

HOM98NMS

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENT AGREEMENT

NAME OF AGENCY OR CONTRACTOR: DANIEL R. HATCH, SENIOR CORPORATE COUNSEL FOR HOME DEPOT U. S. A.

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: FILE NO. 97-01-095K X4
EWD NO. 28801-41/01/02 AND 03, LOTS 1 THROUGH 5 IN BLOCK 1 OF NORTHMALL
SUBDIVISION

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1998

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

Book 2430 Page 157

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

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

2. **Effective Date:** The Effective Date of the Agreement will be the date that this agreement is recorded which is not sooner than recordation of the final plat and site plan approval, whichever first occurs.

RECITALS

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

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer will design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit B attached and incorporated by this reference ("the Improvements" or "Improvements"). The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. The hourly rate of "in-house" inspection services is \$45.00 per hour. The scope of this project is such that the City may have to engage independent consultant(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others. 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 shall supply a letter of credit, issued by a bank doing business in Mesa County, in a form and with terms acceptable to the City.

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

3/11/98

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

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

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

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

10. **Acceptance of Improvements:** The City's final acceptance and/or approval of Improvements will not be given or obtained until the Developer presents a document or documents, for the benefit of the City, showing that the Developer owns the Improvements in fee simple 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 approval and/or acceptance.

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

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

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

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

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

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

15. **City's Rights Upon Default:** When any event of default occurs, the City may draw on the letter of credit, escrowed collateral, or proceed to collect any other security to the extent of the face amount of the credit or full amount of escrowed collateral, cash, or security less ninety percent (90%) of the estimated cost (as shown on Exhibit B) of all improvements previously accepted by the City or may exercise its rights to disbursement of loan proceeds or other funds under the improvements

disbursement agreement. The City will have the right to complete improvements itself or it may contract with a third party for completion, and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining and repairing such Improvements. Alternatively, the City may assign the proceeds of the letter of credit, the improvements disbursement agreement, the escrowed collateral, cash, or other funds or assets to a subsequent developer (or lender) who has acquired the Property by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished improvements and provides to the City reasonable security for the obligation. In addition, the City may also enjoin the sale, transfer, or conveyance of lots within the development, until the improvements are completed or accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

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

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

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

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

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

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

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

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

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

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

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

If to Developer:

Before July 1, 1998 -

Home Depot U.S.A., Inc.
 601 South Placentia Avenue
 Fullerton, California 92831
 Attention: Real Estate Department and
 Legal Department

From and after
July 1, 1998 -

Home Depot U.S.A., Inc.
3800 West Chapman Avenue
Orange, California 92868
Attention: Real Estate Department and
Legal Department

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

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

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

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

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

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

c. Prior to requesting final acceptance of any street, storm drainage facility, or other required improvement(s), the Developer shall: (i) furnish to the City engineer as-built drawings in reproducible form, blue-line stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests

required by City specification; (ii) provide written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon, in and under which the improvements have been constructed, or which are necessary for the improvements, are free from toxic, hazardous or other regulated substances or materials; (iii) provide written evidence to the City Attorney that the title to lands underlying the improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney.

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

[Signature] ^{ATTN} 3/11/98
Director of Community Development date

Attest:

[Signature] 3-11-98
City Clerk date

Home Depot U.S.A., Inc., a Delaware corporation

[Signature] 3/17/98
By: Daniel R. Hatch date
Its: Senior Corporate Counsel

Attest: Secretary date

EXHIBIT A

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Order File Number: 97-01-095K C4 REF #28801-41/01/02&03

4. The land referred to in this Commitment is described as follows:

PARCEL 1: Lots 1 through 5 in Block One of
NORTHMALL SUBDIVISION,

PARCEL 2: S 1/4 NE 1/4 SW 1/4 of Section 4, Township 1 South,
Range 1 West of the Ute Meridian,
EXCEPT the East 30 feet for road purposes
as shown in instrument recorded August 15, 1963
in Book 853 at Page 157,

ALL IN MESA COUNTY, COLORADO.

