

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the irrigation water delivery system, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purposes of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Date. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of a Lot to a nondeclarant Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 18 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or

foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the irrigation water delivery system or abandonment of his Lot.

Section-9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exemption from Colorado Common Interest Ownership Act. Notwithstanding any other provision contained herein, Declarant hereby affirmatively states that at no time shall the annual assessment imposed herein on each Lot, exclusive of optional user fees and insurance premiums paid by the Association, if any, exceed three hundred dollars, or such higher amount as may be hereafter permitted under the Act (as hereafter defined) to retain this exemption. Therefore, the Properties are subject to §§ 38-33.3-105 through 107, C.R.S., but are not subject to the remainder of the provisions of the Colorado Common Interest Ownership Act, as set forth in § 38-33.3-101, et seq., C.R.S. (the "Act").

ARTICLE V

USE RESTRICTIONS

Section 1. Temporary Structures. No trailer, unimproved basement, tent, shack, garage, barn or other outbuildings erected on any land covered by these covenants shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

Section 2. Prefabricated Structures. All dwellings, garages and outbuildings constructed upon the land covered by these covenants shall be of top quality design, construction, workmanship and materials; in particular, no structure will be of the types known as "pre-built", "pre-cut", "modular", "manufactured", or "pre-fabricated", regardless of its quality as determined by other standards.

Section 3. Antenna and similar devices. No antenna, satellite dish, or similar devices for radio, television or any other electronic transmission or reception shall be placed upon or around the exterior of any lot within said subdivision or upon any improvements constructed upon any lot.

Section 4. Grounds Maintenance. The land covered by these covenants, and the improvements thereon, shall be maintained by the owner in good condition and neat appearance, and no portion thereof shall be used or maintained as a dumping ground for trash, junk or rubbish. Trash, garbage and other waste shall not be kept on any lot except in containers designed for storage and disposal of the same, which containers shall be kept in a clean and sanitary condition at all times. In the event any owner shall fail to maintain their lot or lots, the Association shall have the power to hire clean-up as necessary and to bill the lot owner, and file mechanics liens for said work in the event of nonpayment.

Section 5. Nuisances. Notwithstanding any uses permitted by applicable zoning ordinances to the contrary, no trade, industry, shop or professions requiring "STOCK IN TRADE", nor any noxious or offensive activity which may become an annoyance or nuisance to the neighborhood shall be carried on upon any land covered by these covenants. Home offices are permitted as are businesses considered "traveling salespersons", i.e.: insurance, mail order and franchises such as Avon, etc., as long as clientele do not make frequent visits, and no signs of any kind are displayed on the premises and the street address is not used in public advertisements.

Section 6. Signs. Signs by private lot owners will be no larger than four (4) square feet and are not allowed on a permanent basis or to advertise a business. No political signs are permitted. Signs on Common Areas are governed by the ACC. Builders may also exhibit signs during construction promoting the lot, realtors or the financial institution handling the project or resale of homes in the project. The size must not exceed thirty-two (32) square feet.

Section 7. Animals. No animals shall be allowed other than domestic pets, but not more than any three (3) pets in cumulative total shall be kept on the premises and only then if they are kept solely as household pets for private use and not for commercial purposes. No such animal may be kept which is a nuisance or annoyance to other owners' property. Household pets shall be contained on their owners property or on a leash and not permitted to run loose. At the request of any owner, the Board of Directors of the Association shall determine whether a particular animal shall be considered a household or yard pet, a nuisance, or whether the number of any such animals on any lot is in compliance. Habitually barking dogs are prohibited at the sole discretion of the Association.

Section 8. Drilling. No oil drilling, oil development, refining, quarrying or mining operations of any kind shall be permitted nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other

structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

Section 9. Fences, landscaping. No trees, shrubs or hedge plants shall be planted until a plot plan setting forth in detail landscaping design and location and varieties of plants, has been approved by the ACC. Grass and initial landscaping shall be planted within nine (9) months of occupancy. No fences shall exceed six (6) feet in height, and all fences are to be architecturally compatible and uniform with the dwellings. All fence plans must be approved by the ACC with plans sufficient to show the location, height, materials, and color to be used in the erection of the fence.

Section 10. Easements. Easements for the installation and maintenance of utilities, drainage and detention facilities (shown on plat as Common Area), and landscaping are reserved as shown on the recorded plat of the Subdivision. Within these easements no structures, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of flow or obstruct the flow of water in and through drainage channels and easements. The easements located on each lot and all improvements in them shall be maintained continuously by the owner of the lot, except for those improvements for which the Association, a public authority, or one or more utility company is responsible.

Section 11. Keeping of Motor Vehicles. No motor vehicle or recreation vehicle designed for travel over public roads shall be kept upon any real property within said subdivision unless such vehicle shall bear evidence of a license for operation upon public roads of the State of Colorado for the then current year and is kept inside a garage or within a visually screened area as may be approved by the ACC.

Section 12. Recreational Vehicles. No vehicles, boats, campers, trailers, snowmobiles, motorcycles or other such recreational vehicles, devices or equipment, or vehicles used for business (other than passenger type vehicles) shall be stored or permitted to remain on the premises unless garaged or placed in an approved outbuilding or screened storage facility.

Section 13. Maintenance of Site. The Association or Declarant upon the failure of the Owner or tenant of any site to maintain his site and improvements, including the payment of any taxes assessed thereon, in a reasonable and satisfactory manner as determined by the Association, or upon use by the Owner or tenant in a manner inconsistent with these covenants, may enter upon the site and repair, maintain, rehabilitate, and restore the premises and/or improvements or abate the improper use or pay the taxes thereon and any costs shall be charged against the Owner or tenant

of said site and collected in the manner set forth in Article IV hereof.

Section 14. Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, contractors, and designees to perform such reasonable activities, and to maintain upon portions of the Property such facilities as Declarant deems reasonably necessary or incidental to the construction and sale of Lots and development of the Property, specifically including without limiting the generality of the foregoing, maintaining business offices, storage areas, construction yards and equipment, signs, model units which shall be located on a Lot owned by Declarant or Declarant's designee, not more than three sales offices which shall be located on a Lot owned by Declarant or Declarant's designee parking areas and lighting facilities. Sales offices shall be removed from the Property and model units shall be sold to Owners within five (5) years from the date of this Declaration. Sales offices and model units may be relocated from time to time to another Lot and shall be of a size compatible with the development of the Property. Notwithstanding the foregoing, Declarant shall not perform any activity or maintain any facility on any portion of the Property in such a way as to unreasonably interfere with or disturb any Owner, or to unreasonably interfere with the use, enjoyment or access of such Owner, his family members, guests or invitees of and to his Lot, the Common Area, and to public right-of-way.

ARTICLE VI

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Appointment of Architectural Control Committee. The Architectural Control Committee (ACC) shall consist of at least three (3) persons to be appointed by the majority of the Board of the Association. The initial ACC is chaired by Steve Fleming, 359 Main Street, Grand Junction, CO 81501.

Section 2. Submission of Plans. Duplicate copies of plans and specifications relating to an improvement, including, but not limited to residences, fences, garages, and outbuildings, shall be submitted to the ACC for review and final approval. Plans and specifications shall contain, without limitation, the plot plans showing layout, including setbacks, flow and manner of surface drainage, finish and natural grade elevations, floor plans showing overall dimensions, roof plans showing pitch, roof materials, color, exterior elevations showing doors, windows and exterior materials and colors, and a perspective sketch if requested, and other details necessary to explain any feature or component of the improvement.

Section 3. Matters Considered. The ACC shall consider the aesthetic and functional design of any improvement as to the quality of workmanship and materials, harmony of exterior design with existing improvements, location with respect to topography and finished grade elevation, and the preservation and enhancement of the value and the visual appearance of existing improvements.

Section 4. Approval. The ACC shall approve or disapprove all written plans within thirty (30) days after submission. In the event the ACC fails to take any action within such thirty (30) day period, the proposed improvement shall be deemed approved. The majority of vote of the ACC shall be required for the approval or disapproval of any proposed improvement.

Section 5. Limitation on Liability. The ACC shall not be liable in damage to any person submitting requests for approval or to any Owner within the Property by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such request. The actions of the ACC shall be deemed conclusively binding upon the Owners.

ARTICLE VII GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of the Property, or any portion thereof, or other duly recorded instrument(s). Within these easements no structure, planting or other material shall be placed or permitted

to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements. Declarant hereby reserves the right to enter upon the Property to correct any flow of water and to establish and re-establish drainage channels.

Section 5. Conflict of Provisions. In case of any conflict between this Declaration, the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

Section 6. Street Lighting. Unless street lighting and the cost thereof is provided by the community in which jurisdiction this subdivision is situated, all Lots shall be subject to and bound to Public Service Company tariffs which are now and may in the future be filed with the Public Utilities Commission of the State of Colorado relating to street lighting in this subdivision, together with rates, rules and regulations therein provided and subject to all future amendments and changes on file with the Public Utilities Commission of the State of Colorado.

Section 7. Waiver of Homestead. By purchasing or acquiring title to a Lot or any interest therein, every Owner waives all federal and state homestead or other exemptions with respect to any lien for assessments established by the Association.

