

DEVELOPMENT IMPROVEMENTS AGREEMENT

Planning File No. SPN-2013-59

1. Parties: The parties to this Development Improvements Agreement ("Agreement") are Love's Travel Stops & Country Stores, Inc., ("Developer") and the **City of Grand Junction, Colorado** ("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 shall be the date that it is signed by the Public Works & Planning Director, 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, described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The Property, known as Lot 1 of HallCo Subdivision – Love's Travel Stops & Country Stores, Inc., has been reviewed and approved under Planning file number: SPN-2013-59 ("Development" or "the Development").

The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements to the Property and limiting the harmful effects of substandard development.

A further purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself; this 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 owner(s), purchaser(s) or user(s) of the Property.

The mutual promises, covenants and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and City's land development ordinances and regulations.

DEVELOPER'S OBLIGATION

3. Improvements: The Developer shall 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 ("Improvements" or "the Improvements").

3a. On and after the Effective Date of this Agreement the Developer agrees to pay the City for its Administration and Inspection of the Development. The hourly rate for those services is \$45.00/hour. Administration and Inspection includes but is not limited to the time expended by the City's planner, engineer, construction inspector and attorney in directing, advising, correcting and enforcing by means other than litigation, this agreement and/or the approved development plan. Making disbursements and calling/collecting Guarantees are Administration and Inspection services and shall be charged at \$45.00/hour. See, paragraph 19 concerning attorneys'/ litigation fees.

3b. The scope of this project is such that the City may have to engage independent consultants(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others for which Developer is responsible hereunder.

3c. The Developer's obligation to complete the Improvements is and shall 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. The Developer is required to post security in an amount of \$686,766.66 (120% of the amount for the Improvements) in a form and with terms acceptable to the City ("Guarantee"). The Guarantee shall be in the form of a cash deposit made to the City, a letter of credit or a disbursement agreement in a form and with content approved by the City Attorney. The Guarantee specific to this Agreement is attached as Exhibit C and is incorporated by this reference as if fully set forth.

Select one: Letter of Credit

5. **Standards:** The Developer shall construct the Improvements according to the City's standards and specifications.

6. **Warranty:** The Developer shall warrant the Improvements for one year following Acceptance by the City. "Warrant" or "Warranty" as used herein means the Developer shall take such steps and incur such costs as may be needed so that the Improvements or any portion or phase thereof as repaired and/or replaced, shall comply with the Development's construction plans and/or site plan, City standards and specifications at the end of the warranty period. The Developer shall warrant each repaired and/or replaced Improvement or any portion or phase thereof for one year following Acceptance of such repair and/or replacement.

6a. Upon Acceptance the Developer shall provide a Maintenance Guarantee in an amount of \$114,461.11 (Line G2, Exhibit B, City Security).

6b. The Maintenance Guarantee shall be secured by a letter of credit cash escrow or other form acceptable to the City.

7. **Commencement, Completion and Abandonment Periods:** The Developer shall commence work on the Improvements within 90 days from the Effective Date of this Agreement; that date is known as the "Commencement Date."

7a. The Developer shall complete the Improvements by the end of the twelfth month from the Effective Date of this Agreement; that date is known as the "Completion Date."

7b. The Developer shall not cease construction for any period of more than 60 consecutive days. If construction is ceased for 60 or more consecutive days the Director may deem the Development abandoned ("the Abandonment Period").

7c. The Commencement date and the Completion Date are as follows:

Commencement Date: Not later than 90 days after the Effective Date

Completion Date: Within 12 months of the Effective Date

8. Compliance with Law: The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations when fulfilling its obligations under their 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 the Effective Date.

9. Notice of Defect: The Developer by and through his/her/its engineer shall provide timely written notice to the issuer of the Guarantee and the Director when the Developer and/or his/her/its engineer has knowledge, that an Improvement or any part or portion of any Improvement either does not conform to City standards or is otherwise defective.

9a. The Developer shall correct all non-conforming construction and/or defects within thirty (30) days from the issuance of the notice by his/her/its engineer of a/the defect.

10. Acceptance of Improvements: The City shall not accept and/or approve any or all of the Improvements 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 on the Improvements other than those that have been accepted by the City Attorney.

10a. Approval and/or acceptance of any Improvement(s) does not constitute a waiver by the City of any right(s) that 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.

10b. Acceptance by the City shall only occur when the City Engineer, sends a writing to such effect ("Acceptance").

11. Reduction of Security: Upon Acceptance of any Improvement(s) the amount which the City is entitled to draw on the Guarantee shall be reduced by an amount of \$572,305.55 (Line G1, Exhibit B, Total Improvement Costs)

11a. At the written request of the Developer, the City shall execute a certificate verifying Acceptance of the Improvement and thereafter waiving its right to draw on the Guarantee to the extent of such amount. A developer in default under this Agreement has no right to such certification.

12. Use of Proceeds: The City shall use funds deposited with it, drawn or guaranteed pursuant to this Agreement only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements or paying Administration and Inspection fees.

13. Events of Default: The following conditions, occurrences or actions shall constitute a default by the Developer:

13a. Developer's failure to complete each portion of the Improvements on or before the Completion Date;

13b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvements within the applicable warranty period;

13c. 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;

13d. Notification to the City, by any lender with a lien on the Property, of a default by Developer on any obligation to such lender. In such event, the City may immediately declare a default without prior notification to the Developer.

13e. With regard to the Property or any portion thereof: initiation of any foreclosure action regarding any lien or encumbrance; or initiation of mechanics lien(s) procedure(s); or assignment or conveyance of the Property in lieu of foreclosure. In such event the City may immediately declare a default without prior notification to the Developer.

13f. Notification to the City from the bank issuing the Guarantee that it will not renew the Guarantee at a time when security is still required hereunder and no substitute collateral acceptable to the City has been provided by the Developer.

