

CLU07GWB

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	CLUB DEAL 113/114 PARK PLAZA GRAND JUNCTION LIMITED PARTNERSHIP
PROJECT/SUBDIVISION:	GRAND WEST BUSINESS PARK
ADDRESS:	675 23 ROAD
TAX PARCEL NO:	2945-061-18-001, 2945-061-18-002, 2945-061-18-003
FILE #:	FP-2007-133
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2007
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

DEVELOPMENT IMPROVEMENT AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are CD 113/114 Park Plaza, ("Developer") and the **City of Grand Junction**, Colorado ("City"). Grand Junction Limited Partnership

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 GRAND WEST BUSINESS PARK has been reviewed and approved under Community Development file # FP-2007-133 ("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 \$1,415,642.95 (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) X Disbursement Agreement _____

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 \$ 235,940.49 (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 Improvement 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: JULY 6, 2007
Completion Date: JULY 6, 2008

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 \$_____ (Line G1, Exhibit B, Total Improvement Costs).

1,179,702.46

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, 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: CD 113/114 Park Plaza Grand Junction Limited Partnership Name - Developer/Company
9285 Huntington Square Address (Street and Mailing)
Bed N. Richland Hills, TX 76180 City, State & Zip Code
(817) 788-1000 Telephone and Fax Numbers
(817) 788-1670
bdurham@tiholdings.com 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.

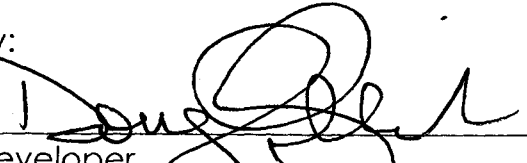
30c. The City shall not issue its written Acceptance with regard to any Improvement(s) including any street, storm drainage facility, sewer, water facility or other required Improvement(s), until the Developer:

(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:



Developer Date
Douglas H. Gullitand
Name (printed)

Corporate Attest:

Name Date

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



Community Development Dept. Date
10.17.07

6/13/2003

TYPE LEGAL DESCRIPTION BELOW, USING ADDITIONAL SHEETS AS NECESSARY.
USE SINGLE SPACING WITH A ONE INCH MARGIN ON EACH SIDE.

EXHIBIT A

LOT 1 AND LOT 2 OF TAURUS SUBDIVISION AS RECORDED IN PLAT BOOK
4211 PAGES 317-318 IN MESA COUNTY

EXHIBIT B

IMPROVEMENTS COSTS ESTIMATE

DATE: 03-12-07

DEVELOPMENT NAME: Grand Mesa Business Center

LOCATION: 23 Road & G Road

PRINTED NAME OF PERSON PREPARING: Austin Civil Group, Inc.

Item#	Item Description	Unit	Quantity	Unit Price	Extended Price
A. SANITARY SEWER					
1	8" PVC Sanitary Sewer Main	LF	1255	30	\$ 37,650.00
2	"PVC Sanitary Sewer Main	LF			\$ -
3	"PVC Sanitary Sewer Main	LF			\$ -
4	Sewer Services	LF	590	35	\$ 20,650.00
5	Sanitary Sewer Manhole	EA	6	2500	\$ 15,000.00
6	Test/Inspection	LS	1	1500	\$ 1,500.00
7	Connection to Existing Manhole	EA	1	4000	\$ 4,000.00
8	Concrete Encasement	LF	60	35	\$ 2,100.00
					\$ -
Subtotal Part A - Sanitary Sewer					\$ 80,900.00
B. DOMESTIC WATER					
1	8" PVC Water Main	LF	1978	30	\$ 59,340.00
2	"PVC Water Main	LF			\$ -
3	"PVC Water Main	LF			\$ -
4	8" Gatevalve	EA	1	800	\$ 800.00
5	6" Gatevalve	EA	7	700	\$ 4,900.00
6	"Gatevalve	EA			\$ -
7	6" Water Services	EA	9	600	\$ 5,400.00
8	Connect to Existing Water Line	EA	3	2000	\$ 6,000.00
9	Fire Hydrant with Valve	EA	4	3500	\$ 14,000.00
10	Utility Adjustments	EA	5	200	\$ 1,000.00
11	Water Flush/Testing	LS	1	1000	\$ 1,000.00
					\$ -
Subtotal Part B - Domestic Water					\$ 92,440.00

