

<b>TYPE OF RECORD:</b>	<b>PERMANENT</b>
<b>CATEGORY OF RECORD:</b>	<b>DEVELOPMENT IMPROVEMENTS AGREEMENT</b>
<b>NAME OF CONTRACTOR:</b>	<b>BRIGHTSTAR REDLANDS MESA INVESTMENT, LLC</b>
<b>PROJECT/SUBDIVISION:</b>	<b>REDLANDS MESA FILING 9</b>
<b>ADDRESS:</b>	<b>2299 W RIDGES BLVD</b>
<b>TAX PARCEL NO:</b>	<b>2945-202-46-016</b>
<b>FILE NUMBER:</b>	<b>SUB-2011-1052</b>
<b>CITY DEPARTMENT:</b>	<b>PUBLIC WORKS AND PLANNING</b>
<b>YEAR:</b>	<b>2012</b>
<b>EXPIRATION DATE:</b>	<b>NONE</b>
<b>DESTRUCTION DATE:</b>	<b>NONE</b>

## DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are BrightStar Redlands Mesa Investment, 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 Redlands Mesa Filing 9 has been reviewed and approved under Planning # SUB-2011-1052 ("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 \$ 59,965.15 (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 X

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

6. **Warranty:** The Developer shall warrant the Improvements for one year following Acceptance by the City. "Warrant" or "Warranty" as used herein means the Developer shall take such steps and incur such costs as may be needed so that the Improvements or any portion or phase thereof as repaired and/or replaced, shall comply with the Development's construction plans and/or site plan, City standards and specifications at the end of the warranty period. The Developer shall warrant each repaired and/or replaced Improvement or any portion or phase thereof for one year following Acceptance of such repair and/or replacement.

6a. Upon Acceptance the Developer shall provide a Maintenance Guarantee in an amount of \$ 9,994.19 (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: May 15, 2012  
Completion Date: May 15, 2013

**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 \$ 49,970.96 (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:	<u>BrightStar Redlands Mesa Investment LLC</u>	Name -Developer/Company
	<u>2175 Salk Avenue</u>	Address (Street and Mailing)
	<u>Suite 160</u>	
	<u>Carlsbad, CA, 92008</u>	City, State & Zip Code
	<u>720-929-9968</u>	Telephone and Fax Numbers
	<u>760-454-2499</u>	
	<u>wdkeogh@brightstargolf.com</u>	E-mail

Cc:

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

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

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

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

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

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

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

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

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

30c. The City shall not issue its written Acceptance with regard to any Improvement(s) including any street, storm drainage facility, sewer, water facility or other required Improvement(s), until the Developer:

- (i) furnishes to the City Engineer as-built drawings in reproducible form, blue line stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests required by City specification;
- (ii) provides written evidence to the City Engineer under signature of a qualified expert



that the earth, soils, lands and surfaces upon in and under which the Improvement(s) have been constructed or which are necessary for the Improvements are free from toxic, hazardous and other regulated substances or materials;  
(iii) provides written evidence to the City Attorney that the title to lands underlying the Improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney; and  
(iv) provides written evidence, certified by the Developer's engineer, that the work was systematically inspected and tested and that the materials and the compaction of the materials that are required to be compacted, were in conformance with City-approved plans and specifications.

By:



4-30-12

Developer

Date

William D. Keogh, Manager

Name (printed)

Corporate Attest:



5.2.12

Name

Date

City of Grand Junction

250 North Fifth Street

Grand Junction, CO 81501



5/2/12

Public Works & Planning Dept.

Date

5/15/2007



Type legal description below.

**EXHIBIT A**

REDLANDS MESA FILING 9

A REPLAT OF BLOCK 8, REDLANDS MESA FILING 1 (Reception #1957570), CITY OF GRAND JUNCTION  
S1/2 NW1/4 Section 20, Township 1 South, Range 1 West, Ute Meridian

## EXHIBIT B

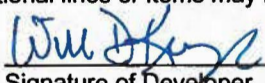
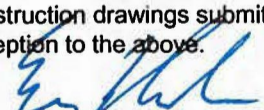

### IMPROVEMENTS COST ESTIMATE

DATE: April 04, 2012  
 DEVELOPMENT NAME: Redlands Mesa Filing 9  
 LOCATION: Grand Junction, Colorado

