for any period of more than 60 consecutive days. If construction is ceased for 60 or more consecutive days the Director may deem the Development abandoned ("the Abandonment Period").

7c. The Commencement date and the Completion Date are as follows:

Commencement Date: JUNE 15, 2007  
Completion Date: JUNE 15, 2009

**8. Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations when fulfilling its obligations under their Agreement. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after the Effective Date.

**9. Notice of Defect:** The Developer by and through his/her/its engineer shall provide timely written notice to the issuer of the Guarantee and the Director when the Developer and/or his/her/its engineer has knowledge, that an Improvement or any part or portion of any Improvement either does not conform to City standards or is otherwise defective.

9a. The Developer shall correct all non-conforming construction and/or defects within thirty (30) days from the issuance of the notice by his/her/its engineer of a/the defect.

**10. Acceptance of Improvements:** The City shall not accept and/or approve any or all of the Improvements until the Developer presents a document or documents for the benefit of the City showing that the Developer owns the Improvements in fee simple, or as accepted by the City Attorney, and that there are no liens, encumbrances or other restrictions on the Improvements other than those that have been accepted by the City Attorney.

10a. Approval and/or acceptance of any Improvement(s) does not constitute a waiver by the City of any right(s) that 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.

10b. Acceptance by the City shall only occur when the City Engineer, sends a writing to such effect ("Acceptance").

**11. Reduction of Security:** Upon Acceptance of any Improvement(s) the amount which the City is entitled to draw on the Guarantee shall be reduced by an amount of \$\_\_\_\_\_ (Line G1, Exhibit B, Total Improvement Costs).

1,418,047.99

11a. At the written request of the Developer, the City shall execute a certificate verifying Acceptance of the Improvement and thereafter waiving its right to draw on the Guarantee to the extent of such amount. A Developer in default under this Agreement has no right to such certification.

12. **Use of Proceeds:** The City shall use funds deposited with it, drawn or guaranteed pursuant to this Agreement only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements or paying Administration and Inspection fees.

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

13a. Developer's failure to complete each portion of the Improvements on or before the Completion Date;

13b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvements within the applicable warranty period;

13c. 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;

13d. Notification to the City, by any lender with a lien on the Property, of a default by Developer on any obligation to such lender. In such event, the City may immediately declare a default without prior notification to the Developer.

13e. With regard to the Property or any portion thereof: initiation of any foreclosure action regarding any lien or encumbrance; or initiation of mechanics lien(s) procedure(s); or assignment or conveyance of the Property in lieu of foreclosure. In such event the City may immediately declare a default without prior notification to the Developer.

13f. Notification to the City from the bank issuing the Guarantee that it will not renew the Guarantee at a time when security is still required hereunder and no substitute collateral acceptable to the City has been provided by the Developer.

13g. Except as provided, the City may not declare a default until written notice has been sent to the Developer at the address shown in the development file. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

14. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer shall be the reasonable cost of satisfactorily completing the Improvements, plus reasonable expenses. Expenses may include but are not limited to

contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to the collection/completion of the Improvements. For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit B shall be *prima facie* evidence of the minimum cost of completion; however, the maximum amount of the Developer's liability shall not be established by that amount or the amount of the Guarantee.

**15. City's Rights Upon Default:** When any event of default occurs, the City may draw on the Guarantee or proceed to collect any other security to the extent of the face amount of the Guarantee less eighty percent (80%) of the estimated cost (as shown on Exhibit B) of all Improvements for which the City has given its Acceptance and no warranty work is reasonably required. The City may also exercise its rights to disbursement of loan proceeds or other funds under the City improvements disbursement agreement.

15a. The City shall have the right to complete Improvements itself or it may contract with a third party for completion.

15b. 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, inspecting and repairing the Improvements.

15c. The City may assign the proceeds of the Guarantee or other funds or assets that it may receive in accordance with this Agreement to a subsequent developer or lender that has acquired the Property by purchase, foreclosure or otherwise.

15d. That developer or lender shall then have the same rights of completion as the City if and only if the subsequent developer or lender agrees in writing to complete or correct the Improvements and provides to the City reasonable security for that obligation.

15e. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

**16. Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns ("City") harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with or on account of the performance or non-performance of work at the Property and/or the Improvements and/or the Development that is being done pursuant to this Agreement.

16a. The Developer further agrees to aid and defend the City in the event that the City and/or the Improvements is named as a defendant in an action concerning the performance of work pursuant to this Agreement except for a suit wherein the Developer states claim(s) against the City.

16b. The Developer is not an agent, partner, joint venturer or employee of the City.

