

DRE04RIV

TYPE OF RECORD: PERMANENT
CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**
NAME OF CONTRACTOR: DILLON REAL ESTATE CO., INC.
SUBJECT/PROJECT: CITY MARKET WAREHOUSE
LOCATION: 2439 RIVER ROAD
TAX PARCEL #: 2945-092-00-170
FILE #: PFP-2003-148
CITY DEPARTMENT: COMMUNITY DEVELOPMENT
YEAR: 2004
EXPIRATION DATE: NONE
DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are Dillon Real Estate Co., Inc., ("Developer") and the **City of Grand Junction, Colorado** ("City").

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

2. **Effective Date:** The Effective Date of the Agreement shall be the date that it is signed by the 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 2439 River Road, Grand Junction, Colorado has been reviewed and approved under Community Development file # PFP-2003-148 ("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 shall not exceed \$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 no more than \$45.00/hour. See, Section 19 concerning attorneys'/ litigation fees. The City agrees to work with the Developer in good faith to resolve any issues with respect to excessive billings.

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 \$219,135.87 (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 letter of credit 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.

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

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 as of the date hereof 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 the amount on Line G2, of Exhibit B, the City Security. The Maintenance Guarantee shall expire and be returned upon Developer's request as of the expiration of the one-year warranty period as extended, if applicable, and in accordance with paragraph 25e.

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: March 5, 2004

Completion Date: March 5, 2005

8. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations when fulfilling its obligations under this Agreement. 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 its engineer shall provide timely written notice to the issuer of the Guarantee and the Director when the Developer and 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 nonconforming construction and/or defects within thirty (30) days from the issuance of the notice by its engineer of a defect.

10. **Acceptance of Improvements:** The City shall not accept and/or approve any or all of the Improvements until the Developer presents the documents required by Section 30c. At such times as Developer provides the required documentation as described in Section 30c, the City shall issue its Acceptance if all other provisions of this Agreement are in full compliance.

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 all Improvement(s) the amount which the City is entitled to draw on the Guarantee shall be reduced to the amount on Line G2, of Exhibit B, the City Security. This remaining balance shall constitute the Maintenance Guarantee as reflected in Section 6a.

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 until such default has been cured.

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, and only after Developer has been notified of being in default of this Agreement as provided for in Section 13g unless Section 13c, 13d, and/or 13e applies.

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 three 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 nonperformance 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 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, the Commencement Date and the Completion Date, 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 three calendar days after deposit with the United States Postal Service, first class, postage prepaid and addressed as follows:

If to Developer:	Dillon Real Estate Co., Inc. 10168 Linn Station Road Louisville, KY 40223 (502) 423-4136 (502) 423-4710	Name -Developer/Company Address (Street and Mailing) City, State & Zip Code Telephone and Fax Numbers
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If to City:	Office of the City Attorney 250 North 5 th Street Grand Junction, CO 81501
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Cc:	Community Development Department 250 North 5 th Street Grand Junction, CO 81501
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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 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 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: DILLON REAL ESTATE CO., INC., a Kansas Corporation

By: *Paul Heidman* 2-16-04

Developer VICE PRESIDENT Date

PAUL HEIDMAN
Name (printed)

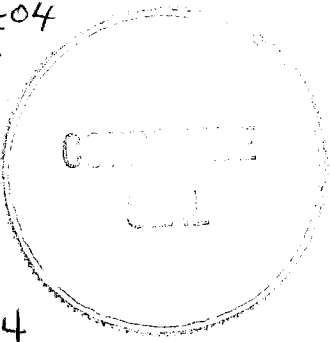


Corporate Attest:

Bruce M. Gach 2-16-04

Name Bruce M. Gach, Assistant Secretary Date

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



Katherine M. Portman 3-5-04

Community Development Dept. Date

EXHIBIT A

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

Real Property situated in the NW $\frac{1}{4}$, and SW $\frac{1}{4}$ of Section 9, Township 1 South, Range 1 West of the Ute Meridian, Mesa County, Colorado; more particularly described as follows:

