

BEN05WAL

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	BENCOR/NORTH L.P.
SUBJECT/PROJECT:	WALGREENS
LOCATION:	2900 NORTH AVENUE
TAX PARCEL #:	2943-083-00-031
FILE #:	CUP-2005-063
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2005
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

## DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are **Bencor/North L.P.**, ("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 Community Development 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 **2900 North Avenue, Grand Junction, CO** has been reviewed and approved under Community Development file # **CUP 2005-063** ("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 \$ 44,146.21 (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: Cash  Letter of Credit (LOC)  Disbursement Agreement \_\_\_\_\_  
*Replaced with Letter of Credit 1/22/05. LWB*

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 \$7,357.70 (Line G2, Exhibit B, City Security).

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

7. **Commencement, Completion and Abandonment Periods:** The Developer shall commence work on the Improvements within 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: **anticipated 10/24/2005**

Completion Date: **anticipated 4/1/2006**

**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 **\$ 36,788.51** (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.

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><u>Bencor/North L.P.</u></b>	Name -Developer/Company
<b><u>90 South Cascade, Suite 330</u></b>	Address (Street and Mailing)
<b><u>Colorado Springs, CO 80903</u></b>	City, State & Zip Code
<b><u>Phone: (719) 447-9902</u></b>	Telephone and Fax Numbers
<b><u>Fax: (719) 447-9893</u></b>	
<b><u>Jongorski@qwest.net</u></b>	E-mail

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



Cc: Community Development Department  
250 North 5th Street  
Grand Junction, CO 81501

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

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

29. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any action commenced by either party to this Agreement whether arising out of or relating to the Agreement, the Guarantee, the Maintenance Guarantee or any action based arising out of or under this Agreement shall be deemed to be proper only if such action is commenced in Mesa County, Colorado.

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

30. **Liability before Acceptance:** The City shall have no responsibility or liability with respect to any street or other Improvement(s), notwithstanding the use of the same by the public, unless the street or other Improvement shall have received Acceptance by the City.

30a. If the City allows a street to be constructed in stages, the Developer of the first one-half street opened for traffic shall construct the adjacent curb, gutter and sidewalk in the standard location and shall construct the required width of pavement from the edge of gutter on the side of the street nearest the property to enable an initial two-way traffic operation without on-street parking.

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

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

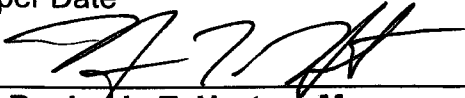
- (i) furnishes to the City Engineer as-built drawings in reproducible form, blue line stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests required by City specification;
- (ii) provides written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon in and under which the Improvement(s) have been constructed or which are necessary for the Improvements are free from toxic, hazardous and other regulated substances or materials;
- (iii) provides written evidence to the City Attorney that the title to lands underlying the Improvements are free and clear from all liens and encumbrances, except those items

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

By: **Bencor/North L.P.**  
By: **Bencor Development, LLC**  
Its General Partner

10-12-05

Developer Date



Name: **Benjamin T. Horton, Manager**

Corporate Attest:



10-12-05

Name Date

City of Grand Junction  
250 North Fifth Street  
Grand Junction, CO 81501

 Oct. 13, 2005  
Community Development Dept. Date

6/13/2003

**EXHIBIT B**  
**IMPROVEMENTS COST ESTIMATE**

DATE: 3/8/2005

DEVELOPMENT NAME: Walgreens

LOCATION: SW/4 SEC. 8, T1S, R1E, U.M.

PRINTED NAME OF PERSON PREPARING: JAMES LANGFORD & CHARLES KNIPPEL

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>
<b>B. DOMESTIC WATER</b>					
1	" PVC Water Main	LF			\$ -
2	" PVC Water Main	LF			\$ -
3	" PVC Water Main	LF			\$ -
4	" Gatevalve	EA			\$ -
5	" Gatevalve	EA			\$ -
6	" Gatevalve	EA			\$ -
7	Water Services	EA or LF			\$ -
8	Connect to Existing Water Line	EA			\$ -
9	Fire Hydrant with Valve	EA			\$ -
10	Utility Adjustments	EA			\$ -
11	Blowoff	EA			\$ -
<b>Subtotal Part B - Domestic Water</b>					<b>\$ -</b>

