

TOT04FRD

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**

NAME OF CONTRACTOR: TOT, LLC

PROJECT/SUBDIVISION: PYRAMID PRINTING

LOCATION: 2526 F ROAD

FILE #: SPR-2003-178

TAX PARCEL #: 2945-033-07-032

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2004

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

## DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are TOI, LLC ("Developer") and the **City of Grand Junction, Colorado** ("City").

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

2. **Effective Date:** The Effective Date of the Agreement shall be the date that it is signed by the Community Development Director, which shall be no sooner than recordation of the final plat or final plan approval whichever first occurs.

### RECITALS

The Developer seeks permission to develop property, described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The Property, known as PYRAMID PRINTING has been reviewed and approved under Community Development file # SPR-200-178 "Development" or "the Development").

The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements to the Property and limiting the harmful effects of substandard development.

A further purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself; this Agreement is not executed for the benefit of materialmen, laborers or others providing work, services or material to the Developer and/or the Property or for the benefit of the owner(s), purchaser(s) or user(s) of the Property.

The mutual promises, covenants and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and City's land development ordinances and regulations.

### DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer shall design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit B attached and incorporated by this reference ("Improvements" or "the Improvements").

3a. On and after the Effective Date of this Agreement the Developer agrees to pay the City for its Administration and Inspection of the Development. The hourly rate for those services is \$45.00/hour. Administration and Inspection includes but is not limited to the time expended by the City's planner, engineer, construction inspector and attorney in directing, advising, correcting and enforcing by means other than

litigation, this agreement and/or the approved development plan. Making disbursements and calling/collecting Guarantees are Administration and Inspection services and shall be charged at \$45.00/hour. See, paragraph 19 concerning attorneys'/ litigation fees.

3b. The scope of this project is such that the City may have to engage independent consultants(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others for which Developer is responsible hereunder.

3c. The Developer's obligation to complete the Improvements is and shall be independent of any obligations of the City contained herein.

4. **Security:** To secure the performance of its obligations under this Agreement the Developer shall supply a guarantee. The Developer is required to post security in an amount of \$ 17,775 (120% of the amount for the Improvements) in a form and with terms acceptable to the City ("Guarantee"). The Guarantee shall be in the form of a cash deposit made to the City, a letter of credit or a disbursement agreement in a form and with content approved by the City Attorney. The Guarantee specific to this Agreement is attached as Exhibit C and is incorporated by this reference as if fully set forth.

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

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

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

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

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

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

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

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

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

Commencement Date: JUNE 25, 2004  
Completion Date: JUNE 25, 2005

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If to Developer: TOT, LLC Name -Developer/Company  
529 2542 Rd Address (Street and Mailing)  
GRAND JUNCTION, CO  
81505 City, State & Zip Code  
( ) 242-1422 Telephone and Fax Numbers  
( ) \_\_\_\_\_  
\_\_\_\_\_ E-mail

Cc:

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



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

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

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

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

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

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

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

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

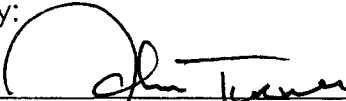
30c. The City shall not issue its written Acceptance with regard to any Improvement(s) including any street, storm drainage facility, sewer, water facility or other required Improvement(s), until the Developer:

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

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

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

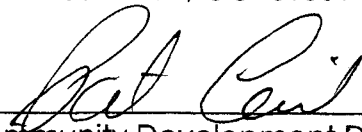
By:

  
\_\_\_\_\_  
Developer 6/23/04  
Date  
John Turner  
Name (printed)

Corporate Attest:

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

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

  
\_\_\_\_\_  
Community Development Dept. 6/30/04  
Date

6/13/2003

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

**EXHIBIT A**

Covering the Land in the State of Colorado, County of Mesa  
Described as:

