

AIG03HW6

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**

NAME OF CONTRACTOR: AIG BAKER GRAND JUNCTION LLC

SUBJECT/PROJECT: GRAND MESA CENTER

LOCATION: 2464 HWY 6 & 50

TAX PARCEL #: 2945-091-00-023

FILE #: FP-2001-087

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2003

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are AIG Baker Grand Junction, L.L.C. ("Developer") and the **City of Grand Junction**, Colorado ("City").

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

2. **Effective Date:** The Effective Date of the Agreement shall be the date that it is signed by the Community Development Director, which shall be no sooner than recordation of the final plat or final plan approval whichever first occurs.

RECITALS

The Developer seeks permission to develop property, described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The Property, known as Grand Mesa Center has been reviewed and approved under Community Development file # FP-2001-087 ("Development" or "the Development").

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

A further purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself; this Agreement is not executed for the benefit of materialmen, laborers or others providing work, services or material to the Developer and/or the Property or for the benefit of the owner(s), purchaser(s) or user(s) of the Property.

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

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer shall design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit B attached and incorporated by this reference ("Improvements" or "the Improvements").

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

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

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

3c. The Developer's obligation to complete the Improvements is and shall be independent of any obligations of the City contained herein.

4. **Security:** To secure the performance of its obligations under this Agreement the Developer shall supply a guarantee. The Developer is required to post security in an amount of \$ 140,000 (120% of the amount for the Improvements) in a form and with terms acceptable to the City ("Guarantee"). The Guarantee shall be in the form of a cash deposit made to the City, a letter of credit or a disbursement agreement in a form and with content approved by the City Attorney. The Guarantee specific to this Agreement is attached as Exhibit C and is incorporated by this reference as if fully set forth.

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

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

6a. Upon Final Acceptance the Developer shall provide a Maintenance Guarantee in an amount of \$ 112,983 (20% of the DIA amount for the Improvements that the Developer has completed and for which the City has given its Final Acceptance.)

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

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

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

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

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

8. Compliance with Law: The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations when fulfilling its obligations under their Agreement. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after the Effective Date.

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

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

10. Acceptance of Improvements: The City shall not accept and/or approve any or all of the Improvements until the Developer presents a document or documents for the benefit of the City showing that the Developer owns the Improvements in fee simple, or as accepted by the City Attorney, and that there are no liens, encumbrances or other restrictions on the Improvements other than those that have been accepted by the City Attorney.

10a. Approval and/or acceptance of any Improvement(s) does not constitute a waiver by the City of any right(s) that it may have on account of any defect in or failure of the Improvement that is detected or which occurs after approval and/or acceptance.

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

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

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

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

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

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

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

13c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer. In such event the City may immediately declare a default without prior notification to the Developer;

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

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

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

13g. Except as provided, the City may not declare a default until written notice has been sent to the Developer at the address shown in the development file. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

14. Measure of Damages: The measure of damages for breach of this Agreement by the Developer shall be the reasonable cost of satisfactorily completing the Improvements, plus reasonable expenses. Expenses may include but are not limited to contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to the collection/completion of the Improvements. For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit B shall be *prima facie* evidence of the minimum cost of completion; however, the maximum amount of the Developer's liability shall not be established by that amount or the amount of the Guarantee.

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

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

15b. The Developer grants to the City, its successors, assigns, agents, contractors and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining, inspecting and repairing the Improvements.

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

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

15e. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

16. Indemnification: The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns ("City") harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with or on account of the performance or non-performance of work at the Property and/or the Improvements and/or the Development that is being done pursuant to this Agreement.

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

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

17. No Waiver: No waiver of any provision of this Agreement by the City shall be deemed or constitute a waiver of any other provision nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and the Developer; nor shall the waiver of

any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful or other act by the Developer or the acceptance of any Improvement.

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

19. Attorney's Fees: Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, shall be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. The City shall be entitled to claim the value of its in-house attorneys at the rate of \$125.00 per hour. If relief is awarded to both parties the attorney's fees may be equitably divided between the parties by the decision maker.

20. Vested Rights: This Agreement does not guarantee, represent or certify that the Developer is entitled to any other approval(s) required by the City, before the Developer is entitled to commence development beyond the scope of this Agreement or to transfer ownership of the Property being developed.