13g. Except as provided, the City may not declare a default until written notice has been sent to the Developer at the address shown in the development file. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid. Developer will have thirty (30) calendar days from the date of the notice to correct the defect, except in the case of a default by Developer under Sections 13c, 13d, 13e and/or 13f for which there is no cure period.

14. Measure of Damages: The measure of damages for breach of this Agreement by the Developer shall be the reasonable cost of satisfactorily completing the Improvements, plus reasonable expenses. 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 shall be *prima facie* evidence of the minimum cost of completion; however, the maximum amount of the Developer's liability shall not be established by that amount or the amount of the Guarantee.

15. City's Rights Upon Default: When any event of default occurs, the City may draw on the Guarantee or proceed to collect any other security to the extent of the face amount of the Guarantee less eighty percent (80%) of the estimated cost (as shown on Exhibit B) of all Improvements for which the City has given its

Acceptance and no warranty work is reasonably required. The City may also exercise its rights to disbursement of loan proceeds or other funds under the City improvements disbursement agreement.

15a. The City shall have the right to complete Improvements itself or it may contract with a third party for completion.

15b. 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, inspecting and repairing the Improvements.

15c. The City may assign the proceeds of the Guarantee or other funds or assets that it may receive in accordance with this Agreement to a subsequent developer or lender that has acquired the Property by purchase, foreclosure or otherwise.

15d. That developer or lender shall then have the same rights of completion as the City if and only if the subsequent developer or lender agrees in writing to complete or correct the Improvements and provides to the City reasonable security for that obligation.

15e. 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 ("City") 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 by Developer, its agents or subcontractors, and/or the Improvements and/or the Development that is being done by Developer, its agents or subcontractors, pursuant to this Agreement.

16a. The Developer further agrees to aid and defend the City in the event that the City and/or the Improvements is named as a defendant in an action concerning the performance of work pursuant to this Agreement by Developer, its agents or subcontractors, except for a suit wherein the Developer states claim(s) against the City.

16b. The Developer is not an agent, partner, joint venturer or employee of the City.

17. No Waiver: No waiver of any provision of this Agreement by the City shall be deemed or constitute a waiver of any other provision nor shall 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 shall 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 shall not constitute the approval of any wrongful or other act by the Developer or the acceptance of any Improvement.

18. Amendment or Modification: The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or his/her/its 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, shall be entitled to costs, including reasonable outside 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: This Agreement does not guarantee, represent or certify that the Developer is entitled to any other approval(s) required by the City, before the Developer is entitled to commence development beyond the scope of this Agreement 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. No statement(s), promise(s) or inducements(s) that is/are not contained in this Agreement shall be binding on the parties.

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

23. Time: For the purpose of computing the Abandonment Period and Commencement and Dates, such times in which war, civil disasters or acts of God occurs or exist shall not be included if such prevents the Developer or City from performing its obligations under the Agreement. The Developer must notify the City in writing if/when it asserts impossibility of performance under this paragraph. The City may reject the Developer's assertion, if it finds, in writing that the condition(s) that the Developer asserts do not exist.

24. Severability: If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term or provision. The rights of the parties shall be construed as if the art, 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.

25a. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property.

25b. There is no prohibition on the right of the City to assign its rights under this Agreement.

25c. Upon written request from the Developer the City shall expressly release the original Developer's Guarantee and/or contract obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City shall constitute a release of the original Developer from his liability under this Agreement.

25d. When the City has issued its Acceptance regarding the Improvements, the City agrees to state the same in writing, with appropriate acknowledgments.

25e. The City shall 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 shall 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: Love's Travel Stops & Country Stores, Inc.	Name/Developer/Company
Attn: Director of Real Estate & Development	(continued)
10601 N. Pennsylvania Avenue, 73120	Address (Street and Mailing)
P.O. Box 26210	Address (continued)
Oklahoma City, OK 73126	City, State & Zip Code
(405) 302.6646	Telephone Number
(405) 463.3646	Fax Number
<u>rick.shuffield@loves.com</u>	E-mail Address

CC (at same address): General Counsel

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

CC: Public Works & Planning Department
250 North 5th Street
Grand Junction, CO 81501

27. **Recordation:** Developer shall pay the costs to record a memorandum of this Agreement (Exhibit D) in the records of the Mesa County Clerk and Recorder's Office. The Developer may, at his/her/its option record the entire agreement.

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, the Guarantee, the Maintenance Guarantee or any action based arising out of or under this Agreement shall be deemed to be proper only if such action is commenced in Mesa County, Colorado.

29a. The Developer expressly waives his/her/its right to bring such action in or to remove such action to any other court whether state or federal.

30. **Liability before 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 Improvement shall have received Acceptance by the City.

30a. 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 the side of the street nearest the property to enable an initial two way traffic operation without on-street parking.

30b. Developer shall also construct and pay for end-transitions, intersection paving, drainage facilities and adjustments to existing utilities necessary to open the street to traffic.

30c. The City shall not issue its written Acceptance with regard to any Improvement(s) including any street, storm drainage facility, sewer, water facility or other required Improvement(s), until the Developer:

(i) furnishes 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) provides written evidence (e.g. a Transaction Screen or Phase I environmental assessment) to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon in and under which the Improvement(s) have been constructed or which are necessary for the Improvements are free from toxic, hazardous and other regulated substances or materials at levels requiring remediation under applicable environmental law;

(iii) provides 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; and (iv) provides written evidence, certified by the Developer's engineer, that the work was systematically inspected and tested and that the materials and the compaction of the materials that are required to be compacted, were in conformance with City-approved plans and specifications.

Love's Travel Stops & Country Stores, Inc.