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			\$ -
5	Aggregate Base Course (Class 6) (6" Compacted Thickness)	SY	593	\$ 5.50	\$ 3,261.50
6	Aggregate Base Course (Class 6) ( " Compacted Thickness)	SY			\$ -
7	Hot Bituminous Paving, Grading (4" thick)	SY	44	\$ 12.15	\$ 534.60
8	Hot Bituminous Paving, Grading ( " thick)	SY			\$ -
9	Asphalt Removal	SY	44	\$ 3.00	\$ 132.00
10	Geotextile	SY			\$ -
11	Concrete Curb ( " Wide by " High)	LF			\$ -
12	Concrete Curb and Gutter (2' wide)	LF			\$ -
13	Concrete Curb and Gutter (1.5' wide)	LF			\$ -
14	Monolithic, Vertical Curb, Gutter and Sidewalk ( ' Wide)	LF			\$ -
15	Drive Over Curb, Gutter, and Sidewalk ( ' Wide)				\$ -
16	Concrete Sidewalk ( ' Wide)	LF			\$ -
17	6' Wide Concrete Median	LF	94	\$ 16.00	\$ 1,504.00
18	Concrete Drainage Pan ( ' Wide, " Thick)	LF			\$ -
19	Concrete Corner Fillet	SY			\$ -
20	Concrete Curb Ramp	SY			\$ -
21	Complete Concrete Corner Including Sidewalks	SY	569	\$ 48.00	\$ 27,312.00
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>BRIDGES</b>				
					\$ -
1	Box Culvert Pre-Cast	LS			\$ -
2	Box Culvert Cast-in-Place	LS			\$ -
3	Wingwalls	LS			\$ -
4	Parapet Wall	LS			\$ -
5	Railing (handrail, guardrail)	LS			\$ -
					\$ -
					\$ -
<b>Subtotal Part C - Streets and Bridges</b>					<b>\$ 32,744.10</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	" Storm Drain Pipe	LF			\$ -
3	" Storm Drain Pipe	LF			\$ -
4	" Storm Drain Pipe	LF			\$ -
5	" Storm Drain Pipe	LF			\$ -
6	" Storm Drain Pipe	LF			\$ -
7	" Flared End Section	EA			\$ -
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 Inlet Box	EA	1	\$ 700.00	\$ 700.00
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>\$ 700.00</b>
<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>E</b>	<b>Subtotal Part E - Landscaping and Irrigation</b>				<b>\$ -</b>
	<b>Subtotal Construction Costs</b>				<b>\$ 33,444.10</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>F. Miscellaneous Items</b>					
1	Construction staking/surveying	%	3.00%	\$33,444.10	\$ 1,003.32
2	Developer's inspection cost	%	1.50%	\$33,444.10	\$ 501.66
3	General construction supervsn	%			
4	Quality control testing	%	3.00%	\$33,444.10	\$ 1,003.32
5	Construction traffic control	%			
6	City inspection fees	%	0.50%	\$33,444.10	\$ 167.22
7	Record Drawings	%	2.00%	\$33,444.10	\$ 668.88
<b>E Subtotal Part F - Miscellaneous Items</b>					<b>\$ 3,344.41</b>
% = Percentage of total site construction costs <b>G. COST SUMMARY</b>  <b>1 Total Improvement Costs \$ 36,788.51</b> <b>2 City Security (20%) \$ 7,357.70</b>  <b>3 Total Guarantee Amount \$ 44,146.21</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.

to by Secretary together with the corporate seals.)

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.

*Keith Davis* 10-13-05  
 City Development Engineer Date

*Lou V. Bowen* Oct. 13, 2005  
 Community Development Date

JPMorgan Chase Bank, N.A.  
c/o JPMorgan Treasury Services  
Global Trade Services  
10420 Highland Manor Drive  
Tampa, FL 33610

NOV 17, 2005  
OUR L/C NO.: CTCS-214862

IRREVOCABLE STANDBY LETTER OF CREDIT NO. CTCS-214862

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

BY THE ORDER OF:  
APPLICANT:  
BENCOR/NORTH, L.P.  
90 S. CASCADE AVE., STE. 330  
COLORADO SPRINGS, CO 80903-1611

WE HEREBY ISSUE IN YOUR FAVOR OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. CTCS-214862 FOR THE ACCOUNT OF BENCOR/NORTH, L.P. FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE USD44,146.21 (FORTY FOUR THOUSAND ONE HUNDRED FORTY SIX AND 21/100 U.S. DOLLARS) AVAILABLE BY YOUR DRAFTS AT SIGHT ON JPMORGAN CHASE BANK, N.A., CHICAGO, IL EFFECTIVE IMMEDIATELY AND EXPIRING AT OUR OFFICE ON NOVEMBER 7, 2007.

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

IT IS EFFECTIVE UPON SIGNATURE.

IT EXPIRES ON NOVEMBER 7, 2007 SUBJECT TO THE AUTOMATIC EXTENSIONS DISCUSSED BELOW:

THIS LETTER OF CREDIT IS AVAILABLE BY SIGHT DRAFT(S) DRAWN AND MARKED: "DRAWN UNDER JPMORGAN CHASE BANK, N.A. LETTER OF CREDIT NO. CTCS-214862".

