

SMI95NML

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENTS AGREEMENT

NAME OF AGENCY OR CONTRACTOR: GERTRUDE SMITH

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: NORTHMALL
SUBDIVISION

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1995

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

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1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement") are GERTRUDE SMITH ("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 PLAT FOR NORTHMALL SUBDIVISION.

RECITALS

1736137 1124AM 11/13/95
MONIKA TODD CLK® MESA COUNTY CO

The Developer seeks permission to develop property within the City to be known as NORTHMALL SUBDIVISION, 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

5 Nye Clerk City 3-4-99

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

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

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

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

7. **Commencement and Completion Periods:** The improvements, each and every one of them, will be completed within ten (10) years 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.

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

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

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

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

14. **City's Rights Upon Default:** When any event of default occurs, the City may draw on the letter of credit, escrowed collateral, or proceed to collect any other security to the extent of the face amount of the credit or full amount of escrowed collateral, cash, or security less ninety percent (90%) of the estimated cost (as shown on Exhibit "B") of all improvements previously accepted by the City or may exercise its rights to disbursement of loan proceeds or other funds under the improvements disbursement agreement. The City will have the right to complete improvements itself or it may contract with a third party for completion, and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes

of constructing, reconstructing, maintaining, and repairing such improvements. Alternatively, the City may assign the proceeds of the letter of credit, the improvements disbursement agreement, the escrowed collateral, cash, or other funds or assets to a subsequent developer (or a lender) who has acquired the development by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished improvements and provides reasonable security for the obligation. In addition, the City may also enjoin the sale, transfer, or conveyance of lots within the development, until the improvements are completed or accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

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

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

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

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

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

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

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

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

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

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

If to Developer: Gertrude Smith **BOOK 2186 PAGE 95**
667 25 Road
Grand Junction, CO 81505

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

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

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

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

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

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

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

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

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

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

X (IV) See Exhibit C

- a. The City shall have no responsibility or liability with respect to any street, or other improvement(s), notwithstanding the use of the same by the public, unless the street or other improvements shall have been accepted by the City. "Acceptance by the City" means a separate writing wherein the City specifies which improvements have been accepted and the date from which warranty(ies) shall run.
- b. Prior to requesting final acceptance of any street, storm drainage facility, or other required improvement(s), the Developer shall: (i) furnish to the City Engineer as-built drawings in reproducible form, blue-line stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests required by City specifications; (ii) provide written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon, in and under which the improvements have been constructed, or which are necessary for the improvements, are free from toxic, hazardous or other regulated substances or materials; (iii) provide written evidence to the City Engineer that the title to lands underlying the improvements are merchantable and free and clear from all liens and encumbrances, except those liens and encumbrances which may be approved in writing by the City Engineer.

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

PROPERTY RELEASED

Jerry Tim 10/18/95
 Director of Community Development Date

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

Leatrice Smith 11/9/95
 Developer Date

(If Corporation, to be signed by President and attested to by Secretary together with the Corporate seals)

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

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Northmall Subdivision as recorded in Plat Book 15, Page 1, Mesa County Clerk and Recorder

EXHIBIT BImprovements

| | LOT 1 | LOTS 2-5 | TOTAL |
|--------------------|---------|----------|----------|
| Drainage Channel | 10,701 | 24,076. | 34,777. |
| Sanitary Sewer | 7,645. | 17,200. | 24,845. |
| Domestic Water | 7,698. | 17,321. | 25,019. |
| Public Service Co. | 7,407. | 16,667. | 24,074. |
| Miscellaneous | 1,369. | 3,081. | 4,450. |
| TOTAL | 34,820. | 78,345. | 113,165. |

EXHIBIT C

The improvements guarantee required by Paragraph 28 shall be in the following forms and shall be subject to the following conditions:

