

SMH05PAT

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**

NAME OF APPLICANT OR DEVELOPER: ST. MARY'S HOSPITAL

PROJECT / SUBDIVISION: ST. MARY'S NORTHWEST PARKING LOT

LOCATION: 515 PATTERSON ROAD

PARCEL NO: 2943-051-70-002

FILE NO: RZ-2004-117

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2005

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are St. Mary's Hospital, ("Developer") and the **City of Grand Junction**, Colorado ("City").

For valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

2. **Effective Date:** The Effective Date of the Agreement shall be the date that it is signed by the Community Development Director, which shall be no sooner than recordation of the final plat or final plan approval whichever first occurs.

RECITALS

The Developer seeks permission to develop property, described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The Property, known as Patterson Access & NW Parking Lot has been reviewed and approved under Community Development file # RZ-2004-117 ("Development" or "the Development").

The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements to the Property and limiting the harmful effects of substandard development.

A further purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself; this Agreement is not executed for the benefit of materialmen, laborers or others providing work, services or material to the Developer and/or the Property or for the benefit of the owner(s), purchaser(s) or user(s) of the Property.

The mutual promises, covenants and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and City's land development ordinances and regulations.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer shall design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit B attached and incorporated by this reference ("Improvements" or "the Improvements").

3a. On and after the Effective Date of this Agreement the Developer agrees to pay the City for its Administration and Inspection of the Development. The hourly rate for those services is \$45.00/hour. Administration and Inspection includes but is not limited to the time expended by the City's planner, engineer, construction inspector and attorney in directing, advising, correcting and enforcing by means other than

litigation, this agreement and/or the approved development plan. Making disbursements and calling/collecting Guarantees are Administration and Inspection services and shall be charged at \$45.00/hour. See, paragraph 19 concerning attorneys'/ litigation fees.

3b. The scope of this project is such that the City may have to engage independent consultants(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others for which Developer is responsible hereunder.

3c. The Developer's obligation to complete the Improvements is and shall be independent of any obligations of the City contained herein.

4. **Security:** To secure the performance of its obligations under this Agreement the Developer shall supply a guarantee. The Developer is required to post security in an amount of \$ 40,262.40 (120% of the amount for the Improvements) in a form and with terms acceptable to the City ("Guarantee"). The Guarantee shall be in the form of a cash deposit made to the City, a letter of credit or a disbursement agreement in a form and with content approved by the City Attorney. The Guarantee specific to this Agreement is attached as Exhibit C and is incorporated by this reference as if fully set forth.

Select one: Cash _____ Letter of Credit (LOC) _____ Disbursement Agreement _____
OTHER ✓ SEE EXHIBIT C.

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

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

6a. Upon Acceptance the Developer shall provide a Maintenance Guarantee in an amount of \$ 6710.40 (Line G2, Exhibit B, City Security).

6b. The Maintenance Guarantee shall be secured by a letter of credit, cash escrow or other form acceptable to the City. *OTHER. SEE EXHIBIT C.*

7. **Commencement, Completion and Abandonment Periods:** The Developer shall commence work on the Improvements within 30 days from the Effective Date of this Agreement; that date is known as the "Commencement Date."

7a. The Developer shall complete the Improvements by the end of the twelfth month from the Effective Date of this Agreement; that date is known as the "Completion Date."

7b. The Developer shall not cease construction for any period of more than 60 consecutive days. If construction is ceased for 60 or more consecutive days the Director may deem the Development abandoned ("the Abandonment Period").

7c. The Commencement date and the Completion Date are as follows:

Commencement Date: AUGUST, 2004
Completion Date: DECEMBER, 2004 5^{PM} 15^{PM}

8. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations when fulfilling its obligations under their Agreement. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after the Effective Date.

9. **Notice of Defect:** The Developer by and through his/her/its engineer shall provide timely written notice to the issuer of the Guarantee and the Director when the Developer and/or his/her/its engineer has knowledge, that an Improvement or any part or portion of any Improvement either does not conform to City standards or is otherwise defective.

9a. The Developer shall correct all non-conforming construction and/or defects within thirty (30) days from the issuance of the notice by his/her/its engineer of a/the defect.

