

## DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are WESTERN HOSPITALITY, ("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 Public Works & Planning 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 MARRIOTT HOTEL has been reviewed and approved under Planning file # SPR 2009-254 ("Development" or "the Development").

The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements to the Property and limiting the harmful effects of substandard development.

A further purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself; this Agreement is not executed for the benefit of materialmen, laborers or others providing work, services or material to the Developer and/or the Property or for the benefit of the owner(s), purchaser(s) or user(s) of the Property.

The mutual promises, covenants and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and City's land development ordinances and regulations.

### DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer shall design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit B attached and incorporated by this reference ("Improvements" or "the Improvements").

3a. On and after the Effective Date of this Agreement the Developer agrees to pay the City for its Administration and Inspection of the Development. The hourly rate for those services is \$45.00/hour. Administration and Inspection includes but is not limited to the time expended by the City's planner, engineer, construction inspector and attorney in directing, advising, correcting and enforcing by means other than litigation, this agreement and/or the approved development plan. Making

disbursements and calling/collecting Guarantees are Administration and Inspection services and shall be charged at \$45.00/hour. See, paragraph 19 concerning attorneys' / litigation fees.

3b. The scope of this project is such that the City may have to engage independent consultants(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others for which Developer is responsible hereunder.

3c. The Developer's obligation to complete the Improvements is and shall be independent of any obligations of the City contained herein.

4. **Security:** To secure the performance of its obligations under this Agreement the Developer shall supply a guarantee. The Developer is required to post security in an amount of \$ 82,789.48 (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) X 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 \$ 13,798.25 (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: 6/24/10  
Completion Date: 6/24/11

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 \$6,971.23 (Line G1, Exhibit B, Total Improvement Costs).

11a. At the written request of the Developer, the City shall execute a certificate verifying Acceptance of the Improvement and thereafter waiving its right to draw on

the Guarantee to the extent of such amount. A Developer in default under this Agreement has no right to such certification.

**12. Use of Proceeds:** The City shall use funds deposited with it, drawn or guaranteed pursuant to this Agreement only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements or paying Administration and Inspection fees.

**13. Events of Default:** The following conditions, occurrences or actions shall constitute a default by the Developer:

13a. Developer's failure to complete each portion of the Improvements on or before the Completion Date;

13b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvements within the applicable warranty period;

13c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer. In such event the City may immediately declare a default without prior notification to the Developer;

13d. Notification to the City, by any lender with a lien on the Property, of a default by Developer on any obligation to such lender. In such event, the City may immediately declare a default without prior notification to the Developer.

13e. With regard to the Property or any portion thereof: initiation of any foreclosure action regarding any lien or encumbrance; or initiation of mechanics lien(s) procedure(s); or assignment or conveyance of the Property in lieu of foreclosure. In such event the City may immediately declare a default without prior notification to the Developer.

13f. Notification to the City from the bank issuing the Guarantee that it will not renew the Guarantee at a time when security is still required hereunder and no substitute collateral acceptable to the City has been provided by the Developer.

13g. Except as provided, the City may not declare a default until written notice has been sent to the Developer at the address shown in the development file. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

**14. Measure of Damages:** The measure of damages for breach of this Agreement by the Developer shall be the reasonable cost of satisfactorily completing the Improvements, plus reasonable expenses. Expenses may include but are not limited to contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to the collection/completion of the Improvements.

For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit B shall be *prima facie* evidence of the minimum cost of completion; however, the maximum amount of the Developer's liability shall not be established by that amount or the amount of the Guarantee.

**15. City's Rights Upon Default:** When any event of default occurs, the City may draw on the Guarantee or proceed to collect any other security to the extent of the face amount of the Guarantee less eighty percent (80%) of the estimated cost (as shown on Exhibit B) of all Improvements for which the City has given its Acceptance and no warranty work is reasonably required. The City may also exercise its rights to disbursement of loan proceeds or other funds under the City improvements disbursement agreement.

15a. The City shall have the right to complete Improvements itself or it may contract with a third party for completion.

15b. The Developer grants to the City, its successors, assigns, agents, contractors and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining, inspecting and repairing the Improvements.

15c. The City may assign the proceeds of the Guarantee or other funds or assets that it may receive in accordance with this Agreement to a subsequent developer or lender that has acquired the Property by purchase, foreclosure or otherwise.

15d. That developer or lender shall then have the same rights of completion as the City if and only if the subsequent developer or lender agrees in writing to complete or correct the Improvements and provides to the City reasonable security for that obligation.

15e. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

**16. Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns ("City") harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with or on account of the performance or non-performance of work at the Property and/or the Improvements and/or the Development that is being done pursuant to this Agreement.

