

NEW08OMR

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	NEW REGATTA LLC.
PROJECT/SUBDIVISION:	ORCHARD MESA RETAIL CENTER
ADDRESS:	2770 HIGHWAY 50
TAX PARCEL NO:	2945-254-00-015
FILE #:	PFP-2006-270
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2008
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are New Regatta 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 OMRC Subdivision has been reviewed and approved under Community Development file # PFP-2006-270 ("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 \$177,826.32 (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 \$29,637.72 (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: ~~December 1, 2007~~ *JANUARY 11, 2008*

Completion Date: ~~December 1, 2008~~ *JANUARY 11, 2009*

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 \$148,188.60 (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

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

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

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

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

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

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

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

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

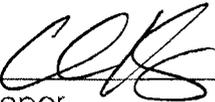
30c. The City shall not issue its written Acceptance with regard to any Improvement(s) including any street, storm drainage facility, sewer, water facility or other required Improvement(s), until the Developer:

(i) furnishes to the City Engineer as-built drawings in reproducible form, blue line stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests required by City specification;

(ii) provides written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon in and under which the Improvement(s) have been constructed or which are necessary for the Improvements are free from toxic, hazardous and other regulated substances or materials;

(iii) provides written evidence to the City Attorney that the title to lands underlying the Improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney; and
(iv) provides written evidence, certified by the Developer's engineer, that the work was systematically inspected and tested and that the materials and the compaction of the materials that are required to be compacted, were in conformance with City-approved plans and specifications.

By:



Developer Date 11.15.08
Donald P. Cook-Manager of New Regatta, LLC
Name (printed) *Christopher R. King*

Corporate Attest:

Name Date

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



Community Development Dept. Date 1.23.08

6/13/2003

Exhibit A Legal Description

A parcel of land situated in the Northwest Quarter Southeast Quarter (NW1/4 SE1/4) Section 25 Township 1 South, Range 1 West of the Ute Meridian, Mesa County Colorado, being more particularly described as follows:

Commencing at the Northwest corner of the NW1/4 SE1/4 Section 25, Township 1 South, Range 1 West of the Ute Meridian, Whence the Northeast Corner NW1/4 SE1/4 of said Section 25 bears S 89° 57'00" E, a distance of 1321.33 feet for a basis of bearings with all bearings contained herein, relative thereto; thence S 00°02'00" E, along the West line of said NW1/4 SE1/4, a distance of 40.00 feet to the South Right-Of-Way line of Mesa County Road B1/2 and the True Point of Beginning; Thence S 00°02'00" E along the West line of said NW1/4 SE1/4, a distance of 253.30 feet to the North Right-Of-Way line of Colorado Highway 50; Thence S 69°23'00" E, along said Right-Of-Way line a distance of 28.11 feet; Thence S 65°05'30" E, along said Right-Of-Way line a distance of 200.50 feet; Thence S 69°29'00" E, along said Right-Of-Way line a distance of 324.40 feet to the Southwest corner of Lot 3, Orchard Mesa Center Subdivision as recorded in Plat Book 17, Page 96, Mesa County Records; Thence N 00°03'00" E, along the west line of said Lot 3, distance of 132.95 feet to the Northwest corner of said Lot 3; Thence S 89°57'00"E, along the North Line of said Lot 3, a distance of 185.00 feet to the Northeast corner of Lot 3; Thence N 00°03'00" E, along the west line of Orchard Mesa Center Subdivision, a distance of 92.94 feet, to the South line of Lot 3, TBIF Minor Subdivision as recorded in Plat Book 18 Page 65, Mesa County Records; Thence N 89°57'00" W along said South line of Lot 3, TBIF Minor Subdivision, a distance of 48.00 feet to the Southwest corner of said Lot 3; Thence N 00°03'00" E, along the West line of TBIF Minor Subdivision a distance of 235.00 feet, to the South Right-Of-Way line of Mesa County Road B1/2; Thence N 89°57'00" W along said south Right-Of-Way line a distance of 649.53 feet and the Point of Beginning.

