

RESOLUTION NO. 26-03

A RESOLUTION APPROVING AN AMENDMENT TO THE SPECIAL IMPROVEMENT DISTRICT AGREEMENT BETWEEN THE CITY OF GRAND JUNCTION RIMROCK MARKETPLACE GENERAL IMPROVEMENT DISTRICT AND THE GRAND JUNCTION DEVELOPMENT, LP.

WHEREAS, the City of Grand Junction Rimrock Marketplace General Improvement District (the "District"), located in the City of Grand Junction, Mesa County, Colorado, is a quasi-municipal corporation duly organized and existing under the Constitution and laws of the State of Colorado; and

WHEREAS, the members of the City Council of the City of Grand Junction ("the Council") have been duly elected and qualified and serve ex officio as the Board of Directors of the District (the "Board"); and

WHEREAS, the board intends to form a special improvement district within the District (the "Assessment District") the boundaries of which will be coterminous with those of the District; and

WHEREAS, pursuant to Section 31-25-503(10), C.R.S., the Board entered into a written agreement with the owners of all assessable property within the Assessment District waiving all the requirements for notice, publication and a hearing for the levy of the assessments in the Assessment District and the issuance of the bonds for financing improvements in the Assessment District on October 29, 2002; and

WHEREAS, A First Amendment to the agreement was approved on December 18, 2002 to amend the original assessment roll; and to provide for 30 substantially equal assessment payments.

WHEREAS, A Second Amendment to the agreement is needed at this time to further amend the assessment roll by the inclusion of Lot 1, Block 4, the Eskie parcel, and to require the developer to post a \$60,000 deposit to ensure the expenses associated with the district are covered.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO, AS THE EX OFFICIO BOARD OF DIRECTORS OF THE CITY OF GRAND JUNCTION RIMROCK MARKETPLACE GENERAL IMPROVEMENT DISTRICT:

Section 1) The form, terms and provisions of this Second Amendment to the Agreement are approved, and the District shall enter into and perform its obligations under the Amendment in substantially the form of such document presented to the Board in this meeting, with only such changes therein as are required by the circumstances and are not inconsistent herewith; and the officers of the District are hereby authorized and directed to execute and deliver such document as required hereby.

Section 2) The officers of the District are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this resolution.

Section 3) If any section, subsection, paragraph, clause or provision of this resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or provision shall in no manner affect any remaining provisions of this resolution, the intent being that the same are severable.

Section 4) All orders, resolutions, bylaws, ordinances or regulations of the City, or parts thereof, inconsistent with this resolution are hereby repealed to the extent only of such inconsistency.

ADOPTED AND APPROVED this March 5, 2003.

/s/ Cindy Enos-Martinez  
Mayor ex officio  
President of the District

(SEAL)  
ATTESTED:

/s/ Stephanie Tuin  
City Clerk ex officio  
Secretary of the District

When Recorded, Return To:  
Dee P. Wisor  
Sherman & Howard L.L.C.  
633 Seventeenth St., Suite 3000  
Denver, CO 80202

**SECOND AMENDMENT TO SID AGREEMENT**

**BETWEEN**

**CITY OF GRAND JUNCTION  
RIMROCK MARKETPLACE GENERAL IMPROVEMENT DISTRICT**

**AND**

**THF GRAND JUNCTION DEVELOPMENT, L.L.C.  
A MISSOURI LIMITED PARTNERSHIP**

This Second Amendment to SID Agreement (the "Second Amendment") amends the Special Improvement District Agreement made and entered into as of October 29, 2002 (the "Original Agreement") for the financing, construction, installation, completion, and acquisition of certain improvements in the City of Grand Junction Rimrock Marketplace General Improvement District (the "District") between the District, a political subdivision of the State of Colorado (the "State"), and THF Belleville Development, L.P., a Missouri Limited Partnership, as the owner of the property within the District (the "THF Belleville"), as amended by the First Amendment to SID Agreement made and entered into as of December 18, 2002 (the "First Amendment"; together with the Original Agreement, the "Agreement"), which Agreement was assigned by THF Belleville to THF Grand Junction Development, L.L.C., a Missouri limited liability company (the "Owner") is made and entered into as of March 5, 2003.

#### RECITALS

The District and the THF Belleville have previously entered into the Agreement.

THF Belleville has assigned the Agreement to the Owner contemporaneously with the transfer of certain property in the District to the Owner.

The District and the Owner desire to amend the Agreement in various respects.

The Original Agreement is recorded in the real estate records of Mesa County at Reception No. 2084237 at Book 3189, Page 321, and the First Amendment is recorded in such records at Reception No. 2101340 at Book 3263, Page 576.

All terms used in this Second Amendment shall have the same meaning as in the Agreement unless otherwise defined in this Second Amendment.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS CONTAINED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:**

Section 1. The assessment roll attached to the Original Agreement as Exhibit F and to the First Amendment as Exhibit I is amended to read as provided in Exhibit I to this Second Amendment.