16a. The Developer further agrees to aid and defend the City in the event that the City and/or the Improvements is named as a defendant in an action concerning the performance of work pursuant to this Agreement except for a suit wherein the Developer states claim(s) against the City.

16b. The Developer is not an agent, partner, joint venturer or employee of the City.

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

18. **Amendment or Modification:** The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or his/her/its authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

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

20. **Vested Rights:** This Agreement does not guarantee, represent or certify that the Developer is entitled to any other approval(s) required by the City, before the Developer is entitled to commence development beyond the scope of this Agreement or to transfer ownership of the Property being developed.

21. **Integration:** This Agreement, together with the exhibits and attachments thereto constitutes the entire Agreement between the parties. No statement(s), promise(s) or inducements(s) that is/are not contained in this Agreement shall be binding on the parties.

22. **Third Party Rights:** No person or entity who or which is not a party to this Agreement shall have any right of action under or be a beneficiary of this Agreement.

23. **Time:** For the purpose of computing the Abandonment Period and Commencement and Dates, such times in which war, civil disasters or acts of God occurs or exist shall not be included if such prevents the Developer or City from performing its obligations under the Agreement. The Developer must notify the City in writing if/when it asserts impossibility of performance under this paragraph. The City may reject the Developer's assertion, if it finds, in writing that the condition(s) that the Developer asserts do not exist.

24. **Severability:** If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term or provision. The

rights of the parties shall be construed as if the part, term or provision was never part of the Agreement.

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

25a. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property.

25b. There is no prohibition on the right of the City to assign its rights under this Agreement.

25c. Upon written request from the Developer the City shall expressly release the original Developer's Guarantee and/or contract obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City shall constitute a release of the original Developer from his liability under this Agreement.

25d. When the City has issued its Acceptance regarding the Improvements, the City agrees to state the same in writing, with appropriate acknowledgments.

25e. The City shall sign a release only after all warranty periods, as extended by litigation, repair or alteration work, have expired.

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

If to Developer: KEVIN REIMER-WESTERN HOSPITALITY Name -Developer/Company  
225 MAIN ST Address (Street and Mailing)  
GRAND JCT. CO. 81501 City, State & Zip Code  
(970) 254-4014 Telephone and Fax Numbers  
(970) 242-0295  
Kevin.Reimer@brannan.net E-mail

Cc:

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

Cc: Public Works & Planning 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)

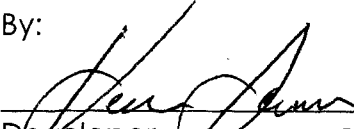


have been constructed or which are necessary for the Improvements are free from toxic, hazardous and other regulated substances or materials;

(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 6/24/10  
Date

KEVIN REIMER  
\_\_\_\_\_  
Name (printed)

Corporate Attest:

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

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

  
\_\_\_\_\_  
Public Works & Planning Dept. 6.28.10  
Date

5/15/2007

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

**EXHIBIT A**

*Lots 7-12, 17-23 B1K 101 City of Grand Jct.*

## EXHIBIT B IMPROVEMENTS COST ESTIMATE

**DATE:** June 1, 2010

**DEVELOPMENT NAME:** Springhill Suites by Marriott

**LOCATION:** 236 Main Street, Grand Junction, Colorado 81501

**PRINTED NAME OF PERSON PREPARING:** James E. Langford

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>A.</b>	<b>SANITARY SEWER</b>				
1	" PVC Sanitary Sewer Main	LF		\$	-
2	" PVC Sanitary Sewer Main	LF		\$	-
3	" PVC Sanitary Sewer Main	LF		\$	-
4	Sewer services	EA or LF		\$	-
5	Sanitary Sewer Manhole	EA		\$	-
6	Sanitary Sewer Drop Manhole	EA		\$	-
7	Connection to Existing Manhole	EA		\$	-
8	Concrete Encasement	LF		\$	-
				\$	-
				\$	-
				\$	-
<b>Subtotal Part A Sanitary Sewer</b>				\$	-
<b>B.</b>	<b>DOMESTIC WATER</b>				
1	" PVC Water Main	LF		\$	-
2	" PVC Water Main	LF		\$	-
3	" PVC Water Main	LF		\$	-
4	" Gatevalve	EA		\$	-
5	" Gatevalve	EA		\$	-
6	" Gatevalve	EA		\$	-
7	Water Services	EA or LF		\$	-
8	Connect to Existing Water Line	EA		\$	-
9	Fire Hydrant with Valve	EA		\$	-
10	Utility Adjustments	EA		\$	-
11	Blowoff	EA		\$	-
				\$	-
				\$	-
				\$	-
<b>Subtotal Part B - Domestic Water</b>				\$	-

