

ENP02ENS

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**

NAME OF APPLICANT OR DEVELOPER: EN-SIMS PARTNERSHIP, LLP

PROJECT/SUBDIVISION: ENSTROM CANDIES

LOCATION: 200 SOUTH 7TH STREET

PARCEL NO.: 2945-144-29-021

FILE NO.: SPR-2002-034

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2002

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

BOOK 3097 PAGE 299

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement" or "Agreement") are EV-SIMS PARTNERSHIP, LLP ("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 EUSTON CANALS, 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 6/11/02 (set date) ("the Commencement Period") and the Improvements, each and every one of them, shall be completed by the end of the 6th month from the Effective Date of this Agreement 12/11/02 (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: EN-SIM PARTNERSHIP, LLA
200 S. 7TH ST
GRAND JUNCTION, CO 81501

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

regulated substances or materials: (iii) provide written evidence to the City Attorney that the title to lands underlying the improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney.

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

Pat Ceit 6/14/02
Director of Community Development date

Attest:

Juanita B. Wesley 6-14-02
Deputy City Clerk date

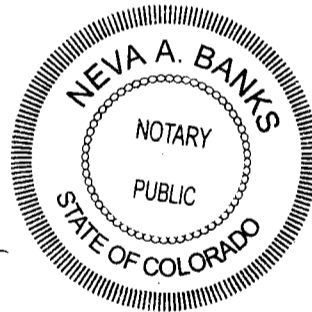


By: Douglas S. Simons 6-11-02
Name (printed): Douglas S. Simons
Its (position): Partner

Attest:

Neva A. Banks 6-11-02
Secretary date

My Commission Expires July 21, 2004



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

EXHIBIT A

SEE ATTACHMENTS

Dec-11-01 12:55P

3 PAIR DOCUMENT

06634 06/11/99 1205PM
MONIKA TODD CLK REC MESA COUNTY CO
REC FEE \$15.00 SURCHG \$1.00

CITY OF GRAND JUNCTION, COLORADO

Ordinance No. 3151

BOOK 2597 PAGE 912

VACATING THE EAST - WEST ALLEY
AND THE NORTH - SOUTH ALLEY IN THE BLOCK
LOCATED BETWEEN 7TH AND 8TH STREETS AND
BETWEEN COLORADO AND UTE AVENUES

Recitals:

This ordinance vacates both the east-west alley located between 7th and 8th Streets and the north-south alley located between Colorado and Ute Avenues. The petitioner owns all but two properties on the block and desires the vacation in order to allow anticipated construction at the site to proceed as expeditiously as possible. The east-west alley contains several utilities that must be removed prior to this vacation becoming effective. The petitioner and city staff has agreed that the vacation ordinance is and shall be contingent on the relocation of the utilities. Therefore, if within one year from the passage of this ordinance (the Effective Date) the utilities are not suitably relocated from the alley and the city engineer has confirmed the same in writing, this ordinance shall not be effective.

The petitioner has represented that he intends on purchasing the remaining two properties on the block commonly known as 755 Colorado Avenue and 219 South 8th Street. If this does not occur on or before the Effective Date, that portion of the east-west alley required for access and utility service shall be vacated but the title which vests upon the vacation shall be burdened by two reciprocal cross access easements: (1) allowing for vehicular ingress and egress from the petitioner's property and the owners of the property at 219 South 8th Street, and (2) utility easement in favor of the public for purposes of maintaining utilities and providing services.

The access and utility easements shall be no less than seventy (70) feet long measured from the flowline of 8th Street and 20 feet wide. Both the petitioner and the current owner of 219 South 8th Street desire access to their properties via the to be vacated alicy. Access will be accomplished, if the properties are not acquired by the petitioner, by a reciprocal cross access easement in the easternmost 70 (seventy) feet of the east-west alley described above. Utility access will be accomplished by a grant of easement to the City for the public. The easement form has been reviewed by city staff and is deemed legally sufficient.

The petitioner has indicated that the property owners have agreed to sign a reciprocal cross access easement agreement if the petitioner does not acquire the property at 219 South 8th Street prior to the Effective Date. City staff has not reviewed the form of this easement.

RECORDER NOTE: POOR QUALITY DOCUMENT
PROVIDED FOR REPRODUCTION

BOOK 3097 PAGE 307

If the petitioner obtains ownership of the properties located at 755 Colorado Avenue and 219 South 8th Street before the Effective Date of this ordinance, then the ordinance shall serve to vacate the entire length of each of the alleys without burden of the aforescribed easements.