Section 8. Expansion.

a. Reservation of Right to Expand. Declarant reserves the right to expand the Property to include additional Lots at any time without approval by the Lot Owners. Declarant reserves the right to create a maximum of 225 dwelling units upon the Property. The right of expansion shall expire December 31, 2010.

b. Supplemental Declarations and Supplemental Plats. Such expansion may be accomplished by the filing for record by Declarant in the office of the Clerk and Recorder of Mesa County, Colorado, one or more Supplemental Declarations setting forth the Lots and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions and easements particular to such property. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion.

c. Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. For example, "Lot" shall mean the Lots described in Article I, Section 5 above plus any additional Lots added by a Supplemental Declaration or Declarations, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Lots shall be effective to

EXHIBIT "A"

Being the portions of Section 6, Township 1 South, Range 1 East, Ute Meridian, described as follows:

The NE $\frac{1}{4}$, SW $\frac{1}{4}$, NW $\frac{1}{4}$, Section 6,

The SE $\frac{1}{4}$, SW $\frac{1}{4}$, NW $\frac{1}{4}$, Section 6,

The NW $\frac{1}{4}$, SW $\frac{1}{4}$, Section 6,

The SW $\frac{1}{4}$, SW $\frac{1}{4}$, NW $\frac{1}{4}$, EXCEPT: Beginning at a point being the West $\frac{1}{4}$, Section 6, T1S, R1E, Ute Meridian, thence North 536.25 feet, thence East 165.0 feet, thence South 210.25 feet, thence 261.8 feet along the arc of a 50 foot radius curve to the right, the chord of which bears South 50 feet, thence South 276.0 feet to the South line of the NW $\frac{1}{4}$ of Section 6, T1S, R1W, Ute Meridian, thence West 165.00 feet to the Point of Beginning,

ALSO EXCEPT: Beginning at the Northwest corner of the SW $\frac{1}{4}$, SW $\frac{1}{4}$, NW $\frac{1}{4}$, Section 6, T1S, R1W, Ute Meridian, thence East 165 feet, thence South 125 feet, thence West 165 feet, thence North 125 feet to the Point of Beginning.

ALL IN MESA COUNTY, COLORADO.

**FIRST AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF
GRAND VIEW SUBDIVISION**

Book 2199 Page 38
1742031 0408PM 01/08/96
MONIKA TODD CLK&REC MESA COUNTY CO

This FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF GRAND VIEW SUBDIVISION (the "First Amendment of Declaration") is made as of the 12th day of December 1995, by DONADA, INC. (the "Declarant") and the undersigned owners of lots in Grand View Subdivision, being more than ninety (90%) percent of the Grand View Subdivision lot owners.

A. Declarant has heretofore caused to be recorded in Book 2143 at Page 753, Mesa County, Colorado Records, a Declaration of Covenants, Conditions and Restrictions of Grand View Subdivision (the "Declaration").

B. In Article VII, Section 3 of the Declaration, Declarant expressly provided for amendment of the Declaration.

Declarant and the undersigned owners hereby amend the Declaration as follows:

1. Article V. Section 12. Recreational Vehicles is hereby amended to read as follows:

" No vehicles, boats, campers, trailers, snowmobiles, motorcycles or other such recreational vehicles, devices or equipment, or vehicles used for business (other than passenger type vehicles) shall be stored or permitted to remain on the premises except behind a six (6) foot privacy fence constructed from the front of the garage to the back of the lot as approved by the ACC."

2. General. The terms and provisions contained in this First Amendment to Declaration shall be in addition to the terms and provisions contained in the Declaration. All terms and provisions of the Declaration, including all definitions, except those terms and provisions specifically modified herein, shall remain applicable. All ownership and other rights, obligation and liabilities of owners of original Lots, Vacant Lots and Dwelling Units are hereby modified as described herein.

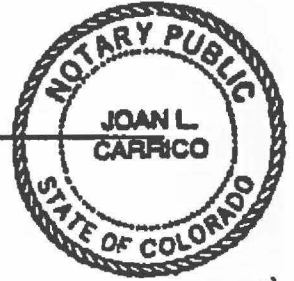
3. Reservation. Declarant and the undersigned owners hereby reserve the right to further amend the Declaration upon compliance with the provisions contained therein for amendment.

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 12th day of December 1995 by Don dela Motte, President of Donada, Inc.

WITNESS my hand and official seal.
My commission expires:

Joan L Carrico
Notary Public



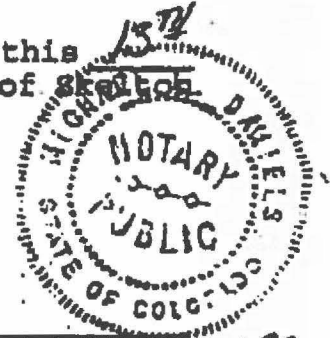
My Commission expires
October 24, 1998

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 15th day of DECEMBER 1995 by Doug Skelton, President of Skelton Construction, Inc., a Colorado corporation.

WITNESS my hand and official seal.
My commission expires:

Michael J. Daniele
Notary Public



EXPIRES 3-2-98

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 13th day of DECEMBER 1995 by Samuel J. Baldwin, President of Disraeli Development, Inc., a Colorado corporation.

WITNESS my hand and official seal.
My commission expires: 7-6-97

Samuel J. Baldwin
Notary Public



**SECOND AMENDMENT TO THE DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
GRAND VIEW SUBDIVISION**

BOOK 2244 PAGE 39

This SECOND AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF GRAND VIEW SUBDIVISION (the "Second Amendment of Declaration") is made as of the 31st day of May, 1996, by DONADA, INC. (the "Declarant") and the undersigned owners of lots in Grand View Subdivision, being more than ninety (90%) percent of the Grand View Subdivision lot owners.

A. Declarant has heretofore caused to be recorded in Book 2143 at Page 753, Mesa County, Colorado Records, a Declaration of Covenants, Conditions and Restrictions of Grand View Subdivision (the "Declaration").

B. In Article VII, Section 3 of the Declaration, Declarant expressly provided for amendment of the Declaration.

Declarant and the undersigned owners hereby amend the Declaration as follows:

1. Article 11. Section 4. Drainage Ditch is hereby added to read as follows:

" The drainage ditch at the south boundary of Grand View Subdivision is presently maintained by the Grand Valley Water Users Association ("GVWUA"). In the event such maintenance is not performed by GVWUA or a successor governmental or quasi-governmental entity, the Grand View Subdivision Homeowners Association, Inc. shall be responsible for the maintenance of the drainage ditch adjacent to the boundary of the subdivision."

2. General. The terms and provisions contained in this Second Amendment to Declaration shall be in addition to the terms and provisions contained in the Declaration. All terms and provisions of the Declaration, including all definitions, except those terms and provisions specifically modified herein, shall remain applicable. All ownership and other rights, obligation and liabilities of owners of original Lots, Vacant Lots and Dwelling Units are hereby modified as described herein.

3. Reservation. Declarant and the undersigned owners hereby reserve the right to further amend the Declaration upon compliance with the provisions contained therein for amendment.

4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

5. Conflicts between Documents. In case of conflict between the Declaration as amended hereby and the Articles and the Bylaws of the Association, the Declaration as amended shall control.

DATED as of the day and year first above written.

DONADA, INC.

By: Don dela Motte
Don dela Motte, President

SKELTON CONSTRUCTION, INC., a Colorado corporation

By: Doug Skelton
Doug Skelton, President

DISRAELI DEVELOPMENT, INC., a Colorado corporation

By: Samuel J. Baldwin
Samuel J. Baldwin, President

MONUMENT HOMES DEVELOPMENT, INC., a Colorado corporation

By: Dennis L. Granum
Dennis L. Granum, President

Dave G. McClelland
Dave G. McClelland

Tina C. McClelland
Tina C. McClelland

Dwain McClelland
Dwain McClelland

Jeffrey M. McClelland
Jeffrey M. McClelland

Bobbie J. McClelland
Bobbie J. McClelland

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

BOOK 2244 PAGE 41

The foregoing instrument was acknowledged before me this 13th day of June, 1996 by Don dela Motte, President of Donada, Inc.

WITNESS my hand and official seal.
My commission expires:

Juan L. Carrico
Notary Public



My Commission expires
October 24, 1998

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 6th day of JUNE, 1996 by Doug Skelton, President of Skelton Construction, Inc., a Colorado corporation.

WITNESS my hand and official seal.
My commission expires: 9-6-98



Michael J. Danville
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 13th day of June, 1996 by Samuel J. Baldwin, President of Disraeli Development, Inc., a Colorado corporation.

WITNESS my hand and official seal.
My commission expires: 7-6-97

Bonnie Jean Beckstein
Notary Public Bonnie Jean Beckstein



STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 31st day of May, 1996 by Dennis L. Granum, President of Monument Homes Developments, Inc. a Colorado corporation.

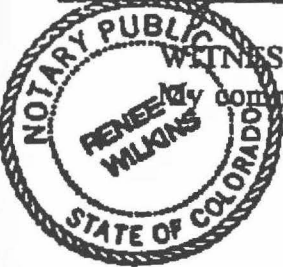


WITNESS my hand and official seal.
My commission expires: 12-16-99

Renee C. Wilkins
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 31st day of May, 1996 by Dave G. McClelland and Tina C. McClelland.

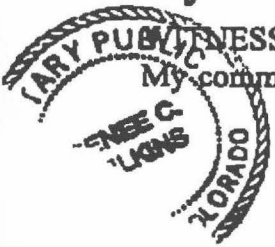


WITNESS my hand and official seal.
My commission expires: 12-16-99

Renee C. Wilkins
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 31st day of May, 1996 by Dwain McClelland.