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C1.</b>	<b>STREETS</b>				
1	" PVC Utility/Irrigation sleeves	LF			\$ -
2	" PVC Utility/Irrigation sleeves	LF			\$ -
3	Reconditioning	SY			\$ -
4	Aggregate Base Course (Class 3)	TN			\$ -
5	Aggregate Base Course (Class 6) (4" Compacted Thickness)	SY	525	\$ 10.00	\$ 5,250.00
6	Aggregate Base Course (Class 6) (" Compacted Thickness)	SY			\$ -
7	Hot Bituminous Paving, Grading (6" thick)	SY			\$ -
8	Hot Bituminous Paving, Grading (" thick)	SY			\$ -
9	Hot Bituminous Paving, Patching (6" Thick)	SY	78	\$ 48.00	\$ 3,744.00
10	Geotextile	SY			\$ -
11	Concrete Curb (" Wide by " High)	LF			\$ -
12	Concrete Curb and Gutter (2' wide)	LF	165	\$ 22.50	\$ 3,712.50
13	Concrete Curb and Gutter (4' wide)	LF	122	\$ 36.00	\$ 4,392.00
14	Monolithic, Vertical Curb, Gutter and Sidewalk (' Wide)	LF			\$ -
15	Drive Over Curb, Gutter, and Sidewalk (' Wide)				\$ -
16	Concrete Sidewalk (5' Wide)	LF	31	\$ 30.00	\$ 930.00
17	Concrete Sidewalk (6' Wide)	LF	46	\$ 36.00	\$ 1,656.00
18	Concrete Sidewalk (7' Wide)	LF	82	\$ 42.00	\$ 3,444.00
19	Concrete Sidewalk (10' Wide)	LF	307	\$ 70.00	\$ 21,490.00
20	Concrete Gutter and Driveway Section (" Thick)	SY			\$ -
21	Concrete Drainage Pan (' Wide, " Thick)	LF			\$ -
22	Concrete Corner Fillet	SY			\$ -
23	Concrete Curb Ramp	SY	5	\$ 62.00	\$ 310.00
24	Complete Concrete Corner	SY			\$ -
25	Concrete Alley (8" Thick)	SY	223	\$ 62.00	\$ 13,826.00
26	Concrete Driveway (8" Thick)	SY	40	\$ 62.00	\$ 2,480.00
27	Driveway/Concrete Repair	SY			\$ -
28	Retaining Walls	LF			\$ -
29	Street Signs	EA			\$ -
30	Striping (New, Remove/Replace)	LF			\$ -
31	Street Lights	EA			\$ -
32	Signal Construction or Reconstruction	LS			\$ -
33	Flowable Fill	CY			\$ -
34	Sleeves, ", PVC	LF			\$ -
					\$ -
					\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C2.</b>	<b>BRIDGES</b>				
					\$ -
1	Box Culvert Pre-Cast	LS			\$ -
2	Box Culvert Cast-in-Place	LS			\$ -
3	Wingwalls	LS			\$ -
4	Parapet Wall	LS			\$ -
5	Railing (handrail, guardrail)	LS			\$ -
					\$ -
					\$ -
	<b>Subtotal Part C - Streets and Bridges</b>				<b>\$ 61,234.50</b>
<b>D1.</b>	<b>EARTHWORK</b>				
1	Mobilization	LS			\$ -
2	Clearing and Grubbing	AC or LS			\$ -
3	Unclassified Excavation	CY			\$ -
4	Unclassified Embankment	CY			\$ -
5	Silt Fence	LF			\$ -
6	Watering (Dust Control)	AC or LS			\$ -
<b>D2.</b>	<b>REMOVALS AND RESETTING</b>				
1	Removal of Asphalt	SY	195	\$ 6.00	\$ 1,170.00
2	Removal of Miscellaneous Concrete	SY	335	\$ 6.00	\$ 2,010.00
3	Remove Curb and Gutter	LF	122	\$ 3.00	\$ 366.00
4	Removal of Culverts	LF			\$ -
5	Remove Structures	EA			\$ -
6	Remove Signs	EA			\$ -
7	Remove Fence	LF			\$ -
8	Adjust Manhole	EA			\$ -
9	Adjust Valvebox	EA			\$ -
10	Relocate or Adjust Utilities	LS			\$ -
<b>D3.</b>	<b>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			\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>D4.</b>	<b>STORM DRAINAGE FACILITIES</b>				
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY			\$ -
2	" Storm Drain Pipe	LF			\$ -
3	" Storm Drain Pipe	LF			\$ -
4	" Storm Drain Pipe	LF			\$ -
5	" Storm Drain Pipe	LF			\$ -
6	" Storm Drain Pipe	LF			\$ -
7	" Flared End Section	EA			\$ -
8	" Flared End Section	EA			\$ -
9	48" Storm Drain Manhole	EA			\$ -
10	60" Storm Drain Manhole	EA			\$ -
11	72" Storm Drain Manhole	EA			\$ -
12	Manhole with Box Base	EA			\$ -
13	Connection to Existing MH	EA			\$ -
14	Single Curb Opening Storm Drain Inlet	EA			\$ -
15	Double Curb Opening Storm Drain Inlet	EA			\$ -
16	Area Storm Drain Inlet	EA			\$ -
17	Detention Area Outlet structure	EA			\$ -
18	Rip-Rap D <sub>50</sub> = ___"	CY			\$ -
19	Sidewalk Trough Drain	EA			\$ -
20	Pump Systems including Electrical	LS			\$ -
<b>Subtotal Part D - Grading and Drainage</b>					<b>\$ 3,546.00</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>E1.</b>	<b>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.</b>	<b>LANDSCAPING</b>				
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				\$ -
					\$ -
					\$ -
					\$ -
<b>Subtotal Part E - Landscaping and Irrigation</b>					<b>\$ -</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>F.</b>	<b>Miscellaneous Items</b>				
1	Construction staking/surveying	%	2.00%	\$ 64,780.50	\$ 1,295.61
2	Developer's inspection cost	%		\$ 64,780.50	
3	General construction supervsn	%		\$ 64,780.50	
4	Quality control testing	%	2.00%	\$ 64,780.50	\$ 1,295.61
5	Construction traffic control	%		\$ 64,780.50	
6	City inspection fees	%	0.50%	\$ 64,780.50	\$ 323.90
7	As-builts	%	2.00%	\$ 64,780.50	\$ 1,295.61
<b>Subtotal Part F - Miscellaneous Items</b>					<b>\$ 4,210.73</b>



