

RED06RM5

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	REDLANDS MESA, LLC
PROJECT / SUBDIVISION:	FILING 5, REDLANDS MESA PLANNED DEVELOPMENT, MESA COUNTY, COLORADO
LOCATION:	RIDGES BLVD
TAX PARCEL #:	2945-203-53-028
FILE #:	FP-2003-108
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2006
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

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

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

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

RECITALS

The Developer seeks permission to develop property, described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The Property, known as Redlands Mesa Filing 5 - Revised has been reviewed and approved under Community Development file # FPP-2003-108 ("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 \$ 88,660 (110% of the amount for the Improvements) in a form and with terms acceptable to the City ("Guarantee"). The Guarantee shall be in the form of a cash deposit made to the City, a letter of credit or a disbursement agreement in a form and with content approved by the City Attorney. The Guarantee specific to this Agreement is attached as Exhibit C and is incorporated by this reference as if fully set forth.

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

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

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

6a. Upon Acceptance the Developer shall provide a Maintenance Guarantee in an amount of \$ 23,660 (Line G'3 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: September 13, 2005
Completion Date: July 1, 2006

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 \$ 65,000 (Line G2 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: Ronald D. Austin, Manager Name -Developer/Company
 Redlands Mesa, LLC Address (Street and Mailing)
 2299 W. Ridges Blvd.
 Grand Junction CO 81503 City, State & Zip Code
 (970) 255 7400 Telephone and Fax Numbers
 (970) 245 6055
 _____ E-mail

Cc:

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

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

27. **Recordation:** Developer shall pay the costs to record a memorandum of this Agreement (Exhibit 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: REDLANDS MESA LLC

Ronald D. Austin 12/29/05
Developer Date
Ronald D. Austin, Manager

Name (printed)

Corporate Attest:

Name Date

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

Kathleen M. Peterson 1-18-06
Community Development Dept. Date

6/13/2003

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

EXHIBIT A

Filing 5, Redlands Mesa Planned Development
Grand Junction, Mesa County, Colorado

EXHIBIT B

IMPROVEMENTS COST ESTIMATE

DATE: December 23, 2005

DEVELOPMENT NAME: Redlands Mesa - Mariposa Drive (Revised Filing 5 DIA)

LOCATION: Grand Junction, Colorado

Note: "strike through" items are completed and removed from the cost estimate.
The "City Security" amount is based on the original total.

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
A. SANITARY SEWER					
1	8" SDR-35 PVC Main	LF	483	\$ 45.00	\$ 21,735.00
2	4" C900 Force Main	EA			\$ -
3	4" SDR-35 Service Line	LF			\$ -
4	4" Service Tap	EA			\$ -
5	Standard Manhole	EA	3	\$ 1,750.00	\$ 5,250.00
6	Drop Manhole	EA			\$ -
7	Connect to Existing Manhole	EA	1	\$ 600.00	\$ 600.00
8	Concrete Encasement	LF	20	\$ 25.00	\$ 500.00
9	Epoxy Coat Manhole	EA			\$ -
10	8" Cap	EA			\$ -
11	4" Cap	EA			\$ -
Subtotal Part A Sanitary Sewer					\$ 28,085.00
B. DOMESTIC WATER					
1	8" C900 CL150 Main	LF	75	\$ 25.00	\$ 1,875.00
2	4" C900 CL150 Main	LF			\$ -
3	8" Gatevalve	EA	2	\$ 800.00	\$ 1,600.00
4	4" Gatevalve	EA			\$ -
5	8" Fittings (Including Thrustblocks)	EA	1	\$ 215.00	\$ 215.00
6	4" Fittings (Including Thrustblocks)	EA			\$ -
7	8" Cap (Including Thrustblock)	EA	1	\$ 200.00	\$ 200.00
8	4" Cap (Including Thrustblock)	EA			\$ -
9	Services	EA			\$ -
10	3/4" Copper Service Line	LF			\$ -
11	Fire Hydrant with Valve	EA			\$ -
12	Connect Water	EA	1	\$ 650.00	\$ 650.00
Subtotal Part B - Domestic Water					\$ 4,540.00
C1 STREETS					
1	Subgrade Prep	SY	6500	\$ 1.25	\$ 8,125.00
2	20" Class 6 Aggregate Base Course	SY			\$ -
3	18" Class 6 Aggregate Base Course	SY			\$ -
4	7" Class 6 Aggregate Base Course	SY			\$ -