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

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

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

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

25. Benefits: The benefits of this Agreement to the Developer are personal and may

not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld but any unapproved assignment is void.

25a. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property.

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

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

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

25e. The City shall sign a release only after all warranty periods, as extended by litigation, repair or alteration work, have expired.

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

AIG Baker Grand Junction, L.L.C.

If to Developer: _____ Name -Developer/Company
 1701 Lee Branch Lane Address – Street and Mailing if different

 Birmingham, Alabama 35242 City, State & Zip Code
 _____ Telephone and Fax Numbers
 Attn: Alex Baker
 _____ E-mail

Cc: Legal Department
 AIG Baker Shopping Center Properties, L.L.C.
 1701 Lee Branch Lane
 Birmingham, Alabama 35242

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

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

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

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

29. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any action commenced by either party to this Agreement whether arising out of or relating to the Agreement, the Guarantee, the Maintenance Guarantee or any action based arising out of or under this Agreement shall be deemed to be proper only if such action is commenced in Mesa County, Colorado.

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

30. **Liability before Final Acceptance:** The City shall have no responsibility or liability with respect to any street or other Improvement(s), notwithstanding the use of the same by the public, unless the street or other Improvement shall have received Final Acceptance by the City.

30a. If the City allows a street to be constructed in stages, the Developer of the first one-half street opened for traffic shall construct the adjacent curb, gutter and sidewalk in the standard location and shall construct the required width of pavement from the edge of gutter on the side of the street nearest the property to enable an initial two-way traffic operation without on-street parking.

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

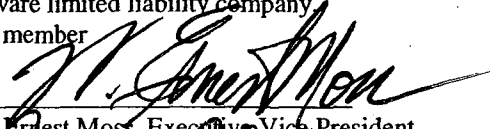
30c. The City shall not issue its written Final Acceptance with regard to any Improvement(s) including any street, storm drainage facility, sewer, water facility or other required Improvement(s), until the Developer:


- (i) furnishes to the City Engineer as-built drawings in reproducible form, blue line stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests required by City specification;
- (ii) provides written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon in and under which the Improvement(s) have been constructed or which are necessary for the Improvements are free from toxic, hazardous and other regulated substances or materials;
- (iii) provides written evidence to the City Attorney that the title to lands underlying the Improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney; and
- (iv) provides written evidence, certified by the Developer's engineer, that the work was systematically inspected and tested and that the materials and the compaction

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

Developer: AIG Baker Grand Junction, L.L.C.,
a Delaware limited liability company

By: AIG Baker Shopping Center Properties, L.L.C.
a Delaware limited liability company
its sole member

By: 
Name: W. Ernest Moss, Executive Vice President

Attest: 
Name: Ronald L. Carlson, Assistant Secretary

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

Director of Community Development

Date

EXHIBIT B

IMPROVEMENTS LIST/DETAIL

(Page 1 of 3)

DATE: May 23, 2003
 NAME OF DEVELOPMENT: Grand Mesa Center
 LOCATION: 2474 Hwy. 6 & 50, Grand Junction, CO 81501
 PRINTED NAME OF PERSON PREPARING: _____

	TOTAL	UNIT	TOTAL
	UNITS	PRICE	AMOUNT
I. SANITARY SEWER			
1. Clearing and grubbing	_____	_____	_____
2. Cut and remove asphalt	_____	_____	_____
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	_____	_____	_____
4. Sewer Services (incl. trenching, bedding, & backfill)	_____	_____	_____
5. Sanitary sewer manhole(s)	_____	_____	_____
6. Connection to existing manhole(s)	_____	_____	_____
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)	_____	_____	_____
4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances)	_____	_____	_____
5. Connect to existing water line	_____	_____	_____
6. Aggregate Base Course	_____	_____	_____
7. Pavement Replacement	_____	_____	_____
8. Utility adjustments	_____	_____	_____
III. STREETS			
1. Clearing and grubbing	_____	_____	_____
2. Earthwork, including excavation and embankment construction	_____	_____	_____
3. Utility relocations	_____	_____	_____
4. Aggregate sub-base course (square yard)	_____	_____	_____
	TOTAL	UNIT	TOTAL
	UNITS	QTY.	PRICE
			AMOUNT