WE ARE INFORMED THAT THIS LETTER OF CREDIT IS ESTABLISHED FOR THE USE AND BENEFIT OF THE CITY OF GRAND JUNCTION BY REASON OF BENCOR/NORTH, L.P. (DEVELOPER) BEING OBLIGATED TO PAY OR PERFORM IN ACCORDANCE WITH THE PROVISIONS OF THE GRAND JUNCTION ZONING AND DEVELOPMENT CODE;

THE FOLLOWING DATED STATEMENT SIGNED BY AN AUTHORIZED SIGNER OF THE CITY



JPMorgan Chase Bank, N.A.  
c/o JPMorgan Treasury Services  
Global Trade Services  
10420 Highland Manor Drive  
Tampa, FL 33610

NOV 17, 2005  
OUR L/C NO.: CTCS-214862

OF GRAND JUNCTION (SIGNED AS SUCH) MUST ACCOMPANY THE SIGHT DRAFT READING:  
"BENCOR/NORTH, L.P. (DEVELOPER) HAS FAILED TO COMPLY WITH 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 REQUEST PAYMENT OF  
USD \_\_\_\_\_."

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT WILL BE AUTOMATICALLY  
EXTENDED FOR A PERIOD OF SIX (6) MONTHS FROM THE PRESENT OR ANY FUTURE  
EXPIRATION DATE UNLESS: (A) THIS LETTER OF CREDIT MAY BE CANCELLED PRIOR  
TO EXPIRY BY PRESENTATION OF A DATED STATEMENT SIGNED BY AN AUTHORIZED  
SIGNER OF THE CITY OF GRAND JUNCTION (SIGNED AS SUCH) TOGETHER WITH THE  
ORIGINAL LETTER OF CREDIT READING: "THE UNDERLYING OBLIGATIONS OF  
BENCOR/NORTH, L.P. HAS BEEN PERFORMED, RELEASED OR SATISFIED; WE HEREWITH  
ENCLOSE JPMORGAN CHASE BANK, N.A. LETTER OF CREDIT NO. CTCS-214862 FOR  
CANCELLATION." OR (B) THE BANK SENDS NOTICE TO THE CITY OF GRAND JUNCTION  
AT 250 N. 5TH STREET GRAND JUNCTION, CO 81501, BY CERTIFIED MAIL RETURN  
RECEIPT REQUESTED, AT LEAST NINETY (90) DAYS PRIOR TO SUCH EXPIRATION DATE  
THAT WE ELECT NOT TO FURTHER EXTEND THIS LETTER OF CREDIT.

THIS LETTER OF CREDIT WILL BE AUTOMATICALLY REDUCED IN ACCORDANCE WITH THE  
SCHEDULE BELOW. IN THE EVENT OF DRAWING WITHIN THE SPECIFIED PERIOD THE  
AMOUNT PAID WILL BE REDUCED FROM THE AMOUNT AVAILABLE IN SUBSEQUENT  
PERIODS. IN NO EVENT WILL THE TOTAL OF ALL AMOUNTS PAID UNDER THIS LETTER  
OF CREDIT EXCEED USD44,146.21.

DATE OF DECREASE	DECREASE BY:	AVAILABLE AMOUNT
NOVEMBER 8, 2006	USD36,788.51	USD7,357.70

EXCEPT AS STATED ABOVE NO MODIFICATIONS OR REVOCATIONS MAY BE MADE BY THE  
UNDERSIGNED TO THIS LETTER OF CREDIT WITHOUT THE EXPRESS WRITTEN APPROVAL  
OF THE CITY'S DIRECTOR OF COMMUNITY DEVELOPMENT OR HIS DESIGNEE.

THIS LETTER OF CREDIT IS NEITHER NEGOTIABLE NOR ASSIGNABLE.

JPMorgan Chase Bank, N.A.  
c/o JPMorgan Treasury Services  
Global Trade Services  
10420 Highland Manor Drive  
Tampa, FL 33610

NOV 17, 2005  
OUR L/C NO.: CTCS-214862

PARTIAL DAWINGS ARE PERMITTED.

WE HEREBY AGREE THAT DRAFTS DRAWN UNDER AN IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT WILL BE DULY HONORED ON DUE PRESENTATION AND DELIVERY OF DOCUMENTS, WHICH MAY BE DONE BY FIRST CLASS MAIL, FACSIMILE, IN PERSON OR BY ANY OTHER REASONABLE BUSINESS PRACTICE ON OR PRIOR TO THE EXPIRATION OR ANY EXTENSION THEREOF OF THIS LETTER OF CREDIT, AT OUR COUNTERS AT 300 SOUTH RIVERSIDE PLAZA, 7TH FLOOR, MAIL CODE IL1-0236, ATTN: STANDBY LETTER OF CREDIT UNIT, CHICAGO, IL 60606-0236.

