

TRA02WES

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**

NAME OF APPLICANT OR DEVELOPER: RICHARD TRAVER AND MARIANNE TRAVER

PROJECT/SUBDIVISION: WESTLAND ESTATES SUBDIVISION - FILING ONE

LOCATION: 2980 ROOD COURT

PARCEL NO.: 2943-174-00-130 AND 2943-174-14-005

FILE NO.: FP-2001-206

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2002

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

FP-2001-206
2943-177-00-130

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement" or "Agreement") are RICHARD AND MARIANNE TRAVER ("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 sooner 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 WESTLAND ESTATES SUBDIVISION - FILING ONE

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. 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 for which Developer is responsible hereunder. 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 supply a guarantee in a form and with terms acceptable to the City. A copy of which or a memorandum thereof is attached as Exhibit C.

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 last Improvement completed by the Developer.

7. **Commencement, Completion and Abandonment Periods:** The Developer will commence work on the Improvements within 14 days from the Effective Date of this Agreement 2/02 (set date) ("the Commencement Period") and the Improvements, each and every one of them, shall be completed by the end of the 12th month from the Effective Date of this Agreement 2/03 (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 will have thirty (30) days from the issuance of such notice to correct 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 or as accepted by the City Attorney and that there are no liens, encumbrances or other restrictions other than those that have been accepted by the City Attorney on the Improvements. Approval and/or acceptance of any Improvements does not constitute a waiver by the City of any rights it may have on account of any defect in or failure of the Improvement that is detected or which occurs after approval and/or acceptance.

11. **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 90 percent of the estimated cost of such 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 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.

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 correction 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 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, neither that amount or the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow or other guarantee establish the maximum amount of the Developer's liability.

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 or employee 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. 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

RICHARD & MARIANNE TRAVER
2967 D½ ROAD
GRAND JUNCTION, CO 81504

If to City:

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

City of Grand Junction
250 North Fifth Street
Grand Junction CO 81501

Pat Coul 4/3/02
Director of Community Development date
KVA

Attest:

Stephanie Lunn 4/3/02
City Clerk date

By: Richard Traver 2-18-02
Developer date

By: Marianne Traver 2-18-02
Developer date

Name (printed): Richard and Marianne Traver
Its (position): Property Owners/Developer

Attest:

N/A
Secretary date

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

EXHIBIT A

Tax Schedule Number: 2943-174-00-130

THE WEST 990 FEET OF THAT PART OF THE SE¼ OF THE SE¼ LYING SOUTH
OF THE RIGHT-OF-WAY OF THE GRAND VALLEY IRRIGATION COMPANY CANAL
IN SECTION 17, TOWNSHIP 1 SOUTH, RANGE 1 EAST OF THE UTE MERIDIAN,
MESA COUNTY COLORADO.

AND

Tax Schedule Number: 2943-174-14-005

LOT 2, BROWN'S MINOR SUBDIVISION II, AS RECORDED IN BOOK 2376, PAGE
153 OF THE RECORDS OF THE MESA COUNTY, COLORADO CLERK AND
RECORDER.

EXHIBIT B

IMPROVEMENTS LIST/DETAIL

(Page 1 of 3)

DATE: 12-6-01 (REV. 2-7-02)

NAME OF DEVELOPMENT: WESTLAND ESTATES - FILING ONE

LOCATION: 2980 ROOD CT., GRD. JCT.

