

## DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are MAVERIK, INC., ("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 LOT 1, MAVERIK 2 SUBDIVISION has been reviewed and approved under Planning file # SPR-2009-023 ("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 \$49,124.02 (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 \_\_\_\_\_  
ESCROW BOND X

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 \$ 8,187.34 (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: JUNE 7, 2010  
Completion Date: OCTOBER 5, 2010

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 ~~\$40,936.68~~ (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: MAVERIK, INC Name -Developer/Company  
880 W. CENTER ST. Address (Street and Mailing)  
NORTH SALT LAKE, UT 84054 City, State & Zip Code  
(801) 335-3851 Telephone and Fax Numbers  
(801) 936-9502  
don.lilyquist@maverik.com 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: MAVERIK, INC

Don Lilyquist 4-7-10  
Developer Date  
DON LILYQUIST  
Name (printed)

Corporate Attest:

John L. Murray 4/7/10  
Name Date

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

[Signature] 6-30-10  
Public Works & Planning Dept. 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**

**Lot 1, Maverik 2 Subdivision.**

## EXHIBIT B IMPROVEMENTS COST ESTIMATE

DATE: 01-27-10  
 DEVELOPMENT NAME: Maverik Inc Commercial Site  
 LOCATION: 2948 F Road  
 PRINTED NAME OF PERSON PREPARING: Jason Ward (Rosenberg Associates)

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	" 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	1	90	\$ 90
9	Fire Hydrant with Valve	EA	1	2000	\$ 2000
10	Utility Adjustments	EA			\$ -
11	Blowoff	EA			\$ -
					\$ -
					\$ -
<b>Subtotal Part B - Domestic Water</b>					<b>\$ 2090 -</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C1.</b>	<b>STREETS</b>				
1	4" PVC Utility/Irrigation sleeves	LF	24	6	\$ 144 -
2	" PVC Utility/Irrigation sleeves	LF			\$ -
3	Reconditioning	SY			\$ -
4	Aggregate Base Course (Class 3	TN			\$ -
5	Aggregate Base Course (Class 6) (6" Compacted Thickness)	SY	635	720	\$ 457 -20
6	Aggregate Base Course (Class 6) (" Compacted Thickness)	SY			\$ -
7	Hot Bituminous Paving, Grading (3" thick)	SY	50	18	\$ 900 -
8	Hot Bituminous Paving, Grading (" thick)	SY			\$ -
9	Hot Bituminous Paving, Patching (3" Thick)	SY	135	18	\$ 243 -
10	Geotextile	SY			\$ -
11	Concrete Curb (" Wide by " High)	LF			\$ -
12	Concrete Curb and Gutter (2' wide)	LF	300	15	\$ 4500 -
13	Concrete Curb and Gutter (1.5' wide)	LF			\$ -
14	Monolithic, Vertical Curb, Gutter and Sidewalk (' Wide)	LF			\$ -
15	Drive Over Curb, Gutter, and Sidewalk (15' Wide)	LF	115	28	\$ 3220 -
16	Concrete Sidewalk (6' Wide)	LF	154	19	\$ 2926 -
17	Concrete Gutter and Driveway Section (" Thick)	SY			\$ -
18	Concrete Drainage Pan (6' Wide, 6" Thick)	LF	87	36	\$ 3132 -
19	Concrete Corner Fillel	SY			\$ -
20	Concrete Curb Ramp	SY	19	200	\$ 3800 -
21	Complete Concrete Corner	SY			\$ -
22	Concrete Driveway (" Thick)	SY			\$ -
23	Driveway/Concrete Repair	SY			\$ -
24	Retaining Walls	LF			\$ -
25	Street Signs	EA			\$ -
26	Striping (New, Remove/Replace)	LF			\$ -
27	Street Lights	EA			\$ -
28	Signal Construction or Reconstruction	LS			\$ -
29	Flowable Fill	CY			\$ -
30	Sleeves, ", PVC	LF			\$ -
					\$ -
					\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<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>\$ 19,322.20</b>
<b>D1.</b>	<b>EARTHWORK</b>				
1	Mobilization	LS	1	500	\$ 500 -
2	Clearing and Grubbing	AC or LS	1	400	\$ 400 -
3	Unclassified Excavation	CY			\$ -
4	Unclassified Embankment	CY			\$ -
5	Silt Fence	LF			\$ -
6	Watering (Dust Control)	AC or LS	1	500	\$ 500 -
<b>D2.</b>	<b>REMOVALS AND RESETTING</b>				
1	Removal of Asphalt	SY	13.5	13.50	\$ 182.25
2	Removal of Miscellaneous Concrete	SY	16.5	18	\$ 132 -
3	Remove Curb and Gutter	LF	135	3	\$ 405 -
4	Removal of Culverts	LF	60	5	\$ 300 -
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. STORM DRAINAGE FACILITIES</b>					
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY			\$ -
2	12" RCP Storm Drain Pipe	LF	49	28	\$ 1372 -
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	1	1100	\$ 1100 -
14	Single Curb Opening Storm Drain Inlet	EA	1	1800	\$ 1800 -
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>\$11,191 -25</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>





## Escrow Agreement

Developer: Maverik, Inc.

Escrow Agent: ESCROW SPECIALISTS, INC

Property: Lot 1 Maverik 2 Subdivision

Planning File #: SPR-2009-023

Effective Date: March 4, 2010

This Escrow Agreement is entered into by and between Maverik, Inc. ("Developer"), ESCROW SPECIALISTS, INC ("Escrow Agent") and the City of Grand Junction, Colorado ("City") as of the Effective Date given above.