RECORDER NOTE: POOR QUALITY DOCUMENT
PROVIDED FOR REPRODUCTION

EXHIBIT "B"

HOME DEPOT - GRAND JUNCTION, CO
ENGINEERS OPINION OF COST

DATE: 4/1/98
 NAME OF DEVELOPMENT: HOME DEPOT, GRAND JUNCTION, CO
 LOCATION: SW/4 SEC.4, T1 S., R1 W., UTE MERIDIAN

PRINTED NAME OF PERSON PREPARING:
 JIM LANGFORD, THOMPSON-LANGFORD CORP., INC.
 DAN UEELE, DUNAWAY ASSOCIATES WEST, INC.

CONSTRUCTION COST ESTIMATE:

General:	Units	Quantity	Unit Price	Total Price
1 Mobilization	LS	1	5000.00	5,000
2 Dust Abatement	LS	1	1500.00	1,500
	Sub-total General Items:			6,500

Patterson Road Storm Sewer system:	Units	Quantity	Unit Price	Total Price
1 36-inch HDPE Storm Sewer	LF	116	44.00	5,104
2 30-inch PVC Storm Sewer	LF	810	36.00	29,160
3 24-inch HDPE Storm Sewer	LF	265	30.00	7,950
4 15-inch HDPE Storm Sewer	LF	128	23.00	2,944
5 12-inch RCP Storm Sewer	LF	183	18.00	3,294
6 12" Flared End Section	EA	2	400.00	800
7 Connect to Ex. Multitplate Structure	EA	1	500.00	500
8 Storm Sewer Manholes (4' dia.)	EA	3	1250.00	3,750
9 Storm Sewer Manholes (5' dia.)	EA	1	1800.00	1,800
10 CDOT Type "C" Inlet w/close mesh grate	EA	4	2600.00	10,400
11 City Std. Inlet w/Curb Opening	EA	3	2200.00	6,600
12 Remove 12" CMP @ Mall Entr.	LF	64	4.00	256
	Sub-total Storm Sewer Items:			72,558

Patterson Road Improvements	Units	Quantity	Unit Price	Total Price
1 Unclassified Excavation	CY	5332	1.50	7,998
2 Unclassified Embankment	CY	66	2.00	132
3 Culvert Removal/Disposal	LF	250	3.00	750
4 Tree/Stump Removal/Disposal	LS	1	1500.00	1,500
5 Asphalt Removal and Disposal	SY	6845	3.00	20,535
6 Concrete Curb/Gutter Removal/Disposal	SY	54	3.50	189
7 Asphalt Patch (6" depth)	SY	0	15.00	0
8 2' Curb/Gutter	LF	978	12.00	11,736
9 1.5' Median Curb/Gutter	LF	811	11.50	9,327
10 6' Detached Concrete Walk	LF	613	15.00	9,195
11 7' Mono Curb/Gutter/Walk	LF	245	18.00	4,410
12 Handicap Ramps	SY	126	34.00	4,284
13 Intersection Radii/V-Pan	SY	112	34.00	3,808
14 Median stamped/colored concrete	SF	1106	5.00	5,530
15 6" Asphalt Pavement	CY	1805	58.50	105,593

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16 Aggregate Base Course (CL-6 Rds. & SWS)	CY	2831	15.00	42,465
17 Adjust Manhole Rim to Grade	EA	1	500.00	500
18 Adjust Water Valve to Grade	EA	1	500.00	500
19 Mirafli 500x Geotextile Fabric	SY	11800	0.80	9,440
20 Landscaping (North side only)	SY	3980	8.25	32,835
21 Hydromulch and sprklrs, Mall side only)	SY	2556	1.50	3,834
22 Reset Existing Fire Hydrant Assy	EA	1	500.00	500
23 Reset Existing Telephone Pedestal	EA	1	500.00	500
24 Signal Installation @ Mall Entr.	LS	1	100000.00	100,000
25 Street Lighting	LS	1	17000.00	17,000
26 Reset Street Signs	EA	3	50.00	150
27 Stop Signs	EA	3	100.00	300
28 Regulatory Signs	EA	8	100.00	800
29 Striping (paint)	GAL	57	90.00	5,130
30 Fog Seal Coat	SY	0	0.50	0
31 Mall sign relocation	LS	1	10000.00	10,000
Sub-total Patterson Road Items:				408,940

