

GLN977TH

| | |
|----------------------|---|
| TYPE OF RECORD: | PERMANENT |
| CATEGORY OF RECORD: | DEVELOPMENT IMPROVEMENTS AGREEMENT |
| NAME OF CONTRACTOR: | THE GLEN AT HORIZON DRIVE, LLC. |
| PROJECT/SUBDIVISION: | GLEN AT HORIZON DRIVE – FILING 1 |
| ADDRESS: | SE CORNER OF 7 TH STREET AND HORIZON DRIVE |
| TAX PARCEL NO: | 2945-024-00-048 |
| FILE #: | FPP-1996-240 |
| CITY DEPARTMENT: | PUBLIC WORKS AND PLANNING |
| YEAR: | 1997 |
| EXPIRATION DATE: | NONE |
| DESTRUCTION DATE: | NONE |

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement") are THE GLEN @ HORIZON DRIVE, LLC ("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 THE PLAT, FILINGS I THROUGH IV, THE GLEN @ HORIZON DRIVE, GRAND JUNCTION, COLORADO

RECITALS

The Developer seeks permission to develop property within the City to be known as THE GLEN @ HORIZON DRIVE, LLC, which property is more particularly described on Exhibit "A" attached and incorporated by this reference (the "Property"). The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the development and limiting the harmful effects of substandard developments. The purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself and is not executed for the benefit of materialmen, laborers, or others providing work, services or material to the development or for the benefit of the purchasers or users of the development. The mutual promises, covenants, and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and the City's land development ordinances.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer will design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit "B" attached and incorporated by this reference. The Developer agrees to pay the City the actual amount for inspection services performed by the City. The estimated amount is shown in 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 26 MONTHS from the Effective Date of this Agreement (the "Completion Period").

8. **Compliance with Law:** The developer shall comply with all relevant federal, state and local laws, ordinances, and regulations in effect at the time of final approval when fulfilling its obligations under this Agreement.

9. **Notice of Defect:** The Developer's Engineer shall provide timely notice to the Developer, contractor, issuer of security and the City Engineer whenever inspection reveals, or the Developer's Engineer otherwise has knowledge, that an improvement does not conform to City standards and any specifications approved in the development application or is otherwise defective. The developer will have thirty (30) days from the issuance of such notice to correct the defect.

10. **Acceptance of Improvements:** The City's final acceptance and/or approval of improvements will not be given or obtained until the Developer presents a document or documents, for the benefit of the City, showing that the Developer owns the improvements in fee simple and that there are no liens, encumbrances, or other restrictions on the improvements. Approval and/or acceptance of any improvements does not constitute a waiver by the City of any rights it may have on account of any defect in or failure of the improvement that is detected or which occurs after approval and/or acceptance.

11. **Use of Proceeds:** The City will use funds deposited with it or drawn pursuant to any written disbursement agreement entered into between the parties only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements.

12. **Events of Default:** The following conditions, occurrences or actions will constitute a default by the Developer during the Completion Period:

- a. Developer's failure to complete each portion of the Improvements in conformance with the agreed upon time schedule; the City may not declare a default until a fourteen (14) calendar day notice has been given to the Developer;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any improvement within the applicable correction period; the City may not declare a default until a fourteen (14) calendar day notice has been given to the Developer;
- c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; in such event the City may immediately declare a default without prior notification to the Developer;
- d. Notification to the City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer.

13. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. For improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit "B" will be prima facie evidence of the minimum cost of completion; however, neither that amount nor the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow establish the maximum amount of the Developer's liability.

14. **City's Rights Upon Default:** When any event of default occurs, the City may draw on the letter of credit, escrowed collateral, or proceed to collect any other security to the extent of the face amount of the credit or full amount of escrowed collateral, cash, or security less ninety percent (90%) of the estimated cost (as shown on Exhibit "B") of all improvements previously accepted by the City or may exercise its rights to disbursement of loan proceeds or other funds under the improvements disbursement agreement. The City will have the right to complete improvements itself or it may contract with a third party for completion, and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining, and repairing such improvements. Alternatively, the City may assign the proceeds of the letter of credit, the improvements disbursement agreement, the escrowed collateral, cash, or other funds or assets to a subsequent developer (or a lender) who has acquired the development by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished improvements and provides reasonable security for the obligation. In addition, the City may also enjoin the sale, transfer, or conveyance of lots within the development, until the improvements are completed or accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

15. **Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees and assigns harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained, or alleged to be received or sustained, by any person or entity in connection with, or on account of, any act or failure to act concerning the performance of work at the development or the Property pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named in an action concerning the performance of work or the failure to perform work pursuant to this Agreement. The Developer is not an agent or employee of the City.

16. **No Waiver:** No waiver of any provision of this Agreement by the City will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both City and Developer; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any improvement.

17. **Amendment or Modification:** The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or his authorized officer. Such amendment or modification shall be properly notarized before it shall be deemed effective.

18. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party; any City obligation under this section shall be subject to the overriding provisions of section 15, above. If the court awards relief to both parties, the attorney's fees may be equitably divided between the parties by the decision maker, subject to the overriding provisions of section 15, above.

19. **Vested Rights:** The City does not warrant by this Agreement that the Developer is entitled to any other approval(s) required by the City, if any, before the Developer is entitled to commence development or to transfer ownership of property in the development.

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

21. **Time:** For the purpose of computing the Abandonment and Completion Periods, and time periods for City action, such times in which war, civil disasters, or acts of God occur or exist will not be included if such times prevent the Developer or City from performing its obligations under the Agreement.

22. **Severability:** If any part, term, or provision of this Agreement is held by a court or courts of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.

23. **Benefits/burdens:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors, and assigns of the Developer, and shall be a covenant(s) running with the Property. There is no prohibition on the right of the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations under the improvements disbursement agreement if it accepts new security from any developer or lender who obtains the Property. However, no other act of the City will constitute a release of the original Developer from his liability under this Agreement.

24. **Notice:** Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

If to Developer:

THE GLEN @ HORIZON DRIVE, LLC
c/o CUNNINGHAM INVESTMENT CO., INC.
605 W. MAIN STREET, SUITE 002
ASPEN, CO 81611

If to City:

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

25. **Recordation:** Developer shall pay for all costs to record a copy of this Agreement in the Clerk and Recorder's Office of Mesa County, Colorado.

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

27. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement whether arising out of or relating to the Agreement, letter of credit, improvements disbursements agreement, or cash escrow agreement or any action to collect security will be deemed to be proper only if such action is commenced in Mesa County, Colorado. The Developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

28. **Improvements guarantee.** The improvements guarantee required by the City to ensure that the improvements described in the improvements agreement are constructed to City standards may be in one of the following forms: (If I or II, then attach as Exhibit C.)

(I) disbursement agreement between a bank doing business in Mesa County and the City, or

(II) a good and sufficient letter of credit acceptable to the City, or

(III) depositing with the City cash equivalent to the estimated cost of construction of the improvements under the following terms:

(a) The Finance Department of the City may act as disbursing agent for disbursements to Developer's contractor(s) as required improvements are completed and accepted if agreed to in writing pursuant to a disbursement agreement; and

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

29. **Conditions of Acceptance.**

a. The City shall have no responsibility or liability with respect to any street, or other improvement(s), notwithstanding the use of the same by the public, unless the street or other improvements shall have been accepted by the City. "Acceptance by the City" means a separate writing wherein the City specifies which improvements have been accepted and the date from which warranty(ies) shall run.

b. Prior to requesting final acceptance of any street, storm drainage facility, or other required improvement(s), the Developer shall: (i) furnish to the City Engineer as-built drawings in reproducible form, blue-line stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests required by City specifications; (ii) provide written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon, in and under which the improvements have been constructed, or which are necessary for the improvements, are free

from toxic, hazardous or other regulated substances or materials; (iii) provide written evidence to the City Engineer that the title to lands underlying the improvements are merchantable and free and clear from all liens and encumbrances, except those liens and encumbrances which may be approved in writing by the City Engineer.

30. **Phased Development.** If the City allows a street to be constructed in stages, the Developer of the first one-half street opened for traffic shall construct the adjacent curb, gutter and sidewalk in the standard location and shall construct the required width of pavement from the edge of gutter on his side of the street to enable an initial two-way traffic operation without on-street parking. That Developer is also responsible for end-transitions, intersection paving, drainage facilities, and adjustments to existing utilities necessary to open the street to traffic.

 7/10/97
Director of Community Development Date

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

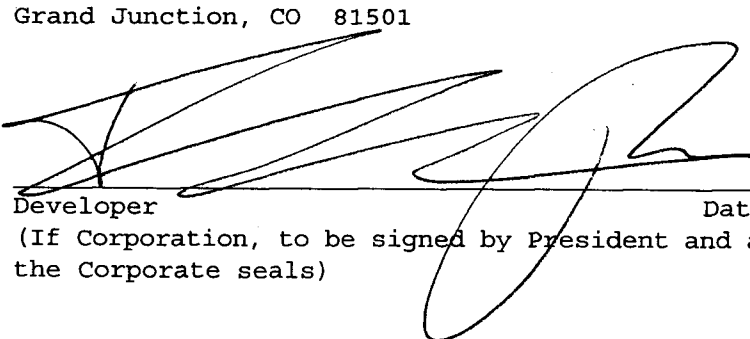
 7/8/97
Developer Date
(If Corporation, to be signed by President and attested to by Secretary together with the Corporate seals)

EXHIBIT "A"

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

SEE ATTACHED EXHIBIT "A"

EXHIBIT "A"

