

BES0600E

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	BEST BUY HOMES COLORADO, INC.
PROJECT/SUBDIVISION:	OLD ORCHARD ESTATES SUBDIVISION
ADDRESS:	774 OLD ORCHARD ROAD
TAX PARCEL NO:	2705-352-00-012
FILE #:	FP-2005-202
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2006
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are Best Buy Homes Colorado, Inc. ("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 Old Orchard Estates has been reviewed and approved under Community Development file # FP-2005-202 ("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 \$ 586,236⁰⁰ (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 X

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 \$ 97,706⁰⁰ (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.

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: 2/13/06
Completion Date: 2/13/07

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 ~~\$488,530~~ (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: Best Buy Homes Colorado, Inc Name -Developer/Company
1801 Wynkoop Street, # 317 Address (Street and Mailing)
Denver, CO 80202 City, State & Zip Code
(303) 296-9888 Voice Telephone and Fax Numbers
(303) 674-0886 FAX
richardcavilli@comcast.net E-mail

Cc: SUN King
PO Box 3299
Grand Junction, CO 81502
970-245-9173 Voice 970-241-9304 Fax
Chris@SUN-King.com

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: *Best Buy Homes Colorado, Inc.*

Cailey E. Dotson 2-9-06

Developer Date

Cailey E. DOTSON

Name (printed)

Corporate Attest:

SEC 2/9/06

Name Date

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

Pat Cecil 2/9/06

Community Development Dept. Date

6/13/2003

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

EXHIBIT A

Old Orchard Estates Subdivision, a plat on file and recorded in
the Office of the Mesa County Clerk and Recorder at Reception
No. 2299523.

The property is situated in the SE 1/4 NW 1/4 Section 35
Township One North, Range One West of the Ute Meridian, City of
Grand Junction, Mesa County, Colorado.

EXHIBIT B

IMPROVEMENT COST ESTIMATE

DATE: February 9, 2006

DEVELOPMENT NAME: Old Orchard Estates Subdivision

LOCATION: 774 Old Orchard Road

NAME OF PERSON PREPARING: Chris Motz, Sun King Management Corp.

DIA ITEMS

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
A SANITARY SEWER					
1	8" PVC Sanitary Sewer Main	LF	1,372	18.40 \$	25,245
4	Sewer services	EA	20	414.00 \$	8,280
5	Sanitary Sewer Manhole	EA	6	1,420.00 \$	8,520
6	Sanitary Sewer Drop Manhole	EA	1	2,440.00 \$	2,440
7	Connection to Existing Manhole	EA	1	260.00 \$	260
8	Concrete Encasement	LF	60	19.40 \$	1,164
Subtotal Part A - Sanitary Sewer					\$ 45,908.80
B DOMESTIC WATER					
1	8" PVC Water Main	LF	1,645	22.40 \$	36,848
4	8" Gate valve	EA	4	799.00 \$	3,196
7	Water Services	EA	18	751.00 \$	13,518
8	Connect to Existing Water Line	EA	1	1,640.00 \$	1,640
9	Fire Hydrant with Valve	EA	4	2,744.00 \$	10,976
11	Blow off	EA	5	310.00 \$	1,550
Subtotal Part B - Domestic Water					\$ 67,728.00
C1 STREETS					
1	4" PVC Utility/Irrigation sleeves	LF	1,500	3.10 \$	4,650
2	10" PVC Utility/Irrigation sleeves	LF	60	8.90 \$	534
3	Reconditioning	SY	7,800	1.40 \$	10,920
5	ABC (Class 6) (6" Compacted Thickness)	SY	7,800	5.25 \$	40,950
7	Hot Bituminous Paving, Grading (3" thick)	SY	5,200	7.80 \$	40,560
9	Hot Bituminous Paving, Patching (5" Thick)	SY	30	85.00 \$	2,550
11	Concrete Curb (6" Wide by 18" High)	LF	610	11.50 \$	7,015
15	Drive Over Curb, Gutter, and Sidewalk (6.5' Wide)	LF	2,580	13.75 \$	35,475
18	Concrete Drainage Pan (6' Wide, 8" Thick)	SY	20	40.50 \$	810
19	Concrete Corner Fillet	SY	45	40.50 \$	1,823
20	Concrete Curb Ramp	SY	33	40.50 \$	1,337
25	Street Signs	EA	8	200.00 \$	1,600
27	Street Lights	EA	4	2,000.00 \$	8,000
31	Mailbox Pad	EA	1	600.00 \$	600
32	T. Dome ADA Mats	SF	60	40.00 \$	2,400
C2 BRIDGES					
Subtotal Part C - Streets and Bridges					\$ 159,223.00
D1 EARTHWORK					
1	Mobilization	LS	1	2,250.00 \$	2,250
2	Clearing and Grubbing	LS	1	6,000.00 \$	6,000
3	Unclassified Excavation	CY	4,500	3.45 \$	15,525
4	Unclassified Embankment	CY	3,800	0.85 \$	3,230
5	Silt Fence/SWMP	LS	1	10,000.00 \$	10,000
6	Watering (Dust Control)	LS	1	2,100.00 \$	2,100
7	Dry Utility Trenching, Backfill, Compaction (4' Deep)	LF	3,190	4.10 \$	13,079
D2 REMOVALS AND RESETTING					
1	Removal of Asphalt	SY	960	4.00 \$	3,840
3	Remove Curb and Gutter	LF	1,280	3.00 \$	3,840
4	Removal of Culverts	LF	205	11.30 \$	2,317
5	Remove Structures	EA	4	925.00 \$	3,700
7	Remove Fence	LF	2,180	1.15 \$	2,507
8	Adjust Manhole	EA	10	400.00 \$	4,000
9	Adjust Valve box	EA	8	185.00 \$	1,480
D3 SEEDING AND SOIL RETENTION					
D4 STORM DRAINAGE FACILITIES					
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY	24	50.00 \$	1,200
2	12" RCP Storm Drain Pipe	LF	368	24.10 \$	8,869
3	24" RCP Storm Drain Pipe	LF	330	37.80 \$	12,474