The above described parcel contains 5.386 Acres.

EXHIBIT B

IMPROVEMENTS COST ESTIMATE

DATE:6/7/07

DEVELOPMENT NAME:OMRC Subdivision

LOCATION:2770 U.S. Highway 50

PRINTED NAME OF PERSON PREPARING:Clint Green Of LANDesign Consulting Engineers

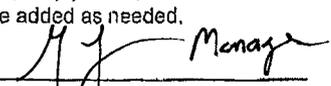
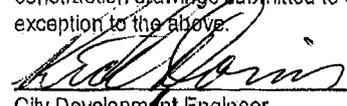
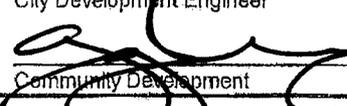
Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
A. SANITARY SEWER					
1	8 " PVC Sanitary Sewer Main	LF	203	\$ 18.00	\$ 3,654.00
2	" PVC Sanitary Sewer Main	LF			\$ -
3	" PVC Sanitary Sewer Main	LF			\$ -
4	Sewer services 8"	LF	39	\$ 12.00	\$ 468.00
5	Sanitary Sewer Manhole	EA	3	\$ 2,500.00	\$ 7,500.00
6	Sanitary Sewer Drop Manhole	EA			\$ -
7	Connection to Existing Manhole	EA			\$ -
8	Concrete Encasement	LF	20	\$ 10.00	\$ 200.00
Subtotal Part A Sanitary Sewer					\$ 11,822.00
B. DOMESTIC WATER					
1	8 " PVC Water Main	LF	952	\$ 18.00	\$ 17,136.00
2	6 " PVC Fire Service	LF	105	\$ 12.00	\$ 1,260.00
3	" PVC Water Main	LF			\$ -
4	8 " Gatevalve	EA	1	\$ 850.00	\$ 850.00
5	6 " Gatevalve	EA	2	\$ 600.00	\$ 1,200.00
6	" Gatevalve	EA			\$ -
7	Water Services	LF	70	\$ 10.00	\$ 700.00
8	Connect to Existing Water Line	EA	1	\$ 1,500.00	\$ 1,500.00
9	Fire Hydrant with Valve	EA	3	\$ 3,000.00	\$ 9,000.00
10	Utility Adjustments	EA			\$ -
11	Blowoff	EA	1	\$ 800.00	\$ 800.00
					\$ -
					\$ -
					\$ -
Subtotal Part B - Domestic Water					\$ 32,446.00

