

STM02ADV

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	ST. MARY'S HOSPITAL
PROJECT/SUBDIVISION:	ADVANCED MEDICAL PAVILION
ADDRESS:	7 TH AND WELLINGTON
TAX PARCEL NO:	2945-111-32-971
FILE #:	FP-2001-181
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2002
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement" or "Agreement") are ST. MARY'S HOSPITAL ("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 THE ADVANCED MEDICAL PAVILION, 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 services; Developer agrees to pay such costs, in addition to all others for which Developer is responsible hereunder. The Developer's obligation to complete the improvements is and will be independent of any obligations of the City contained herein.

4. **Security:** To secure the performance of its obligations under this Agreement the Developer shall supply a guarantee in a form and with terms acceptable to the City. A copy of which or a memorandum thereof is attached as Exhibit C.

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

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

7. **Commencement, Completion and Abandonment Periods:** The Developer will commence work on the Improvements within 14 days from the Effective Date of this Agreement 3/26/01 (set date) ("the Commencement Period") and the Improvements, each and every one of them, shall be completed by the end of the 21st month from the Effective Date of this Agreement Dec. 2003 (set date) (the "Completion Period"). The Developer shall not cease construction activities for any period of more than 60 consecutive days ("the Abandonment Period").

8. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations in effect at the time of final approval when fulfilling its obligations under this Agreement. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after final development approval.

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

10. **Acceptance of Improvements:** The City's final acceptance and/or approval of Improvements will not be given or obtained until the Developer presents a document or documents, 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 draw 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. At the written request of the Developer, the City will execute a certificate verifying the acceptance of the Improvement and waiving its right to draw on the guarantee to the extent of such amount. A Developer in default under this Agreement will have no right to such certification. Upon the acceptance of all of the Improvements the remaining balance that may be drawn under the guarantee shall be available to the City for 90 days after the expiration of the warranty period.

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

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

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

Unless specifically provided herein the City may not declare a default until written notice has been sent to the Developer at the address on file with the development application. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

14. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. Administrative expenses may include but are not limited to contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to the collection/completion of the Improvements. For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit B will be *prima facie* evidence of the minimum cost of completion, however, neither that amount or the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow or other guarantee establish the maximum amount of the Developer's liability.

15. **City's Rights Upon Default:** When any event of default occurs, the City may draw on the letter of credit, escrowed collateral, or proceed to collect any other security to the extent of the face amount of the credit or full amount of escrowed collateral, cash, or security less ninety percent (90%) of the estimated cost (as shown on Exhibit B) of all Improvements previously accepted by the City or may exercise its rights to disbursement of loan proceeds or other funds under the improvements disbursement agreement. The City will have the right to complete Improvements itself or it may contract with a third party for completion, and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining and repairing such Improvements. Alternatively, the City may assign the proceeds of the letter of credit, the improvements disbursement agreement, the escrowed collateral, cash, or other funds or assets to a subsequent developer (or lender) who has acquired the Property by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished Improvements and provides to the City reasonable security for the obligation. In addition, the City may also enjoin the sale, transfer, or conveyance of lots within the development, until the Improvements are completed or accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

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

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

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

ST. MARY'S HOSPITAL
MR. KEITH ESTRIDGE
2635 N. 7th
GRAND JUNCTION, CO 81501

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, blue-line stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests required by City specification; (ii) provide written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon, in and under which the improvements have been constructed, or which are necessary for the improvements, are free from toxic, hazardous or other

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

EXHIBIT A

BEG E 340FT & S 50FT FR N4 COR SEC 11 1S 1W S 2DEG55'W TO WELLINGTON
AVE WLY ALG WELLINGTON AVE TO INTSEC WITH 7TH ST NLY ALG 7TH ST
TO INTSEC WITH PATTERSON RD. ELY ALG PATTERSON RD TO BEG - 48%
EXEMPTION 3.30 AC

EXHIBIT B

IMPROVEMENTS LIST/DETAIL

(Page 1 of 3)

