

KOE0924R

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	JAMES P. KOEHLER
PROJECT/SUBDIVISION:	CANDLEWOOD HILTON SUBDIVISION – DBA CANDLEWOOD SUITES
ADDRESS:	680 24 ROAD
TAX PARCEL NO:	2945-042-30-001
FILE #:	PFP-2008-357
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2009
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

## DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are James P Koehler, ("Developer") and the **City of Grand Junction**, Colorado ("City").

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

2. **Effective Date:** The Effective Date of the Agreement shall be the date that it is signed by the Public Works & Planning Director, which shall be no sooner than recordation of the final plat or final plan approval whichever first occurs.

### RECITALS

The Developer seeks permission to develop property, described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The Property, known as CAVOLE WOODS HIGHWAY SUBDIVISION has been reviewed and approved under Planning file # PPP-2008-357 ("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 \$ 575,679.06 (120% of the amount for the Improvements) in a form and with terms acceptable to the City ("Guarantee"). The Guarantee shall be in the form of a cash deposit made to the City, a letter of credit or a disbursement agreement in a form and with content approved by the City Attorney. The Guarantee specific to this Agreement is attached as Exhibit C and is incorporated by this reference as if fully set forth.

Select one: Cash \_\_\_\_\_ Letter of Credit (LOC) \_\_\_\_\_ Disbursement Agreement X

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 \$ ~~150,000~~ 95,946.50 (Line G2, Exhibit B, City Security).

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

7. **Commencement, Completion and Abandonment Periods:** The Developer shall commence work on the Improvements within 30 days from the Effective Date of this Agreement; that date is known as the "Commencement Date."

7a. The Developer shall complete the Improvements by the end of the twelfth month from the Effective Date of this Agreement; that date is known as the "Completion Date."

7b. The Developer shall not cease construction for any period of more than 60 consecutive days. If construction is ceased for 60 or more consecutive days the Director may deem the Development abandoned ("the Abandonment Period").

7c. The Commencement date and the Completion Date are as follows:

Commencement Date: 4/1/10  
Completion Date: 4/1/11

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 \$575,679.08 (Line G1, Exhibit B, Total Improvement Costs).

11a. At the written request of the Developer, the City shall execute a certificate verifying Acceptance of the Improvement and thereafter waiving its right to draw on

the Guarantee to the extent of such amount. A Developer in default under this Agreement has no right to such certification.

**12. Use of Proceeds:** The City shall use funds deposited with it, drawn or guaranteed pursuant to this Agreement only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements or paying Administration and Inspection fees.

**13. Events of Default:** The following conditions, occurrences or actions shall constitute a default by the Developer:

13a. Developer's failure to complete each portion of the Improvements on or before the Completion Date;

13b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvements within the applicable warranty period;

13c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer. In such event the City may immediately declare a default without prior notification to the Developer;

13d. Notification to the City, by any lender with a lien on the Property, of a default by Developer on any obligation to such lender. In such event, the City may immediately declare a default without prior notification to the Developer.

13e. With regard to the Property or any portion thereof: initiation of any foreclosure action regarding any lien or encumbrance; or initiation of mechanics lien(s) procedure(s); or assignment or conveyance of the Property in lieu of foreclosure. In such event the City may immediately declare a default without prior notification to the Developer.

13f. Notification to the City from the bank issuing the Guarantee that it will not renew the Guarantee at a time when security is still required hereunder and no substitute collateral acceptable to the City has been provided by the Developer.

13g. Except as provided, the City may not declare a default until written notice has been sent to the Developer at the address shown in the development file. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

**14. Measure of Damages:** The measure of damages for breach of this Agreement by the Developer shall be the reasonable cost of satisfactorily completing the Improvements, plus reasonable expenses. Expenses may include but are not limited to contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to the collection/completion of the Improvements.

For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit B shall be *prima facie* evidence of the minimum cost of completion; however, the maximum amount of the Developer's liability shall not be established by that amount or the amount of the Guarantee.

**15. City's Rights Upon Default:** When any event of default occurs, the City may draw on the Guarantee or proceed to collect any other security to the extent of the face amount of the Guarantee less eighty percent (80%) of the estimated cost (as shown on Exhibit B) of all Improvements for which the City has given its Acceptance and no warranty work is reasonably required. The City may also exercise its rights to disbursement of loan proceeds or other funds under the City improvements disbursement agreement.

15a. The City shall have the right to complete Improvements itself or it may contract with a third party for completion.

15b. The Developer grants to the City, its successors, assigns, agents, contractors and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining, inspecting and repairing the Improvements.

15c. The City may assign the proceeds of the Guarantee or other funds or assets that it may receive in accordance with this Agreement to a subsequent developer or lender that has acquired the Property by purchase, foreclosure or otherwise.

15d. That developer or lender shall then have the same rights of completion as the City if and only if the subsequent developer or lender agrees in writing to complete or correct the Improvements and provides to the City reasonable security for that obligation.

15e. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

**16. Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns ("City") harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with or on account of the performance or non-performance of work at the Property and/or the Improvements and/or the Development that is being done pursuant to this Agreement.

16a. The Developer further agrees to aid and defend the City in the event that the City and/or the Improvements is named as a defendant in an action concerning the performance of work pursuant to this Agreement except for a suit wherein the Developer states claim(s) against the City.

16b. The Developer is not an agent, partner, joint venturer or employee of the City.

17. **No Waiver:** No waiver of any provision of this Agreement by the City shall be deemed or constitute a waiver of any other provision nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and the Developer; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful or other act by the Developer or the acceptance of any Improvement.

18. **Amendment or Modification:** The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or his/her/its authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

19. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, shall be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. The City shall be entitled to claim the value of its in-house attorneys at the rate of \$125.00 per hour. If relief is awarded to both parties the attorney's fees may be equitably divided between the parties by the decision maker.

20. **Vested Rights:** This Agreement does not guarantee, represent or certify that the Developer is entitled to any other approval(s) required by the City, before the Developer is entitled to commence development beyond the scope of this Agreement or to transfer ownership of the Property being developed.

21. **Integration:** This Agreement, together with the exhibits and attachments thereto constitutes the entire Agreement between the parties. No statement(s), promise(s) or inducements(s) that is/are not contained in this Agreement shall be binding on the parties.

22. **Third Party Rights:** No person or entity who or which is not a party to this Agreement shall have any right of action under or be a beneficiary of this Agreement.

23. **Time:** For the purpose of computing the Abandonment Period and Commencement and Dates, such times in which war, civil disasters or acts of God occurs or exist shall not be included if such prevents the Developer or City from performing its obligations under the Agreement. The Developer must notify the City in writing if/when it asserts impossibility of performance under this paragraph. The City may reject the Developer's assertion, if it finds, in writing that the condition(s) that the Developer asserts do not exist.

24. **Severability:** If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term or provision. The

rights of the parties shall be construed as if the part, term or provision was never part of the Agreement.

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

25a. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property.

25b. There is no prohibition on the right of the City to assign its rights under this Agreement.

25c. Upon written request from the Developer the City shall expressly release the original Developer's Guarantee and/or contract obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City shall constitute a release of the original Developer from his liability under this Agreement.

25d. When the City has issued its Acceptance regarding the Improvements, the City agrees to state the same in writing, with appropriate acknowledgments.

25e. The City shall sign a release only after all warranty periods, as extended by litigation, repair or alteration work, have expired.