EXCEPT WHEN THE AMOUNT OF THE DRAWING FULLY UTILIZES THIS LETTER OF CREDIT, WE UNDERTAKE TO RETURN THE ORIGINAL LETTER OF CREDIT TO YOU WITH THE AMOUNT OF PAYMENT ENDORSED THEREON.

DEMANDS PRESENTED BY TELEFACSIMILE ("FAX") TO FAX NUMBER 312-954-2458, OR ALTERNATELY TO FAX NUMBER 312-954-5986 ARE ACCEPTABLE, UNDER TELEPHONE PRE-ADVICE TO 312-954-5984, OR ALTERNATELY TO 800-634-1969; PROVIDED THAT THE ORIGINAL DRAFT, STATEMENT AND LETTER OF CREDIT SHALL BE SIMULTANEOUSLY FORWARDED BY OVERNIGHT COURIER SERVICE TO OUR OFFICE AT 300 S. RIVERSIDE PLAZA, 7TH FLOOR, MAIL CODE IL1-0236, STANDBY LETTER OF CREDIT UNIT, CHICAGO, IL 60606-0236; PROVIDED FURTHER THAT THE FAILURE OF THE COURIER SERVICE TO TIMELY DELIVER SHALL NOT AFFECT THE EFFICACY OF THE DEMAND. THE DOCUMENT(S) REQUIRED MUST BE RECEIVED BY FAX ON OR BEFORE THE EXPIRY DATE ON THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT.

EXCEPT AS OTHERWISE STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500 AND TO THE EXTENT THAT IT DOES NOT CONFLICT WITH ARTICLE 5 OF THE UNIFORM COMMERCIAL CODE OF THE STATE OF COLORADO.

PLEASE ADDRESS ALL CORRESPONDENCE REGARDING THIS LETTER OF CREDIT TO THE ATTENTION OF THE STANDBY LETTER OF CREDIT UNIT, 300 S. RIVERSIDE PLAZA, 7TH FLOOR, MAIL CODE IL1-0236, CHICAGO, IL 60606-0236, INCLUDING THE LETTER OF CREDIT NUMBER MENTIONED ABOVE. FOR TELEPHONE ASSISTANCE, PLEASE CONTACT THE STANDBY CLIENT SERVICE UNIT AT 1-800-634-1969, SELECT OPTION 1, AND HAVE THIS LETTER OF CREDIT NUMBER AVAILABLE.



JPMorgan Chase Bank, N.A.  
c/o JPMorgan Treasury Services  
Global Trade Services  
10420 Highland Manor Drive  
Tampa, FL 33610

NOV 17, 2005  
OUR L/C NO.: CTCS-214862

  
\_\_\_\_\_  
AUTHORIZED SIGNATURE

JPMorgan Chase Bank, N.A.  
c/o JPMorgan Treasury Services  
Global Trade Services  
10420 Highland Manor Drive  
Tampa, FL 33610

RECEIVED  
DEC 13 2005  
COMMUNITY DEVELOPMENT  
DEPT.

DEC 16, 2005  
OUR L/C NO.: CTCS-214862

AMENDMENT NO.: 1

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

APPLICANT:  
BENCOR/NORTH, L.P.  
90 S. CASCADE AVE., SUITE 330  
COLORADO SPRINGS, CO 80903-1611

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

RECEIVER'S REFERENCE: NONREF

DEMANDS PRESENTED BY TELEFACSIMILE ("FAX") TO FAX NUMBER 312-954-2458, OR ALTERNATELY TO FAX NUMBER 312-954-5986 ARE ACCEPTABLE, UNDER TELEPHONE PRE-ADVICE TO 312-954-5984, OR ALTERNATELY TO 800-634-1969; PROVIDED THAT THE ORIGINAL DRAFT, STATEMENT AND LETTER OF CREDIT SHALL BE SIMULTANEOUSLY FORWARDED BY OVERNIGHT COURIER SERVICE TO OUR OFFICE AT 300 S. RIVERSIDE PLAZA, 7TH FLOOR, MAIL CODE IL1-0236, STANDBY LETTER OF CREDIT UNIT, CHICAGO, IL 60606-0236; PROVIDED FURTHER THAT THE FAILURE OF THE COURIER SERVICE TO TIMELY DELIVER SHALL NOT AFFECT THE EFFICACY OF THE DEMAND. THE DOCUMENT(S) REQUIRED MUST BE RECEIVED BY FAX ON OR BEFORE THE EXPIRY DATE ON THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT.

