

DEVELOPMENT IMPROVEMENTS AGREEMENT

Print Form

Planning File SPR-2009-068

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are **Western Constructors, 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 **Peppermill Lofts** has been reviewed and approved under Planning file number: **SPR-2009-068** ("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 \$ **213,642.83** (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: 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 \$ **35,607.14** (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: Jul 15, 2011

Completion Date: Dec 31, 2011

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 **\$178,035.69** (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:	Kenneth B. Milyard, Jr.	Name/Developer/Company
	480 W. Park Dr., #200	Address (Street and Mailing)
	P.O. Box 2161	Address (continued)
	Grand Junction, CO 81505	City, State & Zip Code
	970-241-5457 & 970-216-3300	Telephone Number
	970-241-5510	Fax Number
	bruce@westernconstructors.com	E-mail Address

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

CC: Public Works & Planning Department
250 North 5th Street
Grand Junction, CO 81501

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

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

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

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

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

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

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

EXHIBIT A

Part of Lot 1 (NW 1/4 NW 1/4) of Section 18, Township 1 South,
Range 1 East, Ute Meridian, Mesa County, Colorado and being
more particularly described as follows:

Commencing at the NE corner of the said Lot 1; thence along
the east line of said Lot 1 S00°02'03"W 40.00 feet; thence N89°46'47"W
25.00 feet; thence N89°50'41"W 129.73 feet to the Point of Beginning;
said Point of Beginning being a point on the South Right of Way
line of North Avenue;
thence S00°11'37"W 189.68 feet; thence S89°46'47"E 115.25 feet;
thence S00°02'03"W 12.18 feet; thence N89°56'48"W 114.61 feet;
thence S00°10'14"E 260.00 feet; thence S89°56'45"E 113.76 feet;
thence S00°02'03"W 152.85 feet; thence N89°43'25"W 240.54 feet;
thence N00°09'08"W 614.33 feet; thence S89°50'41"E 127.80 feet
to the Point of Beginning.

Mesa County, Colorado

EXHIBIT B

IMPROVEMENTS COST ESTIMATE

DATE: 05/05/2011

DEVELOPMENT NAME: PEPPERMILL LOFTS

LOCATION: 2823 NORTH AVENUE

PRINTED NAME OF PERSON PREPARING: JAMES E. LANGFORD

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
A.	SANITARY SEWER				
1	8" PVC SDR-35 Sanitary Sewer Main	LF	560	\$ 21.20	\$ 11,872.00
2	____ " PVC Sanitary Sewer Main	LF			\$ -
3	____ " PVC Sanitary Sewer Main	LF			\$ -
4	Sewer services	EA or LF			\$ -
5	Sanitary Sewer Manhole	EA	5	\$ 1,766.00	\$ 8,830.00
6	Sanitary Sewer Drop Manhole	EA			\$ -
7	Connection to Existing Manhole	EA			\$ -
8	Concrete Encasement	LF			\$ -
	Subtotal Part A Sanitary Sewer				\$ 20,702.00
B.	DOMESTIC WATER				
1	8" PVC Water Main	LF	887	\$ 23.40	\$ 20,755.80
2	6" PVC Water Main (FH Leads)	LF			\$ -
3	____ " PVC Water Main	LF			\$ -
4	8" Gate valve and box	EA	4	\$ 1,178.00	\$ 4,712.00
5	6" Gate valve and box	EA			\$ -
6	____ " Gate valve	EA			\$ -
7	8" Fittings (including Thrustblocks)	EA	17	\$ 268.00	\$ 4,556.00
8	Connect to Existing Water Line	EA	2	\$ 1,000.00	\$ 2,000.00
9	Fire Hydrant with Tee, Valve & Lead	EA	3	\$ 3,785.00	\$ 11,355.00
10	Utility Adjustments	EA			\$ -
11	Blowoff	EA			\$ -
					\$ -
					\$ -
	Subtotal Part B - Domestic Water				\$ 43,378.80

