

WTN05CAN

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	WTN COEX II, LLC
PROJECT/SUBDIVISION:	CANYON VIEW MARKETPLACE
ADDRESS:	24 ROAD AND F ½ ROAD
TAX PARCEL NO:	2945-043-00-181
FILE #:	SPR-2005-084
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2005
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

## **DEVELOPMENT IMPROVEMENTS AGREEMENT**

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are WIN CoEx II 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 CANYONVIEW MARKETPLACE has been reviewed and approved under Community Development file # SPR-2005-084 ("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.

*R. 1/10/06*  
*\$ 755,116.84*

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 ~~\$ 792,462~~ (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.

*R. 1/10/06*

6a. Upon Acceptance the Developer shall provide a Maintenance Guarantee in an amount of ~~\$ 132,077.91~~ (Line G2, Exhibit B, City Security).

*\$ 125,852.81*

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: Nov. 15, 2005  
Completion Date: Nov. 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 \$\_\_\_\_\_ (Line G1, Exhibit B, Total Improvement Costs).

→ \$660,385.<sup>03</sup>

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: WTN COE, II LLC Name -Developer/Company  
3501 SW FAIRLAWN RD, Ste 200 Address (Street and Mailing)  
ATTN: JEFF UNGERER  
LOPEKA KS 66614 City, State & Zip Code  
(785) 272 - 1398 Telephone and Fax Numbers  
(785) 272 - 1796  
jungerer@mfvc.companies.com E-mail

CC: JAMES WALKER (713) 532 - 0977  
GULF COAST COMMERCIAL DEVELOPMENT, INC.  
3120 ROGERDALE RD, STE. 150 (713) 532 - 0035  
HOUSTON, TX 77042  
 If to City: Office of the City Attorney  
 250 North 5th Street  
 Grand Junction, CO 81501  
 James.walker@  
 gulfcoastcg.com



Cc: Community Development Department  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501

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

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

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

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

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

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

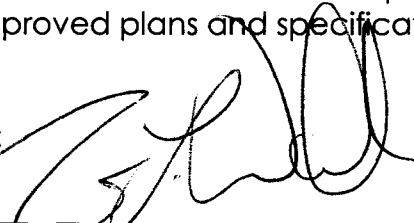
30b. Developer shall also construct and pay for end-transitions, intersection paving, drainage facilities and adjustments to existing utilities necessary to open the street to traffic.

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

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

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

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

By:   
\_\_\_\_\_  
Developer 11/3/05  
Date  
Name (printed) JAMES L. WALKER  
DEVELOPMENT MANAGER  
Corporate Attest:

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

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

  
\_\_\_\_\_  
Community Development Dept. 1/24/06  
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**

**N2NW4SW4 SEC 4 1S 1W EXC BEG N 89DEG52'20SEC E 30FT FR W4 SD  
SEC 4 N89DEG52'20SEC E 1289.14FT S 0DEG03'18SEC E 50FT S  
89DEG52'20SEC W 1250.80FT N81DEG53'36SEC W 38.69FT N  
0DEG05'34SEC W 44.52FT TO POB**

**EXHIBIT B**

**IMPROVEMENTS COSTS ESTIMATE**

DATE: NOVEMBER 2, 2005

DEVELOPMENT NAME: Canyon View Marketplace

LOCATION: 24 Road & F-1/2 Road (NO LEACH CREEK TRAIL WORK)

PRINTED NAME OF PERSON PREPARING: AUSTIN CIVIL GROUP, INC.

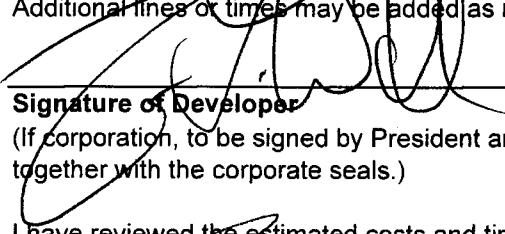
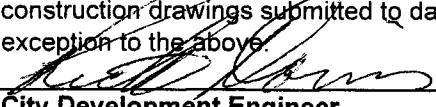

Item#	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>A. SANITARY SEWER</b>					
1	"PVC Sanitary Sewer Main	LF			\$ -
2	"PVC Sanitary Sewer Main	LF			\$ -
3	6"PVC Sanitary Sewer Main	LF	380	\$28.00	\$ 10,640.00
4	Sewer Services	EA or LF			\$ -
5	Sanitary Sewer Manhole	EA	1	\$2,200.00	\$ 2,200.00
6	Sanitary Sewer Drop Manhole	EA			\$ -
7	Connection to Existing Manhole	EA	1	\$600.00	\$ 600.00
8	Concrete Encasement	LF			\$ -
					\$ -
<b>Subtotal Part A - Sanitary Sewer</b>					<b>\$ 13,440.00</b>
<b>B. DOMESTIC WATER</b>					
1	8" PVC Water Main	LF	2185	\$28.00	\$ 61,180.00
2	6 "PVC Water Main	LF	50	\$26.00	\$ 1,300.00
3	"PVC Water Main	LF			\$ -
4	8" Gatevalve	EA	7	\$800.00	\$ 5,600.00
5	6""Gatevalve	EA		\$500.00	\$ -
6	"Gatevalve	EA			\$ -
7	Water Services	EA or LF	300	\$30.00	\$ 9,000.00
8	Connect to Existing Water Line	EA	1	\$2,500.00	\$ 2,500.00
9	Fire Hydrant with Valve	EA	3	\$2,000.00	\$ 6,000.00
10	Utility Bore	LF	140	\$160.00	\$ 22,400.00
11	Wet Tap Connection To Main	LS	1	\$2,000.00	\$ 2,000.00
12	Traffic Control	LS	1	\$1,000.00	\$ 1,000.00
13	Blowoff	EA	1	\$300.00	\$ 300.00
<b>Subtotal Part B - Domestic Water</b>					<b>\$ 111,280.00</b>
<b>C1 STREETS</b>					
1	"PVC Utility/Irrigation Sleeves	LF			\$ -
2	"PVC Utility/Irrigation Sleeves	LF			\$ -
3	Reconditioning (2,136 Access, 2904 Mkt)	SY	5040	\$1.50	\$ 7,560.00
4	Agg. Base Course(Access - 15.5")	SY	2136	\$9.50	\$ 20,292.00
5	Aggregate Base Course (Market-6")	SY	2904	\$7.00	\$ 20,328.00
6	Sub-base - Pit Run (Market St - 10")	TON	1361	\$10.00	\$ 13,610.00