5	6" Class 6 Aggregate Base Course (Under Concrete Only)	SY			\$	-
6	4" Hot Bituminous Paving, Grading	SY	6500	\$ 10.00	\$	65,000.00
7	7' Mount. Curb, Gutter & Sidewalk	LF	335	\$ 18.00	\$	6,030.00
8	3' Mountable Curb & Gutter	LF			\$	-
9	2' Vertical Curb & Gutter	LF	3489	\$ 10.00	\$	34,890.00
10	8" Thick Concrete Corners & Ramps	SY	122	\$ 45.00	\$	5,490.00
11	6" Thick Concrete For Mail Facility	SY			\$	-
12	10' Detached Concrete Sidewalk	LF	1520	\$ 24.00	\$	36,480.00
13	Rock Retaining Walls	FF			\$	-
14	Stop Signs	EA	1	\$ 180.00	\$	180.00
15	Street Signs (Mount on Stop)	EA			\$	-
16	Street Lights	EA			\$	-
17	End of Road Markers	EA			\$	-
18	Traffic Control	LS			\$	-
					\$	-
					\$	-
C2	BRIDGES					
					\$	-
					\$	-
	Subtotal Part C - Streets and Bridges				\$	156,195.00
D1	EARTHWORK					
1	Mobilization	LS			\$	-
2	Clearing and Grubbing	LS	1	\$ 7,500.00	\$	7,500.00
3	Unclassified Excavation (Unadjusted)	CY	4367	\$ 6.50	\$	28,385.50
4	Unclassified Embankment (Unadjusted)	CY	986	\$ 3.00	\$	2,958.00
5	On-site Spoil (Unadjusted)	CY			\$	-
6	Watering (Dust Control)	LS			\$	-
7	Silt Fence/Berm	LF				
8	Outlet Trap	EA				
9	Inlet Protection	EA				
10	Rock Check Dam	EA				
11	Mud Traps	EA				
12	Straw Rolls	LF				
13	Maintenance	LS			\$	-
D2	REMOVALS AND RESETTING					
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			\$	-
7	Remove Fence	LF			\$	-
8	Adjust Manhole	EA			\$	-
9	Adjust Valvebox	EA			\$	-
10	Relocate or Adjust Utilities	LS			\$	-

D3	SEEDING AND SOIL RETENTION				
1	Sod	SY			\$ -
2	Seeding (Native)	AC			\$ -
3	Seeding (Bluegrass/Lawn)	SY or AC			\$ -
4	Hydraulic Seed and Mulching	SY or AC			\$ -
5	Soil Retention Blanket	SY			\$ -
D4	STORM DRAINAGE FACILITIES				
1	Finish Grading (incl. Channels, Swales, and Ponds)	LS			\$ -
2	12" HDPE	LF			\$ -
3	18" HDPE	LF	40	\$ 86.00	\$ 3,440.00
4	24" CMP Extension	EA	10	\$ 50.00	\$ 500.00
5	18" Concrete Flared End Section	EA			\$ -
6	48" Storm Drain Manhole	EA			\$ -
7	Double Curb Opening Storm Drain Inlet	EA	2	\$ 2,500.00	\$ 5,000.00
8	9" Rip-Rap	SF			\$ -
9	12" Rip-Rap	SF			\$ -
	Subtotal Part D - Grading and Drainage				\$ 47,783.50
E1	IRRIGATION				
1	6" Class 200 IPS Irrigation Pipe	LF			\$ -
2	2" Class 200 IPS Irrigation Pipe	LF			\$ -
3	1" Service Pipe	LF			\$ -
4	3" Class 200 Sleeve	LF			\$ -
5	6" Fitting With Thrust Block	EA			\$ -
6	2" Fitting With Thrust Block	EA			\$ -
7	Service Riser	EA			\$ -
E2	LANDSCAPING				
1	Design/Architecture	LS			\$ -
2	Earthwork	CY			\$ -
3	Hardscape Features	LS			\$ -
4	Plant Material & Planting	LS			\$ -
5	Irrigation System	LS			\$ -
6	Curbing	LF			\$ -
7	Retaining Walls & Structures	LS			\$ -
8	1 Year Maintenance Agrmnt.	LS			\$ -
9	Topsoil				\$ -
					\$ -
					\$ -
E	Subtotal Part E - Landscaping and Irrigation				\$ -
	Subtotal Construction Costs				\$ 236,604

