

TSI96CVS

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENT AGREEMENT

NAME OF AGENCY OR CONTRACTOR: THOMAS AND SUN, INCORPORATED

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: CANYON VIEW
SUBDIVISION, FILING NO. 3, FILE NO. FPP-96-28

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1996

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement") are Thomas & Sun, Inc. ("the Developer") and THE CITY OF GRAND JUNCTION, Colorado ("the City").

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

2. **Effective Date:** The Effective Date of the Agreement will be the date that this agreement is recorded which is not sooner than recordation of the Subdivision plat.

RECITALS

The Developer seeks permission to develop property within the City to be known as Canyon View Subdivision, Filing 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

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 one year 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: Thomas & Sun, Inc.
321 Quail Drive
Grand Junction, CO. 81503

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.

BN Jamy Turin 4/2/96
Director of Community Development Date

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

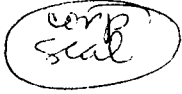
Thomas, Pres. 3-29-96 
Developer Date
(If Corporation, to be signed by President and attested to by Secretary together with the Corporate seals)

EXHIBIT "A"

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

Lot 1 and Lot 2, Block Four of Canyon View Subdivision Phase II, a plat on file in the office of the Mesa County Clerk and Recorder in Plat Book 14 at Page 343 bearing Reception No. 1716390.

EXHIBIT "B"**CANYON VIEW PHASE III**

Engineers Opinion of Cost

DATE: 3/29/96
 NAME OF DEVELOPMENT: CANYON VIEW PHASE III
 LOCATION: TR 37, SEC 35, T.11 S., R.101 W., 6th PM

PRINTED NAME OF
 PERSON PREPARING: JOHN C. SMITH

CONSTRUCTION COST ESTIMATE:

		Units	Quant	Unit Price	Total Price
Water system:					
1	8" Wet Tap w/saddle	EA	1	3,200.00	3,200
2	8" Line Connection	EA	1	450.00	450
3	8" Fittings w/TB's	EA	9	270.00	2,430
4	8" G.V.'s and box's	EA	3	425.00	1,275
5	6" G.V.'s and box's	EA	4	380.00	1,520
6	Fire Hydrant Assymblies	EA	4	1,650.00	6,600
7	8" PVC On-site Waterline	LF	1285	11.50	14,778
8	8" PVC Off-site Waterline	LF	940	11.50	10,810
9	6" PVC Waterline	LF	114	11.00	1,254
10	Water Service Taps	EA	19	50.00	950
11	Service Meter Pits and Yokes	EA	19	150.00	2,850
12	3/4" Copper Serv. Line	LF	672	15.40	10,349
				Sub-total Potable Water:	56,465

		Units	Quant	Unit Price	Total Price
Sewer system:					
1	Connect to Existing MH	EA	2	450.00	900
2	8" PVC Sewer Main	LF	1065	11.00	11,715
3	San. Sewer Manhole	EA	5	1,260.00	6,300
4	San. Sewer Serv. Tap	EA	19	42.00	798
5	4" Service Line	LF	685	14.00	9,590
6	8" PVC Removal	LF	15	1.75	26
7	8" Plug	EA	1	250.00	250
				Sub-total Sanitary Sewer:	29,579