10. **Acceptance of Improvements:** The City shall not accept and/or approve any or all of the Improvements until the Developer presents a document or documents for the benefit of the City showing that the Developer owns the Improvements in fee simple, or as accepted by the City Attorney, and that there are no liens, encumbrances or other restrictions on the Improvements other than those that have been accepted by the City Attorney.

10a. Approval and/or acceptance of any Improvement(s) does not constitute a waiver by the City of any right(s) that it may have on account of any defect in or failure of the Improvement that is detected or which occurs after approval and/or acceptance.

10b. Acceptance by the City shall only occur when the City Engineer, sends a writing to such effect ("Acceptance").

11. **Reduction of Security:** Upon Acceptance of any Improvement(s) the amount which the City is entitled to draw on the Guarantee shall be reduced by an amount of \$_____ (Line G1, Exhibit B, Total Improvement Costs).

11a. At the written request of the Developer, the City shall execute a certificate verifying Acceptance of the Improvement and thereafter waiving its right to draw on the Guarantee to the extent of such amount. A Developer in default under this Agreement has no right to such certification.

12. Use of Proceeds: The City shall use funds deposited with it, drawn or guaranteed pursuant to this Agreement only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements or paying Administration and Inspection fees.

13. Events of Default: The following conditions, occurrences or actions shall constitute a default by the Developer:

13a. Developer's failure to complete each portion of the Improvements on or before the Completion Date;

13b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvements within the applicable warranty period;

13c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer. In such event the City may immediately declare a default without prior notification to the Developer;

13d. Notification to the City, by any lender with a lien on the Property, of a default by Developer on any obligation to such lender. In such event, the City may immediately declare a default without prior notification to the Developer.

13e. With regard to the Property or any portion thereof: initiation of any foreclosure action regarding any lien or encumbrance; or initiation of mechanics lien(s) procedure(s); or assignment or conveyance of the Property in lieu of foreclosure. In such event the City may immediately declare a default without prior notification to the Developer.

13f. Notification to the City from the bank issuing the Guarantee that it will not renew the Guarantee at a time when security is still required hereunder and no substitute collateral acceptable to the City has been provided by the Developer.

13g. Except as provided, the City may not declare a default until written notice has been sent to the Developer at the address shown in the development file. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

14. Measure of Damages: The measure of damages for breach of this Agreement by the Developer shall be the reasonable cost of satisfactorily completing the Improvements, plus reasonable expenses. Expenses may include but are not limited to

contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to the collection/completion of the Improvements. For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit B shall be *prima facie* evidence of the minimum cost of completion; however, the maximum amount of the Developer's liability shall not be established by that amount or the amount of the Guarantee.

15. City's Rights Upon Default: When any event of default occurs, the City may draw on the Guarantee or proceed to collect any other security to the extent of the face amount of the Guarantee less eighty percent (80%) of the estimated cost (as shown on Exhibit B) of all Improvements for which the City has given its Acceptance and no warranty work is reasonably required. The City may also exercise its rights to disbursement of loan proceeds or other funds under the City improvements disbursement agreement.

15a. The City shall have the right to complete Improvements itself or it may contract with a third party for completion.

15b. The Developer grants to the City, its successors, assigns, agents, contractors and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining, inspecting and repairing the Improvements.

15c. The City may assign the proceeds of the Guarantee or other funds or assets that it may receive in accordance with this Agreement to a subsequent developer or lender that has acquired the Property by purchase, foreclosure or otherwise.

15d. That developer or lender shall then have the same rights of completion as the City if and only if the subsequent developer or lender agrees in writing to complete or correct the Improvements and provides to the City reasonable security for that obligation.

15e. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

16. Indemnification: The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns ("City") harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with or on account of the performance or non-performance of work at the Property and/or the Improvements and/or the Development that is being done pursuant to this Agreement.

16a. The Developer further agrees to aid and defend the City in the event that the City and/or the Improvements is named as a defendant in an action concerning the performance of work pursuant to this Agreement except for a suit wherein the Developer states claim(s) against the City.

16b. The Developer is not an agent, partner, joint venturer or employee of the City.

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

18. **Amendment or Modification:** The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or his/her/its authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

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

20. **Vested Rights:** This Agreement does not guarantee, represent or certify that the Developer is entitled to any other approval(s) required by the City, before the Developer is entitled to commence development beyond the scope of this Agreement or to transfer ownership of the Property being developed.