A. Guarantee for improvements to Lot 1 of Northmall Subdivision: The Developer currently has a contract to sell Lot 1. At or prior to the closing of the sale of Lot 1, Developer and/or the purchaser of Lot 1 shall give to the City a good and sufficient letter of credit acceptable to the City, and/or provide a disbursement agreement between a bank doing business in Mesa County and the City, in the total amount of \$58,896.00, itemized as follows:

| <u>ITEM</u> | <u>COST</u> |
|--|--------------------|
| Development costs attributable to Lot 1 (from Exhibit B) | \$34,820.00 |
| Drainage Channel costs attributable to Lots 2-5 (from Exhibit B) | <u>\$24,076.00</u> |
| TOTAL | \$58,896.00 |

The parties anticipate that ~~a~~ letter^s of credit will be given to the City in the amount of \$34,820.00, and that ~~a disbursement agreement for~~ the amount of \$24,076.00 will be deposited.

B. Guarantee for improvements to Lots 2-5 of Northmall Subdivision: The Developer shall execute and deliver a first deed of trust to the City, in the form attached hereto as Exhibit D, to secure the amount of \$54,269.00. This amount represents the development costs attributable to Lots 2-5, other than the drainage channel costs, which are secured under the provisions of Paragraph A, above.

Upon the occurrence of either of the following events before the end of the Completion Period, the Developer shall either provide a disbursement agreement between a bank doing business in Mesa County and the City in the amount of \$54,269.00, or deliver a good and sufficient letter of credit acceptable to the City in the amount of \$54,269.00, to secure Developer's obligations under this Agreement with respect to Lots 2-5:

- (a) Transfer or sale of any or all of Lots 2, 3, 4, or 5 of Northmall Subdivision.
- (b) The commencement of any construction upon or any other development of any or all of Lots 2, 3, 4, or 5 of Northmall Subdivision.

Upon the delivery of such letter of credit or disbursement agreement, the City shall immediately execute a request for release of the deed of trust and deliver such request to the Mesa County Public Trustee, along with the deed of trust and such other documents as the Public Trustee may require, and shall take all other actions and execute all other documents necessary to obtain a release of the deed of trust.

C. If Developer or Developer's successors or assigns should ever receive any revised estimates from her engineers showing that the estimated cost of the improvements has increased, Developer or her successors and assigns shall, within thirty days of receiving such estimates, notify the City of the revised estimates. If the Deed of Trust referred to in Paragraph B of this Exhibit C is still in effect when such estimates are received, the Deed of Trust shall secure payment of any such increased costs that are attributable to the improvements to or associated with the Property described in the Deed of Trust, in addition to the amount specified in Paragraph B. In addition, within thirty days after receiving increased estimates for the costs of the improvements, Developer or her successors and assigns shall deposit or provide to the City additional letters of credit or disbursement agreements, securing the payment of the increased costs of the improvements that are covered by letters of credit or disbursement agreements under either Paragraph A or B, above.

D. Developer and her successors and assigns agree to renew and keep in full force and effect all letters of credit or disbursement agreements given pursuant to Paragraphs A, B, or C, above. At least thirty days prior to the expiration of any letter of credit or disbursement agreement, the Developer or her successors and assigns shall provide evidence that the letter of credit or disbursement agreement has been renewed or will be renewed on or before its expiration date. This renewal obligation will continue until the improvements secured by the letter of credit or disbursement agreement are installed and accepted by the City.

E. A breach of any of the obligations set forth in this Exhibit C by Developer or her successors and assigns shall be considered an "event of default" as provided in Paragraph 12 of the Agreement.

F. Upon the satisfactory completion of Developer's obligations under this Agreement, the City shall release and allow the discharge of any deeds of trust, letters of credit, or disbursement agreements given under the provisions of Paragraphs A and B, above. The City shall, upon request of the Developer or Developer's successors and assigns, execute and deliver all documents reasonably needed for obtaining such releases or discharges.

G. The improvements described herein are based on current information which does not include any specific plans for any of the lots in Northmall Subdivision. At such time as development occurs on any lot in Northmall Subdivision, additional improvements as then required by the City based on the specific development proposal, such as but not limited to road/street improvements or on-site parking, may be required to be guaranteed and/or constructed. The City acknowledges that road and street improvements shall not be required of Developer as a condition of the replatting of Lot 2 of Fisher Subdivision into Northmall Subdivision.

