

## DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are Wexford Borrower LLC, ("Developer") and the **City of Grand Junction, Colorado** ("City").

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

2. **Effective Date:** The Effective Date of the Agreement shall be the date that it is signed by the 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 Wexford Estates has been reviewed and approved under Planning file # FP-2008-096 ("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 \$ 522,399.61 (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

\* The LOC shall be provided as to the Warranty, defined below, only.

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 \$ 288,778.01 (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: 2/12/2011

Completion Date: 2/12/2012

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 ~~\$233,621~~ (line G1, Exhibit B, Total Improvement Costs). All reductions shall first be applied to the Disbursement Agreement and then to the LOC.

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: Wexford Borrower LLC Name -Developer/Company  
331 Metcalf Rd., 2-A, Unit 4, Avon, CO 81622 Address (Street and Mailing)  
P.O. Box 2882, Edwards, CO 81632  
\_\_\_\_\_  
\_\_\_\_\_  
(\_\_\_\_\_) \_\_\_\_\_ City, State & Zip Code  
(\_\_\_\_\_) \_\_\_\_\_ Telephone and Fax Numbers  
\_\_\_\_\_  
\_\_\_\_\_ E-mail

Cc: Colorado Capital Bank  
Attn: Peter Lindquist  
5251 DTC Parkway, Suite 1120  
Greenwood Village, CO 80111  
plindquist@coloradocapitalbank.com

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)

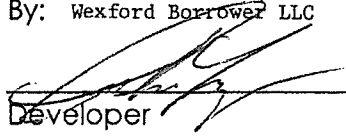


have been constructed or which are necessary for the Improvements are free from toxic, hazardous and other regulated substances or materials;

(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: Wexford Borrower LLC

  
Developer 2/9/11  
Date

Andrew Lecy  
Name (printed)

Corporate Attest:

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

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

  
Public Works & Planning Dept. 2.10.11  
Date

5/15/2007

**EXHIBIT A  
TO  
DEVELOPMENT IMPROVEMENTS AGREEMENT FOR WEXFORD ESTATES  
SUBDIVISION**

(Legal description of the Property)

Lots 1 and 2 of Wexford Subdivision,  
COUNTY OF MESA,  
STATE OF COLORADO

**EXHIBIT B  
WEXFORD SUBDIVISION  
IMPROVEMENTS COST ESTIMATE**

DATE: 1/19/2011  
 DEVELOPMENT NAME: WEXFORD SUBDIVISION  
 LOCATION: SECTION 17, T. 1 S., R. 1 E., UTE MERIDIAN  
 PRINTED NAME OF PERSON PREPARING: CLINTON J. ALLEN

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>A. SANITARY SEWER</b>					
1	8" PVC SDR-35 Sanitary Sewer Main	LF	0	\$ 22.00	\$ -
2	8" PVC Sanitary Sewer CAPS	EA	0	\$ 75.00	\$ -
3	Sewer Services TAPS	EA	0	\$ 75.00	\$ -
4	4" PVC Sanitary Sewer Service Line	LF	0	\$ 13.50	\$ -
5	Sanitary Sewer Manhole	EA	0	\$ 1,500.00	\$ -
6	Sanitary Sewer Cleanouts	EA	0	\$ 900.00	\$ -
7	Connection to Existing Manhole	EA	0	\$ 500.00	\$ -
8	Concrete Encasement	LF	0	\$ 9.00	\$ -
<b>Subtotal Part A Sanitary Sewer</b>					<b>\$ -</b>
<b>B. DOMESTIC WATER</b>					
1	8" PVC Water Main	LF	0	\$ 24.00	\$ -
2	6" PVC Water Main	LF	0	\$ 18.00	\$ -
3	4" PVC Water Main	LF	0	\$ 15.50	\$ -
4	8" Gatevalve	EA	0	\$ 950.00	\$ -
5	6" Gatevalve	EA	0	\$ 700.00	\$ -
6	4" Gatevalve	EA	0	\$ 600.00	\$ -
7	8" Fittings (Including Thrustblocks)	EA	0	\$ 375.00	\$ -
8	4" Fittings (Including Thrustblocks)	EA	0	\$ 250.00	\$ -
9	Water Service TAPS & Set Ute Pit	EA	0	\$ 425.00	\$ -
10	3/4" Copper Service Line	EA	0	\$ 10.50	\$ -
11	Hot Tap Connect to Existing Water Line	EA	0	\$ 4,500.00	\$ -
12	Connect to Existing Water Line	EA	0	\$ 350.00	\$ -
13	Fire Hydrant assembly	EA	0	\$ 3,200.00	\$ -
14	Utility Adjustments	EA			\$ -
15	2" Blowoff	EA	0	\$ 325.00	\$ -
<b>Subtotal Part B - Domestic Water</b>					<b>\$ -</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C1</b>	<b>STREETS</b>				
1	" PVC Utility/Irrigation sleeves	LF			\$ -
2	" PVC Utility/Irrigation sleeves	LF			\$ -
3	Reconditioning	SY		\$ -	\$ -
4	Aggregate Base Course (Class 3)	TN			\$ -
5	Aggregate Base Course (Class 6) (13" Compacted Thickness)	CY	0	\$ 39.00	\$ -
6	Aggregate Base Course (Class 6) (10" Compacted Thickness)	CY	0	\$ 39.00	\$ -
7					\$ -
8	Hot Bituminous Paving, Grading__ (3" thick)	SY	11377	\$ 14.05	\$ 159,846.85
9	Hot Bituminous Paving, Grading__ (4" thick)	SY		\$ -	\$ -
10	Hot Bituminous Paving, Patching ( ___" Thick)	SY			\$ -
11	Geotextile	SY			\$ -
12	Concrete Curb ( ___" Wide by ___" High)	LF			\$ -
13	Drive Over Conc. Curb, Gutter (3' wide)	LF	0	\$ 14.50	\$ -
14	Concrete Curb and Gutter (2' wide)	LF	0	\$ 13.00	\$ -
15	Monolithic, Vertical Curb, Gutter and Sidewalk (7' Wide)	LF	0	\$ 22.00	\$ -
16	Drive Over Curb, Gutter, and Sidewalk (6.5' Wide)	LF	0	\$ 16.50	\$ -
17	Concrete Sidewalk (6' Wide)	LF	0	\$ 24.00	\$ -
18	Concrete Gutter and Driveway Section (6" Thick)	SY	0	\$ 43.00	\$ -
19	Concrete Drainage Pan (6' Wide,8" Thick)	LF			\$ -
20	Concrete Corner	SY			\$ -
21	Concrete Curb Ramp	SY			\$ -
22	Concrete Corner Radii, Apron, & Pan	SY	0	\$ 49.00	\$ -
23	Concrete Driveway ( ___" Thick)	SY			\$ -
24	Driveway/Concrete Repair	SY			\$ -
25	Concrete Mail Box Pads	SY	55	\$ 40.00	\$ 2,200.00
26	Retaining Walls	LF			\$ -
27	Street Signs	EA	7	\$ 300.00	\$ 2,100.00
28	Striping (New, Remove/Replace)	LS			\$ -
29	Street Lights	EA	8	\$ 2,400.00	\$ 19,200.00
30	"End of Road" Markers	EA	13	\$ 400.00	\$ 5,200.00
31	Signal Construction or Reconstruction	LS			\$ -
32	Flowable Fill	CY			\$ -
33	Sleeves, 4-4" PVC Multi-Utility	LF	0	\$ 36.00	\$ -
34	Reclaim 29 1/2 Road Connection ( w/ 5 years inflation)	LS		\$ 6,000.00	\$ -

