

SSH08SWN

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	SONSHINE III CONSTRUCTION AND DEVELOPMENT, LLC
PROJECT/SUBDIVISION:	SWAN MEADOWS SUBDIVISION
ADDRESS:	351 AND 353 30 ROAD
TAX PARCEL NO:	2943-201-00-033, 2943-201-00-020
FILE #:	FP-2007-062
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2008
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

## DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are Sonshine III ("Developer"), and the **City of Grand Junction**, Colorado ("City"). Construction Development, LLC

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 Public Works & Planning 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 Swan Meadows has been reviewed and approved under Planning file # PP-2007-062 "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 \$ 2,095,193.81 (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

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 \$ 349,198.97 (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: March 15, 2008  
Completion Date: March 30, 2009

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 \$ \_\_\_\_\_ (Line G1, Exhibit B, Total Improvement Costs).

\$ 1,745,991.84

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: Kim Kerk-Sunshine III Construction & Development, LLC Name-Developer/Company  
2350 G Rd Address (Street and Mailing)  
G. Jct. CO 81505 City, State & Zip Code  
(970) 255-8853 Telephone and Fax Numbers  
(970) 245-1452 FAX  
KKerk@bluestarindustries.com E-mail

Cc:



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

Cc: Public Works & Planning Department  
250 North 5<sup>th</sup> 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:

  
\_\_\_\_\_  
Developer Date

*John Davis, Manager*  
Name (printed) *Sonshine III Construction & Development, LLC*

Corporate Attest:

\_\_\_\_\_  
Name Date

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

  
Public Works & Planning Dept. *3-20-08*  
Date

5/15/2007

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Tax Schedule No. 2943-201-00-020

The Southwest quarter of the Southeast quarter of the Northeast quarter of Section 20, Township 1 South, Range 1 East of the Ute Meridian,  
TOGETHER with a right-of-way for private road 30 feet wide off the South side of East Half of the Southeast Quarter of the Northeast Quarter of said Section 20.

also known as street and number as 351 30 Road, Grand Junction, CO 81504

and

Tax Schedule No. 2943-201-00-033

Beginning at the E $\frac{1}{4}$  corner of Section 20, T1S, R1E of the Ute Meridian, thence North 00°02' West 662.03 feet, thence South 89°57'30" West 659.18 feet, thence South 00°01' East 661.73 feet, thence North 89°59' East 659.4 feet to the point of beginning; EXCEPT the East 30 feet for road right of way; AND EXCEPT the South 30 feet for road right of way as recorded in Book 546 at page 271, in Mesa County, Colorado.

also known as street and number as 353 30 Road, Grand Junction, CO 81504

<b>EXHIBIT B</b>					
<b>IMPROVEMENTS COST ESTIMATE</b>					
DATE:	<b>8 13 2008</b>				
DEVELOPMENT NAME:	Swan Meadows				
LOCATION:	351 & 353 30 Road 19.6 Acres				
PRINTED NAME OF PERSON:	Kim Kerk- Sonshine III Construction & Development, LLC				
Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>A.</b>	<b>SANITARY SEWER</b>				
1	Mobilization	LS			
2	8" PVC Sanitary Sewer Main	LF	4480	\$22.80	\$ 102,144.00
3	Sanitary sewer manholes	EA	18	\$1,604.00	\$ 28,872.00
4	Epoxy coat manhole with flat invert	EA	7	\$385.00	\$ 2,695.00
5	Furnish & install concrete sewer encasement	EA	6	\$420.00	\$ 2,520.00
6	Furnish & install complete sewer including 8' x 4" Wyes, 4" piping, labor & equipment	EA	65	\$548.00	\$ 35,620.00
7	Furnish & install flow fill backfill	LF	70	\$15.60	\$ 1,092.00
<b>Subtotal Part A Sanitary Sewer</b>					<b>\$ 172,943.00</b>
<b>B.</b>	<b>DOMESTIC WATER</b>				
1	Mobilization	LS			
2	Furnish and install 8" C-900 Pipe CL 150 water main with tracer wire	LF	4461	\$21.94	\$ 97,874.34
3	Furnish and install 8" C-900 Pipe CL 200 water main vault to main	LF	40	\$24.30	\$ 972.00
4	8" Gate valves w/mega lugs	EA	16	\$1,082.00	\$ 17,312.00