The Planning Commission has heard and considered the request and found that the criteria of the Code to have been met. The Planning Commission recommends that the vacation be approved.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT:

1. The following described right-of-way is hereby vacated:

Beginning at the SE corner of Lot 19 in Block 128 of the City of Grand Junction, and with the bearing between the City Monuments at 8th Street and Colorado Avenue and 8th Street and Ute Avenue being assumed to bear S00°00'00"E and all bearings contained herein to be relative thereto; thence S89°58'24"W 225.79 feet to the SW corner of Lot 11 in said Block 128; thence N00°01'46"W 125.41 feet to the NW corner of said lot 11; thence S89°57'35"W 15.00 feet to the NE corner of lot 10 in said Block 128; thence S00°01'46"E 125.41 feet to the SE corner of lot 6 in said Block 128; thence S00°01'46"E 20 feet to the NE corner of said lot 5 in said Block 128; thence S00°01'46"E 125.41 feet to the SE corner of Lot 1 in said Block 128; thence N89°59'14' E 15.00 feet to the SW corner of Lot 28 in said Block 128; thence N00°01'46"W 125.41 feet to the NW corner of said Lot 28; thence N89°58'24"E 225.78 feet to the NE corner of Lot 20 in said Block 128; thence N00°00'00"E 20.00 feet to the point of beginning, Mesa County, Colorado.

2. The Recitals stated above are incorporated herein as if fully set forth.

3. If the easternmost seventy (70) feet of the east-west alley as described is burdened by and subject to the reservation of a public utilities easement in favor of the City on behalf of the public, the form of the easement shall provide for use by the City or any other public utility, for the installation, operation, maintenance, relocation and repair of existing and/or future utilities, together with the right of ingress and egress for workers and equipment on, along, over, under, through and across the entire area of the vacated east-west alley right-of-way.

4. The present and future owners of the real property to which the hereinabove vacated right-of-way shall revert and become attached shall not burden or overburden the granted, reserved and retained public utilities easement by erecting or placing any improvements or structures thereon which might act to damage the functional use and/or integrity of existing and/or future utilities situated therein or which might act to prevent reasonable ingress and egress for workers and equipment on, along, over, under through and across said reserved and retained public utilities easement.

Dec-11-01 12:56P

Book3097 PAGE309

B 2027.

- 5. This ordinance shall become effective, if at all, not more than one year from the date of passage, by an affirmative vote of a majority of the City Council considering the ordinance. A protest against the ordinance, if any shall occur, shall be filed within 30 days of the date of passage of the ordinance by the Council as provided in City Charter Article XVI, Paragraph 136.

INTRODUCED for FIRST READING and PUBLICATION this 19th day of May 1999.

PASSED on SECOND READING this 2nd day of June, 1999.

ATTEST

Christine English
 Acting City Clerk

Gene Ramsey
 President of City Council

Recorded at _____ o'clock _____ M.,
Reception No. _____ Recorder.

QUIT CLAIM DEED

MARY G. ENSTROM, DOUGLAS S. SIMONS and
JAMEE E. SIMONS **BOOK 1736 PAGE 160**
whose address is 720 Golfmore Drive, Grand Junction,
CO 81506; and 653 Round Hill Drive, Grand Junction,
CO 81506, County of Mesa, and State of
Colorado

, for the consideration of
Ten Dollars and Other Valuable
Consideration ~~which~~ in hand paid,

1512036 03:47 PM 03/29/89
E.SAVYER: CLK&REC MESA COUNTY CO
DOC 1 19.90

hereby sell(s) and quit claim(a) to EN-SIM PARTNERSHIP, a Colorado
general partnership,
whose address is 653 Round Hill Drive, Grand Junction, CO 81506
County of Mesa, and State of Colorado, the following real
property, in the County of Mesa, and State of Colorado, to wit:

Lots 1 through 13, both inclusive, and the west 20 feet of Lot
14 in Block 128 of the City of Grand Junction, together with the
vacated alley lying between Lots 5 and 6 in Block 128 described
as follows: East-West alley within Block 128 lying East of Easterly
right-of-way of 7th Street and West of West right-of-way of North-
South alley between Ute and Colorado Avenues, as shown on the
original town plat of the City of Grand Junction, Colorado; vacated
by Ordinance No. 2420 of the City Council of Grand Junction, Colorado,
with all improvements and appurtenances thereto.

SUBJECT to real property taxes and special improvement taxes
(if any) for the year 1989, and

SUBJECT to all encumbrances of record, and

SUBJECT to a Lease Agreement dated February 1, 1985, to Entrom
Candies, Inc., a Colorado corporation, which Lease Agreement
grants to the Lessee the right to extend such Lease at five-year
intervals until December 1, 2007.

also known as street and number
with all its appurtenances

Signed this 27th day of March, 19 89.

Mary G. Enstrom
MARY G. ENSTROM
Douglas S. Simons
DOUGLAS S. SIMONS
Jamee E. Simons
JAMEE E. SIMONS

STATE OF COLORADO,

County of MESA

The foregoing instrument was acknowledged before me this 27th day of MARCH
19 89, by Mary G. Enstrom, Douglas S. Simons, and Jamee E. Simons.
My commission expires

WITNESS my hand and official seal.