Date: November 6, 1997

To: File

From: Dan Wilson, City Attorney



Re: *North Mall Subdivision*

In late 1995 the North Mall Subdivision approved a five lot split, Lots 1 through 5. Gertrude Smith was the subdivider. Because she made a compelling argument to the City Council that she had been an original contributor to the improvements on Patterson Road, the otherwise required improvements were dealt with in a way other than immediate construction of improvements. Specifically, the improvements for Lots 2 through 5 were secured by a Deed of Trust with a term of ten years from November of 1995. In addition, Gertrude Smith was required to post a letter of credit in the approximate amount of \$24,000 which was due to expire on November 10, 1997. Jack Walker was a contract purchaser of Lot 1; to accommodate that transaction the City accepted a letter of credit from Mr. Walker in the amount of approximately \$34,000. That letter of credit was due to expire on November 10, 1996.

In 1997 the Home Depot project is in process. Jack Walker is the intended seller of a good portion of the property, pursuant to an option that he has to purchase Lots 2 through 5 from Gertrude Smith. The week of November 3, 1997, Walker's agent, Dick Scariano, and Walker's attorney, Bob Holmes (of Fairfield and Woods in Denver) proposed to allow Mr. Walker to assume the obligation of Gertrude Smith with respect to Lots 2 through 5 pending the eventual, hoped for, sale to Home Depot.

The City Clerk's office file shows, as of November 4, 1997, a copy of the original Development Improvements Agreement signed by Gertrude Smith which shows required improvements in the approximate amount of \$113,000, of which \$24,000 plus \$34,000 had originally been secured by a letter of credit. The two original letters of credit were in the City Clerk's file.

As part of the assumption by Walker of the Gertrude Smith obligations, the City Manager signed, upon my recommendation, the release of the Deed of Trust and the substitution of a new Deed of Trust (to maintain the City's secured position effective as of November, 1995 if all works.) In addition, I required that the expired Jack Walker letter of credit and the Gertrude Smith letter of credit be renewed in the aggregate amount of \$58,000 (a new letter of credit from the Grand Valley National Bank.

NOTE THAT THIS LETTER OF CREDIT EXPIRES ON JANUARY 15, 1998.

Community Development and the City Clerk's office could assist in tickling this letter of credit for demand on or about January 1, 1998 or the first day of business thereafter, so that we could

make a call on that letter of credit in the event that improvements or other security has not been posted.

The new original letter of credit dated November 5, 1997 issued by Grand Valley National Bank for the account of Jack L. Walker in the amount of \$58,896 will now be in the City Clerk's file. Once Western Colorado Title Company has recorded the replacement Deed of Trust and the Assumption Agreement, those will be returned to me for delivery to the City Clerk's office.

cc: City Clerk's Office
Community Development File
Scott Harrington, Comm. Develop. Manager
John Shaver, Asst. City Attorney
Home Depot File (CD 1)

dan/nthmall.doc
11/06/97 4:25 PM



Grand Valley National Bank

925 NORTH SEVENTH STREET • (970) 241-4400
FAX (970) 241-3039
P.O. BOX 4090 GRAND JUNCTION, COLORADO 81502-4090

November 5, 1997

IRREVOCABLE LETTER OF CREDIT
RE: Jack L. Walker

All Drafts Must be Marked:
Drawn Under Credit No. 136

CITY OF GRAND JUNCTION

We hereby establish our Irrevocable Letter of Credit in your favor for the account of: Jack L. Walker, up to the aggregate amount of Fifty-eight Thousand Eight Hundred ninety-six dollars and No/100 (\$58,896), available by your draft drawn at sight on Grand Valley National Bank, 925 North 7th Street, Grand Junction, Colorado 81501.

This Letter of Credit is effective immediately for an amount not to exceed the sum shown hereon.

The amount and date of negotiation must be endorsed on the Bank thereof by the negotiator.


The draft drawn under this Letter of Credit must be accompanied by the following:

A demand request by the City Engineer at any time prior to midnight on January 15, 1998 for Street Improvements and per attached improvements list/detail Exhibit "B", regarding Northmall Subdivision, Lot 1.