### **RECITALS**

Developer is required by the City to construct certain improvements to Lot 1 Maverik 2 Subdivision ("Improvements") in accordance with the Zoning and Development Code as a condition of its development permit approval. The Improvements required are set forth in the Development Improvements Agreement. The Development Improvements Agreement is incorporated herein by this reference as if fully set forth.

A provision has been made by law whereby Developer may file a guarantee acceptable to the City to secure the actual construction of the Improvements in a manner satisfactory to the City.

Escrow Agent ("Agent") has agreed to hold funds for the Developer and the City as a guarantee for Developer's construction of the Improvements. To the extent necessary or required this Agreement shall serve as the instructions to the Agent as well as creating the Agent's legal obligations.

The City Engineer has approved an estimate of the costs of the Improvements \$40,936.68. A provision is made by law whereby the City shall require security in the amount of the estimate of the cost of the improvements plus 20%. The total amount of the required security for the Improvements is \$49,124.02 ("Funds").

The parties desire to secure the full and complete performance of the Developer's obligations and to insure that the Funds are held for the benefit of the City to secure the performance of the DIA by the Developer.

**NOW, THEREFORE, THE PARTIES AGREE:**

1. **ESCROW ACCOUNT.** As an independent guarantee to City, for the purpose of insuring construction and installation of the Improvements, Developer hereby assigns and sets over to City all its right, title, and interests in the principal of that certain Escrow Account held by Agent in the amount of \$49,124.02 ("Funds"), entitled \_\_\_\_\_ (name of Escrow Account), ("Account").

2. **AGENT OBLIGATIONS.** Agent warrants: that the Funds are to be held in trust solely to secure Developer's obligations under the Development Improvements Agreement ("DIA"); that the Agent shall act as agent of the City in holding the Funds; that the Funds will not be paid out or disbursed to, or on behalf of, the Developer except as set forth in this document and/or as set forth in the DIA; and that the Agent may not modify or revoke its obligation to disburse funds to or on behalf of the Developer or the City. Agent warrants that the Funds are and will be available exclusively for payment of the costs of satisfactory completion of the Improvements.

Agent hereby acknowledges that it has, on deposit to the credit of Developer, in the Account referenced above, the sum mentioned as the Funds; that it is aware of, understands, and agrees to each provision of this Agreement; that it agrees to make disbursement of the Funds of the account only according to terms as outlined in this Agreement; and that it will hold the Funds in the account indefinitely until such time as City, in writing, either demands the Funds be remitted to City or otherwise releases Agent from its obligation to hold the Funds. Should Agent fail to timely perform its obligations as outlined herein or as required by law, Agent shall be liable for incidental costs incurred by City in attempting to enforce Agent's obligations under this Agreement or in completing and/or repairing the Improvements and/or paying fees as a result of Agent's Failure to Perform its obligations under this Agreement. Furthermore, this paragraph shall not limit the right of City to pursue any and all remedies it may have in equity or at law as a result of Agent's failure to perform under this Agreement.

Agent expressly acknowledges, understands and agrees that its obligation under this Agreement is independent of any obligation of the City, either express or implied. Agent agrees that its performance is not and shall not be conditioned upon the commencement of actual construction work in the subdivision or development, or upon the sale of any lots or any part of the subdivision or development. Agent further acknowledges that (a) its obligation to perform under this Agreement is independent of any other remedy available to the City to secure proper completion of the Improvements; (b) Agent may not assert as a defense that City has remedies against other persons or entities or has

other remedies in equity or at law that would otherwise relieve Agent of its duty to perform as outlined in this Agreement, or preclude City from requiring Agent's performance under this Agreement; and (c) Agent may not assert as a defense that City has remedies against other entities or has other remedies in equity or at law that would otherwise relieve Developer of its duty to perform as outlined in this Agreement or preclude City from requiring Developer's performance under this Agreement.

Agent's signature hereon attests that the full amount of the Funds has been dedicated or set aside on behalf of Developer and for the City's use and benefit.

Upon Final Acceptance by the City of the Improvements, the City and Developer will enter into a Maintenance Guarantee, and the City will notify the Agent of Final Acceptance and authorize release of the remaining funds, except \$8187.34, which shall then be held as security for the Maintenance Guarantee. Agent hereby agrees to and shall hold that amount, \$8187.34, as security for the Maintenance Guarantee until released or demanded by the City pursuant to the terms of this Agreement.

3. **REDUCTION OF FUNDS.** As the Improvements are initially accepted by City, a portion of the Funds may be released to the Developer upon the Developer's written request **and** City's written authorization and upon verification by the Agent that there are no outstanding liens for materials or labor on the project. Such requests may be made only once every 30 days. The amount of any requested release shall be determined in the sole discretion of the City. No releases shall be authorized until such time as the City has inspected the Improvements and found them to be in compliance with City standards. Completion of Improvements, even if verified by City, shall not entitle Developer to an automatic release of any part of the Funds. The release of any Funds shall require the prior written authorization of the City.

4. **RELEASE OF FUNDS.** In the event the Improvements have been installed to the satisfaction of the City according to the DIA, the City agrees to execute a written release of the remaining Funds, except for the additional security in the amount of 20% of the estimated cost of the improvements, or \$8187.34, which shall be retained as security for the Maintenance Guarantee until claimed or released by the City pursuant to the terms of said Maintenance Guarantee. The Maintenance Guarantee is incorporated herein by this reference.