% = Percentage of total site construction costs

**COST SUMMARY:**

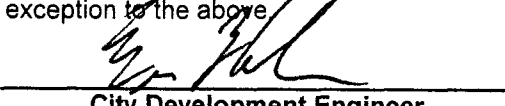
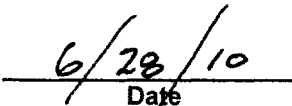
<b>G1</b>	<b>Total Improvement Costs</b>	<b>\$ 68,991.23</b>
<b>G2</b>	<b>City Security (20%)</b>	<b>\$ 13,798.25</b>
<b>Total Guarantee Amount</b>		<b>\$ 82,789.48</b>



**NOTES**

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

  
 \_\_\_\_\_  
 Signature of Developer  
 (If corporation, to be signed by President and attested to by Secretary together with the corporate seals.)
 
  
 \_\_\_\_\_  
 Date

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

  
 \_\_\_\_\_  
 City Development Engineer
 
  
 \_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 Planning Division
 
  
 \_\_\_\_\_  
 Date





RECEIVED

JUL 15 2010

COMMUNITY DEVELOPMENT  
DEPT.

U.S. BANK NATIONAL ASSOCIATION  
INTERNATIONAL DEPARTMENT  
111 S.W. FIFTH AVE., SUITE 500, PD-OR-T5CE  
PORTLAND, OREGON 97204 U.S.A.  
TEL: (503) 275-6059, Toll Free: (866) 359-2503  
SWIFT: USBKUS44PDX FAX: (503)275-5132

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

Irrevocable Letter of Credit No. **SLCPPDX05104**

Dated: July 14, 2010

Expiration: **June 25, 2011** subject to the automatic extensions stated below

Project Name: Springfield Suites by Marriott

Dear Sirs:

We hereby establish our Irrevocable Letter of Credit No. **SLCPPDX05104** in favor of the City of Grand Junction at the request of and for the account of Western Hospitality, LLC, 225 Main St., Grand Junction, CO 81501 in the amount of **(EIGHTY-TWO THOUSAND SEVEN HUNDRED EIGHTY-NINE AND 48/100 U.S. DOLLARS) (\$82,789.48)** U.S. Dollars.