We hereby agree with the drawers, endorsee and Bona Fide Holder of drafts drawn under and in compliance with the terms of this credit that such credit will be duly honored upon presentation of the drawee.

Except as otherwise expressly stated therein, this credit is subject to article 5 of the Colorado Uniform Commercial Code.

Sincerely,


John W. Frederick
President


ATTESTING OFFICER

JWF/olh



EXHIBIT B**Improvements**

| | LOT 1 | LOTS 2-5 | TOTAL |
|--------------------|----------------|----------------|-----------------|
| Drainage Channel | 10,701 | 24,076. | 34,777. |
| Sanitary Sewer | 7,645. | 17,200. | 24,845. |
| Domestic Water | 7,598. | 17,321. | 25,019. |
| Public Service Co. | 7,407. | 16,667. | 24,074. |
| Miscellaneous | 1,369. | 3,081. | 4,450. |
| TOTAL | 34,820. | 78,345. | 113,165. |

EXHIBIT D

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DEED OF TRUST

1743551 0104PM 01/23/96
MONIKA TODD CLK® MESA COUNTY CO

THIS INDENTURE, made this 9th day of December, 1995, between Gertrude Smith, whose address is 667 25 Road, Grand Junction, CO 81505, hereinafter referred to as "First Party", and the Public Trustee of Mesa County, State of Colorado, hereinafter referred to as "Second Party", WITNESSETH:

THAT WHEREAS, The said First Party has executed a Development Improvements Agreement (the "Agreement") with the City of Grand Junction ("City"), of even date herewith. The Agreement provides that the First Party will design, construct, and install certain improvements relating to the development of Northmall Subdivision, with a total anticipated cost of \$113,165.00; and

WHEREAS, the Agreement requires that security be given to secure the First Party's obligations under the Agreement; and

WHEREAS, other security has been given to secure the installation of and payment for \$58,896.00 of the improvements; and

WHEREAS, the First Party and the City desire to secure the installation of and payment for the remaining anticipated costs of the improvements in the amount of \$54,269.00, and First Party's other obligations under the Agreement with respect to Lots 2-5 of Northmall Subdivision.

NOW, THEREFORE, The said First Party, in consideration of the premises, and for the purpose aforesaid, does hereby grant, bargain, sell and convey unto the said Second Party, in trust forever, the following described property situate in the County of Mesa and State of Colorado, to-wit:

Lots 2, 3, 4, and 5, Northmall Subdivision

(the "Property").

TO HAVE AND TO HOLD the Property, together with all and singular the privileges and appurtenances, thereunto belonging.

IN TRUST NEVERTHELESS, That, in case of any default hereunder or under the Agreement with respect to First Party's obligations regarding the Property, by First Party or his successors in interest, the City may file notice with Second Party declaring such default and an election and demand that the Property be advertised for sale and sold, in accordance with the Colorado Statutes in such case made and provided: and thereupon said Second Party shall sell and

dispose of the Property and all of the right, title and interest of the said First Party of public auction at the front door of the County Court House in the County of Mesa, State of Colorado, or on the Property, four weeks' public notice having been previously given of the time and place of such sale, by advertisement, weekly, in some newspaper of general circulation at that time published in said County. It is specifically agreed that time is of the essence of this contract and if each and every stipulation, agreement, condition and covenant of said Agreement or of this Deed of Trust is not duly performed, complied with and abided by, then the balance of the First Party's obligations under the Agreement shall become due and performable forthwith, or at any time thereafter, at the option of City, and the Property may be sold in the manner and with the same effect as if said obligations had matured.

THE SAID FIRST PARTY EXPRESSLY COVENANTS AND AGREES:

That upon the occurrence of either of the following events, the First Party shall either provide to the City a disbursement agreement between a bank doing business in Mesa County and the City in the amount of \$54,269.00, or deliver a good and sufficient letter of credit acceptable to the City in the amount of \$54,269.00, to secure First Party's obligations under the Agreement with respect to Lots 2-5 of the Northmall Subdivision:

- (a) Transfer or sale of any or all of Lots 2, 3, 4, or 5 of Northmall Subdivision.
- (b) The commencement of any construction upon or any other development of any or all of Lots 2, 3, 4, or 5 of Northmall Subdivision.

