

ATM01MVM

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**

NAME OF APPLICANT OR DEVELOPER: ATMF-GRAND JUNCTION, LLC, A COLORADO
LIMITED LIABILITY COMPANY

PROJECT/SUBDIVISION: MESA VILLAGE MARKETPLACE, MESA VILLAGE SUBDIVISION

LOCATION: 2405 F ROAD

PARCEL NO.: 2945-043-06-002

FILE NO.: VE-2000-061

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2001

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

Book 2937 Page 357

1. **Parties:** The parties to this Development Improvements Agreement (“**the Agreement**” or “**Agreement**”) are **ATMF-GRAND JUNCTION, LLC**, a Colorado limited liability company (“**the Developer**”), and **THE CITY OF GRAND JUNCTION, Colorado** (“**the City**” or “**City**”).

RECITALS

2019619 10/10/01 0000PM
 MONIKA TODD CLK® MESA COUNTY CO
 REG FEE \$165.00

The Developer desires to develop property within the City to be known as Mesa Village Marketplace, which property is more particularly described on Exhibit A attached hereto and incorporated herein by this reference (“**the Property**” or “**Property**”). The City has approved the Developer’s site plan for the Property, and the City Council of the City has approved the granting to the Developer of a vested right to develop the Property in accordance with such approved site plan and this Agreement. (Such approved site plan is referred to in this Agreement as the “**Approved Site Plan**”.) The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements on or near the Property and limiting the harmful effects of substandard developments. The purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself and 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. State law, the Colorado Constitution and the City’s land development ordinances authorize the mutual promises, covenants and obligations contained in this Agreement.

For valuable consideration, the receipt and adequacy of which is acknowledged, the parties agree as follows:

2. **Effective Date:** The Effective Date of this Agreement will be the date that this Agreement is signed by the last party to sign.

DEVELOPER’S OBLIGATION

3. **Improvements:** From and after the Effective Date, the Developer is hereby authorized by the City to, and the Developer shall, construct and install at its own expense, in accordance with the Approved Site Plan, those on-site and off-site improvements listed on Exhibits B1, B2 and B3, attached hereto and incorporated herein by this reference (“**the Improvements**” or “**Improvements**”). The Developer, depending on the timing of the development of the Property and other projects in the area, may be relieved of its obligation to construct and install the Improvements listed on Exhibit B3 (the “**Exhibit B3 Improvements**”). Relief, if any, from construction of the Exhibit B3 Improvements shall be granted by the City in writing to the Developer. The Developer shall guarantee the completion of all Improvements as provided for in this Agreement; provided, however, if the City requires another party to complete the Exhibit B3 Improvements as provided herein, the Developer shall not be deemed to have guaranteed completion of the Exhibit B3 Improvements by such other party. The Developer agrees to pay the City for inspection services performed by the City in connection with monitoring and enforcing the terms of this Agreement. The hourly rate of “in-house” City inspection services is \$45.00

per hour. The obligation of the Developer to complete the Improvements is and will be independent of any obligations of the City contained herein.

4. **Initial Right of Way:** Upon full execution of this Agreement, the Developer shall convey and/or cause to be conveyed to the City in fee simple the right of way parcels more particularly described on Exhibit D, attached hereto and incorporated herein by this reference (the "**Initial Right of Way**"). The City acknowledges that third parties other than the Developer own certain of the right of way parcels included as part of the Initial Right of Way. The Developer has agreements in place with such third parties obligating them to convey their respective right of way parcels to the City, and upon full execution of this Agreement the Developer will arrange with those third parties for the conveyance of such right of way parcels to the City. The Developer shall not be permitted to commence any development on the Property until all of the Initial Right of Way has been conveyed to the City in fee simple.

5. **Mall Right of Way:** At such time, if ever, as the Developer is required by the terms of this Agreement to construct the Exhibit B3 Improvements, the Developer shall cause to be conveyed to the City in fee simple the right of way parcels more particularly described on Exhibit E, attached hereto and incorporated herein by this reference (the "**Mall Right of Way**"); provided, however, the City agrees that in the event the owner(s) of the property of which the Mall Right of Way is presently a part shall ever seek approval, permission or the like to undertake any activity on all or any portion of such property, to the extent the City may legally do so, the City will require such owner(s) to convey the Mall Right of Way to the City as a condition of such approval, permission or the like. In the event the City requires a party other than the Developer to complete the Exhibit B3 Improvements as provided herein, it shall be the responsibility of either the City or such other party, and not the Developer, to obtain the Mall Right of Way.

6. **Market Street Adjacent to Lot 2A:** As a condition to receiving City approval of the development of Lot 2A, Mesa Village Subdivision, the City agrees that it shall require the owner of Lot 2A, to (i) convey to the City the additional right of way required to complete Market Street to its full width along the present boundary between Lot 2A and the Property, and (ii) to complete construction of Market Street to its full width along the present boundary between Lot 2A and the Property.

7. **Construction Easements:** The City hereby grants to the Developer a construction easement to go upon City property, rights of way and easements as may be reasonably required by the Developer or its agents, employees or contractors to construct the Improvements in accordance with the Approved Site Plan.

8. **Security:** To secure the performance of its obligations under this Agreement, the Developer shall arrange for issuance to the City of a letter of credit in the form attached as Exhibit C and in an amount equal to 100% of the aggregate estimated cost of the Improvements as reflected on Exhibits B1, B2 and B3. Such letter of credit is hereinafter referred to as "**the Guarantee.**"

9. **Standards:** All Improvements shall be constructed in accordance with the Approved Site Plan.

10. **Warranty:** The Developer warrants that each Improvement constructed by the Developer will be free from defects for a period of twelve (12) months from the date that the City Engineer accepts or approves such Improvement.

11. **Commencement and Completion Periods:** The Improvements, each and every one of them, shall be constructed according to the following schedule:

A. Construction of the Phase I of the Improvements (those Improvements identified on Exhibit B1 (the "**Phase I Improvements**") shall be commenced upon the earlier to occur of (a) the commencement of development of either Lot 3A or Lot 4A, Mesa Village Subdivision, (b) the commencement of development of the Property, or (c) the first (1st) anniversary of the Effective Date of this Agreement, and shall be completed within six (6) months after the commencement of construction of the Phase I Improvements (the "**First Completion Deadline**").

B. Phase II of the Improvements (those Improvements shown on Exhibits B2 and B3 – the "**Phase II Improvements**") shall be completed on or before the date that is five (5) years following completion of the Phase I Improvements (the "**Second Completion Deadline**"). Notwithstanding the foregoing, the Exhibit B3 Improvements (i.e., the traffic signal and appurtenances) may be completed sooner and paid for by others as provided herein.

Notwithstanding the foregoing schedule, the parties acknowledge and agree that the City shall be legally entitled, upon written notice to the Developer, to require the Developer to commence and complete construction of all Phase II Improvements (other than the Exhibit B3 Improvements) prior to the Second Completion Deadline if (and without regard to whether the Developer has begun any development of the Property), (a) development begins on the property located to the north of the Property (tax parcel #2945-043-00-168), (b) the City is in the process of obtaining (either through the voluntary cooperation of affected property owners or through condemnation proceedings) all public right-of-way required to extend Market Street to F1/2 Road, and (c) the City is requiring the owner(s) of all property located to the north of the Property over which Market Street will pass to extend Market Street to F1/2 Road concurrently with the Developer's extension of Market Street to the north property line of the Property. For purposes hereof, development shall be deemed to have begun on the property located to the north of the Property at such time as the City has issued a Planning Clearance for such development to the owner of such property.

The Developer will be relieved of its obligation to construct the Exhibit B3 Improvements if, prior to the Second Completion Deadline, the City notifies the Developer in writing that the activities of another person, developer or entity will cause the capacity of the intersection of Patterson Road and Market Street to be exceeded and that the Exhibit B3 Improvements are warranted as determined by the City. In such case, the City shall cause the person, developer or entity whose activities have created the need for the Exhibit B3 Improvements to construct the Exhibit B3 Improvements in accordance with the Approved Site Plan, and the Developer shall be relieved of its obligation to construct the Exhibit B3 Improvements. The Developer shall not be entitled to claim or receive any interest, money or value for the security or lost profit or advantage of having posted the Guarantee for the Exhibit B3 Improvements if those Improvements are constructed by another party. Notwithstanding the foregoing, if the City exercises its option pursuant to the preceding paragraph to require the Developer to complete construction of all Phase II Improvements (other than the Exhibit B3 Improvements) upon the

commencement of development on the property located to the north of the Property (tax parcel #2945-043-00-168), the City will require the owner of the property located to the north of the Property to construct the Exhibit B3 Improvements in accordance with the Approved Site Plan.

The cessation of construction activity by Developer after completion of the Phase I Improvements shall not constitute abandonment.

12. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations when fulfilling its obligations under this Agreement.

13. **Notice of Defect:** The Developer's engineer shall provide timely notice to the Developer, the Developer's contractor, the issuer of the Guarantee, and the City Engineer whenever inspection reveals, or the Developer's engineer otherwise has knowledge, that an Improvement constructed by the Developer does not conform to the Approved Site Plan or is otherwise defective. The Developer will have thirty (30) days from the issuance of such notice to correct the defect. The City may grant reasonable extensions of such thirty (30) day correction period.

14. **Acceptance of Improvements:** No final acceptance and/or approval of any Improvement constructed by the Developer shall be effective until the Developer has delivered a document or documents to the City Engineer, reviewed and approved by the City Attorney, showing that any liens, monetary encumbrances or other restrictions on such Improvements have been accepted by the City Attorney. Prior to requesting final acceptance of any Improvement(s), the Developer shall furnish to the City as-built drawings in reproducible form, blue lines stamped and sealed by a Colorado registered professional engineer, a computer disk or disks in a format/language specified by the City and copies of results of all construction control tests required by City specification. Approval and/or acceptance of any Improvement does not constitute a waiver by the City of any rights it may have on account of any defect in or failure of such Improvement that is detected before the expiration of the warranty period on such Improvement. Acceptance of an Improvement shall be in writing, prepared by the City Engineer, and shall state that the Developer has fully complied with the Approved Site Plan and provided testing results and drawings as required with respect to each Improvement.