26. **Notice:** Any notice required or permitted by this Agreement shall be deemed effective two calendar days after deposit with the United States Postal Service, first class, postage prepaid and addressed as follows:

If to Developer: James P Koehler Name -Developer/Company  
PO Box 15 Address (Street and Mailing)  
Aberdeen, SD 57402 City, State & Zip Code  
(605) 229-0030 Telephone and Fax Numbers  
(605) 226-326  
jp koeh @ midco.net E-mail

Cc:



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

Cc: Public Works & Planning Department  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501

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

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

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

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

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

30a. If the City allows a street to be constructed in stages, the Developer of the first one-half street opened for traffic shall construct the adjacent curb, gutter and sidewalk in the standard location and shall construct the required width of pavement from the 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:

James P. Koehler 11/10/09  
Developer Date  
James P. Koehler  
Name (printed)

Corporate Attest:

\_\_\_\_\_  
Name Date

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

[Signature] 11.19.09  
Public Works & Planning Dept. Date

5/15/2007

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

**EXHIBIT A**

**Lot 1 of the Canyon View North Subdivision as recorded in Book 4330 at Pages 133-134, Reception Number 2357642 of the Mesa County Records**

**EXHIBIT B**  
**CANDLEWOOD HILTON SUBDIVISION**  
**IMPROVEMENTS COST ESTIMATE**

DATE: 7/1/2009  
DEVELOPMENT NAME: CANDLEWOOD HILTON SUBDIVISION  
LOCATION: SECTION 4, T. 1 S., R. 1 W., UTE MERIDIAN  
PRINTED NAME OF PERSON PREPARING: CLINT ALLEN

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>A. SANITARY SEWER</b>					
1	8" PVC SDR-35 Sanitary Sewer Main	LF	1729	\$ 45.00	\$ 77,805.00
2	8" PVC Sanitary Sewer CAPS	EA	2	\$ 75.00	\$ 150.00
4	8" PVC Sanitary Sewer Service Line	LF	52	\$ 28.00	\$ 1,456.00
5	Sanitary Sewer Manhole (48")	EA	8	\$ 2,300.00	\$ 18,400.00
6	Sanitary Sewer Cleanouts	EA		\$ -	\$ -
7	Connection to Pipe in 24 Road	EA	1	\$ 1,500.00	\$ 1,500.00
8	Concrete Encasement	LF		\$ -	\$ -
9	16" Steel Casing Pipe	LF	56	\$ 45.00	\$ 2,520.00
10	Sewer Boring Under Leach Creek	LS	1	\$ 20,000.00	\$ 20,000.00
11	Traffic Control on 24 Road	LS	1	\$ 1,500.00	\$ 1,500.00
<b>Subtotal Part A Sanitary Sewer</b>					<b>\$ 123,331.00</b>
<b>B. DOMESTIC WATER</b>					
1	8" PVC Water Main	LF	690	\$ 24.00	\$ 16,560.00
2	6" PVC Water Main	LF		\$ 18.00	\$ -
3	4" PVC Water Main	LF		\$ 15.50	\$ -
4	8" Gatevalve	EA	8	\$ 950.00	\$ 7,600.00
5	6" Gatevalve	EA	3	\$ 700.00	\$ 2,100.00
6	4" Gatevalve	EA	2	\$ 600.00	\$ 1,200.00
7	8" Fittings (Including Thrustblocks)	EA	6	\$ 375.00	\$ 2,250.00
8	4" Fittings (Including Thrustblocks)	EA	2	\$ 250.00	\$ 500.00
9	Water Service TAPS & Set Ute Pit	EA	2	\$ 425.00	\$ 850.00
10	3/4" Copper Service Line	EA		\$ 10.50	\$ -
11	Hot Tap Connect to Existing Water Line	EA	1	\$ 4,500.00	\$ 4,500.00
13	Fire Hydrant assembly	EA	3	\$ 3,200.00	\$ 9,600.00
14	Utility Adjustments	EA		\$ -	\$ -
15	2" Blowoff	EA		\$ 325.00	\$ -
<b>Subtotal Part B - Domestic Water</b>					<b>\$ 45,160.00</b>
<b>C1 STREETS</b>					
1	" PVC Utility/Irrigation sleeves	LF		\$ -	\$ -
2	" PVC Utility/Irrigation sleeves	LF		\$ -	\$ -
3	Reconditioning	SY		\$ -	\$ -
4	Aggregate Base Course (Class 3)	TN		\$ -	\$ -
5	Aggregate Base Course (Class 6) (13" Compacted	CY		\$ 39.00	\$ -
6	Aggregate Base Course (Class 6) (16" Compacted	CY	1505	\$ 39.00	\$ 58,695.00
7				\$ -	\$ -
8	Hot Bituminous Paving, Grading (3" thick)	SY		\$ 12.40	\$ -
9	Hot Bituminous Paving, Grading (4" thick)	SY	2342	\$ 16.50	\$ 38,643.00
10	Hot Bituminous Paving, Patching ( " Thick)	SY		\$ -	\$ -
11	Geotextile	SY		\$ -	\$ -
12	Concrete Curb ( 18" Wide by 6" High)	LF		\$ -	\$ -
13	Drive Over Conc. Curb, Gutter (3' wide)	LF		\$ 14.50	\$ -
14	Concrete Curb and Gutter (1.5' wide)	LF		\$ 12.00	\$ -
15	Concrete Curb and Gutter (2' wide)	LF		\$ 13.00	\$ -