9/5/91

John A. Marney
JOHN A. MARNEY
NOTARY PUBLIC
MESA COUNTY, COLORADO

Consideration \$99,000

BOOK 3097 PAGE 310

9/14/99

QUITCLAIM DEED

1923547 10/11/99 0144PM
HOWKA TECH CLEARING MESA COUNTY CO
REG FEE 16.00
DOCUMENTARY FEE 640 FEE
BOOK 2641 PAGE 249

This indenture, made this 12 day of August, 1999, between DOUGLAS S. SIMONS and JAMEE E. SIMONS, of 653 Round Hill Drive, Grand Junction, Colorado, 81506, ("Grantors"), and EN-SDM PARTNERSHIP, LLP, of 653 Round Hill Drive, Grand Junction, Colorado, 81506, ("Grantee"). (The terms "Grantor" and "Grantee" include the respective heirs, successors, successors-in-title, legal representatives and assigns of the parties where the context requires or permits.)

Grantors, for and as part of their capital contribution to Grantee, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, do release, remise and quitclaim to Grantee, all of the interest, right and title of Grantors to that certain tract or parcel of land in Mesa County, Colorado, as more particularly described as follows:

Lot 15 and the East 5 feet of the North 105 feet and the East 4 feet of the South 20 feet of Lot 14; and the West 2 feet of Lot 16, all in Block 128, Grand Junction, Colorado

Assessor's Parcel No.: 2945-144-29-009

Also known by street and number as: 741 Colorado Avenue, Grand Junction, Colorado, 81501 (the "Property").

Grantors convey the Property to Grantee, together with all the estate and rights of Grantors in the Property and Grantors assign to Grantee all rights and appurtenances belonging, or in anyway appertaining, to the use or benefit of the Property.

In witness therein of the above, Grantors have signed, sealed and delivered this Quitclaim Deed on the date written above.

Grantors

Douglas S. Simons
Douglas S. Simons

Jamee E. Simons
Jamee E. Simons

State of Colorado)
)ss.
County of Mesa)

The above instrument was acknowledged before me on August 12, 1999, by DOUGLAS S. SIMONS and JAMEE E. SIMONS.

Witness my hand and official seal

My Commission expires: _____

Sharon K. Habegger
Notary Public



2.9.99 provided by a member of the Colorado Real Estate Board
not a notary seal. This seal is not valid for recording purposes.

BOOK 3097 PAGE 311

1885307 01/25/99 0357PM
HOWIKA TABB CLK&REC MESA COUNTY CO
REC FEE \$5.00 SURCHG \$1.00
DOCUMENTARY FEE \$12.00

WARRANTY DEED

BOOK 2543 PAGE 78

Grantor(s):

The Schurr Family Trust dated February 4, 1991

whose address is

327 Gunnison Avenue, Grand Junction, Colorado 81501
County of Mesa

Colorado

for the consideration of ONE HUNDRED TWENTY EIGHT THOUSAND AND NO/100

dollars in hand paid hereby sell(s)

and convey(s) to:

Douglas S. Simons and James E. Simons as Joint Tenants

whose legal address is 653 Round Hill Drive, Grand Junction, Colorado 81508

County of Mesa

and State of Colorado

the following real property, in the

County of Mesa

and State of Colorado.

to wit:

TAX SCHEDULE NUMBER: 2945-144-29-010

The East 23 feet of Lot 16 and all of Lot 17 in Block 128, CITY OF GRAND JUNCTION, Mesa County, Colorado.

also known by the street and number as 747 Colorado Avenue, Grand Junction, Colorado 81501

with all its appurtenances, and warrant(s) the title to the same, subject to

current year real property taxes and all subsequent taxes, special assessments, covenants, restrictions, reservations and easements, and rights of way, existing or apparent, or of record, if any.

Signed this 14th day of January, 1999

Klem L. Schurr, Jr.
Klem L. Schurr, Jr., Trustee of The Schurr Family Trust dated February 4, 1991

Henry P. Schurr
Henry P. Schurr, Trustee as attorney in fact for Harry D. Schurr, Trustee of The Schurr Family Trust dated February 4, 1991

Nancy C. Uiharn
Nancy C. Uiharn, Trustee as attorney in fact for Nancy C. Uiharn, Trustee of The Schurr Family Trust dated February 4, 1991

STATE OF Colorado

County of Mesa

The foregoing instrument was acknowledged before me this

14th day of

January

1999

BY Klem L. Schurr, Jr., Trustee of The Schurr Family Trust dated February 4, 1991, individually and as a Attorney in fact for Nancy C. Uiharn, Trustee of the Schurr Family Trust dated February 4, 1991, and as attorney in fact for Harry D. Schurr, Trustee of the Schurr Family Trust dated February 4, 1991.