	Units	Quantity	Unit Price	Total Price
24 1/2 Road Improvements				
1 Clearing and grubbing	SF	19000	0.07	1,330
2 Earthwork (excav., embank. const.)	CY	704	3.00	2,112
3 Aggregate base course	SY	2111	6.00	12,666
4 Asphalt or concrete pavement	SY	2111	31.50	66,497
5 Curb, gutter & sidewalk	LF	600	12.00	7,200
6 Driveway sections	SY	100	31.50	3,150
7 12" Storm Drain	LF	370	18.00	6,660
8 Irrigation Junction Box	EA	2	3000.00	6,000
9 Striping (paint)	GAL	25	90.00	2,250
Sub-total 24 1/2 Road Items:				107,868

	Units	Quantity	Unit Price	Total Price
Sewer Improvements				
1 Clearing and Grubbing	AC	16.25	2750.00	44,688
2 PVC sanitary sewer main (including trenching, bedding & backfill)	LF	1261	16.00	20,176
3 Sewer Services (including trenching, bedding & backfill)	LF	757	12.00	9,084
4 Sanitary sewer manhole(s) (Site)	EA	6	2500.00	15,000
5 Connection to existing manhole(s)	EA	1	750.00	750
6 Aggregate Base Course	SY	67	6.00	402
7 Pavement replacement	SY	67	31.50	2,111
8 Utility adjustments (One Manhole)	EA	1	500.00	500
Sub-total Sewer Items:				92,710

	Units	Quantity	Unit Price	Total Price
Water Improvements				
1 Water Main (including excavation, bedding, backfill, valves and appurtenances)	LF	2314	20.00	46,280
2 Water services (including excavation, bedding, backfill, valves and appurtenances)	LF	470	12.00	5,640
3 Connection to existing waterline	EA	7	750.00	5,250
4 Aggregate Base Course	SY	67	6.00	402
5 Pavement replacement	SY	67	31.50	2,111
Sub-total Water Items:				59,683

On/Off-Site Landscaping	Units	Quantity	Unit Price	Total Price
1 2" Cal. Trees	EA	291	250.00	72,750
2 5 Gal. Shrubs	EA	1388	40.00	55,520
3 Turf	SF	71960	0.25	17,990
4 Shredded Bark	SF	20575	0.25	5,144
5 Conc. Curbing	LF	1789	2.50	4,473
6 Irrigation System	LS	1	20000.00	20,000
Sub-total Landscape Items:				175,876

On-Site Drainage:	Units	Quantity	Unit Price	Total Price
1 Construct/Grade Drainage Basins	EA	4	4500.00	18,000
2 Valley Gutter	SF	3160	3.00	9,480
3 12" Storm Drain	LF	700	18.00	12,600
4 SD Manholes	EA	6	1250.00	7,500
5 Misc.	LS	1	5000.00	5,000
6 Outlet Structures	EA	4	2500.00	10,000
Sub-total Landscape Items:				62,580

Total Site Construction Costs: \$986,711

Miscellaneous	Percentage of Total Construction Costs:	
1 Construction Surveying	2.500%	24,668
2 Field Engineering and Inspection Costs	3.000%	29,601
3 As-builts and Detention Certification	0.500%	4,934
4 Quality Control	2.750%	27,135
5 City Inspection Fees	0.750%	7,400
6 Traffic Control		20,000
Sub-total Miscellaneous Items:		113,738

Total Site Construction & Engineering Costs: \$1,100,449

HOME DEPOT U.S.A., INC

[Signature]

4/10/98

DM 4/10/98

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 TAKE NO EXCEPTION TO THE ABOVE.