That this Deed of Trust also secures payment of any increases in the estimated costs of the improvements which are the subject of the Agreement, as provided in Paragraph C of Exhibit C to the Agreement.

To promptly perform the obligations of First Party under the Agreement and this Deed of Trust.

To keep the buildings on the Property insured against loss by fire and other hazards as required by the City and for its benefit and to pay promptly all taxes, assessments, levies, water rents, and insurance premiums and all other liabilities, obligations and encumbrances as they become due.

To and hereby does warrant title to and possession of the Property, waives Homestead and other Exemptions; and further warrants that the Property is free and clear of all liens and encumbrances (except as herein specified):

Subject to easements, reservations, rights of way and restrictions of record, and subject to real estate taxes for the current year and for future years.

That in the event of the failure of First Party to keep the Property, and the improvements thereon at all times in good repair, to pay promptly all taxes, insurance premiums, water rent, assessments, levies, liabilities, obligations, principal or interest on this or any other encumbrance on the Property, or to perform any other agreement, condition, stipulation or covenant, as herein provided, the City may procure such things to be done at First Party's cost and may make any reasonable expenditure or outlay incidental thereto, and any expenditures so made shall become an additional indebtedness hereto and be secured hereby.

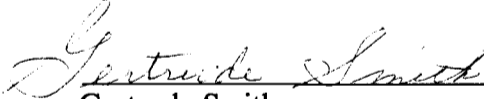
That in case of default in the performance of obligations hereby secured or in the performance of any obligation herein contained, the City or the holder of a Certificate of Purchaser shall, upon notice and hearing become entitled to possession, use and enjoyment of the Property and to the appointment of a Receiver for the Property and shall be entitled thereto as a matter of right without regard to the solvency or insolvency of the First Party or the then owner of the Property and without regard to the value thereof or the adequacy of any security for the debt; and such Receiver may be appointed by any Court of competent jurisdiction upon ex parte application, and without notice -- notice being expressly waived -- and all rents, issues and profits therefrom shall be applied by such Receiver subject to the orders of the Court, to the payment of the indebtedness or obligations hereby secured.

That in the event of foreclosure and sale hereunder, attorneys' fees in a reasonable sum for legal services rendered in such proceeding or suit shall be allowed by the Public Trustee or taxed by the court as part of the costs of foreclosure.

That in the event the ownership of the Property or any part hereof, becomes vested in a person other than the First Party, the City may, without notice to the First Party, deal with such new owner or owners with reference to this Deed of Trust, and the debt hereby secured in the same manner as with the First Party without in any way vitiating or discharging the First Party's liability hereunder, or the indebtedness hereby secured.

That all the covenants and agreements herein contained shall extend to and be binding upon the heirs, executors, legal representatives, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, The said First Party has hereunto executed this Trust Deed the day and year first above written.



Gertrude Smith

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A PAGE DOCUMENT

DEED OF TRUST

1822196 11/25/97 0905AM
MONIKA TODD CLK&REC MESA COUNTY CO
REC FEE \$20.00 SURCHG \$1.00

THIS DEED OF TRUST (the "Deed of Trust"), is made this 31st day of October, 1997, between JACK L. WALKER, whose address is 2754 Compass Drive, Suite 310 Grand Junction, Colorado 81506, hereinafter referred to as "First Party", and the Public Trustee of Mesa County, State of Colorado, hereinafter referred to as "Second Party".

