AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Development Improvements Agreement; Link, LLC; Lan

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: BOCC and Link, LLC

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Attached please find the Development Improvements Agreement for Vista Business Center. A 90 day temporary security proposed is in the form of a Deed of Trust for Vista Business Center. Please see attached. After 90 days security will be replaced in a monetary form such as a bond, LOC or cash.

Fiscal Impact:

Submitted by: Office of the County Attorney **Submitter's Email Address:** rmagruder@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 4/27/2016

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok - gs

Reveiwed by: GUNCOUNTY1\gstuhr Discharge Date: 4/29/2016 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 4/30/2016

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: 5 minutes

Agenda Date: 5/3/2016

Revised April 2015

DEVELOPMENT IMPROVEMENTS AGREEMENT

THIS DEVELOPMENT IMPROVEMENTS AGREEMENT ("Agreement") is entered into this 3rd day of May, 2016 by and between the Board of County Commissioners of the County of Gunnison, Colorado, whose address is 200 E. Virginia, Gunnison, Colorado 81230 ("Gunnison County") and Link, LLC, a Colorado limited liability company, whose address is 1641 County Road 771, Ohio City, Colorado 81237 ("Developer").

1. Purpose. The Developer has submitted to Gunnison County the Developer's application for Land Use Change Permit No: 2011-35 regarding the development of Vista Business Center, a commercial and industrial park consisting of thirteen lots, each approximately 1.1 to 2.6 acres in size (the "Project"). The Project is located in the NW1/4SW1/4 and the SW1/4NW1/4, Section 3, Township 49 North, Range 1 East, N.M.P.M., as identified on the plat titled "Plat of Vista Business Center Being Located in the NW1/4SW1/4 and the SW1/4NW1/4, Section 3, Township 49 North, Range 1 East, New Mexico Principal Meridian Gunnison County, Colorado", prepared by NCW & Associates, Inc., dated March 8, 2016 and recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on April 22, 2016, bearing Reception No: 639021.

As valuable and sufficient consideration for this Agreement, Gunnison County and the Developer agree that approval of such application by Gunnison County is expressly conditioned on completion of the improvements described in paragraph 7 below (the "Improvements") to the specifications described herein and by the times specified herein. Gunnison County and the Developer further agree that such Improvements are appropriate and necessary requirements to be required by Gunnison County, and to be performed by the Developer and which Developer shall perform. Gunnison County and Developer further agree that an agreement guaranteeing the Developer's performance secured by suitable security to protect the interests of Gunnison County, and the public in the amount set forth herein is an appropriate condition to Gunnison County's approval of such Land Use Change Permit. The parties have entered into this Agreement to memorialize such understandings and agreements. The relationship of the parties to this Agreement is contractual; Developer is an independent contractor and is not an agent of Gunnison County.

2. Developer Bound. The Developer agrees to accept and be bound by the terms and conditions for Gunnison County's issuance of its approval of the Land Use Change Permit No: 2011-35 and the terms and conditions of this Agreement. Developer accepts Gunnison County's review and permitting authority, process and performance of same in connection with Land Use Change No: 2011-35, as legal and valid and waives any defect therein.

3. Construction.

A. The Developer agrees to complete construction of Improvements, excluding the Phase 2 Improvements for the Deceleration Lane as identified in paragraph 7 below and Appendix A attached hereto ("Phase 2 Improvements"), within the Project in the locations and in accordance with the specifications as identified in paragraph 7 herein, by no later than October 31, 2017. Phase 2 Improvements shall be constructed in the locations and in accordance with the specifications as identified in paragraph 7 herein no later than one year after the purchase date of the eighth lot within the Project.

Acts of God and any cause beyond the reasonable control of the Developer excepted, including without limitation labor disputes, laws, regulations, or orders of any governmental entity, orders of court, inability to obtain any required authorization, act of war or conditions arising out of or attributable to war, riot, civil strike, insurrection or rebellion, fire, explosion, earthquake, storm, flood or other adverse weather condition, delay or failure by suppliers or materialmen, contractors, or subcontractors, shortage of or inability to obtain labor, supplies or materials.

B. The completion deadlines set forth in this paragraph 3 may be extended by Gunnison County in its sole discretion upon written request of Developer if Gunnison County determines that: (1) such extension of time will not operate to the detriment of Gunnison County, the public or the owners of property within the Project; and (2) Gunnison County's security is adequate to ensure full performance by Developer by the extended completion date; and (3) that such an extension would not be in conflict with the conditions of the approved Land Use Change Permit. Gunnison County may require Developer to provide, at Developer's cost, supplemental estimates by Developer's engineer of the costs of completion and to provide additional security as a prerequisite to its extension of any completion date. Any extended completion date granted by Gunnison County hereunder may be further extended in like manner.

C. Each contract entered into by Developer for construction of the Improvements shall provide that Gunnison County is a third party beneficiary with all rights to enforce such contracts in place of Developer in the event of a default by Developer. Developer shall provide to Gunnison County a copy of each such contract upon its execution.

D. Gunnison County reserves the right not to permit construction of any building in the Project prior to full completion of the Improvements described in paragraph 7 herein.