PRINTED NAME OF PERSON PREPARING: JOHN E. KORNFELD, PE

		TOTAL UNITS	UNIT QTY.	TOTAL PRICE	TOTAL AMOUNT
I. SANITARY SEWER					
1. Clearing and grubbing	<u>SY</u>		<u>INCLUDED IN SURFACE PREP.</u>		
2. Cut and remove asphalt	<u>LIN. FT.</u>	<u>30</u>	<u>2.50</u>	<u>75.</u>	
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	<u>LIN. FT.</u>	<u>350</u>	<u>19.00</u>	<u>6650.</u>	
4. Sewer Services (incl. trenching, bedding, & backfill)	<u>EA</u>	<u>7</u>	<u>200.</u>	<u>1400.</u>	
5. Sanitary sewer manhole(s)	<u>EA</u>	<u>4</u>	<u>1400.</u>	<u>5600.</u>	
6. Connection to existing manhole(s)	<u>EA</u>	<u>1</u>	<u>750.</u>	<u>750.</u>	
7. Aggregate Base Course	<u>T</u>	<u>0</u>			
8. Pavement replacement	<u>SY</u>	<u>30</u>	<u>10</u>	<u>300.</u>	
9. Driveway restoration	<u>LS</u>	<u>0</u>			
10. Utility adjustments	<u>LS</u>	<u>0</u>			
II. DOMESTIC WATER					
1. Clearing and grubbing	<u>SY</u>		<u>INCLUDED IN SURFACE PREP.</u>		
2. Cut and remove asphalt	<u>LIN. FT.</u>	<u>260</u>	<u>2.50</u>	<u>650.</u>	
3. Water Main (incl. excavation, bedding, backfill, valves and appurtenances)	<u>LIN. FT.</u>	<u>400</u>	<u>17.00</u>	<u>6800.</u>	
4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances)	<u>EA</u>	<u>7</u>	<u>325.</u>	<u>2275.</u>	
5. Connect to existing water line	<u>EA</u>	<u>1</u>	<u>500.</u>	<u>500.</u>	
6. Aggregate Base Course	<u>T</u>	<u>0</u>			
7. Pavement Replacement	<u>SY</u>	<u>50</u>	<u>10.00</u>	<u>500.</u>	
8. Utility adjustments	<u>LS</u>	<u>0</u>			
III. STREETS					
1. Clearing and grubbing	<u>SY</u>		<u>INCLUDED IN SURFACE PREP.</u>		
2. Earthwork, including excavation and embankment construction	<u>CY</u>	<u>650</u>	<u>2.25</u>	<u>1463.</u>	
3. Utility relocations	<u>EA</u>	<u>0</u>			
4. Aggregate sub-base course (square yard)	<u>T</u>	<u>0</u>			

5. Aggregate base course (square yard)	T	645	11.00	7095.
6. Sub-grade stabilization	SY	1800	1.00	1800.
7. Asphalt or concrete pavement (square yard)	T	205	35.00	7175.
8. Curb, gutter & sidewalk (linear feet)	LIN. FT.	800	14.00	11200.
9. Driveway sections (square yard)	SY	0		
10. Crosspans & fillets	SF	175	3.75	656.
11. Retaining walls/structures	LF	0		
12. Storm drainage system	LS	1	3600.	3600.
13. Signs and other traffic control devices	EA	2	250.	500.
14. Construction staking	LS	1	2000.	2000.
15. Dust control	LS	1	INCLUDED ABOVE	
16. Street lights (each)	EA	1	2500.	2500.
IV. LANDSCAPING				
1. Design/Architecture	LS	0		
2. Earthwork (includes top soil, fine grading, & berming)	LS	0		
3. Hardscape features (includes walls, fencing, and paving)	LS	0		
4. Plant material and planting	LS	0		
5. Irrigation system	LS	1	5500.	5500.
6. Other features (incl. statues, water displays, park equipment, and outdoor furniture)	NA			
7. Curbing	NA			
8. Retaining walls and structures	NA			
9. One year maintenance agreement	NA			
V. MISCELLANEOUS				
1. Design/Engineering	LS	1	600.	600.
2. Surveying	LS	1	1100.	1100.
3. Developer's inspection costs	LS	1	200.	200.
4. Quality control testing	LS	1	1500.	1500.
5. Construction traffic control	NA			
6. Rights-of-way/Easements	LS	0		
7. City inspection fees @\$45./hr	LS	1	400.	400.
8. Permit fees	LS	0	PREPAID	
9. Recording costs	LS	1	100.	100.
10. Bonds	NA			
11. Newsletters	NA			
12. General Construction Supervision	NA			



Exhibit C

Grand Valley National Bank

BOOK 3076 PAGE 12

925 NORTH SEVENTH STREET • (970) 241-4400
FAX (970) 241-3039 • TOLL FREE 1-877-859-6040
P.O. BOX 848 GRAND JUNCTION, COLORADO 81502-0848
www.grandvalleybank.com

September 24, 2001

City of Grand Junction
Grand Junction, CO 81501

IRREVOCABLE LETTER OF CREDIT

Dear Sirs:

We hereby open our irrevocable credit in your favor available by your draft(s) at sight on us for a sum not exceeding \$100,000.00 for the account of Richard Traver and Marianne Traver, to be accepted by your signed statement that drawing is due to default or failure to perform by Developer with respect to improvements required on or before September 24, 2006 a development occurring within the City of Grand Junction, Colorado. Acting through the City Attorney you will notify us when either.