Site grading and paving		Units	Quant	Unit Price	Total Price
1	Clearing and Grubbing	AC	8.88	650.00	5,772
2	12" or Larger Tree Removal & Disposal	EA	3	300.00	900
3	Unclassified Excavation	CY	3537.00	1.50	5,306
4	Unclassified Embankment	CY	3207.00	2.00	6,414
5	Asphalt Removal	SY	13.00	3.50	46
6	Class-6 A.B.C.	CY	1021.00	15.50	15,826
7	3" Asphalt	SY	3675.00	5.00	18,375
8	6.5' Curb/Gutter/Walk	LF	2251.00	17.00	38,267
9	8' Conc. Walk w/4" C1-6 base	LF	296.00	9.60	2,842
10	6' Conc. V-Pan	LF	28.00	22.00	616
11	Int. Radii & Aprons	SY	62.00	34.00	2,108
12	Stop & Street Name Sign	EA	2.00	80.00	160
13	Street Lights	EA	2.00	1,500.00	3,000
14	Reflective Panel Posts	EA	3.00	50.00	150
15	6.5' X 7' Conc MB Pad	LS	1.00	1,200.00	1,200
Sub-total Site grading and paving:					100,980
Drainage		Units	Quant	Unit Price	Total Price
1	Inlet W/Curb Opening	EA	2.00	980.00	1,960
2	12" RCP Storm Sewer	LF	250.00	25.00	6,250
Sub-total Drainage:					8,210
Irrigation		Units	Quant	Unit Price	Total Price
1	6" Line Connect	EA	2	450.00	900
2	6" PVC Irrigation	LF	1370.00	8.50	11,645
3	8" Fittings	EA	1.00	250.00	250
4	6" Fittings	EA	5.00	225.00	1,125
5	6" G.V.'s and box's	EA	2	425.00	850
6	2" Service Connection	EA	9	40.00	360
7	Irrig. Service Risers	EA	19	150.00	2,850
8	Connect to ditch	EA	1	450.00	450
Sub-total Irrigation:					18,430
Total Site Construction Costs:					213,665

South Camp Road and Channel Improvements

		Units	Quant	Unit Price	Total Price
1	Unclassified Excavation	CY	550.00	1.50	825
2	Unclassified Embankment	CY	840.00	2.00	1,680
3	Asphalt Removal	SY	80.00	3.50	280
4	Class-6 A.B.C.	CY	180.00	15.00	2,700
5	3" Asphalt	SY	419.00	5.00	2,095
6	8'x 4" Conc Bike Path	LF	347.00	7.75	2,689
7	1' Conc Head & Wing Wall	FSF	350.00	15.00	5,250
8	1' Size Rock Rip-Rap	CY	50.00	32.50	1,625
9	Multi-Plate Culvert	LF	70.00	450.00	31,500
Sub-total South Camp Road Improvements:					48,644

Miscellaneous		Units	Quantity	Unit Price	Total Price
1	Construction Engineering	1.50%	LS 1.00	3,934.63	3,935
2	Construction Surveying	1.75%	LS 1.00	4,590.41	4,590
3	Developer's Inspection Costs	1.25%	LS 1.00	3,278.86	3,279
4	Quality Control Testing	1.00%	LS 1.00	2,623.09	2,623
5	City Inspection Fees	0.50%	LS 1.00	1,311.54	1,312
Sub-total Miscellaneous:					15,739

Total Off and Onsite Improvements: 278,047

Jim Thomas, Pres
SIGNATURE OF DEVELOPER

3-29-96
DATE

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

Ady Khola
CITY ENGINEER

BN Jany Timin
COMMUNITY DEVELOPMENT

4-1-96
DATE

4/2/96
DATE

DISBURSEMENT AGREEMENT
(Improvements Guarantee)

DEVELOPER: Thomas and Sun, Inc.
John M. Thomas, president
321 Quail Drive
BANK: Grand Junction, CO 81503
Bank of Colorado Western Slope
by Stephen C. Cox, vice president
PROPERTY: PO Box 968, Grand Junction, CO 81502
Canyon View Subdivision, Phase III, Mesa County, Colorado

DISBURSEMENT AMOUNT: For the construction of improvements to the Property in an amount not to exceed \$ 275,035.

This Agreement is entered into by and between John Thomas and Sun, Inc.

("Developer"), Bank of Colorado

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

RECITALS

Developer has been required by the City to construct certain improvements to Canyon View Sub. ("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 \$ 275,035, 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 John M. Thomas, pres (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 1st day of April, 1996.

(BANK)

By: Stephany Howe

Title Vice President

PO Box 968, Grand Jet, CO

Address

(DEVELOPER)

By: Jim Thomas, Pres.