16	Monolithic, Vertical Curb, Gutter and Sidewalk (5.5' Wide)	LF		\$ 22.00	\$ -
17	Monolithic, Vertical Curb, Gutter and Sidewalk (7' Wide)	LF	932	\$ 22.00	\$ 20,504.00
18	Drive Over Curb, Gutter, and Sidewalk (6.5' Wide)	LF		\$ 16.50	\$ -
20	Concrete Sidewalk (8' Wide)	LF		\$ 32.00	\$ -
21	Concrete Gutter and Driveway Section (6" Thick)	SY		\$ 43.00	\$ -
22	Concrete Drainage Pan (6' Wide, 8" Thick)	LF	52	\$ 32.00	\$ 1,664.00
23	Concrete Corner	SY			\$ -
24	Concrete Curb Ramp	SY	140	\$ 49.00	\$ 6,860.00
25	Concrete Corner Radii, Apron, & Pan	SY	97	\$ 49.00	\$ 4,753.00
26	Concrete Driveway ( " Thick)	SY			\$ -
27	Driveway/Concrete Repair	SY			\$ -
28	Concrete Mail Box Pads	SY		\$ 40.00	\$ -
29	Retaining Walls	LF			\$ -
30	Street Signs	EA	1	\$ 300.00	\$ 300.00
31	Striping (New, Remove/Replace)	LS	1	\$ 2,000.00	\$ 2,000.00
32	Street Lights	EA	29	\$ 2,400.00	\$ 69,600.00
33	"End of Road" Markers	EA	3	\$ 400.00	\$ 1,200.00
34	Signal Construction or Reconstruction	LS			\$ -
35	Flowable Fill	CY			\$ -
36	Sleeves, 4-4" PVC Multi-Utility	LF		\$ 36.00	\$ -
					\$ -
					\$ -
<b>C2</b>	<b>BRIDGES</b>				
					\$ -
1	Box Culvert, Wing Walls and Diversion Struc.	CY		\$ 450.00	\$ -
2	Parapet Wall	LS			\$ -
3	Railing (handrail, guardrail)	LS			\$ -
					\$ -
	<b>Subtotal Part C - Streets and Bridges</b>				<b>\$ 204,219.00</b>
<b>D1</b>	<b>EARTHWORK</b>				
1	Mobilization	LS	1	\$ 12,000.00	\$ 12,000.00
2	Clearing and Grubbing	AC	6	\$ 800.00	\$ 4,800.00
3	Unclassified Excavation	CY	119	\$ 2.50	\$ 297.50
4	Unclassified Embankment	CY	0	\$ 3.50	\$ -
5	Subgrade Preparation	SY	3,427	\$ 1.50	\$ 5,140.50
6	Silt Fence	LF	850	\$ 1.50	\$ 1,275.00
7	Inlet Protection	EA	7	\$ 150.00	\$ 1,050.00
8	Mud traps	EA	1	\$ 1,200.00	\$ 1,200.00
9	Watering (Dust Control)	LS	1	\$ 3,000.00	\$ 3,000.00
<b>D2</b>	<b>REMOVALS AND RESETTING</b>				
1	Removal and Replacement of Asphalt (for utilities)	SY	55	\$ 30.00	\$ 1,650.00
2	Removal of Miscellaneous Concrete	SY	16	\$ 25.00	\$ 400.00
3	Remove Curb, Gutter and Sidewalk	LF			\$ -
4	Removal of Culverts	LF			\$ -
5	Remove Structures	EA			\$ -
6	Remove Signs	EA			\$ -
7	Remove Fence	LF			\$ -
8	Adjust Manhole	EA			\$ -
9	Adjust Valvebox	EA			\$ -
10	Relocate or Adjust Utilities	LS			\$ -
<b>D3</b>	<b>SEEDING AND SOIL RETENTION</b>				
1	Sod	SY			\$ -
2	Seeding (Native)	SY or AC			\$ -
3	Seeding (Bluegrass/Lawn)	SY or AC			\$ -
4	Hydraulic Seed and Mulching	SY or AC			\$ -
5	Soil Retention Blanket	SY			\$ -

<b>D4 STORM DRAINAGE FACILITIES</b>					
1	15" RCP Storm Drain Pipe	LF		\$ 27.00	\$ -
2	18" RCP Storm Drain Pipe	LF	395	\$ 27.00	\$ 10,665.00
3	24" RCP Storm Drain Pipe	LF	397	\$ 27.00	\$ 10,719.00
4	60" Storm Drain Manhole	EA	3	\$ 3,100.00	\$ 9,300.00
5	48" Storm Drain Manhole	EA	1	\$ 2,300.00	\$ 2,300.00
6	Manhole with Box Base	EA			\$ -
7	Connection to Existing MH	EA	1	\$ 1,200.00	\$ 1,200.00
8	Single Curb Opening Storm Drain Inlet	EA	2	\$ 1,800.00	\$ 3,600.00
9	Double Curb Opening Storm Drain Inlet	EA		\$ 2,800.00	\$ -
10	Area Storm Drain Inlet	EA		\$ -	\$ -
11	8" SDR-35 Drain Line	LF		\$ 14.00	\$ -
12	10" Inline Drains	EA		\$ 16.00	\$ -
13	8" Fittings	EA		\$ 350.00	\$ -
14	Retention Area Outlet structure	EA		\$ 4,500.00	\$ -
15	Rip-Rap D <sub>50</sub> = 6"	SY		\$ 50.00	\$ -
16	Sidewalk Trough Drain	EA			\$ -
17	Pump Systems including Electrical	LS		\$ 8,500.00	\$ -
<b>Subtotal Part D - Grading and Drainage</b>					<b>\$ 68,597.00</b>
<b>E1 IRRIGATION</b>					
1	Connect to Existing Pipe	LS		\$ 400.00	\$ -
2	10" PVC Irrigation Pipe	LF		\$ 16.00	\$ -
3	10" CMP Irrigation Pipe	LF		\$ 22.00	\$ -
4	10" FES (Lurvey)	LS		\$ 300.00	\$ -
4	8" PVC Sch 40 PIP Irrigation Pipe (Pond)	LF		\$ 14.00	\$ -
5	16" Steel Casing Pipe	LF		\$ 32.00	\$ -
6	Splitter Box (School)	LS		\$ 2,200.00	\$ -
7	Diversion Structure (Gates & Punch Plate) Concrete is in Canal Crossing	LS		\$ 1,500.00	\$ -
8	Irrigation Manhole w/ Redwood Lid	EA		\$ 1,800.00	\$ -
9	Rem. & Salv. Canal Gates	EA		\$ 150.00	\$ -
10	Relocate Ex. Structure (Lurvey)	LS		\$ 800.00	\$ -
11	Rem. & Disp. Ex. Structure (School)	LS		\$ 500.00	\$ -
12	Inverted Siphon Placement and Materials	EA		\$ 7,000.00	\$ -
13	Rem. & Disp. Ex. Structure (Elam)	LS		\$ 500.00	\$ -
<b>E2 LANDSCAPING</b>					
1	Shrub Beds	SF		\$ 2.30	\$ -
2	Deciduous Tree, Material and Placing	EA		\$ 500.00	\$ -
3	Evergreen Tree, Material and Placing	EA		\$ 500.00	\$ -
4	Grass	SF		\$ 1.25	\$ -
5	6' High Fencing (along D.5 Road)	LF		\$ 21.00	\$ -
6	10' Concrete Walk	LF	425	\$ 38.00	\$ 16,150.00
7	Stucco Fence Demolition and Removal	LF		\$ 50.00	\$ -
8	3" Cobble Rock and Fabric	SF		\$ 15.00	\$ -
9	1 Year Maintenance Agrmnt.	LS		\$ 4,000.00	\$ -
<b>Subtotal Part E - Landscaping and Irrigation</b>					<b>\$ 16,150.00</b>
<b>Subtotal Construction Costs</b>					<b>\$ 457,457.00</b>
<b>F. Miscellaneous Items</b>					
1	Construction staking/surveying	%	1.00%	\$ 457,457.00	\$ 4,574.57
2	Developer's inspection cost	%	1.00%	\$ 457,457.00	\$ 4,574.57
3	General construction supervsn	%		\$ 457,457.00	\$ -
4	Quality control testing	%	1.00%	\$ 457,457.00	\$ 4,574.57

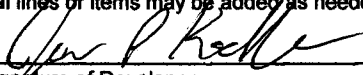
5	Construction traffic control	%	0.50%	\$ 457,457.00	\$ 2,287.29
6	City inspection fees	Lump	1	\$ 1,690.00	\$ 1,690.00
7	As-builts	%	1.00%	\$ 457,457.00	\$ 4,574.57
<b>E</b>	<b>Subtotal Part F - Miscellaneous Items</b>				<b>\$ 22,275.57</b>

% = Percentage of total site construction costs

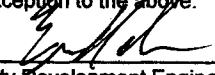
<b>G.</b>	<b>COST SUMMARY</b>			
<b>1</b>	<b>Total Improvement Costs</b>			<b>\$ 479,732.57</b>
<b>2</b>	<b>City Security (20%)</b>			<b>\$ 95,946.51</b>
<b>3</b>	<b>Total Guarantee Amount</b>			<b>\$ 575,679.08</b>

**NOTES**

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

 11/12/09  
 \_\_\_\_\_ Date  
 Signature of Developer  
 (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.