My Commission expires 8/21/99

Witness my hand and official seal

Kimberly A. Clay
Kimberly A. Clay

*If in Denver insert "City and County of Denver"

8/2.80

35318

BOOK 3097 PAGE 312

1713882 07/28/99 0237PM
Florence Tabor Clearing Mesa County Co
Rec'd Fee \$5.00
Documentary Fee \$6.30

WARRANTY DEED

Book 2615 Page 446

8.30

Grantor(s):
Jennifer L. Stout
whose address is
755 Colorado Avenue, Grand Junction, Colorado 81501
*County of Mesa, and State of
Colorado, for the consideration of

EIGHTY THREE THOUSAND AND NO/100 dollars, in hand paid, hereby sell(s)

and convey(s) to:
En-Bin Partnership, LLP

whose legal address is 663 Round Hill Drive, Grand Junction, Colorado 81506
*County of Mesa, and State of Colorado

the following real property, in the *County of Mesa, and State of Colorado,

to wit:
TAX SCHEDULE NUMBER: 2945-144-29-011
Lots 18 and 19, EXCEPT the South 34 feet thereof, Block 126, CITY OF GRAND JUNCTION, Mesa County, Colorado.

3825

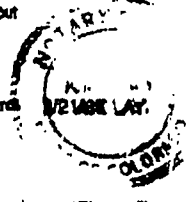
also known by the street and number as 755 Colorado Avenue, Grand Junction, Colorado 81501
with all its appurtenances, and warrant(s) the title to the same, subject to
current year real property taxes and all subsequent taxes, special assessments, covenants, restrictions, reservations and
assessments, and rights of way, existing or apparent, or of record, if any.

Signed this 26th day of July, 1999
Jennifer L. Stout
Jennifer L. Stout

STATE OF COLORADO

County of MESA

The foregoing instrument was acknowledged before me this 26th day of July, 1999.
BY: Jennifer L. Stout



My Commission expires 12/31/01. Witness my hand and official seal.
Kimberly A. Clay
Kimberly A. Clay

No 897 Rev. 12-85 WARRANTY DEED (Short Form)

BOOK 3097 PAGE 313

190423 06/10/99 0113PT
HONIKA TONG CLERK Mesa County Co
RECEIVED \$5.00 SURETY \$1.00
DOCUMENTARY FEE \$4.85

4.55

37868

WARRANTY DEED

BOOK 2597 PAGE 432

Grantor(s):
Edward D. Ryken and Edna R. Ryken

whose address is
219 South 8th Street, Grand Junction, Colorado 81501
*County of Mesa, and State of

Colorado, for the consideration of
FORTY FIVE THOUSAND FIVE HUNDRED AND NO/100
dollars, in hand paid, hereby sell(s)

and convey(s) to:
En-Bim Partnership, LLP

whose legal address is 659 Round Hill Drive, Grand Junction, Colorado 81506
*County of Mesa, and State of Colorado

the following real property, in the *County of Mesa, and State of Colorado,

to wit:
TAX SCHEDULE NUMBER: 2945-144-28-012
The South 36 feet of Lots 18 and 19 in Block 128 in the CITY OF GRAND JUNCTION, Mesa County, Colorado.

also known by the street and number as 219 South 8th Street, Grand Junction, Colorado 81501

with all its appurtenances, and warrant(s) the title to the same, subject to
current year real property taxes and all subsequent taxes, special assessments, covenants, restrictions, reservations and
assessments, and rights of way, existing or apparent, or of record, if any.

Signed this 3rd day of June, 1998

Edward D. Ryken
Edward D. Ryken

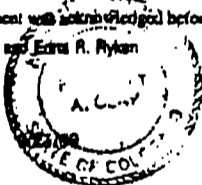
Edna R. Ryken
Edna R. Ryken

STATE OF COLORADO

County of MESA

The foregoing instrument was acknowledged before me this 3rd day of June, 1998.
BY: Edward D. Ryken and Edna R. Ryken

My Commission expires



Witness my hand and official seal.

Kimberly A. Clay
Kimberly A. Clay, Notary Public

*If in Denver, insert My Commission Expires

BOOK 3097 PAGE 314

201467

BOOK 2641 PAGE 244
1923362 10/11/99 0144PM
MONTEZUMA TOOL CURLEZO MESA COUNTY CO
NOTARIAL FEE \$5.00
DOCUMENTARY FEE \$NO FEE

QUITCLAIM DEED

This indenture, made this 12 day of August, 1999, between DOUGLAS S. SIMONS and JAMEE E. SIMONS, of 653 Round Hill Drive, Grand Junction, Colorado, 81506, ("Grantors"), and EN-SIM PARTNERSHIP, LLP, of 653 Round Hill Drive, Grand Junction, Colorado, 81506, ("Grantee"). (The terms "Grantor" and "Grantee" include the respective heirs, successors, successors-in-title, legal representatives and assigns of the parties where the context requires or permits.)

