

ARC98IBM

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: CONTRACT

NAME OF AGENCY OR CONTRACTOR: ARROWHEAD INDUSTRIES CORPORATION,  
IBM CREDIT CORPORATION

STREET ADDRESS/PARCEL NAME/SUBDIVISION: SETTLEMENT AGREEMENT  
WITH IBM CREDIT CORPORATION

CITY DEPARTMENT: ADMINISTRATIVE SERVICES

YEAR: 1998

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "Agreement") is entered into as of May 22, 1998, by and among IBM CREDIT CORPORATION ("IBM Credit") and THE CITY OF GRAND JUNCTION, COLORADO (the "City"). Each of the foregoing parties is sometimes referred to as a "Party" and collectively as the "Parties."

### **RECITALS**

A. IBM Credit claims that it holds a first priority perfected security interest in certain personal property (the "Collateral") of Arrowhead Industries Corp. ("Arrowhead") as security for an indebtedness (the "Debt") which Arrowhead owes to IBM Credit.

B. Pursuant to order of the Arapahoe County District Court, IBM Credit obtained possession of the Collateral and thereafter conducted an auction (the "Auction") on November 16, 1997, of certain of the Collateral after Arrowhead defaulted on the Debt.

C. Prior to the Auction, the City alleges that it distrained the Collateral for taxes, penalty and interest totaling \$109,432.21 (\$72,423.32 tax, \$29,766.56 interest and \$7,242.33 penalty) for the tax period from January 1, 1993 through August 22, 1997 (the "Tax Liability"). The City alleges that it served a copy of the Distrain Warrant on the State of Colorado, on IBM Credit's auctioneer and on IBM Credit's registered agent prior to the Auction. As a result of these actions with respect to the Distrain Warrant, the City asserts that it has a lien against some of the property sold at the Auction and the net proceeds resulting from the Auction.

D. The net proceeds realized from the Auction are \$143,518.71 ("Proceeds").

E. IBM Credit disputes the City's purported lien and right to the Collateral and the Proceeds, and the City disputes IBM Credit's purported liens, and purported right to the Collateral and the Proceeds.

F. In order to resolve this dispute, IBM Credit has agreed to pay to the City Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) out of the Proceeds on account of any and all taxes, penalties and interest of whatsoever nature or kind which Arrowhead owes or may owe to the City, including, without limitation, the Tax Liability (collectively, the "Arrowhead Taxes"), and the City has agreed (i) to release IBM Credit, the Collateral, and the Proceeds from any and all claims or liability for the Arrowhead Taxes; and (ii) to assign to IBM Credit to the extent permitted by law any and all right, title and interest in claims or rights which the City may have against Arrowhead and its officers, directors and controlling or responsible persons for the Arrowhead Taxes (collectively, the "Tax Claim").

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual promises, covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions and Recitals. The Recitals are not mere recitals but are hereby incorporated into and made a part of this Agreement and shall survive the closing contemplated hereunder. The definitions contained in the Recitals are hereby incorporated into and made a part of this Agreement.
2. Settlement Payment. In consideration of the mutual promises and representations contained herein, contemporaneous with the execution and delivery of this Agreement, IBM Credit shall pay to the City the sum of Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) (the "Settlement Payment").
3. Assignment. In further consideration of the mutual promises and representations contained herein, contemporaneous with the execution and delivery of this Agreement, to the extent permitted by law, the City shall execute and deliver to IBM Credit an assignment agreement, in the form attached hereto as Exhibit A, assigning to IBM Credit the Arrowhead Taxes and Tax Claim. In the event the Arrowhead Taxes and Tax Claim are not assignable as provided in this Agreement and the attached Assignment Agreement, the City shall, and the City hereby expressly agrees to, promptly remit to IBM Credit any funds which the City receives from a third party on account of the Arrowhead Taxes. In the event the Arrowhead Taxes and Tax Claim are not assignable, the Parties further agree that as between them, IBM Credit shall have first priority to any funds paid by a third party on account of the Arrowhead Taxes or the Tax Claim.
4. Mutual Release Among the Parties. The Parties, for themselves and for their respective parents, subsidiaries, affiliates, indemnitors, insurers, predecessors, successors, heirs, assigns and agents, hereby completely and forever release, acquit and discharge one another, and their respective properties, including without limitation the Collateral, and their respective parents, subsidiaries, affiliates, agents, representatives, employees, attorneys, officers, directors, indemnitors, insurers, predecessors, successors and assigns, of and from any and all manner of all claims, actions, causes of action, claims, counterclaims, debts, demands, suits, sums of money, promises, liabilities, losses, costs and damages of every kind and nature, at law, in equity or otherwise, whether known or unknown, which were made or could have been made, in connection with any act, omission, event or transaction, or which arise directly or indirectly out of or in any manner related to the Arrowhead Taxes and Tax Claim, except the rights, duties and obligations contained in this Agreement.
5. Unknown Claims. The Parties agree that this Agreement pertains to all claims, actions, causes of action, liabilities, demands, rights, damages costs, expenses and controversies of every nature and kind whatsoever, accrued or unaccrued, known or unknown, suspected or unsuspected between the Parties which arise directly or indirectly out of or in any manner relate