1. The Improvements have been timely completed and the warranty period has terminated and the credit may be released; or
2. The Developer has failed to perform or is in default. Notice shall be signed by the City Attorney or the Attorney's designee. Proof of default or a statement from any other party shall not be required.

All drafts drawn hereunder must be by sight draft marked: "Drawn under Grand Valley National Bank, Credit No. 150, dated September 24, 2001.

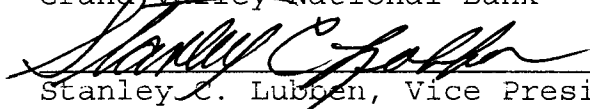
The original of the credit must be presented along with any such draft.

The amount of any draft drawn under this credit must, concurrently with negotiation, be endorsed on the reverse side hereof and the presentment of any such draft will be a warranty by the negotiating bank that such endorsement has been made and the document(s) have been forwarded as herein required.

Except so far as otherwise expressly stated herein, this credit is subject to the Uniform Customs and Practices for Commercial Documentary Credits fixed by the 13th Congress of the International Chamber of Commerce.

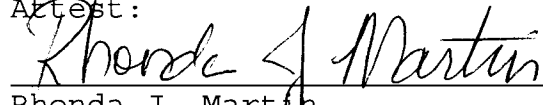
We hereby agree with the drawers, endorses and bona fide holders of drafts under and in compliance with the terms of this credit that the same will be duly honored and payment made no later than 3(three) days after due presentation of the credit and delivery of document(s) as specified on or before the date written in the first paragraph above or as the same may be extended.

Grand Valley National Bank


Stanley C. Lubben, Vice President



Attest:



Rhonda J. Martin

Corporate Seal

M E M O R A N D U M

DATE: March 5, 2003

TO: Stephanie Tuin
City Clerk

FROM: Kristen Ashbeck 
City Community Development Department

RE: FP-2001-206 Westland Estates Subdivision Filing 1

Attached is the Release of Improvements Agreement and Guarantee for the project referenced above. By signature of this form the City is certifying that the Improvements Agreement and Guarantee and the recording evidencing the agreement and guarantee, at Book 3076, Page 1 through 13 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.

RELEASE OF IMPROVEMENTS AGREEMENT & GUARANTEE
Grand Junction Community Development Department
FILE FP-2001-206

This memorandum relates to a certain recorded Improvements Agreement and Guarantee dated May 9, 2002 and recorded at Book 3076, Pages 1 through 13 of the land records of Mesa County, Colorado, by and between Richard and Marianne Traver (Developer) and the City of Grand Junction (City) pertaining to Westland Estates Subdivision Filing 1 (Project).

Legal Description:

The west 990 feet of that part of the SE 1/4 of the SE 1/4 of the SE 1/4 lying south of the right-of-way of the Grand Valley Irrigation Company Canal in Section 17, Township 1 South, Range 1 East of the Ute Meridian, Mesa County, Colorado; and Lot 2, Brown's Minor Subdivision II, as recorded in Book 2376, Page 153 of the records of the Mesa County, Colorado Clerk and Recorder.

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: City Engineer	<u>[Signature]</u>	Date	<u>3-4-03</u>
City Utilities Manager	<u>NA</u>	Date	<u> </u>
Fire Marshall	<u>[Signature]</u>	Date	<u>3-3-03</u>
Community Development	<u>[Signature]</u>	Date	<u>3/4/03</u>
Ute Water	<u>[Signature]</u>	Date	<u>4 Mar 03</u>
Central Grand Valley Sanitation	<u>[Signature]</u>	Date	<u>2-28-03</u>

In accordance with the above signatures, I hereby certify that the Improvements Agreement & Guarantee and the recording evidencing the agreement and guarantee, at Book 3076, Pages 1 through 13 of the Mesa County land records, have been completed and accepted and in accordance with the provisions of the Grand Junction Zoning and Development Code are hereby released subject to the required warranty period.