Title

321 Grand Dr. Grand Jet CO 81503

Address

CITY OF GRAND JUNCTION

By: BW Larry Timm

Larry Timm, Director of Community Development

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between Thomas and Sun, Inc. Developer, Bank of Colorado 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) Thomas & Sun Inc. Jon Thomas, Pres
(signature)

(name) _____
(signature)

(name) _____
(signature)

DEVELOPER'S GENERAL CONTRACTOR:

Thomas & Sun Inc Jon Thomas
(name) (signature)

DEVELOPER'S PROJECT ENGINEER:

(name) (signature)

DEVELOPER'S ARCHITECT:

(name) (signature)

CITY ENGINEER:

Jody Kliska Jody Kliska
(name) (signature)

MEMORANDUM OF IMPROVEMENTS AGREEMENT & GUARANTEE
Grand Junction Community Development Department
File # FPP-96-28

This memorandum relates to an improvements agreement and guarantee dated April 2, 1996 1995,
by and between Thomas & Sun, Inc. (Developer) and the City of Grand Junction
(City) pertaining to Canyon View Filing 3 (Project) in the City of Grand Junction..

Legal Description:

Lot 1 and Lot 2, Block 4, Canyon View Subdivision Phase II
(recorded in Plat Book 14, Page 243; Reception #1716390;
Mesa County Clerk and Recorder)

Whereas, Developer is required to install and construct certain public and private improvements as a
condition of approval of the Project, which completion is guaranteed by an improvements agreement and
guarantee in the sum of \$ 275,035 , and

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

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

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

CITY OF GRAND JUNCTION:

BN James Tamm 4/22/96
Director of Community Development date

DEVELOPER:

Tom Thomas 4-22-96
date

After recording mail to:

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

RELEASE OF IMPROVEMENTS AGREEMENT & GUARANTEE
Grand Junction Community Development Department

This memorandum relates to certain recorded Improvements Agreements and Guarantees. The agreements are by and between Thomas & Sun, Inc. (Developer) and the City of Grand Junction (City) pertaining to Canyon View Subdivision. The necessary data pertaining to each of the filings for this project follows:

Book 3122 Page 641

File #	Date	Book	Page	Total Cost	Disbursement Amount	Filing
PDR-1994-214	4/1/95	2143	231 - 242	\$345,044.00	\$221,511.50	#2
FPP-96-28	4/2/96	2230	752	\$278,047.00	\$275,035.00	#3
RZP-96-179	9/3/96	2291	187	\$259,059.00	\$259,059.00	#4
FPP-96-265	2/25/97	2316	598 - 610	\$311,205.00	\$311,205.00	#5
FPP-1997-141	9/9/97	2387	95	\$209,578.00	\$209,578.00	#6
FPP-1999-097	6/8/97	2601	170 - 185	\$284,310.36	\$284,310.36	#7

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 Improvement 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 *Rob Brown* Date: 7-30-02

City Utilities Manager: *[Signature]* Date: 7/30/02

Fire Marshall: *Frank Masterson* Date: 7-30-02

UTE WATER:

By: *Paul Tolu* Date: 30 Jul 02

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

Director of ~~Community~~ Development *Seonices Pat Ceil* Date: 7/30/02

The foregoing instrument was executed before me this 30th day of July, 2002 (year) by *Pat Ceil*, Director of ~~Community~~ Development for the City of Grand Junction, Colorado. *A. Perreira*

Witness my hand & official seal.
Notary Public *Patricia Bushman*
My commission expires My Commission Expires 5/6/06



Exhibit A - 1 (Filing 7)