2/1/2011

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C2 BRIDGES</b>					
					\$ -
1	Box Culvert, Wing Walls and Diversion Stru	CY		\$ -	\$ -
2	Parapet Wall	LS			\$ -
3	Railing (handrail, guardrail)	LS			\$ -
					\$ -
<b>Subtotal Part C - Streets and Bridges</b>					<b>\$ 188,546.85</b>
<b>D1 EARTHWORK</b>					
1	Mobilization	LS	0	\$ -	\$ -
2	Clearing and Grubbing	AC	0	\$ -	\$ -
3	Unclassified Excavation (Including Pond & Swales)	CY	0	\$ 2.50	\$ -
4	Unclassified Embankment	CY	0	\$ 3.50	\$ -
5	Subgrade Preperation	SY	0	\$ 1.50	\$ -
6	Silt Fence	LF	3596	\$ 1.50	\$ 5,394.00
7	Inlet Protection	EA	8	\$ 150.00	\$ 1,200.00
8	Mud traps	EA	0	\$ 1,200.00	\$ -
9	Watering (Dust Control)	LS	0	\$ 3,000.00	\$ -
<b>D2 REMOVALS AND RESETTING</b>					
1	Removal of Asphalt (for sanitary sewer )	SY			\$ -
2	Removal of Miscellaneous Concrete	SY			\$ -
3	Remove Curb and Gutter	LF			\$ -
4	Removal of Culverts	LF			\$ -
5	Remove Structures	EA			\$ -
6	Remove Signs	EA			\$ -
7	Remove Fence	LF			\$ -
8	Adjust Manhole	EA			\$ -
9	Adjust Valvebox	EA			\$ -
10	Relocate or Adjust Utilities	LS			\$ -
<b>D3 SEEDING AND SOIL RETENTION</b>					
1	Sod	SY			\$ -
2	Seeding (Native)	SY or AC			\$ -
3	Seeding (Bluegrass/Lawn)	SY or AC			\$ -
4	Hydraulic Seed and Mulching	SY or AC			\$ -
5	Soil Retention Blanket	SY			\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>D4</b>	<b>STORM DRAINAGE FACILITIES</b>				
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY			\$ -
2	18" HDPE Storm Drain Pipe	LF	0	\$ 27.00	\$ -
3	18" Flared End Section	EA	0	\$ 450.00	\$ -
4	48" Storm Drain Manhole	EA	0	\$ 2,300.00	\$ -
5	Manhole with Box Base	EA			\$ -
6	Connection to Existing MH	EA			\$ -
7	Single Curb Opening Storm Drain Inlet	EA	0	\$ 1,800.00	\$ -
8	Double Curb Opening Storm Drain Inlet	EA	0	\$ 2,800.00	\$ -
9	Area Storm Drain Inlet	EA		\$ -	\$ -
10	8" SDR-35 Drain Line	LF	0	\$ 14.00	\$ -
11	10" Inline Drains	EA	0	\$ 16.00	\$ -
12	8" Fittings	EA	0	\$ 350.00	\$ -
13	Retention Area Outlet structure	EA	0	\$ 4,500.00	\$ -
14	Rip-Rap D <sub>50</sub> =6"	CY			\$ -
15	Sidewalk Trough Drain	EA			\$ -
16	Pump Systems including Electrical	LS	0	\$ 8,500.00	\$ -
<b>Subtotal Part D - Grading and Drainage</b>					<b>\$ 6,594.00</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>E1</b>	<b>IRRIGATION</b>				
1	Connect to Existing Pipe	LS	0	\$ 400.00	\$ -
2	10" PVC Irrigation Pipe	LF	0	\$ 16.00	\$ -
3	10" CMP Irrigation Pipe	LF	0	\$ 22.00	\$ -
4	10" FES (Lurvey)	LS	0	\$ 300.00	\$ -
4	8" PVC Sch 40 PIP Irrigation Pipe (Pond)	LF	0	\$ 14.00	\$ -
5	16" Steel Casing Pipe	LF	0	\$ 32.00	\$ -
6	Splitter Box (School)	LS	0	\$ 2,200.00	\$ -
7	Diversion Structure (Gates & Punch Plate) Concrete is in Canal Crossing	LS	0	\$ 1,500.00	\$ -
8	Irrigation Manhole w/ Redwood Lid	EA	0	\$ 1,800.00	\$ -
9	Rem. & Salv. Canal Gates	EA	0	\$ 150.00	\$ -
10	Relocate Ex. Structure (Lurvey)	LS	0	\$ 800.00	\$ -
11	Rem. & Disp. Ex. Structure (School)	LS	0	\$ 500.00	\$ -
12	Inverted Siphon Placement and Materials	EA	0	\$ 7,000.00	\$ -
13	Rem. & Disp. Ex. Structure (Elam)	LS	0	\$ 500.00	\$ -
<b>E2</b>	<b>LANDSCAPING</b>				
1	Shrub Beds	SF	2519	\$ 2.30	\$ 4,720.00
2	Deciduous Tree, Material and Placing	EA	14	\$ 500.00	\$ 3,250.00
3	Evergreen Tree, Material and Placing	EA	0	\$ 500.00	\$ -
4	Grass	SF	31245	\$ 1.25	\$ 700.00
5	6' High Fencing (along D.5 Road)	LF	350	\$ 21.00	\$ 7,350.00
6	10' Concrete Walk	LF	128	\$ 38.00	\$ 4,864.00
7	Stucco Fence Demolition and Removal	LF	133	\$ 25.00	\$ 3,325.00
8	3" Cobble Rock and Fabric	SF	4303	\$ 15.00	\$ 3,000.00
9	1 Year Maintenance Agrmnt.	LS		\$ 4,000.00	\$ -
					\$ -
					\$ -
<b>E</b>	<b>Subtotal Part E - Landscaping and Irrigation</b>				<b>\$ 27,209.00</b>
	<b>Subtotal Construction Costs</b>				<b>\$ 222,349.85</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>F. Miscellaneous Items</b>					
1	Construction staking/surveying	%	3.00%	\$ -	\$ -
2	Developer's inspection cost	%			\$ 2,000.00
3	General construction supervsn	%		\$ -	\$ -
4	Quality control testing	%	2.50%	\$ 222,349.85	\$ 1,500.00
5	Construction traffic control	%	0.50%	\$ 222,349.85	\$ -
6	City inspection fees	Lot	74	\$ 90.00	\$ 6,660.00
7	As-builts	%	0.50%	\$ 222,349.85	\$ 1,111.75

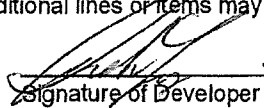
**E Subtotal Part F - Miscellaneous Items** **\$ 11,271.75**

% = Percentage of total site construction costs

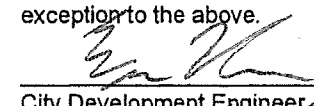
<b>G. COST SUMMARY</b>					
<b>1</b>	<b>Total Improvement Costs</b>				<b>\$ 233,621.60</b>
<b>2</b>	<b>City Security (20%)</b>				<b>\$ 288,778.01</b>
<b>3</b>	<b>Total Guarantee Amount</b>				<b>\$ 522,399.61</b>

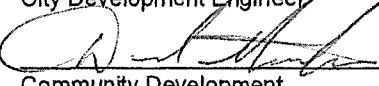
**NOTES**

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


Signature Number 2/10/11  
 Signature of Developer 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.


2/10/11  
 City Development Engineer Date


2/10/11  
 Community Development Date





LETTER OF CREDIT No. 83007166 .

**Date:** February 11, 2011

**Place:** Greenwood Village, Colorado

**Beneficiary:**

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

**Account Party:**

Wexford Borrower, LLC  
P.O. Box 2882  
Edwards, CO 81632

**Expiration Date:** February 12, 2012, subject to the three automatic extensions stated below.

**Amount:** Two Hundred Eighty Eight Thousand Seven Hundred Seventy Eight and 01/100 Dollars  
(US \$ 288,778.01)

City of Grand Junction:

This Letter of Credit is established in your favor, subject to the following terms and conditions:

- 1) It is effective upon signature;
- 2) It expires on February 11, 2012, subject to the three automatic extensions of six months, each, in Paragraph 6, below;
- 3) This Letter of Credit is available by sight draft(s) drawn and marked "Drawn under Colorado Capital Bank Letter of Credit No. 83007166, dated February 11, 2011." All sight draft(s) must be signed and dated, and must include the statement required by Paragraph 5, below;
- 4) This Letter of Credit is established for the use and benefit of the City of Grand Junction by reason of Wexford Borrower, LLC being obligated to pay or perform in accordance with the provisions of the Grand Junction Zoning and Development Code and with that certain Development Improvements Agreement, by and between Wexford Borrower, LLC and the City of Grand Junction (the "DIA");
- 5) The following statement signed by an authorized designee of the City of Grand Junction must accompany the sight draft(s);

**Wexford Borrower, LLC has failed to comply with the terms, conditions, provisions and requirements of the Grand Junction Zoning and Development Code and/or plans, specifications or agreements relating to the warranty of the construction of improvements required by the City of Grand Junction. The monies received from this drawing are required to repair or replace those improvements. The City of Grand Junction therefore requests the payment of \$\_\_\_\_\_.**

6) It is a condition of this Letter of Credit that it will be automatically extended for a maximum of three (3) periods of six (6) months, each, from the present expiration date, unless: (a) the underlying warranty obligation under the DIA has been performed, released, or satisfied; (b) this Letter of Credit has been called, in full; or (c) Colorado Capital Bank mails notification to the City of Grand Junction at c/o Director of Public Works & Planning Department, 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 Colorado Capital Bank elects not to further extend this Letter of Credit.

7) Except as stated above, no modifications or revocations may be made by the undersigned to this Letter of Credit without the express written approval of the City's Director of Public Works & Planning or his or her designee;

8) This Letter of Credit is neither negotiable nor assignable;

9) Partial drawings are permitted up to an aggregate amount not exceeding the face amount of this Letter of Credit;


10) 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;

11) Except as otherwise stated herein, this Letter of Credit is subject to all applicable provisions of the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500; and

12) The City of Grand Junction acknowledges that it has an obligation to inspect the Improvements on the Property, no later than fourteen (14) months following the anniversary date of the City of Grand Junction's initial Acceptance, as those capitalized terms are defined in the DIA, in order to determine whether the Warranty obligation under the DIA has been performed or satisfied. In the event that the City of Grand Junction fails to perform such inspection of the Improvements within fourteen (14) months following the anniversary date of the City of Grand Junction's initial Acceptance, then this Letter of Credit shall automatically terminate, without any further notice to the City of Grand Junction, notwithstanding anything herein to the contrary.