Director of Community Development [Signature] Date 3-4-03
Planning Manager

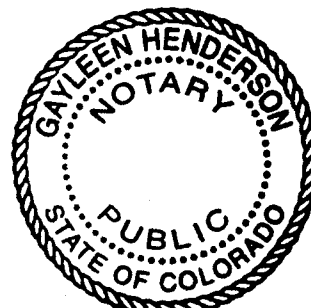
The foregoing instrument was executed before me this 4th day of March, 2003

by [Signature], Director of Community Development for the City of Grand Junction, Colorado.

Witness my hand and official seal.

Notary Public [Signature]

My commission expires 10/29/2005



My Commission Expires 10/29/2005

MAINTENANCE GUARANTEE

1. **Parties:** The parties to this Maintenance Guarantee ("the Guarantee" or "Guarantee") are Richard and Marianne Traver ("the Developer") and the City of Grand Junction, Colorado ("the City" or "City"). Collectively the Developer and the City may be referred to as the Parties.

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

2. **Effective Date:** The Effective Date of the Guarantee will be the date that it is signed and accepted by the City.

RECITALS

The Developer has constructed, installed and is required to warrant and maintain certain improvements ("Improvements" or "the Improvements") which were made necessary by virtue of development on property within the City. The Property, known as Westland Estates Filing 1 has been reviewed and approved under Community Development file #FP 2001-206 and as necessary or required to construe this guarantee, that file(s) is incorporated by this reference.

The City seeks to protect the health, safety and general welfare of the community by requiring that the Improvements, once constructed, be maintained. The purpose of this guarantee is to protect the City from having to repair the Improvements at its cost. The Agreement 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 guarantee are authorized by law, the Colorado Constitution, the Charter and the City's ordinances.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer or its successor(s) or assign(s) shall maintain and guarantee the Improvements, at his/her/its own expense, against defects in workmanship and materials for a period of one year from the date of City acceptance of the Improvements. The Developer's obligation is and will be independent of any obligations of the City.

4. **Security:** To secure the performance of its obligations the Developer is required to post security in an amount of \$17,138.00 (20% of the DIA amount for the Improvements that the Developer has completed and for which the City has given its Final Acceptance.)

4a. The Developer has posted security to guarantee the Improvements in an amount, form and with terms acceptable to the City.

4b. In addition to that security all warranties and/or guarantees (those incident to construction or as provided by the contractor and/or manufacturer of installed equipment) are hereby assigned to the City.

4c. The Developer shall to the extent necessary or required by the City take whatever action is necessary or required to assign all warranties and/or guarantees (those incident to construction or as provided by the contractor and/or manufacturer of installed equipment) to the City. A copy of those warranties or a memorandum of the same is attached as Exhibit A.

4d. The Developer for itself, its successors and assigns agrees that if the Improvements are not maintained to City standards that the City shall notify the Developer in writing of the defect(s) in accordance with paragraph 8 hereof.

5. Standards: The Developer shall maintain the Improvements according to the standards and specifications required by the City or as otherwise established by the City Engineer.

6. Warranty: The Developer hereby warrants that the Improvements, each and every one of them, will be maintained in accordance with the Standards in paragraph 5 for the period of this guarantee.

7. 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 guarantee. 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 acceptance of the Improvements.

8. Notice of Defect/Default: The City shall provide timely notice to the Developer whenever routine inspection reveals that an Improvement and/or maintenance of the same does not conform to City standards and any specifications approved or required in or by the development or that an Improvement(s) is otherwise defective.

8a. As provided herein the City shall provide written notice to the Developer at the address stated in paragraph 22. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

8b. The Developer will have twelve (12) days from the date of the notice to correct the defect.

8c. The City may grant reasonable extensions in writing, however, it is not obligated to do so nor is it obligated to provide any notice of a defect if it becomes aware of the defect in or during an emergency. Furthermore, the City is not obligated to inspect the Improvements but may do so at it would any other improvement.

9. Acceptance: Prior to acceptance of any Improvement(s), the Developer shall demonstrate in writing to the satisfaction of the City Attorney that it owns the Improvements in fee simple or that there are no liens, encumbrances or other restrictions other than those that have been accepted by the City Attorney 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 or maintenance of the same that is detected or which occurs after approval and/or acceptance. All warranties and/or guarantees shall be for a period of no less than 12 months from the date of final acceptance of the Improvements.

10. Funds: Funds drawn, guaranteed or collected by the City under this agreement shall be used for the purpose of correcting defects in and/or repairing or replacing failure(s) of the Improvement(s).