17. **No Waiver:** No waiver of any provision of this Agreement by the City shall be deemed or constitute a waiver of any other provision nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and the Developer; nor shall 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 shall not constitute the approval of any wrongful or other act by the Developer or the acceptance of any Improvement.

18. **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/her/its authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

19. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, shall be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. The City shall be entitled to claim the value of its in-house attorneys at the rate of \$125.00 per hour. If relief is awarded to both parties the attorney's fees may be equitably divided between the parties by the decision maker.

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

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

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

23. **Time:** For the purpose of computing the Abandonment Period and Commencement and Dates, such times in which war, civil disasters or acts of God occurs or exist shall not be included if such prevents the Developer or City from performing its obligations under the Agreement. The Developer must notify the City in writing if/when it asserts impossibility of performance under this paragraph. The City may reject the Developer's assertion, if it finds, in writing that the condition(s) that the Developer asserts do not exist.

24. **Severability:** If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or

unenforceability shall not affect the validity of any other part, term or provision. The rights of the parties shall be construed as if the part, term or provision was never part of the Agreement.

25. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld but any unapproved assignment is void.

25a. 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.

25b. There is no prohibition on the right of the City to assign its rights under this Agreement.

25c. Upon written request from the Developer the City shall expressly release the original Developer's Guarantee and/or contract obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City shall constitute a release of the original Developer from his liability under this Agreement.

25d. When the City has issued its Acceptance regarding the Improvements, the City agrees to state the same in writing, with appropriate acknowledgments.

25e. The City shall sign a release only after all warranty periods, as extended by litigation, repair or alteration work, have expired.

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

If to Developer: LEVEL III Name -Developer/Company  
300 MAIN ST Suite 301 Address (Street and Mailing)  
G. J. CO. 81501 City, State & Zip Code  
(970) 243-3500 Telephone and Fax Numbers  
(970) 241-5653  
E-mail

Cc:

If to City: Office of the City Attorney  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501



Cc: Community Development Department  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501

27. **Recordation:** Developer shall pay the costs to record a memorandum of this Agreement (Exhibit D) in the records of the Mesa County Clerk and Recorder's Office. The Developer may, at his/her/its option record the entire agreement.

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

29. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any action commenced by either party to this Agreement whether arising out of or relating to the Agreement, the Guarantee, the Maintenance Guarantee or any action based arising out of or under this Agreement shall be deemed to be proper only if such action is commenced in Mesa County, Colorado.

29a. The Developer expressly waives his/her/its right to bring such action in or to remove such action to any other court whether state or federal.

30. **Liability before Acceptance:** The City shall have no responsibility or liability with respect to any street or other Improvement(s), notwithstanding the use of the same by the public, unless the street or other Improvement shall have received Acceptance by the City.

30a. 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 the side of the street nearest the property to enable an initial two-way traffic operation without on-street parking.

30b. Developer shall also construct and pay for end-transitions, intersection paving, drainage facilities and adjustments to existing utilities necessary to open the street to traffic.

30c. The City shall not issue its written Acceptance with regard to any Improvement(s) including any street, storm drainage facility, sewer, water facility or other required Improvement(s), until the Developer:

(i) furnishes 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 specification;

(ii) provides 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 Improvement(s) have been constructed or which are necessary for the Improvements are free from toxic, hazardous and other regulated substances or materials;

(iii) provides written evidence to the City Attorney that the title to lands underlying the improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney; and (iv) provides written evidence, certified by the Developer's engineer, that the work was systematically inspected and tested and that the materials and the compaction of the materials that are required to be compacted, were in conformance with City-approved plans and specifications.

LEVEL III  
By: William R. Ogle MANAGER

Developer WILLIAM R. OGLE Date 6/25/07  
Name (printed)

Corporate Attest:

\_\_\_\_\_  
Name Date

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

Tom Moe Date 6-28-07  
Community Development Dept.

6/13/2003

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

## EXHIBIT A

### BOUNDARY DESCRIPTION

That real property located in the Southeast Quarter Southeast Quarter (SE $\frac{1}{4}$  SE $\frac{1}{4}$ ) of Section 30, Township 1 South, Range 1 East, Ute Meridian, Grand Junction, Mesa County, Colorado and being more particularly described as follows:

