

DEVELOPMENT IMPROVEMENTS AGREEMENT (No. 2)

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are **AMERICAN FURNITURE WAREHOUSE CO.**, ("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 AMERICAN SUBDIVISION has been reviewed and approved under Planning file # **PPF-2010-079** ("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 material men, 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 **\$ 918,244.66** (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

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 **\$ 153,040.78** (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: **WITHIN 5 DAYS OF ACCEPTANCE**

Completion Date: **WITHIN 270 DAY FROM START OF CONSTRUCTION**

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 in 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 **\$ 765,203.88** (Line G1, Exhibit B, Total Improvement Costs).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If to Developer: AMERICAN FURNITURE WAREHOUSE CO.
8820 AMERICAN WAY
ENGLEWOOD, CO 80112
303-799-9044
720-873-8600 FAX
kmichalek@afwonline.com

Cc: SUN KING MANAGEMENT CORP.
MR. CHRIS MOTZ
607 25 ROAD, SUITE 201
GRAND JUNCTION, CO 81505
970-245-9173
chris@sun-king.com

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

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

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

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

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

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

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

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

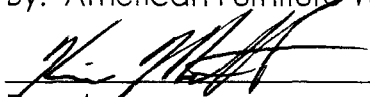
30b. Developer shall also construct and pay for end-transitions, intersection paving, drainage facilities and adjustments to existing utilities necessary to open the street to traffic.

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: American Furniture Warehouse Co.



Developer Date
Kevin Michalek, General Manager
Name (printed)

Corporate Attest:

Name Date

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



Public Works & Planning Dept. Date
12.9.10

5/15/2007

EXHIBIT A

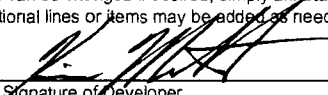
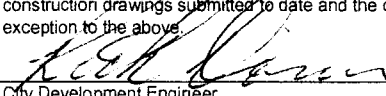
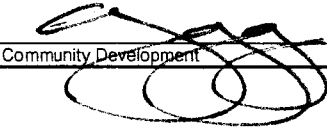
All required improvements and appurtenances located within the right-of-way and the adjoining multi-purpose easements within American Way and Maldonado Street as described on the final plat: American Subdivision.

This does not included the sanitary sewer line in American Way, which is covered by an earlier DIA.

EXHIBIT B
IMPROVEMENTS COST ESTIMATE

DATE: October 29, 2010
DEVELOPMENT NAME: **AMERICAN SUBDIVISION**
LOCATION: S.E Base Rock and Interstate 70 Business Loop
PRINTED NAME OF PERSON PREPARING: Chris Motz

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
A. SANITARY SEWER					
1	8" PVC Sanitary Sewer Main	Previous DIA	886		-
2	4" PVC Sewer Services	Previous DIA	220		-
3	6" PVC Sewer Services	Previous DIA	-		-
4	Other - 2" Force Main Line	Previous DIA	243		-
5	Sanitary Sewer Manhole	Previous DIA	5		-
6	Connection To Sewer Main	Previous DIA	1		-
7	Encasements	Previous DIA	80		-
Subtotal Part A - Sanitary Sewer					-
B. DOMESTIC WATER					
1	8" PVC Water Main (American Way, Maldonado, Base Rock)	LF	1,946	19.00	36,974
2	6" C900 PVC Water Main	LF	112	24.00	2,688
3	8" Gatevalve	EA	6	1,100.00	6,600
4	6" C900 Water Services including Valves (20' already under Sanitary Service X-ings)	LF	190	44.00	8,360
5	Connect to Existing Water Lines	EA	4	330.00	1,320
6	Fire Hydrant with Valve	EA	4	3,700.00	14,800
7	Flush/Testing Water Lines	LS	1	504.00	504
8	Blowoff	EA	1	500.00	500
9	Traffic Control (Base Rock & Maldonado)	In Section F		2,000.00	-
10	Base Rock - Permits, Cutting/Demo, etc.	LS	1	500.00	500
Subtotal Part B - Domestic Water					72,246
C. STREETS					
1	Topsoil/Organics Removal	LS	1	4,500.00	4,500.00
2	Reconditioning Subgrade	LS	1	6,750.00	6,750.00
3	Geogrid Stabilization Fabric Installed (Tensor BX 1200) if needed	SY	1,500	5.00	7,500.00
4	Class 3 Aggregate Base Course Under HBP & Concrete (17")	SY	8,654	9.00	77,886.00
5	Class 6 - Aggregate Base Course Under Pavement & Concrete(9")	SY	8,654	6.50	56,251.00
6	Hot Bituminous Paving (4" thick)	SY	5,816	19.33	112,423.28
7	Hot Bituminous Paving Top Mat, Grd (2" thick)	SY	5,816	9.12	53,041.92
8	Hot Bituminous Paving, Patching (Base Rock - Water Line)	LS	1	11,165.00	11,165.00
9	7-ft Curb, Gutter and Walk	LF	2,075	18.00	37,350.00
10	7" Driveway Curb/Gutter/Sidewalk	LF	102	30.40	3,100.80
11	Concrete Intersection Fillets, V-Pan, etc.	SY	374	47.60	17,802.40
12	HC Ramps	EA	10	192.00	1,920.00
13	Street Signs w/Breakway Bases	EA	7	250.00	1,750.00
14	Pavement Markings - White Epoxy Paint	LS	1	1,200.00	1,200.00
15	Pavement Markings - Yellow Epoxy Paint	LS	1	2,500.00	2,500.00
16	Street Lights	EA	6	4,500.00	27,000.00
Subtotal Part C - Streets					422,140.40
D1 EARTHWORK					
1	Clearing and Grubbing - ROW & Lots 2,4,5,6	LS	1	2,500.00	2,500.00
2	Overlot Grading (Excavation/Embankment) Lots 2,4,5,6 (Compaction 90% Standard)	LS	1	150,526.50	150,526.50
3	Dry Utility Trenching/Exca., Backfill (95% Mod. Compaction)	LF	4,550	2.60	11,830.00
4	Dry Utility Sleeves 4" PVC - White (Mtl & Labor)	LF	1,400	2.52	3,528.00
5	Dry Utility Sleeves 4" Electrical - Gray (Mtl & Labor)	LF	700	2.52	1,764.00
D2 REMOVALS AND RESETTING					
1	Removal of Asphalt- Option to mill and use, or remove/haul	N/A	-		-
2	Removal and Demo of all Items per Sheet D-2	LS	1	2,200.00	2,200
3	Adjust Manhole	EA	4	600.00	2,400
4	Adjust Valvebox	EA	14	60.00	840

