

## DEVELOPMENT IMPROVEMENTS AGREEMENT

Planning File No. SPN-2012-434

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are **Pilot Travel Centers LLC**, ("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 **Pilot Travel Center #592** has been reviewed and approved under Planning file number: **SPN-2012-434** ("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 \$ **384,597.00** (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 \$ **64,099.50** (Line G2, Exhibit B, City Security) *which shall be taken from the Security amount. (C)*

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 30 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:** April 1, 2013

**Completion Date:** November 29, 2013



**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 **\$320,497.50** (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.

**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 and/or the Improvements and/or the Development that is being done pursuant to this Agreement.

→ by Developer (DC)

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 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 attorney's fees and expert witness fees, from the opposing party. ~~The City shall be entitled to claim the value of its in-house attorneys at the rate of \$125.00 per hour.~~ 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 part, term or provision was never part of the Agreement.

**25. Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld but any unapproved assignment is void.

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:	<b>Pilot Travel Centers LLC</b>	Name/Developer/Company (continued)
	<b>5508 Lonas Road</b>	Address (Street and Mailing) Address (continued)
	<b>Knoxville, TN 37909</b>	City, State & Zip Code
	<b>865-588-7488 x 2417</b>	Telephone Number
	<b>865-297-0143</b>	Fax Number
	<b>brad.alsup@pilottravelcenters.com</b>	E-mail Address

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

CC: Public Works & Planning Department  
250 North 5<sup>th</sup> 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





**Exhibit A**  
**Legal Description**

Commencing at a Mesa County Survey Marker for the East ¼ Corner of said Section 36 whence a Mesa County Survey Marker for the South 1/16 Corner on the east line of said Section 36 bears S00°04'42"W for a distance of 1320.81 feet; thence S30°22'27"W for a distance of 599.98 feet to an angle point on the westerly right-of-way line of Interstate 70 and the point of beginning; thence the following courses and distances;

1. Along said westerly right-of-way, S55°40'35"W for a distance of 467.51 feet to a point on the northerly right-of-way line of Union Pacific Railroad;
2. Along said northerly right-of-way line, N56°32'28"W for a distance of 1191.13 feet to a point on the southerly right-of-way line of U.S. Highway 6 & 50;
3. Along said southerly right-of-way line, S69°52'00"E for a distance of 238.78 feet;
4. S84°25'12"E for a distance of 209.31 feet;
5. N89°41'54"E for a distance of 941.46 feet;
6. S71°03'49"E for a distance of 243.85 feet to a point on said westerly right-of-way line of Interstate 70;
7. Along said westerly right-of-way, S46°05'23"W for a distance of 312.00 feet to the point of beginning.

**EXCEPT THEREFROM:**

That certain parcel of land as described at the Office of the Mesa County Clerk and Recorder as described in Book 220 at Page 326 of the Mesa County real property records.

Containing 9.666 acres more or less.

## EXHIBIT B IMPROVEMENTS COST ESTIMATE

DATE: \_\_\_\_\_ 12/13/2012  
 DEVELOPMENT NAME: \_\_\_\_\_ Pilot Travel Center  
 LOCATION: \_\_\_\_\_ 2195 Highway 6&50  
 PRINTED NAME OF PERSON PREPARING: \_\_\_\_\_ Kent Shaffer

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>A. SANITARY SEWER</b>					
1	" PVC Sanitary Sewer Main	LF			\$ -
2	" PVC Sanitary Sewer Main	LF			\$ -
3	" PVC Sanitary Sewer Main	LF			\$ -
4	Sewer services	EA or LF			\$ -
5	Sanitary Sewer Manhole	EA			\$ -
6	Sanitary Sewer Drop Manhole	EA			\$ -
7	Connection to Existing Manhole	EA			\$ -
8	Concrete Encasement	LF			\$ -
					\$ -
					\$ -
	<b>Subtotal Part A Sanitary Sewer</b>				\$ -
<b>B. DOMESTIC WATER</b>					
1	8" PVC Water Main	LF	402	\$ 24.00	\$ 9,648.00
2	6" PVC Water Main	LF	80	\$ 22.00	\$ 1,760.00
3	" PVC Water Main	LF			\$ -
4	8" Gatevalve	EA	1	\$ 1,500.00	\$ 1,500.00
5	6" Gatevalve	EA	1	\$ 1,300.00	\$ 1,300.00
6	" Gatevalve	EA			\$ -
7	Water Services	LF	80	\$ 15.00	\$ 1,200.00
8	Connect to Existing Water Line	EA	1		\$ -
9	Fire Hydrant with Valve	EA	1	\$ 4,500.00	\$ 4,500.00
10	Utility Adjustments	EA			\$ -
11	Blowoff	EA	1	\$ 750.00	\$ 750.00
					\$ -
					\$ -
					\$ -
	<b>Subtotal Part B - Domestic Water</b>				\$ 20,658.00



Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C1.</b>	<b>STREETS</b>				
1	" PVC Utility/Irrigation sleeves	LF			\$ -
2	" PVC Utility/Irrigation sleeves	LF			\$ -
3	Reconditioning	SY			\$ -
4	Aggregate Base Course (Class 3)	TN	898	\$ 12.00	\$ 10,776.00
5	Aggregate Base Course (Class 6)	TN	403	\$ 17.00	\$ 6,851.00
6	Aggregate Base Course (Class 6) ( " Compacted Thickness)	SY			\$ -
7	Hot Bituminous Paving, Grading 64-22	TN	226	\$ 75.00	\$ 16,950.00
8	Hot Bituminous Paving, Grading 76-28	TN	150	\$ 93.00	\$ 13,950.00
9	Hot Bituminous Paving, Patching ( " Thick)	SY			\$ -
10	Geotextile	SY			\$ -
11	Concrete Curb ( " Wide by " High)	LF			\$ -
12	Concrete Curb and Gutter (Type 2)(Section II-B)	LF	231	\$ 25.00	\$ 5,775.00
13	Concrete Curb and Gutter (1.5' wide)	LF			\$ -
14	Monolithic, Vertical Curb, Gutter and Sidewalk (10' Wide)	LF			\$ -
15	Drive Over Curb, Gutter, and Sidewalk ( ' Wide)				\$ -
16	Concrete Sidewalk	SY	129	\$ 30.00	\$ 3,870.00
17	Concrete Gutter and Driveway Section ( " Thick)	SY			\$ -
18	Concrete Drainage Pan ( ' Wide, " Thick)	LF			\$ -
19	Concrete Corner Fillet	SY			\$ -
20	Concrete Curb Ramp	SY	27	\$ 70.00	\$ 1,890.00
21	Complete Concrete Corner	SY			\$ -
22	Concrete Driveway ( " Thick)	SY			\$ -
23	Driveway/Concrete Repair	SY			\$ -
24	Retaining Walls	LF			\$ -
25	Street Signs	EA			\$ -
26	Striping (New, Remove/Replace)	LF			\$ -
27	Street Lights	EA			\$ -
28	Signal Construction or Reconstruction	LS			\$ -
29	Flowable Fill	CY			\$ -
30	Sleeves, " , PVC	LF			\$ -
					\$ -
					\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C2.</b>	<b>TRAFFIC SIGNAL</b>				
					\$ -
1	2 Inch Electrical Conduit (Plastic)	LF	2005	\$ 8.00	\$ 16,040.00
2	3 Inch Electrical Conduit (Plastic)	LF	75	\$ 8.50	\$ 637.50
3	Pull Box (24" x 36" x 18")	EA	7	\$ 650.00	\$ 4,550.00
4	Pull Box (30" x 48" x 24")	EA	1	\$ 1,000.00	\$ 1,000.00
5	Drilled Caisson (42 Inch)	LF	33	\$ 350.00	\$ 11,550.00
6	Drilled Caisson (48 Inch)	LF	41	\$ 400.00	\$ 16,400.00
	Wiring (by City Traffic Crews)	LS	1	\$ 10,000.00	\$ 10,000.00
	Poles, Arms, Cabinet, Signal Heads and All Components (by City Traffic Crews)	LS	1	\$ 140,000.00	\$ 140,000.00
					\$ -
	<b>Subtotal Part C - Streets and Bridges</b>				<b>\$ 260,239.50</b>
<b>D1.</b>	<b>EARTHWORK</b>				
1	Mobilization	LS			\$ -
2	Clearing and Grubbing	AC or LS			\$ -
3	Unclassified Excavation	CY			\$ -
4	Unclassified Embankment	CY			\$ -
5	Silt Fence	LF			\$ -
6	Watering (Dust Control)	AC or LS			\$ -
<b>D2.</b>	<b>REMOVALS AND RESETTING</b>				
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			\$ -
<b>D3.</b>	<b>SEEDING AND SOIL RETENTION</b>				
1	Sod	SY			\$ -
2	Seeding (Native)	SY or AC			\$ -
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
<b>D4.</b>	<b>STORM DRAINAGE FACILITIES</b>				
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY			\$ -
2	24" CL III Storm Drain Pipe	LF	130	\$ 55.00	\$ 7,150.00
3	" Storm Drain Pipe	LF			\$ -
4	" Storm Drain Pipe	LF			\$ -
5	" Storm Drain Pipe	LF			\$ -
6	" Storm Drain Pipe	LF			\$ -
7	24" Flared End Section	EA	1	\$ 250.00	\$ 250.00
8	" Flared End Section	EA			\$ -
9	48" Storm Drain Manhole	EA			\$ -
10	60" Storm Drain Manhole	EA			\$ -
11	72" Storm Drain Manhole	EA			\$ -
12	Manhole with Box Base	EA			\$ -
13	Connection to Existing MH	EA			\$ -
14	Single Curb Opening Storm Drain Inlet	EA			\$ -
15	Double Curb Opening Storm Drain Inlet	EA			\$ -
16	Area Storm Drain Inlet	EA			\$ -
17	Detention Area Outlet structure	EA			\$ -
18	Rip-Rap D <sub>50</sub> = ___"	CY			\$ -
19	Sidewalk Trough Drain	EA			\$ -
20	Pump Systems including Electrical	LS			\$ -
	<b>Subtotal Part D - Grading and Drainage</b>				<b>\$ 7,400.00</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>E1.</b>	<b>IRRIGATION</b>				
1	Connect to Existing Pipe	LS			\$ -
2	" Irrigation Pipe	LF			\$ -
3	" Irrigation Pipe	LF			\$ -
4	Fittings and Valves	LS			\$ -
5	Services	EA			\$ -
6	Pump System and Concrete Vault	LS			\$ -
7	Irrigation Structure	EA			\$ -
8	Vacuum Relief and/or Air Release Valve	EA			\$ -
<b>E2.</b>	<b>LANDSCAPING</b>				
1	Design/Architecture	LS			\$ -
2	Earthwork	CY			\$ -
3	Hardscape Features	LS			\$ -
4	Plant Material & Planting	LS			\$ -
5	Irrigation System	LS			\$ -
6	Curbing	LF			\$ -
7	Retaining Walls & Structures	LS			\$ -
8	1 Year Maintenance Agrmnt.	LS			\$ -
9	Topsoil				\$ -
					\$ -
					\$ -
					\$ -
	<b>Subtotal Part E - Landscaping and Irrigation</b>				<b>\$ -</b>



Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
F.	Miscellaneous Items				
1	Clear and Grub	LS	7.00%	\$ 2,000.00	\$ 140.00
2	Construction Surveying	LS	7.00%	\$ 25,000.00	\$ 1,750.00
3	Mobilization	LS	7.00%	\$ 75,000.00	\$ 5,250.00
4	Construction Traffic Control (Sum of individual pay items)	LS	7.00%	\$ 358,000.00	\$ 25,060.00
<b>Subtotal Part F - Miscellaneous Items</b>					<b>\$ 32,200.00</b>

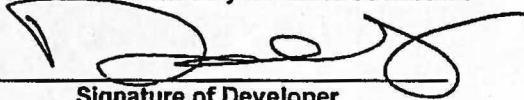
Section F Note: 7% of the overall construction contract costs will be applied to Pilot's Share of Expenses

**COST SUMMARY:**

G1	Total Improvement Costs	\$ 320,497.50
G2	City Security (20%)	\$ 64,099.50
<b>Total Guarantee Amount</b>		<b>\$ 384,597.00</b>


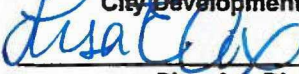
**NOTES**

1. All prices shall be for items complete in place and accepted.
2. All pipe prices shall include excavation, pipe, bedding, backfill, and compaction.
3. Water main shall include pipe, excavation, bedding, backfill, bends, and appurtenances not itemized elsewhere.
4. All concrete items shall include Aggregate Base Course where required by the drawings.
5. Fill in the pipe type for irrigation pipe and sleeves.
6. Reconditioning shall be calculated to at least 6" outside of back of walk on both sides.
7. Units can be changed if desired, simply annotate what is used.
8. Additional lines or items may be added as needed.

  
 \_\_\_\_\_  
 Signature of Developer  
 (If corporation, to be signed by President and attested to by Secretary together with the corporate seals.)

1-31-12  
 \_\_\_\_\_  
 Date

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.

  
 \_\_\_\_\_  
 City Development Engineer  
  
 \_\_\_\_\_  
 Planning Division

5-10-13  
 \_\_\_\_\_  
 Date  
 5-10-2013  
 \_\_\_\_\_  
 Date

BANK OF AMERICA - CONFIDENTIAL

PAGE: 1

DATE: FEBRUARY 11, 2013

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 3127126

ISSUING BANK  
BANK OF AMERICA, N.A.  
1000 W. TEMPLE STREET  
7TH FLOOR, CA9-705-07-05  
LOS ANGELES, CA 90012-1514

BENEFICIARY  
CITY OF GRAND JUNCTION  
C/O DIRECTOR OF PUBLIC WORKS &  
PLANNING DEPARTMENT  
250 N. 5TH STREET

APPLICANT  
PILOT TRAVEL CENTERS LLC  
5508 LONAS DRIVE  
KNOXVILLE, TN 37909

GRAND JUNCTION, CO 81501

AMOUNT  
NOT EXCEEDING USD 384,597.00  
NOT EXCEEDING THREE HUNDRED EIGHTY FOUR THOUSAND FIVE HUNDRED NINETY SEVEN  
AND 00/100'S US DOLLARS

EXPIRATION  
MARCH 1, 2014 AT OUR COUNTERS

DEAR SIRs:

WE HEREBY ESTABLISH OUR IRREVOCABLE LETTER OF CREDIT NO. 3127126 IN FAVOR OF THE CITY OF GRAND JUNCTION AT THE REQUEST OF AND FOR THE ACCOUNT OF PILOT TRAVEL CENTERS LLC ("DEVELOPER") IN THE AMOUNT OF THREE HUNDRED EIGHTY FOUR THOUSAND FIVE HUNDRED NINETY SEVEN AND 00/100'S U.S. DOLLARS (\$384,597.00).

WE ARE ADVISED BY THE APPLICANT THAT THIS LETTER OF CREDIT IS ESTABLISHED FOR THE USE AND BENEFIT OF THE CITY OF GRAND JUNCTION BY REASON OF PILOT TRAVEL CENTERS LLC ("DEVELOPER") BEING OBLIGATED TO PAY OR PERFORM IN ACCORDANCE WITH THE PROVISIONS OF THE GRAND JUNCTION ZONING AND DEVELOPMENT CODE AND THAT CERTAIN DEVELOPMENT IMPROVEMENTS AGREEMENT BETWEEN PILOT TRAVEL CENTERS LLC AND THE CITY OF GRAND JUNCTION.

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

- 1) IT IS EFFECTIVE UPON SIGNATURE.

ORIGINAL



THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 3127126

2) IT EXPIRES ON MARCH 1, 2014, SUBJECT TO THE AUTOMATIC EXTENSIONS DISCUSSED BELOW.

3) THIS LETTER OF CREDIT IS AVAILABLE BY SIGHT DRAFT(S) DRAWN AND MARKED "DRAWN UNDER BANK OF AMERICA, N.A. LETTER OF CREDIT NO. 3127126 DATED FEBRUARY 11, 2013."

4) ACCOMPANYING THE SIGHT DRAFT:

A STATEMENT SIGNED BY AN AUTHORIZED OFFICER OF THE CITY OF GRAND JUNCTION STATING:

"PILOT TRAVEL CENTERS LLC ("DEVELOPER") HAS FAILED TO COMPLY WITH THE TERMS, CONDITIONS, PROVISIONS AND REQUIREMENTS OF THE GRAND JUNCTION ZONING AND DEVELOPMENT CODE 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 \$\_\_\_\_\_."

5) IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED FOR A PERIOD OF SIX (6) MONTHS FROM THE PRESENT OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST NINETY (90) DAYS PRIOR TO SUCH EXPIRATION DATE, WE NOTIFY THE CITY OF GRAND JUNCTION AT 250 N. 5TH STREET, GRAND JUNCTION, CO 81501, BY CERTIFIED MAIL RETURN RECEIPT REQUESTED OR BY OVERNIGHT COURIER SERVICE, THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT FOR AN ADDITIONAL PERIOD.

