

WVD02SCH

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	WEST VALLEY DEVELOPMENTS, LLC
SUBJECT/PROJECT:	SCHLUMBERGER DEVELOPMENT \$122,844.90
LOCATION:	783 22 ROAD
TAX PARCEL #:	2697-361-02-005
FILE #:	SPR-2002-140
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2002
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

2092824 12/12/02 0330PM
MONIKA TODD CLK&REC MESA COUNTY CO
REC FEE \$85.00 SURCHG \$1.00

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. Parties: The parties to this Development Improvements Agreement ("the Agreement" or "Agreement") are WEST VALLEY DEVELOPMENTS, LLC ("the Developer") and THE CITY OF GRAND JUNCTION, Colorado ("the City" or "City").

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

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

DEVELOPER'S OBLIGATION

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

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 last Improvement completed by the Developer.

7. **Commencement, Completion and Abandonment Periods:** The Developer will commence work on the Improvements within 14 days from the Effective Date of this Agreement 12/15/02 (set date) ("the Commencement Period") and the Improvements, each and every one of them, shall be completed by the end of the 6 month from the Effective Date of this Agreement 5/15/03 (set date) (the "Completion Period"). The Developer shall not cease construction activities for any period of more than 60 consecutive days ("the Abandonment Period").

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

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

10. **Acceptance of Improvements:** The City's final acceptance and/or approval of Improvements will not be given or obtained until the Developer presents a document or documents, for the benefit of the City, showing that the Developer owns the Improvements in fee simple or as accepted by the City Attorney and that there are no liens, encumbrances or other restrictions other than those that have been accepted by the City Attorney on the Improvements. Approval and/or acceptance of any Improvements does not constitute a waiver by the City of any rights it may have on account of any defect in or failure of the Improvement that is detected or which occurs after approval and/or acceptance.

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

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

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

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

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

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

15. **City's Rights Upon Default:** When any event of default occurs, the City may draw on the letter of credit, escrowed collateral, or proceed to collect any other security to the extent of the face amount of the credit or full amount of escrowed collateral, cash, or security less ninety percent (90%) of the estimated cost (as shown on Exhibit B) of all Improvements previously accepted by the City or may exercise its rights to disbursement of loan proceeds or other funds under the improvements disbursement agreement. The City will have the right to complete Improvements itself or it may contract with a third party for completion, and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining and repairing such Improvements. Alternatively, the City may assign the proceeds of the letter of credit, the improvements disbursement agreement, the escrowed collateral, cash, or other funds or assets to a subsequent developer (or lender) who has acquired the Property by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished Improvements and provides to the City reasonable security for the obligation. In addition, the City may also enjoin the sale, transfer, or conveyance of lots within the development, until the Improvements are completed or accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

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

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

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

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

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

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

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

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

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

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

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

If to Developer: West Valley Developments, LLC
1111 South 12th Street
Grand Junction, Colorado 81501

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

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

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

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

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

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

c. Prior to requesting final acceptance of any street, storm drainage facility, or other required improvement(s), the Developer shall: (i) furnish to the City engineer as-built drawings in reproducible form, blue-line stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests required by City specification; (ii) provide written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon, in and under which the improvements have been constructed, or which are necessary for the improvements, are free from toxic, hazardous or other

regulated substances or materials: (iii) provide written evidence to the City Attorney that the title to lands underlying the improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney.

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

Pat Lent 12/12/02
Director of Community Development date

Attest:



Deputy Joanna Wesley 12/12/02
City Clerk date

WEST VALLEY DEVELOPMENTS, LLC
(Per agreement with Schlumberger Technology Corporation)

By: Dan Caldwell 11-21-02
Developer date

Name (printed): Darren Caldwell

Its (position): Assistant Manager

Attest:

See attached West Valley Developments, LLC
Amended Statement of Authority

Secretary date

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

EXHIBIT A

Lot 15 in Valley West Subdivision, Filing No. Two

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL

DATE: October, 2002
 NAME OF DEVELOPMENT: Schlumberger
 LOCATION: 783 22 Road
 PRINTED NAME OF PERSON PREPARING: Kevin Knott, LANDesign

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
I. SANITARY SEWER				
1 Clearing and Grubbing	LS			\$ -
2 Cut and remove Asphalt	LS			\$ -
3 PVC Sanitary Sewer main ((include trenching, bedding and backfill)	LF			\$ -
4 Sewer Services (include trenching bedding and backfill)	LF			\$ -
5 Sanitary Sewer Manhole(s)	EA			\$ -
6 Connection to existing manhole(s)	EA			\$ -
7 Aggregate Base Course	SF			\$ -
8 Pavement replacement	SF			\$ -
9 Driveway restoration	SY			\$ -
10 Utility adjustments	LS			\$ -
SUBTOTAL SANITARY SEWER				\$ -
II. DOMESTIC WATER				
1 Clearing and Grubbing	LS			\$ -
2 Cut and remove asphalt	LS			\$ -
3 Water main (include excavation, bedding backfill, valves and appurtenances)	LF			\$ -
4 Relocate Fire Hydrants	EA	2	\$ 750.00	\$ 1,500.00
5 Water Services (include excavation, bedding, backfill, valves and appurtenances)	EA	1	\$ 500.00	\$ 500.00
6 Connect to existing water line	EA	1	\$ 750.00	\$ 750.00
7 Aggregate Base Course	LS			\$ -
8 Pavement replacement	LS			\$ -
9 Utility adjustments	LS	1	\$ 300.00	\$ 300.00
SUBTOTAL DOMESTIC WATER				\$ 3,050.00

SCHEDULE OF IMPROVEMENTS:

I. SANITARY SEWER:	\$0.00
II. DOMESTIC WATER:	\$3,050.00
III. STREETS:	\$37,020.75
IV. LANDSCAPE:	\$54,300.00
V. MISCELLANEOUS:	\$8,000.00

I have reviewed the estimated costs and time schedule shown above and based on the plans and the current costs of construction agree to construct and install the Improvements as required above.

WEST VALLEY DEVELOPMENTS, LLC

(Per agreement with Schlumberger Technology Corporation)

Darren Caldwell 11-21-02

SIGNATURE OF DEVELOPER Darren Caldwell, Assistant Manager

(If corporation, to be signed by president and attested to by secretary together with the corporate seals)

Reviewed and approved

[Signature] 12/10/02
 CITY ENGINEER date

[Signature] 12/12/02
 COMMUNITY DEVELOPMENT date

2084328 10/29/02 0430PM
MONIKA TODD CLK&REC MESA COUNTY CO
REC FEE \$10.00 SURCHG \$1.00

**AMENDED
STATEMENT OF AUTHORITY**

(Section 38-30-172, C.R.S.) **BOOK 3227 PAGE 227**

WEST VALLEY DEVELOPMENTS, LLC

1. This Amended Statement of Authority relates to an entity named **WEST VALLEY DEVELOPMENTS, LLC**.
2. This type of entity is a limited liability company.
3. The entity is formed under the laws of Colorado.
4. The mailing address for the entity is 1111 South 12th Street, Grand Junction, CO 81501
5. Instruments conveying, encumbering or otherwise affecting title to real property on behalf of the entity require the signature of one and only one of the following named individuals:

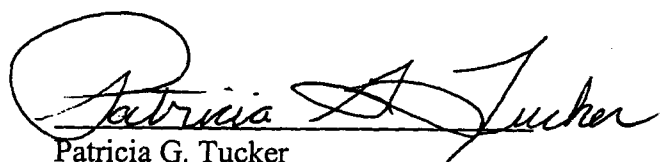
Patricia G. Tucker, Manager


Gerald A. Tucker, Manager


Darren Caldwell, Assistant Manager

6. The authority of the foregoing person(s) to bind the entity is not limited.
7. This Amended Statement of Authority is executed on behalf of the entity pursuant to the provisions of Section 38-30-172, C.R.S.
8. This Amended Statement of Authority amends and supersedes in all respects any prior Statement of Authority executed on behalf of the entity.

Executed this 25 day of October, 2002.


Patricia G. Tucker


Gerald A. Tucker


Darren Caldwell

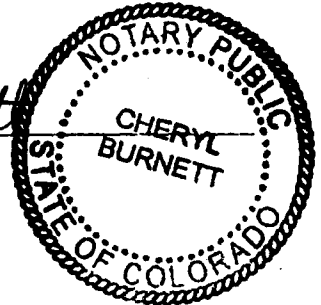
STATE OF COLORADO)
COUNTY OF MESA)ss.

The foregoing instrument was acknowledged before me this 25th day of October, 2002,
by Patricia G. Tucker, Gerald A. Tucker as Managers of West Valley Developments, LLC.

WITNESS my hand and official seal.

My Commission Expires: 04/03/05

Cheryl Burnett
Notary Public



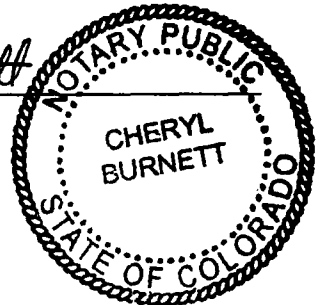
STATE OF COLORADO)
COUNTY OF MESA)ss.

The foregoing instrument was acknowledged before me this 25th day of October, 2002,
by Darren Caldwell as Assistant Manager of West Valley Developments, LLC.

WITNESS my hand and official seal.

My Commission Expires: 04/03/05

Cheryl Burnett
Notary Public



DISBURSEMENT AGREEMENT
(Improvements Guarantee)

DEVELOPER: Conquest Developments, LLC, a Colorado limited liability company, acting by agreement with Schlumberger Technology Corporation, a Texas corporation ("Schlumberger")

BANK: Wells Fargo Bank West, N.A.

Book 3227 PAGE 229

PROPERTY: Lots 15 and 16, Valley West Subdivision, Filing No. Two, Mesa County, Colorado

DISBURSEMENT AMOUNT: For the construction of improvements to the Property in an amount not to exceed \$ 122,844.90

This Agreement is entered into by and between Conquest Developments, LLC ("Developer"), Wells Fargo Bank West, N.A. ("Bank") and the City of Grand Junction, Colorado ("City").

RECITALS

Schlumberger Developer has been required by the City to construct certain improvements to the Property ("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 \$ 122,844.90, 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 Gerald A. Tucker, Member (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)

BOOK 3227 PAGE 231

Dated this 21 day of November, ~~199~~ 2002.

(BANK) WELLS FARGO BANK WEST, N.A.

By: *Leticia Ames* 11/21/02
Title V.P.

2808 North Ave
Address Grand Junction CO
81501

(DEVELOPER) CONQUEST DEVELOPMENTS, LLC

By: *Gerald A. Tucker*
Title Gerald A. Tucker, Member
111 South 12th Street
Grand Junction, CO 81501
Address _____

CITY OF GRAND JUNCTION

By: *Pat Ceil*
Director of Community Development

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between Gerald A. Tucker Developer, Wells Fargo Bank West, N.A. 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: CONQUEST DEVELOPMENTS, LLC

Gerald A. Tucker _____ *Gerald A. Tucker*
(name) (signature)

Darren Caldwell _____ *Darren Caldwell*
(name) (signature)

(name) (signature)

DEVELOPER'S GENERAL CONTRACTOR: ELAM CONSTRUCTION, INC.

DAVID M. VERBLE
(name)

David M. Verble
(signature)

11/21/02

DEVELOPER'S PROJECT ENGINEER: LAND DESIGN

KEVIN KUOTT
(name)

Kevin Kuott
(signature)

DEVELOPER'S ARCHITECT: N/A

(name)

(signature)

CITY ENGINEER:

ERIC HAHN
(name)

Eric Hahn
(signature)

12/10/02

MAINTENANCE GUARANTEE

1. **Parties:** The parties to this Maintenance Guarantee ("the Guarantee" or "Guarantee") are Conquest Development, LLC ("the Developer") and the City of Grand Junction, Colorado ("the City" or "City"). Collectively the Developer and the City may be referred to as the Parties.

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

2. **Effective Date:** The Effective Date of the Guarantee will be the date that it is signed and accepted by the City.

RECITALS

The Developer has constructed, installed and is required to warrant and maintain certain improvements ("Improvements" or "the Improvements") which were made necessary by virtue of development on property within the City. The Property, known as Schlumberger has been reviewed and approved under Community Development file # SPR-2002-140 and as necessary or required to construe this guarantee, that file(s) is incorporated by this reference.

The City seeks to protect the health, safety and general welfare of the community by requiring that the Improvements, once constructed, be maintained. The purpose of this guarantee is to protect the City from having to repair the Improvements at its cost. The 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 owners, purchasers or users of the Property. The mutual promises, covenants and obligations contained in this guarantee are authorized by law, the Colorado Constitution, the Charter and the City's ordinances.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer or its successor(s) or assign(s) shall maintain and guarantee the Improvements, at his/her/its own expense, against defects in workmanship and materials for a period of one year from the date of City acceptance of the Improvements. The Developer's obligation is and will be independent of any obligations of the City.

4. **Security:** To secure the performance of its obligations the Developer is required to post security in an amount of \$20,474.15 (20% of the DIA amount for the Improvements that the Developer has completed and for which the City has given its Final Acceptance.)

4a. The Developer has posted security to guarantee the Improvements in an amount, form and with terms acceptable to the City.

4b. In addition to that security all warranties and/or guarantees (those incident to construction or as provided by the contractor and/or manufacturer of installed equipment) are hereby assigned to the City.

4c. The Developer shall to the extent necessary or required by the City take whatever action is necessary or required to assign all warranties and/or guarantees (those incident to construction or as provided by the contractor and/or manufacturer of installed equipment) to the City. A copy of those warranties or a memorandum of the same is attached as Exhibit A.

4d. The Developer for itself, its successors and assigns agrees that if the Improvements are not maintained to City standards that the City shall notify the Developer in writing of the defect(s) in accordance with paragraph 8 hereof.

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

6. **Warranty:** The Developer hereby warrants that the Improvements, each and every one of them, will be maintained in accordance with the Standards in paragraph 5 for the period of this guarantee.

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

8. **Notice of Defect/Default:** The City shall provide timely notice to the Developer whenever routine inspection reveals that an Improvement and/or maintenance of the same does not conform to City standards and any specifications approved or required in or by the development or that an Improvement(s) is otherwise defective.

8a. As provided herein the City shall provide written notice to the Developer at the address stated in paragraph 22. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

8b. The Developer will have twelve (12) calendar days from the date of the notice to correct the defect.

8c. The City may grant reasonable extensions in writing to the time for correction of defect(s), however, it is not obligated to do so nor is it obligated to provide any notice of a defect(s) if it becomes aware of the defect(s) in or during an emergency. Furthermore, the City is not obligated to inspect the Improvements but may do so as it would any other improvement.

9. Acceptance: Prior to acceptance of any Improvement(s), the Developer shall demonstrate in writing to the satisfaction of the City Attorney that it owns the Improvements in fee simple or that there are no liens, encumbrances or other restrictions other than those that have been accepted by the City Attorney 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 or maintenance of the same that is detected or which occurs after approval and/or acceptance. All warranties and/or guarantees shall be for a period of no less than 12 months from the date of final acceptance of the Improvements.

10. Funds: Funds drawn, guaranteed or collected by the City under this agreement shall be used for the purpose of correcting defects in and/or repairing or replacing failure(s) of the Improvement(s).

11. Defect/Default Events: The following conditions, occurrences or actions will constitute a defect and/or default:

11a. Developer's failure to maintain each and every one of the Improvements in conformance with this guarantee and/or as required by code, law, rule, ordinance or regulation;

11b. Developer's failure to correct defective construction of any Improvement within the applicable guarantee period;

11c. Developer's failure to maintain security in a form and amount required/provided by this guarantee.

11d. As provided herein the City shall provide written notice to the Developer at the address on file with the development application. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

12. Measure of Cost/Expenses: The measure of costs and or expenses chargeable by the City under this guarantee will be the reasonable cost of satisfactorily repairing and/or replacing the Improvements plus reasonable City administrative expenses (in the amount of 20% of the repair, replacement and/or warranty work) all of which may exceed the amount of the security provided for in paragraph 4. The amount of the security provided for in paragraph 4 does not set, limit, establish or provide the Developer's maximum financial obligation.

12a. City administrative expenses for which the Developer is obligated to pay include but are not limited to personnel costs, including benefits, overtime, callback, standby and other extraordinary compensation, materials, equipment, third-party contracting costs, collection costs and the value of engineering, legal and administrative staff time devoted to the repair and/or replacement of the Improvements and/or enforcement of this guarantee and all initial warranty(ies) or guarantee(s) assigned to the City by the Developer.

13. City's Rights: When any defect or default occurs, the City may after notice and the Developer's failure and/or refusal to repair or replace the Improvements, proceed to collect the amount of the cost or expense incidental or necessary to affect the repair or replacement of the Improvements. The City will have the right to reconstruct, rebuild or otherwise maintain 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. This remedy is cumulative in nature and is in addition to any other remedy the City has at law or in equity.

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

15. No Waiver: No waiver of any provision of this Agreement by the City will be deemed to or constitute a waiver of any other provision, nor will it be deemed to or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and the Developer; nor will the waiver of any defect or default under this guarantee be deemed a waiver of any subsequent defect(s) or default(s) 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 defect(s), defaults(s) or Improvement(s).

16. Amendment or Modification: The Parties may amend or modify the Agreement only by written instrument executed on behalf of the City by the Public Works and Utilities Director or his designee and by the Developer or his authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

17. Attorney's Fees: Should either party be required to resort to litigation to enforce the terms of this guarantee, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If relief is awarded to both parties, the attorney's fees may be equitably divided between the parties by the decision-maker. The value of the City's in-house legal counsel is agreed to be \$125.00 per hour.

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

19. 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.

20. Severability: If any part, term or provision of this guarantee 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 right of the parties will be construed as if the part, term or provision was never part of the agreement.

21. 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 City to assign its rights under this agreement. The City will expressly release the original Developer's guarantee or obligations if it accepts new security from any Developer or lender who obtains the Property; however, no other act of the City will constitute a release of the original Developer from his liability under this agreement.

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

If to Developer: Conquest Development, LLC
1111 South 12th Street
Grand Junction, CO 81501
970-243-1242 Telephone
970-243-1379 Fax


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

Cc: Public Works and Utilities Department
250 North 5th Street
Grand Junction, CO 81501

23. Recordation: Developer will pay for all costs to record a memorandum of this guarantee in the Clerk and Recorder's Office of Mesa County, Colorado.

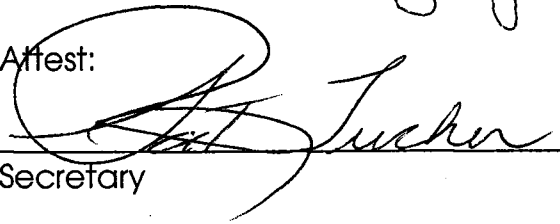
24. Immunity: Nothing contained in this agreement constitutes a waiver of the City's sovereign or other immunity under any applicable law.

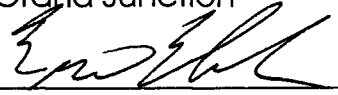
25. Personal Jurisdiction and Venue: Personal jurisdiction and venue for any action commenced by either party to this agreement whether arising out of or relating to the agreement, will be deemed to be proper only if such action is commenced in Mesa County, Colorado. The Developer expressly waives his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

By:  _____
Developer
6/24/03
Date

Name (printed): Gerald A. Tucker

Its (position): Managing Partner

Affest: 
Secretary 6/24/03 Date

City of Grand Junction

Director of Public Works and Utilities 7/2/03 Date

GUARANTEE2003

RECORDING MEMORANDUM

City of Grand Junction Community Development Department Community Development
File: #SPR-200-140.

This memorandum relates to and confirms that certain Maintenance Guarantee concerning land in Mesa County, Colorado. The Agreement is by and between West Valley Developments, Inc. (Developer) and the City of Grand Junction (City) pertaining to the Schlumberger development (Project), located at 783 22 Road.

(Subject subdivision is more particularly depicted and described as Lot 15 in the Valley West Subdivision, Filing No. Two, recorded at Plat Book 12, Pages 166 & 167.)


The Developer of the Project was required by law to install and construct certain public and private improvements, the completion of which was guaranteed by a Maintenance Guarantee. The Project is required to be constructed in accordance with the approval by the City pursuant to and in accordance with the Zoning and Development Code all as more fully detailed and described in City of Grand Junction development file #SPR-2002-140.

The Developer and the City of Grand Junction by and through the signatures of the undersigned have determined and agreed to the type, quality and amount of improvements required and/or necessitated by the approval of the Project and that the improvements are guaranteed by and through the Maintenance Guarantee. Furthermore, the Developer and the City agree that the Maintenance Guarantee are contractual in nature and that the obligations under the Maintenance Guarantee shall not be assigned except as provided in the agreement(s).

By virtue of this notice being recorded in the land records of the Mesa County Clerk and Recorder, subsequent owners and/or those that claim by, through or under the Developer are on notice of the Developer's obligations under the agreement(s).

NOW THEREFORE, the Developer and an official of the City of Grand Junction, both possessing and representing by their signatures that they possess sufficient authority, do hereby memorialize the relative, rights and obligations contained in the Maintenance Guarantee herein characterized.

DEVELOPER:

By:  Date 07/08/03

(Print Name) Darren Caldwell

CITY OF GRAND JUNCTION:

In accordance with the above, I hereby certify that the Maintenance Guarantee are made of record by this memorandum and that the same may be inspected and/or copied at the City of Grand Junction, Community Development Department, 250 N. 5th Street, Grand Junction Colorado.

 Date 7/21/03
Community Development Department

RELEASE OF IMPROVEMENTS AGREEMENT & GUARANTEE
Grand Junction Community Development Department
FILE # SPR-2002-140

This memorandum relates to a certain recorded Improvements Agreement and Guarantee dated Dec. 12, 2002 (year) and recorded at Book 3227, Page 216 through 232 of the land records of Mesa County, Colorado, by and between West Valley Development, LLC (Developer) and the City of Grand Junction (City) pertaining to The Schlumberger Development, 783 22 Road. (Project).

Legal Description: Lot 15 of the West Valley Subdivision, Filing Two, Plat Book 12 Pages 166 & 167

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 [Signature] Date 7/3/03
City Utilities Manager NA Date _____
Fire Marshall NA Date _____

UTE WATER:

By: NA Date _____

GRAND JUNCTION DRAINAGE:

By: NA Date _____

OTHER:

By: _____ Date _____

In accordance with the above signatures, I hereby certify that the Improvements Agreement & Guarantee and the recording evidencing the agreement and guarantee, at Book 3227, Pages 216 through 232 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.

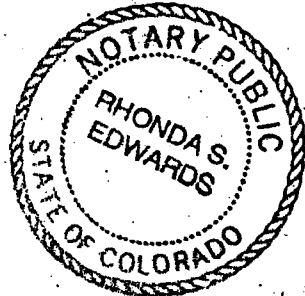
Director of Community Development [Signature] Date 7/3/03

The foregoing instrument was executed before me this 3rd day of July, 2003 (year) by Pat Cecil, Director of Community Development for the City of Grand Junction, Colorado.

Witness my hand & official seal.

Notary Public [Signature]

My commission expires November 28, 2005.



Wells Fargo Bank West, N.A.
Grand Junction
2808 North Avenue
Grand Junction, CO 81501-5130
970 242-8822

June 24, 2003

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

Re: Development Improvement Agreement for Conquest Developments LLC

Ladies and Gentlemen:

This letter is to confirm that Conquest Developments, LLC, the "Developer", has \$20,474.15 remaining available credit with Wells Fargo Bank West, N.A. to provide the required one year guaranty of maintenance to the street and landscaping improvements done by the Developer for the Schlumberger Technology Corporation project at 783 22 Road, Grand Junction.

If further information is needed, please contact me at 970-248-4824.

Sincerely,



Katie Ames
Vice President