

BEL02RIM

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**

NAME OF APPLICANT OR DEVELOPER: BELLEVILLE DEVELOPMENT, L.P. ("THE DEVELOPER")

PROJECT/SUBDIVISION: RIMROCK MARKETPLACE SUBDIVISION, LOT 1

LOCATION: 2526 RIVER ROAD, HIGHWAY 6 & 50 AND 25 ½ ROAD

PARCEL NO.: 2945-152-37-003

FILE NO.: FP-1999-180

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2002

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT
(SURFACE CLEARANCE, FILL AND GRADING)

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement" or "Agreement") are THF BELLEVILLE DEVELOPMENT, L.P. ("the Developer") and THE CITY OF GRAND JUNCTION, Colorado ("the City" or "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 will be the date that this agreement is signed which shall be no sooner than the date of approval of the Developer's grading plan by the City Development Engineer..

RECITALS

The Developer seeks permission to develop property within the City to be known as Rimrock Marketplace Shopping Center, which property is more particularly described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The City seeks to protect the health, safety and general welfare of the community by requiring the completion of grading work on the Property and limiting the harmful effects of substandard developments. The purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself should the Developer fail to complete the approved grading (to the extent that completion of the contemplated grading work is necessary as determined by the City for the protection of the health, safety and welfare of the citizens of the community) and 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 Agreement are authorized by state law, the Colorado Constitution and the City's land development ordinances.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer will design, construct and install, at its own expense, those grading, clearing and filling improvements listed on Exhibit B attached and incorporated by this reference ("the Improvements" or "Improvements"). The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. The hourly rate of "in-house" City inspection services is \$45.00 per hour. The parties agree that the maximum total cost of such inspections under this Agreement shall not exceed Five Thousand Dollars (\$5,000.00). The scope of this project is such that the City may have to engage independent consultant(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others for which Developer is responsible hereunder. The Developer's obligation to complete the improvements is and will 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 Payment and Performance Bond, from a corporate surety of Developer's

choice in the amount of 120% of the total cost of the Improvements, as set forth on Exhibit B hereto, in a form and with terms acceptable to the City. A copy of which or a memorandum thereof is attached as Exhibit C.

5. **Standards:** The Developer shall construct the Improvements according to the standards and specifications required by the City Engineer and/or as adopted by the City.

6. **Warranty:** The Developer warrants that the Improvements, each and every one of them, will be free from defects for a period of twelve (12) months from the date that the City Engineer accepts or approves the last Improvement completed by the Developer.

7. **Commencement, Completion and Abandonment Periods:** The Developer will commence work on the Improvements within 30 days from the Effective Date of this Agreement ("the Commencement Period") and the Improvements, each and every one of them, shall be completed by the end of the sixth (6th) month from the Effective Date of this Agreement (the "Completion Period"). The Developer shall not cease construction activities for any period of more than 60 consecutive days ("the Abandonment Period").

8. **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 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 final development approval.

9. **Notice of Defect:** The Developer's Engineer shall provide timely notice to the Developer, contractor, issuer of security and the City Engineer whenever inspection reveals, or the Developer's Engineer otherwise has knowledge, that an improvement does not conform to City standards and any specifications approved in the development application or is otherwise defective. The Developer will have thirty (30) days from the issuance of such notice to correct the defect. The City may grant reasonable extensions.

10. **Acceptance of Improvements:** The City's final acceptance and/or approval of Improvements will not be given or obtained until the Developer presents a document or documents, showing that the Developer owns the Improvements in fee simple or as accepted by the City Attorney. 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 that is detected or which occurs after approval and/or acceptance.

11. **Reduction of Security:** After the acceptance of any Improvement, the amount which the City is entitled to draw on the security will be reduced by an amount equal to 90 percent of the estimated cost of such Improvement as shown in Exhibit B. At the written request of the Developer, the City will execute a certificate verifying the acceptance of the Improvement and waiving its right to draw on the guarantee to the extent of such amount. A Developer in default under this Agreement will have no right to such certification.