6) THIS LETTER OF CREDIT SHALL BE TERMINATED ON THE EARLIER OF (1) MARCH 1, 2014 OR ANY AUTOMATICALLY EXTENDED EXPIRATION DATE, OR (2) WHEN THE LETTER OF CREDIT IS DRAWN DOWN TO \$0.00, OR (3) UPON OUR RECEIPT OF THE ORIGINAL LETTER OF CREDIT AND ALL AMENDMENTS, IF ANY, ACCOMPANIED BY BENEFICIARY'S SIGNED STATEMENT STATING "LETTER OF CREDIT NO. 3127126 IS HEREBY RETURNED FOR YOUR CANCELLATION."

7) EXCEPT WHEN THE AMOUNT OF THIS LETTER OF CREDIT IS INCREASED, THIS CREDIT CANNOT BE MODIFIED OR REVOKED WITHOUT YOUR CONSENT.

8) THIS LETTER OF CREDIT IS NOT TRANSFERABLE.

9) PARTIAL DRAWINGS ARE PERMITTED.

10 ) WE HEREBY AGREE THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS 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, IN PERSON OR BY ANY OTHER REASONABLE BUSINESS PRACTICE ON OR PRIOR TO THE EXPIRATION OR ANY EXTENSION THEREOF OF THIS LETTER OF CREDIT.

ORIGINAL

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 3127126

11) IF PRESENTATIONS ARE MADE BY FACSIMILE TRANSMISSION OF DRAFT(S) AND DOCUMENTS TO OUR FACSIMILE NUMBER 888-277-5577, BENEFICIARY WILL CALL TO CONFIRM RECEIPT OF DRAFT(S) AND DOCUMENTS TO OUR TELEPHONE NUMBER 1-800-541-6096 OPT. 1, HOWEVER SUCH PHONE CALL IS NOT REQUIRED BY US TO HONOR YOUR PRESENTATION.

12) EXCEPT AS OTHERWISE STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION), ICC PUBLICATION NO. 600 (THE "UCP") AND AS TO MATTERS NOT COVERED BY THE UCP, SHALL BE SUBJECT TO ARTICLE 5 OF THE UNIFORM COMMERCIAL CODE OF THE STATE OF COLORADO.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS TRANSACTION, PLEASE CALL 800-541-6096 OPT 1.



-----  
AUTHORIZED SIGNATURE  
STELLA ROSALES

THIS DOCUMENT CONSISTS OF 3 PAGE(S).

ORIGINAL

BANK OF AMERICA - CONFIDENTIAL

PAGE: 1

DATE: FEBRUARY 14, 2013

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 3127249

ISSUING BANK  
BANK OF AMERICA, N.A.  
1000 W. TEMPLE STREET  
7TH FLOOR, CA9-705-07-05  
LOS ANGELES, CA 90012-1514

BENEFICIARY  
CITY OF GRAND JUNCTION  
C/O DIRECTOR OF PUBLIC WORKS &  
PLANNING DEPARTMENT  
250 N. 5TH STREET

APPLICANT  
PILOT TRAVEL CENTERS LLC  
5508 LONAS DRIVE  
KNOXVILLE, TN 37909

GRAND JUNCTION, CO 81501

AMOUNT  
NOT EXCEEDING USD 1,815,403.00  
NOT EXCEEDING ONE MILLION EIGHT HUNDRED FIFTEEN THOUSAND FOUR HUNDRED  
THREE AND 00/100'S US DOLLARS

EXPIRATION  
MARCH 1, 2014 AT OUR COUNTERS

DEAR SIRs:

WE HEREBY ESTABLISH OUR IRREVOCABLE LETTER OF CREDIT NO. 3127249 IN FAVOR OF THE CITY OF GRAND JUNCTION AT THE REQUEST OF AND FOR THE ACCOUNT OF PILOT TRAVEL CENTERS LLC ("DEVELOPER") IN THE AMOUNT OF ONE MILLION EIGHT HUNDRED FIFTEEN THOUSAND FOUR HUNDRED THREE AND 00/100'S U.S. DOLLARS (\$1,815,403.00).

WE ARE ADVISED BY THE APPLICANT THAT THIS LETTER OF CREDIT IS ESTABLISHED FOR THE USE AND BENEFIT OF THE CITY OF GRAND JUNCTION BY REASON OF PILOT TRAVEL CENTERS LLC ("DEVELOPER") BEING OBLIGATED TO PAY OR PERFORM IN ACCORDANCE WITH THE PROVISIONS OF THE GRAND JUNCTION ZONING AND DEVELOPMENT CODE AND THAT CERTAIN DEVELOPMENT IMPROVEMENTS AGREEMENT BETWEEN PILOT TRAVEL CENTERS LLC AND THE CITY OF GRAND JUNCTION.

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

- 1) IT IS EFFECTIVE UPON SIGNATURE.

ORIGINAL



THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 3127249

2) IT EXPIRES ON MARCH 1, 2014, SUBJECT TO THE AUTOMATIC EXTENSIONS DISCUSSED BELOW.

3) THIS LETTER OF CREDIT IS AVAILABLE BY SIGHT DRAFT(S) DRAWN AND MARKED "DRAWN UNDER BANK OF AMERICA, N.A. LETTER OF CREDIT NO. 3127249 DATED FEBRUARY 14, 2013."

4) ACCOMPANYING THE SIGHT DRAFT:

A STATEMENT SIGNED BY AN AUTHORIZED OFFICER OF THE CITY OF GRAND JUNCTION STATING:

"PILOT TRAVEL CENTERS LLC ("DEVELOPER") HAS FAILED TO COMPLY WITH THE TERMS, CONDITIONS, PROVISIONS AND REQUIREMENTS OF THE GRAND JUNCTION ZONING AND DEVELOPMENT CODE 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 \$ \_\_\_\_\_."

5) IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED FOR A PERIOD OF SIX (6) MONTHS FROM THE PRESENT OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST NINETY (90) DAYS PRIOR TO SUCH EXPIRATION DATE, WE NOTIFY THE CITY OF GRAND JUNCTION AT 250 N. 5TH STREET, GRAND JUNCTION, CO 81501, BY CERTIFIED MAIL RETURN RECEIPT REQUESTED OR BY OVERNIGHT COURIER SERVICE, THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT FOR AN ADDITIONAL PERIOD.

6) THIS LETTER OF CREDIT SHALL BE TERMINATED ON THE EARLIER OF (1) MARCH 1, 2014 OR ANY AUTOMATICALLY EXTENDED EXPIRATION DATE, OR (2) WHEN THE LETTER OF CREDIT IS DRAWN DOWN TO \$0.00, OR (3) UPON OUR RECEIPT OF THE ORIGINAL LETTER OF CREDIT AND ALL AMENDMENTS, IF ANY, ACCOMPANIED BY BENEFICIARY'S SIGNED STATEMENT STATING "LETTER OF CREDIT NO. 3127249 IS HEREBY RETURNED FOR YOUR CANCELLATION."

7) EXCEPT WHEN THE AMOUNT OF THIS LETTER OF CREDIT IS INCREASED, THIS CREDIT CANNOT BE MODIFIED OR REVOKED WITHOUT YOUR CONSENT.

8) THIS LETTER OF CREDIT IS NOT TRANSFERABLE.

9) PARTIAL DRAWINGS ARE PERMITTED.

10 ) WE HEREBY AGREE THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS 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, IN PERSON OR BY ANY OTHER REASONABLE BUSINESS PRACTICE ON OR PRIOR TO THE EXPIRATION OR ANY EXTENSION THEREOF OF THIS LETTER OF CREDIT.


ORIGINAL

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 3127249

11) IF PRESENTATIONS ARE MADE BY FACSIMILE TRANSMISSION OF DRAFT(S) AND DOCUMENTS TO OUR FACSIMILE NUMBER 888-277-5577, BENEFICIARY WILL CALL TO CONFIRM RECEIPT OF DRAFT(S) AND DOCUMENTS TO OUR TELEPHONE NUMBER 1-800-541-6096 OPT. 1, HOWEVER SUCH PHONE CALL IS NOT REQUIRED BY US TO HONOR YOUR PRESENTATION.

12) EXCEPT AS OTHERWISE STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION), ICC PUBLICATION NO. 600 (THE "UCP") AND AS TO MATTERS NOT COVERED BY THE UCP, SHALL BE SUBJECT TO ARTICLE 5 OF THE UNIFORM COMMERCIAL CODE OF THE STATE OF COLORADO.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS TRANSACTION, PLEASE CALL 800-541-6096 OPT 1.

  
-----  
AUTHORIZED SIGNATURE  
STELLA ROSALES

THIS DOCUMENT CONSISTS OF 3 PAGE(S).

ORIGINAL



**RECORDING MEMORANDUM**

**Exhibit D**

City of Grand Junction  
Public Works and Planning Department

File Number: **SPN-2012-434**

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 **Pilot Travel Centers LLC** (Developer) and the City of Grand Junction (City) pertaining to **Pilot Travel Center #592** (Project), located at **2195 Hwy 6 & 50**

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-2012-434**

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: **5/17/13**

Type Name: **David Clothier**

**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 5<sup>th</sup> Street, Grand Junction Colorado.



Date: **MAY 20, 2013**

Public Works and Planning Department



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



**Print Date:**  
 05/21/2013 12:11:52 PM

Transaction #: **164319**  
 Receipt #: **2013057999**  
 Cashier Date: **05/21/2013 12:11:51 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: \$99.00	Date Received: 05/21/2013 Source Code: Over The Counter Return Code: Over The Counter Trans Type: Recording	Total Fees \$11.00 Total Payments \$22.00 Escrow Deposit \$11.00

1 Payments		
CHECK 2825953		\$22.00
Escrow Deposit	11	\$11.00

1 Recorded Items		
(MEMO) MEMORANDUM	BK/PG: 5475/708 Reception Number: 2655403 Date: 05/21/2013 12:11:49 PM From: To:	
Recording @ \$10 per page \$1 Surcharge	1	\$11.00

0 Search Items		
----------------	--	--

0 Miscellaneous Items		
-----------------------	--	--



# Recording Fee

<b>Date</b>	May 20, 2013
<b>Plan File No.</b>	SPN-2012-434
<b>Project Name</b>	Pilot Travel Center #592
<b>Project Location</b>	2195 Hwy 6 & 50
<b>Purpose of DIA</b>	Public & Private
<b>Payee Name</b>	Pilot Travel Centers, LLC
<b>Payee Mailing Address</b>	PO Box 10146
<b>Payee City, State Zip Code</b>	Knoxville, TN 37939-0146
<b>Payee Telephone No.</b>	(865) 588-7487
<b>DIA Completion Date</b>	November 29, 2013
<b>Project Planner</b>	Senta Costello
<b>Project Engineer</b>	Rick Dorris

## ACCOUNTING INFORMATION

	AMOUNT	DATE	REFERENCE (Cash or Check)
<b>RECORDING FEE COLLECTED</b>	\$ 22.00	05/20/13	Check #2825953
<b>RECORDING FEE FOR RECORDING RECORDING MEMORANDUM</b>	\$ 11.00	05/21/13	
<b>RECORDING FEE FOR RECORDING RELEASE OF RECORDING MEMORANDUM</b>	\$ -		
<b>BALANCE</b>	\$ 11.00		

<b>Recording Fee Account No.</b>	<b>Mesa County Clerk Escrow Account</b>
----------------------------------	---

No. 2825953

Date: 5/17/13

120555 MESA COUNTY

INVOICE	DESCRIPTION	DATE	GROSS AMT	DISCOUNT	NET AMT
E171322592		05/17/13	22.00	0.00	22.00
Pilot Travel Centers LLC			<b>TOTALS:</b>	<b>22.00</b>	<b>0.00</b>
					<b>22.00</b>

Page 1 of 1

Detach at Perforation Before Depositing Check  
REMOVE DOCUMENT ALONG THIS PERFORATION

THIS DOCUMENT IS PRINTED IN TWO COLORS. DO NOT ACCEPT UNLESS BLUE AND BURGUNDY ARE PRESENT.