WITNESS my hand and official seal.
My commission expires: 12-16-99

Renee C. Wilkins
Notary Public

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement" or "Agreement") are Donada, Inc. ("the Developer") and **THE CITY OF GRAND JUNCTION, Colorado** ("the City" or "City").

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

2. **Effective Date:** The Effective Date of the Agreement will be the date that this agreement is signed which shall be no sooner than recordation of the final plat or final plan approval whichever first occurs.

RECITALS

The Developer seeks permission to develop property within the City to be known as Grand View Subdivision, Filings No. Five and Six, which property is more particularly described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Property and limiting the harmful effects of substandard developments. The purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself and is not executed for the benefit of materialmen, laborers, or others providing work, services or material to the Developer and/or the Property or for the benefit of the owners, purchasers or users of the Property. The mutual promises, covenants, and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and the City's land development ordinances.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer will design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit B attached and incorporated by this reference ("the Improvements" or "Improvements"). The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. The hourly rate of "in-house" City inspection services is \$45.00 per hour. The scope of this project is such that the City may have to engage independent consultant(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others for which Developer is responsible hereunder. The Developer's obligation to complete the improvements is and will be independent of any obligations of the City contained herein.

4. **Security:** To secure the performance of its obligations under this Agreement the Developer shall supply a guarantee in a form and with terms acceptable to the City. A copy of which or a memorandum thereof is attached as Exhibit C.

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

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

7. **Commencement, Completion and Abandonment Periods:** The Developer will commence work on the Improvements within 14 days from the Effective Date of this Agreement _____ (set date) ("the Commencement Period") and the Improvements, each and every one of them, shall be completed by the end of the _____ month from the Effective Date of this Agreement _____ (set date) (the "Completion Period"). The Developer shall not cease construction activities for any period of more than 60 consecutive days ("the Abandonment Period").

8. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations in effect at the time of final approval when fulfilling its obligations under this Agreement. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after final development approval.

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

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

11. **Reduction of Security:** After the acceptance of any Improvement, the amount which the City is entitled to draw on the guarantee will be reduced by an amount equal to 90 percent of the estimated cost of such Improvement as shown in Exhibit B. At the written request of the Developer, the City will execute a certificate verifying the acceptance of the Improvement and waiving its right to draw on the guarantee to the extent of such amount. A Developer in default under this Agreement will have no right to such certification. Upon the acceptance of all of the Improvements the remaining balance that may be drawn under the guarantee shall be available to the City for 90 days after the expiration of the warranty period.

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

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

- a. Developer's failure to complete each portion of the Improvements in conformance with the time schedule provided in paragraph number seven (7.), above;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvement within the applicable correction period;
- c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; in such event the City may immediately declare a default without prior notification to the Developer;
- d. Notification to the City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer.

Unless specifically provided herein the City may not declare a default until written notice has been sent to the Developer at the address on file with the development application. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

14. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. Administrative expenses may include but are not limited to contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to the collection/completion of the Improvements. For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit B will be *prima facie* evidence of the minimum cost of completion, however, neither that amount or the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow or other guarantee establish the maximum amount of the Developer's liability.

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

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

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

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

19. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If relief is awarded to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.

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

21. **Integration:** This Agreement, together with the exhibits and attachments thereto constitutes the entire agreement between the parties and no statement(s), promise(s) or inducement(s) that is/are not contained in this Agreement will be binding on the parties.

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

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

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

25. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also will be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property. There is no prohibition on the right of the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City will constitute a release of the original Developer from his liability under this Agreement. When the Improvements are completed and approved by the City, the City agrees to state same in writing, with appropriate acknowledgments. The City will sign a release only after all warranty periods, as extended by litigation, repair or alteration work, have expired.

26. **Notice:** Any notice required or permitted by this Agreement will be deemed effective two calendar days after deposit with the United States Postal Service, first class, postage prepaid and addressed as follows:

If to Developer: Donada, Inc.
626 Grand View Drive
Grand Junction, CO 81506

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

27. **Recordation:** Developer will pay for all costs to record this Agreement or a Memorandum thereof in the Clerk and Recorder's Office of Mesa County, Colorado.

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

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

30. a. **Conditions of Acceptance:** The City shall have no responsibility or liability with respect to any street, or other improvement(s), notwithstanding the use of the same by the public, unless the street or other improvements shall have been finally accepted by the City.

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

c. Prior to requesting final acceptance of any street, storm drainage facility, or other required improvement(s), the Developer shall: (i) furnish to the City engineer as-built drawings in reproducible form, 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) provide written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon, in and under which the improvements have been constructed, or which are necessary for the improvements, are free from toxic, hazardous or other

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

EXHIBIT A

**OUTERBOUNDARY
GRAND VIEW SUBDIVISION
FILINGS NO. FIVE AND SIX**

**A REPLAT OF LOT 1, BLOCK 6
GRAND VIEW SUBDIVISION, FILING NO. THREE**

BEING THE PORTIONS OF SECTION 6, TOWNSHIP 1 SOUTH, RANGE 1 EAST, UTE MERIDIAN,
DESCRIBED AS FOLLOWS:

THE NE1/4 SW1/4 NW1/4, SECTION 6,
THE SE1/4 SW1/4 NW1/4, SECTION 6,
THE NW1/4 SW1/4, SECTION 6,

THE SW1/4 SW1/4 NW1/4 EXCEPT: BEGINNING AT A POINT BEING THE WEST 1/4, SECTION 6, T1S,
R1E, UTE MERIDIAN; THENCE NORTH A DISTANCE OF 536.25 FEET; THENCE EAST A DISTANCE OF
165.00 FEET; THENCE SOUTH A DISTANCE OF 210.25 FEET; THENCE 261.80 FEET ALONG THE ARC
OF A 50-FOOT RADIUS CURVE TO THE RIGHT, THE CHORD OF WHICH BEARS SOUTH 50.00 FEET;
THENCE SOUTH A DISTANCE OF 276.00 FEET TO THE SOUTH LINE OF THE NW1/4 OF SECTION 6,
T1S, R1E, UTE MERIDIAN; THENCE WEST A DISTANCE OF 165.00 FEET TO THE POINT OF
BEGINNING.

ALSO EXCEPT: BEGINNING AT THE NORTHWEST CORNER OF THE SW1/4 SW1/4 NW1/4, SECTION 6,
T1S, R1E, UTE MERIDIAN; THENCE EAST A DISTANCE OF 165.00 FEET; THENCE SOUTH A DISTANCE
OF 125.00 FEET; THENCE WEST A DISTANCE OF 165.00 FEET; THENCE NORTH A DISTANCE OF
125.00 FEET TO THE POINT OF BEGINNING.

EXCEPT GRAND VIEW SUBDIVISION FILING NO. ONE
EXCEPT GRAND VIEW SUBDIVISION FILING NO. TWO
EXCEPT GRAND VIEW SUBDIVISION FILING NO. THREE
EXCEPT GRAND VIEW SUBDIVISION FILING NO. FOUR

ALL OF THE ABOVE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WEST ONE-QUARTER CORNER (A 2-INCH ALUMINUM CAP L.S. 16835) OF SAID
SECTION 6, WHENCE THE SOUTH ONE-SIXTEENTH CORNER (MESA COUNTY SURVEY MARKER) ON
THE WEST LINE OF SAID SECTION 6, BEARS S 00°03'34" W, A DISTANCE OF 1322.65 FEET FOR A
BASIS OF BEARINGS, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; THENCE
S 89°56'01" E ALONG THE NORTH LINE OF SAID NW1/4 SW1/4 A DISTANCE OF 1271.66 FEET TO THE
SE CORNER OF NW SW OF SECTION 6 (A 2" ALUMINUM CAP L.S. 16835); THENCE
N 00° 00'43" E A DISTANCE OF 510.79 FEET TO THE POINT OF BEGINNING WHICH IS A NO. 5 REBAR
WITH AN ALUMINUM CAP LS 16835 ALONG NORTH BOUNDRY OF "GRAND VIEW SUBDIVISION
FILING NO. ONE."

THE FOLLOWING COURSES:

THENCE N 00° 00'43" E A DISTANCE OF 811.06 FEET TO THE NE CORNER NW SW OF SECTION 6, A

NO. 5 REBAR; THENCE N $00^{\circ} 01' 41''$ E A DISTANCE OF 1320.19 FEET TO THE NE CORNER OF NE SW NW OF SECTION 6, A B.L.M. BRASS CAP; THENCE N $89^{\circ} 51' 09''$ W A DISTANCE OF 262.37 FEET; THENCE S $00^{\circ} 00' 43''$ W A DISTANCE OF 1071.84 FEET; THENCE S $73^{\circ} 33' 55''$ W A DISTANCE OF 2.61 FEET; THENCE S $12^{\circ} 26' 19''$ E A DISTANCE OF 110.54 FEET; THENCE S $11^{\circ} 00' 11''$ E A DISTANCE OF 52.02 FEET; THENCE S $76^{\circ} 18' 55''$ W A DISTANCE OF 32.18 FEET; THENCE S $00^{\circ} 00' 43''$ W A DISTANCE OF 605.31 FEET; THENCE S $04^{\circ} 21' 28''$ E A DISTANCE OF 139.51 FEET; THENCE S $00^{\circ} 00' 43''$ W A DISTANCE OF 149.83 FEET; THENCE S $89^{\circ} 58' 12''$ E A DISTANCE OF 107.38 FEET; THENCE N $87^{\circ} 48' 06''$ E A DISTANCE 44.03 FEET; THENCE S $89^{\circ} 56' 01''$ E A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 12.72 ACRES MORE OR LESS.