Item#	Item Description	Unit	Quantity	Unit Price	Extended Price
7	Hot Bituminous Paving, Grading_____ (4" - Market Street)	TN	631	\$45.00	\$ 28,395.00
8	Hot Bituminous Paving, Grading_____ (7" Thick - Temp Access-2,137 SY)	TN	813	\$45.00	\$ 36,585.00
9	Hot Bituminous Paving, Patching_____ (8"Thick)	SY	100	\$60.00	\$ 6,000.00
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-FT 'Wide)	LF	1234	\$22.00	\$ 27,148.00
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 (6' Wide, (8" Thick)	SY	64	\$60.00	\$ 3,840.00
19	Concrete Corner Fillet	SY	197	\$65.00	\$ 12,805.00
20	Concrete Curb Ramp	EA	4	\$500.00	\$ 2,000.00
21	Complete Concrete Corner	SY			\$ -
22	Concrete Driveway ( _____ "Thick)	SY			\$ -
23	Off-Street Transit Turnout	LS	1	\$4,000.00	\$ 4,000.00
24	Retaining Walls	LF			\$ -
25	Street Signs	EA	3	\$150.00	\$ 450.00
26	Striping (New, Remove/Replace)	GAL	48	\$64.00	\$ 3,072.00
27	Street Signs	EA	4	\$150.00	\$ 600.00
28	Street Lights	EA	7	\$1,300.00	\$ 9,100.00
29	Relocate Power Pole Tower (1/2 Cost)	LS	0	\$23,000.00	\$ -
29	Signal Construction or Reconstruction	LS			\$ -
30	Flowable Fill	CY			\$ -
31	Sleeves, _____ ", _____ PVC				\$ -
32	Subgrade Cut/Compaction	SY	SEE EARTHWORK		\$ -
33	Traffic Control	DAY	4	\$100.00	\$ 400.00
34	Testing	LS	1	\$1,500.00	\$ 1,500.00

<b>C2 BRIDGES</b>					
1	Box Culvert Pre-Cast (5X9, 78-lf Long X 4)	LS	312	\$275.00	\$ 85,800.00
2	Box Culvert Cast-in -Place	LS			\$ -
3	Wingwalls/Headwalls	LF	70	\$190.00	\$ 13,300.00
4	Parapet Wall	LS			\$ -
5	Railing (Handrail, Guardrail)	LS			\$ -
6	RIP-RAP (86SY + 44 SY)	TON	160	\$50.00	\$ 8,000.00
6	Boulder Walls	SF	1500	\$25.00	\$ 37,500.00
<b>Subtotal Part C - Streets and Bridges</b>					<b>\$ 342,285.00</b>

Item#	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>D1. EARTHWORK</b>					
1	Mobilization	LS	1	\$1,100.00	\$ 1,100.00
2	Clearing and Grubbing	AC or LS	8	\$500.00	\$ 4,000.00
3	Unclassified Excavation	CY	350	\$8.00	\$ 2,800.00
4	Unclassified Embankment	CY	1325	\$16.00	\$ 21,200.00
5	Erosion Control	LS	1	\$6,000.00	\$ 6,000.00
6	Watering (Dust Control)	AC or LS	8	\$100.00	\$ 800.00
<b>D2. REMOVALS AND RESETTING</b>					
1	Removal of Asphalt	SY	101	\$2.60	\$ 262.60
2	Removal of Miscellaneous Concrete	SY			\$ -
3	Remove Curb and Gutter	LF			\$ -
4	Removal of Culverts	LF			\$ -
5	Remove Existing Wood Bridge	EA	1	\$1,500.00	\$ 1,500.00
6	Remove Signs	EA			\$ -
7	Remove Fence	LF			\$ -
8	Adjust Manhole	EA			\$ -
9	Adjust Valvebox	EA			\$ -
10	Relocate or Adjust Utilites	LS			\$ -
11	Saw Cut	LF	129	\$1.75	\$ 225.75
<b>D3. SEEDING AND SOIL RETENTION</b>					
1	Sod	SY			\$ -
2	Seeding (Native)	SY or AC			\$ -
3	Seeding (Bluegrass/Lawn)	SY or AC			\$ -
4	Hydraulic Seed and Mulching	SY or AC			\$ -
5	Soil Retention Blanket	SY			\$ -
5	Silt Fence / Erosion Protection	SF	600	\$8.00	\$ 4,800.00
5	Inlet Protection Devices	EA	15	\$300.00	\$ 4,500.00
<b>D4. STORM DRAINAGE FACILITIES</b>					
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY			\$ -
2	36" Storm Drain Pipe	LF	0	\$40.00	\$ -
3	30" Storm Drain Pipe	LF	0	\$35.00	\$ -
4	24" Storm Drain Pipe	LF	0	\$30.00	\$ -
5	15" Storm Drain Pipe	LF	0	\$27.00	\$ -
6	12" Storm Drain Pipe	LF	0	\$25.00	\$ -
7	36" Flared End Section	EA	0	\$560.00	\$ -
8	15" Flared End Section	EA	0	\$250.00	\$ -
9	48" Storm Drain Manhole	EA			\$ -
10	60" Storm Drain Manhole	EA	0	\$2,000.00	\$ -
11	72" Storm Drain Manhole	EA			\$ -
12	Manhole with Box Base	EA			\$ -