5. Aggregate base course (square yard)				
6. Sub-grade stabilization				
7. Asphalt or concrete pavement (square yard)				
8. Curb, gutter & sidewalk (linear feet)				
9. Driveway sections (square yard)				
10. Crosspans & fillets				
11. Retaining walls/structures				
12. Storm drainage system				
13. Signs and other traffic control devices				
14. Construction staking				
15. Dust control				
16. Street lights (each)				
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				\$120,000.00
5. Irrigation system				
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				
2. Surveying				
3. Developer's inspection costs				
4. Quality control testing				
5. Construction traffic control				
6. Rights-of-way/Easements				
7. City inspection fees @\$45./hr				
8. Permit fees				
9. Recording costs				
	TOTAL UNITS	UNIT QTY.	TOTAL PRICE	AMOUNT

10. Bonds
11. Newsletters

05/04/01

12. General Construction Supervision

13. Other Travel & Administration costs
For out-of-state bank for DIA

14. Other Resolve testing inadequacies and
any necessary reconstruction of
public improvements.

2	each	\$2,500	\$5,000
			\$15,000

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 140,000

SCHEDULE OF IMPROVEMENTS:

I. SANITARY SEWER _____

II. DOMESTIC WATER _____

III. STREETS _____

IV. LANDSCAPING _____

V. MISCELLANEOUS _____

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.

Developer: AIG Baker Grand Junction, L.L.C.,
a Delaware limited liability company
By: AIG Baker Shopping Center Properties, L.L.C.
a Delaware limited liability company,
its sole member

By: W. Ernest Moss
Name: W. Ernest Moss, Executive Vice President

5/22/02
date

Attest: Ronald L. Carlson
Name: Ronald L. Carlson, Assistant Secretary

Reviewed and approved.

CITY ENGINEER date

COMMUNITY DEVELOPMENT date



U.S. BANK NATIONAL ASSOCIATION
INTERNATIONAL DEPT SL-MO-L2IL
8TH AND LOCUST STREETS
ST LOUIS, MISSOURI 63101

SWIFT: USBKUS44STL
TELEX: 192179
TELEPHONE: 877-716-5696
FACSIMILE: 314-418-1376

MAY 29, 2003

Amendment number 1 to letter of credit number SLCCIN00559

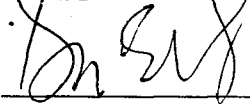
Applicant: AIG BAKER GRAND JUNCTION, LLC
1701 LEE BRANCH LANE
BIRMINGHAM AL 35242
ATTN: RONALD DAY

Beneficiary: CITY OF GRAND JUNCTION, COLORADO
ATTN: COMMUNITY DEVELOPMENT DIRECTOR
250 NORTH 5TH STREET
GRAND JUNCTION, COLORADO 81501

The above mentioned credit is amended as follows:

Expiration date extended to JULY 1, 2003.

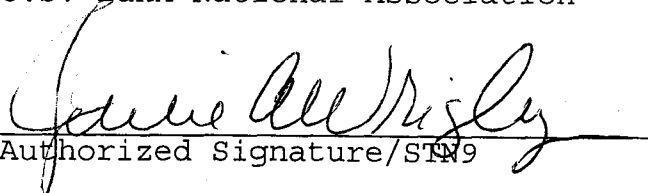
This amendment is subject to beneficiary approval. Please indicate approval or disapproval below and return the attached copy of this amendment.

Beneficiary approval: 

Beneficiary disapproval: _____

This credit is subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500, or any subsequent revision thereto. This amendment is to be considered as part of the original credit and must be attached thereto. All other terms and conditions remain unchanged.

