

PAR04SHW

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**

NAME OF CONTRACTOR: PARADISE HILLS PARTNERSHIP

SUBJECT/PROJECT: SUMMER HILL FILING #5

LOCATION: SUMMER HILL WAY

TAX PARCEL #: 2701-261-41-001

FILE #: FPP-2004-028

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2004

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

## DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement" or "Agreement") are Paradise Hills Partnership, a Colorado General Partnership ("the Developer") and **THE CITY OF GRAND JUNCTION**, Colorado ("the City" or "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 will be the date that this agreement is signed which shall be no earlier than recordation of the final plat or final plan approval whichever first occurs.

### RECITALS

The Developer seeks permission to develop property within the City to be known as Summer Hill Filing No. 5, which property is more particularly described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Property 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 Developer and/or the Property or for the benefit of the owners, purchasers or users of the Property. 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 Improvements" or "Improvements"). The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. The hourly rate of "in-house" City inspection services is \$45.00 per 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. The scope of this project is such that the City may have to engage independent consultant(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others. 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 the Developer shall post security in an amount of \$ 629,255<sup>98</sup> (100% 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.

7. **Commencement, Completion and Abandonment Periods:** The Developer will commence work on the Improvements within 14 days from the Effective Date of this Agreement 8/30/04 (set date) ("the Commencement Period") and the Improvements, each and every one of them, shall be completed by the end of the twelfth month from the Effective Date of this Agreement 8/30/05 (set date) (the "Completion Period"). The Developer shall not cease construction activities for any period of more than 60 consecutive days ("the Abandonment Period").

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

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 shall correct all nonconforming construction and/or defects within thirty (30) days from the issuance of the notice by the engineer of a/the defect. The City may grant reasonable extensions.

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

**11. Reduction of Security:** After the acceptance of any Improvement, the amount which the City is entitled to draw on the guarantee will be reduced by an amount equal to ninety percent (90%) of the estimated cost of the Improvement as shown in Exhibit B. At the written request of the Developer, the City will execute a certificate verifying the acceptance of the Improvement and waiving its right to draw on the guarantee to the extent of such amount. A Developer in default under this Agreement will have no right to such certification. Upon the acceptance of all of the Improvements the remaining balance that may be drawn under the guarantee shall be available to the City for ninety (90) days after the expiration of the Warranty period.

**12. Use of Proceeds:** The City will use funds deposited with it, drawn or guaranteed pursuant to any written agreement entered into between the parties 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 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 time schedule provided in paragraph number seven (7), above;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvement within the applicable Warranty period;
- 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.

Unless specifically provided herein the City may not declare a default until written notice has been sent to the Developer at the address on file with the development application. Notice is and shall be deemed effective two (2) 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 will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. Administrative 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 will be *prima facie* evidence of the minimum cost of completion; however, 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 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 lender) who has acquired the Property 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 to the City 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.

16. **Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents 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 or non-performance of work at the Property or the Property being developed 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 or non-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, employee, joint venturer, or partner of the City.

17. **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 the City and the 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.

18. **Amendment or Modification:** The parties to this Agreement may amend or modify the 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.

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, will 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:** 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 the Property being developed.

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

22. **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.

23. **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.

24. **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.

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. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also will be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property. There is no prohibition on the right of the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City will constitute a release of the original Developer from his liability under this Agreement. When the

Improvements are completed and approved by the City, the City agrees to state same in writing, with appropriate acknowledgments. The City will 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 will 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:

*Paradise Hills Partnership  
1015 N. 7th St.  
Grand Junction, Colo 81501*

If to City:

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

And

City Attorney  
250 N. 5<sup>th</sup> Street  
Grand Junction, CO 81501

27. **Recordation:** Developer will pay for all costs to record this Agreement or a Memorandum thereof in the Clerk and Recorder's Office of Mesa County, Colorado.

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, 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.

30. 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 finally accepted by the City.

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.

- c. 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, blueline 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) 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 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.

By: [Signature] 7/14/04  
Developer's signature date

Print name: Robert L. Bray

Title/Position: Mgr. - Pauline Hill Partnership

STATE OF COLORAD :  
:ss  
COUNTY OF MESA :

Sworn to before me and subscribed in my presence by Robert L. Bray on this 16th day of July 2004.