 11/19/09  
 \_\_\_\_\_ Date  
 City Development Engineer

 11.19.09  
 \_\_\_\_\_ Date  
 Community Development

**DISBURSEMENT AGREEMENT**  
(Improvements Guarantee)

**DEVELOPER:** James P. Koehler  
Great Western Bank

**BANK:** \_\_\_\_\_

**PROPERTY:** Candlewood Hilton Subdivision

**DISBURSEMENT AMOUNT:** For the construction of improvements to the Property in an amount not to exceed \$ 575,679.08.

This Agreement is entered into by and between James P. Koehler ("Developer"), Great Western Bank ("Bank") and the City of Grand Junction, Colorado ("City").

**RECITALS**

Developer has been required by the City to construct certain improvements to Storm Drainage, Sanitary Sewer, Water, Street ("Improvements") in accordance with the Zoning and Development Code, Improvements Agreement and subdivision approval.

The Bank has agreed to loan funds to the Developer for construction of the Improvements.

The City Engineer has approved an estimate of the costs of the Improvements and that amount or an amount not to exceed \$ 575,679.08, whichever is greater, shall be referred to as the "Funds."

The parties desire to secure the full and complete performance of the Developer's obligations and to secure that the Funds are disbursed only to pay for the Improvements.

NOW, THEREFORE, THE PARTIES AGREE:

1. **BANK PROMISES.** Bank shall dedicate or set aside the Funds on behalf of Developer and for the City's benefit within twenty-four hours of execution of this Disbursement Agreement.

Bank warrants: that the Funds are to be held in trust solely to secure Developer's obligations under the Improvements Agreement; that the Bank shall act as agent of the City in holding the Funds; that the Funds will not be paid out or disbursed to, or on behalf of, the Developer except as set forth in this document and/or as set forth in the Improvements Agreement; and that the Bank may not modify or revoke its obligation to disburse funds to or on behalf of the Developer or the City. The Bank warrants that the Funds are and will be available exclusively for payment of the costs of satisfactory completion of the Improvements.

2. **DISBURSEMENT PROCEDURES.** The Funds shall be advanced for payment of costs incurred for the construction of Improvements on the Property in accordance with the Improvements List/Detail attached to the Improvements Agreement, the terms of which are incorporated by this reference. All disbursements must comply with the following



procedures:

(a) **Request for Advance.** Developer shall deliver to the Bank a written request for the disbursement of funds on forms acceptable to the Bank. Such requests shall be signed by Developer, Developer's General Contractor, Project Engineer and Architect, if applicable, and the City Engineer. By signing the request for disbursement the Developer is certifying: that all costs for which the advance is being requested have been incurred in connection with the construction of the Improvements on the Property; that all work performed and materials supplied are in accordance with the plans and specifications submitted to and approved by the City; that the work has been performed in a workmanlike manner; that no funds are being requested for work not completed, nor for material not installed; the Project Engineer has inspected the Improvements for which payment is requested; and that such improvements have been completed in accordance with all terms, specifications and conditions of the approved plans. Attached hereto is the list of those individuals, and their respective signatures, required to sign the above described request(s) for disbursement of funds.

(b) **Documentation, Waivers and Checks.** Each request for disbursement of funds shall be accompanied by: (i) one original and one copy of each invoice to be paid; (ii) checks drawn on Developer's construction loan account with the Bank, made payable to the payee(s) and for the amount of each invoice presented for payment; (iii) lien waivers in a form approved by the Bank prepared for signature by each payee; and (iv) postage paid envelopes addressed to each payee for the mailing of checks presented to the Bank.

The Bank shall verify its receipt of all lien waivers relating to any prior disbursements, which lien waivers shall be properly executed and contain no alterations or modifications from those lien waivers that have been previously presented to the Bank.

Upon approval by Developer, the Project Engineer and the Bank of the invoices being presented to the Bank, the Bank shall advance funds into the checking account designated for the payment of the invoices and mail the checks to the payee(s) in the envelopes presented to the Bank, together with lien waivers and copies of supporting invoices.

Under no circumstances shall the Bank make a disbursement for the payment of an invoice if it in good faith believes that: (i) the work has not been completed; (ii) the work has not been completed in a workmanlike manner; (iii) written approval has not been received from the Project Engineer; or (iv) any lien waiver has been altered or modified or has not been returned to the Bank.

(c) **Default.** Upon default of the Developer on any obligation to the Bank or under the Improvements Agreement, the Bank shall disburse no funds to, or at the direction of, the Developer except to the City under the terms of the Improvements Agreement. The Bank shall immediately notify the City, in writing, of any event of default or event of default as provided for in the Improvements Agreement and/or as provided herein.

(d) **Disbursement to City.** In the event the Improvements are not satisfactorily and timely constructed, or upon any default or event of default, the City Engineer shall notify

the Bank to immediately cease disbursement of funds to the Developer and disburse the full amount of the remaining undisbursed funds to the City. Upon such notice, the Bank shall promptly honor the demand of the City Engineer to disburse the Funds to the City or a third party or parties designated in writing by the City. Upon final completion and acceptance of the performance required under the Improvements Agreement, the City shall refund to the Bank any funds disbursed, if any, which are not actually expended to pay all costs, expenses and liabilities, including attorney fees, incurred in completing the Improvements.

3. **DEVELOPER CONSENT:** The Developer, by the signature of James P. Koehler (name & title), consents to disbursements and other actions authorized and provided for by the terms of this Agreement and/or the Improvements Agreement.


4. **LIABILITY FOR LOSS:** If the Bank fails to disburse funds in accordance with the procedures set forth, and the City suffers loss or damage, the Bank shall be liable to the City for the City's direct and consequential damages and all fees, costs and expenses, including attorney's fees.

5. **BINDING EFFECT:** This Agreement shall be binding on the heirs, successors, receivers and assigns of all parties and shall terminate when the City has accepted the Improvements and has recorded a release of the Improvements Agreement.

6. **IMMUNITY:** Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under applicable state law.

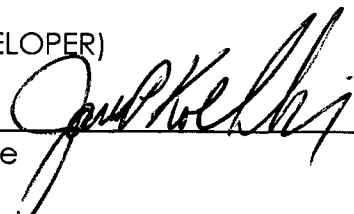
Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(BANK)

By:   
Title A. V. P.


Abardeen, S.D.  
Address

(DEVELOPER)

By:   
Title

P.O. Box 15  
Abardeen S.D. 57102-0015  
Address

CITY OF GRAND JUNCTION

By:   
Director of Public Works & Planning

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between James P. Koehler Developer, Great Western Bank as Bank, and the City of Grand Junction, the following are the individuals authorized to sign written requests for the disbursement of the Funds:

**DEVELOPER:**

*James P. Koehler*  
(name)

*James P. Koehler*  
(signature)

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(signature)

**DEVELOPER'S GENERAL CONTRACTOR:**

*N/A*  
(name)

\_\_\_\_\_  
(signature)

**DEVELOPER'S PROJECT ENGINEER:**

*N/A*  
(name)

\_\_\_\_\_  
(signature)

**DEVELOPER'S ARCHITECT:**

*N/A*  
(name)

\_\_\_\_\_  
(signature)

**CITY ENGINEER:**

*ERIC HAIN*  
(name)

*[Signature]*  
(signature)

revised: May 15, 2007

**RECORDING MEMORANDUM**  
**Exhibit D**

City of Grand Junction  
Public Works and Planning Department  
File: # PFP/SPR-2008-357/359/360

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 TKO (Developer) and the City of Grand Junction (City) pertaining to Candlewood-Hilton (Project), located at 680 24 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 # PFP/SPR-2008-357/359/360

The Developer and the City of Grand Junction by and through the signatures of the undersigned have determined and agreed to the type, quality and amount of improvements required and/or necessitated by the approval of the Project and that the improvements are guaranteed by and through the Development Improvements Agreement and /or Maintenance Guarantee. Furthermore, the Developer and the City agree that the Development Improvements Agreement and/or Maintenance Guarantee are contractual in nature and that the obligations under the Development Improvements Agreement and/or Maintenance Guarantee shall not be assigned except as provided in the agreement(s).