IS CHANGED TO:

' 'DEMANDS PRESENTED BY TELEFACSIMILE ("FAX") TO FAX NUMBER 312-954-2458, OR ALTERNATELY TO FAX NUMBER 312-954-5986 ARE ACCEPTABLE, UNDER TELEPHONE PRE-ADVICE TO 312-954-5984, OR ALTERNATELY TO 800-634-1969. BENEFICIARY SHALL ATTEMPT TO PROVIDE PRE-ADVICE OF THE FAX DEMAND, BUT FAILURE TO PROVIDE THE PRE-ADVICE SHALL NOT AFFECT THE EFFICACY OF THE DEMAND; PROVIDED THAT THE ORIGINAL DRAFT, STATEMENT AND LETTER OF CREDIT SHALL BE SIMULTANEOUSLY FORWARDED BY OVERNIGHT COURIER SERVICE TO OUR OFFICE AT 300 S. RIVERSIDE PLAZA, 7TH FLOOR, MAIL CODE IL1-0236, STANDBY LETTER OF CREDIT UNIT, CHICAGO, IL 60606-0236; PROVIDED FURTHER THAT THE FAILURE OF THE COURIER SERVICE TO TIMELY DELIVER SHALL NOT AFFECT THE EFFICACY OF THE DEMAND. THE DOCUMENT(S) REQUIRED MUST BE RECEIVED BY FAX ON OR BEFORE THE EXPIRY DATE



JPMorgan Chase Bank, N.A.  
c/o JPMorgan Treasury Services  
Global Trade Services  
10420 Highland Manor Drive  
Tampa, FL 33610

DEC 16, 2005  
OUR L/C NO.: CTCS-214862

AMENDMENT NO.: 1

ON THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS  
LETTER OF CREDIT. ''

ALL OTHER TERMS AND CONDITIONS OF THE CREDIT REMAIN UNCHANGED.

---

AUTHORIZED SIGNATURE

RECORDING MEMORANDUM  
Exhibit D

2288351 BK 4043 PG 825-826  
11/22/2005 04:11 PM  
Janice Ward CLK&REC Mesa County, CO  
RecFee \$10.00 SurChg \$1.00

City of Grand Junction  
Community Development Department Community Development  
File: # CUP 2005-063

This memorandum relates to and confirms that certain Development Improvements Agreement and/or Maintenance Guarantee concerning land in Mesa County, Colorado. The Agreement is by and between Bencor/North L.P. (Developer) and the City of Grand Junction (City) pertaining to Walgreens (Project), located at 2900 North Avenue, Grand Junction, CO. (Subject subdivision is more particularly depicted and described in the recording found at Plat Book 4005, Pages 260.)

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 #CUP 2005-063.

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).

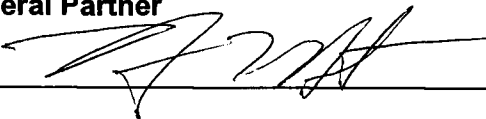
**By virtue of this notice being recorded in the land records of the Mesa County Clerk and Recorder, subsequent owners and/or those that claim by, through or under the Developer are on notice of the Developer's obligations under the agreement(s).**

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:**

**Bencor/North L.P.**

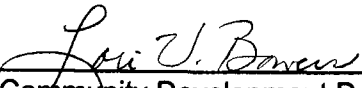
**By: Bencor Development, LLC  
Its General Partner**

By:  10/14/05  
Date

(Print Name) Benjamin T. Horton, Manager

**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, Community Development Department, 250 N. 5th Street, Grand Junction Colorado.

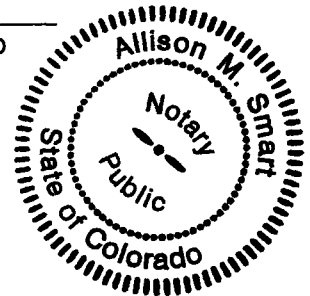
 Nov. 22, 2005  
Community Development Department Date  
6/10/2003

STATE OF COLORADO           )  
                                          ) SS  
COUNTY OF EI PASO         )

Before me, Allison M. Smart, a notary public in and for said state, on the 14<sup>th</sup> day of October, 2005, personally appeared Benjamin T. Horton, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its manager and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such limited liability company for the uses and purposes therein set forth

Allison M. Smart  
Notary Public for Colorado

My commission expires: 8/9/05





CUP-2005-063

2900 North Ave.

September 27, 2006

JPMorgan Chase Bank, NA  
c/o JPMorgan Treasury Services  
Global Trade Services  
10420 Highland Manor Drive  
Tampa, FL 33610

RECEIVED  
SEP 27 2006  
COMMUNITY DEVELOPMENT

Re: Cancellation of Letter of Credit #CTCS-214862

Gentlemen and Ladies:

Enclosed is the Letter of Credit #CTCS-214862. As beneficiary, the City of Grand Junction ("City") informs you that the Letter of Credit along with Amendment No. 1 is being returned to you for cancellation. This letter is being provided at the direction of the Director of Community Development for the City.