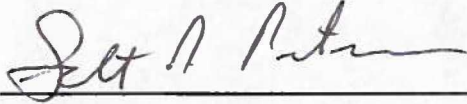
By: _____
Signature

Date: 6-6-2013

Name: David Stutz

Title (position): CUV & CFO

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



Project Planner Signature

Date: 6-25-13



Public Works & Planning Dept. Signature

Date: 6-25-2013

Exhibit A
(Legal Description)

Lot 1, HallCo Subdivision

EXHIBIT B IMPROVEMENTS COST ESTIMATE

DATE: ~~February 4, 2013~~ ~~Updated April 4, 2013~~ Updated May 17, 2013

DEVELOPMENT NAME: _Love's Travel Stops & Country Stores, Grand Junction_CO

LOCATION: 748 22 Road GJ,CO 81505

PRINTED NAME OF PERSON PREPARING:Richard Piggott (Revised Dave Pierson 4-26-13)

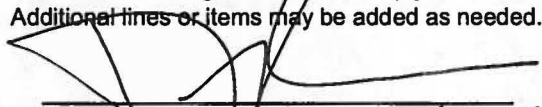
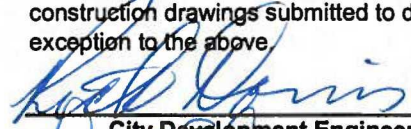

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
A. SANITARY SEWER					
1	15 " PVC Sanitary Sewer Main	LF	425	\$ 35.00	\$ 14,875.00
2	" PVC Sanitary Sewer Main	LF			\$ -
3	" PVC Sanitary Sewer Main	LF			\$ -
4	Sewer services	LF	215	\$ 21.33	\$ 4,585.95
5	Sanitary Sewer Manhole	EA	2	\$ 3,500.00	\$ 7,000.00
6	Sanitary Sewer Drop Manhole	EA			\$ -
7	Connection to Existing Manhole	EA	1	\$ 3,500.00	\$ 3,500.00
8	Concrete Encasement	LF			\$ -
					\$ -
					\$ -
Subtotal Part A Sanitary Sewer					\$ 29,960.95
B. DOMESTIC WATER					
1	8" PVC Water Main	LF	107	\$ 31.40	\$ 3,359.80
2	12" PVC Water Main	LF	382	\$ 42.50	\$ 16,235.00
3	6" PVC Water Main	LF			\$ -
4	8" Gatevalve	EA	1	\$ 1,600.00	\$ 1,600.00
5	4" Gatevalve	EA	1	\$ 950.00	\$ 950.00
6	" Gatevalve	EA			\$ -
7	Water Services	EA	1	\$ 2,500.00	\$ 2,500.00
8	Connect to Existing Water Line	EA	1	\$ 2,500.00	\$ 2,500.00
9	Fire Hydrant with Valve	EA	1	\$ 4,370.00	\$ 4,370.00
10	Utility Adjustments	EA			\$ -
11	Blowoff	EA			\$ -
					\$ -
					\$ -
					\$ -
Subtotal Part B - Domestic Water					\$ 31,514.80