A portion of Lot 1 in  
Block 2 of  
REPLAT OF FORESIGHT PARK FOR INDUSTRY FILING NO. 1, located in a  
part of the SW1/4 of Section 3, Township 1 South, Range 1 West of the Ute  
Meridian being more particularly described as follows:  
Commencing at the Southwest corner of said Section 3,  
thence North 89°57'20" East along the South line of the SW1/4 of said Section 3  
a distance of 1520.11 feet,  
thence North 00°00'10" West 30.00 feet,  
thence South 89°57'20" West 50.00 feet,  
thence North 00°00'10" West 20.00 feet to the true Point of Beginning,  
thence South 89°57'20" West 150.63 feet,  
thence North 00°00'10" West 648.96 feet,  
thence North 90°00'00" East 200.63 feet,  
thence South 00°00'10" East 533.80 feet,  
thence South 89°57'20" West 50.00 feet,  
thence South 00°00'10" East 115.00 feet to the True Point of Beginning.

**EXHIBIT B**

**IMPROVEMENTS COST ESTIMATE**

DATE: 2-27-04  
 DEVELOPMENT NAME: PYRAMID PRINTING  
 LOCATION: 2526 F ROAD  
 PRINTED NAME OF PERSON PREPARING: W A OSWALD

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>A. SANITARY SEWER</b>					
1	" PVC Sanitary Sewer Main	LF			\$ -
2	" PVC Sanitary Sewer Main	LF			\$ -
3	" PVC Sanitary Sewer Main	LF			\$ -
4	Sewer services	EA or LF			\$ -
5	Sanitary Sewer Manhole	EA			\$ -
6	Sanitary Sewer Drop Manhole	EA			\$ -
7	Connection to Existing Manhole	EA			\$ -
8	Concrete Encasement	LF			\$ -
<b>Subtotal Part A Sanitary Sewer</b>					<b>\$ -</b>
<b>B. DOMESTIC WATER</b>					
1	" PVC Water Main	LF			\$ -
2	" PVC Water Main	LF			\$ -
3	" PVC Water Main	LF			\$ -
4	" Gatevalve	EA			\$ -
5	" Gatevalve	EA			\$ -
6	" Gatevalve	EA			\$ -
7	Water Services to Median	EA	1	\$ 2,273.32	\$ 2,273.32
8	Connect to Existing Water Line	EA			\$ -
9	Fire Hydrant with Valve	EA			\$ -
10	Utility Adjustments	EA			\$ -
11	Blowoff	EA			\$ -
<b>Subtotal Part B - Domestic Water</b>					<b>\$ 2,273.32</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C1</b>	<b>STREETS</b>				
1	__" PVC Utility/Irrigation sleeves	LF			\$ -
2	__" PVC Utility/Irrigation sleeves	LF			\$ -
3	Reconditioning - Median	ls	1	\$ 399.60	\$ 399.60
4	Aggregate Base Course (Class 3)	TN			\$ -
5	Aggregate Base Course (Class 6) (__" Compacted Thickness)	SY			\$ -
6	Aggregate Base Course (Class 6) (__" Compacted Thickness)	SY			\$ -
7	Hot Bituminous Paving, Grading (__" thick)	SY			\$ -
8	Hot Bituminous Paving, Grading (__" thick)	SY			\$ -
9	Hot Bituminous Paving, Patching (__" Thick)	SY			\$ -
10	Geotextile	SY			\$ -
11	Concrete Curb (__" Wide by __" High)	LF			\$ -
12	Concrete Curb and Gutter (2' wide)	LF			\$ -
13	Concrete Curb and Gutter (1.5' wide)	LF	374.18	\$ 13.20	\$ 4,939.18
14	Monolithic, Vertical Curb, Gutter and Sidewalk (__' Wide)	ls			\$ -
15	Drive Over Curb, Gutter, and Sidewalk (__' Wide)				\$ -