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL

(Page 1 of 3)

DATE: 2/21/01
 NAME OF DEVELOPMENT: Grand View Filing 5 and Filing 6
 LOCATION: 28 Rd. North of F Rd.
 PRINTED NAME OF PERSON PREPARING: Richard L. Atkins

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
I. SANITARY SEWER				
1. Clearing and grubbing				
2. Cut and remove asphalt				
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	LF	3791	\$ 15.00	\$ 56,865.00
4. Sewer Services (incl. trenching, bedding & backfill)	EA	44	\$ 400.00	\$ 17,600.00
5. Sanitary sewer manhole(s)	EA	10	\$ 1,200.00	\$ 12,000.00
6. Connection to existing manhole(s)	EA	2	\$ 150.00	\$ 300.00
7. Aggregate Base Course				
8. Pavement replacement				
9. Driveway restoration				
10. Utility adjustments				
II. DOMESTIC WATER				
1. Clearing and grubbing				
2. Cut and remove asphalt				
3. Water Main (incl. excavation, bedding, backfill, valves, and appurtenances)	LF	2619	\$ 11.00	\$ 28,809.00
4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances)	EA	49	\$ 400.00	\$ 19,600.00
5. Connect to existing water line	EA	3	\$ 75.00	\$ 225.00
6. Aggregate Base Course				
7. Pavement Replacement				
8. Utility adjustments				
III. STREETS				
1. Clearing and grubbing	AC	12.72	\$ 1,000.00	\$ 12,720.00
2. Earthwork, including excavation and embankment construction	CY	10000	\$ 1.50	\$ 15,000.00
3. Utility relocations				
4. Aggregate sub-base course (square yard)				

5. Aggregate base course CL 6 (Ton)	SY	11940	\$ 7.00	\$ 83,580.00
6. Sub-grade stabilization				
7. Asphalt or concrete pavement (Ton)	SY	8044	\$ 7.50	\$ 60,330.00
8. Curb, gutter, & sidewalk (linear feet)	LF	4708	\$ 15.00	\$ 70,620.00
9. Driveway sections (square yard)				
10. Crosspans & fillets	SY	173	\$ 31.50	\$ 5,449.50
11. Retaining walls/structures				
12. Storm drainage system				
13. Signs and other traffic control devices	EA	9	\$ 150.00	\$ 1,350.00
14. Construction staking	LS	1	\$ 8,500.00	\$ 8,500.00
15. Dust control				
16. Street Lights (each)	EA	6	\$ 1,000.00	\$ 6,000.00
IV. LANDSCAPING				
1. Design/Architecture				
2. Earthwork, (includes top soil, fine grading, & berming)				
3. Hardscape features (includes walls, fencing, and paving)				
4. Plant material and planting				
5. Irrigation system	LS	1	\$ 15,400.00	\$ 15,400.00
6. Other features (incl. statues, water displays, park equipment, and outdoor furniture)				
7. Curbing				
8. Retaining walls and structures				
9. One year maintenance agreement				
V. MISCELLANEOUS				
1. Design/Engineering	LS	1	\$ 16,900.00	\$ 16,900.00
2. Surveying	LS	1	\$ 7,000.00	\$ 7,000.00
3. Developer's inspection costs	LS	1	\$ 5,500.00	\$ 5,500.00
4. Quality control testing	LS	1	\$ 6,000.00	\$ 6,000.00
5. Construction traffic control				
6. Rights-of-way/Easements				
7. City inspection fees @\$45./hr	LS	1	\$ 2,000.00	\$ 2,000.00
8. Permit fees				
9. Recording costs				
10. Bonds				
11. Newsletters				

13. Other _____
14. Other _____

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 451,748.50

SCHEDULE OF IMPROVEMENTS:

- I. SANITARY SEWER July 2001
- II. DOMESTIC WATER August 2001
- III. STREETS September 2001
- IV. LANDSCAPING September 2001
- V. MISCELLANEOUS September 2001

I have reviewed the estimated costs and time schedule shown above and based on the plans and the current costs of construction agree to construct and install the Improvements as required above.

Don de la Motte 2-28-01
SIGNATURE OF DEVELOPER date
(If corporation, to be signed by president and attested to by secretary together with the corporate seals.)

Reviewed and approved.

CITY ENGINEER date

COMMUNITY DEVELOPMENT date

EXHIBIT C

_____ (Bank Name)

Grand Junction, Colorado

Date: _____

IRREVOCABLE LETTER OF CREDIT

Dear Sirs:

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

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

All drafts drawn hereunder must be by sight draft marked: "Drawn under _____(bank name), Credit No. _____, dated _____."

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

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

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

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

_____ (Bank Name)

by: _____
Authorized Officer Signature

Attest:

by: _____ (Corporate Seal)
Authorized Officer Signature

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement" or "Agreement") are Donada, Inc. ("the Developer") and THE CITY OF GRAND JUNCTION, Colorado ("the City" or "City").

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

2. **Effective Date:** The Effective Date of the Agreement will be the date that this agreement is signed which shall be no sooner than recordation of the final plat or final plan approval whichever first occurs.

RECITALS

The Developer seeks permission to develop property within the City to be known as Grand View Subdivision, Filings No. Five and Six, which property is more particularly described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Property and limiting the harmful effects of substandard developments. The purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself and is not executed for the benefit of materialmen, laborers, or others providing work, services or material to the Developer and/or the Property or for the benefit of the owners, purchasers or users of the Property. The mutual promises, covenants, and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and the City's land development ordinances.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer will design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit B attached and incorporated by this reference ("the Improvements" or "Improvements"). The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. The hourly rate of "in-house" City inspection services is \$45.00 per hour. The scope of this project is such that the City may have to engage independent consultant(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others for which Developer is responsible hereunder. The Developer's obligation to complete the improvements is and will be independent of any obligations of the City contained herein.

4. **Security:** To secure the performance of its obligations under this Agreement the Developer shall supply a guarantee in a form and with terms acceptable to the City. A copy of which or a memorandum thereof is attached as Exhibit C.

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

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

7. **Commencement, Completion and Abandonment Periods:** The Developer will commence work on the Improvements within 14 days from the Effective Date of this Agreement ____ (set date) ("the Commencement Period") and the Improvements, each and every one of them, shall be completed by the end of the ____ month from the Effective Date of this Agreement ____ (set date) (the "Completion Period"). The Developer shall not cease construction activities for any period of more than 60 consecutive days ("the Abandonment Period").

8. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations in effect at the time of final approval when fulfilling its obligations under this Agreement. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after final development approval.

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

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

11. **Reduction of Security:** After the acceptance of any Improvement, the amount which the City is entitled to draw on the guarantee will be reduced by an amount equal to 90 percent of the estimated cost of such Improvement as shown in Exhibit B. At the written request of the Developer, the City will execute a certificate verifying the acceptance of the Improvement and waiving its right to draw on the guarantee to the extent of such amount. A Developer in default under this Agreement will have no right to such certification. Upon the acceptance of all of the Improvements the remaining balance that may be drawn under the guarantee shall be available to the City for 90 days after the expiration of the warranty period.

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

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

- a. Developer's failure to complete each portion of the Improvements in conformance with the time schedule provided in paragraph number seven (7.), above;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvement within the applicable correction period;
- c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; in such event the City may immediately declare a default without prior notification to the Developer;
- d. Notification to the City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer.

Unless specifically provided herein the City may not declare a default until written notice has been sent to the Developer at the address on file with the development application. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

14. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. Administrative expenses may include but are not limited to contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to the collection/completion of the Improvements. For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit B will be *prima facie* evidence of the minimum cost of completion, however, neither that amount or the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow or other guarantee establish the maximum amount of the Developer's liability.

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

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

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

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

19. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If relief is awarded to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.

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

21. **Integration:** This Agreement, together with the exhibits and attachments thereto constitutes the entire agreement between the parties and no statement(s), promise(s) or inducement(s) that is/are not contained in this Agreement will be binding on the parties.

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

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

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

25. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also will be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property. There is no prohibition on the right of the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City will constitute a release of the original Developer from his liability under this Agreement. When the Improvements are completed and approved by the City, the City agrees to state same in writing, with appropriate acknowledgments. The City will sign a release only after all warranty periods, as extended by litigation, repair or alteration work, have expired.

26. **Notice:** Any notice required or permitted by this Agreement will be deemed effective two calendar days after deposit with the United States Postal Service, first class, postage prepaid and addressed as follows:

If to Developer: Donada, Inc.
626 Grand View Drive
Grand Junction, CO 81506

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

27. **Recordation:** Developer will pay for all costs to record this Agreement or a Memorandum thereof in the Clerk and Recorder's Office of Mesa County, Colorado.

