

SUN08F25

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	SUNDANCE VILLAGE, LLC
PROJECT/SUBDIVISION:	SUNDANCE VILLAGE
ADDRESS:	2459 F ¼ ROAD
TAX PARCEL NO:	2945-044-24-001
FILE #:	FP-2007-078
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2008
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

June 15, 2009

ORIGINAL

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are Sundance Village, 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 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 Sundance Village has been reviewed and approved under Planning file # FP-2007-078 ("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 \$ 2,606,817.60 (120% of the amount for the Improvements) in a form and with terms acceptable to the City ("Guarantee"). The Guarantee shall be in the form of a cash deposit made to the City, a letter of credit or a disbursement agreement in a form and with content approved by the City Attorney. The Guarantee specific to this Agreement is attached as Exhibit C and is incorporated by this reference as if fully set forth.

Select one: Cash _____ Letter of Credit (LOC) _____ Disbursement Agreement x

5. **Standards:** The Developer shall construct the Improvements according to the City's standards and specifications.

6. **Warranty:** The Developer shall warrant the Improvements for one year following Acceptance by the City. "Warrant" or "Warranty" as used herein means the Developer shall take such steps and incur such costs as may be needed so that the Improvements or any portion or phase thereof as repaired and/or replaced, shall comply with the Development's construction plans and/or site plan, City standards and specifications at the end of the warranty period. The Developer shall warrant each repaired and/or replaced Improvement or any portion or phase thereof for one year following Acceptance of such repair and/or replacement.

6a. Upon Acceptance the Developer shall provide a Maintenance Guarantee in an amount of \$ 434,469.60 (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: June 15, 2008

Completion Date: June 15, 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 \$^{2,172,348.00} (Line G1, Exhibit B, Total Improvement Costs).

11a. At the written request of the Developer, the City shall execute a certificate verifying Acceptance of the Improvement and thereafter waiving its right to draw on

the Guarantee to the extent of such amount. A Developer in default under this Agreement has no right to such certification.

12. Use of Proceeds: The City shall use funds deposited with it, drawn or guaranteed pursuant to this Agreement only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements or paying Administration and Inspection fees.

13. Events of Default: The following conditions, occurrences or actions shall constitute a default by the Developer:

13a. Developer's failure to complete each portion of the Improvements on or before the Completion Date;

13b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvements within the applicable warranty period;

13c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer. In such event the City may immediately declare a default without prior notification to the Developer;

13d. Notification to the City, by any lender with a lien on the Property, of a default by Developer on any obligation to such lender. In such event, the City may immediately declare a default without prior notification to the Developer.

13e. With regard to the Property or any portion thereof: initiation of any foreclosure action regarding any lien or encumbrance; or initiation of mechanics lien(s) procedure(s); or assignment or conveyance of the Property in lieu of foreclosure. In such event the City may immediately declare a default without prior notification to the Developer.

13f. Notification to the City from the bank issuing the Guarantee that it will not renew the Guarantee at a time when security is still required hereunder and no substitute collateral acceptable to the City has been provided by the Developer.

13g. Except as provided, the City may not declare a default until written notice has been sent to the Developer at the address shown in the development file. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

14. Measure of Damages: The measure of damages for breach of this Agreement by the Developer shall be the reasonable cost of satisfactorily completing the Improvements, plus reasonable expenses. Expenses may include but are not limited to contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to the collection/completion of the Improvements.

For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit B shall be *prima facie* evidence of the minimum cost of completion; however, the maximum amount of the Developer's liability shall not be established by that amount or the amount of the Guarantee.

15. City's Rights Upon Default: When any event of default occurs, the City may draw on the Guarantee or proceed to collect any other security to the extent of the face amount of the Guarantee less eighty percent (80%) of the estimated cost (as shown on Exhibit B) of all Improvements for which the City has given its Acceptance and no warranty work is reasonably required. The City may also exercise its rights to disbursement of loan proceeds or other funds under the City improvements disbursement agreement.

15a. The City shall have the right to complete Improvements itself or it may contract with a third party for completion.

15b. The Developer grants to the City, its successors, assigns, agents, contractors and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining, inspecting and repairing the Improvements.

15c. The City may assign the proceeds of the Guarantee or other funds or assets that it may receive in accordance with this Agreement to a subsequent developer or lender that has acquired the Property by purchase, foreclosure or otherwise.

15d. That developer or lender shall then have the same rights of completion as the City if and only if the subsequent developer or lender agrees in writing to complete or correct the Improvements and provides to the City reasonable security for that obligation.

15e. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

16. Indemnification: The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns ("City") harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with or on account of the performance or non-performance of work at the Property and/or the Improvements and/or the Development that is being done pursuant to this Agreement.

16a. The Developer further agrees to aid and defend the City in the event that the City and/or the Improvements is named as a defendant in an action concerning the performance of work pursuant to this Agreement except for a suit wherein the Developer states claim(s) against the City.

16b. The Developer is not an agent, partner, joint venturer or employee of the City.

17. **No Waiver:** No waiver of any provision of this Agreement by the City shall be deemed or constitute a waiver of any other provision nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and the Developer; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful or other act by the Developer or the acceptance of any Improvement.

18. **Amendment or Modification:** The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or his/her/its authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

19. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, shall be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. The City shall be entitled to claim the value of its in-house attorneys at the rate of \$125.00 per hour. If relief is awarded to both parties the attorney's fees may be equitably divided between the parties by the decision maker.

20. **Vested Rights:** This Agreement does not guarantee, represent or certify that the Developer is entitled to any other approval(s) required by the City, before the Developer is entitled to commence development beyond the scope of this Agreement or to transfer ownership of the Property being developed.

21. **Integration:** This Agreement, together with the exhibits and attachments thereto constitutes the entire Agreement between the parties. No statement(s), promise(s) or inducements(s) that is/are not contained in this Agreement shall be binding on the parties.

22. **Third Party Rights:** No person or entity who or which is not a party to this Agreement shall have any right of action under or be a beneficiary of this Agreement.

23. **Time:** For the purpose of computing the Abandonment Period and Commencement and Dates, such times in which war, civil disasters or acts of God occurs or exist shall not be included if such prevents the Developer or City from performing its obligations under the Agreement. The Developer must notify the City in writing if/when it asserts impossibility of performance under this paragraph. The City may reject the Developer's assertion, if it finds, in writing that the condition(s) that the Developer asserts do not exist.

24. **Severability:** If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term or provision. The

rights of the parties shall be construed as if the part, term or provision was never part of the Agreement.

25. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld but any unapproved assignment is void.

25a. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property.

25b. There is no prohibition on the right of the City to assign its rights under this Agreement.

25c. Upon written request from the Developer the City shall expressly release the original Developer's Guarantee and/or contract obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City shall constitute a release of the original Developer from his liability under this Agreement.

25d. When the City has issued its Acceptance regarding the Improvements, the City agrees to state the same in writing, with appropriate acknowledgments.

25e. The City shall sign a release only after all warranty periods, as extended by litigation, repair or alteration work, have expired.

26. **Notice:** Any notice required or permitted by this Agreement shall be deemed effective two calendar days after deposit with the United States Postal Service, first class, postage prepaid and addressed as follows:

If to Developer:	<u>Sundance Village, LLC</u>	Name -Developer/Company
	<u>383 Inverness Parkway</u>	Address (Street and Mailing)
	<u>Suite 470</u>	
	<u>Englewood, CO 80112</u>	City, State & Zip Code
	<u>(303) 470-5907</u>	Telephone and Fax Numbers
	<u>(303) 470-5998</u>	
	<u>tdeneui@lordsoncorp.com</u>	E-mail

Cc:

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

Cc: Public Works & Planning Department
250 North 5th Street
Grand Junction, CO 81501

27. **Recordation:** Developer shall pay the costs to record a memorandum of this Agreement (Exhibit D) in the records of the Mesa County Clerk and Recorder's Office. The Developer may, at his/her/its option record the entire agreement.

28. **Immunity:** Nothing contained in this Agreement constitutes a waiver of the City's sovereign or other immunity under any applicable law.

29. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any action commenced by either party to this Agreement whether arising out of or relating to the Agreement, the Guarantee, the Maintenance Guarantee or any action based arising out of or under this Agreement shall be deemed to be proper only if such action is commenced in Mesa County, Colorado.

29a. The Developer expressly waives his/her/its right to bring such action in or to remove such action to any other court whether state or federal.

30. **Liability before Acceptance:** The City shall have no responsibility or liability with respect to any street or other Improvement(s), notwithstanding the use of the same by the public, unless the street or other Improvement shall have received Acceptance by the City.

