

June 15, 2004

Rob Cantrell
G & R West, LLC

RE: Dakota West Subdivision Fencing

Fax: 523-0354

1 page

Rob,

Laura Lamberty shared your fax with me this morning. The only solution to the fence issue is to correct it at this time. When we issued the fence permit on February 12, 2003, I told you there may be places where the fence would have to be moved or taken down once the subdivision was platted. Please be advised that the following items need to be corrected:

- All fences crossing dedicated right-of-way need to be removed. *↓ within*
- Any fencing in a front yard set back must be reduced to 30 inches.

Thank you for your cooperation in this matter.

City of Grand Junction

Lori V. Bowers, Senior Planner
Community Development Department
Phone: 256-4033
Fax: 256-4031

CC: Randy Keller - City Code Enforcement Officer

ADDENDUM TO RESIDENTIAL COVENANTS, CONDITIONS AND RESTRICTIONS

THIS ADDENDUM is made this ___ day of May, 2004, by Dakota West Homeowners Association concerning the residential subdivision known as Dakota West Subdivision:

1. The Residential Covenants, Conditions, and Restrictions was recorded by the Mesa County Clerk and Recorder on June 24, 2003 on Book 3395, Page 970, at Reception No. 2129445.

2. All residents purchasing a lot within the Dakota West Subdivision understand and accept that the fencing installed across the East end of Mandan Lane and the North and South ends of Washburn street is temporary in nature and will be modified, at HOA expense, to comply with City fencing standards should any future development occur to the adjacent properties North and South of Dakota West which causes a continuation of the streets indicated above. If necessary, a special assessment may be levied to pay for the required fencing changes. This Paragraph 2 shall apply to the following lots:

Lot 4 in Block 2 of
Dakota West Subdivision
~~Mesa County, Colorado~~
City of Grand Jct., CO

Lot 1 in Block 3 of
Dakota West Subdivision
Mesa County, Colorado

Lot 5 in Block 4 of
Dakota West Subdivision
Mesa County, Colorado

Lot 1 in Block 5 of
Dakota West Subdivision
Mesa County, Colorado

Lot 6 in Block 5 of
Dakota West Subdivision
Mesa County, Colorado

Lot 1 in Block 6 of
Dakota West Subdivision
Mesa County, Colorado

3. All other terms and conditions of the Residential Covenants, Conditions, and Restrictions dated June 23, 2003 shall remain in full force and effect.

Dakota West Homeowners Association, Inc.

By: _____
Robert Cantrell, President

SL'

6-15-04

TO: LAURA LAMBERTY
PH: 256-4155
FAX: 256-4031

FROM: GTR WEST LLC (ROB CANTRELL)
DH: 255-8164
FAX: 523-0354

NO OF PAGES: 2

LAURA,

WE WOULD LIKE TO PROPOSE THE FOLLOWING
AS A SOLUTION TO THE FENCE ISSUES AT DAKOTA
WEST:

1. AN AMENDMENT TO THE COVENANTS WHICH
INFORMS ALL RESIDENTS OF THE FENCE SITUATION.
SPECIFICALLY THE 6 LOTS AFFECTED.
2. A RELEASE SIGNED BY FUTURE CUSTOMERS'
OWNERS
OF THE 6 LOTS IN QUESTION WHICH INFORMS
THE CUSTOMER OF THE FENCE SITUATION.

DUE TO THE CURRENT LIVESTOCK SITUATION
SURROUNDING DAKOTA WEST WE FEEL THE FENCE
SHOULD BE LEFT IN PLACE UNTIL FURTHER DEVELOPMENT
OCCURS.

THANKS LAURA
ROB CANTRELL

RESIDENTIAL COVENANTS, CONDITIONS, AND RESTRICTIONS

This declaration of covenants, conditions, and restrictions is made on this ____ day of _____, 2003, by Dakota West Homeowners Association, (hereinafter referred to as the "Association"), concerning the residential subdivision known as Dakota West Subdivision (hereinafter referred to as the "subdivision").

RECITALS:

A. G. & R. West, LLC (hereinafter referred to as "Developer"), a limited liability company organized and existing under the laws of Colorado, with a place of business at 2650 El Corona Drive, City of Grand Junction, Mesa County, Colorado, is the owner of real property located in Mesa County, Colorado, which real property is fully described in Exhibit "A", attached to this declaration.

B. Developer is in the process of developing and platting the mentioned real property to a residential community and contemplates subdividing the property into quality, single-family residential lots, and, in addition, contemplates setting aside certain tracts of land for community open space.

C. Developer desires that the entire subdivision constitute a single residential community with access, use, and rights and obligations toward the ownership, operation, and maintenance of community facilities, open space, and other amenities, and that such properties are also benefited and burdened by the same land-use restrictions and controls.

D. The total development of the subdivision residential community will take several years.

E. The Association desires to provide for minimum building restrictions to promote and assure that the subdivision is a quality residential community.

In consideration of the above, and other valuable consideration, the Association subjects all of the real property described in Exhibit "A" to the following covenants, charges, assessments, conditions, and restrictions subject to the limitations contained in this declaration.

SECTION ONE BUILDING AND DESIGN COMMITTEE

A. There shall be created a building and design committee which shall be responsible for reviewing the plans for all proposed new construction, additions, or modifications. The committee shall be responsible to ascertain that the plans and subsequent construction meet the minimum building requirements set forth in this declaration. The primary purpose of the committee shall be to assist property owners in achieving compliance with the building restrictions. The committee shall allow the greatest possible latitude and flexibility in the design of homes to be built on the lots in the subdivision and shall not discourage new or innovative design concepts or ideas.

B. The building and design committee shall consist of no less than four (4) nor more than eight (8) members to be selected annually by the board of directors of the Association, with the members to be chosen for varying terms so as to achieve staggered terms and continuity of membership of the committee.

C. Any property owner seeking to construct a new home or other appurtenant structure, or to add to or modify any portion of the exterior of an existing home, shall submit the plans to the building and design committee for review. A modification of the home exterior will include decks, hot tubs, patios, pools, and similar alterations. Construction of new structures includes equipment and material housing, dog runs, gazebos, arbors associated with landscaping, and other similar construction.

D. No construction, change, modification, or alteration for which plans are to be submitted to the building and design committee pursuant to Paragraph C, immediately above, shall commence until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the building and design committee as to the harmony of external design and location in relation to surrounding structures and topography, size, estimates of cost, and such other factors as the building and design committee considers necessary, appropriate, and relevant to maintain property values of nearby properties. In the event the building and design committee fails to approve or disapprove the design and location plan within sixty (60) days after the plans and specifications have been submitted to it, approval will not be required and full compliance with this section of the declaration will be deemed to have occurred.

E. Without limiting the generality of the factors to be considered by the building and design committee, the following restrictions shall apply:

1. All roofing material shall be limited to either shingles or concrete tile. All roofing material shall be approved by the building and design committee.
2. All driveways and parking bays shall be constructed of concrete, concrete aggregate, or asphalt unless written approval for the use of some other material is given by the building and design committee.
3. Heat pumps, propane tanks, solar devices, chimney flues, hot tub pumps, swimming pools pumps and filtration systems, and similarly exposed mechanical equipment shall be aesthetically concealed from view on all sides and shall be shielded in such a manner as to minimize noise and safety concerns.
5. Siding shall be of wood, brick, stucco, metal, or vinyl, or combinations of those materials. In addition to the materials being installed property, colors for wood, brick, stucco, metal or vinyl siding must be approved, in writing, by the building and design committee.

F. In spite of the above provisions, the building and design committee shall have no affirmative obligation to be certain that all elements of the design comply with the restrictions contained in this declaration, and no member of the building and design committee shall have any liability, responsibility, or obligation, whatever, for any decision or lack of a decision, in the carrying out of duties as a member of the committee. The committee and its members shall have only an advisory function, and the sole responsibility for compliance with all of the terms of this declaration shall rest with the homeowner. Each homeowner agrees to save, defend, and hold harmless the building and design committee and each of its members on account of any activities of the building and design committee relating to the owner's property or buildings to be constructed on their property.

G. The building and design committee, if it observes deviations from or lack of compliance with the provisions and this declaration, shall report those deviations or lack of compliance to the board of directors of the Association for appropriate action.

SECTION TWO

BUILDING AND USE RESTRICTIONS

A. The subdivision shall be a single-family residential subdivision and shall be used solely for residential purposes. A "building site" shall consist of one or more residential lots or portions of lots, as required below, as shown on the face of the plat or any modifications or adjustments to it. In spite of the preceding, no lot shall be smaller than the minimum lot size allowed by the governmental authorities charged with regulating lot sizes.

B. No building or structure shall be erected, constructed, maintained, or permitted on such residential lots, except on a "building site" as defined below in this declaration.

C. No building, except a single-family residential building together with other accessory buildings as may be permitted by local land use or ordinances, shall be permitted. Such accessory buildings shall not be used for or in connection with multi-family living, and each building site shall be used for no more than one family, together with attendants or domestic servants of that family.

D. Any home constructed on a building site shall have a minimum main floor area of the main structure, exclusive of one-story open porches and garages, of not more than 1,500 square feet for a one-story dwelling. In the case of a multiple-story or split-level dwelling, the lower or ground floor living level shall be not less than 750 square feet and the total finished square footage area of the second and/or split level, when added to the minimum 750 square feet main floor requirement, shall be not more than 1,500 square feet.

E. No improvement upon any property within the subdivision shall be permitted to fail into disrepair, and each improvement shall at all times be kept in good condition and repair.

The owner of each lot shall landscape and plant the front of their property in a manner satisfactory to the Association so as to present an appearance that is neat, well-maintained, and attractive. Landscape plans shall be submitted to the Association prior to installation of the

landscaping. Each lot owner shall have six (6) months after approval of their landscaping plan to complete the work. Each lot owner shall ensure and take reasonable steps to maintain the exterior of their home in good condition and repair at all times. Each lot owner shall timely replace and improve the home and landscaping as it becomes necessary.

In the event an owner of any lot fails to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, after approval by two-thirds of the lot owners, the Association shall make the necessary improvements to bring the improvements and landscaping up to standard, and assess the owner for the cost of the landscaping.

F. No trailer, tent, shack, garage, barn, or other outbuildings shall at any time be used as a residence, temporarily or permanently, on any building site.

G. Any construction commenced on any house as provided in this declaration shall be substantially completed, including, but not limited to, all painting, within six (6) months from the date the construction is commenced.

H. No sign of any kind shall be displayed to public view on any building site, except for a sign, limited to one, advertising the property for sale, which sign shall not be larger than twelve (12) square feet.

I. Developer will create a detention pond at the front of the subdivision, and will create drainage easements around each lot. There shall be no interference with the established drainage pattern over any property within the subdivision unless adequate provision is made for proper drainage and is approved for by the Association. All lot owners shall provide and maintain proper facilities to control storm water run-off onto adjacent properties and to insure that sediments do not enter the natural drainage system.

The storm water detention area labeled Tract A will operate a sump pump system to move collected water into the municipal sewer system so that it is in good working order at all times.

J. All buildings and improvements shall be constructed in compliance with the pertinent zoning and building codes of the City of Grand Junction, Mesa County, Colorado, and any and all other governmental entities that have jurisdiction at the time of undertaking the buildings and improvements. No dwelling house, garage, or other accessory building or part of it (exclusive of fences and similar structures) shall be placed nearer to the front lot line or nearer to the side lot line or to the rear lot line than the minimum building setback lines, if any, imposed by any such governmental entity having control, or as shown on the recorded plat of the subdivision, whichever is more restrictive.

K. All lines or wires for telephone, power, cable television, or otherwise shall be placed underground and no such wires shall be shown on the exterior of any building unless the same shall be underground or in a conduit attached to a building.

No television, microwave or other antenna dish or satellite of a size greater than 24 inches shall be installed. No radio antenna or aerial shall be installed that has a height in excess of fifteen (15) feet above ground for the properties described in Exhibit "A", attached to this declaration. For this purpose, the ground level shall be determined by using the same ground level as is used for determining the maximum height restriction for houses to be constructed on the property under the then-prevailing zoning and building restrictions. That ground level shall apply whether or no the antenna or aerial is located above the roofline of the residence.

L. No fences shall be constructed except after approval and review by the building and design committee, and all fences shall be designed and constructed so as to be compatible with the neighborhood.

Developer intends to construct a perimeter fence around the subdivision. Therefore, the backyard section of fence will already exist for certain lots. This section of fence will be sold to the lot owner as part of their lot price.

Except as provided for herein, all fences shall be constructed of wooden or stucco materials. All fences shall be designed and constructed so as to not constitute a nuisance or offensive effect on other persons residing within the subdivision. Each lot owner shall be responsible for maintaining their section of fence in good order and repair. If the fence is damaged in any way, it will be the lot owner's responsibility to see that the damage is repaired in a timely fashion and at their own expense. Chain-link fences for animal containment purposes, with proper screening from neighbors and public view, may be acceptable on approval of the building and design committee.

M. No noxious, hazardous, illegal, or offensive use of property shall be carried on any lot, nor shall anything be done on it that may be, or become, an annoyance or nuisance to the neighborhood. No grantee or grantees, under any conveyance, nor purchasers, shall at any time conduct or permit to be conducted on any residential lot any trade or business of any description, either commercial or noncommercial, religious or otherwise, including day schools, nurseries, or church schools, nor shall the premises be used for any other purpose whatever except for the purpose of providing a private, single-family dwelling or residence.

N. No trash, garbage, ashes, or other refuse, junk, vehicles in disrepair, underbrush, or other unsightly growths or objects shall be maintained or allowed on any lot. All fences and buildings shall be kept in a state of repair. All residences, garages, and accessory buildings shall be painted or stained, from time to time, so as to maintain a reasonable state of repair. There shall be no burning or other disposal of refuse out of doors. Each lot owner shall provide suitable receptacles for the temporary storage of refuse within the lot.

O. No boat, boat trailer, house trailer, horse trailer, automobile, recreational vehicle, truck, or other vehicle, or any part thereof shall be stored or permitted to remain on any residential lot unless the same is stored or placed in a garage or fully-enclosed space, except for temporary storage for a period not to exceed twenty (20) consecutive days in duration, with such temporary occurrences not to exist more than two (2) times in any one calendar year.

P. All mailboxes and mailbox holders shall be of a standard design accepted by the building and design committee and adhering to the applicable specifications of the U.S. Postal Service. All mailboxes shall be located as directed by the U.S. Postal Service. Each lot owner shall be responsible for the maintenance and replacement of the mailbox so as to keep it in a state of repair at all times.

Q. No animals, livestock, or poultry shall be raised, bred, or kept on any lot of the subdivision for commercial purposes.

R. A reasonable number of household pets, such as dogs and cats, may be kept provided the pets are contained on the lot. A "reasonable number" as used in this reference shall ordinarily mean no more than two (2) pets per household. However, the Association may determine that a "reasonable number", in some instances, may be more or less. Such pets are not allowed to run at large at any time. Pedestrians within the subdivision who are accompanied by pets permitted under these Covenants must have the pets under the pedestrians' direct control by use of a leash not to exceed ten (10) feet in length. Owners shall be solely responsible for the control of and clean-up of waste from their pet. Owners of pets will be required to take all steps necessary to control barking or other disturbances caused by their pets.

S. No obnoxious or offensive activity shall be carried on by a lot owner within the lot and/or subdivision, nor shall anything be done or permitted which shall constitute a public nuisance. No noise or other nuisance shall be permitted to exist or operate upon the lot so as to be offensive or detrimental to any other lot owner of the subdivision.

T. The Association will designate two weekends each calendar year for the homeowners of the subdivision to hold a garage sale. Garage sales may not be held by homeowners on any date(s) not designated and approved for by the Association.

SECTION THREE **COMMUNITY OPEN SPACE AND AMENITIES**

A. There shall be created, as shown on the face of the plat of the subdivision, such open space tracts as the developer shall create. Such open-space tracts as well as all open-space easements created or arising out of the subdivision development shall be for the benefit of all properties in the subdivision and shall be developed, paid for, and maintained by the Association, as provided in this declaration.

B. On the filing of the final subdivision map for the subdivision, the mentioned open space located in the subdivision shall be conveyed to and accepted by the Association.

C. Maintenance of the open-space tracts, open-space easements, detention pond and/or any amenities located on them shall be at the cost and expense of the lot owners within the subdivision. All of such costs, including, but not limited to, maintenance expenses, insurance, and real property taxes, shall be borne by the individual lot owners who have purchased from the developer, such lot owners to pay their pro rata share based on the ratio of their lots to the total number of lots that have been created by the filing of the final subdivision map. It is the express

intent and understanding of the parties that, during the development phase of the subdivision, the lots that have been created in the earlier phases will have the benefit of the open-space tracts, open-space easements, and amenities that exist on them, and should pay for the same, and that the undeveloped property within the subdivision should not bear the burden of such expense.