Beginning at a point which bears S 89°59'37"W, 656.53 feet from the Center of said Section 9,
Thence S 00°02'26" E, 878.28 feet;
Thence S 66°55'45" W, 370.63 feet;
Thence S 68°09'00" W, 150.00 feet;
Thence S 73°38'44" W, 183.62 feet;
Thence N 00°02'50" W, 357.95 feet;
Thence N 90°00'00" W, 200.00 feet;
Thence N 00°02'42" W, 741.82 feet;
Thence S 89°57'13" W, 42.40 feet;
Thence N 00°02'47" W, 57.83 feet;
Thence N 89°57'18" W, 300.00 feet;
Thence N 00°02'47" W, 300.00 feet;
Thence S 89°57'18" E, 300.00 feet;
Thence N 00°02'47" W, 73.29 feet;
Thence N 89°59'29" E, 242.59 feet;
Thence N 00°02'19" W, 810.38 feet;
Thence S 56°32'16" E, 787.31 feet;
Thence S 00°02'29" E, 776.12 feet to the Point of Beginning.

EXHIBIT B
IMPROVEMENTS COST ESTIMATE

DATE: 9/10/2003
 DEVELOPMENT NAME: CITY MARKET WAREHOUSE
 LOCATION: NW 1/16 Corner Section 9, T1S, R3W, UM
 PRINTED NAME OF PERSON PREPARING: James E. Langford & Charles R. Knippel

CITY MARKET WAREHOUSE

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
A. SANITARY SEWER					
1	8" PVC Sanitary Sewer Main	LF	916	\$ 15.00	\$ 13,740.00
2	4" Asphalt Patch for San. Sewer Trench	SY	666	\$ 10.00	\$ 6,660.00
3	5" Concrete Vpan Removal & Replacement	LF	10	\$ 25.00	\$ 250.00
4	Sanitary Sewer Manhole	EA	3	\$ 1,500.00	\$ 4,500.00
5	Core & Connection to Existing Manhole	EA	2	\$ 450.00	\$ 900.00
6	Connection to Existing Manhole	EA	1	\$ 300.00	\$ 300.00
Subtotal Part A Sanitary Sewer					\$ 26,350.00
B. DOMESTIC WATER					
Not Applicable					
Subtotal Part B - Domestic Water					\$ -
C1 STREETS - RIVER ROAD					
1	Aggregate Base Course (Class 6) (4" Compacted Thickness)	CY			\$ -
2	Aggregate Base Course (Class 6) (6" Compacted Thickness)	CY			\$ -
3	Aggregate Base Course (Class 6) (25" Compacted Thickness)	CY			\$ -
4	Hot Bituminous Paving, Grading (4" thick)	SY			\$ -
5	Monolithic, Vertical Curb, Gutter and Sidewalk (7' Wide)	LF			\$ -
6	Complete Concrete Corner	SY			\$ -
7	Modular Block Retaining Walls	FF	340	\$ 18.00	\$ 6,120.00
8	Street Signs	EA			\$ -
9	Striping (Removal)	LF			\$ -
10	Striping (New)	SF			\$ -
11	Painted Arrows	SF			\$ -
12	Traffic Control	LS			\$ -
13	Chain Link Fence Replacement	LF	465	\$ 17.00	\$ 7,905.00
C2 BRIDGES					
Not Applicable					
Subtotal Part C - Streets and Bridges					\$ 14,025.00
D1 EARTHWORK - RIVER ROAD					
1 Not Applicable					
D2 REMOVALS AND RESETTING - RIVER ROAD					

