

GMR93RED

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	GENERAL MILLS RESTAURANT, INC.
PROJECT / SUBDIVISION:	RED LOBSTER RESTAURANT AT MESA MALL
LOCATION:	575 24 ½ ROAD
TAX PARCEL #:	2945-092-10-021
FILE #:	75-92
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	1993
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

**DEVELOPMENT IMPROVEMENTS AGREEMENT**

1629766 08:42 AM 02/19/93  
MONIKA TODD CLK&REC MESA COUNTY CO

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement") are GENERAL MILLS RESTAURANTS, INC. ("the Developer") and THE CITY OF GRAND JUNCTION, Colorado ("the City").

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

2. **Effective Date:** The Effective Date of the Agreement will be the date that this agreement is recorded which is not sooner than recordation of the MEMORANDUM OF LEASE BETWEEN GENERAL MILLS RESTAURANTS, INC. AND THE EQUITABLE LIFE ASSURANCE SOCIETY.

**RECITALS**

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

**DEVELOPER'S OBLIGATION**

3. **Improvements:** The Developer will design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit "B" attached and incorporated by this reference. The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. The City estimates that \$ 50.00 will be required for City inspection of the required improvements. The Developer's obligation to complete the improvements is and will be independent of any obligations of the City contained herein.

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

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

*Recorder's Note: Exhibit A Not attached at time of recording*

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

7. **Commencement and Completion Periods:** The improvements, each and every one of them, will be completed within 150 DAYS from the Effective Date of this Agreement (the "Completion Period").

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

9. **Notice of Defect:** The Developer's Engineer will 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 or substantially correct the defect.

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

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

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

- a. Developer's failure to complete each portion of the Improvements in conformance with the agreed upon time schedule; the City may not declare a default until a fourteen (14) calendar day notice has been given to the Developer;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any improvement within the applicable correction period; the City may not declare a default until a fourteen (14) calendar day notice has been given to the Developer;

- c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; in such event the City may immediately declare a default without prior notification to the Developer;
- d. Notification to the City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer.

13. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. For improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit "B" will be prima facie evidence of the minimum cost of completion; however, neither that amount or the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow establish the maximum amount of the Developer's liability.

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

15. **Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees and assigns harmless from and against all claims, costs and liabilities

of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the development or the Property pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the 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.

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

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

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

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

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

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

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

23. **Benefits:** 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 under the improvements disbursement agreement if it accepts new security from any developer or lender who obtains the Property. However, no other act of the City will constitute a release of the original Developer from his liability under this Agreement.

24. **Notice:** Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

If to Developer:

GENERAL MILLS RESTAURANTS, INC.

ATTN: LEGAL DEPARTMENT

5900 LAKE ELLENOR DRIVE  
ORLANDO, FL 32809

If to City:

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

25. **Recordation:** Developer will pay for any costs to record a copy of this Agreement in the Clerk and Recorder's Office of Mesa County, Colorado.

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

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

28. The **improvements guarantee** required by the City Code to ensure that the improvements described in the improvements agreement are constructed (to city standards) may be in the form of an agreement: (I) between a bank doing business in Mesa County and the City or as described in (II), below. The agreement between a bank and the City

(I) shall provide, among other things, for the bank to guarantee and warrant to the City that it shall:

- a. have available money equal to the estimated costs of the required improvements, in an amount equal to the amount agreed upon in the Improvements Agreement;
- b. only pay such amounts to contractors who have constructed required Improvements;
- c. only pay such amounts after the bank has received the written approval of the City Engineer, or his designee; the City Engineer shall inspect within three (3) working days of request;
- d. in the event the bank disburses without the City Engineer having approved such disbursement, the Bank shall pay, in addition to all other sums it would otherwise be obligated to pay, to the City the amount of the wrongful disbursement if the City Engineer determines that the work is not acceptable, based on the approved plans and specifications. The City shall use such money to cause the work to be constructed in accordance with the approved plans and specifications;

II.<sup>3</sup> An alternative agreement may be executed for a development which is expected to require not more than 10 transactions shall contain the following provisions:

- a. The Finance Department of the City will act as disbursing agent and will account for disbursements to Developer contractors as required improvements are completed and accepted.
- b. The City will accept a cash deposit from the Developer equal to the City approved estimate of the required improvements, for purposes of securing and guaranteeing the construction of the required sewer, water, streets, and on-site improvements in the development plan. Such deposit(s), currently estimated at approximately \$39,171.00 shall be given to the City's Finance Department, commingled with other funds of the City and specifically invested in the short term market. Interest income shall be allocated to the Developer's escrow account monthly, in the same manner as other short-term investments of the city.
- c. Such interest income shall be used to reimburse the General Fund of the City for accounting and transaction costs incurred in making payments to the appropriate contractors. For purposes of this agreement, the City's costs shall be one hundred dollars (\$100.00) for each check disbursement or other transaction which is made. In any event the amount retained by the City for

its transaction costs shall not be less than two percent (2%) of the amount deposited. After all required improvements have been made and accepted by the City, any surplus funds remaining in the account (in excess of the two percent minimum or the calculated transaction costs) shall be returned to the developer within thirty (30) days of said acceptance date. Any transaction costs which are not covered by the amount of the deposit plus accrued interest shall be paid to the City by the Developer in like manner within thirty (30) days of completion of the improvements. No guarantee as to the level of interest income or rate of return on the funds so deposited is either implied or made in this agreement; the City agrees only to keep the funds invested as with other City funds.

- d. in any event, the Developer promises to construct the required improvements to the satisfaction of the City Engineer, in accordance with the approved plans and specifications.
29. 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 accepted by the City.

Prior to requesting final acceptance of streets, storm drainage facilities, or other required improvements, the Developer shall furnish to the City Engineer as-built drawings in reproducible form and copies of results of all construction control tests required by City specifications.

- 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.

Attest:

*Sandra Glaze*  
 Sandra Glaze  
 City Clerk

*Acting*

Attest:

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

By: *Mark K. Achen*  
 Mark K. Achen  
 City Manager



IMPROVEMENTS LIST/DETAIL

(Page 1 of 2)

DATE: January 12, 1993  
 NAME OF DEVELOPMENT: RED LOBSTER RESTAURANT  
 LOCATION: Mesa Mall  
 PRINTED NAME OF PERSON PREPARING: Western Engineers, Inc.

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
<b>I. SANITARY SEWER</b>				
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)	Each	1	1,100	1,100
6. Connection to existing manhole(s)				
7. Aggregate Base Course				
8. Pavement replacement				
9. Driveway restoration				
10. Utility adjustments				
<b>II. DOMESTIC WATER</b>				
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				
<b>III. STREETS</b>				
1. Clearing and grubbing <small>Remove existing curb &amp; gutter</small>	LS	1		1,500
2. Earthwork, including excavation and embankment construction				
3. Utility relocations				
4. Aggregate sub-base course (square yard)				
5. Aggregate base course (square yard)				
6. Sub-grade stabilization				
7. Asphalt or concrete pavement Medians (square yard)	Sq. Yd.	220	14	3,080
8. <del>Curb, gutter &amp; sidewalk</del> 24½ Rd. (linear feet)	Sq. Yd.	39	19	741
9. Driveway sections (square yard)				
10. Crossspans & fillets	Sq. Yd.	12	30	360
11. Retaining walls/structures				
12. Storm drainage system				
13. 2' Curb & Gutter for medians	Ln. Ft.	230	18	4,140

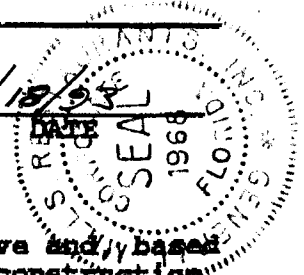
13. Signs and other traffic control devices	Each	4	50	200
14. Construction staking				
15. Dust control				
16. Street lights (each)				
<b>IV. LANDSCAPING</b>				
1. Design/Architecture				
2. Earthwork (includes top soil, fine grading, & berming)				
3. Hardscape features (includes walls, fencing, and paving)				
4. Plant material and planting	LS	1		16,000
5. Irrigation system	LS	1		12,000
6. Other features (incl. statues, water displays, park equipment, and outdoor furniture)				
7. Curbing				
8. Retaining walls and structures				
9. One year maintenance agreement				
<b>V. MISCELLANEOUS</b>				
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	Hour	2	25	50
8. Permit fees				
9. Recording costs				
10. Bonds				
11. Newsletters				
12. General Construction Supervision				
13. Other				
14. Other				

**TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 39,171**

by: Byron A. Samuel VICE-PRES

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

Ronald S. Bates  
Asst. Sect.