Commencing at the Southeast corner of Section 26, Township 11 South, Range 101 West of the 6th Principal Meridian from whence the East Quarter corner of said Section 26 bears North 00°22'30" West 2643.15 feet and all bearings contained herein to be relative thereto;

thence South 00°02'22" East 57.12 feet along the East line of Section 35, Township 11 South, Range 101 West of the 6th Principal Meridian to the true point of beginning;

thence continuing South 00°02'22" East 617.08 feet along the East line of said Section 35;

thence South 89°18'00" West 1419.28 feet;

thence North 00°46'00" West 691.60 feet to the South Quarter corner of said Section 26;

thence North 90°00'00" West 665.60 feet along the South line of said Section 26;

thence North 00°27'00" West 125.00 feet;

thence North 36°14'00" East 192.00 feet;

thence North 30°11'00" East 34.57 feet;

thence South 36°59'58" East 20.00 feet;

thence along the arc of a curve to the right with a central angle of 13°56'36" whose radius is 365.55 feet and whose long chord bears North 81°45'02" East 270.08 feet;

thence South 69°30'00" East 679.56 feet;

thence along the arc of a curve to the left with a central angle of 37°10'50" whose radius is 495.17 feet and whose long chord bears South 88°05'23" East 315.72 feet;

thence along the arc of a curve to the right with a central angle of 13°56'36" whose radius is 365.55 feet and whose long chord bears North 84°31'21" East 88.74 feet;

thence South 85°29'50" East 37.81 feet;

thence along the arc of a curve to the left with a central angle of 30°15'29" whose radius is 420.06 feet and whose long chord bears North 79°31'15" East 219.27 feet;

thence North 60°26'55" East 80.02 feet;

thence South 00°00'00" West 225.99 feet;

thence North 90°00'00" East 321.08 feet to the true point of beginning.

EXCEPT that parcel as conveyed to Redlands Water and Power Company in instrument recorded October 26, 1971, in Book 965 at Page 822.

AND EXCEPT that parcel as conveyed to Mesa County in instrument recorded March 5, 1990, in Book 1778 at Page 749.

TOGETHER WITH an easement for underground utilities as reserved in instrument recorded March 5, 1990, in Book 1778 at Page 750.

Exhibit A-2 (Filing 8)

A replat of lot 1, block 3, Canyon View Phase II and lot 8, block 3,
Canyon View Phase VII, Mesa County, Colorado

~~Exhibit A-3 (Filing 8)~~

~~_____~~

Funding Approval/Agreement

Title I of the Housing and Community Development Act (Public Law 930383)

U.S. Department of Housing and Urban Development
Office of Community Planning and Development
Community Development Block Grant Program

HI-00515R of 20515R

1. Name of Grantee (as shown in item 5 of Standard Form 424) City of Grand Junction	3. Grantee's 9-digit Tax ID Number 84-600059	4. Date use of funds may begin (mm/dd/yyyy) 09/01/2002
2. Grantee's Complete Address (as shown in item 5 of Standard Form 424) 250 North Fifth Street Grand Junction, CO 81501	5a. Project/Grant No. 1 B-02-MC-08-0013	6a. Amount Approved \$494,000
	5b. Project/Grant No. 2	6b. Amount Approved
	5c. Project/Grant No. 3	6c. Amount Approved

Grant Agreement: This Grant Agreement between the Department of Housing and Urban Development (HUD) and the above named Grantee is made pursuant to the authority of Title I of the Housing and Community Development Act of 1974, as amended, (42 USC 5301 et seq.). The Grantee's submissions for Title I assistance, the HUD regulations at 24 CFR Part 570 (as now in effect and as may be amended from time to time), and this Funding Approval, including any special conditions, constitute part of the Agreement. Subject to the provisions of this Grant Agreement, HUD will make the funding assistance specified here available to the Grantee upon execution of the Agreement by the parties. The funding assistance specified in the Funding Approval may be used to pay costs incurred after the date specified in item 4 above provided the activities to which such costs are related are carried out in compliance with all applicable requirements. Pre-agreement costs may not be paid with funding assistance specified here unless they are authorized in HUD regulations or approved by waiver and listed in the special conditions to the Funding Approval. The Grantee agrees to assume all of the responsibilities for environmental review, decision making, and actions, as specified and required in regulations issued by the Secretary pursuant to Section 104(g) of Title I and published in 24 CFR Part 58. The Grantee further acknowledges its responsibility for adherence to the Agreement by sub-recipient entities to which it makes funding assistance hereunder available.