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

NOW THEREFORE, the Developer and an official of the City of Grand Junction, both possessing and representing by their signatures that they possess sufficient authority, do hereby memorialize the relative, rights and obligations contained in the Development Improvement Agreement and/or Maintenance Guarantee herein characterized.

**DEVELOPER:**

By: James P. Koehler 11/10/09  
Date

(Print Name) James P Koehler

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

[Signature] 11.19.09  
Public Works & Planning Department Date

6/10/2003

## **MAINTENANCE GUARANTEE**

1. **Parties:** The parties to this Maintenance Guarantee ("the Guarantee" or "Guarantee") are James P. Koehler ("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 Junction Candlewood Suites has been reviewed and approved under Public Works & Planning file #PP-2008-357 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.

4. **Security:** To secure the performance of its obligations the Developer is required to post security in an amount of \$ 95,946.51 (Line G2, Exhibit B, City Security).

4a. The Developer has posted security to guarantee the Improvements in an amount, form and with terms acceptable to the City.

4b. In addition to that security all warranties and/or guarantees (those incident to construction or as provided by the contractor and/or manufacturer of installed equipment) are hereby assigned to the City.

4c. The Developer shall to the extent necessary or required by the City take whatever action is necessary or required to assign all warranties and/or guarantees (those incident to construction or as provided by the contractor and/or manufacturer of installed equipment) to the City. A copy of those warranties or a memorandum of the same is attached as Exhibit A.

4d. The Developer for itself, its successors and assigns agrees that if the Improvements are not maintained to City standards that the City shall notify the Developer in writing of the defect(s) in accordance with paragraph 8 hereof.

5. **Standards:** The Developer shall maintain the Improvements according to the standards and specifications required by the City or as otherwise established by the City Engineer.

6. **Warranty:** The Developer hereby warrants that the Improvements, each and every one of them, will be maintained in accordance with the Standards in paragraph 5 for the period of this guarantee.

7. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations in effect at the time of final approval when fulfilling its obligations under this guarantee. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after acceptance of the Improvements.

8. **Notice of Defect/Default:** The City shall provide timely notice to the Developer whenever routine inspection reveals that an Improvement and/or maintenance of the same does not conform to City standards and any specifications approved or required in or by the development or that an Improvement(s) is otherwise defective.

8a. As provided herein the City shall provide written notice to the Developer at the address stated in paragraph 22. Notice is and shall be deemed effective

two calendar days after mailing thereof by first class United States mail, postage prepaid.

8b. The Developer will have twelve (12) calendar days from the date of the notice to correct the defect.

8c. The City may grant reasonable extensions in writing to the time for correction of defect(s), however, it is not obligated to do so nor is it obligated to provide any notice of a defect(s) if it becomes aware of the defect(s) in or during an emergency. Furthermore, the City is not obligated to inspect the Improvements but may do so as it would any other improvement.

**9. Acceptance:** Prior to acceptance of any Improvement(s), the Developer shall demonstrate in writing to the satisfaction of the City Attorney that it owns the Improvements in fee simple or that there are no liens, encumbrances or other restrictions other than those that have been accepted by the City Attorney on the Improvements. Approval and/or acceptance of any Improvements does not constitute a waiver by the City of any rights it may have on account of any defect in or failure of the Improvement or maintenance of the same that is detected or which occurs after approval and/or acceptance. All warranties and/or guarantees shall be for a period of no less than 12 months from the date of acceptance of the Improvements.

**10. Funds:** Funds drawn, guaranteed or collected by the City under this agreement shall be used for the purpose of correcting defects in and/or repairing or replacing failure(s) of the Improvement(s).

**11. Defect/Default Events:** The following conditions, occurrences or actions will constitute a defect and/or default:

11a. Developer's failure to maintain each and every one of the Improvements in conformance with this guarantee and/or as required by code, law, rule, ordinance or regulation;

11b. Developer's failure to correct defective construction of any Improvement within the applicable guarantee period;

11c. Developer's failure to maintain security in a form and amount required/provided by this guarantee.

11d. As provided herein the City shall provide written notice to the Developer at the address on file with the development application. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

**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), defaults(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:	<u>James P. Koehler</u>	Name -Developer/Company
	<u>2011 8th Avenue NE</u>	Address (Street and Mailing)
	<u>P O Box 15</u>	
	<u>Aberdeen, SD 57402-0015</u>	City, State & Zip Code
	<u>( 605) 229-0030</u>	Telephone and Fax Numbers
	<u>( 605) 226-3126</u>	
	<u>pennyb@tkohotels.com</u>	E-mail

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

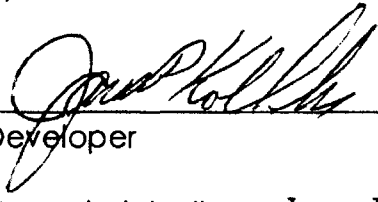
Cc: Public Works and Planning Department  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501

**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:

 July 6, 2011  
Developer Date

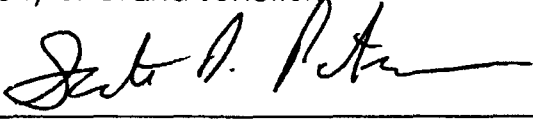
Name (printed): James P. Koehler

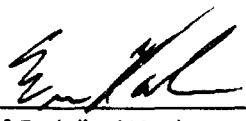
Title (position): Owner

Attest:

\_\_\_\_\_  
Secretary Date

City of Grand Junction

 7-18-11  
Project Planner Date

 7/18/11  
Dept. of Public Works and Planning Date

GUARANTEE2007

5/15/2007



City of Grand Junction  
c/o Director of Public Works & Planning  
250 N 5<sup>th</sup> St  
Grand Junction, CO 81501

Irrevocable Letter of Credit No. 475  
Dated: July 15, 2011  
Expiration: July 15, 2012  
Project Name/City File No.: Candlewood Hilton Sub. (PFP-2008-357)

Dear Sirs:

We hereby establish our Irrevocable Letter of Credit No. 475 in favor of the City of Grand Junction at the request of and for the account of James P. Koehler (Developer) in the amount of Ninety-Five Thousand Nine Hundred Forty-Six and 51/100 U.S. Dollars (\$95,946.51).