Item#	Item Description	Unit	Quantity	Unit Price	Extended Price
C1 STREETS					
1	"PVC Utility/Irrigation Sleeves	LF			\$ -
2	"PVC Utility/Irrigation Sleeves	LF			\$ -
3	Reconditioning	SY	8692	2	\$ 17,384.00
4	Aggregate Base Course (Class 3)	TN			\$ -
5	Aggregate Base Course (Class 6) 13" Compacted Thickness	SY	8692	12.23	\$ 106,303.16
6	Aggregate Base Course (Class 9) ("Compacted Thickness	SY			\$ -
7	Hot Bituminous Paving, Grading _____ (4" Thick)	SY	7570	17.15	\$ 129,825.50
8	Hot Bituminous Paving, Grading _____ ("Thick)	SY			\$ -
9	Hot Bituminous Paving, Patching _____ (6 "Thick)	SY	195	44	\$ 8,580.00
10	Geotextile	SY			\$ -
11	Concrete Curb ("wide by "High	LF			\$ -
12	Concrete Curb and Gutter (2' Wide)	LF	3622	12	\$ 43,464.00
13	Concrete Curb and Gutter (1.5' Wide)	LF			\$ -
14	Monolithic, Vertical Curb, Gutter and Sidewalk (7' Wide)	LF			\$ -
15	Drive Over Curb, Gutter, and Sidewalk ("Wide)				\$ -
16	Concrete Sidewalk ("Wide)	LF			\$ -
17	Concrete Gutter and Driveway Section (6" Thick)	SY	26	42	\$ 1,092.00
18	Concrete Drainage Pan (6' Wide, (8" Thick)	LF			\$ -
19	Concrete Corner Fillet	SY			\$ -
20	Concrete Curb Ramp	SY			\$ -
21	Complete Concrete Corner	SY			\$ -
22	Concrete Driveway ("Thick)	SY			\$ -
23	Driveway/Concrete Repair	SY			\$ -
24	Retaining Walls	LF			\$ -
25	Street Signs	EA	6	225	\$ 1,350.00
26	Striping (New, Remove/Replace)	LS	1	2000	\$ 2,000.00
27	Street Lights	EA	10	4000	\$ 40,000.00
28	Signal Construction or Reconstruction	LS			\$ -
29	Flowable Fill	CY			\$ -
30	Sleeves, ", PVC				\$ -

Item#	Item Description	Unit	Quantity	Unit Price	Extended Price
C2 BRIDGES					
1	Box Culvert Pre-Cast	LS			\$ -
2	Box Culvert Cast-in -Place	LS			\$ -
3	Wingwalls	LS			\$ -
4	Parapet Wall	LS			\$ -
5	Railing (Handrail, Guardrail)	LS			\$ -
Subtotal Part C - Streets and Bridges					\$ 349,998.66
D1. EARTHWORK					
1	Mobilization	LS	1	2500	\$ 2,500.00
2	Clearing and Grubbing	LS	1	5000	\$ 5,000.00
3	Unclassified Excavation	CY	1225	2	\$ 2,450.00
4	Unclassified Embankment	CY	2200	6	\$ 13,200.00
4	Imported Fill	TON	8,450	8	\$ 67,600.00
5	Erosion Control	LS	1	1000	\$ 1,000.00
6	Watering (Dust Control)	LS	1	2000	\$ 2,000.00
D2. REMOVALS AND RESETTING					
1	Removal of Asphalt	SY	295	1	\$ 295.00
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 Utilites	LS			\$ -
D3. SEEDING AND SOIL RETENTION					
1	Sod	SY			\$ -
2	Seeding (Native)	SF			\$ -
3	Seeding (Bluegrass/Lawn)	SY or AC			\$ -
4	Hydraulic Seed and Mulching	AC	4.7	4800	\$ 22,560.00
5	Storm Inlet Protection Devises	EA	6	600	\$ 3,600.00
6	Gravel Track Pads	EA	1	3000	\$ 3,000.00

Item#	Item Description	Unit	Quantity	Unit Price	Extended Price
D4. STORM DRAINAGE FACILITIES					
1	Finish Grading (incl. Channels, Swales, and Ponds)	LS	1	12000	\$ 12,000.00
2	6" Force Line	LF	1111	15	\$ 16,665.00
3	12" Storm Drain Pipe	LF	61	22	\$ 1,342.00
4	15" Storm Drain Pipe	LF	11	35	\$ 385.00
5	18" Storm Drain Pipe	LF	11	40	\$ 440.00
6	24" Storm Drain Pipe	LF	709	45	\$ 31,905.00
7	30" Storm Drain Pipe	LF	334	47	\$ 15,698.00
8	36" Storm Drain Pipe	LF	396	50	\$ 19,800.00
9	42" Storm Drain Pipe	LF	203	60	\$ 12,180.00
10	48" Storm Drain Pipe	LF	34	70	\$ 2,380.00
10	42" Flared End Section	EA	1	1000	\$ 1,000.00
11	48" Flared End Section	EA	1	1500	\$ 1,500.00
12	48" Storm Drain Manhole	EA	1	2500	\$ 2,500.00
13	60" Storm Drain Manhole	EA	2	3000	\$ 6,000.00
14	72" Storm Drain Manhole	EA	2	3500	\$ 7,000.00
15	90" Storm Drain Manhole	EA	2	4000	\$ 8,000.00
16	Connection to Existing MH	EA	1	1000	\$ 1,000.00
17	Single Curb Opening Storm Drain Inlet	EA	5	2000	\$ 10,000.00
18	Double Curb Opening Storm Drain Inlet	EA			\$ -
19	Area Storm Drain Inlet	EA	8	2000	\$ 16,000.00
20	2' V-PAN	LF	1099	8	\$ 8,792.00
21	Rip-Rap D ₅₀ = 12"	CY		50	\$ -
22	Sidewalk Trough Drain	EA			\$ -
23	Pump Systems Including Electrical	LS	1	10000	\$ 10,000.00
Subtotal Part D - Grading and Drainage					\$ 307,792.00