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
C1	STREETS				
1	" PVC Utility/Irrigation sleeves	LF			\$ -
2	" PVC Utility/Irrigation sleeves	LF			\$ -
3	Reconditioning	SY			\$ -
4	Aggregate Base Course (Class 3)	TN			\$ -
5	Aggregate Base Course (Class 6) (6" Compacted Thickness)	SY	377	\$ 7.00	\$ 2,639.00
6	Aggregate Base Course (Class 6) (" Compacted Thickness)	SY			\$ -
7	Hot Bituminous Paving, Grading (2" thick)	SY	4770	\$ 10.00	\$ 47,700.00
8	Hot Bituminous Paving, Grading (" thick)	SY			\$ -
9	Hot Bituminous Paving, Patching (" Thick)	SY			\$ -
10	Geotextile	SY			\$ -
11	Concrete Curb (" Wide by " High)	LF			\$ -
12	Concrete Curb and Gutter (2' wide)	LF			\$ -
13	Concrete Curb and Gutter (1.5' wide)	LF			\$ -
14	Monolithic, Vertical Curb, Gutter and Sidewalk (7 ' Wide)	LF	484	\$ 17.00	\$ 8,228.00
15	Drive Over Curb, Gutter, and Sidewalk (' Wide)				\$ -
16	Concrete Sidewalk (' Wide)	LF			\$ -
17	Concrete Gutter and Driveway Section (" Thick)	SY			\$ -
18	Concrete Drainage Pan (' Wide, " Thick)	LF			\$ -
19	Concrete Corner Fillet	SY			\$ -
20	Concrete Curb Ramp	SY	20	\$ 20.00	\$ 400.00
21	Complete Concrete Corner	SY			\$ -
22	Concrete Driveway (" Thick)	SY			\$ -
23	Driveway/Concrete Repair	SY			\$ -
24	Retaining Walls	LF			\$ -
25	Street Signs	EA	3	\$ 150.00	\$ 450.00
26	Striping (New, Remove/Replace)	LF	1432	\$ 0.60	\$ 859.20
27	Street Lights	EA			\$ -
28	Signal Construction or Reconstruction	LS			\$ -
29	Flowable Fill	CY			\$ -
30	Sleeves, " , PVC	LF			\$ -
					\$ -
					\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
C2	BRIDGES				
					\$ -
1	Box Culvert Pre-Cast	LS			\$ -
2	Box Culvert Cast-in-Place	LS			\$ -
3	Wingwalls	LS			\$ -
4	Parapet Wall	LS			\$ -
5	Railing (handrail, guardrail)	LS			\$ -
					\$ -
					\$ -
	Subtotal Part C - Streets and Bridges				\$ 60,276.20
D1	EARTHWORK				
1	Mobilization	LS			\$ -
2	Clearing and Grubbing	AC or LS			\$ -
3	Unclassified Excavation	CY			\$ -
4	Unclassified Embankment	CY			\$ -
D2	REMOVALS AND RESETTING				
1	Removal of Asphalt	SY			\$ -
2	Removal of Miscellaneous Concrete	SY			\$ -
3	Remove Curb and Gutter	LF			\$ -
4	Removal of Culverts	LF			\$ -
5	Remove Structures	EA			\$ -
6	Remove Signs	EA			\$ -
7	Remove Fence	LF			\$ -
8	Adjust Manhole	EA			\$ -
9	Adjust Valvebox	EA			\$ -
10	Relocate or Adjust Utilities	LS			\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
D3	EROSION CONTROL, SEEDING, AND SOIL RETENTION				
1	Sod	SY			\$ -
2	Seeding (Native)	SY	2660	\$ 0.25	\$ 665.00
3	Seeding (Bluegrass/Lawn)	SY or AC			\$ -
4	Hydraulic Seed and Mulching	SY or AC			\$ -
5	Soil Retention Blanket	SY			\$ -
6	Silt Fence	LF			\$ -
7	Straw Waddles	LF			\$ -
8	Temporary Berms	LF			\$ -
9	Inlet Protection	EA			\$ -
10	Sediment Trap/Basin	EA			\$ -
11	Monthly Maintenance/Inspection	Month			\$ -
12	Watering (Dust Control)	AC or LS			\$ -
13	Temporary Irrigation				\$ -
14	Construction Staging Pad 3"+Rock	CY			\$ -
D4	STORM DRAINAGE FACILITIES				
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY			\$ -
2	18"CI III RCP Storm Drain Pipe	LF	247	\$ 34.00	\$ 8,398.00
3	" Storm Drain Pipe	LF			\$ -
4	" Storm Drain Pipe	LF			\$ -
5	" Storm Drain Pipe	LF			\$ -
6	" Storm Drain Pipe	LF			\$ -
7	" Flared End Section	EA			\$ -
8	" Flared End Section	EA			\$ -
9	48" Storm Drain Manhole	EA			\$ -
10	60" Storm Drain Manhole	EA			\$ -
11	72" Storm Drain Manhole	EA			\$ -
12	Manhole with Box Base	EA			\$ -
13	Connection to Existing MH	EA			\$ -
14	Single Curb Opening Storm Drain Inlet	EA	2	\$ 2,200.00	\$ 4,400.00
15	Double Curb Opening Storm Drain Inlet	EA			\$ -
16	Area Storm Drain Inlet	EA	1	\$ 3,500.00	\$ 3,500.00
17	Detention Area Outlet structure	EA	1	\$ 2,500.00	\$ 2,500.00
18	Rip-Rap D ₅₀ = ____"	CY			\$ -
19	Sidewalk Trough Drain	EA			\$ -
20	Pump Systems including Electrical	LS			\$ -
	Subtotal Part D - Grading and Drainage				\$ 19,463.00