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
D3 EROSION CONTROL, SEEDING, AND SOIL RETENTION					
1	Vehicle Tracking Pad & Maintenance	EA	2	400.00	800
2	Silt Fence & Maintenance	LF	200	4.00	800
3	Temporary Berms & Maintenance	LF	1,560	1.00	1,560
4	Curb Inlet Barrier & Maintenance	EA	4	150.00	600
5	Watering (Dust Control)	LS	1	500.00	500
D4 STORM DRAINAGE FACILITIES					
1	18" Storm Drain Pipe	LF	140	48.00	6,720
2	Single Inlet	EA	4	2,400.00	9,600
Subtotal Part D - Grading and Drainage					196,168.50
E1 IRRIGATION					
E2 LANDSCAPING					
Subtotal Part E -Irrigation and Landscaping					
Subtotal Construction Costs					690,554.90
F. Miscellaneous Items					
1	Construction staking/surveying	%	2.00%	690,554.90	13,811.10
2	Developer's inspection cost	%	2.00%	690,554.90	13,811.10
3	General construction supervsn	%	4.00%	690,554.90	27,622.20
4	Quality control testing	%	2.00%	690,554.90	13,811.10
5	Construction traffic control	%	0.31%	690,554.90	2,140.72
6	City inspection fees	%		690,554.90	-
7	As-builts	%	0.50%	690,554.90	3,452.77
Subtotal Part F - Miscellaneous Items					74,648.98
% = Percentage of total site construction costs G. COST SUMMARY					
1 Total Improvement Costs					765,203.88
2 City Security (20%)					153,040.78
3 Total Guarantee Amount					\$ 918,244.66
NOTES 1. All prices shall be for items complete in place and accepted. 2. All pipe prices shall include excavation, pipe, bedding, backfill, and compaction. 3. Water main shall include pipe, excavation, bedding, backfill, bends, and appurtenances not itemized elsewhere. 4. All concrete items shall include Aggregate Base Course where required by the drawings. 5. Fill in the pipe type for irrigation pipe and sleeves. 6. Reconditioning shall be calculated to at least 6" outside of back of walk on both sides. 7. Units can be changed if desired, simply annotate what is used. 8. Additional lines or items may be added as needed.					
 Signature of Developer (If corporation, to be signed by President and attested to by Secretary together with the corporate seals.)			12/08/10 Date		
I have reviewed the estimated costs and time schedule shown above and, based on the construction drawings submitted to date and the current cost of construction, I take no exception to the above.					
 City Development Engineer			12-8-10 Date		
 Community Development			12-9-10 Date		

IRREVOCABLE LETTER OF CREDIT

City of Grand Junction
c/o Director of Public Works & Planning/Mr. Tim Moore
250 N. 5th Street
Grand Junction, CO 81501
Project Name/City File No.: PFP-2010-079

Irrevocable Letter of Credit No.: NZS671131

Dated: November 24, 2010

Expiration: November 19, 2011 subject to the automatic extensions stated below

Dear Sirs:

We hereby establish our Irrevocable Letter of Credit No.: NZS671131 in favor of the City of Grand Junction at the request and for the account of American Furniture Warehouse Co., 8820 American Way, Englewood, CO 80112, in the amount of Nine Hundred Eighteen Thousand Two Hundred Forty Four and 66/100's United States Dollars (US\$918,244.66).