D. The Association shall be responsible for the sump pumped detention pond, including the electric bill and any and all maintenance necessary to maintain the pond in good working order. Said expenses shall be paid for by Association dues.

SECTION FOUR **GENERAL AND SPECIAL ASSESSMENTS FOR ASSOCIATION**

A. By acceptance of the deed or other instrument of conveyance for their lot within the subdivision, each lot owner shall be deemed to covenant and agree to pay to the Association annual assessments and special assessments for capital improvements. Such assessments shall be fixed, established, and collected from time to time as provided in this declaration. The annual and special assessments, together with such interest and costs of collection as provided below, shall be a continuing lien on the property affected and shall also be a personal obligation of the owner of the property on the date when the assessment is due. Such personal obligation shall not pass to successors in title to the affected property unless expressly assumed by the successors.

Unless changed by a vote of two-thirds of the lot owners, the annual assessment for any lot in the subdivision shall be that amount last approved by two-thirds of the lot owners.

On the vote of the members of the Association in the manner set forth below, the Association may levy, in addition to annual assessments, a special assessment or assessments in any calendar year applicable to that year only, for the purpose of defraying in whole or in part the cost of construction or reconstruction or expected repair or replacement of a described capital improvement or capital improvements on the common properties in the subdivision, including fixtures and personal property related thereto.

Any special assessment or change in maximum annual assessment must be approved by the board of directors of the Association and have the assent of two-thirds or as the case may be] of the votes of the lot owners at a meeting called for that purpose. Written notice of the meeting called for such purpose shall be sent to all members of the Association at least twenty (20) days in advance of the date of the meeting, setting forth the purpose of the meeting.

B. It shall be the duty of the Association to notify all owners or contract purchasers of lots within the subdivision, whose addresses shall be supplied to the Association, by sending written notice to each of the owners within _____ days after the date on which the assessment has been fixed and levied, giving the amount of the charge or assessment for the current year, when the same shall be due, and the amount due for each lot or partial lot owned by each such owner. Failure of the Association to levy an assessment or charge for any one year shall not affect the right of the Association to issue assessments in future years. Failure to deliver or levy an assessment due to a lack of an address for the owner of any particular lot within the subdivision shall not discharge the obligation of any such owner from paying the assessment,

and it shall be the obligation of any such owner to notify the Association of the owner's current address.

C. Any general or special assessment levied as set forth in this declaration shall become a lien on the affected real estate as soon as the assessment is due and payable as set forth above. In the event any owner fails to pay the assessment when due, then the assessment shall bear interest at the maximum legal rate permitted by Colorado from the date when the assessment is due until it is paid in full.

Ninety (90) days after the date of any such assessment has been fixed and levied, the assessment, if not paid, shall become delinquent and the payment of both principal and interest may be enforced as in the case of a laborer's lien on the affected real estate. A notice of the assessment may be filed with Mesa County, and venue shall be laid in County Court, Colorado. It shall be the duty of the board of directors of the Association, as provided below, to bring actions to enforce such liens before they expire. The Association, in its discretion, may file certificates of nonpayment of assessments with Mesa County, Colorado whenever the assessments are delinquent. For each certificate so filed, or for any lien so filed, the Association shall be entitled to collect from the owner or owners of the property described in the certificate or lien a fee of \$50.00, which fee is declared to be a lien on the affected real estate, and shall be collectible in the same manner as the original assessment provided for in this declaration.

Any such lien shall continue for a period of fifteen (15) years from the date of delinquency and no longer, unless within that time period legal proceedings shall be instituted to collect the assessments, in which event the lien shall continue until the termination of the legal proceedings and the sale of the property under the execution of the judgment establishing the same.

In the event legal proceedings are commenced to collect any such assessment, or if the services of an attorney are retained by the Association in connection with same, the nonpaying owner or owners shall be obligated to pay all costs incurred, plus reasonable attorney fees, which costs and fees shall become a portion of the assessment and may be foreclosed on in the same manner as the assessment as provided above.

D. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, enjoyment, and welfare of the residents in the subdivision and, in particular, for the improvement and maintenance of property, service, and facilities devoted to the above-stated purpose and related to the use and enjoyment of the common properties and of the homes situated in the subdivision. Without limiting the generality of the above statement of purpose, the assessments shall be applied by the Association to the payment of the costs to:

1. Enforce any and all building and land-use restrictions that exist as of the date of this declaration or which may be lawfully imposed on or against any of the property in the subdivision.

2. Maintain the community open-space tracts and amenities and improvements on them as provided in this declaration.
3. Pay expenses to carry out the above, such as attorney fees, manager's fees, expenses of liability, fire, and other insurance, bookkeeping and accounting expenses, and any and all other expenses that may from time to time be deemed necessary to carry out the intent of this declaration by the Association.
4. Protect property values in the subdivision by promoting pride in and enthusiasm for it; work for improved transportation, schools, libraries, and recreation facilities within the community in which the subdivision is located; and do all lawful things and tasks that the Association, in its discretion, may deem to be in the best interests of the subdivision and the owners of the lots in the subdivision.

SECTION FIVE DURATION

All of the restrictions and covenants set forth in this declaration shall continue and be binding on the parties and their successors and assigns for a period of twenty-five (25) years from the date this declaration is filed for record in the office of the Clerk and Recorder in and for Mesa County, Colorado, and shall automatically be extended after that date for successive periods of ten (10) years provided, however, that the owners of the legal title to the lots having more than fifty percent (50%) of the front footage of lots shown on the recorded plat may release all of the lots restricted from any one or more of the restrictions and covenants, and may release any lot shown on the plat from any restrictions or covenants erected by deed from the parties at the end of the first twenty-five (25) year period, or at the end of any successive ten (10) year period after this first period, by executing and acknowledging an appropriate agreement or agreements in writing for such purpose and filing the same for record in the manner then required for the recording of land instruments, at least five (5) years prior to the expiration of the first twenty-five (25) year period, or at least five (5) years before the expiration of any ten (10) year period thereafter; and further provided that the owners of the legal title of the lots having more than seventy-five (75) percent of the front footage of the lots shown on this plat may, after twenty-five (25) years from the date of this declaration, by executing and acknowledging an appropriate agreement and filing the same for record as outlined above, release any one or more of the restrictions or covenants mentioned in this declaration.

SECTION SIX RIGHT TO ENFORCE

The restrictions set forth in this declaration shall run with the land and bind the parties and their successors and assigns. All parties claiming by, through, or under the parties shall be taken to hold, agree, and covenant with the parties, their successors and assigns, and with each of them to conform to and observe the restrictions as to the use of the lots and the construction of improvements on them. However, no restrictions in this declaration shall be personally binding

on any corporation, person, or persons except in respect to breaches committed during its, his, her, or their seizing of the title of the land. The owner or owners of any of the above-mentioned land shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the restrictions, in addition to ordinary legal actions for damages. The failure of the parties or owner or owners of any other lot or lots shown on this plat to enforce any of the restrictions set forth in this declaration at the time of its violation shall in no event be deemed to be a waiver of a right to do so subsequently.

SECTION SEVEN
MISCELLANEOUS AND GENERAL PROVISIONS

A. Each owner, by purchasing any lot in the subdivision shall automatically become a member of the Association and shall be bound by the terms and conditions of this declaration, the articles and bylaws of the Association, and such rules and regulations as may be promulgated and adopted by the Association under the articles and bylaws.

B. On transfer, conveyance, or sale by any owner of all of his or her or its interest in any subdivision lot, the owner's membership in the Association shall cease and terminate.

C. Except as provided in this declaration, the Association shall be the sole judge of the qualifications of its membership and of the right to participate in and vote at its meetings.

D. The official address of the Association is 2650 El Corona Drive, Grand Junction, Mesa County, Colorado, 81501, and shall remain so until changed by the Association, at which time the Association shall notify each member of the change in address.

E. Each lot owner or lot purchaser, on the purchase of the lot, shall immediately notify the Association of the owner's name and address.

F. By written consent of two-thirds of all of the lot owners, the Association may be given such additional powers as may be described by the Association, or otherwise modify or amend this declaration in any manner.

G. Prior to the actual organization or incorporation of the Association contemplated by the terms of this declaration and as set forth herein, Developer shall have the right, at its option, to perform the duties and assume the obligations, levy and collect the assessments and charges, and otherwise exercise the powers conferred by this instrument on the Association in the same way and in the same manner as though all such powers and duties were given in this instrument to developer directly. Developer shall also have the right to modify, amend, repeal, or change any of the terms of this declaration prior to the actual organization or incorporation of the Association.

The Association shall have two classes of voting membership:

Class A: Class A members shall be all owners, with the exception of the Developer, and shall be entitled to one vote for each lot owned. When more than

one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any lot.

Class B: The Class B member(s) shall be the Developer and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (i) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (ii) Ten (10) years from the date of these covenants.

I. The Association shall, at all times, observe all of the laws, regulations, ordinances, and the like of the City of Grand Junction, Mesa County, Colorado, and of the United States of America, and if, at any time, any of the provisions of this declaration shall be found to be in conflict with them, then such parts of this declaration as are in conflict with those laws, regulations, ordinances, and the like shall become null and void, but no other part of this declaration not in conflict shall be affected.

J. Subject to the limitations set forth in this declaration, Association shall have the right to make such reasonable rules and regulations and to provide such means and to employ such agents as will enable it adequately and properly to carry out the provisions of this declaration.

K. This declaration may be terminated, and all of the real property now or hereafter affected may be released from all or any part of the terms and conditions of this declaration, by the owners of two-thirds of the properties subject to this declaration at any time it is proposed to terminate this declaration, by executing and acknowledging an appropriate written agreement or agreements for that purpose, and filing the same with the office of the Clerk and Recorder of Mesa County, Colorado.

L. All of the provisions of this declaration shall be deemed to be covenants running with the land, and shall be binding on and inure to the benefit of the owners of the properties described in Exhibit "A", their heirs, successors, and assigns. All parties claiming by, through, or under them shall be taken to hold, agree, and covenant with such owners, their successors in title, and with each other, to conform to and observe all of the terms and conditions contained in this declaration.

M. Any lot owner, or the Association, may maintain any legal proceedings to compel or enforce any of the terms and conditions of this declaration.

N. The initial members of the board of directors of the Association shall be Robert G. Cantrell and Gina Cantrell, 2650 El Corona Drive, of the City of Grand Junction, Mesa County, Colorado.

In witness, the undersigned, acting as the President, of the Dakota West Homeowners Association, has caused this declaration to be executed at Grand Junction, Colorado, on the date first above written.

Robert Cantrell

L. Lamberty

SUPPLEMENT TO
MAINTENANCE GUARANTEES
FOR DAKOTA WEST, FILING 1
AND DAKOTA WEST, FILING 2

This agreement is entered into this 30th day of December 2005 by the City of Grand Junction ("City") and G & R West, LLC ("Developer").

Recitals.

- A. The City and Developer entered into a Maintenance Guarantee signed by Developer on October 13, 2004 regarding the City required improvements for the Dakota West Subdivision, Filing 1 and another Maintenance Guarantee signed by the Developer on October 18, 2004 for the Dakota West Subdivision Phase 2, Filing 2.
- B. Regarding said Filing 1, Laura Lamberty, City Development Engineer, completed an inspection of the streets and drainage facilities on September 16, 2005. She informed the Developer by letter on September 21, 2005 of five items needing correction, one of which was that the truncated dome mats at handicap ramps needed to be re-glued.
- C. Regarding said Filing 2, Laura Lamberty, City Development Engineer, completed an inspection of the streets and drainage facilities on September 16, 2005. She informed the Developer by letter on September 21, 2005 of seven items needing correction, one of which was that the truncated dome mats at handicap ramps needed to be re-glued.
- D. Since both letters, Developer has corrected the items needing correction and Laura Lamberty has approved all of such items, except that the truncated domes in both subdivisions still need to be re-glued.
- E. The Developer and the City have agreed that \$3,000.00 is an adequate estimate of the costs required to re-glue the truncated domes.
- F. The City is willing to release the security provided by the Developer for the Maintenance Guarantees except said \$3,000.00, as security for Developer's obligation to properly re-glue the said truncated domes as the weather permits in the spring of 2006 to the satisfaction of the City or to take such other steps as the City may require so that the truncated domes are installed as required by the City.

For valuable consideration, the receipt and adequacy of which is acknowledged, the City and the Developer agree as follows:

1. The Recitals are a substantive part of this Supplement.
2. Upon receipt of cash in the amount of \$3,000.00 as security for both Maintenance Guarantees. The City shall return the Letters of Credit from the Bank of Colorado being held as security.
3. The purpose of this Supplement is to make clear that the release of the security over and above the \$3,000.00 does not release the Developer from his obligations under the Maintenance Guarantees. The Developer shall be released from the obligations upon receipt of written notice from the City of final acceptance for

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 3rd day of January, 2008, by Laura Lambert, from the Department of Public Works and Utilities.

WITNESS my hand and official seal.
My commission expires: 11-17-08

Kathy Valdez
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 3rd day of January, 2008, by Paul Cecil, from the Community Development Department.

WITNESS my hand and official seal.
My commission expires: 11-17-08

Kathy Valdez
Notary Public

L. Bowers

SUPPLEMENT TO
MAINTENANCE GUARANTEES
FOR DAKOTA WEST, FILING 1
AND DAKOTA WEST, FILING 2

This agreement is entered into this 30th day of December 2005 by the City of Grand Junction ("City") and G & R West, LLC ("Developer").

Recitals.

- A. The City and Developer entered into a Maintenance Guarantee signed by Developer on October 13, 2004 regarding the City required improvements for the Dakota West Subdivision, Filing 1 and another Maintenance Guarantee signed by the Developer on October 18, 2004 for the Dakota West Subdivision Phase 2, Filing 2.
- B. Regarding said Filing 1, Laura Lamberty, City Development Engineer, completed an inspection of the streets and drainage facilities on September 16, 2005. She informed the Developer by letter on September 21, 2005 of five items needing correction, one of which was that the truncated dome mats at handicap ramps needed to be re-glued.
- C. Regarding said Filing 2, Laura Lamberty, City Development Engineer, completed an inspection of the streets and drainage facilities on September 16, 2005. She informed the Developer by letter on September 21, 2005 of seven items needing correction, one of which was that the truncated dome mats at handicap ramps needed to be re-glued.
- D. Since both letters, Developer has corrected the items needing correction and Laura Lamberty has approved all of such items, except that the truncated domes in both subdivisions still need to be re-glued.
- E. The Developer and the City have agreed that \$3,000.00 is an adequate estimate of the costs required to re-glue the truncated domes.
- F. The City is willing to release the security provided by the Developer for the Maintenance Guarantees except said \$3,000.00, as security for Developer's obligation to properly re-glue the said truncated domes as the weather permits in the spring of 2006 to the satisfaction of the City or to take such other steps as the City may require so that the truncated domes are installed as required by the City.

For valuable consideration, the receipt and adequacy of which is acknowledged, the City and the Developer agree as follows:

- 1. The Recitals are a substantive part of this Supplement.
- 2. Upon receipt of cash in the amount of \$3,000.00 as security for both Maintenance Guarantees. The City shall return the Letters of Credit from the Bank of Colorado being held as security.
- 3. The purpose of this Supplement is to make clear that the release of the security over and above the \$3,000.00 does not release the Developer from his obligations under the Maintenance Guarantees. The Developer shall be released from the obligations upon receipt of written notice from the City of final acceptance for

each of the public improvements when accepted by the City. The respective Maintenance Guarantees otherwise remain in full force and effect.

G & R West, LLC

By: [Signature]
Rob Cantrell, Manager

City of Grand Junction

By: [Signature]
Department of Public Works and Utilities

By: [Signature]
Community Development Department

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 30 day of DECEMBER, 2005, by Rob Cantrell, Manager of G & R West, LLC.

WITNESS my hand and official seal.
My commission expires: 10/09/2007 [Signature]
Notary Public



My Commission Expires 10/09/2007

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this ___ day of _____, 2005, by _____, from the Department of Public Works and Utilities.

WITNESS my hand and official seal.
My commission expires: _____
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 3rd day of January, 2008, by Laura Lamberty, from the Department of Public Works and Utilities.

WITNESS my hand and official seal.
My commission expires: 11-17-08

Kathy Valdez
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 3rd day of January, 2008, by Art Cecil, from the Community Development Department.

WITNESS my hand and official seal.
My commission expires: 11-17-08

Kathy Valdez
Notary Public

DISBURSEMENT AGREEMENT
(Improvements Guarantee)

File Copy

DEVELOPER: GJR West

BANK:

PROPERTY: Dakota West Filing 2

DISBURSEMENT AMOUNT: For the construction of improvements to the Property in an amount not to exceed \$ _____.