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

- 1) it is effective upon signature;
- 2) it expires on **June 25, 2011** subject to the automatic extensions discussed below;
- 3) this Letter of Credit is available by sight draft(s) drawn and marked "Drawn under U.S. Bank National Association Letter of Credit No. **SLCPPDX05104** dated July 14, 2010";
- 4) this Letter of Credit is established for the use and benefit of the City of Grand Junction by reason of the Western Hospitality, LLC being obligated to pay or perform in accordance with the provision 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) **"Western Hospitality, LLC (Developer) has failed to comply with the terms, conditions, provisions and requirements of the Grand Junction Zoning and Development Code and/or plans, specifications or agreements relating to the construction of improvements required by the City of Grand Junction. The monies received from this drawing are required to construct those improvements. The City of Grand Junction therefore requests the payment of \$ \_\_\_\_\_.**
- 7) It is a condition of this Letter of Credit that it will be automatically extended for a period of six (6) months from the present or any future expiration dated 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 notified the City of Grand Junction at 250 N. 5<sup>th</sup> Street Grand Junction, CO 81501, by certified mail return receipt requested or overnight courier, at least ninety (90) days prior to such expiration date that we elect not to further extend this Letter of Credit.
- 8) except as stated above no modifications or revocations may be made by the undersigned to this Letter of Credit without the express written approval of the City's Director of Public Works & Planning or his designee;



- 9) this Letter of Credit is neither negotiable nor assignable;
- 10) partial drawings are permitted;
- 11) we hereby agree that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored on due presentation and delivery of documents, which may be done by first class mail, facsimile, in person or by any other reasonable business practice on or prior to the expiration or any extension thereof of this Letter of Credit;
- 12) except as otherwise stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) and to the extent that it does not conflict with Article 5 of the Uniform Commercial Code of the State of Colorado.

U. S. Bank National Association  
A Member of the Federal Reserve System

  
Authorized Signature

NANCY R. TOUSIGNANT  
ASSISTANT VICE PRESIDENT

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

City of Grand Junction  
Public Works and Planning Department  
File: # SPR-2009-254

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 WESTERN HOSPITALITY (Developer) and the City of Grand Junction (City) pertaining to MARRIOTT HOTEL (Project), located at 3rd Street Main.

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-2009-254

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:  6/29/10  
Date

(Print Name) Kevin R. Rasmussen

**CITY OF GRAND JUNCTION:**

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

 6.29.10  
Public Works & Planning Department Date

**From:** Senta Costello  
**To:** Leslie Ankrum  
**Date:** 2/28/2012 4:40 PM  
**Subject:** Fwd: landscape code compliance letter for Downtown Marriot  
**Attachments:** landscape code compliance letter for Downtown Marriot

Leslie, We can release the DIA & security for the Springhill Suites Marriott. THANKS!!!!



February 28, 2012

Ms. Senta Costello  
GJ Community Development  
250 N.5th Street  
Grand Junction CO 81501

Re: Downtown Marriot Hotel Landscape Certification

Dear Senta:

I inspected the planting at Downtown Marriot Hotel, and found the project to be complete and reflecting the planting plan designed by Clavonne, Roberts, & Associates, Inc., dated 2/21/2009. I found the following:

1. Plant material quantities and sizes were as designed.
2. Plant species were as designed with the following exceptions noted in a request for plant substitutions dated 5/25/2011:

plant on plan	substitution
Desert Four O'Clock:	Callirhoe involucrata (Poppy Mallow)
Dwarf Snowball:	Philadelphus x virginialis 'Dwarf Minnesota Snowflake'
Gold Tide Forsythia:	Rosa x Flower Carpet 'Noatraum' (Pink Flower Carpet Rose)
Andorra Juniper:	Juniperus sabina 'Buffalo' (Buffalo Juniper)
Scandia Juniper:	Juniperus sabina 'Buffalo' (Buffalo Juniper)
Village Green Zelkova:	'Sensation' (Sensation Box Elder)
Japanese Pagoda Tree:	Syringa reticulata 'Ivory Silk' (Japanese Tree Lilac)

It was also noted in a site compliance check dated 7/1/2011 that the small planting bed adjacent to the dumpsters (north of the hotel) was not constructed.

I certify that the planting at this site fulfills the design quantities and intent of the plan approved for this construction.

Sincerely,

Craig Roberts, Sec/Treas.

**PUBLIC WORKS & PLANNING**

March 05, 2012

Western Hospitality, LLC  
Attn: Mr. Kevin Reimer  
225 Main Street  
Grand Junction, CO 81501

**RE: Notice of Final Acceptance**  
**Project Name: Marriott Hotel**  
**Plan Number: SPR-2009-254**  
**DIA Number DIA-2010-315**

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 Final Acceptance of the Project have been fulfilled. The Developer's warranty obligations, for all materials and workmanship, have concluded and are hereby released.

The following public improvements are accepted for future maintenance by the City:

**Public streets:**

- All public streets as shown on the project plans.