WITNESSETH:

THAT WHEREAS, Gertrude Smith ("Smith") has executed a Development Improvements Agreement (the "Agreement") with the City of Grand Junction ("City"), dated November 9, 1995. The Agreement provides for the design, construction, and installation of certain improvements relating to the development of the Northmall Subdivision, with a total anticipated cost of \$113,165.00; and

WHEREAS, the Agreement requires that security be given to secure the First Party's obligations under the Agreement; and

WHEREAS, to provide such security, Smith executed that certain deed of trust (the "Original Deed of Trust") for the benefit of the City of Grand Junction (the "City") dated November 9, 1995, and recorded in Book 2202 at Page 238 of the Mesa County, Colorado, Clerk and Recorder's records; and

WHEREAS, Smith, of even date herewith, is transferring the Property (as that term is defined below) to First Party and in connection with such transfer First Party wishes to assume the obligations under the Agreement and the City has agreed to accept First Party's assumption and this Deed of Trust and release Smith from all obligations under the Agreement and release the Original Deed of Trust; and

NOW, THEREFORE, the said First Party, in consideration of the premises, and for the purpose aforesaid, does hereby grant, bargain, sell and convey unto the said Second Party, in trust forever, the following described property situate in the County of Mesa and State of Colorado, to-wit:

Lots 2, 3, 4 and 5, Block One, Northmall Subdivision

(the "Property")

TO HAVE AND TO HOLD the Property, together with all and singular the privileges and appurtenances, thereunto belonging.

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IN TRUST NEVERTHELESS, that, in case of any default hereunder or under the Agreement with respect to First Party's obligations regarding the Property, by First Party or his successors in interest, the City may file notice with Second Party declaring such default and an election and demand that the Property be advertised for sale and sold, in accordance with the Colorado Statutes in such case made and provided; and thereupon said Second Party shall sell and dispose of the Property and all of the right, title and interest of the said First Party of public auction at the front door of the County Court House in the County of Mesa, State of Colorado, or on the Property, four weeks' public notice having been previously given at the time and place of such sale, by advertisement, weekly, in some newspaper of general circulation at that time published in said County. It is specifically agreed that time is of the essence of this contract and if each and every stipulation, agreement, condition and covenant of said Agreement or of this Deed of Trust is not duly performed, complied with and abided by, the balance of the First Party's obligations under the Agreement shall become due and performable forthwith, or at any time thereafter, at the option of City, and the Property may be sold in the manner and with the same effect as if said obligations had matured.

THE SAID FIRST PARTY EXPRESSLY COVENANTS AND AGREES:

That First Party has also provided a letter or letters of credit for the benefit of the City in the amount of \$58,896.00 as partial security for the anticipated development costs of \$113,165.00 referenced above and one of the purposes of this Deed of Trust is to secure the amount of \$54,269.00, which is the difference between such total cost and the amount of the letters of credit; and upon the occurrence of either of the following events, First Party shall provide for a good and sufficient letter of credit acceptable to the City in the amount of \$54,269.00 to secure First Party's obligations under the Agreement with respect to Lots 2-5 of the Northmall Subdivision:

- (a) Transfer or sale of any or all of Lots 2, 3, 4, or 5 of Northmall Subdivision.
- (b) The commencement of any construction upon or any other development of any or all of Lots 2, 3, 4, or 5 of Northmall Subdivision.

That this Deed of Trust also secures payment of any increases in the estimated costs of the improvements which are the subject of the Agreement, as provided in Paragraph C of Exhibit C to the Agreement.

To promptly perform the obligations of First Party under the Agreement and this Deed of Trust.

To keep the buildings on the Property insured against loss by fire and other hazards as required by the City and for its benefit and to pay promptly all taxes, assessments, levies, water rents, and insurance premiums and all other liabilities, obligations and encumbrances as they become due.

To and hereby does warrant title to and possession of the Property, waives homestead and other exemptions; and further warrants that the Property is free and clear of all liens and encumbrances (except as herein specified): Subject to easements, reservations, rights-of-way, and restrictions of record, and subject to real estate taxes for the current year and for future years.

That in the event of the failure of the First Party to keep the Property and the improvements thereon at all times in good repair, to pay promptly all taxes, insurance premiums, water, rents, assessments, levies, liabilities, obligations, principal or interest on this or any other encumbrance on the Property, or to perform any other agreement, condition, stipulation or covenant, as herein provided, the City may procure such things to be done at First Party's cost and may make any reasonable expenditure or outlay incidental thereto, and any expenditures so made shall become an additional indebtedness hereto and be secured hereby.