This Agreement is entered into by and between GJR West ("Developer"), _____ ("Bank") and the City of Grand Junction, Colorado ("City").

RECITALS

Developer has been required by the City to construct certain improvements to Dakota West Filing 2 ("Improvements") in accordance with the Zoning and Development Code, Improvements Agreement and subdivision approval.

The Bank has agreed to loan funds to the Developer for construction of the Improvements.

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

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

NOW, THEREFORE, THE PARTIES AGREE:

1. **BANK PROMISES.** Bank shall dedicate or set aside the Funds on behalf of Developer and for the City's benefit within twenty-four hours of execution of this Disbursement Agreement.

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

2. **DISBURSEMENT PROCEDURES.** The Funds shall be advanced for payment of costs incurred for the construction of Improvements on the Property in accordance with the Improvements List/Detail attached to the Improvements Agreement, the terms of which are incorporated by this reference. All disbursements must comply with the following procedures:

(a) **Request for Advance.** Developer shall deliver to the Bank a written request for the disbursement of funds on forms acceptable to the Bank. Such requests shall be signed by Developer, Developer's General Contractor, Project Engineer and Architect, if applicable, and the City Engineer. By signing the request for disbursement the Developer is certifying: that all costs for which the advance is being requested have been incurred in connection with the construction of the Improvements on the Property; that all work performed and materials supplied are in accordance with the plans and specifications submitted to and approved by the City; that the work has been performed in a workmanlike manner; that no funds are being requested for work not completed, nor for material not installed; the Project Engineer has inspected the Improvements for which payment is requested; and that such improvements have been completed in accordance with all terms, specifications and conditions of the approved plans. Attached hereto is the list of those individuals, and their respective signatures, required to sign the above described request(s) for disbursement of funds.

DISBURSEMENT AGREEMENT
(page 2 of 4)

(b) **Documentation, Waivers and Checks.** Each request for disbursement of funds shall be accompanied by: (i) one original and one copy of each invoice to be paid; (ii) checks drawn on Developer's construction loan account with the Bank, made payable to the payee(s) and for the amount of each invoice presented for payment; (iii) lien waivers in a form approved by the Bank prepared for signature by each payee; and (iv) postage paid envelopes addressed to each payee for the mailing of checks presented to the Bank.

The Bank shall verify its receipt of all lien waivers relating to any prior disbursements, which lien waivers shall be properly executed and contain no alterations or modifications from those lien waivers that have been previously presented to the Bank.

Upon approval by Developer, the Project Engineer and the Bank of the invoices being presented to the Bank, the Bank shall advance funds into the checking account designated for the payment of the invoices and mail the checks to the payee(s) in the envelopes presented to the Bank, together with lien waivers and copies of supporting invoices.

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

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

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

3. **DEVELOPER CONSENT:** The Developer, by the signature of Robert Cantrell, manager (name & title), consents to disbursements and other actions authorized and provided for by the terms of this Agreement and/or the Improvements Agreement.

4. **LIABILITY FOR LOSS:** If the Bank fails to disburse funds in accordance with the procedures set forth, and the City suffers loss or damage, the Bank shall be liable to the City for the City's direct and consequential damages and all fees, costs and expenses, including attorneys fees.

5. **BINDING EFFECT:** This Agreement shall be binding on the heirs, successors, receivers and assigns of all parties and shall terminate when the City has accepted the Improvements and has recorded a release of the Improvements Agreement.

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

Dated this 16 day of July, 2003

(BANK)

By: [Signature]
Title Assistant Vice President

Address 200 Grand Avenue, Grand Jct, Colorado 81501

(DEVELOPER)

By: [Signature]
Title MGR

Address _____

CITY OF GRAND JUNCTION

By: [Signature] July 18, 2003
Director of Community Development

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between G + R West Developer, _____ as Bank, and the City of Grand Junction, the following are the individuals authorized to sign written requests for the disbursement of the funds:

DEVELOPER:

ROBERT CANTRELL
(name)

[Signature]
(signature) MGR

(name)

(signature)

(name)

(signature)

DISBURSEMENT AGREEMENT
(page 4 of 4)

DEVELOPER'S GENERAL CONTRACTOR:

ROBERT CANTRELL
(name)

[Signature]
(signature)

DEVELOPER'S PROJECT ENGINEER:

(name)

(signature)

DEVELOPER'S ARCHITECT:

(name)

(signature)

CITY ENGINEER:

Laura C. Lambertz
(name)

[Signature]
(signature)

File Name: dimusk
revised August 1, 2002



Parks and Recreation Department

City of Grand Junction

1340 Gunnison Avenue

Grand Junction CO 81501

(970) 244-FUNN - FAX (970) 242-1637

FILE NO. FP-2003-079

PROPOSAL: G+R West, Dakota West Sub. #2

LOCATION: 3090 D 1/2 Road

ENGINEER/REPRESENTATIVE: _____

PETITIONER: G+R West, Rob + Gina Cantrell

ADDRESS: 2650 El Corona

PHONE NO.: _____

FEE CALCULATION:

ACCOUNT NUMBER - ~~105-792-47510-24000000~~

_____ UNITS AT \$ _____ /UNIT = \$ 105-792-47510-136412

_____ APPRAISED VALUE AT 10 % = \$ 15,430.96 105-792-47510-117055

AMOUNT PAID \$ 15,430.96 DATE 7-24-03 INITIALS AVB V# 1980

WHITE-PETITIONER; GREEN-FINANCE; YELLOW-PARKS; PINK-COMM DEVELOP; GOLDENROD-FILE

City of Grand Junction
 Department of Community Development



Date July 24, 2003
 Payee Name G + R West, LLC / Dakota West #2
 Address, City, State, Zip 2650 El Corona
 Telephone _____
 Project Address/File/Name FP-2003-079

*** PLEASE CIRCLE ALL THAT APPLY**

DESCRIPTION *	AMT	DESCRIPTION *	AMT
DEVELOPMENT PROJECTS 100-321-43195-13-109465 (DEV)		PERMITS 100-321-43195-13-124415 (PERMIT)	
Rezone		Temporary Use Permit	
Conditional Use		Floodplain Permit	
Special Use		Sign Permit (#)	
Major Sub-ODP, Prelim, Final		Special Events Permit (#)	
Simple Subdivision		Fence Permit (#)	
PDR - ODP, Prelim, Final		Home Occupation Permit	
ROW / Easement Vacation			
Replat / Property Line Adj		OTHER	
Variance		School Impact 701-905-43994 (SLD)	
Site Plan Review		Drainage 202-61314-43995-30 (DRAIN)	
Minor Change		TCP 2071-61314-43993-30 (TCP)	
Change of Use		Sign Dep 100-21090-131840 (SIGN)	
PLANNING CLEARANCE (#) 100-321-43195-13-124450 (PLAN)		Manuals, Copies, etc. 100-321-43195-13-120515 (MANUAL)	19.00

Treasurer Receipt No. _____ TOTAL \$ 19.00 # 1980
 (White: Customer) (Canary: Finance) (Pink: Planning) (Goldenrod: File)

MAINTENANCE GUARANTEE

1. **Parties:** The parties to this Maintenance Guarantee ("the Guarantee" or "Guarantee") are _____ ("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 _____ has been reviewed and approved under Community Development file # _____ 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 \$_____ (Line G2, Exhibit B, City Security).

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 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) calendar days from the date of the notice to correct the defect.

8c. The City may grant reasonable extensions in writing to the time for correction of defect(s), however, it is not obligated to do so nor is it obligated to provide any notice of a defect(s) if it becomes aware of the defect(s) in or during an emergency. Furthermore, the City is not obligated to inspect the Improvements but may do so as 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 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: _____ Name -Developer/Company
_____ Address (Street and Mailing)

_____ City, State & Zip Code
(____) _____ Telephone and Fax Numbers
(____) _____
_____ E-mail

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.

By:

Developer

Date

Name (printed): _____

Title (position): _____

Attest:

Secretary

Date

City of Grand Junction

Project Planner

Date

Dept. of Public Works and Utilities

Date

GUARANTEE2003

6/13/2003

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are G&R WEST LLC ("Developer") and the **City of Grand Junction, Colorado** ("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 shall be the date that it is signed by the Community Development Director, 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, described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The Property, known as DAKOTA WEST Filing 2 has been reviewed and approved under Community Development file # FP-2003-079 ("Development" or "the Development").

The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements to the Property and limiting the harmful effects of substandard development.

A further purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself; this 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 owner(s), purchaser(s) or user(s) of the Property.

The mutual promises, covenants and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and City's land development ordinances and regulations.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer shall 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 ("Improvements" or "the Improvements").

3a. On and after the Effective Date of this Agreement the Developer agrees to pay the City for its Administration and Inspection of the Development. The hourly rate for those services is \$45.00/hour. Administration and Inspection includes but is not limited to the time expended by the City's planner, engineer, construction inspector and attorney in directing, advising, correcting and enforcing by means other than

litigation, this agreement and/or the approved development plan. Making disbursements and calling/collecting Guarantees are Administration and Inspection services and shall be charged at \$45.00/hour. See, paragraph 19 concerning attorneys' / litigation fees.

3b. The scope of this project is such that the City may have to engage independent consultants(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others for which Developer is responsible hereunder.

3c. The Developer's obligation to complete the Improvements is and shall 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. The Developer is required to post security in an amount of \$ 291,975.⁰⁰ (120% of the amount for the Improvements) in a form and with terms acceptable to the City ("Guarantee"). The Guarantee shall be in the form of a cash deposit made to the City, a letter of credit or a disbursement agreement in a form and with content approved by the City Attorney. The Guarantee specific to this Agreement is attached as Exhibit C and is incorporated by this reference as if fully set forth.

Select one: Cash _____ Letter of Credit (LOC) ~~_____~~ ^(PC) Disbursement Agreement X

5. **Standards:** The Developer shall construct the Improvements according to the City's standards and specifications.

6. **Warranty:** The Developer shall warrant the Improvements for one year following Acceptance by the City. "Warrant" or "Warranty" as used herein means the Developer shall take such steps and incur such costs as may be needed so that the Improvements or any portion or phase thereof as repaired and/or replaced, shall comply with the Development's construction plans and/or site plan, City standards and specifications at the end of the warranty period. The Developer shall warrant each repaired and/or replaced Improvement or any portion or phase thereof for one year following Acceptance of such repair and/or replacement.

6a. Upon Acceptance the Developer shall provide a Maintenance Guarantee in an amount of \$ 291,975.00 (Line 02, Exhibit B, City Security).

548,662.⁵⁰ ^(PC)

6b. The Maintenance Guarantee shall be secured by a letter of credit, cash escrow or other form acceptable to the City.

7. **Commencement, Completion and Abandonment Periods:** The Developer shall commence work on the Improvements within 30 days from the Effective Date of this Agreement; that date is known as the "Commencement Date."

7a. The Developer shall complete the Improvements by the end of the twelfth month from the Effective Date of this Agreement; that date is known as the "Completion Date."

7b. The Developer shall not cease construction for any period of more than 60 consecutive days. If construction is ceased for 60 or more consecutive days the Director may deem the Development abandoned ("the Abandonment Period").

7c. The Commencement date and the Completion Date are as follows:

Commencement Date: 7-11-03
Completion Date: 7-11-04

8. Compliance with Law: The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations when fulfilling its obligations under their 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 the Effective Date.

9. Notice of Defect: The Developer by and through his/her/its engineer shall provide timely written notice to the issuer of the Guarantee and the Director when the Developer and/or his/her/its engineer has knowledge, that an Improvement or any part or portion of any Improvement either does not conform to City standards or is otherwise defective.

9a. The Developer shall correct all non-conforming construction and/or defects within thirty (30) days from the issuance of the notice by his/her/its engineer of a/the defect.

10. Acceptance of Improvements: The City shall not accept and/or approve any or all of the Improvements 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 on the Improvements other than those that have been accepted by the City Attorney.

10a. Approval and/or acceptance of any Improvement(s) does not constitute a waiver by the City of any right(s) that 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.

10b. Acceptance by the City shall only occur when the City Engineer, sends a writing to such effect ("Acceptance").

11. Reduction of Security: Upon Acceptance of any Improvement(s) the amount which the City is entitled to draw on the Guarantee shall be reduced by an amount of \$_____ (Line G1, Exhibit B, Total Improvement Costs).

11a. At the written request of the Developer, the City shall execute a certificate verifying Acceptance of the Improvement and thereafter waiving its right to draw on the Guarantee to the extent of such amount. A Developer in default under this Agreement has no right to such certification.

12. Use of Proceeds: The City shall use funds deposited with it, drawn or guaranteed pursuant to this Agreement only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements or paying Administration and Inspection fees.

13. Events of Default: The following conditions, occurrences or actions shall constitute a default by the Developer:

13a. Developer's failure to complete each portion of the Improvements on or before the Completion Date;

13b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvements within the applicable warranty period;

13c. 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;

13d. Notification to the City, by any lender with a lien on the Property, of a default by Developer on any obligation to such lender. In such event, the City may immediately declare a default without prior notification to the Developer.

13e. With regard to the Property or any portion thereof: initiation of any foreclosure action regarding any lien or encumbrance; or initiation of mechanics lien(s) procedure(s); or assignment or conveyance of the Property in lieu of foreclosure. In such event the City may immediately declare a default without prior notification to the Developer.

13f. Notification to the City from the bank issuing the Guarantee that it will not renew the Guarantee at a time when security is still required hereunder and no substitute collateral acceptable to the City has been provided by the Developer.

13g. Except as provided, the City may not declare a default until written notice has been sent to the Developer at the address shown in the development file. 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 shall be the reasonable cost of satisfactorily completing the Improvements, plus reasonable expenses. 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 shall be *prima facie* evidence of the minimum cost of completion; however, the maximum amount of the Developer's liability shall not be established by that amount or the amount of the Guarantee.

15. City's Rights Upon Default: When any event of default occurs, the City may draw on the Guarantee or proceed to collect any other security to the extent of the face amount of the Guarantee less eighty percent (80%) of the estimated cost (as shown on Exhibit B) of all Improvements for which the City has given its Acceptance and no warranty work is reasonably required. The City may also exercise its rights to disbursement of loan proceeds or other funds under the City improvements disbursement agreement.

15a. The City shall have the right to complete Improvements itself or it may contract with a third party for completion.

15b. 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, inspecting and repairing the Improvements.

15c. The City may assign the proceeds of the Guarantee or other funds or assets that it may receive in accordance with this Agreement to a subsequent developer or lender that has acquired the Property by purchase, foreclosure or otherwise.

15d. That developer or lender shall then have the same rights of completion as the City if and only if the subsequent developer or lender agrees in writing to complete or correct the Improvements and provides to the City reasonable security for that obligation.

15e. 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 ("City") 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 and/or the Improvements and/or the Development that is being done pursuant to this Agreement.

16a. The Developer further agrees to aid and defend the City in the event that the City and/or the Improvements is named as a defendant in an action concerning the performance of work pursuant to this Agreement except for a suit wherein the Developer states claim(s) against the City.

16b. The Developer is not an agent, partner, joint venturer or employee of the City.

17. No Waiver: No waiver of any provision of this Agreement by the City shall be deemed or constitute a waiver of any other provision nor shall 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 shall 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 shall not constitute the approval of any wrongful or other act by the Developer or the acceptance of any improvement.

18. 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/her/its 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, shall be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. The City shall be entitled to claim the value of its in-house attorneys at the rate of \$125.00 per hour. If relief is awarded to both parties the attorney's fees may be equitably divided between the parties by the decision maker.

20. Vested Rights: This Agreement does not guarantee, represent or certify that the Developer is entitled to any other approval(s) required by the City, before the Developer is entitled to commence development beyond the scope of this Agreement 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. No statement(s), promise(s) or inducements(s) that is/are not contained in this Agreement shall be binding on the parties.

22. Third Party Rights: No person or entity who or which is not a party to this Agreement shall have any right of action under or be a beneficiary of this Agreement.

23. Time: For the purpose of computing the Abandonment Period and Commencement and Dates, such times in which war, civil disasters or acts of God occurs or exist shall not be included if such prevents the Developer or City from performing its obligations under the Agreement. The Developer must notify the City in writing if/when it asserts impossibility of performance under this paragraph. The City may reject the Developer's assertion, if it finds, in writing that the condition(s) that the Developer asserts do not exist.

24. Severability: If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or

unenforceability shall not affect the validity of any other part, term or provision. The rights of the parties shall 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.

25a. 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.

25b. There is no prohibition on the right of the City to assign its rights under this Agreement.

25c. Upon written request from the Developer the City shall expressly release the original Developer's Guarantee and/or contract obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City shall constitute a release of the original Developer from his liability under this Agreement.