16	Concrete Sidewalk (__' Wide)	LF			\$ -
17	Concrete Gutter and Driveway Section (__" Thick)	ls			\$ -
18	Concrete Drainage Pan (__' Wide, __" Thick)	LF			\$ -
19	Concrete Corner Fillet	SY			\$ -
20	Concrete Curb Ramp	SY			\$ -
21	Complete Concrete Corner	SY			\$ -
22	Concrete Driveway (__" Thick)	SY			\$ -
23	Driveway/Concrete Repair	SY			\$ -
24	Retaining Walls	LF			\$ -
25	Street Signs	EA			\$ -
26	Striping (New, Remove/Replace)	ls	1	\$ 141.20	\$ 141.20
27	Street Lights	EA			\$ -
28	Signal Construction or Reconstruction	LS			\$ -
29	Flowable Fill	CY			\$ -
30	Truncated Domes	ls			\$ -
					\$ -
					\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C2</b>	<b>BRIDGES</b>				
					\$ -
1	Box Culvert Pre-Cast	LS			\$ -
2	Box Culvert Cast-in-Place	LS			\$ -
3	Wingwalls	LS			\$ -
4	Parapet Wall	LS			\$ -
5	Railing (handrail, guardrail)	LS			\$ -
					\$ -
					\$ -
<b>Subtotal Part C - Streets and Bridges</b>					<b>\$ 5,479.97</b>
<b>D1</b>	<b>EARTHWORK</b>				
1	Mobilization	LS			\$ -
2	Clearing and Grubbing	LS			\$ -
3	Unclassified Excavation	CY			\$ -
4	Unclassified Embankment	CY			\$ -
5	Silt Fence	LF			\$ -
6	Watering (Dust Control)	AC or LS			\$ -
<b>D2</b>	<b>REMOVALS AND RESETTING</b>				
1	Removal of Asphalt	ls	1	\$ 2,232.37	\$ 2,232.37
2	Removal of Miscellaneous Concrete	SY			\$ -
3	Remove Curb and Gutter	LF			\$ -
4	Removal of Culverts	LF			\$ -
5	Remove Structures	EA			\$ -
6	Remove Signs	EA			\$ -
7	Remove Fence	LF			\$ -
8	Adjust Manhole	EA			\$ -
9	Adjust Valvebox	EA			\$ -
10	Relocate or Adjust Utilities	LS			\$ -
<b>D3</b>	<b>SEEDING AND SOIL RETENTION</b>				
1	Sod	SY			\$ -
2	Seeding (Native)	SY or AC			\$ -
3	Seeding (Bluegrass/Lawn)	SY or AC			\$ -
4	Hydraulic Seed and Mulching	SY or AC			\$ -
5	Soil Retention Blanket	SY			\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>D4</b>	<b>STORM DRAINAGE FACILITIES</b>				
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY			\$ -
2	_____ " _____ Storm Drain Pipe	LF			\$ -
3	_____ " _____ Storm Drain Pipe	LF			\$ -
4	_____ " _____ Storm Drain Pipe	LF			\$ -
5	_____ " _____ Storm Drain Pipe	LF			\$ -
6	_____ " _____ Storm Drain Pipe	LF			\$ -
7	_____ " Flared End Section	EA			\$ -
8	_____ " Flared End Section	EA			\$ -
9	48" Storm Drain Manhole	EA			\$ -
10	60" Storm Drain Manhole	EA			\$ -
11	72" Storm Drain Manhole	EA			\$ -
12	Manhole with Box Base	EA			\$ -
13	Connection to Existing MH	EA			\$ -
14	Single Curb Opening Storm Drain Inlet	EA			\$ -
15	Double Curb Opening Storm Drain Inlet	EA			\$ -
16	Area Storm Drain Inlet	EA			\$ -
17	Detention Area Outlet structure	EA			\$ -
18	Rip-Rap D <sub>50</sub> = _____"	CY			\$ -
19	Sidewalk Trough Drain	EA			\$ -
20	Pump Systems including Electrical	LS			\$ -
	<b>Subtotal Part D - Grading and Drainage</b>				<b>\$ 2,232.37</b>