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

- 1) it is effective upon signature;
- 2) it expires on November 19, 2011, subject to the automatic extensions discussed below;
- 3) this Letter of Credit is available with us at our above office by payment of your sight draft(s) drawn on us and marked "Drawn under Wells Fargo Bank, N.A. Letter of Credit No.: NZS671131 dated November 24, 2010.";
- 4) we have been informed but will not independently verify that this Letter of Credit is established for the use and benefit of the City of Grand Junction by reason of American Furniture Warehouse Co., ("Developer") being obligated to pay or perform in accordance with the provisions of the Grand Junction Zoning and Development Code. The preceding sentence is inserted in this Letter of Credit for informational purposes only and will not affect, or become a part of, the terms and conditions of this Letter of Credit);
- 5) the following statement signed by a person identifying himself or herself as an authorized designee of the City of Grand Junction must accompany the sight draft;
- 6) "The undersigned, an authorized designee of the City of Grand Junction hereby certifies that American Furniture Warehouse Co., (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

Together we'll go far



This is an integral part of Letter of Credit No. NZS671131

to construct those improvements. The City of Grand Junction therefore requests the payment of \$ _____."

- 7) this Letter of Credit expires at our above office on November 19, 2011, but shall be automatically and successively extended without written amendment, to each November 19 thereafter, unless you have received written notice sent by us to you at your address above by certified mail, return receipt requested or receipted express courier that we elect not to renew this Letter of Credit beyond the date specified in such notice, which date will be November 19, 2011 or any subsequent November 19 and be at least ninety (90) calendar days after the date you receive such notice, you may release from our obligations under this Letter of Credit prior to any expiration date by returning the original Letter of Credit to us together with your written agreement to its cancellation;
- 8) except as stated above no modifications or revocations may be made by the undersigned to this Letter of Credit without the express written approval of the City's Director of Community Development or his designee;
- 9) this Letter of Credit is neither negotiable or assignable;
- 10) partial and multiple drawings are permitted under this Letter of Credit;
- 11) we hereby agree that draft(s) 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, in person or by any other reasonable business practice on or prior to the expiration or any extension thereof of this Letter of Credit. Fax demands to fax no.: 415 296 8905 are permitted under this Letter of Credit provided however, that you must contact by telephone Well Fargo Bank, N.A.'s Letter of Credit office in San Francisco, California at telephone no. 1 800 798 2815 option 1 to confirm their receipt of the demand.
- 12) this Letter of Credit is subject to the Uniform Customs and Practice For Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600 (the "UCP") and to the extent that it does not conflict with Article 5 of the Uniform Commercial Code of the State of Colorado.
- 13) if any instructions accompanying a drawing under this Letter of Credit request that payment is to be made by transfer to an account with us or at another bank, we and/or such other bank may rely on an account number specified in such instructions even if the number identifies a person or entity different from the intended payee.

Very truly yours

Wells Fargo Bank, N.A.

By: _____

EISA CHAU

ASSISTANT VICE PRESIDENT

The original of this Letter of Credit contains an embossed seal over the Authorized Signature

**RECORDING MEMORANDUM
Exhibit D**

City of Grand Junction
Public Works and Planning Department
File: # PFP-2010-079

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 American Furniture Warehouse Co. (Developer) and the City of Grand Junction (City) pertaining to American Subdivision (Project), located at Hwy 6&50 & Maldonado St.

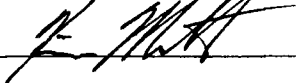
The Developer of the Project was required by law to install and construct certain public and private improvements, the completion of which was guaranteed by a Development Improvements Agreement and/or Maintenance Guarantee. The Project is required to be constructed in accordance with the approval by 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 # PFP-2010-079.

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: American Furniture Warehouse Co.

By:  12/08/10
Date

(Print Name) Kevin Michalek, General Manager

CITY OF GRAND JUNCTION:

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

 12.9.10
Public Works & Planning Department Date

Recording Fee

Date	December 9, 2010
Plan File No.	PFP-2010-079
Project Name	American Furniture Warehouse
Project Location	Highway 6&50 and Maldonado Street
Purpose of DIA	Public and private improvements
Payee Name	Sun King Management Corp./Mr. Chris Motz
Payee Mailing Address	607 25 Road, Suite 201
Payee City, State Zip Code	Grand Junction, CO 81505
Payee Telephone No.	(970) 245-9173
DIA Completion Date	8/14/2011
Project Planner	Lori Bowers
Project Engineer	Rick Dorris

ACCOUNTING INFORMATION

	AMOUNT	DATE	REFERENCE (Cash or Check)
RECORDING FEE COLLECTED	\$ 22.00	12/09/10	Cash
RECORDING FEE FOR RECORDING RECORDING MEMORANDUM	\$ 11.00		
BALANCE	\$ 11.00		