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>A. SANITARY SEWER</b>					
1	8" SDR-35 PVC Main	LF	300	\$ 25.00	\$ 7,500.00
2	4" C900 Force Main	EA			\$ -
3	4" SDR-35 Service Line	LF	178	\$ 20.00	\$ 3,560.00
4	4" Service Tap	EA	7	\$ 200.00	\$ 1,400.00
5	Standard Manhole	EA	1	\$ 2,500.00	\$ 2,500.00
6	Drop Manhole	EA			\$ -
7	Connect to Existing Manhole	EA	1	\$ 500.00	\$ 500.00
8	Concrete Encasement	LF			\$ -
9	Epoxy Coat Manhole	EA			\$ -
10	8" Cap	EA			\$ -
11	4" Cap	EA			\$ -
<b>Subtotal Part A Sanitary Sewer</b>					<b>\$ 15,460.00</b>
<b>B. DOMESTIC WATER</b>					
1	8" C900 CL150 Main	LF			\$ -
2	4" C900 CL150 Main	LF			\$ -
3	8" Gatevalve	EA			\$ -
4	4" Gatevalve	EA			\$ -
5	8" Fittings (Including Thrustblocks)	EA			\$ -
6	3/4" Air Release Valve and Vault	EA			\$ -
7	8" Cap (Including Thrustblock)	EA			\$ -
8	4" Cap (Including Thrustblock)	EA			\$ -
9	Services	EA	7	\$ 750.00	\$ 5,250.00
10	3/4" Copper Service Line	LF			\$ -
11	Fire Hydrant with Valve	EA			\$ -
12	4'x6' Concrete Vault	EA	2	\$ 3,500.00	\$ 7,000.00
13	2" Tap	EA	2	\$ 3,000.00	\$ 6,000.00
<b>Subtotal Part B - Domestic Water</b>					<b>\$ 18,250.00</b>
<b>C1 STREETS (Private)</b>					
1	Subgrade Prep	SY	121	\$ 2.00	\$ 242.00
2	20" Class 6 Aggregate Base Course	SY			\$ -
3	10" Class 6 Aggregate Base Course	SY	43	\$ 12.00	\$ 516.00
4	7" Class 6 Aggregate Base Course	SY			\$ -
5	6" Class 6 Aggregate Base Course (Under Concrete Only)	SY			\$ -
6	4" Hot Bituminous Paving, Grading	SY	43	\$ 12.00	\$ 516.00
7	6.5' Mount. Curb, Gutter & Sidewalk	LF			\$ -
8	3' Mountable Curb & Gutter	LF	5	\$ 18.00	\$ 90.00
9	2' Vertical Curb & Gutter	LF	76	\$ 12.00	\$ 912.00
10	8" Thick Concrete Corners & Ramps	SY	35	\$ 35.00	\$ 1,225.00
11	6" Thick Concrete For Mail Facility	SY			\$ -
12	10' Detached Concrete Sidewalk (4")	LF	31	\$ 24.00	\$ 744.00
13	Rock Retaining Walls	FF			\$ -
14	Stop Signs	EA	1	\$ 500.00	\$ 500.00
15	Street Signs (Mount on Stop)	EA			\$ -
16	Street Lights	EA			\$ -
17	End of Road Markers	EA			\$ -
18	Traffic Control	LS			\$ -
<b>Subtotal Part C - Streets and Bridges</b>					<b>\$ 4,745.00</b>