30a. If the City allows a street to be constructed in stages, the Developer of the first one-half street opened for traffic shall construct the adjacent curb, gutter and sidewalk in the standard location and shall construct the required width of pavement from the edge of gutter on the side of the street nearest the property to enable an initial two-way traffic operation without on-street parking.

30b. Developer shall also construct and pay for end-transitions, intersection paving, drainage facilities and adjustments to existing utilities necessary to open the street to traffic.

30c. The City shall not issue its written Acceptance with regard to any Improvement(s) including any street, storm drainage facility, sewer, water facility or other required Improvement(s), until the Developer:

(i) furnishes to the City Engineer as-built drawings in reproducible form, blue line stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests required by City specification;

(ii) provides written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon in and under which the Improvement(s)

have been constructed or which are necessary for the Improvements are free from toxic, hazardous and other regulated substances or materials;

(iii) provides written evidence to the City Attorney that the title to lands underlying the Improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney; and

(iv) provides written evidence, certified by the Developer's engineer, that the work was systematically inspected and tested and that the materials and the compaction of the materials that are required to be compacted, were in conformance with City-approved plans and specifications.

By:
SUNDANCE VILLAGE, LLC

By: Lordson Corporation, Manager

Developer

Todd DeNeui, President

Name (printed)

Date

8-28-08

Corporate Attest:

Name

Date

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

Public Works & Planning Dept.


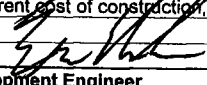
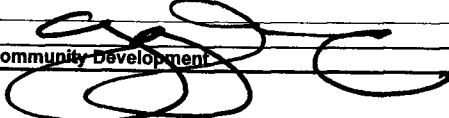
Date

5/15/2007

EXHIBIT B						
IMPROVEMENTS COST ESTIMATE						
August 27, 2008						
Item#	Item Description	Unit	Quantity	Unit Price	Extended	Price
A. SANITARY SEWER						
1	10 " PVC Sanitary Sewer Main	LF				
2	8 " PVC Sanitary Sewer Main	LF	4,888	\$28.37	\$ 138,672.56	
3	" PVC Sanitary Sewer Main	LF				
4	Sewer Services	EA	126	\$350.00	\$ 44,100.00	
5	Sanitary Sewer Manhole	EA	27	\$2,750.00	\$ 74,250.00	
6	Sanitary Sewer Drop Manhole	EA				
7	Connection to Existing MH	EA	4	\$350.00	\$ 1,400.00	
8	C900 Sleeve	LF	180	\$25.00	\$ 4,500.00	
	Subtotal Part A - Sanitary Sewer				\$ 262,922.56	
B. DOMESTIC WATER						
1	8 " PVC Water Main	LF	4,908	\$37.06	\$ 181,890.48	
2	4 " PVC Water Main	LF			\$ -	
3	" PVC Water Main	LF			\$ -	
4	8 " Gatevalve	EA	14	\$1,500.00	\$ 21,000.00	
5	6 " Gatevalve	EA			\$ -	
6	4 " Gatevalve	EA			\$ -	
7	Water Services	EA	123	\$750.00	\$ 92,250.00	
8	Connect to Existing Water Line	EA	4	\$800.00	\$ 3,200.00	
9	Fire Hydrant with Valve (w/ 6" lateral, valve, & CTB)	EA	16	\$3,500.00	\$ 56,000.00	
10	Utility Adjustments	EA			\$ -	
11	Blowoff (4")	EA			\$ -	
12	8"X6" Reducer	EA			\$ -	
	Subtotal Part B - Domestic Water				\$ 354,340.48	
C1 STREETS (PRIVATE)						
1	6 " PVC Utility/Irrigation Sleeves	LF			\$ -	
2	4 " PVC Utility/Irrigation Sleeves	LF	400	\$6.00	\$ 2,400.00	
3	Reconditioning	SY	14,670	\$1.50	\$ 22,005.00	
4	Aggregate Base Course (Class 3)	TN			\$ -	
5	Aggregate Base Course (Class 6) (6 " Compacted Thickness)	TN	6,404	\$14.75	\$ 94,459.00	
6	Aggregate Base Course (Class 6) (" Compacted Thickness)	TN			\$ -	
7	Hot Bitumitious Paving, Grading SX (3 " Thick)	TN	2,857	\$91.98	\$ 262,786.86	
8	Hot Bitumitious Paving, Grading (5 " Thick)	TN			\$ -	
9	Hot Bitumitious Paving, Grading (" Thick)	TN			\$ -	
10	Geotextile	SY			\$ -	
11	Concrete Curb (" Wide by " High)	LF			\$ -	
12	Concrete Curb and Gutter (2' Wide)Vertical 'Carry'	LF	7,380	\$12.00	\$ 88,560.00	
13	Concrete Curb and Gutter (1.5' Wide)Vertical 'Spill'	LF			\$ -	
14	Monolithic, Vertical Curb, Gutter, and Sidewalk (' Wide)	LF			\$ -	
15	Drive-Over 'Carry' Concrete Curb and Gutter (3 ' Wide)	LF			\$ -	
16	Concrete Sidewalk (5 ' Wide)	LF	5,416	\$17.00	\$ 92,072.00	
17	Concrete Gutter and Driveway Section (" Thick)	SY			\$ -	
18	Concrete Drainage Pan (3 ' Wide, 6 " Thick)	LF	1,895	\$18.00	\$ 34,110.00	
19	Concrete Corner Fillet	SY			\$ -	
20	Concrete Curb Ramp	EA	30	\$700.00	\$ 21,000.00	
21	Complete Concrete Corner	SY			\$ -	
22	Concrete Driveway (6 " Thick)	SY			\$ -	
23	Driveway/Concrete Repair	SY			\$ -	
24	Retaining Walls	LF			\$ -	
25	Street Signs	EA	24	\$250.00	\$ 6,000.00	
26	Striping (New, Remove/Replace)	LF			\$ -	
27	Street Lights	EA	10	\$1,750.00	\$ 17,500.00	
28	Signal Construction or Reconstruction	LS			\$ -	
29	Flowable Fill	CY			\$ -	

Item#	Item Description	Unit	Quantity	Unit Price	Extended Price
30	Sleeves, 8", PVC	LF	800	\$7.00	\$ 5,600.00
				Subtotal =	\$ 646,492.86
C1A STREETS (PUBLIC)					
1	6" PVC Utility/Irrigation Sleeves	LF			\$ -
2	4" PVC Utility/Irrigation Sleeves	LF	400	\$6.00	\$ 2,400.00
3	Reconditioning	SY	8,420	\$1.00	\$ 8,420.00
4	Aggregate Base Course (Class 3)	TN			\$ -
5	Aggregate Base Course (Class 6) (6" Compacted Thickness)	TN	3,676	\$17.50	\$ 64,330.00
6	Aggregate Base Course (Class 6) (" Compacted Thickness)	TN			\$ -
7	Hot Bituminous Paving, Grading SX (3" Thick)	TN	1,640	\$85.00	\$ 139,400.00
8	Hot Bituminous Paving, Grading (5" Thick)	TN			\$ -
9	Hot Bituminous Paving, Grading (" Thick)	TN			\$ -
10	Geotextile	SY			\$ -
11	Concrete Curb (" Wide by " High)	LF			\$ -
12	Concrete Curb and Gutter (2' Wide)Vertical 'Carry'	LF	5,630	\$11.55	\$ 65,026.50
13	Concrete Curb and Gutter (1.5' Wide)Vertical 'Spill'	LF			\$ -
14	Monolithic, Vertical Curb, Gutter, and Sidewalk (' Wide)	LF			\$ -
15	Drive-Over 'Carry' Concrete Curb and Gutter (3' Wide)	LF			\$ -
16	Concrete Sidewalk (5' Wide)	LF	2,620	\$16.00	\$ 41,920.00
17	Concrete Gutter and Driveway Section (" Thick)	SY			\$ -
18	Concrete Drainage Pan (3' Wide, 6" Thick)	LF	390	\$18.00	\$ 7,020.00
19	Concrete Corner Fillet	SY			\$ -
20	Concrete Curb Ramp	EA	18	\$700.00	\$ 12,600.00
21	Complete Concrete Corner	SY			\$ -
22	Concrete Driveway (6" Thick)	SY			\$ -
23	Driveway/Concrete Repair	SY			\$ -
24	Retaining Walls	LF			\$ -
25	Street Signs	EA	26	\$300.00	\$ 7,800.00
26	Striping (New, Remove/Replace)	LF	160	\$2.00	\$ 320.00
27	Street Lights	EA	14	\$1,100.00	\$ 15,400.00
28	Signal Construction or Reconstruction	LS			\$ -
29	Flowable Fill	CY	350	\$80.00	\$ 28,000.00
30	Sleeves, 8", PVC	LF	800	\$11.00	\$ 8,800.00
				Subtotal =	\$ 401,436.50
C2 BRIDGES					
1	Box Culvert Pre-Cast	LS			\$ -
2	Box Culvert Cast-in-Place	LS			\$ -
3	Wingwalls	LS			\$ -
4	Parapet Wall	LS			\$ -
5	Railing (handrail, guardrail)	LS			\$ -
				Subtotal =	\$ -
Subtotal Part C - Streets and Bridges					\$ 1,047,929.36
D1 EARTHWORK					
1	Mobilization	LS	1	\$5,000.00	\$ 5,000.00
2	Cleaning and Grubbing	AC	18	\$1,000.00	\$ 18,000.00
3	Unclassified Excavation	CY	15,693	\$1.75	\$ 27,462.75
4	Unclassified Embankment	CY	39,679	\$1.50	\$ 59,518.50
5	Silt Fence	LF	6,260	\$2.00	\$ 12,520.00
6	Watering (Dust Control)	LS	1	\$10,000.00	\$ 10,000.00
				Subtotal =	\$ 132,501.25
D2 REMOVALS AND RESETING					
1	Removal of Asphalt	SY			\$ -
2	Removal of Miscellaneous Concrete	SY			\$ -
3	Remove Curb and Gutter	LF			\$ -
4	Removal of Culverts	LF			\$ -
5	Remove Structures	EA			\$ -
6	Remove Signs	EA			\$ -