12. **Use of Proceeds:** The City will use funds deposited with it, drawn or guaranteed pursuant to any written agreement entered into between the parties only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements.

13. **Events of Default:** The following conditions, occurrences or actions will constitute a default by the Developer during the Completion Period:

- a. Developer's failure to complete each portion of the Improvements in conformance with the time schedule provided in paragraph number seven (7.), above;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvement within the applicable correction period;
- c. 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;
- d. Notification to the City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer.

Unless specifically provided herein the City may not declare a default until written notice has been sent 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.

14. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements (to the extent, if at all, that the completion of such Improvements is reasonably necessary in the City's discretion to protect the health, safety and general welfare of the community) plus reasonable City administrative expenses. Administrative 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 will be *prima facie* evidence of the minimum cost of completion, however, neither that amount or the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow or other guarantee establish the maximum amount of the Developer's liability.

15. **City's Rights Upon Default:** When any event of default occurs, the City may draw on the letter of credit, escrowed collateral, or proceed to collect any other security to the extent of the face amount of the credit or full amount of escrowed collateral, cash, or security less ninety percent (90%) of the estimated cost (as shown on Exhibit B) of all Improvements previously accepted by the City or may exercise its rights to disbursement of loan proceeds or other funds under the improvements disbursement agreement. The City will have the right to complete Improvements itself ((to the extent, if at all, that the completion of such Improvements is reasonably necessary in the City's discretion to protect the health, safety and general welfare of the community) 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. Alternatively, the City may assign the proceeds of the letter of credit, the improvements disbursement agreement, the escrowed collateral, cash, or other funds or assets to a subsequent developer (or lender) who has acquired the Property by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished Improvements and provides to the City reasonable security for the obligation. In addition, the City may also enjoin the sale, transfer, or conveyance of lots within the development, until the Improvements are completed or accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

16. **Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance or non-performance of work at the Property or the Property being developed 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 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 of work pursuant to this Agreement except where such suit is brought by the Developer against the City. The Developer is not an agent or employee of the City.

17. **No Waiver:** No waiver of any provision of this Agreement by the City will be deemed or constitute a waiver of any other provision, nor will 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 will 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 will not constitute the approval of any wrongful act by the Developer or the acceptance of any Improvement.

18. **Amendment or Modification:** The parties to this Agreement may amend or modify the Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or his authorized officer.

19. **Attorney's Fees:** Should either party enforce the terms of this Agreement by litigation, 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.

20. **Vested Rights:** The City does not warrant by this Agreement that the Developer is entitled to any other approval(s) required by the City, if any, before the Developer is entitled to commence development beyond the scope of this Agreement.

21. **Integration:** This Agreement, 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.

22. **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.

23. **Time:** For the purpose of computing the Abandonment and Completion Periods, and time periods for City action, such times in which war, civil disasters, or acts of God occur or exist will not be included if such times prevent the Developer or City from performing its obligations under the Agreement.

24. **Severability:** If any part, term, or provision of this Agreement 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 rights of the parties will 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. 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 right of 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. When the Improvements are completed and approved by the City, the City agrees to state same in writing, with appropriate acknowledgments. The City will 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 will be deemed effective two calendar days after deposit with the United States Postal Service, first class, postage prepaid and addressed as follows:

If to Developer: THF Belleville Development, L.P.
2127 Innerbelt Business Center Drive, Suite 200
St. Louis, MO 63114

With a copy to:

Thomas C. Volkmann
225 North 5th Street, Suite 620
Grand Junction, CO 81501

If to City:

City of Grand Junction
Community Development Director
250 N. 5th Street
Grand Junction, Colorado 81501

With a copy to:

John P. Shaver
250 N. 5th Street
Grand Junction, CO 81501

27. **Recordation:** Developer will pay for all costs to record this Agreement or a Memorandum thereof in the Clerk and Recorder's Office of Mesa County, Colorado.

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, letter of credit, improvements disbursements agreement, or cash escrow agreement or any action to collect security 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.