U.S. Bank National Association


Authorized Signature/STM9



U.S. BANK NATIONAL ASSOCIATION
INTERNATIONAL DEPT SL-MO-L2IL
8TH AND LOCUST STREETS
ST LOUIS, MISSOURI 63101

SWIFT: USBKUS44STL
TELEX: 192179
TELEPHONE: 877-716-5696
FACSIMILE: 314-418-1376

MAY 29, 2003

Amendment number _____ to letter of credit number SLCCIN00559

COPY

Applicant: AIG BAKER GRAND JUNCTION, LLC
1701 LEE BRANCH LANE
BIRMINGHAM AL 35242
ATTN: RONALD DAY

Beneficiary: CITY OF GRAND JUNCTION, COLORADO
ATTN: COMMUNITY DEVELOPMENT DIRECTOR
250 NORTH 5TH STREET
GRAND JUNCTION, COLORADO 81501

The above mentioned credit is amended as follows:

Expiration date extended to JULY 1, 2003.

This amendment is subject to beneficiary approval. Please indicate approval or disapproval below and return the attached copy of this amendment.

Beneficiary approval: /s/ DANE WILSON

Beneficiary disapproval: _____

This credit is subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500, or any subsequent revision thereto. This amendment is to be considered as part of the original credit and must be attached thereto. All other terms and conditions remain unchanged.

U.S. Bank National Association

Authorized Signature/STN9



U.S. BANK NATIONAL ASSOCIATION
INTERNATIONAL DEPT. SL-MO-L2IL
8TH AND LOCUST STREETS
ST. LOUIS, MO 63101

SWIFT: USBKUS44STL
TELEX: 192179
TELEPHONE: 877-716-5696
FACSIMILE: 314-418-1376

DATE: APRIL 3, 2003

BENEFICIARY: CITY OF GRAND JUNCTION
ATTN: RICK DORRIS
DEVELOPMENT ENGINEER
250 N. 5TH STREET
GRAND JUNCTION, CO 81501

OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. SLCCIN00617

GENTLEMEN:

WE HEREBY ISSUE OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER SLCCIN00617 IN FAVOR OF YOURSELVES FOR THE ACCOUNT OF AIG BAKER GRAND JUNCTION, L.L.C., 1701 LEE BRANCH LANE, BIRMINGHAM, AL 35242 UP TO THE AGGREGATE AMOUNT OF USD112,982.64 (ONE HUNDRED TWELVE THOUSAND NINE HUNDRED EIGHTY TWO AND 64/100 UNITED STATES DOLLARS) AVAILABLE BY YOUR DRAFT AT SIGHT DRAWN ON U.S BANK NATIONAL ASSOCIATION, ST. LOUIS, MISSOURI ACCOMPANIED BY:

A DATED AND SIGNED STATEMENT APPEARING ON ITS FACE TO BE EXECUTED BY THE CITY OF GRAND JUNCTION OR DULY AUTHORIZED AGENT THEREOF CERTIFYING THAT:

“AIG BAKER GRAND JUNCTION, L.L.C., HAS FAILED TO CONSTRUCT, INSTALL AND MAINTAIN CERTAIN IMPROVEMENTS WHICH WERE MADE NECESSARY BY VIRTUE OF DEVELOPMENT ON PROPERTY LOCATED AT 2464 U.S. HIGHWAY 6 AND 50, GRAND JUNCTION, CO.”

THIS INSTRUMENT MUST BE PRESENTED WITH THE ABOVE REFERENCED DOCUMENTS FOR NEGOTIATION.

DRAFTS MUST BE DRAWN AND PRESENTED AT U.S. BANK NATIONAL ASSOCIATION, INTERNATIONAL DEPT., SL-MO-L2IL, 8TH AND LOCUST STREETS, ST. LOUIS, MO 63101 NOT LATER THAN MARCH 31, 2004.

EACH DRAFT MUST STATE THAT IT IS “DRAWN UNDER U.S. BANK NATIONAL ASSOCIATION, ST. LOUIS, MISSOURI LETTER OF CREDIT NO. SLCCIN00617 DATED APRIL 3, 2003”.

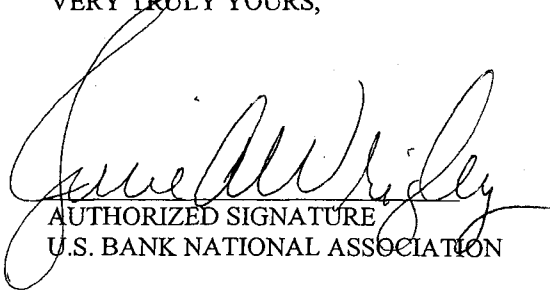
WE HEREBY ENGAGE WITH THE DRAWERS OF ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT, THAT SUCH DRAFTS WILL BE DULY HONORED UPON PRESENTATION TO THE DRAWEE.

