

OPD96KSD

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENTS AGREEMENT

NAME OF AGENCY OR CONTRACTOR: OP DEVELOPMENT CO, LLC

STREET ADDRESS/PARCEL NAME/SUBDIVISION: KNOLLS SUBDIVISION,
FILING ONE

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1996

EXPIRATION DATE: PERMANENT

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement") are O.P. Development Company, L.L.C. ("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 Final Plat for The Knolls Subdivision, Filing One.

RECITALS

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

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer will design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit "B" attached and incorporated by this reference. The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. The Developer's obligation to complete the improvements is and will be independent of any obligations of the City contained herein.

4. **Security:** To secure the performance of its obligations under this Agreement (except its obligations for warranty under paragraph 6), the Developer will enter into an agreement which complies with either option identified in paragraph 28, or other written agreement between the City and the Developer.

5. **Standards:** The Developer shall construct the Improvements according to the standards and specifications required by the City Engineer or as adopted by the City.

6. **Warranty:** The Developer warrants that the Improvements, each and every one of them, will be free from defects for a period of twelve (12) months from the date that the City Engineer accepts or approves the improvements completed by the Developer.

7. **Commencement and Completion Periods:** The improvements, each and every one of them, will be completed within one year 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 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, 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 by any person or entity in connection with, or on account of 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 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 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 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 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: O.P. Development Company, L.L.C.
 2421 Applewood Circle
 Grand Junction, CO 81506

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

25. **Recordation:** Developer will 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 sovereign 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. The **improvements guarantee** required by the City Code to ensure that the improvements described in the 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

X (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.

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.

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 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 in computer disk form and copies of results of all construction control tests required by City specifications.

- b. 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.

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

BW William M. Porten 11/22/96
Director of Community Development Date

Attest:

Stephanie Nye 12/6/96
Stephanie Nye Date
City Clerk

Richard P. Knapp Oct 1, 1996
Developer Date
(If Corporation, to be signed by the President and attested to by the Secretary together with the Corporate seals)

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

DESCRIPTION OF THE KNOLLS SUBDIVISION, FILING 1

A tract of land located in the SW¹/₄ of the NE¹/₄ of Section 1, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado more fully described as follows:

Beginning at the southeasterly corner of The Knolls Subdivision, Filing 1, being a Bureau of Land Management Monument for the C-E 1/16 Corner of Section 1, Township 1 South, Range 1 West, Ute Principal Meridian.

1. Thence N 89° 54' 17" W, 676.81 feet;
2. Thence N 02° 03' 32" W, 298.77 feet;
3. Thence S 68° 06' 13" W, 155.90 feet;
4. Thence S 81° 59' 06" W, 299.62 feet;
5. Thence S 50° 15' 06" W, 206.71 feet;
6. Thence N 00° 00' 59" E, 1221.94 feet;
7. Thence S 89° 57' 11" E, 1287.84 feet;
8. Thence S 00° 00' 59" W, 713.29 feet;
9. Thence S 68° 17' 12" W, 263.02 feet;
10. Thence southeasterly 185.52 feet along the arc of a circular curve to the right with a radius of 370.00 feet, a delta of 28° 43' 43", and a chord bearing S 33° 03' 51" E, 183.58 feet;
11. Thence southeasterly 251.82 feet along the arc of a circular curve to the left with a radius of 430.00 feet, a delta of 33° 33' 14", and a chord bearing S 35° 28' 36" E, 248.24 feet;
12. Thence S 00° 00' 59" W, 121.89 feet to the Point of Beginning.

The Knolls Subdivision, as described above contains 33.844 acres more or less.

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL
(Page 1 of 3)

DATE: November 15, 1996
 NAME OF DEVELOPMENT: Knolls Subdivision
 LOCATION: Grand Junction
 PRINTED NAME OF PERSON PREPARING: Banner Associates, Inc.