Recording Fee Account No.	Mesa County Clerk Escrow Account
----------------------------------	---



Original

— 12/9/10

Receipt # 4695

Cash for recording

Rec. Memorandum ^{511.5} +

release of Rec. Memo. ^{511.00}

Jeri



Janice Rich
 Clerk and Recorder
 544 Rood Ave
 Grand Junction, CO 81501
 (970)-244-1679

Print Date:
 12/09/2010 3:23:54 PM

Transaction #: **103253**
 Receipt #: **2010021173**
 Cashier Date: **12/09/2010 3:23:55 PM**

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

www.mesacounty.us

Customer Information	Transaction Information	Payment Summary
(CITYOFGJ) CITY OF GRAND JCT-COM DEVEL 250 NORTH 5TH STREET GRAND JUNCTION, CO 81501 Escrow Balance: \$167.00 / 68.00	Date Received: 12/09/2010 Source Code: Over The Counter Return Code: Filed Trans Type: Recording	Total Fees \$0.00 Total Payments \$21.00 22.00 Escrow Deposit \$21.00 22.00

1 Payments		
CASH	American Furniture Warehouse Deposit	\$21.00 22.00
Escrow Deposit	21	\$21.00 22.00

0 Recorded Items

0 Search Items

0 Miscellaneous Items

Mesa County Clerk accidentally entered \$21 instead of \$22. She was going to add the additional dollar but didn't want to make me wait.



Janice Rich
 Clerk and Recorder
 544 Rood Ave
 Grand Junction, CO 81501
 (970)-244-1679



Print Date:
 12/09/2010 3:25:36 PM

Transaction #: **103252**
 Receipt #: **2010021174**
 Cashier Date: **12/09/2010 3:25:36 PM**

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

www.mesacounty.us

Customer Information	Transaction Information	Payment Summary
(CITYOFGJ) CITY OF GRAND JCT-COM DEVEL 250 NORTH 5TH STREET GRAND JUNCTION, CO 81501 Escrow Balance: \$156.00 157.00	Date Received: 12/09/2010 Source Code: Over The Counter Return Code: Over The Counter Trans Type: RECORDING	Total Fees \$11.00 Total Payments \$11.00

1 Payments

ESCROW	American Furniture Warehouse Recording Memorandum	\$11.00
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1 Recorded Items

(MEMO) MEMORANDUM	BK/PG: 5098/849 Reception Number: 2556068 Date: 12/09/2010 3:25:35 PM From: To:	
Recording @ \$10 per page \$1 Surcharge	1	\$11.00

0 Search Items

0 Miscellaneous Items

August 10, 2011


Lori V. Bowers, Senior Planner
City of Grand Junction
250 N. 5th Street
Grand Junction, CO 81505

Ms. Bowers,

American Furniture Warehouse is requesting an extension of American Subdivision's DIAs (Planning File PFP-2010-079) to October 1, 2011.

Thank you,

American Furniture Warehouse



Kevin Michalek, General Manager

MAINTENANCE GUARANTEE

1 of # 2

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

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

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

RECITALS

The Developer has constructed, installed and is required to warrant and maintain certain improvements ("Improvements" or "the Improvements") which were made necessary by virtue of development on property within the City. The Property, known as American Subdivision has been reviewed and approved under Public Works & Planning file # PPF-2010-079 and as necessary or required to construe this guarantee, that file(s) is incorporated by this reference.

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

DEVELOPER'S OBLIGATION

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

4. **Security:** To secure the performance of its obligations the Developer is required to post security in an amount of \$ 161,115.98 (Line G2, Exhibit B, City Security).

#1 - 8015.20
#2 - 153,040.78

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

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

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

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

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

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

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

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

8a. As provided herein the City shall provide written notice to the Developer at the address stated in paragraph 22. Notice is and shall be deemed effective

two calendar days after mailing thereof by first class United States mail, postage prepaid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

personal obligations of the Developer and also will be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with

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

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

If to Developer: American Furniture Warehouse Co. Name -Developer/Company
 8820 American Way Address (Street and Mailing)
 Englewood, CO 80115 City, State & Zip Code
 (303) 799-9044 Telephone and Fax Numbers
 (720) 873-8600 Fax
 kmichalek@afwonline.com E-mail

If to City: Office of the City Attorney Cc: Sun King Management Corp.
 250 North 5th Street 607 25 Road, Suite #201
 Grand Junction, CO 81501 Grand Junction, CO 81505
 970-245-9173
 chris@sun-king.com

Cc: Public Works and Planning Department
 250 North 5th Street
 Grand Junction, CO 81501

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

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

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

By: American Furniture Warehouse Co.

