

08-30-08

Ken Koyalchik
Rick Davis

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are LALE Developments, LLC, ("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 Logan Creek Subdivision has been reviewed and approved under Community Development file # PFP-2006-296 ("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 \$209,902.68 (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

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 \$ 34,983.78 (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: June 29, 2007

Completion Date: August 30, 2008

8. Compliance with Law: The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations when fulfilling its obligations under their Agreement. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after the Effective Date.

9. Notice of Defect: The Developer by and through his/her/its engineer shall provide timely written notice to the issuer of the Guarantee and the Director when the Developer and/or his/her/its engineer has knowledge, that an Improvement or any part or portion of any Improvement either does not conform to City standards or is otherwise defective.

9a. The Developer shall correct all non-conforming construction and/or defects within thirty (30) days from the issuance of the notice by his/her/its engineer of a/the defect.

10. Acceptance of Improvements: The City shall not accept and/or approve any or all of the Improvements until the Developer presents a document or documents for the benefit of the City showing that the Developer owns the Improvements in fee simple, or as accepted by the City Attorney, and that there are no liens, encumbrances or other restrictions on the Improvements other than those that have been accepted by the City Attorney.

10a. Approval and/or acceptance of any Improvement(s) does not constitute a waiver by the City of any right(s) that it may have on account of any defect in or failure of the Improvement that is detected or which occurs after approval and/or acceptance.

10b. Acceptance by the City shall only occur when the City Engineer, sends a writing to such effect ("Acceptance").

11. Reduction of Security: Upon Acceptance of any Improvement(s) the amount which the City is entitled to draw on the Guarantee shall be reduced by an amount of \$174,918.90 (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:	<u>LALÉ Developments, LLC</u>	Name -Developer/Company
	<u>Attention: Loren Ennis</u>	
	<u>P.O. Box 399</u>	Address (Street and Mailing)
	<u>Grand Junction, Colorado 81502</u>	City, State & Zip Code
	<u>(970) 245-1040 off., 216-0572 Cell</u>	Telephone
	<u>(970) 263-4050</u>	Fax Number
	<u>loren@ennisllc.com</u>	E-mail

Cc:

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

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

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

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

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

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

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

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

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

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

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

Exhibit A

TYPE LEGAL DESCRIPTION(S) BELOW, USING ADDITIONAL SHEETS AS NECESSARY, USE SINGLE SPACING WITH A ONE INCH MARGIN ON EACH SIDE. IF LEGAL EXCEEDS 1/2 OF A TYPED PAGE, PLEASE PROVIDE AN ELECTRONIC COPY OF THE LEGAL DESCRIPTION. A DISC, CD, OR E-MAIL ARE ACCEPTABLE FORMS FOR THE ELECTRONIC LEGAL DESCRIPTION.

~~LOT 1 FOURSQUARE MINOR SUBDIVISION SEC 2 1S 1W~~ 82

Lots 2, 3, 4, 5 of Logan Creek Subdivision
Mesa, County, Grand Junction, Colorado.

EXHIBIT B

IMPROVEMENTS COST ESTIMATE

DATE: 6/28/2007
 DEVELOPMENT NAME: Logan Creek Subdivision
 LOCATION: 641 Horizon Drive
 PRINTED NAME OF PERSON PREPARING: Loren E. Ennis

