

IHM00265

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENTS AGREEMENT

NAME OF AGENCY OR CONTRACTOR: IMMACULATE HEART OF MARY CHURCH

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: AGREEMENT DATED FEBRUARY 7, 2000, IMMACULATE HEART OF MARY CHURCH/HOLY FAMILY SCHOOL STREET AND LANDSCAPING IMPROVEMENTS, PHASE II, LOCATED AT THE SE CORNER OF 26 ½ AND H ROADS, HOLY FAMILY SUBDIVISION

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2000

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

Book 2678 Page 739

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement" or "Agreement") are Immaculate Heart of Mary Church ("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 recordation of the final plat or final plan approval whichever first occurs.

RECITALS

The Developer seeks permission to develop property within the City to be known as Holy Family Subdivision, 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 various improvements in 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 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 on-site and off-site 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 scope of this project is such that the City may have to engage independent consultant(s) to adequately provide inspection and/or consultation services. The obligation of the Developer 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 guarantee in a form and with terms acceptable to the City. A copy of which or a memorandum thereof is attached as Exhibit C, hereinafter referred to as the Guarantee.

5. **Standards:** The Developer shall construct the Improvements according to the standards and specifications required by the City Engineer 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 in each phase completed by the Developer.

7. **Commencement, Completion and Abandonment Periods:** The Developer will commence work on the Improvements within 10 days from the Effective Date of this Agreement ("the Commencement Period") and the Improvements, each and every one of them, shall be constructed according to the following schedule: Phase I of the project (those Improvements identified on Exhibit B-1) shall be completed on or before December 15, 2000. The First Completion Period. Phase II of the Project (those Improvements shown on Exhibit B-2) shall be completed on or before December 15, 2003. The Second Completion Period. The Developer shall not cease construction activities for any period of more than 60 consecutive days ("the Abandonment Period"). The parties acknowledge however that Developer will not commence work on the Phase II Improvements until September 15, 2003. The cessation of construction activity by Developer after Phase I Improvements are completed and until September 15, 2003, when construction of the Phase II Improvements shall begin shall not constitute abandonment.

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, for the benefit of the City, showing that the Developer owns the Improvements in fee simple or as accepted by the City Attorney and that there are no liens, encumbrances or other restrictions other than those that have been accepted by the City Attorney on the Improvements. Approval and/or acceptance of any Improvements does not constitute a waiver by the City of any rights it may have on account of any defect in or failure of the Improvement 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 receive, draw on or benefit from on the Guarantee will be reduced by an amount equal to 90 percent of the estimated cost of such Improvement as shown in Exhibit B-1 or B-2 as applicable. 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 and take whatever action is reasonably required such that the reduction is released, credited or refunded by A.G. Edwards brokerage or its successor, if any, to the Developer. A Developer in default

under this Agreement will have no right to such certification. Upon the acceptance of all of the Improvements, the remaining balance that may be collected from or drawn on under the Guarantee shall be available to the City for up to 90 days after the expiration of the Warranty period.

12. **Use of Proceeds:** The City will use the Guarantee pursuant to this Agreement 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 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 declare a default with notification to the Developer and a 7 day right of cure, if the Project has not been abandoned by the Developer. If the City determines that the Project has been abandoned after or because of default on an obligation, the City may immediately declare default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien 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 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 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 Exhibits B-1 and B-2 will be *prima facie* evidence of the minimum cost of completion, however, neither that amount or the amount of the 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 Guarantee by selling or otherwise converting the securities that comprise the Guarantee to the full amount pledged less ninety percent (90%) of the estimated cost (as shown on Exhibits B-1 and B-2) of all Improvements previously accepted by the City. The City will have the right to complete Improvements itself or it may contract with a third party for completion, and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining and repairing such Improvements. Alternatively, the City may assign the proceeds of the Guarantee 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 the development, in whole or in part, 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 until such time as the work is accepted and the warranty obligations have been satisfied. 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 or nonperformance 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. Such amendment or modification shall be properly notarized before it may be deemed effective.

19. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, 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 or to transfer ownership of the Property being developed.

21. **Integration:** This Agreement, together with the exhibits and attachments thereto constitutes the entire agreement between the parties 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: Immaculate Heart of Mary Church
c/o James H. Plough
776 Bookcliff Avenue
Grand Junction, CO 81501

With a copy to: Mark Luff
c/o Elder & Phillips

If to City: City of Grand Junction
Community Development Director
250 N. 5th Street
Grand Junction, Colorado 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, blueline 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 in the form of a Phase I environmental assessment 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

David A. Varley 2/7/00
David A. Varley *VAV*
Acting Director of Community Development date

Attest:

Stephanie Nye 2/7/00
Stephanie Nye
City Clerk date

Immaculate Heart of Mary

by: James H. Plough
James H. Plough
Pastor date

Attest: _____
Secretary date

TYPE LEGAL DESCRIPTION BELOW, USING ADDITIONAL SHEETS AS NECESSARY.
USE SINGLE SPACING WITH A ONE INCH MARGIN ON EACH SIDE.

EXHIBIT A

Lots 1 and 2, Holy Family Subdivision, Grand Junction, Mesa County, Colorado

EXHIBIT B-1
PHASE I – SEWER, WATER, STREETS & LANDSCAPING
IMPROVEMENTS LIST/DETAIL
 (Page 1 of 3)

DATE: January 20, 2000

NAME OF DEVELOPMENT: Immaculate Heart of Mary Church / Holy Family School

LOCATION: SE Corner 261/2 and H Roads

PRINTED NAME OF PERSON PREPARING: Mark Luff

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
I. SANITARY SEWER				
1. Clearing and grubbing	LS	1	2,000	2,000
2. Cut and remove asphalt				
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	LF	2352	16.50	38,808
4. Sewer Services (incl. Trenching, bedding, & backfill)	EA	4	950	3,800
5. Sanitary sewer manhole(s)	EA	8	1,500	12,000
6. Connection to existing manhole(s)	EA	1	300	300
7. Aggregate Base Course				
8. Pavement replacement				
9. Driveway restoration				
10. Utility adjustments				
II. DOMESTIC WATER				
1. Clearing and grubbing	LS	1	300	300
2. Cut and remove asphalt	EA	2	500	1,000
3. Water Main (incl. excavation, bedding, backfill, valves and appurtenances)	NA	Existing		
4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances)	EA	2	8,000	16,000
5. Connect to existing water line	Incl. in item 4 above			
6. Aggregate Base Course	EA	2	200	400
7. Pavement Replacement	EA	2	400	800
8. Utility adjustments	Incl. in item 4 above			
III. STREETS				
1. Clearing and grubbing	LS	1	2,000	2,000
2. Earthwork, including excavation and embankment construction	CY	2,424	4	9,696
3. Utility relocations				
4. Mirafi (square yard)	SY	5,638	0.35	4,228