Sincerely,

**COLORADO CAPITAL BANK**

By:   
Name: Dave Zollner  
Its: Senior Vice President

**DISBURSEMENT AGREEMENT**  
(Improvements Guarantee)

**DEVELOPER:** Wexford Borrower LLC

**BANK:** Colorado Capital Bank

**PROPERTY:** Lots 1 and 2 of Wexford Subdivision, County of Mesa, State of Colorado

**DISBURSEMENT AMOUNT:** For the construction of improvements to the Property in an amount not to exceed \$ 233,621.60.

This Agreement is entered into by and between Wexford Borrower LLC ("Developer"), Colorado Capital Bank ("Bank") and the City of Grand Junction, Colorado ("City").

**RECITALS**

Developer has been required by the City to construct certain improvements to the Property ("Improvements") in accordance with the Zoning and Development Code, Improvements Agreement and subdivision approval.

The Bank has agreed to loan funds to the Developer for construction of the Improvements.

The City Engineer has approved an estimate of the costs of the Improvements and that amount or an amount not to exceed \$ 233,621.60, whichever is greater, shall be referred to as the "Funds."

The parties desire to secure the full and complete performance of the Developer's obligations and to secure that the Funds are disbursed only to pay for the Improvements.

NOW, THEREFORE, THE PARTIES AGREE:

1. **BANK PROMISES.** Bank shall dedicate or set aside the Funds on behalf of Developer and for the City's benefit within twenty-four hours of execution of this Disbursement Agreement.

Bank warrants: that the Funds are to be held in trust solely to secure Developer's obligations under the Improvements Agreement; that the Bank 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 Improvements Agreement; and that the Bank may not modify or revoke its obligation to disburse funds to or on behalf of the Developer or the City. The Bank warrants that the Funds are and will be available exclusively for payment of the costs of satisfactory completion of the Improvements.

2. **DISBURSEMENT PROCEDURES.** The Funds shall be advanced for payment of costs incurred for the construction of Improvements on the Property in accordance with the Improvements List/Detail attached to the Improvements Agreement, the terms of which are incorporated by this reference. All disbursements must comply with the following

procedures:

(a) **Request for Advance.** Developer shall deliver to the Bank a written request for the disbursement of funds on forms acceptable to the Bank. Such requests shall be signed by Developer, Developer's General Contractor, Project Engineer and Architect, if applicable, and the City Engineer. By signing the request for disbursement the Developer is certifying: that all costs for which the advance is being requested have been incurred in connection with the construction of the Improvements on the Property; that all work performed and materials supplied are in accordance with the plans and specifications submitted to and approved by the City; that the work has been performed in a workmanlike manner; that no funds are being requested for work not completed, nor for material not installed; the Project Engineer has inspected the Improvements for which payment is requested; and that such improvements have been completed in accordance with all terms, specifications and conditions of the approved plans. Attached hereto is the list of those individuals, and their respective signatures, required to sign the above described request(s) for disbursement of funds.

(b) **Documentation, Waivers and Checks.** Each request for disbursement of funds shall be accompanied by: (i) one original and one copy of each invoice to be paid; (ii) checks drawn on Developer's construction loan account with the Bank, made payable to the payee(s) and for the amount of each invoice presented for payment; (iii) lien waivers in a form approved by the Bank prepared for signature by each payee; and (iv) postage paid envelopes addressed to each payee for the mailing of checks presented to the Bank.

The Bank shall verify its receipt of all lien waivers relating to any prior disbursements, which lien waivers shall be properly executed and contain no alterations or modifications from those lien waivers that have been previously presented to the Bank.

Upon approval by Developer, the Project Engineer and the Bank of the invoices being presented to the Bank, the Bank shall advance funds into the checking account designated for the payment of the invoices and mail the checks to the payee(s) in the envelopes presented to the Bank, together with lien waivers and copies of supporting invoices.

Under no circumstances shall the Bank make a disbursement for the payment of an invoice if it in good faith believes that: (i) the work has not been completed; (ii) the work has not been completed in a workmanlike manner; (iii) written approval has not been received from the Project Engineer; or (iv) any lien waiver has been altered or modified or has not been returned to the Bank.

(c) **Default.** Upon default of the Developer on any obligation to the Bank or under the Improvements Agreement, the Bank shall disburse no funds to, or at the direction of, the Developer except to the City under the terms of the Improvements Agreement. The Bank shall immediately notify the City, in writing, of any event of default or event of default as provided for in the Improvements Agreement and/or as provided herein.

(d) **Disbursement to City.** In the event the Improvements are not satisfactorily and timely constructed, or upon any default or event of default, the City Engineer shall notify

the Bank to immediately cease disbursement of funds to the Developer and disburse the full amount of the remaining undisbursed funds to the City. Upon such notice, the Bank shall promptly honor the demand of the City Engineer to disburse the Funds to the City or a third party or parties designated in writing by the City. Upon final completion and acceptance of the performance required under the Improvements Agreement, the City shall refund to the Bank any funds disbursed, if any, which are not actually expended to pay all costs, expenses and liabilities, including attorney fees, incurred in completing the improvements.

3. **DEVELOPER CONSENT:** The Developer, by the signature of Andrew Lecy (name & title), consents to disbursements and other actions authorized and provided for by the terms of this Agreement and/or the Improvements Agreement.

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

5. **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.

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

Dated this      day of February, 2011.

(BANK)  
By: [Signature]  
Title SVP

P.O. Box 2740 Edwards CO  
Address 81632

(DEVELOPER) Mike & Son's Borrower LLC  
By: [Signature]  
Title sole member

PO Box 2800 Edwards, CO 81632  
Address

CITY OF GRAND JUNCTION

By: [Signature]  
Director of Public Works & Planning

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between Wexford Borrower LLC Developer, Colorado Capital Bank as Bank, and the City of Grand Junction, the following are the individuals authorized to sign written requests for the disbursement of the Funds:

**DEVELOPER:**

WEXFORD BORROWER LLC  
(name)

  
(signature)

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(signature)

**DEVELOPER'S GENERAL CONTRACTOR:**

FORINER CONTRACTING INC  
(name)

  
(signature)

**DEVELOPER'S PROJECT ENGINEER:**

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(signature)

**DEVELOPER'S ARCHITECT:**

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(signature)

**CITY ENGINEER:**

ERIC HAHN  
(name)

  
(signature)

**RECORDING MEMORANDUM  
Exhibit D**

City of Grand Junction  
Public Works and Planning Department  
File: # FP-2008-096

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 Wexford Borrower LLC (Developer) and the City of Grand Junction (City) pertaining to Wexford Estates (Project), located at Lots 1 and 2 of Wexford Subdivision, County of Mesa, State of Colorado.

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 # FP-2008-096

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: Wexford Borrower LLC

By:  2/9/11  
Date

(Print Name) Andrew Lecy

**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.

 2.10.11  
Public Works & Planning Department Date

WEXFORD BORROWER, LLC

February 9, 2011

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

Dear Sir or Madam:

We are the owner and developer of certain real property located in Grand Junction, Colorado, currently known as: Lots 1 and 2 of Wexford Subdivision, County of Mesa, State of Colorado (the "Property"). We wish to record a plat that further subdivides the Property into 74 residential lots (the "Plat").

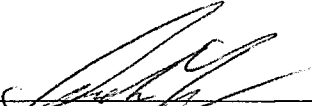
As a condition of The City of Grand Junction (the "City") permitting the recordation of the Plat, we are required to pay the City amounts equal to \$85,000.00 for an Open Space acquisition fee and \$16,200.00 as a Parks and Open Space fee (collectively, the "Open Space Fees"). The re-platting of the Property is beneficial to the City, and as an added inducement for us to record the Plat, our obligation to pay the Open Space Fees shall be deferred until the Warranty period expires and the Maintenance Guarantee is released, as those terms are defined in the Development Improvements Agreement, by and between the City and us and entered into in connection herewith.

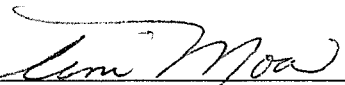
Please indicate your acceptance to these terms by signing below. In the event of any conflict between this letter agreement and other agreements between the City and us, the terms of this letter agreement shall control.

ACCEPTED AND AGREED:

WEXFORD BORROWER, LLC,  
a Colorado limited liability company

THE CITY OF GRAND JUNCTION,  
a Colorado home rule municipality

By:   
Name: Andrew Lecy  
Title: Manager and Sole Member

By:   
Name: Tim Moor  
Title: P.W. & Planning Director



February 10, 2012

Colorado Capital Bank  
5251 DTC Parkway, Suite 100 & 1120  
Greenwood Village, CO 80111  
Attn: Dave Zollner

RE: Wexford Estates  
Colorado Capital Bank Letter of Credit No. 83007166 dated February 11, 2011  
File No. FP-2008-096

Returned  
Not deliverable as  
addressed  
unable to forward  
2/15/12

Dear Sir/Madam:

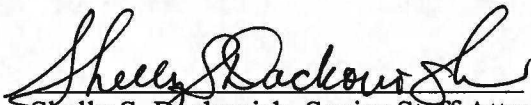
Colorado Capital Bank has provided a letter of credit in the amount of \$288,788.01 for certain improvements to be constructed by Wexford Borrower, LLC and Andrew Lecy (Developer) in connection with a development within the City of Grand Junction known as Wexford Estates, planning file number FP-2008-096, and that certain Development Improvements Agreement by and between Wexford Borrower, LLC and the City of Grand Junction.