U.S. Department of Housing and Urban Development (By Name) Guadalupe M. Herrera	Grantee Name Kelly Arnold
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Title Director, Office of Community Planning and Development	Title City Manager
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Signature <i>Guadalupe M. Herrera</i>	Date (mm/dd/yyyy) OCT 07 2002	Signature <i>Kelly Arnold</i>	Date (mm/dd/yyyy) 10/14/02
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7. Category of Title I Assistance for this Funding Action (check only one) <input checked="" type="checkbox"/> a. Entitlement, Sec 106(b) <input type="checkbox"/> b. State-Administered, Sec 106(d)(1) <input type="checkbox"/> c. HUD-Administered Small Cities, Sec 106(d)(2)(B) <input type="checkbox"/> d. Indian CDBG Programs, Sec 106(a)(1) <input type="checkbox"/> e. Surplus Urban Renewal Funds, Sec 112(b) <input type="checkbox"/> f. Special Purpose Grants, Sec 107 <input type="checkbox"/> g. Loan Guarantee, Sec 108	8. Special Conditions (check one) <input type="checkbox"/> None <input checked="" type="checkbox"/> Attached	9a. Date HUD Received Submission (mm/dd/yyyy) 07/17/2002	10. check one <input checked="" type="checkbox"/> a. Orig. Funding Approval <input type="checkbox"/> b. Amendment Amendment Number
		9b. Date Grantee Notified (mm/dd/yyyy) OCT 07 2002	
		9c. Date of Start of Program Year (mm/dd/yyyy) 09/01/2002	

11. Amount of Community Development Block Grant			
	FY (yyyy)	2002	FY (yyyy)
a. Funds Reserved for this Grantee			
b. Funds now being Approved		\$494,000	
c. Reservation to be Cancelled (11a minus 11b)			

12a. Amount of Loan Guarantee Commitment now being Approved NA	12b. Name and complete Address of Public Agency NA
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Loan Guarantee Acceptance Provisions for Designated Agencies:
The public agency hereby accepts the Grant Agreement executed by the Department Housing and Urban Development on the above date with respect to the above grant number(s) as Grantee designated to receive loan guarantee assistance, and agrees to comply with the terms and conditions of the Agreement, applicable regulations, and other requirements of HUD now or hereafter in effect, pertaining to the assistance provided it.

12c. Name of Authorized Official for Designated Public Agency NA	
Title NA	Date (mm/dd/yyyy) NA
Signature	

HUD Accounting use Only

Batch	TAC	Program	Y	A	Reg	Area	Document No.	Project Number	Category	Amount	Effective Date (mm/dd/yyyy)	F
	153											
	176											
			Y									
			Y									

Date Entered PAS (mm/dd/yyyy)	Date Entered LOCCS (mm/dd/yyyy)	Batch Number	Transaction Code	Entered By	Verified By
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13. (b) Special conditions:

E. O. 12372 - SPECIAL CONTRACT CONDITIONS

1. Notwithstanding any provision of the Grant Agreement, no funds provided under this agreement may be obligated or expended for the planning or construction of water or sewer facilities until receipt of written notification from HUD of the release of funds on completion of the review procedures required under the Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, and HUD's implementing regulations at 24 C.F.R. Part 52. The recipient shall also complete the review procedures required under E.O. 12372 and receive written notification from HUD of the release of funds before obligating or expending any funds provided under this agreement for any new or revised activity for the planning or construction of water or sewer facilities not previously reviewed under E.O. 12372 and implementing regulations.