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
C1.	STREETS				
1	6" PVC Utility/Irrigation sleeves	LF	1200	\$ 13.70	\$ 16,440.00
2	4" PVC Utility/Irrigation sleeves	LF	1200	\$ 12.70	\$ 15,240.00
3	Reconditioning	SY			\$ -
4	Aggregate Base Course (Class 3)	TN			\$ -
5	Aggregate Base Course (Class 6) (13" Compacted Thickness; 1.7 cy/t factor)	SY	1575	\$ 9.50	\$ 14,962.50
6	Aggregate Base Course (Class 6) (" Compacted Thickness)	SY			\$ -
7	Hot Bituminous Paving, Grading (2" wear/5" base XHD ACC per C4.90 Det A)	SY	1575	\$ 39.00	\$ 61,425.00
8	Hot Bituminous Paving, Grading (" thick)	SY			\$ -
9	Hot Bituminous Paving, Patching (" Thick)	SY			\$ -
10	Geotextile	SY	1575	\$ 4.75	\$ 7,481.25
11	Concrete Curb (" Wide by " High)	LF			\$ -
12	Concrete Curb and Gutter (2' wide)	LF	1400	\$ 18.00	\$ 25,200.00
13	Concrete Curb and Gutter (1.5' wide)	LF			\$ -
14	Monolithic, Vertical Curb, Gutter and Sidewalk (' Wide)	LF			\$ -
15	Drive Over Curb, Gutter, and Sidewalk (' Wide)				\$ -
16	Concrete Sidewalk (' Wide)	LF			\$ -
17	Concrete Gutter and Driveway Section (" Thick)	SY			\$ -
18	Concrete Drainage Pan (6' Wide, 12" Thick, reinf'd XHD PCC per C4.90 Det A)	SY	27	\$ 46.00	\$ 1,242.00
19	Concrete Corner Fillet	SY	64	\$ 46.00	\$ 2,944.00
20	Concrete Curb Ramp	SY			\$ -
21	Complete Concrete Corner	SY			\$ -
22	Concrete Driveway (" Thick)	SY			\$ -
23	Driveway/Concrete Repair	SY			\$ -
24	Retaining Walls	LF			\$ -
25	Street Signs (STOP sign, HALLCO STREET sign)	EA	2	\$ 225.00	\$ 450.00
26	Striping (New, Remove/Replace)	Lump Sum	1	\$ 1,500.00	\$ 1,500.00
27	Street Lights	EA	6	\$ 3,500.00	\$ 21,000.00
28	Signal Construction or Reconstruction	LS			\$ -
29	Flowable Fill	CY			\$ -
30	Sleeves, 6", SCH 40 PVC	LF			\$ -
					\$ -
					\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
C2.	BRIDGES				
					\$ -
1	Box Culvert Pre-Cast	LS			\$ -
2	Box Culvert Cast-in-Place	LS			\$ -
3	Wingwalls	LS			\$ -
4	Parapet Wall	LS			\$ -
5	Railing (handrail, guardrail)	LS			\$ -
					\$ -
					\$ -
	Subtotal Part C - Streets and Bridges				\$ 167,884.75
D1.	EARTHWORK				
1	Mobilization	LS	0	\$ 15,000.00	\$ -
2	Clearing and Grubbing	LS	1	\$ 1,500.00	\$ 1,500.00
3	Unclassified Excavation	CY			\$ -
4	Unclassified Embankment	CY			\$ -
5	Silt Fence	LF	400	\$ 2.00	\$ 800.00
6	Watering (Dust Control)	LS	0	\$ 1,000.00	\$ -
D2.	REMOVALS AND RESETTING				
1	Removal of Asphalt	SY			\$ -
2	Removal of Miscellaneous Concrete	SY			\$ -
3	Remove Curb and Gutter	LF			\$ -
4	Removal of Culverts	LF			\$ -
5	Remove Structures	EA			\$ -
6	Remove Signs	EA			\$ -
7	Remove Fence	LF			\$ -
8	Adjust Manhole	EA			\$ -
9	Adjust Valvebox	EA			\$ -
10	Relocate or Adjust Utilities	LS			\$ -
D3.	SEEDING AND SOIL RETENTION				
1	Sod	SY			\$ -
2	Seeding (Native)	SY	1000	\$ 1.35	\$ 1,350.00
3	Seeding (Bluegrass/Lawn)	SY or AC			\$ -
4	Hydraulic Seed and Mulching	SY or AC			\$ -
5	Soil Retention Blanket	SY			\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
D4. STORM DRAINAGE FACILITIES					
<i>NOTE: storm estimate includes the storm picked up from the new street and x-ferred thru our piping to the po</i>					
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY	1500	\$ 6.50	\$ 9,750.00
2	15" Storm Drain Pipe	LF	63	\$ 31.50	\$ 1,984.50
3	18" Storm Drain Pipe	LF	800	\$ 33.00	\$ 26,400.00
4	24" Storm Drain Pipe	LF	376	\$ 36.00	\$ 13,536.00
5	" Storm Drain Pipe	LF			\$ -
6	" Storm Drain Pipe	LF			\$ -
7	24" Flared End Section	EA	2	\$ 1,000.00	\$ 2,000.00
8	" Flared End Section	EA			\$ -
9	48" Storm Drain Manhole	EA	1	\$ 3,200.00	\$ 3,200.00
10	60" Storm Drain Manhole	EA	1	\$ 3,800.00	\$ 3,800.00
11	72" Storm Drain Manhole (BMP)	EA	1	\$ 5,500.00	\$ 5,500.00
12	Manhole with Box Base	EA			\$ -
13	Connection to Existing MH	EA	1	\$ 1,500.00	\$ 1,500.00
14	Single Curb Opening Storm Drain Inlet	EA	8	\$ 2,400.00	\$ 19,200.00
15	Double Curb Opening Storm Drain Inlet	EA			\$ -
16	Area Storm Drain Inlet	EA	2	\$ 2,200.00	\$ 4,400.00
17	Detention Area Outlet structure	EA	1	\$ 2,000.00	\$ 2,000.00
18	Rip-Rap D ₅₀ = 4"	CY	300	\$ 60.00	\$ 18,000.00
19	Sidewalk Trough Drain	EA			\$ -
20	Pump Systems including Electrical	LS			\$ -
Subtotal Part D - Grading and Drainage					\$ 114,920.50

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
E1.	IRRIGATION				
1	Connect to Existing Pipe	LS	2	\$ 3,000.00	\$ 6,000.00
2	18" RCP Irrigation Pipe	LF	1018	\$ 38.00	\$ 38,684.00
3	" Irrigation Pipe	LF			\$ -
4	Fittings and Valves	LS			\$ -
5	Services	EA			\$ -
6	Pump System and Concrete Vault	LS			\$ -
7	Irrigation Structure	EA	8	\$ 2,100.00	\$ 16,800.00
8	Vacuum Relief and/or Air Release Valve	EA			\$ -
E2.	LANDSCAPING				
1	Boulders and stone	LS			\$ 35,000.00
2	Weed and Deep Root Barrier	LS			\$ 6,600.00
3	Stamped Hardscape Features	LS			\$ -
4	Plant Material & Planting	LS			\$ 42,000.00
5	Irrigation System	LS			\$ 12,000.00
6	Curbing	LS			\$ 16,500.00
7	Retaining Walls & Structures	LS			\$ -
8	1 Year Maintenance Agrmnt.	LS			\$ 12,000.00
9	Topsoil amendments	LS			\$ 5,000.00
					\$ -
					\$ -
Subtotal Part E - Landscaping and Irrigation					\$ 190,584.00

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
F.	Miscellaneous Items				
1	Construction staking/surveying	%	1.00%	\$ 534,865.00	\$ 5,348.65
2	Developer's inspection cost	%	1.00%	\$ 534,865.00	\$ 5,348.65
3	General construction supervsn	%	1.00%	\$ 534,865.00	\$ 5,348.65
4	Quality control testing	%	1.00%	\$ 534,865.00	\$ 5,348.65
5	Construction traffic control	%	1.00%	\$ 534,865.00	\$ 5,348.65
6	City inspection fees	%	1.00%	\$ 534,865.00	\$ 5,348.65
7	As-builts	%	1.00%	\$ 534,865.00	\$ 5,348.65
Subtotal Part F - Miscellaneous Items					\$ 37,440.55
<p>% = Percentage of total site construction costs</p> <p>COST SUMMARY:</p> <p>G1 Total Improvement Costs \$ 572,305.55</p> <p>G2 City Security (20%) \$ 114,461.11</p> <p>Total Guarantee Amount \$ 686,766.66</p>					
<p>NOTES</p> <ol style="list-style-type: none"> All prices shall be for items complete in place and accepted. All pipe prices shall include excavation, pipe, bedding, backfill, and compaction. Water main shall include pipe, excavation, bedding, backfill, bends, and appurtenances not itemized elsewhere. All concrete items shall include Aggregate Base Course where required by the drawings. Fill in the pipe type for irrigation pipe and sleeves. Reconditioning shall be calculated to at least 6" outside of back of walk on both sides. Units can be changed if desired, simply annotate what is used. Additional lines or items may be added as needed. <p>  Signature of Developer <i>EVP CFO of Developer</i> Date <u>6.6.2013</u> (If corporation, to be signed by President and attested to by Secretary together with the corporate seals.) </p> <p> I have reviewed the estimated costs and time schedule shown above and, based on the construction drawings submitted to date and the current cost of construction, I take no exception to the above. </p> <p>  City Development Engineer Date <u>6-25-13</u>  Planning Division Date <u>6-25-2013</u> </p>					