Item#	Item Description	Unit	Quantity	Unit Price	Extended Price
13	Connection to Existing MH	EA			\$ -
14	Single Curb Opening Storm Drain Inlet	EA	0	\$1,800.00	\$ -
15	Double Curb Opening Storm Drain Inlet	EA	0	\$2,600.00	\$ -
16	Area Storm Drain Inlet	EA	0	\$1,800.00	\$ -
17	Detention Area Outlet Structure	EA			\$ -
18	Rip-Rap D <sub>50</sub> =_____"	CY	0	\$60.00	\$ -
19	Sidewalk Trough Drain	EA	0	\$500.00	\$ -
20	Pump Systems Including Electrical	LS			\$ -
<b>Subtotal Part D - Grading and Drainage</b>					<b>\$ 47,188.35</b>
<b>E1. IRRIGATION</b>					
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			\$ -
<b>E2. LANDSCAPING</b>					
1	Design/Architecture	LS			\$ -
2	Earthwork	CY	100	\$20.00	\$ 2,000.00
3	Hardscape Features	LS	1	\$10,000.00	\$ 10,000.00
4	Plant Material & Pumping	LS			\$ -
5	Trees	EA	34	\$325.00	\$ 11,050.00
6	Shrubs	EA	65	\$75.00	\$ 4,875.00
7	Rock Mulch / Turf Grass	SF	19040	\$0.80	\$ 15,232.00
8	Irrigation System	LS	19040	\$0.50	\$ 9,520.00
9	Curbing	LF			\$ -
10	Leach Creek Earthwork	CY	0	\$8.00	\$ -
11	Leach Creek Concrete Walk	SF	0	\$4.00	\$ -
12	Leach Creek Pedestrian Lighting	EA	0	\$2,000.00	\$ -
13	Leach Creek Landscape	SF	0	\$0.80	\$ -
14	Leach Creek Street Trees	EA	0	\$325.00	\$ -
15	1 Year Maintenance Agreement	LS	1	\$800.00	\$ 800.00
16	Topsoil	TONS	175	\$40.00	\$ 7,000.00
<b>Subtotal Part E - Landscaping and Irrigation</b>					<b>\$ 60,477.00</b>
<b>SUB-TOTAL CONSTRUCTION</b>					<b>\$ 574,670.35</b>

Item#	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>F. MISCELLANEOUS ITEMS</b>					
1	Construction Staking/Surveying	%	2.00%	\$ 11,493	\$ 11,493.41
2	Developer's Inspection Cost	%	2.00%	\$ 11,493	\$ 11,493.41
3	General Construction Supervision	%	2.00%	\$ 11,493	\$ 11,493.41
4	Quality Control Testing	%	2.00%	\$ 11,493	\$ 11,493.41
5	Construction Traffic Control	%	2.00%	\$ 11,493	\$ 11,493.41
6	City Inspection Fees	%	0.50%	\$ 2,873	\$ 2,873.35
7	As-Builts	%	1.00%	\$ 5,747	\$ 5,746.70
<b>Subtotal Part F - Miscellaneous Items</b>					<b>\$ 54,593.68</b>
<b>G COST SUMMARY</b>					
1	<b>Total Improvement Costs</b>				<b>\$ 629,264.03</b>
2	<b>City Security (20%)</b>				<b>\$ 125,852.81</b>
	<b>Total Guarantee Amount</b>				<b>\$ 755,116.84</b>
<b>NOTES</b>					
1	All prices shall be for items complete in place and accepted.				
2	All pipe 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 sleeve.				
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 times may be added as needed.				
				11/5/05	
	<b>Signature of Developer</b>			<b>Date</b>	
	(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.				
				1/24/06	
	<b>City Development Engineer</b>			<b>Date</b>	
				1/24/06	
	<b>Community Development</b>			<b>Date</b>	





# Alliance Bank

3001 SW Wanamaker Road  
Topeka, Kansas 66614

## IRREVOCABLE STANDBY LETTER OF CREDIT

DATE: JANUARY 7, 2006 L/C #: TWENTY SEVEN (27)

FOR ACCOUNT OF: WTN CoEx II, LLC

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

AMOUNT: SEVEN HUNDRED FIFTY FIVE THOUSAND ONE HUNDRED SIXTEEN AND 84/100 DOLLARS  
(US \$755,116.84)

EXPIRATION DATE: JANUARY 7, 2007 SUBJECT TO THE AUTOMATIC EXTENSIONS STATED BELOW

Gentlemen:

We hereby establish our irrevocable letter of credit in your favor available for payment by your drafts drawn at sight on Alliance Bank, 3001 SW Wanamaker Rd., Topeka, KS 66614, and accompanied by documents specified below:

1. Original Letter of Credit #27.
2. Sight draft.
3. A dated and signed statement by an authorized agent or designee of the City of Grand Junction certifying that WTN CoEx II, LLC has failed to comply with the terms, conditions, provisions and requirements of the Grand Junction Zoning and Development Code and/or plans, specifications or agreements relating to the construction of improvements required by the City of Grand Junction. The monies received from this drawing are required to construct those improvements.
4. Partial draws are permitted.

