

GMR93RLR

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**

NAME OF APPLICANT OR DEVELOPER: GENERAL MILLS RESTAURANTS, INC.

PROJECT/SUBDIVISION: RED LOBSTER RESTAURANT - MESA MALL SUBDIVISION

LOCATION: 575 24 ½ ROAD

PARCEL NO.: 2945-092-10-022

FILE NO.: CUP-1992-075

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1993

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

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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:

1655112 03:32 PM 09/30/93
MONIKA TODD CLK&REC MESA COUNTY CO

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.

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. 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 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

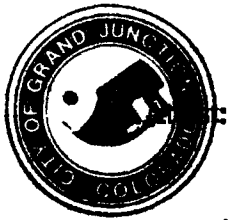
its transaction costs shall not be less than two percent (2%) of the amount deposited. After all required improvements have been made and accepted by the City, any surplus funds remaining in the account (in excess of the two percent minimum or the calculated transaction costs) shall be returned to the 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.



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

Stephanie Nye
Stephanie Nye
City Clerk

By: David A. Achen
Mark K. Achen
City Manager (A.C.C.)

Attest:

EXHIBIT A

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PROPERTY DESCRIPTION

Beginning at a point which bears S00°11'55"W 1316.27' and N89°54'30"W 50.00' from the NE corner of the NW1/4 of Section 9 and considering the line between Mesa County Brass Caps at the NE corner of the NW1/4 of said Section 9 and at the SE Corner of the NE1/4 NW1/4 of said Section 9 to bear S00°11'55"W with all other bearings contained herein relative thereto; thence S00°08'56"W 126.58 feet; thence S67°02'41"W 28.34 feet to the northerly right-of-way of U.S. Highway 6 & 50 and the beginning of a 5830 foot radius curve to the left the chord of which bears N60°56'50"W 273.48 feet; thence along said arc 273.59 feet; thence leaving said right-of-way N27°41'50"E 190.01 feet; thence N63°31'52"W 281.56 feet to the beginning of a 305 foot radius curve to the right the chord of which bears N01°29'27"W 36.23 feet; thence along said arc 36.25 feet; thence S63°31'52"E 230.51 feet; thence N26°28'08"E 104.69 feet; thence S89°48'05"E 178.28 feet to the westerly right-of-way line of 24 1/2 road; thence S00°11'55"W 315.48 feet to the beginning.

NOT Remove
from Office ✓

#75 92

G

IMPROVEMENTS LIST/DETAIL

DATE: SEPTEMBER 27, 1993
 NAME OF DEVELOPMENT: _____
 LOCATION: _____
 PRINTED NAME OF PERSON PREPARING: _____

RED LOBSTER RESTAURANT
 Mesa Mall
 Western Engineers, Inc.

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
I. SANITARY SEWER				
1. Clearing and grubbing				
2. Cut and remove asphalt				
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)				
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				
II. DOMESTIC WATER				
1. Clearing and grubbing				
2. Cut and remove asphalt				
3. Water Main (incl. excavation, bedding, backfill, valves and appurtenances)				
4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances)				
5. Connect to existing water line				
6. Aggregate Base Course				
7. Pavement Replacement				
8. Utility adjustments				
III. STREETS				
1. Clearing and grubbing	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. Curb, gutter & sidewalk 24½ Rd. (linear feet)	Sq. Yd.	39	19	741
9. Driveway sections (square yard)				
0. Crosspans & fillets	Sq. Yd.	12	30	360
1. Retaining walls/structures				
2. Storm drainage system				
3. 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)				
IV. LANDSCAPING				
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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. Retaing walls and structures				
9. One year maintenance agreement				
V. MISCELLANEOUS				
1. Design/Engineering				
2. Surveying				
3. Developer's inspection costs				
4. Quality control testing				
5. Construction traffic control				
6. Rights-of-way/Easements				
7. City inspection fees	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

Rm Gates
Asst Sect.

Bruce A. Amodeo
 SIGNATURE OF DEVELOPER

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

9/28/95
 DATE

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

J. Don Houston
 CITY ENGINEER

9-30-95
 DATE

J. Keith...
 COMMUNITY DEVELOPMENT

9-30-95
 DATE

RECORDER NOTE: POOR QUALITY DOCUMENT
 PROVIDED FOR REPRODUCTION

IMPROVEMENTS AGREEMENT

(Site Plan)

- 1. Parties:** The parties to this Improvements Agreement ("the Agreement") are General Mills Restaurants, Inc., ("the Developer") and THE CITY OF GRAND JUNCTION, Colorado ("the City").
- 2. Effective Date:** The Effective Date of the Agreement will be the date that this agreement is recorded.