JPMorgan Chase Bank, N.A.
Global Trade Services
131 South Dearborn, 5th Floor
Mail Code: IL1-0236
Chicago, IL 60603-5506

JUN 12, 2013

OUR L/C NO.: CTCS-421955

APPLICANT REF. NO.: GRAND JUNCTION

CITY OF GRAND JUNCTION
C/O DIRECTOR OF PUBLIC WORKS & PLANNING
250 N. 5TH STREET
GRAND JUNCTION, CO 81501

IRREVOCABLE LETTER OF CREDIT NO. CTCS-421955

DATED: JUNE 12, 2013

EXPIRATION: JUNE 7, 2014, SUBJECT TO THE AUTOMATIC EXTENSIONS STATED BELOW

PROJECT NAME/CITY FILE NO.: LOVE'S TRAVEL STOPS AND COUNTRY STORES, INC.
SPN-2013-59

DEAR SIRs:

WE HEREBY ESTABLISH OUR IRREVOCABLE LETTER OF CREDIT NO. CTCS-421955 IN FAVOR OF THE CITY OF GRAND JUNCTION AT THE REQUEST OF AND FOR THE ACCOUNT OF LOVE'S TRAVEL STOPS AND COUNTRY STORES, INC., 10601 N PENNSYLVANIA, PO BOX 26210, OKLAHOMA CITY, OK 73126 (DEVELOPER) IN THE AMOUNT OF SIX HUNDRED EIGHTY SIX THOUSAND SEVEN HUNDRED SIXTY SIX AND 66/100 UNITED STATES DOLLARS (U.S. \$686,766.66).

THIS LETTER OF CREDIT IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- 1) IT IS EFFECTIVE UPON SIGNATURE;
- 2) IT EXPIRES ON JUNE 7, 2014 SUBJECT TO THE AUTOMATIC EXTENSIONS DISCUSSED BELOW;
- 3) THIS LETTER OF CREDIT IS AVAILABLE BY SIGHT DRAFT(S) DRAWN AND MARKED "DRAWN UNDER JPMORGAN CHASE BANK, N.A. LETTER OF CREDIT NO. CTCS-421955 DATED JUNE 12, 2013";
- 4) WE ARE INFORMED THAT THIS LETTER OF CREDIT IS ESTABLISHED FOR THE USE AND BENEFIT OF THE CITY OF GRAND JUNCTION BY REASON OF THE LOVE'S TRAVEL STOPS AND COUNTRY STORES, INC. (DEVELOPER) BEING OBLIGATED TO PAY OR

JPMorgan Chase Bank, N.A.
Global Trade Services
131 South Dearborn, 5th Floor
Mail Code: IL1-0236
Chicago, IL 60603-5506

JUN 12, 2013

OUR L/C NO.: CTCS-421955

APPLICANT REF. NO.: GRAND JUNCTION

PERFORM IN ACCORDANCE WITH THE PROVISIONS OF THE GRAND JUNCTION ZONING AND DEVELOPMENT CODE; AND A CERTAIN DEVELOPMENT IMPROVEMENTS AGREEMENT (DIA);

5) THE FOLLOWING STATEMENT SIGNED BY AN AUTHORIZED DESIGNEE OF THE CITY OF GRAND JUNCTION (SIGNED AS SUCH) MUST ACCOMPANY THE SIGHT DRAFT;

6) "LOVE'S TRAVEL STOPS AND COUNTRY STORES, INC. (DEVELOPER) HAS FAILED TO COMPLY WITH THE TERMS, CONDITIONS, PROVISIONS AND REQUIREMENTS OF THE GRAND JUNCTION ZONING AND DEVELOPMENT CODE, DIA, AND/OR PLANS, SPECIFICATIONS OR AGREEMENTS RELATING TO THE CONSTRUCTION OF IMPROVEMENTS REQUIRED BY THE CITY OF GRAND JUNCTION. THE MONIES RECEIVED FROM THIS DRAWING ARE REQUIRED TO CONSTRUCT THOSE IMPROVEMENTS. THE CITY OF GRAND JUNCTION THEREFORE REQUESTS THE PAYMENT OF \$_____."

7) IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT WILL BE AUTOMATICALLY EXTENDED, WITHOUT AMENDMENT, FOR A PERIOD OF NINE (9) MONTHS FROM THE PRESENT OR ANY FUTURE EXPIRATION DATE UNLESS: (A) THIS LETTER OF CREDIT HAS BEEN CALLED IN FULL OR (C) THE BANK SENDS NOTICE TO THE CITY OF GRAND JUNCTION AT 250 N. 5TH STREET GRAND JUNCTION CO 81501, BY CERTIFIED MAIL RETURN RECEIPT REQUESTED OR HAND DELIVERED COURIER, AT LEAST NINETY (90) DAYS PRIOR TO SUCH EXPIRATION DATE THAT WE ELECT NOT TO FURTHER EXTEND THIS LETTER OF CREDIT.