15. **Reduction of Security:** After the written acceptance of any Improvement by the City Engineer, the amount which the City is entitled to receive, draw on or benefit from under the Guarantee shall be reduced by an amount equal to 90% of the estimated cost of such Improvement as shown in Exhibit B1, B2 or B3, as applicable. Further, in the event the City requires a party other than the Developer to complete the Exhibit B3 Improvements as provided herein, the amount which the City is entitled to receive, draw on or benefit from under the Guarantee shall be reduced by 100% of the City's estimated cost of the Exhibit B3 Improvements as shown on Exhibit B3. At the written request of the Developer, the City will (a) execute a certificate verifying that written acceptance of the Improvement has occurred and waiving its right to draw on the Guarantee to the extent of such amount, and (b) take whatever other action is reasonably required such that the reduction amount is released, subject to the Developer's warranty obligations. If the Developer is in default under this Agreement, however, the Developer will have no right to such certification or reduction. Upon the acceptance of each Improvement, the remaining balance that may be collected from or drawn on under the Guarantee with respect to such Improvement (no less than 10% of the estimated cost of such Improvement) shall be

available to the City for up to three (3) months after the expiration of the warranty period with respect to such Improvement.

16. **Use of Proceeds:** The City will use the Guarantee provided by the Developer pursuant to this Agreement only for the purpose of completing the Improvements and/or correcting defects in or failure of the Improvements.

17. **Events of Default:** The following conditions, occurrences or actions will constitute a default by the Developer under this Agreement:

- A. Developer's failure to complete each phase of the Improvements in conformance with the time schedule provided;
- B. Developer's failure to demonstrate reasonable intent and/or ability to correct defective construction of any Improvement within the applicable correction period;
- C. 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;
- D. Notification to the City, by any lender with a lien on the Property, of a default by the Developer on an obligation of the Developer secured by the Property; or
- E. Initiation of a foreclosure action on any lien against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure.

In the event of a default by the Developer under Paragraph 17.C. above, the City may immediately declare a default without affording the Developer an opportunity to cure the same. Otherwise, the City may not declare a default until written notice of such default has been sent to the Developer at the address set forth in Paragraph 29 of this Agreement and the Developer has been provided a reasonable period of time given the nature of the alleged default (but in no event less than fifteen (15) days) to cure such default.

18. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements, plus reasonable City administrative expenses. Administrative 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 or repair of the Improvements. For Improvements upon which construction has not begun, the estimated cost of the Improvements as shown on Exhibits B1, B2 and B3 will be *prima facie* evidence of the minimum cost of completion; provided, however, neither that amount nor the amount of the Guarantee shall establish the maximum amount of the Developer's liability.

19. **City's Rights Upon Default:** When any event of default occurs, then following the expiration of a reasonable notice and cure period given the nature of the alleged default (in no event less than fifteen (15) days) without such default having been cured, the City may draw on the Guarantee by selling or otherwise converting the Guarantee to the full amount pledged less ninety percent (90%) of the estimated cost (as shown on Exhibits B1, B2 and B3) of all Improvements

previously accepted by the City. The City will have the right to complete Improvements itself or it may contract with a third party for completion of the Improvements in accordance with the Approved Site Plan, and the Developer grants to the City, its successors, assigns, agents, contractors and employees a nonexclusive right and easement to enter the Property as reasonably required for the purposes of constructing, reconstructing, maintaining and repairing such Improvements. Alternatively, the City may assign all or a portion of the proceeds of the Guarantee to a subsequent developer (or lender) who has acquired the Property by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if, and only if, the subsequent developer (or lender) agrees in writing to complete the unfinished Improvements in accordance with the Approved Site Plan and provides to the City reasonable security for the obligation. In addition, the City may also enjoin the sale, transfer or conveyance of the Property, in whole or in part, until the Improvements are completed and accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

20. **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 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 the construction of the Improvements pursuant to this Agreement (including third parties claiming through or as a successor or grantee of the Developer) until such time as the Improvements are accepted in writing and the Developer's warranty obligations have been satisfied. 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 nonperformance of work pursuant to this Agreement, except where such suit is brought by the Developer against the City. The Developer is not an agent or employee of the City. Notwithstanding the foregoing, however, the Developer shall be released from its obligations under this paragraph if, with the consent of the City obtained as provided in Paragraph 28 hereof, the Developer has conveyed the Property to another party and assigned its rights and obligations under this Agreement to such party and such party has assumed the Developer's obligations hereunder and posted security satisfactory to the City in replacement of the Guarantee.

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

22. **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 on behalf of the Developer by its authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

23. **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, 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.

24. **Integration:** This Agreement, together with the exhibits and attachments hereto, the Approved Site Plan, and the City Council approval of the granting to the Developer of a vested right to develop the Property in accordance with the Approved Site Plan and this Agreement, constitutes the entire agreement between the parties and no statement(s), promise(s) or inducement(s) that is/are not contained in this Agreement, the Approved Site Plan or the City Council approval will be binding on the parties.

25. **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.

26. **Time:** For the purpose of computing any Completion Period, and time periods for City action, such times in which war, civil disasters or acts of God occur or exist will not be included if such times prevent the Developer or City from performing its obligations under the Agreement.

27. **Severability:** If any part, term or provision of this Agreement 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 rights of the parties will be construed as if the part, term or provision was never part of the Agreement.

28. **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. The City shall have the right to assign its rights under this Agreement insofar as is reasonably necessary to obtain completion of any Improvements which the Developer has failed to complete in accordance with this Agreement. The City will release the original Developer's Guarantee or obligations, only if done expressly, if it accepts new security from any developer or lender who obtains clear title to the Property; however, no other act of the City will constitute a release of the original Developer from its liability under this Agreement. When the Improvements are completed and approved by the City, the City agrees to state such fact in writing, with appropriate acknowledgments. The City will sign a release only after all warranty periods, as extended by litigation, repair or alteration work, have expired.

29. **Notice:** Any notice required or permitted by this Agreement will 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:

Michael D. Gorge
ATMF-Grand Junction, LLC
6735 Telegraph Road, Suite 110
Bloomfield Hills, MI 48301-3143

With a copy to: Terrance A. Noyes
 c/o Ballard, Spahr, Andrews & Ingersoll, LLP
 1225 17th Street, Suite 2300
 Denver, CO 80202

If to City: City of Grand Junction
 Community Development Director
 c/o Kelly Arnold
 City Manager
 250 North 5th Street
 Grand Junction, Colorado 81501

With a copy to: John P. Shaver
 c/o Office of the City Attorney
 250 North 5th Street
 Grand Junction, Colorado 81501

30. **Recordation:** Developer will pay for all costs to record this Agreement or a Memorandum thereof in the Clerk and Recorder's Office of Mesa County, Colorado.

31. **Immunity:** Nothing contained in this Agreement constitutes a waiver of the City's sovereign or other immunity under any applicable law.

32. **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, letter of credit, improvements disbursements agreement or cash escrow agreement or any action to collect security will be deemed to be proper only if such action is commenced in Mesa County, Colorado. The Developer expressly waives its right to bring such action in or to remove such action to any other court whether state or federal.

33. **Conditions of 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 Improvements shall have been finally accepted by the City.

[SIGNATURE PAGE FOLLOWS]

34. **Phased Development:** The City is allowing Market Street to be constructed in stages. The Developer agrees that it shall construct the adjacent curb, gutter and sidewalk in the locations shown on the approved plans and shall construct the required width of pavement, gutter, sidewalk, end-transitions, intersection paving, drainage facilities and construction of adjustments to utilities necessary to open the street to traffic. To the extent necessary or required, the Approved Site Plan is incorporated herein by this reference as if fully set forth.

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



Katherine M. Portner 6-21-01
Katherine M. Portner date
Acting Director of Community Development

Stephanie Nye by Theresa J. Martinez, Deputy
Stephanie Nye 6-21-01 date
City Clerk

ATMF-Grand Junction, LLC
Michael D. Gorge 6/14/01
Michael D. Gorge, Member date

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Lot 1A, Mesa Village Subdivision, Grand Junction, Mesa County, Colorado

EXHIBIT B1
PHASE I – IMPROVEMENTS

[Attach Exhibit]

EXHIBIT "B1"
MESA VILLAGE MARKETPLACE
PHASE - I - CONSTRUCTION COSTS
 ENGINEERS OPINION OF COST

Phase I includes the widening of Patterson Road to meet the current City standards as well as improvements to Market street through the internal four way intersection. The widening of Patterson Road includes curb, gutter and sidewalks on the north side, asphalt widening on the south side and the handicap ramp and pipe exte at The Bank. It does not include the radii and handicap ramp at the southwest corner of the intersection on Mal Phase I includes the water, sewer and storm sewer improvements that fall under both the Patterson Road widen Market street. The storm sewer quantities include the line running through lots 3A and 4A to Leach Creek.

DATE: 5/10/2001
NAME OF DEVELOPMENT: ATMF, GRAND JUNCTION LLC

PRINTED NAME OF PERSONS PREPARING: JIM LANGFORD

**PATTERSON ROAD
 CONSTRUCTION COST ESTIMATE:**

Water System:		UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
1	Reset Water Meter	EA	1	\$200.00	\$200.00
2	Reset Water Valve	EA	1	\$200.00	\$200.00
3	2" PVC Waterline	LF	36	\$9.00	\$324.00
4	6" PVC Waterline	LF	36	\$12.00	\$432.00
5	Meter Pit	EA	1	\$300.00	\$300.00
6	Single Check Leak Detector in Valve Pit	EA	1	\$600.00	\$600.00
7	8" x 6" Tapping Saddle & Valve	EA	1	\$2,800.00	\$2,800.00
8	8" x 2" Tapping Saddle & Valve	EA	1	\$1,000.00	\$1,000.00
Sub-Total Potable Water:					\$5,856.00
Sanitary Sewer System:		UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
1	Cut and Plug Inlet Lines from North	EA	1	\$150.00	\$150.00
2	Adjust Existing MH Rim	EA	1	\$200.00	\$200.00
Sub-Total Sanitary Sewer:					\$350.00
Patterson Road Grading and Paving		UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
1	Unclassified Excavation	CY	638	\$3.00	\$1,914.00
2	Unclassified Embankment	CY	178	\$4.50	\$801.00
3	8" Class 6 Aggregate Base Course	CY	411	\$28.00	\$11,508.00
4	6" Class 6 Aggregate Base Course	CY	71	\$31.00	\$2,201.00
5	4" Class 6 Aggregate Base Course	CY	61	\$45.00	\$2,745.00
6	6" Asphalt (Grading C)	SY	1,625	\$13.00	\$21,125.00
7	2.0' Vertical Curb and Gutter	LF	332	\$11.00	\$3,652.00
8	8.0' Vertical Curb Gutter and Sidewalk	LF	542	\$27.00	\$14,634.00
9	6.0' Detached Concrete Sidewalk	LF	306	\$15.00	\$4,590.00
10	Pan and Handicap ramps (North side)	SY	74	\$35.00	\$2,590.00
11	Radii and Handicap ramp (The Bank)	SY	45	\$35.00	\$1,575.00

