

SII03COL

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT – EXTENDED DIA
NAME OF CONTRACTOR:	SONSHINE II CONSTRUCTION & DEVELOPMENT, LLC.
PROJECT/SUBDIVISION:	COLONIAL HEIGHTS FUTURE 25 ROAD IMPROVEMENTS
LOCATION:	675 25 ROAD
TAX PARCEL #:	2945-041-00-149
FILE #:	FP-2001-254
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2003
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

Copy

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are Sonshine II Const. & Dev. LLC ("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 25 Road Improv has been reviewed and approved under Community Development file # FP2001-254 ("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 \$58,381 (~~420%~~ 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.

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 Final 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 Final Acceptance of such repair and/or replacement.

6a. Upon Final Acceptance the Developer shall provide a Maintenance Guarantee in an amount of \$11,676 (20% of the DIA amount for the Improvements that the Developer has completed and for which the City has given its Final Acceptance.)

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 shown on Exhibit D.

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 ("Final Acceptance").

11. **Reduction of Security:** Upon Final Acceptance of any Improvement(s) the amount which the City is entitled to draw on the Guarantee shall be reduced by an amount of \$46,705 (80% of the DIA amount for the Improvements that the Developer has completed and for which the City has given its Final Acceptance).

11a. At the written request of the Developer, the City shall execute a certificate verifying Final 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 Final 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 Final 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: Sonshine II Const. & Dev. LLC Name -Developer/Company
2350 G Road Address - Street and Mailing if different
Grand Junction
Colorado 81505 City, State & Zip Code
255-8853 Telephone and Fax Numbers
245-1452
_____ E-mail

Cc:

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

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

27. **Recordation:** Developer shall pay the costs to record a memorandum of this Agreement (Exhibit E) 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 Final 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 Final 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 Final 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.

Developer: Sonshine II Const. & Dev. LLC.

~~Sundance Property & Leasing INC. Mgr.~~

by: *L. John Davis Jr.* Date

L. John Davis Jr. President

Attest:

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

Pat Ceul *4/3/03*
Director of Community Development Date

EXHIBIT A

A parcel of land situated in the NW 1/4 NW 1/4 and SW 1/4 NW 1/4 of Section 3, Township 1 South, Range 1 West, of the Ute Meridian, Mesa County, Colorado, being more particularly described as follows:

Commencing at the W 1/4 corner of said Section 3, being a found Mesa County survey marker, the basis of bearing being N00°03'01"E to the N 1/16 corner of said Section 3, being another found Mesa County Survey marker;
thence N00°03'01"E a distance of 811.28 feet along the west line of said SW 1/4 NW 1/4 to the Point of Beginning;
thence N00°03'01"E a distance of 509.55 feet to said N 1/16 corner;
thence N00°02'33"E a distance of 1139.91 feet along the west line of said NW 1/4 NW 1/4;
thence N89°58'59"E a distance of 220.00 feet;
thence N00°02'33"E a distance of 180.00 feet to the north line of said NW 1/4 NW 1/4;
thence N89°58'59"E a distance of 859.26 feet along said north line;
thence S13°57'02"E a distance of 989.68 feet to the east line of said NW 1/4 NW 1/4, also being the west line of Moonridge Falls Subdivision;
thence S00°00'18"W a distance of 371.96 feet to the NW 1/16 corner of said Section 3, being another found Mesa County survey marker;
thence S00°01'47"W a distance of 147.18 feet along the east line of said SW 1/4 NW 1/4 to the northeast corner of Diamond Ridge Subdivision;
thence S74°29'16"W a distance of 684.14 feet to the northwest corner of said Subdivision, also being the northeast corner of Garrett Estates Subdivision;
thence S74°30'51"W a distance of 400.36 feet along the north line of said Subdivision;
thence S64°54'52"W a distance of 141.92 feet along said north line;
thence S89°57'14"W a distance of 145.60 feet along said north line to the Point of Beginning;
Said parcel contains 46.83 acres more or less.