F.	Miscellaneous Items				
1	Construction staking/surveying	%		\$ 236,603.50	\$ -
2	Developer's inspection cost	%		\$ 236,603.50	\$ -
3	General construction supervsn	%		\$ 236,603.50	\$ -
4	Quality control testing	%		\$ 236,603.50	\$ -
5	Construction traffic control	%		\$ 236,603.50	\$ -
6	City inspection fees	%		\$ 236,603.50	\$ -
7	As-builts	%		\$ 236,603.50	\$ -
8	Dry Utility Trenching	LF			\$ -
8	Dry Utility Sleeves	LF			\$ -
8	3' Crushed Granite Path	SF			\$ -

% = Percentage of total site construction costs

E	Subtotal Part F - Miscellaneous Items				\$ -
----------	--	--	--	--	-------------

G.	COST SUMMARY				
1	Total Improvement Costs		Mariposa Only	\$	236,604
2	Total Improvement Costs		Remaining	\$	65,000
3	City Security (10%)			\$	23,660
3	Total Guarantee Amount			\$	88,660

NOTES

1. All prices shall be for items complete in place and accepted.
2. All pipe prices shall include excavation, pipe, bedding, backfill, and compaction.
3. Water main shall include pipe, excavation, bedding, backfill, bends, and appurtenances not itemized elsewhere.
4. All concrete items shall include Aggregate Base Course where required by the drawings.
5. Fill in the pipe type for 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.

REDLANDS MESA, LLC
Ronald Austin, Manager 12/29/05
 Signature of Developer Date
 (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.

Eric [Signature] 1/18/06
 City Development Engineer Date

[Signature] 1-18-06
 Community Development Date



Bank of Colorado

GRAND JUNCTION

IRREVOCABLE LETTER OF CREDIT

Affiliate of Pinnacle Bancorp

City of Grand Junction
c/o Director of Community Development
250 N. 5th Street
Grand Junction, CO 81501

COPY

Irrevocable Letter of Credit No. 2688290094
Dated: December 19, 2005
Expiration: December 19, 2006 subject to the automatic extensions stated below

Dear Sirs:

We hereby establish our Irrevocable Letter of Credit No. 2688290094 in favor of the City of Grand Junction at the request of and for the account of Redlands Mesa, LLC (Developer) in the amount of Eighty Eight Thousand Six Hundred and Sixty Dollars Dollars & No/00 (\$88,660.00) U.S. dollars.

This Letter of Credit is subject to the following terms and conditions:

- 1) it is effective upon signature
2) it expires on December 19, 2006 subject to the automatic extensions discussed below;
3) this Letter of Credit is available by sight draft(s) drawn and marked "Drawn under Bank of Colorado (Bank) Letter of Credit No. 2688290094 dated December 19, 2005";
4) this Letter of Credit is established for the use and benefit of the City of Grand Junction by reason of the Redlands Mesa, LLC (Developer) being obligated to pay or perform in accordance with the provisions of the Grand Junction Zoning and Development Code;
5) the following statement signed by an authorized designee of the City of Grand Junction must accompany the sight draft;
6) Redlands Mesa, LLC (Developer) has failed to comply with the terms, conditions, provisions and requirements of the Grand Junction Zoning and Development Code and/or plans, specifications or agreements relating to the construction of improvements required by the City of Grand Junction. The monies received from this drawing are required to construct those improvements. The City of Grand Junction therefore requests the payment of \$...
7) It is a condition of this Letter of Credit that it will be automatically extended for a period of six (6) months from the present or any future expiration date unless: (a) the underlying obligation has been performed, released or satisfied, (b) this Letter of Credit has been called in full or (c) the Bank notifies the City of Grand Junction at 250 N. 5th Street Grand Junction CO 81501, by certified


200 Grand Avenue 2903 F Road
P.O. Box 968 Grand Junction
Grand Junction Colorado 81504
Colorado 81502 Tel (970) 245-1600
Tel (970) 245-1600 Fax (970) 263-2101
Fax (970) 245-9538

mail return receipt requested, at least ninety (90) days prior to such expiration date that we elect not to further extend this Letter of Credit.