TAX SCHEDULE #: 2945-024-00-048

Being a tract of land situate in the Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$) and in the Northwest Quarter of the Southeast Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 2, Township 1 South, Range 1 West, of the Ute Meridian and being further described as follows:

COMMENCING at the Southwest Corner of the Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 2, Township 1 South, Range 1 West, of the Ute Meridian, from whence the Northwest Corner of said SW $\frac{1}{4}$ SE $\frac{1}{4}$ bears North 00°00'00" East, a distance of 1314.68 feet for a basis of bearing, with all bearings contained herein relative thereto; thence North 00°00'00" East, a distance of 657.34 feet; thence South 89°54'45" East, a distance of 40.00 feet to a point on the easterly right-of-way line of North 7th Street as described in Book 885, Page 100 of Mesa County Records; thence along said right-of-way line North 00°00'00" East, a distance of 100.13 feet to the POINT OF BEGINNING; thence North 00°00'00" East, a distance of 197.66 feet; thence North 11°28'10" East, a distance of 70.37 feet; thence North 45°28'10" East, a distance of 70.00 feet; thence North 38°30'00" West, a distance of 71.32 feet; thence North 00°00'00" East, a distance of 73.35 feet; thence with a curve to the right having a delta angle of 53°56'00", a radius of 185.50 feet, with an arc length of 174.61 feet, a chord bearing of North 26°58'00" East, and a chord distance of 168.24 feet; thence North 53°56'00" East, a distance of 207.81 feet; thence North 48°36'04" East, a distance of 120.52 feet; thence North 36°32'36" East, a distance of 19.41 feet; thence North 53°56'00" East, a distance of 25.89 feet; thence South 61°04'00" East, a distance of 31.66 feet; thence North 28°56'00" East, a distance of 25.00 feet; thence South 57°21'48" East, a distance of 44.87 feet; thence with a curve to the right having a delta angle of 40°14'37", a radius of 460.00 feet, with an arc length of 323.10 feet, a chord bearing of South 36°28'53" East, and a chord distance of 316.50 feet; thence South 16°21'34" East, a distance of 51.93 feet; thence with a curve to the right having a delta angle of 20°27'39", a radius of 435.00 feet, with an arc length of 155.34 feet, a chord bearing of South 06°07'45" East, and a chord distance of 154.52 feet; thence South 04°06'05" West, a distance of 79.36 feet; thence with a curve to the right having a delta angle of 12°16'55", a radius of 385.00 feet, with an arc length of 82.53 feet, a chord bearing of South 10°14'32" West, and a chord distance of 82.37 feet; thence South 16°22'59" West, a distance of 142.05 feet; thence South 12°37'36" West, a distance of 50.25 feet; thence South 06°55'49" East, a distance of 108.46 feet; thence North 89°54'45" West, a distance of 35.26 feet; thence North 06°55'49" West, a distance of 110.19 feet; thence North 12°37'36" East, a distance of 57.43 feet; thence North 81°53'58" West, a distance of 111.62 feet; thence South 75°37'02" West, a distance of 79.19 feet; thence South 43°29'56" West, a distance of 49.75 feet; thence South 80°08'30" West, a distance of 49.10 feet; thence South 83°31'53" West, a distance of 86.77 feet; thence South 89°22'31" West, a distance of 83.88 feet; thence South 87°58'50" West, a distance of 149.43 feet to the POINT OF BEGINNING, Mesa County, Colorado.

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL

DATE: July 7 1997
 NAME OF DEVELOPMENT: the Glen AT HORIZON PHASE 1
 LOCATION: 7th + HORIZON
 PRINTED NAME OF PERSON PREPARING: Peter CARBONE

| | 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.) | _____ | _____ | _____ | 6615.00 |
| 8. Curb, gutter & sidewalk (linear feet) | _____ | _____ | _____ | 22619.07 |
| 9. Driveway sections (sq.yd.) | _____ | _____ | _____ | _____ |
| 10. Crosspans & fillets | _____ | _____ | _____ | _____ |
| 11. Retaining walls/structures | _____ | _____ | _____ | _____ |
| <u>7th St. Decel. Lane</u> | | | | 7445.00 |

2857.93

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

IV. LANDSCAPING

- 1. Design/Architecture _____ 1500.00
- 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 _____ 4050.00
- 2. Surveying _____
- 3. Developer's inspection costs _____
- 4. Quality control testing _____
- 5. Construction traffic control _____
- 6. Rights-of-way/Easements _____
- 7. City inspection fees _____ 1500.00
- 8. Permit fees _____ 60.00
- 9. Recording costs _____
- 10. Bonds _____
- 11. Newsletters _____
- 12. General Construction Supervision _____
- 13. Other AS - BUILTS _____ 2000.00
- 14. Other _____

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 62,147.00

Pat C... 7/8/97
 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.

Jody ... 7-3-97
 CITY ENGINEER DATE

Kathleen M. ... *[Signature]* 7/10/97
 COMMUNITY DEVELOPMENT DATE