

KOE0224R

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: CONTRACT

NAME OF AGENCY OR CONTRACTOR: JAMES P. KOEHLER (HOLIDAY INN AND SUITES)

STREET ADDRESS/PARCEL NAME/SUBDIVISION: 629 24 ROAD

PARCEL NO.: 2945-054-00-101 AND 2945-054-00-102

PURPOSE: MAINTENANCE AGREEMENT - FOR STORM SEWER FACILITIES

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 2002

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

2057073 05/20/02 1059AM
 MONIKA TODD CLK&REC MESA COUNTY CO
 REC FEE \$35.00

MAINTENANCE AGREEMENT

1. **Parties:** The parties to this Maintenance Agreement ("the Agreement" or "Agreement") are JAMES P KOEHLER ("the Developer") and **THE CITY OF GRAND JUNCTION, Colorado** ("the City" or "City"). Collectively the Developer and the City may be referred to as the Parties.

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

2. **Effective Date:** The Effective Date of the Agreement will be the date that this Agreement is signed.

RECITALS

The Developer shall construct, install and maintain certain improvements ("Improvements" or "the Improvements") which are made necessary by virtue of development on property within the City known as (name and tax schedule #) ²⁰⁵⁻⁰⁵⁴⁻⁰⁰⁻¹⁰¹ ~~2445-054-00-102~~ "the Property" or "Property". The Improvement(s) is/are more particularly described on Exhibit A attached and 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 Agreement 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 Agreement 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, at its (their) own expense, those on-site and off-site Improvements listed on Exhibit A attached to this Agreement and incorporated by this reference ("the Improvements" or "Improvements") as if fully set forth. The Developer's obligation to maintain the Improvements is and will be independent of any obligations of the City.
4. **Security:** To secure the performance of its obligations under this Agreement the Developer has agreed to perpetually guarantee the Improvements in a form and with terms acceptable to the City. A copy of all-initial warranties or guarantees (those incident to construction or as provided by the contractor and/or manufacturer of installed equipment) which, are hereby assigned to the City. A copy of those warranties or a memorandum of the same is attached as Exhibit B. The Developer for itself, its successors and assigns agrees that if the Improvements are not maintained to City standards that the City may perform the maintenance and bill the Developer, its successors or assigns. If a City billing is unpaid after a period of 21 days the City shall

certify the amount to the Mesa County Treasurer to be placed on the tax list for the current year and to be collected with a 25 percent administrative surcharge thereon to defray the costs and to provide an economic disincentive for failing to maintain or pay for the maintenance expenses. The unpaid amount shall constitute a lien against the property, which may be collected as and in accordance with the law pertaining to the collection of taxes including the law allowing for the sale of the lien property.

5. **Standards:** The Developer shall maintain the Improvements according to the standards and specifications required by the City Engineer or as otherwise established by the City.
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 in perpetuity.
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 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 final development approval.
8. **Notice of Defect:** 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 in the development application or is otherwise defective. The Developer will have ten (10) days from the issuance of such notice to correct the defect. The City may grant reasonable extensions, however, it is not obligated to do so nor is it obligated to provide any notice of a defect if it becomes aware of the defect in or during an emergency. Furthermore, the City is not obligated to inspect the Improvements but may do so at it would any other improvement.
9. **Initial Acceptance:** Prior to initial 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. Initial warranties or guarantees shall be for a period of no less than 12 months from the date of acceptance of the Improvements. The Developer shall to the extent necessary or required by the City assign to the City any and all rights that is has under the initial warranty (ies) or guarantee(s).
10. **Funds:** Funds drawn, guaranteed or collected by the City under this agreement shall be used only for the purpose of correcting defects in or failure of the Improvements.
11. **Events of Default:** The following conditions, occurrences or actions will constitute a default:

- a. Developer's failure to maintain each and every one of the Improvements in conformance with this Agreement and/or as required by code, law, rule, ordinance or regulation;
- b. Developer's failure to correct defective construction of any Improvement within the applicable Warranty Period;

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 Agreement will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses not to exceed the amount provided for in paragraph 4. Eligible expenses may 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 repair of the Improvements and/or collection.
13. **City's Rights upon Default:** When any event of default occurs, the City may proceed to collect the amount of the cost or expense incidental or necessary to affect the repair 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 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 of work pursuant to this Agreement 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 or constitute a waiver of any other provision, nor will 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 will 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 will not constitute the approval of any wrongful act by the Developer or the acceptance of any Improvement.

16. **Amendment or Modification:** The Parties may amend or modify the Agreement only by written instrument executed on behalf of the City by the City Manager 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 Agreement, 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.
18. **Integration:** This Agreement, 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 Agreement 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:

If to City: City of Grand Junction
Community Development Director
250 North 5th Street
Grand Junction, CO 81501

- 23. **Recordation:** Developer will pay for all costs to record this Agreement or a Memorandum thereof 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.

City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501



Director of Community Development

5/14/02

Date

Attest:

Stephanie Turner 5/14/02
City Clerk Date

By: James P Koelliker 4-11-02
Developer Date

Name (printed): James P Koelliker

Its (position): Owner

Attest:

N/A
Secretary Date

EXHIBIT A

STORM SEWER FACILITY DESCRIPTION

1. Storm sewer pump and manhole.
2. Pressurized storm sewer pipe to the inlet in 24 Road.
3. Detention facilities.
4. All storm sewer items outside the public right of way.