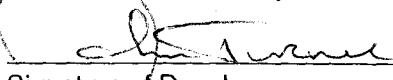
Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>E1</b>	<b>IRRIGATION</b>				
1	Connect to Existing Pipe	LS			\$ -
2	" Irrigation Pipe	LF			\$ -
3	" Irrigation Pipe	LF			\$ -
4	Fittings and Valves	LS			\$ -
5	Services	EA			\$ -
6	Pump System and Concrete Vault	LS			\$ -
7	Irrigation Structure	EA			\$ -
8	Vacuum Relief and/or Air Release Valve	EA			\$ -
<b>E2</b>	<b>LANDSCAPING</b>				
1	Design/Architecture	LS			\$ -
2	Earthwork	CY			\$ -
3	Hardscape Features	LS			\$ -
4	Plant Material & Planting	LS	1	\$ 1,270.80	\$ 1,270.80
5	Irrigation System	LS	1	\$ 1,464.95	\$ 1,464.95
6	Curbing	LF			\$ -
7	Retaining Walls & Structures	LS			\$ -
8	1 Year Maintenance Agrmnt.	LS			\$ -
9	Topsoil				\$ -
					\$ -
					\$ -
<b>E</b>	<b>Subtotal Part E - Landscaping and Irrigation</b>				<b>\$ 2,735.75</b>



Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>F. Miscellaneous Items</b>					
1	Construction staking/surveying	%	0.00%	\$ -	\$ -
2	Developer's inspection cost	%		\$ -	\$ -
3	General construction supervsn	%		\$ -	\$ -
4	Quality control testing	%	0.00%	\$ -	\$ -
5	Construction traffic control	ls	1.00	\$ 2,075.00	\$ 2,075.00
6	City inspection fees	%	0.00%		\$ -
7	As-builts	%	0.00%	\$ 12,721.41	\$ -
<b>E Subtotal Part F - Miscellaneous Items</b>					<b>\$ 2,075.00</b>
% = Percentage of total site construction costs					
<b>G. COST SUMMARY</b>					
<b>1 Total Improvement Costs</b>					<b>\$ 14,796.41</b>
<b>2 City Security (20%)</b>					<b>\$ 2,959.28</b>
<b>3 Total Guarantee Amount</b>					<b>\$ 17,755.70</b>


NOTES

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

 6/23/04  
 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 construction drawings submitted to date and the current cost of construction, I take no exception to the above.

 6/30/04  
 City Development Engineer Date

 6/30/04  
 Community Development Date

**DISBURSEMENT AGREEMENT**  
(Improvements Guarantee)

DEVELOPER: TOT, LLC

BANK: WELLS FARGO BANK, N.A.

PROPERTY:

DISBURSEMENT AMOUNT For the construction of improvements to the Property in an amount not to exceed \$ 17,750.00

This Agreement is entered into by and between TOT, LLC ("Developer"), WELLS FARGO BANK, N.A. ("Bank") and the City of Grand Junction, Colorado ("City").

RECITALS

Developer has been required by the City to construct certain improvements to 2526 F Road, LT, CO 81505 ("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 \$ 17,750.00, 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.

DISBURSEMENT AGREEMENT

(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 *[Signature]* (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.

DISBURSEMENT AGREEMENT

(page 3 of 4)

Dated this 14 day of May, 2004

(BANK) WELLS FARGO BANK, N.A.

