

BLL02RIM

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **CONTRACT**

NAME OF CONTRACTOR: THF BELLEVILLE DEVELOPMENT , LP

SUBJECT/PROJECT: INDEMNIFICATION AND RELEASE AGREEMENT
AMENDING COMMENCEMENT DATE OF DIA WHICH WAS 10/3/02 TO
10/14/02

LOCATION: RIMROCK MARKETPLACE 2 SUBDIVISION -
2530 RIMROCK AVENUE - LOT 1 - BLOCK 3

PARCEL #: 2945-103-37-008

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2002

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

INDEMNIFICATION AND RELEASE AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

Should either the City or the Developer be required to resort to litigation to enforce the terms of this Agreement, the prevailing party will be entitled to costs, including reasonable attorney's fees and expert witness fees from the opposing party. If relief is awarded to both parties, the attorney's fees may be equitably divided by the decision-maker.

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

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

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

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

THF Belleville Development, L.P.

By: THF Belleville, Inc., its General
Partner

By: _____
Michael H. Staenberg, President

CITY OF GRAND JUNCTION

By: _____