5. Aggregate base course (square yard)	CY	1,414	20	28,280
6. Sub-grade stabilization	SY	5,638	1	5,638
7. Asphalt or concrete pavement (square yard)	Ton	1,254	30	37,620
8. Curb, gutter & sidewalk (linear feet)	LF	1,378	18	24,804
9. Driveway sections (square yard)				
10. Crosspans & fillets	SF	3,640	4	14,560
11. Retaining walls/structures	SY	5,811	1	5,811
12. Storm drainage system	LS	1	6,250	6,250
13. Signs and other traffic control devices	EA	5	300	1,500
14. Construction staking	LS	1	7,000	7,000
15. Dust control	LS	1	3,000	3,000
16. Street lights (each)	LS	1	4,000	4,000
IV. LANDSCAPING				
1. Design/Architecture	LS	1	1,250	1,250
2. Earthwork (includes top soil, fine grading, & berming)	LS	1	3,498	3,498
3. Hardscape features (includes walls, fencing, and paving)				
4. Plant material and planting	LS	1	31,677	31,677
5. Irrigation system	LS	1	25,194	25,194
6. Other features (incl. statues, water displays, park equipment, and outdoor furniture)				
7. Curbing				
8. Retaining walls and structures				
9. One year maintenance agreement	LS	1	1,811	1,811
V. MISCELLANEOUS				
1. Design/Engineering				
2. Surveying	EA	2	150	300
3. Developer's inspection costs	LS	1	3,000	3,000
4. Quality control testing	LS	1	3,000	3,000
5. Construction traffic control	LS	1	20,800	20,800
6. Rights-of-way/Easements				
7. City inspection fees @\$45./hr	LS	1	3,000	3,000
8. Permit fees				
9. Recording costs				
10. Striping	LS	1	6,000	6,000
11. Newsletters				

12. General Construction Supervision	LS	1	2,500	2,500
13. Other – Fire Hydrant	EA	1	3,000	3,000
14. Other – As-built	LS	1	1,500	1,500

TOTAL ESTIMATED COST OF B-1 IMPROVEMENTS: \$ 327,325

SCHEDULE OF IMPROVEMENTS:

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

James H. Proulx
 SIGNATURE OF DEVELOPER date

(If corporation, to be signed by president and attested to by secretary together with the corporate seals.)

Reviewed and approved.

Kent Harbert 2/7/00
 CITY ENGINEER date

David VanDer 2/7/00
 COMMUNITY DEVELOPMENT date
 KKA

EXHIBIT B-2

**PHASE II – STREET & LANDSCAPING
IMPROVEMENTS LIST/DETAIL**

(Page 1 of 3) DATE: January 20, 2000

NAME OF DEVELOPMENT: Immaculate Heart of Mary Church / Holy Family School

LOCATION: SE Corner 261/2 and H Roads

PRINTED NAME OF PERSON PREPARING: Mark Luff

			TOTAL UNITS	UNIT QTY.	TOTAL PRICE	TOTAL AMOUNT
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	LS	1	400		400	
2. Earthwork, including excavation and embankment construction	CY	550	4		2,200	
3. Conduit for street lights*	LS	1	3,000		3,000	
4. Aggregate sub-base course Mirafi (square yard)	SY	1108	0.35		831.50	

* Developer will install conduit for wiring to future street lights along 26 1/2 Rd. and H Rd. if requested by City by 12/15/2003. If no request is made by said date, Developer will not be required to install such conduit.

5. Aggregate base course (square yard)	CY	320	20	6,400
6. Sub-grade stabilization	SY	1108	1	1,108
7. Asphalt or concrete pavement (square yard)	Ton	250	30	7,500
8. Curb, gutter & sidewalk (linear feet)	LF	600	18	10,800
9. Driveway sections (square yard)				
10. Crosspans & fillets				
11. Asphalt Removal	SY	560	1	560
12. Storm drainage system				
13. Signs and other traffic control devices	EA	1	300	300
14. Construction staking	LS	1	1,400	1,400
15. Dust control	LS	1	600	600
16. Street lights (each)				
IV. LANDSCAPING				
1. Design/Architecture	LS	1	625	625
2. Earthwork (includes top soil, fine grading, & berming)	LS	1	524	524
3. Hardscape features (includes walls, fencing, and paving)				
4. Plant material and planting	LS	1	6,408	6,408
5. Irrigation system	LS	1	5,522	5,522
6. Other features (incl. statues, water displays, park equipment, and outdoor furniture)				
7. Curbing				
8. Retaining walls and structures				
9. One year maintenance agreement	LS	1	374	374
V. MISCELLANEOUS				
1. Design/Engineering				
2. Surveying				
3. Developer's inspection costs	LS	1	600	600
4. Quality control testing	LS	1	600	600
5. Construction traffic control	LS	1	1,000	1,000
6. Rights-of-way/Easements				
7. City inspection fees @\$45./hr	LS	1	600	600
8. Permit fees				
9. Recording costs				
10. Striping	LS	1	1,200	1,200
11. Newsletters				