Item#	Item Description	Unit	Quantity	Unit Price	Extended	Price
7	Remove Fence	LF			\$	-
8	Adjust Mahnole	EA			\$	-
9	Adjust Valvebox	EA			\$	-
10	Relocate or Adjust Utilities	LS			\$	-
				Subtotal =	\$	-
D3 SEEDING AND SOIL RETENTION						
1	Sod	SY		\$4.00	\$	-
2	Seeding (Native)	AC		\$1,500.00	\$	-
3	Seeding (Bluegrass/Lawn)	AC			\$	-
4	Hydraulic Seed and Mulching	SY or AC			\$	-
5	Soil Retention Blanket	SY		\$15.00	\$	-
				Subtotal =	\$	-
D4 STORM DRAINAGE FACILITIES						
1	Finsh Grading (incl. Channels, Swales, and Ponds)	CY			\$	-
2	12 " RCP Storm Drain Pipe	LF	92	\$23.00	\$	2,116.00
3	15 " RCP Storm Drain Pipe	LF	248	\$25.50	\$	6,324.00
4	18 " RCP Storm Drain Pipe	LF	1,705	\$30.00	\$	51,150.00
5	24 " RCP Storm Drain Pipe	LF	810	\$35.00	\$	28,350.00
6	30 " RCP Storm Drain Pipe	LF	252	\$40.00	\$	10,080.00
7	36 " RCP Storm Drain Pipe	LF	325	\$45.00	\$	14,625.00
8	12" HDPE Storm Drain Pipe	LF	1,002	\$16.50	\$	16,533.00
9	18 " Flared End Section	EA			\$	-
10	24 " Flared End Section	EA	2	\$410.00	\$	820.00
11	30" Flared End Section	EA	2	\$480.00	\$	960.00
12	48" Storm Drain Manhole	EA	5	\$2,000.00	\$	10,000.00
13	60" Storm Drain Manhole	EA	6	\$3,000.00	\$	18,000.00
14	72" Storm Drain Manhole	EA	4	\$4,500.00	\$	18,000.00
15	Manhole with Box Base	EA			\$	-
16	Connection to Existing MH & Inlet	EA	5	\$750.00	\$	3,750.00
17	Single Curb Opening Storm Drain Inlet	EA	12	\$2.00	\$	24.00
18	Small Area Inlet (D 11)	EA	5	\$650.00	\$	3,250.00
19	Type 13 Storm Drain Inlet	EA			\$	-
20	Area Storm Drain Inlet	EA			\$	-
21	Detention Area Outlet Structure	EA	3	\$6,000.00	\$	6,000.00
22	Rip-Rap D ₅₀ = 6 "	CY	5	\$65.00	\$	325.00
23	Sidewalk Trough Drain	EA			\$	-
24	Pump Systems inculding Electrical	LS			\$	-
25	Water Quality Manhole	EA			\$	-
				Subtotal =	\$	190,307.00
Subtotal Part D - Grading and Drainage						\$ 322,808.25
E1 IRRIGATION						
1	Connection to Existing Irrigation Ditch	LS	All Included in site development			
2	4 " PVC Irrigation Pipe	LF			\$	-
3	" Irrigation Pipe	LF			\$	-
4	Fittings and Valves	LS			\$	-
5	Services	EA			\$	-
6	Pump System and Concrete Vault	LS			\$	-
7	Irrigation Structure	EA			\$	-
8	Vacuum Relief and/or Air Release Valve	EA			\$	-
				Subtotal =	\$	-

Item#	Item Description	Unit	Quantity	Unit Price	Extended	Price
E2	LANDSCAPING					
1	Design/Architecture	LS	done		\$	-
2	Earthwork	CY	included above		\$	-
3						
4	Plant Material & Planting	LS	1	\$99,500.00	\$	99,500.00
5	Irrigation System	LS	included above		\$	-
6	Curbing	LF	included above		\$	-
7						
8	1 Year Maintenance Agreement	LS	included above		\$	-
E	Subtotal Part E - Landscaping and Irrigation				\$	99,500.00
F.	Miscellaneous Items					
1	Construction Staking/Surveying	LS	1	\$25,000.00	\$	25,000.00
2	Developers Inspection Cost	LS	1	\$10,000.00	\$	10,000.00
3	General Construction Supervision	LS	1	\$30,000.00	\$	30,000.00
4	Quality Control Testing	LS	1	\$4,500.00	\$	4,500.00
5	Construction Traffic Control	LS	1	\$1,500.00	\$	1,500.00
6	City Inspection Fees	Lots	126	\$90.00	\$	11,340.00
7	As-Builts	LS	1	\$2,500.00	\$	2,500.00
	Subtotal Part F - Miscellaneous Items				\$	84,840.00
% = Percentage of total site construction costs						
G.	COST SUMMARY					
1	Total Improvement Costs				\$	2,172,340.65
2	City Security (20%)				\$	434,468.13
3	Total Guarantee Amount				\$	2,606,808.78
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 appurtenance, not itemized elsewhere.						
4. All concrete items shall include Aggregate Base Course where required by the drawings.						
5. Fill in the pipe type for irrigation pipe and sleeves.						
6. Reconditioning shall be calculated to at least 6" outside of back of walk on both sides.						
7. Units can be changed if desired, simply annotate what is used.						
8. Additional lines or items may be added as needed.						
Sundance Village, LLC.						
Lordson Corporation, Manager						
Todd Deneui, President						
Signature of Developer  Date 8-28-08						
(If corporation, to be signed by President and attested to by Secretary together with the corporate seals)						
I have reviewed the estimated costs and time schedule shown above and, based on the construction drawings submitted to date and the current cost of construction, I take no exception to the above.						
						
City Development Engineer Date 9/8/08						
						
Community Development Date 9-8-08						

DISBURSEMENT AGREEMENT
(Improvements Guarantee)

DEVELOPER: SUNDANCE VILLAGE, LLC

BANK: ACADEMY BANK, N.A.

PROPERTY: SUNDANCE VILLAGE

DISBURSEMENT AMOUNT: For the construction of improvements to the Property in an amount not to exceed \$ 2,606,817.60.

This Agreement is entered into by and between Sundance Village, LLC ("Developer"), Academy Bank, N.A. ("Bank") and the City of Grand Junction, Colorado ("City").

RECITALS

Developer has been required by the City to construct certain improvements to Sundance Village ("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 \$ 2,606,817.60, 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 Todd DeNeui (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 29th day of August, 2008.