Item#	Item Description	Unit	Quantity	Unit Price	Exteneded Price
E1. IRRIGATION					
1	Irrigation System	SF	210000	0.95	\$ 199,500.00
2	12" C900 Irrigation Pipe	LF			\$ -
3	6" PIP Irrigation Pipe	LF			\$ -
4	Fittings and Valves	LS			\$ -
5	Services	EA			\$ -
6	Pump & Electrical	LS	1	5000	\$ 5,000.00
7	Irrigation Structure	LS	1	3000	\$ 3,000.00
8	Vacuum Relief and/or Air Release Valve	EA			\$ -
E2. LANDSCAPING					
1	Design/Architecture	LS			\$ -
2	Earthwork / Soil Amendments	LS	1	25000	\$ 25,000.00
3	Trees	EA	115	225	\$ 25,875.00
4	Shrubs	EA	69	80	\$ 5,520.00
5	Ground Cover	SF	5000	0.7	\$ 3,500.00
6	Berms	LS	1	1000	\$ 1,000.00
7	Retaining Walls & Structures	LS			\$ -
8	1 Year Maintenance Agreement	LS	1	3000	\$ 3,000.00
9	Fencing	LF			\$ -
Subtotal Part E - Landscaping and Irrigation					\$ 271,395.00

Item#	Item Description	Unit	Quantity	Unit Price	Extended Price
F. MISCELLANEOUS ITEMS					
1	Construction Staking/Surveying	%	2.00%	\$ 22,050.51	\$ 22,050.51
2	Developer's Inspection Cost	%	1.00%	\$ 11,025.26	\$ 11,025.26
3	General Construction Supervision	%	2.00%	\$ 11,025.26	\$ 11,025.26
4	Quality Control Testing	%	2.00%	\$ 11,025.26	\$ 11,025.26
5	Construction Traffic Control	%	2.00%	\$ 11,025.26	\$ 11,025.26
6	City Inspection Fees	%	0.50%	\$ 5,512.63	\$ 5,512.63
7	As-Builts	%	0.50%	\$ 5,512.63	\$ 5,512.63
Subtotal Part F - Miscellaneous Items					\$ 77,176.80

% = Percentage of total site construction costs

G COST SUMMARY

1	Total Improvement Costs	\$ 1,179,702.46
2	City Security (20%)	\$ 235,940.49
	Total Guarantee Amount	\$ 1,415,642.95

NOTES

- 1 All prices shall be for items complete in place and accepted.
- 2 All pipe 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 sleeve.
- 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 times may be added as needed.

Signature of Developer

Date

(If corporation, to be signed by President and attested 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.

City Development Engineer

Date

Community Development

Date



IRREVOCABLE STANDBY LETTER OF CREDIT NO. SB06-1956027-6001

DATE: September 5, 2007

EXPIRATION: September 5, 2008

BENEFICIARY:
CITY OF GRAND JUNCTION
C/O DIRECTOR OF PUBLIC WORKS & PLANNING
250 NORTH 5TH STREET
GRAND JUNCTION, CO 81501

RE: Project Name/City File No.: Grand West Business Park/FP2007133

AMOUNT: USD \$1,415,000.00

Dear Sir/Madam:

At the request of Club Deal 113/114 Park Plaza and Grand Junction, Limited Partnership, 1350 East Newport Center Drive, Deerfield Beach, FL 33442, we hereby establish our Irrevocable Standby Letter of Credit in your favor up to an aggregate amount of One Million Four Hundred Thousand and 00/100 (\$1,415,000.00USD). This Letter of Credit is available for payment against presentation of your draft(s) at Sight drawn on VECTRA BANK COLORADO, NATIONAL ASSOCIATION, bearing the clause: "Drawn under Letter of Credit no. 1956027-6001 of VECTRA BANK COLORADO, NATIONAL ASSOCIATION dated September 5, 2007" accompanied by the following documents:

This original Letter of Credit and amendment(s) thereto, if any, which will be returned to you following our notation thereon of the amount of such draft drawn hereunder. If the amount of the draft is for the full amount of this Letter of Credit, the original Letter of Credit will be retained by us.

Beneficiary's statement purportedly signed by an authorized designee of City of Grand Junction stating as follows:

"Club Deal 113/114 Park Plaza and Grand Junction, Limited Partnership) 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 \$1,415,000.00 USD."

Partial drawings are allowed.

Except as stated above no modifications or revocations may be made by the undersigned to this letter of Credit without the express written approval of the City's Director of Public Works & Planning or his designee.

This Letter of Credit is not transferable.

In the event of a drawing all original documents including original sight Draft must be dispatched in one lot by registered mail, courier services, in person or by any other reasonable business practice directly to VECTRA BANK COLORADO, NATIONAL ASSOCIATION.

This Standby Letter of Credit expires at our counters at the close of business on the expiration date September 5, 2008



GRAND JUNCTION BANK
2394 PATTERSON ROAD GRAND JUNCTION, COLORADO 81505
PHONE: 970 248 9762 FAX: 970 248 9767
www.vectrabank.com

Member FDIC



City of Grand Junction, CO

Irrevocable Standby Letter of Credit No. SB06-1956027-6001

Page 2

All banking charges outside our counters are for the account of the Beneficiary.

If you have any questions concerning this transaction, please call us at (720) 947-7947 or (720) 947-7950
We hereby agree with you that all draft(s) drawn under and in compliance with the terms of this Letter of Credit will be honored upon presentation to us as specified herein.

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

Sincerely,

VECTRA BANK COLORADO, NATIONAL ASSOCIATION

A handwritten signature in cursive script that reads "Carol Skubic".

Authorized Signature

**RECORDING MEMORANDUM
Exhibit D**

City of Grand Junction
Public Works and Planning Department
File: #

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 CP Grand Junction, LLC (Developer) and the City of Grand Junction (City) pertaining to Grand West Business Park (Project), located at 1075 23rd Road.