21. **Integration:** This Agreement, together with the exhibits and attachments thereto constitutes the entire Agreement between the parties. No statement(s), promise(s) or inducements(s) that is/are not contained in this Agreement shall be binding on the parties.

22. **Third Party Rights:** No person or entity who or which is not a party to this Agreement shall have any right of action under or be a beneficiary of this Agreement.

23. **Time:** For the purpose of computing the Abandonment Period and Commencement and Dates, such times in which war, civil disasters or acts of God occurs or exist shall not be included if such prevents the Developer or City from performing its obligations under the Agreement. The Developer must notify the City in writing if/when it asserts impossibility of performance under this paragraph. The City may reject the Developer's assertion, if it finds, in writing that the condition(s) that the Developer asserts do not exist.

24. **Severability:** If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or

unenforceability shall not affect the validity of any other part, term or provision. The rights of the parties shall be construed as if the part, term or provision was never part of the Agreement.

25. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld but any unapproved assignment is void.

25a. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property.

25b. There is no prohibition on the right of the City to assign its rights under this Agreement.

25c. Upon written request from the Developer the City shall expressly release the original Developer's Guarantee and/or contract obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City shall constitute a release of the original Developer from his liability under this Agreement.

25d. When the City has issued its Acceptance regarding the Improvements, the City agrees to state the same in writing, with appropriate acknowledgments.

25e. The City shall sign a release only after all warranty periods, as extended by litigation, repair or alteration work, have expired.

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

If to Developer: St. Mary's Hospital Name -Developer/Company
Mr. Keith Estridge Address (Street and Mailing)
2635 N. 7th Street
Grand Jct, CO 81501 City, State & Zip Code
(970) 244-2445 Telephone and Fax Numbers
(970) 244-2893
kestridge@stmarygj.com E-mail

Cc:

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

Cc: Community Development Department
250 North 5th Street
Grand Junction, CO 81501

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

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

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

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

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

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

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

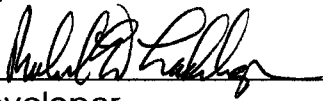
30c. The City shall not issue its written Acceptance with regard to any Improvement(s) including any street, storm drainage facility, sewer, water facility or other required Improvement(s), until the Developer:

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

(ii) provides written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon in and under which the Improvement(s) have been constructed or which are necessary for the Improvements are free from toxic, hazardous and other regulated substances or materials;

(iii) provides written evidence to the City Attorney that the title to lands underlying the improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney; and
(iv) provides written evidence, certified by the Developer's engineer, that the work was systematically inspected and tested and that the materials and the compaction of the materials that are required to be compacted, were in conformance with City-approved plans and specifications.

By:

 5/26/05
Developer Date

Name (printed)

Corporate Attest:

Name Date

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

 5/13/05
Community Development Dept. Date

6/13/2003

| Item # | Item Description | Unit | Quantity | Unit Price | Extended Price |
|-----------|---|------|----------|------------|----------------|
| C1 | STREETS | | | | |
| 1 | " PVC Utility/Irrigation sleeves | LF | | | \$ - |
| 2 | " PVC Utility/Irrigation sleeves | LF | | | \$ - |
| 3 | Reconditioning | SY | 560 | \$ 1.00 | \$ 560.00 |
| 4 | Aggregate Base Course (Class 3) | TN | | | \$ - |
| 5 | Aggregate Base Course (Class 6) (6" Compacted Thickness) | SY | 365 | \$ 5.00 | \$ 1,825.00 |
| 6 | Aggregate Base Course (Class 6) (12" Compacted Thickness) | SY | 554 | \$ 8.00 | \$ 4,432.00 |
| 7 | Hot Bituminous Paving, Grading C (5" thick) | SY | 456 | \$ 12.00 | \$ 5,472.00 |
| 8 | Hot Bituminous Paving, Grading (" thick) | SY | | | \$ - |
| 9 | Hot Bituminous Paving, Patching (" Thick) | SY | | | \$ - |
| 10 | Geotextile | SY | | | \$ - |
| 11 | Concrete Curb (" Wide by " High) | LF | | | \$ - |
| 12 | Concrete Curb and Gutter (2' wide) | LF | | | \$ - |
| 13 | Concrete Curb and Gutter (1.5' wide) | LF | | | \$ - |
| 14 | Monolithic, Vertical Curb, Gutter and Sidewalk (8' Wide) | LF | 250 | \$ 18.00 | \$ 4,500.00 |
| 15 | Drive Over Curb, Gutter, and Sidewalk (' Wide) | | | | \$ - |
| 16 | Concrete Sidewalk (' Wide) | LF | | | \$ - |
| 17 | Concrete Gutter and Driveway Section (" Thick) | SY | | | \$ - |
| 18 | Concrete Drainage Pan (6' Wide, 8" Thick) | SY | 25 | \$ 40.00 | \$ 1,000.00 |
| 19 | Concrete Corner Fillet | SY | 74 | \$ 40.00 | \$ 2,960.00 |
| 20 | Concrete Curb Ramp | SY | | | \$ - |
| 21 | Complete Concrete Corner | SY | 80 | \$ 40.00 | \$ 3,200.00 |
| 22 | Concrete Driveway (" Thick) | SY | | | \$ - |
| 23 | Driveway/Concrete Repair | SY | | | \$ - |
| 24 | Retaining Walls | LF | | | \$ - |
| 25 | Street Signs | EA | 1 | \$ 250.00 | \$ 250.00 |
| 26 | Striping (New, Remove/Replace) | LF | | | \$ - |
| 27 | Street Lights | EA | | | \$ - |
| 28 | Signal Construction or Reconstruction | LS | | | \$ - |
| 29 | Flowable Fill | CY | | | \$ - |
| 30 | Sleeves, " , PVC | LF | | | \$ - |
| | | | | | \$ - |
| | | | | | \$ - |

| Item # | Item Description | Unit | Quantity | Unit Price | Extended Price |
|--|-----------------------------------|----------|----------|-------------|---------------------|
| C2 BRIDGES | | | | | |
| | | | | | \$ - |
| 1 | Box Culvert Pre-Cast | LS | | | \$ - |
| 2 | Box Culvert Cast-in-Place | LS | | | \$ - |
| 3 | Wingwalls | LS | | | \$ - |
| 4 | Parapet Wall | LS | | | \$ - |
| 5 | Railing (handrail, guardrail) | LS | | | \$ - |
| | | | | | \$ - |
| | | | | | \$ - |
| Subtotal Part C - Streets and Bridges | | | | | \$ 24,199.00 |
| D1 EARTHWORK | | | | | |
| 1 | Mobilization | LS | 1 | \$ 2,000.00 | \$ 2,000.00 |
| 2 | Clearing and Grubbing | AC or LS | | | \$ - |
| 3 | Unclassified Excavation | CY | | | \$ - |
| 4 | Unclassified Embankment | CY | | | \$ - |
| 5 | Silt Fence | LF | | | \$ - |
| 6 | Watering (Dust Control) | LS | 1 | \$ 500.00 | \$ 500.00 |
| D2 REMOVALS AND RESETTING | | | | | |
| 1 | Removal of Asphalt | SY | 548 | \$ 2.00 | \$ 1,096.00 |
| 2 | Removal of Miscellaneous Concrete | SY | 320 | \$ 2.00 | \$ 640.00 |
| 3 | Remove Curb and Gutter | LF | | | \$ - |
| 4 | Removal of Culverts | LF | | | \$ - |
| 5 | Remove Structures | EA | | | \$ - |
| 6 | Remove Signs | EA | 1 | \$ 250.00 | \$ 250.00 |
| 7 | Remove Fence | LF | | | \$ - |
| 8 | Adjust Manhole | EA | | | \$ - |
| 9 | Adjust Valvebox | EA | | | \$ - |
| 10 | Relocate or Adjust Utilities | LS | | | \$ - |
| D3 SEEDING AND SOIL RETENTION | | | | | |
| 1 | Sod | SY | | | \$ - |
| 2 | Seeding (Native) | SY or AC | | | \$ - |
| 3 | Seeding (Bluegrass/Lawn) | SY or AC | | | \$ - |
| 4 | Hydraulic Seed and Mulching | SY or AC | | | \$ - |
| 5 | Soil Retention Blanket | SY | | | \$ - |