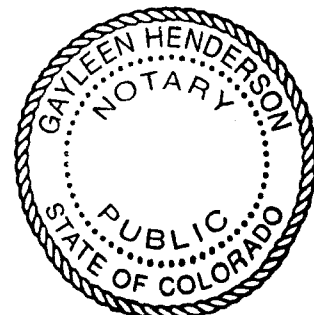
Witness my hand and seal.

My commission expires: 10/29/2005

Gayleen Henderson  
Notary Public

City of Grand Junction:

[Signature] 7/14/04  
Community Development date



My Commission Expires 10/29/2005



EXHIBIT A

PROPERTY DESCRIPTION

A parcel of land situated in the northeast quarter of Section 26, Township 1 North, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado, being a part of Block 4 of Summer Hill Filing No. 3 and all of Tract 4 of Grand Vista Subdivision Filing No. 2, more particularly described as follows:

Commencing at the northeast sixteenth corner of said Section 26, a BLM Cadastral Survey standard monument whence the center-north sixteenth corner of said Section 26, a Mesa County Survey Marker, bears South 89°52'36" West with all bearings herein relative thereto;

Thence South 00°06'39" West, a distance of 344.53 feet to the Point of Beginning on the common boundary of said Summer Hill Filing No. 3 and Grand Vista Filing No. 2;

Thence along said boundary South 00°06'39" West, a distance of 105.16 feet;

Thence along said boundary South 31°04'05" West, a distance of 89.54 feet;

Thence departing said boundary South 76°32'06" East, a distance of 131.18 feet;

Thence 251.92 feet along the arc of a 322.00 foot radius non-tangent curve to the right, through a central angle of 44°49'34", with a chord bearing North 39°21'14" East, a distance of 245.54 feet;

Thence North 61°46'00" East tangent to said curve, a distance of 54.31 feet;

Thence North 16°46'00" East, a distance of 28.28 feet;

Thence North 61°46'00" East, a distance of 44.00 feet;

Thence South 73°14'00" East, a distance of 28.28 feet;

Thence South 28°14'00" East, a distance of 44.00 feet;

Thence South 16°46'00" West, a distance of 28.28 feet;

Thence South 28°14'00" East, a distance of 91.17 feet;

Thence 133.10 feet along the arc of a 322.00 foot radius tangent curve to the right, through a central angle of 23°40'58", with a chord bearing South 16°23'31" East, a distance of 132.15 feet;

Thence South 04°33'02" East tangent to said curve, a distance of 115.88 feet;

Thence 185.31 feet along the arc of a 278.00 foot radius tangent curve to the left, through a central angle of 38°11'34", with a chord bearing South 23°38'48" East, a distance of 181.90 feet joining with the boundary of Summer Hill Filing No. 3 along this curve;

Thence along the boundary of said Block 4 of Summer Hill Filing No. 3 the following seventeen (17) courses:

1. South 42°44'35" East tangent to said curve, a distance of 67.76 feet;

2. South 47°15'05" West, a distance of 44.00 feet;

3. North 42°44'35" West, a distance of 67.77 feet;

4. 57.53 feet along the arc of a 322.00 foot radius tangent curve to the right, through a central angle of 10°14'12", with a chord bearing North 37°37'29" West, a distance of 57.45 feet to a point of cusp;

5. South 56°43'10" West, a distance of 116.50 feet;

6. South 52°47'07" West, a distance of 96.45 feet;

7. South 13°50'57" West, a distance of 126.30 feet;

8. North 87°42'17" West, a distance of 46.06 feet;

9. North 26°56'04" West, a distance of 75.33 feet;

10. North 44°49'20" West, a distance of 77.03 feet;

11. North 61°48'04" West, a distance of 86.41 feet to a point of cusp on a 822.00 foot radius curve concave to the west;

12. 80.25 feet southerly and southwesterly along the arc of said curve, through a central angle of 5°35'38", with a chord bearing South 21°58'13" West, a distance of 80.22 feet to a point of cusp;

13. North 62°10'21" West, a distance of 44.07 feet;

14. South 71°27'01" West, a distance of 27.76 feet;

15. South 27°37'44" West, a distance of 43.16 feet;

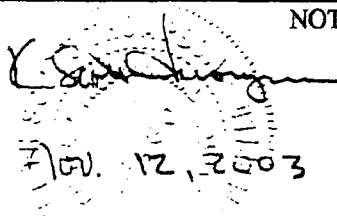
16. South 16°11'34" East, a distance of 27.70 feet;