25d. When the City has issued its Acceptance regarding the Improvements, the City agrees to state the same in writing, with appropriate acknowledgments.

25e. The City shall 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 shall 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: G & R WEST LLC Name -Developer/Company
2650 EL CORONA DR Address (Street and Mailing)
GRAND JUNCTION CO 81501 State & Zip Code
(970) 255-8164 Telephone and Fax Numbers
()
_____ E-mail

Cc:

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

Cc:

Community Development Department
250 North 5th Street
Grand Junction, CO 81501

27. Recordation: Developer shall pay the costs to record a memorandum of this Agreement (Exhibit D) in the records of the Mesa County Clerk and Recorder's Office. The Developer may, at his/her/its option record the entire agreement.

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, the Guarantee, the Maintenance Guarantee or any action based arising out of or under this Agreement shall be deemed to be proper only if such action is commenced in Mesa County, Colorado.

29a. The Developer expressly waives his/her/its right to bring such action in or to remove such action to any other court whether state or federal.

30. Liability before 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 Improvement shall have received Acceptance by the City.

30a. 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 the side of the street nearest the property to enable an initial two-way traffic operation without on-street parking.


30b. Developer shall also construct and pay for end-transitions, intersection paving, drainage facilities and adjustments to existing utilities necessary to open the street to traffic.

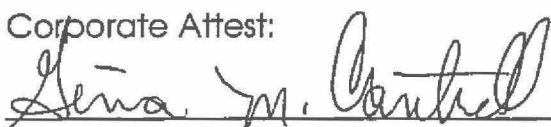
30c. The City shall not issue its written Acceptance with regard to any Improvement(s) including any street, storm drainage facility, sewer, water facility or other required Improvement(s), until the Developer:

(i) furnishes 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 specification;

(ii) provides 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 Improvement(s) have been constructed or which are necessary for the Improvements are free from toxic, hazardous and other regulated substances or materials;

(iii) provides 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; and
(iv) provides written evidence, certified by the Developer's engineer, that the work was systematically inspected and tested and that the materials and the compaction of the materials that are required to be compacted, were in conformance with City-approved plans and specifications.

By:  MAR 7-18-03
Developer Date
ROBERT CANTRELL
Name (printed)

Corporate Attest:
 7-18-03
Name Date

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

 July 18 2003
Community Development Dept. Date

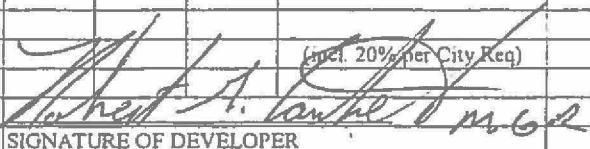
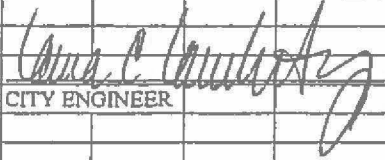

6/13/2003

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

EXHIBIT A

Dakota West Subdivision, Filing 2

Dakota West Subdivision (Filing 2)					July 1, 2003	
Development Improvements Agreement						
				Unit	Total	
General:			Units	Quantity	Price	Price
1	Mobilization		LS	1	3000.00	\$3,000.00
2	Dust Abatement		LS	1	3000.00	\$3,000.00
3	Stormwater Management		LS	1	1500.00	\$1,500.00
				Sub-total General Items:		\$7,500.00
				Unit	Total	
Water system:			Units	Quantity	Price	Price
1	Connect Water		EA	2	600.00	\$1,200.00
2	8" Waterline		LF	1170	20.00	\$23,400.00
3	8" Fittings w/Thrust Blocks		EA	4	200.00	\$800.00
4	8" Gate Valves & Boxes		EA	4	625.00	\$2,500.00
5	2" Blow Off Valve		EA	4	250.00	\$1,000.00
6	Water Service		EA	27	150.00	\$4,050.00
7	3/4" Service Tap/Corp		LF	1089	10.00	\$10,890.00
8	Fire Hydrant Assemblies		EA	2	2200.00	\$4,400.00
				Sub-total Water Items:		\$48,240.00
				Unit	Total	
Sanitary Sewer system:			Units	Quantity	Price	Price
1	Connect Sewer		EA	2	800.00	\$1,600.00
2	8" PVC Sewer		LF	634	16.00	\$10,144.00
3	San. Sew. Manholes		EA	4	1400.00	\$5,600.00
4	Concrete Encasement		LF	20	33.00	\$660.00
5	4" Service Tap		EA	14	75.00	\$1,050.00
6	4" Service Line		LF	580	12.00	\$6,960.00
				Sub-total Off Sanitary Sewer Items:		\$26,014.00
				Unit	Total	
Roadway Improvements			Units	Quantity	Price	Price
1	Clearing and Grubbing		LS	1	5000.00	\$5,000.00
2	Excavation		CY	5473	1.50	\$8,209.50
3	Embankment		CY	685	2.50	\$1,712.50
4	6'-6" Driveover C,G&SW		LF	2176	14.00	\$30,464.00
5	Radii, Aprons, Pan and Handicap Ramps		SY	200	38.00	\$7,600.00
8	3" Asphalt Pavement		SY	4072	8.00	\$32,576.00
9	6" Aggregate Base Course (CL.6)-Sidewalk		SY	1696	6.50	\$11,024.00
10	7.25" Aggregate Base Course (CL.6)		SY	4294	8.50	\$36,499.00
11	Stabilization		SY	780	8.50	\$6,630.00
12	Stop/Street Signs		EA	2	400.00	\$800.00
13	Speed Limit Signs		EA	1	400.00	\$400.00
				Sub-total Roadway Items:		\$140,915.00

PROJECT SUBTOTAL				\$222,669.00
(incl. 20% per City Req)				
Miscellaneous				PRICE
1	Construction Phase Engineering	2.00%		\$4,453
2	Construction Phase Surveying	2.00%		\$4,453
3	Development Inspection Costs	1.25%		\$2,783
4	Quality Control	1.50%		\$3,340
5	City Inspection	0.50%		\$1,113
6	As-built survey and drawing revision	LS		\$4,500
Sub-total Miscellaneous Items:				\$20,643.50
Total Project Cost:				\$243,312.50
(incl. 20% per City Req) Total Project Cost:				\$291,975.00
 SIGNATURE OF DEVELOPER				DATE
I HAVE REVIEWED THE ESTIMATED COSTS AND TIME SCHEDULE SHOWN ABOVE AND, BASED ON THE PLAN LAYOUTS SUBMITTED TO DATE AND THE CURRENT COSTS OF CONSTRUCTION TAKE NO EXCEPTION TO THE ABOVE				
 CITY ENGINEER				7-18-03 DATE
 COMMUNITY DEVELOPMENT				7-18-03 DATE

DISBURSEMENT AGREEMENT
(Improvements Guarantee)

DEVELOPER: GJR West

BANK:

PROPERTY: Dakota West Filing 2

DISBURSEMENT AMOUNT: For the construction of improvements to the Property in an amount not to exceed \$ 291,975-

This Agreement is entered into by and between GJR West ("Developer"), Bank of Colorado ("Bank") and the City of Grand Junction, Colorado ("City").

RECITALS

Developer has been required by the City to construct certain improvements to Dakota West Filing 2 ("Improvements") in accordance with the Zoning and Development Code, Improvements Agreement and subdivision approval.

The Bank has agreed to loan funds to the Developer for construction of the Improvements.

The City Engineer has approved an estimate of the costs of the Improvements and that amount or an amount not to exceed \$ 291,975, whichever is greater, shall be referred to as the "Funds."

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

NOW, THEREFORE, THE PARTIES AGREE:

1. BANK PROMISES. Bank shall dedicate or set aside the Funds on behalf of Developer and for the City's benefit within twenty-four hours of execution of this Disbursement Agreement.

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

2. DISBURSEMENT PROCEDURES. The Funds shall be advanced for payment of costs incurred for the construction of Improvements on the Property in accordance with the Improvements List/Detail attached to the Improvements Agreement, the terms of which are incorporated by this reference. All disbursements must comply with the following procedures:

- (a) Request for Advance. Developer shall deliver to the Bank a written request for the disbursement of funds on forms acceptable to the Bank. Such requests shall be signed by Developer, Developer's General Contractor, Project Engineer and Architect, if applicable, and the City Engineer. By signing the request for disbursement the Developer is certifying: that all costs for which the advance is being requested have been incurred in connection with the construction of the Improvements on the Property; that all work performed and materials supplied are in accordance with the plans and specifications submitted to and approved by the City; that the work has been performed in a workmanlike manner; that no funds are being requested for work not completed, nor for material not installed; the Project Engineer has inspected the Improvements for which payment is requested; and that such improvements have been completed in accordance with all terms, specifications and conditions of the approved plans. Attached hereto is the list of those individuals, and their respective signatures, required to sign the above described request(s) for disbursement of funds.

JANILE WARD
Hess County Clerk & Recorder
Grand Junction Co
Reception No. 2136667

***** Fees *****

<<Reception No. 2136663>>	
RECORDING FEE	20.00
DOCUMENT FEE	0.00
DOCUMENT SURCHARGE	1.00
<<Reception No. 2136664>>	
RECORDING FEE	5.00
DOCUMENT FEE	0.00
DOCUMENT SURCHARGE	1.00

*** Tendered Amounts ***

CK g & r west 1979	27.00
--------------------	-------

Total Tendered	27.00
----------------------	-------

Transactions	27.00
--------------------	-------

Change	0.00
--------------	------

D415PH 07/24/03
Trans.No. 00070965 Cashiers In
Rec'd of city of gj (gayleen)

** THANK YOU **

CITY OF GRAND JUNCTION
DEPARTMENT OF PUBLIC WORKS & UTILITIES
250 NORTH 5TH STREET
GRAND JUNCTION, CO 81501
(970) 244-4003

TO THE MESA COUNTY CLERK & RECORDER:

THIS IS TO CERTIFY that the herein named Subdivision Plat,

DAKOTA WEST SUBDIVISION PHASE 2

Situated in the SE 1/4 NE 1/4 of Section 16

Township 1S, Range 1E,

of the UTE Meridian in the City of Grand Junction, County of Mesa, State of Colorado, has been reviewed under my direction and, to the best of my knowledge, satisfies the requirements pursuant to C.R.S. 38-51-106 and the Zoning and Development Code of the City of Grand Junction for the recording of subdivision plats in the office of the Mesa County Clerk and Recorder.

This certification makes no warranties to any person for any purpose. It is prepared to establish for the County Clerk and Recorder that City review has been obtained. This certification does not warrant: 1) title or legal ownership to the land hereby platted nor the title or legal ownership of adjoining; 2) errors and/or omissions, including, but not limited to, the omission(s) of rights-of-ways and/or easements, whether or not of record; 3) liens and encumbrances, whether or not of record; 4) the qualifications, licensing status and/or any statement(s) or representation(s) made by the surveyor who prepared the above-named subdivision plat.

Dated this 23rd day of JULY, 2003.

City of Grand Junction,
Department of Public Works & Utilities

By: 
TIM MOORE
Public Works Manager

2136663 07/24/03 0415PM
JANICE WARD CLK® MESA COUNTY CO
REC FEE \$20.00 SURCHG \$1.00

Recorded in Mesa County

Date: 7-24-03

Plat Book: 19 Page: 375

Drawer: 00-19

SUBDIVISION DAKOTA West Sub., Filing #2

DATE 7/24/03

OF LOTS 24

RECEPTION # 2136663

BK/PG 19,375

ACRES 6.290 acres

ZONE RmF-5

OWNER G+R West

LOCATION 3090 D $\frac{1}{2}$ Rd.

SEC/TWP/RNG 16, T15, R1E

FILE # FP-2003-079

SIF \$292.00

TCP 500.⁰⁰ per du.

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are G&R West LLC ("Developer") and the **City of Grand Junction, Colorado** ("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 shall be the date that it is signed by the Community Development Director, 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, described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The Property, known as DAKOTA WEST has been reviewed and approved under Community Development file # FD-2003-038 ("Development" or "the Development").

The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements to the Property and limiting the harmful effects of substandard development.

A further purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself; this 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 owner(s), purchaser(s) or user(s) of the Property.

The mutual promises, covenants and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and City's land development ordinances and regulations.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer shall 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 ("Improvements" or "the Improvements").

3a. On and after the Effective Date of this Agreement the Developer agrees to pay the City for its Administration and Inspection of the Development. The hourly rate for those services is \$45.00/hour. Administration and Inspection includes but is not limited to the time expended by the City's planner, engineer, construction inspector and attorney in directing, advising, correcting and enforcing by means other than litigation, this agreement and/or the approved development plan. Making

disbursements and calling/collecting Guarantees are Administration and Inspection services and shall be charged at \$45.00/hour. See, paragraph 19 concerning attorneys' / litigation fees.

3b. The scope of this project is such that the City may have to engage independent consultants(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others for which Developer is responsible hereunder.

3c. The Developer's obligation to complete the Improvements is and shall 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. The Developer is required to post security in an amount of \$423,791 (120% of the amount for the Improvements) in a form and with terms acceptable to the City ("Guarantee"). The Guarantee shall be in the form of a cash deposit made to the City, a letter of credit or a disbursement agreement in a form and with content approved by the City Attorney. The Guarantee specific to this Agreement is attached as Exhibit C and is incorporated by this reference as if fully set forth.

5. **Standards:** The Developer shall construct the Improvements according to the City's standards and specifications.

6. **Warranty:** The Developer shall warrant the Improvements for one year following Final Acceptance by the City. "Warrant" or "Warranty" as used herein means the Developer shall take such steps and incur such costs as may be needed so that the Improvements or any portion or phase thereof as repaired and/or replaced, shall comply with the Development's construction plans and/or site plan, City standards and specifications at the end of the warranty period. The Developer shall warrant each repaired and/or replaced Improvement or any portion or phase thereof for one year following Final Acceptance of such repair and/or replacement.

6a. Upon Final Acceptance the Developer shall provide a Maintenance Guarantee in an amount of \$159,004 (20% of the DIA amount for the Improvements that the Developer has completed and for which the City has given its Final Acceptance.)

6b. The Maintenance Guarantee shall be secured by a letter of credit, cash escrow or other form acceptable to the City.

7. **Commencement, Completion and Abandonment Periods:** The Developer shall commence work on the Improvements within 30 days from the Effective Date of this Agreement; that date is known as the "Commencement Date."

7a. The Developer shall complete the Improvements by the end of the twelfth month from the Effective Date of this Agreement; that date is known as the "Completion Date."

7b. The Developer shall not cease construction for any period of more than 60 consecutive days. If construction is ceased for 60 or more consecutive days the Director may deem the Development abandoned ("the Abandonment Period").

7c. The Commencement date and the Completion Date are shown on Exhibit D.

8. Compliance with Law: The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations when fulfilling its obligations under their 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 the Effective Date.

9. Notice of Defect: The Developer by and through his/her/its engineer shall provide timely written notice to the Issuer of the Guarantee and the Director when the Developer and/or his/her/its engineer has knowledge, that an Improvement or any part or portion of any Improvement either does not conform to City standards or is otherwise defective.

9a. The Developer shall correct all non-conforming construction and/or defects within thirty (30) days from the issuance of the notice by his/her/its engineer of a/the defect.

10. Acceptance of Improvements: The City shall not accept and/or approve any or all of the Improvements 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 on the Improvements other than those that have been accepted by the City Attorney.

10a. Approval and/or acceptance of any Improvement(s) does not constitute a waiver by the City of any right(s) that 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.

10b. Acceptance by the City shall only occur when the City Engineer, sends a writing to such effect ("Final Acceptance").

11. Reduction of Security: Upon Final Acceptance of any Improvement(s) the amount which the City is entitled to draw on the Guarantee shall be reduced by an amount of \$~~357,881~~¹⁶ (80% of the DIA amount for the Improvements that the Developer has completed and for which the City has given its Final Acceptance).

11a. At the written request of the Developer, the City shall execute a certificate verifying Final Acceptance of the Improvement and thereafter waiving its right to draw on the Guarantee to the extent of such amount. A Developer in default under this Agreement has no right to such certification.

12. **Use of Proceeds:** The City shall use funds deposited with it, drawn or guaranteed pursuant to this Agreement only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements or paying Administration and Inspection fees.

13. **Events of Default:** The following conditions, occurrences or actions shall constitute a default by the Developer:

13a. Developer's failure to complete each portion of the Improvements on or before the Completion Date;

13b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvements within the applicable warranty period;

13c. 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;

13d. Notification to the City, by any lender with a lien on the Property, of a default by Developer on any obligation to such lender. In such event, the City may immediately declare a default without prior notification to the Developer.

13e. With regard to the Property or any portion thereof: initiation of any foreclosure action regarding any lien or encumbrance; or initiation of mechanics lien(s) procedure(s); or assignment or conveyance of the Property in lieu of foreclosure. In such event the City may immediately declare a default without prior notification to the Developer.