11. Defect/Default Events: The following conditions, occurrences or actions will constitute a defect and/or default:

11a. Developer's failure to maintain each and every one of the Improvements in conformance with this guarantee and/or as required by code, law, rule, ordinance or regulation;

11b. Developer's failure to correct defective construction of any Improvement within the applicable guarantee period;

11c. Developer's failure to maintain security in a form and amount required/provided by this guarantee.

11d. As provided herein the City shall provide written notice to the Developer at the address on file with the development application. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

12. Measure of Cost/Expenses: The measure of costs and or expenses chargeable by the City under this guarantee will be the reasonable cost of satisfactorily repairing and/or replacing the Improvements plus reasonable City administrative expenses (in the amount of 20% of the repair, replacement and/or warranty work) all of which may exceed the amount of the security provided for in paragraph 4. The amount of the security provided for in paragraph 4 does not set, limit, establish or provide the Developer's maximum financial obligation.

12a. City administrative expenses for which the Developer is obligated to pay include but are not limited to personnel costs, including benefits, overtime, callback, standby and other extraordinary compensation, materials, equipment, third-party contracting costs, collection costs and the value of engineering, legal and administrative staff time devoted to the repair and/or replacement of the Improvements and/or enforcement of this guarantee and all initial warranty(ies) or guarantee(s) assigned to the City by the Developer.

13. City's Rights: When any defect or default occurs, the City may after notice and the Developer's failure and/or refusal to repair or replace the Improvements, proceed to collect the amount of the cost or expense incidental or necessary to affect the repair or replacement of the Improvements. The City will have the right to reconstruct, rebuild or otherwise maintain 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. This remedy is cumulative in nature and is in addition to any other remedy the City has at law or in equity.

14. 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 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 guarantee. 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 guarantee except where such suit is brought by the Developer against the City. The Developer is, however, not an agent or employee of the City.

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 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.

22. 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: Westland Development
2967 D ½ Road
Grand Junction, CO 81504
970-263-4014
trvr_wstland@hotmail.com

If to City: Office of the City Attorney
250 North 5th Street
Grand Junction, CO 81501

Cc: Public Works and Utilities Department
250 North 5th Street
Grand Junction, CO 81501

23. Recordation: Developer will pay for all costs to record a memorandum of this guarantee in the Clerk and Recorder's Office of Mesa County, Colorado.

24. Immunity: Nothing contained in this agreement constitutes a waiver of the City's sovereign or other immunity under any applicable law.

25. 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, 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.

City of Grand Junction

Paul Davis 3-3-03
Director of Public Works and Utilities Date

By: Richard Traver 2-28-03
Developer Date

Name (printed): RICHARD TRAVER

Its (position): REGISTERED AGENT
WESTLAND DEVELOPMENT, LLC

Attest:

Secretary Date

GUARANTEE2003

RECORDING MEMORANDUM

City of Grand Junction Community Development Department
Community Development File: FP-2001-206

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 Richard and Marianne Traver (Developer) and the City of Grand Junction (City) pertaining to Westland Estates Subdivision Filing 1 (Project).

(Westland Estates Subdivision Filing 1 is more particularly depicted and described in the recording found at Plat Book 18, Pages 398-399.)

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 FP-2001-206.

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

By: Richard Traver
Date

CITY OF GRAND JUNCTION:

By: Kathleen M. Portman 3-4-03
Director of Community Development Date
Planning Manager

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. 5th Street, Grand Junction Colorado.

Kathleen M. Portman 3-4-03
Director of Community Development Date
Planning Manager

RELEASE OF RECORDING MEMORANDUM
City of Grand Junction
Community Development Department
FILE # FP-2001-206

This Release relates to a Recording Memorandum dated March 4, 2003, by and between Richard and Marianne Traver (Developer) and the City of Grand Junction, recorded at Book 3292, Page 632 of the records of the Mesa County Clerk and Recorders office, pertaining to Westland Estates Subdivision Filing 1 (Project), located more particularly as depicted and described in the recording found at Plat Book 18, Pages 398-399, Mesa County Clerk and Recorders Office.