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
C1.	STREETS				
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	157	\$ 5.00	\$ 785.00
6	Aggregate Base Course (Class 6) (16" Compacted Thickness)	SY	1278	\$ 19.84	\$ 25,355.52
7	Hot Bituminous Paving, Grading__ (3" thick)	SY	951	\$ 15.52	\$ 14,759.52
8	Hot Bituminous Paving, Grading__ (___" thick)	SY			\$ -
9	Hot Bituminous Paving, Patching (3" Thick)	SY	29	\$ 13.00	\$ 377.00
10	Geotextile	SY			\$ -
11	Concrete Curb (___" Wide by ___" High)	LF			\$ -
12	Concrete Curb and Gutter (2' wide)	LF	399	\$ 14.00	\$ 5,586.00
13	Concrete Curb and Gutter (1.5' wide)	LF			\$ -
14	Monolithic, Vertical Curb, Gutter and Sidewalk (7' Wide)	LF			\$ -
15	Drive Over Curb, Gutter, and Sidewalk (___' Wide)				\$ -
16	Concrete Sidewalk (5' Wide)	LF	190	\$ 30.00	\$ 5,700.00
17	Concrete Gutter and Driveway Section (___" Thick)	SY			\$ -
18	Concrete Intersection Radius, Aprons, Pans and HC Ramps	SY	234	\$ 45.00	\$ 10,530.00
19	Concrete Driveway (___" Thick)	SY			\$ -
20	Driveway/Concrete Repair	SY			\$ -
21	Retaining Walls	LF			\$ -
22	Street Signs	EA	2	\$ 250.00	\$ 500.00
23	Stop Signs	EA	2	\$ 250.00	\$ 500.00
24	Striping (New, Remove/Replace)	LS	1	\$ 2,000.00	\$ 2,000.00
25	Street Lights	EA	2	\$ 2,400.00	\$ 4,800.00
26	Signal Construction or Reconstruction	LS			\$ -
27	Flowable Fill	CY			\$ -
28	Sleeves, _____", _____ PVC	LF			\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
C2.	BRIDGES				
					\$ -
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			\$ -
	Subtotal Part C - Streets and Bridges				\$ 70,893.04
D1.	EARTHWORK				
1	Mobilization	LS	1	\$ 2,000.00	\$ 2,000.00
2	Clearing and Grubbing	LS	1	\$ 1,000.00	\$ 1,000.00
3	Unclassified Excavation	CY	456	\$ 3.50	\$ 1,596.00
4	Unclassified Embankment	CY	56	\$ 5.00	\$ 280.00
5	Silt Fence	LF			\$ -
6	Watering (Dust Control)	AC or LS			\$ -
D2.	REMOVALS AND RESETTING				
1	Removal of Asphalt	SY	133	\$ 3.00	\$ 399.00
2	Removal of Miscellaneous Concrete	SY	65	\$ 5.00	\$ 325.00
3	Remove Curb and Gutter	LF	170	\$ 2.50	\$ 425.00
4	Removal of Culverts	LF	49	\$ 10.00	\$ 490.00
5	Remove Structures	EA	2	\$ 250.00	\$ 500.00
6	Remove Signs	EA			\$ -
7	Remove Fence	LF			\$ -
8	Adjust Manhole	EA			\$ -
9	Adjust Valvebox	EA			\$ -
10	Relocate or Adjust Utilities	LS			\$ -
D3.	SEEDING AND SOIL RETENTION				
1	Sod	SY			\$ -
2	Seeding (Native)	SY or AC			\$ -
3	Seeding (Bluegrass/Lawn)	SY or AC			\$ -
4	Hydraulic Seed and Mulching	SY or AC			\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
D4.	STORM DRAINAGE FACILITIES				
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY			\$ -
2	24" RCP Storm Drain Pipe	LF	51	\$ 45.00	\$ 2,295.00
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	1	\$ 2,500.00	\$ 2,500.00
15	Double Curb Opening Storm Drain Inlet	EA			\$ -
16	Area Storm Drain Inlet	EA	1	\$ 2,200.00	\$ 2,200.00
17	Detention Area Outlet structure	EA			\$ -
18	Rip-Rap D ₅₀ = ____"	CY			\$ -
19	Sidewalk Trough Drain	EA			\$ -
20	Pump Systems including Electrical	LS			\$ -
	Subtotal Part D - Grading and Drainage				\$ 14,010.00