Grantors, for and as part of their capital contribution to Grantee, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, do release, remise and quitclaim to Grantee, all of the interest, right and title of Grantors to that certain tract or parcel of land in Mesa County, Colorado, as more particularly described as follows:

Lots 22 and 23 in Block 128, City of Grand Junction

Assessor's Parcel No.: 2945-144-29-14

Also known by street and number as: 742 Ute Avenue, Grand Junction, Colorado, 81501 (the "Property").

Grantors convey the Property to Grantee, together with all the estate and rights of Grantors in the Property and Grantors assign to Grantee all rights and appurtenances belonging, or in anyway appertaining, to the use or benefit of the Property.

In witness therein of the above, Grantors have signed, sealed and delivered this Quitclaim Deed on the date written above.

Grantors

Douglas S. Simons

Douglas S. Simons

Jamee E. Simons

Jamee E. Simons

State of Colorado)
)ss.
County of Mesa)

The above instrument was acknowledged before me on August 12, 1999, by DOUGLAS S. SIMONS and JAMEE E. SIMONS.

Witness my hand and official seal

My Commission expires: 11/1/00

Sharon K. Hareberger

Notary Public



BOOK 3097 PAGE 316

421461

1923544 10/11/99 0144PM
MORNING 1000 CLEARED MESA COUNTY CO
RECFAX 95.00
DOCUMENTARY FEE \$10 FEE
BOOK 2641 PAGE 246

QUITCLAIM DEED

This indenture, made this 18 day of August, 1999, between DOUGLAS S. SIMONS and JAMEE E. SIMONS, of 653 Round Hill Drive, Grand Junction, Colorado, 81506, ("Grantors"), and EN-SIM PARTNERSHIP, LLP, of 653 Round Hill Drive, Grand Junction, Colorado, 81506, ("Grantee"). (The terms "Grantor" and "Grantee" include the respective heirs, successors, successors-in-title, legal representatives and assigns of the parties where the context requires or permits.)

Grantors, for and as part of their capital contribution to Grantee, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, do release, remise and quitclaim to Grantee, all of the interest, right and title of Grantors to that certain tract or parcel of land in Mesa County, Colorado, as more particularly described as follows:

Lots 24 and 25 in Block 128 of City of Grand Junction,

Assessor's Parcel No. 2945-144-29-015

Also known by street and number as: 732 Ute Avenue, Grand Junction, Colorado, 81501 (the "Property").

Grantors convey the Property to Grantee, together with all the estate and rights of Grantors in the Property and Grantors assign to Grantee all rights and appurtenances belonging, or in anyway appertaining, to the use or benefit of the Property.

In witness therein of the above, Grantors have signed, sealed and delivered this Quitclaim Deed on the date written above.

Grantors

Douglas S. Simons
Douglas S. Simons
Jamee E. Simons
Jamee E. Simons

State of Colorado)
)ss.
County of Mesa)

The above instrument was acknowledged before me on August 18, 1999, by DOUGLAS S. SIMONS and JAMEE E. SIMONS.

Witness my hand and official seal

My Commission expires: _____

Baron K. Habegger
Notary Public



THIS INSTRUMENT IS SUBJECT TO THE RECORDING ACTS AND THE RECORDS OF THE COUNTY OF MESA, COLORADO.

BOOK 3097 PAGE 317

20467

QUITCLAIM DEED

1922345 10/11/99 0144PM
MONIKA TOON CLERK MESA COUNTY CO
RECFEE \$5.00
DOCUMENTARY FEE \$10 FEE
BOOK 2041 PAGE 247

This indenture, made this 17 day of August, 1999, between DOUGLAS S. SIMONS and JAMEE E. SIMONS, of 653 Round Hill Drive, Grand Junction, Colorado, 81506, ("Grantors"), and EN-SIM PARTNERSHIP, LLP, of 653 Round Hill Drive, Grand Junction, Colorado, 81506, ("Grantee"). (The terms "Grantor" and "Grantee" include the respective heirs, successors, successors-in-title, legal representatives and assigns of the parties where the context requires or permits.)

Grantors, for and as part of their capital contribution to Grantee, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, do release, remise and quitclaim to Grantee, all of the interest, right and title of Grantors to that certain tract or parcel of land in Mesa County, Colorado, as more particularly described as follows:

Lot 26 in Block 128 of City of Grand Junction,

Assessor's Parcel No.: 2945-144-29-016

Also known by street and number as: 730 Ute Avenue, Grand Junction, Colorado, 81501 (the "Property").

Grantors convey the Property to Grantee, together with all the estate and rights of Grantors in the Property and Grantors assign to Grantee all rights and appurtenances belonging, or in anyway appertaining, to the use or benefit of the Property.

In witness therein of the above, Grantors have signed, sealed and delivered this Quitclaim Deed on the date written above.

Grantors

Douglas S. Simons
Douglas S. Simons

Jamee E. Simons
Jamee E. Simons

State of Colorado)
)ss.
County of Mesa)

The above instrument was acknowledged before me on August 17, 1999, by DOUGLAS S. SIMONS and JAMEE E. SIMONS.