THIS LETTER OF CREDIT AND AMENDMENTS, IF ANY, MUST BE RETURNED TO US FOR CANCELLATION WITH BENEFICIARY'S STATEMENT THAT LETTER OF CREDIT IS BEING RETURNED FOR CANCELLATION. IN THE ABSENCE OF BENEFICIARY'S STATEMENT WE WILL CONSIDER THE LETTER OF CREDIT RETURNED FOR CANCELLATION.



THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS 1993 REVISION INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION 500.

VERY TRULY YOURS,


AUTHORIZED SIGNATURE
U.S. BANK NATIONAL ASSOCIATION

MAINTENANCE GUARANTEE

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

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

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

RECITALS

The Developer has constructed, installed and is required to warrant and maintain certain improvements ("Improvements" or "the Improvements") which were made necessary by virtue of development on property within the City. The Property, known as Grand Mesa Center has been reviewed and approved under Community Development file #FP-2001-087 and as necessary or required to construe this guarantee, that file(s) is incorporated by this reference.

The City seeks to protect the health, safety and general welfare of the community by requiring that the Improvements, once constructed, be maintained. The purpose of this guarantee is to protect the City from having to repair the Improvements at its cost. The Agreement is not executed for the benefit of materialmen, laborers or others providing work, services or material to the Developer and/or the Property or for the benefit of the owners, purchasers or users of the Property. The mutual promises, covenants and obligations contained in this guarantee are authorized by law, the Colorado Constitution, the Charter and the City's ordinances.

DEVELOPER'S OBLIGATION

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

4. **Security:** To secure the performance of its obligations the Developer has posted as security a Letter of Credit in an amount of \$112,982.64, which security is in the form and amount and on the terms acceptable to the City.

4a. In addition to that security all warranties and/or guarantees (those incident to construction or as provided by the contractor and/or manufacturer of installed equipment) shall be provided to the City to allow it to determine what rights the City may have, by assignment from the Developer or as a incidental or intended beneficiary, if any under the warranties and/or guarantees.

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

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

5. Standards and Warranty: The Developer hereby warrants that the Improvements, each and every one of them, will be maintained free from defects in workmanship and materials until April 3, 2004. The Developer shall maintain the Improvements in accordance with the standards and specifications used by the City/as established by the City Engineer.

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

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

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

8b. The Developer will have fourteen (14) calendar days from the date of the notice to correct the defect.

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

9. **Acceptance:** Prior to acceptance of any Improvement(s), the Developer shall demonstrate in writing to the satisfaction of the City Attorney that it owns the Improvements in fee simple or that there are no liens, encumbrances or other restrictions other than those that have been accepted by the City Attorney on the Improvements. Approval and/or acceptance of any Improvements does not constitute a waiver by the City of any rights it may have on account of any defect in or failure of the Improvement or maintenance of the same that is detected or which occurs after approval and/or acceptance. All warranties and/or guarantees shall be for a period of no less than 12 months from the date of final acceptance of the Improvements.

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

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

11a. Developer's failure to maintain each and every one of the Improvements in conformance with this guarantee and/or as required by code, law, rule, ordinance or regulation for a period of fourteen (14) days after receipt of written notice that the Improvements are not being/have not been maintained ;

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

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

11d. As provided herein the City shall provide written notice to the Developer at the address on file with the development application. Notice is and shall be deemed effective three (3) business days after mailing thereof by first class United States mail, postage prepaid.

12. **Measure of Cost/Expenses:** The measure of costs and or expenses chargeable by the City under this guarantee will be the reasonable cost of satisfactorily repairing and/or replacing the Improvements plus reasonable City administrative expenses (in the amount of 20% of the repair, replacement

and/or warranty work) all of which may exceed the amount of the security provided for in paragraph 4. The amount of the security provided for in paragraph 4 does not set, limit, establish or provide the Developer's maximum financial obligation.