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
E1.	IRRIGATION				
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			\$ -
E2.	LANDSCAPING				
1	Design/Architecture	LS			\$ -
2	Earthwork	CY			\$ -
3	Hardscape Features	LS			\$ -
4	Plant Material & Planting	LS			\$ -
5	Irrigation System	LS			\$ -
6	Curbing	LF			\$ -
7	Retaining Walls & Structures	LS			\$ -
8	1 Year Maintenance Agrmnt.	LS			\$ -
9	Topsoil				\$ -
	Subtotal Part E - Landscaping and Irrigation				\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
F.	Miscellaneous Items				
1	Construction staking/surveying	%	4.00%	\$ 148,983.84	\$ 5,959.35
2	Developer's inspection cost	%	4.00%	\$ 148,983.84	\$ 5,959.35
3	General construction supervsn	%	2.00%	\$ 148,983.84	\$ 2,979.68
4	Quality control testing	%	2.00%	\$ 148,983.84	\$ 2,979.68
5	Construction traffic control	%	5.00%	\$ 148,983.84	\$ 7,449.19
6	City inspection fees	%	0.50%	\$ 148,983.84	\$ 744.92
7	As-builts	%	2.00%	\$ 148,983.84	\$ 2,979.68
Subtotal Part F - Miscellaneous Items					\$ 29,051.85

% = Percentage of total site construction costs

COST SUMMARY:

G1	Total Improvement Costs	\$ 178,035.69
G2	City Security (20%)	\$ 35,607.14
Total Guarantee Amount		\$ 213,642.83

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.

*Western Constructors, Inc.
By Vincent M. Costa VP*

Signature of Developer

6-20-2011

Date

(If corporation, to be signed by President and attested to by Secretary together with the corporate seals.)

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

[Signature]

City Development Engineer

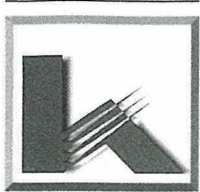
6/23/11

Date

Katherine M. Parker

6-23-11

EXHIBIT "C"
(Letter of Credit)



HOME LOAN

INVESTMENT
Company

A century of strength.

June 20, 2011

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

Irrevocable Letter of Credit No. 2011-1001

Dated: June 20, 2011

Expiration: December 20, 2012

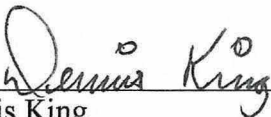
Dear Sirs:

We hereby establish our irrevocable Letter of Credit No. 2011-1001 in favor of the City of Grand Junction at the request of and for the account of Western Constructors, Inc. in the amount of two hundred thirteen thousand six hundred forty two & 83/100 Dollars (\$213,642.83).

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

- 1) it is effective upon signature;
- 2) it expires on December 20, 2012 subject to the automatic extensions discussed below;
- 3) this Letter of Credit is available by sight draft(s) drawn and marked "Drawn under Home Loan & Investment Company Letter of Credit No. 2011-1001 dated June 20, 2011";
- 4) this Letter of Credit is established for the use and benefit of the City of Grand Junction by reason of the developer being obligated to pay or perform in accordance with the provisions of the Grand Junction Zoning and Development Code;
- 5) the following statement signed by an authorized designee of the City of Grand Junction must accompany the sight draft;
- 6) "_____ 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 date unless: (a) the underlying obligation has been performed, released or satisfied, (b) this Letter of Credit has been called in full or (c) the Bank notifies the City of Grand Junction at 250 N. 5th Street Grand Junction CO 81501, by certified mail return receipt requested, at least ninety (90) days prior to such expiration date that we elect not to further extend this Letter of Credit.
- 8) except as stated above no modifications or revocations may be made by the undersigned to this Letter of Credit without the express written approval of the City's Director of Community Development or his designee;
- 9) this Letter of Credit is neither negotiable nor assignable;
- 10) partial drawings are permitted;
- 11) we hereby agree that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored on due presentation and delivery of documents, which may be done by first class mail, facsimile, in person or by any other reasonable business practice on or prior to the expiration or any extension thereof of this Letter of Credit;
- 12) except as otherwise stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) and to the extent that it does not conflict with Article 5 of the Uniform Commercial Code of the State of Colorado.



