

LOW95SR3

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENTS AGREEMENT

NAME OF AGENCY OR CONTRACTOR: LOWE DEVELOPMENT CORPORATION

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: SOUTH RIM, FILING THREE,
FINAL PLAT

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1995

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

BOOK 2166 PAGE 622

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement") are LOWE DEVELOPMENT CORPORATION ("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 Final Plat

RECITALS

The Developer seeks permission to develop property within the City to be known as SOUTH RIM, Filing No. 3, 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

POW 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 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 shall construct the Improvements according to the standards and specifications required by the City Engineer or as adopted by the City.

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

7. **Commencement and Completion Periods:** The improvements, each and every one of them, will be completed within 18 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 final 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 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.

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. **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 shall be properly notarized before it may be deemed 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 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.

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: Lowe Development Corporation
1280 Ute, Suite 32
Aspen, CO 81611

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

25. **Recordation:** Developer will pay for 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 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, 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 the improvements agreement are constructed to City standards may be in one of the following forms:

- (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.
- (IV) other; see attached.

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.

The Finance Department of the City will disburse any deposit or any portion thereof, with no more than three checks, at no charge. If disbursements are made in excess of three checks, the developer will be charged \$100 per transaction for every transaction in excess of three.

Exhibit C, attached hereto and incorporated herein by this reference as if fully set forth, is the City approved and accepted guarantee for this project.

- 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, 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 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:

Stephanie Nye
Stephanie Nye Date
City Clerk

Acting Kathleen M. Profen
Director of Community Development Date

City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501

Peter R. O'Keefe 6.29.95
Developer **PETER R. O'KEEFE** Date
SENIOR VICE PRESIDENT

(If Corporation, to be signed by President
and attested to by Secretary together with
the Corporate seals)

Betty J. Kanyon 6/29/95
Betty J. Kanyon, Secretary

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

EXHIBIT A

Commencing at the Mesa County Brass Cap at the Northwest Corner of the Southeast Quarter of the Southwest Quarter (SE1/4 SW1/4) of Section 8, Township 1 South, Range 1 West of the Ute Meridian, Mesa County, Colorado, whence the Mesa County Brass Cap at the Northeast Corner of the Southeast Quarter of the Southwest Quarter (SE1/4 SW1/4) of Section 8 bears North 89 degrees 47 minutes 07 seconds East (N 89°47'07" E), 1319.34 feet for a basis of bearings with all bearings contained herein relative thereto;