5	Furnish & install 8" MJ caps	EA	5	\$215.00	\$	1,075.00
6	Furnish & install 8" tees	EA	7	\$444.00	\$	3,108.00
7	Furnish & install 8" 45° w/mega lugs	EA	12	\$308.00	\$	3,696.00
8	Furnish & install 8x4" Reducer	EA	2	\$199.00	\$	398.00
9	Furnish & install 2" blow offs	EA	3	\$291.00	\$	873.00
10	Furnish & install fire hydrant complete, tee, valve, hydrant and piping	EA	8	\$3,194.00	\$	25,552.00
11	Furnish & install 8x3/4" water service including setting Ute furnished pit & yoke	EA	65	\$791.00	\$	51,415.00
12	Furnish & install 6" PRV, vault & piping	EA	2	\$12,294.50	\$	24,589.00
<b>Subtotal Part B - Domestic Water</b>						<b>\$ 226,864.34</b>
<b>C</b>	<b>STREETS</b>					
30 Rd 1	Subgrade prep	SY	285	3.75		\$1,068.75
2	Geotextile fabric (Class A)	SY	330	\$1.50	\$	495.00
3	8" Aggregate Base Course	TN	135	\$24.35	\$	3,287.25
4	4" HBP	TN	70	\$81.60	\$	5,712.00
5	Tack	GAL	55	\$2.00	\$	110.00
<b>30 Road Construction Items</b>						<b>\$10,673.00</b>
C 1/2 Rd 1	Subgrade prep	SY	4745	\$1.50	\$	7,117.50
	Geotextile fabric (Class A)	SY	5610	\$1.50	\$	8,415.00
	8" Aggregate Base Course	TN	2280	\$19.25	\$	43,890.00
	4" HBP	TN	935	\$77.00	\$	71,995.00
	Tack	GAL	720	\$2.00	\$	1,440.00
<b>C 1/2 Rd Construction items</b>						<b>\$ 132,857.50</b>
Interior Sub. Streets 1	Clear & Grub	LS	1	\$5,000.00	\$	5,000.00
2	Excavation & embankment	CY	12660	\$4.30	\$	54,438.00
3	Import material	TN	17500	\$5.75	\$	100,625.00
4	Subgrade preparation	SY	15925	\$1.50	\$	23,887.50

	5	7" ABC	TN	6430	\$19.25	\$	123,777.50
	6	3" HBP	TN	1765	\$71.10	\$	125,491.50
	7	Adjust manholes	EA	23	\$650.00	\$	14,950.00
	8	Adjust water valves	EA	24	\$55.00	\$	1,320.00
	9	Storm water management	LS	1	\$24,500.00	\$	24,500.00
	10	Mobilization	LS	1	\$8,500.00	\$	8,500.00
		<b>Interior Subdivision Streets</b>				\$	<b>482,489.50</b>
	11	Add on \$ for shortage of fine grading bid	LS	1	\$38,041.40	\$	38,041.40
		<b>Subtotal Interior streets</b>				\$	<b>520,530.90</b>
		<b>Subtotal Part C - Streets</b>					<b>\$664,061.40</b>
<b>D</b>		<b>EARTHWORK</b>					
		Mobilization	LS	1	\$4,000.00	\$	4,000.00
		Clearing and Grubbing (ditches & fences)	LS	1	\$12,000.00	\$	12,000.00
		Unclassified Excavation	CY	11129	\$4.50	\$	50,080.50
		Import & place embankment from Arbors Sub	CY	13262	\$10.00	\$	132,620.00
		<b>Subtotal Part D- Earthwork</b>				\$	<b>198,700.50</b>
		<b>Removals</b>					
		Included in clearing and grubbing and included in sewer.				\$	-
<b>E</b>		<b>EROSION CONTROL</b>					
	1	Vehicle tracking control	EA	3	\$250.00	\$	750.00
	2	Silt fence/ ditch berm	LS			\$	4,200.00
	3	Concrete washout	EA			\$	375.00
	4	Inlet protection	EA		\$875.00	\$	875.00