Witness my hand and official seal

My Commission expires: 11-1-00

Sharon K. Habegger
Notary Public



NOTARY PUBLIC STATE OF COLORADO

BOOK 3097 PAGE 318

12:35 DEC 04 '01 005 P10 +9702420848 UNDERWOOD ARCHITECT

Recorded at _____ o'clock _____ M. _____
Reception No. _____ Recorder _____

PERSONAL REPRESENTATIVE'S DEED

(Testate Estate)

THIS DEED is made by Richard Terrell

Harry H. Terrell as Personal Representative of the Estate of
Harry H. Terrell deceased, Grantor,
to Douglas Simons and James Simons

whose legal address is 653 Round Hill Drive, Grand Junction
81504

of the _____ County of Mesa, State of Colorado

WHEREAS, the Last Will and Testament of the above-named decedent was made and executed in the lifetime of the decedent, and is dated November 26, 1980, which Will was duly admitted to /forfeit (informal) probate on July 12, 1996, by the District Court in and for the County of Mesa, State of Colorado, Probate No. 96 PR 171;

WHEREAS, Grantor was duly appointed Personal Representative of said Estate on July 12, 1996, and is now qualified and acting in said capacity.

NOW THEREFORE, pursuant to the powers conferred upon Grantor by the Colorado Probate Code, Grantor does hereby sell, convey, assign, transfer and set over unto said Grantee (in joint tenancy) (for and in consideration of Forty-five Thousand (\$45,000) Dollars) (As the person entitled to distribution of the property in the above captioned Will) the following described real property situate in the _____ County of Mesa, State of Colorado:

Lots 27 and 28 in Block 128 in the City of Grand Junction, Colorado

also known by street and number as 724 Ute Avenue, Grand Junction, Colorado 81501

With all appurtenances, subject to covenants, easements and restrictions of record, and subject to general property taxes for the year 1996, and subject to

As used herein, the singular includes the plural and the plural the singular.

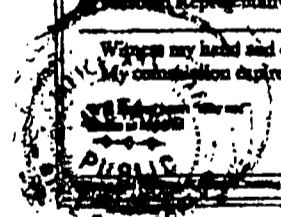
Executed 8-5-96, 1996. Richard Terrell
RICHARD TERRELL

Personal Representative of the Estate of Harry H. Terrell
Deceased

STATE OF COLORADO }
COUNTY OF Mesa }

The foregoing instrument was acknowledged before me this 5th day of August, 1996, by Richard Terrell Personal Representative of the Estate of Harry H. Terrell, Deceased.

Witness my hand and official seal. My commission expires: 07/07/97



James Ann Leard
Notary Public

CPA No. 11-82. PERSONAL REPRESENTATIVE'S DEED (Private)

Standard Publishing, 1743 W. 14th St., Denver, CO 80202 - (303) 733-2500 - 8-14

+97024220848 VANDERWOOD ARCHITECT

12:35 DEC 04 '01 005 P11

BOOK3097 PAGE319

FORM 18) 222-10-6148

RETAIN PERMANENTLY

Recorded at _____ o'clock _____ M., _____
 Reception No. _____ Recorder.
 Harold Ball
 R.O.W. Agent

PSCD Document No. 152518
 Plat No. 14 - 15 - 1W
 Grid No. 23/43 E
 Mtn. Bell Doc. No. _____

RECORDER'S STAMP

UTILITY EASEMENT

BOOK 1734 PAGE 810

The undersigned Grantor hereby acknowledges receipt of \$ 1.00 (One and no/100) from PUBLIC SERVICE COMPANY OF COLORADO, 550 15th Street, Denver, Colorado, 80202-4206, AND THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, 931 14th Street, Denver, Colorado, 80202, hereafter called the Grantees, in consideration of which he hereby grants unto said Grantees their successors and assigns, an easement to construct, operate and maintain utility lines and all fixtures and devices, used or useful in the operation of said lines, through, over, under, across and along a course as said lines may be hereafter constructed in Lot 6 Block 128
 Subdivision Grand Junction

in the SE 1/4 of Section 14
 Township 15 Range 1W of the 10E
 Grand Junction County of Mesa

Principal Meridian in the City of State of Colorado, the above

description of the easement is described as follows:

1511249 02:27 PM 03/20/89
 E.SAUYER, CLK&REC Mesa County CO
 DOC EXEMPT

The south ten feet (10') of Lot 6, Block 128,
 Grand Junction.

METHOD OF PAYMENT (CASH) (VOUCHER NO. 41-65012)
 W.O.NO. NO. ER9219
 GRAND JUNCTION
 TOWN Western
 212 S. 7th Street
 DIVISION

The easement is 10 feet in width.

