

RLS96SJS

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENTS AGREEMENT

NAME OF AGENCY OR CONTRACTOR: RICHARD L. SPARKMAN/JOHN R.
SHAFFER

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: SJ
SUBDIVISION LOT 3 WINTERS AVENUE INDUSTRIAL PARK

CITY DEPARTMENT: COMUNITY DEVELOPMENT

YEAR: 1996

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

2/15/11/11
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IMPROVEMENTS AGREEMENT
(Site Plan)

1. **Parties:** The parties to this Improvements Agreement ("the Agreement") are Richard L. Sparkman, ("the Developer") and THE CITY OF GRAND JUNCTION, Colorado ("the City").
2. **Effective Date:** The Effective Date of the Agreement will be the date that this agreement is recorded.

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

RECITALS

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

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer will design, construct and install, at its own expense, those improvements listed on Exhibit B attached hereto and incorporated herein 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 City estimates that \$ 100.00 will be required for City inspection of the required improvements. 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 acceptable to the City to post a good and sufficient letter of credit, or deposit with the City cash equivalent to the estimated cost of construction of the improvements or provide a bank disbursement agreement acceptable to the City.

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

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

7. **Commencement and Completion Periods:** The improvements, each and every one of them, will be completed within 12 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 site plan/development approval when fulfilling its obligations under this Agreement.

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

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

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

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

- a. Developer's failure to complete each portion of the Improvements in conformance with the agreed upon time schedule; the City may not declare a default until a 14 calendar day notice has been given to the Developer;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any improvement within the applicable correction period; the City may not

declare a default until a 14 calendar day notice has been given to the Developer;

- c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; in such event the City may immediately declare a default without prior notification to the Developer;
- d. Notification to City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer.

13. Measure of Damages: The measure of damages for breach of this Agreement by Developer will be the reasonable cost of satisfactorily completing the 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 disbursement agreement or cash escrow establish the maximum amount of the Developer's liability.

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

15. **Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officer, employees and assigns harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the Development or on the Property pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance of work pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance of work pursuant to this Agreement except where such suit is brought by the Developer. The Developer is not an agent or employee of the City for any purpose whatsoever.

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

17. **Amendment or Modification:** The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or its authorized officer. Such amendment or modification shall be properly notarized before it may be 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 the courts to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term or provision, and the rights of the parties will be construed as if the part, term or provision was never part of the Agreement.

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

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

If to Developer:

Richard L. Sparkman
P. O. Box 1789
Grand Junction, CO 81502

If to City:

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

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

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

27. Personal Jurisdiction and Venue: Personal jurisdiction and venue for any action commenced by either party to this Agreement, whether arising out of, or relating to the Agreement, letter of credit, disbursement agreement or cash deposit will be deemed to be proper only if such action is commenced in Mesa County Colorado.

Exhibit A

SJ Subdivision,
Except Lot 4, Thereof

County of Mesa,
State of Colorado

Exhibit B

Approximately 500' of 4' sidewalk
along north side of Kimball Avenue \$6,000.00

Approximately 300' of Valley Gutter along
south side of Winters Avenue \$8,400.00

**DISBURSEMENT AGREEMENT
(Improvements Guarantee)**

DEVELOPER: Richard L. Sparkman
P. O. Box 1789
Grand Junction, CO 81502

BANK: Norwest Bank Grand Junction, National Association
P. O. Box 1568
Grand Junction, CO 81502

PROPERTY: SJ Subdivision, a Replat of Lot 3, Winters Avenue
Industrial Park, Mesa County, Colorado

DISBURSEMENT AMOUNT: For the construction of the improvements to
the Property shall be in an amount not to exceed
\$14,400.00.

This Agreement is entered into by and between Richard L. Sparkman ("the Developer"), Norwest Bank ("Bank") and the City of Grand Junction, Colorado ("the City").

RECITALS

Developer has been required by the City to construct certain improvements to SJ Subdivision ("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 subdivision and improvements.

The City Engineer has approved an estimate of the costs of the Improvements and that amount or an amount not to exceed \$14,400.00, whichever is greater, shall be referred to as the "Funds".

The parties desire to secure the performance of the Developer's obligations and that the funds are disbursed only to pay for the Improvements.