Drafts drawn hereunder must be marked "Drawn under Alliance Bank, Letter of Credit No. Twenty Seven (27) dated January 7, 2006. Any draw, partial or full, under Letter of Credit No. Twenty Seven (27) must be accompanied by the original Letter of Credit, however, notification that a draw will be made against the Letter of Credit may be made by facsimile so long as the notification, by an authorized agent of the Beneficiary, is received by Alliance Bank prior to the expiration of the Letter of Credit and/or any extensions thereof. Facsimile notification should be made to Alliance Bank at 785-271-2111. The original items listed in 1, 2, and 3 above must be received by Alliance Bank within 30 calendar days of notification for the draw to be honored.

We hereby engage with you that all drafts drawn under and in compliance with the terms of this credit will be duly honored if drawn and presented for payment at this office on or before the expiration date of this credit. This Letter of Credit 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 or,
- b) This Letter of Credit has been called in full or,
- c) The Bank notifies the City of Grand Junction at 250 N. 5<sup>th</sup> 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.

Unless otherwise stated, all documents are to be forwarded in one cover, by first class, registered or certified mail, in person, or by overnight carrier. This credit will be subject to the Uniform Customs and Practice for Documentary Credits (1993 revision), ICC Publication No. 500.

Sincerely yours,  
Alliance Bank



Jeff A. Berkley, President

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

City of Grand Junction  
Community Development Department Community Development  
File: # SPR-2005-084

**ORIGINAL**

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 WTN Co Ex II, LLC (Developer) and the City of Grand Junction (City) pertaining to The Canyon View Marketplace (Project), located at 24 Rd & F 1/2 Rd.

(Subject subdivision is more particularly depicted and described in the recording found at Plat Book 4081, Pages 324.)

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 # SPR-2005-084.

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: [Signature] 1/19/2006  
Date

(Print Name) JAMES L. WALKER

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

[Signature] 1/24/06  
Community Development Department Date



November 6, 2006

Mr. Jeff A. Berkley, President  
Alliance Bank  
3001 SW Wanamaker Road  
Topeka, Kansas 66614

Reference: Canyon View Marketplace, SPR-2005-084, Letter of Credit Release

Dear Mr. Berkley

This letter serves as the City of Grand Junction's official release of Alliance Bank's Irrevocable Letter of Credit #27 for the account of WTN CoEx II, LLC dated January 7, 2006. Please call me at 970-256-4085 if you have any questions.

Sincerely,

Sheryl Trent  
Acting Community Development Director

Cc: Pat Cecil  
Rick Dorris

## MAINTENANCE GUARANTEE

1. **Parties:** The parties to this Maintenance Guarantee ("the Guarantee" or "Guarantee") are WTN Co Ex II, LLC ("the Developer") and the City of Grand Junction, Colorado ("the City" or "City"). Collectively the Developer and the City may be referred to as the Parties.

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

2. **Effective Date:** The Effective Date of the Guarantee will be the date that it is signed and accepted by the City.

### RECITALS

The Developer has constructed, installed and is required to warrant and maintain certain improvements ("Improvements" or "the Improvements") which were made necessary by virtue of development on property within the City. The Property, known as CONSONVIEW MARKETPLACE has been reviewed and approved under Community Development file # SPR-2005-084 and as necessary or required to construe this guarantee, that file(s) is incorporated by this reference.

The City seeks to protect the health, safety and general welfare of the community by requiring that the Improvements, once constructed, be maintained. The purpose of this guarantee is to protect the City from having to repair the Improvements at its cost. The Agreement is not executed for the benefit of materialmen, laborers or others providing work, services or material to the Developer and/or the Property or for the benefit of the owners, purchasers or users of the Property. The mutual promises, covenants and obligations contained in this guarantee are authorized by law, the Colorado Constitution, the Charter and the City's ordinances.

### DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer or its successor(s) or assign(s) shall maintain and guarantee the Improvements, at his/her/its own expense, against defects in workmanship and materials for a period of one year from the date of City acceptance of the Improvements. The Developer's obligation is and will be independent of any obligations of the City.

4. **Security:** To secure the performance of its obligations the Developer is required to post security in an amount of \$ 75,469.61 (Line G2, Exhibit B, City Security).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**12. Measure of Cost/Expenses:** The measure of costs and or expenses chargeable by the City under this guarantee will be the reasonable cost of satisfactorily repairing and/or replacing the Improvements plus reasonable City administrative expenses (in the amount of 20% of the repair, replacement and/or warranty work) all of which may exceed the amount of the security provided for in paragraph 4. The amount of the security provided for in paragraph 4 does not set, limit, establish or provide the Developer's maximum financial obligation.

12a. City administrative expenses for which the Developer is obligated to pay include but are not limited to personnel costs, including benefits, overtime, callback, standby and other extraordinary compensation, materials, equipment, third-party contracting costs, collection costs and the value of engineering, legal and administrative staff time devoted to the repair and/or replacement of the Improvements and/or enforcement of this guarantee and all initial warranty(ies) or guarantee(s) assigned to the City by the Developer.

**13. City's Rights:** When any defect or default occurs, the City may after notice and the Developer's failure and/or refusal to repair or replace the Improvements, proceed to collect the amount of the cost or expense incidental or necessary to affect the repair or replacement of the Improvements. The City will have the right to reconstruct, rebuild or otherwise maintain Improvements itself or it may contract with a third party for completion and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining and repairing such Improvements. This remedy is cumulative in nature and is in addition to any other remedy the City has at law or in equity.