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

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

30. a. **Conditions of Acceptance:** The City shall have no responsibility or liability with respect to any street, or other improvement(s), notwithstanding the use of the same by the public, unless the street or other improvements shall have been finally accepted by the City.
- b. **Phased Development:** If the City allows a street to be constructed in stages, the Developer of the first one-half street opened for traffic shall construct the adjacent curb, gutter and sidewalk in the standard location and shall construct the required width of pavement from the edge of gutter on his side of the street to enable an initial two-way traffic operation without on-street parking. That Developer is also responsible for end-transitions, intersection paving, drainage facilities, and adjustments to existing utilities necessary to open the street to traffic.
- c. Prior to requesting final acceptance of any street, storm drainage facility, or other required improvement(s), the Developer shall: (i) furnish to the City engineer as-built drawings in reproducible form, 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) provide written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon, in and under which the improvements have been constructed, or which are necessary for the improvements, are free from toxic, hazardous or other

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

EXHIBIT A

**OUTERBOUNDARY
GRAND VIEW SUBDIVISION
FILINGS NO. FIVE AND SIX**

**A REPLAT OF LOT 1, BLOCK 6
GRAND VIEW SUBDIVISION, FILING NO. THREE**

BEING THE PORTIONS OF SECTION 6, TOWNSHIP 1 SOUTH, RANGE 1 EAST, UTE MERIDIAN,
DESCRIBED AS FOLLOWS:

THE NE1/4 SW1/4 NW1/4, SECTION 6,
THE SE1/4 SW1/4 NW1/4, SECTION 6,
THE NW1/4 SW1/4, SECTION 6,

THE SW1/4 SW1/4 NW1/4 EXCEPT: BEGINNING AT A POINT BEING THE WEST 1/4, SECTION 6, T1S,
R1E, UTE MERIDIAN; THENCE NORTH A DISTANCE OF 536.25 FEET; THENCE EAST A DISTANCE OF
165.00 FEET; THENCE SOUTH A DISTANCE OF 210.25 FEET; THENCE 261.80 FEET ALONG THE ARC
OF A 50-FOOT RADIUS CURVE TO THE RIGHT, THE CHORD OF WHICH BEARS SOUTH 50.00 FEET;
THENCE SOUTH A DISTANCE OF 276.00 FEET TO THE SOUTH LINE OF THE NW1/4 OF SECTION 6,
T1S, R1E, UTE MERIDIAN; THENCE WEST A DISTANCE OF 165.00 FEET TO THE POINT OF
BEGINNING.

ALSO EXCEPT: BEGINNING AT THE NORTHWEST CORNER OF THE SW1/4 SW1/4 NW1/4, SECTION 6,
T1S, R1E, UTE MERIDIAN; THENCE EAST A DISTANCE OF 165.00 FEET; THENCE SOUTH A DISTANCE
OF 125.00 FEET; THENCE WEST A DISTANCE OF 165.00 FEET; THENCE NORTH A DISTANCE OF
125.00 FEET TO THE POINT OF BEGINNING.

EXCEPT GRAND VIEW SUBDIVISION FILING NO. ONE
EXCEPT GRAND VIEW SUBDIVISION FILING NO. TWO
EXCEPT GRAND VIEW SUBDIVISION FILING NO. THREE
EXCEPT GRAND VIEW SUBDIVISION FILING NO. FOUR

ALL OF THE ABOVE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WEST ONE-QUARTER CORNER (A 2-INCH ALUMINUM CAP L.S. 16835) OF SAID
SECTION 6, WHENCE THE SOUTH ONE-SIXTEENTH CORNER (MESA COUNTY SURVEY MARKER) ON
THE WEST LINE OF SAID SECTION 6, BEARS S 00°03'34" W, A DISTANCE OF 1322.65 FEET FOR A
BASIS OF BEARINGS, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; THENCE
S 89°56'01" E ALONG THE NORTH LINE OF SAID NW1/4 SW1/4 A DISTANCE OF 1271.66 FEET TO THE
SE CORNER OF NW SW OF SECTION 6 (A 2" ALUMINUM CAP L.S. 16835); THENCE
N 00° 00'43" E A DISTANCE OF 510.79 FEET TO THE POINT OF BEGINNING WHICH IS A NO. 5 REBAR
WITH AN ALUMINUM CAP LS 16835 ALONG NORTH BOUNDRY OF "GRAND VIEW SUBDIVISION
FILING NO. ONE."

THE FOLLOWING COURSES:

THENCE N 00° 00'43" E A DISTANCE OF 811.06 FEET TO THE NE CORNER NW SW OF SECTION 6, A

NO. 5 REBAR; THENCE N 00° 01'41" E A DISTANCE OF 1320.19 FEET TO THE NE CORNER OF NE SW NW OF SECTION 6, A B.L.M. BRASS CAP; THENCE N 89° 51'09" W A DISTANCE OF 262.37 FEET; THENCE S 00° 00'43" W A DISTANCE OF 1071.84 FEET; THENCE S 73° 33'55" W A DISTANCE OF 2.61 FEET; THENCE S 12° 26'19" E A DISTANCE OF 110.54 FEET; THENCE S 11° 00'11" E A DISTANCE OF 52.02 FEET; THENCE S 76° 18'55" W A DISTANCE OF 32.18 FEET; THENCE S 00° 00'43" W A DISTANCE OF 605.31 FEET; THENCE S 04° 21'28" E A DISTANCE OF 139.51 FEET; THENCE S 00° 00'43" W A DISTANCE OF 149.83 FEET; THENCE S 89° 58'12" E A DISTANCE OF 107.38 FEET; THENCE N 87° 48'06" E A DISTANCE 44.03 FEET; THENCE S 89° 56'01" E A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 12.72 ACRES MORE OR LESS.

EXHIBIT "B"

REVISED IMPROVEMENTS LIST/DETAIL

(Page 1 of 3)

DATE: 3/25/01
 NAME OF DEVELOPMENT: Grand View Filing 5 and Filing 6
 LOCATION: 28 Rd. North of F Rd.
 PRINTED NAME OF PERSON PREPARING: Richard L. Atkins

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
I. SANITARY SEWER				
1. Clearing and grubbing				
2. Cut and remove asphalt				
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	LF	3791	\$ 18.00	\$ 68,238.00
4. Sewer Services (incl. trenching, bedding & backfill)	EA	44	\$ 400.00	\$ 17,600.00
5. Sanitary sewer manhole(s)	EA	10	\$ 1,600.00	\$ 16,000.00
6. Connection to existing manhole(s)	EA	2	\$ 150.00	\$ 300.00
7. Aggregate Base Course				
8. Pavement replacement				
9. Driveway restoration				
10. Utility adjustments				
II. DOMESTIC WATER				
1. Clearing and grubbing				
2. Cut and remove asphalt				
3. Water Main (incl. excavation, bedding, backfill, valves, and appurtenances)	LF	2619	\$ 11.00	\$ 28,809.00
4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances)	EA	49	\$ 400.00	\$ 19,600.00
5. Connect to existing water line	EA	3	\$ 75.00	\$ 225.00
6. Aggregate Base Course				
7. Pavement Replacement				
8. Utility adjustments				
III. STREETS				
1. Clearing and grubbing	AC	12.72	\$ 1,000.00	\$ 12,720.00
2. Earthwork, including excavation and embankment construction	CY	10000	\$ 1.50	\$ 15,000.00
3. Utility relocations				
4. Aggregate sub-base course (square yard)				

5. Aggregate base course CL 6 (Ton)	SY	11940	\$ 7.00	\$ 83,580.00
6. Sub-grade stabilization				
7. Asphalt or concrete pavement (Ton)	SY	8044	\$ 7.50	\$ 60,330.00
8. Curb, gutter, & sidewalk (linear feet)	LF	4708	\$ 15.00	\$ 70,620.00
9. Driveway sections (square yard)				
10. Crosspans & fillets	SY	173	\$ 31.50	\$ 5,449.50
11. Retaining walls/structures				
12. Storm drainage system				
13. Signs and other traffic control devices	EA	9	\$ 150.00	\$ 1,350.00
14. Construction staking	LS	1	\$ 8,500.00	\$ 8,500.00
15. Dust control				
16. Street Lights (each)	EA	6	\$ 1,000.00	\$ 6,000.00
IV. LANDSCAPING				
1. Design/Architecture				
2. Earthwork, (includes top soil, fine grading, & berming)				
3. Hardscape features (includes walls, fencing, and paving)				
4. Plant material and planting				
5. Irrigation system	LS	1	\$ 15,400.00	\$ 15,400.00
6. Other features (incl. statues, water displays, park equipment, and outdoor furniture)				
7. Curbing				
8. Retaining walls and structures				
9. One year maintenance agreement				
V. MISCELLANEOUS				
1. Design/Engineering	LS	1	\$ 16,900.00	\$ 16,900.00
2. Surveying	LS	1	\$ 7,000.00	\$ 7,000.00
3. Developer's inspection costs	LS	1	\$ 5,500.00	\$ 5,500.00
4. Quality control testing	LS	1	\$ 6,000.00	\$ 6,000.00
5. Construction traffic control				
6. Rights-of-way/Easements				
7. City inspection fees @\$45./hr	LS	1	\$ 2,000.00	\$ 2,000.00
8. Permit fees				
9. Recording costs				
10. Bonds				
11. Newsletters				

- 12. General Construction Supervision _____
- 13. Other _____
- 14. Other _____

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 467,121.50

SCHEDULE OF IMPROVEMENTS

I. SANITARY SEWER	July 2001
II. DOMESTIC WATER	August 2001
III. STREETS	September 2001
IV. LANDSCAPING	September 2001
V. MISCELLANEOUS	September 2001

I have reviewed the estimated costs and schedule shown above and based on the plans and the current costs of construction agree to construct and install the Improvements as required above.