<b>D1</b>	<b>EARTHWORK</b>					
1	Mobilization	LS			\$	-
2	Clearing and Grubbing	SY				
3	Unclassified Excavation (Unadjusted)	CY	20	\$ 6.00	\$	120.00
4	Unclassified Embankment (Unadjusted)	CY			\$	-
5	On-site Spoil (Unadjusted)	CY				
6	Watering (Dust Control)	LS			\$	-
7	Silt Fence/Berm	LF				
8	Outlet Trap	EA				
9	Inlet Protection	EA				
10	Straw Bails	LF				
11	Mud Traps	EA				
12	Straw Rolls	LF				
13	Maintenance	LS				
<b>D2</b>	<b>REMOVALS AND RESETTING</b>					
1	Removal of Asphalt	SY	26	\$ 5.00	\$	130.00
2	Removal of Miscellaneous Concrete	SY	86	\$ 10.00	\$	860.00
3	Remove Curb and Gutter	LF	63	\$ 4.00	\$	252.00
4	Removal of Culverts	LF			\$	-
5	Remove Structures & Landscaping	LS	1	\$ 1,250.00	\$	1,250.00
6	Remove Signs	EA			\$	-
7	Remove Fence	LF			\$	-
8	Adjust Manhole	EA	1	\$ 250.00	\$	250.00
9	Adjust Valvebox	EA			\$	-
10	Relocate or Adjust Utilities (Remove Svc)	LS	1	\$ 1,000.00	\$	1,000.00
<b>D3</b>	<b>SEEDING AND SOIL RETENTION</b>					
1	Sod	SY			\$	-
2	Seeding (Native)	AC			\$	-
3	Seeding (Bluegrass/Lawn)	SY or AC			\$	-
4	Hydraulic Seed and Mulching	SY or AC			\$	-
5	Soil Retention Blanket	SY			\$	-
<b>D4</b>	<b>STORM DRAINAGE FACILITIES</b>					
1	Finish Grading (incl. Channels, Swales, and Ponds)	LS	1	\$ 1,000.00	\$	1,000.00
2	12" HDPE	LF			\$	-
3	18" HDPE	LF			\$	-
4	12" Concrete Flared End Section	EA			\$	-
5	18" Concrete Flared End Section	EA			\$	-
6	48" Storm Drain Manhole	EA			\$	-
7	Single Curb Opening Storm Drain Inlet	EA			\$	-
8	6" Rip-Rap	SF			\$	-
9	12" Rip-Rap	SF			\$	-
	<b>Subtotal Part D - Grading and Drainage</b>				<b>\$</b>	<b>4,862.00</b>
<b>E1</b>	<b>IRRIGATION</b>					
1	6" Class 200 IPS Irrigation Pipe	LF			\$	-
2	1.5" Class 200 IPS Irrigation Pipe	LF			\$	-
3	1" Service Pipe	LF			\$	-
4	4" Class 200 Sleeve	LF			\$	-
5	6" Fitting With Thrust Block	EA			\$	-
6	2" Fitting With Thrust Block	EA			\$	-
7	Service Riser	EA			\$	-
8	6" Gate Valve	EA			\$	-
9	1.5" Gate Valve	EA			\$	-
10	3/4" Air Release Valve	EA			\$	-
<b>E2</b>	<b>LANDSCAPING</b>					



1	Design/Architecture	LS			\$	-
2	Earthwork	CY			\$	-
3	Hardscape Features	LS			\$	-
4	Plant Material & Planting	LS	1	\$ 1,000.00	\$	1,000.00
5	Irrigation System	LS	1	\$ 500.00	\$	500.00
6	Curbing	LF			\$	-
7	Retaining Walls & Structures	LS			\$	-
8	1 Year Maintenance Agrmnt.	LS			\$	-
9	Topsoil	SY			\$	-
					\$	-
					\$	-
<b>E</b>	<b>Subtotal Part E - Landscaping and Irrigation</b>				<b>\$</b>	<b>1,500.00</b>
	<b>Subtotal Construction Costs</b>				<b>\$</b>	<b>44,817.00</b>
<b>F.</b>	<b>Miscellaneous Items</b>					
1	Construction staking/surveying	%	3.00%	\$ 44,817.00	\$	1,344.51
2	Developer's inspection cost	%	1.00%	\$ 44,817.00	\$	448.17
3	General construction supervsn	%	3.00%	\$ 44,817.00	\$	1,344.51
4	Quality control testing	%	2.00%	\$ 44,817.00	\$	896.34
5	Construction traffic control	%			\$	-
6	City inspection fees	%	0.50%	\$ 44,817.00	\$	224.09
7	As-builts	%	2.00%	\$ 44,817.00	\$	896.34
8	Dry Utility Trenching	LF		\$ 30.00	\$	-
9	Dry Utility Sleeves	LF		\$ 12.00	\$	-
	% = Percentage of total site construction costs					
<b>E</b>	<b>Subtotal Part F - Miscellaneous Items</b>				<b>\$</b>	<b>5,153.96</b>
<b>G.</b>	<b>COST SUMMARY</b>					
<b>1</b>	<b>Total Improvement Costs</b>				<b>\$</b>	<b>49,970.96</b>
<b>2</b>	<b>City Security (20%)</b>				<b>\$</b>	<b>9,994.19</b>
<b>3</b>	<b>Total Guarantee Amount</b>				<b>\$</b>	<b>59,965.15</b>
<b>NOTES</b>						
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.						
 <u>4-30-12</u>						
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.						
 <u>5/2/12</u>						
City Development Engineer Date						
 <u>5.2.12</u>						
Community Development Date						

**DISBURSEMENT AGREEMENT**  
**(Improvements Guarantee)**

**DEVELOPER:** BrightStar Redlands Mesa Investment LLC

**BANK:** Alpine Bank

**PROPERTY:** Parcel 3, Filing 9, Redlands Mesa, Grand Junction

**DISBURSEMENT AMOUNT:** For the construction of improvements to the Property in an amount not to exceed \$ 59,965.15.

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

**RECITALS**

Developer has been required by the City to construct certain improvements to public infrastructure per Filing 9 Plat ("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 \$ 59,965.15, 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 William Keogh 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 24<sup>th</sup> day of April, 2012.