13f. Notification to the City from the bank issuing the Guarantee that it will not renew the Guarantee at a time when security is still required hereunder and no substitute collateral acceptable to the City has been provided by the Developer.

13g. Except as provided, the City may not declare a default until written notice has been sent to the Developer at the address shown in the development file. 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 shall be the reasonable cost of satisfactorily completing the Improvements, plus reasonable expenses. 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 shall be *prima facie* evidence of the minimum cost of completion; however, the maximum amount of the Developer's liability shall not be established by that amount or the amount of the Guarantee.

15. City's Rights Upon Default: When any event of default occurs, the City may draw on the Guarantee or proceed to collect any other security to the extent of the face amount of the Guarantee less eighty percent (80%) of the estimated cost (as shown on Exhibit B) of all Improvements for which the City has given its Final Acceptance and no warranty work is reasonably required. The City may also exercise its rights to disbursement of loan proceeds or other funds under the City Improvements disbursement agreement.

15a. The City shall have the right to complete Improvements itself or it may contract with a third party for completion.

15b. 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, inspecting and repairing the Improvements.

15c. The City may assign the proceeds of the Guarantee or other funds or assets that it may receive in accordance with this Agreement to a subsequent developer or lender that has acquired the Property by purchase, foreclosure or otherwise.

15d. That developer or lender shall then have the same rights of completion as the City if and only if the subsequent developer or lender agrees in writing to complete or correct the Improvements and provides to the City reasonable security for that obligation.

15e. 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 ("City") 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 and/or the Improvements and/or the Development that is being done pursuant to this Agreement.

16a. The Developer further agrees to aid and defend the City in the event that the City and/or the Improvements is named as a defendant in an action concerning the performance of work pursuant to this Agreement except for a suit wherein the Developer states claim(s) against the City.

16b. The Developer is not an agent, partner, joint venturer or employee of the City.

17. No Waiver: No waiver of any provision of this Agreement by the City shall be deemed or constitute a waiver of any other provision nor shall 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 shall 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 shall not constitute the approval of any wrongful or other act by the Developer or the acceptance of any Improvement.

18. 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/her/its 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, shall be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. The City shall be entitled to claim the value of its in-house attorneys at the rate of \$125.00 per hour. If relief is awarded to both parties the attorney's fees may be equitably divided between the parties by the decision maker.

20. Vested Rights: This Agreement does not guarantee, represent or certify that the Developer is entitled to any other approval(s) required by the City, before the Developer is entitled to commence development beyond the scope of this Agreement 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. No statement(s), promise(s) or inducements(s) that is/are not contained in this Agreement shall be binding on the parties.

22. Third Party Rights: No person or entity who or which is not a party to this Agreement shall have any right of action under or be a beneficiary of this Agreement.

23. Time: For the purpose of computing the Abandonment Period and Commencement and Dates, such times in which war, civil disasters or acts of God occurs or exist shall not be included if such prevents the Developer or City from performing its obligations under the Agreement. The Developer must notify the City in writing if/when it asserts impossibility of performance under this paragraph. The City may reject the Developer's assertion, if it finds, in writing that the condition(s) that the Developer asserts do not exist.

24. Severability: If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term or provision. The rights of the parties shall 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.

25a. 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.

25b. There is no prohibition on the right of the City to assign its rights under this Agreement.

25c. Upon written request from the Developer the City shall expressly release the original Developer's Guarantee and/or contract obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City shall constitute a release of the original Developer from his liability under this Agreement.

25d. When the City has issued its Final Acceptance regarding the Improvements, the City agrees to state the same in writing, with appropriate acknowledgments.

25e. The City shall 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 shall 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: G&R WEST LLC Name - Developer/Company
2650 EL COLONADA Address - Street and Mailing if different
GRAND JUNCTION CO 81501 City, State & Zip Code
(970) 255-8164 Telephone and Fax Numbers
(970) 245-3649 E-mail

Cc:

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

Cc: Community Development Department
250 North 5th Street
Grand Junction, CO 81501

27. **Recordation:** Developer shall pay the costs to record a memorandum of this Agreement (Exhibit E) in the records of the Mesa County Clerk and Recorder's Office. The Developer may, at his/her/its option record the entire agreement.

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, the Guarantee, the Maintenance Guarantee or any action based arising out of or under this Agreement shall be deemed to be proper only if such action is commenced in Mesa County, Colorado.

29a. The Developer expressly waives his/her/its right to bring such action in or to remove such action to any other court whether state or federal.

30. **Liability before Final 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 Improvement shall have received Final Acceptance by the City.

30a. 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 the side of the street nearest the property to enable an initial two-way traffic operation without on-street parking.

30b. Developer shall also construct and pay for end-transitions, intersection paving, drainage facilities and adjustments to existing utilities necessary to open the street to traffic.

30c. The City shall not issue its written Final Acceptance with regard to any Improvement(s) including any street, storm drainage facility, sewer, water facility or other required Improvement(s), until the Developer:

- (i) furnishes 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 specification;
- (ii) provides 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 Improvement(s) have been constructed or which are necessary for the Improvements are free from toxic, hazardous and other regulated substances or materials;
- (iii) provides 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; and
- (iv) provides written evidence, certified by the Developer's engineer, that the work was systematically inspected and tested and that the materials and the compaction

of the materials that are required to be compacted, were in conformance with City-approved plans and specifications.

Developer:

Robert S. Lawtel 5-13-03
m612 Date

Attest:

Aimee C. Lundberg

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

Pat Cerril 5/13/03
Director of Community Development Date

Dakota West Subdivision (Phase I)			Exhibit B		February 18, 2003	
Development Improvements Agreement			City of Grand Junction			
					Unit	Total
General:			Units	Quantity	Price	Price
1	Mobilization	LS	1	3000.00		\$3,000.00
2	Dust Abatement	LS	1	3000.00		\$3,000.00
3	Stormwater Management	LS	1	1500.00		\$1,500.00
					Sub-total General Items:	\$7,500.00
Water system:			Units	Quantity	Unit Price	Total Price
1	Connect Water	EA	1	600.00		\$600.00
2	8" Waterline	LF	1143	20.00		\$22,860.00
3	8" Fittings w/Thrust Blocks	EA	2	200.00		\$400.00
4	8" Gate Valves & Boxes	EA	6	625.00		\$3,750.00
5	2" Blow Off Valve	EA	3	250.00		\$750.00
6	Water Service	EA	34	150.00		\$5,100.00
7	3/4" Service Tap/Corp	LF	1438	10.00		\$14,380.00
8	Fire Hydrant Assemblies	EA	2	2200.00		\$4,400.00
					Sub-total Water Items:	\$52,240.00
Sanitary Sewer system:			Units	Quantity	Unit Price	Total Price
1	Connect Sewer	EA	1	800.00		\$800.00
2	8" PVC Sewer	LF	1721	16.00		\$27,536.00
3	San. Sew. Manholes	EA	6	1400.00		\$8,400.00
4	Concrete Encasement	LF	20	33.00		\$660.00
5	4" Service Tap	EA	34	75.00		\$2,550.00
6	4" Service Line	LF	1277	12.00		\$15,324.00
					Sub-total Off Sanitary Sewer Items:	\$55,270.00
Storm Sewer system:			Units	Quantity	Unit Price	Total Price
1	18" HDPE Storm Sewer w/FES	LF	144	22.00		\$3,168.00
2	Double Combination Inlet w/Curb Opening	EA	2	2000.00		\$4,000.00
3	Outlet Erosion Control (Grouted Rip Rap)	CY	5	100.00		\$500.00
4	Retention Ponds	LS	1	13550.00		\$13,550.00
						(Excavation and stormwater discharge system)
5	Retention Pond Landscaping (Tract A)	SF	13100	1.50		\$19,650.00
					Sub-total Storm Sewer Items:	\$40,868.00
Roadway Improvements			Units	Quantity	Unit Price	Total Price
On Site-Phase I:						
1	Clearing and Grubbing	LS	1	5000.00		\$5,000.00
2	Excavation	CY	8779	1.50		\$13,168.50
3	Embankment	CY	117	2.50		\$292.50
4	6'-6" Driveover C,G&SW	LF	2075	14.00		\$29,050.00
5	Radii, Aprons, Pan and Handicap Ramps	SY	238	38.00		\$9,044.00
6	Drain Trough Metal Frame and Cover	LF	44	10.00		\$440.00
7	8" Thick Concrete Retaining Wall	SF	525	10.00		\$5,250.00
8	3" Asphalt Pavement	SY	3274	8.00		\$26,192.00
9	6" Aggregate Base Course (CL.6)-Sidewalk	SY	1562	6.50		\$10,153.00
10	7.25" Aggregate Base Course (CL.6)	SY	3391	8.50		\$28,823.50
11	Stabilization	SY	650	8.50		\$5,525.00
12	Stop/Street Signs	EA	2	400.00		\$800.00
13	Speed Limit Signs	EA	1	400.00		\$400.00
14	End of Roadway Markers	EA	3	600.00		\$1,800.00
15	Postal Box Pads w/anchor bolts	EA	1	600.00		\$600.00
					Sub-total On-Site Roadway Items:	\$136,538.50

Off Site-D.5 Road:						
1	Excavation		CY	631	1.50	\$946.50
2	Embankment		CY	46.5	2.50	\$116.25
3	2'-0" Vertical C,G&SW		LF	117	14.00	\$1,638.00
4	8'-0" Detached Sidewalk		SY	104	30.00	\$3,120.00
5	Radii, Aprons, Pan and Handicap Ramps		SY	54	38.00	\$2,052.00
6	4" Asphalt Pavement		SY	1216	11.00	\$13,376.00
7	6" Aggregate Base Course (CL.6)-Sidewalk		SY	163	6.50	\$1,059.50
8	6" Aggregate Base Course (CL.6)- D.5 Road		SY	1285	6.50	\$8,352.50
9	10.75" Pit Run (CL.3)- D.5 Road		SY	1285	5.00	\$6,425.00
10	Striping		GI	1	40.00	\$40.00
11	Stop/Street Signs		EA	2	400.00	\$800.00
Sub-total Off-Site Roadway Items:						\$37,085.75
Sub-total Roadway Items:						\$173,624.25
PROJECT SUBTOTAL						\$329,502.25
(incl. 20% per City Req)						395,402.70
Miscellaneous						PRICE
1	Construction Phase Engineering			2.00%		\$6,590
2	Construction Phase Surveying			2.00%		\$6,590
3	Development Inspection Costs			1.25%		\$4,119
4	Quality Control			1.50%		\$4,943
5	City Inspection			0.50%		\$1,648
6	As built survey and drawing revision			LS		\$4,500
Sub-total Miscellaneous Items:						\$28,388.91
Total Project Cost:						\$357,891.16
(incl. 20% per City Req)						\$423,791.61
SIGNATURE OF DEVELOPER						DATE
I HAVE REVIEWED THE ESTIMATED COSTS AND TIME SCHEDULE SHOWN ABOVE AND, BASED ON THE PLAN LAYOUTS SUBMITTED TO DATE AND THE CURRENT COSTS OF CONSTRUCTION TAKE NO EXCEPTION TO THE ABOVE						
CITY ENGINEER						5-13-03
DATE						
COMMUNITY DEVELOPMENT						5/13/03
DATE						

DISBURSEMENT AGREEMENT
(Improvements Guarantee)

DEVELOPER: G&R West LLC

BANK: Bank of Colorado

PROPERTY: 3088 D 1/2 Road
Grand Junction, CO

DISBURSEMENT AMOUNT: For the construction of improvements to the Property in an amount not to exceed \$ 423,791.61.

This Agreement is entered into by and between G&R West LLC ("Developer"), Bank of Colorado ("Bank") and the City of Grand Junction, Colorado ("City").

RECITALS

Developer has been required by the City to construct certain improvements to 3088 D 1/2 Road, Dakota West Sub ("Improvements") in accordance with the Zoning and Development Code, Improvements Agreement and subdivision approval.

The Bank has agreed to loan funds to the Developer for construction of the Improvements.

The City Engineer has approved an estimate of the costs of the Improvements and that amount or an amount not to exceed \$ 423,791.61, whichever is greater, shall be referred to as the "Funds."

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

NOW, THEREFORE, THE PARTIES AGREE:

1. **BANK PROMISES.** Bank shall dedicate or set aside the Funds on behalf of Developer and for the City's benefit within twenty-four hours of execution of this Disbursement Agreement.

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

2. **DISBURSEMENT PROCEDURES.** The Funds shall be advanced for payment of costs incurred for the construction of Improvements on the Property in accordance with the Improvements List/Detail attached to the Improvements Agreement, the terms of which are incorporated by this reference. All disbursements must comply with the following procedures:

(a) **Request for Advance.** Developer shall deliver to the Bank a written request for the disbursement of funds on forms acceptable to the Bank. Such requests shall be signed by Developer, Developer's General Contractor, Project Engineer and Architect, if applicable, and the City Engineer. By signing the request for disbursement the Developer is certifying: that all costs for which the advance is being requested have been incurred in connection with the construction of the Improvements on the Property; that all work performed and materials supplied are in accordance with the plans and specifications submitted to and approved by the City; that the work has been performed in a workmanlike manner; that no funds are being requested for work not completed, nor for material not installed; the Project Engineer has inspected the Improvements for which payment is requested; and that such improvements have been completed in accordance with all terms, specifications and conditions of the approved plans. Attached hereto is the list of those individuals, and their respective signatures, required to sign the above described request(s) for disbursement of funds.

DISBURSEMENT AGREEMENT

(page 2 of 4)

(b) **Documentation, Waivers and Checks.** Each request for disbursement of funds shall be accompanied by: (i) one original and one copy of each invoice to be paid; (ii) checks drawn on Developer's construction loan account with the Bank, made payable to the payee(s) and for the amount of each invoice presented for payment; (iii) lien waivers in a form approved by the Bank prepared for signature by each payee; and (iv) postage paid envelopes addressed to each payee for the mailing of checks presented to the Bank.

The Bank shall verify its receipt of all lien waivers relating to any prior disbursements, which lien waivers shall be properly executed and contain no alterations or modifications from those lien waivers that have been previously presented to the Bank.

Upon approval by Developer, the Project Engineer and the Bank of the invoices being presented to the Bank, the Bank shall advance funds into the checking account designated for the payment of the invoices and mail the checks to the payee(s) in the envelopes presented to the Bank, together with lien waivers and copies of supporting invoices.

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

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

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

3. **DEVELOPER CONSENT:** The Developer, by the signature of Gina Cantrell, manager
Robert G. Cantrell, manager (name & title), consents to disbursements and other actions authorized and provided for by the terms of this Agreement and/or the Improvements Agreement.

4. **LIABILITY FOR LOSS:** If the Bank fails to disburse funds in accordance with the procedures set forth, and the City suffers loss or damage, the Bank shall be liable to the City for the City's direct and consequential damages and all fees, costs and expenses, including attorneys fees.

5. **BINDING EFFECT:** This Agreement shall be binding on the heirs, successors, receivers and assigns of all parties and shall terminate when the City has accepted the Improvements and has recorded a release of the Improvements Agreement.

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

DISBURSEMENT AGREEMENT
(page 3 of 4)

Dated this 12th day of May, 2003

(BANK) Bank of Colorado

By: 
Title Elizabeth Wright, Assistant Vice President

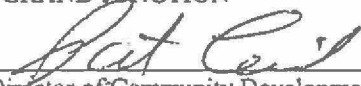
200 Grand Avenue, Grand Junction, CO 81501
Address

(DEVELOPER)

By:  MGR Gina M. Cantrell
Title

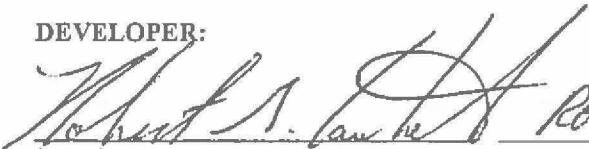
2650 EL CORONA DR GJ CO 81501
Address

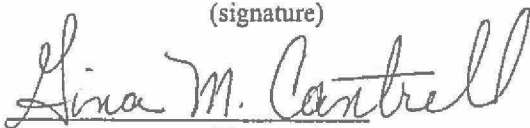
CITY OF GRAND JUNCTION

By: 
Director of Community Development

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between G&R WEST LLC, Developer, BANK OF COLORADO as Bank, and the City of Grand Junction, the following are the individuals authorized to sign written requests for the disbursement of the Funds:

DEVELOPER:

 ROBERT CANTRELL
(name) (signature)

GINA M. CANTRELL 
(name) (signature)

(name) (signature)

DISBURSEMENT AGREEMENT
(page 4 of 4)

DEVELOPER'S GENERAL CONTRACTOR:

_____ (name) _____ (signature)

DEVELOPER'S PROJECT ENGINEER:

_____ (name) _____ (signature)

DEVELOPER'S ARCHITECT:

_____ (name) _____ (signature)

CITY ENGINEER:

Laura C. Lambertz _____ (name) Laura C. Lambertz _____ (signature)

File Name: disbursk
revised: February 13, 2003

RECORDING MEMORANDUM

City of Grand Junction Community Development Department
Community Development Files: # FP-2003-038

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 G + R West (Developer) and the City of Grand Junction (City) pertaining to Dakota West Subdivision, (Project).