Thence North 72 degrees 45 minutes 56 seconds East (N 72°45'56" E), a distance of 459.34 feet to a point located on the Northernmost corner of Lot 12, Block 2, South Rim Filing No. Two, being on the southerly right-of-way line of Rim Drive, and being the TRUE POINT OF BEGINNING; Thence crossing said right-of-way North 14 degrees 24 minutes 40 seconds West (N14°24'40" W), a distance of 47.80 feet; thence North 37 degrees 48 minutes 18 seconds West (N 37°48'18" W), a distance of 140.54 feet; thence North 65 degrees 02 minutes 42 seconds East (N 65°02'42" E), a distance of 9.43 feet; thence North 12 degrees 04 minutes 04 seconds West (N 12°04'04" W), a distance of 299.40 feet to a point on the southerly line of a PUBLIC OPEN SPACE tract, as recorded in Book 2132, Pages 955-958 (formerly Green Belt Drive right-of-way); thence along said southerly line the following two courses: North 49 degrees 19 minutes 01 seconds East (N 49°19'01" East), a distance of 76.83 feet; thence along the arc of a non-tangent curve to the right having a central angle of 13 degrees 13 minutes 59 seconds (13°13'59"), a radius of 1105.92 feet, an arc length of 255.42 feet, and a chord that bears North 55 degrees 56 minutes 00 seconds E (N 55°56'00" E), a distance of 254.86 feet; thence leaving said southerly line South 88 degrees 33 minutes 23 seconds East (S 88°33'23" E), a distance of 358.49 feet; thence South 16 degrees 08 minutes 26 seconds West (S 16°08'26" W), a distance of 148.34 feet; thence South 51 degrees 28 minutes 54 seconds East (S 51°28'54" E), a distance of 94.47 feet; thence South 38 degrees 31 minutes 06 seconds West (S 38°31'06" W), a distance of 195.44 feet; thence South 62 degrees 55 minutes 59 seconds East (S 62°55'59" E), a distance of 210.06 feet; thence South 50 degrees 27 minutes 05 seconds East (S 50°27'05" E), a distance of 97.35 feet; thence South 31 degrees 59 minutes 26 seconds West (S 31°59'26" W), a distance of 148.24 feet; thence South 03 degrees 48 minutes 04 seconds West (S 03°48'04" W), a distance of 44.00 feet; thence South 86 degrees 11 minutes 56 seconds East (S 86°11'56" E), a distance of 89.95 feet; thence South 33 degrees 13 minutes 19 seconds West (S 33°13'19" W), a distance of 207.70 feet; thence South 36 degrees 54 minutes 11 seconds West (S 36°54'11" W), a distance of 443.44 feet; thence South 01 degrees 00 minutes 00 seconds West (S 01°00'00" W), a distance of 276.51 feet; thence South 89 degrees 41 minutes 20 seconds West (S 89°41'20" W), a distance of 346.94 feet; thence South 81 degrees 12 minutes 42 seconds West (S 81°12'42" W), a distance of 69.42 feet; thence North 33 degrees 39 minutes 12 seconds West (N 33°39'12" W), a distance of 57.64 feet; thence North 39 degrees 53 minutes 58 seconds East (N 39°53'58" E), 137.81 feet; thence along the arc of a curve to the left having a central angle of 21 degrees 13 minutes 11 seconds (21°13'11"), a radius of 201.77 feet, an arc length of 74.73 feet, and a chord that bears South 83 degrees 58 minutes 31 seconds East (S 83°58'31" E), a distance of 74.30 feet; thence North 14 degrees 08 minutes 51 seconds West (N 14°08'51" W), a distance of 192.23 feet; thence North 24 degrees 40 minutes 17 seconds East (N 24°40'17" E), a distance of 58.40 feet; thence South 59 degrees 50 minutes 04 seconds East (S 59°50'04" E), a distance of 45.00 feet; thence North 47 degrees 00 minutes 03 seconds East (N 47°00'03" E), a distance of 98.88 feet; thence North 29 degrees 35 minutes 10 seconds East (N 29°35'10" E), a distance of 80.45 feet; thence North 37 degrees 45 minutes 51 seconds East (N 37°45'51" E), a distance of 108.89 feet; thence North 37 degrees 54 minutes 08 seconds West (N 37°54'08" W), a distance of 175.30 feet; thence North 05 degrees 25 minutes 05 seconds West (N 05°25'05" W), a distance of 50.20 feet; thence North 37 degrees 00 minutes 59 seconds West (N 37°00'59" W), a distance of 115.33 feet to the TRUE POINT OF BEGINNING. Said tract containing 16.262 acres of land, more or less.

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL
(Page 1 of 3)

DATE: AUGUST 4, 1995
 NAME OF DEVELOPMENT: SOUTH RIM, FILING NO. 3
 LOCATION: EAST END OF SOUTH RIM DRIVE
 PRINTED NAME OF PERSON PREPARING: LAND DESIGN, LLC.

ROADWAY IMPROVEMENTS

ITEM	DESCRIPTION	UNIT	QUAN.	UNIT PRICE	TOTAL
1	Excavation	CY	4435	\$3.26	\$14,458.10
2	Embankment	CY	1364	\$2.00	\$2,728.00
3	Sub-Grade Preparation	SY	11834	\$0.45	\$5,325.30
4	Class 6 ABC	CY	575	\$21.80	\$12,535.00
5	5" Grading C HBP	TON	2133	\$24.25	\$51,725.25
6	6'-6" Curbwalk	LF	4053	\$13.70	\$55,526.10
7	Fillets and Cross Pans	SF	1959	\$3.00	\$5,877.00
8	12" RCP Storm Sewer	LF	62	\$20.00	\$1,240.00
9	12" PVC Storm Sewer	LF	815	\$15.50	\$12,632.50
10	Standard Storm Inlet	EA	5	\$1,000.00	\$5,000.00
11	Standard Manhole	EA	2	\$1,200.00	\$2,400.00
12	12" Rip-Rap	CY	45	\$40.00	\$1,800.00
13	Traffic Control Signs	EA	6	\$60.00	\$360.00
14	Adjust MH's & Valves	EA	29	\$24.00	\$696.00
15	Street Lights	EA	4	\$1,250.00	\$5,000.00
TOTAL ROADS					\$177,303.25