5. **DEMAND FOR AND USE OF FUNDS.** Agent shall remit to City the full amount of the Funds upon City's written demand stating any one or more of the following: that the Improvements have not been installed to the satisfaction of the City; that any development-related fees ("Fees") owed by the Developer to

the City have not been paid; that the Developer has failed to perform any obligation under the DIA or the terms of the project approval. City may use and expend all the Funds or such lesser amount as may be estimated by City to be necessary to complete the Improvements and/or pay Fees as required by the DIA and the Code. If, upon City's written demand containing notice to Agent of Developer's failure to perform, the Funds are not remitted to the City within 30 days of demand, then City's costs of obtaining the Funds and/or completion of the Improvements and all incidental costs shall be added to the amount due City from Agent, and shall be paid to City in addition to and with the Funds.

Upon notice of failure to perform or default of the Developer on any obligation under the DIA or the project approval, the Agent shall disburse no funds to, or at the direction of, the Developer for any reason.

6. **INADEQUATE FUNDS.** If the Funds are inadequate to pay the cost of the completion of the Improvements according to City standards, for whatever reason, including previous reductions, Developer shall be responsible for the deficiency independent of Agent. Additionally, no further approvals, permits or licenses shall be issued, and/or any existing approvals, permits or licenses applicable to the payment of the Fees of the location of the Improvements may be immediately suspended or revoked by the City Manager until the Improvements are complete and/or the Fees are paid, or, until a new guarantee acceptable to the City has been executed to insure the completion of the remaining Improvements and/or payment of the Fees. Furthermore, the costs of completion of the Improvements shall include reimbursement to City for all costs including, but not limited to, construction costs and any incidental costs incurred by City in completing the Improvements and/ or in collecting the Funds.

7. **SPECIFIC ENFORCEMENT.** Developer and Agent have entered into this Agreement with City for the purpose of guaranteeing construction of the Improvements and/or payment of the Fees. City shall be entitled to specifically enforce Developer's obligation under this Agreement to construction and install the Improvements in a manner satisfactory to City, and to pay the Fees. City shall also be entitled to specifically enforce Agent's performance required by this Agreement.

8. **FINAL ACCEPTANCE.** Notwithstanding the fact that certain of the Funds may be released upon partial completion of the Improvements, any partial release or full release of the Funds shall not be deemed to constitute final acceptance of the Improvements by City. Final acceptance of the Improvements shall be official only upon written notice to the Developer from the City expressly acknowledging such.

9. **NOTICE.** Notice to Developer, Agent or City shall be mailed or delivered to the addresses shown in this Agreement. The date notice is received at the address shown in this Agreement shall be the date of actual notice, however accomplished.

10. **MECHANIC / MATERIAL LIENS.** Should City elect to complete or remedy the Improvements, Developer shall indemnify, defend, and hold harmless City from and against any liability which exceeds the Funds for the payment of any labor or material liens as a result of any work of any contractor (including subcontractors and materialmen of any such contractor or agent) hired by City or which may arise due to either a defect in or failure of this Agreement or insufficient funds to cover such costs.

11. **WAIVER.** The failure by any party to insist upon the immediate or strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a failure to perform thereof shall not constitute a waiver of any rights to performance. No waiver shall effect or alter the remainder of this Agreement.

12. **LIABILITY FOR LOSS:** If the Agent fails to disburse funds in accordance with the procedures set forth, and the City suffers loss or damage, the Agent shall be liable to the City for the City's direct and consequential damages and all fees, costs and expenses, including attorney's fees.

13. **TIME IS OF THE ESSENCE.** Time is of the essence of this agreement. In case a party shall fail to perform the obligations on its part at the time fixed for the performance of such obligations by the terms of this Agreement, the other party may pursue any and all remedies available in equity or law.

14. **BINDING EFFECT:** This Agreement shall be binding on the heirs, successors, receivers and assigns of all parties and shall terminate when the City has accepted the Improvements and has recorded a release of the Improvements Agreement.

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

16. **INTEGRATION:** This Agreement, together with the exhibits and attachments thereto and documents incorporated herein by specific reference 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.

17. **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.

18. **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.

Dated this \_\_\_\_ day of March, 2010.

ESCROW AGENT: \_\_\_\_\_ (print name)

By:  
Signature \_\_\_\_\_  
Title: \_\_\_\_\_

Address

DEVELOPER: MAVERIK, INC.

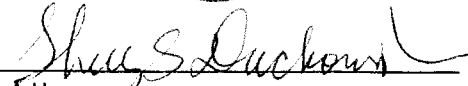
By:  
Signature *Don Lelyquist*  
Title: PERMITS MANAGER

Address

880 W. CENTER ST. NORTH SALT LAKE, UT 84054

CITY OF GRAND JUNCTION, 250 North 5<sup>th</sup> Street, Grand Junction, Colorado 81501

By:   
Director of Community Development

By:   
City Attorney



Escrow Number \_\_\_\_\_

## ESCROW AGREEMENT

123 North 7<sup>th</sup> Street, Suite 130, P.O. Box 4370, Grand Junction, CO 81502  
(970) 241-0131 \* Fax (970) 245-6073

The undersigned deposit with ESCROW SPECIALISTS, INC., as Escrow Agent, the items set forth in Schedule A, to be held by the Escrow Agent subject to the terms and the Special Instructions set forth in Schedule B.