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

Don Lawton  
CITY ENGINEER

1-21-93  
DATE

Gary L...  
COMMUNITY DEVELOPMENT

1-22-93  
DATE

RKY06ICP

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	ROCKY MOUNTAIN PRODUCTION SERVICES, LLC
PROJECT / SUBDIVISION:	INTERSTATE COMMERCIAL PARK THREE
LOCATION:	744 23 ROAD
PARCEL NO:	2701-323-08-007
FILE #:	PFP-2005-200
CITY DEPARTMENT:	PUBLIC WORKS & PLANNING
YEAR:	2006
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

## DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are Rocky Mt. Production Sec. 174 ("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 Interstate Commercial Park Tracts has been reviewed and approved under Community Development file # PEP-2065-200 ("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

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JUN 2 2006

COMMUNITY DEVELOPMENT  
DEPT.

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 \$ 265,903.55 (120% of the amount for the Improvements) in a form and with terms acceptable to the City ("Guarantee"). The Guarantee shall be in the form of a cash deposit made to the City, a letter of credit or a disbursement agreement in a form and with content approved by the City Attorney. The Guarantee specific to this Agreement is attached as Exhibit C and is incorporated by this reference as if fully set forth.

Select one: Cash \_\_\_\_ Letter of Credit (LOC) LOC Disbursement Agreement \_\_\_\_

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

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

6a. Upon Acceptance the Developer shall provide a Maintenance Guarantee in an amount of \$ 44,317.26 (Line G2, Exhibit B, City Security).

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

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

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

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

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

Commencement Date: July 2006  
Completion Date: July 2007

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

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

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

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

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

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

11. **Reduction of Security:** Upon Acceptance of any Improvement(s) the amount which the City is entitled to draw on the Guarantee shall be reduced by an amount of \$ 1 (Line G1, Exhibit B, Total Improvement Costs).

\$221,586.30

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

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

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

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

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

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

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

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

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

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

14. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer shall be the reasonable cost of satisfactorily completing the Improvements, plus reasonable expenses. Expenses may include but are not limited to

contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to the collection/completion of the Improvements. For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit B shall be *prima facie* evidence of the minimum cost of completion; however, the maximum amount of the Developer's liability shall not be established by that amount or the amount of the Guarantee.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

unenforceability shall not affect the validity of any other part, term or provision. The rights of the parties shall be construed as if the part, term or provision was never part of the Agreement.

25. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld but any unapproved assignment is void.

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

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

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

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

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

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

If to Developer: Rocky Mountain Production Services, LLC Name -Developer/Company  
716 B Arrowhead Rd. Address (Street and Mailing)  
Grand Junction, Colo.  
81505 City, State & Zip Code  
(970) 257-0458 Telephone and Fax Numbers  
(970) 257-0460  
office@mediawireline.com E-mail

Cc:

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

Cc: Community Development Department  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501

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

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

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

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

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

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

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

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

(i) furnishes to the City Engineer as-built drawings in reproducible form, blue line stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests required by City specification;

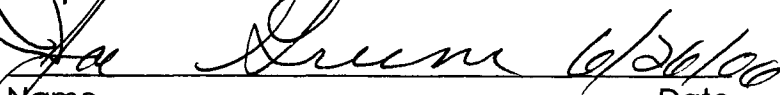
(ii) provides written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon in and under which the Improvement(s) have been constructed or which are necessary for the Improvements are free from toxic, hazardous and other regulated substances or materials;

(iii) provides written evidence to the City Attorney that the title to lands underlying the improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney; and  
(iv) provides written evidence, certified by the Developer's engineer, that the work was systematically inspected and tested and that the materials and the compaction of the materials that are required to be compacted, were in conformance with City-approved plans and specifications.

By: Rocky Mountain Production Services, LLC.

Developer \_\_\_\_\_ Date \_\_\_\_\_  
Joe Greene mgr  
Name (printed)

Corporate Attest:

  
Name \_\_\_\_\_ Date \_\_\_\_\_

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

 8-17-06  
Community Development Dept. Date

6/13/2003

**EXHIBIT B****IMPROVEMENTS COST ESTIMATE**

DATE: 3/31/06

DEVELOPMENT NAME: INTERSTATE COMMERCIAL PARK THREE SUBDIVISION

LOCATION: 744 23 ROAD

PRINTED NAME OF PERSON PREPARING: KENT SHAFFER

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>A. SANITARY SEWER</b>					
1	8" PVC Sanitary Sewer Main (on-site)	LF	1,135	\$ 28.00	\$ 31,780.00
2	" PVC Sanitary Sewer Main	LF			\$ -
3	Sewer services	EA	5	\$ 500.00	\$ 2,500.00
4	Sanitary Sewer Manhole (on-site)	EA	3	\$ 1,500.00	\$ 4,500.00
6	Connection to Existing Manhole	EA	1	\$ 500.00	\$ 500.00
7	Concrete Encasement	LF	40	\$ 5.00	\$ 200.00
<b>Subtotal Part A Sanitary Sewer</b>					<b>\$ 39,480.00</b>
<b>B. DOMESTIC WATER</b>					
1	8" PVC Water Main	LF	200	\$ 22.00	\$ 4,400.00
2	" PVC Water Main	LF			\$ -
3	" PVC Water Main	LF			\$ -
4	8" Gatevalve	EA	1	\$ 800.00	\$ 800.00
5	2" Gatevalve	EA			\$ -
6	" Gatevalve	EA			\$ -
7	Water Services	EA	5	\$ 500.00	\$ 2,500.00
8	Connect to Existing Water Line	EA	2	\$ 1,000.00	\$ 2,000.00
9	Fire Hydrant with Valve	EA			\$ -
10	Utility Adjustments	EA			\$ -
11	Blowoff	EA			\$ -
					\$ -
					\$ -
					\$ -
<b>Subtotal Part B - Domestic Water</b>					<b>\$ 9,700.00</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C1</b>	<b>STREETS</b>				
1	" PVC Utility/Irrigation sleeves	LF			\$ -
2	" PVC Utility/Irrigation sleeves	LF			\$ -
3	Reconditioning	SY	2,322	\$ 1.00	\$ 2,322.00
4	Aggregate Base Course (Class 3)	TN			\$ -
5	Aggregate Base Course (Class 6) (10" Compacted Thickness)	SY	2,322	\$ 10.00	\$ 23,220.00
6	Aggregate Base Course (Class 6) ( " Compacted Thickness)	SY			\$ -
7	Hot Bituminous Paving, Grading C (4" thick)	SY	2,322	\$ 12.00	\$ 27,864.00
8	Hot Bituminous Paving, Grading ( " thick)	SY			\$ -
9	Hot Bituminous Paving, Patching	SY	10	\$ 8.00	\$ 80.00
10	Geotextile	SY			\$ -
11	Concrete Curb ( " Wide by " High)	LF			\$ -
12	Concrete Curb and Gutter (2' wide)	LF	1,382	\$ 18.00	\$ 24,876.00
13	Concrete Curb and Gutter (1.5' wide)	LF			\$ -
14	Monolithic, Vertical Curb, Gutter and Sidewalk ( ' Wide)	LF			\$ -
15	Drive Over Curb, Gutter, and Sidewalk (6.5' Wide)	LF			\$ -
16	Concrete Sidewalk ( ' Wide)	LF			\$ -
17	Concrete Gutter and Driveway Section ( " Thick)	SY			\$ -
18	Concrete Drainage Pan (5' Wide,8" Thick) transition to match existing	SY	16	\$ 30.00	\$ 480.00
19	Concrete Drainage Pan 3' Wide,6" Thick) Detention pond	SY	32	\$ 30.00	\$ 960.00
20	Concrete Corner Fillet	SY			\$ -
21	Concrete Curb Ramp	SY			\$ -
22	Complete Concrete Corner	SY		\$ 50.00	\$ -
23	Concrete Driveway ( " Thick)	SY			\$ -
24	Driveway/Concrete Repair	SY			\$ -
25	Retaining Walls	LF			\$ -
26	Street Signs	EA	2	\$ 250.00	\$ 500.00
27	Striping (New, Remove/Replace)	LF			\$ -
28	Street Lights	EA		\$ 1,000.00	\$ -
29	Signal Construction or Reconstruction	LS			\$ -
30	Flowable Fill	CY			\$ -
31	Sleeves, " , PVC	LF			\$ -
					\$ -
					\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C2 BRIDGES</b>					
					\$ -
1	Box Culvert Pre-Cast	LS			\$ -
2	Box Culvert Cast-in-Place	LS			\$ -
3	Wingwalls	LS			\$ -
4	Parapet Wall	LS			\$ -
5	Railing (handrail, guardrail)	LS			\$ -
					\$ -
					\$ -
<b>Subtotal Part C - Streets and Bridges</b>					<b>\$ 80,302.00</b>
<b>D1 EARTHWORK</b>					
1	Mobilization	LS	1	\$ 3,000.00	\$ 3,000.00
2	Clearing and Grubbing	LS	1	\$ 500.00	\$ 500.00
3	Unclassified Excavation	CY	5,000	\$ 2.00	\$ 10,000.00
4	Unclassified Embankment	CY		\$ 1.00	\$ -
5	Silt Fence	LF	1,000	\$ 1.00	\$ 1,000.00
6	Watering (Dust Control)	LS	1	\$ 1,000.00	\$ 1,000.00
<b>D2 REMOVALS AND RESETTING</b>					
1	Removal of Asphalt	SY			\$ -
2	Removal of Miscellaneous Concrete	SY			\$ -
3	Remove Curb and Gutter	LF			\$ -
4	Removal of Culverts	LF		\$ 3.00	\$ -
5	Remove Structures	EA	1	\$ 250.00	\$ 250.00
6	Remove Signs	EA			\$ -
7	Remove Fence	LF			\$ -
8	Adjust Manhole	EA	1	\$ 1,000.00	\$ 1,000.00
9	Adjust Valvebox	EA			\$ -
10	Relocate or Adjust Utilities	LS	1	\$ 1,000.00	\$ 1,000.00
<b>D3 SEEDING AND SOIL RETENTION</b>					
1	Sod	SY			\$ -
2	Seeding (Native)	SY	36,300	\$ 0.50	\$ 18,150.00
3	Seeding (Bluegrass/Lawn)	SY or AC			\$ -
4	Hydraulic Seed and Mulching	SY or AC			\$ -
5	Soil Retention Blanket	SY			\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>D4</b>	<b>STORM DRAINAGE FACILITIES</b>				
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY	1,500	\$ 2.00	\$ 3,000.00
2	8" PVC Storm Drain Pipe	LF		\$ 15.00	\$ -
3	15" Storm Drain Pipe	LF	156	\$ 30.00	\$ 4,680.00
4	18" Storm Drain Pipe	LF	464	\$ 35.00	\$ 16,240.00
5	24" Storm Drain Pipe	LF	79	\$ 50.00	\$ 3,950.00
6	18" RCP Storm Drain Pipe	LF	15	\$ 45.00	\$ 675.00
7	24" Flared End Section	EA	1	\$ 250.00	\$ 250.00
8	" Flared End Section	EA			\$ -
9	48" Storm Drain Manhole	EA			\$ -
10	60" Storm Drain Manhole	EA	1	\$ 1,800.00	\$ 1,800.00
11	72" Storm Drain Manhole	EA			\$ -
12	Manhole with Box Base	EA			\$ -
13	Connection to Existing MH	EA			\$ -
14	Single Curb Opening Storm Drain Inlet	EA	1	\$ 1,500.00	\$ 1,500.00
15	Double Curb Opening Storm Drain Inlet	EA			\$ -
16	Area Storm Drain Inlet	EA	4	\$ 1,500.00	\$ 6,000.00
17	Detention Area Outlet structure	EA			\$ -
18	Rip-Rap D <sub>50</sub> = "	CY			\$ -
19	Drain Pan (detention area)	L.F.	50	\$ 15.00	\$ 750.00
20	Pump Systems including Electrical	LS			\$ -
	<b>Subtotal Part D - Grading and Drainage</b>				<b>\$ 74,745.00</b>



Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>E1</b>	<b>IRRIGATION</b>				
1	Connect to Existing Pipe	LS			\$ -
2	" Irrigation Pipe	LF			\$ -
3	" Irrigation Pipe	LF			\$ -
4	Fittings and Valves	LS			\$ -
5	Services	EA			\$ -
6	Pump System and Concrete Vault	LS			\$ -
7	Irrigation Structure	EA			\$ -
8	Vacuum Relief and/or Air Release Valve	EA			\$ -
<b>E2</b>	<b>LANDSCAPING</b>				
1	Design/Architecture	LS			\$ -
2	Earthwork	CY			\$ -
3	Hardscape Features	LS			\$ -
4	Plant Material & Planting	LS			\$ -
5	Irrigation System	LS			\$ -
6	Curbing	LF			\$ -
7	Retaining Walls & Structures	LS			\$ -
8	1 Year Maintenance Agrmnt.	LS			\$ -
9	Topsoil				\$ -
					\$ -
					\$ -
					\$ -
	<b>Subtotal Part E - Landscaping and Irrigation</b>				<b>\$ -</b>
	<b>Subtotal Construction Costs</b>				<b>\$ 204,227.00</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>F.</b>	<b>Miscellaneous Items</b>				
1	Construction staking/surveying	2%	0	\$ 204,227.00	\$ 4,084.54
2	Developer's inspection cost	0.50%	0	\$ 204,227.00	\$ 1,021.14
3	General construction supervsn	0.50%	0	\$ 204,227.00	\$ 1,021.14
4	Quality control testing	2%	0	\$ 204,227.00	\$ 4,084.54
5	Construction traffic control	0.50%	0	\$ 204,227.00	\$ 1,021.14
6	City inspection fees	1.00%	0	\$ 204,227.00	\$ 2,042.27
7	As-builts	2%	0	\$ 204,227.00	\$ 4,084.54
	<b>Subtotal Part F - Miscellaneous Items</b>				<b>\$ 17,359.30</b>
% = Percentage of total site construction costs					
<b>G.</b>	<b>COST SUMMARY</b>				
<b>1</b>	<b>Total Improvement Costs</b>				<b>\$ 221,586.30</b>
<b>2</b>	<b>City Security (20%)</b>				<b>\$ 44,317.26</b>
<b>3</b>	<b>Total Guarantee Amount</b>				<b>\$ 265,903.55</b>