17. 120.36 feet along the arc of a 778.00 foot radius non-tangent curve to the right, through a central angle of 8°51'51", with a chord bearing

South 35°09'15" West, a distance of 120.24 feet to a point on the boundary of Block 2 of Summer Hill Filing No. 1;  
 Thence along said boundary the following five (5) courses:  
 1. North 50°41'56" West, a distance of 99.82 feet;  
 2. North 66°00'18" West, a distance of 47.93 feet;  
 3. North 77°59'55" West, a distance of 73.12 feet;  
 4. North 88°17'15" West, a distance of 90.73 feet;  
 5. South 58°40'32" West, a distance of 186.80 feet;  
 Thence along the common boundary of Summer Hill Filing No. 1 and Grand Vista Filing No. 2 South 52°24'24" West, a distance of 40.77 feet to the southwest corner of said Tract 4;  
 Thence along the westerly and northwesterly boundary of said Tract 4 the following nine (9) courses:  
 1. North 00°01'40" East, a distance of 61.57 feet;  
 2. North 54°15'57" East, a distance of 235.44 feet;  
 3. 11.34 feet along the arc of a 48.00 foot radius tangent curve to the left, through a central angle of 13°32'25", with a chord bearing North 47°29'45" East, a distance of 11.32 feet;  
 4. North 40°43'32" East tangent to said curve, a distance of 126.89 feet;  
 5. North 11°30'47" East, a distance of 130.98 feet;  
 6. North 35°53'35" East, a distance of 150.00 feet;  
 7. North 41°20'35" East, a distance of 75.34 feet;  
 8. North 47°51'07" East, a distance of 76.66 feet;  
 9. North 30°49'01" East, a distance of 190.22 feet to the Point of Beginning.

Containing 10.015 acres, more or less.

This description was prepared by:  
 Kenneth Scott Thompson  
 Colorado P.L.S. 18480  
 529 25 1/2 Road, Suite 210  
 Grand Junction, Colorado



7/10/12, 2003

NOTICE: Any rewriting or retyping of this description must NOT include this preparation information. Lack of an embossed seal indicates this document is not the original.

