

CMA00245

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**

NAME OF APPLICANT OR DEVELOPER: RIVER OF LIFE ALLIANCE CHURCH OF THE
CHRISTIAN AND MISSIONARY ALLIANCE, A COLORADO NONPROFIT CORPORATION
("CHURCH")

PROJECT/SUBDIVISION: POMONA PARK SUBDIVISION, EAST HALF OF LOT 58

LOCATION: 701 24 1/2 ROAD, GRAND JUNCTION, COLORADO

PARCEL NO.: 2701-333-00-952

FILE NO.: SPR 2000-097

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2000

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

701 24 1/2 Rd 5

SFR-2000-097

PAGE NO. 5

BOOK 2782 PAGE 634
1977220 12/18/00 0230PM
MONIKA TODD CLK&REC MESA COUNTY CO
REC FEE \$25.00

DEVELOPMENT IMPROVEMENTS AGREEMENT

Parties: The parties to this Development Improvements Agreement (“the Agreement” or “Agreement”) are RIVER OF LIFE ALLIANCE CHURCH OF THE CHRISTIAN AND MISSIONARY ALLIANCE, a Colorado nonprofit corporation (“Church”), THE CITY OF GRAND JUNCTION, Colorado, a Colorado home rule municipality (“City”), and THE ALLIANCE DEVELOPMENT FUND, INC., a Colorado corporation (“ADF”).

FOR VALUABLE CONSIDERATION, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

Effective Date: The Effective Date of the Agreement is December 11, 2000.

RECITALS

A. The Church seeks permission to develop property within the City described as the East Half of Lot 58, Pomona Park, Mesa County, Colorado (“Property”).

B. The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Property and limiting the harmful effects of substandard developments, normally requiring developers to make certain improvements as a condition of development; however, because the completion of curb, gutter, sidewalk, drainage and road improvements (“Improvements”) with respect to the development of the Property at this time cannot be completed in a manner in accordance with the City’s long range plan for the development of G Road and 24 1/2 Road, the City has agreed to accept cash payments in lieu of such Improvements.

C. The purpose of this Agreement is to protect the City from the cost of completing the Improvements itself and to specify the respective rights and obligations of the parties. 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.

CHURCH’S OBLIGATIONS

1. **Payments in Lieu of Improvements:** Church, concurrently with execution of this Agreement, has paid to City \$7,065.00 in full payment of the estimated current cost of the Improvements along the Property’s G Road frontage. Church has agreed to pay \$25,118.00, plus interest, in full payment of the estimated current cost of the Improvements along the Property’s 24 1/2 Road frontage. Church will pay the \$25,118 amount in two equal installments of principal, the first due December 11, 2003 and the second due December 11, 2006; the amount of each installment shall bear interest at the rate of 6.63% per annum, compounded annually, and accrued interest upon the principal amount of each installment shall be paid with each installment (i.e. if the December 11, 2003 installment is paid when due it would be in the amount of \$15,226.26 and the December 11, 2006 installment would be \$18,459.99); any installment not paid when due shall thereafter bear interest at the rate of 12% per annum, compounded annually, until paid. Any installment may be

prepaid without penalty. The parties acknowledge that the current cost estimate has been negotiated by the parties with the advice of their own engineers; each party shall bear the risk of any mistake in arriving at the estimated amount and that amount shall not be adjusted (up or down) based upon actual cost of the Improvements.

2. **Security:** To secure the performance of its obligations under this Agreement, ADF has executed this Agreement and shall act as a disbursing agent with respect to \$33,686.25 of the construction loan for the Church. ADF agrees to retain \$33,686.25 of the Church's construction loan, approved but undisbursed, until released by City. At any time prior to release by the City, ADF agrees to disburse to City the amount of any installment due, plus interest, pursuant to paragraph 1 upon written notice from the City to ADF in accordance with paragraph 17 that (i) the due date of such installment has passed and (ii) the installment payment has not been received by the City. ADF agrees that its obligation to disburse under this Agreement shall not be affected by any default by Church under any provision of the applicable loan documents. Church agrees that any disbursement made by ADF pursuant to this paragraph shall be added to its existing loan with ADF as additional principal from the date of disbursement. City agrees that when the construction loan is converted to permanent financing, this commitment to disburse may be transferred to the permanent loan, so long as the City's position and security are not impaired and so long as the City's written approval, which shall not be unreasonably withheld, of the permanent loan documents is first obtained. ADF shall be released from all further liability under this Agreement if a notice to disburse has not been mailed from the City to ADF on or before February 28, 2007, by United States certified mail, return receipt requested. At any time after February 28, 2007, the City will, within 5 days after written request from ADF or the Church, confirm in writing that such notice has or has not been sent by City

CITY'S OBLIGATIONS

3. **Construction of Improvements:** The City agrees that the Public Works staff will recommend to the City Council that the City complete the Improvements along the Property's G Road and 24½ Road frontages on or before January 1, 2010; however, the City and ADF acknowledge that such decisions are vested in the City Councils of a future time and cannot be binding upon such Councils. When the City does construct the Improvements, it shall do so according to the standards and specifications for improvements of similar type at locations comparable to the Property, adopted by the City at the time of construction.

4. **Assessments:** If the City, or any improvement district formed by the City, assesses the Property in accordance with the Grand Junction Code of Ordinances or applicable state law for curb, gutter, sidewalk, drainage or road improvements made on either the G Road or 24½ Road frontages of the Property, the Church shall be entitled to a credit against the assessment in an amount equal to the total amounts paid by the Church pursuant to paragraph 1 (including interest) together with interest on the amounts paid at the rate of 6.63% per annum, compounded annually, from the date of the payment through the date of assessment. If the amount of any such assessment is less than the credit available to the Church, the unused portion of the credit, with interest on the unused credit amount at the rate of 6.63% per annum, compounded annually, shall be carried forward to be

applied to future assessments for such purposes, if any.