| Item # | Item Description | Unit | Quantity | Unit Price | Extended Price |
|-----------|--|------|----------|------------|--------------------|
| D4 | STORM DRAINAGE FACILITIES | | | | |
| 1 | Finish Grading (incl. Channels, Swales, and Ponds) | CY | | | \$ - |
| 2 | " Storm Drain Pipe | LF | | | \$ - |
| 3 | " Storm Drain Pipe | LF | | | \$ - |
| 4 | " Storm Drain Pipe | LF | | | \$ - |
| 5 | " Storm Drain Pipe | LF | | | \$ - |
| 6 | " Storm Drain Pipe | LF | | | \$ - |
| 7 | " Flared End Section | EA | | | \$ - |
| 8 | " Flared End Section | EA | | | \$ - |
| 9 | 48" Storm Drain Manhole | EA | | | \$ - |
| 10 | 60" Storm Drain Manhole | EA | | | \$ - |
| 11 | 72" Storm Drain Manhole | EA | | | \$ - |
| 12 | Manhole with Box Base | EA | | | \$ - |
| 13 | Connection to Existing MH | EA | | | \$ - |
| 14 | Single Curb Opening Storm Drain Inlet | EA | | | \$ - |
| 15 | Double Curb Opening Storm Drain Inlet | EA | | | \$ - |
| 16 | Area Storm Drain Inlet | EA | | | \$ - |
| 17 | Detention Area Outlet structure | EA | | | \$ - |
| 18 | Rip-Rap D ₅₀ = ___" | CY | | | \$ - |
| 19 | Sidewalk Trough Drain | EA | | | \$ - |
| 20 | Pump Systems including Electrical | LS | | | \$ - |
| | Subtotal Part D - Grading and Drainage | | | | \$ 4,486.00 |

| Item # | Item Description | Unit | Quantity | Unit Price | Extended Price |
|-----------|---|------|----------|------------|----------------|
| E1 | IRRIGATION | | | | |
| 1 | Connect to Existing Pipe | LS | | | \$ - |
| 2 | " Irrigation Pipe | LF | | | \$ - |
| 3 | " Irrigation Pipe | LF | | | \$ - |
| 4 | Fittings and Valves | LS | | | \$ - |
| 5 | Services | EA | | | \$ - |
| 6 | Pump System and Concrete Vault | LS | | | \$ - |
| 7 | Irrigation Structure | EA | | | \$ - |
| 8 | Vacuum Relief and/or Air Release Valve | EA | | | \$ - |
| | | | | | |
| | | | | | |
| E2 | LANDSCAPING | | | | |
| 1 | Design/Architecture | LS | | | \$ - |
| 2 | Earthwork | CY | | | \$ - |
| 3 | Hardscape Features | LS | | | \$ - |
| 4 | Plant Material & Planting | LS | | | \$ - |
| 5 | Irrigation System | LS | | | \$ - |
| 6 | Curbing | LF | | | \$ - |
| 7 | Retaining Walls & Structures | LS | | | \$ - |
| 8 | 1 Year Maintenance Agrmnt. | LS | | | \$ - |
| 9 | Topsoil | | | | \$ - |
| | | | | | \$ - |
| | | | | | \$ - |
| E | Subtotal Part E - Landscaping and Irrigation | | | | \$ - |
| | | | | | |
| | Subtotal Construction Costs | | | | \$ 28,685.00 |

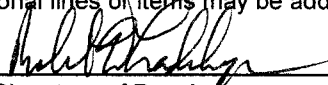
| Item # | Item Description | Unit | Quantity | Unit Price | Extended Price |
|--|--------------------------------|------|----------|-------------|--------------------|
| F. Miscellaneous Items | | | | | |
| 1 | Construction staking/surveying | % | 2.00% | \$ 574.00 | \$ 574.00 |
| 2 | Developer's inspection cost | % | | | \$ - |
| 3 | General construction supervsn | % | | | \$ - |
| 4 | Quality control testing | % | 2.00% | \$ 574.00 | \$ 574.00 |
| 5 | Construction traffic control | % | | \$ 3,000.00 | \$ 3,000.00 |
| 6 | City inspection fees | % | 0.50% | \$ 145.00 | \$ 145.00 |
| 7 | As-builts | % | 2.00% | \$ 574.00 | \$ 574.00 |
| E Subtotal Part F - Miscellaneous Items | | | | | \$ 4,867.00 |