RECIPIENT COPY

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement	ASSISTANCE ID NO.		DATE OF AWARD	
		PRG	DOC ID		AMEND#
		X - 98877501 - 0			AUG 22 2002
		TYPE OF ACTION New			MAILING DATE AUG 29 2002
RECIPIENT TYPE: Municipal		PAYMENT METHOD: Reimbursement			
RECIPIENT: City of Grand Junction 250 N. 5th Street Grand Junction, CO 81501-2668 EIN: 84-6000592		Send Payment Request to: R8 Finance Office, 8TMS-F			
PROJECT MANAGER Eileen List 250 N. 5th Street Grand Junction, CO 81501-2668 E-Mail: Phone: 970-256-4149		EPA PROJECT OFFICER Bruce Zander 999 18th Street, Suite 300, 8EPR-EP Denver, CO 80202-2466 E-Mail: Zander.Bruce@epa.gov Phone: 303-312-6846		EPA GRANT SPECIALIST Joyce Brame Grants, Audits & Procurements, 8TMS-G E-Mail: Brame.Joyce@epa.gov Phone: 303-312-6367	
PROJECT TITLE AND DESCRIPTION Special Studies - TMDL Selenium Water Quality Trading Proposal Study, Lower Colorado River					
BUDGET PERIOD 09/01/2002 - 09/01/2003	PROJECT PERIOD 09/01/2002 - 09/01/2003	TOTAL BUDGET PERIOD COST \$75,000.00	TOTAL PROJECT PERIOD COST \$75,000.00		
NOTE: The Agreement must be completed in duplicate and the Original returned to the appropriate Grants Management Office listed below, within 3 calendar weeks after receipt or within any extension of time as may be granted by EPA. Receipt of a written refusal or failure to return the properly executed document within the prescribed time, may result in the withdrawal of the offer by the Agency. Any change to the Agreement by the Recipient subsequent to the document being signed by the EPA Award Official, which the Award Official determines to materially alter the Agreement, shall void the Agreement.					
OFFER AND ACCEPTANCE					
The United States, acting by and through the U.S. Environmental Protection Agency (EPA), hereby offers Assistance/Amendment to the <u>City of Grand Junction</u> for <u>100.00</u> % of all approved costs incurred up to and not exceeding <u>\$75,000</u> for the support of approved budget period effort described in application (including all application modifications) cited in the Project Title and Description above, signed <u>08/01/2002</u> included herein by reference.					
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)			AWARD APPROVAL OFFICE		
ORGANIZATION / ADDRESS Environmental Protection Agency, Region 8 999 18th Street, Suite 300 Denver, CO 80202-2466			ORGANIZATION / ADDRESS U.S. EPA, Region 8 999 18th Street, Suite 300 Denver, CO 80202-2466		
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY					
SIGNATURE OF AWARD OFFICIAL 		TYPED NAME AND TITLE Wayne Anthofer, Director		DATE AUG 22 2002	
This agreement is subject to applicable U.S. Environmental Protection Agency statutory provisions and assistance regulations. In accepting this award or amendment and any payments made pursuant thereto, (1) the undersigned represents that he is duly authorized to act on behalf of the recipient organization, and (2) the recipient agrees (a) that the award is subject to the applicable provisions of 40 CFR Chapter 1, Subchapter B and of the provisions of this agreement (and all attachments), and (b) that acceptance of any payments constitutes an agreement by the payee that the amounts, if any found by EPA to have been overpaid will be refunded or credited in full to EPA.					
BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION					
SIGNATURE 		TYPED NAME AND TITLE Cindy Enos-Martinez, Mayor		DATE	

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 75,000	\$ 75,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 75,000	\$ 75,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.606 - Surveys - Studies - Investigations - Spec	Clean Air Act: Sec. 104	40 CFR PART 31

Fiscal									
Site Name	DCN	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	LGR054	2002	B	08L1	20301B	4141	-	-	75,000
									75,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$0
2. Fringe Benefits	\$0
3. Travel	\$0
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$75,000
7. Construction	\$0
8. Other	\$0
9. Total Direct Charges	\$75,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %.)	\$75,000
12. Total Approved Assistance Amount	\$75,000
13. Program Income	\$0