WHEREAS, the Developer has installed and constructed certain public and private improvements at and for the Project, which completion was guaranteed by the execution of a Maintenance Guarantee and provision of a Guarantee, and;

WHEREAS, the City of Grand Junction and other agencies possessing 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, duly representing their agencies, possessing and representing by their signatures affixed hereto, that they possess sufficient authority to accept improvements and may release the Maintenance Guarantee, pertaining to the improvements under their jurisdiction, do accept, sign and release said Maintenance Guarantee.

CITY OF GRAND JUNCTION:

City Engineer: *Rich Davis* Date: *4-14-04*
City Planner: *Christy L. Adcock* Date: *4/14/04*

In acknowledgement with the above signatures, I hereby certify that the improvements as specified in the Maintenance Guarantee have been completed and accepted in accordance with the provisions of the Grand Junction Zoning and Development Code, and are hereby released, subject to the required warranty period.

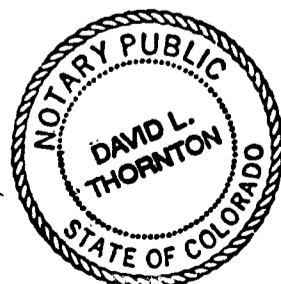
Pat Cecil Date *4/15/04*
Community Development Department
KKA

The foregoing instrument was executed before me this *15th* day of *April*, 2004, by *PAT Cecil*, of the Community Development Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

David L. Thornton
Notary Public

My commission expires on *August 15, 2004*



MAINTENANCE GUARANTEE

1. **Parties:** The parties to this Maintenance Guarantee ("the Guarantee" or "Guarantee") are Richard and Marianne Traver ("the Developer") and the City of Grand Junction, Colorado ("the City" or "City"). Collectively the Developer and the City may be referred to as the Parties.

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

2. **Effective Date:** The Effective Date of the Guarantee will be the date that it is signed and accepted by the City.

RECITALS

The Developer has constructed, installed and is required to warrant and maintain certain improvements ("Improvements" or "the Improvements") which were made necessary by virtue of development on property within the City. The Property, known as Westland Estates Filing 1 has been reviewed and approved under Community Development file #FP 2001-206 and as necessary or required to construe this guarantee, that file(s) is incorporated by this reference.

The City seeks to protect the health, safety and general welfare of the community by requiring that the Improvements, once constructed, be maintained. The purpose of this guarantee is to protect the City from having to repair the Improvements at its cost. The Agreement 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 guarantee are authorized by law, the Colorado Constitution, the Charter and the City's ordinances.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer or its successor(s) or assign(s) shall maintain and guarantee the Improvements, at his/her/its own expense, against defects in workmanship and materials for a period of one year from the date of City acceptance of the Improvements. The Developer's obligation is and will be independent of any obligations of the City.

4. **Security:** To secure the performance of its obligations the Developer is required to post security in an amount of \$17,138.00 (20% of the DIA amount for the Improvements that the Developer has completed and for which the City has given its Final Acceptance.)

4a. The Developer has posted security to guarantee the Improvements in an amount, form and with terms acceptable to the City.

4b. In addition to that security all warranties and/or guarantees (those incident to construction or as provided by the contractor and/or manufacturer of installed equipment) are hereby assigned to the City.

4c. The Developer shall to the extent necessary or required by the City take whatever action is necessary or required to assign all warranties and/or guarantees (those incident to construction or as provided by the contractor and/or manufacturer of installed equipment) to the City. A copy of those warranties or a memorandum of the same is attached as Exhibit A.

4d. The Developer for itself, its successors and assigns agrees that if the Improvements are not maintained to City standards that the City shall notify the Developer in writing of the defect(s) in accordance with paragraph 8 hereof.

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

6. **Warranty:** The Developer hereby warrants that the Improvements, each and every one of them, will be maintained in accordance with the Standards in paragraph 5 for the period of this guarantee.

7. **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 guarantee. 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 acceptance of the Improvements.

8. **Notice of Defect/Default:** The City shall provide timely notice to the Developer whenever routine inspection reveals that an Improvement and/or maintenance of the same does not conform to City standards and any specifications approved or required in or by the development or that an Improvement(s) is otherwise defective.

8a. As provided herein the City shall provide written notice to the Developer at the address stated in paragraph 22. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

8b. The Developer will have twelve (12) days from the date of the notice to correct the defect.