NOW, THEREFORE, THE PARTIES AGREE:

1. Bank shall dedicate or set aside the funds on behalf of Developer and for the City's benefit within forty eight hours of execution of this Disbursement Agreement. Bank warrants that the funds are to be held in trust solely to secure Developer's obligations under the Improvements Agreement; that the Bank shall act as agent of the City in holding the funds; that the funds will not be paid out or disbursed to or on behalf of the Developer except as set forth in this document 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 payments of the cost of satisfactory completion of the improvements.

A. DISBURSEMENT PROCEDURES: Funds shall be advanced for payment of costs incurred for the construction of Improvements on the Property in accordance with the Improvements List/Detail, evidenced as Exhibit A. All disbursements must comply with the following procedures:

(1) **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 shall certify that all costs for which the advance is being requested have been incurred in connection with the construction and 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, for material not installed and that Project Engineer has inspected the improvements for which payment is requested and that such has been completed in accordance with all terms, specifications and conditions of the approved plans.

(2) **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 the Bank, made payable to the payee and for the amount of each invoice presented for payment; (iii) lien waiver in a form approved by the Bank prepared for each payee for the mailing of checks presented to the Bank; and (v) receipt by the Bank of all lien waivers relating to any prior disbursements, which lien waiver 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 payees in the envelopes presented to the Bank, together with lien waivers and copies of supporting invoices.

Under no circumstance shall the Bank make a disbursement for the payment of an invoice 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.

(3) **Default:** Upon default of the Developer on any obligation to Bank or under the Improvements Agreement, Bank shall disburse no funds to, or at the direction of, the Developer except to the City under the terms of the Improvements Agreement. Bank shall immediately notify the City, in writing, of any event of default as provided for in the Improvements Agreement or as provided herein.

(4) **Disbursement to City:** In the event the improvements are not satisfactorily and timely constructed, or upon any default, the City 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 to disburse the funds to the City or a third party or parties. 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.

DEVELOPER CONSENT: The Developer, by the signature of the general partner, consents to disbursements and other actions authorized and provided for by the terms of this Agreement.

LIABILITY FOR LOSS: If the Bank fails to disburse funds in accordance with the procedures set forth and the City suffers loss, the Bank shall be liable to the City for the City's direct and consequential damages.

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.


IMMUNITY: Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under applicable state law.

Dated this 12th day of October, 1994.


NORWEST BANK GRAND JUNCTION, NATIONAL ASSOCIATION

By Jeffrey S. Parker
Jeffrey E. Parker, Vice President
P. O. Box 1568
Grand Junction, CO 81502

DEVELOPER


Richard L. Sparkman

CITY OF GRAND JUNCTION

By 
Mark K. Achen, City Manager

RELEASE OF IMPROVEMENTS AGREEMENT & GUARANTEE

Grand Junction Community Development Department

FILE # COU-96-4.2

Book 2257 Page 133

This memorandum relates to a certain recorded Improvements Agreement and Guarantee dated FEBRUARY 21 1996, and recording at Book 2209, Page 552 of the land records of Mesa County, Colorado, by and between JOHN R. SHAFER (Developer) and the City of Grand Junction (City) pertaining to QUALITY IN COUNTRY Project).

1767915 1201PM 08/15/96
MONIKA TODD CLK&REC MESA COUNTY CO

Legal Description: LOT 3 AMENDED SJ SUBDIVISION
AKA LOT 3, WINTERS AVENUE INDUSTRIAL PARK

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 improvements 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: William H. Neth 8-6-96
City ~~Engineer~~ PLANNER Date

City Utilities Manager Date

Fire Marshall Date

UTE WATER:

By: NA

Date

GRAND JUNCTION DRAINAGE:

By: NA

Date

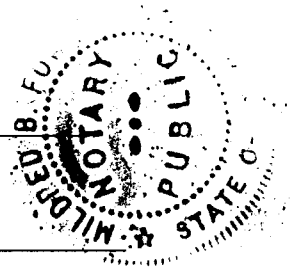
In accordance with the above signatures, I hereby certify that the Improvements Agreement & Guarantee and the recording evidencing the agreement and guarantee, at Book 2209, Page 552 of the Mesa County land records, have been completed and accepted and in accordance with the provisions of the Grand Junction Zoning and Development Code are hereby released, subject to the required warranty period.

BN Katherine M. Portner 8/14/96
Director of Community Development Date

The foregoing instrument was executed before me this 14th day of August, 1996 by KATHERINE M. PORTNER, Director of Community Development for the City of Grand Junction, Colorado.

Witness my hand & official seal.

Mildred B Fowler
Notary Public



My commission expires 10-26-96