This letter shall constitute NOTICE by the City of Grand Junction that the Improvements have not been satisfactorily and timely constructed by the Developer and as well as a DEMAND that the Colorado Capital Bank immediately release and tender funds in the amount of \$288,788.01 to the City of Grand Junction pursuant to the terms of the letter of credit and the Development Improvements Agreement executed by Wexford Borrower, LLC and Andrew Lecy, copies of which are attached hereto.

Also attached hereto is a sight draft issued by the undersigned in accordance with the terms of Letter of Credit No. 83007166.

OFFICE OF THE CITY ATTORNEY

CITY ENGINEER

  
Shelly S. Dackonish, Senior Staff Attorney

  
Eric Hahn, Engineer

Encl.

pc: Andrew Lecy, Developer  
Manager and Sole Member  
Wexford Borrower, LLC  
P.O. Box 2882  
Edwards, CO 81832



CITY ATTORNEY

ec: Dave Thornton, Senior Planner and Project Manager  
Eric Hahn, Development Engineer  
Greg Moberg, Planning Services Supervisor  
Tim Moore, Public Works & Planning Director  
Leslie Ankrum, Sr. Administrative Assistant

**SIGHT DRAFT**

February 10, 2012

To Drawee: Colorado Capital Bank, 5251 DTC Parkway, Suite 100 & 1120, Greenwood Village, CO 80111

Pay to the order of the **City of Grand Junction U.S. \$288,788.01**


The sum of Two Hundred Eighty-Eight Thousand Seven Hundred Eighty-Eight Dollars and One Cent

Drawn under Colorado Capital Bank Letter of Credit No. 83007166, dated February 11, 2011.

Beneficiary: City of Grand Junction, Colorado

**Wexford Borrower, LLC has failed to comply with the terms, conditions, provisions and requirements of the Grand Junction Zoning and Development Code and/or plans, specifications or agreements relating to the construction of improvements required by the City of Grand Junction. The monies received from this drawing are required to construct, repair and/or replace those improvements. The City of Grand Junction therefore requests the payment of \$288,788.01.**

By:

  
Shelly Dackovich  
Senior Staff Attorney

## Leslie Ankrum - Wexford Estates

---

**From:** Shelly Dackonish  
**To:** David Thornton; Eric Hahn; Greg Moberg; Leslie Ankrum; Tim Moore  
**Date:** 2/22/2012 2:37 PM  
**Subject:** Wexford Estates  
**Attachments:** call letter Wexford disb agr.pdf

---

Hello everyone,

Attached please find your copy of today's letter to First Citizens Bank demanding payment of funds under the Disbursement Agreement due to default of the developer under the DIA.

I previously sent a call letter to Colorado Capital Bank, which was returned undeliverable. After some research I learned that Colorado Capital Bank failed and was recently purchased by First Citizens Bank.

Shelly

OFFICE OF THE CITY ATTORNEY  
Shelly S. Dackonish, Senior Staff Attorney

City of Grand Junction, Colorado  
250 N. 5th St.  
Grand Junction, CO 81501  
(970) 244-1503

This electronic mail transmission is from Shelly S. Dackonish, Senior Staff Attorney, City Attorney's Office for the City of Grand Junction, Colorado. The information contained in this message may be privileged and/or confidential and/or protected by the attorney-client privilege or the attorney work product doctrine. The privileges are not waived by virtue of this message being sent to you in error. If the person receiving this message or any other reader of the message is not the intended recipient, please note that disclosure, copying, distribution or any other use of this message or the information contained in this message is strictly prohibited. If you have received this message in error, please immediately return it via email and then delete the message immediately.



CITY ATTORNEY

February 22, 2012

First Citizens Bank  
69 Edwards Access Boulevard, Suite 11  
Edwards, Colorado 81632  
Attn: Dave Zollner

RE: Wexford Estates  
Colorado Capital Bank Disbursement Agreement dated February 2011  
File No. FP-2008-096

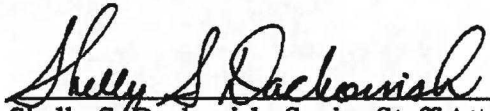
Dear Sir/Madam:

Colorado Capital Bank entered into a Disbursement Agreement (attached) setting aside funds in the amount of \$233,621.60 on behalf of Wexford Borrower, LLC/Andrew Lecy (Developer) for the City's benefit and for certain improvements to be constructed by the Developer in connection with a development within the City of Grand Junction known as Wexford Estates, planning file number FP-2008-096, and that certain Development Improvements Agreement (attached) by and between Wexford Borrower, LLC and the City of Grand Junction.

This letter shall constitute NOTICE by the City of Grand Junction that the Improvements have not been satisfactorily and timely constructed by the Developer and as well as a DEMAND that First Citizens Bank, as successor to Colorado Capital Bank, immediately release and tender funds in the amount of \$233,621.60 to the City of Grand Junction pursuant to the terms of the Disbursement Agreement.

OFFICE OF THE CITY ATTORNEY

CITY ENGINEER

  
Shelly S. Dackonish, Senior Staff Attorney

  
Eric Hahn, Engineer

Encl. (2)

pc: Andrew Lecy, Developer (w/encl)  
Manager and Sole Member  
Wexford Borrower, LLC  
P.O. Box 2882  
Edwards, CO 81832

ec: Dave Thornton, Senior Planner and Project Manager (w/o encl)  
Greg Moberg, Planning Services Supervisor (w/o encl)  
Tim Moore, Public Works & Planning Director (w/o encl)  
Leslie Ankrum, Sr. Administrative Assistant (w/o encl)

### Agreement Creating Deed Restriction

This agreement (the "Agreement") is made this 31<sup>st</sup> day of December, 2013, by and between the City of Grand Junction, Colorado (the "City") and Wexford3, LLC, 633 24 Road, Grand Junction, CO 81505 ("Wexford").

#### RECITALS

WHEREAS, Wexford has entered into a contract to purchase certain real property located in the City of Grand Junction and described more fully in Exhibit A to this Agreement (the "Property").

WHEREAS, the City has agreed to allow its claim to funds held by First-Citizens Bank on behalf of Wexford Borrower, LLC to lapse.

WHEREAS, the City has further agreed to allow Wexford to purchase the Property without requiring Wexford to first post security in the form of a Subdivision Improvements Disbursement Agreement (the "Security").

WHEREAS, Wexford and the City have agreed to impose restrictions upon Wexford's title to the Property until a Security that the City deems adequate is posted by Wexford.

WHEREAS, the Parties wish to memorialize the terms and conditions of their agreement.

NOW, THEREFORE, in consideration for the mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Lapse of Prior Security. In order to facilitate Wexford's purchase of the Property, the City agrees to forbear from making a claim against the security interest it received from Wexford Borrower, LLC and will allow the previous disbursement agreement to expire.

2. Restriction of Sale of Individual Lots. Wexford will not sell any individual lots within the Property until Wexford has posted the Security required of it after acquiring title to the Property. Such Security shall be in the form and on such terms as the City shall require and shall be satisfactory to the City.

3. The present planning clearance stay that affects the Property shall not be lifted until the Security is posted by Wexford as required by Section 2 of this Agreement.

4. This Agreement is recordable and is intended to create a restriction upon the deed that Wexford acquired in the Property until the City has received the Security it requires in Section 2 and has recorded its satisfaction as to the Security in the office of the Mesa County Clerk and Recorder's office.

5. The City agrees that, within two weeks of receiving the Security described in Section 2, it will cause to be recorded a release of this deed restriction at the office of the Mesa County Clerk and Recorder.

IN WITNESS OF THIS AGREEMENT, the parties have executed this Agreement on the date indicated above.

City of Grand Junction

By: *Tim Moore*  
Tim Moore, Deputy City Manager

Wexford3, LLC

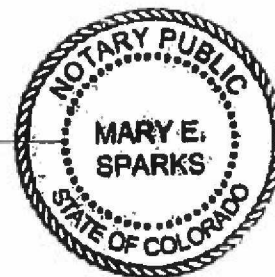
By: *Ted A. Martin*  
Ted A. Martin, Member

COUNTY OF MESA )  
 ) ss.  
STATE OF COLORADO )

This Agreement Creating Deed Restrictions was subscribed and sworn to before me this 31<sup>st</sup> day of December, 2013 by Tim Moore, Deputy City Manager.

Witness my hand and official seal.  
My Commission Expires: 04/07/2014

*Mary E. Sparks*  
Notary Public

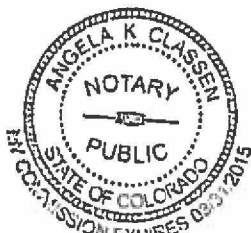


COUNTY OF MESA )  
 ) ss.  
STATE OF COLORADO )

This Agreement Creating Deed Restrictions was subscribed and sworn to before me this 20<sup>th</sup> day of December, 2013 by Ted A. Martin, Member of Wexford3, LLC.