SANITARY SEWER**BOOK 2166****PAGE 631**

ITEM	DESCRIPTION	UNIT	QUAN.	UNIT PRICE	TOTAL
1	8" Sanitary Sewer Main	LF	2873	\$8.00	\$22,984.00
2	4" Sanitary Sewer Service	LF	2200	\$6.00	\$13,200.00
3	4" Force Main	LF	747	\$4.00	\$2,988.00
4	Standard Manhole	EA	18	\$800.00	\$14,400.00
5	Service Connections	EA	55	\$100.00	\$5,500.00
6	Trench Compaction	LF	4303	\$2.50	\$10,757.50
7	Pipe Bedding	CY	905	\$10.00	\$9,050.00
8	Join Existing	EA	2	\$200.00	\$1,000.00
9	Lift Station & Wet Well	LS			\$35,000.00
TOTAL SANITARY SEWER					\$114,879.50

DOMESTIC WATER

ITEM	DESCRIPTION	UNIT	QUAN.	UNIT PRICE	TOTAL
1	8" PVC Water Main	LF	1781	\$12.00	\$21,372.00
2	8" Gate Valve w/Box	EA	7	\$590.00	\$4,130.00
3	Join Existing Water Main	EA	2	\$200.00	\$400.00
4	Service Connection	EA	40	\$400.00	\$16,000.00
5	Trench Compaction	LF	2178	\$2.00	\$4,356.00
6	Fire Hydrant Assembly	EA	5	\$1,650.00	\$8,250.00
TOTAL DOMESTIC WATER					\$54,508.00

ITEM	DESCRIPTION	UNIT	QUAN.	UNIT PRICE	TOTAL
1	Design Engineering	LS			\$29,160.00
2	Surveying/Staking	LS			\$10,900.00
3	Developer's Inspection Costs	LS			\$2,000.00
4	Quality Control Testing	LS			\$6,000.00
5	City Inspection Fess	LS			\$1,500.00
6	General Constuctin Supervision	LS			\$14,580.00
TOTAL MISCELLANEOUS					\$64,140.00

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 410,830.75

PETER R. O'KEEFFE
SENIOR VICE PRESIDENT

Peter R. O'Keefe

6-29-95

SIGNATURE OF DEVELOPER

DATE

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

Attest: *Betty J. Kenyon Secretary 6/29/95*

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.

John K. Kola
CITY ENGINEER

7-17-95

DATE

Kathleen M. Portman
COMMUNITY DEVELOPMENT

7-20-95

DATE



DISBURSEMENT AGREEMENT
(Improvements Guarantee)

Book 2166 Page 633

DEVELOPER: LOWE DEVELOPMENT, CORPORATION ATTN. MITCH ROZALSKY
11777 SAN VICENTE BLVD., SUITE 900
LOS ANGELES, CA 90040

BANK: NORWEST BANK GRAND JUNCTION N.A. ATTN. JEFF PARKER
2808 NORTH AVENUE
PO BOX 1568
GRAND JUNCTION, CO 81502

PROPERTY: SOUTH RIM, FILING 3, GRAND JUNCTION, CO

DISBURSEMENT AMOUNT: For the construction of improvements to the
Property in an amount not to exceed \$ 410,830.75.

This Agreement is entered into by and between LOWE DEVELOPMENT CORPORATION
("Developer"), NORWEST BANK GRAND JUNCTION, N.A.
("Bank") and the City of Grand Junction,
Colorado ("City").

RECITALS

Developer has been required by the City to construct certain
improvements to SOUTH RIM, FILING NO. 3 ("Improvements") in
accordance with the Zoning and Development Code, Improvements
Agreement and subdivision approval.

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

The City Engineer has approved an estimate of the costs of the
Improvements and that amount or an amount not to exceed
\$410,830.75, whichever is greater, shall be referred to as the
"Funds."

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

NOW, THEREFORE, THE PARTIES AGREE:

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

Disbursement Agreement
page 2 of 5

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

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

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

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

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

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

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

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

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

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



Disbursement Agreement
page 4 of 5

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

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

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

Dated this 1st day of August, 1995.

(BANK) NORWEST BANK GRAND JUNCTION, N.A.