The Developer of the Project was required by law to install and construct certain public and private improvements, the completion of which was guaranteed by a Development Improvements Agreement and/or Maintenance Guarantee. The Project is required to be constructed in accordance with the approval by the City pursuant to and in accordance with the Zoning and Development Code all as more fully detailed and described in City of Grand Junction development file # FP-2007-133.

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 the 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.

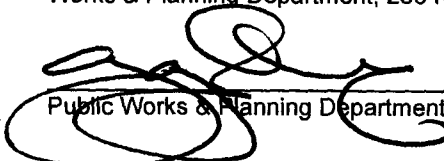
DEVELOPER: CP Grand Junction, LLC

By:  _____
Date

(Print Name) Douglas H. Gilliland

CITY OF GRAND JUNCTION:

In accordance with the above, I hereby certify that the Development Improvement Agreement and/or Maintenance Guarantee are made of record by this memorandum and that the same may be inspected and/or copied at the City of Grand Junction, Public Works & Planning Department, 250 N. 5th Street, Grand Junction Colorado.

 _____
Public Works & Planning Department Date 10-17-07



NOTICE OF DEFAULT OF DEVELOPMENT IMPROVEMENTS AGREEMENT

September 2, 2008

VIA FIRST CLASS U.S. MAIL, POSTAGE PREPAID

CD 113/114 Park Plaza Grand Junction Limited Partnership
9285 Huntington Square
N. Richland Hills, TX 76180

Re: Grand West Business Park, FP-2007-133

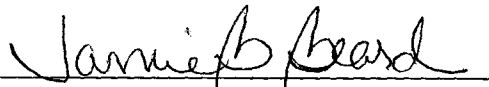
Dear Sir or Madam:

CD 113/114 Park Plaza Grand Junction Limited Partnership is hereby declared to be in default of the terms of the Development Improvements Agreements executed by Douglas H. Gilliland on July 16, 2007, ("DIA") concerning the above referenced development. You are in default for failing to complete one (1) or more portions of the Improvements on or before the Completion Date or any extensions thereof.

If you have questions, you may contact me or Greg Moberg, the planner for this project.

Sincerely,

OFFICE OF THE CITY ATTORNEY

By: 

Jamie B. Beard
Assistant City Attorney

cc: John Shaver, City Attorney
Tim Moore, Public Works & Planning Director
File: FP-2007-133
Vectra Bank
2394 Patterson Rd
Grand Junction, CO 81505



IRREVOCABLE STANDBY LETTER OF CREDIT NO. 1956027-6003

BENEFICIARY:
CITY OF GRAND JUNCTION
C/O DIRECTOR OF PUBLIC WORKS & PLANNING
250 NORTH 5TH STREET
GRAND JUNCTION, CO 81501

DATE: September 5, 2008
EXPIRATION: May 31, 2009

RE: Project Name/City File No.: Grand West Business Park

AMOUNT: USD \$235,941.00

Dear Sir/Madam:

At the request of Club Deal 113/114 Park Plaza and Grand Junction, Limited Partnership, 1350 East Newport Center Drive, Deerfield Beach, FL 33442, we hereby establish our Irrevocable Standby Letter of Credit in your favor up to an aggregate amount of Two Hundred Thirty Five Thousand Nine Hundred Forty One Dollars and 00/100 (\$235,941.00USD). This Letter of Credit is available for payment against presentation of your draft(s) at Sight drawn on VECTRA BANK COLORADO, NATIONAL ASSOCIATION, bearing the clause: "Drawn under Letter of Credit no. 1956027-6003 of VECTRA BANK COLORADO, NATIONAL ASSOCIATION dated September 5, 2008" accompanied by the following documents:

This original Letter of Credit and amendment(s) thereto, if any, which will be returned to you following our notation thereon of the amount of such draft drawn hereunder. If the amount of the draft is for the full amount of this Letter of Credit, the original Letter of Credit will be retained by us.

Beneficiary's statement purportedly signed by an authorized designee of City of Grand Junction stating as follows:

"Club Deal 113/114 Park Plaza and Grand Junction, Limited Partnership) 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 \$235,941.00 USD."

Partial drawings are allowed.

Except as stated above no modifications or revocations may be made by the undersigned to this letter of Credit without the express written approval of the City's Director of Public Works & Planning or his designee.

This Letter of Credit is not transferable.

In the event of a drawing all original documents including original sight Draft must be dispatched in one lot by registered mail, courier services, in person or by any other reasonable business practice directly to VECTRA BANK COLORADO, NATIONAL ASSOCIATION.

This Standby Letter of Credit expires at our counters at the close of business on the expiration date May 31, 2009

All banking charges outside our counters are for the account of the Beneficiary.

If you have any questions concerning this transaction, please call us at (720) 947-7947 or (720) 947-7950
We hereby agree with you that all draft(s) drawn under and in compliance with the terms of this letter of Letter of Credit will be honored upon presentation to us as specified herein.



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Member FDIC



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Sincerely,

VECTRA BANK COLORADO, NATIONAL ASSOCIATION

Carol Spivak, Pres.

Authorized Signature



November 4, 2008

Mr. Wayne Hunter
Sun King
PO Box 3299
Grand Junction, CO 81502

RE: Project Name: Grand West Business Park
Project Number: FP-2007-133

The Developer is hereby notified that all requirements for the initial acceptance for the Project have been fulfilled. The Developer is responsible for all materials and workmanship for all of the public infrastructure improvements constructed or installed as part of the Project for one year following the initial acceptance date. Except that improvements under the jurisdiction of other entities, such as water districts and sewer districts shall be subject to the warranty requirements of those entities.