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
A. SANITARY SEWER					
1	8 "PVC Sanitary Sewer Main	LF	298	\$ 32.00	\$ 9,536.00
2	4 "PVC Sanitary Sewer Main	LF			\$ -
3	8 "PVC Sanitary Sewer Main	LF			\$ -
4	Sewer Services	EA or LF	4	\$ 175.00	\$ 700.00
5	4' Sanitary Sewer Manhole	EA	3	\$ 2,800.00	\$ 8,400.00
6	Sanitary Sewer Drop Manhole	EA			\$ -
7	Connection to Existing Manhole	EA	1	\$ 1,200.00	\$ 1,200.00
		LF			\$ -
Subtotal Part A Sanitary Sewer					\$ 19,836.00
B. DOMESTIC WATER					
1	8 "PVC Water Main	LF	331	\$ 24.00	\$ 7,944.00
2	6 "PVC Water Main	LF	14	\$ 24.00	\$ 336.00
3	8 " Caps	LF			\$ -
4	8 "Gatevalve	EA	1	\$ 1,200.00	\$ 1,200.00
5	6 "Gatevalve	EA			\$ -
6	"Gatevalve	EA			\$ -
7	Water Services	EA or LF	5	\$ 1,100.00	\$ 5,500.00
8	Connect to Existing Water Line	EA	1	\$ 1,500.00	\$ 1,500.00
9	Fire Hydrant with Valve	EA	2	\$ 3,500.00	\$ 7,000.00
10	Utility Adjustments	EA			\$ -
11	End of Line 8" Plug	EA	1	\$ 150.00	\$ 150.00
Subtotal Part B - Domestic Water					\$ 23,630.00

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
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C1	STREETS					
1	4" PVC Utility/Irrigation Sleeves	EA	1	\$ 300.00	\$	300.00
2	12" PVC Utility/Irrigation Sleeves	LF			\$	-
3	Reconditioning	SY			\$	-
4	9" Aggregate Base Course (Class 6 ABC)	CY	648	\$ 32.00	\$	20,736.00
5	Aggregate Base Course (Class6) (6" Compacted Thickness)	SY				
6	Aggregate Base Course (Class 6) " Compacted Thickness	SY				
7	Hot Bituminous Paving, Grading 3" Thick	TN	270	\$ 80.50	\$	21,735.00
8	Hot Bituminous Paving, Grading 3" Thick	SY			\$	-
9	Hot Bituminous Patching	SY				
10	Geotextile	SY				
11	Concrete Curb	LF				
12	Concrete Curb and Gutter	LF				
13	Concrete Curb and Gutter	LF				
14	Monolithic Vertical Curb, Gutter and Sidewalk	LF				
15	2.5 ft. Drive Over Curb, Gutter and Sidewalk (4' Wide)	LF	738	\$ 17.40	\$	12,841.20
16	Concrete Sidewalk	LF				
17	Concrete Gutter and Driveway Section	SY				
18	Concrete Drainage Pan	LF	1	\$ 400.00		
19	Concrete Corner Fillet	SY				
20	Concrete Curb Ramp	SY			\$	-
21	Complete Concrete Corner	SY				
22	Concrete Driveway	SY				
23	Driveway/Concrete Repair	SY				
24	Retaining Walls	SY			\$	-
25	Street Signs	EA	3	\$ 250.00	\$	750.00
26	Traffic Control	LS	1	\$ 2,000.00	\$	2,000.00
27	Street Lights	EA	2	\$ 1,500.00	\$	3,000.00
28	Signal Construction or Reconstruction	LS				
29	Gravel Shoulder	SY	34	\$ 32.00	\$	1,088.00
30	Concrete Trail - 10 ft. by 4" thick	LF	508	\$ 32.40	\$	16,459.20