4. Estimated Cost. The total cost of the Improvements to be constructed by the Developer is estimated currently to be Two Hundred Seventy Five Thousand One Hundred Sixty Four and 91/100 U.S. Dollars ($275,164.91) plus a contingency amount.

5. Security. In order to secure all obligations of the Developer herein, the Developer and Gunnison County agree that the Developer shall, at Developer's sole cost, and before starting work on any phase of the Project or Improvements, and before conveying any portion of the Project, obtain and provide to Gunnison County either cash, a bond, an irrevocable letter of credit or other performance guarantee in a form and content satisfactory to Gunnison County to the benefit of Gunnison County in the amount of Three Hundred Forty Three Thousand Nine Hundred Fifty Six and 13/100 U.S. Dollars ($343,956.13) which is 125 percent of the currently estimated cost of the Improvements to include a reasonable contingency amount. If said security is in the form of cash, it will be placed by Gunnison County in an interest bearing account; the interest shall accrue to Developer at 1% less than received by Gunnison County.

Gunnison County agrees to accept as temporary security, sufficient to allow starting work on the Improvements, a first position deed of trust on the property where the Project is located, as described in Paragraph 1, above. Within ninety (90) days from the date this Agreement is entered into, such deed of trust shall be replaced by security in the form of cash, a bond, an irrevocable letter of credit, or other performance guarantee in a form and content satisfactory to Gunnison County, and until such deed of trust is so replaced, Developer shall not convey any portion of the Project.

During the time that Gunnison County holds such temporary security, and in the event that Developer defaults under this Agreement:

A. Gunnison County shall have the right in its sole discretion and in addition to each other remedy provided in this Agreement, to sell all or a portion of the Project to guarantee completion of the Improvements; and

B. Developer shall not sell, convey or hypothecate all or any portion of the Project.

If the contract(s) provided to Gunnison County pursuant to paragraph 3C indicate a substantially different total cost than estimated in paragraph 4, the amount of security may be increased or decreased. For the purposes of this paragraph 5, substantial is defined as 10 percent or more.

Pending full performance of all of the terms and conditions hereof by the Developer, Gunnison County shall retain said security and shall remain the beneficiary of such security. In the event of any uncured default hereunder Gunnison County in its sole discretion, and without any other authority required, may draw upon said security up to the full amount of Three Hundred Forty Three Thousand Nine Hundred Fifty Six and 13/100

U.S. Dollars ($343,956.13), upon presentation by Gunnison County to the issuer of a written statement by Gunnison County that such uncured default exists. Upon timely performance of all terms and conditions hereof, said security shall be tendered by Gunnison County to the Developer, except as provided in paragraph 7C.

6. Certification.

A. Engineer.

I. Not later than October 31, 2017, a registered Colorado engineer retained by the Developer at its expense shall certify to Gunnison County whether the Developer's construction obligations regarding the Improvements, excluding construction of Phase 2 Improvements, under this agreement have been fully and faithfully performed according to design and time specifications. Upon receipt by the Office of the County Attorney of such certification and receipt of a complete paper and two (2) electronic copies of road and utility as-built specifications and drawings, Gunnison County shall review the same and shall make an independent judgment whether to accept the same in the sole discretion of Gunnison County.

II. Within one year following the purchase date of the eighth lot within the Project, a registered Colorado engineer retained by the Developer at its expense shall certify to Gunnison County whether the Developer's construction obligations regarding Phase 2 Improvements under this agreement have been fully and faithfully performed according to design and time specifications. Upon receipt by the Office of the County Attorney of such certification and receipt of a complete paper and two electronic copies of as-built specifications and drawings, Gunnison County shall review the same and shall make an independent judgment whether to accept the same in the sole discretion of Gunnison County.

III. Developer agrees not to cover or otherwise prevent inspection of the Improvements constructed hereunder until Developer's engineer and Gunnison County's representative have had reasonable opportunity to inspect such Improvements.

B. Developer.

I. Not later than October 31, 2017, Developer shall provide to Gunnison County Attorney a sworn affidavit, signed by the Developer's authorized representative, that the Improvements, excluding the Phase 2 Improvements, completed have been paid for, in full, by the Developer.

II. Not later than one year following the purchase date of the eighth lot within

the Project, Developer shall provide to Gunnison County Attorney a sworn affidavit, signed by the Developer's authorized representative, that Phase 2 Improvements completed have been paid for, in full, by the Developer.

III. The Developer shall be responsible for the information so provided. Said written certifications will be reviewed by Gunnison County, but Gunnison County shall have no responsibility or liability to any party regarding the veracity of the information so provided.