**14. Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance or non-performance of work at the Property pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance or non-performance of work pursuant to this guarantee. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance of work pursuant to this guarantee except where such suit is brought by the Developer against the City. The Developer is, however, not an agent or employee of the City.



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

16. **Amendment or Modification:** The Parties may amend or modify the Agreement only by written instrument executed on behalf of the City by the Public Works and Utilities Director or his designee and by the Developer or his authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

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

18. **Integration:** This guarantee, together with the exhibits and attachments thereto constitutes the entire agreement between the Parties and no statement(s), promise(s) or inducement(s) that is/are not contained in this agreement will be binding on the parties.

19. **Third Party Rights:** No person or entity who or which is not a party to this agreement will have any right of action under this agreement.

20. **Severability:** If any part, term or provision of this guarantee is held by a court or courts of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the right of the parties will be construed as if the part, term or provision was never part of the agreement.

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

personal obligations of the Developer and also will be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with

the Property. There is no prohibition on the City to assign its rights under this agreement. The City will expressly release the original Developer's guarantee or obligations if it accepts new security from any Developer or lender who obtains the Property; however, no other act of the City will constitute a release of the original Developer from his liability under this agreement.

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

If to Developer: WTN Co Ex II, LLP Name -Developer/Company  
3501 SW FAIRLAWN B. ST. 2<sup>ND</sup> Address (Street and Mailing)  
ATTN. JEFF UNGERER  
TOPEKA, KS 66614 City, State & Zip Code  
(785) 272-1398 Telephone and Fax Numbers  
(785) 272-1796  
jungerer@wtncompanies.com E-mail

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

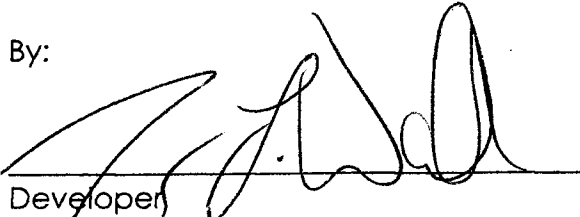
Cc: Public Works and Utilities Department  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501

23. **Recordation:** Developer will pay for all costs to record a memorandum of this guarantee in the Clerk and Recorder's Office of Mesa County, Colorado.

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

25. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any action commenced by either party to this agreement whether arising out of or relating to the agreement, will be deemed to be proper only if such action is commenced in Mesa County, Colorado. The Developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

By:

  
Developer

October 23, 2006  
Date

Name (printed): James L. Walker

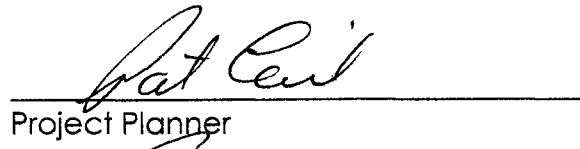
Title (position): Authorized Agent

Attest:

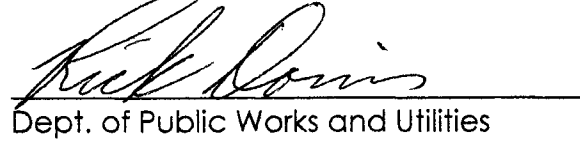
\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Date

City of Grand Junction

  
Project Planner

10/24/06  
Date

  
Dept. of Public Works and Utilities

10-24-06  
Date

GUARANTEE2003

6/13/2003



# Alliance Bank

3001 SW Wanamaker Road  
Topeka, Kansas 66614

## IRREVOCABLE STANDBY LETTER OF CREDIT

DATE: JANUARY 7, 2006 L/C #: TWENTY EIGHT (28)

FOR ACCOUNT OF: WTN CoEx II, LLC

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

AMOUNT: ONE HUNDRED SEVENTY THREE THOUSAND ONE HUNDRED ONE AND 96/100 DOLLARS  
(US \$173,101.96)

EXPIRATION DATE: JANUARY 7, 2007 SUBJECT TO THE AUTOMATIC EXTENSIONS STATED BELOW

Gentlemen:

We hereby establish our irrevocable letter of credit in your favor available for payment by your drafts drawn at sight on Alliance Bank, 3001 SW Wanamaker Rd., Topeka, KS 66614, and accompanied by documents specified below:

1. Original Letter of Credit #28.
2. Sight draft.
3. A dated and signed statement by an authorized agent or designee of the City of Grand Junction certifying that WTN CoEx II, LLC has failed to comply with the terms, conditions, provisions and requirements of the Grand Junction Zoning and Development Code and/or plans, specifications or agreements relating to the construction of improvements required by the City of Grand Junction. The monies received from this drawing are required to construct those improvements.
4. Partial draws are permitted.

Drafts drawn hereunder must be marked "Drawn under Alliance Bank, Letter of Credit No. Twenty Eight (28) dated January 7, 2006. Any draw, partial or full, under Letter of Credit No. Twenty Eight (28) must be accompanied by the original Letter of Credit, however, notification that a draw will be made against the Letter of Credit may be made by facsimile so long as the notification, by an authorized agent of the Beneficiary, is received by Alliance Bank prior to the expiration of the Letter of Credit and/or any extensions thereof. Facsimile notification should be made to Alliance Bank at 785-271-2111. The original items listed in 1, 2, and 3 above must be received by Alliance Bank within 30 calendar days of notification for the draw to be honored.

We hereby engage with you that all drafts drawn under and in compliance with the terms of this credit will be duly honored if drawn and presented for payment at this office on or before the expiration date of this credit. This Letter of Credit 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 or,
- b) This Letter of Credit has been called in full or,
- c) The Bank notifies the City of Grand Junction at 250 N. 5<sup>th</sup> 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.