Pilot Travel Centers LLC  
P.O. Box 10146  
Knoxville, TN 37939-0146  
(865) 588-7487



Regions 807-307  
Knoxville, TN 641  
Check Date Check No.  
05/17/2013 2825953

Vendor No. 120555

Amount  
\$ \*\*\*\*\*22.00

PAY EXACTLY Twenty Two and 00/100 Dollars

USD

PAY TO THE ORDER OF  
MESA COUNTY  
200 S SPRUCE  
GRAND JUNCTION CO 81501

Authorized Signature





**AMENDMENT TO DEVELOPMENT IMPROVEMENTS AGREEMENT  
AND COST SHARE AGREEMENT**

1. **Parties:** The parties to this Amendment to Development Improvements Agreement and Cost Share Agreement ("Amendment") are **Pilot Travel Centers L.L.C.**, a Delaware limited liability company ("Developer"), and the **City of Grand Junction**, Colorado ("City").

2. **Effective Date:** The Effective Date of this Amendment shall be the date that it is signed by the City Public Works & Planning Director.

**RECITALS**

The Parties previously entered into a Development Improvements Agreement (DIA) for a Project known as **Pilot Travel Center #592**. A copy of the DIA is attached and incorporated by this reference. The Project was reviewed and approved under City planning file # **SPN-2012-434**. Under the DIA, the Developer agreed, among other things, to commence construction of certain public infrastructure (Improvements) within 30 days of the effective date of the DIA. At the time it was anticipated that Developer would be constructing its Project simultaneously with the Improvements.

The Parties also entered into a Cost Share Agreement dated 2-28-2013, a copy of which is attached and incorporated by this reference, in which they agreed that the City would perform some of the Improvements described in the DIA Exhibit B in connection with other work the City had planned to do on the 22 Road realignment at Highway 6 (22 Road Work) and the Developer would pay the City for that work. Because of the Project, the City agreed to undertake the 22 Road Work sooner than it had originally planned.

The Developer now seeks to delay construction of its Project until March 15, 2014.

Because the City has already undertaken the 22 Road Work, time remains of the essence for construction of the Improvements under the DIA and for the Developer's payment obligations under the Cost Share Agreement.

The Developer has posted security for its obligations under the DIA and under the Cost Share Agreement in the form an irrevocable standby letter of credit issued by Bank of America, N.A. (Bank) in the amount of \$384,597.00 (LOC # 3127126). The Developer posted performance security for completion of its Project in the form of an irrevocable standby letter of credit in the amount of \$1,815,403.00 (LOC # 3127249). These letters of credit have an expiration date of March 1, 2014, but are deemed automatically extended unless the City is notified 90 days prior to the expiration date that the letter(s) of credit will not be extended.

Subsequent to the execution of the Cost Share Agreement, the parties agreed to this Amendment and hereby incorporate and memorialize the changes.

**NOW THEREFORE, for valuable consideration for the making and enforcement of this Amendment, the receipt and adequacy of which is acknowledged, the Parties agree as follows:**

1. Developer shall commence construction of the Project on or before March 31, 2014. Developer shall complete construction of the Project on or before September 30, 2014. If Developer fails to commence or to complete the Project construction on/by these respective dates, the City can declare a default and make a call on the security in LOC # 3127249.
2. Likewise, the Parties acknowledge and agree that because of the discrepancy in the dates between the Developer's proposed Project commencement and the expiration of the LOC, if the Bank declines to extend LOC #3127249 beyond the March 1, 2014 expiration date, the City may declare a default and make a call on said security.
3. Developer shall immediately complete construction of the Improvements as set forth in the DIA including but not limited to the water line improvements. The water line improvements must be completed on or before June 29, 2013.
4. Developer shall pay the City the full amount of the estimate in the Cost Share Agreement, to wit, \$ 299,839.00, rather than the actual cost of the Reimbursable Work. Developer will make such payment within 30 days of completion of the Reimbursable Work, and not at the time of issuance of a final certificate of occupancy for the Developer's building. Time is of the essence for said payment.
5. As consideration for any difference between the actual cost of the Reimbursable Work and payment of the estimated cost of \$299,839.00, the City will assume responsibility for the cost of subgrade stabilization and for change orders described in paragraphs 3 of the Cost Share Agreement rather than requiring the Developer to pay those costs.
6. Because <sup>31</sup> ~~15~~ <sup>(PS)</sup> the Developer will not commence construction of its Project until March 15, 2014, the City will need to "daylight" two storm sewer pipes on the Developer's property. That work may consist of construction of swales and/or holes on the property. Developer hereby agrees to grant a temporary easement to the City for installation and construction activities as described in the paragraph and/or as reasonably required to properly sequence the work. City will perform the work in accordance with the City's own specifications and standards. Developer shall maintain responsibility for the condition of its property after said construction and agrees to maintain these "daylight" facilities until construction of its Project, at which time the Parties anticipate that they will no



longer be necessary because of the required on-site drainage facilities Developer will be constructing in accordance with the construction plans approved under City planning file ## SPN-2012-434.