COMMENCING at the Southeast corner of said SE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 30, whence the Northeast Corner of said SE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 30 bears North 00 degrees 10 minutes 41 seconds West, a distance of 1311.77 feet for a basis of bearings, with all bearings contained herein relative thereto; thence South 89 degrees 57 minutes 39 seconds West, a distance of 51.39 feet, along the South line of said SE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 30; thence North 00 degrees 02 minutes 21 seconds West, a distance of 30.00 feet, to a point on the North right-of-way line of B Road, as described in Book 894, Page 202, the POINT OF BEGINNING; thence South 89 degrees 57 minutes 39 seconds West, a distance of 608.67 feet, along said North right-of-way line of B Road to a point at the Southeast corner of a tract of land belonging to Grand River Properties, L.L.C., as described in Book 3862, Page 11; thence North 00 degrees 10 minutes 07 seconds West, a distance of 1282.52 feet, along the East line of said Grand River Properties tract and the East line of Granite Springs Subdivision, as shown on plat recorded in Book 3902, Page 70, Mesa County records, to a point on the North line of said SE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 30; thence South 89 degrees 58 minutes 25 seconds East, a distance of 629.78 feet, along said North line of said SE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 30, to the West right-of-way line of 29 Road, as described in Book 3628, Page 471 and Book 3628, pages 671 through 673; thence South 00 degrees 10 minutes 41 seconds East, a distance of 367.53 feet, along said West right-of-way line, to the North line of a parcel described in Book 2253, Page 86; thence South 89 degrees 49 minutes 19 seconds West, a distance of 148.00 feet, along the North line of aforementioned parcel, to the Northwest corner of said parcel; thence South 00 degrees 10 minutes 41 seconds East, a distance of 600.00 feet, along said West line of said parcel and the West line of a parcel described in Book 3214, Page 426, to the Southwest corner of this parcel; thence North 89 degrees 49 minutes 19 seconds East, a distance of 148.00 feet, along the South line of said parcel to a point on the West right-of-way line of 29 Road, as described in Book 3580, Pages 799 and 799a; thence, along said West right-of-way line the following two (2) courses: (1) South 00 degrees 10 minutes 41 seconds East, a distance of 292.36 feet; (2) thence South 44 degrees 05 minutes 59 seconds West, a distance of 30.54 feet to the POINT OF BEGINNING.

Said parcel containing an area of 16.496 acres, as described.

**EXHIBIT B**

**IMPROVEMENTS COSTS ESTIMATE**

DATE: 4/03/07  
 DEVELOPMENT NAME: CHIPETA HEIGHTS  
 LOCATION:  
 PRINTED NAME OF PERSON PREPARING: James A. Joslyn

Item#	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>A. SANITARY SEWER</b>					
1	8 "PVC Sanitary Sewer Main	LF	2,638	28	\$ 73,864.00
2	"PVC Sanitary Sewer Main	LF	0		\$ -
3	"PVC Sanitary Sewer Main	LF	0		\$ -
4	Sewer Services	LF	2,001	20	\$ 40,020.00
5	Sanitary Sewer Manhole	EA	16	1900	\$ 30,400.00
6	Sanitary Sewer Drop Manhole	EA			\$ -
7	Connection to Existing Manhole	EA	1	2000	\$ 2,000.00
8	Concrete Encasement	LF	200	25	\$ 5,000.00
					\$ -
<b>Subtotal Part A - Sanitary Sewer</b>					<b>\$ 151,284.00</b>
<b>B. DOMESTIC WATER</b>					
1	8 "PVC Water Main	LF	3392	20	\$ 67,840.00
2	"PVC Water Main	LF		20	\$ -
3	"PVC Water Main	LF			\$ -
4	8 "Gatevalve	EA	11	1350	\$ 14,850.00
5	"Gatevalve	EA			\$ -
6	"Gatevalve	EA			\$ -
7	Water Services	LF	1339	25	\$ 33,475.00
8	Connect to Existing Water Line	EA	4	1500	\$ 6,000.00
9	Fire Hydrant with Valve	EA	5	3725	\$ 18,625.00
10	Utility Adjustments	EA			\$ -
11	Blowoff	EA	2	500	\$ 1,000.00
					\$ -
<b>Subtotal Part B - Domestic Water</b>					<b>\$ 141,790.00</b>