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
E1	IRRIGATION				
1	Connect to Existing Pipe	LS			\$ -
2	" Irrigation Pipe	LF			\$ -
3	" Irrigation Pipe	LF			\$ -
4	Fittings and Valves	LS			\$ -
5	Services	EA			\$ -
6	Pump System and Concrete Vault	LS			\$ -
7	Irrigation Structure	EA			\$ -
8	Vacuum Relief and/or Air Release Valve	EA			\$ -
E2	LANDSCAPING				
1	Design/Architecture	LS			\$ -
2	Earthwork	CY			\$ -
3	Hardscape Features	LS			\$ -
4	Plant Material & Planting	LS			\$ -
5	Irrigation System	LS			\$ -
6	Curbing	LF			\$ -
7	Retaining Walls & Structures	LS			\$ -
8	1 Year Maintenance Agrmnt.	LS			\$ -
9	Topsoil				\$ -
10	Re-seeding of Dryland Grass	SF			\$ -
					\$ -
					\$ -
	Subtotal Part E - Landscaping and Irrigation				\$ -
	Subtotal Construction Costs				\$ 124,007.20

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
F. Miscellaneous Items					
1	Construction staking/surveying	%	2.00%	\$124,007.20	\$ 2,480.14
2	Developer's inspection cost	%	1.00%	\$124,007.20	\$ 1,240.07
3	General construction supervsn	%	10.00%	\$124,007.20	\$ 12,400.72
4	Quality control testing	%	2.00%	\$124,007.20	\$ 2,480.14
5	Construction traffic control	%	2.00%	\$124,007.20	\$ 2,480.14
6	City inspection fees	%	0.50%	\$124,007.20	\$ 620.04
7	As-builts	%	2.00%	\$124,007.20	\$ 2,480.14
Subtotal Part F - Miscellaneous Items					\$ 24,181.40
% = Percentage of total site construction costs G. COST SUMMARY					
1	Total Improvement Costs				\$ 148,188.60
2	City Security (20%)				\$ 29,637.72
3	Total Guarantee Amount				\$ 177,826.32
NOTES 1. All prices shall be for items complete in place and accepted. 2. All pipe prices shall include excavation, pipe, bedding, backfill, and compaction. 3. Water main shall include pipe, excavation, bedding, backfill, bends, and appurtenances not itemized elsewhere. 4. All concrete items shall include Aggregate Base Course where required by the drawings. 5. Fill in the pipe type for irrigation pipe and sleeves. 6. Reconditioning shall be calculated to at least 6" outside of back of walk on both sides. 7. Units can be changed if desired, simply annotate what is used. 8. Additional lines or items may be added as needed.					
<p><i>New Regatta LLC</i>  <i>Manager</i> 1/22/08</p> <p>Signature of Developer _____ Date (If corporation, to be signed by President and attested to by Secretary together with the corporate seals.)</p> <p>I have reviewed the estimated costs and time schedule shown above and, based on the construction drawings submitted to date and the current cost of construction, I take no exception to the above.</p> <p> 1-23-08 City Development Engineer _____ Date</p> <p> 1.23.08 Community Development _____ Date</p>					

COLORADO CAPITAL

BANK

CASTLE PINES

City of Grand Junction
c/o Director of Public Works & Planning
250 N. 5th Street
Grand Junction, CO 81501

Irrevocable Letter of Credit No. 91006758
Dated: January 11, 2008
Expiration: January 11, 2009 subject to the automatic extensions
stated below
Project Name / City File No.: OMRC Subdivision # PFP-2006-270

Dear Sirs:

We hereby establish our Irrevocable Letter of Credit No. 91006758 in favor of the City of Grand Junction at the request of and for the account of New Regatta, LLC (Developer) in the amount of One Hundred Seventy-Seven Thousand Eight Hundred Twenty-Six and 32/100 (\$177,826.32) U.S. dollars.