Dennis King
Vice President

**RECORDING MEMORANDUM
Exhibit D**

City of Grand Junction
Public Works and Planning Department
File: #

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 Constructors, Inc. (Developer) and the City of Grand Junction (City) pertaining to Peppermill Lofts (Project), located at 497 28 $\frac{1}{4}$ Rd, Grand Junction, CO

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-2009-068.

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: WESTERN CONSTRUCTORS, INC.

By:  6/20/2011
Date

(Print Name) Vince Testa, Vice President

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. 5th Street, Grand Junction Colorado.

 6-23-11
Public Works & Planning Department Date

Mr. Bruce Milyard

August 10, 2012

Email address: bruce@westernconstructors.com (This letter sent by email only; hardcopy will NOT follow.)

RE: Project Name: Peppermill Lofts Project Number: SPR-2009-068

Dear Mr. Milyard:

On August 9, 2012, representatives from the Public Works Division conducted an initial inspection of the public improvements at the Peppermill Lofts project. The following items were found to be deficient and must be addressed before the City can issue Initial Acceptance and begin the one-year warranty for these public improvements:

Streets:

1. Cut & caulk all joints in the intersection fillets at 28¼ Road & Peppermill Street and at the access drive on Peppermill Street.
2. Repair and/or replace the cracked section of sidewalk on 28¼ Road at the north edge of the property.
3. There are some cracks in the fillet and handicap ramp on the north side of the intersection of 28¼ Road & Peppermill Street. This can remain unrepaired until the end of the one-year warranty, at which time City staff will determine what repairs must be made.

Grading & Landscaping:

1. The standpipe overflow structure for the north Porous Landscape Detention (PLD) pond must have a grate over its top.
2. The engineer's certification letter for the Porous Landscape Detention (PLD) pond must include certification of the volume and must verify that all components of the facility were accurately constructed and will perform as designed. Such components of the PLD include, but are not limited to, the outlet structure, the perforated sub-drain and crushed rock layer, and seeding of the bottom surface.
3. The City Planner may have specific requirements regarding the remaining landscaping that must be completed. Please contact Kathy Portner at 244-1420.

In addition to the field items listed above, the following paperwork must also be addressed:

1. If any fees have been deferred, they must be paid.
2. Submit final as-built drawings.
3. Submit final bound set of ALL Quality Assurance testing.
4. Submit final bound set of ALL engineer's observation reports.
5. Submit final pond certification letter from a Professional Engineer certifying the water quality ponds have adequate volume AND that all components of the facilities were accurately constructed and will perform as designed.
6. Submit a Maintenance Guarantee secured with adequate financial instrument in the amount of **\$35,607**.

Once the above issues are resolved and you have verified that the Planning Division has no further concerns, City staff will release any remaining DIA security and begin the one-year warranty. Thank you for your efforts in closing this project.

Sincerely,



Eric Hahn, PE
Development Engineer

Electronic copy:

Greg Moberg, Planning Services Supervisor
Kathy Portner, Neighborhood Services Supervisor
Larry Brown, Sewage Collection System
Vince Testa, Western Constructors

Mark Barslund, Development Inspector
Darren Starr, Streets Manager
Leslie Ankrum, Senior Admin. Assistant
Verne Hedges, Hedges Mountain Homes



PUBLIC WORKS, UTILITIES, PLANNING & STREETS

January 9, 2013

Western Constructors, Inc.
Attn: Mr. Kenneth Milyard
480 West Park Drive, #200
Grand Junction, CO 81505

RE: Notice of Initial Acceptance
Project Name: Peppermill Lofts
Plan Number: SPR-2009-068; DIA-2011-915

Dear Mr. Milyard :

The Developer is hereby notified that all requirements for the Initial Acceptance for the Project have been fulfilled. The Developer is responsible for all materials and workmanship for all of the public infrastructure improvements constructed or installed as part of the Project for one year following the Initial Acceptance date, except that improvements under the jurisdiction of other entities, such as water districts and sewer districts shall be subject to the warranty requirements of those entities.