- 12. General Construction Supervision
- 13. Other _____
- 14. Other - As-built

LS 1 300 300

TOTAL ESTIMATED COST OF B-2 IMPROVEMENTS: \$ 52,852.50

SCHEDULE OF IMPROVEMENTS:

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

James H. Poynt _____ date
 SIGNATURE OF DEVELOPER
 (If corporation, to be signed by president and attested to by secretary together with the corporate seals.)

Reviewed and approved.

Kent Harbert _____ 2/7/00
 CITY ENGINEER date

David Vuley _____ 2/7/00
 COMMUNITY DEVELOPMENT *KFA* date

TOTAL ESTIMATED COST OF ALL IMPROVEMENTS: \$380,177.50

SCHEDULE OF IMPROVEMENTS:

- I. SANITARY SEWER: December 15, 2000
- II. DOMESTIC WATER: December 15, 2000
- III. STREETS: Phase I – December 15, 2000; Phase II – December 15, 2003
- IV. LANDSCAPING: Phase I – December 15, 2000; Phase II – December 15, 2003
- V. MISCELLANEOUS: Phase I – December 15, 2000; Phase II – December 15, 2003

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.

James H. Plough
 SIGNATURE OF DEVELOPER date
 (If corporation, to be signed by president and attested
 to by secretary together with the corporate seals.)

Reviewed and approved.

Kent Harbert 2/7/00
 CITY ENGINEER date

David VanCen 2/7/00
 COMMUNITY DEVELOPMENT *VVA* date

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EXHIBIT C
**AGREEMENT TO PROVIDE FINANCIAL GUARANTY
AND MANAGEMENT OF ACCOUNTS**

THIS AGREEMENT, made this 15th day of December, 1999, between the City of Grand Junction (hereafter "City"), Immaculate Heart of Mary Church (hereafter "Church"), and Grand Valley Catholic Education, Inc., (hereafter "School"), and is subject to the following recitals:

RECITALS

WHEREAS, the Church and School are developing a parcel of real property known as Lot 1 Holy Family Subdivision, located at the intersection of 26-1/2 and H Roads, in Grand Junction, Colorado. As part of said development, the Church has entered into a Development Improvement Agreement (hereafter "DIA") with the City, guarantying the construction of certain improvements, more particularly described therein. Under the DIA, in order to secure the performance of the obligations described therein, the Church must supply a financial guaranty (hereafter "pledge") equivalent to the estimated cost of the construction of said improvements, \$380,177.50; and

WHEREAS, the Church and School each have an account (hereafter "General Account") with the Grand Junction office of A.G. Edwards & Sons, Inc., (hereafter "Broker"). In order to satisfy the pledge requirements of the DIA, the Church and School each desire to transfer bonds, CD's and/or other marketable securities (hereafter "securities") from their general accounts into a separate account with Broker which will be managed and controlled by the City pursuant to this agreement, such that the total of both accounts will be equal to or greater than the estimated cost of completing the improvements as required under the DIA; and

WHEREAS, the City desires to accept such accounts as the pledge required under the DIA and manage and control such accounts in accordance with this Agreement; and

WHEREAS, the purpose this Agreement is to establish such financial guaranty and to outline the management and control of such accounts as are described herein.

NOW THEREFORE, the parties agree as follows:

1. Establishment of Accounts.
 - (a) The Church shall deposit various securities with a face value of \$ 163,000.00 in a separate account with Broker (the "Church Account"). Said account shall be entitled "Immaculate Heart of Mary Church.-DIA Account" or similar name to designate such account as the pledge account to the City. The tax identification number for the Church shall be used on this account for income tax purposes.
 - (b) School shall deposit various securities with a face value of \$ 218,000.00 in an account with Broker (the "School Account"). Said account shall be entitled "Holy Family School- DIA Account" or similar name to designate such account as the

pledge account to the City. The tax identification number for the School shall be used on this account for income tax purposes.