Alpine Bank

By:   
Aaron Miller, Executive Vice President

225 North 5<sup>th</sup> St, Grand Junction, CO 81501

BrightStar Redlands, Mesa Investment LLC

By:   
William Keogh, Manager

2175 Salk Ave., Suite 160, Carlsbad, CA 92008

CITY OF GRAND JUNCTION

By:   
Director of Public Works & Planning

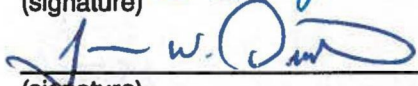
Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between BrightStar Redlands Mesa Investment LLC Developer, Alpine Bank as Bank, and the City of Grand Junction, the following are the individuals authorized to sign written requests for the disbursement of the Funds:

**DEVELOPER:**

William Keogh  
(name)

  
(signature)

Jim Dierker  
(name)

  
(signature)

n/a  
(name)

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

**DEVELOPER'S GENERAL CONTRACTOR:**

n/a  
(name)

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

**DEVELOPER'S PROJECT ENGINEER:**

n/a  
(name)

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

**DEVELOPER'S ARCHITECT:**

n/a  
(name)

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

**CITY ENGINEER:**

ERIC HAHN  
(name)

  
(signature)



**RECORDING MEMORANDUM**

**Exhibit D**

City of Grand Junction  
Public Works and Planning Department

File Number: **SUB-2011-1052**

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 **BrightStar Redlands Mesa Investment, LLC** (Developer) and the City of Grand Junction (City) pertaining to **Redlands Mesa Filing 9** (Project), located at **2299 West Ridges Blvd., Grand Junction, CO**

The Developer of the Project was required by law to install and construct certain public and private improvements, the completion of which was guaranteed by a Development Improvements Agreement and/or Maintenance Guarantee. The Project is required to be constructed in accordance with the approval by the City pursuant to and in accordance with the Zoning and Development Code all as more fully detailed and described in City of Grand Junction development file number **SUB-2011-1052**

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: 4-30-12

Type Name: **William D. Keogh, 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 North 5<sup>th</sup> Street, Grand Junction Colorado.

\_\_\_\_\_  
Public Works and Planning Department

Date: \_\_\_\_\_

5/2/12

# Recording Fee

<b>Date</b>	May 2, 2012
<b>Plan File No.</b>	SUB-2011-1052
<b>Project Name</b>	Redlands Mesa Filing 9
<b>Project Location</b>	2299 West Ridges Blvd
<b>Purpose of DIA</b>	Public and private improvements
<b>Payee Name</b>	BrightStar Redlands Mesa Investment, LLC
<b>Payee Mailing Address</b>	2175 Salk Avenue, Suite 160
<b>Payee City, State Zip Code</b>	Carlsbad, CA 92008
<b>Payee Telephone No.</b>	(720) 929-9968
<b>DIA Completion Date</b>	5/15/2013
<b>Project Planner</b>	Lori Bowers
<b>Project Engineer</b>	Eric Hahn

## ACCOUNTING INFORMATION

	AMOUNT	DATE	REFERENCE (Cash or Check)
<b>RECORDING FEE COLLECTED</b>	\$ 22.00	05/02/12	Check #13687
<b>RECORDING FEE FOR RECORDING RECORDING MEMORANDUM</b>	\$ 11.00	05/04/12	
<b>RECORDING FEE FOR RECORDING RELEASE OF RECORDING MEMORANDUM</b>	\$ -		
<b>BALANCE</b>	\$ 11.00		

**Recording Fee Account No.**

**Mesa County Clerk Escrow Account**

13687

Invoice #	Description	Date	Amount	Discount	Total Paid
050212	Recording Fees Plat	5/2/12	33.00		33.00

\$11.00 plat  
 \$11.00 Recording Memorandum  
 \$11.00 Release of Recording Memorandum

Memo: Redlands Mesa 9 - 0356-035  
 Date: 5/2/12 Ck#: 13687 Payee: Mesa County Clerk & Recorder \$33.00



744 HORIZON COURT, SUITE 110  
 GRAND JUNCTION, CO 81506  
 970-241-4722

HOME LOAN STATE BANK  
 205 North 4th Street  
 Grand Junction, CO 81501

Check No: 13687  
 DATE  
 13687  
 82-8867/3021  
 02

Memo: Redlands Mesa 9 - 0356-035

May 2, 2012

AMOUNT

Thirty-Three and 00/100 Dollars

\$ 33.00

PAY  
 TO THE  
 ORDER  
 OF:

