

LIN04LDN

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**

NAME OF CONTRACTOR: LINDEN POINTE, LLLP.

SUBJECT/PROJECT: LINDEN AVENUE APARTMENTS

LOCATION: 276 LINDEN AVENUE

TAX PARCEL #: 2945-261-00-947

FILE #: SPR-2003-238  
FP-2003-256

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2004

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

City Copy  
(File Copy)

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are Linden Pointe, LLLP, ("Developer") and the **City of Grand Junction**, Colorado ("City").

For valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

2. **Effective Date:** The Effective Date of the Agreement shall be the date that it is signed by the Community Development Director, which shall be no sooner than recordation of the final plat or final plan approval whichever first occurs.

RECITALS

The Developer seeks permission to develop property, described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The Property, known as Linden Pointe has been reviewed and approved under Community Development file # FP-2003-256 ("Development" or "the Development") SPR-2003-238.

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 collecting/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 \$ 430,827.12 (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   
See Exhibit C

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 \$ 71,804.52 (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 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: May 1, 2004  
Completion Date: June 1, 2005

8. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations when fulfilling its obligations under their Agreement. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after the Effective Date.

9. **Notice of Defect:** The Developer by and through his/her/its engineer shall provide timely written notice to the issuer of the Guarantee and the Director when the Developer and/or his/her/its engineer has knowledge, that an Improvement or any part or portion of any Improvement either does not conform to City standards or is otherwise defective.

9a. The Developer shall correct all non-conforming construction and/or defects within thirty (30) days from the issuance of the notice by his/her/its engineer of a/the defect.

10. **Acceptance of Improvements:** The City shall not accept and/or approve any or all of the Improvements until the Developer presents a document or documents for the benefit of the City showing that the Developer owns the Improvements in fee simple, or as accepted by the City Attorney, and that there are no liens, encumbrances or other restrictions on the Improvements other than those that have been accepted by the City Attorney.

10a. Approval and/or acceptance of any Improvement(s) does not constitute a waiver by the City of any right(s) that it may have on account of any defect in or failure of the Improvement that is detected or which occurs after approval and/or acceptance.

10b. Acceptance by the City shall only occur when the City Engineer, sends a writing to such effect ("Acceptance").

11. **Reduction of Security:** Upon Acceptance of any Improvement(s) the amount which the City is entitled to draw on the Guarantee shall be reduced by an amount of \$\_\_\_\_\_ (Line G1, Exhibit B, Total Improvement Costs).

359,022.60

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 venture 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:	Gregory E. Hancock Linden Pointe LLLP	Name -Developer/Company
	c/o Grand Junction Housing Authority	Address (Street and Mailing)
	1011 North 10th Street	
	Grand Junction, CO 81501	City, State & Zip Code
	( 970 ) 245-0388 x 219	Telephone and Fax Numbers
	( 970 ) 254-8347 (fax)	
	ghancock@gjha.org	E-mail

Cc: Jody M. Kole  
Grand Junction Housing Authority  
1011 North 10th Street  
Grand Junction, CO 81501

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



Cc: Community Development Department  
250 1/2 th 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: Linden Pointe, LLLP  
By Grand Junction Housing Authority, General Partner  
*Stephen G. Heinemann* 05/09/04  
Developer Date  
Stephen G. Heinemann, Chairperson, Board of Commissioners  
Name (printed)

Corporate Attest:  
*Jody M. Kole* 05/04/2004  
Name Jody M. Kole Date

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

*Pat C...* 5/4/04  
Community Development Dept. Date

6/13/2003

EXHIBIT A

LEGAL DESCRIPTION

All the certain real property located in the County of Mesa, State of Colorado, described as follows:

Lot 1 in Block 1 of LINDEN POINTE.

Lot 1 in Block 2 of LINDEN POINTE.

Lot 1 in Block 3 of LINDEN POINTE.