12	Relocate Sign	EA	3	\$50.00	\$150.00
13	Removal and Dispose Asphalt	SY	1,315	\$3.50	\$4,602.50
14	Remove Trees	EA	4	\$250.00	\$1,000.00
15	Removal Guard Rail	LF	95	\$3.00	\$285.00
16	Install New Guard Rail	LF	68	\$28.00	\$1,904.00
17	Remove Curb and Gutter	LF	248	\$3.50	\$868.00
18	Pavement Marking Paint	GAL	10	\$55.00	\$550.00
19	Traffic Control	LS	1	\$8,000.00	\$8,000.00
Sub-Total Patterson Road Grading and Paving:					\$84,694.50

Storm Drainage:		UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
1	Adjust Existing Grate to Grade	EA	1	\$350.00	\$350.00
2	Adjust Existing MH Rim	EA	2	\$200.00	\$400.00
3	30" HDPE Pipe	LF	9	\$44.00	\$396.00
4	24" CMP Pipe (The Bank)	LF	12	\$48.00	\$576.00
5	Regrade area around 24" pipe extension (The Bank)	SF	687	\$0.75	\$515.25
6	18" RCP Pipe	LF	34	\$38.00	\$1,292.00
7	Standard Curb Opening Inlet	EA	3	\$1,500.00	\$4,500.00
8	Remove Concrete Pan	EA	2	\$200.00	\$400.00
9	Remove Type C Inlet	EA	2	\$800.00	\$1,600.00
Sub-Total Storm Drainage:					\$10,029.25

Supplemental (Subgrade Stabilization):		UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
1	12" Class 2 Aggregate Sub Base Course	CY	155	\$24.00	\$3,720.00
2	Mirafi 500X Where Soft Subsoil Conditions are Encountered (To be at discretion of Engineer)	SY	463	\$3.00	\$1,389.00
Sub-Total Supplemental:					\$5,109.00

TOTAL PATTERSON ROAD CONSTRUCTION COSTS: \$106,038.75

MARKET STREET CONSTRUCTION COST ESTIMATE:

Grading and Paving		UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
1	Clearing & Grubbing	AC	1	\$250.00	\$250.00
2	Unclassified Excavation	CY	710	\$3.00	\$2,130.00
3	Unclassified Embankment	CY	376	\$4.50	\$1,692.00
4	6" Class 6 Aggregate Base Course	CY	574	\$28.00	\$16,072.00
5	4" Class 6 Aggregate Base Course	CY	0	\$45.00	\$0.00
6	12" Class 2 Aggregate Sub Base Course	CY	962	\$24.00	\$23,088.00
7	4" Asphalt (Grading C)	SY	2,855	\$9.50	\$27,122.50
8	2.0' Curb/Gutter	LF	238	\$11.00	\$2,618.00
9	7.0' Curb Gutter and Sidewalk	LF	268	\$24.00	\$6,432.00
10	Pan and Handicap ramps	SY	298	\$35.00	\$10,430.00
11	Removal and Dispose Asphalt	SY	167	\$3.50	\$584.50
12	Removal and Dispose Concrete	SY	57	\$7.00	\$399.00

- 13 Remove Curb and Gutter
- 14 Pavement Marking Paint

LF	369	\$3.50	\$1,291.50
GAL	5	\$55.00	\$275.00
Sub-Total Market Street Grading and Paving:			\$92,384.50

Water System:		UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
1	8-inch C900 waterline	LF	411	\$18.00	\$7,398.00
2	6-inch C900 waterline	LF	186	\$16.00	\$2,976.00
3	8-inch GV&B	EA	1	\$700.00	\$700.00
4	6-inch GV&B	EA	3	\$650.00	\$1,950.00
5	2-inch Service Tap	EA	1	\$200.00	\$200.00
6	2-inch PVC Service line	LF	95	\$12.00	\$1,140.00
7	Bends, Tees & Plugs	EA	7	\$350.00	\$2,450.00
8	Fire Hydrant Assemblies (w/o Tee or pipe)	EA	2	\$2,200.00	\$4,400.00
Sub-Total Water System:					\$21,214.00

Sewer System:		UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
1	8-inch SDR-35 PVC sewer line	LF	0	\$19.50	\$0.00
2	4-inch SDR-35 PVC Service line	LF	0	\$16.00	\$0.00
3	Manholes	EA	0	\$1,800.00	\$0.00
4	Adj. Manholes	EA	1	\$250.00	\$250.00
Sub-Total Sewer System:					\$250.00

Storm Drainage:		UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
1	Std. Curb Inlet	EA	2	\$1,150.00	\$2,300.00
2	CDOT Type C Inlet	EA	1	\$1,150.00	\$1,150.00
3	Storm Manhole	EA	2	\$1,750.00	\$3,500.00
4	18" HDPE Pipe	LF	90	\$32.00	\$2,880.00
5	24" HDPE Pipe	LF	60	\$34.00	\$2,040.00
6	30" HDPE Pipe	LF	20	\$44.00	\$880.00
7	36" HDPE Pipe	LF	637	\$58.00	\$36,946.00
8	18" Dia. Riprap over 500x Mirafi	CY	28	\$55.00	\$1,540.00
Sub-Total Storm Drainage:					\$51,236.00

Supplemental (Subgrade Stabilization):		UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
1	12" Class 2 Aggregate Sub Base Course	CY	382	\$24.00	\$9,168.00
2	Mirafi 500X Where Soft Subsoil Conditions are Encountered (To be at descretion of Engineer)	SY	1,145	\$3.00	\$3,435.00
Sub-Total Supplemental:					\$12,603.00

TOTAL MARKET STREET CONSTRUCTION COSTS: \$177,687.50

**LEACH CREEK PEDESTRIAN RECREATION PATH
CONSTRUCTION COST ESTIMATE:**

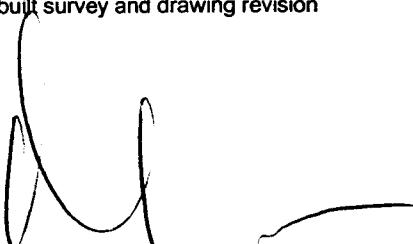
Site Grading and Paving		UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
1	10.0' Pedestrian Recreation Path	LF	176	\$18.00	\$3,168.00
2	4" Class 6 Aggregate Base Course	CY	25	\$35.00	\$875.00
3	Site Grading	LF	176	\$7.50	\$1,320.00
Sub-Total Recreation Path:					\$5,363.00

TOTAL LEACH CREEK PED. PATH CONSTRUCTION COSTS: \$5,363.00

TOTAL CONSTRUCTION COSTS OF PUBLIC IMPROVEMENTS: \$289,089.25

Miscellaneous	PERCENTAGE OF TOTAL CONSTRUCTION COST:	TOTAL PRICE
1 Construction Phase Engineering	0.75%	\$2,168.17
2 Construction Phase Surveying	3.00%	\$8,672.68
3 Development Inspection Costs	2.00%	\$5,781.79
4 Quality Control	3.00%	\$8,672.68
5 City Inspection	0.75%	\$2,168.17
6 As-built survey and drawing revision	1.00%	\$2,890.89
Miscellaneous:		\$30,354.37

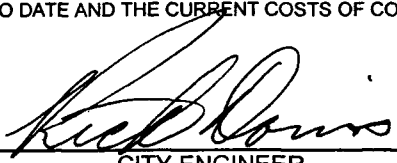
GRAND TOTAL: \$319,443.62



SIGNATURE OF DEVELOPER

6/14/01
DATE

I HAVE REVIEWED THE ESTIMATED COSTS AND TIME SCHEDULE SHOWN ABOVE AND, BASED ON THE PLAN LAYOUTS SUBMITTED TO DATE AND THE CURRENT COSTS OF CONSTRUCTION TAKE NO EXCEPTION TO THE ABOVE.



CITY ENGINEER

6/21/01
DATE



COMMUNITY DEVELOPMENT

6-21-01
DATE

EXHIBIT B2
PHASE II – IMPROVEMENTS

Book 2937 Page 873

[Attach Exhibit]

EXHIBIT "B2"
MESA VILLAGE MARKETPLACE
PHASE - II - CONSTRUCTION COSTS
 ENGINEERS OPINION OF COST

DATE: 5/20/2001
NAME OF DEVELOPMENT: ATMF, GRAND JUNCTION LLC

PRINTED NAME OF PERSONS PREPARING: JIM LANGFORD

Phase II includes completing the remainder of the Market Street improvements, including water, sewer and drainage improvements to the north line of Lote 1A. Market street will be completed as a half street improvement. Curb, gutter and sidewalk will be installed on the east side only. The remainder of the street with the westerly curb, gutter and sidewalk will be complete when lot 2A develops. The Phase II signal and striping improvements for Patterson Road, are shown on Exhibit B3 as well as the remainder of the improvements at the southwest corner of the Mall intersection.

**MARKET STREET
 CONSTRUCTION COST ESTIMATE:**

		UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
Grading and Paving					
1	Clearing & Grubbing	AC	1	\$250.00	\$250.00
2	Unclassified Excavation	CY	26	\$3.00	\$78.00
3	Unclassified Embankment	CY	750	\$4.50	\$3,375.00
4	6" Class 6 Aggregate Base Course	CY	917	\$28.00	\$25,676.00
5	4" Class 6 Aggregate Base Course	CY	0	\$45.00	\$0.00
6	12" Class 2 Aggregate Sub Base Course	CY	767	\$24.00	\$18,408.00
7	4" Asphalt (Grading C)	SY	1,828	\$9.50	\$17,366.00
8	2.0' Curb/Gutter	LF	0	\$11.00	\$0.00
9	7.0' Curb Gutter and Sidewalk	LF	482	\$24.00	\$11,568.00
10	Radii and Handicap ramps	SY	202	\$35.00	\$7,070.00
11	Pavement Marking Paint	GAL	10	\$55.00	\$550.00
Sub-Total Market Street Grading and Paving:					\$84,341.00

		UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
Water System:					
1	8-inch C900 waterline	LF	594	\$18.00	\$10,692.00
2	6-inch C900 waterline	LF	26	\$16.00	\$416.00
3	8-inch GV&B	EA	4	\$700.00	\$2,800.00
4	6-inch GV&B	EA	2	\$650.00	\$1,300.00
5	2-inch Service Tap	EA	0	\$200.00	\$0.00
6	2-inch PVC Service line	LF	0	\$12.00	\$0.00
7	Bends, Tees & Plugs	EA	7	\$350.00	\$2,450.00
8	Fire Hydrant Assemblies (w/o Tee or pipe)	EA	2	\$2,200.00	\$4,400.00
Sub-Total Water System:					\$22,058.00

		UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
Sewer System:					
1	8-inch SDR-35 PVC sewer line	LF	98	\$19.50	\$1,911.00
2	4-inch SDR-35 PVC Service line	LF	0	\$16.00	\$0.00