Administrative Conditions

1. The recipient will comply with the following: (1) all applicable provisions of 40 CFR Parts 29, 31, 34, and 35 (if applicable), OMB Circulars A-87, A-102, and A-133 and (2) any terms and conditions set forth in this assistance agreement or any assistance agreement.
2. The Project Work Plan is the work plan for this award. Performance will be evaluated consistent with the Policy on Performance Based Assistance dated May 31, 1985.
3. The recipient agrees to ensure that all requisitions for conference, meeting, convention, or training space funded in whole or in part with Federal funds comply with the Hotel and Motel Fire Safety Act of 1990.
4. Pursuant to EPA Order 1000.25, dated January 24, 1990, the recipient agrees to use recycled paper for all reports which are prepared as a part of this agreement and delivered to the Agency. This requirement does not apply to Standard Forms. These forms are printed on recycled paper as available through the General Services Administration.
5. The recipient must submit an annual Financial Status Report within 90 days after the grant year, and must submit a final report within 90 days after the expiration or termination of grant support in accordance with 40 CFR Part 31.41(b).
6. In accordance with OMB Circular A-21, A-87, or A-122, as appropriate, the recipient agrees that it will not use project funds, including the Federal and non-Federal share, to engage in lobbying the Federal Government or in litigation against the United States. The recipient also agrees to provide the information mandated by EPA's annual appropriations acts for fiscal year 2000, 2001 and fiscal year 2002 (PL 106-74, §426, PL 106-377, §424 and PL 107-73, §424 respectively) which require as follows: 'A chief executive officer of any entity receiving funds under this Act shall certify that none of these funds have been used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.' The recipient may satisfy this certification requirement in any reasonable manner. The certification must be submitted to EPA after all grant funds have been expended.
7. In accordance with EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance programs, the recipient agrees to:
 - (a) Accept the applicable FY 1999 or 2000 "fair share" goals negotiated with EPA by the Colorado Department of Public Health and Environment as follows:

	MBE	WBE
Construction	5.6%	3.3%
Supplies	5.2%	3.3%
Services	5.8%	3.2%
Equipment	5.2%	3.3%

If the recipient does not want to rely on the applicable State's MBE/WBE goals, the recipient agrees to submit proposed MBE/WBE goals based on availability of qualified minority and women-owned businesses to do work in the relevant market for construction, services, supplies and equipment. "Fair share" objectives must be submitted to Maurice Velasquez within 30 days of award and approved by EPA no later than 30 days thereafter.

- (b) Ensure to the fullest extent possible that at least the FY1999/2000 "fair share" objective of Federal funds for prime contractors or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged

individuals, women and historically black colleges and universities.

- (c) Include in bid documents "fair share" objectives of 1999/2000 fair share percentage [see a) above] and require all of its prime contractors to include in their bid documents for subcontracts the negotiated fair share percentages.
- (d) Follow the six affirmative steps stated in 40 CFR 30.44(b) 40 CFR 31.36(e), 35.3145(d), or 35.6580, as appropriate.
- (e) For assistance awards for continuing environmental programs and assistance awards with institutions of higher education, hospitals and other non-profit organizations, submit an EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" to the EPA Award Official by October 30 of each year. Other program reports must be submitted to the award official within 30 days of the end of the Federal fiscal quarter (January 30, April, July 30 and October 30).
- (f) In the event race and/or gender neutral efforts prove to be inadequate to achieve a fair share objective for MBE/WBEs, the recipient agrees to notify EPA in advance of any race and/or gender conscious action it plans to take to more closely achieve the fair share objective.

Programmatic Conditions

1. The recipient must submit an annual Performance/Progress Report within 90 days after the reporting period and a final report within 90 days after the expiration or termination of grant support in accordance with 40 CFR Part 31.40 (b) (2).