**EXHIBIT B**  
SUMMER HILL FILING 5  
**IMPROVEMENTS COST ESTIMATE**

DATE: 7/13/2004

DEVELOPMENT NAME: Summer Hill Filing 5

LOCATION: Summer Hill Way

PRINTED NAME OF PERSON PREPARING: D. Thies, Thompson Langford Corporation

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>A. SANITARY SEWER</b>					
1	8 " PVC Sanitary Sewer Main	LF	1656	\$ 14.85	\$ 24,591.60
2	4 " PVC Sanitary Sewer Main	LF	1291	\$ 13.20	\$ 17,041.20
3	" PVC Sanitary Sewer Main	LF			\$ -
4	Sewer services	EA	27	\$ 165.00	\$ 4,455.00
5	Sanitary Sewer Manhole	EA	13	\$ 1,650.00	\$ 21,450.00
6	Sanitary Sewer Drop Manhole	EA			\$ -
7	Connection to Existing Manhole	EA	2	\$ 550.00	\$ 1,100.00
8	Concrete Encasement	LF	20	\$ 27.50	\$ 550.00
	<b>Subtotal Part A Sanitary Sewer</b>				<b>\$ 69,187.80</b>
<b>B. DOMESTIC WATER</b>					
1	8 " PVC Water Main (incl fittings)	LF	1931	\$ 13.20	\$ 25,489.20
2	6 " PVC Water Main	LF			\$ -
3	4 " PVC Water Main	LF	392	\$ 9.90	\$ 3,880.80
4	8 " Gatevalve	EA	7	\$ 685.00	\$ 4,795.00
5	" Gatevalve	EA			\$ -
6	" Gatevalve	EA			\$ -
7	Water Services	LF	27	\$ 325.00	\$ 8,775.00
8	Connect to Existing Water Line	EA	3	\$ 550.00	\$ 1,650.00
9	Fire Hydrant with Valve	EA	3	\$ 2,200.00	\$ 6,600.00
10	Utility Adjustments	EA			\$ -
11	Blowoff	EA	3	\$ 300.00	\$ 900.00
					\$ -
					\$ -
					\$ -
	<b>Subtotal Part B - Domestic Water</b>				<b>\$ 52,090.00</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C1</b>	<b>STREETS</b>				
1	4 " PVC Utility/Irrigation sleeves	LF	1500	\$ 4.00	\$ 6,000.00
2	" PVC Utility/Irrigation sleeves	LF			\$ -
3	Reconditioning (10")	CY	1878	\$ 1.10	\$ 2,065.80
3	Reconditioning (24")	CY	483	\$ 1.70	\$ 821.10
4	Aggregate Base Course (Class 3) 12"	SY			\$ -
5	Aggregate Base Course (Class 6) (6" Compacted Thickness)	SY	3780	\$ 5.25	\$ 19,845.00
6	Aggregate Base Course (Class 6) (10" Compacted Thickness)	SY			\$ -
7	Aggregate Base Course (Class 6) (11" Compacted Thickness)	SY	5439	\$ 7.70	\$ 41,880.30
8	Aggregate Base Course (Class 6) (12" Compacted Thickness)	SY	2482	\$ 12.00	\$ 29,784.00
9	Hot Bituminous Paving, Grading (3" thick)	SY	5439	\$ 9.00	\$ 48,951.00
10	Hot Bituminous Paving, Grading (4" thick)	SY	2482	\$ 12.00	\$ 29,784.00
11	Hot Bituminous Paving, Patching (3" Thick)	SY			\$ -
12	Geotextile	SY			\$ -
13	Concrete Curb ( " Wide by " High)	LF			\$ -
14	Concrete Curb and Gutter (2' wide)	LF	609	\$ 9.50	\$ 5,785.50
15	Concrete Curb and Gutter (3' wide)	LF	75	\$ 16.50	\$ 1,237.50
16	Monolithic, Vertical Curb, Gutter and Sidewalk (7' Wide)	LF	1110	\$ 15.90	\$ 17,649.00
17	Drive Over Curb, Gutter, and Sidewalk (6 1/2' Wide)	LF	2892	\$ 13.20	\$ 38,174.40
18	Concrete Sidewalk (5' Wide)	LF			\$ -
19	Concrete Gutter and Driveway Section ( " Thick)	SY			\$ -
20	Concrete Drainage Pan ( ' Wide, 8" Thick)	SY			\$ -
21	Concrete Corner Fillet	SY			\$ -
22	Concrete Curb Ramp	SY			\$ -
23	Complete Concrete Corner	SY	111	\$ 47.65	\$ 5,289.15
24	Concrete Driveway ( " Thick)	SY			\$ -
25	Driveway/Concrete Repair	SY			\$ -
26	Colored/Patterned Concrete	SY	270	\$ 54.00	\$ 14,580.00
27	Retaining Walls	FF	2138	\$ 20.00	\$ 42,760.00
28	Street Signs	EA	9	\$ 650.00	\$ 5,850.00
29	Striping (New, Remove/Replace)	LF			\$ -
30	Street Lights	EA			\$ -
31	Signal Construction or Reconstruction	LS			\$ -
32	Flowable Fill	CY			\$ -
33	Sleeves, " , PVC	LF			\$ -
34	Mailbox Pad	EA	2	\$ 500.00	\$ 1,000.00

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
					\$ -
<b>C2</b>	<b>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>\$ 311,456.75</b>
<b>D1</b>	<b>EARTHWORK</b>				
1	Mobilization	LS	1	\$ 3,000.00	\$ 3,000.00
2	Clearing and Grubbing	LS	1	\$ 1,000.00	\$ 1,000.00
3	Unclassified Excavation	CY	21675	\$ 1.10	\$ 23,842.50
4	Unclassified Embankment	CY	26120	\$ 0.60	\$ 15,672.00
5	On Site Borrow	CY	4440	\$ 1.10	\$ 4,884.00
6	Silt Fence/SWMP	LS	1	\$ 2,500.00	\$ 2,500.00
7	Watering (Dust Control)	LS	1	\$ 2,500.00	\$ 2,500.00
<b>D2</b>	<b>REMOVALS AND RESETTING</b>				
1	Removal of Asphalt	SY			\$ -
2	Removal of Miscellaneous Concrete	SY			\$ -
3	Remove Curb and Gutter	LF			\$ -
4	Removal of Culverts	LF			\$ -
5	Remove Structures	EA	2	\$ 350.00	\$ 700.00
6	Remove Signs	EA			\$ -
7	Remove Fence	LF			\$ -
8	Adjust Manhole	EA			\$ -
9	Adjust Valvebox	EA			\$ -
10	Relocate or Adjust Utilities	LS			\$ -
<b>D3</b>	<b>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			\$ -


Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>D4</b>	<b>STORM DRAINAGE FACILITIES</b>				
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY			\$ -
2	10" HDPE Storm Drain Pipe	LF	651	\$ 14.30	\$ 9,309.30
3	12" HDPE Storm Drain Pipe	LF	89	\$ 17.60	\$ 1,566.40
4	18" HDPE Storm Drain Pipe	LF	151	\$ 20.90	\$ 3,155.90
5	24" HDPE Storm Drain Pipe	LF	35	\$ 26.40	\$ 924.00
6	18" CMP Storm Drain Pipe	LF			\$ -
7	24" CMP Storm Drain Pipe	LF			\$ -
8	42" RCP Storm Drain Pipe	LF			\$ -
9	12" Flared End Section	EA			\$ -
10	18" Flared End Section	EA			\$ -
11	24" Flared End Section	EA	1	\$ 550.00	\$ 550.00
12	42" Flared End Section	EA			\$ -
13	48" Storm Drain Manhole	EA	1	\$ 2,200.00	\$ 2,200.00
14	60" Storm Drain Manhole	EA			\$ -
15	72" Storm Drain Manhole	EA			\$ -
16	90" Storm Drain Manhole	EA			\$ -
17	Connection to Existing Structure	EA			\$ -
18	Single Curb Opening Storm Drain Inlet	EA	5	\$ 1,210.00	\$ 6,050.00
19	Double Curb Opening Storm Drain Inlet	EA			\$ -
20	Area Storm Drain Inlet	EA	7	\$ 385.00	\$ 2,695.00
21	Detention Area Outlet structure	EA			\$ -
22	Rip-Rap D <sub>50</sub> = ____"	SY	34	\$ 40.00	\$ 1,360.00
23	Sidewalk Trough Drain	EA	2	\$ 1,000.00	\$ 2,000.00
24	3' Concrete Trickle Pan	LF			\$ -
25	Trash Rack	EA			\$ -
26	Pump Systems including Electrical	LS			\$ -
	<b>Subtotal Part D - Grading and Drainage</b>				<b>\$ 83,909.10</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>E1</b>	<b>IRRIGATION</b>				
1	Connect to Existing Pipe	LS			\$ -
2	2" PVC Irrigation Pipe	LF			\$ -
3	6" PVC Irrigation Pipe	LF			\$ -
4	Fittings and Valves	LS			\$ -
5	Services	EA	27	\$ 150.00	\$ 4,050.00
6	Irrigation Distribution - pipe, valves, etc.	LS	1	\$ 20,145.00	\$ 20,145.00
6	Pump System and Concrete Vault	LS			\$ -
7	Irrigation Structure	EA			\$ -
8	Vacuum Relief and/or Air Release Valve	EA			\$ -
<b>E2</b>	<b>LANDSCAPING</b>				
1	Design/Architecture	LS	incl		
2	Earthwork	CY	incl		
3	Hardscape Features	LS	incl		
4	Plant Material & Planting	LS	1	\$ 18,500.00	\$ 18,500.00
5	Irrigation System	LS	incl		
6	Curbing	LF	incl		
7	Retaining Walls & Structures	LS	na		
8	1 Year Maintenance Agrmnt.	LS	incl		
9	Topsoil	LS	incl		
					\$ -
					\$ -
<b>E</b>	<b>Subtotal Part E - Landscaping and Irrigation</b>				<b>\$ 42,695.00</b>
	<b>Subtotal Construction Costs</b>				<b>\$ 559,338.65</b>