(BANK) ACADEMY BANK, N.A.
By: Tom Espeland
Title Tom Espeland
Sr. Vice President/Market Manager

1048 Independent Avenue
Grand Junction, CO 81505

Address

(DEVELOPER) SUNDANCE VILLAGE, LLC
By: Lordson Corporation, Manager
By: Todd DeNeui
Title Todd DeNeui, President

383 Inverness Parkway, Suite 470
Englewood, CO 80112

Address

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 SUNDANCE VILLAGE, LLC Developer, ACADEMY BANK, N.A. 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:

SUNDANCE VILLAGE, LLC
By: Lordson Corporation, Manager
By: Todd DeNeui, President



(name)

(signature)

(name)

(signature)

(name)

(signature)

DEVELOPER'S GENERAL CONTRACTOR:

(name)

(signature)

DEVELOPER'S PROJECT ENGINEER:

(name)

(signature)

DEVELOPER'S ARCHITECT:

(name)

(signature)

CITY ENGINEER:

 ERIC HAHN

(name)



(signature)

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 SUNDANCE VILLAGE, LLC (Developer) and the City of Grand Junction (City) pertaining to SUNDANCE VILLAGE (Project), located at 2459 F 1/4 Road.


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-2007-078

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).

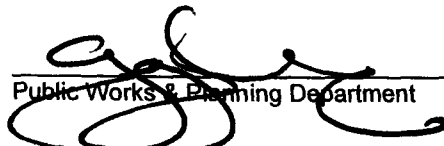
NOW THEREFORE, the Developer and an official of the City of Grand Junction, both possessing and representing by their signatures that they possess sufficient authority, do hereby memorialize the relative, rights and obligations contained in the Development Improvement Agreement and/or Maintenance Guarantee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

DEVELOPER:

SUNDANCE VILLAGE, LLC
By: Lordson Corporation, Manager Date 8/28/08
By:  Date
(Print Name) Todd DeNeui, President

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. 5th Street, Grand Junction Colorado.


Public Works & Planning Department Date 9.8.08

6/10/2003

AGREEMENT

(PHASED ACCEPTANCE WITH PERFORMANCE BONDS)

This Agreement is dated this 26th day of January, 2009, by and between Sundance Village, LLC ("Developer") and the City of Grand Junction ("City").

RECITALS

Developer and the City entered into that certain Development Improvements Agreement ("DIA"), dated on or about 8/28/08 regarding Developer's development of a subdivision in the City known as Sundance Village ("Subdivision") pursuant to planning file # FP-2007-078.

Pursuant to the DIA, Developer has posted security in the amount of \$2,606,808.78 in the form of a Disbursement Agreement executed among Developer, City and Academy Bank, N.A. to secure Developer's performance of its obligations under the DIA. Developer also provides to the City, pursuant to the DIA, a warranty for the improvements as described in Section 6 of the DIA accompanied by a maintenance guarantee secured in the amount of twenty percent (20%) of the total estimated cost of the improvements.

While the DIA provides for simultaneous acceptance of all improvements, such that the warranty period would begin at the same time for all improvements, this Agreement for Phased Acceptance With Performance Bonds ("Agreement") provides a means for some improvements to be accepted before others ("phased acceptance" of improvements). The City agrees to allow phased acceptance of improvements in the Subdivision according to the terms and conditions set forth in this Agreement.

The City and Developer agree to amend the DIA only as set forth herein. All terms of the DIA and/or Disbursement Agreement not expressly modified hereby shall remain in full force and effect as if no amendment had been made to the DIA or to the Disbursement Agreement.

WHEREFORE, based upon the mutual covenants, conditions and considerations set forth herein, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. Phased Acceptance. The City will review for acceptance categories of improvements as identified on Exhibit B to the DIA as requested by the Developer. Before any category of improvements (ex. A, B, C, D, E, and/or F) may be reviewed for acceptance, the particular category to be reviewed must be completely installed, as determined by the City.
2. Phased Release of Security. Upon acceptance of any particular category of improvements, the City will release its right to draw on the Disbursement Agreement by the corresponding amount shown on Exhibit B of the Disbursement Agreement, that amount being the subtotal for that category of improvements plus 20% of that subtotal. For example, if the

City accepts item "A" on Exhibit "B", Sanitary Sewer, \$315,507.07 shall be released (\$262,922.56 + \$52,584.51) by the City.

3. Bond For Warranty/Maintenance Obligation. Upon acceptance of improvements by the City, Developer shall obtain a Performance Bond satisfactory to the City for the accepted improvements securing the faithful performance of the Developer's obligations under the DIA for those improvements in the amount of 20% of the estimated cost of those improvements. "Estimated cost" shall mean and refer to those shown on Exhibit B of the Disbursement Agreement.

4. Varied Warranty Period Acknowledgment. The parties acknowledge that the warranty period for a particular category of improvements within the Subdivision may expire prior to the expiration of the warranty period for other improvements within the Subdivision, depending upon the acceptance date of the category of improvements.

5. Replacement of Maintenance Guarantee with Performance Bond. In the event that the City has any claims during the Warranty Period the City shall provide its initial notice thereof and Developer shall perform its warranty obligations under the DIA as if the DIA was not amended hereby. Upon a written request from the City directing that a claim be made under the Performance Bond, which request shall not be made earlier than ten (10) days from and after the initial notice of claim by the City to Developer, Developer shall (a) make a corresponding claim under the Performance Bond within seven (7) days of receipt of the request from the City, and (b) use its best efforts to obtain satisfaction of the City's claims made in accordance with the DIA from the surety under the Performance Bond. The parties agree that this process constitutes the Maintenance Guarantee under Section 6 of the DIA.

6. Release of Academy Bank. Provided Developer has in place a Performance Bond or Bonds as described above, upon Phased Acceptance as to any category of items under the DIA, Academy Bank shall be released from further obligation to the City for any item covered by such category of improvements. Any such release will cover Academy Bank's obligations under the DIA and DA as to the identified category of improvements only.

7. No other Changes to DIA. Except as, and only to the extent, amended by this Agreement, all terms and conditions of the DIA and DA, and the parties' respective performance obligations under the DIA and DA, shall remain in full force and effect and without change.

8. Indulgences. Neither the failure nor any delay on the part of any party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

9. Controlling Law. This Agreement and all questions relating to its validity, interpretations, performance and enforcement, shall be governed by and construed in accordance with the laws of the State of Colorado, notwithstanding any conflict of law provisions.

10. Notices. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received when delivered against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below:

If to Developer: Todd DeNeui
383 Inverness Parkway, Suite 470
Englewood, CO 80112

With copy to:

Lloyd Quesenberry
200 Grand, Suite 200
Grand Junction, CO 81501

If to the City: Eric Hahn, Development Engineer
City of Grand Junction Department of Public Works and Planning
250 N. 5th St.
Grand Junction, CO 81501

With a copy to:

City Attorney
250 N. 5th St.
Grand Junction, CO 81501

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this subsection for the giving of notice.

11. Binding Nature of Agreement; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns. No party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other parties hereto.

12. Number of Days. In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays and holidays, provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

13. Provisions Severable. The provisions of this Agreement are independent of and severable from each other and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable, in whole or in part.

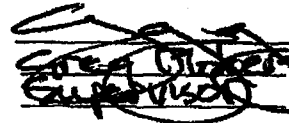
14. Entire Agreement. This Agreement, including all exhibits hereto and all documents contemplated hereby, contains the entire understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as expressly stated herein. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof.

DEVELOPER:

SUNDANCE VILLAGE, LLC,
a Colorado limited liability company
By: Lordson Corporation, Manager

By: 
Todd DeNeui, President

CITY OF GRAND JUNCTION

By: 
~~_____~~ (printed name)
~~Supervisor~~ (title)



**PUBLIC WORKS
& PLANNING**

February 18, 2009

Mr. Todd DeNeui
Sundance Village, LLC
383 Inverness Parkway
Suite 470
Englewood, Colorado 80112

RE: Project Name: Sundance Village Subdivision
Project Number: FP-2007-078

Mr. DeNeui,

The Developer is hereby notified that all requirements for Initial Acceptance of the following improvements associated with the Project have been fulfilled, (with exceptions identified):

- Sanitary Sewer (Section A of Exhibit B in the DIA: \$262,922.56)
- Domestic Water (Section B of Exhibit B in the DIA: \$354,340.48)
- Grading & Drainage (Section D of Exhibit B in the DIA: \$322,808.25)
- Exception from Section D, and not accepted at this time, is the 36" storm outfall pipe. (Paid for by the City, to be reimbursed by the developer. Amount paid: \$51,392, to be subtracted from the released DIA.)

The Developer is responsible for all materials and workmanship for these public infrastructure improvements constructed or installed as part of the Project for one year following the Initial Acceptance date. Additionally, any improvements under the jurisdiction of other entities, such as water districts and sewer districts, shall be subject to the warranty requirements of those entities.