30. a. **Conditions of 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 improvements shall have been finally accepted by the City.

b. **Phased Development:** 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 his side of the street to enable an initial two-way traffic operation without on-street parking. That Developer is also responsible for end-transitions, intersection paving, drainage facilities, and adjustments to existing utilities necessary to open the street to traffic.

c. Prior to requesting final acceptance of any street, storm drainage facility, or other required improvement(s), the Developer shall: (i) furnish 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) provide 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 improvements have been constructed, or which are necessary for the improvements, are free from toxic, hazardous or other regulated substances or materials; (iii) provide 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.

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

Ralph Blanchard 1/8/02
Director of Community Development date

Attest:

Deputy Christene English 1/18/02
City Clerk date

THF BELLEVILLE DEVELOPMENT, L.P.

By: THF Belleville, Inc., its general partner

By: [Signature] 12/20/01
Michael H. Staenberg, President date
Developer



EXHIBIT A

Lot 1, Rimrock Marketplace, a subdivision recorded on September 29, 1997 in Plat Book 16, Page 314, of the Mesa County, Colorado, Recorder's Office.

EXHIBIT A

Lot 1, Rimrock Marketplace, a subdivision recorded on September 29, 1997 in Plat Book 16, Page 314, of the Mesa County, Colorado, Recorder's Office.

EXHIBIT B

IMPROVEMENTS LIST/DETAIL

(Page 1 of 3)

DATE: December 7, 2001

NAME OF DEVELOPMENT: Rimrock Marketplace Shopping Center

LOCATION: 6 & 50 Highway & 25 1/2 Road

PRINTED NAME OF PERSON PREPARING: Kenton Griffin – Wolverton & Associates
John Rubenstein

UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
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I. SANITARY SEWER

1. Clearing and grubbing
2. Cut and remove asphalt
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)
4. Sewer Services (incl. trenching, bedding, & backfill)
5. Sanitary sewer manhole(s)
6. Connection to existing manhole(s)
7. Aggregate Base Course
8. Pavement replacement
9. Driveway restoration
10. Utility adjustments

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

II. DOMESTIC WATER

1. Clearing and grubbing
2. Cut and remove asphalt
3. Water Main (incl. excavation, bedding, backfill, valves and appurtenances)
4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances)
5. Connect to existing water line
6. Aggregate Base Course
7. Pavement Replacement
8. Utility adjustments

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

III. STREETS

1. Clearing and grubbing
2. Earthwork, including excavation and embankment construction
3. Utility relocations
4. Aggregate sub-base course (square yard)

15%	_____	_____	\$9,321
15%	_____	_____	\$138,000
_____	_____	_____	_____
_____	_____	_____	_____
TOTAL	UNIT	TOTAL	

	UNITS	QTY.	PRICE	AMOUNT
5. Aggregate base course (square yard)	_____	_____	_____	_____
6. Sub-grade stabilization	_____	_____	_____	_____
7. Asphalt or concrete pavement (square yard)	_____	_____	_____	_____
8. Curb, gutter & sidewalk (linear feet)	_____	_____	_____	_____
9. Driveway sections (square yard)	_____	_____	_____	_____
10. Crosspans & fillets	_____	_____	_____	_____
11. Retaining walls/structures	_____	_____	_____	_____
12. Storm drainage system	_____	_____	_____	_____
13. Signs and other traffic control devices	_____	_____	_____	_____
14. Construction staking	_____	_____	_____	_____
15. Dust control	_____	_____	_____	_____
16. Street lights (each)	_____	_____	_____	_____
IV. LANDSCAPING				
1. Design/Architecture	_____	_____	_____	_____
2. Earthwork (includes top soil, fine grading, & berming)	_____	_____	_____	_____
3. Hardscape features (includes walls, fencing, and paving)	_____	_____	_____	_____
4. Plant material and planting	_____	_____	_____	_____
5. Irrigation system	_____	_____	_____	_____
6. Other features (incl. statues, water displays, park equipment, and outdoor furniture)	_____	_____	_____	_____
7. Curbing	_____	_____	_____	_____
8. Retaining walls and structures	_____	_____	_____	_____
9. One year maintenance agreement	_____	_____	_____	_____
V. MISCELLANEOUS				
1. Design/Engineering	_____	_____	_____	_____
2. Surveying	1	_____	_____	\$90,000
3. Developer's inspection costs	_____	_____	_____	_____
4. Quality control testing	1	_____	_____	\$25,000
5. Construction traffic control	_____	_____	_____	_____
6. Rights-of-way/Easements	_____	_____	_____	_____
7. City inspection fees @\$45./hr	_____	_____	_____	\$5,000 Maximum
8. Permit fees	_____	_____	_____	_____
9. Recording costs	_____	_____	_____	_____
	TOTAL	UNIT	TOTAL	
	UNITS	QTY.	PRICE	AMOUNT