8) EXCEPT AS STATED ABOVE NO MODIFICATIONS OR REVOCATIONS MAY BE MADE BY THE UNDERSIGNED TO THIS LETTER OF CREDIT WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE CITY'S DIRECTOR OF PUBLIC WORKS & PLANNING OR HIS DESIGNEE;

9) THIS LETTER OF CREDIT IS NOT TRANSFERABLE;

10) PARTIAL DRAWINGS ARE PERMITTED;

11) WE HEREBY AGREE THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT WILL BE DULY HONORED ON DUE PRESENTATION AND DELIVERY OF DOCUMENTS, WHICH MAY BE DONE BY FIRST CLASS MAIL, FACSIMILE, OR IN PERSON, ON OR PRIOR TO THE EXPIRATION OR ANY EXTENSION THEREOF OF THIS LETTER OF CREDIT;

JPMorgan Chase Bank, N.A.
Global Trade Services
131 South Dearborn, 5th Floor
Mail Code: IL1-0236
Chicago, IL 60603-5506

JUN 12, 2013
OUR L/C NO.: CTCS-421955
APPLICANT REF. NO.: GRAND JUNCTION

DRAWINGS PRESENTED BY TELEFACSIMILE ("FAX") TO FAX NUMBER 312-233-2265, OR ALTERNATELY TO FAX NUMBER 312-233-2266 ARE ACCEPTABLE, UNDER TELEPHONE PRE-ADVICE TO 312-385-7226, OR ALTERNATELY TO 1-800-634-1969, OPTION 1; PROVIDED THAT SUCH FAX PRESENTATION IS RECEIVED ON OR BEFORE THE EXPIRY DATE ON THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, IT BEING UNDERSTOOD THAT ANY SUCH FAX PRESENTATION SHALL BE CONSIDERED THE SOLE OPERATIVE INSTRUMENT OF DRAWING, NOT CONTINGENT UPON PRESENTATION OF THE ORIGINAL LETTER OF CREDIT OR ORIGINAL DOCUMENTS WITH RESPECT THERETO.

12) EXCEPT AS OTHERWISE STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE - PUBLICATION NO. 600 AND TO THE EXTENT THAT IT DOES NOT CONFLICT WITH ARTICLE 5 OF THE UNIFORM COMMERCIAL CODE OF THE STATE OF COLORADO.

PLEASE ADDRESS ALL CORRESPONDENCE AND DRAW PRESENTATIONS REGARDING THIS LETTER OF CREDIT TO THE ATTENTION OF THE STANDBY LETTER OF CREDIT UNIT, 131 SOUTH DEARBORN, 5TH FLOOR, MAIL CODE IL1-0236, CHICAGO, IL 60603-5506, INCLUDING THE LETTER OF CREDIT NUMBER MENTIONED ABOVE. FOR TELEPHONE ASSISTANCE, PLEASE CONTACT THE STANDBY CLIENT SERVICE UNIT AT 1-800-634-1969, SELECT OPTION 1, OR 1-312-385-7910, AND HAVE THIS LETTER OF CREDIT NUMBER AVAILABLE.



SIGNATURE

KATHERINE M MOSES, ASSOCIATE

RECORDING MEMORANDUM

Exhibit D

City of Grand Junction
Public Works and Planning Department
File Number: **SPN-2013-59**

This memorandum relates to and confirms that certain Development Improvements Agreement and/or Maintenance Guarantee concerning land in Mesa County, Colorado is by and between **Love's Travel Stops & Country Stores, Inc.** (Developer) and the City of Grand Junction (City) pertaining to **Love's Travel Stops & Country Stores, Inc.** (Project), located at **748 22 Road**

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 Development Improvements Agreement and/or 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 number **SPN-2013-59**

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 Development Improvements Agreement and /or Maintenance Guarantee. Furthermore, the Developer and the City agree that the Development Improvements Agreement and/or Maintenance Guarantee are contractual in nature and that the obligations under the Development Improvements Agreement and/or 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 Development Improvement Agreement and/or Maintenance Guarantee herein characterized.

DEVELOPER:

By: _____

Date: **6/25/2013**

Type Name: **Doug Stussi**
CFO

CITY OF GRAND JUNCTION:

In accordance with the above, I hereby certify that the Development Improvement Agreement and/or 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, Public Works & Planning Department, 250 North 5th Street, Grand Junction Colorado.

Lisa Cox

Date: **6-25-2013**

Public Works and Planning Department



Sheila Reiner
 Clerk and Recorder
 200 S. Spruce St.
 Grand Junction, CO 81501
 (970)-244-1679



Print Date:
 7/1/2013 2:12:46 PM

Transaction #: **167616**
 Receipt #: **2013061186**
 Cashier Date: **7/1/2013 2:12:46 PM**

Mailing Address:
 P.O. BOX 20,000-5007
 Grand Junction, CO 81502
 (970)-244-1679

www.mesacounty.us

Customer Information	Transaction Information	Payment Summary
(CITYOFGJ) CITY OF GRAND JCT COM DEVELOP 250 N 5TH ST GRAND JCT, CO 81501 Escrow Balance: \$110.00	Date Received: 07/01/2013 Source Code: Over The Counter Return Code: Over The Counter Trans Type: RECORDING	Total Fees \$11.00 Total Payments \$11.00

1 Payments	
ESCROW	\$11.00

1 Recorded Items <i>Louie's Travel Stop DIA Recording Memorandum</i>	
(MEMO) MEMORANDUM	<i>BK/PG: 5496/65 Reception Number: 2660344 Date: 7/1/2013 2:12:46 PM From: To:</i>
Recording @ \$10 per page \$1 Surcharge	1 \$11.00

0 Search Items

0 Miscellaneous Items

Recording Fee

Date	July 1, 2013
Plan File No.	SPN-2013-59
Project Name	Love's Travel Stops & Country Stores
Project Location	748 22 Road
Purpose of DIA	Public & Private
Payee Name	Love's Travel Stops & Country Stores, Inc.
Payee Mailing Address	PO Box 26210
Payee City, State Zip Code	Oklahoma, OK 73126
Payee Telephone No.	(405) 302-6646
DIA Completion Date	June 25, 2014
Project Planner	Scott Peterson
Project Engineer	Rick Dorris

ACCOUNTING INFORMATION

	AMOUNT	DATE	REFERENCE (Cash or Check)
RECORDING FEE COLLECTED	\$ 22.00	07/02/13	Check #1035342
RECORDING FEE FOR RECORDING RECORDING MEMORANDUM	\$ 11.00	07/02/13	
RECORDING FEE FOR RECORDING RELEASE OF RECORDING MEMORANDUM	\$ -		
BALANCE	\$ 11.00		

Recording Fee Account No.