2. Signatories on Accounts. In order to insure the City has control over the Church account and School Account pursuant to the DIA, representatives from the City shall be the only signatories on such accounts. The City shall have the sole authority and power to withdraw, sell, release or otherwise dispose of any and all securities in the Church account and the School account, but only in conformance with this Agreement. The Church and School shall have no ability or power to withdraw, sell, release or otherwise dispose of such securities from their respective accounts. Two signatures will be required on the accounts. The following City representatives shall be the authorized signers on the Church Account and School Account: City Development Director and City Engineer. The individuals who currently occupy these positions are David Varley and Don Newton, respectively.

Notwithstanding the foregoing, the City acknowledges and agrees that the authority given to the City under this Agreement is solely for purposes of using the Church Account and School Account as the financial guaranty under the DIA. City agrees that nothing contained herein, or in any documents establishing the accounts with Broker, constitutes evidence of the City's ownership of such accounts. Except as provided herein, City agrees that it will not exercise any ownership over the Church Account or the School Account.

3. Authority to make Investment Decisions.

- (a) The parties acknowledge that during the time the Church account is pledged to the City, securities in said account may mature, and other securities may become more desirable due to higher yields. Notwithstanding the provisions of paragraph 2 herein, Church and City agree that the Church shall have the sole authority to make investment decisions relating to said account, including but not limited to rolling over such securities or exchanging, transferring or substituting one security for another, including but not limited to mortgages, stocks, bonds, debentures, notes, options, warrants, certificates of deposits, mortgage backed securities, certificates of interest of any and every kind whatsoever, or any other type of investment available through Broker, so long as the balance in said account after such proposed investment decision does not fall below that amount required by City pursuant to the DIA. The City agrees that it shall not make any investment decisions relating to the Church account. At the time the Church desires to make an investment decision, it will notify City and City shall implement such transaction(s) with Broker. Any one (1) of the following individuals are authorized to make such investment decisions on behalf of Church:

Fr. James H, Plough
Mary Novotney

- (b) The parties acknowledge that during the time the School account is pledged to the City, securities in such account may mature, and other securities may become

more desirable due to higher yields. Notwithstanding the provisions of paragraph 2 herein, School and City agree that School shall have the sole authority and power to make investment decisions relating to said account, including but not limited to rolling over such securities or exchanging transferring or substituting one security for another, including but not limited to mortgages, stocks, bonds, debentures, notes, options, warrants, certificates of deposits, mortgage backed securities, certificates of interest of any and every kind whatsoever, or any other type of investment available through Broker, so long as the balance in said account after such proposed investment decision does not fall below the amount required by the City pursuant to the DIA. The City agrees that it shall not make any investment decisions relating to the School account. At the time the School desires to make an investment decision, it shall notify City thereof, and City shall implement such transaction with Broker. Any one (1) of the following individuals are authorized to make such investment decisions on behalf of School:

Bernard A. Buescher
 Fr. James H. Plough
 Fr. Ed Nunez
 Sr. Kathy Lentch
 Sr. Barbara Piotrowski

4. Release of Accounts. At such time as the City accepts any improvement pursuant to the DIA, the City shall release so much of the Church account and School account as is appropriate under the DIA. Of the amount to be released, fifty six percent (56%) of said amount shall be released from the Church account, and forty four percent (44%) shall be released from the School account. City shall submit such documentation to Broker as is necessary to release such amounts from the Church account and School account, as the case may be and transfer such amounts into the general accounts that the Church and School hold with Broker.

5. Default. If the Church is in default pursuant to the DIA, the City can exercise its rights under the DIA and may sell, exchange, or otherwise dispose of the securities contained in the Church account and/or School account, as the case may be, by providing written notice to Broker that it is exercising such right. Except as provided herein, City will take no action or control over the Church Account or School Account.