Mesa County Clerk & Recorder  
 PO Box 20000  
 Grand Junction, CO 81502-5007

*A. Shus*  
 AUTHORIZED SIGNATURE





**DEVELOPMENT IMPROVEMENTS AGREEMENT EXTENSION**

**Extension of Completion Date for the DIA**

**Name of Project: Parcel 3, Filing 9, Redlands Mesa, Grand Junction**

**Planning File #: SUB-2011-1052**

An extension of the Completion Date for the Development Improvements Agreement ("DIA") is being requested for the project captioned above. The completion date set forth in the DIA is April 24, 2013. Additional time is needed to complete the required

improvements. It is requested that the Completion Date be extended an additional

Select one: six months to October 24, 2013. The necessary bank, issuer or disburser has acknowledged and consented to the extension of the letter of credit or disbursement agreement as requested. (No bank/issuer/disperser signature is required if the security is cash.)

Developer: BrightStar Redlands Mesa Investment LLC

William D. Keogh

Signature

STATE OF California COLORADO )

COUNTY OF San Diego MESA ) SS )



Acknowledged before me and subscribed in my presence by Arthea Cook  
as Notary for William D. Keogh on this 18<sup>th</sup> day of  
March, 2013.

Witness my hand and seal.

My commission expires: June 21, 2016

Arthea Cook

Notary Public

Bank, issuer or disburser's acknowledgment and consent to extension of security for the DIA:

Alpine Bank  
Company/Bank

Aaron Miller  
Print Name

Executive VP  
Title

City of Grand Junction - Public Works & Planning

Jan V. Bowen  
Project Manager

[Signature]  
Signature

3/19/13  
Date

[Signature]  
Development Engineer



10/28/2003

REQUEST FOR DISBURSEMENT AND APPLICATION FOR PAYMENT NO. 1

To: BRIGHTSTAR REDLANDS MESA, for work at PARCEL 3, FILING 7 REDLANDS accomplished  
(owner) INVESTMENT LLC (Project) MESA, GRAND JUNCTION  
through the date of 6/20/13 by KANS CONSTRUCTION, LLC as follows or attach an itemized list.  
(Subcontractor)

CONTRACTOR'S Certification: KANS CONSTRUCTION, LLC (subcontractor) certifies that all progress payments received from OWNERS on account of Work done under the Work Agreement referred to above have been applied to discharge in full all obligations of KANS CONSTRUCTION, LLC (subcontractor) incurred in connection with the Work covered by this Application For Payment Number 1 inclusive; AND title to all materials and equipment incorporated in said Work or otherwise listed in or covered by this Application For Payment will pass to OWNERS at time of final acceptance of project free and clear of all liens, claims, security interests and encumbrances.

Dated 6/20, 2013  
KANS CONSTRUCTION, LLC (subcontractor)  
By: [Signature]  
Title: Managing member

Per paragraph 2(a) of the disbursement agreement for PARCEL 3, FILING 7 (Project), the signatures below certify 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.

PROJECT ENGINEER / MANAGER'S RECOMMENDATION: This Application (with any accompanying documentation) meets the requirements of the Contract Documents and payment of the above Current Payment Due is recommended.

Dated JUNE 25, 2013 Name: RIVER CITY CONSULTANTS INC.  
By: [Signature]

CITY OF GRAND JUNCTION RECOMMENDATIONS: This Application (with accompanying documentation) meets the requirements of the Development Improvements Agreement and payment of the above Current Payment Due is recommended.

Dated JULY 2, 2013  
CITY OF GRAND JUNCTION  
By: [Signature]  
Title: CITY DEVELOPMENT ENGINEER

OWNER'S Acceptance: This application (with accompanying documentation) is accepted and payment of the above Current Payment Due is recommended.

Dated 7-2, 2013 Company: Brightstar Redlands Mesa Investment LLC  
By & Title: Will J. Koyl, Manager

As a part of the process of filing a Request for Disbursement, the Developer must provide the following information:

1. Developer shall submit a spreadsheet that shows all line items presented in Exhibit B of the accepted Development Improvements Agreement (DIA), and shall indicate the payment status of each line item. The payment status shall be indicated by one of the following: Paid, Current Request to be Paid, Work Not Completed. The Developer shall not submit a Request for Disbursement for items not included in the accepted DIA.
2. Developer shall submit a copy of the enclosed Development Improvements Agreement Disbursement Log and Authorization form with the requested disbursement amounts entered in the appropriate columns.