[Signature] _____ 12/22/11 _____
Developer Date

Name (printed): Kevin Michalek _____

Title (position): General Manager _____

Attest:

[Signature] Sec/Treas _____ 12/22/11 _____
Secretary Date



City of Grand Junction

[Signature] _____ 12.29.11 _____
Project Planner Date

[Signature] _____ 12/29/11 _____
Dept. of Public Works and Planning Date

GUARANTEE2007
5/15/2007



Wells Fargo Bank, N.A.
U. S. Trade Services
Standby Letters of Credit
MAC A0195-212
One Front Street, 21st Floor
San Francisco, California 94111
Phone: 1(800) 798-2815 Option 1
E-Mail: sftrade@wellsfargo.com

Irrevocable Standby Letter Of Credit

Number : IS0008951
Issue Date : December 20, 2011

RECEIVED

DEC 23 2011

COMMUNITY DEVELOPMENT
DEPT.

APPLICANT:
AMERICAN FURNITURE WAREHOUSE
8820 AMERICAN WAY
ENGLEWOOD, COLORADO 80112

BENEFICIARY:
CITY OF GRAND JUNCTION
C/O DIRECTOR OF PUBLIC WORKS & PLANNING
250 N. 5TH STREET
GRAND JUNCTION, COLORADO 81501

LETTER OF CREDIT ISSUE AMOUNT USD 161,115.98

EXPIRY DATE: DECEMBER 20, 2012

Ladies and Gentlemen:

At the request and for the account of the above referenced applicant, we hereby issue our Irrevocable Standby Letter of Credit (the "Letter of Credit") in your favor in the amount of USD 161,115.98 (One Hundred Sixty One Thousand One Hundred Fifteen & 98/100's USD) available with us at our above office by payment against presentation of Beneficiary's signed and dated demand worded as follows (with the instructions in brackets therein complied with):

"The undersigned, an authorized representative of the City of Grand Junction hereby demands US\$ (insert amount of drawing) under Wells Fargo Bank Letter of Credit No. IS0008951 and hereby certifies that the amount demanded is due the City of Grand Junction pursuant to and in connection with the obligations of American Furniture Warehouse to the City of Grand Junction."

Multiple and partial drawing(s) are permitted under this Letter of Credit; provided, however, that the total amount of any payment(s) made under this Letter of Credit will not exceed the total amount available under this Letter of Credit.

This Letter of Credit expires at our above office on December 20, 2012.

We hereby engage with you that each draft drawn under and in compliance with the terms and conditions of this Letter of Credit will be duly honored if presented together with the documents specified in this Letter of Credit at our office located at One Front Street, 21st Floor, MAC A0195 - 212, San Francisco, CA. 94111, Attention: US Trade Services - Standby Letters of Credit on or before the above stated expiry date, or any extended expiry date if applicable.

This Irrevocable Standby Letter of Credit sets forth in full the terms of our undertaking. This undertaking

Together we'll go far



is independent of and shall not in any way be modified, amended, amplified or incorporated by reference to any document, contract or agreement referenced herein other than the stipulated ICC rules and governing laws.

CANCELLATION PRIOR TO EXPIRATION: you may return this Letter of Credit to us for cancellation prior to its expiration provided that this Letter of Credit is accompanied by your written agreement to its cancellation. Such written agreement to cancellation should specifically reference this Letter of Credit by number, clearly indicate that it is being returned for cancellation and be signed by a person identifying themselves as authorized to sign for you.

Except as otherwise expressly stated herein, this Standby Letter of Credit is subject to the International Standby Practice 1998, International Chamber of Commerce Publication No. 590, and to the extent that it does not conflict with Article 5 of the Uniform Commercial Code of the State of Colorado.

Very Truly Yours,

WELLS FARGO BANK, N.A.

By. _____

Authorized Signature

**JAI R. CHAUDHARY
VICE PRESIDENT**

The original of the Letter of Credit contains an embossed seal over the Authorized Signature.

Please direct any written correspondence or inquiries regarding this Letter of Credit, always quoting our reference number, to Wells Fargo Bank, National Association, Attn: U.S. Standby Trade Services

at either One Front Street
MAC A0195-212,
San Francisco, CA 94111

or 401 Linden Street
MAC D4004-017,
Winston-Salem, NC 27101

Phone inquiries regarding this credit should be directed to our Standby Customer Connection Professionals

1-800-798-2815 Option 1
(Hours of Operation: 8:00 a.m. PT to 5:00 p.m. PT)

1-800-776-3862 Option 2
(Hours of Operation: 8:00 a.m. EST to 5:30 p.m. EST)



January 9, 2012

Wells Fargo Bank NA
US Trade Services - Standby Letter of Credit
One Front St 21st Floor
San Francisco, CA 94111

Re: Cancellation of Letter of Credit Number NZS671131
American Furniture Warehouse
Internal Reference: American Subdivision: PR-2010-62, PFP-2010-079, DIA-2010-387

To Whom It May Concern:

Enclosed please find the original Letter of Credit Number **NZS671131** for **American Furniture Warehouse**. As beneficiary, the City of Grand Junction informs you that the Letter of Credit is being returned to you for cancellation. The letter is being provided at the direction of the Director of Public Works and Planning Department for the City.

If you have any questions, or need additional information, please inform me.