6. Fees and Charges; Monthly Statements. Any fees or charges relating to the Church account shall be paid by the Church. Any fees or charges relating to the School account, shall be paid by the School. City agrees to instruct Broker to send monthly statements for the Church Account to the Church, c/o Mary Novotney, 776 Bookcliff Avenue, Grand Junction, CO, 81501 and the School Account to School, c/o Bernard A. Buescher, P. O. Box 1752, Grand Junction, Co., 81502.

7. Income and Dividends. City agrees to instruct Broker that any income, dividends or distributions relating to the securities held in the Church account or School account shall be automatically deposited into their respective general accounts, as the case may be, and shall not

be deposited in the Church account or School account, or released to the City, except as authorized herein.

8. Control over Broker Agreement. The parties acknowledge that the Church Account and School Account established with Broker may allow the signatories unlimited access and control over such accounts. Notwithstanding such authority under any such agreement, the parties herein agree that such authority is subject to this Agreement, and that this document shall supercede and control the management and use of such accounts.

9. Modification of Agreement. Except as otherwise specifically provided herein, this Agreement may be altered, amended, modified or revoked by writing only, signed by all of the parties hereto.

10. Attorney's Fees. Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, 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.

11. 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 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.

12. Incorporation of DIA The parties acknowledge that the terms and conditions of the DIA, a copy of which is attached hereto, are made a part hereof and incorporated herein.

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

IMMACULATE HEART OF MARY
CHURCH:

By: Father James H. Plough
Father James H. Plough, Pastor

GRAND VALLEY CATHOLIC
EDUCATION, INC.:

By: Bernard A. Buescher
Bernard A. Buescher, President

CITY OF GRAND JUNCTION

By: David Bentley
Title ACTING COMM. DEV. DIRECTOR

PARTIAL RELEASE OF IMPROVEMENTS AGREEMENT & GUARANTEE
Grand Junction Community Development Department
FILE # SPR-1999-130

This memorandum relates to a certain recorded Improvements Agreement and Guarantee dated February 11, 2000 recorded at Book 2678, Pages 739-757 of the land records of Mesa County, Colorado, by and between Immaculate Heart of Mary Church (Developer) and the City of Grand Junction (City) pertaining to Immaculate Heart of Mary Church (Project) located at 790 26-1/2 Road.

The property on which the Project was constructed is described as Lots 1 and 2, Holy Family Subdivision, Grand Junction, Mesa County, Colorado.

RECITALS: The Developer has installed and constructed certain public and private improvements constituting Phase 1 of and at the Project. The completion of the Improvements was guaranteed by the execution of an Improvements Agreement and Guarantee. The City of Grand Junction and all other regulatory agencies possessing authority over the Project and/or the Improvements, having inspected the construction of the same and having accepted the same do hereby partially release the Improvements Agreement and Guarantee.

NOW THEREFORE, in consideration of the recitals and other operative facts, the officials of the City of Grand Junction and other officials duly representing and possessing sufficient authority to accept the Improvements, do as provided for herein release that portion of the Improvements Guarantee pertaining to Phase 1 Improvements. That a portion of the Improvements Agreement and Guarantee in the amount of \$327,325.00 Phase I is released.