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
9	24" Flared End Section	EA	1	610.00	\$ 610
11	48" Storm Drain Manhole	EA	2	1,203.00	\$ 2,406
12	60" Storm Drain Manhole	EA	5	1,925.00	\$ 9,625
16	Single Curb Opening Storm Drain Inlet	EA	4	1,410.00	\$ 5,640
19	Detention Area Outlet structure	EA	1	2,260.00	\$ 2,260
20	Rip-Rap D ₅₀ = 12"	CY	3	85.00	\$ 255
Subtotal Part D - Grading and Drainage					\$ 117,206.30
E1 IRRIGATION					
1	Connect to Existing Pipe	LS	1	250.00	\$ 250
3	6" PVC Irrigation Pipe	LF	3,050	7.00	\$ 21,350
4	Fittings and Valves	LS	1	5,000.00	\$ 5,000
5	Services	EA	19	150.00	\$ 2,850
7	Irrigation Structure	EA	1	1,500.00	\$ 1,500
E2 LANDSCAPING					
4	Plant Material & Planting	LS	1	5,000.00	\$ 5,000
10	Fence 6' Cedar	LF	445	18.50	\$ 8,233
Subtotal Part E - Landscaping and Irrigation					\$ 44,183
Subtotal Construction Costs					\$ 434,248.60
F MISCELLANEOUS ITEMS					
1	Construction staking/surveying	%	3.0%	434,248.60	13,027.46
2	Developer's inspection cost	%	2.0%	434,248.60	8,684.97
3	General construction supervision	%	2.0%	434,248.60	8,684.97
4	Quality control testing	%	2.0%	434,248.60	8,684.97
5	Construction traffic control	%	1.0%	434,248.60	4,342.49
6	City inspection fees	%	0.5%	434,248.60	2,171.24
7	As-builts	%	2.0%	434,248.60	8,684.97
Subtotal Part F - Miscellaneous Items					\$ 54,281
% = Percentage of total site construction costs G COST SUMMARY					
1	Total Improvement Costs				\$ 488,530
2	City Security (20%)				\$ 97,706
3	Total Guarantee Amount				\$ 586,236
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.					
Signature of Developer: <u>Barney E. [Signature]</u> Date: <u>2-9-06</u> (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.					
City Development Engineer: <u>[Signature]</u> Date: <u>3/6/06</u>					
Community Development: <u>[Signature]</u> Date: <u>3/6/06</u>					

DISBURSEMENT AGREEMENT
(Improvements Guarantee)

DEVELOPER: Best Buy Homes Colorado, Inc.