1. Except as otherwise specially provided herein, this Escrow Agreement may be altered, amended, modified or revoked by writing only, signed by all the parties hereto, and approved by the Escrow Agent, upon payment of all fees, costs and expenses incident hereto.
2. No assignment, transfer, conveyance or hypothecation of any right, title or interest in and to the subject matter of this Escrow Agreement shall be binding upon the Escrow Agent unless written notice thereof signed by all parties to this Agreement (except Escrow Agent) shall be given to the Escrow Agent and all fees, costs and expenses incident to such transfer of interest shall have been paid.
3. Any notice, instruction or other document to be given by the Escrow Agent to any other party to this Escrow Agreement may be given by personal service in accordance with Rule 4 of the Colorado Rules of Civil Procedure or by mailing the same to such party at the address noted below, by regular U.S. mail, postage prepaid, and notice so mailed shall for all purposes hereof be deemed effective at the time of depositing such notice in the mail. Any notice, instructions or other document to be given by any other party to this Escrow Agreement to the Escrow Agent shall be deemed to be given to the Escrow Agent by personal service of such notice, in accordance with Rule 4 of the Colorado Rules of Civil Procedure or by mailing the same to such party at the address noted below, by regular U.S. mail, postage prepaid, and notice so mailed shall for all purposes hereof be deemed effective at the time of depositing such notice in the mail. The Escrow Agent shall be given a copy of any default notices which either party may serve upon the other.
4. The Escrow Agent shall not be personally liable for any act it may do or omit to do hereunder as such agent, while acting in good faith and in the exercise of its own best judgment, and any act done or omitted by it pursuant to the advice of its own attorney shall be conclusive evidence of such good faith.
5. Except as specifically provided in Paragraph 12 the Escrow Agent is hereby expressly authorized and directed to disregard any and all notices, instructions or other documents executed by fewer than all of the other parties hereto, or by any other person or corporation, excepting only orders or process of court given to the Escrow Agent, and is hereby expressly authorized to comply with and obey any and all orders, judgments or decrees of any court concerning the subject matter of this Escrow Agreement, and in case the Escrow Agent obeys or complies with any such order, judgment or decree of any court it shall not be liable to any of the parties hereto or any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree be subsequently reversed, modified, annulled, set aside or vacated, or found to have been entered without jurisdiction. In the event either party fails to perform any obligation required under the terms of the escrow documents, the Escrow Agent will undertake no steps to enforce the obligation including notices or past due payments. Changes in the time or amount of payment made through the Escrow Agent must be agreed to in writing by all parties, and a copy of the agreement must be delivered to the Escrow Agent.
6. In consideration of the acceptance of this escrow by the Escrow Agent, the undersigned Developer agrees, for its heirs, legal representatives, successors and assigns, to pay the Escrow Agent its charges and fees hereunder and to indemnify and hold it harmless as to any liability by it incurred to any other person, firm or corporation by reason of its having accepted the same, or in connection herewith, and under such circumstances, or in the event of a dispute, whether or not resulting in litigation, between the parties hereto, or between the parties hereto and the Escrow Agent, to reimburse the Escrow Agent for all its expenses, including, among other things, court costs and reasonable attorney's fees incurred in connection therewith; and that the Escrow Agent shall have a first and prior lien upon and security interest in all deposits made hereunder to secure the performance of said agreement of indemnity and the payment of all of its fees, charges and expenses, hereby expressly authorizing the Escrow Agent in the event payment is not received promptly from the undersigned Developer, to deduct such fees, charges and expenses without previous notice from any funds deposited hereunder, and to foreclose its lien and security interest (as allowed by the Colorado UCC or otherwise) and to exercise its other legal remedies. Escrow fees or charges, as distinguished from other expenses hereunder, shall be as written above the Escrow Agent's signature at the time of the acceptance hereof, and are intended as compensation for the Escrow Agent's ordinary services as contemplated by this Agreement. In the event the conditions of this escrow are not promptly fulfilled, or any dispute arises hereunder, or if for any

other reason the Escrow Agent renders services not provided for in this Agreement, the undersigned Developer agrees to pay reasonable compensation for such extraordinary services. In the event of any action to recover the Escrow Agent's fees, expenses or charges from any party hereto, the Escrow Agent shall be entitled to reasonable attorneys' fees and costs incurred with respect to any such action. No provision in any attached special instructions by which one or more of the other parties hereto shall undertake to pay such fees, charges and expenses, or any portion thereof, shall, except as between such other parties only, alter the Developer's liability to the Escrow Agent for such fees, charges and expenses.