7. Scope of Work.

A. The scope of work to be done by the Developer shall include, but not be limited to:

1. All items listed on the two page cost estimate titled, "Vista Business Center Infrastructure Engineer's Cost Estimate", prepared by NCW & Associates, Inc., dated April 5, 2016, attached hereto and incorporated herein by reference as Appendix "A," as further described and illustrated in the plans titled:

   a. "Site Plan, Boundaries and Easements", prepared by NCW & Associates, Inc., dated March 31, 2015; and

   b. "Site Plan, Water Quality, Grading and Drainage", prepared by NCW & Associates, Inc., dated March 31, 2015; and

   c. "Site Plan, Erosion Control and Reclamation", prepared by NCW & Associates, Inc., dated March 31, 2015; and

   d. "Site Plan, Landscaping", prepared by NCW & Associations, Inc., dated March 31, 2015; and

   e. "Utility Plan", prepared by NCW & Associates, Inc., dated March 31, 2015, as modified to run electrical utilities from Industrial Park Road along the northern boundary (rather than the southern boundary) of Lot 2; and

   f. "Plan and Profiles, Vista Drive", prepared by NCW & Associates, Inc., dated January 28, 2016; and

   g. "Plan and Profiles, Vista Drive and Vader Lane", prepared by NCW & Associates, Inc., dated January 28, 2016; and

   h. "Plat of Vista Business Center Being Located in the NW1/4SW1/4 and the SW1/4NW1/4, Section 3, Township 49

North, Range 1 East, New Mexico Principal Meridian Gunnison County, Colorado", prepared by NCW & Associates, Inc., dated March 8, 2016; and

2. The terms and conditions of the Reclamation Permit for Vista Business Center and to include noxious weed control to the satisfaction and approval of Gunnison County Weed Coordinator; and

3. Those conditions cited by the Planning Commission and approved by the Board of County Commissioners of the County of Gunnison, Colorado, for Land Use Change Permit No: 2011-35.

B. The conditions of this Agreement and Land Use Change Permit No: 2011-35 are such that if the obligations hereunder of the Developer are well, truly, faithfully and timely performed by Developer, inspected and certified to by the Developer's engineer, and such performance is accepted by Gunnison County in Gunnison County's sole discretion, the Developer's obligations to Gunnison County under this Agreement except as set forth in 7C below shall be at an end; otherwise such conditions and obligations shall remain in full force and effect.

C. For a period of one year from and after the completion and acceptance by Gunnison County of Improvements, excluding the Phase II Improvements, described in paragraph 7A above, Developer shall, at its own expense, make all needed repairs and replacements to such work as shall, in Gunnison County's reasonable opinion, become necessary. Gunnison County shall have the right to retain up to Fifty Thousand Two Hundred Eighty Four and 23/100 U.S. Dollars ($50,284.23) of the security for up to one year following the acceptance of Improvements, excluding the Phase II Improvements, as security to ensure such repair and replacement.

Gunnison County shall have the right to retain up to Fifty Nine Thousand Four Hundred Thirty Nine and 20/100 U.S. Dollars ($59,439.20) until completion and acceptance by Gunnison County of the Phase 2 Improvements. For a period of one year from and after the completion and acceptance by Gunnison County of the Phase 2 Improvements, Developer shall, at its own expense, make all needed repairs and replacements to such work as shall, in Gunnison County's reasonable opinion, become necessary. Gunnison County shall have the right to retain up to Eleven Thousand Eight Hundred Eighty Seven and 84/100 U.S. Dollars ($ 11,887.84) of the security for up to one year following the acceptance of the Phase 2 Improvements, as security to ensure such repair and replacement.

Gunnison County shall have the right to retain all of the Landscaping and Reclamation costs plus 25% contingency in the amount of Thirty Three Thousand

Ninety Five and 75/100 U.S. Dollars ($33,095.75) for a two year period after completion of initial reclamation efforts to ensure the disturbed areas have been reclaimed to Gunnison County's satisfaction.

8. Partial Release of Security.

A. Gunnison County recognizes that as work proceeds upon the Improvements, Gunnison County's need for security shall be reduced. Accordingly, Gunnison County may make a reasonable partial release of the security to be delivered to Gunnison County pursuant to paragraph 5 herein upon receipt of a written certification by Developer's engineer stating the estimated cost of remaining completion; upon receipt of such certification, Gunnison County shall review the same and shall make an independent judgment whether to accept the same in the sole discretion of Gunnison County. If Gunnison County does make a partial release, Gunnison County shall retain security equal to: (a) 125 percent of such estimated cost of remaining completion of Improvements plus 25 percent of the original estimated cost of the Improvements; and (b) all the estimated costs of all of the Reclamation; and shall release the balance of all security held by Gunnison County.

Without limiting the generality of the foregoing provision, Gunnison County shall make a partial release of the security upon acceptance of the Improvements, excluding the Phase 2 Improvements, in accordance with paragraph 6.A.I., above. The amount released shall be the full security, less the amounts that Gunnison County has reserved the right to retain in paragraph 7.C, above, such amounts to be released in accordance with paragraph 7.C, above.

B. Upon Developer's entering into a contract or contracts for construction of Improvements hereunder, Developer and Gunnison County may negotiate an addendum to this Agreement setting forth such reasonable schedule for partial releases of the security in accordance with the anticipated construction schedule. In such circumstance, Gunnison County shall designate and authorize Gunnison County Manager to make the partial release(s) hereunder after consultation with appropriate Gunnison County staff.