That in case of default in the performance of obligations hereby secured or in the performance of any obligation herein contained, the City or the holder of a Certificate of Purchase shall, upon notice and hearing become entitled to possession, use and enjoyment of the Property and to the appointment of a Receiver for the Property and shall be entitled thereto as a matter of right without regard to the solvency or insolvency of the First Party or the then owner of the Property and without regard to the value thereof or the adequacy of any security for the debt; and such Receiver may be appointed by any Court of competent jurisdiction upon *ex parte* application, and without notice - notice being expressly waived - and all rents, issues and profits therefrom shall be applied by such Receiver subject to the orders of the Court, to the payment of the indebtedness or obligations hereby secured.

That in the event of foreclosure and sale hereunder, attorneys' fees in a reasonable sum for legal services rendered in such proceeding or suit shall be allowed by the Public Trustee or taxed by the court as part of the costs of foreclosure.

That in the event the ownership of the Property or any part hereof becomes vested in a person other than the First Party, the City may, without notice to the First Party, deal with such new owner or owners with reference to this Deed of Trust, and the debt hereby secured in the same manner as with the First Party without in any way vitiating or discharging the First Party's liability hereunder, or the indebtedness hereby secured.

That by acceptance of this Deed of Trust and the release of the Original Deed of Trust, the City accepts Jack L. Walker's assumption of the Agreement and releases Smith from all obligations and liabilities in connection therewith.

That all the covenants and agreements herein contained shall extend to and be binding upon the heirs, executors, legal representatives, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the said First Party has hereunto executed this Deed of Trust the day and year first above written.

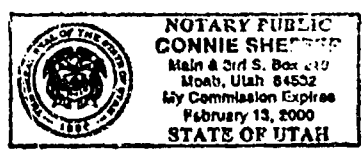
Jack L. Walker
JACK L. WALKER

STATE OF Utah)
COUNTY OF Grand) ss.

The foregoing instrument was acknowledged before me this 31 day of Oct, 1997, by JACK L. WALKER.

WITNESS my hand and official seal.

My commission expires: 2-13-00.



Connie Sheffer
Notary Public

Address: Moab, Utah



Alpine Bank

Grand Junction

November 10, 1995

IRREVOCABLE LETTER OF CREDIT
RE: Jack L. Walker

All Drafts Must be Marked:
Drawn Under Credit No. #2900

CITY OF GRAND JUNCTION

We hereby establish our Irrevocable Letter of Credit in your favor for the account of: Jack L. Walker, up to the aggregate amount of Thirty Four Thousand, Eight Hundred Twenty and No/100 (\$34,820.00), available by your draft drawn at sight on Alpine Bank, Grand Junction, 225 North 5th Street, Suite #B, Grand Junction, Colorado 81501.

This Letter of Credit is effective immediately for an amount not to exceed the sum shown hereon.

The amount and date of negotiation must be endorsed on the Bank thereof by the negotiator.

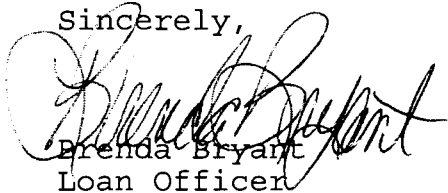
The draft drawn under this Letter of Credit must be accompanied by the following:

A demand request by the City Engineer at any time prior to midnight on November 10, 1996 for Street Improvements and per attached improvements list/detail Exhibit "B", regarding Northmall Subdivision, Lot 1.

We hereby agree with the drawers, endorsee and Bona Fide Holder of drafts drawn under and in compliance with the terms of this credit that such credit will be duly honored upon presentation of the drawee.

Except as otherwise expressly stated therein, this credit is subject to article 5 of the colorado uniform commercial code.