7. All provisions of the DIA and of the Cost Share Agreement not specifically amended hereby shall remain in full force and effect.
8. The persons signing this Amendment represent that they are fully authorized to sign and bind the entity for which they sign.
9. The Parties agree to waive the common rule of construction that ambiguities are construed against the drafter; in the event of ambiguity the favored construction of this Amendment shall be that which affords the City the full measure of legal and equitable protection.


PILOT TRAVEL CENTERS L L C

By: 

6-25-13  
Date

Printed Name: Mitchell Stearnod

Corporate Attest:



6-25-13  
Date

Name Kristin Seabrook

CITY OF GRAND JUNCTION



6-17-13  
Date

Public Works & Planning Dept.

## Leslie Ankrum - Fwd: Pilot Check

---

**From:** Rick Dorris  
**To:** Leslie Ankrum; Stephanie Tuin  
**Date:** 11/14/2013 8:37 AM  
**Subject:** Fwd: Pilot Check  
**Attachments:** pilotcheck.pdf

---

Meant to send to you all yesterday.

Thanks,

Rick Dorris, PE, CFM  
Development Engineer  
City of Grand Junction  
250 N. 5th Street  
Grand Junction, CO 81501  
voice [970-256-4034](tel:970-256-4034)  
fax [970-256-4031](tel:970-256-4031)

email: [rickdo@gjcity.org](mailto:rickdo@gjcity.org)>>> On 11/13/2013 at 4:20 PM, in message  
<52848BAE.5757.005F.0@ci.grandjct.co.us>, Rick Dorris wrote:

Attached is the check for Pilot's \$299,839 payment.

Mary Sparks has the original.

Thanks,

Rick Dorris, PE, CFM  
Development Engineer  
City of Grand Junction  
250 N. 5th Street  
Grand Junction, CO 81501  
voice [970-256-4034](tel:970-256-4034)  
fax [970-256-4031](tel:970-256-4031)  
email: [rickdo@gjcity.org](mailto:rickdo@gjcity.org)

No. 2894221

Date: 11/8/13

114035 CITY OF GRAND JUNCTION

INVOICE	DESCRIPTION	DATE	GROSS AMT	DISCOUNT	NET AMT
K013299839592		11/08/13	299,839.00	0.00	299,839.00
Pilot Travel Centers LLC			<b>TOTALS:</b>	0.00	299,839.00

Detach at Perforation Before Depositing Check

REMOVE DOCUMENT ALONG THIS PERFORATION

THIS DOCUMENT IS PRINTED IN TWO COLORS. DO NOT ACCEPT UNLESS BLUE AND BURGUNDY ARE PRESENT.

Pilot Travel Centers LLC  
P.O. Box 10146  
Knoxville, TN 37939-0146  
(865) 588-7487



Regions  
Knoxville, TN  
Check Date  
11/08/2013

807-307  
641  
Check No.  
2894221

Vendor No. 114035

Amount  
\$ \*\*\*299,839.00

PAY EXACTLY Two Hundred Ninety Nine Thousand Eight Hundred Thirty Nine and 00/100 Dollars USD

PAY TO THE ORDER OF  
CITY OF GRAND JUNCTION  
250 N 5TH STREET  
GRAND JUNCTION CO 81501

Authorized Signature



Pilot Travel Centers LLC  
P.O. Box 10146  
Knoxville, TN 37939-0146

Vendor No. 114035

CITY OF GRAND JUNCTION  
250 N 5TH STREET  
GRAND JUNCTION CO 81501

OPENING INSTRUCTIONS

SEE REVERSE SIDE FOR OPENING INSTRUCTIONS





City Attorney

May 14, 2014

Bank of America, N.A.  
1000 W. Temple Street  
7<sup>th</sup> Floor, CA9-705-07-05  
Los Angeles, CA 90012-1514

Re: Cancellation of Letter of Credit Number **#3127249**  
**Pilot Travel Centers LLC**  
Internal Reference: **Pilot Travel Center SPN-2012-434**

Dear Sirs:

Enclosed please find the original Letter of Credit Number **#3127249** for **Pilot Travel Center SPN-2012-434**. As beneficiary, the City of Grand Junction informs you that the Letter of Credit is being returned to you for cancellation. 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 **#3127249**

Pc: Senta Costello, Planner  
Rick Dorris, Development Engineer  
Peggy Sharpe, Planning

Pilot Travel Centers LLC  
5508 Lonas Drive  
Knoxville, TN 37909

## Mary Sparks - Pilot Letter of Credit Release

---

**From:** Rick Dorris  
**To:** Mary Sparks  
**Date:** 5/14/2014 8:29 AM  
**Subject:** Pilot Letter of Credit Release

---

Mary,

Pilot posted two letters of Credit with us and we need to release the large one. Can you please take care of that? The smaller one I'll deal with when I return from vacation.

\$1,814,403.00.

Thanks,

Rick Dorris, PE, CFM  
Development Engineer  
City of Grand Junction  
250 N. 5th Street  
Grand Junction, CO 81501  
voice [970-256-4034](tel:970-256-4034)  
fax [970-256-4031](tel:970-256-4031)  
email: [rickdo@gjcity.org](mailto:rickdo@gjcity.org)



BANK OF AMERICA - CONFIDENTIAL

PAGE: 1

DATE: FEBRUARY 14, 2013

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 3127249

ISSUING BANK  
BANK OF AMERICA, N.A.  
1000 W. TEMPLE STREET  
7TH FLOOR, CA9-705-07-05  
LOS ANGELES, CA 90012-1514

BENEFICIARY  
CITY OF GRAND JUNCTION  
C/O DIRECTOR OF PUBLIC WORKS &  
PLANNING DEPARTMENT  
250 N. 5TH STREET

APPLICANT  
PILOT TRAVEL CENTERS LLC  
5508 LONAS DRIVE  
KNOXVILLE, TN 37909

GRAND JUNCTION, CO 81501

AMOUNT  
NOT EXCEEDING USD 1,815,403.00  
NOT EXCEEDING ONE MILLION EIGHT HUNDRED FIFTEEN THOUSAND FOUR HUNDRED  
THREE AND 00/100'S US DOLLARS