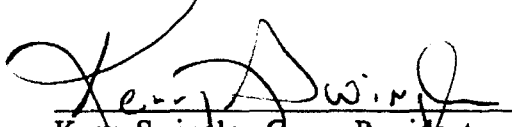
This Letter of Credit is Subject to the following terms and conditions:

- 1) It is effective upon signature;
- 2) It expires on July 15, 2012 subject to the automatic extensions discussed below;
- 3) This Letter of Credit is available by sight draft(s) drawn and marked "Drawn under Great Western Bank Letter of Credit No. 475 dated July 15, 2011";
- 4) This Letter of Credit is established for the use and benefit of the City of Grand Junction by reason of James P. Koehler being obligated to pay or perform in accordance with the provisions of the Grand Junction Zoning and Development Code;
- 5) The following statement signed by an authorized designee of the City of Grand Junction must accompany the sight draft;
- 6) "\_\_\_\_\_ (Developer) has failed to comply with the terms, conditions, provisions and requirements of the Grand Junction Zoning and Development Code and/or plans, specifications or agreements relating to the construction of improvements required by the City of Grand Junction. The monies received from this drawing are required to construct those improvements. The City of Grand Junction therefore requests the payment of \$\_\_\_\_\_."
- 7) It is a condition of this Letter of Credit that it will be automatically extended for a period of six (6) months from the present or any future expiration date unless; (a) the underlying obligation has been performed, released or satisfied, (b) this Letter of Credit has been called in full or (c) the Bank notifies the City of Grand Junction at 250 N 5<sup>th</sup> St, Grand Junction, CO 81501, by certified mail return receipt requested, at least ninety (90) days prior to such expiration date that we elect not to further extend this Letter of Credit.
- 8) Except as stated above no modification 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;
- 9) This Letter of Credit is neither negotiable nor assignable;

10) Partial drawings are permitted;

11) We hereby agree that drafts drawn under and in compliance with the terms of the Letter of Credit will be duly honored on due presentation and delivery of documents, which may be done by first class mail, facsimile, in person or by any other reasonable business practice on or prior to the expiration or any extension thereof of this Letter of Credit;

12) Except as otherwise stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) and to the extent that it does not conflict with Article 5 of the Uniform Commercial Code of the State of Colorado.

  
Kerry Swingler, Group President  
Great Western Bank

# Grand Junction

## PUBLIC WORKS & PLANNING

August 08, 2011

James Koehler  
PO Box 15  
Aberdeen, SD 57402

**RE: Notice of Initial Acceptance**  
**Project Name: Candlewood Hilton Subdivision**  
**Project Number: PR-2011-112; Plan Number: PFP-2008-357; DIA-2011-613**


Dear Mr. Koehler:

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 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 15, 2011
Form of financial guarantee:	Letter of Credit
Amount of financial guarantee:	\$95,946.51

Sincerely,



Eric Hahn, PE  
City Development Engineer

EC: Leslie Ankrum, Senior Administrative Assistant  
Mark Barslund, Development Inspector  
Scott Peterson, Senior Planner

# Grand Junction

PUBLIC WORKS & PLANNING

August 08, 2011

Great Western Bank  
119 6th Avenue SE  
Aberdeen, SD 57401

**Re: Cancellation of Disbursement Agreement:  
Candlewood Hilton Subdivision: PR-2011-112; PFP-2008-357; DIA-2011-613**

To Whom It May Concern:

Enclosed is a copy of the Disbursement Agreement (Improvement Guarantee) entered into between the City of Grand Junction ("City"), **James P. Koehler** ("Developer"), and **Great Western Bank** for improvements to the development referred to as **Candlewood Hilton Subdivision** under **PFP-2008-357**. As beneficiary of the security for a Development Improvements Agreement ("DIA"), the City informs you that the terms of the improvements have been completed by the Developer and the improvements have been accepted by the City. The City hereby releases its interest in the disbursement agreement security. This letter is being provided at the direction of the Director of Public Works and Planning.

If you have any questions, please inform me.



---

Lisa E. Cox, Planning Manager

EC: Plan #PFP-2008-357  
DIA Plan #DIA-2011-613  
Leslie Ankrum, Senior Administrative Assistant

**Developer:**  
Mr. James P. Koehler  
PO Box 15  
Aberdeen, SD 57402

# Grand Junction

June 13, 2011

Mr. Ryan Henderson

RE: Project Name: Candlewood Hilton Subdivision  
Project Number: PFP-2008-357

(sent by electronic transmission only, no hardcopy to follow)

Mr. Henderson:

During the week of June 6, 2011, representatives from the City of Grand Junction Public Works Division conducted an initial inspection of the public improvements at Candlewood Hilton Subdivision. The following items must be addressed before the City can issue Initial Acceptance and begin the one-year warranty for these public improvements:

#### Streets:

1. Clean and sweep all public streets and gutters.
2. Provide sufficient backfill behind all sidewalks and handicap ramps.
3. Cut & caulk the concrete joints in the fillets for both site accesses constructed on Market Street.
4. Install the end-of-road markers at the dead-end of Market Street, as shown on the approved drawings.
5. Repair and/or replace the cracked concrete in the accesses, per the direction of the City Development Inspector.
6. Replace any concrete stained by hydraulic fluids or petroleum products.
7. Replace the "flexed" ADA mats.
8. Grind off all concrete "burrs" on the sidewalks. These are most obvious at the south end of the street, on the west side.
9. The developer and contractor must coordinate all the above efforts with the City Development Inspector to ensure the work is done correctly. (Mark Barslund, 201-1362)

#### Grading & Drainage:

1. Complete the finished surface of the subdivision detention pond, or propose and complete a temporary finished surface for the pond.
2. Complete the final grouting of the frames & grates of both inlets on Market Street.

#### Utilities:

1. All sewer mains associated with the subdivision must be TV-inspected by City staff.
2. Check all fire hydrants and adjust the height as necessary. Coordinate this with the Fire Dept, as necessary.
3. Fasten and/or lock the covers on all irrigation structures.

In addition to the field items listed above, the following closeout documents must also be submitted and approved:

1. Final as-built drawings.
2. Final bound set of ALL engineer's observation reports.
3. Final bound set of ALL trench fill, subgrade, and base course compaction tests, concrete tests, and asphalt tests.
4. Final air test results for all sewer mains associated with the subdivision, including the main located in the F $\frac{1}{2}$  Road right-of-way.
5. Final pond certification letter from a Professional Engineer certifying the detention pond has adequate volume AND that the outlet structure is installed at the correct elevation and will perform as designed.
6. Acceptance letter from Ute Water.
7. Maintenance Guarantee secured with adequate financial instrument.



Once the above issues are resolved and you have verified that the Planning Division has no further concerns, City staff will release the original DIA. Thank you for your efforts to complete this project.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Hahn". The signature is fluid and cursive, with a prominent loop at the end.

Eric Hahn, PE  
Development Engineer

Electronic copy:

Greg Moberg, Planning Services Supervisor  
Scott Peterson, Senior Planner  
Darren Starr, Streets Manager  
Ed Tolen, Ute Water  
Mike Mossburg, Mesa County Building Dept.

Mark Barslund, Development Inspector  
Shelly Dackonish, Staff Attorney  
Chris Spears, Storm Drainage System  
Larry Brown, Sewage Collection System  
Clint Allen, PE (SMA)



Great Western Bank<sup>SM</sup>

Making Life Great

Member FDIC

July 9, 2012

City of Grand Junction  
c/o Director of Public Works & Planning  
250 N 5<sup>th</sup> St  
Grand Junction, CO 81501

Re: Irrevocable Letter of Credit No. 475

Dear Sirs:

Please see the attached copy of the Irrevocable Letter of Credit No. 475 in favor of the City of Grand Junction at the request of and for the account of James P. Koehler (Developer) in the amount of Ninety-Five Thousand Nine Hundred Forty-Six and 51/100 U.S. Dollars (\$95,946.51).