100-310-010.7310_03



Travel Stops & Country Stores, Inc.
 10601 North Pennsylvania
 PO Box 26210
 Oklahoma City OK 73126

CHECK NUMBER: 1035342

INVOICE NUMBER	INVOICE DATE	GROSS AMOUNT	DISCOUNT	NET AMOUNT
RECORDATION FEE Message : RECORDING MEMO PERMIT	6/27/2013	22.00	.00	22.00
CHECK TOTALS		22.00	.00	22.00

WARNING - THIS DOCUMENT HAS A SECURITY COLOR BACKGROUND ON FACE AND ARTIFICIAL WATERMARK IN PAPER

Love's
 Travel Stops & Country Stores, Inc.
 10601 North Pennsylvania
 PO Box 26210
 Oklahoma City OK 73126

DATE

6/27/2013

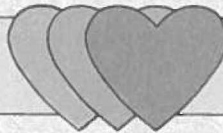
56-1544/441

1035342

AMOUNT OF CHECK

\$22.00

Twenty-Two and 00/100 DOLLARS



Greg Love

NOT TO EXCEED \$50,000.00 UNLESS COUNTERSIGNED

Pay To CITY OF GRAND JUNCTION
 The 2145 RIVER ROAD
 Order Of GRAND JUNCTION CO 81501

JPMorgan Chase Bank, N.A.
 Columbus, OH

MAINTENANCE GUARANTEE

Planning File No: **SPN-2013-59**

1. **Parties:** The parties to this Maintenance Guarantee ("the Guarantee" or "Guarantee") are Love's Travel Stops & Country Stores, Inc. ("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 **Lot 1 of HallCo Subdivision – Love's Travel Stops & Country Stores, Inc.**, has been reviewed and approved under Planning file number **SPN-2013-59** and as necessary or required to construe this guarantee, that file(s) is/are 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, and for one year following repair or replacement of Improvements, in accordance with Section 6 of that certain Development Improvements Agreement (DIA) dated June 6, 2013, ("Maintenance Period"). The DIA is incorporated herein by this reference. The Developer's obligation is and will be independent of any obligations of the City. Upon expiration of the Maintenance Period the City will issue a final acceptance of the Improvements (the "Final Acceptance"), following which the Developer will have no continuing obligations to maintain or guarantee the Improvements.
4. **Security:** To secure the performance of its obligations the Developer is required to post security in an amount of **\$114,461.11** (LineG2, Exhibit B, City Security.)

- 4a. The Developer has posted security to guarantee the Improvements in an amount, form and with terms acceptable to the City.
- 4b. 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, upon expiration of the Maintenance Period. A copy of those warranties or a memorandum of the same is attached as Exhibit A.
- 4c. 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.
- 4d. Upon the expiration of the Maintenance Period and upon issuance by the City of a final acceptance of the Improvements in accordance with Section 3 above, the Developer is no longer required to post security to guarantee the Improvements.
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 according to the standards and specifications required by the City or as otherwise established by the City Engineer.
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 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 (2) 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:** Acceptance of any Improvement(s) by the City shall be governed by the terms of the DIA.
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 Maintenance 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 (2) 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 expenses 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 liability 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), default(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 or other legal action 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. The value of the Developer'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 this liability under this agreement.
22. **Notice:** Any notice required or permitted by this Agreement will be deemed effective two (2) calendar days after deposit with the United States Postal Service, first class, postage prepaid and addressed as follows:

If to Developer:

Love's Travel Stops & Country Stores, Inc.
Attn: Director of Real Estate & Development
10601 N. Pennsylvania Ave., 73120
P.O. Box 26210
Oklahoma City, OK 73126
(405) 302-6646 ph
(405) 463-3646 fax
Rick.shuffield@loves.com

If to the City:

Office of the City Attorney
250 N. 5th Street
Grand Junction CO 81501

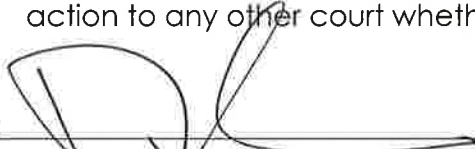
CC:

Planning Division
250 N. 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:  _____ Date: 7/15/14 _____

Developer's Signature
Developer's Name:
Title (position):

Corporate Attest:  _____

City of Grand Junction

 _____ Date: 7-24-14 _____

Signature
Project Manager

 _____ Date: 7-24-14 _____

Signature
Development Engineer

 _____ Date: 7-24-14 _____

Signature
Director or Planning Manager

JPMorgan Chase Bank, N.A.
Global Trade Services
131 South Dearborn, 5th Floor
Mail Code: IL1-0236
Chicago, IL 60603-5506

JUN 27, 2014
OUR L/C NO.: CTCS-421955
APPLICANT REF. NO.: GRAND JUNCTION
AMENDMENT NO.: 1

TO:
CITY OF GRAND JUNCTION
C/O DIRECTOR OF PUBLIC WORKS
PLANNING DEPARTMENT
250 N. 5TH STREET
GRAND JUNCTION, CO 81501

APPLICANT:
LOVE'S TRAVEL STOPS & COUNTRY
STORES, INC.
10601 N PENNSYLVANIA
PO BOX 26210
OKLAHOMA CITY, OK 73126

IN ACCORDANCE WITH INSTRUCTIONS RECEIVED, THE ABOVE REFERENCED STANDBY LETTER OF CREDIT HAS BEEN AMENDED AS FOLLOWS:

RECEIVER'S REFERENCE: NONREF

L/C DECREASED BY: USD572,305.55

THE AVAILABLE AMOUNT OF THIS LETTER OF CREDIT AFTER GIVING EFFECT TO THIS AMENDMENT IS U.S. DOLLARS 114,461.11.