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
C2	BRIDGES				
1	Box Culvert Pre-Cast	LS	0		\$ -
2	Box Culvert Cast-in-Place	LS	0		\$ -
3	Wingwalls	LS	0		\$ -
4	Parapet Walls	LS	0		\$ -
5	Railing (handrail,guardrail)	LS	0		\$ -
	Subtotal Part C - Streets				\$ 78,909.40
D1	EARTHWORK				
1	Mobilization	LS	1	\$ 500.00	\$ 500.00
2	Clearing and Grubbing	AC or LS	3810	\$ 3.00	\$ 11,430.00
3	Unclassified Excavation	CY	1	\$ 6,000.00	\$ 6,000.00
4					\$ -
5	Silt Fence	LF	256	\$ 3.00	\$ 768.00
6	Tack Strips	EA	1	\$ 1,000.00	\$ 1,000.00
7	Inlet/Outlet Protection	EA	1	\$ 100.00	\$ 100.00
8	NPDES Permit	LS	1	\$ 1,000.00	\$ 1,000.00
D2	REMOVALS AND RESETTING				
1	Removal of Asphalt	SY			\$ -
2	Removal of Miscellaneous Concrete	SY			\$ -
3	Removal of Curb and Gutter	LF			\$ -
4	Removal of Culverts	LF			\$ -
5	Remove Structures	EA			\$ -
6	Remove Signs	EA			\$ -
7	Remove Fence	LF			\$ -
8	Adjust Manhole	EA			\$ -
9	Adjuct Valvebox	EA			\$ -
10	Relocate or Adjust Utilities	LS			\$ -
D3	SEEDING AND SOIL RETENTION				
1	Sod	SY			\$ -
2	Seeding (Native)	SY or AC	1.25	\$ 1,000.00	\$ 1,250.00
3	Seeding (Bluegrass)	SY or AC			\$ -
4	Hydraulic Seeding and Mulching	SY or AC			\$ -
5	Soil Retention Blancket	SY			\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
D4	STORM DRAINAGE FACILITIES				
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY			\$ -
2	12 " Storm Drain Pipe	LF	31	\$ 28.00	\$ 868.00
3	18 " Storm Drain Pipe	LF			\$ -
4	24 " Storm Drain Pipe	LF			\$ -
5	24" Storm Drain Pipe	LF			\$ -
6	30" Storm Drain Pipe	LF			\$ -
7	30 " Fared End Extension	EA			\$ -
8	24 " Fared End Extension	EA			\$ -
9	48" Storm Drain Manhole	EA			\$ -
10	60" Storm Drain Manhole	EA			\$ -
11	72" Storm Drain Manhole	EA			\$ -
12	6" Perforated Pipe	LF	363	\$ 18.00	\$ 6,534.00
13	2" Wide Scupper	EA	1	\$ 1,200.00	\$ 1,200.00
14	Outlet Structure	EA	1	\$ 3,000.00	\$ 3,000.00
15	Double Curb Opening Storm Drain Inlet	EA			\$ -
16	Area Storm Drain Inlet	EA			\$ -
17	Detention Area Outlet Structure	EA			\$ -
18	Rip-Rap D50= " "	CY			\$ -
19	Sidewalk Trough Drain	EA			\$ -
20	Clean Out	EA	2	\$ 250.00	\$ 500.00
	Subtotal Part D - Grading and Drainage				\$ 34,150.00

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
E1	Irrigationn				
1	Connect To Existing Pipe	LS			\$ -
2	" Irrigation Pipe	SF			\$ -
3	" Irrigation Pipe	SF			\$ -
4	Fittings and Valves	LS			\$ -
5	Services	EA			\$ -
6	Pump System and Concrete Vault	LS			\$ -
7	Irrigation Structure	EA			\$ -
8	Vacuum Relief and/or Air Release	EA			\$ -
E2	Landscaping				
1	Design/Architesture	LS			\$ -
2	Earthwork	CY			\$ -
3	Hardscape Features	LS			\$ -
4	Plant Material & Planting	LS			\$ -
5	Trees	EA			\$ -
	Shrubs	EA			\$ -
6	Curbing	LF			\$ -
7	Retain Walls and Structures	LS			\$ -
8	1 Year Maintenance Agreement	LS			\$ -
9	Topsoil	LS			\$ -
E	Subtotal Part E - Landscaping and Irrigation				\$ -

RECORDING MEMORANDUM
Exhibit D

City of Grand Junction
Public Works and Planning Department
File: # PFP-2006-296

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 LALE DEVELOPMENTS, LLC (Developer) and the City of Grand Junction (City) pertaining to LOGAN CREEK SUBDIVISION (Project), located at 641 HORIZON DR.

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-2006-296.