10. Bonds	2 _____	\$16,000
11. Newsletters	_____	_____
12. General Construction Supervision	_____	_____
13. Other _____	2, 66' pipes _____	\$326,645
14. Other _____	85% _____	\$834,819

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$1,444,785

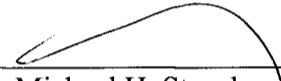
SCHEDULE OF IMPROVEMENTS:

- I. GRADING to begin 12/27/01 through 4/1/02 weather permitting.
- II. MISCELLANEOUS Ligrani Drain to begin 12/27/01 until complete in 60 days +/-

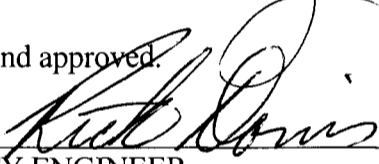
I have reviewed the estimated costs and time schedule shown above and based on the plans and the current costs of construction agree to construct and install the Improvements as required above.

THF BELLEVILLE DEVELOPMENT, L.P.

By: THF Belleville, Inc., its general partner

By:  12/20/01
 Michael H. Staenberg, President date

Reviewed and approved.

 1/8/02
 CITY ENGINEER date

 1/8/02
 COMMUNITY DEVELOPMENT date

EXHIBIT C

12/13/01

12

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned THE BELLVILLE DEV. L.P., a corporation organized under the laws of the State of Missouri hereinafter referred to as the "Developer" and Fidelity & Deposit Company of Maryland, a corporation organized under the laws of the State of Maryland and authorized and licensed to transact business in the State of Colorado, hereinafter referred to as "Surety," are held and firmly bound unto the City of Grand Junction, Colorado, hereinafter referred to as the "City," in the penal sum of *See below (\$ 1,733,742.00), lawful money of the United States of

America, for the payment of which sum the Developer and Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly and severally by these presents. ***One Million Seven Hundred Thirty Three Thousand Seven Hundred Forty Two & .00/100**

WHEREAS, the above Developer has on the 10th day of December, 2001, entered into written contracts for the surface clearing, fill and grading of its site known as Rimrock Marketplace (the "Project"), in accordance with the Contract, Contract Drawings, Specifications and the Development Improvements Agreement for Surface Clearance, Fill and Grading Only and all other contract documents therefor which are incorporated herein by reference and made a part hereof and are herein referred to as the Contracts.

NOW, THEREFORE, the conditions of this performance bond are such that if the Developer:

1. Promptly and faithfully observes, abides by and performs each and every covenant, condition and part of said Contracts, including, but not limited to, its warranty provisions, in the time and manner prescribed in the Contracts, and
2. Guarantees that the City shall not bear any loss or damage (liquidated or actual, including, but not limited to, damages caused by failures or delays in performance of the Contract), expenses, costs and attorneys' fees, that the City sustains resulting from any breach or default by the Developer under the Contracts,

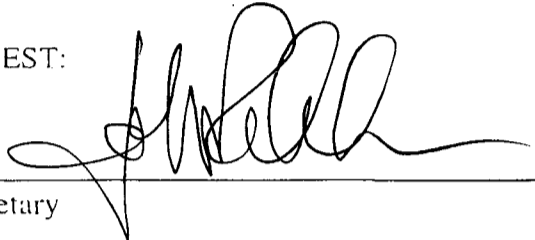
then this bond is void; otherwise, it shall remain in full force and effect.