Ada delo Motte
SIGNATURE OF DEVELOPER

5-1-01
date

attested by:
Ada delo Motte, Sec.

(If corporation, to be signed by president and attested to by secretary together with the corporate seals.)

Reviewed and approved.

CITY ENGINEER date

COMMUNITY DEVELOPMENT date

QUIT CLAIM DEED

2067588 07/24/02 1120AM
MONIKA TODD CLK&REC MESA COUNTY CO
REG FEE \$5.00
DOCUMENTARY FEE \$No FEE

DONADA, INC., a Colorado corporation, whose address is 626 Grand View Drive, Grand Junction, Mesa County, CO 81506 ("Grantor"), for the consideration of Ten Dollars and Other Good and Valuable Consideration, in hand paid, hereby sells and quit claims to GRAND VIEW HOMEOWNERS ASSOCIATION, INC. whose legal address is 626 Grand View Drive, Grand Junction, Mesa County, CO 81506 ("Grantee"), the following real property in the County of Mesa, and State of Colorado, to wit:

A perpetual and non-exclusive easement for the installation, operation and maintenance of an irrigation system serving Grand View Subdivision described as set forth in the plat for Grand View Subdivision, Filing 6.

with all its appurtenances, and subject to 2002 general taxes, payable in 2003, and all subsequent taxes; easements, rights-of-way, restrictions, covenants, conditions and reservations of record or in use.

Signed this 18th day of July, 2002.

DONADA, INC.

By: Donald D. dela Motte
Donald D. dela Motte, President

STATE OF COLORADO)
 La Plata)ss.
COUNTY OF ~~MESA~~)

The foregoing instrument was acknowledged before me this 18th day of July, 2002, by Donald D. dela Motte, the President of Donada, Inc., a Colorado corporation.

My commission expires August 31, 2004
Witness my hand and official seal.



Jane E. Zwisler
Notary Public



REVIEWED AFTER RECORDING
BY COMMUNITY DEVELOPMENT

bit
Initials

5.00 NO

Return to:
City of Grand Junction
Community Development Dept.
File #: FP-2001-058
Planner: Bill Nebeker

J. Richard Livingston, Esq.
Golden, Mumby, Summers, et al.
2808 North Avenue, Suite 400
P. O. Box 398
Grand Junction, CO 81502

**SECOND AMENDMENT TO THE DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
GRAND VIEW SUBDIVISION**

BOOK 2244 PAGE 39

This SECOND AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF GRAND VIEW SUBDIVISION (the "Second Amendment of Declaration") is made as of the 31st day of May, 1996, by DONADA, INC. (the "Declarant") and the undersigned owners of lots in Grand View Subdivision, being more than ninety (90%) percent of the Grand View Subdivision lot owners.

A. Declarant has heretofore caused to be recorded in Book 2143 at Page 753, Mesa County, Colorado Records, a Declaration of Covenants, Conditions and Restrictions of Grand View Subdivision (the "Declaration").

B. In Article VII, Section 3 of the Declaration, Declarant expressly provided for amendment of the Declaration.

Declarant and the undersigned owners hereby amend the Declaration as follows:

1. Article 11. Section 4. Drainage Ditch is hereby added to read as follows:

" The drainage ditch at the south boundary of Grand View Subdivision is presently maintained by the Grand Valley Water Users Association ("GVWUA"). In the event such maintenance is not performed by GVWUA or a successor governmental or quasi-governmental entity, the Grand View Subdivision Homeowners Association, Inc. shall be responsible for the maintenance of the drainage ditch adjacent to the boundary of the subdivision."

2. General. The terms and provisions contained in this Second Amendment to Declaration shall be in addition to the terms and provisions contained in the Declaration. All terms and provisions of the Declaration, including all definitions, except those terms and provisions specifically modified herein, shall remain applicable. All ownership and other rights, obligation and liabilities of owners of original Lots, Vacant Lots and Dwelling Units are hereby modified as described herein.

3. Reservation. Declarant and the undersigned owners hereby reserve the right to further amend the Declaration upon compliance with the provisions contained therein for amendment.

4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

5. Conflicts between Documents. In case of conflict between the Declaration as amended hereby and the Articles and the Bylaws of the Association, the Declaration as amended shall control.

DATED as of the day and year first above written.

DONADA, INC.

By: Don dela Motte
Don dela Motte, President

SKELTON CONSTRUCTION, INC., a Colorado corporation

By: Doug Skelton
Doug Skelton, President

DISRAELI DEVELOPMENT, INC., a Colorado corporation

By: Samuel J. Baldwin
Samuel J. Baldwin, President

MONUMENT HOMES DEVELOPMENT, INC., a Colorado corporation

By: Dennis L. Granum
Dennis L. Granum, President

Dave G. McClelland
Dave G. McClelland

Tina C. McClelland
Tina C. McClelland

Dwain McClelland
Dwain McClelland

Jeffrey M. McClelland
Jeffrey M. McClelland

Bobbie J. McClelland
Bobbie J. McClelland

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

BOOK 2244 PAGE 41

The foregoing instrument was acknowledged before me this 13th day of June, 1996 by Don dela Motte, President of Donada, Inc.

WITNESS my hand and official seal.
My commission expires:

Juan R. Carrico
Notary Public



My Commission expires
October 24, 1998

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 6th day of JUNE, 1996 by Doug Skelton, President of Skelton Construction, Inc., a Colorado corporation.

WITNESS my hand and official seal.
My commission expires: 9-6-98

Michael J. Daniels
Notary Public



STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 13th day of June, 1996 by Samuel J. Baldwin, President of Disraeli Development, Inc., a Colorado corporation.

WITNESS my hand and official seal.
My commission expires: 7-6-97

Bonnie Jean Beckstein
Notary Public Bonnie Jean Beckstein



STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 3/5th day of May, 1996 by Dennis L. Granum, President of Monument Homes Developments, Inc., a Colorado corporation.

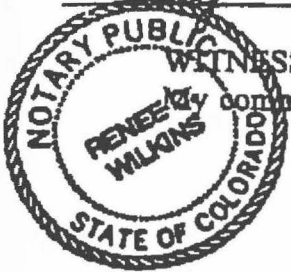


WITNESS my hand and official seal.
My commission expires: 12-16-99

Renee C. Wilkins
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 3/5th day of May, 1996 by Dave G. McClelland and Tina C. McClelland.

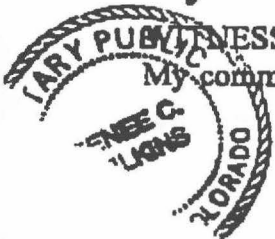


WITNESS my hand and official seal.
My commission expires: 12-16-99

Renee C. Wilkins
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 3/5th day of May, 1996 by Dwain McClelland.



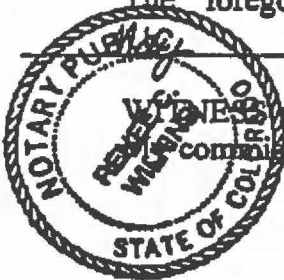
WITNESS my hand and official seal.
My commission expires: 12-16-99

Renee C. Wilkins
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

Book 2244 PAGE 43

The foregoing instrument was acknowledged before me this 3rd day of _____, 1996 by Jeffrey M. McClelland and Bobbie J. McClelland.



Witness my hand and official seal.
commission expires: 12-16-99

Renee C. Wilkins
Notary Public

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement" or "Agreement") are Donada, Inc. ("the Developer") and **THE CITY OF GRAND JUNCTION, Colorado** ("the City" or "City").

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

2. **Effective Date:** The Effective Date of the Agreement will be the date that this agreement is signed which shall be no sooner than recordation of the final plat or final plan approval whichever first occurs.

RECITALS

The Developer seeks permission to develop property within the City to be known as Grand View Subdivision, Filings No. Five and Six, which property is more particularly described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Property and limiting the harmful effects of substandard developments. The purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself and is not executed for the benefit of materialmen, laborers, or others providing work, services or material to the Developer and/or the Property or for the benefit of the owners, purchasers or users of the Property. The mutual promises, covenants, and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and the City's land development ordinances.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer will design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit B attached and incorporated by this reference ("the Improvements" or "Improvements"). The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. The hourly rate of "in-house" City inspection services is \$45.00 per hour. The scope of this project is such that the City may have to engage independent consultant(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others for which Developer is responsible hereunder. The Developer's obligation to complete the improvements is and will be independent of any obligations of the City contained herein.

4. **Security:** To secure the performance of its obligations under this Agreement the Developer shall supply a guarantee in a form and with terms acceptable to the City. A copy of which or a memorandum thereof is attached as Exhibit C.

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

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

7. **Commencement, Completion and Abandonment Periods:** The Developer will commence work on the Improvements within 14 days from the Effective Date of this Agreement _____ (set date) ("the Commencement Period") and the Improvements, each and every one of them, shall be completed by the end of the ____ month from the Effective Date of this Agreement _____ (set date) (the "Completion Period"). The Developer shall not cease construction activities for any period of more than 60 consecutive days ("the Abandonment Period").

8. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations in effect at the time of final approval when fulfilling its obligations under this Agreement. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after final development approval.