## DEVELOPMENT IMPROVEMENTS AGREEMENT DISBURSEMENT LOG AND AUTHORIZATION

**PROJECT:** Redlands Mesa - Filing 9 (SUB-2011-1052)  
**DEVELOPER:** Brightstar Redlands Mesa Investment, LLC  
**ESCROW AGENCY:** Alpine Bank

**DIA NOT RECORDED:**  
**DIA RECORDED:**   x    
 Book - \_\_\_\_\_  
 Page - \_\_\_\_\_

DATE	BY	A) Sanitary Sewer	B) Domestic Water	C) Streets & Bridges	D) Grading & Drainage	E) Landscape & Irrigation	F) Misc. Items	City Security (20%)	TOTAL
<b>Original Amount</b>									
		\$15,460.00	\$18,250.00	\$4,745.00	\$4,862.00	\$1,500.00	\$5,153.96	\$9,994.19	\$59,965.15
<b>Disbursements</b>									
2-Jul-13	ewh	\$15,460.00	\$18,250.00		\$4,862.00		\$4,257.61		\$42,829.61
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
<b>Total Disbursed</b>		\$15,460.00	\$18,250.00	\$0.00	\$4,862.00	\$0.00	\$4,257.61	\$0.00	\$42,829.61
<b>Remaining Balance</b>		\$0.00	\$0.00	\$4,745.00	\$0.00	\$1,500.00	\$896.35	\$9,994.19	\$17,135.54

The City of Grand Junction, Community Development Department hereby authorizes the Escrow Agency to release up to \$42,829.61, including all previous payments, to the Developer for work completed on the Project.

Signature:   
 Name: Eric Hahn

Date: 7/2/13  
 Title: City Development Engineer

Kaus Construction, LLC

120 Desert Vista Ct  
 Whitewater, CO 81527  
 (970) 234-1236

# Invoice

Date	Invoice #
6/6/2013	48

<b>Bill To</b>
DAVID WECKERLY davidweckerly@gmail.com FILING 9 REDLANDS MESA

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
7	5/10/13 START SEWER HOE/SKID	165.00	1,155.00
9	5/13/13 DIG TO HOE REFUSAL AND WATER DIRT. HOE/ WATER TRUCK	165.00	1,485.00
8	5/14/13 GOT HAMMER MACHINE STARTED ON SEWER. HOE/ HAMMER/SKID	165.00	1,320.00
10	5/15/13 HAMMER/SKID/HOE	200.00	2,000.00
8.5	5/16/13 " "	200.00	1,700.00
9.5	5/17/13 " "	200.00	1,900.00
9	5/20/13 " "	200.00	1,800.00
9	5/21/13 " "	200.00	1,800.00
8	5/22/13 " "	200.00	1,600.00
8.5	5/23/13 " "	200.00	1,700.00
9	5/24/13 " "	100.00	900.00
6	5/27/13 " "	200.00	1,200.00
8	5/28/13 FINNISH LAST SERVICE AND PRE-PRESSURE TEST LINE	80.00	640.00
10	5/29/13 PROCESS MATERIAL AND START BACKFILL. HOE/WATER TRUCK/ROLLER	165.00	1,650.00
8	5/30/13 " "	165.00	1,320.00
8.5	5/31/13 " "	165.00	1,402.50
8.5	6/3/13 FINNISH BACKFILL TO START WATER	165.00	1,402.50
	PIPE MATERIALS	3,400.00	3,400.00
	GRAVEL FOR BEDDING PIPE	1,800.00	1,800.00
	HAMMER MACHINE RENTAL	12,000.00	12,000.00
	ROLLER RENTAL	1,200.00	1,200.00