**Storm drainage system:**

- N/A, none included in project.

**Water distribution system:**

- N/A, none included in project.

**Sanitary sewer:**

- N/A, none included in project.

The City Planner will release the Development Improvements Agreement, the Maintenance Agreement and any financial security attached to the project.

Sincerely,



Eric Hahn, PE  
Development Engineer

EC: Mark Barslund, Development Inspector  
Leslie Ankrum, Senior Administrative Assistant  
Chris Spears, Streets Supervisor  
Senta Costello, Senior Planner

March 5, 2012

U. S. Bank National Association  
International Dept PD-OR-T5CE, Suite 500  
111 SW Fifth Avenue  
Portland, OR 97204

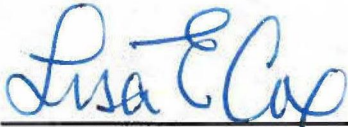
**Re: Cancellation of Amendment to Letter of Credit Number USBKUS44PDX  
Western Hospitality LLC  
Internal Reference: Marriott Hotel Downtown: SPR-2009-254; DIA-2010-315**

To Whom It May Concern:

Enclosed please find the original Amendment to Letter of Credit Number **USBKUS44PDX** for **Western Hospitality LLC**. As beneficiary, the City of Grand Junction informs you that the Amendment to 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,



---

Lisa E. Cox, Planning Manager

Encl. Amendment to Letter of Credit **USBKUS44PDX**

EC: Mark Barslund, Development Inspector  
Leslie Ankrum, Senior Administrative Assistant  
Eric Hahn, Development Engineer  
Senta Costello, Senior Planner

**Developer**

Western Hospitality LLC  
Attn: Mr. Kevin Reimer  
225 Main Street  
Grand Junction, CO 81501





U.S. BANK NATIONAL ASSOCIATION  
INTERNATIONAL DEPT. PD-OR-T5CE, SUITE 500  
111 SW FIFTH AVENUE, PORTLAND, OR 97204  
P.O. BOX 4412, PORTLAND, OR 97208-4412

SWIFT: USBKUS44PDX  
TOLL FREE: 866-359-2503  
FAX: 503-275-5132

07/14/11

=====
AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT
=====

BENEFICIARY:
CITY OF GRAND JUNCTION
250 N 5TH STREET
GRAND JUNCTION, CO 81501

APPLICANT:
WESTERN HOSPITALITY, LLC
225 MAIN ST.
GRAND JUNCTION, CO 81501

LETTER OF CREDIT NUMBER SLCPPDX05104 AMENDMENT NO. 2

WE HEREBY AMEND IRREVOCABLE STANDBY LETTER OF CREDIT AS FOLLOWS:

+ L/C AMOUNT IS DECREASED BY USD 68,991.23
MAKING THE NEW AMOUNT USD 13,798.25

\*\*PLEASE NOTE: THE EXPIRY DATE OF THIS STANDBY LETTER CREDIT
HAS BEEN RENEWED TO JUNE 25, 2012.

BENEFICIARY IS REQUESTED TO INDICATE BELOW YOUR ACCEPTANCE OR
REJECTION OF THE ABOVE TERMS OF THIS AMENDMENT, SIGN AND RETURN
TO US URGENTLY BY FAX TO (503) 275-5132.

PLEASE INDICATE (BY 'X') CHOICE

[X] THE REFERENCED AMENDMENT TO THE LETTER OF CREDIT IS ACCEPTABLE

\_\_\_ THE REFERENCED AMENDMENT TO THE LETTER OF CREDIT IS REJECTED

[Signature]
BENEFICIARY

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

U.S. BANK NATIONAL ASSOCIATION
A MEMBER OF THE FEDERAL RESERVE SYSTEM

[Signature]
STANDBY LETTERS OF CREDIT
NANCY R TOUSIGNANT
ASSISTANT VICE PRESIDENT





**RELEASE OF RECORDING MEMORANDUM**  
**City of Grand Junction**  
**Public Works & Planning Department**  
**Plan: SPR-2009-254**  
**DIA-2010-315**

This Release relates to a Recording Memorandum dated June 28, 2010, by and between Western Hospitality LLC (Developer) and the City of Grand Junction, pertaining to Marriott Hotel Downtown (Project), located at 236 Main Street, Grand Junction, CO 81501, recorded at Book 5027, Page 271, 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 Engineer:  Date: 3/5/12  
City Planner:  Date: 3/5/12

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.