By: [Signature]  
Title Vice President

2808 N Ave, Grand Junction, CO 81501  
Address

(DEVELOPER) TOT, LLC

By: [Signature]  
Title

2673 Daria Ct. Grand Junction Co 81506  
Address

CITY OF GRAND JUNCTION

By: [Signature]  
Director of Community Development

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between \_\_\_\_\_ Developer, \_\_\_\_\_ as Bank, and the City of Grand Junction, the following are the individuals authorized to sign written requests for the disbursement of the Funds:

DEVELOPER:

\_\_\_\_\_  
(name) (signature)

\_\_\_\_\_  
(name) (signature)

\_\_\_\_\_  
(name) (signature)

DISBURSEMENT AGREEMENT  
(page 4 of 4)

DEVELOPER'S GENERAL CONTRACTOR:

ROBERT V. TURNER Robert V. Turner  
(name) (signature)

DEVELOPER'S PROJECT ENGINEER:

BILL OSWALD W A Oswald W A Oswald  
(name) (signature)

DEVELOPER'S ARCHITECT:

MIKE ONEY Michael E. Oney  
(name) (signature)

CITY ENGINEER:

\_\_\_\_\_  
(name) (signature)

# **AGREEMENT**

This AGREEMENT is made and entered into effective JUNE 30, 2004, by and between the **CITY OF GRAND JUNCTION** ("City") and **TOT, LLC** ("Developer"), a Colorado Limited Liability Corporation.

## **RECITALS**

A. Developer has received approval to develop certain property commonly known as Pyramid Printing and is located at 2526 F Road, Grand Junction, CO, as it will be constructed.

B. City and the Developer have agreed that the City will reimburse the Developer for certain construction that is made in the course of the development of Pyramid Printing to median of F Road from the westerly limit of the subject property to the westerly limit of the proposed improvements excluding median landscaping, irrigation, and water service.

C. Developer has agreed to construct the street median fronting subject property, including landscaping and irrigation, striping, signage and other necessary infrastructure.

D. City and Developer desire to reduce to writing their agreement regarding the construction of the improvements to the median for the purpose of providing safety and capacity improvements along F Road between

NOW, THEREFORE, for and in consideration of the promises contained herein, the parties hereto mutually covenant and agree as follows:

1. Developer agrees to construct certain both surface and subsurface street improvements as directed by the City. That direction shall generally be in accordance with the plans entitled "Pyramid Printing" dated June 22, 2004 hereinafter referred to as the "Plans". The Developer agrees that it will build the improvements shown on the Plans in accordance with the vertical and horizontal controls, dimensions, designs and specifications and City standards. The Developer has had occasion to review the Plans, is familiar with current City specifications and agrees to perform all of the work in accordance with the pursuant to the same.

2. Developer further agrees to perform all necessary traffic control, temporary street surfacing, dewatering, incidental work and phasing of work as may be necessary to accomplish the work per the Plans and specifications.

3. Collectively the labor, equipment and materials described in paragraphs 1 & 2 shall be known for the purposes of this agreement as the Reimbursable Work.

5. City agrees to reimburse the Developer a total, lump sum, not to exceed amount, with all applicable markups and overhead costs, of \$10,465.00 for completion

of the Reimbursable Work. The City shall make payment of **\$10,465.00** within thirty (30) days of initial acceptance of the Reimbursable Work. If the City rejects some or all of the Reimbursable Work, it shall do the same in writing, addressed to the Developer, citing with reasonable particularity its objection(s). If the City does not reject some or all of the Reimbursable Work within fourteen (14) days of initial acceptance then the City shall, upon execution of a lien waiver(s) by the Developer make final payment within not more than 30 days.

6. The City reserves the right to inspect any and all work; to require certifications of the work and to otherwise take reasonable or necessary action(s) to ensure that the work is in conformance with City Standards. The City has the right to reject non-conforming work.

7. Final acceptance of the work shall not occur or be deemed to have occurred until:

- (a) the City accepts the work in writing or
- (b) 14 days elapses after initial acceptance is made.

8. City agrees that Developer shall not be required to provide a bond or other financial guarantee of the estimated cost of the Reimbursable Work. The Developer understands and agrees that completion of the Reimbursable Work is a condition precedent to the initial acceptance of the Pyramid Printing development project. The Developer shall be wholly responsible for and bear the risk of loss during its prosecution of the Reimbursable Work and the consequences of its failure to do the same.