Sincerely,



Lisa E. Cox, Planning Manager

Encl. Letter of Credit **NZS671131**

EC: Mark Barslund, Development Inspector
Lori Bowers, Senior Planner
Rick Dorris, Development Engineer
Leslie Ankrum, Senior Administrative Assistant

Developer:
American Furniture Warehouse
Kevin Michalek, General Manager
8820 American Way
Englewood, CO 80112



U.S. TRADE SERVICES, NORTHERN CALIFORNIA
ONE FRONT STREET, 21ST FLOOR
SAN FRANCISCO, CALIFORNIA 94111
Contact Phone: 1(800) 798-2815 (Option 1)
Email: sftrade@wellsfargo.com

IRREVOCABLE LETTER OF CREDIT

City of Grand Junction
c/o Director of Public Works & Planning/Mr. Tim Moore
250 N. 5th Street
Grand Junction, CO 81501
Project Name/City File No.: PFP-2010-079

Irrevocable Letter of Credit No.: NZS671131

Dated: November 24, 2010

Expiration: November 19, 2011 subject to the automatic extensions stated below

Dear Sirs:

We hereby establish our Irrevocable Letter of Credit No.: NZS671131 in favor of the City of Grand Junction at the request and for the account of American Furniture Warehouse Co., 8820 American Way, Englewood, CO 80112, in the amount of Nine Hundred Eighteen Thousand Two Hundred Forty Four and 66/100's United States Dollars (US\$918,244.66).

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

- 1) it is effective upon signature;
- 2) it expires on November 19, 2011, subject to the automatic extensions discussed below;
- 3) this Letter of Credit is available with us at our above office by payment of your sight draft(s) drawn on us and marked "Drawn under Wells Fargo Bank, N.A. Letter of Credit No.: NZS671131 dated November 24, 2010.";
- 4) we have been informed but will not independently verify that this Letter of Credit is established for the use and benefit of the City of Grand Junction by reason of American Furniture Warehouse Co., ("Developer") being obligated to pay or perform in accordance with the provisions of the Grand Junction Zoning and Development Code. The preceding sentence is inserted in this Letter of Credit for informational purposes only and will not affect, or become a part of, the terms and conditions of this Letter of Credit);
- 5) the following statement signed by a person identifying himself or herself as an authorized designee of the City of Grand Junction must accompany the sight draft;
- 6) "The undersigned, an authorized designee of the City of Grand Junction hereby certifies that American Furniture Warehouse Co., (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

Together we'll go far



This is an integral part of Letter of Credit No. NZS671131

to construct those improvements. The City of Grand Junction therefore requests the payment of \$ _____.”

- 7) this Letter of Credit expires at our above office on November 19, 2011, but shall be automatically and successively extended without written amendment, to each November 19 thereafter, unless you have received written notice sent by us to you at your address above by certified mail, return receipt requested or receipted express courier that we elect not to renew this Letter of Credit beyond the date specified in such notice, which date will be November 19, 2011 or any subsequent November 19 and be at least ninety (90) calendar days after the date you receive such notice, you may release from our obligations under this Letter of Credit prior to any expiration date by returning the original Letter of Credit to us together with your written agreement to its cancellation;
- 8) except as stated above no modifications or revocations may be made by the undersigned to this Letter of Credit without the express written approval of the City's Director of Community Development or his designee;
- 9) this Letter of Credit is neither negotiable or assignable;
- 10) partial and multiple drawings are permitted under this Letter of Credit;
- 11) we hereby agree that draft(s) 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, in person or by any other reasonable business practice on or prior to the expiration or any extension thereof of this Letter of Credit. Fax demands to fax no.: 415 296 8905 are permitted under this Letter of Credit provided however, that you must contact by telephone Wells Fargo Bank, N.A.'s Letter of Credit office in San Francisco, California at telephone no. 1 800 798 2815 option 1 to confirm their receipt of the demand.
- 12) this Letter of Credit is subject to the Uniform Customs and Practice For Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600 (the "UCP") and to the extent that it does not conflict with Article 5 of the Uniform Commercial Code of the State of Colorado.
- 13) if any instructions accompanying a drawing under this Letter of Credit request that payment is to be made by transfer to an account with us or at another bank, we and/or such other bank may rely on an account number specified in such instructions even if the number identifies a person or entity different from the intended payee.

Very truly yours

Wells Fargo Bank, N.A.

By: 

EISA CHAU

ASSISTANT VICE PRESIDENT

The original of this Letter of Credit contains an embossed seal over the Authorized Signature



PUBLIC WORKS & PLANNING

January 12, 2012

American Furniture Warehouse
Attn: Mr. Kevin Michalek, General Manager
8820 American Way
Englewood, CO 80112

**RE: Notice of Initial Acceptance -
Project Name: American Subdivision
Project Number: PR-2010-62
Plan Number: DIA-2010-387**

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

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

Date of Maintenance Guarantee:	12/20/2011
Maintenance Guarantee Type:	Letter of Credit
Maintenance Guarantee Amount:	\$153,040.78

Sincerely,

A handwritten signature in blue ink that reads "Rick Dorris".