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

RECITALS

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

DEVELOPER'S OBLIGATION

- 3. Improvements:** The Developer will design, construct and install, at its own expense, those improvements listed on Exhibit B attached hereto and incorporated herein 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 acceptable to the City to post a good and sufficient letter of credit, or deposit with the City cash equivalent to the estimated cost of construction of the improvements or provide a bank disbursement agreement acceptable to the City.

5. **Standards:** The Developer will construct the Improvements according to the standards and specifications required by the City Engineer or as otherwise 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, in writing, the improvements completed by the Developer.

7. **Commencement and Completion Periods:** The improvements, each and every one of them, will be completed within 6 months from the Effective Date of this Agreement (the "Completion Period").

8. **Compliance with Law:** The Developer shall comply with all relevant federal, state and local laws, ordinances and regulations in effect at the time of site plan/development approval when fulfilling its obligations under this Agreement.

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, or is otherwise defective. The Developer will have thirty (30) days from the issuance of such notice to correct the defect.

10. **Acceptance of Improvements:** The City's final acceptance and/or approval of improvements will not be given or obtained until 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.

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- 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 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 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 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;
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15. **Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officer, employees and assigns harmless from and against all claims, costs and liability 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 on 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. The Developer is not an agent or employee of the City for any purpose whatsoever.

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

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If to Developer:

General Mills Restaurants, Inc.
Attn: Legal Dept
5900 Lake Eleanor Drive
Orlando, Florida 32809

If to City:

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

25. Recordation: Developer will pay for any and all 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 action commenced by either party to this Agreement, whether arising out of, or relating to the Agreement, letter of credit, disbursement agreement or cash deposit 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.

28. The **improvements guarantee** required by the City Code to ensure that the improvements described in this Improvements Agreement are constructed (to City standards) may be in the form of a (I) disbursement agreement between a bank doing business in Mesa County and the City, or (II) a good and sufficient letter of credit acceptable to the City, or (III) depositing with the City cash equivalent to the estimated cost of construction of the improvements. Exhibit C attached hereto and incorporated herein by this reference as if fully set forth is the accepted form of guarantee.

The Finance Department of the City may act as disbursing agent for disbursements to Developer's contractor(s) as required improvements are completed and accepted if agreed to in writing pursuant to a disbursement agreement.

29. The City shall have no responsibility or liability with respect to any street, or any other improvement(s), notwithstanding the use of the same by the public, unless the street or other improvement(s) shall have been accepted by the City.

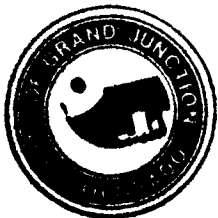
Prior to requesting final acceptance of streets, storm drainage facilities or other required public improvement(s), the Developer shall furnish to the City Engineer as-built drawings in reproducible form and copies of results of all construction control tests required by City specifications.

30. 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 prescribed location and shall construct the required width of pavement from the edge of gutter on the side of the street being developed to enable an initial two-way traffic flow without on-street parking.

The Developer is also responsible for end-transitions, intersection paving, drainage facilities, adjustments to existing utilities and joints necessary to open the street or sidewalk to use.

City of Grand Junction

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



Attest:

Stephanie Nye
Stephanie Nye, City Clerk

X Developer

By: Aren Chris Fortmueller
~~President~~ Project Mng'r.
Aren Chris Fortmueller

Attest:

Patti J. Redigo
Secretary
Patti J. Redigo

EXHIBIT A

PROPERTY DESCRIPTION

Beginning at a point which bears S00°11'55"W 1316.27' and N89°54'30"W 50.00' from the NE corner of the NW1/4 of Section 9 and considering the line between Mesa County Brass Caps at the NE corner of the NW1/4 of said Section 9 and at the SE Corner of the NE1/4 NW1/4 of said Section 9 to bear S00°11'55"W with all other bearings contained herein relative thereto; thence S00°08'56"W 126.58 feet; thence S67°02'41"W 28.34 feet to the northerly right-of-way of U.S. Highway 6 & 50 and the beginning of a 5830 foot radius curve to the left the chord of which bears N60°56'50"W 273.48 feet; thence along said arc 273.59 feet; thence leaving said right-of-way N27°41'50"E 190.01 feet; thence N63°31'52"W 281.56 feet to the beginning of a 305 foot radius curve to the right the chord of which bears N01°29'27"W 36.23 feet; thence along said arc 36.25 feet; thence S63°31'52"E 230.51 feet; thence N26°28'08"E 104.69 feet; thence S89°48'05"E 178.28 feet to the westerly right-of-way line of 24 1/2 road; thence S00°11'55"W 315.48 feet to the beginning.

DO NOT Remove
from Office

#75 92

G

IMPROVEMENTS LIST/DETAIL

DATE: _____
 NAME OF DEVELOPMENT: _____
 LOCATION: _____
 PRINTED NAME OF PERSON PREPARING: _____

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
I. SANITARY SEWER				
1. Clearing and grubbing	_____	_____	_____	_____
2. Cut and remove asphalt	_____	_____	_____	_____
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	_____	_____	_____	_____
4. Sewer Services (incl. trenching, bedding, & backfill)	_____	_____	_____	_____
5. Sanitary sewer manhole(s)	_____	_____	_____	_____
6. Connection to existing manhole(s)	Each	1	1,100	1,100
7. Aggregate Base Course	_____	_____	_____	_____
8. Pavement replacement	_____	_____	_____	_____
9. Driveway restoration	_____	_____	_____	_____
10. Utility adjustments	_____	_____	_____	_____
II. DOMESTIC WATER				
1. Clearing and grubbing	_____	_____	_____	_____
2. Cut and remove asphalt	_____	_____	_____	_____
3. Water Main (incl. excavation, bedding, backfill, valves and appurtenances)	_____	_____	_____	_____
4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances)	_____	_____	_____	_____
5. Connect to existing water line	_____	_____	_____	_____
6. Aggregate Base Course	_____	_____	_____	_____
7. Pavement Replacement	_____	_____	_____	_____
8. Utility adjustments	_____	_____	_____	_____
III. STREETS				
1. Clearing and grubbing ^{Remove existing curb & gutter}	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. Curb, gutter & sidewalk - 24 1/2 Road (linear feet)	Sq. Yd	39	19	741
9. Driveway sections (square yard)	_____	_____	_____	_____
10. Crosspans & 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)				
IV. LANDSCAPING				
1. Design/Architecture				
2. Earthwork (includes top soil, fine grading, & berming)				
3. Hardscape features (includes walls, fencing, and paving)				
4. Plant material and planting	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				
V. MISCELLANEOUS				
1. Design/Engineering				
2. Surveying				
3. Developer's inspection costs				
4. Quality control testing				
5. Construction traffic control				
6. Rights-of-way/Easements				
7. City inspection fees	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: \$ 39,171.00

X Allen Chris Zottmuller 3/1/94
 SIGNATURE OF DEVELOPER 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 plan layouts submitted to date and the current costs of construction, I take no exception to the above.

Jody Kloba 3-3-94
 CITY ENGINEER DATE
Developer
James Turner 3/2/94
 COMMUNITY DEVELOPMENT DATE

MEMORANDUM OF IMPROVEMENTS AGREEMENT & GUARANTEE
Grand Junction Community Development Department
File #75-92

This memorandum relates to an improvements agreement and guarantee dated March 3, 1994, by and between General Mills Restaurants (Developer) and the City of Grand Junction (City) pertaining to Red Lobster (Project) in the City of Grand Junction.
#75-92

Whereas, Developer is required to install and construct certain public and private improvements as a condition of approval of the Project, which completion is guaranteed by an improvements agreement and guarantee in the sum of \$39,171.00, and

Whereas, the City of Grand Junction and other agencies possessing regulatory authority over the Project and/or the improvements to be constructed, must inspect the improvements and accept the same before the improvements agreement and guarantee are released or if not constructed the City may use the proceeds or collateral of the guarantee to install the improvements, and

Whereas, the existence of the improvements agreement and guarantee may affect certain rights, responsibilities and actions of the Developer, the City or any other person or entity,

NOW THEREFORE, this memorandum is recorded to be notice to the world of the existence of said improvements agreement and guarantee. This memorandum is not a complete summary of the improvements agreement and guarantee. Provisions of this memorandum shall not be used to interpret the terms or provisions of the improvements agreement and/or guarantee. In the event of conflict between this memorandum and the unrecorded improvements agreement and/or guarantee, the unrecorded improvements agreement and guarantee shall control. The improvements agreement and guarantee may be inspected at the City of Grand Junction Community Development Department, 250 N. 5th Street, Grand Junction, CO.

