

TWD05DRL

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**

NAME OF CONTRACTOR: TRAVER/WESTLAND DEVELOPMENT LLC

SUBJECT/PROJECT: 30 AND D ROAD, WESTLAND ESTATES, FILING
THREE

TAX PARCEL #: 2943-174-22-001

FILE #: FP-2004-012

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2005

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

FILING THREE

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are **Traver/Westland Development, 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 **Westland Estates Filing Three** has been reviewed and approved under Community Development file # **FP-2004-012** ("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"). Some of the Improvements have been installed at the time of the execution of this Agreement.

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 **\$79,883.43** (100% of the amount for the Improvements left to complete plus 20% of the total cost of all Improvements for the development) 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 **\$47,273.43** (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: **March 15, 2005**

Completion Date: **March 15, 2006**

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 **\$32,610.00** (Handwritten Line G1, Exhibit B, Total Improvement Costs remaining to complete).

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:	Traver/Westland Development, LLC 2967 D 1/2 Road Grand Junction, CO 81504 (970) 263-4014 trvr_westland@hotmail.com	Name -Developer/Company Address (Street and Mailing) City, State & Zip Code Telephone and Fax Numbers E-mail
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Cc:

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

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

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

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

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

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

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

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

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

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

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

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

(iii) provides written evidence to the City Attorney that the title to lands underlying the Improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney; and

(iv) provides written evidence, certified by the Developer's engineer, that the work was systematically inspected and tested and that the materials and the compaction

of the materials that are required to be compacted, were in conformance with City-approved plans and specifications.

By: Traver/Westland Development, LLC

Richard Traver 3-11-05
Richard Traver, Member Date

Corporate Attest:

NA
Name Date

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

Pat Cend 3/28/05
Community Development Dept. Date

6/13/2003

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

EXHIBIT A

Lots 1 and 2, Block 3, Westland Estates, Filing 1,
Grand Junction, Mesa County, Colorado

also known as 2980 Rood Avenue and 2986 D Road, Grand Junction, Colorado

EXHIBIT B

IMPROVEMENTS COST ESTIMATE

DATE: 18-Dec-03 (UPDATED 17 MAR 04) (UPDATE 25 OCT 04)
 DEVELOPMENT NAME: Westland Estates Subdivision - Filing 3
 LOCATION: 2986 D Road & 2980 Rood Ave, Grand Junction
 PRINTED NAME OF PERSON PREPARING: Rich Traver & John Kornfeld

%
COMPL.
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Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
A. SANITARY SEWER					
1	8" PVC Sanitary Sewer Main	LF	836	\$ 18.00	\$ 15,048.00
2	" PVC Sanitary Sewer Main	LF			\$ -
3	" PVC Sanitary Sewer Main	LF			\$ -
4	Sewer services	EA	20	\$ 425.00	\$ 8,500.00
5	Sanitary Sewer Manhole	EA	3	\$ 1,500.00	\$ 4,500.00
6	Sanitary Sewer Drop Manhole	EA			\$ -
7	Connection to Existing Manhole	EA			\$ -
8	Concrete Encasement	LF			\$ -
Subtotal Part A Sanitary Sewer					\$ 28,048.00
B. DOMESTIC WATER					
1	8" PVC Water Main	LF	880	\$ 17.00	\$ 14,960.00
2	" PVC Water Main	LF			\$ -
3	" PVC Water Main	LF			\$ -
4	8" Gatevalve with Tee	EA	3	\$ 920.00	\$ 2,760.00
5	" Gatevalve	EA			\$ -
6	" Gatevalve	EA			\$ -
7	Water Services	EA	20	\$ 300.00	\$ 6,000.00
8	Connect to Existing Water Line	EA			\$ -
9	Fire Hydrant with Valve	EA	2	\$ 2,500.00	\$ 5,000.00
10	Utility Adjustments	EA			\$ -
11	Blowoff	EA			\$ -
12	14" Steel Casing	LF	30	\$ 15.00	\$ 450.00
Subtotal Part B - Domestic Water					\$ 29,170.00

100%

100%

100%

BALANCE
\$ 0.00

88%

1795.

100%

100%

100%

0

BALANCE
\$ 2,245.