to the Arrowhead Taxes and Tax Claim, including without limitation the Tax Liability and the Collateral. The Parties acknowledge that they may hereafter discover facts different from, or in addition to, those which they now know to be or believe to be true with respect to those matters, and they agree that this Agreement shall remain effective in all respects, notwithstanding such different or additional facts or the discovery thereof.

6. Agreement Not to Sue. Each Party, for itself, represents and agrees that it shall not, at any time hereafter, commence against the other Party any action, lawsuit or other proceeding, at law, in equity or otherwise, based upon or arising out of the Arrowhead Taxes, Tax Claim or other matter released and/or assigned herein.

7. Further Cooperation. Each Party shall execute and deliver any and all documents and do and perform any and all acts necessary or proper to fully effectuate or further evidence the terms and provisions of this Agreement and exhibits hereto. Absent a valid subpoena or valid court order, the City shall not take any action hereafter that could result in additional liability to IBM Credit or its assets for any taxes that may be owing by Arrowhead to a jurisdiction other than the City.

8. No Admission of Liability. This Agreement is not an admission by any Party of any liability whatsoever to any other person or entity for damages or other relief, nor an admission by any Party of any fact, set of circumstances or legal conclusions concerning any matter other than the existence and effectiveness of this Agreement. This Agreement shall not be admissible in any court, administrative agency, or tribunal for any purpose, with the exception of a proceeding to enforce or interpret the terms of this Agreement, including without limitation any proceeding commenced by IBM Credit to enforce the Tax Claim or otherwise determine amounts owing to IBM Credit for the Debt.

9. No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any Party, nor shall any provision of this Agreement give any third person any right of subrogation or action over or against any Party.

10. Attorneys' Fees. Each Party shall be responsible for its own attorneys' fees, costs and expenses incurred in connection with this dispute.

11. Complete Agreement; Modification; and Waiver. This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations, warranties and understandings of the Parties. There are no agreements, representations, or warranties of any kind except as expressly set forth in this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless executed in a writing signed by both Parties. No waiver of any of the provisions of this Agreement shall be deemed or constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a

continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

12. Construction and Interpretation. Should any provision of this Agreement require interpretation or construction, the Parties agree that this Agreement shall be interpreted or construed without any presumption that the provisions of this Agreement are to be strictly enforced against the Party which, itself or through its agents, prepared the Agreement. Instead, it is agreed and acknowledged that the Parties and their respective counsel and other agents have fully and equally participated in the preparation, negotiation, review and approval of all provisions of this Agreement.

13. Review; Representation by Counsel; Etc. Each Party acknowledges and represents that:

- a. it has fully and carefully read and considered this Agreement prior to its execution;
- b. it has consulted with or has had the opportunity to consult with its attorneys regarding the legal effect and meaning of this Agreement and all terms and conditions hereof, and that it is fully aware of the contents of this Agreement and its legal effect;
- c. it has had the opportunity to make whatever investigation or inquiry it deems necessary or appropriate in connection with the subject matter of this Agreement;
- d. it is executing this Agreement voluntarily and free from any undue influence, coercion, duress or fraud of any kind; and
- e. it is knowingly and voluntarily waiving and releasing claims against the other Parties as provided in this Agreement.

14. Miscellaneous Provisions.

- a. This Agreement shall be binding upon and shall inure to the benefit of the Parties and the Parties' respective heirs, legal representatives, successors and assigns.
- b. If any Party is required to take any action to enforce this Agreement, the prevailing Party shall be entitled to recover all reasonable attorneys' fees and costs from the nonprevailing Party.
- c. The paragraph headings used in this Agreement are for purposes of identification only and shall not be considered in construing this Agreement.

15. Governing Law and Consent to Jurisdiction. The Parties agree that this Agreement shall be governed, construed and enforced in accordance with the laws of the State of Colorado. Each Party further agrees that any action to enforce or interpret this Agreement against the other Party shall be brought in the United States District Court for the District of

Colorado, and in no other court. The Parties consent to the exclusive jurisdiction of such courts for these purposes.

16. Authority. By executing this Agreement, each of the undersigned represents and warrants to the other that each of the undersigned has the full power and authority to enter into and perform this Agreement in accordance with its terms. This Agreement, when executed, will be the legal and binding obligation of IBM Credit and the City.

17. Execution Counterparts. A separate copy of this Agreement may be executed by each Party, separately, and when each Party has executed at least one copy hereof, such copies taken together shall be deemed to be full and complete contract between the Parties and a single document. This Agreement may be executed by facsimile signatures which, when transmitted, shall have the same effect as original signatures.

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

IBM CREDIT CORPORATION

By: *Philip N. Morse*  
Philip N. Morse (name)  
Director Global Credit (title)  
Central Finance

STATE OF NEW YORK )  
 )ss.  
COUNTY OF Westchester )

The foregoing instrument was acknowledged before me this 22 day of May, 1998 by Philip N. Morse of IBM Credit Corporation.

Witness my hand and official seal.  
My commission expires: 8-1-98

*Barbara V. Parsons*  
Notary Public

BARBARA V. PARSONS  
Notary Public, State of New York  
No. 60-4941255  
Qualified in Westchester County  
Commission Expires 8-1-98



## EXHIBIT A

### ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT is made and delivered as of this 22nd day of May, 1998, to the extent permitted by law, by The City of Grand Junction, Colorado ("Assignor" or the "City") in favor of IBM Credit Corporation, a Delaware corporation ("Assignee" or "IBM Credit").

This Assignment Agreement is executed and delivered pursuant to the terms, conditions, promises and representations set forth in the Settlement Agreement, of even date herewith, by and between the Assignor and Assignee (the "Settlement Agreement"). The Settlement Agreement is hereby incorporated herein and made a part hereof by this reference. Capitalized words used herein and defined in the Settlement Agreement shall have the same meaning as contained in the Settlement Agreement, unless otherwise defined in this Assignment Agreement.

IN CONSIDERATION OF THE SUM OF TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$22,500.00) AND OTHER GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, and to the fullest extent permitted by law, Assignor hereby assigns and quits its claim to Assignee and its successors and assigns, the Arrowhead Taxes and Tax Claim (collectively, the "Assets").

IN ADDITION, from time to time after the date hereof, without further consideration, and to the extent permitted by law, Assignor shall execute and deliver such other instruments of assignment, transfer and conveyance and shall take such other action as Assignee may reasonably request in order more effectively to assign the Assets to Assignee, and to place Assignee in possession and control of the Assets, and to enable it to exercise and enjoy all rights and benefits of Assignor with respect to the Assets.

This Assignment Agreement shall inure to the benefit of and be binding upon Assignor and Assignee and their respective successors and assigns.

This Assignment Agreement is made without recourse and without any representations or warranties whatsoever, other than those representations expressly contained herein or in the Settlement Agreement. Assignor hereby represents and warrants to Assignee that as of the date hereof Assignor possesses lawful authority to collect the Arrowhead Taxes and Tax Claim and has not assigned, transferred or conveyed or attempted to assign, transfer or convey the Arrowhead Taxes and Tax Claim to any person, other than Assignee.



IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed and delivered by its duly authorized representative as of the day and year first above written.

THE CITY OF GRAND JUNCTION,  
COLORADO

By: Ronald M. Lippi  
\_\_\_\_\_  
(name)  
\_\_\_\_\_  
(title)

STATE OF COLORADO                    )  
  )ss.  
COUNTY OF \_\_\_\_\_                    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of May, 1998 by \_\_\_\_\_, \_\_\_\_\_ of The City of Grand Junction, Colorado.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

APPROVED AS TO FORM:

CITY ATTORNEY'S OFFICE

By: \_\_\_\_\_

John P. Shaver  
250 N. 5th Street  
Grand Junction, Colorado 81501  
Telephone: (303) 640-3611

Attorneys for CITY OF GRAND  
JUNCTION, COLORADO

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### ASSIGNMENT AGREEMENT

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IN ADDITION, from time to time after the date hereof, without further consideration, and to the extent permitted by law, Assignor shall execute and deliver such other instruments of assignment, transfer and conveyance and shall take such other action as Assignee may reasonably request in order more effectively to assign the Assets to Assignee, and to place Assignee in possession and control of the Assets, and to enable it to exercise and enjoy all rights and benefits of Assignor with respect to the Assets.

This Assignment Agreement shall inure to the benefit of and be binding upon Assignor and Assignee and their respective successors and assigns.

This Assignment Agreement is made without recourse and without any representations or warranties whatsoever, other than those representations expressly contained herein or in the Settlement Agreement. Assignor hereby represents and warrants to Assignee that as of the date hereof Assignor possesses lawful authority to collect the Arrowhead Taxes and Tax Claim and has not assigned, transferred or conveyed or attempted to assign, transfer or convey the Arrowhead Taxes and Tax Claim to any person, other than Assignee.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed and delivered by its duly authorized representative as of the day and year first above written.

THE CITY OF GRAND JUNCTION,  
COLORADO

By: Ronald M. Lappi  
Ronald M. Lappi (name)  
Finance Director (title)

STATE OF COLORADO )  
 )ss.  
COUNTY OF Mesa )

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of June, 1998 by Ronald M. Lappi of The City of Grand Junction, Colorado.

Witness my hand and official seal.

My commission expires: 2/6/02

Christine English  
Notary Public

APPROVED AS TO FORM:

CITY ATTORNEY'S OFFICE

By: [Signature]  
John P. Shaver  
250 N. 5th Street  
Grand Junction, Colorado 81501  
Telephone: (303) 640-3611

Attorneys for CITY OF GRAND  
JUNCTION, COLORADO



City of Grand Junction , Colorado  
250 North 5th Street  
81501-2668  
Phone: (970) 244-1501  
FAX: (970) 244-1456

May 29, 1998

Mr. Tom Yearout  
c/o Holme, Roberts and Owen  
1700 Lincoln Street, Suite 4100  
Denver, Colorado 80203

Via Facsimile and US Mail  
Re: Signature pages

Dear Mr. Yearout:

This letter is written following our telephone conversation of this morning. As I indicated to you the difference between signatures on the settlement agreement and the assignment documents is simply a matter of Mr. Lappi failing to sign all copies when they were circulated to him. As we discussed Mr. Lappi is on vacation and has named City Clerk Stephanie Nye as acting Director of Finance and Administrative Services in his absence.

Also, as we discussed the City Clerk is an officer of the City under and by virtue of the Charter. Given Mr. Lappi's designation of the Clerk as Acting Director of Finance and her status under the Charter, it is my opinion that she is duly authorized to execute the assignment agreement. To the extent required by your client please consider this letter as a waiver of any defense that the City may have to the enforceability of the assignment relating to or arising out of the City Clerk executing the assignment agreement on behalf of the City.

Please call or write at your earliest convenience should you have additional questions.

OFFICE OF THE CITY ATTORNEY

by: \_\_\_\_\_

  
John P. Shaver

Assistant City Attorney

250 N. 5th Street

Grand Junction, Colorado 81501

(303) 244-1501

pc: Ms. Stephanie Nye, City Clerk, City of Grand Junction  
Ms. Jodi Romero, Revenue Manager, City of Grand Junction  
Mr. Dan Wilson, City Attorney, City of Grand Junction

## SETTLEMENT AGREEMENT

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### **RECITALS**

A. IBM Credit claims that it holds a first priority perfected security interest in certain personal property (the "Collateral") of Arrowhead Industries Corp. ("Arrowhead") as security for an indebtedness (the "Debt") which Arrowhead owes to IBM Credit.

B. Pursuant to order of the Arapahoe County District Court, IBM Credit obtained possession of the Collateral and thereafter conducted an auction (the "Auction") on November 16, 1997, of certain of the Collateral after Arrowhead defaulted on the Debt.

C. Prior to the Auction, the City alleges that it distrained the Collateral for taxes, penalty and interest totaling \$109,432.21 (\$72,423.32 tax, \$29,766.56 interest and \$7,242.33 penalty) for the tax period from January 1, 1993 through August 22, 1997 (the "Tax Liability"). The City alleges that it served a copy of the Distrain Warrant on the State of Colorado, on IBM Credit's auctioneer and on IBM Credit's registered agent prior to the Auction. As a result of these actions with respect to the Distrain Warrant, the City asserts that it has a lien against some of the property sold at the Auction and the net proceeds resulting from the Auction.

D. The net proceeds realized from the Auction are \$143,518.71 ("Proceeds").

E. IBM Credit disputes the City's purported lien and right to the Collateral and the Proceeds, and the City disputes IBM Credit's purported liens, and purported right to the Collateral and the Proceeds.

F. In order to resolve this dispute, IBM Credit has agreed to pay to the City Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) out of the Proceeds on account of any and all taxes, penalties and interest of whatsoever nature or kind which Arrowhead owes or may owe to the City, including, without limitation, the Tax Liability (collectively, the "Arrowhead Taxes"), and the City has agreed (i) to release IBM Credit, the Collateral, and the Proceeds from any and all claims or liability for the Arrowhead Taxes; and (ii) to assign to IBM Credit to the extent permitted by law any and all right, title and interest in claims or rights which the City may have against Arrowhead and its officers, directors and controlling or responsible persons for the Arrowhead Taxes (collectively, the "Tax Claim").

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual promises, covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions and Recitals. The Recitals are not mere recitals but are hereby incorporated into and made a part of this Agreement and shall survive the closing contemplated hereunder. The definitions contained in the Recitals are hereby incorporated into and made a part of this Agreement.
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4. Mutual Release Among the Parties. The Parties, for themselves and for their respective parents, subsidiaries, affiliates, indemnitors, insurers, predecessors, successors, heirs, assigns and agents, hereby completely and forever release, acquit and discharge one another, and their respective properties, including without limitation the Collateral, and their respective parents, subsidiaries, affiliates, agents, representatives, employees, attorneys, officers, directors, indemnitors, insurers, predecessors, successors and assigns, of and from any and all manner of all claims, actions, causes of action, claims, counterclaims, debts, demands, suits, sums of money, promises, liabilities, losses, costs and damages of every kind and nature, at law, in equity or otherwise, whether known or unknown, which were made or could have been made, in connection with any act, omission, event or transaction, or which arise directly or indirectly out of or in any manner related to the Arrowhead Taxes and Tax Claim, except the rights, duties and obligations contained in this Agreement.
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7. Further Cooperation. Each Party shall execute and deliver any and all documents and do and perform any and all acts necessary or proper to fully effectuate or further evidence the terms and provisions of this Agreement and exhibits hereto. Absent a valid subpoena or valid court order, the City shall not take any action hereafter that could result in additional liability to IBM Credit or its assets for any taxes that may be owing by Arrowhead to a jurisdiction other than the City.

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11. Complete Agreement; Modification; and Waiver. This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations, warranties and understandings of the Parties. There are no agreements, representations, or warranties of any kind except as expressly set forth in this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless executed in a writing signed by both Parties. No waiver of any of the provisions of this Agreement shall be deemed or constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a

continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

12. Construction and Interpretation. Should any provision of this Agreement require interpretation or construction, the Parties agree that this Agreement shall be interpreted or construed without any presumption that the provisions of this Agreement are to be strictly enforced against the Party which, itself or through its agents, prepared the Agreement. Instead, it is agreed and acknowledged that the Parties and their respective counsel and other agents have fully and equally participated in the preparation, negotiation, review and approval of all provisions of this Agreement.

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- a. it has fully and carefully read and considered this Agreement prior to its execution;
- b. it has consulted with or has had the opportunity to consult with its attorneys regarding the legal effect and meaning of this Agreement and all terms and conditions hereof, and that it is fully aware of the contents of this Agreement and its legal effect;
- c. it has had the opportunity to make whatever investigation or inquiry it deems necessary or appropriate in connection with the subject matter of this Agreement;
- d. it is executing this Agreement voluntarily and free from any undue influence, coercion, duress or fraud of any kind; and
- e. it is knowingly and voluntarily waiving and releasing claims against the other Parties as provided in this Agreement.

14. Miscellaneous Provisions.

- a. This Agreement shall be binding upon and shall inure to the benefit of the Parties and the Parties' respective heirs, legal representatives, successors and assigns.
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Colorado, and in no other court. The Parties consent to the exclusive jurisdiction of such courts for these purposes.

16. Authority. By executing this Agreement, each of the undersigned represents and warrants to the other that each of the undersigned has the full power and authority to enter into and perform this Agreement in accordance with its terms. This Agreement, when executed, will be the legal and binding obligation of IBM Credit and the City.

17. Execution Counterparts. A separate copy of this Agreement may be executed by each Party, separately, and when each Party has executed at least one copy hereof, such copies taken together shall be deemed to be full and complete contract between the Parties and a single document. This Agreement may be executed by facsimile signatures which, when transmitted, shall have the same effect as original signatures.

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

IBM CREDIT CORPORATION

By: \_\_\_\_\_  
\_\_\_\_\_ (name)  
\_\_\_\_\_ (title)

STATE OF NEW YORK )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of May, 1998 by \_\_\_\_\_, \_\_\_\_\_ of IBM Credit Corporation.

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

THE CITY OF GRAND JUNCTION,  
COLORADO

By: Ronald M. Lappi  
Ronald M. Lappi (name)  
Finance Dir. (title)

STATE OF COLORADO )  
 )ss.  
COUNTY OF Mesa )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of May, 1998 by Ron Lappi, Finance Director of The City of Grand Junction, Colorado.

Witness my hand and official seal.  
My commission expires: 10-10-98

Stephanie Kaye  
Notary Public

APPROVED AS TO FORM:

CITY ATTORNEY'S OFFICE

By: [Signature]  
John P. Shaver  
250 N. 5th Street  
Grand Junction, Colorado 81501  
Telephone: (970) 244-1501

Attorneys for THE CITY OF GRAND  
JUNCTION, COLORADO

## EXHIBIT A

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THIS ASSIGNMENT AGREEMENT is made and delivered as of this 22nd day of May, 1998, to the extent permitted by law, by The City of Grand Junction, Colorado ("Assignor" or the "City") in favor of IBM Credit Corporation, a Delaware corporation ("Assignee" or "IBM Credit").

This Assignment Agreement is executed and delivered pursuant to the terms, conditions, promises and representations set forth in the Settlement Agreement, of even date herewith, by and between the Assignor and Assignee (the "Settlement Agreement"). The Settlement Agreement is hereby incorporated herein and made a part hereof by this reference. Capitalized words used herein and defined in the Settlement Agreement shall have the same meaning as contained in the Settlement Agreement, unless otherwise defined in this Assignment Agreement.

IN CONSIDERATION OF THE SUM OF TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$22,500.00) AND OTHER GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, and to the fullest extent permitted by law, Assignor hereby assigns and quits its claim to Assignee and its successors and assigns, the Arrowhead Taxes and Tax Claim (collectively, the "Assets").

IN ADDITION, from time to time after the date hereof, without further consideration, and to the extent permitted by law, Assignor shall execute and deliver such other instruments of assignment, transfer and conveyance and shall take such other action as Assignee may reasonably request in order more effectively to assign the Assets to Assignee, and to place Assignee in possession and control of the Assets, and to enable it to exercise and enjoy all rights and benefits of Assignor with respect to the Assets.

This Assignment Agreement shall inure to the benefit of and be binding upon Assignor and Assignee and their respective successors and assigns.

This Assignment Agreement is made without recourse and without any representations or warranties whatsoever, other than those representations expressly contained herein or in the Settlement Agreement. Assignor hereby represents and warrants to Assignee that as of the date hereof Assignor possesses lawful authority to collect the Arrowhead Taxes and Tax Claim and has not assigned, transferred or conveyed or attempted to assign, transfer or convey the Arrowhead Taxes and Tax Claim to any person, other than Assignee.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed and delivered by its duly authorized representative as of the day and year first above written.

THE CITY OF GRAND JUNCTION,  
COLORADO

By: Stephanie Nye  
Stephanie Nye (name)  
Acting Finance Dir (title)  
City Clerk

STATE OF COLORADO )  
 )ss.  
COUNTY OF Mesa )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of May, 1998 by Stephanie Nye Acting Finance Director of The City of Grand Junction, Colorado.

Witness my hand and official seal.

My commission expires: 2/2/2006

Christine English  
Notary Public

APPROVED AS TO FORM:

CITY ATTORNEY'S OFFICE

By: [Signature]  
John P. Shaver  
250 N. 5th Street  
Grand Junction, Colorado 81501  
Telephone: (303) 640-3611

Attorneys for CITY OF GRAND  
JUNCTION, COLORADO