Sincerely,



Brenda Bryant
Loan Officer

THIS CREDIT EXPIRES 11/10/96

225 N. 5th Street • Grand Junction, Colorado 81501 • (970) 243-5600 • Fax (970) 243-5778

 recycled paper

EXHIBIT B

Improvements

| | LOT 1 | LOTS 2-5 | TOTAL |
|--------------------|---------|----------|----------|
| Drainage Channel | 10,701 | 24,076. | 34,777. |
| Sanitary Sewer | 7,645. | 17,200. | 24,845. |
| Domestic Water | 7,698. | 17,321. | 25,019. |
| Public Service Co. | 7,407. | 16,667. | 24,074. |
| Miscellaneous | 1,369. | 3,081. | 4,450. |
| TOTAL | 34,820. | 78,345. | 113,165. |

REQUEST FOR RELEASE OF DEED OF TRUST AND RELEASE

February 9, 1999 _____ Date
JACK L. WALKER _____ Grantor (Borrower)
THE CITY OF GRAND JUNCTION _____ Original Beneficiary (Lender)
October 31, 1997 _____ Date of Deed of Trust
November 25, 1997 _____ Recording Date of Deed of Trust
Mesa _____ County of Recording
1822196 _____ Reception and/or Film Nos. of Recorded Deed of Trust
Reception No. 2380 Film No. 128 Book and Page of Deed of Trust
Book No. _____ Page No. _____

TO THE PUBLIC TRUSTEE OF
Mesa _____

County (The Public Trustee to which the above Deed of Trust conveys the said property.)

Please execute this release, as the indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully satisfied.

THE CITY OF GRAND JUNCTION

Current Owner and Holder of the Indebtedness Secured by Deed of Trust (Lender)

X DAVID VARLEY ACTING CITY MANAGER
Name and Title of Agent or Officer of Current Owner and Holder

X David Varley _____
Signature

Signature

State of Colorado, County of
Mesa

The foregoing request for release was acknowledged before me on
X February 17, 1999 (date) by*
The City of Grand Junction by:

Witness My Hand and Seal

X David Varley _____

X Stephanie Kuge _____
Notary Public

X 10-10-02 _____ Date Commission Expires

RELEASE OF DEED OF TRUST

WHEREAS, the above referenced Grantor(s), by Deed of Trust, conveyed certain real property described in said Deed of Trust to the Public Trustee of the County referenced above, in the State of Colorado, to be held in trust to secure the payment of the indebtedness referred to therein; and

WHEREAS, the indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully satisfied as set forth in the written request of the current owner and holder of the said indebtedness.

NOW THEREFORE, in consideration of the premises and the payment of the statutory sum, receipt of which is hereby acknowledged, I, as the Public Trustee in the County first referenced above, do hereby remise, release and quitclaim unto the present owner or owners of said real property, and unto the heirs, successors and assigns of such owner or owners forever, all the right, title and interest which I have under and by virtue of the aforesaid Deed of Trust in the real estate described therein, to have and to hold the same, with all the privileges and appurtenances thereunto belonging forever; and further I do hereby fully and absolutely release, cancel and forever discharge said Deed of Trust.

Public Trustee

by _____
Deputy Public Trustee

State of Colorado, County of _____

The foregoing instrument was acknowledged before me on _____ (date) by _____ as the _____ Public Trustee of _____ County, Colorado.
_____ Date Commission Expires

Witness My Hand and Seal

Notary Public

*If applicable, insert title of agent or officer and name of current owner and holder.

Original Note and Deed of Trust Returned to:

Received by _____



State of Colorado)
County of Mesa) SS
City of Grand Junction)

I hereby certify the attached to be a true, complete and genuine copy of the official Development Improvements Agreement for the Northmall Subdivision signed by Gertrude Smith on November 9, 1995 and recorded at the Mesa County Clerk & Recorder on November 13, 1995 at Book 2186, Page 92. This certified copy and the original, which is on file in the Office of the City Clerk for the City of Grand Junction, has been marked paid and is hereby released by the City Clerk as authorized by the City Attorney.

In witness whereof, I affixed my hand and official seal this 4th day of March, 1999.



Stephanie Nye
Stephanie Nye, City Clerk
City of Grand Junction, Colorado
250 N. 5th Street
Grand Junction, Co. 81501