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
I. SANITARY SEWER				
1. Clearing and grubbing				
2. Cut and remove asphalt	S.F.	240	3.00	720.00
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	L.F.	207	35.00	7,245.00
4. Sewer Services (incl. trenching, bedding, & backfill)	L.F.	475	25.00	11,875.00
5. Sanitary sewer manhole(s)	EA.	1	2,500.00	2,500.00
6. Connection to existing manhole(s)	EA.	1	1,000.00	1,000.00
7. Aggregate Base Course	C.Y.	4.4	40.00	176.00
8. Pavement replacement	TON	4.3	95.00	408.00
9. Driveway restoration				
10. Utility adjustments				
II. DOMESTIC WATER				
1. Clearing and grubbing				
2. Cut and remove asphalt	S.F.	408	3.00	1,224.00
3. Water Main (incl. excavation, bedding, backfill, valves and appurtenances)	L.F.	156	25.00	3,900.00
4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances)	L.F.	533	20.00	10,660.00
5. Connect to existing water line	EA.	9	300.00	2,700.00
6. Aggregate Base Course	C.Y.	7.5	40.00	300.00
7. Pavement Replacement	TON	7.4	95.00	703.00
8. Utility adjustments	L.S.	1	1,000.00	1,000.00
III. STREETS				
1. Clearing and grubbing	L.S.	1	2,000.00	2,000.00
2. Earthwork, including excavation and embankment construction	C.Y.	700	7.00	4,900.00
3. Utility relocations				

4. Aggregate sub-base course (square yard)				
5. Aggregate base course (square yard)				
6. Sub-grade stabilization				
7. Asphalt or concrete pavement (square yard) with A.B.C.	S.Y.	932	22.00	20,504.00
8. Curb, gutter & sidewalk (linear feet)	L.F.	451	15.00	6,765.00
9. Driveway sections (square yard)	S.Y.	201	35.00	7,035.00
10. Crosspans & Fillets Sidewalks	S.Y.	206	10.00	2,060.00
11. Retaining walls/structures Drop Inlets	EA.	2	1,000.00	2,000.00
12. Storm drainage system Pipe	L.F.	75	40.00	3,000.00
13. Signs and other traffic control devices				
14. Construction staking	L.S.	1	2,000.00	2,000.00
15. Dust control	L.S.	1	1,000.00	1,000.00
16. Street lights (each)	EA.	1	400.00	400.00
IV. LANDSCAPING				
1. Design/Architecture				
2. Earthwork (includes top soil, fine grading, & berming)				
3. Hardscape features (includes walls, fencing, and paving)	S.F.	2,000	3.00	6,000.00
4. Plant material and planting	S.F.	2,400	0.20	480.00
5. Irrigation system				
6. Other features (incl. statues, water displays, park equipment, and outdoor furniture)				
7. Curbing				
8. Retaining walls and structures				
9. One year maintenance agreement				
V. MISCELLANEOUS				
1. Design/Engineering	L.S.	1	3,000.00	3,000.00
2. Surveying	L.S.	1	2,500.00	2,500.00
3. Developer's inspection costs	HR.	15	35.00	525.00
4. Quality control testing	HR.	15	35.00	525.00
5. Construction traffic control	L.S.	1	2,000.00	2,000.00
6. Rights-of-way/Easements				

7. City inspection fees	L.S.	1	750.00	750.00
8. Permit fees	L.S.	1	2,800.00	2,800.00
9. Recording costs	L.S.	1	2,050.00	2,050.00
10. Bonds				
11. Newsletters				
12. General Construction Supervision	L.S.	1	1,500.00	1,500.00
13. Other <u>AIR FARE TO DENVER TO</u>				500.00
14. Other <u>COLLECT ON LETTER OF CREDIT</u>				

RMK

BN 1-8-97

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ ~~118,205.00~~ RMK

O.P. Development Company, L.L.C. 118,705.00

Robert P. Bragg, Managing Director 11/15/96
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.