**EXHIBIT B**

**IMPROVEMENTS COST ESTIMATE**

DATE: 10/22/03

DEVELOPMENT NAME: LINDEN AVENUE SUBDIVISION

LOCATION: NE 1/4, NE 1/4, SECTION 26, T 1 S, R 1 W, UTE MERIDIAN

PRINTED NAME OF PERSON PREPARING: JIM LANGFORD

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>A. SANITARY SEWER</b>					
1	8" PVC Sanitary Sewer Main	LF	476	\$ 17.50	\$ 8,330.00
2	6" PVC Sanitary Sewer Main	LF	1254	\$ 15.00	\$ 18,810.00
3	Sewer services	EA or LF			\$ -
4	Sanitary Sewer Manhole	EA	7	\$ 1,700.00	\$ 11,900.00
5	Sanitary Sewer Drop Manhole	EA			\$ -
6	Connection to Existing Manhole	EA	4	\$ 350.00	\$ 1,400.00
7	Concrete Encasement	LF			\$ -
<b>Subtotal Part A Sanitary Sewer</b>					<b>\$ 40,440.00</b>
<b>B. DOMESTIC WATER</b>					
1	8" PVC Water Main	LF	1277	\$ 16.00	\$ 20,432.00
2	6" PVC Water Main	LF	183	\$ 13.50	\$ 2,470.50
3	4" PVC Water Main	LF	479	\$ 12.00	\$ 5,748.00
4	8" Gatevalve	EA	9	\$ 700.00	\$ 6,300.00
5	6" Gatevalve	EA	4	\$ 550.00	\$ 2,200.00
6	4" Gatevalve	EA	9	\$ 450.00	\$ 4,050.00
7	8" Fittings w/ Thrustblocks	EA	33	\$ 350.00	\$ 11,550.00
8	Water Services Taps	EA	9	\$ 150.00	\$ 1,350.00
9	Connect to Existing Water Line	EA	5	\$ 900.00	\$ 4,500.00
10	Fire Hydrant with Valve	EA	4	\$ 2,300.00	\$ 9,200.00
11	Utility Adjustments	EA			\$ -
12	Blowoff	EA			\$ -
					\$ -
					\$ -
					\$ -
<b>Subtotal Part B - Domestic Water</b>					<b>\$ 67,800.50</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C1</b>	<b>STREETS</b>				
1	___" PVC Utility/Irrigation sleeves	LF			\$ -
2	___" PVC Utility/Irrigation sleeves	LF			\$ -
3	Reconditioning	SY			\$ -
4	Aggregate Base Course (Class 6) (11" Compacted Thickness) Streets	SY	4794	\$ 6.70	\$ 32,119.80
5	Aggregate Base Course (Class 6) (9" Compacted Thickness) Streets	SY	318	\$ 5.75	\$ 1,828.50
6	Aggregate Base Course (Class 6) (6" Compacted Thickness)	SY	1653	\$ 3.70	\$ 6,116.10
7	Hot Bituminous Paving, Grading___ (4" thick) Linden Avenue	SY	1056	\$ 7.80	\$ 8,236.80
8	Hot Bituminous Paving, Grading___ (3" thick) Streets, Drives & Parking	SY	4056	\$ 5.90	\$ 23,930.40
9	Hot Bituminous Paving, Patching (___" Thick)	SY			\$ -
10	Geotextile	SY			\$ -
11	Concrete Curb (___" Wide by ___" High)	LF			\$ -
12	Concrete Curb and Gutter (2' wide)	LF	157	\$ 8.50	\$ 1,334.50
13	Concrete Curb and Gutter (1.5' wide)	LF			\$ -
14	Monolithic, Vertical Curb, Gutter and Sidewalk (7' Wide)	LF	1651	\$ 16.00	\$ 26,416.00
15	Drive Over Curb, Gutter, and Sidewalk (___' Wide)				\$ -
16	Concrete Sidewalk (___' Wide)	LF			\$ -
17	Concrete Gutter	SY	80	\$ 32.00	\$ 2,560.00
18	Concrete Drainage Pan (6' Wide, 8" Thick)	LF	219	\$ 25.00	\$ 5,475.00
18	Concrete Drainage Pan (3' Wide, 8" Thick)	LF	210	\$ 16.00	\$ 3,360.00
19	Concrete Corner Fillet	SY			\$ -
20	Concrete Curb Ramp	SY			\$ -
21	Complete Concrete Corner	SY	704	\$ 34.00	\$ 23,936.00
22	Concrete Driveway (___" Thick)	SY			\$ -
23	Driveway/Concrete Repair	SY			\$ -
24	Concrete Mail Box Pads	SY			\$ -
25	Retaining Walls	LF			\$ -
26	Street Signs	EA	14	\$ 200.00	\$ 2,800.00
27	Striping (New)	LF	313	\$ 5.50	\$ 1,721.50
28	Street Lights	EA	3	\$ 2,000.00	\$ 6,000.00
29	Signal Construction or Reconstruction	LS			\$ -
30	Flowable Fill	CY			\$ -
31	Sleeves, ___", ___" PVC	LF			\$ -
					\$ -
					\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C2 BRIDGES</b>					
					\$ -
1	Box Culvert Pre-Cast	CY	53	\$ 350.00	\$ 18,550.00
2	Box Culvert Cast-in-Place	LS			\$ -
3	Wingwalls	CY	23	\$ 350.00	\$ 8,050.00
4	Parapet Wall	LS			\$ -
5	Railing (handrail, guardrail)	LF	86	\$ 30.00	\$ 2,580.00
					\$ -
					\$ -
<b>Subtotal Part C - Streets and Bridges</b>					<b>\$ 175,014.60</b>
<b>D1 EARTHWORK</b>					
1	Mobilization	LS			\$ -
2	Clearing and Grubbing	AC or LS			\$ -
3	Unclassified Excavation	CY	1755	\$ 2.00	\$ 3,510.00
4	Unclassified Embankment	CY	236	\$ 2.50	\$ 590.00
5	Silt Fence	LF			\$ -
6	Watering (Dust Control)	AC or LS			\$ -
<b>D2 REMOVALS AND RESETTING</b>					
1	Removal of Asphalt	SY	2340	\$ 2.50	\$ 5,850.00
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			\$ -
7	Remove Fence	LF			\$ -
8	Adjust Manhole	EA	3	\$ 150.00	\$ 450.00
9	Adjust Valvebox	EA			\$ -
10	Relocate or Adjust Utilities	LS			\$ -
<b>D3 SEEDING AND SOIL RETENTION</b>					
1	Sod	SY			\$ -
2	Seeding (Native)	SY or AC			\$ -
3	Seeding (Bluegrass/Lawn)	SY or AC			\$ -
4	Hydraulic Seed and Mulching	SY or AC			\$ -
5	Soil Retention Blanket	SY			\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>D4</b>	<b>STORM DRAINAGE FACILITIES</b>				
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY			\$ -
2	12" HDPE Storm Drain Pipe	LF	42	\$ 25.00	\$ 1,050.00
3	18" HDPE Storm Drain Pipe	LF	42	\$ 20.00	\$ 840.00
4	" Storm Drain Pipe	LF			\$ -
5	" Storm Drain Pipe	LF			\$ -
6	" Storm Drain Pipe	LF			\$ -
7	" Flared End Section	EA			\$ -
8	" Flared End Section	EA			\$ -
9	48" Storm Drain Manhole	EA			\$ -
10	60" Storm Drain Manhole	EA			\$ -
11	72" Storm Drain Manhole	EA			\$ -
12	Manhole with Box Base	EA			\$ -
13	Connection to Existing MH	EA			\$ -
14	Single Curb Opening Storm Drain Inlet	EA	7	\$ 1,800.00	\$ 12,600.00
15	Double Curb Opening Storm Drain Inlet	EA			\$ -
16	Area Storm Drain Inlet	EA			\$ -
17	Detention Area Outlet structure	EA			\$ -
18	Gabion Reno Mattresses 6'x12'x6"	CY	3	\$ 40.00	\$ 120.00
19	Rip-Rap D <sub>50</sub> = ___"	CY			\$ -
20	Sidewalk Trough Drain	EA			\$ -
21	Pump Systems including Electrical	LS			\$ -
	<b>Subtotal Part D - Grading and Drainage</b>				<b>\$ 25,010.00</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>E1</b>	<b>IRRIGATION</b>				
1	Connect to Existing Pipe	LS			\$ -
2	" 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			\$ -
<b>E2</b>	<b>LANDSCAPING</b>				
1	Design/Architecture	LS			\$ -
2	Earthwork	CY			\$ -
3	Hardscape Features	LS	1	\$ 4,588.18	\$ 4,588.18
4	Plant Material & Planting	LS	1	\$ 10,760.57	\$ 10,760.57
5	Irrigation System	LS	1	\$ 3,605.85	\$ 3,605.85
6	Curbing/Edging	LS	1	\$ 830.18	\$ 830.18
7	Retaining Walls & Structures	LS	1	\$ 385.78	\$ 385.78
8	1 Year Maintenance Agrmnt.	LS	1	\$ 148.44	\$ 148.44
9	Topsoil (amendments)	LS	1	\$ 794.43	\$ 794.43
					\$ -
					\$ -
<b>E</b>	<b>Subtotal Part E - Landscaping and Irrigation</b>				<b>\$ 21,113.43</b>
	<b>Subtotal Construction Costs</b>				<b>\$ 329,378.53</b>



Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>F. Miscellaneous Items</b>					
1	Construction staking/surveying	%	3.00%	\$ 329,378.53	\$ 9,881.36
2	Developer's inspection cost	%	1.50%	\$ 329,378.53	\$ 4,940.68
3	General construction supervsn	%			
4	Quality control testing	%	3.00%	\$ 329,378.53	\$ 9,881.36
5	Construction traffic control	%			
6	City inspection fees	%	0.50%	\$ 329,378.53	\$ 1,646.89
7	As-builts	%	1.00%	\$ 329,378.53	\$ 3,293.79
<b>E</b>	<b>Subtotal Part F - Miscellaneous Items</b>				<b>\$ 29,644.07</b>
% = Percentage of total site construction costs					
<b>G. COST SUMMARY</b>					
1	<b>Total Improvement Costs</b>				<b>\$ 359,022.60</b>
2	<b>City Security (20%)</b>				<b>\$ 71,804.52</b>
3	<b>Total Guarantee Amount</b>				<b>\$ 430,827.12</b>

**NOTES**

- All prices shall be for items complete in place and accepted.
- All pipe prices shall include excavation, pipe, bedding, backfill, and compaction.
- Water main shall include pipe, excavation, bedding, backfill, bends, and appurtenances not itemized elsewhere.
- All concrete items shall include Aggregate Base Course where required by the drawings.
- Fill in the pipe type for irrigation pipe and sleeves.
- Reconditioning shall be calculated to at least 6" outside of back of walk on both sides.
- Units can be changed if desired, simply annotate what is used.
- Additional lines of items may be added as needed.