DATE: MARCH 21, 2002
 NAME OF DEVELOPMENT: ST. MARY'S ADVANCED MEDICAL PAVILION
 LOCATION: WELLINGTON (NORTH SIDE) AND PATTERSON ACCESS.
 PRINTED NAME OF PERSON PREPARING: TREVOR BROWN

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
I. SANITARY SEWER				
1. Clearing and grubbing DEMO CONCRETE CG&S	S.Y.	396	5 ²⁵	2079 ⁰⁰
2. Cut and remove asphalt	S.Y.	275	5 ⁰⁰	1375 ⁰⁰
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	L.F.	40	17 ⁰⁰	680 ⁰⁰
4. Sewer Services (incl. trenching, bedding, & backfill)				
5. Sanitary sewer manhole(s)				
6. Connection to existing manhole(s)	1	EA	750 ⁰⁰	750 ⁰⁰
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, 6" PVC bedding, backfill, valves and appurtenances)	LF	52	17 ⁰⁰	884 ⁰⁰
4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances)				
5. Connect to existing water line	EA	1	500 ⁰⁰	500 ⁰⁰
6. Aggregate Base Course FIRE HYDRANT	EA	1	3000 ⁰⁰	3000 ⁰⁰
7. Pavement Replacement				
8. Utility adjustments				
III. STREETS				
1. Clearing and grubbing				
2. Earthwork, including excavation 8' CG&S AT PATTERSON ACCESS and embankment construction WITH H/C RAMPS	S.F.	720 ⁰⁰	4 ⁰⁰	2880 ⁰⁰
3. Utility relocations STAMPED & COLORED CONC.	S.F.	210	8 ⁰⁰	1680 ⁰⁰
4. Aggregate sub-base course (square yard) VERTICAL CURB & GUTTER (INCLUDES WELLINGTON & PATTERSON ACCESS ISLAND)	L.F.	435	13 ⁰⁰	5655 ⁰⁰

05/04/01

	TOTAL UNITS	UNIT QTY.	TOTAL PRICE	TOTAL AMOUNT
5. Aggregate base course (square yard)	S.Y.	53	3 ⁰⁰	159 ⁰⁰
6. Sub-grade stabilization ASPHALT PATCHING	S.Y.	275	40 ⁰⁰	11,000 ⁰⁰
7. Asphalt or concrete pavement (square yard)	S.Y.	53	12 ⁰⁰	636 ⁰⁰
8. Curb, gutter & sidewalk 6' DETACHED WALK	L.F.	300	24 ⁰⁰	7200 ⁰⁰
9. Driveway sections BUS TURNOUT CONCRETE INCLUDES BASE COURSE	S.F.	1230	7 ⁰⁰	8610 ⁰⁰
10. Crosspans & fillets	SF.	1293	4 ⁰⁰	5172 ⁰⁰
11. Retaining walls/structures H/C RAMPS	SF	875	4 ⁰⁰	3500 ⁰⁰
12. Storm drainage system				
13. Signs and other traffic control devices	EA	3	350 ⁰⁰	1050 ⁰⁰
14. Construction staking	LS	1	3500 ⁰⁰	3500 ⁰⁰
15. Dust control	LS	1	1000 ⁰⁰	1000 ⁰⁰
16. Street lights (each)				
IV. LANDSCAPING				
1. Design/Architecture				
2. Earthwork (includes top soil, fine grading, & berming)				
3. Hardscape features (includes walls, fencing, and paving)				
4. Plant material and planting				
5. Irrigation system				
6. Other features (incl. statues, water displays, park equipment, and outdoor furniture)				
7. Curbing				
8. Retaining walls and structures				
9. One year maintenance agreement				
V. MISCELLANEOUS				
1. Design/Engineering				
2. Surveying				
3. Developer's inspection costs				
4. Quality control testing	LS	1	3000 ⁰⁰	3000 ⁰⁰
5. Construction traffic control	LS	1	5000 ⁰⁰	5000 ⁰⁰
6. Rights-of-way/Easements				
7. City inspection fees @\$45./hr	LS	1	1500 ⁰⁰	1500 ⁰⁰
8. Permit fees				
9. Recording costs				