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price	
C1	STREETS					
1	10" PVC Utility/Irrigation sleeves	LF	100	\$ 12.00	\$ 1,200.00	100 %
2	" PVC Utility/Irrigation sleeves	LF			\$ -	
3	Reconditioning	SY	5510	\$ 1.00	\$ 5,510.00	100 %
4	Aggregate Base Course (Class 3)				\$ -	
5	Aggregate Base Course (Class 6) (6" Compacted Thickness)	SY	1630	\$ 4.25	\$ 6,927.50	90 %
6	Aggregate Base Course (Class 6) (11.5" Compacted Thickness)	SY	3510	\$ 6.25	\$ 21,937.50	90 %
7	Hot Bituminous Paving, Grading (3" thick)	SY	3510	\$ 8.00	\$ 28,080.00	90 %
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 (' Wide)	LF			\$ -	
15	Drive Over Curb, Gutter, and Sidewalk (6.5' Wide)		2250	\$ 14.00	\$ 31,500.00	90 %
16	Concrete Sidewalk (' Wide)	LF			\$ -	
17	Concrete Gutter and Driveway Section (" Thick)	SY			\$ -	
18	Concrete Drainage Pan (6' Wide, 8" Thick)	LF	28	\$ 21.00	\$ 588.00	100 %
19	Concrete Corner Fillet	SY	35	\$ 35.00	\$ 1,225.00	100 %
20	Concrete Curb Ramp	SY	30	\$ 35.00	\$ 1,050.00	100 %
21	Complete Concrete Corner	SY			\$ -	
22	Concrete Driveway (" Thick)	SY			\$ -	
23	Driveway/Concrete Repair	SY			\$ -	
24	Retaining Walls	LF			\$ -	
25	Street Signs	EA	3	\$ 65.00	\$ 195.00	
26	Striping (New, Remove/Replace)	LF			\$ -	
27	Street Lights	EA	4	\$ 1,020.00	\$ 4,080.00	100 %
28	Signal Construction or Reconstruction	LS			\$ -	
29	Flowable Fill	CY			\$ -	
30	Sleeves, 4", PVC	LF	400	\$ 3.00	\$ 1,200.00	80 %
31	Ene Roadway Markers	EA	3	\$ 150.00	\$ 450.00	
		EA			\$ -	

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
D4	STORM DRAINAGE FACILITIES				
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY			\$ -
2	15" HDPE Storm Drain Pipe	LF	190	\$ 25.00	\$ 4,750.00
3	36" RCP Storm Drain Pipe	LF	6	\$ 70.00	\$ 420.00
4	42" RCP Storm Drain Pipe	LF	82	\$ 80.00	\$ 6,560.00
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	4	\$ 1,200.00	\$ 4,800.00
15	Double Curb Opening Storm Drain Inlet	EA			\$ -
16	Area Storm Drain Inlet (modified)	EA			\$ -
17	Detention Area Outlet structure	EA			\$ -
18	Rip-Rap D ₅₀ = 6"	CY	1	\$ 250.00	\$ 250.00
19	Sidewalk Trough Drain	EA			\$ -
20	Pump Systems including Electrical	LS			\$ -
	Subtotal Part D - Grading and Drainage				\$ 27,640.00

100 %
100 %
100 %

100 %

0

BALANCE
\$ 250.

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price	
E1	IRRIGATION					
1	Connect to Existing Pipe	LS			\$ -	
2	6" Irrigation Pipe	LF	1920	\$ 7.00	\$ 13,440.00	100%
3	4" Irrigation Pipe	LF	20	\$ 5.00	\$ 100.00	100%
4	Fittings and Valves	LS	1	\$ 1,200.00	\$ 1,200.00	100%
5	Services	EA	20	\$ 50.00	\$ 1,000.00	100%
6	Pump System and Concrete Vault	LS			\$ -	
7	Irrigation Structure	EA	1	\$ 4,000.00	\$ 4,000.00	0
8	Vacuum Relief and/or Air Release Valve	EA	2	\$ 200.00	\$ 400.00	100%
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				\$ -	
					\$ -	
					\$ -	
E	Subtotal Part E - Landscaping and Irrigation				\$ 20,140.00	\$4,000

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
F. Miscellaneous Items					
1	Construction staking/surveying	%	2.00%	\$ 221,941.00	\$ 4,438.82
2	Developer's inspection cost	%		\$ 221,941.00	
3	General construction supervsn	%		\$ 221,941.00	
4	Quality control testing	%	2.00%	\$ 221,941.00	\$ 4,438.82
5	Construction traffic control	%		\$ 221,941.00	
6	City inspection fees	%	0.50%	\$ 221,941.00	\$ 1,109.70
7	As-builts	%	2.00%	\$ 221,941.00	\$ 4,438.82
E Subtotal Part F - Miscellaneous Items					\$ 14,426.16
% = Percentage of total site construction costs					
G COST SUMMARY					
1 Total Improvement Costs					\$ 236,367.16
2 City Security (20%)					\$ 47,273.43
Total Guarantee Amount					\$ 283,640.59

90%
90%
75%
50%
BALANCE \$3,385.
BALANCE 32,610.
TOTAL 79,883.

NOTES *REVIEWED By: John E. Krindel*
10-25-04

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

Richard Graver 12-2-04
Signature of Developer Date
(If corporation, to be signed by President and attested to by Secretary together with the corporate seals.)