 Date: 3.5.12  
Public Works & Planning Department

The foregoing instrument was executed before me this 5<sup>th</sup> day of March, 2012, by Greg Moberg, of the Public Works & Planning Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

  
Leslie G. Ankrum, Notary Public



My Commission Expires 08/21/2013

My commission expires on 8/21/2013



**Sheila Reiner**  
 Clerk and Recorder  
 544 Rood Ave  
 Grand Junction, CO 81501  
 (970)-244-1679



**Print Date:**  
 03/06/2012 2:09:22 PM

Transaction #: **131602**  
 Receipt #: **2012026324**  
 Cashier Date: **03/06/2012 2:09:22 PM**

Mailing Address:  
 P.O. BOX 20,000-5007  
 Grand Junction, CO 81502  
 (970)-244-1679

www.mesacounty.us

Customer Information	Transaction Information	Payment Summary
(CITYOFGJ) CITY OF GRAND JCT  COM DEVELOP 250 N 5TH ST GRAND JCT, CO 81501 Escrow Balance: \$70.00	DateReceived: 03/06/2012 Source Code: Over The Counter Return Code: Over The Counter Trans Type: Recording	Total Fees \$22.00 Total Payments \$22.00

1 Payments	
ESCROW	\$22.00

2 Recorded Items	
<i>Release of Recording Memorandum</i>	
(REL) REL <i>Marrriott Hotel</i> <i>SPL-2009-254</i>	BK/PG: 5269/393 Reception Number: 2602916 Date: 03/06/2012 2:09:22 PM From: To:
Recording @ \$10 per page \$1 Surcharge	1 \$11.00
(REL) REL <i>Release of Recording Memorandum</i> <i>Forrest Run Sub</i> <i>FP-2004-276</i>	BK/PG: 5269/394 Reception Number: 2602917 Date: 03/06/2012 2:09:22 PM From: To:
Recording @ \$10 per page \$1 Surcharge	1 \$11.00

0 Search Items
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0 Miscellaneous Items
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March 13, 2012

US Bank National Association  
International Dept PD-OR-T5CE, Suite 500  
111 SW Fifth Avenue  
Portland, OR 97204

**Re: Cancellation of Letter of Credit Number SLCPPDX05104 and Amendment #1  
Western Hospitality LLC  
Internal Reference: Marriott Hotel Downtown: SPR-2009-254, DIA-2010-315**

To Whom It May Concern:

Enclosed please find the original Letter of Credit Number **SLCPPDX05104** and a copy of Amendment #1, which was rejected by the City (the original returned to US Bank) for **Western Hospitality LLC**. As beneficiary, the City of Grand Junction informs you that the Letters of Credit are being returned to you for cancellation. Amendment #2 was canceled and sent to you on March 5, 2012. The 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,



---

Lisa E. Cox, Planning Manager

Encl. Letter of Credit **SLCPPDX05104**  
Copy of Amendment #2

EC: Leslie Ankrum, Senior Administrative Assistant  
File #SPR-2009-254

**Developer**  
Western Hospitality LLC  
Attn: Mr. Kevin Reimer  
225 Main Street  
Grand Junction, CO 81501

JUL 15 2010

COMMUNITY DEVELOPMENT  
DEPT.

U.S. BANK NATIONAL ASSOCIATION  
INTERNATIONAL DEPARTMENT  
111 S.W. FIFTH AVE., SUITE 500, PD-OR-T5CE  
PORTLAND, OREGON 97204 U.S.A.  
TEL: (503) 275-6059, Toll Free: (866) 359-2503  
SWIFT: USBKUS44PDX FAX: (503)275-5132

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

Irrevocable Letter of Credit No. **SLCPPDX05104**

Dated: July 14, 2010

Expiration: **June 25, 2011** subject to the automatic extensions stated below

Project Name: Springfield Suites by Marriott

Dear Sirs:

We hereby establish our Irrevocable Letter of Credit No. **SLCPPDX05104** in favor of the City of Grand Junction at the request of and for the account of Western Hospitality, LLC, 225 Main St., Grand Junction, CO 81501 in the amount of **(EIGHTY-TWO THOUSAND SEVEN HUNDRED EIGHTY-NINE AND 48/100 U.S. DOLLARS) (\$82,789.48)** U.S. Dollars.