BANK: First National Bank of the Rockies

PROPERTY: Old Orchard Estates

DISBURSEMENT AMOUNT: For the construction of improvements to the Property in an amount not to exceed \$ 586,236⁰⁰.

This Agreement is entered into by and between Best Buy Homes Colorado, Inc. ("Developer"), First National Bank of the Rockies ("Bank") and the City of Grand Junction, Colorado ("City").

RECITALS

Developer has been required by the City to construct certain improvements to Old Orchard Estates ("Improvements") in accordance with the Zoning and Development Code, Improvements Agreement and subdivision approval.

The Bank has agreed to loan funds to the Developer for construction of the Improvements.

The City Engineer has approved an estimate of the costs of the Improvements and that amount or an amount not to exceed \$ 586,236⁰⁰, whichever is greater, shall be referred to as the "Funds."

The parties desire to secure the full and complete performance of the Developer's obligations and to secure that the Funds are disbursed only to pay for the Improvements.

NOW, THEREFORE, THE PARTIES AGREE:

1. **BANK PROMISES.** Bank shall dedicate or set aside the Funds on behalf of Developer and for the City's benefit within twenty-four hours of execution of this Disbursement Agreement.

Bank warrants: that the Funds are to be held in trust solely to secure Developer's obligations under the Improvements Agreement; that the Bank shall act as agent of the City in holding the Funds; that the Funds will not be paid out or disbursed to, or on behalf of, the Developer except as set forth in this document and/or as set forth in the Improvements Agreement; and that the Bank may not modify or revoke its obligation to disburse funds to or on behalf of the Developer or the City. The Bank warrants that the Funds are and will be available exclusively for payment of the costs of satisfactory completion of the Improvements.

2. **DISBURSEMENT PROCEDURES.** The Funds shall be advanced for payment of costs incurred for the construction of Improvements on the Property in accordance with the Improvements List/Detail attached to the Improvements Agreement, the terms of which are incorporated by this reference. All disbursements must comply with the following

procedures:

(a) **Request for Advance.** Developer shall deliver to the Bank a written request for the disbursement of funds on forms acceptable to the Bank. Such requests shall be signed by Developer, Developer's General Contractor, Project Engineer and Architect, if applicable, and the City Engineer. By signing the request for disbursement the Developer is certifying: that all costs for which the advance is being requested have been incurred in connection with the construction of the Improvements on the Property; that all work performed and materials supplied are in accordance with the plans and specifications submitted to and approved by the City; that the work has been performed in a workmanlike manner; that no funds are being requested for work not completed, nor for material not installed; the Project Engineer has inspected the Improvements for which payment is requested; and that such improvements have been completed in accordance with all terms, specifications and conditions of the approved plans. Attached hereto is the list of those individuals, and their respective signatures, required to sign the above described request(s) for disbursement of funds.

(b) **Documentation, Waivers and Checks.** Each request for disbursement of funds shall be accompanied by: (i) one original and one copy of each invoice to be paid; (ii) checks drawn on Developer's construction loan account with the Bank, made payable to the payee(s) and for the amount of each invoice presented for payment; (iii) lien waivers in a form approved by the Bank prepared for signature by each payee; and (iv) postage paid envelopes addressed to each payee for the mailing of checks presented to the Bank.

The Bank shall verify its receipt of all lien waivers relating to any prior disbursements, which lien waivers shall be properly executed and contain no alterations or modifications from those lien waivers that have been previously presented to the Bank.

Upon approval by Developer, the Project Engineer and the Bank of the invoices being presented to the Bank, the Bank shall advance funds into the checking account designated for the payment of the invoices and mail the checks to the payee(s) in the envelopes presented to the Bank, together with lien waivers and copies of supporting invoices.