9. Developer's Default. In the event of any default hereunder by the Developer, Gunnison County shall give notice to the Developer specifying the nature of such default, which notice shall be given by facsimile transmission or by certified mail with return receipt requested addressed to the Developer at: 1641 County Road 771, Ohio City, Colorado 81237 and to Developer's bond company, Allstar Surety Company, Inc. at PO Box 500698, Atlanta, GA 31150. In the event the Developer does not remedy such default to the satisfaction of Gunnison County within 14 days following such notice, Gunnison County may elect, in its discretion to exercise all remedies available to it, including but not limited to:

A. To specifically enforce the terms and conditions of this Agreement;

B. To draw upon or otherwise obtain the benefit of the security;

C. To exercise any other rights and obtain any other remedies provided by law;

D. To obtain from the Developer either an extension of Gunnison County's security hereunder to guarantee the completion of the Improvements only on the conditions: (1) that suitable additional security is provided to Gunnison County to guarantee the construction of said Improvements within the new time period determined by Gunnison County; and (2) that Gunnison County determines that it would not be detrimental to the interest of Gunnison County, the public or the owners of property within the Project to allow such extension; and (3) that Gunnison County determines that it would not be in conflict with the conditions of the approved Land Use Change Permit.

E. To engage a manager to supervise the completion of improvements as identified herein. The costs incurred for hiring a manager shall be the responsibility of the Developer and may be withdrawn by Gunnison County from the security. Furthermore, all Gunnison County staff time spent thereafter on this Project shall be calculated at an hourly rate and shall be charged to the Developer and may be withdrawn from security.

10. Notice. All notices and other communications required or permitted under this Agreement shall be in writing and shall be, as determined by the person giving such notice, either hand delivered, mailed by registered or certified mail, return receipt requested or by facsimile communication to the required party at the following addresses:

Gunnison County:	Board of Gunnison County Commissioners of the County of Gunnison, Colorado c/o Gunnison County Attorney 200 East Virginia Gunnison, CO 81230 Fax No: 970-641-7696
Developer:	Link, LLC 1641 County Road 771 Ohio City, Colorado 81237
With a copy to:	Allstar Surety Company, Inc. PO Box 500698 Atlanta, GA 31150.

11. Recording of Agreement. Upon its execution, this Agreement shall be recorded by the Developer and shall be a covenant running with the property herein described in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

12. Retention of Police Powers. Gunnison County retains the power and right to impose additional requirements upon Developer with regard to the Project if the failure to do so would place the public or owners of property within the Project in a perilous condition, or in the event of substantially changed conditions; that is, nothing in this Agreement is or shall be construed to be a bargaining away of Gunnison County's police power.

13. Transfer or Assignment. No transfer or assignment of any of the rights or obligations of the Developer under this Agreement shall be permitted without prior written approval of Gunnison County which approval shall not unreasonably be withheld.

14. Title and Authority. The Developer expressly warrants and represents to Gunnison County that it is the record owner of the real property constituting the Project, and further represents and warrants, that the undersigned individual has full power and authority to enter into this Agreement. The Developer understands that Gunnison County is relying on such representations and warranties in entering into this Agreement.

15. Litigation. Nothing contained herein shall prevent either party from obtaining a judicial determination of the violation of its rights hereunder; provided however, that written notice to the other party advising the other party of the alleged violation, and advising that in the event the matter is not resolved by the parties within 14 days thereafter, shall be a condition precedent to the commencement of any litigation.

16. Time of Essence. It is mutually agreed that time of performance is an essential part of this Agreement and that all terms, covenants and conditions herein shall extend to and become obligatory upon the successors and assigns of the respective parties hereto.

17. Venue and Choice of Law. This Agreement is entered into in Gunnison County, Colorado and it is agreed that the exclusive jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Agreement shall be in the District Court of Gunnison County, Colorado. The exclusive choice of law pertaining to this transaction shall be that of the State of Colorado without giving effect to Colorado choice of law principles.

18. Severability. If any term or provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement and the terms and provisions thereof shall not be affected thereby and all other terms and provisions of this Agreement shall be valid and enforceable to the full extent permitted by law.

19. Hold Harmless Clause. The Developer shall indemnify, defend and hold harmless Gunnison County, its officials, employees and agents from and against liability for

damages, injury or death which may arise from the direct or indirect operations of the owner, Developer, contractors or subcontractors, which relate to the Project.

20. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto.

21. Entire Agreement. This Agreement contains the entire and only Agreement between the parties regarding development improvements, and no oral statements or representations not contained in this Agreement shall be of any force and effect between the parties. This Agreement shall not be modified or amended in any manner except by written instrument executed by the parties.

IN WITNESS WHEREOF the parties have executed this Agreement the date first above written.

BOARD OF GUNNISON COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Paula Swenson, Chairperson

ATTEST:

_____
Deputy Gunnison County Clerk

LINK, LLC,
a Colorado limited liability company

By: _____
Hal Hearne, President

STATE OF COLORADO)
)ss.
COUNTY OF GUNNISON)

The foregoing instrument was acknowledged before me this 29th day of April, 2016, by Hal Hearne, President of Link, LLC, a Colorado limited liability company, Developer herein.