9. The Developer shall procure and maintain and shall cause each sub-contractor, if any, to procure and maintain, the minimum insurance coverage's listed below. All coverage shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by the Developer pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured by the Developer to maintain such continuous coverage.

(a) Workers' Compensation insurance as required by the Labor Code of the State of Colorado and Employers Liability Insurance. Evidence of qualified self-insured status may be substituted.

(b) General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall include the City of Grand Junction, its officers and its employees, as additional insured, with primary coverage as respects the City of Grand Junction, its officers and its employees and shall contain a severability of interests provision.

(c) Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000) per person in any one occurrence and **FIVE HUNDRED THOUSAND DOLLARS (\$500,000)** for two or more persons in any one occurrence, and auto property damage insurance of at least FIFTY THOUSAND DOLLARS (\$50,000) per occurrence, with respect to each of Developer's owned, hired or non-owned vehicles assigned to or used in performance of the Work. The policy shall include the City, its officers and its employees, as additional insured, with primary coverage as respects to the City, its officers and its employees, and shall contain a severability of interest provision. A certificate of insurance shall be completed by the Architect's insurance agent(s) as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City prior to commencement of any services under the contract.

(d) The parties hereto understand and agree that the City is relying on, and does not waive or intend to waiver by any provision of this contract, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, 25-10-101 *et. Seq.*, 10 C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees.

(e) The Developer agrees to indemnify and hold harmless the City, and its officers and its employees, from and against all liability, claims, demands and expenses, including court costs and attorney fees, or account of any injury, loss or damage, which arise out of or are in any manner connected with the work to be performed **by the Developer** under this Agreement, if such injury, loss, or damage is caused by, or is claimed to be caused by, the act, omission, or other fault of the Developer or any officer or employee of the Developer. These obligations shall not extend to any injury, loss, or damage, which is caused by the act, omission or other fault of the City. Developer and any persons employed by Developer for the performance of work hereunder shall be independent contractors and not employees of the City. Any provisions in this Agreement that may appear to give the City the right to direct Developer as to details of doing work or to exercise a measure of control over the work mean that Developer shall follow the direction of the City as to end results of the work, only. **As an independent contractor, Developer is not entitled to City workers' compensation benefits or unemployment insurance benefits. The Developer is obligated to pay all federal and state income tax on any moneys earned or paid pursuant to this contract.**

10. The Developer shall provide by contract with the material men, vendors, suppliers and installers and/or contractors that all warranties concerning or relating to the equipment, material and labor provided hereunder are transferable to the City. The Developer shall warrant the Reimbursable Work for a period of one year from the date of final acceptance and to the extent necessary or required shall transfer and assign any and all warranties to the City at no cost upon completion of the Reimbursable Work. All



warranties shall be for a minimum of one year from the date of final acceptance by the City.

11. This Agreement incorporates all prior discussions and agreements of the parties and may not be amended except in writing duly executed by the parties. The Reimbursable Work to be performed under this Agreement shall commence upon March 20, 2003 and shall be completed within 180 days of commencement of construction.

12. This Agreement represents the entire agreement between the parties and there are no oral collateral agreements or understandings. Only an instrument in writing signed by the parties may amend this Agreement.

13. This Agreement is binding upon and injures to the benefit of the parties hereto. Developer shall not assign or delegate this Agreement or any portion thereof or any monies due hereunder without the City's prior written consent.

14. Any dispute hereunder shall be resolved by submission to binding arbitration pursuant to C.R.S. §13-22-201, *et seq.*

15. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.

16. The City shall receive originals of any documents, papers, and records of the Developer that are related to, prepared as a result of or required by this Agreement. Furthermore, for the purpose of making audit, examination, excerpts and transcriptions, the City shall have the right of inspection of the Developer's books, records and any and all instruments of service.