Unless otherwise stated, all documents are to be forwarded in one cover, by first class, registered or certified mail, in person, or by overnight carrier. This credit will be subject to the Uniform Customs and Practice for Documentary Credits (1993 revision), ICC Publication No. 500.

Sincerely yours,  
Alliance Bank



Jeff A. Berkley, President



City Attorney

Page 2

August 18, 2008

Alliance Bank  
3001 SW Wanamaker Road  
Topeka, Kansas 66614

Re: Cancellation of Letter of Credit Number **#28**  
WTN CoEx II, LLC  
Internal Reference: **Canyon View Market Place SPR-2005-084**

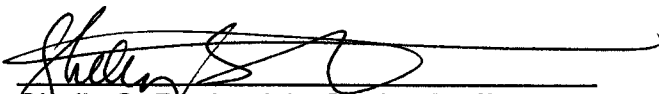
Dear Sirs:

Enclosed please find the original Letter of Credit Number **#28** for **Canyon View Market Place**. 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



Shelly S. Dackonish, Senior Staff Attorney

Encl. Letter of Credit Number **#28**

Pc: Lisa Cox, Planning Division Manager  
Rick Dorris, Planning Engineer  
Peggy Sharpe, Planning

WTN CoEx, II, LLC  
Attn: Jeff Ungerer  
3501 SW Fairlawn Rd., Suite 200  
Topeka, KS 66614

September 13, 2007

Jeff A. Berkley, President  
Alliance Bank  
3001 Wanamaker Road  
Topeka, Kansas 66614

Re: Cancellation of Letter of Credit #27


Dear Mr. Berkley:

Enclosed is the Letter of Credit #27. As beneficiary, the City of Grand Junction ("City") informs you that the Letter of Credit is being returned to you for cancellation. Notice of cancellation was provided in November 2006, but the Letter of Credit was not included with the notice. This letter is being provided at the direction of the Director of Public Works and Planning formerly known as the Director of Community Development for the City.

If you have any questions, please inform me.

Sincerely,

OFFICE OF THE CITY ATTORNEY

By:   
Jamie B. Beard  
Assistant City Attorney

Enclosure: Letter of Credit #SLCLSTL01831

pc: Scott Peterson, Senior Planner  
Planning File #SPR-2005-084  
WTN CoEx II, LLC  
Attn: Jeff Ungerer  
3501 SW Fairlawn Road, Ste. 200  
Topeka, KS 66614  
James Walker  
Gulf Coast Commercial Development, Inc.  
3120 Rogerdale Rd., Ste 150  
Houston, TX 77042



# Alliance Bank

3001 SW Wanamaker Road  
Topeka, Kansas 66614

## IRREVOCABLE STANDBY LETTER OF CREDIT

DATE: OCTOBER 23, 2006

L/C #: THIRTY SIX (36)

FOR ACCOUNT OF: WTN CoEx II, LLC

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

AMOUNT: SEVENTY FIVE THOUSAND FOUR HUNDRED SIXTY NINE AND 61/100 DOLLARS  
(US \$75,469.61)

EXPIRATION DATE: OCTOBER 23, 2007 SUBJECT TO THE AUTOMATIC EXTENSIONS STATED BELOW

Gentlemen:

We hereby establish our irrevocable letter of credit in your favor available for payment by your drafts drawn at sight on Alliance Bank, 3001 SW Wanamaker Rd., Topeka, KS 66614, and accompanied by documents specified below:

1. Original Letter of Credit #36.
2. Sight draft.
3. **A dated and signed statement by an authorized agent or designee of the City of Grand Junction certifying that WTN CoEx II, LLC has failed to comply with the terms, conditions, provisions and requirements of the Grand Junction Zoning and Development Code and/or plans, specifications or agreements relating to the construction of improvements required by the City of Grand Junction. The monies received from this drawing are required to construct those improvements.**
4. Partial draws are permitted.

Drafts drawn hereunder must be marked "Drawn under Alliance Bank, Letter of Credit No. Thirty Six (36) dated October 23, 2006. Any draw, partial or full, under Letter of Credit No. Thirty Six (36) must be accompanied by the original Letter of Credit, however, notification that a draw will be made against the Letter of Credit may be made by facsimile so long as the notification, by an authorized agent of the Beneficiary, is received by Alliance Bank prior to the expiration of the Letter of Credit and/or any extensions thereof. Facsimile notification should be made to Alliance Bank at 785-271-2111. The original items listed in 1, 2, and 3 above must be received by Alliance Bank within 30 calendar days of notification for the draw to be honored.

We hereby engage with you that all drafts drawn under and in compliance with the terms of this credit will be duly honored if drawn and presented for payment at this office on or before the expiration date of this credit. This Letter of Credit 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 or,
- b) This Letter of Credit has been called in full or,
- c) The Bank notifies the City of Grand Junction at 250 N. 5<sup>th</sup> 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.

Unless otherwise stated, all documents are to be forwarded in one cover, by first class, registered or certified mail, in person, or by overnight carrier. This credit will be subject to the Uniform Customs and Practice for Documentary Credits (1993 revision), ICC Publication No. 500.

Sincerely yours,  
Alliance Bank



Jeff A. Berkley, President

April 12, 2007

McPherson Development  
C/O Mr. Dusty Grandmontagne  
707 ½ Willow Creek  
Grand Junction, CO 81505

Reference: Combined Project Initial Acceptance  
Mesa Village Marketplace – VE-2000-061  
Canyon View Marketplace – SPR-2005-084  
Mesa Village Marketplace, Kohls - PFP-2005-242

Dear Dusty,

A final inspection of the streets, drainage facilities, and sanitary sewer for the referenced projects was conducted. A list of items to be corrected and/or furnished was given to the project representative. Subsequent inspections have revealed that these items have been satisfactorily completed with a couple of inspection itemized below. These items must be fixed before the end of the warranty period.