CITY OF GRAND JUNCTION:

Jerry Tu 3/3/94 (WA)
Director of Community Development date

DEVELOPER:

X Aren Chris Patmella 3/1/94
date

After recording mail to:

Kristen Ashbeck
c/o Community Development Department
City of Grand Junction
250 N. 5th Street
Grand Junction, CO 81501

RECORDER NOTE: POOR QUALITY DOCUMENT
PROVIDED FOR REPRODUCTION

Colorado National Bank
950 17th Street, Suite 250
Denver, Colorado 80202

Telex: 168141 CNBD UT
SWIFT: CNBDUS55
FAX: (303) 825-8958
Telephone: (303) 893-1862

ADVICE OF A LETTER OF CREDIT	Date: February 5, 1993
BENEFICIARY: City of Grand Junction 250 N. 5th St. Grand Junction, CO 81501	ISSUING BANK: Sun Bank National Association Orlando, Florida
OUR REF: FC-9888	ISSUING BANK L/C NO: SP13854

Gentlemen:

At the request of the issuing bank we are pleased to enclose the above referenced letter of credit. Please examine the letter of credit carefully to ensure that you are able to comply with the terms and conditions thereof. If the terms and conditions are unacceptable to you, please communicate with your customer and request that they have their bank send us amended instructions.

*We add our confirmation to this letter of credit and thereby undertake to honor all drafts and documents drawn and presented in compliance with the terms and conditions of the letter of credit.

*The issuing bank has instructed us to claim reimbursement from a third bank for documents presented in compliance with this letter of credit. We shall therefore effect payment to you only after our reimbursement claim has been honored. Unless otherwise instructed by you, we may dispatch the documents to the issuing bank before receiving payment from the issuing or reimbursing bank.

Our advising fee of USD35.00, any amendment fees of USD20.00, and other fees applicable will be deducted from payments made to you under the letter of credit if the charges are for your account. In the event documents are not presented to us, at the expiration of the credit, we will debit your account or invoice you for amounts due and owing.

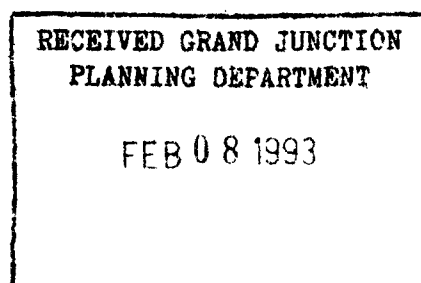
All documents presented to our bank must be accompanied by the original letter of credit and any amendments thereto for endorsement.

Should you have any questions regarding the letter of credit, please refer your inquiry to our International Department, attention: Cheri Jones at (303) 899-4322 quoting our reference No. FC-9888.

Unless otherwise expressly stated, this letter of credit will be governed by the "Uniform Customs and Practice for Documentary Credits," 1983 Revision, International Chamber of Commerce Publication No. 400.

Yours truly,


Authorized Signature





Sun Bank, National Association

International Division
P.O. Box 3833, 200 S. Orange Avenue (32801)
Orlando, Florida 32897

IRREVOCABLE LETTER OF CREDIT

Date of Issue: February 2, 1993

Credit Number: SP13854

**Advising/
Confirming Bank:** Colorado National Bank
International Department
Attn: Letters of Credit Section
950 17th Street
Colorado National Bank Bldg., 2nd Floor
Denver, CO 80217

Applicant: General Mills Restaurants, Inc.
d/b/a Red Lobster
P. O. Box 593330
Orlando, FL 32859-3330

Beneficiary: City of Grand Junction
250 N. 5th St.
Grand Junction, CO 81501

Amount: \$39,171.00

Expiry Date: February 2, 1994
At The Counters of
Colorado National Bank, Denver, Colorado