- 8) Except as stated above no modifications or revocations may be made by the undersigned to this Letter of Credit without the express written approval of the City's Director of Community Development or his designee;
- 9) this Letter of Credit is neither negotiable nor assignable;
- 10) partial drawings are permitted;
- 11) we hereby agree that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored on due presentation and delivery of documents, which may be done by first class mail, facsimile, in person or by any other reasonable business practice on or prior to the expiration or any extension thereof of this Letter of Credit;
- 12) except as otherwise stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) and to the extent that it does not conflict with Article 5 of the Uniform Commercial Code of the State of Colorado

BANK OF COLORADO

By



E. Chris Launer, President

AUTHORIZATION

by Limited Liability Company

1. ENTITY CERTIFICATIONS. I, Rochelle Mullen, certify that:

- A. I am Manager, designated to act on behalf of REDLANDS MESA, LLC, Federal Tax Identifying Number 84-1443534 (Limited Liability Company).
- B. I am authorized and directed to execute an original or a copy of this Authorization to Financial Institution, and anyone else requiring a copy.
- C. Limited Liability Company is properly formed and validly existing under the laws of Colorado and that Limited Liability Company has the power and authority to conduct business and other activities as now being conducted.
- D. Limited Liability Company has the power and authority to adopt and provide this Authorization and to confer the powers granted in this Authorization; the designated Agents have the power and authority to exercise the actions specified in this Authorization; and Limited Liability Company properly adopted these authorizations and appointed the Agents and me to act on its behalf.
- E. Limited Liability Company will not use any trade or fictitious name without Financial Institution's prior written consent and will preserve Limited Liability Company's existing name, trade names, fictitious names and franchises.
- F. Limited Liability Company will notify Financial Institution before reorganizing, merging, consolidating, recapitalizing, dissolving or otherwise materially changing ownership, management or organizational form. Limited Liability Company will be fully liable for failing to notify Financial Institution of these material changes.

2. GENERAL AUTHORIZATIONS. I certify Limited Liability Company authorizes and agrees that:

- A. BANK OF COLORADO (Financial Institution) is designated to provide Limited Liability Company the financial accommodations indicated in this Authorization.
- B. All prior transactions obligating Limited Liability Company to Financial Institution by or on behalf of Limited Liability Company are ratified by execution of this Authorization.
- C. Any Agent, while acting on behalf of Limited Liability Company, is authorized, subject to any expressed restrictions, to make all other arrangements with Financial Institution which are necessary for the effective exercise of the powers indicated within this Authorization.
- D. The signatures of the Agents are conclusive evidence of their authority to act on behalf of Limited Liability Company.
- E. Unless otherwise agreed to in writing, this Authorization replaces any earlier related Authorization and will remain effective until Financial Institution receives and records an express written notice of its revocation, modification or replacement. Any revocation, modification or replacement of this Authorization must be accompanied by documentation, satisfactory to Financial Institution, establishing the authority for the change.
- F. Limited Liability Company agrees not to combine proceeds from collateral securing any debts owed to Financial Institution with unrelated funds.
- G. Financial Institution may verify credit history of Limited Liability Company by obtaining a credit report from a credit reporting agency or any other necessary means.

3. SPECIFIC AUTHORIZATIONS. The following persons (Agents) are authorized to act on behalf of Limited Liability Company in fulfilling the purposes of this Authorization:

Name and Title	Signature	Facsimile Signature
ROCHELLE MULLEN, MANAGER		

Limited Liability Company authorizes and directs the designated Agents to act, as indicated, on Limited Liability Company's behalf to:

- A. Borrow money or obtain other credit or financial accommodation from Financial Institution on behalf of and in the name of Limited Liability Company on the terms agreed to with Financial Institution. The designated agents may execute and endorse promissory notes, acceptances or other evidences of indebtedness.
This power may only be exercised by ROCHELLE MULLEN and requires one authorized signature.
- B. Grant a security interest, lien or other encumbrance to Financial Institution in any or all real or personal property that Limited Liability Company now owns or may acquire in the future for the payment or performance of all debts, liabilities and obligations of every type and description owed now or in the future by Limited Liability Company to Financial Institution.
This power may only be exercised by ROCHELLE MULLEN and requires one authorized signature.
- C. Receive and acknowledge receipt for funds, whether payable to the order of Limited Liability Company or an Agent, without additional certification as to the use of the proceeds.
This power may only be exercised by ROCHELLE MULLEN and requires one authorized signature.
- D. Periodically amend, restructure, renew, extend, modify, substitute or terminate any agreements or arrangements with Financial Institution that relate to this Authorization.
This power may only be exercised by ROCHELLE MULLEN and requires one authorized signature.
- E. Execute other agreements that Financial Institution may require, and perform or cause to be performed any further action necessary to carry out the purposes of this Authorization.
This power may only be exercised by ROCHELLE MULLEN and requires one authorized signature.

4. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Authorization.

SIGNATURES. By signing, I certify and agree to the terms contained in this Authorization on behalf of Limited Liability Company on December 19, 2005. I also acknowledge receipt of a copy of this Authorization.