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

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

11. **Reduction of Security:** After the acceptance of any Improvement, the amount which the City is entitled to draw on the guarantee will be reduced by an amount equal to 90 percent of the estimated cost of such Improvement as shown in Exhibit B. At the written request of the Developer, the City will execute a certificate verifying the acceptance of the Improvement and waiving its right to draw on the guarantee to the extent of such amount. A Developer in default under this Agreement will have no right to such certification. Upon the acceptance of all of the Improvements the remaining balance that may be drawn under the guarantee shall be available to the City for 90 days after the expiration of the warranty period.

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

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

- a. Developer's failure to complete each portion of the Improvements in conformance with the time schedule provided in paragraph number seven (7.), above;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvement within the applicable correction period;
- c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; in such event the City may immediately declare a default without prior notification to the Developer;
- d. Notification to the City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer.

Unless specifically provided herein the City may not declare a default until written notice has been sent to the Developer at the address on file with the development application. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

14. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. Administrative expenses may include but are not limited to contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to the collection/completion of the Improvements. For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit B will be *prima facie* evidence of the minimum cost of completion, however, neither that amount or the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow or other guarantee establish the maximum amount of the Developer's liability.

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

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

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

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

19. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If relief is awarded to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.

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

21. **Integration:** This Agreement, together with the exhibits and attachments thereto constitutes the entire agreement between the parties and no statement(s), promise(s) or inducement(s) that is/are not contained in this Agreement will be binding on the parties.

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

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

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

25. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also will be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property. There is no prohibition on the right of the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City will constitute a release of the original Developer from his liability under this Agreement. When the Improvements are completed and approved by the City, the City agrees to state same in writing, with appropriate acknowledgments. The City will sign a release only after all warranty periods, as extended by litigation, repair or alteration work, have expired.

26. **Notice:** Any notice required or permitted by this Agreement will be deemed effective two calendar days after deposit with the United States Postal Service, first class, postage prepaid and addressed as follows:

If to Developer: Donada, Inc.
626 Grand View Drive
Grand Junction, CO 81506

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

27. **Recordation:** Developer will pay for all costs to record this Agreement or a Memorandum thereof in the Clerk and Recorder's Office of Mesa County, Colorado.

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

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

30. a. **Conditions of Acceptance:** The City shall have no responsibility or liability with respect to any street, or other improvement(s), notwithstanding the use of the same by the public, unless the street or other improvements shall have been finally accepted by the City.

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

c. Prior to requesting final acceptance of any street, storm drainage facility, or other required improvement(s), the Developer shall: (i) furnish to the City engineer as-built drawings in reproducible form, 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) provide written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon, in and under which the improvements have been constructed, or which are necessary for the improvements, are free from toxic, hazardous or other

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

EXHIBIT A

**OUTERBOUNDARY
GRAND VIEW SUBDIVISION
FILINGS NO. FIVE AND SIX**

**A REPLAT OF LOT 1, BLOCK 6
GRAND VIEW SUBDIVISION, FILING NO. THREE**

BEING THE PORTIONS OF SECTION 6, TOWNSHIP 1 SOUTH, RANGE 1 EAST, UTE MERIDIAN,
DESCRIBED AS FOLLOWS:

THE NE1/4 SW1/4 NW1/4, SECTION 6,
THE SE1/4 SW1/4 NW1/4, SECTION 6,
THE NW1/4 SW1/4, SECTION 6,

THE SW1/4 SW1/4 NW1/4 EXCEPT: BEGINNING AT A POINT BEING THE WEST 1/4, SECTION 6, T1S,
R1E, UTE MERIDIAN; THENCE NORTH A DISTANCE OF 536.25 FEET; THENCE EAST A DISTANCE OF
165.00 FEET; THENCE SOUTH A DISTANCE OF 210.25 FEET; THENCE 261.80 FEET ALONG THE ARC
OF A 50-FOOT RADIUS CURVE TO THE RIGHT, THE CHORD OF WHICH BEARS SOUTH 50.00 FEET;
THENCE SOUTH A DISTANCE OF 276.00 FEET TO THE SOUTH LINE OF THE NW1/4 OF SECTION 6,
T1S, R1E, UTE MERIDIAN; THENCE WEST A DISTANCE OF 165.00 FEET TO THE POINT OF
BEGINNING.

ALSO EXCEPT: BEGINNING AT THE NORTHWEST CORNER OF THE SW1/4 SW1/4 NW1/4, SECTION 6,
T1S, R1E, UTE MERIDIAN; THENCE EAST A DISTANCE OF 165.00 FEET; THENCE SOUTH A DISTANCE
OF 125.00 FEET; THENCE WEST A DISTANCE OF 165.00 FEET; THENCE NORTH A DISTANCE OF
125.00 FEET TO THE POINT OF BEGINNING.

EXCEPT GRAND VIEW SUBDIVISION FILING NO. ONE
EXCEPT GRAND VIEW SUBDIVISION FILING NO. TWO
EXCEPT GRAND VIEW SUBDIVISION FILING NO. THREE
EXCEPT GRAND VIEW SUBDIVISION FILING NO. FOUR

ALL OF THE ABOVE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WEST ONE-QUARTER CORNER (A 2-INCH ALUMINUM CAP L.S. 16835) OF SAID
SECTION 6, WHENCE THE SOUTH ONE-SIXTEENTH CORNER (MESA COUNTY SURVEY MARKER) ON
THE WEST LINE OF SAID SECTION 6, BEARS S 00°03'34" W, A DISTANCE OF 1322.65 FEET FOR A
BASIS OF BEARINGS, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; THENCE
S 89°56'01" E ALONG THE NORTH LINE OF SAID NW1/4 SW1/4 A DISTANCE OF 1271.66 FEET TO THE
SE CORNER OF NW SW OF SECTION 6 (A 2" ALUMINUM CAP L.S. 16835); THENCE
N 00° 00'43" E A DISTANCE OF 510.79 FEET TO THE POINT OF BEGINNING WHICH IS A NO. 5 REBAR
WITH AN ALUMINUM CAP LS 16835 ALONG NORTH BOUNDRY OF "GRAND VIEW SUBDIVISION
FILING NO. ONE."

THE FOLLOWING COURSES:

THENCE N 00° 00'43" E A DISTANCE OF 811.06 FEET TO THE NE CORNER NW SW OF SECTION 6, A

NO. 5 REBAR; THENCE N $00^{\circ} 01' 41''$ E A DISTANCE OF 1320.19 FEET TO THE NE CORNER OF NE SW NW OF SECTION 6, A B.L.M. BRASS CAP; THENCE N $89^{\circ} 51' 09''$ W A DISTANCE OF 262.37 FEET; THENCE S $00^{\circ} 00' 43''$ W A DISTANCE OF 1071.84 FEET; THENCE S $73^{\circ} 33' 55''$ W A DISTANCE OF 2.61 FEET; THENCE S $12^{\circ} 26' 19''$ E A DISTANCE OF 110.54 FEET; THENCE S $11^{\circ} 00' 11''$ E A DISTANCE OF 52.02 FEET; THENCE S $76^{\circ} 18' 55''$ W A DISTANCE OF 32.18 FEET; THENCE S $00^{\circ} 00' 43''$ W A DISTANCE OF 605.31 FEET; THENCE S $04^{\circ} 21' 28''$ E A DISTANCE OF 139.51 FEET; THENCE S $00^{\circ} 00' 43''$ W A DISTANCE OF 149.83 FEET; THENCE S $89^{\circ} 58' 12''$ E A DISTANCE OF 107.38 FEET; THENCE N $87^{\circ} 48' 06''$ E A DISTANCE 44.03 FEET; THENCE S $89^{\circ} 56' 01''$ E A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 12.72 ACRES MORE OR LESS.

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL

(Page 1 of 3)

DATE: 2/21/01
 NAME OF DEVELOPMENT: Grand View Filing 5 and Filing 6
 LOCATION: 28 Rd. North of F Rd.
 PRINTED NAME OF PERSON PREPARING: Richard L. Atkins

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
I. SANITARY SEWER				
1. Clearing and grubbing				
2. Cut and remove asphalt				
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	LF	3791	\$ 15.00	\$ 56,865.00
4. Sewer Services (incl. trenching, bedding & backfill)	EA	44	\$ 400.00	\$ 17,600.00
5. Sanitary sewer manhole(s)	EA	10	\$ 1,200.00	\$ 12,000.00
6. Connection to existing manhole(s)	EA	2	\$ 150.00	\$ 300.00
7. Aggregate Base Course				
8. Pavement replacement				
9. Driveway restoration				
10. Utility adjustments				
II. DOMESTIC WATER				
1. Clearing and grubbing				
2. Cut and remove asphalt				
3. Water Main (incl. excavation, bedding, backfill, valves, and appurtenances)	LF	2619	\$ 11.00	\$ 28,809.00
4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances)	EA	49	\$ 400.00	\$ 19,600.00
5. Connect to existing water line	EA	3	\$ 75.00	\$ 225.00
6. Aggregate Base Course				
7. Pavement Replacement				
8. Utility adjustments				
III. STREETS				
1. Clearing and grubbing	AC	12.72	\$ 1,000.00	\$ 12,720.00
2. Earthwork, including excavation and embankment construction	CY	10000	\$ 1.50	\$ 15,000.00
3. Utility relocations				
4. Aggregate sub-base course (square yard)				

