

WAT95NGV

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENTS AGREEMENT

NAME OF AGENCY OR CONTRACTOR: WATERLOO NEVADA LIMITED,
SIDNEY SPIVAK, PRESIDENT

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: NIAGARA
VILLAGE SUBDIVISION FILING ONE

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 Waterloo Nevada Limited ("the Developer") and THE CITY OF GRAND JUNCTION, Colorado ("the City").

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

2. **Effective Date:** The Effective Date of the Agreement will be the date that this agreement is recorded which is not sooner than recordation of the Final Plat

RECITALS

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

DEVELOPER'S OBLIGATION

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

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

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

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

7. **Commencement and Completion Periods:** The improvements, each and every one of them, will be completed within 18 months from the Effective Date of this Agreement (the "Completion Period").

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

9. **Notice of Defect:** The Developer's Engineer shall provide timely notice to the Developer, contractor, issuer of security and the City Engineer whenever inspection reveals, or the Developer's Engineer otherwise has knowledge, that an improvement does not conform to City standards and any specifications approved in the

development application or is otherwise defective. The developer will have thirty (30) days from the issuance of such notice to correct the defect.

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

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

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

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

13. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. For improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit "B" will be prima facie evidence of the minimum cost of completion; however, neither that amount 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.

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:

Sidney J. Spivak, Q.C.
Waterloo Nevada Limited
PO Box 98, Station L
Winnipeg, Manitoba R3H 0Z4 CANADA

If to Developer:

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.
- (IV) Developer intends to complete construction of all improvements prior to the recording of the final plat and provide evidence acceptable to the City of payment in full for same. In the event improvements are not completed prior to a request for recording, Developer shall provide a disbursement agreement or letter of credit acceptable to the City.

29. Conditions of Acceptance.

- 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.

[Signature] *9MTD 11/17/95*

 Director of Community Development Date
 City of Grand Junction
 250 North 5th Street
 Grand Junction, CO 81501

WATERLOO NEVADA LIMITED
[Signature] *11-9-95*

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

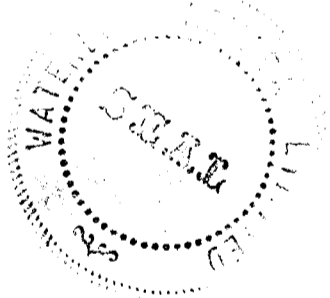


EXHIBIT "A"

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

COMMENCING at the Northeast Corner of the Northwest Quarter of the Northwest Quarter (NW1/4 NW1/4) of Section 18, Township 1 South, Range 1 East, of the Ute Principal Meridian which bears North 90 degrees 00 minutes 00 seconds East (N 90°00'00" E), a distance of 1316.38 from the Northwest Corner of said Section 18;thence South 00 degrees 07 minutes 57 seconds East (S 00°07'57" E), a distance of 654.90 feet; thence North 89 degrees 53 minutes 21 seconds West (N 89°53'21" W), a distance of 40.00 feet to the POINT OF BEGINNING; thence South 00 degrees 07 minutes 57 seconds East (S 00°07'57" E), a distance of 630.82 feet; thence North 89 degrees 59 minutes 31 seconds West (N 89°59'31" W), a distance of 401.03 feet; thence North 00 degrees 02 minutes 30 seconds West (N 00°02'30" W), a distance of 119.64 feet; thence North 89 degrees 57 minutes 30 seconds East (N 89°57'30" E), a distance of 28.19 feet; thence North 00 degrees 02 minutes 30 seconds West (N 00°02'30" W), a distance of 151.39 feet; thence North 89 degrees 51 minutes 30 seconds East (N 89°51'30" E), a distance of 46.06 feet; thence North 00 degrees 02 minutes 30 seconds West (N 00°02'30" W), a distance of 259.75 feet; thence North 89 degrees 57 minutes 30 seconds East (N 89°57'30" E), a distance of 23.66 feet; thence North 13 degrees 07 minutes 52 seconds East (N 13°07'52" E), a distance of 81.06 feet; thence North 00 degrees 12 minutes 46 seconds West (N 00°12'46" W), a distance of 67.60 feet; thence South 89 degrees 58 minutes 20 seconds East (S 89°58'20" E), a distance of 42.88 feet; thence South 00 degrees 22 minutes 47 seconds East (S 00°22'47" E), a distance of 46.23 feet; thence South 89 degrees 53 minutes 21 seconds East (S 89°53'21" E), a distance of 240.70 feet to the POINT OF BEGINNING.

Said parcel containing 5.056 acres, as described.

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL

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DATE: NOVEMBER, 6th., 1995

NAME OF DEVELOPMENT: NIAGARA VILLAGE FILING NO. ONE

PRINTED NAME OF PERSON PREPARING: LANDesign LTD.