The City will conduct a warranty inspection of the project prior to the end of the one year warranty period. The Developer will be required to correct any deficiencies noted during the warranty period. If a deficient item requires replacement or major repairs, the warranty for that item, the Maintenance Agreement and the full financial guarantee shall be extended by one year from the date the item is repaired or replaced.

Initial acceptance date / begin warranty period:	October 1, 2012
Form of financial guarantee:	Letter of Credit
Amount of financial guarantee:	\$35,607.14

Sincerely,

A handwritten signature in blue ink, appearing to read "Eric Hahn".

Eric Hahn, PE
City Development Engineer

EC: Leslie Ankrum, Senior Administrative Assistant
Mark Barslund, Development Inspector
Senta Costello, Senior Planner
Kathy Portner, Neighborhood Services Manager

January 9, 2013

Home Loan Investment Company
Attn: Mr. Dennis King, Vice President
PO Box 100
Grand Junction, CO 81502

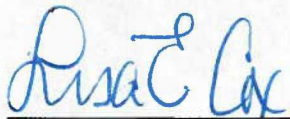
Re: Cancellation of Original Letter of Credit Number 2011-1001
Letter of Credit replaced with Amended Letter of the Credit Number 2011-1001
Western Constructors, Inc.
Internal Reference: Peppermill Lofts: SPR-2009-068, DIA-2011-915

Dear Mr. King:

Enclosed please find the original Letter of Credit Number 2011-1001 for **Western Constructors, Inc.** in the amount of \$213,642.83. A new Amended Letter of Credit Number 2011-1001 has been received in the amount of \$35,607.14. As beneficiary, the City of Grand Junction informs you that the Letter of Credit is being returned to you for cancellation. The 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,



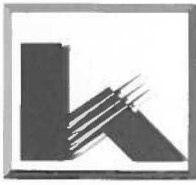
Lisa E. Cox, Planning Manager

Encl. Letter of Credit 2011-1001

EC: Leslie Ankrum, Senior Administrative Assistant
Mark Barslund, Development Inspector
Senta Costello, Senior Planner
Eric Hahn, Development Engineer
Kathy Portner, Neighborhood Services Manager

Developer:

Western Constructors, Inc.
Attn: Mr. Kenneth Milyard
480 West Park Drive, #200
Grand Junction, CO 81505



HOME LOAN

INVESTMENT
Company

A century of strength.

June 20, 2011

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

Irrevocable Letter of Credit No. 2011-1001
Dated: June 20, 2011
Expiration: December 20, 2012

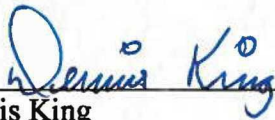
Dear Sirs:

We hereby establish our irrevocable Letter of Credit No. 2011-1001 in favor of the City of Grand Junction at the request of and for the account of Western Constructors, Inc. in the amount of two hundred thirteen thousand six hundred forty two & 83/100 Dollars (\$213,642.83).

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

- 1) it is effective upon signature;
- 2) it expires on December 20, 2012 subject to the automatic extensions discussed below;
- 3) this Letter of Credit is available by sight draft(s) drawn and marked "Drawn under Home Loan & Investment Company Letter of Credit No. 2011-1001 dated June 20, 2011";
- 4) this Letter of Credit is established for the use and benefit of the City of Grand Junction by reason of the developer being obligated to pay or perform in accordance with the provisions of the Grand Junction Zoning and Development Code;
- 5) the following statement signed by an authorized designee of the City of Grand Junction must accompany the sight draft;
- 6) "_____ 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 date unless: (a) the underlying obligation has been performed, released or satisfied, (b) this Letter of Credit has been called in full or (c) the Bank notifies the City of Grand Junction at 250 N. 5th Street Grand Junction CO 81501, by certified mail return receipt requested, at least ninety (90) days prior to such expiration date that we elect not to further extend this Letter of Credit.
- 8) except as stated above no modifications or revocations may be made by the undersigned to this Letter of Credit without the express written approval of the City's Director of Community Development or his designee;
- 9) this Letter of Credit is neither negotiable nor assignable;
- 10) partial drawings are permitted;
- 11) we hereby agree that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored on due presentation and delivery of documents, which may be done by first class mail, facsimile, in person or by any other reasonable business practice on or prior to the expiration or any extension thereof of this Letter of Credit;
- 12) except as otherwise stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) and to the extent that it does not conflict with Article 5 of the Uniform Commercial Code of the State of Colorado.