Linden Pointe, LLLP by Grand Junction Housing Authority, General Partner

*Stephen G. Heinemann* 05/04/04  
 Signature of Developer Date

*Jody M. Kole*  
 Jody M. Kole, Secretary

Stephen G. Heinemann  
 Chairperson, Board of Commissioners

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.

*Keith Davis* 5-4-04  
 City Development Engineer Date

*Pat Cerr* 5/4/04  
 Community Development Date

## EXHIBIT C

### FINANCIAL GUARANTEE AGREEMENT

For  
**LINDEN POINTE**  
**Affordable Housing Project**  
**276 Linden Avenue**

THIS AGREEMENT serves as a financial guarantee securing the Development Improvements Agreement (DIA) dated the 30<sup>th</sup> day of April, 2004 executed by the Grand Junction Housing Authority (GJHA) for the public improvements for Linden Pointe, required by the Zoning and Development Code and specified in the attached DIA.

Total costs for the public improvements included in the DIA are estimated at \$ 430,827.12.

GJHA has received a Community Development Block Grant (CDBG) from the City of Grand Junction (City) for the Linden Pointe Apartments for the amount of \$335,450 for the construction of the required public infrastructure improvements.

In addition, GJHA has received a City General Fund allocation of \$131,830 towards the construction of the entire project.

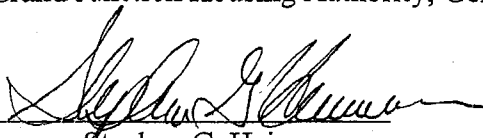
In consideration of the premises stated which constitute adequate consideration for the making of this agreement, the CITY and the GJHA agree as follows:

1. That GJHA will not be required to secure the amount of 120% of the costs of improvements by a letter of credit or a disbursement agreement, because the GJHA effectively has on deposit cash with the City that may be used for the DIA Guarantee;
2. In order to guarantee the completion of public improvements, the City will withhold payment to GJHA of both the CDBG funds (\$335,450) and the General Fund monies (\$131,830), for reimbursement until after the City has granted initial acceptance of said public improvements;
3. Prior to such time as all CDBG and City funds are disbursed, GJHA shall be required to submit a financial guarantee for any remaining items included on the DIA such as onsite landscaping improvements AND shall include provisions for the maintenance bond as required in Section 2.19 of the Zoning and Development Code.
4. The parties acknowledge good and sufficient consideration for this agreement and waive any and all contractual defenses to the agreement.

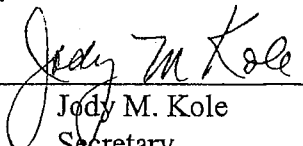
GJHA- City  
Linden Pointe  
Financial Guarantee Agreement  
Page 2 of 2

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed  
as of the 30<sup>th</sup> day of April 2004.

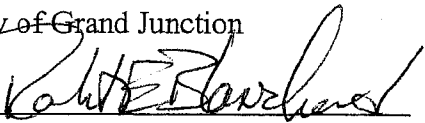
Linden Pointe, LLLP  
by Grand Junction Housing Authority, General Partner

by:   
Stephen G. Heinemann  
Chairperson, Board of Commissioners

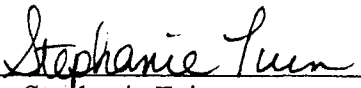
Attest:

by:   
Jody M. Kole  
Secretary

City of Grand Junction

by:   
Robert E. Blanchard, AICP  
City Community Development Director

Attest:

by:   
Stephanie Tuin  
City Clerk



## INDEMNIFICATION AGREEMENT

This INDEMNIFICATION AGREEMENT ("Agreement") is made and entered into this 24<sup>TH</sup> day of FEBRUARY, 2004, by and between Grand Junction Housing Authority ("Developer") and the City of Grand Junction, Colorado, its officers, agents and employees, hereinafter referred to as the "City."

This Agreement specifies terms, conditions, responsibilities and duties of the Developer to indemnify and hold harmless the City, pertaining to the development, use and placement of drainage facility(ies), conveyance(s), structure(s) and point(s) of discharge (together "Project Drainage Facilities") in and concerning Linden Avenue Apartments ("the Project" or Project").

## RECITALS

- A. The Developer has designed and developed the Project such that storm and/or surface water will be discharged into the Orchard Mesa Main Drain, a facility managed by the Orchard Mesa Irrigation District.
- B. The Orchard Mesa Irrigation District has claimed and otherwise asserted an interest in the Orchard Mesa Main Drain. The Orchard Mesa Irrigation District has consented to accept the developed surface water flow from the Project.
- C. The Project does have surface and storm water detention and/or retention drainage facilities constructed to City standards. By review and approval of the Project, the City cannot and does not authorize discharge of developed flows into the facilities of others without their permission.
- D. The City is not and cannot be the arbiter of the competing legal claims of the Developer and the Orchard Mesa Irrigation District and, as such, the City is unwilling to accept any liabilities, costs or expenses associated with or resulting from the Developer's decision to discharge as designed.