Section 2. Section 1.3 of the Original Agreement is amended to read:

1.3. Incidental Expenses.

The Owner and the District shall be entitled to be reimbursed for their incidental expenses ("Incidental Expense") as follows:

A. Owner Incidental Expenses. The Owner shall be entitled to be reimbursed from Bond proceeds for the actual costs of the following estimated Incidental Expenses incurred and paid by the Owner in connection with the District, up to an amount not exceeding \$835,000 (unless additional amounts are available from cost underruns on the Project or the District's Incidental Expenses): engineering, architect and survey expenses (estimated at \$310,000); legal expenses (estimated at \$40,000); right of way acquisition costs (estimated at \$415,000); other non-construction costs associated with the District (CDOT fee at \$10,000); and the deposit of \$60,000 made by the Developer for the District's costs. The District will, upon presentation of evidence of payment of the foregoing expenses by the Owner and approval thereof by the District, pay to the Owner the cost incurred, but only from the available proceeds of the Bonds.

B. District Incidental Expenses. The District shall be entitled to pay the following Incidental Expenses directly from the proceeds of the Bonds, the deposit of \$60,000 made by the Developer for the District's costs, and any other monies provided to the District by the Owner for that purpose: (1) the District's cost of issuing the Bonds, which is estimated to be \$167,500 and which includes the estimated fees and expenses of bond counsel (\$45,000), the estimated cost of official statement printing and mailing (\$2,500), the other costs listed in the purchase contract for the Bonds to be paid by the District including the estimated underwriter's discount (\$30,000), the estimated costs of the Letter of Credit (\$90,000), and the District's other estimated expenses in connection with the issuance of the Bonds (\$1,000); (2) the estimated cost of publications and notices (\$1,000); (3) the estimated amount of the District's other costs of creating the District and the Assessment District and administrating the acquisition and construction of the Project, including legal expenses (\$1000) and (4) the estimated amount of the District's administrative expenses related to the District and the Project (including without limitation the costs for consultants and District staff in connection with submittal reviews and approvals) for two years (\$2000). If the deposit made by the Owner for District costs and the available Bond proceeds are not sufficient to pay the District's Incidental Expenses, the Owner shall, at the request of the District, pay the amounts needed.

Section 3. The District consents to the assignment of the Agreement by THF Belleville to the Owner.

Section 4. This Second Amendment shall be binding upon and inure to the benefit of the District, the Owner, and their respective successors and assigns. No assignment of this Second Amendment or any right or obligation hereunder by the Owner shall be valid unless the District consents to such assignment in writing.

Section 5. If any provision of this Second Amendment is deemed to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions hereof that can be given effect without the invalid or unenforceable provision and the District and Owner agree to replace such invalid or unenforceable provision with a valid provision which has, as nearly as possible, the same effect.

Section 6. This Second Amendment shall be governed by and construed in accordance with the laws of the State of Colorado. The parties agree that exclusive venue for any litigation arising out of or relating to the Project, the Bonds, the District or the assessments shall be in the district court located in Mesa County.

Section 7. This Second Amendment may be executed on one or more counterparts, each of which shall be regarded as an original and all of which shall constitute the same agreement.

Section 8. After this Second Amendment is executed in full, the District shall, within ten working days, record this Second Amendment in the office the Clerk and Recorder of Mesa County, Colorado (the "Clerk"), after which this Second Amendment is a binding obligation on all subsequent owners of the Owner's property in the District pursuant to the terms hereof.

Section 9. Except as expressly amended by this Second Amendment, the Agreement remains in full force and effect.

[Remainder of page left blank intentionally]

**IN WITNESS WHEREOF** the District and the Owner have caused this Second Amendment to be executed as of the day and year first mentioned above.

CITY OF GRAND JUNCTION,  
COLORADO, RIMROCK MARKETPLACE  
GENERAL IMPROVEMENT DISTRICT

\_\_\_\_\_  
President

(SEAL)

\_\_\_\_\_  
Secretary

Approved as to Form:

\_\_\_\_\_  
City Attorney

THE GRAND JUNCTION DEVELOPMENT, L.L.C.  
A MISSOURI LIMITED LIABILITY COMPANY

\_\_\_\_\_  
By: Michael Staenberg  
Title: Manager





STATE OF COLORADO            )  
  ) ss.  
CITY OF GRAND JUNCTION    )

This instrument was acknowledged before me on \_\_\_\_\_, 2003  
by Michael Staenberg as Manager of THF Grand Junction Development, L.L.C., a  
Missouri Limited Liability Company.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public for the State of Colorado

(NOTARY SEAL)

Exhibit I  
Assessment Roll

Legal Description	Assessment
Lot 1, Block 1, Rimrock Marketplace	\$1,258,476
Lot 2, Block 1, Rimrock Marketplace	\$ 328,748
Lot 3, Block 1, Rimrock Marketplace	\$1,713,390
Lot 1, Block 2, Rimrock Marketplace	\$ 161,986
Lot 1, Block 3, Rimrock Marketplace	\$ 394,816
Lot 1, Block 4, Rimrock Marketplace	\$ 122,584