Witness my hand and official seal.  
My Commission Expires: 8-31-15

*Angela K. Classen*  
Notary Public



**Exhibit A**  
**The Property**

**Parcel 1:**

Lots 1 and 2 of Wexford Subdivision, now known as Wexford Estates Subdivision,  
EXCEPT Tracts B and C as conveyed to the City of Grand Junction in Deed recorded  
June 25, 2008 at Reception No. 2445961;  
AND EXCEPT any portion of said land lying within the Streets, Roads, and Rights-of-  
way as dedicated to the City of Grand Junction on the plat of said subdivision recorded  
February 11, 2011 at Reception No. 2562927;  
AND EXCEPT Tracts A, D, and E of Wexford Estates Subdivision as conveyed to  
Wexford Estates Homeowners Association in Deed recorded February 11, 2011 at  
Reception No. 2562940, County of Mesa, State of Colorado

**Parcel 2:**

Lot 8, Block 1, Siena View Subdivision, Filing No. One, according to the plat recorded  
October 26, 2006 in Book 4279 at Page 777 at Reception No. 2345834, County of Mesa,  
State of Colorado.



## **Agreement Creating Deed Restriction**

This agreement (the "Agreement") is made this 31<sup>st</sup> day of December, 2013, by and between the City of Grand Junction, Colorado (the "City") and Wexford3, LLC, 633 24 Road, Grand Junction, CO 81505 ("Wexford").

### **RECITALS**

WHEREAS, Wexford has entered into a contract to purchase certain real property located in the City of Grand Junction and described more fully in Exhibit A to this Agreement (the "Property").

WHEREAS, the City has agreed to allow its claim to funds held by First-Citizens Bank on behalf of Wexford Borrower, LLC to lapse.

WHEREAS, the City has further agreed to allow Wexford to purchase the Property without requiring Wexford to first post security in the form of a Subdivision Improvements Disbursement Agreement (the "Security").

WHEREAS, Wexford and the City have agreed to impose restrictions upon Wexford's title to the Property until a Security that the City deems adequate is posted by Wexford.

WHEREAS, the Parties wish to memorialize the terms and conditions of their agreement.

NOW, THEREFORE, in consideration for the mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Lapse of Prior Security.** In order to facilitate Wexford's purchase of the Property, the City agrees to forbear from making a claim against the security interest it received from Wexford Borrower, LLC and will allow the previous disbursement agreement to expire.

2. **Restriction of Sale of Individual Lots.** Wexford will not sell any individual lots within the Property until Wexford has posted the Security required of it after acquiring title to the Property. Such Security shall be in the form and on such terms as the City shall require and shall be satisfactory to the City.

3. The present planning clearance stay that affects the Property shall not be lifted until the Security is posted by Wexford as required by Section 2 of this Agreement.

4. This Agreement is recordable and is intended to create a restriction upon the deed that Wexford acquired in the Property until the City has received the Security it requires in Section 2 and has recorded its satisfaction as to the Security in the office of the Mesa County Clerk and Recorder's office.


5. The City agrees that, within two weeks of receiving the Security described in Section 2, it will cause to be recorded a release of this deed restriction at the office of the Mesa County Clerk and Recorder.

IN WITNESS OF THIS AGREEMENT, the parties have executed this Agreement on the date indicated above.

**City of Grand Junction**

By:   
Tim Moore, Deputy City Manager

**Wexford3, LLC**

By:   
Ted A. Martin, Member

COUNTY OF MESA            )  
  )        ss.  
STATE OF COLORADO    )

This Agreement Creating Deed Restrictions was subscribed and sworn to before me this 31<sup>st</sup> day of December, 2013 by Tim Moore, Deputy City Manager.

Witness my hand and official seal.  
My Commission Expires: 04/07/2014

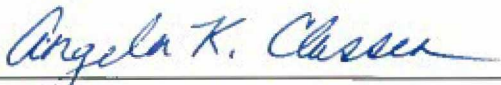
  
Notary Public

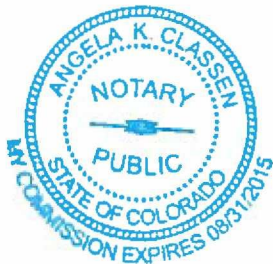


COUNTY OF MESA            )  
  )        ss.  
STATE OF COLORADO    )

This Agreement Creating Deed Restrictions was subscribed and sworn to before me this 20<sup>th</sup> day of December, 2013 by Ted A. Martin, Member of Wexford3, LLC.

Witness my hand and official seal.  
My Commission Expires: 8-31-15

  
Notary Public



**Exhibit A**  
**The Property**

**Parcel 1:**

Lots 1 and 2 of Wexford Subdivision, now known as Wexford Estates Subdivision, EXCEPT Tracts B and C as conveyed to the City of Grand Junction in Deed recorded June 25, 2008 at Reception No. 2445961;  
AND EXCEPT any portion of said land lying within the Streets, Roads, and Rights-of-way as dedicated to the City of Grand Junction on the plat of said subdivision recorded February 11, 2011 at Reception No. 2562927;  
AND EXCEPT Tracts A, D, and E of Wexford Estates Subdivision as conveyed to Wexford Estates Homeowners Association in Deed recorded February 11, 2011 at Reception No. 2562940, County of Mesa, State of Colorado

**Parcel 2:**

Lot 8, Block 1, Siena View Subdivision, Filing No. One, according to the plat recorded October 26, 2006 in Book 4279 at Page 777 at Reception No. 2345834, County of Mesa, State of Colorado.

1. **Parties:** The parties to this Development Improvements Agreement (Agreement) are **Wexford 3 LLC** (Developer) and the **City of Grand Junction, Colorado** (City).

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

2. **Effective Date:** The Effective Date of the Agreement shall be the date that it is signed by the Planning Director.

**RECITALS**

The Developer seeks approval to develop property described on Exhibit A (Property). The property known as:

**Wexford Subdivision**

has been reviewed and approved under the above-referenced planning file number. (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- and off-site improvements listed on Exhibit B (Improvements).

3a. The Developer agrees to pay the City for its administration of the Development. The hourly rate for those services is \$45.00/hour. Administration includes but is not limited to the time expended by the City's planner, engineer 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 security are administration services and shall be charged at \$45.00/hour. See paragraph 19 concerning attorneys'/ litigation fees.

3b. The Developer agrees to pay a flat fee of \$ **6,660.00** for construction inspection. If in the City's determination the scope of this project is such that the City needs 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 financial guarantee. The Developer is required to post security in an amount of \$ **428,613.00** (120% of the approved cost estimate for the improvements) in a form and with terms acceptable to the City (Security). The Security shall be in the form of a cash deposit made to the City, a letter of credit, a disbursement agreement or other form approved by the City Attorney. The Security specific to this Agreement is attached as Exhibit C and is incorporated by this reference as if fully set forth.

**Form of Security (select one): Letter of Credit**

5. **Standards:** The Developer shall construct the Improvements according to the City's standards, specifications and approved plans.

6. **Warranty:** The Developer shall warrant the Improvements for one year following acceptance of the Improvements 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 repair or replacement thereof shall comply with the approved construction plans site plan and 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 of the Improvements by the City the Developer shall provide a Maintenance Guarantee in an amount of \$ **71,435.50** (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 Attorney.

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.

8. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations when fulfilling its obligations under this Agreement. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after the Effective Date.

9. **Notice of Defect:** The Developer shall provide timely written notice to the issuer of the Security and the Director when the Developer and/or his/her/its engineer has knowledge that an Improvement does not conform to City standards or is otherwise defective in whole or in part. The Developer shall correct all non-conforming construction and/or defects within thirty (30) days of such notice.

10. **Acceptance of Improvements:** The City will not accept Improvements until the Developer documents that the Developer owns the Improvements in fee simple and that there are no liens, encumbrances or other restrictions on the Improvements other than those that have been accepted in writing by the City Attorney.

10a. 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 has been accepted in writing by the City.

10b. The City will 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 appropriate electronic form, stamped and sealed by a professional engineer 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 construction were in conformance with City-approved plans and specifications.

10c. Acceptance by the City shall only occur when the City's engineer sends a writing to such effect.

10d. Acceptance of Improvements does not constitute a waiver by the City of any right it may have to demand correction of a defect in or failure of Improvements detected or occurring after acceptance.

**11. Reduction of Security:** Upon acceptance of the Improvements, the City will release **\$ 357,177.50** (Line G1, Exhibit B, Total Improvement Costs) of the Security, except that a developer in default under this Agreement has no right to a release of the Security in any amount.

**12. Use of Proceeds:** The City shall use Security funds only to complete the Improvements, correct failed or defective improvements or pay administration, inspection development fees or impact fees.

**13. Events of Default:** The following shall constitute a default by the Developer:

13a. Developer's failure to complete all of the Improvements on or before the Completion date;

13b. Developer's failure to take reasonable actions 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;

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;

13e. With regard to the Property or any portion thereof, initiation of any foreclosure action regarding any lien or encumbrance, initiation of mechanics lien(s) procedure(s) or assignment or conveyance of the Property in lieu of foreclosure;

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

Except in the event of 13c, 13d and 13e above, in which the City may immediately declare a default without prior notice to the Developer, the City may not declare a default until written notice has been sent to the Developer in accordance with section 26 below.

**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 and completion of the Improvements. For Improvements upon which construction has not begun, the estimated costs of the Improvements 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 by the amount of the Security.