3	Manholes	EA	2	\$1,800.00	\$3,600.00
4	Adj. Manholes	EA	0	\$250.00	\$0.00
Sub-Total Sewer System:					\$5,511.00

Storm Drainage:		UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
1	Std. Curb Inlet	EA	2	\$1,150.00	\$2,300.00
2	CDOT Type C Inlet	EA	0	\$1,150.00	\$0.00
3	Storm Manhole	EA	3	\$1,750.00	\$5,250.00
4	18" HDPE Pipe	LF	37	\$32.00	\$1,184.00
5	24" HDPE Pipe	LF	632	\$34.00	\$21,488.00
Sub-Total Storm Drainage:					\$30,222.00

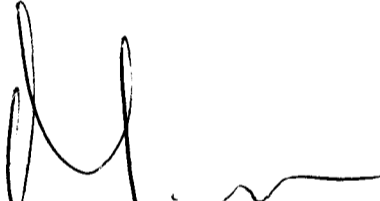
Supplemental (Subgrade Stabilization):		UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
1	12" Class 2 Aggregate Sub Base Course	CY	200	\$24.00	\$4,800.00
2	Mirafi 500X Where Soft Subsoil Conditions are Encountered (To be at discretion of Engineer)	SY	1,000	\$3.00	\$3,000.00
Sub-Total Supplemental:					\$7,800.00

TOTAL MARKET STREET CONSTRUCTION COSTS: \$149,932.00

TOTAL CONSTRUCTION COSTS OF PUBLIC IMPROVEMENTS: \$149,932.00

Miscellaneous	PERCENTAGE OF TOTAL CONSTRUCTION COST:	PRICE
1 Construction Phase Engineering	0.75%	\$1,124.49
2 Construction Phase Surveying	3.00%	\$4,497.96
3 Development Inspection Costs	2.00%	\$2,998.64
4 Quality Control	3.00%	\$4,497.96
5 City Inspection	0.75%	\$1,124.49
6 As-built survey and drawing revision	1.00%	\$1,499.32
Miscellaneous:		\$15,742.86

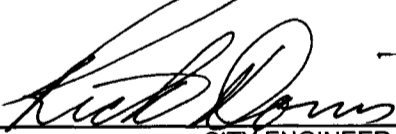
GRAND TOTAL: \$165,674.86



 SIGNATURE OF DEVELOPER

6/11/01
 DATE

I HAVE REVIEWED THE ESTIMATED COSTS AND TIME SCHEDULE SHOWN ABOVE AND, BASED ON THE PLAN LAYOUTS SUBMITTED TO DATE AND THE CURRENT COSTS OF CONSTRUCTION TAKE NO EXCEPTION TO THE ABOVE.



 CITY ENGINEER

6/21/01
 DATE

Kathleen M. Portman
COMMUNITY DEVELOPMENT

6-21-01
DATE

EXHIBIT B3

**PHASE II – TRAFFIC SIGNAL, STREET RECONSTRUCTION STRIPING AND LIGHTING
IMPROVEMENTS**

[Attach Exhibit]

EXHIBIT "B3"
MESA VILLAGE MARKETPLACE
PHASE - II - CONSTRUCTION COSTS
 ENGINEERS OPINION OF COST

This portion of the Phase II improvements includes the installation of the signal at Patterson Road, the modifications that will have to be made to the signal at the 24 Road intersection, the remainder of the improvements at the southwest corner of the Mall intersection and the restriping of Patterson Road as well as a portion of the stiping on Market Street to accommodate the signalized intersection.

DATE: 5/10/2001
NAME OF DEVELOPMENT: ATMF, GRAND JUNCTION LLC

PRINTED NAME OF PERSONS PREPARING: JIM LANGFORD

PATTERSON ROAD
CONSTRUCTION COST ESTIMATE:

Patterson Road Grading and Paving		UNITS	QUANTITY	PRICE	PRICE
1	Market Street Traffic Signal	LS	1	\$120,000.00	\$120,000.00
2	24 Road Traffic Signal Modifications	LS	1	\$40,000.00	\$40,000.00
3	2.0' Median Vertical Curb and Gutter (Mall Entr.)	LF	32	\$15.00	\$480.00
4	Radii and Handicap ramp (Mall Entr.)	SY	45	\$35.00	\$1,575.00
5	Retaining Wall (Mall Entr.)	LF	20	\$125.00	\$2,500.00
6	Hand Rail (Mall Entr.)	LF	14	\$150.00	\$2,100.00
7	Remove Median Curb and Gutter (Mall Entr.)	LF	48	\$3.50	\$168.00
8	Patch Asphalt (Mall Entr.)	SY	11	\$35.00	\$385.00
9	Remove Existing Pavement Markings	LF	8,455	\$0.50	\$4,227.50
10	Pavement Marking Paint	GAL	68	\$55.00	\$3,740.00
11	Traffic Control	LS	1	\$8,000.00	\$8,000.00

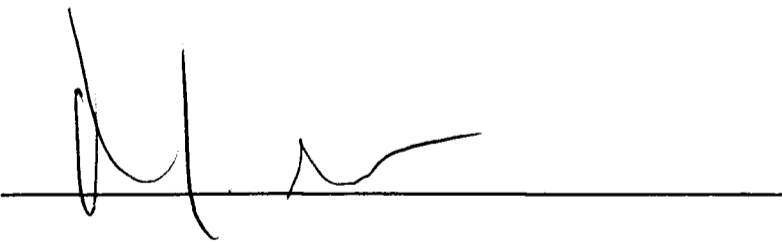
Sub-Total Patterson Road Grading and Paving: \$183,175.50

TOTAL PATTERSON ROAD CONSTRUCTION COSTS: \$183,175.50

TOTAL CONSTRUCTION COSTS OF PUBLIC IMPROVEMENTS: \$183,175.50

Miscellaneous	PERCENTAGE OF TOTAL CONSTRUCTION COST:	PRICE
1 Construction Phase Engineering	0.75%	\$1,373.82
2 Construction Phase Surveying	3.00%	\$5,495.27
3 Development Inspection Costs	2.00%	\$3,663.51
4 Quality Control	3.00%	\$5,495.27
5 City Inspection	0.75%	\$1,373.82
6 As-built survey and drawing revision	1.00%	\$1,831.76
	Miscellaneous:	\$19,233.43

GRAND TOTAL: \$202,408.93

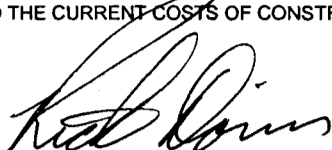


6/14/01

SIGNATURE OF DEVELOPER

DATE

I HAVE REVIEWED THE ESTIMATED COSTS AND TIME SCHEDULE SHOWN ABOVE AND, BASED ON THE PLAN LAYOUTS SUBMITTED TO DATE AND THE CURRENT COSTS OF CONSTRUCTION TAKE NO EXCEPTION TO THE ABOVE.


CITY ENGINEER

6/21/01
DATE


COMMUNITY DEVELOPMENT

6-21-01
DATE



Exhibit "c"

U.S. BANK NATIONAL ASSOCIATION
INTERNATIONAL DEPARTMENT
1420 FIFTH AVENUE, 9TH FLOOR
SEATTLE, WA 98101 U.S.A.

SWIFT:USBKUS44SEA
TELEX:6733211USBW
PHONE:206-344-3711
FAX:206-344-5374

LETTER OF CREDIT
ADVISING COVER LETTER

DATE: SEPTEMBER 26, 2001

BENEFICIARY:
THE CITY OF GRAND JUNCTION COLORADO
250 NORTH 5TH STREET
GRAND JUNCTION, CO 81501-2668

U.S. BANK REFERENCE NUMBER: ELCSSSEA18052
LETTER OF CREDIT NUMBER: S533691
AMOUNT: USD 687,527.41
ISSUING BANK: LASALLE BANK N.A. CHICAGO, ILLINOIS

We enclose the original of the above-mentioned letter of credit.

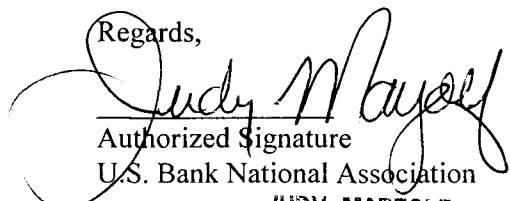
This letter of credit is subject to the "Uniform Customs and Practices for Documentary Credits" (1993 Revision) International Chamber of Commerce Publication No. 500.

IMPORTANT

We hereby add our confirmation to this letter of credit provided all terms and conditions are strictly complied with and original letter of credit and any amendments, draft(s) and documents have been presented at our counters or any U.S. Bank National Association branch within the expiry date of this credit. If drafts and documents are presented to a branch, copy of the original documents must be faxed to (206) 344-5369 for payment.

Our confirmation of this letter of credit shall be reviewed in JULY 2002, if at that time we elect not to renew our confirmation we will notify you at least 25 days prior to the expiration date of the letter of credit that we are revoking our confirmation.

If you have any questions, please feel free to call our office at the above listed number.

Regards,

Authorized Signature
U.S. Bank National Association
JUDY MARZOLF
ASSISTANT VICE PRESIDENT

Marianne VanWulfen
First Vice President
Commercial Real Estate

Standard Federal Bank
Member ABN AMRO Group
2600 West Big Beaver Road
Troy, Michigan 48084
248/816-4856 Fax: 248/816-4860
Email: marianne.vanwulfen@abnamro.com



EXHIBIT D
LEGAL DESCRIPTIONS OF INITIAL RIGHT OF WAY

Parcel 1 (Bank of Grand Junction)

A parcel for right-of-way purposes being a portion of a parcel of land described in an instrument recorded in Book 1519 at Page 196 of the Mesa County records, situated in the SW 1/4 of Section 4, Township I South, Range I West of the Ute Meridian, County of Mesa, State of Colorado, said right-of-way parcel being more particularly described as follows:

Beginning at a point on the Southerly right-of-way line of Patterson Road, at its intersection with the Westerly line of said parcel of land, whence the Northeast corner of Lot B of Mesa Mall's Second Minor Subdivision bears South 89°59'40" West, a distance of 75.00 feet;
 Thence along the Southerly right-of-way line of Patterson Road, North 89°59'40" East, a distance of 13.65 feet;
 Thence South 45°03'01" West, a distance of 19.28 feet to the Westerly line of said parcel of land;
 Thence along said Westerly line, North 00°00'20" West, a distance of 13.62 feet to the Point of Beginning.

Containing 0.002 Acres, more or less.