By: Jeffrey S. Parker
Title ~~JEFFERY L. PARKER, V.P.~~
Jeffrey F. Parker, VP
PO BOX 1568, GRAND JUNCTION, CO 81502
Address

(DEVELOPER) LOWE DEVELOPMENT CORPORATION

By: David G. Behrhorst
Title DAVID G. BEHRHORST, V.P.
11777 SAN VICENTE BLVD. SUITE 900
Address LOS ANGELES, CA 90049

CITY OF GRAND JUNCTION

By: Katherine M. Poole
~~Larry Timm, Director of Community Development~~
Acting

JP

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between LOWE DEVELOPMENT CORPORATION Developer, NORWEST BANK GRAND JUNCTION as Bank, and the City of Grand Junction, the following are the individuals authorized to sign written requests for the disbursement of the Funds:

DEVELOPER:

DAVID G. BEHRHORST
(name)

David G. Behrhorst, Vice Pres
(signature)

(name)

(signature)

(name)

(signature)

DEVELOPER'S GENERAL CONTRACTOR:

ELAM CONSTRUCTION, Inc.

(name) Jim Roussin Proj Manager

Jim Roussin

(signature)

DEVELOPER'S PROJECT ENGINEER:

LANDESIGN, LLC. PHIL HART, P.E.

(name)

Phil Hart
(signature)

DEVELOPER'S GENERAL CONTRACTOR

EDEX INC. Edward Hackler

(name) Edward Hackler

Edward Hackler

(signature)

CITY ENGINEER:

Jody Kliska

(name)

Jody Kliska
(signature)

DB

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL
(Page 1 of 3)

DATE: AUGUST 4, 1995
 NAME OF DEVELOPMENT: SOUTH RIM, FILING NO. 3
 LOCATION: EAST END OF SOUTH RIM DRIVE
 PRINTED NAME OF PERSON PREPARING: LAND DESIGN, LLC.

ROADWAY IMPROVEMENTS

ITEM	DESCRIPTION	UNIT	QUAN.	UNIT PRICE	TOTAL
1	Excavation	CY	4435	\$3.26	\$14,458.10
2	Embankment	CY	1364	\$2.00	\$2,728.00
3	Sub-Grade Preparation	SY	11834	\$0.45	\$5,325.30
4	Class 6 ABC	CY	575	\$21.80	\$12,535.00
5	5" Grading C HBP	TON	2133	\$24.25	\$51,725.25
6	6'-6" Curbwalk	LF	4053	\$13.70	\$55,526.10
7	Fillets and Cross Pans	SF	1959	\$3.00	\$5,877.00
8	12" RCP Storm Sewer	LF	62	\$20.00	\$1,240.00
9	12" PVC Storm Sewer	LF	815	\$15.50	\$12,632.50
10	Standard Storm Inlet	EA	5	\$1,000.00	\$5,000.00
11	Standard Manhole	EA	2	\$1,200.00	\$2,400.00
12	12" Rip-Rap	CY	45	\$40.00	\$1,800.00
13	Traffic Control Signs	EA	6	\$60.00	\$360.00
14	Adjust MH's & Valves	EA	29	\$24.00	\$696.00
15	Street Lights	EA	4	\$1,250.00	\$5,000.00
TOTAL ROADS					\$177,303.25

SANITARY SEWER

BOOK 2166

PAGE 639

ITEM	DESCRIPTION	UNIT	QUAN.	UNIT PRICE	TOTAL
1	8" Sanitary Sewer Main	LF	2873	\$8.00	\$22,984.00
2	4" Sanitary Sewer Service	LF	2200	\$6.00	\$13,200.00
3	4" Force Main	LF	747	\$4.00	\$2,988.00
4	Standard Manhole	EA	18	\$800.00	\$14,400.00
5	Service Connections	EA	55	\$100.00	\$5,500.00
6	Trench Compaction	LF	4303	\$2.50	\$10,757.50
7	Pipe Bedding	CY	905	\$10.00	\$9,050.00
8	Join Existing	EA	2	\$200.00	\$1,000.00
9	Lift Station & Wet Well	LS			\$35,000.00
TOTAL SANITARY SEWER					\$114,879.50