IN ADDITION, if said Developer fails to duly pay for any labor, materials, team hire, sustenance, provisions, provender or any other supplies used or consumed by said Developer or its contractors, subdevelopers, subcontractors or agents in its performance of the work contracted to be done or fails to pay any person who supplies rental machinery, tools or equipment, all amounts due as the result of the use of such machinery, tools or equipment in the prosecution of the work or the Developer fails to complete the work, the Surety shall pay the same in an amount not exceeding the amount of this obligation,

PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that any and all changes in the Contracts or compliance or noncompliance with the formalities in the Contracts for making such changes shall not affect the surety's obligations under this bond and the Surety hereby waives notice of any such changes. Further, Developer and Surety acknowledge that the penal sum of this bond shall increase in accordance with approved changes to the Contracts without obtaining the Surety's consent up to a maximum of 20 percent of the penal sum. Any additional increases in the penal sum shall require the Surety's consent.

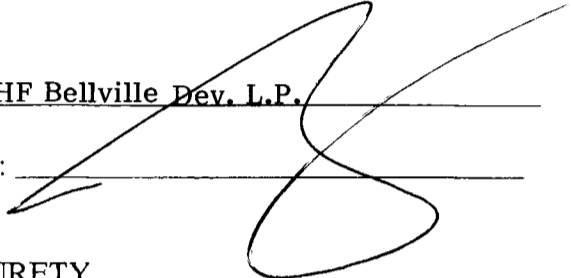
IN WITNESS WHEREOF, said Developer and said Surety have executed these presents as of this _____ day of November 2001.

ATTEST:



Secretary

DEVELOPER

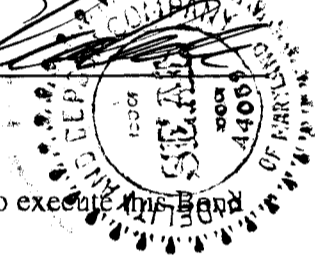


THF Bellville Dev. L.P.
Its: _____

SURETY
Fidelity & Deposit Company of Maryland

By 

Attorney-In-Fact



(Accompany this Bond with the attorney-in-fact's authority from the surety to execute this Bond certified to include the date of the Bond.)

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned THF BELLVILLE DEV. L.P. ; a corporation organized under the laws of the State of Missouri, the "Developer" and Fidelity & Deposit Company of Maryland, a corporation organized under the laws of the State of Maryland, and authorized and licensed to transact business in the State of Colorado, hereinafter referred to as "Surety," are held and firmly bound unto the City of Grand Junction, Colorado, hereinafter referred to as the "City," in the penal sum of *See below (\$1,733,742.00), lawful money of the United States of America, for the payment of which sum the Developer and Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.
***One Million Seven Hundred Thirty Three Thousand Seven Hundred Forty Two & .00/100**

WHEREAS, the above Developer has on the 10th day of December, 2001, entered into written contracts for the surface clearing, fill and grading of its site known as Rimrock Marketplace (the "Project"), in accordance with the Contract, Contract Drawings, Specifications and the Development Improvements Agreement for Surface Clearance, Fill and Grading Only and all other contract documents therefor which are incorporated herein by reference and made a part hereof and are herein referred to as the Contracts.

NOW, THEREFORE, the condition of this payment bond obligation is such that if the Developer shall at all times promptly make payments of all amounts lawfully due to all persons supplying or furnishing it or its contractors, subdevelopers, subcontractors or agents with labor, materials, rental machinery, tools or equipment, used or performed in the prosecution of work provided for in the Contracts and shall indemnify and save harmless the City to the extent of any and all payments in connection with the carrying out of such Contracts which the City may be required to make under the law and for all losses, damages, expenses, costs and attorneys' fees incurred by the City resulting from the failure of the Developer to make the payments discussed above or complete the work then this obligation shall be null and void, otherwise, it shall remain in full force and effect.