Parcel 4 (McZanc, LLC)

A parcel of land situated in Lot 3A, Replat of Mesa Village Subdivision, according to the plat recorded at Reception No. 1746811 of the Mesa County records, Mesa County, Colorado; being more particularly described as follows:

Beginning at a point on the West line of said Lot 3A, whence the Southwest corner of said Lot 3A bears South 00°06'21" West a distance of 2.00 feet;
 Thence along the West line of said Lot 3A, North 00°06'21" East, a distance of 64.69 feet to a point of cusp on a 152.00 foot radius curve concave to the southwest;
 Thence 81.52 feet southeasterly and southerly along the arc of said curve, through a central angle of 30°43'46", with a chord bearing South 36°34'32" East, a distance of 80.55 feet;
 Thence South 89°59'40" West, a distance of 48.12 feet to the Point of Beginning.

Containing 0.042 Acres, more or less.

Parcel 5 (McZanc, LLC)

A parcel of land situated in Lot 4A, Replat of Mesa Village Subdivision, according to the plat recorded at Reception No. 1746811 of the Mesa County records, Mesa County, Colorado; being more particularly described as follows:

Beginning at a point whence the Southeast corner of said Lot 4A bears South 00°00'20" East a distance of 5.00 feet and North 89°59'40" East, a distance of 15.18 feet;

Thence South 89°59'40" West, a distance of 42.62 feet to a point of cusp on a 105.00 foot radius curve concave to the southeast;
 Thence 68.90 feet along the arc of said curve, through a central angle of 37°35'54", with a chord bearing North 50°22'54" East, a distance of 67.67 feet;
 Thence South 00°06'21" West, a distance of 33.72 feet;
 Thence South 45°03'01" West, a distance of 13.35 feet to the Point of Beginning.

Containing 0.031 Acres, more or less.

Parcel 6 (McZanc, LLC)

A parcel of land situated in Lots 3A and 4A, Replat of Mesa Village Subdivision, according to the plat recorded at Reception No. 1746811 of the Mesa County records, Mesa County, Colorado; being more particularly described as follows:

Beginning at the Southeast corner of said Lot 4A;
 Thence along the South line of said Lots 3A and 4A, South 89°59'40" West, a distance of 347.50 feet;
 Thence along the South line of said Lot 3A, North 00°00'20" West, a distance of 3.00 feet; Thence along the South line of said Lot 3A, South 89°59'40" West, a distance of 199.99 feet to the Southwest corner of said Lot 3A;
 Thence along the West line of said Lot 3A, North 00°06'21" East, a distance of 2.00 feet;
 Thence North 89°59'40" East, a distance of 532.32 feet;
 Thence North 45°03'01 " East, a distance of 13.35 feet;
 Thence North 00°06'21 " East, a distance of 113.20 feet;
 Thence 45.58 feet along the arc of a 112-50 foot radius tangent curve to the left, through a central angle of 23°12'54", with a chord bearing North 11°30'06" West, a distance of 45.27 feet to the North line of said Lot 4A;
 Thence North 89°59'40" East, a distance of 14.86 feet to the Northeast corner of said Lot 4A; Thence South 00°06'21 " West, a distance of 172.00 feet to the Point of Beginning.

Containing 0.077 Acres, more or less.

Parcel 7 (ATMF-Grand Junction, LLC)

A parcel of land situated in Lot 1A, Replat of Mesa Village Subdivision, according to the plat recorded at Reception No. 1746811 of the Mesa County records, Mesa County, Colorado; being more particularly described as follows:

Beginning at the Northwest corner of said Lot 1A;
 1) Thence along the North line of said Lot 1A, South 89°58'30" East, a distance of 40.00 feet;
 2) Thence South 00°01'30" West, a distance of 514.95 feet;
 3) Thence 92.87 feet along the arc of a 124.00 foot radius tangent curve to the left, through a central angle of 42°54'45", with a chord bearing South 21°25'52" East, a distance of 90.72 feet;
 4) Thence South 87°38'08" East, a distance of 34.39 feet;
 5) Thence South 42°11'41 " East, a distance of 30.27 feet;

- 6) Thence North 89°59'40" East, a distance of 32.24 feet to the Northwest corner of Lot 5A of said Replat of Mesa Village Subdivision;
- 7) Thence along the line common to said Lots 1A and 5A, South 00°06'21" West, a distance of 39.50 feet to the corner common to said Lots 1A and 5A and Lot 2A of said Replat of Mesa Village Subdivision;
- 8) Thence along the line common to said Lots 1A and 2A, South 89°59'40" West, a distance of 161.00 feet to the corner common to said Lots 1A and 2A;
- 9) Thence along the line common to Lots 1A and 2A, North 00°06'20" East, a distance of 662.76 feet to the Point of Beginning.

Containing 0.786 Acres, more or less.

Parcel 8 (Paul & Norma Dibble; Gordon & Jane Moore; and George & Gwen Ferree)

A parcel of land situated in Lots 5A, Replat of Mesa Village Subdivision, according to the plat recorded at Reception No. 1746811 of the Mesa County records, Mesa County, Colorado; being more particularly described as follows:

Beginning at the Southwest corner of said Lot 5A;
 Thence along the West line of said Lot 5A, North 00°06'21" East, a distance of 231.75 feet to a point of cusp on a 183.25 foot radius curve concave to the west;
 Thence 110.82 feet southeasterly along the arc of said curve, through a central angle of 34°38'57", with a chord bearing South 17°13'08" East, a distance of 109.14 feet;
 Thence South 00°06'21" West tangent to said curve, a distance of 113.88 feet;
 Thence South 89°54'22" East, a distance of 16.13 feet;
 Thence South 44°56'59" East, a distance of 19.20 feet to the South line of said Lot 5;
 Thence South 89°59'40" West, a distance of 52.22 feet to the Point of Beginning.

Containing 0.155 Acres, more or less.

Easement 101 (McZanc, LLC)

A multipurpose easement across Lots 3A and 4A, Replat of Mesa Village Subdivision, according to the plat recorded at Reception No. 1746811 of the Mesa County records, Mesa County, Colorado; being more particularly described as follows:

Beginning at a point whence the Southeast corner of said Lot 4A bears South 00°00'20" East, a distance of 5.00 feet and North 89°59'40" East, a distance of 57.79 feet;
 Thence South 89°59'40" West, a distance of 441.58 feet;
 Thence 15.34 feet along the arc of a 152.00 foot radius non-tangent curve to the right, through a central angle of 5°47'01", with a chord bearing North 24°06'10" West, a distance of 15.34 feet; Thence North 89°59'40" East, a distance of 458.14 feet;
 Thence 17.40 feet along the arc of a 105.00 foot radius non-tangent curve to the left, through a central angle of 9°29'39", with a chord bearing South 36°19'47" West, a distance of 17.38 feet to the Point of Beginning.

Containing 0.145 Acres, more or less.

Easement 102 (McZanc, LLC)

A thirty foot utility easement across Lot 3A, Replat of Mesa Village Subdivision, according to the plat recorded at Reception No. 1746811 of the Mesa County records, Mesa County, Colorado; said vacated easement being more particularly described as follows:

Beginning at a point on the South line of said Lot 3A, whence the Southwest corner of said Lot 3A bears South 89°59'40" West, a distance of 155.00 feet;
 Thence North 00°06'21" East, a distance of 169.00 feet to the North line of said Lot 3A;
 Thence along the North line of said Lot 3A, North 89°59'40" East, a distance of 70.96 feet; Thence South 00°00'20" East, a distance of 15.00 feet;
 Thence South 89°59'40" West, a distance of 40.98 feet;
 Thence South 00°06'21" West, a distance of 154.00 feet to the South line of said Lot 3A;
 Thence South 89°59'40" West, a distance of 30.00 feet; to the Point of Beginning.

Containing 0.131 Acres, more or less.

Easement 103 (McZanc, LLC)

A twenty foot wide utility easement across Lot 3A, Replat of Mesa Village Subdivision, according to the plat recorded at Reception No. 1746811 of the Mesa County records, Mesa County, Colorado; said easement being more particularly described as follows:

Beginning at a point on the northerly line of an existing fifteen foot multi-purpose easement, whence the Southeast corner of said Lot 3A bears South 00°00'20" East a distance of 19.00 feet and North 89°59'40" East, a distance of 52.71 feet;
 Thence South 89°59'40" West, a distance of 20.00 feet;
 Thence North 00°00'20" West, a distance of 138.00 feet to the southerly line of an existing fifteen foot utility easement;
 Thence along said southerly line, North 89°59'40" East, a distance of 20.00 feet;
 Thence South 00°00'20" East, a distance of 138.00 feet to the Point of Beginning.

Containing 0.065 Acres, more or less.

Easement 105 (ATMF-Grand Junction, LLC)

An easement across Lot 1A, Replat of Mesa Village Subdivision, according to the plat recorded at Reception No. 1746811 of the Mesa County records, Mesa County, Colorado; being more particularly described as follows:

Beginning at a point on the North line of said Lot 1A, whence the Northwest corner of said Lot 1A bears North 89°58'30" West, a distance of 40.00 feet;
 Thence South 89°58'30" East, a distance of 14.00 feet;
 Thence South 00°01'30" West, a distance of 514.95 feet;

Thence 97.62 feet along the arc of a 110.00 foot radius tangent curve to the left, through a central angle of $50^{\circ}50'52''$, with a chord bearing South $25^{\circ}23'56''$ East, a distance of 94.45 feet;
Thence North $87^{\circ}38'08''$ West, a distance of 21.38 feet;
Thence 92.87 feet along the arc of a 124.00 foot radius non-tangent curve to the right, through a central angle of $42^{\circ}54'45''$, with a chord bearing North $21^{\circ}25'52''$ West, a distance of 90.72 feet;
Thence North $00^{\circ}01'30''$ East tangent to said curve, a distance of 514.95 feet to the Point of Beginning.

Easement 106 (ATMF-Grand Junction, LLC)

A 20.00 feet wide utility easement across Lot 1A, Replat of Mesa Village Subdivision, according to the plat recorded at Reception No. 1746811 of the Mesa County records, Mesa County, Colorado; said easement being more particularly described as follows:

Beginning at a point on the easterly line of said Lot 1A, whence the Northeast corner of said Lot 1A bears North $00^{\circ}07'48''$ East, a distance of 20.00 feet;
Thence South $00^{\circ}10'49''$ West, a distance of 20.00 feet;
Thence North $89^{\circ}58'30''$ West, a distance of 795.57 feet;
Thence North $00^{\circ}01'30''$ East, a distance of 20.00 feet;
Thence along said southerly line, South $89^{\circ}58'30''$ East, a distance of 795.60 feet to the Point of Beginning.

Containing 0.365 Acres, more or less.

EXHIBIT E
LEGAL DESCRIPTIONS OF MALL RIGHT OF WAY

Parcel 2 (SDG Macerich Properties, L.P.)