Rick Dorris, PE, CFM
Development Engineer

EC: Mark Barslund, Development Inspector
Lori Bowers, Senior Planner
Leslie Ankrum, Senior Administrative Assistant
Chris Spears, Storm Sewer Supervisor
Dan Thome, Street System Supervisor
Ron Key, Water System Supervisor

December 19, 2012

American Furniture Warehouse
Attn: Mr. Kevin Michalek, General Manager
8820 American Way
Englewood, CO 80112

RE: Notice of Final Acceptance
Project Name: American Furniture Warehouse #2
Plan Number: PFP-2010-079
DIA Number: DIA-2010-387

The City has conducted a warranty inspection of the Project and any needed follow-up inspections. The public infrastructure improvements have been found to be in satisfactory condition. All requirements for Final Acceptance of the Project have been fulfilled. The Developer's warranty obligations, for all materials and workmanship, have concluded and are hereby released.

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

Public streets:

- All public streets as shown on the project plan.

Storm drainage system:

- All storm drain pipes within ROW.

Water distribution system:

- All water mains and valves within public ROW.

Sanitary sewer:

- N/A. See Notice of Final Acceptance, DIA-2010-163.

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

Sincerely,



Rick Dorris, PE, CFM
Development Engineer

EC: Mark Barslund, Development Inspector
Lori Bowers, Senior Planner
Larry Brown, Waste Water Maintenance Supervisor
Leslie Ankrum, Senior Administrative Assistant
Chris Spears, Streets Supervisor
Dan Thorne, Streets System
Ron Key, Water Distribution System
Darren Starr, Streets Manager

December 19, 2012

Wells Fargo Bank, N.A.
U.S. Trade Services – Standby Letter of Credit
One Front Street, 21st Floor
San Francisco, CA 94111

Re: Cancellation of Letter of Credit Number IS0008951
American Furniture Warehouse
Internal Reference: American Furniture Warehouse: PFP-2010-079, DIA-2010-163
American Furniture Warehouse #2: PFP-2010-079, DIA-2010-387

To Whom It May Concern:

Enclosed please find the original Letter of Credit Number **IS0008951** for **American Furniture Warehouse**. As beneficiary, the City of Grand Junction informs you that the Letter of Credit is being returned to you for cancellation. The letter is being provided at the direction of the Director of Public Works and Planning Department for the City.

If you have any questions, or need additional information, please inform me.

Sincerely,



Lisa E. Cox, Planning Manager

Encl. Letter of Credit **IS0008951**

EC: Leslie Ankrum, Senior Administrative Assistant
Mark Barslund, Development Inspector
Lori Bowers, Senior Planner
Rick Dorris, Development Engineer

Developer:
American Furniture Warehouse
Attn: Mr. Kevin Michalek, General Manager
8820 American Way
Englewood, CO 80112

Irrevocable Standby Letter Of CreditNumber : IS0008951
Issue Date : December 20, 2011**RECEIVED**

DEC 23 2011

**COMMUNITY DEVELOPMENT
DEPT.**APPLICANT:
AMERICAN FURNITURE WAREHOUSE
8820 AMERICAN WAY
ENGLEWOOD, COLORADO 80112BENEFICIARY:
CITY OF GRAND JUNCTION
C/O DIRECTOR OF PUBLIC WORKS & PLANNING
250 N. 5TH STREET
GRAND JUNCTION, COLORADO 81501

LETTER OF CREDIT ISSUE AMOUNT USD 161,115.98

EXPIRY DATE: DECEMBER 20, 2012

Ladies and Gentlemen:

At the request and for the account of the above referenced applicant, we hereby issue our Irrevocable Standby Letter of Credit (the "Letter of Credit") in your favor in the amount of USD 161,115.98 (One Hundred Sixty One Thousand One Hundred Fifteen & 98/100's USD) available with us at our above office by payment against presentation of Beneficiary's signed and dated demand worded as follows (with the instructions in brackets therein complied with):

"The undersigned, an authorized representative of the City of Grand Junction hereby demands US\$ {insert amount of drawing} under Wells Fargo Bank Letter of Credit No. IS0008951 and hereby certifies that the amount demanded is due the City of Grand Junction pursuant to and in connection with the obligations of American Furniture Warehouse to the City of Grand Junction."

Multiple and partial drawing(s) are permitted under this Letter of Credit; provided, however, that the total amount of any payment(s) made under this Letter of Credit will not exceed the total amount available under this Letter of Credit.

This Letter of Credit expires at our above office on December 20, 2012.

We hereby engage with you that each draft drawn under and in compliance with the terms and conditions of this Letter of Credit will be duly honored if presented together with the documents specified in this Letter of Credit at our office located at One Front Street, 21st Floor, MAC A0195 - 212, San Francisco, CA. 94111, Attention: US Trade Services - Standby Letters of Credit on or before the above stated expiry date, or any extended expiry date if applicable.

