

VAN95REX

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENTS AGREEMENT

NAME OF AGENCY OR CONTRACTOR: VANCE MCCOWN
CONSTRUCTION CO., INC

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: LOT 5
ARROW SQUARE INDUSTRIAL SUBDIVISION, TO DEVELOP PROPERTY,
FILE NO. SPR-97-76

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1995

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

MEMORANDUM OF IMPROVEMENTS AGREEMENT & GUARANTEE
Grand Junction Community Development Department

File # SPR-95-76 BOOK 2155 PAGE 233

This memorandum relates to an improvements agreement and guarantee dated June 22 1995, by and between Vance McCown Construction Co., Inc. (Developer) and the City of Grand Junction (City) pertaining to Rex TV & Appliance (Project) in the City of Grand Junction.

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 \$6,338.00, and

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

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

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

CITY OF GRAND JUNCTION:

Jerry Tullin

Director of Community Development 6/26/95
date

DEVELOPER:

T. Vance

T. Vance McCown, President 6-22-95
date

After recording mail to:

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

IMPROVEMENTS AGREEMENT
(Site Plan)

1. **Parties:** The parties to this Improvements Agreement ("the Agreement") are Vance McCown Construction Co., 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.

RECITALS

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

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer will design, construct and install, at its own expense, those 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 will construct the Improvements according to the

City may not declare a default until a (14) calendar day notice has been given to the Developer;

- c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; in such event the City may immediately declare a default without prior notification to the Developer;
- d. Notification to City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer.

13. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. For improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit "B" will be prima facie evidence of the minimum cost of completion; however neither that amount or the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow establish the maximum amount of the Developer's liability.

14. **City's Rights Upon Default:** When any event of default occurs, the City may draw on the letter of credit or cash deposit to the extent of the face amount of the credit or full amount of the deposit, 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 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 disbursement agreement, 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 en-join the sale, transfer, or conveyance of the Development, until the Improvements are completed or accepted. These remedies are cumulative in

and time periods for City action, such times in which war, civil disasters or acts of God occur or exist will not be included if such times prevent the Developer or City from performing its obligations under the Agreement.

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

23. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also will be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property. There is no prohibition on the right of the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations 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 this 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: Vance McCown Construction Co., Inc.
3213 Midtown Park South
Mobile, AL 36606

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

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

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

27. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement, whether arising out of or relating to the Agreement, letter of credit, disbursement agreement, cash deposit or any action

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

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



Jerry Tunn
Director of Community Development

6/26/95
Date

Stephanie Nye
Stephanie Nye, City Clerk

6/26/95
Date

T. Vance McCown
Developer T. VANCE McCOWN, President

6-22-95
Date

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

Attest: Teresa J. McCown
Teresa J. McCown, Secretary

06-22-95
Date

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL
(Page 1 of 3)

DATE: 06-22-95
 NAME OF DEVELOPMENT: Rex TV & Appliance
 LOCATION: 2465 Hwy. 6 & 50, Grand Junction, CO
 PRINTED NAME OF PERSON PREPARING: T. Vance McCown

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
I. SANITARY SEWER				
1. Clearing and grubbing	-	-	-	-
2. Cut and remove asphalt	-	-	-	-
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	-	-	-	-
4. Sewer Services (incl. trenching, bedding, & backfill)	-	-	-	-
5. Sanitary sewer manhole(s)	-	-	-	-
6. Connection to existing manhole(s)	-	-	-	-
7. Aggregate Base Course	-	-	-	-
8. Pavement replacement	-	-	-	-
9. Driveway restoration	-	-	-	-
10. Utility adjustments	-	-	-	-
II. DOMESTIC WATER				
1. Clearing and grubbing	-	-	-	-
2. Cut and remove asphalt	-	-	-	-
3. Water Main (incl. excavation, bedding, backfill, valves and appurtenances)	-	-	-	-
4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances)	-	-	-	-
5. Connect to existing water line	-	-	-	-
6. Aggregate Base Course	-	-	-	-
7. Pavement Replacement	-	-	-	-
8. Utility adjustments	-	-	-	-
III. STREETS				
1. Clearing and grubbing	SY	355	1.00	355
2. Earthwork, including excavation and embankment construction	LS	1	280	280
3. Utility relocations	-	-	-	-

7. City inspection fees	-	-	-	-
8. Permit fees	-	-	-	50
9. Recording costs	-	-	-	-
10. Bonds	-	-	-	-
11. Newsletters	-	-	-	-
12. General Construction Supervision	-	-	-	-
13. Other	-	-	-	-
14. Other	-	-	-	-

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 6,338.00

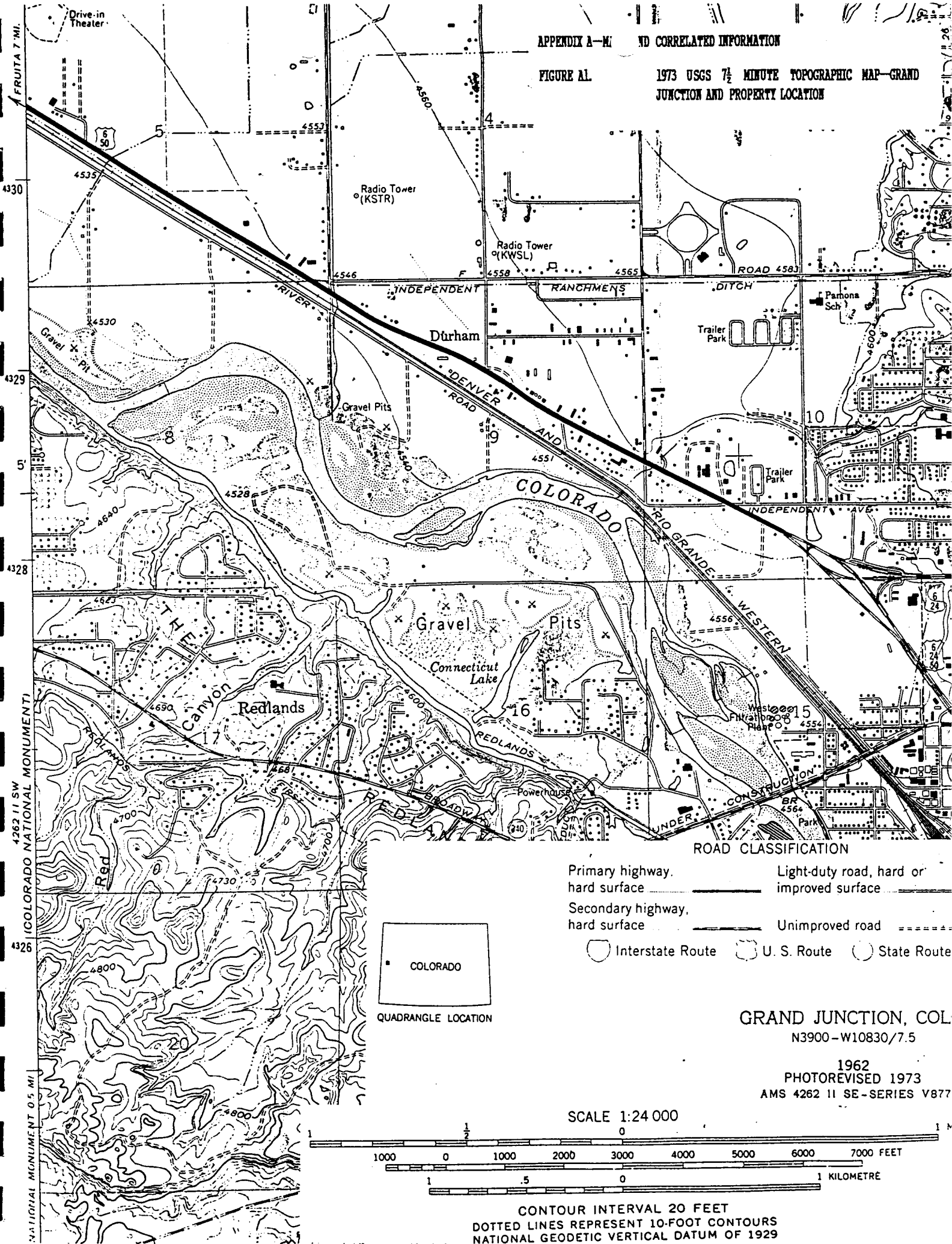
T. Vance McCown T. Vance McCown 6-22-95
 SIGNATURE OF DEVELOPER President DATE
 (If corporation, to be signed by President and attested
 to by Secretary together with the corporate seals.)

Attest: Teresa J. McCown Date: 06-22-95
 Teresa J. McCown, Secretary

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

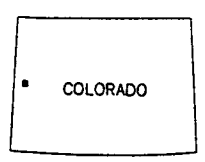
[Signature] 6-23-95
 CITY ENGINEER DATE

[Signature] 6/26/95
 COMMUNITY DEVELOPMENT DATE



ROAD CLASSIFICATION

- Primary highway, hard surface —————
- Secondary highway, hard surface ————
- Light-duty road, hard or improved surface —————
- Unimproved road —————
- Interstate Route (thick dashed line with 'I' shield)
- U. S. Route (dashed line with 'U.S.' shield)
- State Route (dashed line with 'S' shield)

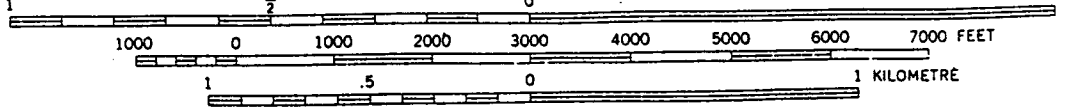


QUADRANGLE LOCATION

GRAND JUNCTION, COL. N3900-W10830/7.5

1962 PHOTOREVISED 1973 AMS 4262 II SE-SERIES V877

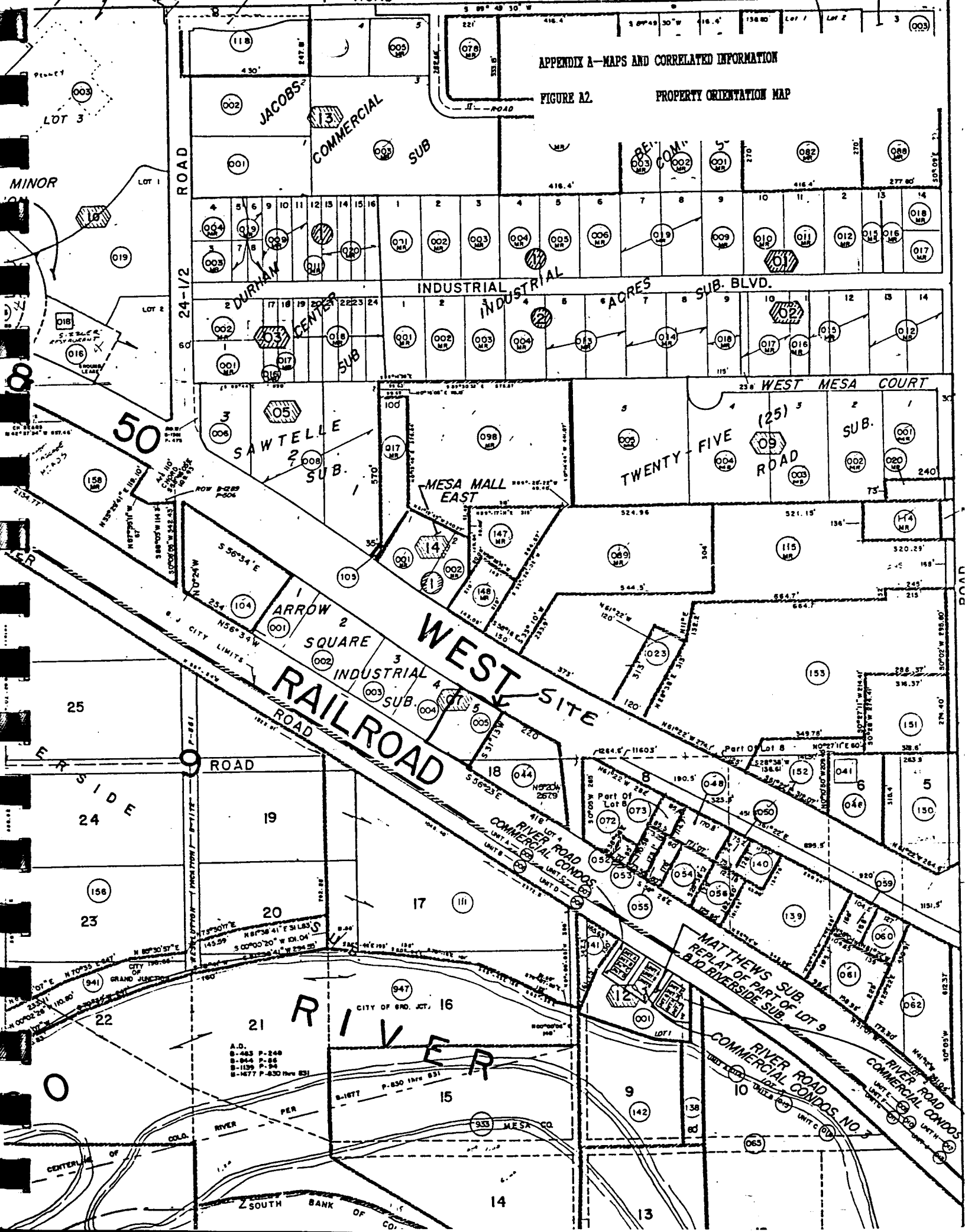
SCALE 1:24 000



CONTOUR INTERVAL 20 FEET
DOTTED LINES REPRESENT 10-FOOT CONTOURS
NATIONAL GEODETIC VERTICAL DATUM OF 1929

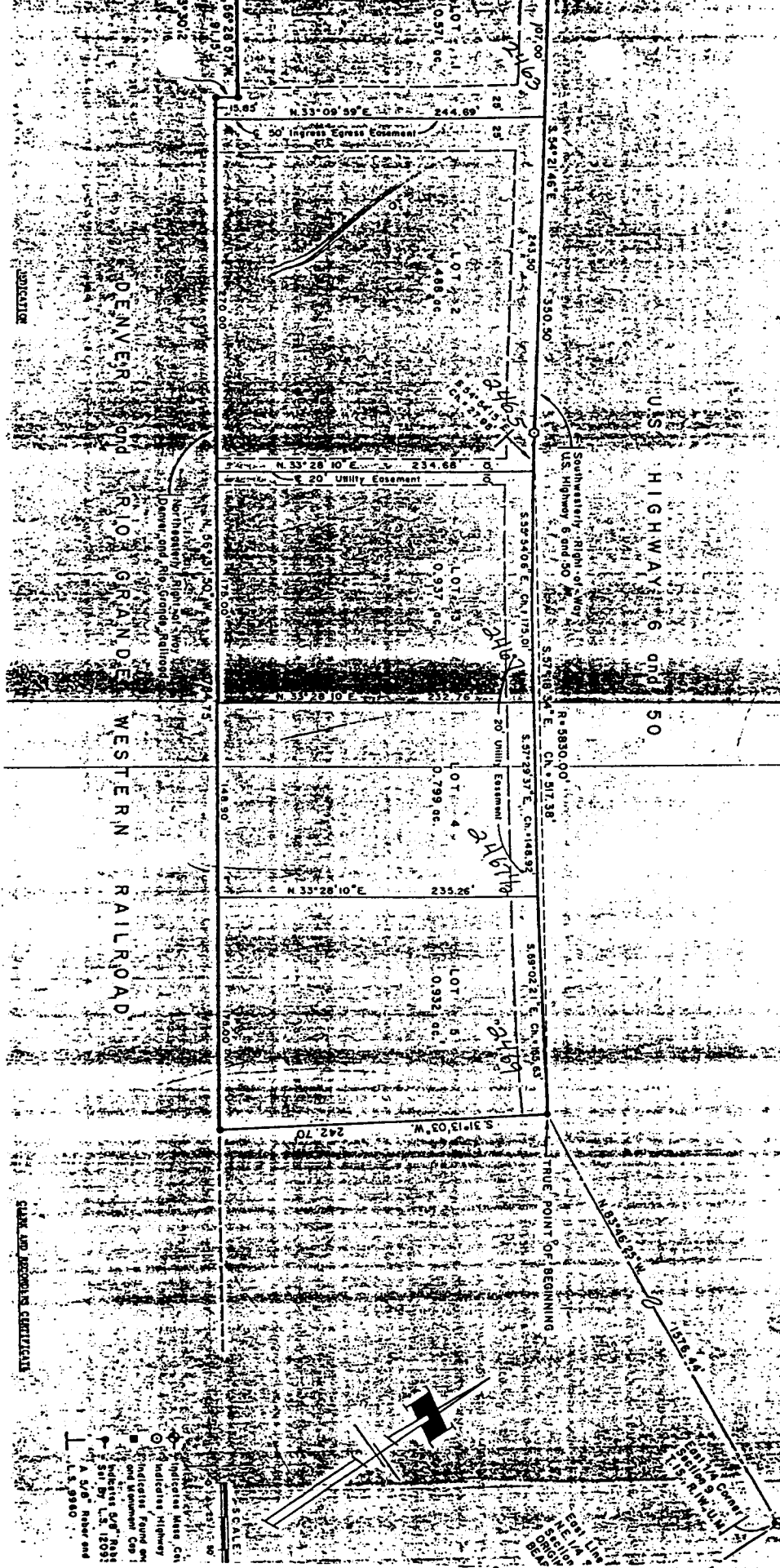
APPENDIX A—MAPS AND CORRELATED INFORMATION

FIGURE A2. PROPERTY ORIENTATION MAP



A.D.
B-483 P-248
B-944 P-88
B-139 P-94
B-1477 P-830 (Rev. 83)

ARKROW SQUARE INDUSTRIAL SUBDIVISION



APPENDIX A—MAPS AND CORRELATED INFORMATION

FIGURE A3. SUBDIVISION PLAT MAP