A parcel for right-of-way purposes being a portion of Lot A of Mesa Mall's Second Minor Subdivision, according to the plat recorded at Reception No. 1717252 of the Mesa County records, situated in the SW 1/4 of Section 4, Township I South, Range I West of the Ute Meridian, County of Mesa, State of Colorado, said parcel being more particularly described as follows:

Beginning at the corner common to said Lot A and Lot B of Mesa Mall's Second Minor Subdivision; Thence along the North line of said Lot A, North 89°59'40" East, a distance of 75.18 feet; Thence along the Easterly line of said Lot A, South 00°00'20" East, a distance of 13.62 feet; Thence South 45°03'01" West, a distance of 6.31 feet;
 Thence South 89°59'40" West, a distance of 10.70 feet;
 Thence North 00°06'20" East, a distance of 16.08 feet;
 Thence South 89°59'40" West, a distance of 45.00 feet;
 Thence South 00°06'20" West, a distance of 16.08 feet;
 Thence South 89°59'40" West, a distance of 14.60 feet;
 Thence North 44°56'59" West, a distance of 0.59 feet to the line common to said Lots A and B;
 Thence North 00°00'20" West, a distance of 17.67 feet to the Point of Beginning.

Containing 0.014 Acres, more or less.

Parcel 3

A parcel for right-of-way purposes being a portion of Lot B of Mesa Mall's Second Minor Subdivision, according to the plat recorded at Reception No. 1717252 of the Mesa County records, situated in the SW 1/4 of Section 4, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado, being more particularly described as follows:

Beginning at a point on the North line of said Lot B, whence the Northwest corner of Lot B of Mesa Mall's Second Minor Subdivision bears North 89°53'40" West, a distance of 526.85 feet; Thence South 89°53'40" East, a distance of 17.63 feet to the Northeast corner of said Lot B; Thence along the East line of said Lot B, South 00°06'21" West, a distance of 17.67 feet;
 Thence North 44°56'59" West, a distance of 24.96 feet to the Point of Beginning.

Containing 0.003 Acres, more or less.

MEMO TO FILE:

PER TIM MOORE AND JAMIE KRIELING THIS LETTER REPLACES THE
LETTER OF CREDIT.

MAY 5, 2004

for Mesa Village Marketplace
File VE-2000-061

original dated 9/25/01 & 9/26/01 for
\$687,527.41

Stum

ASSIGNMENT & ASSUMPTION OF OBLIGATIONS OF DEVELOPMENT IMPROVEMENT AGREEMENT

This Agreement is between the City of Grand Junction, a Colorado home rule municipality ("City"), ATMF-Grand Junction, LLC, a Colorado limited liability company (ATMF), and WTN CoEx I, LLC, a Colorado limited liability company ("WTN") (collectively "Parties") and is entered into this 5th day of May 2004:

RECITALS:

ATMF entered into a Vesting Agreement with the City on June 20, 2001, and a Development Improvements Agreement ("DIA") on June 21, 2001, for and concerning Lot 1A, Mesa Village Subdivision, real property in the City of Grand Junction, Mesa County, Colorado ("Property"). The Vesting Agreement is recorded in the Mesa County Clerk & Records records at Book 2937 and Pages 845 - 856. The DIA is recorded in the Mesa County Clerk & Records records at Book 2937 and Page 857 - 889.

ATMF desires to convey the Property and assign the Vesting Agreement and the DIA to WTN.

WTN agrees to assume all obligations of ATMF under the DIA and faithfully perform the obligations thereunder.

Pursuant to the terms of the DIA, express written approval must be obtained from the City in order for ATMF to assign the DIA.

For valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

1. Upon ATMF's conveyance of all rights, title, and interest in the Property and assignment of all rights and obligations in the Vesting Agreement to WTN, WTN accepts the conveyance and assignment. Upon ATMF's assignment of the DIA to WTN, WTN accepts the assignment and agrees to assume all rights and obligations of ATMF under the DIA and will fulfill the obligations of ATMF under the terms of the DIA.

2. Upon conveyance of the Property to WTN with clear title, the assignments and assumption completed, and WTN providing the City with cash at closing in the amount of \$328,083.79 to secure WTN's performance of the obligations under the DIA for Exhibits B2 and B3, then the City hereby releases ATMF from its personal obligation and shall return to ATMF the original of the Letter of Credit with number S533691 in the ordinary course of business. All burdens of the DIA shall be the personal obligation of WTN and also shall be binding on the heirs, successors and assigns of WTN and shall continue to be a covenant(s) running with the Property. The obligations of WTN to complete the Improvements required under the DIA are independent of any obligations of the City. All terms of the DIA remain in effect unaltered by substitution of WTN for ATMF except for the release of ATMF from any further obligation under the DIA as set forth above.

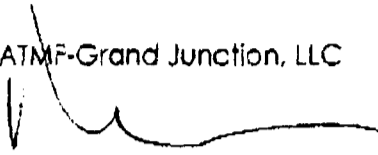
3. Any notice required or permitted under the DIA shall be addressed to the City as stated in the DIA but notice to WTN shall be as follows:

Name: WTN CoEx I, LLC
Address: c/o Jeffrey L. Ungerer
2231 SW Wanamaker Rd., Suite 300
Topeka, Kansas 66614

4. WTN shall pay all costs to record this Agreement in the Mesa County Clerk & Recorder's Office.

5. This Agreement may be executed by the parties in counterparts and such counterparts exchanged by facsimile transmission, and such counterparts shall together constitute this Agreement. However, each party shall also sign three original counterparts of this Agreement and provide one original counterpart signed by such party to each other party so that each party hereto shall have a fully executed original of this Agreement.

By: ATMF-Grand Junction, LLC



5/5/04
Date

Michael D. Gorge, Member

STATE OF MICHIGAN:

:SS

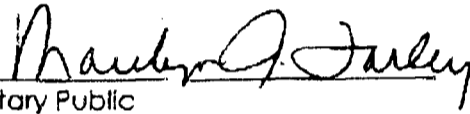
COUNTY OF OAKLAND :

Sworn to before me and subscribed in my presence by Michael D. Gorge, Member on this the 5th day of May 2004.

Witness my hand seal.

My commission expires: _____

MARILYN J. FARLEY
NOTARY PUBLIC OAKLAND CO., MI
MY COMMISSION EXPIRES May 28, 2007


Notary Public

By: WTN CoEx I, LLC

Jeffrey L. Ungerer, Managing Member Date

STATE OF _____ :
:SS
COUNTY OF _____ :

Sworn to before me and subscribed in my presence by Jeffrey L. Ungerer, Managing Member on this the _____ day of May 2004.

Witness my hand seal.

My commission expires: _____

Notary Public

Name: WTN CoEx I, LLC
Address: c/o Jeffrey L. Ungerer
2231 SW Wanamaker Rd., Suite 300
Topeka, Kansas 66614

4. WTN shall pay all costs to record this Agreement in the Mesa County Clerk & Recorder's Office.

5. This Agreement may be executed by the parties in counterparts and such counterparts exchanged by facsimile transmission, and such counterparts shall together constitute this Agreement. However, each party shall also sign three original counterparts of this Agreement and provide one original counterpart signed by such party to each other party so that each party hereto shall have a fully executed original of this Agreement.

By: ATMF-Grand Junction, LLC

Michael D. Gorge, Member Date

STATE OF MICHIGAN:

COUNTY OF _____ :
:ss

Sworn to before me and subscribed in my presence by Michael D. Gorge, Member on this the _____ day of May 2004.

Witness my hand seal.
My commission expires: _____

Notary Public

By: WTN CoEx I, LLC

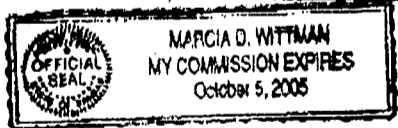
Jeffrey L. Ungerer 5-5-04
Jeffrey L. Ungerer, Managing Member Date

STATE OF KANSAS :
COUNTY OF SHAWNEE :
:ss

Sworn to before me and subscribed in my presence by Jeffrey L. Ungerer, Managing Member on this the 5th day of May 2004.

Witness my hand seal.
My commission expires: October 5, 2005

Marcia D. Wittman
Notary Public



By: City of Grand Junction

Pat Carl
Community Development Dept.

5/5/04
Date

Stephanie Tuin - Fwd: Mesa Village marketplace LOC

From: Jamie Kreiling
To: Stephanie Tuin
Date: 5/15/07 10:03 AM
Subject: Fwd: Mesa Village marketplace LOC
CC: John Shaver; Rick Dorris; Shelly Dackonish

Dear Stephanie:

According to the engineer for Mesa Village Marketplace we are now in a position to release the Letter of Credit (LOC). If you would please provide the LOC to our office, we will return it to the bank.

If you need more from us or from Planning, please let me know.

Thank you,

Jamie

>>> Rick Dorris 5/2/2007 11:53 AM >>>

ATMF created the original DIA and it was assumed, and I think renegotiated, when WTN CoEx I, LLC bought the project. bk 2937, page 857 according to James Walker.

Belinda can't find the original. I don't have it.

James is requesting release and I am okay to release it. I'll send Shelly a memo.

Thanks,

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



COPY

U.S. BANK NATIONAL ASSOCIATION
INTERNATIONAL DEPARTMENT
1420 FIFTH AVENUE, 9TH FLOOR
SEATTLE, WA 98101 U.S.A.
PHONE: 206-344-2398
FAX: 206-344-5369

Letter of Credit
Confirmation/Advising Cover Letter

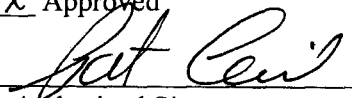
Date: March 3, 2004

Beneficiary: The City of Grand Junction
Colorado
250 North 5th Street
Grand Junction, CO 81501-2668

U.S. Bank Reference Number: SLCSSA01322
Letter of Credit Number: S533691
For the Account of: ATMF Grand Junction, L.L.C.
Issuing Bank: LaSalle Bank N.A.

We enclose the original amendment for the above-mentioned letter of credit amending the Letter of Credit amount to a new balance of US\$328,083.79.

This amendment is inoperative and will only become operative upon our receipt of your agreement to it's terms. Please sign this confirmation amendment indicating your agreement/disagreement and have it faxed to the attention of Janet Joireman at 206-344-5365. Upon our receipt of you acceptance or rejection of the enclosed amendment, we will notify LaSalle Bank N.A., thereby making the amendment operative.

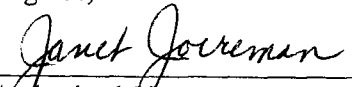
Approved


Authorized Signature

Rejected

Authorized Signature

If you have any questions, please feel free to call our office at the above listed number.