Payable upon receipt within 30 days. Finance charge of 10% minimum \$10.00

**Total** \$43,375.00

Kaus Construction, LLC

120 Desert Vista Ct  
 Whitewater, CO 81527  
 (970) 234-1236

# Invoice

Date	Invoice #
6/20/2013	49

<b>Bill To</b>
DAVID WECKERLY davidweckerly@gmail.com FILING 9 REDLANDS MESA

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
9	6/4/13 SORT ROCKS AND PROCESS MATERIAL	165.00	1,485.00
9.5	6/5/13 FINNISH SORTING ROCKS AND START TRENCHING WATER LINE	165.00	1,567.50
9.5	6/6/13 DIG WATER LINE AND HAMMER ROCK	200.00	1,900.00
8.5	6/7/13 LAY WATER LINE THAT WE DUG. NEEDED PERMITS FOR STREET ( THOUGHT U PROVIDED)	165.00	1,402.50
9	6/10/13 LAYED MORE WATER LINE AS FAR AS WE COULD AND CHASE PERMITS/BONDING	165.00	1,485.00
10	6/11/13 DUG AND EXPOSED WATER LINE IN STREET FOR TAPS	165.00	1,650.00
12	6/12/13 RUN PIPE AND GET INSPECTIONS FROM UTE WATER	165.00	1,980.00
8.5	6/13/13 FLOWFILL IN STREET AND FINNISH DIGGING WATER LINE TRENCH	165.00	1,402.50
10	6/14/13 PROCESS AND BACKFILL WATER LINES LAYED	165.00	1,650.00
10	6/17/13 PROCESS AND BACKFILL WATER LINE AND START GRADING ROAD	165.00	1,650.00
7	6/18/13 FINNISH ROAD AND HAUL OUT CONCRETE	165.00	1,155.00
	GRAVEL FOR BEDDING	460.00	460.00
	PIPE MATERIALS	6,570.00	6,570.00
	HAMMER MACHINE	4,000.00	4,000.00

Payable upon receipt within 30 days. Finance charge of 10% minimum \$10.00

**Total** \$28,357.50





October 16, 2013

Mr. David Weckerly  
BrightStar Redlands Mesa Investment LLC  
2325 West Ridges Blvd.  
Grand Junction, Colorado 81507

RE: Initial Acceptance  
Project Name: Redlands Mesa Subdivision, Filing 9  
Project Number: SUB-2011-1052

Mr. Weckerly,

As the Developer of the referenced Project, you are hereby notified that the requirements for Initial Acceptance of the public infrastructure associated with the Project have been fulfilled. The Developer is responsible for all materials and workmanship for the public infrastructure improvements constructed or installed as part of the Project for one year following the Initial Acceptance date. Additionally, any 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 above improvements 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 under the warranty, the Maintenance Agreement and the full financial guarantee may be extended by one year from the date the item is repaired or replaced.

Initial Acceptance date: **September 1, 2013.**

Amount of financial security for the Maintenance Guarantee: **\$9,994.19.**

Sincerely,

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

Eric Hahn, PE  
City of Grand Junction

EC: Eric Hahn, City Development Engineer  
Mark Barslund, Development Inspector  
David Priske, Ute Water <dpriske@utewater.org>

Lori Bowers, Senior Planner  
Leslie Ankrum, Senior Administrative Assistant

## MAINTENANCE GUARANTEE

1. **Parties:** The parties to this Maintenance Guarantee ("the Guarantee" or "Guarantee") are **BrightStar Redlands Mesa Investment, LLC** ("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

**Parcel 3 Filing 9, Redlands Mesa, Grand Junction** has been reviewed and approved under Public Works & Planning file number and as necessary or required to construe this guarantee, that file(s) is/are incorporated by this reference.

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

### DEVELOPER'S OBLIGATION

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

4. **Security:** To secure the performance of its obligations the Developer is required to post security in an amount of **\$9,994.19** (Line G2, Exhibit B, City Security).

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

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



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

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

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

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

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

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

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

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

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

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

months from the date of acceptance of the Improvements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<b>If to Developer:</b>	<b>BrightStar Redlands Mesa Investment LLC 2299 West Ridges Blvd  Grand Junction, CO 81507 970 255 7400 n/a davidweckeriy@gmail.com</b>	<b>Name/Developer/Company (continued) Address (Street and Mailing) Address (continued) City, State &amp; Zip Code Telephone Number Fax Number E-mail Address</b>
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**If to City:** Office of the City Attorney  
250 North 5th Street  
  
Grand Junction, CO 81501

**CC:** Public Works & Planning Department  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501

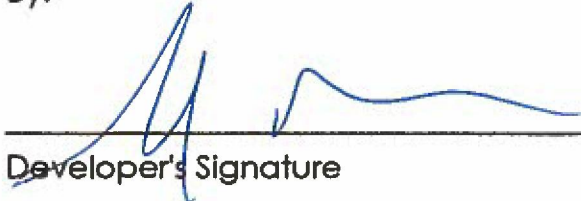
**23. Recordation:** Developer will pay for all costs to record a memorandum of this guarantee in the Clerk and Recorder's Office of Mesa County, Colorado.