5	Outlet protection	EA		\$150.00	\$	300.00
6	Erosion control visists (10)	LS			\$	2,700.00
7	Sweeping	EA	8	\$100.00	\$	800.00
					\$	<b>10,000.00</b>
<b>F.</b>	<b>STORM DRAINAGE FACILITIES</b>					
1	12" SDR 35 Storm Drain Pipe	LF	1228	\$26.65	\$	32,726.20
2	15" SDR 35 Storm Drain Pipe	LF	84	\$30.95	\$	2,599.80
3	15" RCP Drain Piping	LF	72	\$32.30	\$	2,325.60
4	24" RCP Storm Drain Piping	LF	64	\$47.10	\$	3,014.40
5	30" RCP Storm Drain Pipe	LF	304	\$61.50	\$	18,696.00
6	45" RCP Drain Piping including removal of existing RCP	LF	660	\$127.25	\$	83,985.00
7	48" Flared End Section w/trash rack	EA	1	\$3,524.00	\$	3,524.00
8	19"x30" elliptical concrete pipe	LF	328	\$78.65	\$	25,797.20
9	29x45" elliptical concrete pipe	LF	64	\$120.60	\$	7,718.40
10	60" Storm Drain Manhole	EA	4	\$2,336.00	\$	9,344.00
11	90" Storm Drain Manhole	EA	2	\$8,401.00	\$	16,802.00
12	Standard single inlet	EA	1	\$2,701.00	\$	2,701.00
13	CDOT Triple R inlet	EA	6	\$3,762.00	\$	22,572.00
14	CDOT Type C inlet	EA	1	\$3,115.00	\$	3,115.00
15	CDot type 13 inlet	EA	1	\$2,560.00	\$	2,560.00
16	Concrete head wall w/rip rap & grading of exisiting channel	LS	1	\$12,145.00	\$	12,145.00
17	Minimal portion of french drain retained				\$	8,000.00
	<b>Subtotal Part C - Storm Drainage</b>				\$	<b>257,625.60</b>
	<b>IRRIGATION</b>					
1	18" irrigation pipe w/flow fill concrete @ road crossings & concrete removal	LF	700	\$29.20	\$	20,440.00
2	4" DIA Irrigation manhole-pour in place with ring & Lid	EA	1	\$862.00	\$	862.00
3	8" PVC Irrigation pipe sleeves-8 C900 CL150	LF	360	\$18.05	\$	6,498.00





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 irri (If corporation, to be signed by President and attested					
6. Reconditioning shall be ca to by Secretary together with the corporate seals.)					
7. Units can be changed if desired, simply annotate what is used.					
8. Additional lines or items may be added as needed.					
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.					
Signature of Developer				Date	8/14/08
Signature of Developer				Date	8-20-08
City Development Engineer				Date	8-20-08
Community Development				Date	

**DISBURSEMENT AGREEMENT**  
(Improvements Guarantee)

DEVELOPER: Sonshine III Construction + Development, LLC  
BANK: Timberline Bank  
PROPERTY: Swan Meadows 351 + 353 30 Road

**DISBURSEMENT AMOUNT:** For the construction of improvements to the Property in an amount not to exceed \$ 2,095,193.81.

This Agreement is entered into by and between Sonshine III Construction + Development, LLC ("Developer"), Timberline ("Bank") and the City of Grand Junction, Colorado ("City").

**RECITALS**

Developer has been required by the City to construct certain improvements to Swan Meadows ("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 \$ 2,095,193.81, 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 John Davis, Manager (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 14<sup>th</sup> day of August, 2008

(BANK)  
By: [Signature]  
Title

Address

(DEVELOPER)  
By: [Signature]  
Title manager

2350 G Rd. Grand Junction, Co  
Address 81505

CITY OF GRAND JUNCTION

By: [Signature]  
Director of Public Works & Planning

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by, and between Sonshing III Const. + Dev. Developer, Timberline Bank 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:**

John Davis  
(name)

[Signature]  
(signature)

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(signature)

**DEVELOPER'S GENERAL CONTRACTOR:**

John Davis  
(name)

[Signature]  
(signature)

**DEVELOPER'S PROJECT ENGINEER:**

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(signature)

**DEVELOPER'S ARCHITECT:**

N/A  
(name)