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

Initial acceptance date/ begin warranty period: July 10, 2008

Form of financial guarantee: Modification to the original LOC from Vectra Bank Colorado, National Association

Amount of financial guarantee: \$245,941.00

Sincerely,

Ted Eyl
Development Inspector

EC:

Greg Moberg, Planning Services Supervisor
Chris Spears, Storm Drainage System
Ron Key, Water Distribution System
Larry Brown, Sewage Collection System
Mary Sparks, Senior Administrative Assistant

David Van Wagoner, Street System
Rick Dorris, Development Engineer
Peggy Sharpe, Administrative Assistant
Darren Starr, Streets Manager
Ed Tolen, Ute Water

Development Improvements Guarantee Recap Sheet

Check One:	<input checked="" type="checkbox"/> Cash Deposit	<input type="checkbox"/> Letter of Credit (LOC)
	<input type="checkbox"/> Cash Refund	<input type="checkbox"/> LOC Release

Date	June 23, 2009
Project File No.	FP-2007-133
Project Name	Grand West Business Park
Project Location	23 Road & G Road
Purpose of DIA	Maintenance Guarantee
Payee Name	Sun King Management Corporation
Payee Mailing Address	PO Box 3299
Payee City, State Zip Code	Grand Junction, CO 81502
Payee Telephone No.	(970) 245-9173
DIA Expiration Date	September 24, 2009
Project Planner	Greg Moberg
Project Engineer	Rick Dorris

ACCOUNTING INFORMATION

CASH				LETTER OF CREDIT			
	AMOUNT	DATE	REFERENCE		AMOUNT	DATE	REFERENCE
DEPOSIT	\$10,000.00	06/23/09	Check #36473	LOC Amount	\$ -		
Refund				Release	\$ -		
Refund	\$ -			Release	\$ -		
Refund	\$ -			Release	\$ -		
BALANCE	\$10,000.00			BALANCE	\$ -		

DIA Cash Fund/Account No.	207-2090
----------------------------------	----------

MAINTENANCE GUARANTEE

1. **Parties:** The parties to this Maintenance Guarantee ("the Guarantee" or "Guarantee") are ~~Grand Junction Limited Partnership~~ ^{City West Park Plaza} ("the Developer") and the City of Grand Junction, Colorado ("the City" or "City"). Collectively the Developer and the City may be referred to as the Parties.

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

2. **Effective Date:** The Effective Date of the Guarantee will be the date that it is signed and accepted by the City.

RECITALS

The Developer has constructed, installed and is required to warrant and maintain certain improvements ("Improvements" or "the Improvements") which were made necessary by virtue of development on property within the City. The Property, known as Grand West Business Park has been reviewed and approved under Public Works & Planning file # EP-2007-133 and as necessary or required to construe this guarantee, that file(s) is incorporated by this reference.

The City seeks to protect the health, safety and general welfare of the community by requiring that the Improvements, once constructed, be maintained. The purpose of this guarantee is to protect the City from having to repair the Improvements at its cost. The Agreement is not executed for the benefit of materialmen, laborers or others providing work, services or material to the Developer and/or the Property or for the benefit of the owners, purchasers or users of the Property. The mutual promises, covenants and obligations contained in this guarantee are authorized by law, the Colorado Constitution, the Charter and the City's ordinances.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer or its successor(s) or assign(s) shall maintain and guarantee the Improvements, at his/her/its own expense, against defects in workmanship and materials for a period of one year from the date of City acceptance of the Improvements. The Developer's obligation is and will be independent of any obligations of the City.

12. Measure of Cost/Expenses: The measure of costs and or expenses chargeable by the City under this guarantee will be the reasonable cost of satisfactorily repairing and/or replacing the Improvements plus reasonable City administrative expenses (in the amount of 20% of the repair, replacement and/or warranty work) all of which may exceed the amount of the security provided for in paragraph 4. The amount of the security provided for in paragraph 4 does not set, limit, establish or provide the Developer's maximum financial obligation.

12a. City administrative expenses for which the Developer is obligated to pay include but are not limited to personnel costs, including benefits, overtime, callback, standby and other extraordinary compensation, materials, equipment, third-party contracting costs, collection costs and the value of engineering, legal and administrative staff time devoted to the repair and/or replacement of the Improvements and/or enforcement of this guarantee and all initial warranty(ies) or guarantee(s) assigned to the City by the Developer.

13. City's Rights: When any defect or default occurs, the City may after notice and the Developer's failure and/or refusal to repair or replace the Improvements, proceed to collect the amount of the cost or expense incidental or necessary to affect the repair or replacement of the Improvements. The City will have the right to reconstruct, rebuild or otherwise maintain Improvements itself or it may contract with a third party for completion and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining and repairing such Improvements. This remedy is cumulative in nature and is in addition to any other remedy the City has at law or in equity.

14. Indemnification: The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns harmless from and against all claims, costs and 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 pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance or non-performance of work pursuant to this guarantee. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance of work pursuant to this guarantee except where such suit is brought by the Developer against the City. The Developer is, however, not an agent or employee of the City.