**Mesa Village Marketplace – VE-2000-061**

1. There is a water line leak on a potable water line between Sears and the Oak tree. It was agreed that McPherson would excavate the leak and would work together with the property owner's association (Paul Dibble) to determine the problem and whose responsibility it is.

**Canyon View Marketplace – SPR-2005-084**

1. Fix the burned out and damaged pedestrian lights. I have put some pressure on Xcel since you said they aren't responding to you. They are having trouble obtaining parts.
2. Most of the striping has worn off. This striping needs to be repaired as soon as weather permits.

"As Built" record drawings and required test results for the projects were received and reviewed, corrected as necessary, and are now acceptable.

A Maintenance Agreement and financial security were received and executed for SPR-2005-084 and PFP-2005-242. The other project had a vesting agreement and didn't require such.

The streets, drainage facilities, and sanitary sewer within the public right-of-way are eligible to be accepted for future maintenance by the City of Grand Junction one year after the date of initial acceptance. The date of initial acceptance is February 1, 2007

Your warranty obligation, for all materials and workmanship, is for a period of one-year beginning with the date of initial acceptance. The City will re-inspect the project prior to the

end of the warranty period. Any defects discovered during this re-inspection must be corrected. The City will then establish a new acceptance date and an extended warranty period. The warranty period will expire upon final acceptance by the City. Thank you for your cooperation in the completion of the work on this project.

Sincerely,

Rick Dorris, PE, CFM  
City Development Engineer

cc: Doug Cline                      Mark Barslund                      Jody Kliska                      Scott Peterson  
Walt Hoyt                              Trent Prall                              Larry Brown



PUBLIC WORKS & PLANNING DEPARTMENT  
PLANNING DIVISION

March 22, 2008

McPherson Development  
C/O Mr. Dusty Grandmontagne  
707 ½ Willow Creek  
Grand Junction, CO 81505

Reference: Combined Project Punch List  
Mesa Village Marketplace – VE-2000-061  
Canyon View Marketplace – SPR-2005-084  
Mesa Village Marketplace, Kohl's - PFP-2005-242

Dear Dusty,

This letter follows up our field investigation of Leach Creek and Market Street on March 6, 2008.

#### Leach Creek and Initial Acceptance

The items listed below are necessary for the City to initially accept the Leach Creek improvements and start the one year warranty period. If memory serves correctly we have a separate DIA for the Leach Creek work.

- Two concrete path stones are cracked on edges just south of F ½ Rd. Remove and replace.
- Is Walsh satisfied that alignment and landscaping is per plan? Have them submit a letter to me stating such.
- Remove rip rap out of flared end section about half way down on east side.
- There are very few if any willow plantings visible? These need to be replanted or otherwise mitigated.
- Provide final acceptance by the Corps of Engineers.
- Provide Maintenance guarantee agreement.
- Provide financial guarantee.
- I am still investigating who is responsible for trail and channel maintenance and if the bike path can ultimately be in an easement instead of right of way.

- The City will accept the as-built flow capacity of Leach Creek even though it is about 10% lower than design. The construction looks good and the vegetation is doing well. The reason for the lesser capacity is primarily due to a flatter bed slope in the channel than assumed in the design modeling. The actual bed slope of the channel will vary, particularly with what happens through the City Market site and is ultimately governed by the culvert inverts between F ½ Road and Patterson. Also the actual concrete box at F ½ Road is about 2' below the channel invert due to COE requirements. Another reason this is acceptable is that upstream modifications to Leach Creek are necessary to reduce the floodplain and top the 24 Road overtopping. The City has latitude (i.e. reduce the flow south of F ½ Road) in these modifications that will allow this reach of Leach Creek to function properly. Development of the parcel between Leach Creek and Market Street will need to use this information to set the building finished floor elevations.
- Provide more wall as-built information on the as-built. Provide a disk of the as-built with .dwg and .dwf files.

When the construction items are corrected and the paperwork items submitted and satisfactory, the City will issue initial acceptance and start the one year warranty period.

#### Market Street and Final Acceptance

The items below are necessary to complete the warranty punch list work. Once they are complete the City will release the DIA's and all financial guarantees.

- Two cracked sidewalk stones on west side, just south of F ½.
- Just south of F ½, re-stripe left turn arrow.
- North theater entrance, remove & replace cracked v-pan stone.
- North Kohl's entrance, remove and replace patched v-pan.
- Kohl's enter entrance, remove and replace cracked fillet stone.
- Seal asphalt joints at Boston's intersection on north and east where this project's paving started.
- North side Kohl's entrance, remove and replace truncated domes

Please inform me when the work is complete and we will inspect again. Once complete the City will release all DIA's, maintenance guarantee agreements, and financial guarantees (except Leach Creek) and your responsibility will be over. Thanks for your cooperation in completion of these projects.