TOTAL UNITS	UNIT QTY.	TOTAL PRICE	TOTAL AMOUNT
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10. Bonds			
11. Newsletters			
12. General Construction Supervision			
13. Other <u>CURB INLET (REMOVE & REPLACE)</u>	<u>EA</u>	<u>1</u>	<u>1750⁰⁰ 1750⁰⁰</u>
14. Other <u>LANDSCAPING & IRRIGATION</u>	<u>LS</u>	<u>1</u>	<u>125,059⁰⁰ 125,059⁰⁰</u>

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 197,619⁰⁰
 120% OF TOTAL \$ 237,142⁸⁰

SCHEDULE OF IMPROVEMENTS:

- I. SANITARY SEWER _____
- II. DOMESTIC WATER _____
- III. STREETS _____
- IV. LANDSCAPING _____
- V. MISCELLANEOUS _____


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.

 3-21-02
 SIGNATURE OF DEVELOPER date

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

Reviewed and approved.

 3/21/02
 CITY ENGINEER date

 3/26/02
 COMMUNITY DEVELOPMENT date

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

THIS AGREEMENT, made this 25th day of March, 2002, 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 a parcel of real property whose legal description is:

BEG E 340FT & S 50FT FR N4 COR SEC 11 1S 1W S 2DEG55'W TO WELLINGTON AVE WLY
ALG WELLINGTON AVE TO INTERSEC WITH 7TH ST NLY ALG 7TH ST TO INTSEC WITH
PATTERSON RD. ELY ALG PATTERSON RD TO BEG -48% EXEMPTION 3.30 AC

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, \$ 237,142.80.

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 require 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 out line the management and control os 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 \$ 237,142.80 in an account with the Bank. Said account shall be entitled "St. Mary's Hospital - Advanced Medicine Pavilion Account" (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 form the account. Two signatures will be required to transact the account. The following City representatives shall be authorized signers on the Hospital Account:

Robert E. Blanchard
(Printed Name)

Katherine M. Partner
(Printed Name)

Lisa Gerstenberger
(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 the 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 of 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:

Richard White

Forest C. Binder

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 Richard White, 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 inhouse 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. Serverability. 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: *Forest C. Bunker - CFO*

CITY OF GRAND JUNCTION

By: *Pat Carl*

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,

Rick Dorris, PE, CFM
City Development Engineer

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

RELEASE MEMORANDUM
City of Grand Junction
Public Works & Planning Department
FILE # FP-2001-181

This Release relates to a Development Improvements Agreement dated MARCH 26, 2002, by and between ST. MARY'S HOSPITAL (Developer) and the City of Grand Junction, pertaining to THE ADVANCED MEDICAL PAVILION (Project), located at 2945-111-32-971 AND 2945-111-32-972

WHEREAS, the Developer has installed and constructed certain public and private improvements at and for the Project, which completion was guaranteed by the execution of a Development Improvements Agreement and/or Maintenance Guarantee and provision of a Guarantee, and;

WHEREAS, the City of Grand Junction and other agencies possessing authority over the Project, and/or the improvements, have inspected the improvements and have accepted the same.

NOW THEREFORE, officials of the City of Grand Junction, duly representing their agencies, possessing and representing by their signatures affixed hereto, that they possess sufficient authority to accept improvements and may release the Development Improvements Agreement and/or Maintenance Guarantee, pertaining to the improvements under their jurisdiction, do accept, sign and release said Development Improvements Agreement and/or Maintenance Guarantee.

CITY OF GRAND JUNCTION:

City Engineer: *Kirk Brown* Date: 5-11-07

City Planner: *Jeta A. Peterson* Date: MAY 11, 2007

In acknowledgement with the above signatures, I hereby certify that the improvements as specified in the Development Improvements Agreement and/or Maintenance Guarantee have been completed and accepted in accordance with the provisions of the Grand Junction Zoning and Development Code, and are hereby released, subject to the required warranty period.

Lisa E. Cox
Public Works & Planning Department

5/11/07
Date

The foregoing instrument was executed before me this 11th day of May, 2007, by Lisa E. Cox, of the Public Works & Planning Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

Gayleen Henderson
Notary Public



My commission expires on 10/29/2009