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
1	Removal & Disposal of Asphalt	SY			\$ -
2	Remove & Replace 2' Vpan (8' Sections)	EA	9	\$ 200.00	\$ 1,800.00
3	Remove & Dispose Concrete Wall	LS	1	\$ 1,500.00	\$ 1,500.00
4	Remove Structures	EA			\$ -
5	Remove Signs	EA			\$ -
6	Remove Fence	LF	572	\$ 2.50	\$ 1,430.00
7	Sump Pump Salvage	EA	1	\$ 100.00	\$ 100.00
D3 SEEDING AND SOIL RETENTION					
	Not Applicable				
D4 STORM DRAINAGE FACILITIES					
1	12" PVC Storm Drain Pipe	LF	765	\$ 20.00	\$ 15,300.00
2	12" RCP Storm Drain Pipe	LF	76	\$ 28.00	\$ 2,128.00
3	48" Storm Drain Manhole	EA	3	\$ 1,400.00	\$ 4,200.00
4	Connection to Existing MH	EA	1	\$ 600.00	\$ 600.00
5	Single Curb Opening Storm Drain Inlet	EA			\$ -
6	Area Storm Drain Inlet	EA	1	\$ 1,200.00	\$ 1,200.00
Subtotal Part D - Grading and Drainage					\$ 28,258.00
E1 IRRIGATION					
	See Landscaping				
E2 LANDSCAPING					
1	Mobilization	LS	1	\$ 954.97	\$ 954.97
2	Turf	SF	1207	\$ 0.25	\$ 301.75
3	Plant Material & Planting	LS	1	\$ 13,360.20	\$ 13,360.20
4	Plant Material & Planting	SF	5955	\$ 1.40	\$ 8,337.00
5	Irrigation System	LS	1	\$ 1,691.25	\$ 1,691.25
6	Concrete Edging	LF	46	\$ 4.00	\$ 184.00
E Subtotal Part E - Landscaping and Irrigation					\$ 24,829.17
SANDHILL LANE IMPROVEMENTS					
C1 STREETS - SANDHILL LANE					
1	Aggregate Base Course (Class 6) (6" Compacted Thickness)	CY	19	\$ 24.00	\$ 456.00
2	Aggregate Base Course (Class 6) (19" Compacted Thickness)	CY	855	\$ 21.00	\$ 17,955.00
3	Hot Bituminous Paving, Grading_ (2" thick)	SY	1308	\$ 5.00	\$ 6,540.00
4	Hot Bituminous Paving, OVERLAY (3" Thick)	SY	2318	\$ 9.25	\$ 21,441.50
5	Concrete Curb and Gutter (2' wide)	LF	304	\$ 10.00	\$ 3,040.00
6	Concrete Drainage Pan (3' Wide, " Thick)	LF	295	\$ 18.00	\$ 5,310.00
7	Concrete Drainage Pan (6' Wide, " Thick)	LF	41.5	\$ 18.00	\$ 747.00
8	Complete Concrete Corners w/ 6' Pan	SY	170	\$ 36.00	\$ 6,120.00
Subtotal Part C - Streets and Bridges					\$ 61,609.50
D1 EARTHWORK - SANDHILL LANE					

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
1	Unclassified Excavation	CY	1100	\$ 2.00	\$ 2,200.00
D2 REMOVALS AND RESETTING - SANDHILL LANE					
1	Removal & Disposal of Asphalt	SY	1724	\$ 2.00	\$ 3,448.00
Subtotal Part D - Grading and Drainage					\$ 5,648.00
Subtotal Construction Costs					\$ 160,719.67
F. Miscellaneous Items					
1	Construction Phase Engineering	%	0.75%	\$ 160,719.67	\$ 1,205.40
2	Construction staking/surveying	%	2.75%	\$ 160,719.67	\$ 4,419.79
3	Developer's inspection cost	%	1.00%	\$ 160,719.67	\$ 1,607.20
4	General construction supervsn	%		\$ 160,719.67	\$ -
5	Quality control testing	%	2.75%	\$ 160,719.67	\$ 4,419.79
6	Construction traffic control	%	5.00%	\$ 160,719.67	\$ 8,035.98
7	City inspection fees	%	0.75%	\$ 160,719.67	\$ 1,205.40
8	As-builts	LS		\$ 1,000.00	\$ 1,000.00
E Subtotal Part F - Miscellaneous Items					\$ 21,893.56
<p>% = Percentage of total site construction costs</p> <p>G. COST SUMMARY</p> <p>1 Total Improvement Costs \$ 182,613.23</p> <p>2 City Security (20%) \$ 36,522.65</p> <p>3 Total Guarantee Amount \$ 219,135.87</p>					
<p>NOTES</p> <ol style="list-style-type: none"> All prices shall be for items complete in place and accepted. All pipe prices shall include excavation, pipe, bedding, backfill, and compaction. Water main shall include pipe, excavation, bedding, backfill, bends, and appurtenances not itemized elsewhere. All concrete items shall include Aggregate Base Course where required by the drawings. Fill in the pipe type for irrigation pipe and sleeves. Reconditioning shall be calculated to at least 6" outside of back of walk on both sides. Units can be changed if desired, simply annotate what is used. Additional lines or items may be added as needed. <p>Signature of Developer <i>Paul W. Heikman</i> Date <i>02-16-04</i> (If corporation, to be signed by President and attested to by Secretary together with the corporate seals.)</p> <p>I have reviewed the estimated costs and time schedule shown above and, based on the construction drawings submitted to date and the current cost of construction, I take no exception to the above.</p> <p><i>Laura C. Lambertz</i> 3-5-04 City Development Engineer, Date</p> <p><i>Kathleen Paterson</i> 3-5-04 Community Development Date</p>					