EXPIRATION  
MARCH 1, 2014 AT OUR COUNTERS

DEAR SIRs:

WE HEREBY ESTABLISH OUR IRREVOCABLE LETTER OF CREDIT NO. 3127249 IN FAVOR OF THE CITY OF GRAND JUNCTION AT THE REQUEST OF AND FOR THE ACCOUNT OF PILOT TRAVEL CENTERS LLC ("DEVELOPER") IN THE AMOUNT OF ONE MILLION EIGHT HUNDRED FIFTEEN THOUSAND FOUR HUNDRED THREE AND 00/100'S U.S. DOLLARS (\$1,815,403.00).

WE ARE ADVISED BY THE APPLICANT THAT THIS LETTER OF CREDIT IS ESTABLISHED FOR THE USE AND BENEFIT OF THE CITY OF GRAND JUNCTION BY REASON OF PILOT TRAVEL CENTERS LLC ("DEVELOPER") BEING OBLIGATED TO PAY OR PERFORM IN ACCORDANCE WITH THE PROVISIONS OF THE GRAND JUNCTION ZONING AND DEVELOPMENT CODE AND THAT CERTAIN DEVELOPMENT IMPROVEMENTS AGREEMENT BETWEEN PILOT TRAVEL CENTERS LLC AND THE CITY OF GRAND JUNCTION.

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

1) IT IS EFFECTIVE UPON SIGNATURE,

ORIGINAL

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 3127249

2) IT EXPIRES ON MARCH 1, 2014, SUBJECT TO THE AUTOMATIC EXTENSIONS DISCUSSED BELOW.

3) THIS LETTER OF CREDIT IS AVAILABLE BY SIGHT DRAFT(S) DRAWN AND MARKED "DRAWN UNDER BANK OF AMERICA, N.A. LETTER OF CREDIT NO. 3127249 DATED FEBRUARY 14, 2013."

4) ACCOMPANYING THE SIGHT DRAFT:

A STATEMENT SIGNED BY AN AUTHORIZED OFFICER OF THE CITY OF GRAND JUNCTION STATING:

"PILOT TRAVEL CENTERS LLC ("DEVELOPER") HAS FAILED TO COMPLY WITH THE TERMS, CONDITIONS, PROVISIONS AND REQUIREMENTS OF THE GRAND JUNCTION ZONING AND DEVELOPMENT CODE 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 \$\_\_\_\_\_."

5) IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED FOR A PERIOD OF SIX (6) MONTHS FROM THE PRESENT OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST NINETY (90) DAYS PRIOR TO SUCH EXPIRATION DATE, WE NOTIFY THE CITY OF GRAND JUNCTION AT 250 N. 5TH STREET, GRAND JUNCTION, CO 81501, BY CERTIFIED MAIL RETURN RECEIPT REQUESTED OR BY OVERNIGHT COURIER SERVICE, THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT FOR AN ADDITIONAL PERIOD.

6) THIS LETTER OF CREDIT SHALL BE TERMINATED ON THE EARLIER OF (1) MARCH 1, 2014 OR ANY AUTOMATICALLY EXTENDED EXPIRATION DATE, OR (2) WHEN THE LETTER OF CREDIT IS DRAWN DOWN TO \$0.00, OR (3) UPON OUR RECEIPT OF THE ORIGINAL LETTER OF CREDIT AND ALL AMENDMENTS, IF ANY, ACCOMPANIED BY BENEFICIARY'S SIGNED STATEMENT STATING "LETTER OF CREDIT NO. 3127249 IS HEREBY RETURNED FOR YOUR CANCELLATION."

7) EXCEPT WHEN THE AMOUNT OF THIS LETTER OF CREDIT IS INCREASED, THIS CREDIT CANNOT BE MODIFIED OR REVOKED WITHOUT YOUR CONSENT.

8) THIS LETTER OF CREDIT IS NOT TRANSFERABLE.

9) PARTIAL DRAWINGS ARE PERMITTED.

10 ) WE HEREBY AGREE THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS 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, IN PERSON OR BY ANY OTHER REASONABLE BUSINESS PRACTICE ON OR PRIOR TO THE EXPIRATION OR ANY EXTENSION THEREOF OF THIS LETTER OF CREDIT.


ORIGINAL

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 3127249

11) IF PRESENTATIONS ARE MADE BY FACSIMILE TRANSMISSION OF DRAFT(S) AND DOCUMENTS TO OUR FACSIMILE NUMBER 888-277-5577, BENEFICIARY WILL CALL TO CONFIRM RECEIPT OF DRAFT(S) AND DOCUMENTS TO OUR TELEPHONE NUMBER 1-800-541-6096 OPT. 1, HOWEVER SUCH PHONE CALL IS NOT REQUIRED BY US TO HONOR YOUR PRESENTATION.

12) EXCEPT AS OTHERWISE STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION), ICC PUBLICATION NO. 600 (THE "UCP") AND AS TO MATTERS NOT COVERED BY THE UCP, SHALL BE SUBJECT TO ARTICLE 5 OF THE UNIFORM COMMERCIAL CODE OF THE STATE OF COLORADO.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS TRANSACTION, PLEASE CALL 800-541-6096 OPT 1.

  
-----  
AUTHORIZED SIGNATURE  
STELLA ROSALES

THIS DOCUMENT CONSISTS OF 3 PAGE(S).

ORIGINAL