7. The Escrow Agent shall have no duty to know or determine the performance or non-performance of any provision of any agreement between the other parties hereto, and the original, or a copy, of any such agreement deposited with the Escrow Agent shall not bind said agent in any manner. The Escrow Agent assumes no responsibility for the validity or sufficiency of any documents or papers or payments deposited or called for hereunder except as may be expressly and specifically set forth in this Agreement in clear and unambiguous language, and the duties and responsibilities of the Escrow Agent are limited to those expressly and specifically stated in this Agreement in such language.
8. The Escrow Agent shall be under no duty or obligation to ascertain the identity, authority or rights of the parties (or their agents) executing or delivering or purporting to execute or deliver this Agreement or any documents or papers or payment deposited or called for hereunder.
9. The Escrow Agent shall not be liable for the outlawing of any rights under any Statute of Limitations or by reason of laches in respect to the Agreement or any documents or papers deposited.
10. In the event of any dispute between the parties hereto as to the facts of default, the validity or meaning of this Agreement or any other fact or matter relating to the transaction between the parties, the Escrow Agent is instructed as follows:
  - a. That it shall be under no obligation to act, except under process or order of court, or until it has been adequately indemnified to its full satisfaction, and shall sustain no liability for its failure to act pending such process or court order or indemnification;
  - b. That it may in its sole and absolute discretion, deposit the property described herein or so much thereof as remains in its hands with the then Clerk; or acting Clerk, of the District Court of the County of Mesa , State of Colorado, and interplead the parties hereto, and upon so depositing such property and filing its complaint in interpleader it shall be relieved of all liability under the terms hereof as to the property so deposited and shall be entitled to recover in such interpleader action, from the other parties hereto , its reasonable attorney fees and related costs and expenses incurred in commencing such action and furthermore, the parties hereto for themselves, their heirs, legal representatives, successors and assigns do hereby submit themselves to the jurisdiction of said court and do hereby appoint the then Clerk, or acting Clerk, of said court as their Agent for the Service of all process in connection with such proceedings. The institution of any such interpleader action shall not impair the rights of the Escrow Agent under paragraph numbered 6, above.
11. All payments shall be made, and all checks made payable to ESCROW SPECIALISTS INC. Receipts are not issued until payment is received by the Escrow Agent.
12. Files for paid or terminated accounts are retained for a period of five years.
13. The Escrow Agent shall be entitled to reasonable compensation for its services rendered from time to time. The fees and charges shall be as follows unless and until modified as provided herein:

Setting-up Fee	<b><u>\$ 150.00 PAID BY MAVERIK, INC.</u></b>
Transaction or Other Fee	<b><u>\$ 20.00 PAID BY MAVERIK, INC.</u></b>

All of the fees above set forth may be amended by the Escrow Agent, at any time, by advance written notification to the parties to this Escrow Agreement. The amended fees shall be effective on and after twenty (20) days following the date of such notice. Collection fees chargeable to the Developer in accordance with the terms of the documents in Escrow will be paid by the Developer with and in addition to payment set forth in the contract or note. In the event Developer shall fail to make such payment(s), Escrow Agent is authorized to deduct said payment(s) from any sums due the City, which are held in trust by the Escrow Agent.



**Certification** - Under penalties of perjury, I certify that:

- (1) The number shown on this form is my correct Taxpayer Identification Number (or I am waiting for a number to be issued to me), **and**
- (2) I am not subject to backup withholding either because I have not been notified by the Internal Revenue Services (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the IRS has notified me that I am no longer subject to backup withholding.

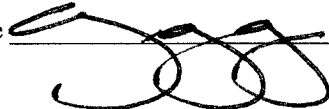
**Certification Instructions** - You must cross out item (2) above if you have been notified by IRS that you are subject to backup withholding because of underreporting interest or dividends on your tax return. However, if after being notified by IRS that you were subject to backup withholding you received another notification from IRS that you are no longer subject to backup withholding, do not cross out item (2).

**IN WITNESS WHEREOF**, the undersigned have hereunto affixed their signatures and hereby adopt as a part of this Escrow Agreement Schedules A and B hereto attached.

**DEVELOPER:**  
**MAVERIK, INC.**

**CITY OF GRAND JUNCTION**

Signature   
**DON LILYQUIST, PERMITS MANAGER**

Signature 

Federal ID No. 83-0197092

Federal ID No. \_\_\_\_\_

Address **880 WEST CENTER STREET**  
**NORTH SALT LAKE, UT 84054**

Address **250 NORTH 5<sup>TH</sup> STREET**  
**GRAND JUNCTION, CO 81501**

DATE:

4-7-10

ACCEPTED:  
**ESCROW SPECIALISTS, INC.**  
**ESCROW AGENT**

By \_\_\_\_\_  
**Pamela K. Sasser, President**

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**Schedule A (Item Deposited)**

1). WIRED FUNDS IN THE AMOUNT OF \$49,124.02 SHALL BE DEPOSITED WITH ESCROW SPECIALISTS, INC., TO BE HELD IN A NON-INTEREST BEARING BANK ACCOUNT UNDER THE NAME OF ESCROW SPECIALISTS, INC.

2). DEPOSITED FUNDS ARE BEING HELD IN COMPLIANCE WITH THE FULLY EXECUTED "ESCROW AGREEMENT", DATED MARCH 4, 2010, AS EXHIBIT "A".

**Schedule B (Special Instructions)**

1). ESCROW AGENT SHALL HOLD FUNDS IN TRUST FOR THE CITY OF GRAND JUNCTION UNTIL ESCROW AGENT RECEIVES WRITTEN NOTIFICATION SIGNED BY THE DIRECTOR OF COMMUNITY DEVELOPMENT, CITY OF GRAND JUNCTION THROUGH HIM/HERSELF OR HIM/HER DESIGNEE, STATING THAT FUNDS MAY BE RELEASED TO (WHOM EVER THEY DESIGNATE)

2). ADDITIONAL ESCROW INSTRUCTIONS, INCLUDING BUT NOT LIMITED TO THOSE ALLOWING PARTIAL DRAWS/PARTIAL RELEASE OF FUNDS BY AND TO THE DEVELOPER ARE SET FORTH IN DEVELOPMENT IMPROVEMENT SECURITY (ESCROW) AGREEMENT, WHICH AGREEMENT IS SPECIFICALLY INCORPORATED HEREIN BY THISE REFERENCE.