NIAGARA VILLAGE FILING NO. ONE

STREET IMPROVEMENTS

ITEM	DESCRIPTION	UNIT	QUAN	UNIT PRICE	CONTRACT TOTAL
1	Mobilization	LS	1	\$1,500.00	\$1,500.00
2	Clear, Grub & Disposal	LS	1	\$3,988.00	\$3,988.00
3	Import Pit-Run (Street Subgrade)	TON	3,164	\$3.70	\$11,706.80
4	Sub-Grade Prep. (Streets-Phase 1)	SY	7,811	\$0.72	\$5,623.92
5	6"-Class 6 ABC (Under Concrete)	TON	640	\$10.60	\$6,784.00
6	5" Grading C HBP (2 Lifts)	TON	1,500	\$26.40	\$39,600.00
7	Shoulder Behind Curb & Gutter	LS	1	\$700.00	\$700.00
8	Raise Water Valves to Grade	EA	4	\$130.00	\$520.00
9	Raise Manholes to Grade	EA	3	\$200.00	\$600.00
10	24" Curb & Gutter	LF	570	\$7.62	\$4,343.40
11	6'- 6" Mountable Curb, Gutter & Walk	LF	1,335	\$13.97	\$18,649.95
12	7'-0" Vertical Curb, Gutter & Sidewalk	LF	248	\$13.92	\$3,452.16

NIAGARA VILLAGE FILING NO. ONE
STREET IMPROVEMENTS

ITEM	DESCRIPTION	UNIT	QUAN	UNIT PRICE	CONTRACT TOTAL
13	4' Detached Sidewalk	SF	2,810	\$2.05	\$5,760.50
14	8" Fillets	SF	292	\$3.78	\$1,103.76
15	8" Cross Pans	SF	216	\$3.47	\$749.52
16	Handicap Ramp	SF	1,955	\$2.90	\$5,669.50
17	Concrete Mail Box Pad	EA	2	\$310.00	\$620.00
18	Road Barricade	EA	3	\$1,350.00	\$4,050.00
19	Traffic Control Signs	EA	2	\$202.00	\$404.00
20	Post Delineators (9 Each)	LS	1	\$133.00	\$133.00
21	Retention Pond Grading (2,222 CY)	LS	1	\$2,777.50	\$2,777.50
22	Asphalt Driveways (4 move-ins)	SF	16,200	\$1.00	\$16,200.00
23	Realign Waste Ditch	LS	1	\$1,075.00	\$1,075.00
24	Compliance Testing	LS	1	\$2,150.00	\$2,150.00

TOTAL STREET IMPROVEMENTS

\$138,161.01

NIAGARA VILLAGE FILING NO. ONE
SANITARY SEWER IMPROVEMENTS

ITEM	DESCRIPTION	UNIT	QUAN	UNIT PRICE	CONTRACT TOTAL
1	8" Sanitary Sewer Main (including flow fill & encasements)	LF	1,631	\$16.80	\$27,400.80
2	Standard Manhole	EA	7	\$1,155.00	\$8,085.00
3	Service Connections	EA	28	\$446.25	\$12,495.00
TOTAL SANITARY SEWER IMPROVEMENTS					\$47,980.80

NIAGARA VILLAGE FILING NO. ONE
DOMESTIC WATER IMPROVEMENTS

ITEM	DESCRIPTION	UNIT	QUAN	UNIT PRICE	CONTRACT TOTAL
1	8" PVC Water Main	LF	2,200	\$12.60	\$27,720.00
2	8" Gate Valve w/Box	EA	4	\$525.00	\$2,100.00
3	Fire Hydrant Assembly	EA	3	\$1,840.00	\$5,520.00
4	Service Connections	EA	29	\$450.00	\$13,050.00
5	Join Existing	EA	2	\$1,260.00	\$2,520.00
6	Stubout For Future Fire Hydrant	EA	1	\$1,260.00	\$1,260.00
TOTAL DOMESTIC WATER IMPROVEMENTS					\$52,170.00

NIAGARA VILLAGE FILING NO. ONE
DRY UTILITY IMPROVEMENTS

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ITEM	DESCRIPTION	UNIT	QUAN	UNIT PRICE	CONTRACT TOTAL
1	4" PVC Conduits Including Trenching, Backfill and Compaction.	LF	1,740	\$1.90	\$3,306.00
TOTAL DRY UTILTIY IMPROVEMENTS					\$3,306.00