**15. City's Rights Upon Default:** Upon default the City may draw on or proceed to collect the Security up to the full face amount. The City may also exercise its rights to disbursement of loan proceeds or other funds under the 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 Security 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. That developer or lender shall then have the same rights of completion as the City hereunder 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.

15d. 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 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 is named as a defendant in an action concerning the performance of work pursuant to this Agreement except in a suit in which 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 to a waiver of any other provision nor shall it be deemed 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 or different 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 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 in-house attorney time 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 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, promise or inducements that 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 an abandonment period, completion date or other date hereunder and 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 in writing if it finds 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 covenants running with the Property.

25b. The City may assign its rights under this Agreement.



25c. The City shall expressly release the Security and/or contract obligations if it accepts new security from any developer or lender who subsequently acquires the Property; however, no other act of the City shall constitute a release of the original Developer from his liability under this Agreement.

25d. The City agrees to state acceptance of the Improvements 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:

Name/Developer/Company: **Wexford 3 LLC**

Address (Street and Mailing): **633 24 Road Suite B**

City, State and Zip Code: **Grand Junction, CO 81505**

Telephone and Fax Number: **(970) 260-8064**

E-mail Address: **agenttedmartin@gmail.com**

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

CC: **Planning Division  
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 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 Security or the Maintenance Guarantee shall be deemed to be proper only in Mesa County, Colorado. 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.

By:

 4-23-14

Developer's Signature

Date


Developer's Name:

**City of Grand Junction**

 4/28/14

Project Manager's Signature

Date

 4-24-14

Development Engineer's Signature

Date

 4-28-14

Director or Planning Manager's Signature

Date

Type legal description below.

**EXHIBIT A**

LEGAL DESCRIPTION

Lot 1 thru Lot 74 of Wexford Subdivision.  
County of Mesa, State of Colorado

**EXHIBIT B  
WEXFORD SUBDIVISION  
IMPROVEMENTS COST ESTIMATE**


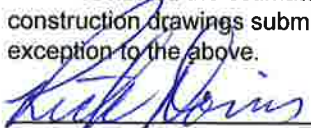
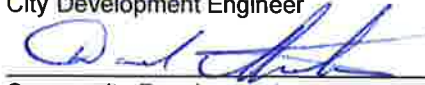
DATE: 4/14/2014  
 DEVELOPMENT NAME: WEXFORD SUBDIVISION  
 LOCATION: SECTION 17, T. 1 S., R. 1 E., UTE MERIDIAN  
 PRINTED NAME OF PERSON PREPARING: CLINTON J. ALLEN

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>A. SANITARY SEWER</b>					
1	8" PVC SDR-35 Sanitary Sewer Main	LF	0	\$ 22.00	\$ -
2	8" PVC Sanitary Sewer CAPS	EA	0	\$ 75.00	\$ -
3	Sewer Services TAPS	EA	0	\$ 75.00	\$ -
4	4" PVC Sanitary Sewer Service Line	LF	0	\$ 13.50	\$ -
5	Sanitary Sewer Manhole	EA	0	\$ 1,500.00	\$ -
6	Sanitary Sewer Cleanouts	EA	0	\$ 900.00	\$ -
7	Connection to Existing Manhole	EA	0	\$ 500.00	\$ -
8	Concrete Encasement	LF	0	\$ 9.00	\$ -
<b>Subtotal Part A Sanitary Sewer</b>					<b>\$ -</b>
<b>B. DOMESTIC WATER</b>					
1	8" PVC Water Main	LF	0	\$ 24.00	\$ -
2	6" PVC Water Main	LF	0	\$ 18.00	\$ -
3	4" PVC Water Main	LF	0	\$ 15.50	\$ -
4	8" Gatevalve	EA	0	\$ 950.00	\$ -
5	6" Gatevalve	EA	0	\$ 700.00	\$ -
6	4" Gatevalve	EA	0	\$ 600.00	\$ -
7	8" Fittings (Including Thrustblocks)	EA	0	\$ 375.00	\$ -
8	4" Fittings (Including Thrustblocks)	EA	0	\$ 250.00	\$ -
9	Water Service TAPS & Set Ute Pit	EA	0	\$ 425.00	\$ -
10	3/4" Copper Service Line	EA	0	\$ 10.50	\$ -
11	Hot Tap Connect to Existing Water Line	EA	0	\$ 4,500.00	\$ -
12	Connect to Existing Water Line	EA	0	\$ 350.00	\$ -
13	Fire Hydrant assembly	EA	0	\$ 3,200.00	\$ -
14	Utility Adjustments	EA			\$ -
15	2" Blowoff	EA	0	\$ 325.00	\$ -
<b>Subtotal Part B - Domestic Water</b>					<b>\$ -</b>
<b>C1 STREETS</b>					
1	" PVC Utility/Irrigation sleeves	LF			\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
2	" PVC Utility/Irrigation sleeves	LF			\$ -
3	Reconditioning	SY		\$ -	\$ -
4	Aggregate Base Course (Class 3)	TN			\$ -
5	Aggregate Base Course (Class 6) (Replace removed quantity)	CY	670	\$ 39.00	\$ 26,130.00
6	Aggregate Base Course (Class 6) (10" Compacted Thickness)	CY	0	\$ 39.00	\$ -
7					\$ -
8	Hot Bituminous Paving, Grading (3" thick)	SY	11317	\$ 17.19	\$ 194,533.50
9	Hot Bituminous Paving, Grading (4" thick)	SY		\$ -	\$ -
10	Hot Bituminous Paving, Patching (" Thick)	SY			\$ -
11	Geotextile	SY			\$ -
12	Concrete Curb (" Wide by " High)	LF			\$ -
13	Drive Over Conc. Curb, Gutter (3' wide)	LF	0	\$ 14.50	\$ -
14	Concrete Curb and Gutter (2' wide)	LF	0	\$ 13.00	\$ -
15	Monolithic, Vertical Curb, Gutter and Sidewalk (7' Wide)	LF	0	\$ 22.00	\$ -
16	Drive Over Curb, Gutter, and Sidewalk (6.5' Wide)	LF	0	\$ 16.50	\$ -
17	Concrete Sidewalk (6' Wide)	LF	0	\$ 24.00	\$ -
18	Concrete Gutter and Driveway Section (6" Thick)	SY	0	\$ 43.00	\$ -
19	Concrete Drainage Pan (6' Wide,8" Thick)	LF			\$ -
20	Concrete Corner	SY			\$ -
21	Concrete Curb Ramp	SY			\$ -
22	Concrete Corner Radii, Apron, & Pan	SY	0	\$ 49.00	\$ -
23	Concrete Driveway (" Thick)	SY			\$ -
24	Driveway/Concrete Repair	SY			\$ -
25	Concrete Mail Box Pads	SY	55	\$ 40.00	\$ 2,200.00
26	Retaining Walls	LF			\$ -
27	Street Signs	EA	7	\$ 300.00	\$ 2,100.00
28	Striping (New, Remove/Replace)	LS			\$ -
29	Street Lights	EA	0	\$ 2,400.00	\$ -
30	"End of Road" Markers	EA	13	\$ 400.00	\$ 5,200.00
31	Signal Construction or Reconstruction	LS			\$ -
32	Flowable Fill	CY			\$ -
33	Sleeves, 4-4" PVC Multi-Utility	LF	0	\$ 36.00	\$ -
34	Reclaim 29 1/2 Road Connection ( w/ 5 years inflation)	LS		\$ 6,000.00	\$ -
<b>C2</b>	<b>BRIDGES</b>				
1	Box Culvert, Wing Walls and Diversion Struc.	CY		\$ 450.00	\$ -
2	Parapet Wall	LS			\$ -
3	Railing (handrail, guardrail)	LS			\$ -
	<b>Subtotal Part C - Streets and Bridges</b>				<b>\$ 230,163.50</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>D1 EARTHWORK</b>					
1	Mobilization	LS	1	\$ -	\$ -
2	Clearing and Grubbing	AC	0	\$ 800.00	\$ -
3	Unclassified Excavation (Including Pond & Swales)	CY	0	\$ 2.50	\$ -
4	Unclassified Embankment	CY	0	\$ 3.50	\$ -
5	Subgrade Preparation	SY	0	\$ 1.50	\$ -
6	Silt Fence	LF	0	\$ 1.50	\$ -
7	Inlet Protection	EA	21	\$ 150.00	\$ 3,150.00
8	Mud traps	EA	2	\$ 1,200.00	\$ 2,400.00
9	Watering (Dust Control)	LS	1	\$ 3,000.00	\$ 3,000.00
10	Dry Utility Trench	LF		\$ 3.00	\$ -
11	Maintain Existing Ditch and Burm	LF	3596	\$ 0.15	\$ 539.40
<b>D2 REMOVALS AND RESETTING</b>					
1	Removal of Asphalt (for sanitary sewer )	SY			\$ -
2	Removal of Miscellaneous Concrete	SY			\$ -
3	Remove Curb and Gutter	LF			\$ -
4	Removal of Culverts	LF			\$ -
5	Remove Structures	EA			\$ -
6	Remove Signs	EA			\$ -
7	Remove Fence	LF			\$ -
8	Adjust Manhole	EA	included in asphalt price		\$ -
9	Adjust Valvebox	EA	included in asphalt price		\$ -
10	Relocate or Adjust Utilities	LS			\$ -
<b>D3 SEEDING AND SOIL RETENTION</b>					
1	Sod	SY			\$ -
2	Seeding (Native)	SY or AC			\$ -
3	Seeding (Bluegrass/Lawn)	SY or AC			\$ -
4	Hydraulic Seed and Mulching	SY or AC			\$ -
5	Soil Retention Blanket	SY			\$ -
<b>D4 STORM DRAINAGE FACILITIES</b>					
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY			\$ -
2	18" HDPE Storm Drain Pipe	LF	0	\$ 27.00	\$ -
3	18" Flared End Section	EA	1	\$ 450.00	\$ 450.00
4	48" Storm Drain Manhole	EA	0	\$ 2,300.00	\$ -
5	Manhole with Box Base	EA			\$ -
6	Connection to Existing MH	EA			\$ -
7	Single Curb Opening Storm Drain Inlet	EA	0	\$ 1,800.00	\$ -
8	Double Curb Opening Storm Drain Inlet	EA	0	\$ 2,800.00	\$ -
9	Area Storm Drain Inlet	EA		\$ -	\$ -
10	8" SDR-35 Drain Line	LF	0	\$ 14.00	\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
11	10" Inline Drains	EA	0	\$ 16.00	\$ -
12	8" Fittings	EA	0	\$ 350.00	\$ -
13	Retention Area Outlet structure	EA	1	\$ 4,500.00	\$ 4,500.00
14	Rip-Rap D <sub>50</sub> =6"	CY			\$ -
15	Sidewalk Trough Drain	EA			\$ -
16	Pump Systems including Electrical	LS	1	\$ 8,500.00	\$ 8,500.00
<b>Subtotal Part D - Grading and Drainage</b>					<b>\$ 22,539.40</b>
<b>E1</b>	<b>IRRIGATION</b>				
1	Connect to Existing Pipe	LS	1	\$ 400.00	\$ 400.00
2	10" PVC Irrigation Pipe	LF	0	\$ 16.00	\$ -
3	10" CMP Irrigation Pipe	LF	0	\$ 22.00	\$ -
4	10" FES (Lurvey)	LS	1	\$ 300.00	\$ 300.00
4	8" PVC Sch 40 PIP Irrigation Pipe (Pond)	LF	0	\$ 14.00	\$ -
5	16" Steel Casing Pipe	LF	0	\$ 32.00	\$ -
6	Splitter Box (School)	LS	0	\$ 2,200.00	\$ -
7	Diversion Structure (Gates & Punch Plate)	LS	0	\$ 1,500.00	\$ -
	Concrete is in Canal Crossing				
8	Irrigation Manhole w/ Redwood Lid	EA	0	\$ 1,800.00	\$ -
9	Rem. & Salv. Canal Gates	EA	0	\$ 150.00	\$ -
10	Relocate Ex. Structure (Lurvey)	LS	0	\$ 800.00	\$ -
11	Rem. & Disp. Ex. Structure (School)	LS	0	\$ 500.00	\$ -
12	Inverted Siphon Placement and Materials	EA	0	\$ 7,000.00	\$ -
13	Rem. & Disp. Ex. Structure (Elam)	LS	0	\$ 500.00	\$ -
<b>E2</b>	<b>LANDSCAPING</b>				
1	Shrub Beds	EA	118	\$ 86.00	\$ 10,148.00
2	Deciduous Tree, Material and Placing	EA	5	\$ 900.00	\$ 4,500.00
3	Evergreen Tree, Material and Placing	EA	1	\$ 365.00	\$ 365.00
4	Grass (hydro seeding)	SF	26000	\$ 0.10	\$ 2,600.00
5	6' High Fencing (along D.5 Road)	LF	350	\$ 21.00	\$ 7,350.00
6	10' Concrete Walk	LF	128	\$ 38.00	\$ 4,864.00
7	Stucco Fence Demolition and Removal	LF	0	\$ 50.00	\$ -
8	3" Cobble Rock and Fabric	CY	230	\$ 43.00	\$ 9,890.00
9	Soil Amendment	LS	1	\$ 12,500.00	\$ 12,500.00
10	Irrigation System for Landscape Areas	LS	1	\$18,450	\$ 18,450.00
11	1 Year Maintenance Agrmnt.	LS	1	\$ 4,000.00	\$ 4,000.00
					\$ -
12	Dry Utilities (Trenching completed 4/2/14, cost only reflects cost of backfilling) (all other costs have been prepaid to Excell Energy, CenturyLink, Etc.)	LF	5300	\$ 0.50	\$ 2,650.00
<b>E</b>	<b>Subtotal Part E - Landscaping and Irrigation</b>				<b>\$ 78,017.00</b>
<b>Subtotal Construction Costs</b>					<b>\$ 330,719.90</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>F.</b>	<b>Miscellaneous Items</b>				
1	Construction staking/surveying	%	3.00%	\$ 330,719.90	\$ 9,921.60
2	Developer's inspection cost	%	1.50%	\$ 330,719.90	\$ 4,960.80
3	General construction supervsn	%		\$ 330,719.90	\$ -
4	Quality control testing	%	2.50%	\$ 330,719.90	\$ 8,268.00
5	Construction traffic control	%	0.50%	\$ 330,719.90	\$ 1,653.60
6	City inspection fees	Lot	74	\$ -	\$ -
7	As-builts	%	0.50%	\$ 330,719.90	\$ 1,653.60
<b>E</b>	<b>Subtotal Part F - Miscellaneous Items</b>				<b>\$ 26,457.60</b>
% = Percentage of total site construction costs					
<b>G.</b>	<b>COST SUMMARY</b>				
<b>1</b>	<b>Total Improvement Costs</b>				<b>\$ 357,177.50</b>
<b>2</b>	<b>City Security (20%)</b>				<b>\$ 71,435.50</b>
<b>3</b>	<b>Total Guarantee Amount</b>				<b>\$ 428,613.00</b>
NOTES 1. All prices shall be for items complete in place and accepted. 2. All pipe prices shall include excavation, pipe, bedding, backfill, and compaction. 3. Water main shall include pipe, excavation, bedding, backfill, bends, and appurtenances not itemized elsewhere. 4. All concrete items shall include Aggregate Base Course where required by the drawings. 5. Fill in the pipe type for irrigation pipe and sleeves. 6. Reconditioning shall be calculated to at least 6" outside of back of walk on both sides. 7. Units can be changed if desired, simply annotate what is used. 8. Additional lines or items may be added as needed.					
					