If you have any questions, please inform me.

Sincerely,

OFFICE OF THE CITY ATTORNEY

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

Enclosure: Letter of Credit #CTCS-214862

pc: Sheryl Trent, Community Development Director  
Lori Bowers, Senior Planner  
Community Development File #CUP-2005-063  
Rick Dorris, Development Engineer  
Bencor/North L.P.  
90 South Cascade, Suite 330  
Colorado Springs, CO 80903





JPMorgan Chase Bank, N.A.  
c/o JPMorgan Treasury Services  
Global Trade Services  
10420 Highland Manor Drive  
Tampa, FL 33610

NOV 17, 2005  
OUR L/C NO.: CTCS-214862

IRREVOCABLE STANDBY LETTER OF CREDIT NO. CTCS-214862

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

BY THE ORDER OF:  
APPLICANT:  
BENCOR/NORTH, L.P.  
90 S. CASCADE AVE., STE. 330  
COLORADO SPRINGS, CO 80903-1611

WE HEREBY ISSUE IN YOUR FAVOR OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. CTCS-214862 FOR THE ACCOUNT OF BENCOR/NORTH, L.P. FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE USD44,146.21 (FORTY FOUR THOUSAND ONE HUNDRED FORTY SIX AND 21/100 U.S. DOLLARS) AVAILABLE BY YOUR DRAFTS AT SIGHT ON JPMORGAN CHASE BANK, N.A., CHICAGO, IL EFFECTIVE IMMEDIATELY AND EXPIRING AT OUR OFFICE ON NOVEMBER 7, 2007.

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

IT IS EFFECTIVE UPON SIGNATURE.

IT EXPIRES ON NOVEMBER 7, 2007 SUBJECT TO THE AUTOMATIC EXTENSIONS DISCUSSED BELOW:

THIS LETTER OF CREDIT IS AVAILABLE BY SIGHT DRAFT(S) DRAWN AND MARKED: "DRAWN UNDER JPMORGAN CHASE BANK, N.A. LETTER OF CREDIT NO. CTCS-214862".

WE ARE INFORMED THAT THIS LETTER OF CREDIT IS ESTABLISHED FOR THE USE AND BENEFIT OF THE CITY OF GRAND JUNCTION BY REASON OF BENCOR/NORTH, L.P. (DEVELOPER) BEING OBLIGATED TO PAY OR PERFORM IN ACCORDANCE WITH THE PROVISIONS OF THE GRAND JUNCTION ZONING AND DEVELOPMENT CODE;

THE FOLLOWING DATED STATEMENT SIGNED BY AN AUTHORIZED SIGNER OF THE CITY



JPMorgan Chase Bank, N.A.  
 c/o JPMorgan Treasury Services  
 Global Trade Services  
 10420 Highland Manor Drive  
 Tampa, FL 33610

NOV 17, 2005  
 OUR L/C NO.: CTCS-214862

OF GRAND JUNCTION (SIGNED AS SUCH) MUST ACCOMPANY THE SIGHT DRAFT READING:  
 "BENCOR/NORTH, L.P. (DEVELOPER) HAS FAILED TO COMPLY WITH 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 DRAWNG ARE REQUIRED TO CONSTRUCT THOSE  
 IMPROVEMENTS. THE CITY OF GRAND JUNCTION THEREFORE REQUEST PAYMENT OF  
 USD \_\_\_\_\_."

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT WILL BE AUTOMATICALLY  
 EXTENDED FOR A PERIOD OF SIX (6) MONTHS FROM THE PRESENT OR ANY FUTURE  
 EXPIRATION DATE UNLESS: (A) THIS LETTER OF CREDIT MAY BE CANCELLED PRIOR  
 TO EXPIRY BY PRESENTATION OF A DATED STATEMENT SIGNED BY AN AUTHORIZED  
 SIGNER OF THE CITY OF GRAND JUNCTION (SIGNED AS SUCH) TOGETHER WITH THE  
 ORIGINAL LETTER OF CREDIT READING: "THE UNDERLYING OBLIGATIONS OF  
 BENCOR/NORTH, L.P. HAS BEEN PERFORMED, RELEASED OR SATISFIED; WE HEREWITH  
 ENCLOSE JPMORGAN CHASE BANK, N.A. LETTER OF CREDIT NO. CTCS-214862 FOR  
 CANCELLATION." OR (B) THE BANK SENDS NOTICE TO THE CITY OF GRAND JUNCTION  
 AT 250 N. 5TH STREET GRAND JUNCTION, CO 81501, BY CERTIFIED MAIL RETURN  
 RECEIPT REQUESTED, AT LEAST NINETY (90) DAYS PRIOR TO SUCH EXPIRATION DATE  
 THAT WE ELECT NOT TO FURTHER EXTEND THIS LETTER OF CREDIT.