Under no circumstances shall the Bank make a disbursement for the payment of an invoice if it in good faith believes that: (i) the work has not been completed; (ii) the work has not been completed in a workmanlike manner; (iii) written approval has not been received from the Project Engineer; or (iv) any lien waiver has been altered or modified or has not been returned to the Bank.

(c) **Default.** Upon default of the Developer on any obligation to the Bank or under the Improvements Agreement, the Bank shall disburse no funds to, or at the direction of, the Developer except to the City under the terms of the Improvements Agreement. The Bank shall immediately notify the City, in writing, of any event of default or event of default as provided for in the Improvements Agreement and/or as provided herein.

(d) **Disbursement to City.** In the event the Improvements are not satisfactorily and timely constructed, or upon any default or event of default, the City Engineer shall notify

the Bank to immediately cease disbursement of funds to the Developer and disburse the full amount of the remaining undisbursed funds to the City. Upon such notice, the Bank shall promptly honor the demand of the City Engineer to disburse the Funds to the City or a third party or parties designated in writing by the City. Upon final completion and acceptance of the performance required under the Improvements Agreement, the City shall refund to the Bank any funds disbursed, if any, which are not actually expended to pay all costs, expenses and liabilities, including attorney fees, incurred in completing the Improvements.

3. **DEVELOPER CONSENT:** The Developer, by the signature of Barley E. Dotson, Pres. (name & title), consents to disbursements and other actions authorized and provided for by the terms of this Agreement and/or the Improvements Agreement.

4. **LIABILITY FOR LOSS:** If the Bank fails to disburse funds in accordance with the procedures set forth, and the City suffers loss or damage, the Bank shall be liable to the City for the City's direct and consequential damages and all fees, costs and expenses, including attorney's fees.

5. **BINDING EFFECT:** This Agreement shall be binding on the heirs, successors, receivers and assigns of all parties and shall terminate when the City has accepted the Improvements and has recorded a release of the Improvements Agreement.

6. **IMMUNITY:** Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under applicable state law.

Dated this ____ day of _____, 20__.

(BANK) First National Bank of the Rockies

By: [Signature]
Title BANK MANAGER

685 HORIZON DR, GRAND JUNCTION,
Address CO 81501

(DEVELOPER) Best Buy Homes Colorado, Inc.

By: [Signature]
Title

1801 WYNWOOD ST. #317
Address DENVER, CO - 80202

CITY OF GRAND JUNCTION

By: [Signature]
Director of Community Development

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between Best Buy Homes Colorado, Inc. Developer, First National Bank of the Rockies as Bank, and the City of Grand Junction, the following are the individuals authorized to sign written requests for the disbursement of the Funds:

DEVELOPER:

Bailey E Dotson Bailey E Dotson
(name) (signature)

RICHARD CAVALLI Richard Cavalli
(name) (signature)

(name) (signature)

DEVELOPER'S GENERAL CONTRACTOR: Sun King Management Corp.

Chris Motz, Secretary/Treasurer Chris Motz
(name) (signature)

DEVELOPER'S PROJECT ENGINEER: THOMPSON-LANGFORD CORP.

Doug Thies D. Thies
(name) (signature)

DEVELOPER'S ARCHITECT:

N/A _____
(name) (signature)

CITY ENGINEER:

ERIC HAIN Eric Hain
(name) (signature)

revised: February 18, 2004

RECORDING MEMORANDUM
Exhibit D

2303308 BK 4100 PG 182
02/23/2006 02:46 PM
Janice Ward CLK&REC Mesa County, CO
RecFee \$5.00 SurChg \$1.00

City of Grand Junction
Community Development Department Community Development
File: # FP-2005-202

This memorandum relates to and confirms that certain Development Improvements Agreement and/or Maintenance Guarantee concerning land in Mesa County, Colorado. The Agreement is by and between Best Buy Homes Colorado, Inc. (Developer) and the City of Grand Junction (City) pertaining to Old Orchard Estates (Project), located at 774 Old Orchard Road, Grand Jct, CO.

(Subject subdivision is more particularly depicted and described in the recording found at Plat Book 4086, Pages 647-651.)