% = Percentage of total site construction costs

| | | | | | |
|----------------------------------|--|--|--|--|---------------------|
| G. COST SUMMARY | | | | | |
| 1 Total Improvement Costs | | | | | \$ 33,552.00 |
| 2 City Security (20%) | | | | | \$ 6,710.40 |
| | | | | | \$ - |
| 3 Total Guarantee Amount | | | | | \$ 40,262.40 |

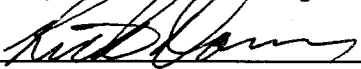
NOTES

1. All prices shall be for items complete in place and accepted.
2. All pipe prices shall include excavation, pipe, bedding, backfill, and compaction.
3. Water main shall include pipe, excavation, bedding, backfill, bends, and appurtenances not itemized elsewhere.
4. All concrete items shall include Aggregate Base Course where required by the drawings.
5. Fill in the pipe type for irrigation pipe and sleeves.
6. Reconditioning shall be calculated to at least 6" outside of back of walk on both sides.
7. Units can be changed if desired, simply annotate what is used.
8. Additional lines or items may be added as needed.

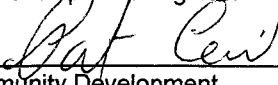

5/26/04

 Signature of Developer Date
 (If corporation, to be signed by President and attested
 to by Secretary together with the corporate seals.)

I have reviewed the estimated costs and time schedule shown above and, based on the construction drawings submitted to date and the current cost of construction, I take no exception to the above.


3-29-05

 City Development Engineer Date


5/23/05

 Community Development Date

EXHIBIT "C"

AGREEMENT TO PROVIDE FINANCIAL GUARANTY AND MANAGEMENT OF ACCOUNTS

THIS AGREEMENT, made this 20th day of May, 2004 between the city of Grand Junction (hereafter "City") and the Sisters of Charity of Leavenworth dba St. Mary's Hospital & Medical Center, Inc. (hereafter "Hospital"), and is subject to the following recitals:

RECITALS

The Hospital is developing Parcel Numbers 2945-112-00-931 and 2945-112-00-971 for a new Entrance from Patterson Road and a new Parking Lot. Reference the attached property descriptions from the Mesa County Assessor's office.

As part of said development the Hospital has entered into a Development Improvement Agreement (hereafter, "DIA") with the City, guaranteeing the construction of certain improvements, more particularly described herein, the Hospital must supply a financial guaranty (hereafter, "pledge") equivalent to the estimated cost of the construction of said improvements, \$40,262.40.

The Hospital has an investment account with Wells Fargo Bank (hereafter, "Bank" or "Banker"). In order to satisfy the pledge requirements of the DIA, the Hospital desires to transfer, pledge, or otherwise encumber certain of its certificates of deposits (CD's and/or other investment instruments hereafter, "Instruments"), from their general account into a separate account with the Bank, which will be managed and controlled by the City pursuant to this Agreement, such that the total of the accounts will be equal to or greater than the estimated cost of completing the improvements as required under the DIA.

The City has accepted such accounts as the pledge required under the DIA and controls such accounts in accordance with this Agreement.

The purpose of 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 Account. The Hospital has deposited various Instruments with a face value of \$40,262.40 in an account with the Bank. Said account shall be entitled "St. Mary's Hospital – Northwest Parking Lot" (for the purpose of this agreement "Hospital Account" or "the Hospital Account") to

designate such account as the pledge account to the City. The tax identification number for the Hospital shall be used on this account for income tax purposes.

2. Signatories on the Account. In order to ensure that the City has control over the Hospital Account pursuant to the DIA, representatives from the City shall be the only signatories on such account. The City shall have the sole authority and power to withdraw, sell, release, convert and/or otherwise dispose of any and all investments in the Hospital Account but only in conformance with this Agreement. The Hospital shall have no ability or power to withdraw, sell, release or otherwise dispose of such investment from the account. Two signatures will be required to transact the account.

The following City representatives shall be authorized signers on the Hospital Account:

(Printed Name) ,

(Printed Name)

(Printed Name)

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 Hospital Account as the financial guaranty under the DIA. City agrees that nothing contained herein or in any documents establishing the accounts with Banker, constitutes evidence of the City's ownership of such accounts. Except as provided herein, City agrees that it will not exercise any ownership of such accounts. Except as provided herein, City agrees that it will not exercise any ownership over the Hospital Account.