Witness my hand and seal.
My commission expires: 6/25/2017.

AGNES KRONERAFF JOHNSON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #20134039223
My Commission Expires June 25, 2017

_____
Notary Public
Address:

Vista Business Center
Infrastructure
Engineer's Cost Estimate 4/5/16

Earthwork - Existing Grade to Finished Grade			Unit	Units	Unit Cost	Total Cost
Cut	Pond		9,081	cy	1.40	12,713.40
	Top Soil	Pond	3,967	cy	1.40	5,553.80
	Top Soil	Road	4,267	cy	1.50	6,400.00
Fill	Berm		2,028	cy	1.40	2,839.20
	Road		8,259	cy	1.90	15,691.47
	Final Grading		1,064	cy	1.80	1,915.20
Roadway and Path Structure						
Class 6 Base			1,927	ton	14.50	27,941.50
Clean Fines			240	ton	7.25	1,740.00
Utilities						
Electric and Phone Trench			2,628	lf	1.75	4,599.00
Electric conduit and equipment			1	ls	36913.76	36,913.76
Phone Boxes			6	ea	100.00	600.00
Landscaping / Reclamation						
Cottonwood		4"+	37	ea	370.00	13,690.00
Spruce		6'+	12	ea	230.00	2,760.00
Bushes			21	ea	40.00	840.00
Reclamation			130,145	sf	0.04	5,205.80
Erosion logs			1,590	lf	1.60	2,544.00
Miscellaneous						
Pond liner			59,879	sf	0.33	19,760.00
Culvert		18"	205.00	lf	22.00	4,510.00
Flared end		18"	2	ea	150.00	300.00
PVC		4"	460	lf	2.50	1,150.00
PVC		6"	10	lf	3.50	35.00
Valve Gate		4"	1	ea	800.00	800.00
Dry hydrant			2	ea	1350	2,700.00
Entrance Sign			1	ea	2000.00	2,000.00
						173,202.13
Construction Staking and Observation						4,330.00
Contingency					10%	17,320.00
			Project Total			$ 194,852.13

COLORADO LICENSED PE AND PLS NORMAN C. WHITEHEAD 27739 4/5/16

Prepared By:
Norman C. Whitehead, P.E. -P.L.S.
NCW & Associates, Inc. Crested Butte, CO 81224

APPENDIX A

Vista Business Center
Deceleration Lane
Engineer's Cost Estimate

4/5/16

Phase I - At time of Vista infrastructure construction

Earthwork

		Unit	Units	Unit Cost	Total Cost
Traffic Control		1	ls	3700	3,700.00
Erosion Control		840	lf	2.75	2,310.00
Remove Fence		1	ls	275.00	275.00
Strip		273	cy	5.25	1,433.25
Culvert - CMP 24"		20	lf	33.00	660.00
Embankment		3,718	cy	3.50	13,013.00
Base Coarse Class 6	6 in	232	cy	16.50	3,828.00
Top Soil		220	cy	1.40	307.37
Seeding & Mulch		17960	sf	0.08	1,436.80
Soil Testing		1	ls	1650.00	1,650.00
					28,613.42
					1,287.00
				10%	2,861.00
			Phase I Total		$ 32,761.42

Phase II - After defined no. of lots developed

Pavement

Traffic Control			1	ls	3200	3,200.00
Strip topsoil			25	cy	7.25	181.61
Milling			742	lf	2.25	1,669.50
HBP	6 in	539 sy	178	ton	150.00	26,680.50
HBP	3 in	138 sy	23	ton	150.00	3,415.50
Striping - remove			300	lf	2.00	600.00
Striping	8 in		551	lf	2.75	1,515.25
Striping	4 in		848	lf	2.50	2,120.00
Backfill			24	cy	27.00	648.00
Soil Testing			1	ls	1500.00	1,500.00
						41,530.36
Construction Staking and Observation						1,868.00
Contingency					10%	4,153.00
				Phase II Total		$ 47,551.36

Project Total $ 80,312.77

Prepared By:

Norman C. Whitehead, P.E. -P.L.S.
NCW & Associates, Inc. Crested Butte, CO 81224

DEED OF TRUST

THIS DEED OF TRUST is made this _____ day of April, 2016, between Link, LLC, a Colorado limited liability company (Link), whose address is 1641 County Road 771, Ohio City, CO 81237; and the Public Trustee of the County in which the Property (see § 1) is situated (Trustee); for the benefit of the Board of County Commissioners of Gunnison County, Colorado (BOCC), whose address is 200 E. Virginia Ave., Gunnison, CO 81230.

Link and BOCC covenant and agree as follows:

1. **Property in Trust.** Link, in consideration of the indebtedness herein recited and the trust herein created, hereby grants and conveys to Trustee in trust, with power of sale, the following legally described property located in the County of Gunnison, State of Colorado:

Vista Business Center, according to the official plat thereof, recorded April 22, 2016 at Reception No. 639021 (Plat), together with all its appurtenances (Property).