5. Aggregate base course CL 6 (Ton)	SY	11940	\$ 7.00	\$ 83,580.00
6. Sub-grade stabilization				
7. Asphalt or concrete pavement (Ton)	SY	8044	\$ 7.50	\$ 60,330.00
8. Curb, gutter, & sidewalk (linear feet)	LF	4708	\$ 15.00	\$ 70,620.00
9. Driveway sections (square yard)				
10. Crosspans & fillets	SY	173	\$ 31.50	\$ 5,449.50
11. Retaining walls/structures				
12. Storm drainage system				
13. Signs and other traffic control devices	EA	9	\$ 150.00	\$ 1,350.00
14. Construction staking	LS	1	\$ 8,500.00	\$ 8,500.00
15. Dust control				
16. Street Lights (each)	EA	6	\$ 1,000.00	\$ 6,000.00
IV. LANDSCAPING				
1. Design/Architecture				
2. Earthwork, (includes top soil, fine grading, & berming)				
3. Hardscape features (includes walls, fencing, and paving)				
4. Plant material and planting				
5. Irrigation system	LS	1	\$ 15,400.00	\$ 15,400.00
6. Other features (incl. statues, water displays, park equipment, and outdoor furniture)				
7. Curbing				
8. Retaining walls and structures				
9. One year maintenance agreement				
V. MISCELLANEOUS				
1. Design/Engineering	LS	1	\$ 16,900.00	\$ 16,900.00
2. Surveying	LS	1	\$ 7,000.00	\$ 7,000.00
3. Developer's inspection costs	LS	1	\$ 5,500.00	\$ 5,500.00
4. Quality control testing	LS	1	\$ 6,000.00	\$ 6,000.00
5. Construction traffic control				
6. Rights-of-way/Easements				
7. City inspection fees @\$45./hr	LS	1	\$ 2,000.00	\$ 2,000.00
8. Permit fees				
9. Recording costs				
10. Bonds				
11. Newsletters				

13. Other _____
14. Other _____

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 451,748.50

SCHEDULE OF IMPROVEMENTS:

- I. SANITARY SEWER July 2001
- II. DOMESTIC WATER August 2001
- III. STREETS September 2001
- IV. LANDSCAPING September 2001
- V. MISCELLANEOUS September 2001

I have reviewed the estimated costs and time schedule shown above and based on the plans and the current costs of construction agree to construct and install the Improvements as required above.

Don delMottis 2-28-01
SIGNATURE OF DEVELOPER date

(If corporation, to be signed by president and attested to by secretary together with the corporate seals.)

Reviewed and approved.

CITY ENGINEER date

COMMUNITY DEVELOPMENT date

EXHIBIT C

_____ (Bank Name)

Grand Junction, Colorado

Date: _____

IRREVOCABLE LETTER OF CREDIT

Dear Sirs:

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

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

All drafts drawn hereunder must be by sight draft marked: "Drawn under _____(bank name), Credit No. _____, dated _____."

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

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

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

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

_____ (Bank Name)

by: _____
Authorized Officer Signature

Attest:

by: _____ (Corporate Seal)
Authorized Officer Signature



Parks and Recreation Department
 City of Grand Junction
 1340 Gunnison Avenue
 Grand Junction CO 81501
 (970) 244-FUNN - FAX (970) 242-1637

FILE NO. 67-2011-008

PROPOSAL: _____
 LOCATION: _____
 ENGINEER/REPRESENTATIVE: _____
 PETITIONER: _____
 ADDRESS: _____
 PHONE NO.: _____
 FEE CALCULATION: _____

ACCOUNT NUMBER - 105-792-47510-40-00000

44 UNITS AT \$ 25 /UNIT = \$ 1100
 APPRAISED VALUE AT _____ % = \$ _____

AMOUNT PAID \$ 1100 DATE 7-4-01 INITIALS BN

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

14828



City of Grand Junction
 Department of Community Development

Date 7-4-01
 Payee Name GUNNISON INC
 Address 626 GRANDVIEW DR GJ CO 81506
 Telephone _____
 Project Address/File/Name Gunnison 516

* PLEASE CIRCLE ALL THAT APPLY

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

Treasurer Receipt No. _____ TOTAL \$ 9000
 (White: Customer) (Canary: Finance) (Pink: Planning) (Goldenrod: File)

SUBDIVISION *Grand View Filing 6*

DATE *7-24-02*

OF LOTS *23 lots*

BK/PG *19, 81-82*

ACRES *6.39 acres*

ZONE *RMF-5*

OWNER *Donada, Inc.*

LOCATION *626 Grand View Dr*

SECT/TWP/RNG *6, T1S, R1E*

OPEN SPACE FEES *Ø*

FILE # *FP-2001-058*

SIF *292.00*

TCP *500.00*

TRAFFIC *22*

CENSUS *10*

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,

GRAND VIEW SUBDIVISION FILING NO. SIX

Situated in the WEST HALF of Section 6

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 8th day of JULY, 2002.

City of Grand Junction,
Department of Public Works & Utilities

By: 

Mark Relph
Director of Public Works and Utilities

Recorded in Mesa County

Date: 7-24-02

Plat Book: 19 Page: 81-82

Drawer: mm-49

2067587 07/24/02 1120AM
MONIKA TODD CLK® MESA COUNTY CO
REC FEE \$20.00

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:

2016815 09/26/01 0948AM
MONIKA TODD CLK&REC MESA COUNTY CO
REC FEE \$20.00

THIS IS TO CERTIFY that the herein named Subdivision Plat,

GRAND VIEW SUBDIVISION FILING No. FIVE

Situated in the NW 1/4 SW 1/4 & SW 1/4 NW 1/4 of Section 6,

Township 1 SOUTH, Range 1 EAST,

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 13 day of APRIL, 2001.

City of Grand Junction,
Department of Public Works & Utilities

By: 

Mark Relph
Director of Public Works & Utilities

Recorded in Mesa County

Date: 9-26-01

Plat Book: 18 Page: 234, 235

Drawer: LL 27

g:\share\special\platcert.doc

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement" or "Agreement") are Donada, Inc. ("the Developer") and THE CITY OF GRAND JUNCTION, Colorado ("the City" or "City").

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

2. **Effective Date:** The Effective Date of the Agreement will be the date that this agreement is signed which shall be no sooner than recordation of the final plat or final plan approval whichever first occurs.

RECITALS

The Developer seeks permission to develop property within the City to be known as Grand View Subdivision, Filings No. Five and Six, which property is more particularly described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Property and limiting the harmful effects of substandard developments. The purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself and is not executed for the benefit of materialmen, laborers, or others providing work, services or material to the Developer and/or the Property or for the benefit of the owners, purchasers or users of the Property. The mutual promises, covenants, and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and the City's land development ordinances.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer will design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit B attached and incorporated by this reference ("the Improvements" or "Improvements"). The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. The hourly rate of "in-house" City inspection services is \$45.00 per hour. The scope of this project is such that the City may have to engage independent consultant(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others for which Developer is responsible hereunder. The Developer's obligation to complete the improvements is and will be independent of any obligations of the City contained herein.

4. **Security:** To secure the performance of its obligations under this Agreement the Developer shall supply a guarantee in a form and with terms acceptable to the City. A copy of which or a memorandum thereof is attached as Exhibit C.

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

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

7. **Commencement, Completion and Abandonment Periods:** The Developer will commence work on the Improvements within 14 days from the Effective Date of this Agreement _____(set date) ("the Commencement Period") and the Improvements, each and every one of them, shall be completed by the end of the _____ month from the Effective Date of this Agreement _____(set date) (the "Completion Period"). The Developer shall not cease construction activities for any period of more than 60 consecutive days ("the Abandonment Period").

8. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations in effect at the time of final approval when fulfilling its obligations under this Agreement. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after final development approval.

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

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

11. **Reduction of Security:** After the acceptance of any Improvement, the amount which the City is entitled to draw on the guarantee will be reduced by an amount equal to 90 percent of the estimated cost of such Improvement as shown in Exhibit B. At the written request of the Developer, the City will execute a certificate verifying the acceptance of the Improvement and waiving its right to draw on the guarantee to the extent of such amount. A Developer in default under this Agreement will have no right to such certification. Upon the acceptance of all of the Improvements the remaining balance that may be drawn under the guarantee shall be available to the City for 90 days after the expiration of the warranty period.

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

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

- a. Developer's failure to complete each portion of the Improvements in conformance with the time schedule provided in paragraph number seven (7.), above;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvement within the applicable correction period;
- c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; in such event the City may immediately declare a default without prior notification to the Developer;
- d. Notification to the City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer.

Unless specifically provided herein the City may not declare a default until written notice has been sent to the Developer at the address on file with the development application. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

14. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. Administrative expenses may include but are not limited to contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to the collection/completion of the Improvements. For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit B will be *prima facie* evidence of the minimum cost of completion, however, neither that amount or the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow or other guarantee establish the maximum amount of the Developer's liability.

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

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

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

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

19. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If relief is awarded to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.

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

21. **Integration:** This Agreement, together with the exhibits and attachments thereto constitutes the entire agreement between the parties and no statement(s), promise(s) or inducement(s) that is/are not contained in this Agreement will be binding on the parties.

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

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

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

25. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also will be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property. There is no prohibition on the right of the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City will constitute a release of the original Developer from his liability under this Agreement. When the Improvements are completed and approved by the City, the City agrees to state same in writing, with appropriate acknowledgments. The City will sign a release only after all warranty periods, as extended by litigation, repair or alteration work, have expired.

26. **Notice:** Any notice required or permitted by this Agreement will be deemed effective two calendar days after deposit with the United States Postal Service, first class, postage prepaid and addressed as follows: