

TAS94CVS

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: CONTRACT

NAME OF AGENCY OR CONTRACTOR: THOMAS AND SUN INCORPORATION

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: CANYON VIEW
SUBDIVISION, PRE-ANNEXATION AGREEMENT

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1994

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

AGREEMENT

This agreement is between John Thomas, d/b/a Thomas and Sun, Inc., a Colorado corporation, 321 Quail Drive, Grand Junction, CO, 81503 (collectively, "Thomas") and the City of Grand Junction, 250 N. 5th Street, Grand Junction, CO 81501 ("City").

Recitals.

Thomas desires to develop a parcel of ground near the Wingate school in the Redlands district. He desires to develop at a density such that sewer service is required. The City is willing to allow him the benefit of such sewer services but requires, among other things, that Thomas to agree to annex to the City, i.e., grant a power of attorney to annex.

The City could require that Thomas have obtained development approval from the City, but to avoid undue delay to Thomas, and because Thomas was willing to agreed to the terms set forth herein, the City has chosen to enter into this agreement.

Now therefore, in consideration of the mutual beliefs obtained, the rights foregone, and other valuable consideration, the parties agree as follows:

1. (a) The City acknowledges having received from Thomas a power of attorney to annex the property described below (the "Property"), which is a portion of that property known as the "La Casa Vista property" in the Mesa County development file C82-93-2. The portion of La Casa Vista which is the subject of the power of attorney, and which is the subject of this Agreement, unless otherwise set forth, is described as:

PARCEL 1

The W 1/2 S 1/2 of Government Lot 1, EXCEPT the North 20 feet thereof, and the W 1/2 of Government Lot 2, all in Section 35, Township 11 South, Range 101 West of the Sixth Principal Meridian; and,

PARCEL 2

Beginning at the Southeast corner of Government Lot 1, Section 35, Township 11 South, Range 101 West of the Sixth Principal Meridian, thence North 00°02'00" East 637.87 feet, thence West 710.68 feet to the West line of the E 1/2 S 1/2 of Government Lot 1, thence South 00°13'15" East 638.32 feet to the Southwest corner of the E 1/2 of said Government Lot 1, thence South 00°02'42" East 470.95 feet to the centerline of the Redlands Water and Power Company 3rd Lift Canal, thence South 86°51'47" East 708.25 feet to the East line of said

Section 35,
thence North 00°02'00" East 509.85 feet to the Point of Beginning,
EXCEPT the East 30 feet for road right-of-way deeded to Mesa County
by document recorded in Book 976 at Page 558,

ALL IN MESA COUNTY, COLORADO, comprising 49.29 acres, more or less.

(b) Thomas agrees to execute such other documents as may be reasonably required, if any, in order to accomplish the annexation of the Property either alone or in conjunction with other property or tracts as determined by the City. Thomas agrees that the City may determine, for purposes of implementing the Annexation Act of 1965, as amended, and in order that the City may maximize the benefit to the City of annexing the Property, that Thomas' signature on the power of attorney is Thomas' consent to divide a parcel or parcels. If City requests that Thomas execute other documents which will facilitate the annexation of the Property, and/or other properties in the area, Thomas agrees to do so in a timely manner.

2. The City agrees to not contest Thomas' request for development approval through Mesa County, if such request does not change, *i.e.*, so long as such request is consistent with the Mesa County approved Outline Development Plan, as modified herein, and so long as each preliminary and final plat conforms with the Outline Development Plan as set forth in Mesa County Resolution Number MCM 94-11, dated January 18, 1994, subject to the provisions hereof, and upon annexation, Thomas shall pay and be subject to all applicable fees, charges and dedicatory requirements of the City unless specifically otherwise set forth herein. Thomas acknowledges that there are differences in the processes of the City and Mesa County and that he shall conform to the City's processes upon the exercise of land use jurisdiction by the City, *e.g.*, the City's preliminary plan is equivalent to, but not identical to, the County's Outline Development Plan. City staff agrees to recommend approval, to the governing body of the City, of the zoning and subdivision approvals received by Thomas from Mesa County, upon annexation of the Property, if: the provisions hereof have been complied with; subsequent County approvals are consistent with adopted Mesa County regulations and the Outline Development Plan; Thomas has complied with applicable Mesa County requirements; and sixty months have not expire since the next prior plat which has been recorded.

3. Thomas agrees to develop the Property to the City's infrastructure and other applicable improvements standards, even if the County has approved other standards.

4. (a) On or before July 1, 1995, Thomas agrees to convey to the City, by general warranty deed, at no additional consideration from the City, the 4.5 acre parcel identified in the County's development file "number C82-93-2 Canyon View Subdivision (formerly

La Casa Vista)." The City shall use such parcel as a park, open space or equivalent purposes. Thomas shall cause the 4.5 acre parcel to be described, in a lot and block format, at the time that Phase V of the Property is platted.

(b) Upon Thomas' request, on or before January 1, 1998, the City agrees to negotiate in good faith to modify the shape/location of said 4.5 acre parcel so long as any such reconfiguration does not damage the City's use of and benefits received from the 4.5 acre parcel, e.g., after the reconfiguration the parcel shall be contiguous to the Wingate School property, shall not increase the costs to maintain and operate the parcel as determined by the Director of the Parks and Recreation Department of the City of Grand Junction, and shall not increase any capital costs required to develop the parcel as open space, park or similar use. The location of such parcel is along the western boundary of the Wingate School parcel, as generally shown on the attached Exhibit "Thomas ODP". The parties agree to execute such documents as may be reasonably required to effectuate the provisions of this paragraph.

(c) Thomas shall not be required to pay for or to make capital or other improvements to the park parcel.

5. Thomas agrees to construct bicycle/pedestrian pathways as identified in the County approval (generally, on the eastern boundary of the Property and parallel to South Camp Road), of concrete with a 4" base in lieu of the County approved asphalt surfaces, as shown on the attached exhibit labeled "Thomas/City Path." If the City elects that such pathway be constructed of concrete, the City agrees to pay to Thomas the incremental increased costs of such construction of approximately twelve hundred lineal feet (1200'). Such incremental increased cost, based on bids which Thomas has received, is equal to \$5.18 per lineal foot for an eight foot wide pathway. Notwithstanding Exhibit "Thomas/City Path," Thomas shall cause the pathway to be constructed so that the pathway shall be 6" thick in all areas crossed by vehicular rights-of-way and roads and other vehicular crossings. Approximately eight hundred lineal feet (800') shall be constructed in 1994 with the balance of four hundred lineal feet (400') to be constructed by Thomas when the next filing occurs, presently expected to occur in 1995.

6. Thomas shall cause to be delivered, forthwith, five shares of Redlands Water and Power Company "F" shares to the City. The City acknowledges Thomas' representation that Redlands Water and Power Company has already received the request to transfer such five shares into the name of the City. In any event, Thomas shall cause the certificates to be delivered to the City, or shall acquire other share to deliver to the City, on or before January 1, 1995.

7. Because Thomas shall dedicate the 4.5 acre parcel as open space/park use, Thomas shall not be required to pay (or to dedicate any land for open space/park), for any portion of the property described in the La Casa Vista file, Mesa County Number C132-82, (including all of Canyon View), approximately, 85 acres, any additional open space or similar fee or charge. For example, the present City requirement imposes a \$225 fee per lot in a single family lot development; Thomas, and other affected owners, would not be required to pay any such fee, or equivalent fee for parks/open space, for any portion of the Property and including property included in the La Casa Vista application.

8. The ODP and the concomitant County approvals (collectively referred to as the "ODP", the map form of which is attached hereto as "Thomas ODP", is modified, in addition to the modifications which are referred to or implied from the other terms of this agreement, to require that Thomas provide a twelve feet (12') wide pedestrian/bicycle way easement as shown in the location highlighted in pink.

9. General provisions.

- A. Entire Agreement - Merger - Modifications - No Waiver. This Agreement contains the entire understanding of the parties and is intended as a complete and final expression of their Agreement and of the terms thereof. All prior statements and representations, including those which may have been negligently made, and all prior understandings and agreements are merged herein. The parties specifically waive any claims they may have for negligent misrepresentations in the formation of this Agreement. This Agreement shall not be modified except by a writing signed by the parties hereto or their duly authorized representatives. No waiver by either party of any default shall be deemed a waiver of any subsequent default.
- B. Time of the Essence. Time is of the essence of this Agreement, and in the event of the failure of either party to perform any term or condition hereof, including but not limited to terms pertaining to delivery and payment, such party shall be in default and the other party shall be entitled to all remedies provided by law and the terms of this Agreement.
- C. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for all actions connected herewith shall be in Mesa County, State of

Colorado.

- D. Invalidity. If any clause or provision of this Agreement be determined to be illegal, invalid or unenforceable under present or future laws, then it is the intention of the parties that the other terms and provisions of this Agreement shall not be affected thereby.
- E. Captions. Article titles and paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision thereof.
- F. Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person, persons, entity or entities may require.
- G. Attorney's fees. If, on account of any breach or default by a party hereto under the terms and conditions hereof, it shall become necessary or appropriate for the other party to employ or consult with an attorney concerning the enforcement or defense of its rights or remedies hereunder, the party breaching or in default hereunder shall pay all reasonable attorneys' fees so incurred by the other party.

CITY OF GRAND JUNCTION



ATTEST:

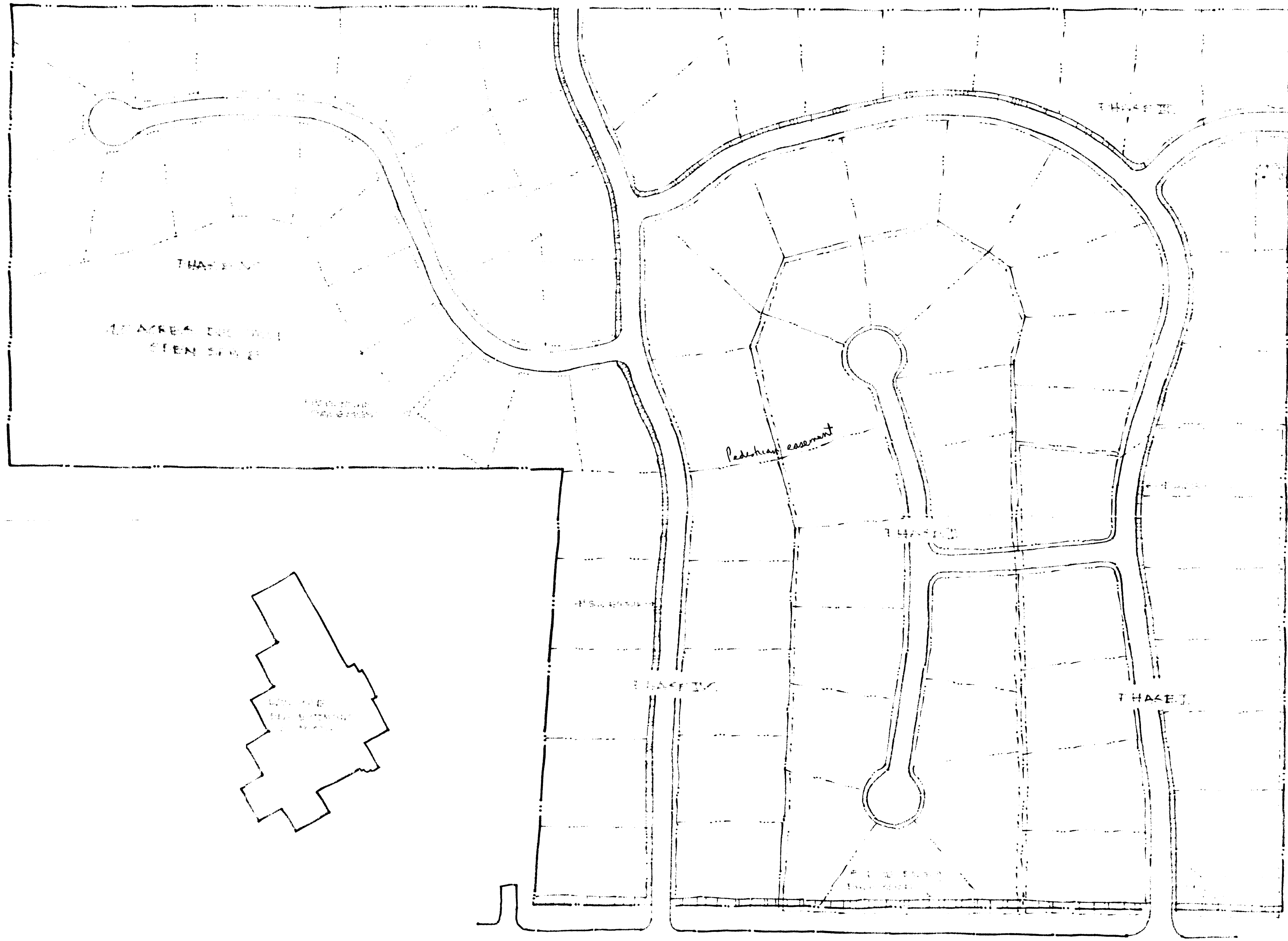
Stephanie Nye
city clerk

By Mark Achen 5-20-94
City Manager

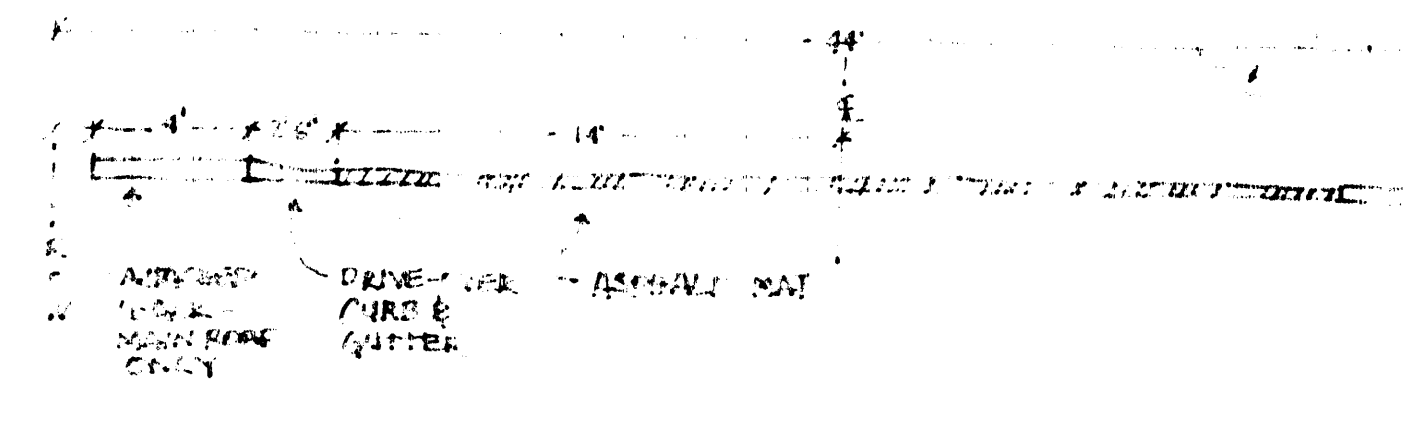
Thomas and Sun, Inc.,
a Colorado Corporation

By John Thomas 5-20-94
President, John Thomas

"THOMAS ODP"
 (Exhibit to Agreement signed 5-20-94)



PROPOSED 44' RIGHT-OF-WAY



LAND USE	ACRES	% OF TOTAL
SINGLE-FAMILY RES.	11.27	76.5
STREET CORRIDORS	1.22	8.43
GREEN SPACES	1.51	10.07
TOTAL	14.00	100.00

CANYON VIEW SUBDIVISION
 REVISED ODP

DATE: 11/11/94
 BY: [Signature]
 TITLE: [Title]