The City will conduct a warranty inspection of the above improvements prior to the end of the one-year warranty period. The Developer will be required to correct any deficiencies noted during the warranty period. If a deficient item requires replacement or major repairs under the warranty for that item, the Development Improvement Agreement, the Maintenance Agreement and the full financial guarantee shall be extend by one year from the date the item is repaired or replaced.

Initial acceptance date / begin warranty period:	February 13, 2009
Amount of total financial guarantee in DIA:	\$2,606,808.78
Amount to be released by this approval:	\$888,679
Required Maintenance Guarantee:	\$177,736

Please take note that the security funds identified above (\$888,679) will not be released until the City receives the necessary performance bond, as previously negotiated with the Staff City Attorney, Shelly Dackonish.

Sincerely,

Eric Hahn, PE
City of Grand Junction
Development Engineer

EC: Shelly Dackonish, Staff City Attorney
Peggy Sharpe, Administrative Assistant
Mary Sparks, Senior Administrative Assistant
Otto Burden <oburden@coloradocivil.com>

Mark Barslund, Development Inspector
Lori Bowers, Senior Planner
Christopher Cutsforth <christopher@lordsoncorp.com>



CITY ATTORNEY

February 20, 2009

Academy Bank, N. A.
1048 Independent Avenue
Grand Junction, CO 81505

Re: Release of Funds - **Sundance Village #FP-2007-078**

Dear Sirs:

Enclosed is a copy of the Disbursement Agreement (Improvement Guarantee) entered into between the City of Grand Junction ("City"), **Sundance Village, LLC** ("Developer"), and **Bank Academy, N. A.** for improvements to the development referred to as **Sundance Village** under the City's Planning File **FP-2007-078**. As beneficiary of the security for a Development Improvements Agreement ("DIA") (enclosed), the City informs you that the terms of certain of the improvements have been completed by the Developer, and that these improvements have been accepted by the City, as more specifically set forth in the enclosed letter dated February 18, 2009 from Eric Hahn, Development Engineer for the City of Grand Junction, pursuant to the Agreement for Phased Acceptance of Improvements (enclosed).

This letter shall inform that a portion of the Developer's \$434,000.00 warranty obligation as defined in the DIA on page 2, paragraph 6, has been satisfied by a maintenance performance bond #884752S issued by Insko Insurance Services, Inc., in the amount of \$140, 421.00 (copy attached). The City therefore hereby releases its interest in that portion of Academy Bank's related credit obligation, to wit, \$140,241.00. 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



Shelly S. Dackonish, Senior Staff Attorney

Enclosures (5)

pc: Eric Hahn, Development Engineer
Planning File # **FP-2007-078**
Peggy Sharpe, Planning
Developer: **Mr. Todd DeNeui**
Sundance Village, LLC
383 Inverness Parkway, Suite 470
Englewood, CO 80112



INSCO INSURANCE SERVICES, INC.

Underwriting Manager for:
Developers Surety and Indemnity Company
Indemnity Company of California
17780 Fitch, Suite 200 • Irvine, California 92614 • (949) 263-3300

MAINTENANCE BOND

BOND NO. 884752S

KNOW ALL MEN BY THESE PRESENTS:

THAT we, Sundance Village, LLC, as Principal,
and Developers Surety and Indemnity Company, a corporation organized and doing
business and under and by virtue of the laws of the State of Iowa and duly
licensed to conduct surety business in the State of Colorado,
as Surety, are held and firmly bound unto the City of Grand Junction, Colorado

as Obligee, in the sum of One Hundred Forty Thousand, Four Hundred and Twenty-One Dollars and no cents
(\$140,421.00) Dollars,
for which payment, well and truly to be made, we bind ourselves, our heirs, executors and successors,
jointly and severally firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH THAT:

WHEREAS, the above named Principal entered into an agreement or agreements with said Obligee to:
Warrant items A, B, and F as listed on the Disbursement Log and Authorization dated 12/24/2008 for Sundance Village
(FP-2007-078).

WHEREAS, said agreement provided that Principal shall guarantee replacement and repair of improvements
as described therein for a period of one year(s) following final acceptance of said improvements.

NOW, THEREFORE, if the above Principal shall indemnify the Obligee for all loss that Obligee may
sustain by reason of any defective materials or workmanship which become apparent during the period
of one year(s) from and after acceptance of the said improvements by Obligee, then this obligation
shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the seal and signature of said Principal is hereto affixed and the corporate seal
and the name of the said Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact, this
20th day of January, 2009
Year

Sundance Village, LLC Principal

BY: 
Timothy Todd DeNeui, Managing Member

Developers Surety and Indemnity Company

BY: 
Burton J. Hamilton Attorney-in-Fact

**POWER OF ATTORNEY FOR
DEVELOPERS SURETY AND INDEMNITY COMPANY**
PO BOX 19725, IRVINE, CA 92623 (949) 263-3300
www.InscoDico.com

KNOW ALL MEN BY THESE PRESENTS, that except as expressly limited, DEVELOPERS SURETY AND INDEMNITY COMPANY does hereby make, constitute and appoint:

James D. Hamilton, Burton J. Hamilton, Diane J. Caselman, Sandra K. Pierce, jointly or severally

as its true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporation as surety, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as the corporation could do, but reserving to the corporation full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

This Power of Attorney is granted and is signed by facsimile under and by authority of the following resolution adopted by the Board of Directors of DEVELOPERS SURETY AND INDEMNITY COMPANY effective as of November 1, 2000:

RESOLVED, that the Chairman of the Board, the President and any Vice President of the corporation be, and that each of them hereby is, authorized to execute Powers of Attorney, qualifying the Attorney(s)-in-Fact named in the Powers of Attorney to execute, on behalf of the corporation, bonds, undertakings and contracts of suretyship; and that the Secretary or any Assistant Secretary of the corporation be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney;

RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporation when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY has caused these presents to be signed by its respective Executive Vice President and attested by its Secretary this 1st day of December, 2005.

By: [Signature]
David H. Rhodes, Executive Vice-President

By: [Signature]
Walter A. Crowell, Secretary



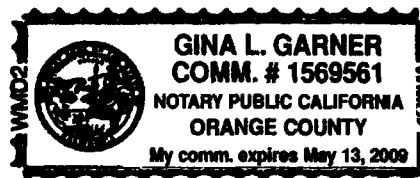
STATE OF CALIFORNIA]
COUNTY OF ORANGE]

On December 1, 2005 before me, Gina L. Garner, (here insert name and title of the officer), personally appeared David H. Rhodes and Walter A. Crowell, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature [Signature]

(SEAL)



CERTIFICATE

The undersigned, as Assistant Secretary, of DEVELOPERS SURETY AND INDEMNITY COMPANY, does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked, and furthermore, that the provisions of the resolution of the respective Boards of Directors of said corporation set forth in the Power of Attorney, is in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, the 20th day of JANUARY, 2009.

By: [Signature]
Albert Hillebrand, Assistant Secretary

City of Grand Junction
Accounts Payable Edit Listing

10/17

Vendor/Remittance Address	Number	Description	Invoice Date	G/L Date	Due Date	Confirming EFT G/L Date	Notes	Amounts
3246 - Sundance Village LLC	RFD29July2009	Security Deposit Refund/Thunder Mountain Drive	07/23/2009	07/23/2009	07/29/2009		No	Gross: 25,080.00
								Freight: 0.00
Invoice Department: 06-630 PW&P,Planning		Check Sort Code:	Bank Account: Accounts Payable Clearing			State Tax:		0.00
PO Box 130		Check Code:	Invoice Terms:			County Tax:		0.00
PO Box 130		Manual Check: No			Local/City Tax:		0.00	
Castle Rock, CO 80104		Check Number:			Discount:		0.00	
								Retainage: 0.00
								Net Amount: 25,080.00

Detail:	P.O. Number	C/D/F/T/ A/1099	Description	Quantity	U/M	Amount/Unit	Total Amount
		N/N/N/N/N	REFUND - Security Deposit Refund/Thunder Mountain Drive	1.0000	EA	25,080.0000	25,080.00

G/L Distribution:	G/L Account/Project	Expensed	Unencumbered
	207.2090 (Transportation Capacity Fund.Deposits Payable)	25,080.00	0.00

Total Invoice Items: 1 Invoice Amount Expensed: \$25,080.00 Invoice Amount Unencumbered: \$0.00