Dennis King
Vice President

MAINTENANCE GUARANTEE

1. **Parties:** The parties to this Maintenance Guarantee ("the Guarantee" or "Guarantee") are **WESTERN CONSTRUCTORS, INC.** ("the Developer") and the City of Grand Junction, Colorado ("the City" or "City"). Collectively the Developer and the City may be referred to as the Parties.

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

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

RECITALS

The Developer has constructed, installed and is required to warrant and maintain certain improvements ("Improvements" or "the Improvements") which were made necessary by virtue of development on property within the City. The Property, known as

PEPPERMILL LOFTS has been reviewed and approved under Public Works & Planning file number **SPR-2009-068** and as necessary or required to construe this guarantee, that file(s) is/are incorporated by this reference.

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

DEVELOPER'S OBLIGATION

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

4. **Security:** To secure the performance of its obligations the Developer is required to post security in an amount of **\$35,607.14** (Line G2, Exhibit B, City Security).

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

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

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

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

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

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

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

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

8a. As provided herein the City shall provide written notice to the Developer at the address stated in paragraph 22. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

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

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

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

months from the date of acceptance of the Improvements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21. Benefits: The benefits of this agreement to the Developer are personal and may not

be assigned without the express written approval of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this agreement are personal obligations of the Developer and also will be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with

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

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

If to Developer:	WESTERN CONSTRUCTORS, INC.	Name/Developer/Company (continued)
	401 KOKOPELLI BLVD UNIT 1 STE 200	Address (Street and Mailing) Address (continued)
	FRUITA, CO 81521-3308	City, State & Zip Code
	970-241-5457	Telephone Number Fax Number E-mail Address

If to City: Office of the City Attorney
250 North 5th Street

Grand Junction, CO 81501

CC: Public Works & Planning Department
250 North 5th Street
Grand Junction, CO 81501

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

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

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



HOME LOAN

INVESTMENT
Company

A century of strength.

January 4, 2013

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

Irrevocable Letter of Credit No. 2011-1001
Dated: June 20, 2011
Expiration: February 1, 2014

Dear Sirs:

We hereby establish our irrevocable Letter of Credit No. 2011-1001 in favor of the City of Grand Junction at the request of and for the account of Western Constructors, Inc. in the amount of two hundred thirteen thousand six hundred forty two & 83/100 Dollars (\$213,642.83).

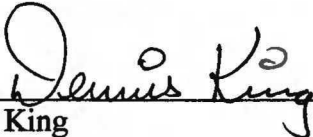
AMENDMENT

Irrevocable Letter of Credit No. 2011-1001 in favor of the City of Grand Junction will now have a reduced amount from the original \$213,642.83 which was established on June 20, 2011, to a new amount of \$35,607.14. The Letter of Credit will mature on February 1, 2014.

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

- 1) it is effective upon signature;
- 2) it expires on February 1, 2014 subject to the automatic extensions discussed below;
- 3) this Letter of Credit is available by sight draft(s) drawn and marked "Drawn under Home Loan & Investment Company Letter of Credit No. 2011-1001 dated June 20, 2011";
- 4) this Letter of Credit is established for the use and benefit of the City of Grand Junction by reason of the developer being obligated to pay or perform in accordance with the provisions of the Grand Junction Zoning and Development Code;
- 5) the following statement signed by an authorized designee of the City of Grand Junction must accompany the sight draft;

