

BNN96SIT

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	SITBUL, LLC.
PROJECT/SUBDIVISION:	BARNES AND NOBLE
ADDRESS:	2451 F ROAD
TAX PARCEL NO:	2945-091-00-118
FILE #:	SPR-1996-190
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	1996
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement") are SitBul, LLC, a Colorado Limited Liability Company ("the Developer") and THE CITY OF GRAND JUNCTION, Colorado ("the City").

THEREFORE, 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 recorded which is not sooner than recordation of the warranty deed for the Property.

RECITALS

The Developer seeks permission to develop property within the City to be known as Barnes & Noble Bookstore, which property is more particularly described on Exhibit "A" attached and incorporated by this reference (the "Property"). The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the development 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 development or for the benefit of the purchasers or users of the development. 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 Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. 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 (except its obligations for warranty under paragraph 6), the Developer will enter into an agreement which complies with either option identified in paragraph 28, or other written agreement between the City and the Developer.

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 improvements completed by the Developer.

7. **Commencement and Completion Periods:** The improvements, each and every one of them, will be completed within twelve (12) months from the Effective Date of this Agreement (the "Completion Period").

8. **Compliance with Law:** The developer shall comply with all relevant federal, state and local laws, ordinances, and regulations in effect at the time of final approval when fulfilling its obligations under this Agreement.

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.

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 and that there are no liens, encumbrances, or other restrictions 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. **Use of Proceeds:** The City will use funds deposited with it or drawn pursuant to any written disbursement agreement entered into between the parties only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements.

12. **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 agreed upon time schedule; the City may not declare a default until a fourteen (14) calendar day notice has been given to the Developer;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any improvement within the applicable correction period; the City may not declare a default until a fourteen (14) calendar day notice has been given to the Developer;
- 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.

13. **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. 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 nor the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow establish the maximum amount of the Developer's liability.

14. **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 a lender) who has acquired the development 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 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.

15. **Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees and assigns harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained, or alleged to be received or sustained, by any person or entity in connection with, or on account of, any act or failure to act concerning the performance of work at the development or the Property pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named in an action concerning the performance of work or the failure to perform work pursuant to this Agreement. The Developer is not an agent or employee of the City.

16. **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 City and 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.

17. **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 authorized officer. Such amendment or modification shall be properly notarized before it shall be deemed effective.

18. **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; any City obligation under this section shall be subject to the overriding provisions of section 15, above. If the court awards relief to both parties, the attorney's fees may be equitably divided between the parties by the decision maker, subject to the overriding provisions of section 15, above.

19. **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 property in the development.

20. **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.

21. **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.

22. **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.

29. **Conditions of Acceptance.**

- a. 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 accepted by the City. "Acceptance by the City" means a separate writing wherein the City specifies which improvements have been accepted and the date from which warranty(ies) shall run.
- b. 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 specifications; (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 regulated substances or materials; (iii) provide written evidence to the City Engineer that the title to lands underlying the improvements are merchantable and free and clear from all liens and encumbrances, except those liens and encumbrances which may be approved in writing by the City Engineer.

30. **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.

Kathleen M. Postum 10/23/96
Director of Community Development Date

City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501

S+BUI LLS
By: [Signature] Manager 9-24-96
Developer Date

(If Corporation, to be signed by President and attested to by Secretary together with the Corporate seals)

EXHIBIT "A"

TYPE LEGAL DESCRIPTION BELOW, USING ADDITIONAL SHEETS AS NECESSARY. USE SINGLE SPACING WITH A ONE (1) INCH MARGIN ON EACH SIDE.

A tract of land located in a part of the NW 1/4 NE 1/4 of Section 9, Township 1 South, Range 1 West of the Ute Meridian, being more particularly described as follows:

Beginning at the N 1/4 corner of said Section 9,
thence North 89°49'30" East along the North line of the NE 1/4 of said Section 9 a distance of 430.00 feet,
thence South 00°02'22" West 247.81 feet,
thence South 89°49'30" West 430.00 feet to a point on the West line of the NW 1/4 NE 1/4 of Section 9,
thence North 00°02'22" East 247.81 feet to the Point of Beginning,
EXCEPT that portion conveyed to the City of Grand Junction,
a Municipal Corporation in Warranty Deed recorded November 15, 1982
in Book 1400 at Page 227,

ALL IN MESA COUNTY, COLORADO.