CITY OF GRAND JUNCTION:

By: City Engineer [Signature] Date 1-15-01
City Utilities Manager [Signature] Date 1/23/01
Fire Marshall Norman Noble Date 1/25/01

UTE WATER:

By: [Signature] Date 1/29/01

GRAND JUNCTION DRAINAGE:

By: NA Date _____

OTHER (Community Development):

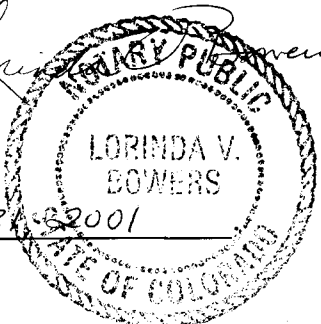
By: [Signature] Date 1/15/01

In accordance with the above signatures, I hereby certify that Phase 1 of the Improvements Agreement & Guarantee and that a portion of the recording evidencing the agreement and guarantee, at Book 2678, Pages 739-757 of the Mesa County land records, in the principal sum of \$327,325.00 has been completed and accepted and in accordance with the provisions of the Grand Junction Zoning and Development Code are hereby partially released, subject to the required warranty period. Further obligations for Phase II still apply.

Director of Community Development [Signature] Date 1-31-01

The foregoing instrument was executed before me this 31st day of, 2001
by Katherine M. Portner, Director of Community Development for
the City of Grand Junction, Colorado.

Witness my hand & official seal. [Signature]
Notary Public
My commission expires January 31, 2001



BOOK 2798 PAGE 66
1982144 02/01/01 0249PH
MONIKA TOGG CLERK OF MESA COUNTY CO
REC FEE \$5.00

Clerk

2149329 09/19/03 1148AM
JANICE WARD CLK&REC MESA COUNTY CO
REC FEE \$5.00 SURCHG \$1.00

RELEASE OF IMPROVEMENTS AGREEMENT & GUARANTEE
Grand Junction Community Development Department
FILE SPR-1999-130 and SPR-2002-088

BOOK 3488 PAGE 364

This memorandum relates to a certain recorded Improvements Agreement and Guarantee dated February 11, 2000 and recorded at Book 2678, Pages 739 through 757 of the land records of Mesa County, Colorado, by and between Immaculate Heart of Mary Church (Developer) and the City of Grand Junction (City) pertaining to Immaculate Heart of Mary Church and Holy Family School located at 790 26-1/2 Road (Project).

The property on which the Project was constructed is described as Lots 1 and 2, Holy Family Subdivision, Grand Junction, Mesa County, Colorado.

RECITALS: The developer has installed and constructed certain public and private improvements constituting Phases 1 and 2 of and at the Project. The completion of the Improvements was guaranteed by the execution of an Improvements Agreement and Guarantee. The City of Grand Junction and all other regulatory agencies possessing authority over the Project and/or the Improvements, having inspected the construction of the same and having accepted the same do hereby release the Improvements Agreement and Guarantee.

NOW THEREFORE, in consideration of the recitals and other operative facts, the officials of the City of Grand Junction and other officials duly representing and possessing sufficient authority to accept the Improvements, do as provided herein release the Improvements Guarantee pertaining to Phase 1 and 2 Improvements.

CITY OF GRAND JUNCTION:

By: City Engineer	<u><i>Rick Davis</i></u>	Date	<u>9-18-03</u>
City Utilities Manager	<u><i>Scott Davis for Paul</i></u>	Date	_____
* Fire Marshall	<u><i>Norman Noble</i></u>	Date	<u>9/17/03</u>
Community Development	<u><i>Scott Davis for Paul</i></u>	Date	<u>9/18/03</u>
Ute Water	<u><i>Paul Tule</i></u>	Date	<u>17 Sep 03</u>

In accordance with the above signatures, I hereby certify that Phases 1 and 2 of the Improvements Agreement & Guarantee and that a portion of the recording evidencing the agreement and guarantee, at Book 2678, Pages 739-757 of the Mesa County land records, have been completed and accepted and in accordance with the provisions of the Grand Junction Zoning and Development Code are hereby released subject to the required warranty period.

~~Director~~ of Community Development *Pat Ceal* Date 9/18/03

The foregoing instrument was executed before me this 18th day of September, 2003

by Pat Ceal, ~~Director~~ of Community Development for the City of Grand Junction, Colorado.

Witness my hand and official seal.

Notary Public *Rhonda S Edwards*

My commission expires November 28, 2005