This Irrevocable Standby Letter of Credit sets forth in full the terms of our undertaking. This undertaking

Together we'll go far

is independent of and shall not in any way be modified, amended, amplified or incorporated by reference to any document, contract or agreement referenced herein other than the stipulated ICC rules and governing laws.

CANCELLATION PRIOR TO EXPIRATION: you may return this Letter of Credit to us for cancellation prior to its expiration provided that this Letter of Credit is accompanied by your written agreement to its cancellation. Such written agreement to cancellation should specifically reference this Letter of Credit by number, clearly indicate that it is being returned for cancellation and be signed by a person identifying themselves as authorized to sign for you.

Except as otherwise expressly stated herein, this Standby Letter of Credit is subject to the International Standby Practice 1998, International Chamber of Commerce Publication No. 590, and to the extent that it does not conflict with Article 5 of the Uniform Commercial Code of the State of Colorado.

Very Truly Yours,

WELLS FARGO BANK, N.A.

By. _____

Authorized Signature

**JAI R. CHAUDHARY
VICE PRESIDENT**

The original of the Letter of Credit contains an embossed seal over the Authorized Signature.

Please direct any written correspondence or inquiries regarding this Letter of Credit, always quoting our reference number, to Wells Fargo Bank, National Association, Attn: U.S. Standby Trade Services

at either One Front Street
MAC A0195-212,
San Francisco, CA 94111

or 401 Linden Street
MAC D4004-017,
Winston-Salem, NC 27101

Phone inquiries regarding this credit should be directed to our Standby Customer Connection Professionals

1-800-798-2815 Option 1
(Hours of Operation: 8:00 a.m. PT to 5:00 p.m. PT)

1-800-776-3862 Option 2
(Hours of Operation: 8:00 a.m. EST to 5:30 p.m. EST)



RELEASE OF RECORDING MEMORANDUM
City of Grand Junction
Public Works & Planning Department
Plan: PFP-2010-079
DIA-2010-387

This Release relates to a Recording Memorandum dated December 9, 2010, by and between American Furniture Warehouse Co., (Developer) and the City of Grand Junction, pertaining to American Subdivision on (Project), located at Hwy 6 & 50 and Maldonado Street, Grand Junction, CO, recorded at Book 5098, Page 849, Mesa County Clerk and Recorder's Office.

WHEREAS, the Developer has installed and constructed certain public and private improvements at and for the Project, which completion was guaranteed by the execution of a Development Improvements Agreement and/or Maintenance Guarantee and provision of a Guarantee, and;

WHEREAS, the City of Grand Junction and other agencies possessing authority over the Project, and/or the improvements, have inspected the improvements and have accepted the same.

NOW THEREFORE, officials of the City of Grand Junction, duly representing their agencies, possessing and representing by their signatures affixed hereto, that they possess sufficient authority to accept improvements and may release the Development Improvements Agreement and/or Maintenance Guarantee, pertaining to the improvements under their jurisdiction, do accept, sign and release said Development Improvements Agreement and/or Maintenance Guarantee.

City Engineer:

Rich Davis

Date:

12-19-12

City Planner:

Jay V. Brown

Date:

12/19/12

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

Lisa Cox

Public Works & Planning Department

12-19-2012

Date

The foregoing instrument was executed before me this 19th day of December, 2012, by Lisa Cox, of the Public Works & Planning Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

Leslie G. Ankrum

Leslie G. Ankrum, Notary Public



My Commission Expires 08/21/2013

My commission expires on 8/21/2013



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



Print Date:
 12/19/2012 2:33:06 PM

Transaction #: 153271
 Receipt #: 2012047280
 Cashier Date: 12/19/2012 2:33:06 PM

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

www.mesacounty.us

Customer Information	Transaction Information	Payment Summary
(CITYOFGJ) CITY OF GRAND JCT COM DEVELOP 250 N 5TH ST GRAND JCT, CO 81501 Escrow Balance: \$50.00	Date Received: 12/19/2012 Source Code: Over The Counter Return Code: Over The Counter Trans Type: Recording	Total Fees \$22.00 Total Payments \$22.00

1 Payments	
ESCROW	\$22.00

2 Recorded Items	
<i>DFP-2010-079</i>	
<i>Release AFW# MA-2010-387</i>	
(MEMO) MEMORANDUM	BK/PG: 5405/36 Reception Number: 2637670 Date: 12/19/2012 2:33:06 PM From: To:
Recording @ \$10 per page \$1 Surcharge	1 \$11.00
<i>Release AFW MA-2010-163</i>	
(MEMO) MEMORANDUM	BK/PG: 5405/37 Reception Number: 2637671 Date: 12/19/2012 2:33:06 PM From: To:
Recording @ \$10 per page \$1 Surcharge	1 \$11.00

0 Search Items

0 Miscellaneous Items