This description was prepared by:
Michael W. Drissel PLS 20677
118 Ouray Avenue,
Grand Junction, CO. 81501

EXHIBIT B

	IN RE: COLONIAL HEIGHTS SUBDIVISION - FILING ONE				
	FUTURE 25 ROAD IMPROVEMENTS - EXTENDED DIA				
	LOCATION: 675 25 ROAD, GJ,	3/27/03			
Intending to be legally bound, the undersigned subdivider hereby agrees to provide throughout this subdivision as shown on the above named subdivision plat dated this _____ Day of _____ 2002. The following improvements to the City of Grand Junction, or special district, standards.					
ITEM #	DESCRIPTION	QUANTITY	UNITS	E.A.P UNITS	TOTAL COST
	25 ROAD IMPROVEMENTS (Future Filings - except FILING ONE)				
304	Wheel-cut existing asphalt	910	Lin. Ft.	\$ 1.00	\$910.00
304	Subgrade Preparation	1405	Sq. Yd.	\$ 1.00	\$1,405.00
304	7" Aggregate Base Course	370	Ton	\$ 11.25	\$4,162.50
401	3" Hot Bituminous Pavement	20	Ton	\$ 36.00	\$720.00
401	5" Hot Bituminous Pavement	210	Ton	\$ 36.00	\$7,560.00
608	7" vertical curbwalk w/base	587	Lin. Ft.	\$ 17.50	\$10,272.50
608	8" Pans, Fillets, Ramps	670	Sq. Ft.	\$ 3.00	\$2,010.00
630	Landscaping/irrigation	12740	Sq. Ft.	\$ 1.00	\$12,740.00
500	Traffic Control	1	L.S.	\$ 5,000.00	\$5,000.00
500	Striping	1	L.S.	\$ 2,000.00	\$2,000.00
	SUB-TOTAL				\$46,780.00
	SUPERVISION	1	L.S.	4%	\$ 1,871.20
	ESTIMATED PROJECT COST				\$48,651.20
	PERFORMANCE BOND			120%	\$58,381.44

	TOTAL UNITS	UNIT QTY.	TOTAL PRICE	TOTAL AMOUNT
10. Bonds	_____	_____	_____	_____
11. Newsletters	_____	_____	_____	_____
12. General Construction Supervision	_____	_____	_____	_____
13. Other _____	_____	_____	_____	_____
14. Other _____	_____	_____	_____	_____

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 58,381.44

SCHEDULE OF IMPROVEMENTS:

- I. SANITARY SEWER N/A
- II. DOMESTIC WATER N/A
- III. STREETS \$34,040.00
- IV. LANDSCAPING \$12,740.00
- V. MISCELLANEOUS \$11,601.44

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.
 Sonshine II Const. & Dev. LLC., Suniance Property & Leasing, INC. Mgr.

by: *L. John Davis Jr.*
 SIGNATURE OF DEVELOPER L. John Davis Jr. Pres. date
 (If corporation, to be signed by president and attested
 to by secretary together with the corporate seals.)

Reviewed and approved.

[Signature] 4/3/03
 CITY ENGINEER date

[Signature] 4/4/03
 COMMUNITY DEVELOPMENT date

RECORDING MEMORANDUM

2126273 06/06/03 0311PM
JANICE WARD CLK&REC MESA COUNTY CO
REC FEE \$5.00 SURCHG \$1.00

City of Grand Junction Community Development Department
Community Development Files: # FP-2001-254

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 Sonshine II Const. Dev. LLC (Developer) and the City of Grand Junction (City) pertaining to Colonial Heights - 25 Road Improvements. (Project).

(Subject subdivision is more particularly depicted and described in the recording found at Plat Book 19, Pages 297-299.)

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-2001-254.

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:

By: Jim Fanning 5-21-03
Date

(Print Name) Jim Fanning

CITY OF GRAND JUNCTION:

By: Pat Cecil 5/22/03
Director of Community Development Date

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 5/22/03
Director of Community Development Date