Item#	Item Description	Unit	Quantity	Unit Price	Exteneded Price
<b>C1 STREETS</b>					
1	10 "PVC Utility/Irrigation Sleeves	LF	340	20	\$ 6,800.00
2	"PVC Utility/Irrigation Sleeves	LF			\$ -
3	Reconditioning	SY	12386	1	\$ 12,386.00
4	Aggregate Base Course (Class 3)	TN		140	\$ -
5	Aggregate Base Course (Class 6) 6" Compacted Thickness	SY	12386	6	\$ 74,316.00
6	Aggregate Base Course (Class 9) ( "Compacted Thickness	SY			\$ -
7	Hot Bituminous Paving, Grading____ (3" Thick)	SY	4090	13.5	\$ 55,215.00
8	Hot Bituminous Paving, Grading____ ( 4" "Thick)	SY	7740	13.5	\$ 104,490.00
9	Hot Bituminous Paving, Patching____ ( "Thick)	SY	67	36	\$ 2,412.00
10	Geotextile	SY			\$ -
11	Concrete Curb ( "wide by "High	LF			\$ -
12	Concrete Curb and Gutter (2' Wide)	LF			\$ -
13	Concrete Curb and Gutter (1.5' Wide)	LF		11	\$ -
14	Monolithic, Vertical Curb, Gutter and Sidewalk (7' Wide)	LF	1183	27	\$ 31,941.00
15	Drive Over Curb, Gutter, and Sidewalk ( 6.5 'Wide)	LF	4871	24	\$ 116,904.00
16	Concrete Sidewalk ( 'Wide)	LF			\$ -
17	Concrete Gutter and Driveway Section (6" Thick)	SY	52	21	\$ 1,092.00
18	Concrete Drainage Pan (6' Wide, (8" Thick)	LF			\$ -
19	Concrete Corner Fillet	SY			\$ -
20	Concrete Curb Ramp	SY	83	63	\$ 5,229.00
21	Complete Concrete Corner	SY	871	63	\$ 54,873.00
22	Concrete Driveway ( "Thick)	SY			\$ -
23	Driveway/Concrete Repair	SY			\$ -
24	Retaining Walls	LF	1133	75	\$ 84,975.00
25	Street Signs	EA	18	300	\$ 5,400.00
26	Striping (New, Remove/Replace)	LF			\$ -
27	Street Lights	EA			\$ -
28	Signal Construction or Reconstruction	LS			\$ -
29	Flowable Fill	CY			\$ -
30	Sleeves, " , PVC				\$ -

Item#	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C2 BRIDGES</b>					
1	Box Culvert Pre-Cast	LS			\$ -
2	Box Culvert Cast-in -Place	LS			\$ -
3	Wingwalls	LS			\$ -
4	Parapet Wall	LS			\$ -
5	Railing (Handrail, Guardrail)	LS			\$ -
<b>Subtotal Part C - Streets and Bridges</b>					<b>\$ 556,033.00</b>
<b>D1. EARTHWORK</b>					
1	Mobilization	LS		500	\$ -
2	Clearing and Grubbing	LS		800	\$ -
3	Unclassified Excavation	CY	16000	2	\$ 32,000.00
4	Unclassified Embankment	CY	13000	3	\$ 39,000.00
<b>D2. REMOVALS AND RESETTING</b>					
1	Removal of Asphalt	SY	67	5	\$ 335.00
2	Removal of Miscellaneous Concrete	SY			\$ -
3	Remove Curb and Gutter	LF	128	2	\$ 256.00
4	Removal of Culverts	LF			\$ -
5	Remove Structures	EA			\$ -
6	Remove Signs	EA			\$ -
7	Remove Fence	LF			\$ -
8	Adjust Manhole	EA			\$ -
9	Adjust Valvebox	EA			\$ -
10	Relocate or Adjust Utilites	LS			\$ -
<b>D3. EROSION CONTROL, SEEDING AND SOIL RETENTION</b>					
1	Sod	SY			\$ -
2	Seeding (Native)	SY or AC			\$ -
3	Seeding (Bluegrass/Lawn)	SY or AC			\$ -
4	Hydraulic Seed and Mulching	SY or AC			\$ -
5	Soil Retention Blanket	SY			\$ -
6	Silt Fence	LF	1734	2	\$ 3,468.00
7	Straw Bales	EA	20	4	\$ 80.00
8	Temporary Berms	LF			\$ -
9	Inlet Protection	EA	13	250	\$ 3,250.00
10	Sediment Trap/Basin	EA			\$ -
11	Monthly Maintenance/Inspection	Month			\$ -
12	Watering (Dust Control)	AC or LS			\$ -
13	Temporary Irrigation				\$ -