2. **Payment of Performance Guarantee; Other Obligations Secured.** This Deed of Trust is given to secure to BOCC:

2.1. The deposit of a performance guarantee in a form and content satisfactory to Gunnison County to the benefit of Gunnison County in the amount of Three Hundred Forty Three Thousand Nine Hundred Fifty Six and 13/100 U.S. Dollars ($343,956.13) (the "Performance Guarantee"), in accordance with that certain Development Improvements Agreement dated _____, 2016 between Link and BOCC, such Performance Guarantee to be deposited within 90 days of the date of this Deed of Trust, and until such deposit is made, to secure the performance, by Link, of all other obligations set forth in the Development Improvements Agreement;

2.2. The payment of all sums, with interest thereon at 10% per annum, disbursed by BOCC in accordance with this Deed of Trust to protect the security of this Deed of Trust; and

2.3. The performance of the covenants and agreements of Link herein contained.

3. **Restriction on Sale of Lots**. Link shall not sell, convey or hypothecate the Property or any lot shown on the Plat until this Deed of Trust has been released.

4. **Title.** Link covenants that Link owns and has the right to grant and convey the Property, and warrants title to the same, subject to general real estate taxes for the current year, easements of record or in existence, and recorded declarations, restrictions, reservations and covenants, matters shown on the Plat, and the lifetime lease of the Outlot granted to W.K. Edwards.

5. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Link shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may have or attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any, in the manner set out in § 22 (Escrow Funds for Taxes and Insurance) or, if not required to be paid in such manner, by Link making payment when due, directly to the payee thereof. Despite the foregoing, Link shall not be required to make payments otherwise required by this section if Link, after notice to BOCC, shall in good faith contest such obligation by, or defend enforcement of such obligation in, legal proceedings which operate to prevent the enforcement of the obligation or forfeiture of the Property or any part thereof, only upon Link making all such contested payments and other payments as ordered by the court to the registry of the court in which such proceedings are filed.

6. **Property Insurance.** Link shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire or hazards included within the term "extended coverage" in an amount at least equal to the lesser of (a) the insurable value of the Property or (b) an amount sufficient to pay the sums secured by this Deed of Trust as well as any prior encumbrances on the Property. All of the foregoing shall be known as "Property Insurance."

6.1. The insurance carrier providing the insurance shall be qualified to write Property Insurance in Colorado and shall be chosen by Link subject to BOCC's right to reject the chosen carrier for reasonable cause. All insurance policies and renewals thereof shall include a standard mortgage clause in favor of BOCC, and shall provide that the insurance carrier shall notify BOCC at least ten (10) days before cancellation, termination or any material change of coverage. Insurance policies shall be furnished to BOCC at or before closing. BOCC shall have the right to hold the policies and renewals thereof.

6.2. In the event of loss, Link shall give prompt notice to the insurance carrier and BOCC. BOCC may make proof of loss if not made promptly by Link.

6.3. Insurance proceeds shall be applied to restoration or repair of the Property damaged, provided said restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Link. If the Property is abandoned by Link, or if Link fails to respond to BOCC within 30 days from the date notice is given in accordance with § 15 (Notice) by BOCC to Link that the insurance carrier offers to settle a claim for insurance benefits, BOCC is authorized to collect and apply the insurance proceeds, at BOCC's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

6.4. Any such application of proceeds to principal shall not extend or postpone the due date of the due date for the payment of the Performance Guarantee under § 2.1. Notwithstanding anything herein to the contrary, if under § 17 (Acceleration; Foreclosure; Other Remedies) the Property is acquired by BOCC, all right, title and interest of Link in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to BOCC to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition.

6.5. All of the rights of Link and BOCC hereunder with respect to insurance carriers, insurance policies and insurance proceeds are subject to the rights of any holder of a prior deed of trust with respect to said insurance carriers, policies and proceeds.

7. **Preservation and Maintenance of Property.** Link shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. Link shall perform all of Link's obligations under any declarations, covenants, by-laws, rules, or other documents governing the use, ownership or occupancy of the Property.

8. **Protection of BOCC's Security.** If Link fails to perform the covenants and agreements contained in this Deed of Trust, or if a default occurs in a prior lien, or if any action or proceeding is commenced which materially affects BOCC's interest in the Property, then BOCC, at BOCC's option, with notice to Link if required by law, may make such appearances, disburse such sums and take such action as is necessary to protect BOCC's interest, including, but not limited to:

8.1. any general or special taxes or ditch or water assessments levied or accruing against the Property;

8.2. the premiums on any insurance necessary to protect any improvements comprising a part of the Property;

8.3. sums due on any prior lien or encumbrance on the Property;

8.4. if the Property is a leasehold or is subject to a lease, all sums due under such lease;

8.5. the reasonable costs and expenses of defending, protecting, and maintaining the Property and BOCC's interest in the Property, including repair and maintenance costs and expenses, costs and expenses of protecting and securing the Property, receiver's fees and expenses, inspection fees, appraisal fees, court

costs, attorney fees and costs, and fees and costs of an attorney in the employment of BOCC or holder of the certificate of purchase;

8.6. all other costs and expenses allowable by the evidence of debt or this Deed of Trust; and

8.7. such other costs and expenses which may be authorized by a court of competent jurisdiction.