**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:

  
\_\_\_\_\_

Developer's Signature

Developer's Name: David Weckerly  
Title (position): Project Manager

Date: 9-24-13

Corporate Attest:

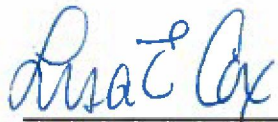
\_\_\_\_\_  
Signature

Date:

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

  
\_\_\_\_\_  
Project Planner Signature

Date: 10/1/13

  
\_\_\_\_\_

Public Works & Planning Dept. Signature

Date: 10-1-2013

**ADDENDUM TO DISBURSEMENT AGREEMENT**

**DEVELOPER:** BrightStar Redlands Mesa Investment LLC

**BANK:** Alpine Bank

**PROPERTY:** Parcel 3, Filing 9, Redlands Mesa, Grand Junction

This Addendum to the Disbursement Agreement is entered into by and between BrightStar Redlands Mesa Investment LLC (Developer), Alpine Bank (Bank) and the City of Grand Junction (City).

**RECITALS**

In connection with the development of the Property referenced above, Developer has completed construction of certain public improvements required by the Zoning and Development Code and that certain Development Improvements Agreement between the City and Developer (DIA).

In accordance with the DIA, Developer has entered into that certain Maintenance Guarantee, attached hereto and incorporated herein as if fully set forth.

The Parties desire to extend the Disbursement Agreement to the Maintenance Guarantee and to apply those funds to secure said Maintenance Guarantee.

**THEREFORE, the Parties agree as follows:**

Bank shall hold in trust \$9,994.19 (Line G2, Exhibit B, City Security) ("Maintenance Funds") of the funds held pursuant to the Disbursement Agreement to secure Developer's obligations under the Maintenance Guarantee and under the maintenance provisions of the DIA.

No Maintenance Funds shall be advanced to the Developer. Correction of defects by the Developer shall be at Developer's expense in accordance with the Maintenance Guarantee and the maintenance provisions of the DIA.

City releases its interest in and rights to funds remaining in the disbursement account except for the Maintenance Funds. City may demand in writing Maintenance Funds upon Developer's failure or refusal to timely correct or repair defects or deficiencies in the improvements in accordance with the Maintenance Guarantee. Bank shall advance Maintenance Funds to the City in accordance with City's written demand.

All Bank Promises, Disbursement Procedures and other terms of the Disbursement Agreement not expressly modified hereby remain in force and effect.

Dated this 9th day of Oct., 2013.

Alpine Bank

225 N 5<sup>th</sup> St, Grand Junction CO 81501

  
\_\_\_\_\_  
Aaron Miller, Executive Vice President

BrightStar Redlands Mesa Investment LLC 2325 W. Ridges Blvd, Grand Junction CO 81507

  
\_\_\_\_\_  
David Weckerty, Managing Consultant

City of Grand Junction

250 N 5<sup>th</sup> St Grand Junction CO 81501

  
\_\_\_\_\_  
Lisa Cox, Planning Manager



**Mary Sparks - Redlands Mesa - Filing 9 - Warranty Inspection Checklist**

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**From:** Eric Hahn  
**To:** weckerly', 'david  
**Date:** 8/13/2014 2:47 PM  
**Subject:** Redlands Mesa - Filing 9 - Warranty Inspection Checklist  
**CC:** Barslund, Mark; Bowers, Lori; Doug Thies; Mary Sparks  
**Attachments:** Redlands Mesa - Filing 9 - Warranty Inspection Checklist.pdf

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Mr. Weckerly,

Please see the attached punchlist. A hardcopy will not follow.

Please respond to this email, to verify receipt.

Eric Hahn, PE  
Public Works & Planning Dept.  
City of Grand Junction  
(970) 244-1443

## Warranty Inspection Checklist

Date: August 13, 2014  
Project Number: SUB-2011-1052  
Project Name: Redlands Mesa, Filing 9  
Developer / Rep.: Brightstar Redlands Mesa Investment LLC (David Weckerly)  
Development Engineer: Eric Hahn

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The one-year warranty period for this filing expires on September 1, 2014. A warranty inspection was conducted on August 12, 2014. The following deficiencies were noted during the inspection and shall be corrected by the Developer:

1. Repair the cracked fillet on the west side of the access. Contact Mark Barslund (201-1362) to discuss the scope of this work and work out the details.
2. Repair the cracked handicap ramp on the east side of the access. Contact Mark Barslund (201-1362) to discuss the scope of this work and work out the details.
3. Check rubber-neck in all sewer manholes, trim as necessary. Clean both manholes.

The Developer shall notify the Development Engineer when all of the deficiencies have been corrected. The Development Engineer and/or the Development Inspector will conduct a follow up inspection.