THIS LETTER OF CREDIT ADVISES
UNDER REFERENCE NO. FC 9888
COLORADO NATIONAL BANK
OF DENVER
INTERNATIONAL DIVISION

We hereby establish our Irrevocable Letter of Credit No. SP13854 in your favor for the account of General Mills Restaurants, Inc. d/b/a Red Lobster which is available against presentation of your draft(s) drawn on Colorado National Bank at sight up to an aggregate amount of U.S. \$39,171.00 (U.S. Dollars Thirty-Nine Thousand One Hundred Seventy-One and 00/100) accompanied by the following signed statement:

"I hereby certify that I am an authorized official of the City of Grand Junction for the purposes of drawing under this Letter of Credit. I further certify that General Mills Restaurants, Inc. d/b/a Red Lobster has failed to complete on and off-site improvements and landscape requirements for the Red Lobster located in the Mesa Mall Subdivision as required by the City of Grand Junction. The monies received from this drawing are required to complete such improvements."

We engage with you that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented at the offices of Colorado National Bank on or before the current expiry date and any draft drawn by you under this Letter of Credit must bear the clause "Drawn under Irrevocable Letter of Credit No. SP13854 of SunBank, N.A. dated February 2, 1993."

CONTINUED ON PAGE 2



Sun Bank, National Association

International Division
P.O. Box 3833, 200 S. Orange Avenue (32801)
Orlando, Florida 32897

CREDIT NUMBER SP13854

PAGE 2

THE LETTER OF CREDIT ADVISORY
UNDER REFERENCE NO. FC 9888
COLORADO NATIONAL BANK
OF DENVER
INTERNATIONAL DIVISION

The original Letter of Credit must accompany any drawing.

Cancellation of the Letter of Credit prior to expiration:


This Letter of Credit (and any amendments) must be returned to Colorado National Bank for cancellation accompanied by your signed statement that "the letter of credit is no longer required by us and is returned herewith for cancellation".

Except so far as otherwise stated, this documentary credit is subject to the "Uniform Customs and Practice for Documentary Credits" (1983 Revision) International Chamber of Commerce (Publication 400).

Reimbursement Instructions to Confirming Bank:

Upon receipt of your authenticated claim via telex or mail stating that a drawing has been presented in compliance with the credit terms we agree to reimburse you in accordance with your instructions value 3 business days from the date of your claim. If you have any questions regarding this Letter of Credit please contact our office at 407/237-4326, Telex No. 441511 SunBank.

SunBank, N.A.


(Authorized Signature) *Vjb*



Sun Bank, National Association
International Division
P.O. Box 3833, 200 S. Orange Avenue (32801)
Orlando, Florida 32897

BOOK 2011 PAGE 619

1655113 03:32 PM 09/30/93
MONIKA TODD CLK&REC MESA COUNTY CO

AMENDMENT TO IRREVOCABLE LETTER OF CREDIT

Date: September 13, 1993

Credit Number: SP13854

**Advising/
Confirming Bank:** Colorado National Bank
950 17th Street
Colorado National Bank Bldg.
Denver, Colorado 80202
Ref. FC 9888

Applicant: General Mills Restaurants, Inc.
d/b/a Red Lobster
P. O. Box 593330
Orlando, FL 32859-3330

Beneficiary: City of Grand Junction
250 N. 5th St.
Grand Junction, CO 81501

Our Letter of Credit Number SP13854 dated February 2, 1993 issued in Beneficiary's favor is hereby amended as follows:

AMENDMENT NO. 01

The expiry date is extended to August 24, 1994.

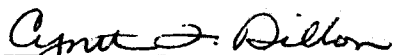
Unless we are notified within (30) days from the date of this amendment by the Beneficiary of non-acceptance, we will consider the amendment in its entirety to be accepted.

All other terms and conditions remain unchanged.

This amendment is subject to the "Uniform Customs and Practice for Documentary Credits" (1983 Revision) International Chamber of Commerce (Publication 400).

COLORADO NATIONAL BANK, INTERNATIONAL DEPT.

THIS IS YOUR COPY OF THE LETTER OF CREDIT AMENDMENT NO. 1 AND IS CONSIDERED TO BE THE ORIGINAL UNDER OUR REFERENCE NO. FC-9888 PLEASE NOTE: THIS INSTRUMENT MUST ACCOMPANY YOUR DOCUMENTS WHEN PRESENTED FOR NEGOTIATION.


(Authorized Signature)