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

13. **City's Rights:** When any defect or default occurs, the City may after written notice and the Developer's failure and/or refusal to repair or replace the Improvements, proceed to collect the amount of the cost or expense incidental or necessary to affect the repair or replacement of the Improvements. The City will have the right to reconstruct, rebuild or otherwise maintain Improvements itself or it may contract with a third party for completion and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining and repairing such Improvements. This remedy is cumulative in nature and is in addition to any other remedy the City has at law or in equity.

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

15. **No Waiver:** No waiver of any provision of this Agreement by the City will be deemed to or constitute a waiver of any other provision, nor will it be deemed to or constitute a continuing waiver unless expressly provided for by a written

amendment to this Agreement signed by both the City and the Developer; nor will the waiver of any defect or default under this guarantee be deemed a waiver of any subsequent defect(s) or default(s) of the same type. The City's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any defect(s), defaults(s) or Improvement(s).

16. Amendment or Modification: The Parties may amend or modify the Agreement only by written instrument executed on behalf of the City by the Public Works and Utilities Director or his designee and by the Developer or his authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

17. Attorney's Fees: Should either party be required to resort to litigation to enforce the terms of this guarantee, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If relief is awarded to both parties, the attorney's fees may be equitably divided between the parties by the decision-maker. The value of the City's in-house legal counsel is agreed to be \$125.00 per hour.

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

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

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

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

the Property; however, no other act of the City will constitute a release of the original Developer from his liability under this agreement.

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

If to Developer: David M. Bearden
AIG Baker Grand Junction, L.L.C. -Developer/Company
1701 Lee Branch Lane
Birmingham, Alabama 35242
Phone: (205) 969-1000
Fax: (205) 969-1017
david@abshop.com

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

Cc: AIG Baker Grand Junction, L.L.C.
1701 Lee Branch Lane
Birmingham, Alabama 35242
Phone: (205) 969-1000
Fax: (205) 969-9467
Attention: Legal Department

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

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

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


SIGNATURES ON FOLLOWING PAGE

DEVELOPER

AIG Baker Grand Junction, L.L.C.

By: AIG Baker Shopping Center Properties, L.L.C.

Its sole member

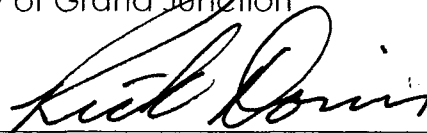
By: 

7/23/03
Date

Name (printed): Alex D. Baker

Its (position): President

City of Grand Junction


Director of Public Works and Utilities

7/25/03
Date

RELEASE OF IMPROVEMENTS AGREEMENT & GUARANTEE
Grand Junction Community Development Department
FILE # FP-2001-087

This memorandum relates to a certain unrecorded Improvements Agreement and Guarantee dated JAN 23, 2003, by and between A/E Baker Grand Junction, LLC (Developer) and the City of Grand Junction (City) pertaining to Grand Mesa Center - Landscaping (Project).

Legal Description: See recorded plat for Grand Mesa Center Subdivision Book Pages

Whereas, Developer has installed and constructed certain public and private improvements at and for the Project, which completion was guaranteed by the execution of an Improvements Agreement and Guarantee, and

Whereas, the City of Grand Junction and all other agencies possessing regulatory authority over the Project and/or the improvements have inspected the improvements and have accepted the same,

NOW THEREFORE, officials of the City of Grand Junction and other officials duly representing their agencies, possessing and representing by their signatures, affixed thereto, that they possess sufficient authority to accept improvements and release the portion of the guarantee pertaining to the improvements under their jurisdiction, do accept, sign and release said improvements agreement and guarantee.

CITY OF GRAND JUNCTION:

By: City Engineer Rob Davis Date 7-8-03
City Utilities Manager N/A Date _____
Fire Marshall N/A Date _____

UTE WATER:

By: N/A Date _____

GRAND JUNCTION DRAINAGE:

By: N/A Date _____

OTHER:

By: N/A Date _____

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

~~Director of~~ Community Development Pat Cecil Date 7/8/03

The foregoing instrument was executed before me this 8th day of July, 2003

by Pat Cecil, ~~Director of~~ Community Development for the City of Grand Junction, Colorado.

Witness my hand & official seal.

Notary Public

Rhonda S. Edwards

My commission expires November 28, 2005