Together with the right to enter upon said premises to survey, construct, maintain, operate, repair, replace, control and use said utility lines and related fixtures and devices, and to remove objects interfering therewith, including the trimming of trees and bushes, and together with the right to use so much of the adjoining premises of Grantor during surveying, construction, maintenance, repair, removal, or replacement of said utility lines and related fixtures and devices as may be required to permit the operation of standard utility construction or repair machinery, and the right to permit the installation of the facilities of any other company. The Grantor reserves the right to use and occupy said easement for any purpose consistent with the right and privileges above granted and which will not interfere with or endanger any of the said Grantees facilities therein or use thereof. Such reservation by the Grantor shall in no event include the right to erect or cause to be erected any buildings or structures upon the easement herein granted. In case of the permanent abandonment of the easement, all right, privileges and interest herein granted shall terminate.

Grantor further grants unto the Grantees the right, privilege and authority to permit any form of other communications or other utility company to occupy and maintain its facilities within and in accordance with the provisions of the easement.

The work of installing and maintaining said lines and related fixtures and devices shall be done with care; the surface along the easement shall be restored substantially to its original level and condition.

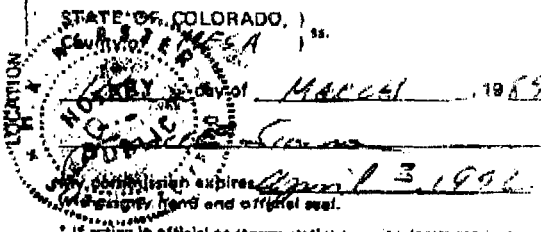
"Grantor" shall include the singular, plural, feminine, masculine and neuter.

Signed this 10th day of March 1989

WITNESSES:

GRANTOR:

Douglas S. Simons
Jamee E. Simons
 Douglas S. Simons
 Jamee E. Simons



The foregoing instrument was acknowledged before me this

by Douglas S. Simons and

NOTARY PUBLIC

ADDRESS

* If acting in official or representative capacity, insert name and also office or capacity and for whom acting.

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL

Book3097 Page321

DATE: June 12, 2002
 NAME OF DEVELOPMENT: Enstrom Candies
 LOCATION: 200 S 7th Street
 PRINTED NAME OF PERSON PREPARING: Kevin Knott, LANDesign

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
I. SANITARY SEWER				
1 Clearing and Grubbing	LS			\$ -
2 Cut and remove Asphalt	LS	1	\$ 500.00	\$ 500.00
3 PVC Sanitary Sewer main (include trenching, bedding and backfill)	LF	14	\$ 14.00	\$ 196.00
4 Sewer Services (include trenching bedding and backfill)	LF			\$ -
5 Sanitary Sewer Manhole(s)	EA	2	\$ 1,850.00	\$ 3,700.00
6 Connection to existing manhole(s)	EA			\$ -
7 Aggregate Base Course	SF			\$ -
8 Pavement replacement	SF			\$ -
9 Driveway restoration	SY			\$ -
10 Utility adjustments	LS			\$ -
SUBTOTAL SANITARY SEWER				\$ 4,396.00
II. DOMESTIC WATER				
1 Clearing and Grubbing	LS			\$ -
2 Cut and remove asphalt	LS			\$ -
3 Water main (include excavation, bedding backfill, valves and appurtenances)	LS			\$ -
4 Fire Hydrants	EA			\$ -
5 Water Services (include excavation, bedding, backfill, valves and appurtenances)	EA	1	\$ 500.00	\$ 500.00
6 Connect to existing water line	EA			\$ -
7 Aggregate Base Course	LS			\$ -
8 Pavement replacement	LS			\$ -
9 Utility adjustments	LS			\$ -
SUBTOTAL DOMESTIC WATER				\$ 500.00

III. STREETS

1 Clearing and Grubbing	LS			\$	-
2 Earthwork, including excavation and embankment construction	CY			\$	-
3 Utility relocations (removal and relocate of utility poles)	LS			\$	-
4 Aggregate sub-base course	SY			\$	-
5 Aggregate base course	SY	51	\$ 5.50	\$	280.50
6 Subgrade Preparation	SY			\$	-
7 Asphalt Pavement	SY	51	\$ 5.60	\$	285.60
8 Vertical Curb and Gutter	LF	190	\$ 9.00	\$	1,710.00
9 5' Sidewalk	LS	1	\$ 1,500.00	\$	1,500.00
10 Concrete Driveways	SF	1845	\$ 4.50	\$	8,302.50
11 Storm Manholes	EA	1	\$ 1,850.00	\$	1,850.00
12 12" RCP	LF	53	\$ 10.50	\$	556.50
13 Signs, traffic control devices	EA			\$	-
14 Construction staking	LS			\$	-
15 Dust control	LS			\$	-
16 Street lights	EA			\$	-
17 Striping	LF			\$	-
18 Remove Concrete Driveways	LS	1	\$ 1,500.00	\$	1,500.00
SUBTOTAL STREETS				\$	15,985.10