THIS LETTER OF CREDIT WILL BE AUTOMATICALLY REDUCED IN ACCORDANCE WITH THE  
 SCHEDULE BELOW. IN THE EVENT OF DRAWING WITHIN THE SPECIFIED PERIOD THE  
 AMOUNT PAID WILL BE REDUCED FROM THE AMOUNT AVAILABLE IN SUBSEQUENT  
 PERIODS. IN NO EVENT WILL THE TOTAL OF ALL AMOUNTS PAID UNDER THIS LETTER  
 OF CREDIT EXCEED USD44,146.21.

DATE OF DECREASE	DECREASE BY:	AVAILABLE AMOUNT
NOVEMBER 8, 2006	USD36,788.51	USD7,357.70

EXCEPT AS STATED ABOVE NO MODIFICATIONS OR REVOCATIONS MAY BE MADE BY THE  
 UNDERSIGNED TO THIS LETTER OF CREDIT WITHOUT THE EXPRESS WRITTEN APPROVAL  
 OF THE CITY'S DIRECTOR OF COMMUNITY DEVELOPMENT OR HIS DESIGNEE.

THIS LETTER OF CREDIT IS NEITHER NEGOTIABLE NOR ASSIGNABLE.



JPMorgan Chase Bank, N.A.  
c/o JPMorgan Treasury Services  
Global Trade Services  
10420 Highland Manor Drive  
Tampa, FL 33610

NOV 17, 2005  
OUR L/C NO.: CTCS-214862

PARTIAL DAWINGS ARE PERMITTED.

WE HEREBY AGREE THAT DRAFTS DRAWN UNDER AN IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT WILL BE DULY HONORED ON DUE PRESENTATION AND DELIVERY OF DOCUMENTS, WHICH MAY BE DONE BY FIRST CLASS MAIL, FACSIMILE, IN PERSON OR BY ANY OTHER REASONABLE BUSINESS PRACTICE ON OR PRIOR TO THE EXPIRATION OR ANY EXTENSION THEREOF OF THIS LETTER OF CREDIT, AT OUR COUNTERS AT 300 SOUTH RIVERSIDE PLAZA, 7TH FLOOR, MAIL CODE IL1-0236, ATTN: STANDBY LETTER OF CREDIT UNIT, CHICAGO, IL 60606-0236.

EXCEPT WHEN THE AMOUNT OF THE DRAWING FULLY UTILIZES THIS LETTER OF CREDIT, WE UNDERTAKE TO RETURN THE ORIGINAL LETTER OF CREDIT TO YOU WITH THE AMOUNT OF PAYMENT ENDORSED THEREON.

DEMANDS PRESENTED BY TELEFACSIMILE ("FAX") TO FAX NUMBER 312-954-2458, OR ALTERNATELY TO FAX NUMBER 312-954-5986 ARE ACCEPTABLE, UNDER TELEPHONE PRE-ADVICE TO 312-954-5984, OR ALTERNATELY TO 800-634-1969; PROVIDED THAT THE ORIGINAL DRAFT, STATEMENT AND LETTER OF CREDIT SHALL BE SIMULTANEOUSLY FORWARDED BY OVERNIGHT COURIER SERVICE TO OUR OFFICE AT 300 S. RIVERSIDE PLAZA, 7TH FLOOR, MAIL CODE IL1-0236, STANDBY LETTER OF CREDIT UNIT, CHICAGO, IL 60606-0236; PROVIDED FURTHER THAT THE FAILURE OF THE COURIER SERVICE TO TIMELY DELIVER SHALL NOT AFFECT THE EFFICACY OF THE DEMAND. THE DOCUMENT(S) REQUIRED MUST BE RECEIVED BY FAX ON OR BEFORE THE EXPIRY DATE ON THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT.

EXCEPT AS OTHERWISE STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500 AND TO THE EXTENT THAT IT DOES NOT CONFLICT WITH ARTICLE 5 OF THE UNIFORM COMMERCIAL CODE OF THE STATE OF COLORADO.