Item#	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>D4. STORM DRAINAGE FACILITIES</b>					
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY			\$ -
2	12" HDPE Storm Drain Pipe	LF	1578	25	\$ 39,450.00
3	15" HDPE Storm Drain Pipe	LF	66	40	\$ 2,640.00
4	18" HDPE Storm Drain Pipe	LF	250	42	\$ 10,500.00
5	24" RCP Storm Drain Pipe	LF	1816	65	\$ 118,040.00
6	30" RCP Storm Drain Pipe	LF	135	70	\$ 9,450.00
7	12" Flared End Section	EA	2	150	\$ 300.00
8	60" Flared End Section	EA	2	1500	\$ 3,000.00
9	24" Flared End Section	EA	1	400	\$ 400.00
10	48" Storm Drain Manhole	EA	14	2500	\$ 35,000.00
11	60" Storm Drain Manhole	EA	3	3000	\$ 9,000.00
12	CCOT T-Base Manhole	EA	1	3000	\$ 3,000.00
13	Stormceptor	EA	1	6000	\$ 6,000.00
14	60" RCP	LF	85	125	\$ 10,625.00
15	Single Curb Opening Storm Drain Inlet	EA	10	1500	\$ 15,000.00
16	Double Curb Opening Storm Drain Inlet	EA			\$ -
17	Area Storm Drain Inlet	EA	5	2000	\$ 10,000.00
18	Outlet 4'x 6' box	EA	1	2000	\$ 2,000.00
19	Rip-Rap D <sub>50</sub> = 12"	CY			\$ -
20	Sidewalk Trough Drain	EA	1	750	\$ 750.00
21	Pump Systems Including Electrical	LS			\$ -
<b>Subtotal Part D - Grading and Drainage</b>					<b>\$ 353,544.00</b>

Item#	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>E1. IRRIGATION</b>					
1	Connect to Existing Pipe	LS			\$ -
2	8" C900 Irrigation Pipe	LF	4436	12	\$ 53,232.00
3	6" PIP Irrigation Pipe	LF		9	\$ -
4	Fittings and Valves	LS			\$ -
5	Services	EA	51	200	\$ 10,200.00
6	Pump System and Concrete Vault	LS			\$ -
7	Irrigation Structure	EA	1	1000	\$ 1,000.00
8	Vacuum Relief and/or Air Release Valve	EA	2	500	\$ 1,000.00
<b>E2. LANDSCAPING</b>					
1	Design/Architecture	LS			\$ -
2	Earthwork	CY			\$ -
3	Prep, Grass seeding & Trees	LS	1	15185	\$ 15,185.00
4	Plant Material & Planting	LS	1	32076	\$ 32,076.00
5	Irrigation System	LS	1	25000	\$ 25,000.00
6	Fencing	LS	1	46500	\$ 46,500.00
7	Retaining Walls & Structures	LS			\$ -
8	1 Year Maintenance Agreement				\$ -
9	Topsoil				\$ -
<b>Subtotal Part E - Landscaping and Irrigation</b>					<b>\$ 184,193.00</b>



Item#	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>F. MISCELLANEOUS ITEMS</b>					
1	Construction Staking/Surveying	%	0.80%	\$ 11,094.75	\$ 11,094.75
2	Developer's Inspection Cost	%	2.00%		\$ -
3	General Construction Supervision	%	2.00%		\$ -
4	Quality Control Testing	%	0.80%	\$ 11,094.75	\$ 11,094.75
5	Construction Traffic Control	%	2.00%		\$ -
6	City Inspection Fees	%	0.50%	\$ 6,934.22	\$ 6,934.22
7	As-Builts	%	0.15%	\$ 2,080.27	\$ 2,080.27
<b>Subtotal Part F - Miscellaneous Items</b>					<b>\$ 31,203.99</b>

% = Percentage of total site construction costs

**G COST SUMMARY**

<b>1</b>	<b>Total Improvement Costs</b>	<b>\$ 1,418,047.99</b>
<b>2</b>	<b>City Security (20%)</b>	<b>\$ 283,609.60</b>
	<b>Total Guarantee Amount</b>	<b>\$ 1,701,657.59</b>

**NOTES**

- 1 All prices shall be for items complete in place and accepted.
- 2 All pipe shall include excavation, pipe, bedding, backfill, and compaction.
- 3 Water main shall include pipe, excavation, bedding, backfill, bends, and appurtenances not itemized elsewhere.
- 4 All concrete items shall include Aggregate Base Course where required by the drawings.
- 5 Fill in the pipe type for irrigation pipe and sleeve.
- 6 Reconditioning shall be calculated to at least 6" outside of back of walk on both sides.
- 7 Units can be changed if desired, simply annotate what is used.
- 8 Additional lines or times may be added as needed.

William R. Ogle 6/25/07  
 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 construction drawings submitted to date and the current cost of construction, I take no exception to the above.

Samuel S. Fischer 6-28-07  
 City Development Engineer Date

Tom Moaw 6-28-07  
 Community Development Date

**DISBURSEMENT AGREEMENT**  
(Improvements Guarantee)

**DEVELOPER:** Level III

**BANK:** Bank of Colorado

**PROPERTY:** Chipeta Heights

**DISBURSEMENT AMOUNT:** For the construction of improvements to the Property in an amount not to exceed \$ 1,701,657.59.