NIAGARA VILLAGE FILING NO. ONE
STORM SEWER IMPROVEMENTS

ITEM	DESCRIPTION	UNIT	QUAN	UNIT PRICE	CONTRACT TOTAL
1	18" RCP Storm Sewer	LF	38	\$26.00	\$988.00
2	Standard Street Inlet	EA	1	\$1,470.00	\$1,470.00
3	Remove and Replace 20 L.F. of 24" - Curb and Gutter.	LS	1	\$899.00	\$899.00
TOTAL STORM SEWER IMPROVEMENTS					\$3,357.00

NIAGARA VILLAGE FILING NO. ONE
UTILITIES COMPLIANCE TESTING

ITEM	DESCRIPTION	UNIT	QUAN	UNIT PRICE	CONTRACT TOTAL
1	Testing (For Water, Sanitary Sewer, Storm Sewer & Dry Utilities).	LS	1	\$5,025.00	\$5,025.00
TOTAL UTILITY COMPLIANCE TESTING					\$5,025.00

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NIAGARA VILLAGE FILING NO. ONE
LANDSCAPING IMPROVEMENTS

ITEM	DESCRIPTION	UNIT	QUAN	UNIT PRICE	CONTRACT TOTAL
1	Design/Architecture	LS	1	\$675.00	\$675.00
2	4' Concrete Sidewalk	LS	1	\$1,000.00	\$1,000.00
3	Picnic Tables /Grills	LS	1	\$750.00	\$750.00
4	Plant Material, Sod & Planting	LS	1	\$2,875.00	\$2,875.00
5	Irrigation System	LS	1	\$1,700.00	\$1,700.00
TOTAL LANDSCAPING IMPROVEMENTS					\$7,000.00

NIAGARA VILLAGE FILING NO. ONE
MISCELLANEOUS ITEMS

ITEM	DESCRIPTION	UNIT	QUAN	UNIT PRICE	CONTRACT TOTAL
1	Surveying	LS	1	\$8,000.00	\$8,000.00
2	Developer's Inspection Cost	LS	1	\$6,000.00	\$6,000.00
3	City Inspection Fees	LS	1	\$500.00	\$500.00
TOTAL MISCELLANEOUS ITEMS					\$14,500.00

SUBTOTAL ESTIMATED COST OF IMPROVEMENTS: \$271,499.81
 CREDIT FOR DEPOSIT TO CONTRACTOR: \$50,000.00
 CREDIT FOR DRY UTILITY DEPOSITS: \$40,221.04

TOTAL ESTIMATED COST OF IMPROVEMENTS: **\$181,278.77**

Walter A. ...
11-27-95

SIGNATURE OF DEVELOPER
 (If corporation, to be signed by President and attested to by Secretary together with the corporate seals.)

DATE

I have reviewed the estimated costs and time schedule shown above and, based on the plan layouts submitted to date and the current cost of construction, I take no exception to the above.

Judy Koola
 CITY ENGINEER

11-27-95
 DATE

DISBURSEMENT AGREEMENT

(Improvements Guarantee)

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DEVELOPER: WATERLOO NEVADA LIMITED
Box 98, Station L
Winnipeg, Manitoba CANADA R3H 0Z4

ESCROW AGENT: GOLDEN, MUMBY, SUMMERS, LIVINGSTON & KANE
2808 North Avenue, Suite 400
Grand Junction, CO 81501

CITY: CITY OF GRAND JUNCTION
City Hall
Grand Junction, CO 81501

PROPERTY: Niagara Village Subdivision, Filing One
Grand Junction, Colorado

DISBURSEMENT AMOUNT: For the construction of the improvements
to the property shall be in an amount not
to exceed \$181,278.77.

This Agreement is entered into by and between Waterloo Nevada Limited ("the Developer"), Golden, Mumby, Summers, Livingston & Kane ("Escrow Agent") and the City of Grand Junction, Colorado ("the City").

RECITALS

Developer has been required by the City to construct certain improvements to Niagara Village Filing One ("Improvements") in accordance with the Zoning and Development Code, Improvements Agreement and subdivision approval.

The Escrow Agent has agreed to hold and disburse funds of the Developer for construction of the subdivision and improvements.

The City Engineer has approved an estimate of the costs of the Improvements and that amount or an amount not to exceed \$181,278.77, whichever is greater, shall be referred to as the "funds".

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

NOW THEREFORE, THE PARTIES AGREE:

1. Escrow Agent Promises. Escrow Agent shall hold the funds in an interest-bearing account on behalf of Developer and for the

City's benefit. Escrow Agent warrants: that the funds are to be held in trust solely to secure Developer's obligations under the Improvements Agreement; that the Escrow Agent shall act as agent of the City in holding the funds; that the Funds will not be paid out or disbursed to or on behalf of the Developer except as set forth in this document or as set forth in the Improvements Agreement; and that the Escrow Agent may not modify or revoke its obligation to disburse funds to or on behalf of the Developer except as set forth in this document or as set forth in the Improvements Agreement; and that the Escrow Agent may not modify or revoke its obligation to disburse funds to or on behalf of the Developer or the City. The Escrow Agent warrants that the funds are and will be available exclusively for payment of the costs of satisfactory completion of the improvements.