3). ESCROW AGENT WILL HAVE NO RESPONSIBILITY TO VERIFY THAT SAID REQUEST IS NOT VALID. HOWEVER, ESCROW AGENT SHALL EXERCISE REASONABLE CARE NOT TO RELEASE ANY FUNDS AT THE REQUEST OF THE DEVELOPER UNLESS SUCH DRAW/RELEASE IS AUTHORIZED IN WRITING BY THE DIRECTOR OF COMMUNITY DEVELOPMENT, CITY OF GRAND JUNCTION THROUGH HIM/HERSELF OR HIM/HER DESIGNEE.

4). ESCROW FEES SHALL BE PAID BY MAVERIK, INC.

5). ESCROW AGENT WILL DEDUCT FEES BEFORE DISBURSING ANY FUNDS IF SAID FEES HAVE NOT BEEN COLLECTED PRIOR TO FINAL DISBURSEMENT.

RECORDING MEMORANDUM  
Exhibit D

City of Grand Junction  
Public Works and Planning Department  
File: # SPR-2009-023

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 MAVERIK, INC. (Developer) and the City of Grand Junction (City) pertaining to MAVERIK CONVENIENCE STORES (Project), located at NW CORNER 2942 Rd + F Rd.

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-2009-023

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: Don Lilyquist 4-7-10  
Date

(Print Name) DON LILYQUIST

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.

[Signature] 6.30.10  
Public Works & Planning Department Date

# Grand Junction

## PUBLIC WORKS & PLANNING

June 22, 2011

Maverik Inc  
Attn: Mr. Don Lilyquist  
880 W Center St  
North Salt Lake, UT 84054

**RE: Notice of Final Acceptance**  
**Project Name: Maverik Convenience Store**  
**Project Number: PR-2010-30**  
**Plan Number: SPR-2009-023**  
**DIA Plan Number: DIA-2010-316**

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:**

- All storm drain pipes, inlets and manholes within the public right-of-way.

**Water distribution system:**

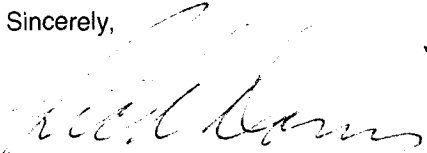
- All water mains are within Ute Water jurisdiction

**Sanitary sewer:**

- All sewer mains are within Central Grand Valley Sanitation District jurisdiction

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

Sincerely,



Rick Dorris, PE, CFM  
Development Engineer

EC: Leslie Ankrum, Senior Administrative Assistant  
Mark Barslund, Development Inspector  
Senta Costello, Senior Planner  
Chris Spears, Streets Supervisor  
Larry Brown, Wastewater Maintenance Supervisor  
Ed Tolen, Ute Water  
Steve LaBonde, Central Grand Valley Sanitation District

# Grand Junction

## PUBLIC WORKS & PLANNING

June 22, 2011


Escrow Specialists, Inc.  
123 North 7<sup>th</sup> Street, Suite 130  
PO Box 4370  
Grand Junction, CO 81502

**Re: Cancellation of Escrow Agreement: Maverik Inc  
Maverik Convenience Store, PR-2010-30, SPR-2009-023, DIA-2010-316**

To Whom It May Concern:

Enclosed is a copy of the Escrow Agreement (Improvement Guarantee) entered into between the City of Grand Junction ("City"), **Maverik, Inc** ("Developer"), and **Escrow Specialists, Inc.** for improvements to the development referred to as **Maverik Convenience Store** under the City's Planning File **SPR-2009-023**. As beneficiary of the security for a Development Improvements Agreement ("DIA"), the City informs you that the terms of the improvements have been completed by the Developer and the improvements have been accepted by the City. The City hereby releases its interest in the escrow agreement security. This letter is being provided at the direction of the Director of Public Works and Planning.

If you have any questions, please inform me.

  
\_\_\_\_\_  
Lisa E. Cox, Planning Manager

EC: Leslie Ankrum, Senior Administrative Assistant  
Rick Dorris, PE, CFM, Development Engineer  
Mark Barslund, Development Inspector  
Senta Costello, Senior Planner

**Developer**

Maverik, Inc  
Attn: Mr. Don Lilyquist  
880 West Center Street  
North Salt Lake, UT 84054

## Escrow Agreement

Developer: Maverik, Inc.

Escrow Agent: ESCROW SPECIALISTS, INC

Property: Lot 1 Maverik 2 Subdivision

Planning File #: SPR-2009-023

Effective Date: March 4, 2010

This Escrow Agreement is entered into by and between Maverik, Inc. ("Developer"), ESCROW SPECIALISTS, INC ("Escrow Agent") and the City of Grand Junction, Colorado ("City") as of the Effective Date given above.

### **RECITALS**

Developer is required by the City to construct certain improvements to Lot 1 Maverik 2 Subdivision ("Improvements") in accordance with the Zoning and Development Code as a condition of its development permit approval. The Improvements required are set forth in the Development Improvements Agreement. The Development Improvements Agreement is incorporated herein by this reference as if fully set forth.

A provision has been made by law whereby Developer may file a guarantee acceptable to the City to secure the actual construction of the Improvements in a manner satisfactory to the City.