15. No Waiver: No waiver of any provision of this Agreement by the City will be deemed to or constitute a waiver of any other provision, nor will it be deemed to or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and the Developer; nor will the waiver of any defect or default under this guarantee be deemed a waiver of any subsequent defect(s) or default(s) of the same type. The City's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any defect(s), default(s) or improvement(s).

16. Amendment or Modification: The Parties may amend or modify the Agreement only by written instrument executed on behalf of the City by the Public Works and Utilities Director or his designee and by the Developer or his authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

17. Attorney's Fees: Should either party be required to resort to litigation to enforce the terms of this guarantee, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If relief is awarded to both parties, the attorney's fees may be equitably divided between the parties by the decision-maker. The value of the City's in-house legal counsel is agreed to be \$125.00 per hour.

18. Integration: This guarantee, together with the exhibits and attachments thereto constitutes the entire agreement between the Parties and no statement(s), promise(s) or inducement(s) that is/are not contained in this agreement will be binding on the parties.

19. Third Party Rights: No person or entity who or which is not a party to this agreement will have any right of action under this agreement.

20. Severability: If any part, term or provision of this guarantee is held by a court or courts of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the right of the parties will be construed as if the part, term or provision was never part of the agreement.

21. Benefits: The benefits of this agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this agreement are

personal obligations of the Developer and also will be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with

the Property. There is no prohibition on the City to assign its rights under this agreement. The City will expressly release the original Developer's guarantee or obligations if it accepts new security from any Developer or lender who obtains the Property; however, no other act of the City will constitute a release of the original Developer from his liability under this agreement.

22. 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: CO113/14 BK A Grand Junction Limited Partnership Name - Developer/Company
9285 Huntington Square Address (Street and Mailing)
N. Richland Hills, TX 76180 City, State & Zip Code
(817) 788 - 1000 Telephone and Fax Numbers
(817) 788 - 1670
bdurham@ti-holdings.com E-mail

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

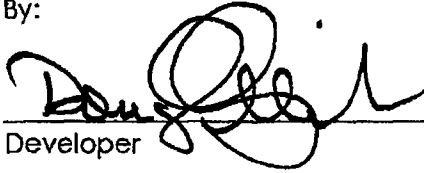
Cc: Public Works and Planning Department
250 North 5th Street
Grand Junction, CO 81501

23. Recordation: Developer will pay for all costs to record a memorandum of this guarantee in the Clerk and Recorder's Office of Mesa County, Colorado.

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

25. Personal Jurisdiction and Venue: Personal jurisdiction and venue for any action commenced by either party to this agreement whether arising out of or relating to the agreement, will be deemed to be proper only if such action is commenced in Mesa County, Colorado. The Developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

By:



Developer

7-29-08

Date

Name (printed): Douglas H. Gililand

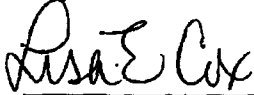
Title (position): Manager

Attest:

Secretary

Date

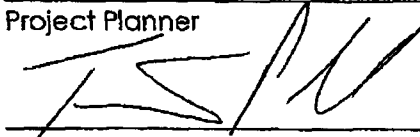
City of Grand Junction



9/24/08

Project Planner

Date



9/24/08

Dept. of Public Works and Planning

Date

GUARANTEE2007

5/15/2007



City Attorney

June 23, 2009

Vectra Bank
2394 Patterson Road
Grand Junction, CO 81505

Re: Cancellation of Letters of Credit Numbers **1956027-6002 & 1956027-6003**
Club Deal 113/114 Park Plaza and Grand Junction, Limited Partnership
Internal Reference: **Grand West Business Park: FP-2007-133**

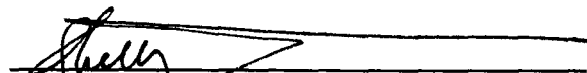
To Whom It May Concern:

Enclosed please find the original Letters of Credit Numbers **1956027-6002** and **1956027-6003** for **Club Deal 113/114 Park Plaza and Grand Junction, Limited Partnership**. As beneficiary, the City of Grand Junction informs you that the Letters of Credit are being returned to you for cancellation. This letter is being provided at the direction of the Director of Public Works and Planning Department for the City.

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

Sincerely,

OFFICE OF THE CITY ATTORNEY



Shelly Dackonish, Staff Attorney

Encl. Letters of Credit Numbers **1956027-6002**
and **1956027-6003**

Pc: Greg Moberg, Planner
Peggy Sharpe, Planning

Club Deal 113/114 Park Plaza and
Grand Junction, Limited Partnership
9285 Huntington Square
N. Richland Hills, TX 76180



IRREVOCABLE STANDBY LETTER OF CREDIT NO. 1956027-6002

BENEFICIARY:
CITY OF GRAND JUNCTION
C/O DIRECTOR OF PUBLIC WORKS & PLANNING
250 NORTH 5TH STREET
GRAND JUNCTION, CO 81501

DATE: September 5, 2008
EXPIRATION: May 31, 2009

RE: Project Name/City File No.: Grand West Business Park

AMOUNT: USD \$269,101.00

Dear Sir/Madam:

At the request of Club Deal 113/114 Park Plaza and Grand Junction, Limited Partnership, 1350 East Newport Center Drive, Deerfield Beach, FL 33442, we hereby establish our Irrevocable Standby Letter of Credit in your favor up to an aggregate amount of Two Hundred Sixty Nine Thousand One hundred and One Dollar and 00/100 (\$269,101.00USD). This Letter of Credit is available for payment against presentation of your draft(s) at Sight drawn on VECTRA BANK COLORADO, NATIONAL ASSOCIATION, bearing the clause: "Drawn under Letter of Credit no. 1956027-6002 of VECTRA BANK COLORADO, NATIONAL ASSOCIATION dated September 5, 2008" accompanied by the following documents:

This original Letter of Credit and amendment(s) thereto, if any, which will be returned to you following our notation thereon of the amount of such draft drawn hereunder. If the amount of the draft is for the full amount of this Letter of Credit, the original Letter of Credit will be retained by us.