2. Disbursement Procedures. Funds shall be advanced for payment of costs incurred for the construction of Improvements on the Property in accordance with the Improvements List/Detail, attached hereto as Exhibit "A". All disbursements must comply with the following procedures:

a. Request for Advance. Developer shall deliver to the Escrow Agent a written request for the disbursement of funds on forms acceptable to the City. Such requests shall be signed by Developer, Developer's Project Engineer and, ~~if applicable,~~ the City Engineer and shall certify: that all costs for which the advance is being requested have been incurred in connection with the construction of the improvements on the Property; that all work performed and materials supplied are in accordance with the plans and specifications submitted to and approved by the City; that the work has been performed in a workmanlike manner; that no funds are being requested for work not completed, nor for material not installed; that the Project Engineer has inspected the improvements for which payment is requested; and that such improvements have been completed in accordance with all terms, specifications and conditions of the approved plans. The City Engineer shall respond to all disbursement requests within three (3) working days or such requests shall be deemed approved. JW

Attached hereto as Attachment "A" is the list of those individuals, and their respective signatures, required to sign the above described requests.

b. Documentation, Waivers and Checks. Each request for disbursement of funds shall be accompanied by: (i) one original and one copy of each invoice to be paid; (ii) lien waivers in a form approved by the Escrow Agent prepared for signature by each payee; and (iii) postage paid envelopes addressed to each payee for the mailing of checks. The Escrow Agent shall verify its receipt of all lien waivers relating to any prior disbursements, which lien waivers shall be properly executed and contain no alterations or

modifications from those lien waivers that have been previously presented to the Escrow Agent.

Upon approval by Developer, the Project Engineer and the City of the invoices being presented to the Escrow Agent, the Escrow Agent shall advance funds designated for the payment of the invoices and mail checks to the payees in the envelopes presented to the Escrow Agent, together with lien waivers and copies of supporting invoices.

Under no circumstances shall the Escrow Agent make a disbursement for the payment of an invoice if it in good faith believes that: (i) the work has not been completed; (ii) the work has not been completed in a workmanlike manner; (iii) written approval has not been received from the Project Engineer; or (iv) any lien waiver has been altered or modified or has not been returned to the Escrow Agent.

c. Default. Upon default of the Developer under the Improvements Agreement, Escrow Agent shall disburse no funds to, or at the direction of, the Developer except to the City under the terms of the Improvements Agreement. Escrow Agent shall immediately notify the City, in writing, of any event of default as provided herein.

d. Disbursement to City. In the event the improvements are not satisfactorily and timely constructed, or upon any default, the City shall notify the Escrow Agent to immediately cease disbursement of funds to the Developer and disburse the full amount of the remaining undisbursed funds to the City. Upon such notice, the Escrow Agent shall promptly honor the demand of the City to disburse the funds to the City or a third party or parties. Upon final completion and acceptance of the performance required under the Improvements Agreement, the City shall refund to the Escrow Agent any funds not disbursed, if any, which are not actually expended to pay all costs, expenses and liabilities, including attorney fees, incurred in completing the improvements.

3. Developer Consent. The Developer, by its signature consents to disbursements and other actions authorized and provided for by the terms of this Agreement.

4. Liability for Loss. If the Escrow Agent fails to disburse funds in accordance with the procedures set forth herein, the Escrow Agent shall be liable to the City for reasonable losses sustained by the City due to such failure. Developer hereby indemnifies and holds harmless Escrow Agent from any loss arising hereunder unless such loss is caused by the gross negligence of Escrow Agent.

5. Binding Effect. This Agreement shall be binding on the heirs, successors, receivers and assigns of all parties and shall

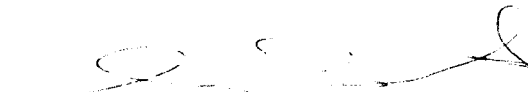
terminate when the City has accepted the Improvements and has recorded a release of the Improvements Agreement.

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

Dated this 9th day of November, 1995.

"DEVELOPER"

WATERLOO NEVADA LIMITED

By: 
Sidney Spivak, President

"ESCROW AGENT"

GOLDEN, MUMBY, SUMMERS, LIVINGSTON & KANE

By: 
Partner

"CITY"

CITY OF GRAND JUNCTION

By: 
Mark K. Achen, City Manager

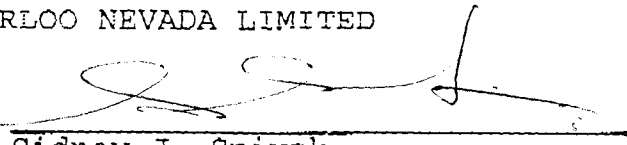
ATTACHMENT "A"

Pursuant to the terms of the Disbursement Agreement (Improvements Guarantee) by and between Waterloo Nevada Limited, Developer, Golden, Mumby, Summers, Livingston & Kane, as Escrow Agent, and the City of Grand Junction, the following are the individuals authorized to sign written requests for the disbursement of funds under paragraph 1 of the Agreement.

"DEVELOPER"

WATERLOO NEVADA LIMITED

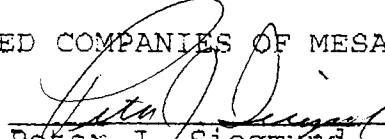
By:


Sidney J. Spivak

"DEVELOPER'S GENERAL CONTRACT"

UNITED COMPANIES OF MESA COUNTY, INC.

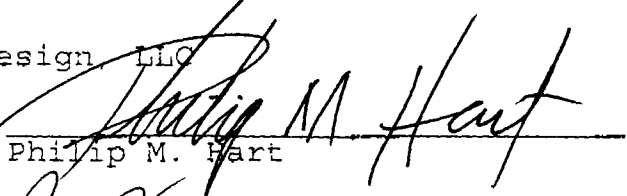
By:


Peter J. Siegmund

"DEVELOPER'S PROJECT ENGINEER"

LANDesign, LLC

By:


Philip M. Hart

"CITY ENGINEER"

Name:


JODY KLISKA

SECURITY AGREEMENT

DEBTOR: WATERLOO NEVADA LIMITED
c/o P. O. Box 398
Grand Junction, CO 81502

SECURED PARTY: CITY OF GRAND JUNCTION
City Hall
Grand Junction, CO 81501

1. Security Interest. Debtor hereby grants to Secured Party a continuing security interest in the Collateral described below to secure the Obligations described in this Agreement.

2. Obligations. The Collateral shall secure the payment and performance of all of Debtor's present and future, joint and/or several, direct and indirect, absolute and contingent, express and implied, indebtedness, liabilities, obligations and covenants (collectively "Obligations") to Secured Party pursuant to:

- a. this Agreement;
- b. that certain Development Improvements Agreement entered into between Debtor and Secured Party dated November 9, 1995;
- c. all amendments, modifications, replacements or substitutions to any of the foregoing; and
- d. applicable law.

3. Collateral. The Collateral shall consist of all of the following described property and Debtor's rights, title and interest in such property whether now owned or hereafter acquired by Debtor and wheresoever located: Any and all rebates due or to become due to Debtor under the terms of the utility agreements with Public Service Company and US West relative to Niagara Village Subdivision, copies of which are attached hereto as Exhibit "A."

4. Representations, Warranties and Covenants. Debtor represents, warrants and covenants to Secured Party that:

- a. Debtor's taxpayer identification number is 880258396;

b. Debtor is a corporation, duly organized, validly existing and in good standing under the laws of the State of Nevada and authorized to do business in the State of Colorado;

c. Debtor is and shall remain the sole owner of the Collateral;

d. Debtor's chief executive office, chief place of business, office where its business records are located, or residence is the address identified above. Debtor shall immediately advise Secured Party in writing of any change in or addition to the foregoing addresses.

e. Debtor shall not become a party to any restructuring of its form of business or participate in any consolidation, merger, liquidation or dissolution without providing Secured Party with thirty (30) or more days' prior written notice thereof;

f. Debtor shall provide Secured Party with thirty (30) or more days' prior written notice of any intended change of Debtor's name or the use of any trade name;

g. All of the Collateral shall be held by the Secured Party;

h. Debtor shall provide Secured Party with possession of all chattel paper and instruments constituting the Collateral;

i. All of Debtor's accounts, contract rights, chattel paper, documents, general intangibles, and instruments constituting the Collateral are and shall be valid, genuine and legally enforceable obligations and rights belonging to Debtor against one or more third parties and not subject to any claim, defense, setoff or counterclaim of any kind;

j. Debtor shall not amend, modify, replace, or substitute any account, contract right, chattel paper, document, general intangible or instrument constituting the Collateral without the prior written consent of Secured Party;

k. No action or proceeding is pending or threatened against Debtor which might result in any material and adverse change in its business operations or financial condition or materially affect the Collateral that has not been previously disclosed in writing to Secured Party; and

l. Debtor has the right and is duly authorized to enter into and perform its obligations under this Agreement and these actions do not and shall not conflict with the provisions of any statute, regulation, ordinance, rule of law, contract or other agreement which may be binding on Debtor at any time.