(Subject subdivision is more particularly depicted and described in the recording found at Plat Book _____, Pages _____.)

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-2003-038.

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: Robert G. Cantrell 5-13-03
MGR Date

(Print Name) ROBERT G. CANTRELL

CITY OF GRAND JUNCTION:

By: Pat Cantrell 6/20/03
Director of Community Development Date

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.

Pat Cantrell 6-20-03
Director of Community Development Date

May 1, 2006

Rob Cantrell
G & R West LLC
474 Bismarck Avenue
Grand Junction, CO 81505


RE: FP-2003-038: Dakota West Filing 1 Subdivision
~~FP-2003-079: Dakota West Filing 2 Subdivision~~
Final Acceptance for Maintenance

Dear Mr. Cantrell:

The letter is to notify you of full acceptance for maintenance of the public improvements including streets and public storm drainage facilities for the Dakota West Filings 1 & 2 Subdivisions and confirming the completion of the terms of the "Supplement to Maintenance Guarantees for Dakota West Filing 1 and Filing 2".

Thank you for your assistance in the completion of these projects.

Sincerely,


Laura C. Lamberty, PE
City Development Engineer

cc: Lori Bowers, Senior Planner



THOMPSON - LANGFORD CORPORATION
ENGINEERS AND LAND SURVEYORS

tlic@wic.net
Facsimile (970) 241-2845
Telephone: (970) 243-6067
529 25 1/2 Rd, Grand Junction, CO 81505

August 11, 2004

Laura Lamberty, P.E.
City of Grand Junction
250 North 5th Street
Grand Junction, CO.
81505

RE: Dakota West Subdivision - Retention Pond Certifications

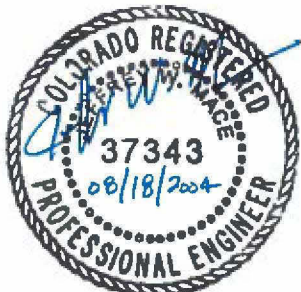
Dear Laura,

The retention facility for Dakota West was surveyed as constructed, with landscaping in place, on August 9, 2004. A stage vs. storage curve was developed for the pond based upon this survey information and accompanies this letter. The required storage volume for the pond is 32,866 cf as determined in the final drainage report dated February 27, 2003. This volume would correspond with a water surface elevation of 4641.19. With the actual top of the pond being at 4641.58, this would result in nearly 0.4' of freeboard. In the unlikely event of a storm which exceeded the calculated 100-year storm quantities or the capacity of the pond, the excess flows would be directed across D 1/2 Road at a localized low point and away from any existing development.

The outlet system was constructed as designed and appears to be functioning correctly. The pump installed as part of this system is model number MUFS-750 as provided by Munro Pump. Copies of the pump specifications and rating curves are provided for your review with this letter.

Included with this submittal are reproducibles of the record drawings along with the associated electronic files. Please contact me if you have any questions or need to discuss this further.

Respectfully,



Jeffrey W Mace, PE

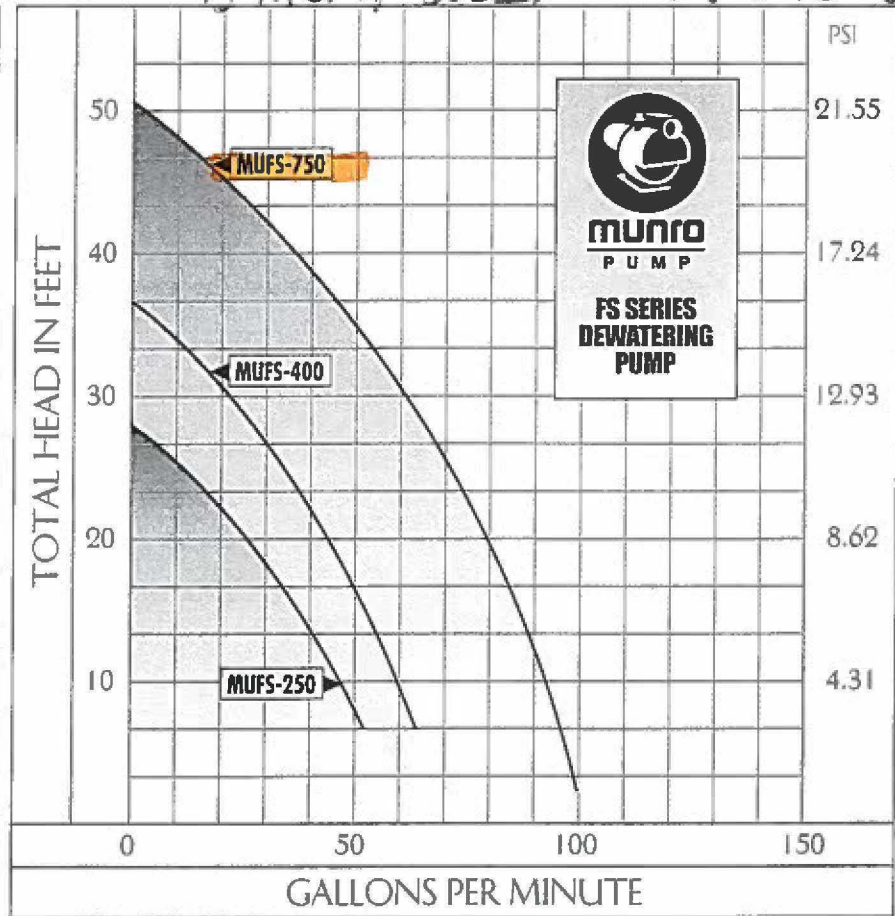
Xc: Rob Cantrell, file

```
#Units=Elevation,ft,Volume,ft3
#Stage-Storage Curve Data
#Stage - ft   Volume - ft3
#-----
4641.20000000, 32961.59402091
4641.10000000, 32071.37081120
4641.00000000, 31191.15443334
4640.90000000, 30320.90761287
4640.80000000, 29460.59307671
4640.70000000, 28610.17355043
4640.60000000, 27769.61175958
4640.50000000, 26938.87043115
4640.40000000, 26117.91229070
4640.30000000, 25306.70006384
4640.20000000, 24505.19647756
4640.10000000, 23713.36425890
4640.00000000, 22931.16613347
4639.90000000, 22158.56482554
4639.80000000, 21395.52306216
4639.70000000, 20642.00357040
4639.60000000, 19897.96907596
4639.50000000, 19163.38230454
4639.40000000, 18438.20598187
4639.30000000, 17722.40283509
4639.20000000, 17015.93559135
4639.10000000, 16318.76697642
4639.00000000, 15630.85971612
4638.90000000, 14952.17653625
4638.80000000, 14282.68016267
4638.70000000, 13622.3332263
4638.60000000, 12971.09874340
4638.50000000, 12328.93915091
4638.40000000, 11695.81727109
4638.30000000, 11071.69582991
4638.20000000, 10456.53755475
4638.10000000, 9850.30517304
4638.00000000, 9252.96140941
4637.90000000, 8664.46899138
4637.80000000, 8084.79064644
4637.70000000, 7513.88909936
4637.60000000, 6951.72707774
4637.50000000, 6398.26730919
4637.40000000, 5853.47251861
4637.30000000, 5317.30543372
4637.20000000, 4789.72878226
4637.10000000, 4270.70528928
4637.00000000, 3760.19768263
4636.90000000, 3258.20740284
4636.80000000, 2766.27765709
4636.70000000, 2290.91466909
4636.60000000, 1841.41015593
4636.50000000, 1430.23678709
4636.40000000, 1069.66788340
4636.30000000, 766.82864687
4636.20000000, 525.95826501
4636.10000000, 344.09018861
4636.00000000, 210.76798346
4635.90000000, 116.44596402
4635.80000000, 54.99848801
4635.70000000, 20.06753781
4635.60000000, 4.26490976
4635.50000000, 0.00000000
```

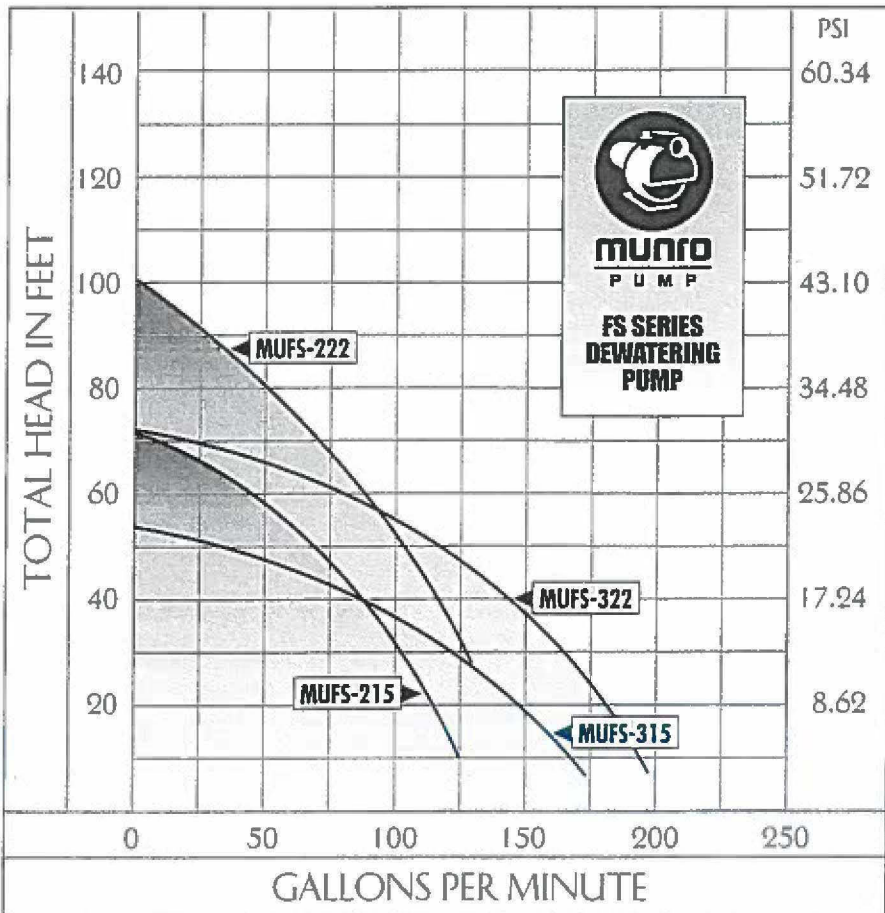
PUMP MODEL
 DAKOTA WEST: MUF5 750522

**PUMP
 PERFORMANCE
 CURVES**

MODELS FS-250/400/750



MODELS FS-215/315/222/322



TECHNICAL SPECIFICATIONS

Weight In Lbs.	Solids Handling in Inches	Discharge Size in Inches	Cord Length in Feet	Voltage	Phase	Amps	HP	Part Number
33	.24	1.5	18	110	1	4	1/3	MUFS250S11
32	.24	1.5	18	220	1	2.5	1/3	MUFS250S22
33	.24	2	18	110	1	5.3	1/2	MUFS400S11
33	.24	2	18	220	1	3	1/2	MUFS400S22
40	.32	2	18	110	1	10	1	MUFS750S11
37	.32	2	18	220	1	5	1	MUFS750S22
35	.32	2	18	220	3	4	1	MUFS750T22
35	.32	2	18	440	3	2	1	MUFS750T44
83	.36	2	33	110	1	16	2	MUFS215S11
81	.36	2	33	220	1	9	2	MUFS215S22
70	.36	2	33	220	3	6.8	2	MUFS215T22
60	.36	2	33	440	3	3.5	2	MUFS215T44
83	.36	3	33	110	1	17	2	MUFS315S11
81	.36	3	33	220	1	8	2	MUFS315S22
59	.36	3	33	220	3	6.8	2	MUFS315T22
78	.36	3	33	440	3	3.5	2	MUFS315T44
88	.36	2	33	220	3	10.5	3	MUFS222T22
68	.36	2	33	440	3	5.5	3	MUFS222T44
68	.36	3	33	220	3	11	3	MUFS322T22
69	.36	3	33	440	3	5.5	3	MUFS322T44
142	.4	2	33	220	3	14.5	5	MUFS237T22
122	.4	2	33	440	3	8	5	MUFS237T44
143	.4	3	33	220	3	14	5	MUFS337T22
135	.4	3	33	440	3	8	5	MUFS337T44
145	.4	4	33	220	3	14	5	MUFS437T22
144	.4	4	33	440	3	8	5	MUFS437T44
158	.4	3	33	220	3	20	7.5	MUFS355T22
148	.4	3	33	440	3	11	7.5	MUFS355T44
133	.4	4	33	220	3	20	7.5	MUFS455T22
148	.4	4	33	440	3	11	7.5	MUFS455T44
300	.6	4	33	220	3	30	10	MUFS475T22
300	.6	4	33	440	3	16	10	MUFS475T44
300	.6	6	33	220	3	30	10	MUFS675T22
300	.6	6	33	440	3	16	10	MUFS675T44
305	.6	4	33	220	3	35	15	MUFS411T22
307	.6	4	33	440	3	18	15	MUFS411T44
310	.6	6	33	220	3	35	15	MUFS611T22
311	.6	6	33	440	3	18	15	MUFS611T44



THOMPSON - LANGFORD CORPORATION
ENGINEERS AND LAND SURVEYORS

tlc@rwc.net
Facsimile (970) 241-2845
Telephone: (970) 243-6067
529 25 1/2 Rd, Grand Junction, CO 81505

August 4, 2004

Laura Lamberty, P.E.
City of Grand Junction
250 North 5th Street
Grand Junction, CO.
81505

RE: Dakota West Subdivision - Retention Pond Certifications

Dear Laura,

The retention facility for Dakota West was surveyed as constructed on June 18, 2004. A stage vs. storage curve was developed for the pond based upon this survey information and accompanies this letter. The required storage volume for the pond is 32,866 cf as determined in the final drainage report dated February 27, 2003. This volume would correspond with a water surface elevation of 4641.29. With the actual top of the pond being at 4641.58, this would result in approximately 0.3' of freeboard. In the unlikely event of a storm which exceeded the calculated 100-year storm quantities or the capacity of the pond, the excess flows would be directed across D ½ Road at a localized low point and away from any existing development.

Included with this submittal are 2 sets of blueines of the record drawings along with the associated electronic files. Please contact me if you have any questions or need to discuss this further.

Respectfully,



Jeffrey W Mace, PE

Xc: Rob Cantrell, file

G & R West L.L.C.
474 Bismarck St.
Grand Junction, CO 81504
(970) 255-8164

07/07/2006

City of Grand Junction
Attn: Laura Lamberty, PE
Community Development Department
250 N. 5th Street
Grand Junction Co, 81501

DAKOTA
WEST?
BISMARCK?

Regarding: Dakota West HOA,

Please see exhibits A & B enclosed.

Laura,

Thank you for your letter to Mrs. Moe dated June 30th 2006. We are trying to get the HOA up and running. As part of this process we are attempting to determine the amount of funds we should carry in the reserve account. This debate is what precipitated Barbs original inquiries to you about the Dakota West infrastructure.

Your letter indicates that Mesa County maintains and operates D ½ Rd. My concern is the approximate 100ft of drainage pipe Dakota West has buried under both Bismarck St. and D ½ Rd. Please refer to the highlighted portion of exhibit "A". Hypothetically speaking, if this pipe were to fail, such as a break or blockage that could not be remedied, where would the financial burden rest to have the pipe excavated from the asphalt and repaired? Would this be Dakota West HOAs cost, Mesa County's cost or the City of Grand Junctions cost?

I think I'll need to have the answer in a letter so that everyone is ok with this. Thanks for your help Laura. Would it be possible to fax me your letter? 523-0354



Robert Cantrell, Manager
G & R West L.L.C.