## AGREEMENT

NOW, THEREFORE, in consideration of the recitals and the approval of the Project, the Developer agrees as follows:

1. The Project was designed and approved for development as detailed and described in Community Development file # SPR-2003-238 and FP-2003-256. The Orchard Mesa Irrigation District asserts a claim and interest in the Orchard Mesa Main Drain, the facility to which the Developer has proposed stormwater to be discharged. The Orchard Mesa Irrigation District asserts, among other things, that it may limit/preclude the introduction of new and/or developed flows to its facility. The Developer asserts, among other things, that it has a right based on an express agreement between the Developer and Orchard Mesa Irrigation District to use the facility.
2. Orchard Mesa Irrigation District and/or the Developer each may have certain legal rights but those rights cannot be fully or finally determined by the City.

3. By virtue of the City's role in reviewing and approving the Project the City does not and cannot determine which if any right is preeminent. Therefore, the Developer has agreed in consideration of the City approving the Project, the sufficiency of which consideration is acknowledged, to indemnify and hold harmless the City of Grand Junction and its officers, agents and employees from and against any and all claims, suits, damages, costs, expenses, liabilities, actions or proceedings arising from bodily injury, loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the Project Drainage Facilities, including but not limit to, use and placement of drainage facility(ies), conveyance(s), structure(s) and discharge from or related to the Project.

4. The Developer shall indemnify and hold harmless the City of Grand Junction, its officers and employees, from any and all loss, liability, claims, damages, fines or penalties asserted, assessed or imposed against the City by any Federal, State or local agency concerning an environmental release or discharge from the Project or violation of environmental laws, rules or regulations that occur, result, or are claimed to occur or result by or from the City's approval of the Project.

5. The indemnification provided for herein shall include, but not necessarily be limited to, property damage, personal injury, attorney fees and/or cost of restoration/reclamation.

6. The Developer shall bear all costs and expenses of the indemnification provided for herein including, but not necessarily limited to, court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false or fraudulent. The Developer may retain legal counsel of its choosing so long as any such counsel retained to defend the Developer and/or the City is licensed by and in good standing with the Colorado Supreme Court and is competent and experienced in defending claims, suits, actions or proceedings arising from bodily injury, loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the Project Drainage Facilities, including but not limited to, use and placement of drainage facility(ies), conveyance(s), structure(s) and discharge from or related to the Project. The City may disapprove such legal counsel, without cause being stated.

7. The person(s) signing this Agreement, whether as individuals or in a representative capacity, shall have authority and be authorized to sign the Agreement and bind themselves or the entity that on whose behalf he/she/they sign. This Agreement shall be perpetual and shall not be terminated except by a written instrument executed by the City.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first written above.

"DEVELOPER"

GRAND JUNCTION HOUSING AUTHORITY

BY: Judy M Kole

TITLE: Executive Director

"CITY"

CITY OF GRAND JUNCTION, COLORADO

BY: Rick Davis

TITLE: DEVELOPMENT ENGR.

RECORDING MEMORANDUM  
Exhibit D

2190060 BK 3645 PG 442  
05/04/2004 04:37 PM  
Janice Ward CLK&REC Mesa County, CO  
RecFee \$5.00 SurChg \$1.00

City of Grand Junction  
Community Development Department Community Development  
File: # SPR-2003-238 and FP-2003-256

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 Linden Pointe, LLLP (Developer) and the City of Grand Junction (City) pertaining to Linden Pointe (Project), located at 276 Linden Avenue, Grand Junction, CO 81501.

(Subject subdivision is more particularly depicted and described in the recording found at Plat Book 3626, Pages 553.)

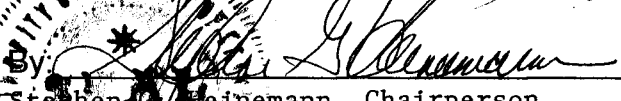
The Developer of the Project was required by law to install and construct certain public and private improvements, the completion of which was guaranteed by a Development Improvements Agreement and/or Maintenance Guarantee. The Project is required to be constructed in accordance with the approval by 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 # SPR-2003-238 and FP-2003-256

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:** Linden Pointe, LLLP by Grand Junction Housing Authority, General Partner

  
Stephen G. Heinemann, Chairperson Date 05/03/04  
Board of Commissioners  
(Print name) Stephen G. Heinemann

**CITY OF GRAND JUNCTION:**

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

  
Community Development Department Date 5/4/04

**MAINTENANCE GUARANTEE**

COPY

1. **Parties:** The parties to this Maintenance Guarantee ("the Guarantee" or "Guarantee") are **Linden Pointe, LLLP** ("Developer") and the **City of Grand Junction**, Colorado ("the City" or "City"). Collectively the Developer and the City may be referred to as the Parties.

FOR valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

2. **Effective Date:** The Effective Date of the Guarantee will be the date that it is signed and accepted by the City.