Regards,


Authorized Signature
U.S. Bank National Association
Seattle, WA

Janet Joireman
Letter of Credit Officer



COPY

U.S. BANK NATIONAL ASSOCIATION
INTERNATIONAL DEPT., PD-WA-T9IN
1420 FIFTH AVENUE, 9TH FLOOR
SEATTLE, WASHINGTON 98101 U.S.A.

SWIFT:USBKUS44SEA
TELEX:192179
PHONE:206-344-3711
FAX: 206-344-5374

FORWARD LETTER OF CREDIT AMENDMENT

05/14/03

NEW REFERENCE NUMBER: SLCSSSEA01322
CURRENT REF. NO: ELCSSEA
ADVISED THROUGH:

BENEFICIARY:
THE CITY OF GRAND JUNCTION COLORADO
250 NORTH 5TH STREET
GRAND JUNCTION, CO 81501-2668
ATTN: PAT COEIL

LC ISSUED BY: LASALLE BANK N.A.
INTERNATIONAL BANKING
200 WEST MONROE STREET, SUITE 1100
CHICAGO, IL 60606-5002
S533691

FOR ACCOUNT OF: ATMF GRAND JUNCTION, LLC
6735 TELEGRAPH, STE. 110
BLOOMFIELD HILLS, MI 48301-3141

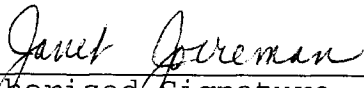
IN THE AMOUNT OF, INCLUDING ALL AMENDMENTS (IF ANY): USD 360,028.15

Due to a change in the way confirmed letters of credit are being booked we have changed the reference number to SLCSSSEA01322. Please refer to the new reference number on all future correspondence.

We confirm this credit and thereby undertake that all draft(s) drawn and/or documents presented as specified in the credit and its attachments will be duly honored. We will make payment in accordance with its terms after determining that all conditions of this credit have been met.

Our confirmation of this letter of credit shall be reviewed in JULY 2003, if at that time we elect not to renew our confirmation we will notify you at least 25 days prior to the expiration date of the letter of credit that we are revoking our confirmation. The original letter of credit, original amendment(s) (if any), and all original advice letters must accompany your documents/drafts when presented for negotiation. Please present your documents to the above address.

Regards,
U.S. BANK NATIONAL ASSOCIATION



Authorized Signature
Standby Letters of Credit

U.S. BANK NATIONAL ASSOCIATION
Letter of Credit Department



COPY

U. S. Bank National Association
International Dept., PD-WA-T9IN
1420 Fifth Avenue, 9th Floor
Seattle, WA 98101 U. S. A.

SWIFT : USBKUS44SEA
Telex : 6733211USBW
Phone : 206-344-3711
Fax : 206-344-5374

12/26/02

LETTER OF CREDIT
AMENDMENT COVER LETTER

THE CITY OF GRAND JUNCTION COLORADO
250 NORTH 5TH STREET
GRAND JUNCTION, CO 81501-2668
Attn: PAT COEIL

```

=====
U. S. Bank Reference Number      CELCSSEA18052
Letter of Credit Number          S533691
Amendment Number                 2
Amount                           USD 360,028.15
Applicant                        ATMF GRAND JUNCTION, L.L.C.
Issuing Bank                      LASALLE BANK N.A.
                                   INTERNATIONAL BANKING
                                   200 WEST MONROE STREET, SUITE 1100
                                   CHICAGO, IL 60606-5002
=====

```

We hold the original of the above mentioned letter of credit amendment.

This Letter of Credit is subject to the "Uniform Customs and Practices for Documentary Credits" (1993 Revision) International Chamber of Commerce Publication No. 500.


Please acknowledge below your Acceptance/Rejection of this Amendment and fax back to us at 206-344-5374. Thank you!

Amendment Accepted:  Date: 1-8-03
Authorized Signature

Amendment Rejected: _____ Date: _____
Authorized Signature

If you have any questions, please feel free to call our office at the above listed number.

Thank you for your continued business.


Authorized Signature EDD7
U. S. Bank National Association
Seattle, WA



U.S. Bank National Association
 International Dept., PD-WA-T9IN
 1420 Fifth Avenue, 9th Floor
 Seattle, WA 98101 U.S.A.

COPY

SWIFT:USBKUS44SEA
 Telex:6733211USBW
 Phone:206-344-3711
 Fax :206-344-5374

09/20/02

LETTER OF CREDIT
 AMENDMENT COVER LETTER

THE CITY OF GRAND JUNCTION COLORADO
 250 NORTH 5TH STREET
 GRAND JUNCTION, CO 81501-2668

```

=====
U.S. Bank Reference Number      CELCSSEA18052
Letter of Credit Number         S533691
Amendment Number                1
Amount                          USD 391,125.81
Applicant                      ATMF GRAND JUNCTION, L.L.C.
Issuing Bank                    LASALLE BANK N.A.
                                INTERNATIONAL BANKING
                                200 WEST MONROE STREET, SUITE 1100
                                CHICAGO, IL 60606-5002
=====
  
```

We enclose the original of the above mentioned letter of credit amendment.

This letter of credit is subject to the "Uniform Customs and Practices for Documentary Credits" (1993 Revision) International Chamber of Commerce Publication No. 500.

Please indicate below whether or not this amendment is accepted or rejected and fax your reply back to us at 206/344-5369. Thank you!

accepted
 rejected

Pat Cowl (authorized signature of beneficiary)

Please examine the letter of credit and all amendments carefully. If you are unable to comply with its terms and conditions, please contact your buyer immediately to arrange for another amendment.

If you have any questions, please feel free to call our office at the above listed number.

Thank you for your continued business.

Regards,

Janet Joreman
 Authorized Signature EDD7
 U.S. Bank National Association
 Seattle, WA

- 1) First phase improvements have not been accepted by Public works.
- 2) There are still problems related to the repair of the irrigation and landscape on the property to the east that was damaged during the construction.



COPY

U.S. Bank National Association
International Dept., PD-WA-T9IN
1420 Fifth Avenue, 9th Floor
Seattle, WA 98101 U.S.A.

SWIFT:USBKUS44SEA
Telex:6733211USBW
Phone:206-344-3711
Fax :206-344-5374

09/20/02

LETTER OF CREDIT
AMENDMENT COVER LETTER

THE CITY OF GRAND JUNCTION COLORADO
250 NORTH 5TH STREET
GRAND JUNCTION, CO 81501-2668

```

=====
U.S. Bank Reference Number      CELCSSEA18052
Letter of Credit Number         S533691
Amendment Number                1
Amount                          USD 391,125.81
Applicant                       ATMF GRAND JUNCTION, L.L.C.
Issuing Bank                     LASALLE BANK N.A.
                                   INTERNATIONAL BANKING
                                   200 WEST MONROE STREET, SUITE 1100
                                   CHICAGO, IL 60606-5002
=====

```

We enclose the original of the above mentioned letter of credit amendment.

This letter of credit is subject to the "Uniform Customs and Practices for Documentary Credits" (1993 Revision) International Chamber of Commerce Publication No. 500.

Please indicate below whether or not this amendment is accepted or rejected and fax your reply back to us at 206/344-5369. Thank you!

accepted
 rejected

_____ (authorized signature of beneficiary)

Please examine the letter of credit and all amendments carefully. If you are unable to comply with its terms and conditions, please contact your buyer immediately to arrange for another amendment.

If you have any questions, please feel free to call our office at the above listed number.

Thank you for your continued business.

Regards,

Authorized Signature EDD7
U.S. Bank National Association
Seattle, WA



CITY ATTORNEY

June 14, 2007

US Bank National Association
International Dept. SL-MO-L2IL
8th and Locust Street
St. Louis, MO 63101

RECEIVED
JUN 19 2007
COMMUNITY DEVELOPMENT
DEPT

Re: Cancellation of Letter of Credit #SLCLSTL01212

Gentlemen and Ladies:

Enclosed is the Letter of Credit # SLCLSTL01212. As beneficiary, the City of Grand Junction ("City") 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 Public Works and Planning, formerly known as Director of Community Development for the City.

If you have any questions, please inform me.

Sincerely,

OFFICE OF THE CITY ATTORNEY

By: Jamie B. Beard
Jamie B. Beard
Assistant City Attorney

pc: Tim Moore, Director of Public Works and Planning
Lisa Cox, Planning Manager
Planning File for Mesa Village Marketplace
Rick Dorris, Development Engineer
WTN CoEx I, LLC
2231 SW Wanamaker Rd., Suite 300
Topeka, Kansas 66614



U.S.BANK NATIONAL ASSOCIATION
INTERNATIONAL DEPT. SL-MO-L2IL
8TH AND LOCUST STREETS
ST. LOUIS, MO 63101

SWIFT: USBKUS44STL
TELEX: 192179
TELEPHONE: 877-716-5696
FACSIMILE: 314-418-1376

DATE: JUNE 16, 2004

BENEFICIARY: CITY OF GRAND JUNCTION
C/O DIRECTOR OF COMMUNITY DEVELOPMENT
250 N. 5TH STREET
GRAND JUNCTION, CO 81501

EXPIRATION DATE: JUNE 16, 2005 SUBJECT TO THE AUTOMATIC EXTENSIONS
STATED BELOW

OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. SLCLSTL01212

GENTLEMEN:

WE HEREBY ISSUE OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER
SLCLSTL01212 IN FAVOR OF THE CITY OF GRAND JUNCTION FOR THE ACCOUNT OF WTN
COEX I, LLC, 2231 SW WANAMAKER ROAD, SUITE 300, TOPEKA, KS 66614 UP TO THE
AGGREGATE AMOUNT OF USD328,083.79 (THREE HUNDRED TWENTY-EIGHT THOUSAND
EIGHTY-THREE AND 79/100 UNITED STATES DOLLARS) AVAILABLE BY YOUR DRAFT AT
SIGHT DRAWN ON U.S. BANK NATIONAL ASSOCIATION, ST. LOUIS, MISSOURI
ACCOMPANIED BY:

A DATED AND SIGNED STATEMENT APPEARING ON ITS FACE TO BE EXECUTED BY
BENEFICIARY OR DULY AUTHORIZED AGENT THEREOF CERTIFYING THAT:

“WTN COEX I, LLC 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 \$ _____.”