PROVIDE FURTHER, that the said Surety, for value received, hereby stipulates and agrees that any and all changes in the Contracts or compliance or noncompliance with the formalities in the Contracts for making such changes shall not affect the Surety's obligations under this bond and the Surety hereby waives notice of any such changes. Further, Developer and Surety acknowledge that the penal sum of this bond shall increase or decrease in accordance with approved changes to the Contracts without obtaining the Surety's consent up to a maximum of 20 percent of the penal sum. Any additional increases in the penal sum shall require the Surety's consent.

IN WITNESS WHEREOF, said Developer and said Surety have executed these presents as of this ____ day of November 2001.

ATTEST:

Secretary

[Handwritten signature]

DEVELOPER

THF Bellville Dev. L.P.

By:

Its:

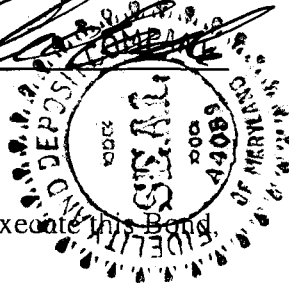
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SURETY

Fidelity & Deposit Company of Maryland

By:

Attorney-In-Fact

[Handwritten signature]


(Accompany this Bond with Attorney-in-Fact's authority from the Surety to execute this Bond certified to include the date of the Bond.)

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
HOME OFFICE: 3910 KESWICK ROAD, BALTIMORE, MD 21211

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by M. P. HAMMOND, Vice President, and L. L. GOUCHER, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **James Alabach, Stephen J. Alabach and Ellen J. Alabach, all of Chesterfield, Missouri, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of James Alabach, Daniel J. Alabach, and Stephen J. Alabach, dated October 16, 1997.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 28th day of June, A.D. 2001.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



FOR PROTECTION OF THE PUBLIC
LOOK FOR THE SEAL OF THE STATE

L. L. Goucher

L. L. Goucher

M. P. Hammond

By:

Assistant Secretary

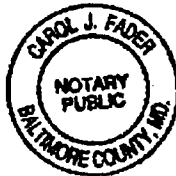
M. P. Hammond

Vice President

State of Maryland }
County of Baltimore } ss:

On this 28th day of June, A.D. 2001, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came M. P. HAMMOND, Vice President, and L. L. GOUCHER, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Carol J. Fader

Carol J. Fader

Notary Public

My Commission Expires: August 1, 2004

19 pages
95.00

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto."

CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 10th day of December, 2001

[Signature]
Assistant Secretary

CO
FI

State of Missouri }
County of St. Louis } ss:

On December 10, 2001, before me, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared James Alabach

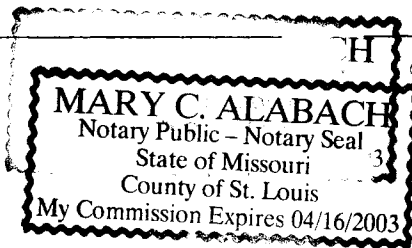
known to me to be Attorney-in-Fact of Fidelity & Deposit Company of Maryland the corporation described in and that executed the within and foregoing instrument, and known to me to be the person who executed the said instrument in behalf of the said corporation, and he duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year stated in this certificate above.

My Commission Expires

360212-6-66

[Signature]
Notary Public



INDEMNIFICATION AND RELEASE AGREEMENT

THIS AGREEMENT, made this 16th day of October 2002, between the City of Grand Junction (hereinafter "City") and THF Belleville Development, LP (hereinafter "Developer") is made and subject to the following agreements, representations and understandings:

The Developer desires to develop real property South and West of the intersection of Independent Avenue and Highway 6&50 ("Project" or "Property") in Grand Junction, Colorado. The Project, in accordance with the City Zoning and Development Code was administratively approved on October 3, 2002. That approval, in accordance with the Code, may be appealed to the Planning Commission.