[Signature]

4/13/98

CITY ENGINEER

DATE

[Signature]

4/13/98

COMMUNITY DEVELOPMENT

DATE

NORWEST BANKS

NORWEST BANK COLORADO, NA
LETTER OF CREDIT DEPARTMENT
1740 BROADWAY
ONE NORWEST CENTER
DENVER, CO 80274-8685
TELEX NUMBER 6737198 NORWEST NBC
SWIFT ADDRESS: NWNBUS55
PHONE (303) 863-6719, FAX (303) 863-4898

ADVICE OF ISSUING BANK'S IRREVOCABLE STANDBY CREDIT

APRIL 29, 1998

TO: (BENEFICIARY)
THE CITY OF GRAND JUNCTION
COLORADO
250 NORTH 5TH STREET
GRAND JUNCTION, CO 81501

OUR ADVICE NUMBER: X900196

ISSUING BANK'S LC NO:
S117972

APPLICANT:
HOME DEPOT U.S.A., INC.

ISSUING BANK:
FIRST UNION NATIONAL BANK OF

AMOUNT: USD 1,281,899.00
EXPIRY DATE: APRIL 15, 2000

AT THE REQUEST OF THE ABOVE NAMED ISSUING BANK, WE ENCLOSE THE ORIGINAL OF THEIR LETTER OF CREDIT ISSUED IN FAVOR OF YOURSELVES.

THIS LETTER OF CREDIT IS CONFIRMED BY US. WE ENGAGE THAT DRAFTS AND DOCUMENTS PRESENTED IN STRICT COMPLIANCE WITH THE LETTER OF CREDIT TERMS WILL BE HONORED BY US IF PRESENTED TO US AT OUR ABOVE ADDRESS. EXAMINATION OF DOCUMENTS IS RESTRICTED TO OURSELVES. BY ADDING OUR CONFIRMATION TO THIS LETTER OF CREDIT, WE UNDERTAKE TO EFFECT PAYMENT WITHIN THREE BANKING DAYS FOLLOWING THE FIRST DAY WE ARE ELIGIBLE TO BE REIMBURSED.

UNLESS YOU INSTRUCT US TO THE CONTRARY, DOCUMENTS WILL BE FORWARDED TO THE ISSUING BANK BEFORE WE RECEIVE PAYMENT FROM THE REIMBURSING BANK.

***CONTINUED ON NEXT PAGE ***

OUR REF. NO. X900196

PAGE 2

WE INVITE YOU TO CONSULT US ON ANY OF THE CREDIT'S CONDITIONS WHICH MAY BE UNCLEAR AT 303-863-6719. IF YOU ARE UNABLE TO COMPLY WITH THE TERMS OF THIS LETTER OF CREDIT, WE SUGGEST YOU PROMPTLY CONTACT THE APPLICANT.

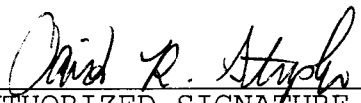
PLEASE INCLUDE AN ADDITIONAL COPY OF YOUR DOCUMENT(S) PRESENTED FOR EXAMINATION, FOR OUR FILES.

SPECIAL INSTRUCTIONS:

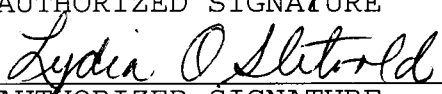
WE EXAMINE DOCUMENTS UNDER THE GUIDELINES PROVIDED IN THE "STANDARD BANKING PRACTICE FOR EXAMINATION OF LETTER OF CREDIT DOCUMENTS" BOOKLET PUBLISHED BY THE U.S. COUNCIL ON INTERNATIONAL BANKING. HOWEVER, WE RESERVE THE RIGHT TO DEVIATE ACCORDING TO POLICIES/STANDARDS ESTABLISHED BY US. FOR A COPY OF THIS BOOKLET YOU MAY CALL THE USCIB AT 212-466-3352 OR FAX 212-432-0544.

UNLESS YOU HAVE STANDING PAYMENT INSTRUCTIONS ON FILE WITH US, PLEASE INCLUDE YOUR PAYMENT INSTRUCTIONS WHEN SUBMITTING YOUR DOCUMENTS TO US. IF YOU DO NOT INCLUDE YOUR PAYMENT INSTRUCTIONS, YOU WILL BE SENT A BANK CASHIERS CHEQUE FOR THE PAYMENT. NO PARTIES INVOLVED IN THE CREDIT, WHO ARE SUBJECT TO U.S. JURISDICTION MAY BE ON THE TREASURY DEPARTMENTS FOREIGN ASSET CONTROL REGULATIONS DESIGNATED OR SPECIALLY DESIGNATED NATIONALS LIST. FOR MORE INFORMATION, CALL THE OFFICE OF FOREIGN ASSET CONTROL AT (202)622-2520 OR THE U.S. DEPARTMENT OF COMMERCE AT (202)377-4255. THIS LETTER OF CREDIT IS SUBJECT TO THE UCP PUBLICATION 500, 1993 REVISION.