I have reviewed the estimated costs and time schedule shown above and, based on the construction drawings submitted to date and the current cost of construction, I take no exception to the above.

Richard Graver 12-8-04
City Development Engineer Date

Pat Cowl 12/8/04
Community Development Date

KKA

DISBURSEMENT AGREEMENT

DEVELOPER: Traver/Westland Development, LLC

BANK: Vectra Bank Colorado

PROPERTY/PROJECT: Westland Estates Filing Three

DISBURSEMENT AMOUNT: For the construction and maintenance of improvements to the Property in an amount not to exceed **\$32,610.00**.

This Agreement is entered into by and between **Traver/Westland Development, LLC** ("Developer"), Vectra Bank Colorado ("Bank") and the **City of Grand Junction, Colorado** ("City").

RECITALS

Developer has been required by the City to construct certain improvements to **Westland Estates Filing Three** ("Improvements") in accordance with the Zoning and Development Code, Development Improvements Agreement and subdivision approval, all of which are included by this reference as if fully set forth.

The Bank has agreed to loan funds to the Developer to secure this Agreement and the obligations of the Zoning and Development Code, Development Improvements Agreement and subdivision approval.

The City Engineer has approved an estimate of the costs of the Improvements and that amount or an amount not to exceed **\$79,883.43**, 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 the Funds for purposes of this Agreement.

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.

The Bank warrants that the Funds are to be held in trust solely to secure Developer's obligations under the Development 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 Agreement and/or as set forth in the Development 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 as contractually required.

DISBURSEMENT AGREEMENT
(Page 2 of 5)

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 Development 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 for construction 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 for construction 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 for construction 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
DISBURSEMENT AGREEMENT
(Page 3 of 5)

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 Development 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 Development 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 Development 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 or upon acceptance of the Improvements together with written direction from the City to convert the Funds held under this Agreement to secure the Maintenance Agreement, the City Engineer shall notify the Bank to immediately: (i) cease disbursement of funds to the Developer and disburse the full amount of the remaining un-disbursed funds to the City or (ii) convert the Funds to secure the Maintenance Agreement.

Upon such notice, the Bank shall promptly honor the demand of the City Engineer. The City Engineer may require Funds to be disbursed to the City or a third party or parties designated in writing by the City or to be held by the Bank for the City's use and benefit.

3. **DEVELOPER CONSENT:** The Developer, by the signature of **Richard Traver, Member**, consents to disbursements and other actions authorized and provided for by the terms of this Agreement and/or the Development 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 Development Improvements Agreement.

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

DISBURSEMENT AGREEMENT
(Page 4 of 5)

Dated this 28th day of February, 2005

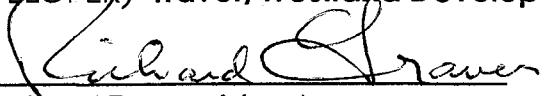
(BANK) Vectra Bank Colorado

By: 

Name: Ken Stewart
Title: Vice President

499 28 1/4 Road, Grand Junction, CO 81501
Address

(DEVELOPER) **Traver/Westland Development, LLC**

By: 
Richard Traver, Member


Address: 2967 D 1/2 Road, Grand Junction, CO 81501

CITY OF GRAND JUNCTION

By:  3/28/05
Director of Community Development

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between **Traver/Westland Development, LLC** Developer, _____ 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: Traver/Westland Development, LLC

 3-11-05
Richard Traver, Member (Signature)

(name) (Signature)

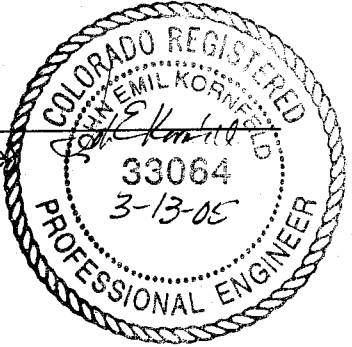
DISBURSEMENT AGREEMENT

DEVELOPER'S GENERAL CONTRACTOR:

Michael B. Adcock ^{Adcock Concrete} for ~~Senior~~ Construction, Inc. [Signature] PRES
(Name) (Signature)

DEVELOPER'S PROJECT ENGINEER:

John E. Kornfeld for Rhino Engineering
(Name)

[Signature]
(Signature) 

DEVELOPER'S ARCHITECT:

N/A _____
(Name) (Signature)

CITY ENGINEER:

Rick Porter [Signature]
(Name) (Signature)

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, Community Development Department, 250 N. 5th Street, Grand Junction Colorado.