5. Sale of Collateral. Debtor shall not assign, convey, lease, sell or transfer any of the Collateral to any third party without the prior written consent of Secured Party.

6. Financing Statements and Other Documents. Debtor shall take all actions and execute all documents required by Secured Party to attach, perfect and maintain its security interest in the Collateral and establish and maintain its right to receive the payment of the proceeds thereof including, but not limited to, executing any financial statements, fixture filings, continuation statements, notices of security interest and other documents required by the Uniform Commercial Code and other applicable law.

In lieu of filing security agreements and financing statements containing original signatures, Secured Party shall be entitled to perfect its security interest in the Collateral by filing carbon, photographic or other reproductions of the aforementioned documents with any authority required by the Uniform Commercial Code or other applicable law.

7. Inquiries and Notification to Third Parties. Debtor hereby authorizes Secured Party to contact any third party and make any inquiry pertaining to Debtor's financial condition or the Collateral. In addition, Secured Party is authorized to provide oral or written notice of its security interest in the Collateral to any third party.

8. Collection of Indebtedness From Third Parties. Upon the occurrence of an Event of Default which has not been cured within the applicable cure period, Secured Party shall be entitled to notify, and upon the request of Secured Party, Debtor shall notify any account debtor or other third party (including, but not limited to, insurance companies) to pay any indebtedness or obligation owing to Debtor ("Indebtedness") to Secured Party whether or not a default exists under this Agreement. Debtor shall diligently collect the Indebtedness owing to Debtor from its account debtors and other third parties until the giving of such notification. In the event that Debtor possesses or receives possession of any instruments or other remittances with respect to the Indebtedness following the giving of such notification or if the instruments or other remittances constitute the prepayment of any Indebtedness or the payment of any insurance proceeds, Debtor shall hold such instruments and other remittances in trust for Secured Party apart from its other property, endorse the instruments and other remittances to Secured Party, and immediately provide Secured Party with possession of the instruments and other remittances.

Secured Party shall be entitled, but not required, to collect (by legal proceedings or otherwise), extend the time for payment, compromise, exchange or release any obligor or collateral upon, or otherwise settle any of the Indebtedness whether or not an event of default exists under this Agreement. Secured Party shall not be

liable to Debtor for any action, error, mistake, omission or delay pertaining to the actions described in this paragraph or any damages resulting therefrom.

9. Power of Attorney. Debtor hereby appoints Secured Party as its attorney-in-fact to: (a) endorse Debtor's name on all instruments and other remittances payable to Debtor with respect to the Indebtedness; and (b) perform any action or execute any document required to be taken or executed by Debtor under this Agreement. Secured Party's performance of such action or execution of such documents shall be taken or not taken in its sole discretion and shall not relieve Debtor from any obligation or cure any default under this Agreement. The powers of attorney described in this paragraph are coupled with an interest and irrevocable. Said appointment shall be effective upon the occurrence of an Event of Default which is not cured within any applicable cure period.

10. Indemnification. Secured Party shall not assume or be responsible for the performance of any of Debtor's obligations with respect to the Collateral under any circumstances. Debtor shall immediately provide Secured Party with written notice of and indemnify and hold Secured Party harmless from all claims, damages, liabilities (including attorneys' fees and legal expenses), causes of action, actions, suits and other legal proceedings (collectively "Claims") pertaining to its business operations or the Collateral including, but not limited to, those arising from Secured Party's performance of Debtor's obligations with respect to the Collateral. Debtor, upon the request of Secured Party, shall hire legal counsel to defend Secured Party from such Claims, and pay the attorneys fees, legal expenses and other costs incurred in connection therewith. In the alternative, Secured Party shall be entitled to employ its own legal counsel to defend such Claims at Debtor's cost.

11. Taxes and Assessments. Debtor shall execute and file all tax returns and pay all taxes, licenses, fees and assessments relating to its business operations or the Collateral (including, but not limited to, income taxes, personal property taxes, withholding taxes, sales taxes, use taxes, excise taxes and workers' compensation premiums) in a timely manner.

12. Default. Debtor shall be in default under this Agreement in the event that Debtor, Borrower, or any other party liable for the Obligations described herein:

a. fails to pay any indebtedness or perform any obligation or breaches any warrant or covenant to Secured Party contained in this Agreement, the Development Improvement Agreement, or any other present or future, written or oral, agreement;

b. provides or causes any false or misleading signature or representation to be provided to Secured Party;

c. allows any Collateral securing the Obligations to be lost, stolen, damaged or destroyed as a result of the negligence or malfeasance of the Debtor in any material respect;

d. permits the entry or service of any garnishment, judgment, tax levy, attachment or lien against them or any of their property; or

e. is dissolved or terminated, ceases to operate its business, becomes insolvent, makes an assignment for the benefit of creditors, or becomes the subject of any voluntary or involuntary bankruptcy, insolvency or debtor rehabilitation proceeding.