IV. LANDSCAPING

1 Design/Architecture	LS			\$	-
2 Earthwork (includes top soil, fine grading, and berming)	LS	1	\$ 1,000.00	\$	1,000.00
3 Hardscape features (includes walls, fencing and paving)	LS			\$	-
4 Plant material and planting	LS	1	\$ 8,500.00	\$	8,500.00
5 Irrigation System	LS	1	\$ 4,150.00	\$	4,150.00
6 Other features (includes playground equipment and appurtenances)	LS			\$	-
7 Curbing	LF			\$	-
8 Retaining walls and structures	LS			\$	-
9 One year maintenance agreement	LS			\$	-
SUBTOTAL LANDSCAPING				\$	13,650.00

V. MISCELLANEOUS

1 Design/Engineering	LS			\$	-
2 Surveying	LS			\$	-
3 Developer's inspection costs	LS	1	\$ 500.00	\$	500.00
4 Quality control testing	LS			\$	-
5 Construction traffic control	LS	1	\$ 500.00	\$	500.00
6 Rights-of-way/Easements	LS			\$	-
7 City Inspection fees	LS	1	\$ 500.00	\$	500.00
8 Permit fees	LS			\$	-
9 Recording fees	LS			\$	-
10 Bonds	LS			\$	-
11 Newsletters	LS			\$	-
12 General Construction Supervision	LS			\$	-
13 As-Builts	LS			\$	-
14 Miscellaneous	LS			\$	-
SUBTOTAL MISCELLANEOUS				\$	1,500.00

ESTIMATED COST OF IMPROVEMENTS: \$ **36,031.10**

TOTAL ESTIMATED COST OF IMPROVEMENTS (X 20%): \$ **43,237.32**

SCHEDULE OF IMPROVEMENTS:

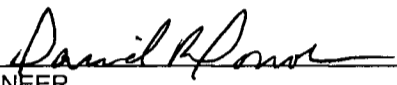
I. SANITARY SEWER:	\$4,396.00
II. DOMESTIC WATER:	\$500.00
III. STREETS:	\$15,985.10
IV. LANDSCAPE:	\$13,650.00
V. MISCELLANEOUS:	\$1,500.00

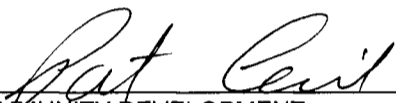
I have reviewed the estimated costs and time schedule shown above and based on the plans and the current costs of construction agree to construct and install the Improvements as required above.

 6-13-02
SIGNATURE OF DEVELOPER date

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

Reviewed and approved

 6/14/02
CITY ENGINEER date

 6/14/02
COMMUNITY DEVELOPMENT date

DISBURSEMENT AGREEMENT
(Improvements Guarantee)

DEVELOPER: EV-SIMS PARTNERSHIP, LLP

BOOK 3097 PAGE 324

BANK: WELLS FARGO BANK WEST, N.A.

PROPERTY: EASTERN CANDIES 200 S. 7TH ST

DISBURSEMENT AMOUNT: For the construction of improvements to the Property in an amount not to exceed \$ 43,237.32.

This Agreement is entered into by and between EV-SIMS PARTNERSHIP ("Developer"), WELLS FARGO BANK WEST, N.A. ("Bank") and the City of Grand Junction, Colorado ("City").
LLP

RECITALS

Developer has been required by the City to construct certain improvements to EASTERN CANDIES 200 S 7TH ST ("Improvements") in accordance with the Zoning and Development Code, Improvements Agreement and subdivision approval.

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

The City Engineer has approved an estimate of the costs of the Improvements and that amount or an amount not to exceed \$ 43,237.32, whichever is greater, shall be referred to as the "Funds."

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

NOW, THEREFORE, THE PARTIES AGREE:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated this 11th day of June, ~~199~~ ²⁰⁰².

(BANK) Wells Fargo Bank West, N.A.

By: [Signature] S.V.P.
Title

2808 North Avenue, G.J., CO 81501
Address

(DEVELOPER)

By: [Signature]
Title Partner

653 Round Hill Dr
Address

CITY OF GRAND JUNCTION

By: [Signature]
Director of Community Development

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between Zn-Sim Partnership Developer, Wells Fargo bank west, N.A. as Bank, and the City of Grand Junction, the following are the individuals authorized to sign written requests for the disbursement of the Funds:

DEVELOPER:

(name) [Signature]
(signature)

(name) _____
(signature)

(name) _____
(signature)

DEVELOPER'S GENERAL CONTRACTOR:

PHIPPS NEWELL CONST., INC. [Signature]
(name) (signature)

DEVELOPER'S GENERAL CONTRACTOR:

PHIPPS NEWELL CONST, INC.
(name)

[Signature]
(signature)

DEVELOPER'S PROJECT ENGINEER:

KEVIN KNOTT
(name)

[Signature]
(signature)

DEVELOPER'S ARCHITECT:

Vanderwood Associates Architects
(name)

[Signature]
(signature)

CITY ENGINEER:

DAVID R DONOHUE
(name)

[Signature]
(signature)