- 6) " _____ 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 date unless: (a) the underlying obligation has been performed, released or satisfied, (b) this Letter of Credit has been called in full or (c) the Bank notifies the City of Grand Junction at 250 N. 5th Street Grand Junction CO 81501, by certified mail return receipt requested, at least ninety (90) days prior to such expiration date that we elect not to further extend this Letter of Credit.
- 8) except as stated above no modifications or revocations may be made by the undersigned to this Letter of Credit without the express written approval of the City's Director of Community Development or his designee;
- 9) this Letter of Credit is neither negotiable nor assignable;
- 10) partial drawings are permitted;
- 11) we hereby agree that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored on due presentation and delivery of documents, which may be done by first class mail, facsimile, in person or by any other reasonable business practice on or prior to the expiration or any extension thereof of this Letter of Credit;
- 12) except as otherwise stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) and to the extent that it does not conflict with Article 5 of the Uniform Commercial Code of the State of Colorado.



Dennis King
Vice President



Mr. Bruce Milyard
401 Kokopelli Blvd.
Suite 1
Fruita, CO 81521-3308

October 8, 2013

RE: Notice of Final Acceptance

Project Name: Peppermill Lofts
Project Number: SPR-2009-068

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, and all requirements for Final Acceptance of the project have been fulfilled. The developer's warranty obligation, for all materials and workmanship, has concluded and all warranty obligations are hereby released.

The following improvements within the public right-of-way are accepted for future maintenance by the City:

Public streets:

- All public streets constructed within public right-of-way, as shown on the project plat or dedicated by separate instrument.

Storm drainage system:

- Storm drain pipes, inlets and manholes within the public right of way.
- Maintenance of the detention pond, outlet works, and water quality features is the responsibility of the property owner(s).

Water distribution system:

- All water mains and appurtenances within public right-of-way or public easements. Also all fire hydrants, service lines to the meters, water meters, and meter pits.

Sanitary sewer:

- All sewer mains and manholes within public right-of-way or public easements.

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

Sincerely,

Eric Hahn, PE
City of Grand Junction - Development Engineer

Electronic copy:

Kathy Portner, Economic Development
Shelly Dackonish, Staff Attorney
Chris Spears, Streets

Mark Barslund, Development Inspector
Larry Brown, Sanitary Sewer
Leslie Ankrum, Sr. Administrative Assistant



October 8, 2013

Home Loan Investment Company
Attn: Mr. Dennis King, Vice President
PO Box 100
Grand Junction, CO 81502

**Re: Cancellation of Original Amendment to Letter of Credit Number 2011-1001
Western Constructors, Inc.
Internal Reference: Peppermill Lofts: SPR-2009-068, DIA-2011-915**

Dear Mr. King:

Enclosed please find the original Amendment to Letter of Credit Number 2011-1001 for **Western Constructors, Inc.** in the amount of \$35,607.14. As beneficiary, the City of Grand Junction informs you that the Letter of Credit is being returned to you for cancellation. The 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,

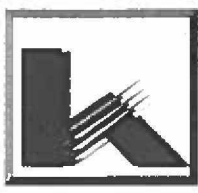
A handwritten signature in blue ink that reads "Lisa E. Cox".

Lisa E. Cox, Planning Manager

Encl. Letter of Credit 2011-1001

EC: Leslie Ankrum, Senior Administrative Assistant
Mark Barslund, Development Inspector
Eric Hahn, Development Engineer
Kathy Portner, Neighborhood Services Manager

Developer:
Western Constructors, Inc.
Attn: Mr. Bruce Milyard
401 Kokopelli Blvd, Suite 1
Fruita, CO 81521-3308



HOME LOAN

INVESTMENT
Company

A century of strength.

January 4, 2013

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

Irrevocable Letter of Credit No. 2011-1001
Dated: June 20, 2011
Expiration: February 1, 2014

Dear Sirs:

We hereby establish our irrevocable Letter of Credit No. 2011-1001 in favor of the City of Grand Junction at the request of and for the account of Western Constructors, Inc. in the amount of two hundred thirteen thousand six hundred forty two & 83/100 Dollars (\$213,642.83).