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

1. it is effective upon signature;
2. it expires on January 11, 2009 subject to the automatic extensions discussed below;
3. this Letter of Credit is available by sight draft(s) drawn and marked "Drawn under Colorado Capital Bank Letter of Credit No. 91006758 dated January 11, 2008";
4. this Letter of Credit is established for the use and benefit of the City of Grand Junction by reason of the New Regatta, LLC (Developer) 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. **"New Regatta, LLC (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 or full or (c) the Bank notifies the City of Grand Junction at 250 N. 5th Street Grand Junction CO 81501, by certified mail return receipt requested, at least ninety (90) days prior to such expiration date that we elect not to further extend this Letter of Credit.

COLORADO CAPITAL
BANK
CASTLE PINES

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 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 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.

 Tammy L. Weiser, VP

Tammy L. Weiser, Vice President – Loan Officer

RECORDING MEMORANDUM
Exhibit D

City of Grand Junction
Public Works and Planning Department
File: # PFP-2006-270

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 NEW REGATTA LLC (Developer) and the City of Grand Junction (City) pertaining to ORCHARD MESA (Project), located at 2770 Hwy 50. RETAIL CENTER

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-2006-270

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:  11/10/08
Date

(Print Name) Christopher King

CITY OF GRAND JUNCTION:

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

 1.23.08
Public Works & Planning Department Date

RECEPTION #: 2421400, BK 4591 PG 373 01/25/2008 at
11:32:53 AM, 1 OF 1, R \$5.00 S \$1.00 Doc Code: MEMO
Janice Rich, Mesa County, CO CLERK AND RECORDER



Date: June 23, 2009

New Regatta, LLC
C/O DPC Development, Inc.
7000 E. Belleview Avenue, Suite 300
Greenwood Village, CO 80111
Attn: Mr. Tony Kill

RE: **Notice of Initial Acceptance -**
Project Name: Orchard Mesa Retail Center
Project Number: SPR-2006-270

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

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

Initial acceptance date / begin warranty period: April 23, 2009.

Form of financial guarantee: Letter of Credit from Colorado Capitol Bank
Amount of financial guarantee: \$29,637.72

Sincerely,

**Rick
Dorris**

Digitally signed by Rick Dorris
DN: cn=Rick Dorris, o=City of
Grand Junction Colorado,
ou=Public Works and Planning,
email=rickdo@gjcity.org, c=US
Date: 2009.06.23 14:53:20
+0600

Rick Dorris, PE, CFM
Development Engineer

Electronic copy:

Scott Peterson, Senior Planner
Ted Eyl, Development Inspector
Mark Barslund, Development Inspector
Larry Brown – Sewage Collection System



City Attorney

June 23, 2009

Colorado Capital Bank
7505 Village Square Drive, Suite 101
Castle Rock, CO 80108

Re: Cancellation of Letter of Credit Number **#91006758**
New Regatta, LLC
Internal Reference: **Orchard Mesa Retail Center Subdivision PFP-2006-270**

To Whom It May Concern:

Enclosed please find the original Letter of Credit Number **#91006758** for **New Regatta, LLC**. As beneficiary, the City of Grand Junction informs you that the Letter of Credit is being returned to you for cancellation. This letter is being provided at the direction of the Director of Public Works and Planning Department for the City.

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

Sincerely,

OFFICE OF THE CITY ATTORNEY

A handwritten signature in black ink, appearing to read "Shelly Dackonish". The signature is written in a cursive style and is positioned above a horizontal line.