Beneficiary's statement purportedly signed by an authorized designee of City of Grand Junction stating as follows:

"Club Deal 113/114 Park Plaza and Grand Junction, Limited Partnership) 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 \$269,101.00 USD."

Partial drawings are allowed.

Except as stated above no modifications or revocations may be made by the undersigned to this letter of Credit without the express written approval of the City's Director of Public Works & Planning or his designee.

This Letter of Credit is not transferable.

In the event of a drawing all original documents including original sight Draft must be dispatched in one lot by registered mail, courier services, in person or by any other reasonable business practice directly to VECTRA BANK COLORADO, NATIONAL ASSOCIATION.

This Standby Letter of Credit expires at our counters at the close of business on the expiration date May 31, 2009

All banking charges outside our counters are for the account of the Beneficiary.

If you have any questions concerning this transaction, please call us at (720) 947-7947 or (720) 947-7950
We hereby agree with you that all draft(s) drawn under and in compliance with the terms of this letter of Letter of Credit will be honored upon presentation to us as specified herein.



GRAND JUNCTION BANK
2394 PATTERSON ROAD GRAND JUNCTION, COLORADO 81505
PHONE: 970 248 9762 FAX: 970 248 9767
www.vectrabank.com

Member FDIC



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Sincerely,

VECTRA BANK COLORADO, NATIONAL ASSOCIATION

Carol Skubic, Pres.

Authorized Signature



IRREVOCABLE STANDBY LETTER OF CREDIT NO. 1956027-6003

BENEFICIARY:
CITY OF GRAND JUNCTION
C/O DIRECTOR OF PUBLIC WORKS & PLANNING
250 NORTH 5TH STREET
GRAND JUNCTION, CO 81501

DATE: September 5, 2008
EXPIRATION: May 31, 2009

RE: Project Name/City File No.: Grand West Business Park

AMOUNT: USD \$235,941.00

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

Sincerely,

VECTRA BANK COLORADO, NATIONAL ASSOCIATION

Carol Skubic, Pres.
Authorized Signature



December 3, 2009

Mr. Chris Motz
Sun King
PO Box 3299
Grand Junction, CO 81502

RE: Notice of Final Acceptance
Project Name: Grand West Business Park
Project Number: FP-2007-133

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.
- Maintenance of the detention pond and outlet works is the responsibility of the homeowners association.

Water distribution system:

- N/A – Served by Ute Water

Sanitary sewer:

- Sewer mains, manholes

I have contacted the Planner for release of the Development Improvements Agreement, the Maintenance Agreement, and any financial security attached to the Project.

Sincerely,

**Rick
Dorris**

Digitally signed by Rick Dorris
DN: cn=Rick Dorris, o=City of
Grand Junction, ou=Public
Works and Planning,
email=rickdo@gjcity.org, c=US
Date: 2009.12.03 11:27:52 -0700

Rick Dorris, PE, CFM
Development Engineer

Electronic copy:

Greg Mober, Planning Services Supervisor
Peggy Sharpe, Administrative Assistant
Chris Spears – Storm Drainage System
Leslie Ankurm – Senior Admin. Asst.

Mark Barslund, Development Inspector
David Van Wagoner – Street System
Larry Brown – Sewage Collection System
Darren Star – Streets Manager

City of Grand Junction
Accounts Payable Edit Listing

Vendor/Remittance Address	Number	Description	Invoice Date	G/L Date	Due Date	Confirming EFT G/L Date	Notes	Amounts
3244 - Sun King Management Corporation	RFD2009Dec09	DIA Refund/Grand West Development Park/FP-2007-133	12/09/2009	12/09/2009	12/09/2009		No	Gross: 10,000.00
								Freight: 0.00
Invoice Department: 06-630 PW&P,Planning		Check Sort Code:	Bank Account: Accounts Payable Clearing			State Tax:		0.00
PO Box 3299		Check Code:	Invoice Terms:			County Tax:		0.00
PO Box 3299		Manual Check: No			Local/City Tax:		0.00	
Grand Junction, CO 81502		Check Number:			Discount:		0.00	
								Retainage: 0.00
								Net Amount: \$10,000.00

Detail:	P.O. Number	C/D/FT/ A/1099	Description	Quantity	U/M	Amount/Unit	Total Amount
	N/N/N/N/N/N		REFUND - DIA Refund/Grand West Development Park/FP-2007-133	1.0000	EA	10,000.0000	10,000.00

G/L Distribution:	G/L Account/Project	Expensed	Unencumbered
	207.2090 (Transportation Capacity Fund.Deposits Payable)	10,000.00	0.00

Total Invoice Items: 1 Invoice Amount Expensed: \$10,000.00 Invoice Amount Unencumbered: \$0.00



PUBLIC WORKS & PLANNING

December 9, 2009

Sun King Management Corporation
PO Box 3299
Grand Junction, CO 81502

**Re: Development Improvement Agreement FP-2007-133
Grand West Business Park**

To Whom It May Concern:

Enclosed please find a check in the amount of \$10,000.00 for the security deposit refund for the above referenced Development Improvement Agreement.