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

- 1) it is effective upon signature;
- 2) it expires on **June 25, 2011** subject to the automatic extensions discussed below;
- 3) this Letter of Credit is available by sight draft(s) drawn and marked "Drawn under U.S. Bank National Association Letter of Credit No. **SLCPPDX05104** dated July 14, 2010";
- 4) this Letter of Credit is established for the use and benefit of the City of Grand Junction by reason of the Western Hospitality, LLC being obligated to pay or perform in accordance with the provision 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) **"Western Hospitality, LLC (Developer) has failed to comply with the terms, conditions, provisions and requirements of the Grand Junction Zoning and Development Code and/or plans, specifications or agreements relating to the construction of improvements required by the City of Grand Junction. The monies received from this drawing are required to construct those improvements. The City of Grand Junction therefore requests the payment of \$ \_\_\_\_\_.**
- 7) It is a condition of this Letter of Credit that it will be automatically extended for a period of six (6) months from the present or any future expiration dated 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 notified the City of Grand Junction at 250 N. 5<sup>th</sup> Street Grand Junction, CO 81501, by certified mail return receipt requested or overnight courier, at least ninety (90) days prior to such expiration date that we elect not to further extend this Letter of Credit.
- 8) except as stated above no modifications or revocations may be made by the undersigned to this Letter of Credit without the express written approval of the City's Director of Public Works & Planning or his designee;

- 9) this Letter of Credit is neither negotiable nor assignable;
- 10) partial drawings are permitted;
- 11) we hereby agree that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored on due presentation and delivery of documents, which may be done by first class mail, facsimile, in person or by any other reasonable business practice on or prior to the expiration or any extension thereof of this Letter of Credit;
- 12) except as otherwise stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) and to the extent that it does not conflict with Article 5 of the Uniform Commercial Code of the State of Colorado.

U. S. Bank National Association  
A Member of the Federal Reserve System

  
Authorized Signature

NANCY R. TOUSIGNANT  
ASSISTANT VICE PRESIDENT





U.S. BANK NATIONAL ASSOCIATION  
 INTERNATIONAL DEPT. PD-OR-T5CE, SUITE 500  
 111 SW FIFTH AVENUE, PORTLAND, OR 97204  
 P.O. BOX 4412, PORTLAND, OR 97208-4412

SWIFT: USBKUS44PDX  
 TOLL FREE: 866-359-2503  
 FAX: 503-275-5132

04/04/11

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AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT

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BENEFICIARY:  
 CITY OF GRAND JUNCTION  
 250 N 5TH STREET  
 GRAND JUNCTION, CO 81501

APPLICANT:  
 WESTERN HOSPITALITY, LLC  
 225 MAIN ST.  
 GRAND JUNCTION, CO 81501

=====

LETTER OF CREDIT NUMBER SLCPDX05104                      AMENDMENT NO. 1

-----

WE HEREBY AMEND IRREVOCABLE STANDBY LETTER OF CREDIT AS FOLLOWS:

+ L/C AMOUNT IS DECREASED BY USD 68,991.23  
 MAKING THE NEW AMOUNT USD 13,798.25

\*\*PLEASE NOTE:  
 WE HEREBY RESCIND OUR NON RENEWAL LETTER DATED 03/15/2011. THIS  
 LETTER OF CREDIT WILL NOT BE CANCELLED AND SHALL REMAIN OPEN FOR  
 ANOTHER YEAR, MAKING THE NEW EXPIRY DATE JUNE 25, 2012.

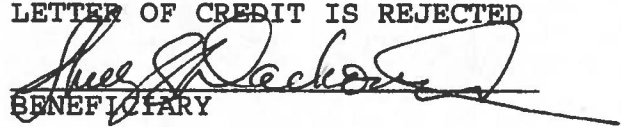
ALL OF THE TERMS AND CONDITIONS OF THE ORIGINAL LETTER OF CREDIT  
 REMAIN UNCHANGED AND ARE IN EFFECT INCLUDING THE AUTO RENEWABLE  
 CLAUSE.

BENEFICIARY IS REQUESTED TO INDICATE BELOW YOUR ACCEPTANCE OR  
 REJECTION OF THE ABOVE TERMS OF THIS AMENDMENT, SIGN AND RETURN  
 TO US URGENTLY BY FAX TO (503) 275-5132.

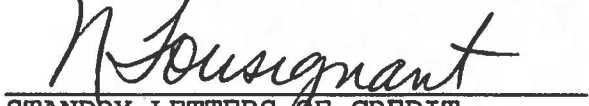
PLEASE INDICATE (BY 'X') CHOICE

THE REFERENCED AMENDMENT TO THE LETTER OF CREDIT IS ACCEPTABLE

THE REFERENCED AMENDMENT TO THE LETTER OF CREDIT IS REJECTED

  
 BENEFICIARY

U.S. BANK NATIONAL ASSOCIATION  
 A MEMBER OF THE FEDERAL RESERVE SYSTEM

  
 STANDBY LETTERS OF CREDIT  
 NANCY R. TOUSIGNANT  
 ASSISTANT VICE PRESIDENT