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 acting and representing by their signatures that they possess sufficient authority, do hereby acknowledge the relative rights and obligations contained in the Development Improvements Agreement and/or Maintenance Guarantee herein characterized

DEVELOPER
By: 
Date: 7-24-07
City of Grand Junction


City of Grand Junction, Colorado
Public Works and Planning Department
641 Horizon Drive
Grand Junction, Colorado 81505



City of Grand Junction
C/o Director of Public Works & Planning
250 North Street
Grand Junction, CO 81501

Irrevocable Letter of Credit No. 398-6200273
Dated: January 5, 2008
Expiration: 12/1/2008
Project Name/City File No.: PFP-2006-296

Dear Sirs,

We hereby establish our irrevocable Letter of Credit No. 398-6200273 in favor of Grand Junction at the request of and for the account of LALE Development, LLC in the amount of \$34,938.78 U.S. dollars.

The Letter of Credit is subject to the following terms and conditions:

- 1) It is effective upon signature;
- 2) It expires on 12/01/2008 subject to the automatic extensions discussed below;
- 3) This Letter of Credit is available by sight draft(s) drawn and marked "Drawn under TCF National Bank Letter of Credit No. 398-6200273 Dated: January 5, 2008";
- 4) This Letter of Credit is established for the use and benefit of the City of Grand Junction by reason of the LALE Development, LLC 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) "LALE Development, LLC has failed to comply with the terms, conditions, provisions and requirements of the Grand Junction Zoning and Development code and/or plans, specifications, or agreements relating to the construction of the 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 \$34,938.78
- 7) It is a condition of this Letter of Credit that it will be automatically extended for a period of six 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 North Street Grand Junction, CO 81501, by certified mail return receipt requested, at least ninety (90) days prior to such expiration date that we elect not to further extend this Letter of Credit.



- 8) Except as stated above no modifications or revocations may be made by the undersigned to this Letter of Credit without the express written approval of the City's Director of Community Development or his designee;
- 9) This Letter of Credit is neither negotiable or assignable;
- 10) Partial drawings are permitted;
- 11) We hereby agree that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored on due presentation and delivery of documents, which may be done by first class mail, facsimile, in person or by any other reasonable business practice on or prior to the expiration or any extension thereof of this Letter of Credit;
- 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.

A handwritten signature in black ink, appearing to read "Warren A. Rick", is written over a horizontal line.

Warren A. Rick
Branch Lending Manager
TCF National Bank

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID OD
STONE-3

DATE (MM/DD/YYYY)
04/05/10

PRODUCER
The Insurance Center-Montrose
South First & Selig
PO Box 550
Montrose CO 81402
Phone: 970-249-2222 Fax: 970-249-2225

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

Stonefly Earthworks, Llc
Don Cooling & Daniel McCarty
16231 Chipeta Rd
Montrose CO 81401

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	Colorado Casualty Insurance Co	41785
INSURER B:	Pinnacol Assurance	
INSURER C:		
INSURER D:		
INSURER E:		

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CBP8584139	02/01/10	02/01/11	EACH OCCURRENCE \$ 1000000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100000 MED EXP (Any one person) \$ 15000 PERSONAL & ADV INJURY \$ 1000000 GENERAL AGGREGATE \$ 2000000 PRODUCTS - COMP/OP AGG \$ 2000000
A		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	BA8586331	02/01/10	02/01/11	COMBINED SINGLE LIMIT (Ea accident) \$ 1000000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
A		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$	CU8583356	02/01/10	02/01/11	EACH OCCURRENCE \$ 1000000 AGGREGATE \$ \$ \$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	4120537	02/01/10	02/01/11	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 100000 E.L. DISEASE - EA EMPLOYEE \$ 100000 E.L. DISEASE - POLICY LIMIT \$ 500000
A		Colorado Casualty	CBP8584139	02/01/10	02/01/11	Excavator 78000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
Golf Course Construction Excavation

CERTIFICATE HOLDER

CITYG-8

City of Grand Junction
Scott Hockins
333 West Ave Bldg C
Grand Junction CO 81501

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL **10** DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
 AUTHORIZED REPRESENTATIVE
Sean M Stansberry, CIC, AU