**RECITALS**

The Developer has constructed, installed and is required to warrant and maintain certain improvements ("Improvements" or "the Improvements") which were made necessary by virtue of development on property within the City. The Property, known as **Linden Pointe** has been reviewed and approved under Community Development file **#FP-2003-256 and SPR-2003-238** and as necessary or required to construe this guarantee, that file(s) is incorporated by this reference.

The City seeks to protect the health, safety and general welfare of the community by requiring that the Improvements, once constructed, be maintained. The purpose of this guarantee is to protect the City from having to repair the Improvements at its cost. The 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 owners, purchasers or users of the Property. The mutual promises, covenants and obligations contained in this guarantee are authorized by law, the Colorado Constitution, the Charter and the City's ordinances.

**DEVELOPER'S OBLIGATION**

3. **Improvements:** The Developer or its successor(s) or assign(s) shall maintain and guarantee the Improvements, at its own expense, against defects in workmanship and materials for a period of one year from the date of City's acceptance [as defined in the Development Improvements Agreement ("DIA")] of the Improvements, unless an Improvement has been determined to be defective and/or needed to be repaired or replaced. If an Improvement has been repaired or replaced, then the warranty shall continue for said Improvement for one year from the acceptance of the Improvement after such

repair or replacement. The Developer's obligation is and will be independent of any obligations of the City.

4. **Security:** To secure the performance of its obligations the Developer is required to post security in an amount of **\$ 71,804.52** (Line G2, Exhibit B of DIA, City Security).

4a. The Developer has posted security to guarantee the Improvements in an amount, form and with terms acceptable to the City.

4b. In addition to that security all warranties and/or guarantees (those incident to construction or as provided by the contractor and/or manufacturer of installed equipment) are hereby assigned to the City.

4c. The Developer shall to the extent necessary or required by the City take whatever action is necessary or required to assign all warranties and/or guarantees (those incident to construction or as provided by the contractor and/or manufacturer of installed equipment) to the City. A copy of those warranties or a memorandum of the same is attached as Exhibit A.

4d. The Developer for itself, its successors and assigns agrees that if the Improvements are not maintained to City standards that the City shall notify the Developer in writing of the defect(s) in accordance with paragraph 8 hereof.

5. **Standards:** The Developer shall maintain the Improvements according to the standards and specifications required by the City.

6. **Warranty:** The Developer hereby warrants that the Improvements, each and every one of them, will be maintained in accordance with the Standards in paragraph 5 for the period of this guarantee.

7. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations in effect at the time of acceptance when fulfilling its obligations under this guarantee. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after acceptance of the Improvements.

8. **Notice of Defect/Default:** The City shall provide timely notice to the Developer whenever routine inspection reveals that an Improvement and/or maintenance of the same does not conform to City standards and any specifications approved or required in or by the development.



8a. As provided herein the City shall provide written notice to the Developer at the address stated in paragraph 22. Notice is and shall be deemed effective upon receipt if hand delivered, or overnight courier service, and if sent by the United States mail, postage prepaid, certified mail, return receipt requested, upon delivery or the date of refusal, if addressed at the address given below.

8b. The Developer will have twelve (12) calendar days from the date of the notice to correct the defect or such longer or additional time as is reasonably required if Developer commences to correct defect or repair within the twelve (12) day period and diligently pursues correction to completion.

8c. The City may grant reasonable extensions in writing to the time for correction of defect(s), however, it is not obligated to do so nor is it obligated to provide any notice of a defect(s) if it becomes aware of the defect(s) in or during an emergency. Furthermore, the City is not obligated to inspect the Improvements but may do so as it would any other improvement.

9. **Acceptance:** Prior to acceptance of any Improvement(s), the Developer shall demonstrate in writing to the satisfaction of the City Attorney, which approval shall not be unreasonably withheld, that it owns the Improvements in fee simple or that there are no liens, encumbrances or other restrictions other than those that have been accepted by the City Attorney on the Improvements. Acceptance of any Improvements does not constitute a waiver by the City of any rights it may have under this Agreement or otherwise on account of any defect in or failure of the Improvement or maintenance of the same that is detected or which occurs after acceptance.

10. **Funds:** Funds drawn, guaranteed or collected by the City under this Agreement shall be used for the purpose of correcting defects in and/or repairing or replacing failure(s) of the Improvement(s).

11. **Defect/Default Events:** The following conditions, occurrences or actions will constitute a defect and/or default:

11a. Developer's failure to maintain each and every one of the Improvements in conformance with this guarantee and/or as required by code, law, rule, ordinance or regulation;

11b. Developer's failure to correct defective construction of any Improvement within the applicable period specified in paragraph 8(b);

11c. Developer's failure to maintain security in a form and amount required/provided by this guarantee.

12. **Measure of Cost/Expenses:** The measure of costs and or expenses chargeable by the City under this guarantee will be the reasonable cost of satisfactorily repairing and/or replacing the Improvements plus reasonable City administrative expenses all of which may exceed the amount of the security provided for in paragraph 4. The amount of the security provided for in paragraph 4 does not set, limit, establish or provide the Developer's maximum financial obligation.