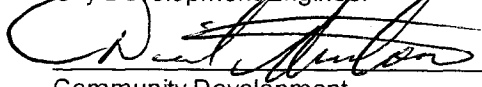
Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>F.</b>	<b>Miscellaneous Items</b>				
1	Construction staking/surveying	%	3.00%	\$ 559,338.65	\$ 16,780.16
2	Developer's inspection cost	%	2.00%	\$ 559,338.65	\$ 11,186.77
3	General construction supervsn	%	2.00%	\$ 559,338.65	\$ 11,186.77
4	Quality control testing	%	2.00%	\$ 559,338.65	\$ 11,186.77
5	Construction traffic control	%	1.00%	\$ 559,338.65	\$ 5,593.39
6	City inspection fees	%	0.50%	\$ 559,338.65	\$ 2,796.69
7	As-builts	%	2.00%	\$ 559,338.65	\$ 11,186.77
<b>E.</b>	<b>Subtotal Part F - Miscellaneous Items</b>				<b>\$ 69,917.33</b>
% = Percentage of total site construction costs					
<b>G.</b>	<b>COST SUMMARY</b>				
1	<b>Total Improvement Costs</b>				<b>\$ 629,255.98</b>
2	<b>City Security (not applicable)</b>				
3	<b>Total Guarantee Amount</b>				<b>\$ 629,255.98</b>

**NOTES**

1. All prices shall be for items complete in place and accepted.
2. All pipe prices 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 sleeves.
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 items may be added as needed.

  
 Signature of Developer \_\_\_\_\_ Date 7/16/04  
 (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.

  
 City Development Engineer \_\_\_\_\_ Date 7-13-04  
  
 Community Development \_\_\_\_\_ Date 7-14-04



**DISBURSEMENT AGREEMENT**  
(Improvements Guarantee)

**DEVELOPER:** Paradise Hills Partnership

**BANK:** Grand Valley National Bank

**PROPERTY:** Summer Hill Filing #5

**DISBURSEMENT AMOUNT:** For the construction of improvements to the Property in an amount not to exceed \$ 629,255.98.

This Agreement is entered into by and between Paradise Hills Partnership ("Developer"), G.V.N.B. ("Bank") and the City of Grand Junction, Colorado ("City").  
Grand Valley National Bank

**RECITALS**

Developer has been required by the City to construct certain improvements to Summer Hill Filing #5 ("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 \$ 629,255.98, 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.

Bankwarrants: 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 Robert L. Bray, Manager (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 6<sup>th</sup> day of August, 2004

(BANK)

By: [Signature]  
Title

975 North 7<sup>th</sup> Ave  
Address 81501

(DEVELOPER)

By: [Signature]  
Title mgr. - Paradise Hills Partnership

1015 N. 7<sup>th</sup> St.  
Address Grand Junction, CO 81501

CITY OF GRAND JUNCTION

By: [Signature]  
Director of Community Development Dept.

Principal Planner

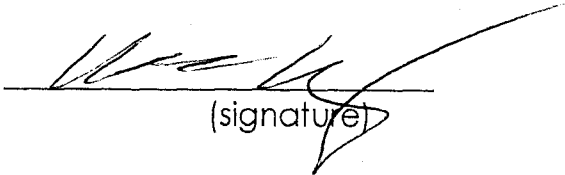
Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between paradise Hills Partnership Developer, Grand Valley National Bank as Bank, and the City of Grand Junction, the following are the individuals authorized to sign written requests for the disbursement of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

**DEVELOPER:**

  
(name)

Robert L. Bray  
(signature)

Kevin Bray  
(name)

  
(signature)

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

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

**DEVELOPER'S GENERAL CONTRACTOR:**

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

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

**DEVELOPER'S PROJECT ENGINEER:**

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

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

**DEVELOPER'S ARCHITECT:**

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

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

**CITY ENGINEER:**

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

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

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

City of Grand Junction  
Community Development Department Community Development  
File: # **FPP-2004-028**

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 PARADISE HILLS PARTNERSHIP (Developer) and the City of Grand Junction (City) pertaining to SUMMER HILL Subdivision Filing 5 (Project), located at SUMMER HILL WAY.

(Subject subdivision is more particularly depicted and described in the recording found at Plat Book 3786, Pages 940-943)

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 # FPP-2004-028.

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:** Paradise Hills Partnership  
By: [Signature] 10/25/04  
Date  
(Print Name) Robert L. Boy

**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, Community Development Department, 250 N. 5<sup>th</sup> Street, Grand Junction Colorado.

[Signature] 11-1-04  
Community Development Department Date