ALL AMENDMENTS UNDER THIS LETTER OF CREDIT ARE SUBJECT TO THE BENEFICIARY'S AGREEMENT. THIS AMENDMENT SHALL NOT BE CONSIDERED OPERATIVE UNLESS THE BENEFICIARY COMMUNICATES THEIR AGREEMENT TO THE AMENDED TERMS. PLEASE INDICATE YOUR ACCEPTANCE/REJECTION BY SIGNING AND RETURNING A COPY OF THIS AMENDMENT VIA FAX TO (312)-233-2265 TO THE ATTENTION OF STANDBY LETTER OF CREDIT UNIT, 131 SOUTH DEARBORN, 5TH FLOOR, MAIL CODE IL1-0236, CHICAGO, IL 60603-5506

CITY OF GRAND JUNCTION

ACCEPTED BY: 

(SIGNATURE)

PRINT NAME - TITLE Corey Johnson Development Services Manager

DATE AND TEL. NO. : 7-24-14 970.256.4023

REJECTED BY: _____

JPMorgan Chase Bank, N.A.
Global Trade Services
131 South Dearborn, 5th Floor
Mail Code: IL1-0236
Chicago, IL 60603-5506

JUN 27, 2014
OUR L/C NO.: CTCS-421955
APPLICANT REF. NO.: GRAND JUNCTION
AMENDMENT NO.: 1

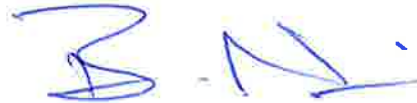
(SIGNATURE)

PRINT NAME - TITLE: _____

DATE AND TEL. NO. : _____

ALL OTHER TERMS AND CONDITIONS OF THE CREDIT REMAIN UNCHANGED.

NOTE: KINDLY SIGNIFY YOUR CONSENT TO THIS AMENDMENT BY SIGNING AND RETURNING THE ENCLOSED COPY DIRECTLY TO US OR THE ADVISING BANK (IF ONE IS PRESENT) FOR TRANSMISSION TO US. YOUR IMMEDIATE ATTENTION TO THIS MATTER WILL BE APPRECIATED IN ORDER THAT WE MAY COMPLETE OUR RECORDS.



AUTHORIZED SIGNATURE



July 24, 2014

Mr. Rick Shuffield
Love's Travel Stops
P.O. Box 26210
Oklahoma City, OK 73126

RE: Initial Acceptance
Project Name: Love's Truck Stop
Project Number: SPN-2013-59

Dear Mr. Shuffield,

As the Developer of the referenced Project, you are hereby notified that the requirements for Initial Acceptance of the public infrastructure associated with the Project have been fulfilled. The Developer is responsible for all materials and workmanship for the public infrastructure improvements constructed or installed as part of the Project for one year following the Initial Acceptance date. Additionally, any improvements under the jurisdiction of other entities, such as water districts and sewer districts, shall be subject to the warranty requirements of those entities.

The City will conduct a warranty inspection of the above improvements prior to the end of the one-year warranty period. The Developer will be required to correct any deficiencies noted during the warranty period. If a deficient item requires replacement or major repairs under the warranty, the Maintenance Agreement and the full financial guarantee may be extended by one year from the date the item is repaired or replaced.

Initial Acceptance date: **July 24, 2014**

Amount of financial security for the Maintenance Guarantee: **\$114,461.11**

Sincerely,

**Rick
Dorris**

Digitally signed by Rick
Dorris
DN: cn=Rick Dorris,
o=City of Grand Junction,
CO, ou=Public Works,
email=rkdor@city.org,
c=US
Date: 2014.07.24 11:36:02
-0600

Rick Dorris, PE
Development Engineer

EC: Shelly Dackonish, Staff City Attorney
Scott Peterson, Senior Planner
Dan Thorne – Street System
Chris Spears – Storm Drainage System
Mary Sparks, Senior Administrative Assistant

Mark Barslund, Development Inspector
Larry Brown – Sewage Collection System
David Priske, Ute Water



City Attorney

July 28, 2014

JPMorgan Chase Bank, N.A.
Global Trade Services
131 South Dearborn, 5th Floor
Mail Code: IL1-0236
Chicago, IL 60603-5506

Re: Amended Letter of Credit Number **CTCS-421955-Amendment No. 1**
Love's Travel Stops & Country Stores, Inc.
Internal Reference: **Love's Travel Stop SPN-2013-59**

Dear Sirs:

Enclosed please find a copy of the Letter of Credit **#CTCS-421955-Amendment No. 1** **Love's Travel Stop SPN-2013-59**. As beneficiary, the City of Grand Junction informs you that the amended Letter of Credit is approved. This letter is being provided at the direction of the Director of Planning Department for the City.

If you have any questions, or need additional information, please inform me.

Sincerely,

OFFICE OF THE CITY ATTORNEY



Shelly Dackonish, Staff City Attorney

Encl. Letter of Credit Number **# CTCS-421955-Amendment No. 1**

Pc: Scott Peterson, Planner
Rick Dorris, Development Engineer

Love's Travel Stops & Country Stores, LLC
Rick Shuffield
PO Box 26210
Oklahoma City, OK 73126