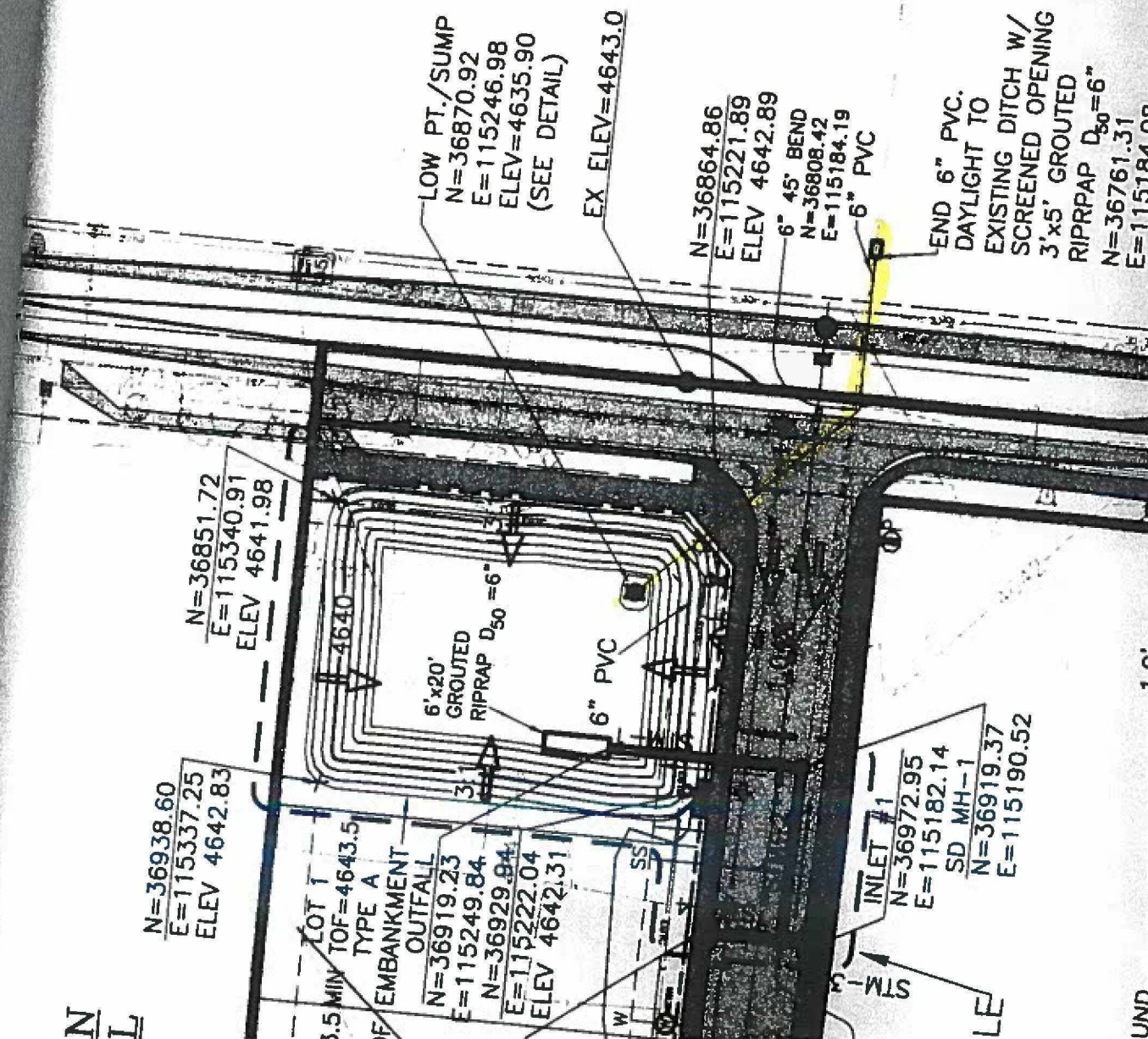
EXHIBIT "A"

GRADING & DRAINAGE

DAKOTA WEST SURVEY

G & R WEST, LLC

THOMPSON-LANGFORD CORP.
ENGINEERS AND LAND SURVEYORS
529 25 1/2 RD., SUITE B210
GRAND JUNCTION, COLORADO
PH. (970) 243-6067
FAX (970) 241-2845
tlc@tlwest.com



N=36851.72
E=115340.91
ELEV 4641.98

N=36938.60
E=115337.25
ELEV 4642.83

LOT 1
3.5 MIN TOF=4643.5
EMBANKMENT TYPE A
OUTFALL
N=36919.23
E=115249.84
N=36929.84
E=115222.04
ELEV 4642.31

N=36864.86
E=115221.89
ELEV 4642.89
6" 45' BEND
N=36808.42
E=115184.19
6" PVC

LOW PT./SUMP
N=36870.92
E=115246.98
ELEV=4635.90
(SEE DETAIL)

EX ELEV=4643.0

END 6" PVC.
DAYLIGHT TO
EXISTING DITCH W/
SCREENED OPENING
3'x5' GROUDED
RIPRAP D₅₀ = 6"
N=36761.31
E=115184.08

BACK

N
L

STM-3

LE

UND

June 30, 2006

Barbara Moe
468 Bismarck Street
Grand Junction, CO 81504
Gjurkie319@acsol.net

Regarding: Dakota West: Maintenance of Subdivision Improvements

Ms. Moe:

This letter is in response to your inquiries regarding the Dakota West Home Owner's Association responsibilities for maintenance of subdivision improvements.

The right-of-way improvements Dakota West Subdivision Filings I and II have been accepted for public maintenance.

The Home Owner's Association's (HOA) maintenance and operation responsibility is limited to the pond and pump improvements located within the tract owned by the HOA. Landscaping in the tract and along D 1/2 Road as located in the right-of-way is further the responsibility of the HOA.

The City of Grand Junction maintains and operates all street/roadway and drainage improvements located within the right-of-way. Various public utility companies maintain and operate public utilities such as water and sanitary sewer in the public right-of-way. Currently, Mesa County maintains and operates D 1/2 Road. Reconstruction of D 1/2 Road would probably necessitate alteration of the drainage discharge but that would be the responsibility of the public entity constructing those improvements at that time.

At this time, I am not aware of any defects in the drainage system which would be cause for replacement.

If you have any questions, please contact me at 256-4155

Sincerely,

Laura C. Lamberty, PE
Development Engineer



July 14, 2006

G & R West, LLC
474 Bismarck Street
Grand Junction, CO 81504

Regarding:

Mr. Cantrell,

The maintenance of Bismarck and other subdivision improvements within the right-of-way are the responsibility of the City of Grand Junction. The maintenance of D ½ Road itself is currently Mesa County's but that could change with further annexations and development. This includes your stormwater discharge line – that is a failure would be Mesa County or the City's responsibility depending on the maintenance limits in place at the time.

Maintenance of a trash rack or screen at the pump intake line should eliminate the possibility of a blockage or a breakage precipitated by something other than utility excavation. This is the Homeowner's Association's responsibility.

The City has no knowledge of any defects or failures at this time. The fairly unusual inquiries have me concerned that there is a problem that has not been disclosed. If you or the Homeowner's have knowledge of a problem that could affect the public's infrastructure, please inform me or our Streets Department immediately.

I hope this answers your questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Laura C. Lamberty".

Laura C. Lamberty, PE
Development Engineer

June 30, 2006

Barbara Moe
468 Bismarck Street
Grand Junction, CO 81504
Guirkie319@acsol.net

Regarding: Dakota West: Maintenance of Subdivision Improvements

Ms. Moe:

This letter is in response to your inquiries regarding the Dakota West Home Owner's Association responsibilities for maintenance of subdivision improvements.

The right-of-way improvements Dakota West Subdivision Filings I and II have been accepted for public maintenance.

The Home Owner's Association's (HOA) maintenance and operation responsibility is limited to the pond and pump improvements located within the tract owned by the HOA. Landscaping in the tract and along D ½ Road as located in the right-of-way is further the responsibility of the HOA.

The City of Grand Junction maintains and operates all street/roadway and drainage improvements located within the right-of-way. Various public utility companies maintain and operate public utilities such as water and sanitary sewer in the public right-of-way. Currently, Mesa County maintains and operates D ½ Road. Reconstruction of D ½ Road would probably necessitate alteration of the drainage discharge but that would be the responsibility of the public entity constructing those improvements at that time.

At this time, I am not aware of any defects in the drainage system which would be cause for replacement.

If you have any questions, please contact me at 256-4155

Sincerely,

Laura C. Lamberty, PE
Development Engineer

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are G & R WEST LLC ("Developer") and the **City of Grand Junction**, Colorado ("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 shall be the date that it is signed by the Community Development Director, 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, described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The Property, known as DAKOTA WEST Filing 2 has been reviewed and approved under Community Development file # FP-2003-079 ("Development" or "the Development").

The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements to the Property and limiting the harmful effects of substandard development.

A further purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself; this 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 owner(s), purchaser(s) or user(s) of the Property.

The mutual promises, covenants and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and City's land development ordinances and regulations.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer shall 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 ("Improvements" or "the Improvements").

3a. On and after the Effective Date of this Agreement the Developer agrees to pay the City for its Administration and Inspection of the Development. The hourly rate for those services is \$45.00/hour. Administration and Inspection includes but is not limited to the time expended by the City's planner, engineer, construction inspector and attorney in directing, advising, correcting and enforcing by means other than

litigation, this agreement and/or the approved development plan. Making disbursements and calling/collecting Guarantees are Administration and Inspection services and shall be charged at \$45.00/hour. See, paragraph 19 concerning attorneys' / litigation fees.

3b. The scope of this project is such that the City may have to engage independent consultants(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others for which Developer is responsible hereunder.

3c. The Developer's obligation to complete the Improvements is and shall 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. The Developer is required to post security in an amount of \$ 291,975⁰⁰ (120% of the amount for the Improvements) in a form and with terms acceptable to the City ("Guarantee"). The Guarantee shall be in the form of a cash deposit made to the City, a letter of credit or a disbursement agreement in a form and with content approved by the City Attorney. The Guarantee specific to this Agreement is attached as Exhibit C and is incorporated by this reference as if fully set forth.

Select one: Cash _____ Letter of Credit (LOC) ~~_____~~ ^{RC} Disbursement Agreement

5. **Standards:** The Developer shall construct the Improvements according to the City's standards and specifications.

6. **Warranty:** The Developer shall warrant the Improvements for one year following Acceptance by the City. "Warrant" or "Warranty" as used herein means the Developer shall take such steps and incur such costs as may be needed so that the Improvements or any portion or phase thereof as repaired and/or replaced, shall comply with the Development's construction plans and/or site plan, City standards and specifications at the end of the warranty period. The Developer shall warrant each repaired and/or replaced Improvement or any portion or phase thereof for one year following Acceptance of such repair and/or replacement.

6a. Upon Acceptance the Developer shall provide a Maintenance Guarantee in an amount of \$ ~~291,975.00~~ 548,662⁵⁰ (Line 02, Exhibit B, City Security).

6b. The Maintenance Guarantee shall be secured by a letter of credit, cash escrow or other form acceptable to the City.

7. **Commencement, Completion and Abandonment Periods:** The Developer shall commence work on the Improvements within 30 days from the Effective Date of this Agreement; that date is known as the "Commencement Date."

7a. The Developer shall complete the Improvements by the end of the twelfth month from the Effective Date of this Agreement; that date is known as the "Completion Date."

7b. The Developer shall not cease construction for any period of more than 60 consecutive days. If construction is ceased for 60 or more consecutive days the Director may deem the Development abandoned ("the Abandonment Period").

7c. The Commencement date and the Completion Date are as follows:

Commencement Date: 7-11-03
Completion Date: 7-11-04

8. Compliance with Law: The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations when fulfilling its obligations under their 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 the Effective Date.

9. Notice of Defect: The Developer by and through his/her/its engineer shall provide timely written notice to the issuer of the Guarantee and the Director when the Developer and/or his/her/its engineer has knowledge, that an Improvement or any part or portion of any Improvement either does not conform to City standards or is otherwise defective.

9a. The Developer shall correct all non-conforming construction and/or defects within thirty (30) days from the issuance of the notice by his/her/its engineer of a/the defect.

10. Acceptance of Improvements: The City shall not accept and/or approve any or all of the Improvements 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 on the Improvements other than those that have been accepted by the City Attorney.

10a. Approval and/or acceptance of any Improvement(s) does not constitute a waiver by the City of any right(s) that 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.

10b. Acceptance by the City shall only occur when the City Engineer, sends a writing to such effect ("Acceptance").

11. Reduction of Security: Upon Acceptance of any Improvement(s) the amount which the City is entitled to draw on the Guarantee shall be reduced by an amount of \$_____ (Line G1, Exhibit B, Total Improvement Costs).

11a. At the written request of the Developer, the City shall execute a certificate verifying Acceptance of the Improvement and thereafter waiving its right to draw on the Guarantee to the extent of such amount. A Developer in default under this Agreement has no right to such certification.

12. Use of Proceeds: The City shall use funds deposited with it, drawn or guaranteed pursuant to this Agreement only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements or paying Administration and Inspection fees.

13. Events of Default: The following conditions, occurrences or actions shall constitute a default by the Developer:

13a. Developer's failure to complete each portion of the Improvements on or before the Completion Date;

13b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvements within the applicable warranty period;

13c. 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;

13d. Notification to the City, by any lender with a lien on the Property, of a default by Developer on any obligation to such lender. In such event, the City may immediately declare a default without prior notification to the Developer.

13e. With regard to the Property or any portion thereof: initiation of any foreclosure action regarding any lien or encumbrance; or initiation of mechanics lien(s) procedure(s); or assignment or conveyance of the Property in lieu of foreclosure. In such event the City may immediately declare a default without prior notification to the Developer.

13f. Notification to the City from the bank issuing the Guarantee that it will not renew the Guarantee at a time when security is still required hereunder and no substitute collateral acceptable to the City has been provided by the Developer.

13g. Except as provided, the City may not declare a default until written notice has been sent to the Developer at the address shown in the development file. 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 shall be the reasonable cost of satisfactorily completing the Improvements, plus reasonable expenses. 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 shall be *prima facie* evidence of the minimum cost of completion; however, the maximum amount of the Developer's liability shall not be established by that amount or the amount of the Guarantee.

15. City's Rights Upon Default: When any event of default occurs, the City may draw on the Guarantee or proceed to collect any other security to the extent of the face amount of the Guarantee less eighty percent (80%) of the estimated cost (as shown on Exhibit B) of all Improvements for which the City has given its Acceptance and no warranty work is reasonably required. The City may also exercise its rights to disbursement of loan proceeds or other funds under the City Improvements disbursement agreement.

15a. The City shall have the right to complete Improvements itself or it may contract with a third party for completion.

15b. 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, inspecting and repairing the Improvements.

15c. The City may assign the proceeds of the Guarantee or other funds or assets that it may receive in accordance with this Agreement to a subsequent developer or lender that has acquired the Property by purchase, foreclosure or otherwise.

15d. That developer or lender shall then have the same rights of completion as the City if and only if the subsequent developer or lender agrees in writing to complete or correct the Improvements and provides to the City reasonable security for that obligation.

15e. 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 ("City") 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 and/or the Improvements and/or the Development that is being done pursuant to this Agreement.

16a. The Developer further agrees to aid and defend the City in the event that the City and/or the Improvements is named as a defendant in an action concerning the performance of work pursuant to this Agreement except for a suit wherein the Developer states claim(s) against the City.

16b. The Developer is not an agent, partner, joint venturer or employee of the City.

17. No Waiver: No waiver of any provision of this Agreement by the City shall be deemed or constitute a waiver of any other provision nor shall 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 shall 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 shall not constitute the approval of any wrongful or other act by the Developer or the acceptance of any Improvement.

18. 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/her/its 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, shall be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. The City shall be entitled to claim the value of its in-house attorneys at the rate of \$125.00 per hour. If relief is awarded to both parties the attorney's fees may be equitably divided between the parties by the decision maker.

20. Vested Rights: This Agreement does not guarantee, represent or certify that the Developer is entitled to any other approval(s) required by the City, before the Developer is entitled to commence development beyond the scope of this Agreement 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. No statement(s), promise(s) or inducements(s) that is/are not contained in this Agreement shall be binding on the parties.

22. Third Party Rights: No person or entity who or which is not a party to this Agreement shall have any right of action under or be a beneficiary of this Agreement.

23. Time: For the purpose of computing the Abandonment Period and Commencement and Dates, such times in which war, civil disasters or acts of God occurs or exist shall not be included if such prevents the Developer or City from performing its obligations under the Agreement. The Developer must notify the City in writing if/when it asserts impossibility of performance under this paragraph. The City may reject the Developer's assertion, if it finds, in writing that the condition(s) that the Developer asserts do not exist.

24. Severability: If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or

unenforceability shall not affect the validity of any other part, term or provision. The rights of the parties shall 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.

25a. 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.

25b. There is no prohibition on the right of the City to assign its rights under this Agreement.

25c. Upon written request from the Developer the City shall expressly release the original Developer's Guarantee and/or contract obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City shall constitute a release of the original Developer from his liability under this Agreement.