Lisa E. Cox for Pat Cecil 3/16/2005
Community Development Department Date

**RECORDING MEMORANDUM
Exhibit D**

City of Grand Junction
Community Development Department Community Development
File: #FP-2004-012

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 **Traver/Westland Development, LLC** (Developer) and the City of Grand Junction (City) pertaining to **Westland Estates Filing Three** (Project), located at **Lots 1 and 2 Block 3 Westland Estates Filing One in the City of Grand Junction, County of Mesa, State of Colorado.**

(Subject subdivision is more particularly depicted and described in the recording found at Plat Book 3859, Pages 970.)

The Developer of the Project was required by law to install and construct certain public and private improvements, the completion of which was guaranteed by a Development Improvements Agreement and/or Maintenance Guarantee. The Project is required to be constructed in accordance with the approval by the City pursuant to and in accordance with the Zoning and Development Code all as more fully detailed and described in City of Grand Junction development file #FP-2004-012.

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: Traver/Westland Development, LLC

By: Richard Traver 3-11-05
Richard Traver, Member Date

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, Community Development Department, 250 N. 5th Street, Grand Junction Colorado.

Lisa E. Cox for Pat Cecil 3/16/2005
Community Development Department Date

City of Grand Junction
c/o Director of Community Development
250 North 5th Street
Grand Junction, CO 81501

Irrevocable Letter of Credit No. 8518009-6001

Dated: June 28, 2006

Expiration: June 28, 2007, subject to the automatic extensions stated below

Dear Sirs:

We hereby establish our Irrevocable Letter of Credit No. 8518009-6001 in favor of the City of Grand Junction at the request of and for the account of Traver/Westland Development, LLC (Developer) in the amount of Forty Seven Thousand Two Hundred Seventy Three and 43/100 Dollars (\$47,273.43).

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

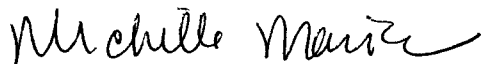
1. It is effective upon signature.
2. It expires on June 28, 2007, subject to the automatic extensions discussed below.
3. This Letter of Credit is available by sight draft(s) drawn and marked "Drawn under Vectra Bank Colorado Letter of Credit No. 8518009-6001 dated June 28, 2006.
4. This letter of Credit is established for the use and benefit of the City of Grand Junction by reason of Traver/Westland Development, 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. **YY-N-Vestments, 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 \$47,273.43.**
7. It is a condition of this Letter of Credit that it will automatically be 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 North 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.



EQUAL HOUSING LENDER

VECTRA BANK

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 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 other wise 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.



Michelle Marie
Michelle Marie
Assistant Vice President



City Attorney

October 27, 2008

Vectra Bank
499 28 ¼ Road
Grand Junction, CO 81501

Re: Cancellation of Letter of Credit Number **#8518009-6001**
Westland Development LLC
Internal Reference: **Westland Estates Filing 3, FP-2004-012**

Dear Sirs:

Enclosed please find the original Letter of Credit Number **#8518009-6001** for **Westland Estates Filing 3**. 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



Jamie Beard, City Attorney

Encl. Letter of Credit Number **#8518009-6001**

Pc: Rick Dorris, Development Engineer
Peggy Sharpe, Planning

Westland Development LLC
2967 D ½ Road
Grand Junction, CO 81504



October 27, 2008

Mr. Rich Traver
Westland Development LLC
2967 D 1/2 Road
Grand Junction, Colorado 81504

RE: **Notice of Final Acceptance -**
Project Name: Westland Filing 3
Project Number: FP-2004-012

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.

Water distribution system:

- N/A – Served by Ute Water.

Sanitary sewer:

- N/A – Server by Central Grand Valley Sanitation District

I have contacted Shelly Dackonish, Staff Attorney, to release the Developments Agreement, the Maintenance Agreement and any financial security attached to the Project.

Sincerely,

Mike Best, Project Specialist

Electronic copy:

Greg Moberg, Planning Services Supervisor
Rick Dorris, Development Engineer
Peggy Sharpe, Administrative Assistant
David Van Wagoner – Street System

Mark Barslund, Development Inspector
Shelly Dackonish, Staff Attorney
Darren Starr, Streets Manager
Chris Spears – Storm Drainage System
Larry Brown – Sewage Collection System

RELEASE OF RECORDING MEMORANDUM
City of Grand Junction
Public Works & Planning Department
FILE: FP-2004-012

This Release relates to a Recording Memorandum dated October 27, 2008, by and between Westland Development LLC (Developer) and the City of Grand Junction, pertaining to Westland Estates Filing 3 (Project), located at 2986 D Road and 2980 Rood Avenue, Grand Junction, CO, recorded at Book 3859, Page 970, Mesa County Clerk and Recorders Office. Project is more particularly described as

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: [Signature] Date: 10-31-08
Planner: [Signature] Date: 10/31/08

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 10.31.08

The foregoing instrument was executed before me this 31st day of October, 2008, by Greg Moberg, of the Public Works & Planning Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

[Signature]
Notary Public

My commission expires on 10/29/2009