Shelly Dackonish, Staff Attorney

Encl. Letter of Credit Number **#91006758**

Pc: Scott Peterson, Planner
Peggy Sharpe, Planning

New Regatta LLC
Attn: Christopher R. King, Manager
7000 E. Belleview Avenue
Suite 300
Greenwood, CO 80111

COLORADO CAPITAL
BANK
CASTLE PINES

City of Grand Junction
c/o Director of Public Works & Planning
250 N. 5th Street
Grand Junction, CO 81501

Irrevocable Letter of Credit No. 91006758
Dated: January 11, 2008
Expiration: January 11, 2009 subject to the automatic extensions
 stated below
Project Name / City File No.: OMRC Subdivision # PFP-2006-270

Dear Sirs:

We hereby establish our Irrevocable Letter of Credit No. 91006758 in favor of the City of Grand Junction at the request of and for the account of New Regatta, LLC (Developer) in the amount of One Hundred Seventy-Seven Thousand Eight Hundred Twenty-Six and 32/100 (\$177,826.32) U.S. dollars.

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

1. it is effective upon signature;
2. it expires on January 11, 2009 subject to the automatic extensions discussed below;
3. this Letter of Credit is available by sight draft(s) drawn and marked "Drawn under Colorado Capital Bank Letter of Credit No. 91006758 dated January 11, 2008";
4. this Letter of Credit is established for the use and benefit of the City of Grand Junction by reason of the New Regatta, LLC (Developer) 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. **"New Regatta, LLC (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 or full or (c) the Bank notifies the City of Grand Junction at 250 N. 5th Street Grand Junction CO 81501, by certified mail return receipt requested, at least ninety (90) days prior to such expiration date that we elect not to further extend this Letter of Credit.

COLORADO CAPITAL
BANK
CASTLE PINES

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 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 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.

Handwritten signature of Tammy L. Weiser in cursive, followed by the initials "VP".

Tammy L. Weiser, Vice President – Loan Officer



April 9, 2010

New Regatta, LLC
C/O DPC Development, Inc.
7000 E. Belleview Avenue, Suite 300
Greenwood Village, CO 80111
Attn: Mr. Tony Kill

RE: Notice of Final Acceptance -
Project Name: Orchard Mesa Retail Center
Project Number: SPR-2006-270

The City has conducted a warranty inspection of the project and any needed follow-up inspections. The public infrastructure improvements have been found to be in satisfactory condition. All requirements for the final acceptance for the Project have been fulfilled.

The Developer's warranty obligation, for all materials and workmanship, has concluded and all warranty obligations are hereby released.

The following improvements within the public right-of-way are accepted for future maintenance by the City:

Public streets:

- All public streets as shown on the Project plans.

Storm drainage system:

- Storm drain pipes, inlets and manholes within the public right of way.
- Maintenance of the detention pond and outlet works is the responsibility of the homeowners association.

Water distribution system:

- N/A – Served by Ute Water

Sanitary sewer:

- Sewer mains, manholes within public right of way and public easements.

The Planner has been contacted and will release Development Improvements Agreement, the Maintenance Agreement, and any financial security attached, to the Project. *

Sincerely,

**Rick
Dorris**

Digitally signed by Rick Dorris
DN: cn=Rick Dorris, o=City of
Grand Junction, ou=Public
Works and Planning,
email=rickdo@gjcity.org,
c=US
Date: 2010.04.09 08:53:56
-06'00'

Rick Dorris, PE, CFM
Development Engineer

Electronic copy:

Scott Peterson, Senior Planner
Peggy Sharpe, Administrative Assistant
Larry Brown – Sewage Collection System

Mark Barslund, Development Inspector
Chris Spears – Storm Drainage System
Leslie Ankrum – Senior Admin. Assistant



Public Works & Planning
Planning Division

April 13, 2010

Colorado Capital Bank
7505 Village Square Drive, Suite 101
Castle Rock, CO 80108

Re: Cancellation of Letter of Credit #91007054
New Regatta, LLC
Internal Reference: **Orchard Mesa Retail Center: PFP-2006-270**

To Whom It May Concern:

Enclosed please find the original Letter of Credit #91007054 for **New Regatta, LLC**. 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,

A handwritten signature in cursive script that reads "Lisa E. Cox".