PLEASE ADDRESS ALL CORRESPONDENCE REGARDING THIS LETTER OF CREDIT TO THE ATTENTION OF THE STANDBY LETTER OF CREDIT UNIT, 300 S. RIVERSIDE PLAZA, 7TH FLOOR, MAIL CODE IL1-0236, CHICAGO, IL 60606-0236, INCLUDING THE LETTER OF CREDIT NUMBER MENTIONED ABOVE. FOR TELEPHONE ASSISTANCE, PLEASE CONTACT THE STANDBY CLIENT SERVICE UNIT AT 1-800-634-1969, SELECT OPTION 1, AND HAVE THIS LETTER OF CREDIT NUMBER AVAILABLE.



JPMorgan Chase Bank, N.A.  
c/o JPMorgan Treasury Services  
Global Trade Services  
10420 Highland Manor Drive  
Tampa, FL 33610

NOV 17, 2005  
OUR L/C NO.: CTCS-214862

A handwritten signature in black ink, appearing to read "W. Lindow", written over a horizontal line.

AUTHORIZED SIGNATURE

JPMorgan Chase Bank, N.A.  
c/o JPMorgan Treasury Services  
Global Trade Services  
10420 Highland Manor Drive  
Tampa, FL 33610

RECEIVED  
DEC 16 2005  
COMMUNITY DEVELOPMENT  
DEPT.

DEC 16, 2005  
OUR L/C NO.: CTCS-214862

AMENDMENT NO.: 1

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

APPLICANT:  
BENCOR/NORTH, L.P.  
90 S. CASCADE AVE., SUITE 330  
COLORADO SPRINGS, CO 80903-1611

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

RECEIVER'S REFERENCE: NONREF

DEMANDS PRESENTED BY TELEFACSIMILE ("FAX") TO FAX NUMBER 312-954-2458, OR ALTERNATELY TO FAX NUMBER 312-954-5986 ARE ACCEPTABLE, UNDER TELEPHONE PRE-ADVICE TO 312-954-5984, OR ALTERNATELY TO 800-634-1969; PROVIDED THAT THE ORIGINAL DRAFT, STATEMENT AND LETTER OF CREDIT SHALL BE SIMULTANEOUSLY FORWARDED BY OVERNIGHT COURIER SERVICE TO OUR OFFICE AT 300 S. RIVERSIDE PLAZA, 7TH FLOOR, MAIL CODE IL1-0236, STANDBY LETTER OF CREDIT UNIT, CHICAGO, IL 60606-0236; PROVIDED FURTHER THAT THE FAILURE OF THE COURIER SERVICE TO TIMELY DELIVER SHALL NOT AFFECT THE EFFICACY OF THE DEMAND. THE DOCUMENT(S) REQUIRED MUST BE RECEIVED BY FAX ON OR BEFORE THE EXPIRY DATE ON THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT.

IS CHANGED TO:

' 'DEMANDS PRESENTED BY TELEFACSIMILE ("FAX") TO FAX NUMBER 312-954-2458, OR ALTERNATELY TO FAX NUMBER 312-954-5986 ARE ACCEPTABLE, UNDER TELEPHONE PRE-ADVICE TO 312-954-5984, OR ALTERNATELY TO 800-634-1969. BENEFICIARY SHALL ATTEMPT TO PROVIDE PRE-ADVICE OF THE FAX DEMAND, BUT FAILURE TO PROVIDE THE PRE-ADVICE SHALL NOT AFFECT THE EFFICACY OF THE DEMAND; PROVIDED THAT THE ORIGINAL DRAFT, STATEMENT AND LETTER OF CREDIT SHALL BE SIMULTANEOUSLY FORWARDED BY OVERNIGHT COURIER SERVICE TO OUR OFFICE AT 300 S. RIVERSIDE PLAZA, 7TH FLOOR, MAIL CODE IL1-0236, STANDBY LETTER OF CREDIT UNIT, CHICAGO, IL 60606-0236; PROVIDED FURTHER THAT THE FAILURE OF THE COURIER SERVICE TO TIMELY DELIVER SHALL NOT AFFECT THE EFFICACY OF THE DEMAND. THE DOCUMENT(S) REQUIRED MUST BE RECEIVED BY FAX ON OR BEFORE THE EXPIRY DATE



JPMorgan Chase Bank, N.A.  
c/o JPMorgan Treasury Services  
Global Trade Services  
10420 Highland Manor Drive  
Tampa, FL 33610

DEC 16, 2005  
OUR L/C NO.: CTCS-214862

AMENDMENT NO.: 1

ON THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS  
LETTER OF CREDIT. ''

ALL OTHER TERMS AND CONDITIONS OF THE CREDIT REMAIN UNCHANGED.

---

AUTHORIZED SIGNATURE