OR

“WTN COEX I, LLC HAS NOT CONSTRUCTED THE IMPROVEMENTS AS REQUIRED BY
THE DEVELOPMENT IMPROVEMENTS AGREEMENT DATED EFFECTIVE JUNE 29,
2001, AND ASSIGNED AND ASSUMED BY WTN COEX I, LLC ON MAY 5, 2004, AND
THE CITY OF GRAND JUNCTION HAS BEEN INFORMED THAT THIS LETTER OF
CREDIT WILL NOT BE RENEWED UPON EXPIRY OF THE CURRENT TERM HEREOF
AND WTN COEX I, LLC HAS NOT PROVIDED THE CITY OF GRAND JUNCTION AN
ACCEPTABLE REPLACEMENT FOR THIS LETTER OF CREDIT. THE MONIES
RECEIVED FROM THIS DRAWING ARE REQUIRED TO SECURE PROPER
CONSTRUCTION OF SUCH IMPROVEMENTS OR IN THE EVENT OF A DEFAULT TO
COMPLETE SUCH IMPROVEMENTS.”

THIS INSTRUMENT MUST BE PRESENTED WITH THE ABOVE REFERENCED DOCUMENTS
FOR NEGOTIATION.



DRAFTS MUST BE DRAWN AND PRESENTED AT U.S. BANK NATIONAL ASSOCIATION, INTERNATIONAL DEPT., SL-MO-L2IL, 8TH AND LOCUST STREETS, ST. LOUIS, MO 63101.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT WILL BE AUTOMATICALLY EXTENDED FOR ADDITIONAL PERIODS OF ONE (1) YEAR(S) FROM THE PRESENT OR ANY FUTURE EXPIRATION DATE UNLESS: (A) THIS LETTER OF CREDIT HAS BEEN CALLED IN FULL OR (B) THE BANK NOTIFIES THE CITY OF GRAND JUNCTION AT 250 N. 5TH STREET GRAND JUNCTION CO 81501, BY COURIER SERVICE (E.G. UPS OR POSTAL COURIER) RETURN RECEIPT REQUESTED, AT LEAST NINETY (90) DAYS PRIOR TO THE CURRENT EXPIRATION DATE THAT WE ELECT NOT TO FURTHER EXTEND THIS LETTER OF CREDIT.

EXCEPT AS OTHERWISE STATED HEREIN, NO MODIFICATIONS OR CANCELLATIONS MAY BE MADE BY THE UNDERSIGNED TO THIS LETTER OF CREDIT WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE CITY OF GRAND JUNCTIONS' DIRECTOR OF COMMUNITY DEVELOPMENT OR HIS DESIGNEE.

THIS LETTER OF CREDIT IS NOT ASSIGNABLE.

PARTIAL DRAWINGS ARE PERMITTED.

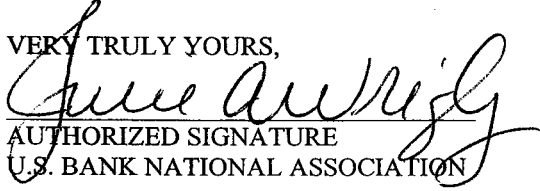
EACH DRAFT MUST STATE THAT IT IS "DRAWN UNDER U.S. BANK NATIONAL ASSOCIATION, ST. LOUIS, MISSOURI LETTER OF CREDIT NO. SLCLSTL01212 DATED JUNE 16, 2004".

WE HEREBY ENGAGE WITH THE CITY OF GRAND JUNCTION THAT ALL DRAFT(S) DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT THAT SUCH DRAFTS WILL BE DULY HONORED ON DUE PRESENTATION AND DELIVERY OF DOCUMENTS, WHICH MAY BE DONE BY COURIER SERVICE, FIRST CLASS MAIL, OR IN PERSON ON OR PRIOR TO THE EXPIRATION OR ANY EXTENSION THEREOF OF THIS LETTER OF CREDIT.

CANCELLATION OF LETTER OF CREDIT PRIOR TO EXPIRY: THIS LETTER OF CREDIT AND AMENDMENTS, IF ANY, MUST BE RETURNED TO US FOR CANCELLATION WITH BENEFICIARY'S STATEMENT THAT LETTER OF CREDIT IS BEING RETURNED FOR CANCELLATION.

EXCEPT AS OTHERWISE STATED HEREIN, THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS FOR 1993 REVISION INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500.

VERY TRULY YOURS,


AUTHORIZED SIGNATURE
U.S. BANK NATIONAL ASSOCIATION



PUBLIC WORKS & PLANNING DEPARTMENT
PLANNING DIVISION

March 22, 2008

McPherson Development
C/O Mr. Dusty Grandmontagne
707 ½ Willow Creek
Grand Junction, CO 81505

Reference: Combined Project Punch List
Mesa Village Marketplace – VE-2000-061
Canyon View Marketplace – SPR-2005-084
Mesa Village Marketplace, Kohl's - PFP-2005-242

Dear Dusty,

This letter follows up our field investigation of Leach Creek and Market Street on March 6, 2008.

Leach Creek and Initial Acceptance

The items listed below are necessary for the City to initially accept the Leach Creek improvements and start the one year warranty period. If memory serves correctly we have a separate DIA for the Leach Creek work.

- Two concrete path stones are cracked on edges just south of F ½ Rd. Remove and replace.
- Is Walsh satisfied that alignment and landscaping is per plan? Have them submit a letter to me stating such.
- Remove rip rap out of flared end section about half way down on east side.
- There are very few if any willow plantings visible? These need to be replanted or otherwise mitigated.
- Provide final acceptance by the Corps of Engineers.
- Provide Maintenance guarantee agreement.
- Provide financial guarantee.
- I am still investigating who is responsible for trail and channel maintenance and if the bike path can ultimately be in an easement instead of right of way.

- The City will accept the as-built flow capacity of Leach Creek even though it is about 10% lower than design. The construction looks good and the vegetation is doing well. The reason for the lesser capacity is primarily due to a flatter bed slope in the channel than assumed in the design modeling. The actual bed slope of the channel will vary, particularly with what happens through the City Market site and is ultimately governed by the culvert inverts between F ½ Road and Patterson. Also the actual concrete box at F ½ Road is about 2' below the channel invert due to COE requirements. Another reason this is acceptable is that upstream modifications to Leach Creek are necessary to reduce the floodplain and top the 24 Road overtopping. The City has latitude (i.e. reduce the flow south of F ½ Road) in these modifications that will allow this reach of Leach Creek to function properly. Development of the parcel between Leach Creek and Market Street will need to use this information to set the building finished floor elevations.
- Provide more wall as-built information on the as-built. Provide a disk of the as-built with .dwg and .dwf files.

When the construction items are corrected and the paperwork items submitted and satisfactory, the City will issue initial acceptance and start the one year warranty period.

Market Street and Final Acceptance

The items below are necessary to complete the warranty punch list work. Once they are complete the City will release the DIA's and all financial guarantees.

- Two cracked sidewalk stones on west side, just south of F ½.
- Just south of F ½, re-stripe left turn arrow.
- North theater entrance, remove & replace cracked v-pan stone.
- North Kohl's entrance, remove and replace patched v-pan.
- Kohl's enter entrance, remove and replace cracked fillet stone.
- Seal asphalt joints at Boston's intersection on north and east where this project's paving started.
- North side Kohl's entrance, remove and replace truncated domes

Please inform me when the work is complete and we will inspect again. Once complete the City will release all DIA's, maintenance guarantee agreements, and financial guarantees (except Leach Creek) and your responsibility will be over. Thanks for your cooperation in completion of these projects.

Sincerely,

Rick Dorris, PE, CFM



July 7, 2009

Mr. James Walker
WTN CoEx I, LC
3120 Rogerdale, Suite 150
Houston, TX 77042

Reference: Final Acceptance
Mesa Village Marketplace – VE-2000-061
Mesa Village Marketplace, Kohl's - PFP-2005-242

The City has conducted a warranty inspection of the project and any needed follow-up inspections. The public infrastructure improvements have been found to be in satisfactory condition. All requirements for the final acceptance for the Project have been fulfilled.

The Developer's warranty obligation, for all materials and workmanship, has concluded and all warranty obligations are hereby released.

The following improvements within the public right-of-way are accepted for future maintenance by the City:

Public streets:

- All public streets as shown on the Project plans.

Storm drainage system:

- Storm drain pipes, inlets and manholes within the public right of way.

Water distribution system:

- N/A – Served by Ute Water

Sanitary sewer:

- Sewer mains, manholes

The Planner has been contacted to release the Development Improvements Agreement, the Maintenance Agreement and any financial security attached to the Project.

Sincerely,

Rick
Digitally signed by Rick Dorris
DN: cn=Rick Dorris, o=City of
Grand Junction Colorado,
ou=Public Works and Planning,
email=rickdorris@cityofgj.org, c=US
Date: 2009.07.06 12:24:06-0600

Dorris

Rick Dorris, PE, CFM
Development Engineer

Electronic copy:

Scott Peterson, Senior Planner
Peggy Sharpe, Administrative Assistant
Chris Spears – Storm Drainage System
Leslie Ankrum, Administrative Assistant

Mark Barslund, Development Inspector
David Van Wagoner – Street System
Larry Brown – Sewage Collection System

RELEASE OF RECORDING MEMORANDUM
City of Grand Junction
Public Works & Planning Department
FILE: VE-2000-061

This Release relates to a Recording Memorandum dated October 10, 2001, by and between ATMF-Grand Junction, LLC, (Developer) and the City of Grand Junction, pertaining to Mesa Village Marketplace (Project), located at 2414 F Road, Grand Junction, CO, recorded at Book 2937, Page 857, Mesa County Clerk and Recorder's Office.

WHEREAS, the Developer has installed and constructed certain public and private improvements at and for the Project, which completion was guaranteed by the execution of a Development Improvements Agreement and/or Maintenance Guarantee and provision of a Guarantee, and;

WHEREAS, the City of Grand Junction and other agencies possessing authority over the Project, and/or the improvements, have inspected the improvements and have accepted the same.

NOW THEREFORE, officials of the City of Grand Junction, duly representing their agencies, possessing and representing by their signatures affixed hereto, that they possess sufficient authority to accept improvements and may release the Development Improvements Agreement and/or Maintenance Guarantee, pertaining to the improvements under their jurisdiction, do accept, sign and release said Development Improvements Agreement and/or Maintenance Guarantee.

CITY OF GRAND JUNCTION:

City Engineer: *Kurt Davis* Date: 7-10-09

Planner: *Jim P. Peter* Date: JULY 10, 2009

In acknowledgement with the above signatures, I hereby certify that the improvements as specified in the Development Improvements Agreement and/or Maintenance Guarantee have been completed and accepted in accordance with the provisions of the Grand Junction Zoning and Development Code, and are hereby released, subject to the required warranty period.

Lisa E. Cox

Public Works & Planning Department

7/10/09

Date

The foregoing instrument was executed before me this 10th day of July, 2009, by LISA E. COX, of the Public Works & Planning Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

Cynthia L. McKee
Notary Public

My commission expires on 9/2/09