Lisa E. Cox, Planning Manager

Encl. Letter of Credit #91007054

Pc: Planning File PFP-2006-270
Peggy Sharpe, Planning

Developer:
New Regatta, LLC
7000 E. Belleview Avenue
Suite 300
Greenwood, CO 80111

COLORADO CAPITAL
BANK
CASTLE PINES

ORIGINAL

City of Grand Junction
c/o Director of Public Works & Planning
Attn: Scott Peterson
250 N. 5th Street
Grand Junction, CO 81501

Irrevocable Letter of Credit No. 91007054
Dated: April 23, 2009
Expiration: April 23, 2010 subject to the automatic extensions stated below
Project Name / City File No.: OMRC Subdivision # PFP-2006-270

Dear Sirs:

We hereby establish our Irrevocable Letter of Credit No. 91007054 in favor of the City of Grand Junction at the request of and for the account of New Regatta, LLC (Developer) in the amount of Twenty Nine Thousand Six Hundred Thirty-Seven and 72/100 (\$29,637.72) U.S. dollars.

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

1. it is effective upon signature;
2. it expires on April 23, 2010 subject to the automatic extensions discussed below;
3. this Letter of Credit is available by sight draft(s) drawn and marked "Drawn under Colorado Capital Bank Letter of Credit No. 91007054 dated April 23, 2009";
4. this Letter of Credit is established for the use and benefit of the City of Grand Junction by reason of the New Regatta, LLC (Developer) 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. **"New Regatta, LLC (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 or full or (c) the Bank notifies the City of Grand Junction at 250 N. 5th Street Grand Junction CO 81501, by certified mail return receipt requested, at least ninety (90) days prior to such expiration date that we elect not to further extend this Letter of Credit.

ORIGINAL

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 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 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.

Tammy L. Weiser, Vice President – Loan Officer

RELEASE OF RECORDING MEMORANDUM
City of Grand Junction
Public Works & Planning Department
FILE: PFP-2006-270

This Release relates to a Recording Memorandum dated January 23, 2008, by and between New Regatta, LLC (Developer) and the City of Grand Junction, pertaining to Orchard Mesa Retail Center (Project), located at 2770 Highway 50, Grand Junction, CO, recorded at Book 4591, Page 373, Mesa County Clerk and Recorder's Office.

WHEREAS, the Developer has installed and constructed certain public and private improvements at and for the Project, which completion was guaranteed by the execution of a Development Improvements Agreement and/or Maintenance Guarantee and provision of a Guarantee, and;

WHEREAS, the City of Grand Junction and other agencies possessing authority over the Project, and/or the improvements, have inspected the improvements and have accepted the same.

NOW THEREFORE, officials of the City of Grand Junction, duly representing their agencies, possessing and representing by their signatures affixed hereto, that they possess sufficient authority to accept improvements and may release the Development Improvements Agreement and/or Maintenance Guarantee, pertaining to the improvements under their jurisdiction, do accept, sign and release said Development Improvements Agreement and/or Maintenance Guarantee.

CITY OF GRAND JUNCTION:
City Engineer: *Keith Davis* Date: 4-13-10
Planner: *John H. Peterson* Date: 4-13-10

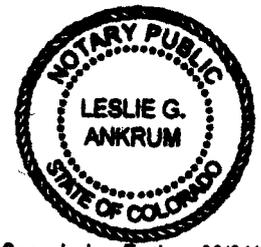
In acknowledgement with the above signatures, I hereby certify that the improvements as specified in the Development Improvements Agreement and/or Maintenance Guarantee have been completed and accepted in accordance with the provisions of the Grand Junction Zoning and Development Code, and are hereby released, subject to the required warranty period.

[Signature] Public Works & Planning Department Date: 4.13.10

The foregoing instrument was executed before me this 13th day of April, 2010, by Greg Moberg, of the Public Works & Planning Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

Leslie G. Ankrum
Notary Public



My commission expires on 8/21/2013

My Commission Expires 08/21/2013