If you have any questions regarding this matter, please feel free to call me at (970) 244-1438.

Sincerely,

A handwritten signature in cursive script that reads "Leslie Ankrum".

Leslie Ankrum
Senior Administrative Assistant

enclosures

pc: Planning File #FP-2007-133
Peggy Sharpe, Administrative Assistant

Development Improvements Guarantee Recap Sheet

Check One:	<input type="checkbox"/> Cash Deposit	<input type="checkbox"/> Letter of Credit (LOC)
	<input checked="" type="checkbox"/> Cash Refund	<input type="checkbox"/> LOC Release

Date	December 3, 2009
Project File No.	FP-2007-133
Project Name	Grand West Business Park
Project Location	23 Road & G Road
Purpose of DIA	
Payee Name	Sun King Management Corporation
Payee Mailing Address	PO Box 3299
Payee City, State Zip Code	Grand Junction, CO 81502
Payee Telephone No.	(970) 245-9173
DIA Completion Date	September 24, 2009
Project Planner	Greg Moberg
Project Engineer	Rick Dorris

ACCOUNTING INFORMATION

CASH				LETTER OF CREDIT			
	AMOUNT	DATE	REFERENCE		AMOUNT	DATE	REFERENCE
DEPOSIT	\$10,000.00	06/23/09	Check #36473	LOC Amount	\$ -		
Refund	\$ 10,000.00	12/09/09		Release	\$ -		
Refund	\$ -			Release	\$ -		
Refund	\$ -			Release	\$ -		
BALANCE	\$0.00			BALANCE	\$ -		

DIA Cash Fund/Account No.	207-2090
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RELEASE OF RECORDING MEMORANDUM
City of Grand Junction
Public Works & Planning Department
FILE: FP-2007-133

This Release relates to a Recording Memorandum dated October 17, 2007, by and between Club Deal Grand Junction, LLC (Developer) and the City of Grand Junction, pertaining to Grand West Business Park (Project), located at 675 23 Road, Grand Junction, CO, recorded at Book 4537, Page 785, 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: Richard A. Dennis Date: 12-3-09

Planner: [Signature] Date: 12.3.09

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.

[Signature] Public Works & Planning Department Date: 12.3.09

The foregoing instrument was executed before me this 3rd day of December, 2009, by Greg Moberg, of the Public Works & Planning Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

Leslie G. Ankrum
Notary Public

My commission expires on 8/21/2013



My Commission Expires 08/21/2013

RELEASE OF PUBLIC IMPROVEMENTS AGREEMENT


September 5, 2014

TO WHOM IT MAY CONCERN:

Because the obligations have been sufficiently satisfied by the completion of the Grand West Business Park project, the City of Grand Junction hereby releases and disclaims any interest it has in the following recorded land use obligations for public improvements, to the extent that such interest inured to the City by virtue of its annexation of the property:

AGREEMENT BETWEEN MESA COUNTY BOARD OF COMMISSIONERS AND
MIDWEST COMMERCIAL PARTNERSHIP, recorded at Reception No. 1294907 on June 18,
1982.

Director of Community Development



Tim Moore

City Manager



Rich Englehart



2784 Crossroads Blvd., P.O. Box 2163, Grand Junction, Co. 81501 Phone (303) 242-3517

May 4, 1982

1294907
JUN 18, 1982 08:56 AM 81378 P0160
E.SAWYER, CLK&REC MESA CTY, CO

Mesa County Board of Commissioners
Mesa County Court House
559 White Avenue
Grand Junction,
Colorado 81501

RE: Development Schedule and Guarantee of Improvements, MIDWEST
COMMERCIAL SUBDIVISION

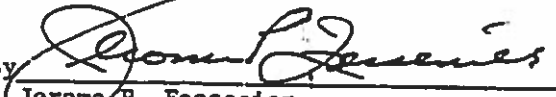
Lady and Gentlemen:

It is the plan of the owners of Midwest Commercial Subdivision to develop the project in three phases. Improvements to the lots fronting on G Road are presently complete except for driveways and individual water and sewer services which will be constructed at the time on site development occurs. These lots fronting onto G Road are in the initial phase and since the improvements are complete, these lots will be considered released from this improvements agreement. However, powers of attorney for inclusion in a potential Improvement District for street improvements is G Road and/or 23 Road will be provided.

Phase 2 of development will include the improvements to the lots fronting onto 23 Road. These improvements essentially consist of the extension of water and sewer services and will be scheduled at a later date as marketing of the lots facing 23 Road demand. The undersigned hereby guarantees not to request building permits in the said second phase until improvements are complete for this phase and a partial release from this improvements agreement has been obtained.

Improvements for 22 3/4 Road and its connection to U.S. Highway 6 & 50 are in phase 3 and similar to phase 2, will be scheduled at a later date as marketing of the lots facing 22 3/4 Road demand. The undersigned hereby guarantees not to request building permits on lots facing 22 3/4 Road until phase 3 improvements are completed and a release from this agreement has been obtained.

Signed: MIDWEST COMMERCIAL PARTNERSHIP
By C.B.W. Builders, Inc., Managing Partner

By 
Jerome P. Fossenier
Executive Vice President

JPF:hl



CBW IS A FRANCHISED DEALER FOR BUTLER BUILDING SYSTEMS