This Agreement is entered into by and between Level III ("Developer"), Bank of Colorado ("Bank") and the City of Grand Junction, Colorado ("City").

**RECITALS**

Developer has been required by the City to construct certain improvements to Chipeta Heights ("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 \$ 1,701,657.59, 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 William R. Ogle (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 attorney's 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 25<sup>th</sup> day of June, 2007

(BANK) BANK OF COLORADO  
By: Jonathan Berglund  
Title VICE PRESIDENT

GRAND  
200 GRAND JUNCTION, CO 81501  
Address

(DEVELOPER)  
LEVEL III  
By: William R. Ogle  
Title MANAGER

300 MAIN ST SUITE 301  
Address GRAND JUNCTION CO 81501

CITY OF GRAND JUNCTION

By: Tim Noon  
Director of Community Development

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between LEVEL III DEVELOPMENT, LLC Developer, BANK OF COLORADO 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:**

WILLIAM R. OGLE William R. Ogle  
(name) (signature)

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

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

**DEVELOPER'S GENERAL CONTRACTOR:**

ORTER CONSTRUCTION INC William R. Ogle  
(name) (signature)

**DEVELOPER'S PROJECT ENGINEER:**

MARK AUSTIN Mark Austin  
(name) (signature)

**DEVELOPER'S ARCHITECT:**

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

**CITY ENGINEER:**

KENNETH E. FISCHER Kenneth E. Fischer  
(name) (signature)

**RECORDING MEMORANDUM**  
**Exhibit D**

City of Grand Junction  
Public Works and Planning Department

File: # FP-2006-355

This memorandum relates to and confirms that certain Development Improvements Agreement and/or Maintenance Guarantee concerning land in Mesa County, Colorado. The Agreement is by and between Level III (Developer) and the City of Grand Junction (City) pertaining to Chipeta Heights (Project), located at 203 #221 29 Road.

The Developer of the Project was required by law to install and construct certain public and private improvements, the completion of which was guaranteed by a Development Improvements Agreement and/or Maintenance Guarantee. The Project is required to be constructed in accordance with the approval by the City pursuant to and in accordance with the Zoning and Development Code all as more fully detailed and described in City of Grand Junction development file # FP 2006 355.

The Developer and the City of Grand Junction by and through the signatures of the undersigned have determined and agreed to the type, quality and amount of improvements required and/or necessitated by the approval of the Project and that the improvements are guaranteed by and through the Development Improvements Agreement and/or Maintenance Guarantee. Furthermore, the Developer and the City agree that the Development Improvements Agreement and/or Maintenance Guarantee are contractual in nature and that the obligations under the Development Improvements Agreement and/or Maintenance Guarantee shall not be assigned except as provided in the agreement(s).

**By virtue of this notice being recorded in the land records of the Mesa County Clerk and Recorder, subsequent owners and/or those that claim by, through or under the Developer are on notice of the Developer's obligations under the agreement(s).**

NOW THEREFORE, the Developer and an official of the City of Grand Junction, both possessing and representing by their signatures that they possess sufficient authority, do hereby memorialize the relative, rights and obligations contained in the Development Improvement Agreement and/or Maintenance Guarantee herein characterized.

\* DEVELOPER:

By:

William R. Ogle 6-25-07  
Date

(Print Name)

William R. OGLE

**CITY OF GRAND JUNCTION:**

In accordance with the above, I hereby certify that the Development Improvement Agreement and/or Maintenance Guarantee are made of record by this memorandum and that the same may be inspected and/or copied at the City of Grand Junction, Public Works & Planning Department, 250 N. 5<sup>th</sup> Street, Grand Junction Colorado.

[Signature]  
Public Works & Planning Department

7-2-07  
Date



June 30, 2008

Mr. William Ogle  
Level III  
300 Main Street Suite 301  
Grand Junction, Colorado 81501

RE: Project Name: Chipeta Heights Subdivision  
Project Number: SPR-2006-355

Dear Mr. Ogle:

An inspection of the subdivision for initial acceptance was completed on June 20, 2008. The following punch list of items needs to be completed before final acceptance of the project is granted:

#### Concrete

- Item 1: The concrete cross pan located at the intersection of Vista Hills Drive and Meadows Way east side needs to be replaced. The broken section is doweled to the north and south but is not reinforced in the location of the crack.
- Item 2: The concrete cross pan located at the intersection of Meadows Point Drive and Meadows Street east side needs to be replaced. The broken section is doweled to the north and south but is not reinforced in the location of the crack.
- Item 3: The concrete triangle located on the south side of the intersection of Granite Parkway and 29 Road is broken and needs to be replaced.