5. **Compliance with Law:** The City shall comply with all applicable federal, state and local laws, ordinances and regulations in effect at the time of construction of the Improvements when fulfilling its obligations under this Agreement.

6. **Development Approvals:** City acknowledges that Church has paid for all of the Improvements required to be constructed by Church as a condition of the approval of Phase Two of the Church's plans for development of the Property, as generally shown on the site plan submitted to the City's planning department in conjunction with its current development plans (see City file #SPR-2000-097), by the current ordinances and policies of the City. Church acknowledges that other requirements, for approvals for Phase Two, may be added to the City ordinances or policies after the date of this Agreement and such other requirements, if any, shall be binding upon the Church.

7. **Reduction of Security:** City agrees to release \$15,226.26 of the security amount upon the City's receipt of payment of the December 11, 2003 installment, and to fully release the security when all obligations of the Church under this Agreement have been satisfied.

8. **Use of Proceeds:** The City will have the unrestricted right to use funds paid to it pursuant to this Agreement by Church or ADF for any appropriate governmental purpose. The City shall not be obligated to maintain a dedicated fund for the purpose of completing the Improvements.

GENERAL PROVISIONS

9. **No Waiver:** No waiver of any provision of this Agreement by a party shall be deemed to or constitute a waiver of any other provision, nor will it be deemed to or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by all parties; nor will the waiver of any default under this Agreement be deemed to be a waiver of any subsequent default or defaults of the same type.

10. **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 Church and ADF by their respective authorized officers.

11. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, each party shall pay its own costs and attorney's fees.

12. **No Vested Rights:** The City does not warrant by this Agreement that the Church is entitled to any other approval(s) required by the City, if any, before the Church is entitled to commence development.

13. **Integration:** This Agreement constitutes the entire agreement between the parties relating to the Improvements and no statement(s), promise(s) or inducement(s) that is/are not contained in this Agreement will be binding on the parties.

14. **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.

15. **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.

16. **Benefits:** The benefits of this Agreement to the Church 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 Church and also will be binding on the heirs, successors and assigns of the Church 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 Church's guarantee or obligations if it accepts new security sufficient in amount and type to meet or exceed the Church's obligations hereunder from any developer or lender who obtains the Property, however, no other act of the City will constitute a release of the Church from liability under this Agreement.

17. **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 Church: River of Life Alliance Church
Attn: Pastor
P.O. Box 55391
Grand Junction, CO 81505

With a copy to

William H.T. Frey
Dufford, Waldeck, Milburn & Krohn, LLP
744 Horizon Court, Suite 300
Grand Junction, CO 81506

If to City: City of Grand Junction
Community Development Director
250 N. Fifth Street
Grand Junction, CO 81501

DUFFORD, WALDECK, MILBURN & KROHN, L.L.P.

ATTORNEYS AT LAW

744 HORIZON COURT, SUITE 300
GRAND JUNCTION, CO 81506
TELEPHONE: (970) 241-5500
FAX: (970) 243-7738

BETTY C. BECHTEL
WILLIAM H. T. FREY
RICHARD H. KROHN
LAIRD T. MILBURN

WILLIAM G. WALDECK
FLINT B. OGLE
OF COUNSEL

D. J. DUFFORD
(1919-1998)

NATHAN A. KEEVER
CHRISTOPHER G. McANANY*
JOHN R. PIERCE
SAM D. STARRITT†
KERI A. YODER

MOAB, UTAH
(435) 259-2225

MONTRORSE OFFICE
222 B SOUTH PARK AVENUE
MONTRORSE, CO 81401
TELEPHONE: (970) 249-4500
FAX: (970) 249-5537

*ALSO ADMITTED IN UTAH
†ALSO ADMITTED IN WYOMING

December 8, 2000

John Shaver, Esq.
Assistant City Attorney
250 N. Fifth Street
Grand Junction, CO 81501

Re: River of Life Alliance Church

Dear John:

I am delivering with this letter original versions of the following documents, all of which have been signed by the Church and/or the Alliance Development Fund as required:

1. Development Improvements Agreement;
2. Grant of Multi-Purpose Easement;
3. Subordination of Trust Deed;
4. Warranty Deed; and,
5. Request for Partial Release of Deed of Trust.

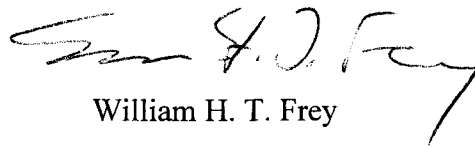
I am also enclosing a check in the amount of \$7,065 which is the payment due from the Church concurrently with execution of the Agreement. I would appreciate receiving copies of the fully signed Agreement after the City's execution.

In recording the documentation, you are expressly authorized to fill in the reception number in the space in the Subordination of Trust Deed after you have the reception number for the Grant of Easement. Additionally, I have the original Promissory Note and Trust Deed and, when the Partial Release is delivered to the Public Trustee, my runner will deliver the Note and Trust Deed to the Public Trustee to be marked as required and then returned to our office.

John Shaver, Esq.
December 8, 2000
Page 2

If you have any questions about this letter, please feel free to contact me. Now that the Church has complied with all of these requirements, we would like to have final approval from the Planning Commission in order to allow us to begin construction while weather still permits. Dan had told me that there would not be any delay after the Agreements had been submitted to the City and I would appreciate you expediting this as much as possible.

Sincerely,



William H. T. Frey

WHTF/saj
Enclosures
cc: Phil Olson
Bill Oswald

F:\Wp\7922\CORR\Shaver-LTR.wpd