12a. City administrative expenses for which the Developer is obligated to pay include but are not limited to personnel costs, including benefits, overtime, callback, standby and other extraordinary compensation, materials, equipment, third-party contracting costs, collection costs and the value of engineering, legal and administrative staff time devoted to the repair and/or replacement of the Improvements and/or enforcement of this guarantee and all initial warranty(ies) or guarantee(s) assigned to the City by the Developer.

13. **City's Rights:** When any defect or default occurs, the City may after notice and the Developer's failure and/or refusal to repair or replace the Improvements, proceed to collect the amount of the cost or expense incidental or necessary to affect the repair or replacement of the Improvements. The City will have the right to reconstruct, rebuild or otherwise maintain Improvements itself or it may contract with a third party for completion and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining and repairing such Improvements. This remedy is cumulative in nature and is in addition to any other remedy the City has at law or in equity.

14. **Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns 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 pursuant to this Agreement, however, Developer shall not be liable solely and to the extent any injury, damage, or loss is caused by the gross negligence of City, its agents, officials, or employees. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance or non-performance of work pursuant to this guarantee. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance of work pursuant to this guarantee except where such suit is brought by the Developer against the City. The Developer is, however, not an agent or employee of the City.

15. **No Waiver:** No waiver of any provision of this Agreement by the City will be deemed to or constitute a waiver of any other provision, nor will it be deemed to 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 will the waiver of any defect or default under this guarantee be deemed a waiver of any subsequent defect(s) or default(s) of the same type. The City's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any defect(s), defaults(s) or Improvement(s).

16. **Amendment or Modification:** The Parties may amend or modify the Agreement only by written instrument executed on behalf of the City by the Public Works and Utilities Director or his designee and by the Developer or his authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

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

18. **Integration:** This guarantee, together with the exhibits and attachments thereto constitutes the entire agreement between the Parties and no statement(s), promise(s) or inducement(s) that is/are not contained in this Agreement will be binding on the parties.

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

20. **Severability:** If any part, term or provision of this guarantee is held by a court or courts of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the right of the parties will be construed as if the part, term or provision was never part of the Agreement.

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

the Property. There is no prohibition on the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations if it accepts new security from any Developer or lender who obtains the Property; however, no other act of the City will constitute a release of the original Developer from his liability under this Agreement.

22. **Notice:** Any notice required or permitted by this Agreement shall be deemed effective upon receipt if hand delivered, or overnight courier service, and if sent by the United States mail, postage prepaid, certified mail, return receipt requested, upon delivery or the date of refusal, addressed as follows:

If to Developer:	Linden Pointe, LLLP Attn: Jody M. Kole 1011 North 10th Street Grand Junction, CO 81501	Name -Developer/Company Address (Street and Mailing) City, State & Zip Code
------------------	---	---

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

Cc: Public Works and Utilities Department  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501

23. **Recordation:** Developer will pay for all costs to record a memorandum of this guarantee in the Clerk and Recorder's Office of Mesa County, Colorado.

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

25. **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, will be deemed to be proper only if such action is commenced in Mesa County, Colorado. The Developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

26. **Ambiguities.** Developer and the City have each obtained the advice of its own legal counsel regarding this Agreement or have knowingly declined to do so. The parties agree that the rule of construing ambiguities against the drafter shall have no application to this Agreement.

By: Linden Pointe, LLLP

*Jody M. Kole, Executive Director,  
Grand Junction Housing Authority,  
Developer General Partner*

*June 8, 2005*  
Date

Name (printed): Jody M. Kole for the General Partner  
Grand Junction Housing Authority,

Title (position): Executive Director

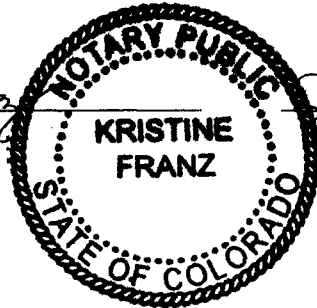
Attest:

State of Colorado, County of Mesa

On *June 8,* 20*05* personally appeared before me

*Jody Kole* to be the signer to the above and she acknowledged that she signed it.

*Kristine Franz*  
Notary Public



*January 28, 2006*  
My Commission Expires

City of Grand Junction

*Pat Cui*  
~~Project Planner~~

*6/9/05*  
Date

*Rick Davis*  
Dept. of Public Works and Utilities

*6-14-05*  
Date

This Certificate CITY OF GRAND JUNCTION

Evidences A LINDEN POINTE LLLP

Deposit In The

Name(s) Of:

1011 N 10TH ST  
GRAND JUNCTION CO 81501-3166

Certificate Number 2600000061

SSN/TIN 20-1008895

D/O/B

Account Number 2600000061

Date 06/14/2005

In The Amount Of Seventy-one Thousand Eight Hundred Four Dollars And Fifty-two Cents

dollars \$ 71804.52

ACCOUNT TYPE AND TERMS - Only the boxes that are checked and the lines that are filled in apply.