Exhibit C

(See attached letter of credit)



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

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

DATE: FEBRUARY 17, 2004

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

EXPIRATION DATE: AUGUST 19, 2005

OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. SLCLSTL01016

GENTLEMEN:

WE HEREBY ISSUE OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER SLCLSTL01016 IN FAVOR OF YOURSELVES FOR THE ACCOUNT OF THE KROGER COMPANY, 1014 VINE ST., CINCINNATI, OH 45202 UP TO THE AGGREGATE AMOUNT OF USD219,135.87 (TWO HUNDRED NINETEEN THOUSAND, ONE HUNDRED THIRTY FIVE AND 87/100 UNITED STATES DOLLARS) AVAILABLE BY YOUR DRAFT AT SIGHT DRAWN ON U.S BANK NATIONAL ASSOCIATION, ST. LOUIS, MISSOURI ACCOMPANIED BY:

THIS LETTER OF CREDIT IS EFFECTIVE UPON SIGNATURE.

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

“THE KROGER COMPANY 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 \$ _____.”

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

DRAFTS MUST BE DRAWN AND PRESENTED AT U.S. BANK NATIONAL ASSOCIATION, INTERNATIONAL DEPT., SL-MO-L2IL, 8TH AND LOCUST STREETS, ST. LOUIS, MO 63101 NOT LATER THAN AUGUST 19, 2005 OR ANY EXTENDED DATE THEREOF.

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 AT LEAST NINETY (90) DAYS PRIOR TO SUCH EXPIRATION DATE WE NOTIFY YOU AT 250 N. 5TH STREET, GRAND JUNCTION, CO 81501 BY COURIER SERVICE THAT WE ELECT NOT TO FURTHER EXTEND THIS LETTER OF CREDIT. EXCEPT AS STATED ABOVE NO MODIFICATIONS OR CANCELLATIONS 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 NOT ASSIGNABLE.

PARTIAL DRAWINGS ARE PERMITTED

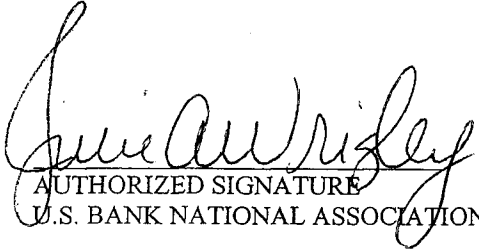
EACH DRAFT MUST STATE THAT IT IS "DRAWN UNDER U.S. BANK NATIONAL ASSOCIATION, ST. LOUIS, MISSOURI LETTER OF CREDIT NO. SLCLSTL01016 DATED FEBRUARY 17, 2004".

WE HEREBY ENGAGE WITH THE DRAWERS OF ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT, THAT SUCH DRAFTS WILL BE DULY HONORED UPON PRESENTATION TO THE DRAWEE.