13. Rights of Secured Party on Default. If there is a default under this Agreement, Secured Party shall be entitled to exercise one or more of the following remedies without presentment, dishonor, notice or demand of any kind (all of which are hereby waived by Debtor):

a. to declare the Obligations immediately due and payable in full;

b. to collect the outstanding Obligations with or without resorting to judicial process;

c. to change Debtor's mailing address, open Debtor's mail, and retain any instruments or other remittances constituting the Collateral contained therein;

d. to enter Debtor or any third party's premises and take possession of any Collateral;

e. to require Debtor to deliver and make available to Secured Party any Collateral at a place reasonably convenient to Debtor and Secured Party;

f. to sell, lease or otherwise dispose of any Collateral and collect any deficiency balance with or without resorting to legal process;

g. to apply for and obtain, without notice and upon ex parte application, the appointment of a receiver for the Collateral without regard to Debtor's financial condition or solvency, the adequacy of the Collateral to secure the payment or performance of the Obligations, or the existence of any waste to the Collateral;

h. to exercise all other rights available to Secured Party under any other written agreement or applicable law.

Secured Party's rights are cumulative and may be exercised together, separately, and in any order. If notice to Debtor of intended disposition of Collateral is required by law, five days

notice shall constitute reasonable notification. In the event that Secured Party institutes an action to recover any Collateral or appoint a receiver or seeks the recovery of any Collateral or the appointment of a receiver by way of a prejudgment remedy in an action against Debtor, Debtor waives the posting of any bond which might otherwise be required.

14. Essence of Time. Debtor and Secured Party agree that time is of the essence.

15. Application of Payments. Whether or not a default has occurred under this Agreement, all payments made by or on behalf of Debtor and all credits due to Debtor from the disposition of the Collateral or otherwise may be applied against the amounts paid by Secured Party (including attorneys' fees, legal expenses and court costs) in connection with the exercise of its rights or remedies described in this Agreement and any interest thereon and then to the payment of the remaining Obligations in whatever order Secured Party chooses.

16. Reimbursement of Amounts Expended by Secured Party. Debtor shall reimburse Secured Party for all amounts (including attorneys' fees, legal expenses and court costs) expended by Secured Party in the performance of any action required to be taken by Debtor or the exercise of any right or remedy belonging to Secured Party under this Agreement, together with interest thereon at 15%. These sums shall be included in the definition of "Obligations" herein, shall be secured by the security interest granted herein and shall be payable upon demand.

17. Termination. This Agreement shall remain in full force and effect until Secured Party provides Debtor with written notice of the termination hereof or until repayment and satisfaction of all Obligations from Debtor to Secured Party.

18. Assignment. Debtor shall not be entitled to assign any of its rights, remedies or obligations described in this Agreement without the prior written consent of Secured Party which may be withheld by Secured Party in its sole discretion. Secured Party shall be entitled to assign some or all of its rights and remedies described in this Agreement without notice to or the prior consent of Debtor in any manner.

19. Modification and Waiver. The modification or waiver of any of Debtor's obligations or Secured Party's rights under this Agreement must be contained in a writing signed by Secured Party. Secured Party may perform any of Debtor's obligations or delay or fail to exercise any of its rights under this Agreement without causing a waiver of those obligations or rights. A waiver on one occasion shall not constitute a waiver on any other occasion. Debtor's Obligations under this Agreement shall not be affected if Secured Party amends, compromises, exchanges, fails to exercise,

impairs or releases any of the obligations belonging to any Debtor or third party or any of its rights against any Debtor, third party or collateral.

20. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Debtor and Secured Party and their respective successors, assigns, trustees, receivers, administrators, personal representatives, legatees and devisees.

21. Notices. Any notice or other communication to be provided under this Agreement shall be in writing and shall be deemed given when sent via telecopy, or overnight, certified, registered or regular mail to the parties at the addresses described in this Agreement or such other address as the parties may designate in writing from time to time.

22. Severability. If any provision of this Agreement violates the law or is unenforceable, the rest of the Agreement shall remain valid.

23. Applicable Law. This Agreement shall be governed by the laws of the State of Colorado. Debtor consents to the jurisdiction and venue in Mesa County, State of Colorado in the event of any legal proceeding pertaining to this Agreement or the enforcement of any right or obligations described herein.

24. Collection Costs. If Secured Party hires an attorney to assist or uses the services of the City's attorneys in collecting any amount due or enforcing any right or remedy under this Agreement, Debtor agrees to pay Secured Party's attorneys' fees, legal expenses and court costs (before trial, at trial and on appeal).