Batch Total Invoices:	10
Batch Total Gross:	\$49,236.79
Batch Total Freight:	\$0.00
Batch Total State Tax:	\$0.00
Batch Total County Tax:	\$0.00
Batch Total Local/City Tax:	\$0.00
Batch Total Discount:	\$0.00
Batch Total Retainage:	\$0.00
Batch Total Net:	\$49,236.79
Batch Total Unencumbered:	\$0.00
Grand Total Invoices:	10
Grand Total Gross:	\$49,236.79
Grand Total Freight:	\$0.00
Grand Total State Tax:	\$0.00
Grand Total County Tax:	\$0.00
Grand Total Local/City Tax:	\$0.00
Grand Total Discount:	\$0.00
Grand Total Retainage:	\$0.00
Grand Total Net:	\$49,236.79

Development Improvements Guarantee Recap Sheet

Check One:	<input type="checkbox"/> Cash Deposit	<input type="checkbox"/> Letter of Credit (LOC)
	<input checked="" type="checkbox"/> Cash Refund	<input type="checkbox"/> LOC Release

Date	July 29, 2009
Project File No.	FP-2007-078: 2477 Thunder Mtn; 2481 Thunder Mtn; 2473 Thunder Mtn
Project Name	2477 Thunder Mtn \$8360; 2481 Thunder Mtn \$8360; 2473 Thunder Mtn \$8360
Project Location	Thunder Mountain Drive
Purpose of DIA	Landscape Irrigation
Payee Name	Sundance Village, LLC
Payee Mailing Address	PO Box 130
Payee City, State Zip Code	Castle Rock, CO 80104
Payee Telephone No.	(303) 470-5907
DIA Expiration Date	July 1, 2009
Project Planner	Lori Bowers
Project Engineer	Eric Hahn

ACCOUNTING INFORMATION

CASH				LETTER OF CREDIT			
	AMOUNT	DATE	REFERENCE		AMOUNT	DATE	REFERENCE
DEPOSIT	\$8,360.00	03/24/09	Check # 0028759	LOC Amount	\$ -		
DEPOSIT	\$ 8,360.00	03/24/09	Check # 0028756	Release	\$ -		
DEPOSIT	\$ 8,360.00	03/24/09	Check # 0028758	Release	\$ -		
Refund	\$ 25,080.00	07/29/09		Release	\$ -		
BALANCE	\$0.00			BALANCE	\$ -		

DIA Cash Fund/Account No.	207-2090
----------------------------------	-----------------



PUBLIC WORKS & PLANNING

July 29, 2009

Sundance Village, LLC
Attn: Mr. Tom Martinez, Sr.
PO Box 130
Castle Rock, CO 80104

**Re: Development Improvement Agreement FP-2007-078
2473, 2477, 2481 Thunder Mountain Drive**

Dear Mr. Martinez:

Enclosed please find a check in the amount of \$25080.00 for your security deposit refund for the above referenced Development Improvement Agreement.

If you have any questions regarding this matter, please feel free to call me at (970) 244-1438.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leslie Ankrum".

Leslie Ankrum
Senior Administrative Assistant

enclosures

pc: Planning File # FP-2007-078
Peggy Sharpe, Administrative Assistant

PUBLIC WORKS & PLANNING

Date: 2/10/10

City of Grand Junction
Public Works & Planning Department
Attn: Lori Bowers, Project Manager
250 N. 5th Street
Grand Junction, CO 81501

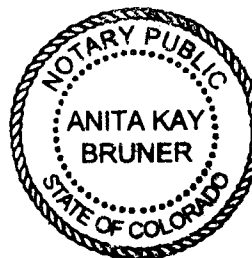
Re: Extension of Completion Date for the Development Improvements Agreement
Project file #: FP-2007-078; Name of project: Sundance Village Subdivision

Dear Ms. Bowers:

An extension of the Completion Date for development improvements as set forth in the Development Improvements Agreement ("DIA") is being requested for the project captioned above. The completion date set forth in the DIA is June 15, 2009. Prior extensions have been requested and granted. Additional time is needed to complete required improvements. It is requested that the Completion Date be extended for an additional **six months**, or until **August 18, 2010**. The bank / disburser has acknowledged and consented to the extension of the or disbursement agreement as requested.

Court-Appointed Receiver for Sundance Village, LLC:
MJB Construction, Inc.

Myron Barker
Myron Barker, Principal



My Commission Expires 10/27/2010

STATE OF COLORADO)
) ss
COUNTY OF MESA)

Acknowledged before me and subscribed in my presence by Myron Barker as Principal of MJB Construction, Inc., as court-appointed receiver for Sundance Village LLC, on this 10 day of February, 2010.

Witness my hand and seal. 10/27/2010
My commission expires: 10/27/2010

Anita Kay Bruner
Notary Public

Bank, issuer, or disburser's acknowledgment and consent to extension of security for the DIA:

Academy Bank, N.A.
Company/Bank
Thomas W. Espeland *Thomas W. Espeland*
Print Name
SVP - Market Manager
Title

Thomas W. Espeland
Signature
2-10-10
Date

City of Grand Junction - Public Works & Planning

Lori W. Bowers
Project Manager

[Signature]
Development Engineer



Mr. Myron Barker
MJB Construction
4344 Kannah Creek Rd.
Whitewater, Colorado 81527

June 10, 2010

RE: Sundance Village Subdivision (FP-2007-078)

Mr. Barker,

The intent of this letter is to summarize recent transactions and agreements, authorize the release of additional DIA security funds, and update the project records accordingly. Prior acceptance letters (dated Feb. 18, 2009 and May 20, 2010) authorized the release of DIA security funds for the following completed improvements:

- Sanitary Sewer (Section A of Exhibit B in the DIA):	\$	262,922.56
- Domestic Water (Section B of Exhibit B in the DIA):	\$	354,340.48
- Grading & Drainage (Section D of Exhibit B in the DIA):	\$	322,808.25
- Less \$51,392 for outstanding cost of storm outfall:	\$	(51,392.00)
- Streets (Section C of Exhibit B in the DIA):	\$	<u>1,047,929.36</u>
o DIA security funds released as of May 20, 2010:	\$	1,936,608.65

Since May 20, 2010, the City has received payment for the storm outfall and staff has identified additional DIA security funds that may now be released, summarized as follows:

- Value of driveway improvements credited to developer:	\$	18,099.00
- Payment received for remaining cost of storm outfall:	\$	33,293.00
- Miscellaneous Items (Section F of Exhibit B in the DIA):	\$	84,840.00
- 20% City Security for Sections A, B, C, D, and F:	\$	414,568.13
- Hold Streets Maint. Guarantee (20% of value of public streets):	\$	<u>(80,287.00)</u>
o DIA security funds to be released now:	\$	470,513.13


Therefore, a summary of the current status of the DIA is as follows:

- Amount of total original guarantee in DIA:	\$	2,606,808.78
- Minus security funds released as of May 20, 2010:	\$	(1,936,608.65)
- Minus security funds released with this letter:	\$	<u>(470,513.13)</u>
o DIA security funds remaining:	\$	199,687.00

This amount (\$199,687) remaining in the DIA equates to 120% of the Landscaping section (Section E) identified in Exhibit B to the DIA, and the required Maintenance Guarantee for the public streets. I have confirmed with our legal department that you would be allowed to secure the Maintenance Guarantee for the public streets with a performance bond. However, the existing security of \$80,287 cannot be released from the DIA until the performance bond has been provided and approved by the City Attorney.

If you have any questions regarding any of the above information, please contact me.

Sincerely,


Eric Hahn, PE
City of Grand Junction
Development Engineer

EC: Shelly Dackonish, Staff City Attorney
Lori Bowers, Senior Planner
Tim Moore, Director – Public Works & Planning

Mark Barslund, Development Inspector
Leslie Ankrum, Sr. Administrative Assistant



Mr. Myron Barker
MJB Construction
4344 Kannah Creek Rd.
Whitewater, Colorado 81527

June 10, 2010

RE: Final Acceptance – utilities and storm drains only
Project Name: Sundance Village Subdivision
Project Number: FP-2007-078

Mr. Barker,

The Developer is hereby notified that all requirements for Final Acceptance of the following improvements associated with the Project have been fulfilled:

Storm drainage system:

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

Water distribution system:

- N/A (Ute Water)

Sanitary sewer:

- Sewer mains and manholes within the public right of way.

The City has conducted a warranty inspection of the project and any needed follow-up inspections. The public infrastructure improvements identified above have been found to be in satisfactory condition. All requirements for the Final Acceptance of the project have been fulfilled. The developer's warranty obligation, for all materials and workmanship, has concluded and all warranty obligations are hereby released.