DOMESTIC WATER

ITEM	DESCRIPTION	UNIT	QUAN.	UNIT PRICE	TOTAL
1	8" PVC Water Main	LF	1781	\$12.00	\$21,372.00
2	8" Gate Valve w/Box	EA	7	\$590.00	\$4,130.00
3	Join Existing Water Main	EA	2	\$200.00	\$400.00
4	Service Connection	EA	40	\$400.00	\$16,000.00
5	Trench Compaction	LF	2178	\$2.00	\$4,356.00
6	Fire Hydrant Assembly	EA	5	\$1,650.00	\$8,250.00
TOTAL DOMESTIC WATER					\$54,508.00

ITEM	DESCRIPTION	UNIT	QUAN.	UNIT PRICE	TOTAL
1	Design Engineering	LS			\$29,160.00
2	Surveying/Staking	LS			\$10,900.00
3	Developer's Inspection Costs	LS			\$2,000.00
4	Quality Control Testing	LS			\$6,000.00
5	City Inspection Fess	LS			\$1,500.00
6	General Constuctin Supervision	LS			\$14,580.00
TOTAL MISCELLANEOUS					\$64,140.00

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 410,830.75

David D. Buhbont, V.P.

8-1-95

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.

Jay Kola

CITY ENGINEER

8-21-95

DATE

Katherine M. Poston

COMMUNITY DEVELOPMENT

(ATTN)

8/21/95

DATE

J

FIRST AMENDED
DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement") are LOWE DEVELOPMENT CORPORATION ("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 FINAL PLAT FOR SOUTH RIM, FILING THREE.

RECITALS

The Developer seeks permission to develop property within the City to be known as SOUTH RIM, FILING THREE, 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 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 shall construct the Improvements according to the standards and specifications required by the City Engineer or as adopted by the City.

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

7. **Commencement and Completion Periods:** The improvements, each and every one of them, will be completed within SIX 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 final 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 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.

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. **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 nor 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, or alleged to be received or sustained, by any person or entity in connection with, or on account of, any act or failure to act concerning 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 in an action concerning the performance of work or the failure to perform work pursuant to this Agreement. 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 shall be properly notarized before it shall be deemed 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; any City obligation under this section shall be subject to the overriding provisions of section 15, above. If the court awards relief to both parties, the attorney's fees may be equitably divided between the parties by the decision maker, subject to the overriding provisions of section 15, above.

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 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.

23. **Benefits/burdens:** 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 shall 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:

LOWE DEVELOPMENT CORPORATION
11777 SAN VICENTE BLVD., SUITE 900
LOS ANGELES, CA 90040

If to City:

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

25. **Recordation:** Developer shall pay for 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 immunity under any applicable 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, 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. **Improvements guarantee.** The improvements guarantee required by the City to ensure that the improvements described in the improvements agreement are constructed to City standards may be in one of the following forms: (If I or II, then attach as Exhibit C.)

XX (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 under the following terms:

(a) 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; and

(b) The Finance Department of the City will disburse any deposit or any portion thereof, with no more than three checks, at no charge. If disbursements are made in excess of three checks, the developer will be charged \$100 per transaction for every transaction in excess of three.

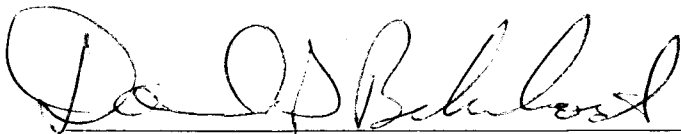
29. Conditions of Acceptance.

- a. 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. "Acceptance by the City" means a separate writing wherein the City specifies which improvements have been accepted and the date from which warranty(ies) shall run.
- b. 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 specifications; (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 Engineer that the title to lands underlying the improvements are merchantable and free and clear from all liens and encumbrances, except those liens and encumbrances which may be approved in writing by the City Engineer.

30. 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.

Director of Community Development Date

City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501

 8-30-95

Developer Date

(If Corporation, to be signed by President and attested to by Secretary together with the Corporate seals)

FIRST AMENDED
DISBURSEMENT AGREEMENT
(Improvements Guarantee)

DEVELOPER: LOWE DEVELOPMENT CORPORATION, ATTN. MITCH ROZALSKY
11777 SAN VICENTE BLVD., SUITE 900
LOS ANGELES, CA 90040

BANK: NORWEST BANK GRAND JUNCTION N.A. ATTN. JEFF PARKER
2808 NORTH AVENUE
POBOX 1568
GRAND JUNCTION, CO 81502

PROPERTY: SOUTH RIM, FILING 3, GRAND JUNCTION, CO

DISBURSEMENT AMOUNT: For the construction of improvements to the
Property in an amount not to exceed \$ 5,100.00 .