Condition #7 stipulates that the bank needs to notify the City of Grand Junction at 250 N 5<sup>th</sup> St, Grand Junction, CO 81501, by certified mail return receipt requested, at least ninety (90) days prior to such expiration date that we elect not to further extend this Letter of Credit.

**This letter will serve to inform you that we will automatically extend the above mentioned letter of credit the full 6 months until January 15, 2013 and give notice that the Letter of Credit will expire and the Bank will no longer extend at expiration.**

Should you have any further questions please do not hesitate to contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kerry Swingler', written over a horizontal line.

Kerry Swingler, Group President  
Great Western Bank



October 9, 2012

Mr. James Koehler  
P.O. Box 15  
Aberdeen, SD 57402

RE: End-of-Warranty – Candlewood Hilton Subdivision (PFP-2008-357)

Dear Mr. Koehler:

During the last week of September, 2012, representatives from the Public Works Division conducted a final end-of-warranty inspection of the subdivision improvements at the Candlewood Hilton Subdivision. The following items were found to be deficient and must be addressed before the City can issue Final Acceptance and release the developer from all remaining warranty obligations for these public improvements:

1. The center section of the valley pan at the hotel entrance is cracked and is starting to come apart. The damaged section must be removed and replaced per City of Grand Junction Standards.

Once the above issues are resolved and you have verified that the Planning Division has no further concerns, City staff will release any remaining security. Thank you for your efforts in closing this project.

Sincerely,

A handwritten signature in blue ink, appearing to read "Eric Hahn".

Eric Hahn, PE  
Development Engineer

Electronic copy:

Greg Moberg, Planning Services Supervisor  
Scott Peterson, Senior Planner  
Terry Franklin, Streets Manager

Mark Barslund, Development Inspector  
Shelly Dackonish, Staff Attorney  
Chris Spears, Storm Drainage System

December 11, 2012

Mr. James P. Koehler  
PO Box 15  
Aberdeen, SD 57402

**RE: Notice of Final Acceptance**  
**Project Name: Candlewood Hilton Subdivision**  
**Plan Number: PFP-2008-357**  
**Plan Number: DIA-2011-613**

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 Final Acceptance of the Project have been fulfilled. The Developer's warranty obligations, for all materials and workmanship, have concluded and are hereby released.

The following public improvements are accepted for future maintenance by the City:

**Public streets:**

- All public streets as shown on the project plan.

**Storm drainage system:**

- All storm drain pipes, inlets and manholes within the public ROW.

**Water distribution system:**

- N/A. All water mains are within Ute Water jurisdiction.

**Sanitary sewer:**

- N/A. All sewer mains and manholes within public ROW

The City Planner will release the Development Improvements Agreement, the Maintenance Agreement and any financial security attached to the project.

Sincerely,



Eric Hahn, PE  
Development Engineer

EC: Jim Daugherty, Ute Water  
Mark Barslund, Development Inspector  
Scott Peterson, Senior Planner  
Chris Spears, Streets Supervisor  
Larry Brown, Waste Water Maintenance Supervisor  
Leslie Ankrum, Senior Administrative Assistant

December 11, 2012

Great Western Bank  
119 6<sup>th</sup> AVE SE  
Aberdeen, SD 57401

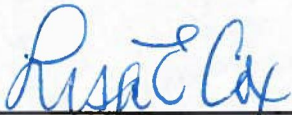
**Re: Cancellation of Letter of Credit Number 475**  
**James P. Kohler**  
**Internal Reference: Candlewood-Hilton Subdivision: FP-2008-357, DIA-2011-613**

To Whom It May Concern:

Enclosed please find the original Letter of Credit Number 475 for **James P. Kohler**. As beneficiary, the City of Grand Junction informs you that the Letter of Credit is being returned to you for cancellation. The 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,



---

Lisa E. Cox, Planning Manager

Encl. Letter of Credit 475

EC: Leslie Ankrum, Senior Administrative Assistant  
Mark Barslund, Development Inspector  
Scott Peterson, Senior Planner  
Eric Hahn, Development Engineer

**Developer**  
James P. Koehler  
PO Box 15  
Aberdeen, SD 57402



**Great Western Bank**<sup>SM</sup>  
Making Life Great  
Member FDIC

City of Grand Junction  
c/o Director of Public Works & Planning  
250 N 5<sup>th</sup> St  
Grand Junction, CO 81501

Irrevocable Letter of Credit No. 475  
Dated: July 15, 2011  
Expiration: July 15, 2012  
Project Name/City File No.: Candlewood Hilton Sub. (PFP-2008-357)

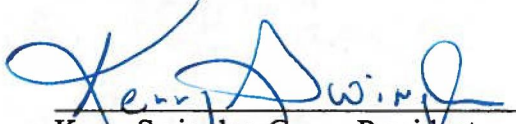
Dear Sirs:

We hereby establish our Irrevocable Letter of Credit No. 475 in favor of the City of Grand Junction at the request of and for the account of James P. Koehler (Developer) in the amount of Ninety-Five Thousand Nine Hundred Forty-Six and 51/100 U.S. Dollars (\$95,946.51).

This Letter of Credit is Subject to the following terms and conditions:

- 1) It is effective upon signature;
- 2) It expires on July 15, 2012 subject to the automatic extensions discussed below;
- 3) This Letter of Credit is available by sight draft(s) drawn and marked "Drawn under Great Western Bank Letter of Credit No. 475 dated July 15, 2011";
- 4) This Letter of Credit is established for the use and benefit of the City of Grand Junction by reason of James P. Koehler being obligated to pay or perform in accordance with the provisions of the Grand Junction Zoning and Development Code;
- 5) The following statement signed by an authorized designee of the City of Grand Junction must accompany the sight draft;
- 6) "\_\_\_\_\_ (Developer) has failed to comply with the terms, conditions, provisions and requirements of the Grand Junction Zoning and Development Code and/or plans, specifications or agreements relating to the construction of improvements required by the City of Grand Junction. The monies received from this drawing are required to construct those improvements. The City of Grand Junction therefore requests the payment of \$\_\_\_\_\_."
- 7) It is a condition of this Letter of Credit that it will be automatically extended for a period of six (6) months from the present or any future expiration date unless; (a) the underlying obligation has been performed, released or satisfied, (b) this Letter of Credit has been called in full or (c) the Bank notifies the City of Grand Junction at 250 N 5<sup>th</sup> St, Grand Junction, CO 81501, by certified mail return receipt requested, at least ninety (90) days prior to such expiration date that we elect not to further extend this Letter of Credit.
- 8) Except as stated above no modification 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;
- 9) This Letter of Credit is neither negotiable nor assignable;

- 10) Partial drawings are permitted;
- 11) We hereby agree that drafts drawn under and in compliance with the terms of the Letter of Credit will be duly honored on due presentation and delivery of documents, which may be done by first class mail, facsimile, in person or by any other reasonable business practice on or prior to the expiration or any extension thereof of this Letter of Credit;
- 12) Except as otherwise stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) and to the extent that it does not conflict with Article 5 of the Uniform Commercial Code of the State of Colorado.