8.8. Link hereby assigns to BOCC any right Link may have by reason of any prior encumbrance on the Property or by law or otherwise to cure any default under said prior encumbrance.

8.9. Any amounts disbursed by BOCC pursuant to this § 8, with interest thereon, shall become additional indebtedness of Link secured by this Deed of Trust. Such amounts shall be payable upon notice from BOCC to Link requesting payment thereof, and BOCC may bring suit to collect any amounts so disbursed plus interest specified in § 2.2. Nothing contained in this § 8 shall require BOCC to incur any expense or take any action hereunder.

9. **Inspection.** BOCC may make or cause to be made reasonable entries upon and inspection of the Property, provided that BOCC shall give Link notice prior to any such inspection specifying reasonable cause therefore related to BOCC's interest in the Property.

10. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to BOCC as herein provided. However, all of the rights of Link and BOCC hereunder with respect to such proceeds are subject to the rights of any holder of a prior deed of trust.

10.1. In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Link. In the event of a partial taking of the Property, the proceeds remaining after taking out any part of the award due any prior lien holder (net award) shall be divided between BOCC and Link, in the same ratio as the amount of the sums secured by this Deed of Trust immediately prior to the date of taking bears to Link's equity in the Property immediately prior to the date of taking. Link's equity in the Property means the fair market value of the Property less the amount of sums secured by both this Deed of Trust and all prior liens (except taxes) that are to receive any of the award, all at the value immediately prior to the date of taking.

10.2. If the Property is abandoned by Link or if, after notice by BOCC to Link that the condemnor offers to make an award or settle a claim for damages, Link fails to respond to BOCC within 30 days after the date such notice is given, BOCC is authorized to collect and apply the proceeds, at BOCC's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

10.3. Any such application of proceeds to principal shall not extend or postpone the due date of the deposit of the Performance Guarantee.

11. **Link not Released.** Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by BOCC to any successor in interest of Link shall not operate to release, in any manner, the liability of the original Link, nor Link's successors in interest, from the original terms of this Deed of Trust. BOCC shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Link nor Link's successors in interest.

12. **Forbearance by BOCC Not a Waiver.** Any forbearance by BOCC in exercising any right or remedy hereunder, or otherwise afforded by law, shall not be a waiver or preclude the exercise of any such right or remedy.

13. **Remedies Cumulative.** Each remedy provided in this Deed of Trust is distinct from and cumulative to all other rights or remedies under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

14. **Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of BOCC and Link, subject to the provisions of § 23 (Transfer of the Property; Assumption). All covenants and agreements of Link shall be joint and several. The captions and headings of the sections in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

15. **Notice.** Except for any notice required by law to be given in another manner, (a) any notice to Link provided for in this Deed of Trust shall be in writing and shall be given and be effective upon (1) delivery to Link or (2) mailing such notice by first class U.S. mail, addressed to Link at Link's address stated herein or at such other address as Link may designate by notice to BOCC as provided herein, and (b) any notice to BOCC shall be in writing and shall be given and be effective upon (1) delivery to BOCC or (2) mailing such notice by first class U.S. mail, to BOCC's address stated herein or to such other address as BOCC may designate by notice to Link as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Link or BOCC when given in any manner designated herein.

16. **Governing Law; Severability.** This Deed of Trust shall be governed by the law of Colorado. In the event that any provision or clause of this Deed of Trust conflicts with the law, such conflict shall not affect other provisions of this Deed of Trust which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust are declared to be severable.

17. **Acceleration; Foreclosure; Other Remedies.** Except as provided in § 23 (Transfer of the Property; Assumption), upon Link's breach of any covenant or agreement of Link in this Deed of Trust, or upon any default in a prior lien upon the Property, at BOCC's option, all of the sums secured by this Deed of Trust shall be immediately due and payable (Acceleration). To exercise this option, BOCC may invoke the power of sale and any other remedies permitted by law. BOCC shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Deed of Trust, including, but not limited to, reasonable attorney's fees.

17.1. If BOCC invokes the power of sale, BOCC shall give written notice to Trustee of such election. Trustee shall give such notice to Link of Link's rights as is provided by law. Trustee shall record a copy of such notice and shall cause publication of the legal notice as required by law in a legal newspaper of general circulation in each county in which the Property is situated, and shall mail copies of such notice of sale to Link and other persons as prescribed by law. After the lapse of such time as may be required by law, Trustee, without demand on Link, shall sell the Property at public auction to the highest bidder for cash at the time and place (which may be on the Property or any part thereof as permitted by law) in one or more parcels as Trustee may think best and in such order as Trustee may determine. BOCC or BOCC's designee may purchase the Property at any sale. It shall not be obligatory upon the purchaser at any such sale to see to the application of the purchase money.

17.2. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

18. **Link's Right to Cure Default.** Whenever foreclosure is commenced for nonpayment of any sums due hereunder, the owners of the Property or parties liable hereon shall be entitled to cure said defaults by paying all delinquent principal and interest payments due as of the date of cure, costs, expenses, late charges, attorney's fees and other fees all in the manner provided by law. Upon such payment, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as though no Acceleration had occurred, and the foreclosure proceedings shall be discontinued.