The City Planner and City Attorney will release the Maintenance Agreement and maintenance bond attached to such Agreement for this project.

Sincerely,

Eric Hahn, PE
City of Grand Junction
Development Engineer

EC: Shelly Dackonish, Staff City Attorney
Lori Bowers, Senior Planner
Tim Moore, Director-Public Works & Planning

Mark Barslund, Development Inspector
Leslie Ankrum, Senior Administrative Assistant



June 16, 2010

Developers Surety and Indemnity Company
Indemnity Company of California
17780 Fitch, Suite 200
Irvine, California 92614

RE: Release of Maintenance Bond No. 884752S
Sundance Village
Our file no. FP-2007-078

Dear Sir/Madam:

We are hereby releasing our interest in and claim to Maintenance Bond No. 884752S in the amount of \$140,421.00 because the developer has met the obligations secured thereby.

Sincerely,

City of Grand Junction

A handwritten signature in black ink, appearing to read "Shelly S. Dackonish", with a long horizontal flourish extending to the right.

Shelly S. Dackonish, Senior Staff Attorney
Office of the City Attorney

Cc: Eric Hahn
Lori Bowers
Myron Barker



INSCO INSURANCE SERVICES, INC.

Underwriting Manager for:
Developers Surety and Indemnity Company
Indemnity Company of California
17780 Fitch, Suite 200 • Irvine, California 92614 • (949) 263-3300

MAINTENANCE BOND

BOND NO. 884752S

KNOW ALL MEN BY THESE PRESENTS:

THAT we, Sundance Village, LLC, as Principal,
and Developers Surety and Indemnity Company, a corporation organized and doing
business and under and by virtue of the laws of the State of Iowa and duly
licensed to conduct surety business in the State of Colorado,
as Surety, are held and firmly bound unto the City of Grand Junction, Colorado

as Obligee, in the sum of One Hundred Forty Thousand, Four Hundred and Twenty-One Dollars and no cents
(\$140,421.00) Dollars,
for which payment, well and truly to be made, we bind ourselves, our heirs, executors and successors,
jointly and severally firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH THAT:

WHEREAS, the above named Principal entered into an agreement or agreements with said Obligee to:
Warrant items A, B, and F as listed on the Disbursement Log and Authorization dated 12/24/2008 for Sundance Village
(FP-2007-078).

WHEREAS, said agreement provided that Principal shall guarantee replacement and repair of improvements
as described therein for a period of one year(s) following final acceptance of said improvements.

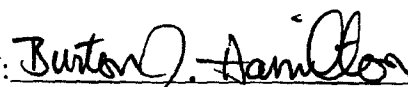
NOW, THEREFORE, if the above Principal shall indemnify the Obligee for all loss that Obligee may
sustain by reason of any defective materials or workmanship which become apparent during the period
of one year(s) from and after acceptance of the said improvements by Obligee, then this obligation
shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the seal and signature of said Principal is hereto affixed and the corporate seal
and the name of the said Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact, this
20th day of January, 2009
Year

Sundance Village, LLC Principal

BY: 
Timothy Todd DeNeui, Managing Member

Developers Surety and Indemnity Company

BY: 
Burton J. Hamilton Attorney-in-Fact

**POWER OF ATTORNEY FOR
DEVELOPERS SURETY AND INDEMNITY COMPANY**

PO BOX 19725, IRVINE, CA 92623 (949) 263-3300
www.InscoDico.com

KNOW ALL MEN BY THESE PRESENTS, that except as expressly limited, DEVELOPERS SURETY AND INDEMNITY COMPANY does hereby make, constitute and appoint:

James D. Hamilton, Burton J. Hamilton, Diane J. Caselman, Sandra K. Pierce, jointly or severally

as its true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporation as surety, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as the corporation could do, but reserving to the corporation full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

This Power of Attorney is granted and is signed by facsimile under and by authority of the following resolution adopted by the Board of Directors of DEVELOPERS SURETY AND INDEMNITY COMPANY effective as of November 1, 2000:

RESOLVED, that the Chairman of the Board, the President and any Vice President of the corporation be, and that each of them hereby is, authorized to execute Powers of Attorney, qualifying the Attorney(s)-in-Fact named in the Powers of Attorney to execute, on behalf of the corporation, bonds, undertakings and contracts of suretyship; and that the Secretary or any Assistant Secretary of the corporation be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney;

RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporation when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY has caused these presents to be signed by its respective Executive Vice President and attested by its Secretary this 1st day of December, 2005.

By: 
David H. Rhodes, Executive Vice-President


By: 
Walter A. Crowell, Secretary



STATE OF CALIFORNIA]
COUNTY OF ORANGE]

On December 1, 2005 before me, Gina L. Garner, (here insert name and title of the officer), personally appeared David H. Rhodes and Walter A. Crowell, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature 

(SEAL)



CERTIFICATE

The undersigned, as Assistant Secretary, of DEVELOPERS SURETY AND INDEMNITY COMPANY, does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked, and furthermore, that the provisions of the resolution of the respective Boards of Directors of said corporation set forth in the Power of Attorney, is in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, the 20th day of JANUARY, 2009.

By: 
Albert Hillebrand, Assistant Secretary

Leslie Ankrum - Fwd: Re: Sundance Sub DIA

From: Senta Costello
To: Leslie Ankrum
Date: 8/18/2010 3:34 PM
Subject: Fwd: Re: Sundance Sub DIA

>>> On 8/17/2010 at 8:07 AM, in message <WorldClient-F201008170807.AA07120014@gjhomes.com>, "Kathy Hoffmann" <KHoffmann@gjhomes.com> wrote:

yes, 2011 is correct

-----Original Message-----

From: "Senta Costello" <sentac@ci.grandjct.co.us>
To: <khoffmann@gjhomes.com>
Date: Mon, 16 Aug 2010 12:27:23 -0600
Subject: Sundance Sub DIA

Hi, Kathleen.

I just received a notice regarding the DIA on the Sundance Sub saying it's expiring. In looking at the paperwork, it looks like when you turned in your most recent extension request it was for 2 years, but you used the original DIA date instead of the original extension request expiration date. I just want to confirm with you that your intent was to extend the DIA for 2 years from the original extension request expiration, not the original DIA expiration. **If this is correct, the expiration date should be 8/15/2011.** Please let me know when you get a minute or if I've completely confused you.

Thank you,
Senta

Senta L. Costello
Senior Planner
Public Works & Planning Dept
City of Grand Junction
Phone - 970.244.1442
Fax - 970.256.4031
sentac@gjcity.org



September 9, 2010

Academy Bank, N.A.
1048 Independent Avenue
Grand Junction, CO 81505

Re: Release of Funds: Sundance Village FP-2007-078

Dear Sirs:


Enclosed is a copy of the Disbursement Agreement (Improvement Guarantee) entered into between the City of Grand Junction ("City"), **Sundance Village, LLC** ("Developer"), and **Academy Bank, N.A.** for improvements to the development referred to as **Sundance Village** under the City's Planning File **FP-2007-078**. As beneficiary of the security for a Development Improvements Agreement ("DIA") (enclosed), the City informs you that the landscaping portion of the improvements have been completed by the Developer and the improvements have been accepted by the City.

The City hereby releases the landscaping portion, Section E, in the amount of \$99,500 and the 20% security, Section E, in the amount of \$19,900, for a total amount of \$119,400 of its interest in the disbursement agreement security. The remaining security to be held for the City in the disbursement agreement is \$80,287. 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



Shelly S. Dackonish, Senior Staff Attorney

Enclosures (2)

pc: Eric Hahn, Development Engineer
Lori Bowers, Senior Planner
Planning File #**FP-2007-078**
Developer: **MJB Construction**
Attn: Mr. Myron Barker
4344 Kannah Creek Road
Whitewater, CO 81527

DISBURSEMENT AGREEMENT
(Improvements Guarantee)

DEVELOPER: SUNDANCE VILLAGE, LLC

BANK: ACADEMY BANK, N.A.

PROPERTY: SUNDANCE VILLAGE

DISBURSEMENT AMOUNT: For the construction of improvements to the Property in an amount not to exceed \$ 2,606,817.60.

This Agreement is entered into by and between Sundance Village, LLC ("Developer"), Academy Bank, N.A. ("Bank") and the City of Grand Junction, Colorado ("City").

RECITALS

Developer has been required by the City to construct certain improvements to Sundance Village ("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 \$ 2,606,817.60, 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 Todd DeNeui (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 29th day of August, 2008.