8c. The City may grant reasonable extensions in writing, however, it is not obligated to do so nor is it obligated to provide any notice of a defect if it becomes aware of the defect in or during an emergency. Furthermore, the City is not obligated to inspect the Improvements but may do so at it would any other improvement.

9. Acceptance: Prior to acceptance of any Improvement(s), the Developer shall demonstrate in writing to the satisfaction of the City Attorney that it owns the Improvements in fee simple or that there are no liens, encumbrances or other restrictions other than those that have been accepted by the City Attorney 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 or maintenance of the same that is detected or which occurs after approval and/or acceptance. All warranties and/or guarantees shall be for a period of no less than 12 months from the date of final acceptance of the Improvements.

10. Funds: Funds drawn, guaranteed or collected by the City under this agreement shall be used for the purpose of correcting defects in and/or repairing or replacing failure(s) of the Improvement(s).

11. Defect/Default Events: The following conditions, occurrences or actions will constitute a defect and/or default:

11a. Developer's failure to maintain each and every one of the Improvements in conformance with this guarantee and/or as required by code, law, rule, ordinance or regulation;

11b. Developer's failure to correct defective construction of any Improvement within the applicable guarantee period;

11c. Developer's failure to maintain security in a form and amount required/provided by this guarantee.

11d. As provided herein the City shall provide written notice to the Developer at the address on file with the development application. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

12. Measure of Cost/Expenses: The measure of costs and or expenses chargeable by the City under this guarantee will be the reasonable cost of satisfactorily repairing and/or replacing the Improvements plus reasonable City administrative expenses (in the amount of 20% of the repair, replacement and/or warranty work) all of which may exceed the amount of the security provided for in paragraph 4. The amount of the security provided for in paragraph 4 does not set, limit, establish or provide the Developer's maximum financial obligation.

12a. City administrative expenses for which the Developer is obligated to pay include but are not limited to personnel costs, including benefits, overtime, callback, standby and other extraordinary compensation, materials, equipment, third-party contracting costs, collection costs and the value of engineering, legal and administrative staff time devoted to the repair and/or replacement of the Improvements and/or enforcement of this guarantee and all initial warranty(ies) or guarantee(s) assigned to the City by the Developer.

13. City's Rights: When any defect or default occurs, the City may after notice and the Developer's failure and/or refusal to repair or replace the Improvements, proceed to collect the amount of the cost or expense incidental or necessary to affect the repair or replacement of the Improvements. The City will have the right to reconstruct, rebuild or otherwise maintain 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. This remedy is cumulative in nature and is in addition to any other remedy the City has at law or in equity.

14. 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 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 guarantee. 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 guarantee except where such suit is brought by the Developer against the City. The Developer is, however, not an agent or employee of the City.

15. **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 the City and the Developer; nor will the waiver of any defect or default under this guarantee be deemed a waiver of any subsequent defect(s) or default(s) 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 defect(s), defaults(s) or Improvement(s).

16. **Amendment or Modification:** The Parties may amend or modify the Agreement only by written instrument executed on behalf of the City by the Public Works and Utilities Director 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.

17. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this guarantee, 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 relief is awarded to both parties, the attorney's fees may be equitably divided between the parties by the decision-maker. The value of the City's in-house legal counsel is agreed to be \$125.00 per hour.

18. **Integration:** This guarantee, 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.

19. **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.

20. **Severability:** If any part, term or provision of this guarantee 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 right of the parties will be construed as if the part, term or provision was never part of the agreement.

21. **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 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.

22. 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: Westland Development
2967 D ½ Road
Grand Junction, CO 81504
970-263-4014
trvr_wstland@hotmail.com

If to City: Office of the City Attorney
250 North 5th Street
Grand Junction, CO 81501

Cc: Public Works and Utilities Department
250 North 5th Street
Grand Junction, CO 81501

23. Recordation: Developer will pay for all costs to record a memorandum of this guarantee in the Clerk and Recorder's Office of Mesa County, Colorado.

24. Immunity: Nothing contained in this agreement constitutes a waiver of the City's sovereign or other immunity under any applicable law.

25. 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, 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.

City of Grand Junction

Richard Davis 3-3-03
Director of Public Works and Utilities Date

By: Richard Traver 2-28-03
Developer Date

Name (printed): RICHARD TRAVER

Its (position): REGISTERED AGENT
WESTLAND DEVELOPMENT, LLC

Attest:

Secretary Date