[Signature] 11-22-96
CITY ENGINEER DATE

BN Kathleen M. Portman 11/22/96
COMMUNITY DEVELOPMENT DATE

NORWEST BANKS

NORWEST BANK COLORADO, NA
LETTER OF CREDIT DEPARTMENT
1740 BROADWAY
ONE NORWEST CENTER
DENVER, CO 80274-8685
TELEX NUMBER 168118 NBI DVR
SWIFT ADDRESS: NWNBUS55
PHONE (303) 863-6719, FAX (303) 863-4898

IRREVOCABLE STANDBY LETTER OF CREDIT

OUR REFERENCE NUMBER: S801119
DECEMBER 11, 1996

TO: (BENEFICIARY)
CITY OF GRAND JUNCTION
COMMUNITY DEVELOPMENT DIRECTOR
250 N. 5TH STREET
GRAND JUNCTION, CO 81501

ACCOUNT PARTY:
O.P. DEVELOPMENT COMPANY, LLC
1655 WALNUT STREET, SUITE 300
BOULDER, CO 80302

WE OPEN IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER S801119
WHICH IS AVAILABLE BY PAYMENT AGAINST BENEFICIARY'S DRAFT(S) AT
SIGHT, DRAWN ON NORWEST BANK COLORADO, NATIONAL ASSOCIATION.

IN FAVOR OF YOURSELVES

EXPIRES AT OUR COUNTERS AT 3:00 PM DENVER TIME ON DECEMBER 10,
1997.

THIS CREDIT IS FOR AN AGGREGATE AMOUNT NOT TO EXCEED A TOTAL OF
U.S. DOLLAR 119,000.00 (ONE HUNDRED NINETEEN THOUSAND AND
00/100 U.S. DOLLARS). DRAFTS SUBMITTED MUST BE ACCOMPANIED BY
THE FOLLOWING DOCUMENTS:

1. BENEFICIARY'S SIGNED STATEMENT PURPORTEDLY SIGNED BY AN
AUTHORIZED SIGNER STATING: 'PER DEVELOPMENT IMPROVEMENTS
AGREEMENT BETWEEN O.P. DEVELOPMENT COMPANY, LLC AND THE CITY OF

***CONTINUED ON NEXT PAGE ***

OUR REF. NO. S801119

PAGE 2

GRAND JUNCTION, COLORADO AS IDENTIFIED UNDER SECTION 12 EVENTS OF DEFAULT.''

2. THIS ORIGINAL LETTER OF CREDIT FOR ENDORSEMENT.

ALL DRAFTS MUST BE MARKED: DRAWN UNDER NORWEST BANK COLORADO, NATIONAL ASSOCIATION, IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER S801119.

CANCELLATION OF L/C PRIOR TO EXPIRATION:

THIS LETTER OF CREDIT (AND AMENDMENTS) MUST BE RETURNED TO US FOR CANCELLATION WITH A STATEMENT PURPORTEDLY SIGNED BY THE BENEFICIARY STATING THAT:

"THIS LETTER OF CREDIT IS NO LONGER REQUIRED BY US AND IS HEREBY RETURNED TO THE ISSUING BANK FOR CANCELLATION."


WE HEREBY AGREE TO HONOR EACH DRAFT DRAWN AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT IF DULY PRESENTED (TOGETHER WITH THE DOCUMENTS AS SPECIFIED) TO NORWEST BANK COLORADO, NA, 1740 BROADWAY, ATTN: LETTER OF CREDIT DEPARTMENT, DENVER, CO 80274-8685 ON OR BEFORE THE EXPIRY DATE.

THIS CREDIT IS ISSUED SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500.

NORWEST BANK COLORADO, NATIONAL ASSOCIATION
BY:



(AUTHORIZED SIGNATURE)



(AUTHORIZED SIGNATURE)

NORWEST BANK COLORADO, NA
LETTER OF CREDIT DEPARTMENT
1740 BROADWAY
ONE NORWEST CENTER
DENVER, CO 80274-8685
TELEX NUMBER 168118 NBI DVR
SWIFT ADDRESS: NWNBUS55
PHONE (303) 863-6719, FAX (303) 863-4893
JANUARY 07, 1997