REGARDS,



AUTHORIZED SIGNATURE



AUTHORIZED SIGNATURE

Incoming SWIFT Message
799 Free Format Message
Reference: 9804231012000004

Page 1

To: NWNBUS55
NORWEST BANK INTERNATIONAL COLORADO DENVER, CO
From: FUNBUS33
FIRST UNION NATIONAL BANK OF NORTH CAROLINA
20 Reference
S117972
79 Narrative
ADV BK REF X900196 OUR REF S117972
/ AVOID DUPLICATION /
ADVISE TO THE CITY OF GRAND JUNCTION, COLORADO
250 NORTH 5TH STREET GRAND JUNCTION, CO 81501
ADDING YOUR CONFIRMATION, LC NO. S117972:
WE HEREBY OPEN OUR IRREVOCABLE CREDIT IN THEIR
FAVOR AVAILABLE BY DRAFT(S) AT SIGHT ON YOUR
SELVES FOR A SUM NOT EXCEEDING ONE MILLION TWO
HUNDRED EIGHTY ONE THOUSAND EIGHT HUNDRED NINETY
NINE U.S. DOLLARS (USD1,281,899.00) FOR THE
ACCOUNT OF HOME DEPOT U.S.A., INC., 2455 PACES
FERRY ROAD, ATLANTA, GEORGIA 30339 ('DEVELOPER')
WHEN ACCOMPANIED BY: A STATEMENT PURPORTEDLY
SIGNED BY THE CITY ATTORNEY (OR THE ATTORNEY'S
DESIGNEE) STATING 'DRAWING IS DUE TO DEFAULT OR
FAILURE TO PERFORM BY DEVELOPER WITH RESPECT TO
IMPROVEMENTS REQUIRED ON OR BEFORE SEPTEMBER 13,
1999 IN HOME DEPOT A DEVELOPMENT OCCURRING WITHIN
THE CITY OF GRAND JUNCTION, COLORADO'. PRIOR TO
THE EXPIRATION DATE, ACTING THROUGH THE CITY
ATTORNEY, YOU WILL NOTIFY US WHEN EITHER:
1. THE IMPROVEMENTS HAVE BEEN TIMELY COMPLETED
AND THE WARRANTY PERIOD HAS TERMINATED AND THE
CREDIT MAY BE RELEASED, OR
2. THE DEVELOPER HAS FAILED TO PERFORM OR IS IN
DEFAULT. (NOTICE SHALL BE SIGNED BY THE CITY
ATTORNEY OR THE ATTORNEY'S DESIGNEE. PROOF OF
DEFAULT OR A STATEMENT FROM ANY OTHER PARTY SHALL
NOT BE REQUIRED.)
ALL DRAFTS DRAWN HEREUNDER MUST BE BY SIGHT DRAFT
MARKED: 'DRAWN UNDER FIRST UNION NATIONAL BANK
IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER
S117972 DATED APRIL 14, 1998, CONFIRMED BY
NOWWEST BANK COLORADO, 'NA', AND MUST BE
PAGE 1/2 ALC SBISS

ORIGINAL



ISN/OSN Number: 266495 TIME: 170427042398

Incoming SWIFT Message
799 Free Format Message
Reference: 9804231012000003

Page 1

To: NWNBUS55
NORWEST BANK INTERNATIONAL COLORADO DENVER, CO
From: FUNBUS33
FIRST UNION NATIONAL BANK OF NORTH CAROLINA
20 Reference
S117972
79 Narrative

ADV BK REF X900196 OUR REF S117972
PRESENTED ALONG WITH THE ORIGINAL OF THIS CREDIT.
THE AMOUNT OF ANY DRAFT DRAWN UNDER THIS CREDIT
MUST, CONCURRENTLY WITH NEGOTIATION, BE ENDORSED
ON THE REVERSE SIDE HEREOF AND THE PRESENTMENT OF
ANY SUCH DRAFT WILL BE A WARRANTY BY THE
CONFIRMING BANK THAT SUCH ENDORSEMENT HAS BEEN
MADE AND THAT DOCUMENT(S) HAVE BEEN FORWARDED AS
HEREIN REQUIRED.