#### Traffic Signs

- Item 1: End of road makers need to be placed at the west end of Meadows Vista Street.
- Item 2: End of road markers need to be placed at the east end of Meadows Street.

#### Storm Drain System

- Item 1: The storm water detention pond needs to be completed.
- Item 2: The 6 inch pvc irrigation drainage pipe located in the back of the drain box at the sag point of Vista Hills Drive needs to be trimmed to 1 inch inside the box.

#### Ute Water

- Item 1: The fire hydrant guard valve located just north of Granite Parkway and Meadows Drive needs to be sealed around the valve box. This could be done with the caulk used for the concrete cross pans or a method proposed and approved by the City.

Please contact Ted Eyl when the above items have been corrected.

Initial acceptance for the project will be granted when the City has received and accepted the following items:

- Item 1: Design engineer's certification for the storm water detention pond.
- Item 2: Final Ute Water Conservancy District acceptance letter.
- Item 3: Final Orchard Mesa Sanitation acceptance letter.
- Item 4: One paper copy of the as-built plans for the development signed and sealed by the Engineer of Record.
- Item 5: One computer disk with the as-built plans as both XXX.dwg and XXX.dwf files.
- Item 6: Final concrete and asphalt test results, including testing and materials certifications.
- Item 7: Final engineer's inspection reports for the development.
- Item 8: A maintenance agreement
- Item 9: A financial guarantee for \$283,609.60

Please submit the above listed items soon as possible, so we can start the warranty for this project.

Sincerely,

Mike Best, Project Specialist

Electronic copy:

Greg Moberg, Planning Services Supervisor  
Ken Fischer, Development Engineer  
Peggy Sharpe, Administrative Assistant  
David Van Wagoner, Street System  
Ron Key, Water Distribution System  
Ed Tolen, Ute Water Conservancy District

Ted Eyl, Development Inspector  
Shelly Dackonish, Staff Attorney  
Darren Starr, Streets Manager  
Chris Spears, Storm Drainage System  
Larry Brown, Sewage Collection System



July 16, 2009

Bank of Colorado  
200 Grand Avenue  
Grand Junction, CO 81501

Re: Cancellation of Disbursement Agreement for:  
**Chipeta Heights Subdivision FP-2006-355**

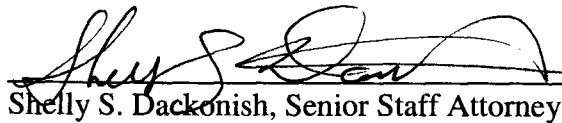
To Whom It May Concern:

Enclosed is a copy of the Disbursement Agreement (Improvement Guarantee) entered into between the City of Grand Junction ("City"), **Level III** ("Developer"), and **Bank of Colorado** for improvements to the development referred to as **Chipeta Heights Subdivision** under the City's Planning File **FP-2006-355**. As beneficiary of the security for a Development Improvements Agreement ("DIA"), the City informs you that the terms of the improvements have been completed by the Developer and the improvements have been accepted by the City. The City hereby releases its interest in the disbursement agreement security. This letter is being provided at the direction of the Director of Public Works and Planning.

If you have any questions, please inform me.

Sincerely,

OFFICE OF THE CITY ATTORNEY



Shelly S. Dackonish, Senior Staff Attorney

pc: Planning File **FP-2006-355**  
Peggy Sharpe, Planning  
Developer: **Level III**  
**Attn: Mr. William R. Ogle**  
**300 Main Street, Suite 301**  
**Grand Junction, CO 81501**

**DISBURSEMENT AGREEMENT**  
(Improvements Guarantee)

**DEVELOPER:** Level III

**BANK:** Bank of Colorado

**PROPERTY:** Chipeta Heights

**DISBURSEMENT AMOUNT:** For the construction of improvements to the Property in an amount not to exceed \$ 1,701,657.59.

This Agreement is entered into by and between Level III ("Developer"), Bank of Colorado ("Bank") and the City of Grand Junction, Colorado ("City").