\_\_\_\_\_  
(signature)

**CITY ENGINEER:**

RICK DORRIS  
(name)

[Signature]  
(signature)

revised: May 15, 2007

**RECORDING MEMORANDUM  
Exhibit D**

City of Grand Junction  
Public Works and Planning Department  
File: #

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 Sunshine #4 Construction + Development and the City of Grand Junction (City) pertaining to Swan Meadows Project, located at 351\*353 30 Rd Grand Jct. CO 81504

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 # PP-2007-062

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: [Signature] 8/13/08  
Date

(Print Name) John Davis

**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, Public Works & Planning Department, 250 N. 5<sup>th</sup> Street, Grand Junction Colorado.

[Signature] 8.20.08  
Public Works & Planning Department Date

December 7, 2009

Timberline Bank  
633 24 Road  
Grand Junction, CO 81505

Re: Cancellation of Disbursement Agreement: Sonshine III Construction &  
Development, LLC  
**Internal File: Swan Meadows Subdivision: FP-2007-062**

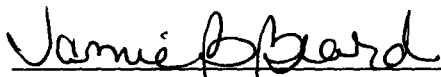
To Whom It May Concern:

Enclosed is a copy of the Disbursement Agreement (Improvement Guarantee) entered into between the City of Grand Junction ("City"), **Sonshine III Construction & Development, LLC** ("Developer"), and **Timberline Bank** for improvements to the development referred to as **Swan Meadows Subdivision** under the City's Planning File **FP-2007-062**. As beneficiary of the security for a Development Improvements Agreement ("DIA"), the City informs you that the terms of the improvements have been completed by the Developer and the improvements have been accepted by the City. The City hereby releases its interest in the disbursement agreement security. This letter is being provided at the direction of the Director of Public Works and Planning.

If you have any questions, please inform me.

Sincerely,

OFFICE OF THE CITY ATTORNEY



Jamie Beard, Assistant City Attorney

pc: Planning File #**FP-2007-062**  
Peggy Sharpe, Planning

Developer:  
**Sonshine III Construction & Development, LLC**  
**2350 G Road**  
**Grand Junction, CO 81505**



December 4, 2009

Ms. Kim Kerk  
2350 G Road  
Grand Junction, Colorado 81505

RE: Final Acceptance  
Project Name: Swan Meadows Subdivision  
Project Number: FP-2007-062

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. Final acceptance for the Project is being issued even though there are a few punch list items remaining; they will be completed in the next week except for seeding which will be done next spring.

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.
- The drainage channel and pipe on the west property line is the responsibility of the HOA and the GVDD.

Water distribution system:

- N/A – Served by Ute Water

Sanitary sewer:

- N/A – Served by Central Grand Valley Sanitation District



I have contacted the Planner for release of the Development Improvements Agreement and any financial security attached to the Project.

Sincerely,

**Rick  
Dorris**

Digitally signed by Rick Dorris  
DN: cn=Rick Dorris, o=City of  
Grand Junction, ou=Public  
Works and Planning,  
email=rickdo@gjcity.org, c=US  
Date: 2009.12.04 11:37:14 -0700

Rick Dorris, PE, CFM  
Development Engineer

Electronic copy:

Greg Moberg, Planning Services Supervisor  
Peggy Sharpe, Administrative Assistant  
Chris Spears – Storm Drainage System

Mark Barslund, Development Inspector  
David Van Wagoner – Street System  
Leslie Ankrum – Senior Admin. Asst.

**RELEASE OF RECORDING MEMORANDUM**  
**City of Grand Junction**  
**Public Works & Planning Department**  
**FILE: FP-2007-062**

This Release relates to a Recording Memorandum dated August 20, 2008, by and between Sonshine III Construction & Development, LLC (Developer) and the City of Grand Junction, pertaining to Swan Meadows Subdivision (Project), located at 351 & 353 30 Road, Grand Junction, CO, recorded at Book 4717, Page 82, Mesa County Clerk and Recorder's Office.

**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: 12-7-09  
Planner: [Signature] Date: 12.7.09

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 12.7.09

The foregoing instrument was executed before me this 7<sup>th</sup> day of December, 2009, by Greg Moberg, 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 8/21/2013

My Commission Expires 08/21/2013