9/27/96

EXHIBIT "B"

BARNES AND NOBLE RETAIL STORE
Engineers Opinion of Cost

DATE: 9/27/96
NAME OF DEVELOPMENT: BARNES AND NOBLE RETAIL STORE
LOCATION: HW/4 NE/4, SEC 9, T.1 S., R.1 W., U.P.M

PRINTED NAME OF PERSON PREPARING: JOHN C. SMITE

CONSTRUCTION COST ESTIMATE:

	Units	Quant	Unit Price	Total Price	
Site grading and paving					
1	Unclassified Excavation	CY	65.00	2.00	130
2	Unclassified Embankment	CY	30.00	3.00	90
3	Class-6 A.B.C.	CY	48.00	16.50	792
4	5' Concrete Walk	LF	140.00	15.00	2,100
4	6' Concrete Walk	LF	384.00	17.00	6,528
5	8" Concrete Driveway	SY	95.00	60.00	5,700
6	PSCO Relocates	LS	1	4,000.00	4,000
Sub-total Site grading and paving:					19,340

	Units	Quant	Price	Price	
Sewer System					
1	8" Line Connect	EA	1.00	220.00	220
2	8" PVC Sewer Main	LF	458.00	15.00	6,870
3	San Sewer Manhole	EA	2.00	1,150.00	2,300
4	Drop Manhole Connection	EA	1.00	350.00	350
5	San Sewer Serv Tap	EA	1.00	50.00	50
2	6" PVC Sewer Service	LF	90.00	10.00	900
5	Service Cleanout	EA	1.00	650.00	650
Sub-total Drainage:					11,340

	Units	Quant	Unit Price	Total Price	
Drainage					
1	Connect to Outfall Pipe (with Grout Collar)	EA	1.00	800.00	800
2	18" PVC Storm Sewer Pipe	LF	41.00	20.00	820
3	Rip-Rap	SY	20.00	50.00	1,000
4	Retention Pond	LS	1.00	5,000.00	5,000
5	Orifice Controlled Outlet Structure	EA	1.00	1,500.00	1,500
Sub-total Drainage:					9,120

Total off site Construction Costs: 39,800

[Signature]
Manager of
S.T.B.U. LLC
SIGNATURE OF DEVELOPER

10-18-96
DATE

I have reviewed the estimated costs and time schedule shown above and, bas on the plan layouts submitted to date and the current costs of constructio take no exception to the above.

[Signature]
CITY ENGINEER
[Signature]
COMMUNITY DEVELOPMENT

10-23-96
DATE

10/23/96
DATE

Michael



February 25, 1997

Jim Langford
Thompson-Langford Corp
529 25-1/2 Rd, Suite B210
Grand Junction, CO 81505

City of Grand Junction, Colorado
250 North Fifth Street
81501-2668
FAX: (970)244-1599

Project: Barnes and Noble Sewer Extension

Subject: Initial Acceptance

Dear Mr. Langford:

An inspection of the sanitary sewer system constructed for Barnes and Noble was conducted on, January 10, 1997. As a result of this inspection, all construction pertaining to sanitary sewer was found to be satisfactorily completed.

"As Built" record drawings and required test results for the sanitary sewer facilities were received on February 25, 1997. These have been reviewed and found to be acceptable.

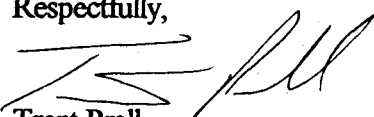
In light of the above, the sanitary sewer lines and appurtenances are eligible to be accepted for future maintenance by the City of Grand Junction one year after the date of substantial completion. The date of substantial completion is January 10, 1997.

Your warranty obligation for all materials and workmanship, including trench settlement and any related damages, for a period of one year beginning with the date of substantial completion will expire upon acceptance by the City. If you are required to replace or correct any defects which are apparent during the period of the warranty, a new acceptance date (and extended warranty period) will be established by the City.

At the time of acceptance if any of the facilities for which you have made a warranty and for which you desire acceptance is located anywhere, other than a previously existing City right of way, you must also provide proof of good title (to be transferred to the City at the time of acceptance).

Thank you for your cooperation in the completion of the work on this project.

Respectfully,


Trent Prall
Utility Engineer

cc: Walt Hoyt, Senior Inspection Supervisor
Jerry O'Brien, Persigo Treatment Facility Supervisor
Jodi Romero, Customer Service Supervisor
✓Kathy Portner, Senior Planner, Community Development