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

THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS 1993 REVISION INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION 500.

VERY TRULY YOURS,


AUTHORIZED SIGNATURE
U.S. BANK NATIONAL ASSOCIATION



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

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

MARCH 4, 2004

Amendment number 1 to letter of credit number SLCLSTL01016

Applicant: THE KROGER COMPANY
1014 VINE ST. 8TH FLOOR
CINCINNATI, OH 45202-1100

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

The above mentioned credit is amended as follows:

On the second page, add to the fourth paragraph:
". . . , which may be done by courier service, first class
mail, or in person."

This amendment is subject to beneficiary approval. Please indicate approval or disapproval below and return the attached copy of this amendment.

Beneficiary approval: *Katherine M. Patton*

Beneficiary disapproval: _____

This credit is subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500, or any subsequent revision thereto. This amendment is to be considered as part of the original credit and must be attached thereto. All other terms and conditions remain unchanged.

U.S. Bank National Association

Jane A. Drisley
Authorized Signature/LESA



Gloria Landry
Corporate Real Estate Manager
The Kroger Co.

Email: gloria.landry@kroger.com

1014 Vine Street
Cincinnati, Ohio, 45202
Phone: (513) 762-4208
Fax: (513) 762-4839

February 16, 2004

Mr. Bob Blanchard, Community Development Director
City of Grand Junction
250 North Fifth Street
Grand Junction, CO 81501-2668

**Re: City Market Warehouse Improvements
"Cash In Lieu of Construction"**

Dear Mr. Blanchard:

Please accept the enclosed check # 3302466 in the amount of \$ 78,731.00 as payment for the "Cash In Lieu of Construction" as discussed with Ms. Laura Lamberty, Development Engineer (see attached email confirmation dated 12/23/03). The Cash In Lieu of Construction is for work originally contained as part of our Development Improvement Agreement (DIA). At the City's request this work has been deleted from our DIA as part of the overall work to be performed by the City during its future River Road improvements.

Should you have any questions please feel free to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "Gloria Landry", is written over a faint, larger version of the same signature.

Gloria Landry
Corporate Real Estate Manager



"Jim Langford"
<jlangford@tlcwest.co
m>

To: <troy.fraley@kroger.com>
CC:
Subject: FW: City Market

12/23/2003 05:40 PM

Troy,
Here is the confirmation of the City's offer to take the \$100/ft.
Jim

-----Original Message-----

From: Laura Lamberty [mailto:laural@ci.grandjct.co.us]
Sent: Thursday, December 18, 2003 7:05 AM
To: jlangford@tlcwest.com
Subject: Re: City Market

Jim, That is correct.

Laura Lamberty, PE
Development Engineer
City of Grand Junction

>>> "Jim Langford" <jlangford@tlcwest.com> 12/17/03 02:14PM >>>

Laura,
I took the frontage dimension off the City Market plat, 787.31 feet. If I
understood you correctly, at \$100/ft., this would give us a payment in lieu
of construction of \$78,731 versus the \$100,282.60 which was based on the
actual construction estimate. Please confirm.
Jim

RELEASE OF RECORDING MEMORANDUM
City of Grand Junction
Community Development Department
FILE # PFP-2003-148

Development Improvements Agreement

This Release relates to a ~~Recording Memorandum~~ dated March 5, 2004, by and between Dillon Real Estate Co., Inc. (Developer) and the City of Grand Junction, pertaining to City Market Subdivision (Project), located at 2439 River Road, recorded at Book 3602, Page 424/434 Mesa County Clerk and Recorders Office. 438

COPY

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: Liam C. Lamberty Date: 2-14-06

Planner: Ronnie Edwards APA Date: 2-14-06

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.

Katherine M. Portner Date: 2-14-06
Community Development Department

The foregoing instrument was executed before me this 14th day of February, 2006, by Katherine M. Portner, of the Community Development Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

Gayleen Henderson
Notary Public

My commission expires on 10/29/2009