Escrow Agent ("Agent") has agreed to hold funds for the Developer and the City as a guarantee for Developer's construction of the Improvements. To the extent necessary or required this Agreement shall serve as the instructions to the Agent as well as creating the Agent's legal obligations.

The City Engineer has approved an estimate of the costs of the Improvements \$40,936.68. A provision is made by law whereby the City shall require security in the amount of the estimate of the cost of the improvements plus 20%. The total amount of the required security for the Improvements is \$49,124.02 ("Funds").

The parties desire to secure the full and complete performance of the Developer's obligations and to insure that the Funds are held for the benefit of the City to secure the performance of the DIA by the Developer.

**NOW, THEREFORE, THE PARTIES AGREE:**

1. **ESCROW ACCOUNT.** As an independent guarantee to City, for the purpose of insuring construction and installation of the Improvements, Developer hereby assigns and sets over to City all its right, title, and interests in the principal of that certain Escrow Account held by Agent in the amount of \$49,124.02 ("Funds"), entitled \_\_\_\_\_ (name of Escrow Account), ("Account").

2. **AGENT OBLIGATIONS.** Agent warrants: that the Funds are to be held in trust solely to secure Developer's obligations under the Development Improvements Agreement ("DIA"); that the Agent shall act as agent of the City in holding the Funds; that the Funds will not be paid out or disbursed to, or on behalf of, the Developer except as set forth in this document and/or as set forth in the DIA; and that the Agent may not modify or revoke its obligation to disburse funds to or on behalf of the Developer or the City. Agent warrants that the Funds are and will be available exclusively for payment of the costs of satisfactory completion of the Improvements.

Agent hereby acknowledges that it has, on deposit to the credit of Developer, in the Account referenced above, the sum mentioned as the Funds; that it is aware of, understands, and agrees to each provision of this Agreement; that it agrees to make disbursement of the Funds of the account only according to terms as outlined in this Agreement; and that it will hold the Funds in the account indefinitely until such time as City, in writing, either demands the Funds be remitted to City or otherwise releases Agent from its obligation to hold the Funds. Should Agent fail to timely perform its obligations as outlined herein or as required by law, Agent shall be liable for incidental costs incurred by City in attempting to enforce Agent's obligations under this Agreement or in completing and/or repairing the Improvements and/or paying fees as a result of Agent's Failure to Perform its obligations under this Agreement. Furthermore, this paragraph shall not limit the right of City to pursue any and all remedies it may have in equity or at law as a result of Agent's failure to perform under this Agreement.

Agent expressly acknowledges, understands and agrees that its obligation under this Agreement is independent of any obligation of the City, either express or implied. Agent agrees that its performance is not and shall not be conditioned upon the commencement of actual construction work in the subdivision or development, or upon the sale of any lots or any part of the subdivision or development. Agent further acknowledges that (a) its obligation to perform under this Agreement is independent of any other remedy available to the City to secure proper completion of the Improvements; (b) Agent may not assert as a defense that City has remedies against other persons or entities or has

other remedies in equity or at law that would otherwise relieve Agent of its duty to perform as outlined in this Agreement, or preclude City from requiring Agent's performance under this Agreement; and (c) Agent may not assert as a defense that City has remedies against other entities or has other remedies in equity or at law that would otherwise relieve Developer of its duty to perform as outlined in this Agreement or preclude City from requiring Developer's performance under this Agreement.

Agent's signature hereon attests that the full amount of the Funds has been dedicated or set aside on behalf of Developer and for the City's use and benefit.

Upon Final Acceptance by the City of the Improvements, the City and Developer will enter into a Maintenance Guarantee, and the City will notify the Agent of Final Acceptance and authorize release of the remaining funds, except \$8187.34, which shall then be held as security for the Maintenance Guarantee. Agent hereby agrees to and shall hold that amount, \$8187.34, as security for the Maintenance Guarantee until released or demanded by the City pursuant to the terms of this Agreement.

3. **REDUCTION OF FUNDS.** As the Improvements are initially accepted by City, a portion of the Funds may be released to the Developer upon the Developer's written request and City's written authorization and upon verification by the Agent that there are no outstanding liens for materials or labor on the project. Such requests may be made only once every 30 days. The amount of any requested release shall be determined in the sole discretion of the City. No releases shall be authorized until such time as the City has inspected the Improvements and found them to be in compliance with City standards. Completion of Improvements, even if verified by City, shall not entitle Developer to an automatic release of any part of the Funds. The release of any Funds shall require the prior written authorization of the City.

4. **RELEASE OF FUNDS.** In the event the Improvements have been installed to the satisfaction of the City according to the DIA, the City agrees to execute a written release of the remaining Funds, except for the additional security in the amount of 20% of the estimated cost of the improvements, or \$8187.34, which shall be retained as security for the Maintenance Guarantee until claimed or released by the City pursuant to the terms of said Maintenance Guarantee. The Maintenance Guarantee is incorporated herein by this reference.

5. **DEMAND FOR AND USE OF FUNDS.** Agent shall remit to City the full amount of the Funds upon City's written demand stating any one or more of the following: that the Improvements have not been installed to the satisfaction of the City; that any development-related fees ("Fees") owed by the Developer to



the City have not been paid; that the Developer has failed to perform any obligation under the DIA or the terms of the project approval. City may use and expend all the Funds or such lesser amount as may be estimated by City to be necessary to complete the Improvements and/or pay Fees as required by the DIA and the Code. If, upon City's written demand containing notice to Agent of Developer's failure to perform, the Funds are not remitted to the City within 30 days of demand, then City's costs of obtaining the Funds and/or completion of the Improvements and all incidental costs shall be added to the amount due City from Agent, and shall be paid to City in addition to and with the Funds.