This Agreement is entered into by and between LOWE DEVELOPMENT CORPORATION

("Developer"), NORWEST BANK GRAND JUNCTION, N.A.

("Bank") and the City of Grand Junction,
Colorado ("City").

RECITALS

Developer has been required by the City to construct certain
improvements to SOUTH RIM, FILING THREE ("Improvements") in
accordance with the Zoning and Development Code, Improvements
Agreement and subdivision approval.

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

The City Engineer has approved an estimate of the costs of the
Improvements and that amount or an amount not to exceed
\$ \$5,100.00, whichever is greater, shall be referred to as the
"Funds."

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

NOW, THEREFORE, THE PARTIES AGREE:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated this 30th day of August, 1995.

(BANK) NORWEST BANK GRAND JUNCTION, N.A.

By: Jeffrey F. Parker VP
Title JEFFREY F. PARKER, V.P.

PO BOX 1568, GRAND JUNCTION, CO 81502
Address

(DEVELOPER) YOWE DEVELOPMENT CORPORATION

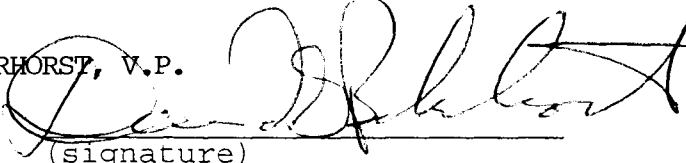
By: David G. Behrhorst
Title DAVID G. BEHRHORST, V.P.

11777 SAN VICENTE BLVD., SUIT 900, LOS ANGELES, CA 90049
Address

CITY OF GRAND JUNCTION

By: Larry Timm, Director of Community Development

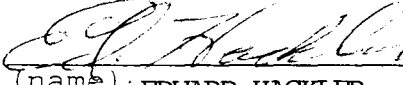
Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between LOWE DEVELOPMENT CORPORATION Developer, NORWEST BANK GRAND JUNCTION as Bank, and the City of Grand Junction, the following are the individuals authorized to sign written requests for the disbursement of the Funds:

DEVELOPER: DAVID G. BEHRHORST, V.P. 
(name) _____
(signature)

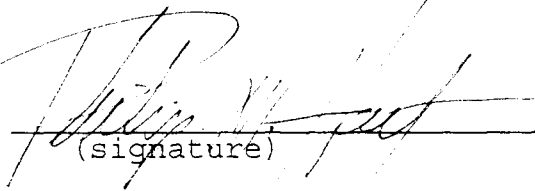
(name) _____
(signature)

(name) _____
(signature)

DEVELOPER'S GENERAL CONTRACTOR: EDEX INC.


(name) EDWARD HACKLER _____ (signature)

DEVELOPER'S PROJECT ENGINEER:

PHILIP M. HART, PE
(name) _____ 
(signature)

DEVELOPER'S ARCHITECT:

(name) _____ (signature)

CITY ENGINEER:


(name) _____ JOY KUSKA
(signature)

EXHIBIT "A"

TYPE LEGAL DESCRIPTION BELOW, USING ADDITIONAL SHEETS AS NECESSARY. USE SINGLE SPACING WITH A ONE (1) INCH MARGIN ON EACH SIDE.


All lots within South Rim, Filing 3
of the records of the Mesa County
Clerk and Recorder.

EXHIBIT "B"

FIRST AMENDED
IMPROVEMENTS LIST/ DETAIL

Date: August 29, 1995
Name of Development: SOUTH RIM, FILING THREE
Location: EAST END OF SOUTH RIM DRIVE, REDLANDS
Name of Person Preparing: LANDesign, LLC., Phil Hart, P.E.

ITEM	DESCRIPTION	UNIT	QUAN.	UNIT PRICE	TOTAL
1	Outlet Structure	EA	3	\$1,600.00	\$4,800.00
2	Design Engineering	LS			\$150.00
3	Construction Supervision	LS			\$150.00
4	TOTAL AMENDMENT				\$5,100.00

 8-30-95

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.



CITY ENGINEER

8-31-95
DATE

COMMUNITY DEVELOPMENT

DATE