25d. When the City has issued its Acceptance regarding the Improvements, the City agrees to state the same in writing, with appropriate acknowledgments.

25e. The City shall 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 shall 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: G & R WEST LLC Name -Developer/Company
2650 EL CORONA DR Address (Street and Mailing)
GRAND JUNCTION CO 81501 City, State & Zip Code
(970) 253-8164 Telephone and Fax Numbers
()
_____ E-mail

Cc:

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

Cc: Community Development Department
250 North 5th Street
Grand Junction, CO 81501

27. **Recordation:** Developer shall pay the costs to record a memorandum of this Agreement (Exhibit D) in the records of the Mesa County Clerk and Recorder's Office. The Developer may, at his/her/its option record the entire agreement.

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, the Guarantee, the Maintenance Guarantee or any action based arising out of or under this Agreement shall be deemed to be proper only if such action is commenced in Mesa County, Colorado.

29a. The Developer expressly waives his/her/its right to bring such action in or to remove such action to any other court whether state or federal.

30. **Liability before 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 Improvement shall have received Acceptance by the City.

30a. 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 the side of the street nearest the property to enable an initial two-way traffic operation without on-street parking.

30b. Developer shall also construct and pay for end-transitions, intersection paving, drainage facilities and adjustments to existing utilities necessary to open the street to traffic.

30c. The City shall not issue its written Acceptance with regard to any Improvement(s) including any street, storm drainage facility, sewer, water facility or other required Improvement(s), until the Developer:

(i) furnishes 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 specification;

(ii) provides 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 Improvement(s) have been constructed or which are necessary for the Improvements are free from toxic, hazardous and other regulated substances or materials;

(iii) provides 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; and
(iv) provides written evidence, certified by the Developer's engineer, that the work was systematically inspected and tested and that the materials and the compaction of the materials that are required to be compacted, were in conformance with City-approved plans and specifications.

By:

Robert Cantrell MAR 7-18-03
Developer Date
ROBERT CANTRELL
Name (printed)

Corporate Attest:

Lena M. Cantrell 7-18-03
Name Date

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

Lori V. Bowen July 18 2003
Community Development Dept. Date

6/13/2003

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

EXHIBIT A

Dakota West Subdivision, Filing 2

Dakota West Subdivision (Filing 2)

July 1, 2003

Development Improvements Agreement

				Unit	Total
General:				Price	Price
		Units	Quantity		
1	Mobilization	LS	1	3000.00	\$3,000.00
2	Dust Abatement	LS	1	3000.00	\$3,000.00
3	Stormwater Management	LS	1	1500.00	\$1,500.00
				Sub-total General Items:	\$7,500.00
Water system:				Unit	Total
		Units	Quantity	Price	Price
1	Connect Water	EA	2	600.00	\$1,200.00
2	8" Waterline	LF	1170	20.00	\$23,400.00
3	8" Fittings w/Thrust Blocks	EA	4	200.00	\$800.00
4	8" Gate Valves & Boxes	EA	4	625.00	\$2,500.00
5	2" Blow Off Valve	EA	4	250.00	\$1,000.00
6	Water Service	EA	27	150.00	\$4,050.00
7	3/4" Service Tap/Corp	LF	1089	10.00	\$10,890.00
8	Fire Hydrant Assemblies	EA	2	2200.00	\$4,400.00
				Sub-total Water Items:	\$48,240.00
Sanitary Sewer system:				Unit	Total
		Units	Quantity	Price	Price
1	Connect Sewer	EA	2	800.00	\$1,600.00
2	8" PVC Sewer	LF	634	16.00	\$10,144.00
3	San. Sew. Manholes	EA	4	1400.00	\$5,600.00
4	Concrete Encasement	LF	20	33.00	\$660.00
5	4" Service Tap	EA	14	75.00	\$1,050.00
6	4" Service Line	LF	580	12.00	\$6,960.00
				Sub-total Off Sanitary Sewer Items:	\$26,014.00
Roadway Improvements				Unit	Total
		Units	Quantity	Price	Price
1	Clearing and Grubbing	LS	1	5000.00	\$5,000.00
2	Excavation	CY	5473	1.50	\$8,209.50
3	Embankment	CY	685	2.50	\$1,712.50
4	6'-6" Driveover C,G&SW	LF	2176	14.00	\$30,464.00
5	Radii, Aprons, Pan and Handicap Ramps	SY	200	38.00	\$7,600.00
8	3" Asphalt Pavement	SY	4072	8.00	\$32,576.00
9	6" Aggregate Base Course (CL.6)-Sidewalk	SY	1696	6.50	\$11,024.00
10	7.25" Aggregate Base Course (CL.6)	SY	4294	8.50	\$36,499.00
11	Stabilization	SY	780	8.50	\$6,630.00
12	Stop/Street Signs	EA	2	400.00	\$800.00
13	Speed Limit Signs	EA	1	400.00	\$400.00
				Sub-total Roadway Items:	\$140,915.00

DISBURSEMENT AGREEMENT
(Improvements Guarantee)

DEVELOPER: G3R West

BANK:

PROPERTY: Dakota West Filing 2

DISBURSEMENT AMOUNT: For the construction of improvements to the Property in an amount not to exceed \$ 291,975

This Agreement is entered into by and between G3R West ("Developer"), Bank of Colorado ("Bank") and the City of Grand Junction, Colorado ("City").

RECITALS

Developer has been required by the City to construct certain improvements to Dakota West Filing 2 ("Improvements") in accordance with the Zoning and Development Code, Improvements Agreement and subdivision approval.

The Bank has agreed to loan funds to the Developer for construction of the Improvements.

The City Engineer has approved an estimate of the costs of the Improvements and that amount or an amount not to exceed \$ 291,975, whichever is greater, shall be referred to as the "Funds."

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

NOW, THEREFORE, THE PARTIES AGREE:

1. BANK PROMISES. Bank shall dedicate or set aside the Funds on behalf of Developer and for the City's benefit within twenty-four hours of execution of this Disbursement Agreement.

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

2. DISBURSEMENT PROCEDURES. The Funds shall be advanced for payment of costs incurred for the construction of Improvements on the Property in accordance with the Improvements List/Detail attached to the Improvements Agreement, the terms of which are incorporated by this reference. All disbursements must comply with the following procedures:

(a) Request for Advance. Developer shall deliver to the Bank a written request for the disbursement of funds on forms acceptable to the Bank. Such requests shall be signed by Developer, Developer's General Contractor, Project Engineer and Architect, if applicable, and the City Engineer. By signing the request for disbursement the Developer is certifying: that all costs for which the advance is being requested have been incurred in connection with the construction of the Improvements on the Property; that all work performed and materials supplied are in accordance with the plans and specifications submitted to and approved by the City; that the work has been performed in a workmanlike manner; that no funds are being requested for work not completed, nor for material not installed; the Project Engineer has inspected the Improvements for which payment is requested; and that such improvements have been completed in accordance with all terms, specifications and conditions of the approved plans. Attached hereto is the list of those individuals, and their respective signatures, required to sign the above described request(s) for disbursement of funds.

RECORDING MEMORANDUM
Exhibit D

2136664 07/24/03 0415PM
JANICE WARD CLK&REC MESA COUNTY CO
REC FEE \$5.00 SURCHG \$1.00

City of Grand Junction
Community Development Department Community Development
File: # FP-2003-079

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 B 3 R West LLC (Developer) and the City of Grand Junction (City) pertaining to Dakota West Filing 2 (Project), located at 3090 D 1/2 Road, Grand Junction.

(Subject subdivision is more particularly depicted and described in the recording found at Plat Book 19, Pages 375.) not recorded as of 7/18/03

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-2003-079.

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: [Signature] MGR 7-18-03
Date

(Print Name) ROBERT CANTRELL

CITY OF GRAND JUNCTION:

In accordance with the above, I hereby certify that the Development Improvement Agreement and/or Maintenance Guarantee are made of record by this memorandum and that the same may be inspected and/or copied at the City of Grand Junction, Community Development Department, 250 N. 5th Street, Grand Junction Colorado.

[Signature]
Community Development Department July 18, 2003
Date

L. Lamberty

SUPPLEMENT TO
MAINTENANCE GUARANTEES
FOR DAKOTA WEST, FILING 1
AND DAKOTA WEST, FILING 2

This agreement is entered into this 30th day of December 2005 by the City of Grand Junction ("City") and G & R West, LLC ("Developer").

Recitals.

- A. The City and Developer entered into a Maintenance Guarantee signed by Developer on October 13, 2004 regarding the City required improvements for the Dakota West Subdivision, Filing 1 and another Maintenance Guarantee signed by the Developer on October 18, 2004 for the Dakota West Subdivision Phase 2, Filing 2.
- B. Regarding said Filing 1, Laura Lamberty, City Development Engineer, completed an inspection of the streets and drainage facilities on September 16, 2005. She informed the Developer by letter on September 21, 2005 of five items needing correction, one of which was that the truncated dome mats at handicap ramps needed to be re-glued.
- C. Regarding said Filing 2, Laura Lamberty, City Development Engineer, completed an inspection of the streets and drainage facilities on September 16, 2005. She informed the Developer by letter on September 21, 2005 of seven items needing correction, one of which was that the truncated dome mats at handicap ramps needed to be re-glued.
- D. Since both letters, Developer has corrected the items needing correction and Laura Lamberty has approved all of such items, except that the truncated domes in both subdivisions still need to be re-glued.
- E. The Developer and the City have agreed that \$3,000.00 is an adequate estimate of the costs required to re-glue the truncated domes.
- F. The City is willing to release the security provided by the Developer for the Maintenance Guarantees except said \$3,000.00, as security for Developer's obligation to properly re-glue the said truncated domes as the weather permits in the spring of 2006 to the satisfaction of the City or to take such other steps as the City may require so that the truncated domes are installed as required by the City.

For valuable consideration, the receipt and adequacy of which is acknowledged, the City and the Developer agree as follows:

- 1. The Recitals are a substantive part of this Supplement.
- 2. Upon receipt of cash in the amount of \$3,000.00 as security for both Maintenance Guarantees. The City shall return the Letters of Credit from the Bank of Colorado being held as security.
- 3. The purpose of this Supplement is to make clear that the release of the security over and above the \$3,000.00 does not release the Developer from his obligations under the Maintenance Guarantees. The Developer shall be released from the obligations upon receipt of written notice from the City of final acceptance for

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 3rd day of January, 2008, by Laura Lamberty, from the Department of Public Works and Utilities.

WITNESS my hand and official seal.
My commission expires: 11-17-08

Kathy Valdez
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 3rd day of January, 2008, by Art Cecil, from the Community Development Department.

WITNESS my hand and official seal.
My commission expires: 11-17-08

Kathy Valdez
Notary Public

G & R West L.L.C.
474 Bismarck St.
Grand Junction, CO 81504
(970) 255-8164

RECEIVED
DEC 02 2005
COMMUNITY DEVELOPMENT
DEPT.

12/02/2005

City of Grand Junction
Attn: Laura Lamberty, PE
Community Development Department
250 N. 5th Street
Grand Junction Co, 81501

Regarding: FP-2003-038: Dakota West Subdivision Filing 1
FP-2003-079: Dakota West Subdivision Filing 2
Request for Release of Letters of Credit

Laura,

During our phone conversation on 12/01/2005, you indicated that all of the warranty correction notice item repairs for filings 1 and 2 were acceptable to the City except for the improper installation of the handicap ramp dome mats throughout the subdivision.

G & R West L.L.C. is in agreement that all of these mats need to be re-installed so that they are properly adhered to the concrete. Adcock Concrete has been contracted by G & R West to complete this task. However due to the cold weather temperatures Adcock has advised me that they are unable to re-install the mats at this time. I have requested that Adcock complete this installation at the earliest possible moment but it is possible temperatures may not be optimal until March of 2006. Please see attached estimate from Adcock Concrete for the cost to re-install all of the mats in the subdivision.

Since all of the other warranty correction items are acceptable I would like to request that G & R West L.L.C. be released from the remainder of the existing letters of credit for filings 1 and 2 and that a new letter of credit to the City of Grand Junction be established for the amount of \$3,000.00 to guarantee the re-installation of the dome mats. We hope this will be acceptable.

Thank you for your assistance in this matter.


Robert Cantrell, Manager
G & R West L.L.C.

ADCOCK CONCRETE 242-8567 Licensed & Insured

2777 Crossroads Blvd. Unit E, Grand Junction, CO 81506 Fax 242-2061
Residential & Commercial Foundations Flatwork Demolition

To: Rob Cantrall

Date: 2-Dec-05

JOB DESCRIPTION: Repair Work to Handicap Ramps

Bld for project includes labor and material: Concrete, rebar, expansion joints, cure and fine grading to + or - 1/10th.

Not included: Excavation, backfill, compaction, gravel, surveying, testing, traffic control, and demolition.

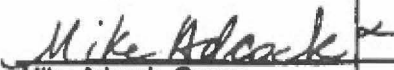
NOTE:

This work will be completed as weather and temperature permits - no later than mid March.

ITEMIZED ESTIMATE:

		Price
Handicap Ramps Repair	90 SF @ \$24.00 SF	\$ 2,180.00
Subtotal		\$ 2,180.00

SIGNED:


Mike Adcock, Owner

G & R West L.L.C.
474 Bismarck St.
Grand Junction, CO 81504
(970) 255-8164

11/30/2005

City of Grand Junction
Attn: Laura Lamberty, PE
Community Development Department
250 N. 5th Street
Grand Junction Co, 81501

Regarding: FP-2003-038: Dakota West Subdivision Filing 1
FP-2003-079: Dakota West Subdivision Filing 2
Warranty Correction Notice

Laura,

Please see attached copies of the Warranty Correction Notice letters for both filing 1 and filing 2.

The punch list items specified in these letters have been corrected and are ready for re-inspection. Would it be possible to have our re-inspection as soon as tomorrow; 12/01/2005? We would like very much to bring this portion of our project to a close.

Please let me know if I can be of any further assistance. Thank you very much for your time regarding this matter.



Robert Cantrell, Manager
G & R West L.L.C.

RECEIVED

NOV 30 2005

COMMUNITY DEVELOPMENT
DEPT.

Sep 21 05 04:51p

p. 2



September 21, 2005

Rob Cantrell
G & R West LLC
474 Bismarck Avenue
Grand Junction, CO 81505

RE: FP-2003-038: Dakota West Filing 1 Subdivision
Warranty Correction Notice

Dear Mr. Cantrell:

A warranty inspection of the streets and drainage facilities for the referenced project was conducted on September 16, 2005.

The following items were found to need correction:

1. Truncated dome mats at handicap ramps, in general, need to be re-glued were not fully adhered to concrete.
2. Backfill sunken utility trenches within 14' multi-purpose easement
3. Adjust fire hydrants to grade (18" - 22" from operating nut to finish grade) in areas that have been landscaped.
4. Replace broken water meter lid at 452 Bismarck.
5. Repair broken corp stop on water service at 456 Bismarck.

Please contact me for re-inspection upon completion of the work at 256-4155. Thank you for your cooperation in the completion of the work on this project.

Sincerely,

Laura C. Lamberty, PE
City Development Engineer

cc: Lori Bowers, Senior Planner
Dan Wilson, Coleman, Williams and Wilson

Sep 21 05 04:51p

P. 1



523-0384

September 21, 2005

Rob Cantrell
G & R West LLC
474 Bismarck Avenue
Grand Junction, CO 81505

RE: FP-2003-079: Dakota West Filing 2 Subdivision
Warranty Correction Notice

Dear Mr. Cantrell:

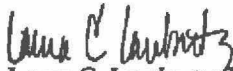
A warranty inspection of the streets and drainage facilities for the referenced project was conducted on September 16, 2005.

The following items were found to need correction:

1. Truncated dome mats at handicap ramps, in general, need to be re-glued ^hwere not fully adhered to concrete.
2. Backfill sunken utility trenches within 14' multi-purpose easement.
3. Adjust fire hydrants to grade (18" - 22" from operating nut to finish grade) in areas that have been landscaped.
4. Replace improperly adhered thermoplastic truncated dome mat at SW corner Mandan and Bismarck.
5. Replace or reset end of road marker at south end of Washburn.
6. Excavate and full depth repair of south end of Washburn for sink holes developing and deferred infrared repair/repair of segregated asphalt materials. This work item needs to have City inspection during the work effort - including limit determination and presence during initial excavation. Contact Mark Barslund 201-1362.
7. Adjust water valve to grade and infrared repair asphalt at 3090 Mandan.

Please contact me for re-inspection upon completion of the work at 256-4155. Thank you for your cooperation in the completion of the work on this project.

Sincerely,


Laura C. Lamberty, PE
City Development Engineer

cc: Lori Bowers, Senior Planner
Dan Wilson, Coleman, Williams and Wilson