Sincerely,

Rick Dorris, PE, CFM



# Alliance Bank

3001 SW Wanamaker Road  
Topeka, Kansas 66614  
Fax: 785.271.2111

Branch Office  
2620 SW 6th Avenue, Suite A  
Topeka, Kansas 66606  
Fax: 785.357.4341

## IRREVOCABLE STANDBY LETTER OF CREDIT

DATE: JULY 8, 2008 L/C #: SEVENTY ONE (71)

FOR ACCOUNT OF: WTN CoEx RP, LLC

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

AMOUNT: TWENTY EIGHT THOUSAND EIGHT HUNDRED FIFTY AND 33/100 DOLLARS  
(US \$28,850.33)

EXPIRATION DATE: APRIL 30, 2009

Gentlemen:

We hereby establish our irrevocable letter of credit in your favor available for payment by your drafts drawn at sight on Alliance Bank, 3001 SW Wanamaker Rd., Topeka, KS 66614, and accompanied by documents specified below:

1. Original Letter of Credit #71.
2. Sight draft.
3. A dated and signed statement by an authorized agent or designee of the City of Grand Junction certifying that WTN CoEx RP, LLC has failed to comply with the terms, conditions, provisions and requirements of the Grand Junction Zoning and Development Code and/or plans, specifications or agreements relating to the construction of improvements required by the City of Grand Junction. The monies received from this drawing are required to construct those improvements.
4. Partial draws are permitted.

Drafts drawn hereunder must be marked "Drawn under Alliance Bank, Letter of Credit No. Seventy One (71) dated July 8, 2008. Any draw, partial or full, under Letter of Credit No. Seventy One (71) must be accompanied by the original Letter of Credit, however, notification that a draw will be made against the Letter of Credit may be made by facsimile so long as the notification, by an authorized agent of the Beneficiary, is received by Alliance Bank prior to the expiration of the Letter of Credit and/or any extensions thereof. Facsimile notification should be made to Alliance Bank at 785-271-2111. The original items listed in 1, 2, and 3 above must be received by Alliance Bank within 30 calendar days of notification for the draw to be honored.

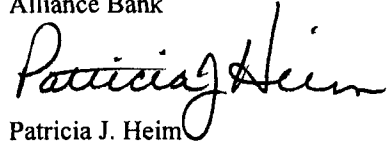
We hereby engage with you that all drafts drawn under and in compliance with the terms of this credit will be duly honored if drawn and presented for payment at this office on or before the expiration date of this credit.

785-271-1800

www.alliancebankkansas.com

Unless otherwise stated, all documents are to be forwarded in one cover, by first class, registered or certified mail, in person, or by overnight carrier. This credit will be subject to the Uniform Customs and Practice for Documentary Credits (1993 revision), ICC Publication No. 500.

Sincerely yours,  
Alliance Bank

A handwritten signature in cursive script, reading "Patricia J. Heim". The signature is written in black ink and is positioned above the printed name and title.

Patricia J. Heim  
Vice President





July 7, 2009

Mr. James Walker  
WTN CoEx II, LC  
3120 Rogerdale, Suite 150  
Houston, TX 77042

Reference: Final Acceptance - Canyon View Marketplace – SPR-2005-084

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.
- Leach Creek – Drainage and path maintenance in the City's, landscaping maintenance is the Developer's.

Water distribution system:

- N/A – Served by Ute Water

Sanitary sewer:

- Sewer mains, manholes

The Planner has been contacted to release the 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 Colorado,  
ou=Public Works and Planning,  
email=rickdo@gjcjty.org, c=US  
Date: 2009.07.07 08:30:25 -0600

Rick Dorris, PE, CFM  
Development Engineer

Electronic copy:

Scott Peterson, Senior Planner  
Peggy Sharpe, Administrative Assistant  
Chris Spears – Storm Drainage System  
Leslie Ankrum, Administrative Assistant

Mark Barslund, Development Inspector  
David Van Wagoner – Street System  
Larry Brown – Sewage Collection System



City Attorney

July 8, 2009

Alliance Bank  
3001 SW Wanamaker Road  
Topeka, KS 66614

Re: Cancellation of Letters of Credit Numbers **36 & 71**  
**WTN CoEX I, LLC**  
Internal Reference: **Canyon View Market Place: SPR-2005-084**


To Whom It May Concern:

Enclosed please find the original Letters of Credit Numbers **36 and 71** for **WTN CoEX I, LLC**. As beneficiary, the City of Grand Junction informs you that the Letters of Credit are being returned to you for cancellation. These letters are 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

  
Shelly Dackonish, Senior Staff Attorney

Encl. Letter of Credit Number **36 & 71**

Pc: Scott Peterson, Planner  
Peggy Sharpe, Planning

Gulf Coast Commercial  
Attn: James Walker  
3120 Rogerdale Road, Suite 150  
Houston, TX 77042

**RELEASE OF RECORDING MEMORANDUM**  
**City of Grand Junction**  
**Public Works & Planning Department**  
**FILE: SPR-2005-084**

This Release relates to a Recording Memorandum dated January 24, 2006, by and between WTN, CoEx II, LLC, (Developer) and the City of Grand Junction, pertaining to Canyon View Market Place (Project), located at 24 Road & F 1/2 Road, Grand Junction, CO, recorded at Book 4081, Page 329, 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: *[Signature]* Date: 7-8-09

Planner: *[Signature]* Date: 7-8-09

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

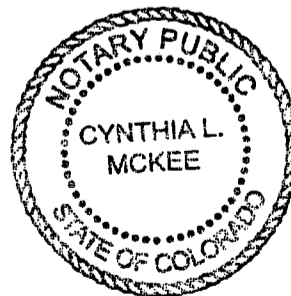
7-8-09  
Date

The foregoing instrument was executed before me this 8<sup>th</sup> day of July, 2009, by Greg Moberg, of the Public Works & Planning Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

*Cynthia L. McKee*  
Notary Public

My commission expires on 9/2/09



RECEPTION #: 2497133, BK 4886 PG 768 07/10/2009 at  
10:42:14 AM, 1 OF 1, R \$5.00 S \$1.00  
Janice Rich, Mesa County, CO CLERK AND RECORDER