Signature of Developer		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.					
					
City Development Engineer		Date			
					
Community Development		Date			



**Exhibit C**

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

Irrevocable Letter of Credit No.

Dated: April 22, 2014

Expiration: April 23, 2015 subject to the automatic extensions stated below

Project Name/City File No.: FP-2008-096

Dear Sirs:

We hereby establish our Irrevocable Letter of Credit No. 209 in favor of the City of Grand Junction at the request of and for the account of Wexford3, LLC (Developer) in the amount of \$428,613.00 U.S. dollars.

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

- 1) it is effective upon signature;
- 2) it expires on April 23, 2015 subject to the automatic extensions discussed below;
- 3) this Letter of Credit is available by sight draft(s) drawn and marked "Drawn under Timberline Bank Letter of Credit No. 209 dated 04/23/2014" ;
- 4) this Letter of Credit is established for the use and benefit of the City of Grand Junction by reason of the Wexford 3, LLC (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) " \_\_\_\_\_ (Developer) has failed to comply with the terms, conditions, provisions and requirements of the Grand Junction Zoning and Development Code and/or plans, specifications or agreements relating to the construction of improvements required by the City of Grand Junction. The monies received from this drawing are required to construct those improvements. The City of Grand Junction therefore requests the payment of \$ \_\_\_\_\_.**
- 7) It is a condition of this Letter of Credit that it will be automatically extended for a period of six (6) months from the present or any future expiration 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 Public Works & Planning or his designee;

Aspen | 720 East Hyman Ave. | Aspen, CO 81611 | 970-920-0112

Grand Junction | 633 24 Road | Grand Junction, CO 81505 | 970-683-5560

Montrose | 1561 Oxbow Dr. | Montrose, CO 81401 | 970-240-5489

[www.timberlinebank.com](http://www.timberlinebank.com)



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.



---

Jeff Faets

Timberline Bank  
President

## Mary Sparks - Re: Release of Deed Restrictions

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**From:** Shelly Dackonish  
**To:** David Thornton  
**Date:** 4/30/2014 1:58 PM  
**Subject:** Re: Release of Deed Restrictions  
**CC:** Mary Sparks

---

Dave,

The original of that goes to the property owner; we keep a copy. A copy should be included in the DIA file.

Thanks.