19. **Assignment of Rents; Appointment of Receiver; BOCC in Possession.** As additional security hereunder, Link hereby assigns to BOCC the rents of the Property; however, Link shall, prior to Acceleration

under § 17 (Acceleration; Foreclosure; Other Remedies) or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

19.1. BOCC or the holder of the Trustee's certificate of purchase shall be entitled to a receiver for the Property after Acceleration under § 17 (Acceleration; Foreclosure; Other Remedies), and shall also be so entitled during the time covered by foreclosure proceedings and the period of redemption, if any; and shall be entitled thereto as a matter of right without regard to the solvency or insolvency of Link or of the then owner of the Property, and without regard to the value thereof. Such receiver may be appointed by any Court of competent jurisdiction upon ex parte application and without notice; notice being hereby expressly waived.

19.2. Upon Acceleration under § 17 (Acceleration; Foreclosure; Other Remedies) or abandonment of the Property, BOCC, in person, by agent or by judicially-appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by BOCC or the receiver shall be applied, first to payment of the costs of preservation and management of the Property, second to payments due upon prior liens, and then to the sums secured by this Deed of Trust. BOCC and the receiver shall be liable to account only for those rents actually received.

20. **Release.** Upon deposit of the Performance Guarantee and payment of any other sums secured by this Deed of Trust, BOCC shall cause Trustee to release this Deed of Trust and shall produce for Trustee a copy of this Deed of Trust marked "cancelled" as evidence that the obligations secured by this Deed of Trust have been performed. Link shall pay all costs of recordation and shall pay the statutory Trustee's fees. If BOCC shall not produce the cancelled Deed of Trust as aforesaid, then BOCC, upon notice in accordance with § 15 (Notice) from Link to BOCC, shall obtain, at BOCC's expense, and file any lost instrument bond required by Trustee or pay the cost thereof to effect the release of this Deed of Trust.

21. **Waiver of Exemptions.** Link hereby waives all right of homestead and any other exemption in the Property under state or federal law presently existing or hereafter enacted.

22. **Escrow Funds for Taxes and Insurance.** N/A.

23. **Transfer of the Property; Assumption.** The following events shall be referred to herein as a "Transfer": (i) a transfer or conveyance of title (or any portion thereof, legal or equitable) of the Property (or any part thereof or interest therein); (ii) the execution of a contract or agreement creating a right to title (or any portion thereof, legal or equitable) in the Property (or any part thereof or interest therein); (iii) or an agreement granting a possessory right in the Property (or any portion thereof), in excess of 3 years; (iv) a sale or transfer of, or the execution of a contract or agreement creating a right to acquire or receive, more than fifty percent (50%) of the controlling interest or more than fifty percent (50%) of the beneficial interest in Link and (v) the reorganization, liquidation or dissolution of Link. Not to be included as a Transfer are (x) the creation of a lien or encumbrance subordinate to this Deed of Trust; (y) the creation of a purchase money security interest for household appliances; or (z) a transfer by devise, descent or by operation of the law upon the death of a joint tenant. At the election of BOCC, in the event of each and every Transfer:

23.1. All sums secured by this Deed of Trust shall become immediately due and payable (Acceleration).

23.2. If a Transfer occurs and should BOCC not exercise BOCC's option pursuant to this § 23 to Accelerate, Transferee shall be deemed to have assumed all of the obligations of Link under this Deed of Trust including all sums secured hereby whether or not the instrument evidencing such conveyance, contract or grant expressly so provides. This covenant shall run with the Property and remain in full force and effect until said sums are paid in full. BOCC may without notice to Link deal with Transferee in the same manner as with Link with reference to said sums including the payment or credit to Transferee of undisbursed reserve Funds on payment in full of said sums, without in any way altering or discharging Link's liability hereunder for the obligations hereby secured.

23.3. Should BOCC not elect to Accelerate upon the occurrence of such Transfer then, subject to § 23.2above, the mere fact of a lapse of time or the acceptance of payment subsequent to any of such events, whether or not BOCC had actual or constructive notice of such Transfer, shall not be deemed a waiver of BOCC's right to make such election nor shall BOCC be estopped therefrom by virtue thereof. The issuance on behalf of BOCC of a routine statement showing the status of the loan, whether or not BOCC had actual or constructive notice of such Transfer, shall not be a waiver or estoppel of BOCC's said rights.

24. **Link's Copy.** Link acknowledges receipt of a copy of this Deed of Trust.

EXECUTED BY LINK.

LINK, LLC,
a Colorado limited liability company

By: _____
Hal Hearne, President

STATE OF COLORADO)
)ss.
COUNTY OF GUNNISON)

The foregoing instrument was acknowledged before me this 26th day of April, 2016, by Hal Hearne, President of Link, LLC, a Colorado limited liability company. Witness my hand and seal. My commission expires: Jan 15 2020.

_____
Notary Public

AMY HERRON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20164001813
MY COMMISSION EXPIRES JANUARY 15, 2020