25. Definitions. All of the words and phrases in the Agreement shall possess the applicable definitions set forth in the Uniform Commercial Code as adopted by the State of Colorado unless specifically defined otherwise in this Agreement.

26. Grammatical Changes. Wherever the context requires, the singular form of any word shall include the plural, the neuter form of any word shall include the masculine or feminine forms, and vice versa.

27. Miscellaneous. This Agreement is executed for business and not consumer purposes. All references to Debtor in this Agreement shall include all persons signing below. If there is more than one Debtor, their obligations shall be joint and several and their joint and/or several property shall be included in the Collateral. This Agreement represents the complete and integrated

RELEASE OF IMPROVEMENTS AGREEMENT & GUARANTEE
Grand Junction Community Development Department
FILE # FFP-95-156

This memorandum relates to a certain unrecorded Improvements Agreement and Guarantee dated November 30, 1995, and memorandum of recording at Book 2190, Page 340 of the land records of Mesa County, Colorado, by and between Waterloo Nevada Limited (Developer) and the City of Grand Junction (City) pertaining to Niagara Village, Filing No. 1 (Project).

Legal Description: LOTS 1-8 BLK 1, LOTS 1-11 BLK 2, LOTS 1-9 BLK 3, 1915014 08/06/99 0336PM
ALL INCLUSIVE, NIAGARA VILLAGE FILING #1 & AN MONIKA TODD CLK&REC MESA COUNTY CO
UND INT IN COMMON AREA, OUTLOT A REC FEE \$5.00

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: [Signature] 7-22-99
City Engineer Date
By: [Signature] 7/19/99
City Utilities Manager Date
By: [Signature] 7-26-99
Fire Marshall Date
INSPECTOR

UTE WATER:

By: N/A
Date

GRAND JUNCTION DRAINAGE:

By: [Signature] 8/3/99
Date

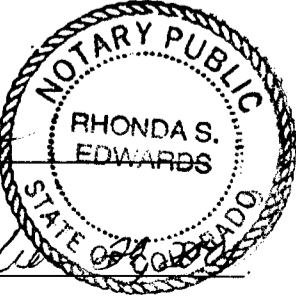
In accordance with the above signatures, I hereby certify that the Improvements Agreement & Guarantee and the recording evidencing the agreement and guarantee, at Book _____, Page _____ of the Mesa County land records, have been completed and accepted and in accordance with the provisions of the Grand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

[Signature] 8/3/99
Director of Community Development Date

The foregoing instrument was executed before me this 3rd day of August, 1999 by Katherine M. Portner, Director of Community Development for the City of Grand Junction, Colorado.

Witness my hand & official seal.

[Signature]
Notary Public
My commission expires September 2000



RELEASE OF IMPROVEMENTS AGREEMENT & GUARANTEE

Grand Junction Community Development Department

FILE # FP-96-115

This memorandum relates to a certain unrecorded Improvements Agreement and Guarantee dated SEPTEMBER 6, 1996, and memorandum of recording at Book 2267, Page 662-670 of the land records of Mesa County, Colorado, by and between Waterloo Nevada Limited (Developer) and the City of Grand Junction (City) pertaining to Niagara Village Filing No. 2 (Project).

Legal Description: LOTS 1-34 BLK 1, LOTS 1-21 BLK 2, ALL INCLUSIVE, NIAGARA VILLAGE FILING #2 & AN UND INT IN COMMON AREA, OUTLOT A

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: Rick Davis City Engineer Date 7-22-99
DEV
City Utilities Manager Date 7/19/99
Hank Masterson Fire Marshal Date 7/26/99
INSPECTOR

UTE WATER:

By: N/A Date

GRAND JUNCTION DRAINAGE:

By: John L. Ballagh Date 8/3/99

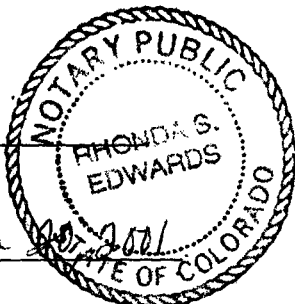
In accordance with the above signatures, I hereby certify that the Improvements Agreement & Guarantee and the recording evidencing the agreement and guarantee, at Book _____, Page _____ of the Mesa County land records, have been completed and accepted and in accordance with the provisions of the Grand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

Katherine M. Portner 8/3/99
Director of Community Development Date

The foregoing instrument was executed before me this 3rd day of August, 1999 by Katherine M. Portner, Director of Community Development for the City of Grand Junction, Colorado.

Witness my hand & official seal.

Rhonda S. Edwards
Notary Public



My commission expires September 30, 2001