Shelly

OFFICE OF THE CITY ATTORNEY  
Shelly S. Dackonish, Senior Staff Attorney

City of Grand Junction, Colorado  
250 N. 5th St.  
Grand Junction, CO 81501  
(970) 244-1503

This electronic mail transmission is from Shelly S. Dackonish, Senior Staff Attorney, City Attorney's Office for the City of Grand Junction, Colorado. The information contained in this message may be privileged and/or confidential and/or protected by the attorney-client privilege or the attorney work product doctrine. The privileges are not waived by virtue of this message being sent to you in error. If the person receiving this message or any other reader of the message is not the intended recipient, please note that disclosure, copying, distribution or any other use of this message or the information contained in this message is strictly prohibited. If you have received this message in error, please immediately return it via email and then delete the message immediately.

>>> David Thornton 4/30/2014 11:59 AM >>>  
The release was recorded today.

Dave Thornton, AICP  
Planning and Development Supervisor  
(970)244-1450  
[davidt@gjcity.org](mailto:davidt@gjcity.org)

>>> Shelly Dackonish 4/28/2014 12:33 PM >>>  
Dave,

Release is attached. We have only two weeks from the day the security was posted to record this, so make sure

we meet that deadline.

Shelly

OFFICE OF THE CITY ATTORNEY  
Shelly S. Dackonish, Senior Staff Attorney

City of Grand Junction, Colorado  
250 N. 5th St.  
Grand Junction, CO 81501  
(970) 244-1503

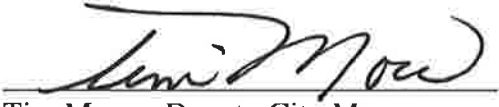
This electronic mail transmission is from Shelly S. Dackonish, Senior Staff Attorney, City Attorney's Office for the City of Grand Junction, Colorado. The information contained in this message may be privileged and/or confidential and/or protected by the attorney-client privilege or the attorney work product doctrine. The privileges are not waived by virtue of this message being sent to you in error. If the person receiving this message or any other reader of the message is not the intended recipient, please note that disclosure, copying, distribution or any other use of this message or the information contained in this message is strictly prohibited. If you have received this message in error, please immediately return it via email and then delete the message immediately.

Release of Deed Restriction

The **City of Grand Junction** hereby states that the conditions for release of all deed restrictions as set forth in that certain Agreement Creating Deed Restriction dated December 31, 2013 and recorded at Reception # 2680255, Book 5566, Page 834 on January 23, 2014 in the records of the Mesa County Clerk and Recorder have been satisfied through the posting of adequate security by Wexford 3, LLC for development improvements required for development of the real property described in Exhibit A to the aforementioned Agreement (known as the Wexford Subdivision project) on or about April 28, 2014.

THEREFORE, the restrictions upon the sale of lots in that certain real property described in Exhibit A to the aforementioned Agreement Creating Deed Restriction are hereby RELEASED.

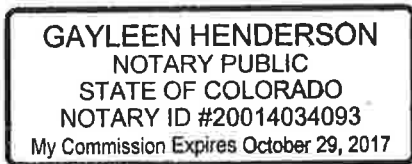
**City of Grand Junction**

By:   
Tim Moore, Deputy City Manager

COUNTY OF MESA            )  
  )ss.  
STATE OF COLORADO    )

This Release of Deed Restrictions was subscribed and sworn to before me this 28<sup>th</sup> day of April 2014 by Tim Moore, Deputy City Manager for the City of Grand Junction.

Witness my hand and official seal. Gayleen Henderson  
My commission expires: October 29, 2017



**RECORDING MEMORANDUM**

**Exhibit D**

City of Grand Junction  
Planning Division

File Number:

This memorandum relates to and confirms that certain Development Improvements Agreement and/or Maintenance Guarantee concerning land in Mesa County, Colorado is by and between **Wexford 3, LLC** (Developer) and the City of Grand Junction (City) pertaining to **Wexford Subdivision** (Project), located at **29 1/2 Road and D 1/2 Road**

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 number **FP-2008-096**

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: 

Date: 4-23-14

Type Name: **Ted Martin**

**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, Planning Division, 250 North 5<sup>th</sup> Street, Grand Junction Colorado.

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

Date: 4/28/14



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



**Print Date:**  
 4/30/2014 10:41:43 AM

Transaction #: **186932**  
 Receipt #: **2014079993**  
 Cashier Date: **4/30/2014 10:41:42 AM**

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: \$332.00	Date Received: 04/30/2014 Source Code: Over The Counter Return Code: Over The Counter Trans Type: Recording	Total Fees \$22.00 Total Payments \$33.00 Escrow Deposit \$11.00

2 Payments		
CHECK 1060		\$11.00
Escrow Deposit	11	\$11.00
CHECK 1059		\$22.00

2 Recorded Items		
(REL) REL	<i>BK/PG: 5594/917 Reception Number: 2688489</i> <i>Date: 4/30/2014 10:41:40 AM</i> <i>From: To:</i>	
Recording @ \$10 per page \$1 Surcharge	1	\$11.00
(MEMO) MEMORANDUM	<i>BK/PG: 5594/918 Reception Number: 2688490</i> <i>Date: 4/30/2014 10:41:40 AM</i> <i>From: To:</i>	
Recording @ \$10 per page \$1 Surcharge	1	\$11.00

0 Search Items
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0 Miscellaneous Items
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### Agreement Creating Deed Restriction

This agreement (the "Agreement") is made this 31<sup>st</sup> day of December, 2013, by and between the City of Grand Junction, Colorado (the "City") and Wexford3, LLC, 633 24 Road, Grand Junction, CO 81505 ("Wexford").

#### RECITALS

WHEREAS, Wexford has entered into a contract to purchase certain real property located in the City of Grand Junction and described more fully in Exhibit A to this Agreement (the "Property").

WHEREAS, the City has agreed to allow its claim to funds held by First-Citizens Bank on behalf of Wexford Borrower, LLC to lapse.

WHEREAS, the City has further agreed to allow Wexford to purchase the Property without requiring Wexford to first post security in the form of a Subdivision Improvements Disbursement Agreement (the "Security").

WHEREAS, Wexford and the City have agreed to impose restrictions upon Wexford's title to the Property until a Security that the City deems adequate is posted by Wexford.

WHEREAS, the Parties wish to memorialize the terms and conditions of their agreement.

NOW, THEREFORE, in consideration for the mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Lapse of Prior Security. In order to facilitate Wexford's purchase of the Property, the City agrees to forbear from making a claim against the security interest it received from Wexford Borrower, LLC and will allow the previous disbursement agreement to expire.
2. Restriction of Sale of Individual Lots. Wexford will not sell any individual lots within the Property until Wexford has posted the Security required of it after acquiring title to the Property. Such Security shall be in the form and on such terms as the City shall require and shall be satisfactory to the City.
3. The present planning clearance stay that affects the Property shall not be lifted until the Security is posted by Wexford as required by Section 2 of this Agreement.
4. This Agreement is recordable and is intended to create a restriction upon the deed that Wexford acquired in the Property until the City has received the Security it requires in Section 2 and has recorded its satisfaction as to the Security in the office of the Mesa County Clerk and Recorder's office.



5. The City agrees that, within two weeks of receiving the Security described in Section 2, it will cause to be recorded a release of this deed restriction at the office of the Mesa County Clerk and Recorder.

IN WITNESS OF THIS AGREEMENT, the parties have executed this Agreement on the date indicated above.

City of Grand Junction

By: *Tim Moore*  
Tim Moore, Deputy City Manager

Wexford3, LLC

By: *Ted A. Martin*  
Ted A. Martin, Member

COUNTY OF MESA )  
 )  
STATE OF COLORADO ) ss.

This Agreement Creating Deed Restrictions was subscribed and sworn to before me this 31<sup>st</sup> day of December, 2013 by Tim Moore, Deputy City Manager.

Witness my hand and official seal.  
My Commission Expires: 04/07/2014

*Mary E. Sparks*  
Notary Public

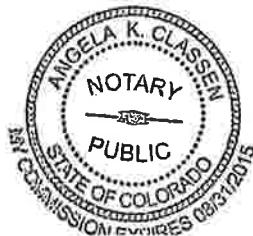


COUNTY OF MESA )  
 )  
STATE OF COLORADO ) ss.

This Agreement Creating Deed Restrictions was subscribed and sworn to before me this 20<sup>th</sup> day of December, 2013 by Ted A. Martin, Member of Wexford3, LLC.

Witness my hand and official seal.  
My Commission Expires: 8-31-15

*Angela K. Classen*  
Notary Public



**Exhibit A**  
**The Property**

**Parcel 1:**

Lots 1 and 2 of Wexford Subdivision, now known as Wexford Estates Subdivision,  
EXCEPT Tracts B and C as conveyed to the City of Grand Junction in Deed recorded  
June 25, 2008 at Reception No. 2445961;  
AND EXCEPT any portion of said land lying within the Streets, Roads, and Rights-of-  
way as dedicated to the City of Grand Junction on the plat of said subdivision recorded  
February 11, 2011 at Reception No. 2562927;  
AND EXCEPT Tracts A, D, and E of Wexford Estates Subdivision as conveyed to  
Wexford Estates Homeowners Association in Deed recorded February 11, 2011 at  
Reception No. 2562940, County of Mesa, State of Colorado

**Parcel 2:**

Lot 8, Block 1, Siena View Subdivision, Filing No. One, according to the plat recorded  
October 26, 2006 in Book 4279 at Page 777 at Reception No. 2345834, County of Mesa,  
State of Colorado.