ALL BANKING CHARGES ARE FOR THE APPLICANT'S ACCT.
EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN,
THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOM AND
PRACTICE FOR DOCUMENTARY CREDITS PUBLICATION NO.
500.

CONFIRMING BANK: NORWEST BANK COLORADO, NA
BENEFICIARY: CITY OF GRAND JUNCTION, COLORADO
DRAWEE BANK: NORWEST BANK COLORADO, NA
EXPIRATION: APRIL 15, 2000 AT YOUR COUNTERS
WE WILL HONOR YR REIMBURSEMENT INSTRUCTIONS THREE
WORKING DAYS AFTER DATE OF YR TESTED TELEX/SWIFT
MESSAGE TO US STATING DRAFT AMT AND CERTIFYING
DOCUMENTS CONFORM TO CREDIT TERMS. PLS QUOTE OUR
CREDIT NUMBER IN ALL COMMUNICATIONS.
ISSUING BANK'S ADDRESS: 301 SOUTH TRYON STREET
INTERNATIONAL M-7, CHARLOTTE NC 28288-0742.
PAGE 2/2
REGARDS, ALC SBISS S117972FF001

ISN/OSN Number: 266494 TIME: 170425042398



ORIGINAL

RELEASE OF IMPROVEMENTS AGREEMENT & GUARANTEE
Grand Junction Community Development Department

FILE # SUP-1998-028 1919751 09/13/99 0320PM
MONIKA TOOD CLK® MESA COUNTY CO
REC FEE \$5.00

This memorandum relates to a certain unrecorded Improvements Agreement and Guarantee dated April 20, 1998, and memorandum of recording at Book 2430, Page 157-167 of the land records of Mesa County, Colorado, by and between Home Depot U.S.A., Inc. (Developer) and the City of Grand Junction (City) pertaining to Home Depot (Project).

PARCEL 1 : LOTS 1 THROUGH 5 IN BLOCK ONE OF NORTHMALL SUBDIVISION,

Legal Description:

PARCEL 2 : S 1/4 NE 1/4 SW 1/4 OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 1 WEST OF THE UTE MERIDIAN, EXCEPT THE EAST 30 FEET FOR ROAD PURPOSES AS SHOWN IN INSTRUMENT RECORDED AUGUST 15, 1963 IN BOOK 853 AT PAGE 157, ALL IN MESA COUNTY, COLORADO.

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

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

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

CITY OF GRAND JUNCTION:

By: [Signature] 7-2-99
City Engineer Date
[Signature] 7/1/99
City Utilities Manager Date
[Signature] 7/7/99
Fire Marshal Date

UTE WATER:

By: [Signature] 8/13/99
Date

GRAND JUNCTION DRAINAGE:

By: [Signature] 7/14/99
Date

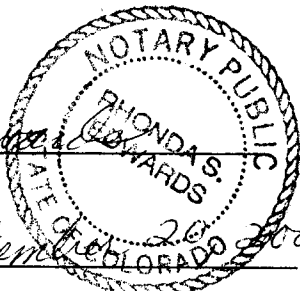
In accordance with the above signatures, I hereby certify that the Improvements Agreement & Guarantee and the recording evidencing the agreement and guarantee, at Book _____, Page _____ of the Mesa County land records, have been completed and accepted and in accordance with the provisions of the Grand Junction Zoning and Development Code are hereby released, subject to the required warranty period.

[Signature] 8/17/99
~~Director~~ of Community Development Date

The foregoing instrument was executed before me this 17th day of August, 1999 by Katherine M. Portner, ~~Director~~ of Community Development for the City of Grand Junction, Colorado.

Witness my hand & official seal.

[Signature]
Notary Public



My commission expires September 2001