17. This Agreement be terminated by the City for its convenience and without cause of any nature by giving written notice at least seven (7) days in advance of the termination date. In the event of such termination, the Developer will be paid for the reasonable value of the services rendered to the date of termination, not to exceed the total amount set forth and upon such payment, all obligations of the City to the Developer under this Agreement will cease. Termination pursuant to this section shall not prevent either party from exercising any other legal remedies, which may be available to it. In no event, shall the City be liable to the developer for direct or consequential damages including, but limited to, lost or advantage.

18. Developer shall be solely responsible for compliance with all applicable City, state and federal laws, including the resolutions, rules and regulations of the City; for payment of all applicable taxes and obtaining and keeping in force all applicable licenses, permits and approvals.

19. Developer will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. Developer will take affirmative action to ensure that applicants are employed and that

employees are treated during employment without regard to their race, color, religion, age, sex, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.

20. Developer shall be in compliance with the applicable provisions of the American with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal, state, or local laws and regulations. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year above written.

“CITY”

CITY OF GRAND JUNCTION

By: Lana C. Laubert

Title: Development Engineer

“DEVELOPER”

TOT, LLC

By: John Turner

Printed Name: John Turner

Title: Member

September 2, 2008

Wells Fargo Bank  
2808 North Avenue  
Grand Junction, CO 81501

Re: Cancellation of Disbursement Agreement for:  
**Pyramid Printing #SPR-2003-178**

Dear Sirs:

Enclosed is a copy of the Disbursement Agreement (Improvement Guarantee) entered into between the City of Grand Junction ("City"), **TOT, LLC** ("Developer"), and **Wells Fargo Bank** for improvements to the development referred to as **Pyramid Printing** under the City's Planning File **SPR-2003-178**. As beneficiary of the security for a Development Improvements Agreement ("DIA"), the City informs you that the terms of the improvements have been completed by the Developer and the improvements have been accepted by the City. The City hereby releases its interest in the disbursement agreement security. This letter is being provided at the direction of the Director of Public Works and Planning.

If you have any questions, please inform me.

Sincerely,

OFFICE OF THE CITY ATTORNEY

  
Shelly S. Dackonish, Senior Staff Attorney

pc: Rhonda Edwards, Planner  
Planning File # **SPR-2003-178**  
✓Peggy Sharpe, Planning  
Developer: **TOT, LLC**  
529 25 ½ Road  
Grand Junction, CO 81505

RELEASE OF IMPROVEMENTS AGREEMENT & GUARANTEE  
Grand Junction Community Development Department  
FILE # SPP-2003-178

This memorandum relates to a certain unrecorded Improvements Agreement and Guarantee dated JUNE 24, 2004, by and between TOT LLC (Developer) and the City of Grand Junction (City) pertaining to PYRAMID PRINTING (Project).

Legal Description:

UNPLATTED - 2526 F ROAD

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: City Engineer Law C. [Signature] Date 12-5-06  
City Utilities Manager PLANNING: Jack A. [Signature] Date 12-4-06  
Fire Marshall N/A Date \_\_\_\_\_

UTE WATER:

By: N/A Date \_\_\_\_\_

GRAND JUNCTION DRAINAGE:

By: N/A Date \_\_\_\_\_

OTHER:

By: N/A Date \_\_\_\_\_

In accordance with the above signatures, I hereby certify that the Improvements Agreement & Guarantee have been completed and accepted and in accordance with the provisions of the Grand Junction Zoning & Development Code are hereby released, subject to the required warranty period.

Asst. Director of Community Development Katherine M. Portner Date 12-4-06

The foregoing instrument was executed before me this 4th day of December, 2006

by Katherine M. Portner, Director of Community Development for the City of Grand Junction, Colorado.

Witness my hand & official seal.

Notary Public Gayleen Henderson

My commission expires 10/29/2009