TO:
CITY OF GRAND JUNCTION
COMMUNITY DEVELOPMENT DIRECTOR
250 N. 5TH STREET
GRAND JUNCTION, CO 81501

ACCOUNT PARTY:
O.P. DEVELOPMENT COMPANY, LLC
1655 WALNUT STREET, SUITE 300
BOULDER, CO 80302

OUR STANDBY LETTER OF CREDIT NUMBER S801119 DATED DECEMBER 11,
1996
AMENDMENT NO. 001

1. CHANGE BENEFICIARY'S SIGNED STATEMENT SIGNED BY AN
AUTHORIZED SIGNER TO READ: "PER DEVELOPMENT IMPROVEMENTS
AGREEMENT BETWEEN O.P. DEVELOPMENT COMPANY, LLC AND THE CITY OF
GRAND JUNCTION, COLORADO, DEMAND IS HEREBY MADE FOR PAYMENT."
THIS AMENDMENT IS ONLY OPERATIVE UPON RECEIPT BY NORWEST BANK
COLORADO NATIONAL ASSOCIATION OF BENEFICIARY'S WRITTEN
AGREEMENT. PLEASE INDICATE YOUR AGREEMENT OR DISAGREEMENT
BY SIGNING ATTACHED COPY AND RETURNING TO US.

AGREEMENT-----*Bill Nebel*----- DATE-----*1-8-97*-----

DISAGREEMENT----- DATE-----

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.
NORWEST BANK COLORADO, NATIONAL ASSOCIATION

-----*Chris R. Steph*-----
AUTHORIZED SIGNATURE

-----*Carol J. Meninger*-----
AUTHORIZED SIGNATURE

MEMORANDUM OF IMPROVEMENTS AGREEMENT & GUARANTEE

Grand Junction Community Development Department

File # PDR-96-217 **BOOK 2294 PAGE 931**

This memorandum relates to an improvements agreement and guarantee dated January 8, 1997, by and between O.P. Development Co. LLC (Developer) and the City of Grand Junction (City) pertaining to The Knolls (Project) in the City of Grand Junction..

Legal Description: The Knolls Subdivision, Filing #1, as recorded in Book 15 Page 243-244, Mesa County Clerk & Recorder **DRAWER CC 135**

1785316 0925AM 01/17/97
MONIKA TODD CLERK REC MESA COUNTY CO

Whereas, Developer is required to install and construct certain public and private improvements as a condition of approval of the Project, which completion is guaranteed by an improvements agreement and guarantee in the sum of \$ 118,705.00, and

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

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

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

CITY OF GRAND JUNCTION:

Barbara M. Poston 1/13/97
Director of Community Development date

DEVELOPER:

Robert C. Kucyple 1/13/97
date

After recording mail to:

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

RELEASE OF IMPROVEMENTS AGREEMENT & GUARANTEE
Grand Junction Community Development Department

This memorandum relates to certain recorded Improvements Agreements and Guarantees. The agreements are by and between O.P. Development Company, LLC (Developer) and the City of Grand Junction (City) pertaining to The Knolls Subdivision. The necessary data pertaining to each of the filings for this project follows:

File #	Date	Book	Page	Total Cost	Disbursement Amount	Filing
PDR-96-217	11/22/96	2294	931	\$118,705.00	\$118,705.00	#1 <i>copy</i>
FPP-1997-091	12/29/97	2403	913 - 925	\$214,486.00	\$500,000.00	#2
FPP-98-069	1/11/99	2549	28 - 43	\$247,333.50	\$247,333.50	#3

Whereas, Developer has installed and constructed certain public and private improvements at and for the Project, which completion was guaranteed by the execution of an Improvements Agreement and Guarantee, and

Whereas, the City of Grand Junction and all other agencies possessing regulatory authority over the Project and/or the improvements have inspected the Improvement and have accepted the same.

NOW THEREFORE, officials of the City of Grand Junction and other officials duly representing their agencies, possessing and representing by their signatures, affixed thereto, that they possess sufficient authority to accept improvements and release the portion of the guarantee pertaining to the improvements under their jurisdiction, do accept, sign and release said improvements agreement and guarantee.

CITY OF GRAND JUNCTION:

By: City Engineer *Richard Davis* Date: 2-4-02
 City Utilities Manager: *TS Pd* Date: 2/4/02
 Fire Marshall: *Hank Masterson* Date: 2/6/02

UTE WATER:

By: *Chal Taha* Date: 4 Feb 02

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

Director of Community Development *Pat Cecil* Date: 2/6/02

The foregoing instrument was executed before me this 6th day of February, 2002 (year) by Pat Cecil, Director of Community Development for the City of Grand Junction, Colorado.

Witness my hand & official seal.

Notary Public

My commission expires November 28, 2005