(BANK) ACADEMY BANK, N.A.
By: Tom Espeland
Title Tom Espeland
Sr. Vice President/Market Manager

1048 Independent Avenue
Grand Junction, CO 81505

Address

(DEVELOPER) SUNDANCE VILLAGE, LLC
By: Lordson Corporation, Manager
By: Todd DeNeui
Title Todd DeNeui, President

383 Inverness Parkway, Suite 470
Englewood, CO 80112

Address

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 SUNDANCE VILLAGE, LLC Developer, ACADEMY BANK, N.A. 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:

SUNDANCE VILLAGE, LLC
By: Lordson Corporation, Manager
By: Todd DeNeui, President



(name)

(signature)

(name)

(signature)

(name)

(signature)

DEVELOPER'S GENERAL CONTRACTOR:

(name)

(signature)

DEVELOPER'S PROJECT ENGINEER:

(name)

(signature)

DEVELOPER'S ARCHITECT:

(name)

(signature)

CITY ENGINEER:

Eric Hahn
ERIC HAHN



(name)

(signature)

Grand Junction

CITY OF GRAND JUNCTION

2000 10th Street
Grand Junction, CO 81505

April 21, 2011

Mr. Myron Barker
MJB Construction, Inc.
4344 Kannah Creek Rd.
Whitewater, CO 81527

RE: End-of-Warranty - Sundance Village Subdivision (FP-2007-078)

Dear Mr. Barker:

During the week of April 11, 2011, representatives from the Public Works Division conducted a final inspection of only the streets and drainage improvements at Sundance Village Subdivision. The following items were found to be deficient and must be addressed before the City can issue Final Acceptance and release the developer from all remaining warranty obligations for these public improvements:

1. The Type R inlet near the corner of F1/8 & Devils Thumb requires some minor repairs. The concrete on the inside upper edge of the throat opening is damaged. This area must be smooth-grouted to provide a water resistant surface and minimize future deterioration of the inlet. Please contact Mark Barslund (201-1362) to oversee and approve this work.

Once the above issues are resolved and you have verified that the Planning Division has no further concerns, City staff will release any remaining security. Thank you for your efforts in closing this project.

Sincerely,



Eric Hahn, PE
Development Engineer

Electronic copy:

Greg Moberg, Planning Services Supervisor
Lori Bowers, Senior Planner
Terry Franklin, Streets Manager

Mark Barslund, Development Inspector
Shelly Dackonish, Staff Attorney
Chris Spears, Storm Drainage System

Leslie Ankrum - Re: Sundance Village - end-of-warranty punchlist - streets & drainage

From: Myron Barker <mjbconstructioninc@gmail.com>
To: Eric Hahn <erich@ci.grandjct.co.us>
Date: 4/22/2011 7:58 PM
Subject: Re: Sundance Village - end-of-warranty punchlist - streets & drainage
CC: Chris Spears <chriss@ci.grandjct.co.us>, Greg Moberg <gregm@ci.grandjct...

Eric,

I received the email and will be doing repairs early next week.

Thanks,
Myron

On Thu, Apr 21, 2011 at 4:05 PM, Eric Hahn <erich@ci.grandjct.co.us> wrote:

Myron,
Please find attached the end-of-warranty punchlist for Sundance Village. Unless requested, a hardcopy will NOT follow, so please reply to this email to verify you have received it.
Eric Hahn, PE
Public Works & Planning Dept.
City of Grand Junction
244-1443

--

Myron Barker
MJB Construction, Inc.
4356 Kannah Creek Rd
Whitewater, CO 81527
T--(970)243-6889 C--(970)640-1228 <MJBConstructioninc@gmail.com>

PUBLIC WORKS & PLANNING

May 02, 2011

MJB Construction
Attn: Mr. Myron Barker
4344 Kannah Creek Road
Whitewater, CO 81527

RE: Notice of Final Acceptance (Streets Only)
Project Name: Sundance Village
Project Number: PR-2010-53
Plan Number: FP-2007-078
DIA Number: DIA-2011-562

The City has conducted a warranty inspection of the Project and any needed follow-up inspections. The public infrastructure improvements have been found to be in satisfactory condition. All requirements for Final Acceptance of the Project have been fulfilled. The Developer's warranty obligations, for all materials and workmanship, have concluded and are hereby released.

The following public improvements are accepted for future maintenance by the City:

Public streets:

- All public streets as shown on the project plans.

Storm drainage system:

- N/A, accepted earlier

Water distribution system:

- N/A, accepted earlier

Sanitary sewer:

- N/A, accepted earlier

The City Planner will release the Development Improvements Agreement, the Maintenance Agreement and any financial security attached to the project.

Sincerely,



Eric Hahn, PE
Development Engineer

EC: Mark Barslund, Development Inspector
Leslie Ankrum, Senior Administrative Assistant
Lori Bowers, Senior Planner
Chris Spears, Street Supervisor

PUBLIC WORKS & PLANNING

May 02, 2011

Academy Bank, N.A.
1048 Independent Avenue
Grand Junction, CO 81505

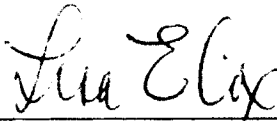
Re: Cancellation of Disbursement Agreement
Project Name: Sundance Village
Project Number: PR-2010-53
Plan Number: FP-2007-078
DIA Number: DIA-2011-562

Dear Sir/Madam:

Enclosed is a copy of the Disbursement Agreement (Improvement Guarantee) entered into between the City of Grand Junction ("City"), Sundance Village ("Developer"), and Academy Bank for improvements to the development referred to as Sundance Village under FP-2007-078. 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,



Lisa E. Cox, Planning Manager

EC: Mark Barslund, Development Engineer
Leslie Ankrum, Senior Administrative Assistant
Lori Bowers, Senior Planner
Eric Hahn, PE, Development Engineer

Developer
MJB Construction
Attn: Mr. Myron Barker
4344 Kannah Creek Road
Whitewater, CO 81527

DISBURSEMENT AGREEMENT
(Improvements Guarantee)

DEVELOPER: SUNDANCE VILLAGE, LLC

BANK: ACADEMY BANK, N.A.

PROPERTY: SUNDANCE VILLAGE

DISBURSEMENT AMOUNT: For the construction of improvements to the Property in an amount not to exceed \$ 2,606,817.60.

This Agreement is entered into by and between Sundance Village, LLC ("Developer"), Academy Bank, N.A. ("Bank") and the City of Grand Junction, Colorado ("City").

RECITALS

Developer has been required by the City to construct certain improvements to Sundance Village ("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 \$ 2,606,817.60, 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 Todd DeNeui (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 29th day of August, 2008.

(BANK) ACADEMY BANK, N.A.

By: Tom Espeland
Title Tom Espeland
Sr. Vice President/Market Manager

1048 Independent Avenue
Grand Junction, CO 81505

Address

(DEVELOPER) SUNDANCE VILLAGE, LLC
By: Lordson Corporation, Manager

By: Todd DeNeui
Title Todd DeNeui, President

383 Inverness Parkway, Suite 470
Englewood, CO 80112

Address

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 SUNDANCE VILLAGE, LLC Developer, ACADEMY BANK, N.A. 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:

SUNDANCE VILLAGE, LLC
By: Lordson Corporation, Manager
By: Todd DeNeui, President


(signature)

(name)

(name)

(signature)

(name)

(signature)

DEVELOPER'S GENERAL CONTRACTOR:

(name)

(signature)

DEVELOPER'S PROJECT ENGINEER:

(name)

(signature)

DEVELOPER'S ARCHITECT:

(name)

(signature)

CITY ENGINEER:


ERIC HAHN
(name)


(signature)

revised: May 15, 2007

RELEASE OF RECORDING MEMORANDUM
City of Grand Junction
Public Works & Planning Department
Project: PR-2010-53
Plan: FP-2007-078
DIA-2011-562

This Release relates to a Recording Memorandum dated September 08, 2008, by and between Sundance Village, (Developer) and the City of Grand Junction, pertaining to Sundance Village (Project), located at 2459 F 1/4 Road, Grand Junction, CO, recorded at Book 4727, Page 593, 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 Engineer: *[Signature]* Date: 5/2/11
City Planner: *[Signature]* Date: 5/3/11

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] Date: 5.3.11
Public Works & Planning Department

The foregoing instrument was executed before me this 3rd of May, 2011, by Greg Moberg, of the Public Works & Planning Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

[Signature]
Leslie G. Ankrum, Notary Public

My commission expires on 8/21/2013



My Commission Expires 08/21/2013