The Developer has determined that in order to timely develop the Property to meet its needs it should proceed with on-site development activities. The Developer has made that determination even though the Project is likely to be appealed, the time in which an appeal may be filed has not yet run and there is not a recorded plat.

The Developer has been told by the City that any investment that the Developer makes in the Property/development of the same is at its sole, exclusive and absolute risk. There is risk because, among other things, the Project may be denied on appeal and/or the opponent(s) may commence litigation which may include but not be limited to enjoining the development. The City has recommended that the Developer wait for a determination of the appeal(s), if any, before it begins work. The Developer has chosen not to accept that recommendation.

The Developer has represented to the City that it understands each and every risk and that it has made a conscious choice to proceed with the Project even though it does not yet have vested right(s) or other unqualified approval or right to proceed with construction.

If the plat is recorded then the property will be known as Lots 1-6 of the Rimrock Marketplace 2 Subdivision; the property is bounded by and generally located at the intersection of Independent Avenue and Highway 6&50 in Grand Junction, Colorado. Only upon recordation of the plat will the Developer have salable lots. The plat will not be recorded unless or until the project approval is (1) rendered final by the passage of the appeal time without an appeal being filed, or (2) upheld on appeal by the Planning Commission..

As a condition of the Project's administrative approval the Developer was required to guarantee certain improvements, all as described in the Development Improvement Agreement (DIA). The Developer is legally obligated to pay for/guarantee those improvements once the project is finally approved. Given that the DIA does not contemplate that the Developer may begin before the appeal period has run/the project has been approved by the Planning Commission, this agreement serves to amend the commencement date of the DIA to be/begin on October 14, 2002. By amending the DIA Commencement Date the Developer is obligated under the DIA, on the terms and conditions therein, to complete and/or restore any work that it begins but does not finish if the Project is not finally approved.

Furthermore, the Developer does hereby release, waive and forego any and all claim(s), cause(s) of action or damages that it may have or claim for itself and any person or entity claiming through or under it against the City, its officers, agents and employees under the terms and conditions provided for/established in and by this agreement.

The Developer acknowledges and agrees that there is sufficient consideration to support this agreement. Furthermore, the Developer agrees that it shall not challenge, defend, fail or refuse to fulfill its obligations hereunder by asserting contract/contract formation defenses.

Developer further understands and agrees that this agreement and/or the DIA do not establish a maximum financial cost, liability or exposure for the Developer. The Developer hereby waives any defenses and/or claims it may have based on the decision and/or the application of the same to the Project, in the Colorado Supreme Court case of *The Zoning Board of Adjustment of Garfield County et. al. v. J.E. DeVilbiss*, 729 P.2d 353 to the effect that the performance of the work pursuant to this Agreement prior to the recording of the plat renders a challenge to the administrative approval moot.

The Developer and the City acknowledge and agree that this Agreement is solely for purposes stated herein and upon signature the Developer may begin work on the Project. The Developer may not sell or offer to sell a lot or lots within the subject subdivision unless and until a final plat is recorded, if at all. No approval other than as expressly provided herein may be inferred, claimed or asserted by the Developer.

This Agreement may be altered, amended, modified or revoked by writing only, signed by the Developer and the City.

Should either the City or the Developer be required to resort to litigation to enforce the terms of this Agreement, the prevailing party 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 by the decision-maker.

If any part, term or provision of this Agreement is held by a court or courts of competent jurisdiction to be illegal or otherwise enforceable, such illegality or unenforceability will not affect the validity of any other part, term or provision and the rights of the parties will be constructed as if the part, term or provision was never part of the Agreement.

The terms of this Agreement are not mere recitals but are contractual in nature.

The person(s) signing for the Developer have both actual and apparent authority to sign for, bind and obligate the Developer and any and all persons claiming by, through and under the Developer to the terms of this Agreement.

IN WITNESS WHEREOF, the undersigned have hereunto affixed their signatures to this Agreement.

THF Belleville Development, L.P.

By: THF Belleville, Inc., its General
Partner

By: _____
Michael H. Staenberg, President

CITY OF GRAND JUNCTION

By: _____