**NOTES**

- All prices shall be for items complete in place and accepted.
- All pipe prices shall include excavation, pipe, bedding, backfill, and compaction.
- Water main shall include pipe, excavation, bedding, backfill, bends, and appurtenances not itemized elsewhere.
- All concrete items shall include Aggregate Base Course where required by the drawings.
- Fill in the pipe type for irrigation pipe and sleeves.
- Reconditioning shall be calculated to at least 6" outside of back of walk on both sides.
- Units can be changed if desired, simply annotate what is used.
- Additional lines or items may be added as needed.

*Rocky Mountain Production Services, hnc*  
*Joe Greene*  
 Signature of Developer *Joe Greene* Date  
 (If corporation, to be signed by President and attested to by Secretary together with the corporate seals.)

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

*Rick Davis* 8-17-06  
 City Development Engineer Date

*Kathleen M. Patten* 8-17-06  
 Community Development Date

**RECORDING MEMORANDUM**  
**Exhibit D**

2333449 BK 4228 PG 717  
08/17/2006 04:36 PM  
Janice Ward CLK&REC Mesa County, CO  
RecFee \$5.00 SurChs \$1.00

City of Grand Junction  
Community Development Department Community Development

File: # PEP 2005-200

This memorandum relates to and confirms that certain Development Improvements Agreement and/or Maintenance Guarantee concerning land in Mesa County, Colorado. The Agreement is by and between Rocky Mountain Production Services (Developer) and the City of Grand Junction (City) pertaining to Inverdale Commercial Park Phase (Project), located at 23 Road & Hogos Drive.

(Subject subdivision is more particularly depicted and described in the recording found at Plat Book 4228, Pages 715-716.)

The Developer of the Project was required by law to install and construct certain public and private improvements, the completion of which was guaranteed by a Development Improvements Agreement and/or Maintenance Guarantee. The Project is required to be constructed in accordance with the approval by the City pursuant to and in accordance with the Zoning and Development Code all as more fully detailed and described in City of Grand Junction development file # PEP 2005-200

The Developer and the City of Grand Junction by and through the signatures of the undersigned have determined and agreed to the type, quality and amount of improvements required and/or necessitated by the approval of the Project and that the improvements are guaranteed by and through the Development Improvements Agreement and /or Maintenance Guarantee. Furthermore, the Developer and the City agree that the Development Improvements Agreement and/or Maintenance Guarantee are contractual in nature and that the obligations under the Development Improvements Agreement and/or Maintenance Guarantee shall not be assigned except as provided in the agreement(s).

**By virtue of this notice being recorded in the land records of the Mesa County Clerk and Recorder, subsequent owners and/or those that claim by, through or under the Developer are on notice of the Developer's obligations under the agreement(s).**

NOW THEREFORE, the Developer and an official of the City of Grand Junction, both possessing and representing by their signatures that they possess sufficient authority, do hereby memorialize the relative, rights and obligations contained in the Development Improvement Agreement and/or Maintenance Guarantee herein characterized.

**DEVELOPER:** Rocky Mountain Production Services, LLC

By: Joe Greene 8/15/06  
Joe Greene Mgr. Date

(Print Name) Rocky Mountain Production Services, LLC  
By Joe Greene Mgr.

**CITY OF GRAND JUNCTION:**

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

Kathleen M. Parker 8-17-06  
Community Development Department Date

RECEIVED  
AUG 15 2006  
COMMUNITY DEVELOPMENT  
DEPT.