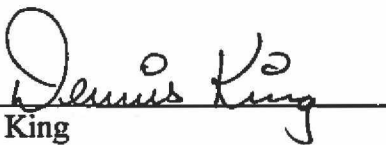
AMENDMENT

Irrevocable Letter of Credit No. 2011-1001 in favor of the City of Grand Junction will now have a reduced amount from the original \$213,642.83 which was established on June 20, 2011, to a new amount of \$35,607.14. The Letter of Credit will mature on February 1, 2014.

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

- 1) it is effective upon signature;
- 2) it expires on February 1, 2014 subject to the automatic extensions discussed below;
- 3) this Letter of Credit is available by sight draft(s) drawn and marked "Drawn under Home Loan & Investment Company Letter of Credit No. 2011-1001 dated June 20, 2011";
- 4) this Letter of Credit is established for the use and benefit of the City of Grand Junction by reason of the developer being obligated to pay or perform in accordance with the provisions of the Grand Junction Zoning and Development Code;
- 5) the following statement signed by an authorized designee of the City of Grand Junction must accompany the sight draft;

- 6) " _____ 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 date unless: (a) the underlying obligation has been performed, released or satisfied, (b) this Letter of Credit has been called in full or (c) the Bank notifies the City of Grand Junction at 250 N. 5th Street Grand Junction CO 81501, by certified mail return receipt requested, at least ninety (90) days prior to such expiration date that we elect not to further extend this Letter of Credit.
- 8) except as stated above no modifications or revocations may be made by the undersigned to this Letter of Credit without the express written approval of the City's Director of Community Development or his designee;
- 9) this Letter of Credit is neither negotiable nor assignable;
- 10) partial drawings are permitted;
- 11) we hereby agree that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored on due presentation and delivery of documents, which may be done by first class mail, facsimile, in person or by any other reasonable business practice on or prior to the expiration or any extension thereof of this Letter of Credit;
- 12) except as otherwise stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) and to the extent that it does not conflict with Article 5 of the Uniform Commercial Code of the State of Colorado.



Dennis King
Vice President

RELEASE OF RECORDING MEMORANDUM
City of Grand Junction
Public Works & Planning Department
Plan: SPR-2009-068
DIA-2011-915

This Release relates to a Recording Memorandum dated June 23, 2011, by and between Western Constructors, (Developer) and the City of Grand Junction, pertaining to Peppermill Lofts (Project), located at 497 28 1/4 Road, Grand Junction, CO, recorded at Book 5170, Page 808, 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: [Signature] Date: 10/8/13
City Planner: [Signature] Date: 10/9/13

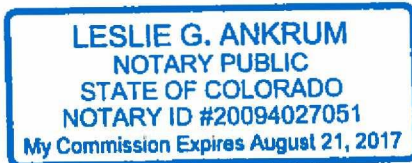
In acknowledgement with the above signatures, I hereby certify that the improvements as specified in the Development Improvements Agreement and/or Maintenance Guarantee have been completed and accepted in accordance with the provisions of the Grand Junction Zoning and Development Code, and are hereby released, subject to the required warranty period.

[Signature] 10-8-2013
Public Works & Planning Department Date

The foregoing instrument was executed before me this 8th day of October, 2013, by Lisa Cox, of the Public Works & Planning Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

[Signature]
Leslie G. Ankrum, Notary Public



My commission expires on 8/21/2017



Sheila Reiner
 Clerk and Recorder
 200 S. Spruce St.
 Grand Junction, CO 81501
 (970)-244-1679



Print Date:
 10/08/2013 1:09:47 PM

Transaction #: 174620
 Receipt #: 2013067996
 Cashier Date: 10/08/2013 1:09:47 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: \$165.00	Date Received: 10/08/2013 Source Code: Mail Return Code: Mail Trans Type: Recording	Total Fees \$11.00 Total Payments \$11.00

1 Payments
ESCROW \$11.00

1 Recorded Items
(REL) REL <i>Pepper Mill Lofts Release SPR-2009-068</i> BK/PG: 5535/279 Reception Number: 2671176 Date: 10/08/2013 1:09:46 PM From: To:
Recording @ \$10 per page \$1 Surcharge 1 \$11.00

0 Search Items

0 Miscellaneous Items