The Developer of the Project was required by law to install and construct certain public and private improvements, the completion of which was guaranteed by a Development Improvements Agreement and/or Maintenance Guarantee. The Project is required to be constructed in accordance with the approval by the City pursuant to and in accordance with the Zoning and Development Code all as more fully detailed and described in City of Grand Junction development file # FP-2005-202.

The Developer and the City of Grand Junction by and through the signatures of the undersigned have determined and agreed to the type, quality and amount of improvements required and/or necessitated by the approval of the Project and that the improvements are guaranteed by and through the Development Improvements Agreement and/or Maintenance Guarantee. Furthermore, the Developer and the City agree that the Development Improvements Agreement and/or Maintenance Guarantee are contractual in nature and that the obligations under the Development Improvements Agreement and/or Maintenance Guarantee shall not be assigned except as provided in the agreement(s).

By virtue of this notice being recorded in the land records of the Mesa County Clerk and Recorder, subsequent owners and/or those that claim by, through or under the Developer are on notice of the Developer's obligations under the agreement(s).

NOW THEREFORE, the Developer and an official of the City of Grand Junction, both possessing and representing by their signatures that they possess sufficient authority, do hereby memorialize the relative, rights and obligations contained in the Development Improvement Agreement and/or Maintenance Guarantee herein characterized.

DEVELOPER: Best Buy Homes Colorado, Inc.

By: Bailey E. Dotson 2-9-06
Date

(Print Name) Bailey E. Dotson

CITY OF GRAND JUNCTION:

In accordance with the above, I hereby certify that the Development Improvement Agreement and/or Maintenance Guarantee are made of record by this memorandum and that the same may be inspected and/or copied at the City of Grand Junction, Community Development Department, 250 N. 5th Street, Grand Junction Colorado.

Pat Cecil 2/22/06
Community Development Department Date



April 29, 2008

Mr. Chris Motz
Sun King Management Corp.
PO Box 3299
Grand Junction, Colorado 81502

RE: **Notice of Final Acceptance -**
Project Name: Old Orchard Estates Subdivison
Project Number: FP-2005-202

The City has conducted a warranty inspection of the project and any needed follow-up inspections. The public infrastructure improvements have been found to be in satisfactory condition. All requirements for the final acceptance for the Project have been fulfilled.

The Developer's warranty obligation, for all materials and workmanship, has concluded and all warranty obligations are hereby released.

The following improvements within the public right-of-way are accepted for future maintenance by the City:

Public streets:

- All public streets as shown on the Project plans.

Storm drainage system:

- Storm drain pipes, inlets and manholes within the public right of way.

Water distribution system:

- N/A – Served by Ute Water. Letter from Ute received March 3, 2008 confirming final acceptance,

Sanitary sewer:

- Sewer mains, manholes

I have contacted Jamie Beard, Assistant City Attorney, to release the Development Improvements Agreement, the Maintenance Agreement and any financial security attached to the Project.

Sincerely,

Mike Best, Project Specialist

Electronic copy:

Greg Mobert, Planning Services Supervisor
Eric Hahn, Development Engineer
Peggy Sharpe, Administrative Assistant
David Van Wagoner – Street System
Ron Key – Water Distribution System

Mark Barslund, Development Inspector
Jamie Beard, Assistant City Attorney
Darren Starr, Streets Manager
Chris Spears – Storm Drainage System
Larry Brown – Sewage Collection System

RELEASE OF RECORDING MEMORANDUM
City of Grand Junction
Public Works & Planning Department
FILE: FP-2005-202

This Release relates to a Recording Memorandum dated July 7, 2008, by and between Best Buy Homes Colorado, Inc. (Developer) and the City of Grand Junction, pertaining to Old Orchard Estates (Project), located at 774 Old Orchard Road, Grand Junction, CO, recorded at Book 4086, Page 649-651, Mesa County Clerk and Recorders Office. Project is more particularly described as

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: [Signature] Date: 9/8/08
Planner: [Signature] Date: 7.9.08

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.

[Signature] Public Works & Planning Department Date 7.9.08

The foregoing instrument was executed before me this 9th day of July, 2008, by Don Motery, of the Public Works & Planning Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

[Signature]
Notary Public

My commission expires on 10/29/2009