3. Authority to Make Investment Decisions. The parties acknowledge that during the time the Hospital 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, Hospital and City agree that the Hospital shall have the sole authority to make investment decisions relating to said account, including, but not limited to, rolling over such investments or exchanging, transferring or substituting one investment for another, including, but not limited to mortgages, stocks, bonds, debentures, notes, options, warrants, certificates of deposits, mortgage-backed

securities, available through the Banker, 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. At the time the Hospital desires to make an investment decision, it will notify the City and City shall implement such transaction(s) with Banker. Any one (1) of the following individuals are authorized to make such investment decision on behalf of Hospital:

Robert Ladenburger


4. Release of Accounts: At such time as City accepts any Improvement pursuant to the DIA, the City shall release so much of the Hospital Account as is appropriate under the DIA. The City shall submit such documentation to Banker as is necessary to release such amount(s) from the Hospital account.
5. Default. If the Hospital is in default pursuant to the DIA, the City can exercise its rights under the DIA and may sell, exchange, redeem or otherwise convert or dispose of the investments contained in the Hospital Account as the case may be, by providing written notice to Banker that it is exercising such right. Except as provided herein, City shall take no action or control the Hospital Account.
6. Fees and Charges: Monthly Statements. Any fees or charges relating to the Hospital Account shall be paid by the Hospital. City agrees to instruct Banker to send monthly statements for the Hospital Account to the Hospital, c/o Forest Binder, c/o St. Mary's Finance Department, 2635 North 7th Street, Grand Junction, CO 81502-1628.
7. Interest. City agrees to instruct Banker that all interest income relating to the investments in the Hospital Account shall be automatically deposited into the account and shall not be released to the City except as authorized herein.
8. Control over Agreement. The parties acknowledge that the Hospital Account established with Bank 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 including but not limited to the value of in-house council and expert witness

fees from the opposing party. If relief is awarded to both parties, the attorney's fees may be equally divided between the parties by the decision-maker.

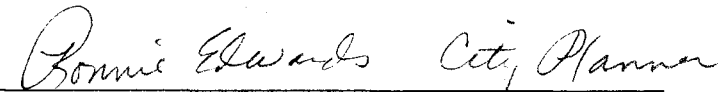
11. Severability. If any part, term or provision of this Agreement is held by court or courts of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term or provision and the rights of the parties will be 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.

ST. MARY'S HOSPITAL & MEDICAL CENTER, INC.

By: 

CITY OF GRAND JUNCTION

By:  City Planner

December 12, 2006

Mr. Rob Jenkins
St. Mary's Hospital
P.O. Box 1628
Grand Junction, CO 81502

Reference: Warranty Over on Several St. Mary's Projects

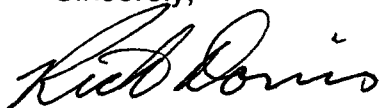
Dear Rob,

As you know St. Mary's has built several projects with public improvements over the last five years. None of these were accepted for the warranty period because the maintenance and financial guarantees were not received. Construction has been complete on all projects well over the standard one year warranty period and there are no problems at this time. The City has received all the normal testing and as-built documentation. To reduce paperwork and effort on both our parts, the City has decided to disregard the warranty period and accept the projects listed below.

- FP-2001-146, Original Project with 7th Street, Wellington Parking Lot, & Center St. Parking Lot
Original DIA amount = \$520,894.20
- FP-2001-181, Ambulatory Center
Original DIA amount = \$237,142.80
- FP-2003-099, Holy Family Parking Lot
Original DIA amount = \$120,370.80
- FP-2003-100, Parking Garage
Original DIA amount = 105,422.22
- RZ-2004-117, Northwest Parking Lot
Original DIA amount = \$40,262.40

The warranty period is now over and the City is responsible for all future maintenance. Call Scott Peterson and/or Ronnie Edwards to request release of the DIAs and associated financial guarantees. Please call me at 256-4034 if you have questions.

Sincerely,

A handwritten signature in black ink that reads "Rick Dorris". The signature is written in a cursive style with a small "u" above the "i" in "Dorris".

Rick Dorris, PE, CFM
City Development Engineer

CC: Scott Peterson
 Doug Cline
 Jody Kliska
 Trent Prall
 Mark Barslund
 Bret Guillory
 Ronnie Edwards