Term (Initial) 12 Months

Maturity Date (First) 06/14/2006

Interest Rate (Initial) 3.9500 %

Compounded Quarterly

Interest Calculated actual / 365

No. Endorsements Required for Withdrawal 1

Single Maturity  Automatically Renewable

Interest Paid

(a)  By adding it to the account balance

(b)  By Deposit To Acct. No.

Additions permitted in a minimum amount of \$

Fixed Rate  Min. Balance Req. \$

Variable Rate: Initial Index Rate % Maximum Rate %

Minimum Rate % First Adjustment Date

Adjustment Frequency

Rate Formula

BANK OF COLORADO

200 GRAND AVENUE

GRAND JUNCTION CO 81501

BY

DEFINITIONS: "We" and "us" means the financial institution. "You" and "your" means the depositor(s). "Certificate" means both this original instrument as well as the deposit it shows. This certificate (and the account it represents) may not be transferred or assigned without our prior written consent and is not negotiable.

VARIABLE INTEREST RATE: Your deposit will earn interest at the initial interest rate stated on this certificate to the first adjustment date. Then, and on each succeeding adjustment date, the rate this certificate will earn is subject to be increased or decreased according to the formula described on this certificate. The rate will remain the same between interest adjustment dates.

If the "first adjustment date" is phrased in terms of "index change" this means the first adjustment date and the rate adjustment frequency after the first adjustment date are not regularly scheduled. In this case, the rate this certificate will earn will be adjusted any time the "index" changes.

The interest rate we will pay on this certificate will not, however, be greater than the stated maximum rate (if any) or be less than the stated minimum rate (if any) regardless of changes in the index rate.

COMPOUNDING: The compounding frequency and interest calculation method will not change during the term of the certificate, regardless of adjustments to the interest rate, until we give reasonable notice to you of such change.

ADDITIONS: If we permit you to make any additions, they will only be permitted in an amount equal to, or greater than, the minimum amount indicated. The making of additions to this certificate will not extend the maturity of all, or any portion, of the funds on deposit. Additions will earn interest from the date of deposit, and will mature at the same time as the first deposit. No additions may

be made within \_\_\_\_\_ days of the final maturity date.

SINGLE MATURITY: If the single maturity box is checked, the depositor should present this certificate promptly at maturity for payment.

Interest  will  will not accrue after maturity.

AUTOMATIC RENEWALS: If the automatic renewal box is checked, this certificate will be automatically renewed after the stated maturity date stated for successive terms, each equal to the original term. The interest rate will be the same we offer on new certificates on the maturity date which have the same term, minimum balance (if any) and other features as this original certificate. The depositor may call us on or shortly before the maturity date and we will tell the depositor what the interest rate will be for the next renewal term.

The automatic renewal of this certificate may be prevented if one of the following things happens:

(1) This certificate is personally presented for payment on a maturity date or within 10 \_\_\_\_\_ days after the maturity date; or

(2) We receive written notice from the depositor before a maturity date of their intention to cash in this certificate.

YOUR DEPOSIT  WILL  WILL NOT EARN INTEREST AFTER FINAL MATURITY.

Endorsements (Sign only when requesting withdrawal):

x \_\_\_\_\_

x \_\_\_\_\_

NOTICE OF PENALTY FOR EARLY WITHDRAWAL

Except as mentioned below, you cannot withdraw any principal from this account before a maturity date without our consent and we will charge a penalty. We can only consent to an early withdrawal at the time you request it. The penalty will be an amount equal to:

the greatest of: (1) all of the interest earned on the amount withdrawn from the most recent date of deposit or last renewal, (2) all the interest that could have been earned on the amount withdrawn during a period equal to one-half of the maturity period, or (3) seven days' interest on the amount withdrawn.

one month's interest on the amount withdrawn.

three months' interest on the amount withdrawn.

We will charge the penalty first against any interest then in the account, and any excess will be deducted from the amount you withdraw.

FIXED RATE TIME DEPOSITS: For a fixed rate time deposit we will use the nominal (simple interest) rate in effect to calculate the amount of the applicable penalty.

VARIABLE RATE TIME DEPOSIT: For any time deposit which earns a rate that may vary from time to time during the term, the interest rate we will use to calculate this interest forfeiture will be:

average (weighted for time) of the simple interest rates earned on this certificate up to the date of withdrawal;

simple interest rate in effect on the date that this account is opened; or,

the simple interest rate in effect on the date of early withdrawal.

Minimum Balance Account: If we require a minimum balance on this account, we may treat any withdrawal that reduces the balance below such minimum as a withdrawal of the entire balance and calculate the penalty accordingly.

EXCEPTIONS: Federal regulations permit, or in some cases require, the waiver of the early withdrawal penalty if:

- (1) any account owner dies or is declared incompetent, or
- (2) this is an I.R.A. or Keogh account and you are at least 59½ years of age or disabled at the time of the withdrawal request, or
- (3) this is an I.R.A. or Keogh account and the request for withdrawal is made within seven days of establishing the account. (The penalty in such case will be all interest earned on the amount withdrawn.)