Kerry Swingler, Group President  
Great Western Bank

**RELEASE OF RECORDING MEMORANDUM**  
**City of Grand Junction**  
**Public Works & Planning Department**  
**Plan: PFP-2008-357**  
**DIA-2011-613**

This Release relates to a Recording Memorandum dated November 19, 2009, by and between TKO, (Developer) and the City of Grand Junction, pertaining to Candlewood-Hilton (Project), located at 680 24 Road, Grand Junction, CO, recorded at Book 4944, Page 264, 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 Engineer:  Date: 12/11/12  
City Planner:  Date: 12-11-12

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.

 12-11-12  
Public Works & Planning Department Date

The foregoing instrument was executed before me this 11<sup>th</sup> day of December, 2012, by Lisa Cox, 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 08/21/2013

My commission expires on 8/21/2013





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



**Print Date:**  
 12/12/2012 2:30:42 PM

Transaction #: 152775  
 Receipt #: 2012046797  
 Cashier Date: 12/12/2012 2:30:41 PM

Mailing Address:  
 P.O.BOX 20,000-5007  
 Grand Junction, CO 81502  
 (970)-244-1679

www.mesacounty.us

Customer Information	Transaction Information	Payment Summary
(CITYOFGJ) CITY OF GRAND JCT  COM DEVELOP 250 N 5TH ST GRAND JCT, CO 81501 Escrow Balance: \$67.00	Date Received: 12/12/2012 Source Code: Over The Counter Return Code: Over The Counter Trans Type: Recording	Total Fees \$11.00 Total Payments \$11.00

<b>1 Payments</b>		
ESCROW		\$11.00

<b>1 Recorded Items</b> <i>Candlewood Hilltop PFP-2008-357 DIA-2011-613</i>		
(REL) REL	BK/PG: 5401/648 Reception Number: 2636721 Date: 12/12/2012 2:30:41 PM From: To:	
Recording @ \$10 per page \$1 Surcharge	1	\$11.00

<b>0 Search Items</b>
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<b>0 Miscellaneous Items</b>
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April 6, 2010

*Developers and Operators of Fine Hotels*

Mr. Tim Moore  
Public Works Manager  
City of Grand Junction  
250 N. 5<sup>th</sup> Street  
Grand Junction, CO 81501

Dear Mr. Moore:

The nationwide recession has had a significant adverse impact on hotels, including extended stay hotels. The recession has also caused greater difficulty in securing financing. Those factors have created greater risk for hotel developments. Consequently, every dollar saved improves the prospects for a hotel to be successful.

Our company has spent many months, and many dollars, working on the development of the Candlewood Suites hotel to be located at 654 Market Street, Grand Junction, Colorado 81506. In spite of that effort, we had to delay construction because of the sewer and traffic capacity fees assessed by the City. Now, based on the City's adjustment of the Traffic Capacity Payment to reflect the extended stay nature of our hotel, and the City's authorization for payment of the fees in installments, we will be starting construction.

As agreed, the total fees will be as follows:

Sewer - \$97,776  
Traffic Capacity Payment – 97 rooms at \$1,637 per room = \$158,789  
City Inspection Fee - \$1,690  
Total Fees - \$258,255

The fees will be paid as follows:

\$58,255 will be paid at the start of construction. The remaining balance of \$200,000 will be paid in four equal installments of \$50,000. The first installment will be paid on the first anniversary of the date that a Certificate of Occupancy is issued for the hotel; the three remaining payments will be made on each succeeding anniversary date. No interest will accrue on the sums owed.


Thank you for helping make this hotel project a reality. Governmental entities need pragmatic decision makers, like you. The City of Grand Junction will benefit from the construction and operation of the hotel which our company may have been forced to abandon without the City's assistance. Please confirm our payment arrangements with the City by signing below and returning the signed original in the enclosed stamped envelope. Thank you for your help.

Sincerely,

James P Koehler

Enclosures  
Check #5004

The fees and the installment payment schedule specified in this letter are accepted by the City of Grand Junction.

  
\_\_\_\_\_  
Tim Moore, Public Works Manager  
Date 4-7-10

## PROMISSORY NOTE

**Borrower:** James P. Koehler of 2011 8<sup>th</sup> Avenue, NE, Aberdeen, South Dakota, 57401 (individually and collectively the "Borrower")

**Lender:** City of Grand Junction

**Principal Amount:** \$200,000.00

1. FOR VALUE RECEIVED, the Borrower promises to pay to City of Grand Junction at 250 North 5<sup>th</sup> Street, Grand Junction, Colorado, 81501, the principal sum of two hundred thousand (\$200,000.00) USD, without interest payable on the unpaid principal.
2. This Note will be repaid in consecutive yearly installments of \$50,000.00 each on the anniversary date of the Grand Junction, CO, Candlewood Suites, 654 Market Street, Grand Junction, Colorado 81506, certificate of occupancy.
3. At any time while not in default under this Note, the Borrower may pay the outstanding balance then owing under this Note to City of Grand Junction without bonus or penalty.
4. Notwithstanding anything to the contrary in this Note, if the Borrower defaults in the performance of any obligation under this Note, then City of Grand Junction may declare the unpaid principal amount then due and owing under this Note at that time to be immediately due and payable. Furthermore, in the event of a default the City may disconnect the Candlewood Suites from sewer service.
5. This Note will be construed in accordance with and governed by the laws of the State of Colorado.
6. All costs, expenses and expenditures including, and without limitation, the complete legal costs incurred by City of Grand Junction in enforcing this Note as a result of any default by the Borrower, including but not limited to the cost of disconnecting sewer service, will be added to the principal then outstanding and will immediately be paid by the Borrower.
7. This Note will enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the Borrower and City of Grand Junction. The Borrower waives presentment for payment, notice of non-payment, protest and notice of protest.
8. If Borrower sells the Grand Junction, CO Candlewood Suites during the term of this Note, the Borrower must pay the outstanding balance owed under this Note before closing of the sale.



2 PAGE DOCUMENT

### PROMISSORY NOTE

**Borrower:** James P. Koehler of 2011 8<sup>th</sup> Avenue, NE, Aberdeen, South Dakota, 57401 (individually and collectively the "Borrower")

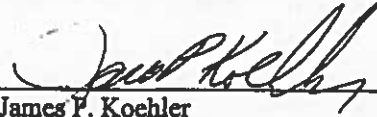
**Lender:** City of Grand Junction

**Principal Amount:** \$200,000.00


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8. If Borrower sells the Grand Junction, CO Candlewood Suites during the term of this Note, the Borrower must pay the outstanding balance owed under this Note before closing of the sale.

IN WITNESS WHEREOF James P. Koehler has duly affixed his signature under seal on this 6<sup>th</sup> day of April, 2010.

SIGNED, SEALED AND DELIVERED

  
James P. Koehler

This 6<sup>th</sup> day of April, 2010 in the presence of:

 (seal)

A NOTARY PUBLIC IN AND FOR  
The State of South Dakota



Address 2011 8<sup>th</sup> Ave NE - Aberdeen SD 57401  
Telephone 605-229-0030 ext 721


**NOTARY ACKNOWLEDGEMENT**

State of South Dakota )  
County of Brown ) ss.

On this the 6<sup>th</sup> day of April, 2010, before me,  
Penny Barondeau, the undersigned officer, personally appeared James P. Koehler,  
know to me (or satisfactorily proven) to be the person whose name is subscribed to the within  
instrument and acknowledged that he/she executed the same for the purposes therein  
contained.

In witness whereof I hereunto set my hand and official seal.



  
Notary Public

My commission expires: 6-24-2014