**RECITALS**

Developer has been required by the City to construct certain improvements to Chipeta Heights ("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 \$ 1,701,657.59, 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 William R. Ogle (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 attorney's 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 25<sup>th</sup> day of June, 2007

(BANK) BANK OF COLORADO

By: Stephen Selig  
Title VICE PRESIDENT

GRAND  
200 GRAND JUNCTION, CO 81501  
Address

(DEVELOPER)

LEVEL III  
By: William R. Ogle  
Title MANAGER

300 MAIN ST SUITE 301  
Address GRAND JUNCTION CO 81501

CITY OF GRAND JUNCTION

By: Tim Mow  
Director of Community Development

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between LEVEL III DEVELOPMENT, LLC Developer, BANK OF COLORADO 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:**

WILLIAM R. OGLE William R. Ogle  
(name) (signature)

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

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

**DEVELOPER'S GENERAL CONTRACTOR:**

ORTER CONSTRUCTION INC William R. Ogle  
(name) (signature)

**DEVELOPER'S PROJECT ENGINEER:**

MARK AUSTIN Mark Austin  
(name) (signature)

**DEVELOPER'S ARCHITECT:**

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

**CITY ENGINEER:**

KENNETH E. FISCHER Kenneth E. Fischer  
(name) (signature)



PUBLIC WORKS  
& PLANNING

July 15, 2009

Mr. William Ogle  
Level III  
300 Main Street Suite 301  
Grand Junction, Colorado 81501

RE: Project Name: Chipeta Heights Subdivision  
Project Number: FP-2006-355

Dear Mr. Ogle:

The City has conducted a warranty inspection of the project and any needed follow-up inspections. The public infrastructure improvements have been found to be in satisfactory condition. All requirements for the final acceptance for the Project have been fulfilled.

The Developer's warranty obligation, for all materials and workmanship, has concluded and all warranty obligations are hereby released.

The following improvements within the public right-of-way are accepted for future maintenance by the City:

**Public streets:**

- All public streets as shown on the approved set of Project Plans.

**Storm drainage system:**

- Storm drain pipes, inlets and manholes as shown on the approved set of Project Plans.

**Water distribution system:**

- N.A. Ute Water's system.

**Sanitary sewer:**

- N.A. Orchard Mesa Sanitation District's system.

I will contact the Planner for release of the Development Improvements Agreement, the Maintenance Agreement and any financial security attached to the project.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted Eyl".

Ted Eyl  
City of Grand Junction  
Development Inspector

Electronic copy:

Greg Moberg, Planning Services Supervisor  
Ken Fischer, Development Engineer  
Darren Starr, Streets Manager  
David Van Wagoner, Street System  
Jody Kliska, Transportation Engineer

Mark Barslund, Development Inspector  
Shelly Dackonish, Staff Attorney  
Chris Spears, Storm Drainage System  
Leslie Ankrum, Sr. Administrative Assistant

250 NORTH 5TH STREET  
GRAND JUNCTION, CO 81501

FAX [970] 256-4031  
[www.gjcity.org](http://www.gjcity.org)

**RELEASE OF RECORDING MEMORANDUM**  
**City of Grand Junction**  
**Public Works & Planning Department**  
**FILE: FP-2006-355**

This Release relates to a Recording Memorandum dated July 2, 2007, by and between Level III, (Developer) and the City of Grand Junction, pertaining to Chipeta Heights Subdivision (Project), located at 203 & 221 29 Road, Grand Junction, CO, recorded at Book 4462, Page 933, Mesa County Clerk and Recorder's Office.

**WHEREAS**, the Developer has installed and constructed certain public and private improvements at and for the Project, which completion was guaranteed by the execution of a Development Improvements Agreement and/or Maintenance Guarantee and provision of a Guarantee, and;

**WHEREAS**, the City of Grand Junction and other agencies possessing 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, duly representing their agencies, possessing and representing by their signatures affixed hereto, that they possess sufficient authority to accept improvements and may release the Development Improvements Agreement and/or Maintenance Guarantee, pertaining to the improvements under their jurisdiction, do accept, sign and release said Development Improvements Agreement and/or Maintenance Guarantee.

CITY OF GRAND JUNCTION:

City Engineer: *Kenneth E. Fischer* Date: 7/16/09

Planner: *Spate Costello* Date: 7/16/09

In acknowledgement with the above signatures, I hereby certify that the improvements as specified in the Development Improvements Agreement and/or Maintenance Guarantee have been completed and accepted in accordance with the provisions of the Grand Junction Zoning and Development Code, and are hereby released, subject to the required warranty period.

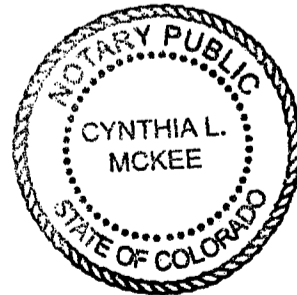
*[Signature]*  
Public Works & Planning Department

7.16.09  
Date

The foregoing instrument was executed before me this 16<sup>th</sup> day of July, 2009, by Greg Moberg, of the Public Works & Planning Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

*Cynthia L. McKee*  
Notary Public



My commission expires on 9/2/09