Upon notice of failure to perform or default of the Developer on any obligation under the DIA or the project approval, the Agent shall disburse no funds to, or at the direction of, the Developer for any reason.

6. **INADEQUATE FUNDS.** If the Funds are inadequate to pay the cost of the completion of the Improvements according to City standards, for whatever reason, including previous reductions, Developer shall be responsible for the deficiency independent of Agent. Additionally, no further approvals, permits or licenses shall be issued, and/or any existing approvals, permits or licenses applicable to the payment of the Fees of the location of the Improvements may be immediately suspended or revoked by the City Manager until the Improvements are complete and/or the Fees are paid, or, until a new guarantee acceptable to the City has been executed to insure the completion of the remaining Improvements and/or payment of the Fees. Furthermore, the costs of completion of the Improvements shall include reimbursement to City for all costs including, but not limited to, construction costs and any incidental costs incurred by City in completing the Improvements and/ or in collecting the Funds.

7. **SPECIFIC ENFORCEMENT.** Developer and Agent have entered into this Agreement with City for the purpose of guaranteeing construction of the Improvements and/or payment of the Fees. City shall be entitled to specifically enforce Developer's obligation under this Agreement to construction and install the Improvements in a manner satisfactory to City, and to pay the Fees. City shall also be entitled to specifically enforce Agent's performance required by this Agreement.

8. **FINAL ACCEPTANCE.** Notwithstanding the fact that certain of the Funds may be released upon partial completion of the Improvements, any partial release or full release of the Funds shall not be deemed to constitute final acceptance of the Improvements by City. Final acceptance of the Improvements shall be official only upon written notice to the Developer from the City expressly acknowledging such.

9. **NOTICE.** Notice to Developer, Agent or City shall be mailed or delivered to the addresses shown in this Agreement. The date notice is received at the address shown in this Agreement shall be the date of actual notice, however accomplished.

10. **MECHANIC / MATERIAL LIENS.** Should City elect to complete or remedy the Improvements, Developer shall indemnify, defend, and hold harmless City from and against any liability which exceeds the Funds for the payment of any labor or material liens as a result of any work of any contractor (including subcontractors and materialmen of any such contractor or agent) hired by City or which may arise due to either a defect in or failure of this Agreement or insufficient funds to cover such costs.

11. **WAIVER.** The failure by any party to insist upon the immediate or strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a failure to perform thereof shall not constitute a waiver of any rights to performance. No waiver shall effect or alter the remainder of this Agreement.

12. **LIABILITY FOR LOSS:** If the Agent fails to disburse funds in accordance with the procedures set forth, and the City suffers loss or damage, the Agent shall be liable to the City for the City's direct and consequential damages and all fees, costs and expenses, including attorney's fees.

13. **TIME IS OF THE ESSENCE.** Time is of the essence of this agreement. In case a party shall fail to perform the obligations on its part at the time fixed for the performance of such obligations by the terms of this Agreement, the other party may pursue any and all remedies available in equity or law.

14. **BINDING EFFECT:** This Agreement shall be binding on the heirs, successors, receivers and assigns of all parties and shall terminate when the City has accepted the Improvements and has recorded a release of the Improvements Agreement.

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

16. **INTEGRATION:** This Agreement, together with the exhibits and attachments thereto and documents incorporated herein by specific reference 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.

17. **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.

18. **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.

Dated this \_\_\_\_ day of March, 2010.

ESCROW AGENT: \_\_\_\_\_ (print name)

By: \_\_\_\_\_  
Signature \_\_\_\_\_ Address \_\_\_\_\_  
Title: \_\_\_\_\_

DEVELOPER: MAVERIK, INC.

By: \_\_\_\_\_  
Signature *Don Lilyquist* Address \_\_\_\_\_  
Title: *PERMITS MANAGER* *880 W. CENTER ST. NORTH SALT LAKE UT 84054*

CITY OF GRAND JUNCTION, 250 North 5<sup>th</sup> Street, Grand Junction, Colorado 81501

By: \_\_\_\_\_  
Director of Community Development

By: \_\_\_\_\_  
City Attorney

**RELEASE OF RECORDING MEMORANDUM**  
**City of Grand Junction**  
**Public Works & Planning Department**  
**Project: PR-2010-30**  
**Plan: SPR-2009-023**  
**DIA-2010-316**

This Release relates to a Recording Memorandum dated June 30, 2010, by and between Maverik, Inc, (Developer) and the City of Grand Junction, pertaining to Maverik Convenience Store (Project), located at 29 1/2 & F Road, Grand Junction, CO 81504, recorded at Book 5027, Page 563, 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: *Neil Brown* Date: 6-22-11

City Planner: *Antonia Mistello* Date: 6/22/11

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.

*Leslie G. Ankrum* Date: 6-22-2011  
Public Works & Planning Department Date

The foregoing instrument was executed before me this 22nd of June, 2011, by Lisa E. Cox, of the Public Works & Planning Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

*Leslie G. Ankrum*  
Leslie G. Ankrum, Notary Public



My Commission Expires 08/21/2013

My commission expires on 8/21/2013