AUTHORIZATION'S SIGNER:

REDLANDS MESA, LLC

By _____
Rochelle Mullen, Manager

Notary or Acknowledgment Here (Optional)

FOR FINANCIAL INSTITUTION USE ONLY	
Acct/Loan # _____	Authorization and agreement completed and effective _____ by _____ for the Financial Institution.

**APPLICATION AND AGREEMENT FOR
IRREVOCABLE STANDBY LETTER OF CREDIT**

BANK OF COLORADO

Bank of Colorado - Grand Junction
Bank Name
P.O. Box 968
Address
Grand Junction, CO 81502

Date December 16, 2005
L/C No. 2688290094
US \$ 88,660.00

TERMS OF THE LETTER OF CREDIT

The undersigned hereby requests that you issue an Irrevocable Standby Letter of Credit with the following terms and conditions:

Available by drafts payable _____ drawn on us

when accompanied by the following documents:

A statement issued and signed by the beneficiary certifying that the account of _____
_____ is _____ days past due under the terms of
_____, therefore payment is demanded under this letter of credit.

Copy of invoices for which claim is made.

OTHER: See attached City of Grand Junction letter.

COPY

Except as otherwise expressly stated herein, this Letter of Credit is subject to all applicable provisions of Uniform Customs and Practice for Documentary Credits, 1983 Revision, International Chamber of Commerce Publication No. 400.

Very truly yours,

Redlands Mesa, LLC
Firm Name
2299 W. Ridges Blvd.
Grand Junction, CO 81503
Address

Rochelle Mullen
Name of Applicant

Signed By: _____

Phone (970) 255-7400

By: _____

RECORDING MEMORANDUM
Exhibit D

City of Grand Junction
Community Development Department Community Development
File: # FPP-2003-108

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 Redland Mesa, LLC (Developer) and the City of Grand Junction (City) pertaining to Redlands Mesa, Eling S (Project), located at W. Ridges Blvd.

(Subject subdivision is more particularly depicted and described in the recording found at Plat Book 3553, Pages 918-923.)

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 # FPP-2003-108.

The Developer and the City of Grand Junction by and through the signatures of the undersigned have determined and agreed to the type, quality and amount of improvements required and/or necessitated by the approval of the Project and that the improvements are guaranteed by and through the Development Improvements Agreement and /or Maintenance Guarantee. Furthermore, the Developer and the City agree that the Development Improvements Agreement and/or Maintenance Guarantee are contractual in nature and that the obligations under the Development Improvements Agreement and/or Maintenance Guarantee shall not be assigned except as provided in the agreement(s).

By virtue of this notice being recorded in the land records of the Mesa County Clerk and Recorder, subsequent owners and/or those that claim by, through or under the Developer are on notice of the Developer's obligations under the agreement(s).

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

DEVELOPER:

By: Ronald D Austin 3/10/06
Date

(Print Name) Ronald D. Austin

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. 5th Street, Grand Junction Colorado.

Kathleen M. [Signature] 3-15-06
Community Development Department Date

RELEASE OF RECORDING MEMORANDUM
City of Grand Junction
Community Development Department
FILE: FPP-2003-108

This Release relates to a Recording Memorandum dated 3-15-06, by and between Redlands Mesa, LLC – Ronald D. Austin (Developer) and the City of Grand Junction, pertaining to Redlands Mesa, Filing 5 Project, located at W Ridges Blvd, recorded at Book 4115, Page 247, Mesa County Clerk and Records Office. Project is more particularly described as:

Subject subdivision is more particularly depicted and described in the recording found at Plat Book 3553, Pages 918-923.

WHEREAS, the Developer has installed and constructed certain public and private improvements at and for the Project, which completion was guaranteed by the execution of a Development Improvements Agreement and/or Maintenance Guarantee and provision of a Guarantee, and;

WHEREAS, the City of Grand Junction and other agencies possessing authority over the Project, and/or the improvements, have inspected the improvements and have accepted the same.

NOW THEREFORE, officials of the City of Grand Junction, duly representing their agencies, possessing and representing by their signatures affixed hereto, that they possess sufficient authority to accept improvements and may release the Development Improvements Agreement and/or Maintenance Guarantee, pertaining to the improvements under their jurisdiction, do accept, sign and release said Development Improvements Agreement and/or Maintenance Guarantee.

CITY OF GRAND JUNCTION:

City Engineer: Eric Hahn by Kenneth E. Fischer Date: 5/3/07
Planner: Dana Cox Date: 5/3/07

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.

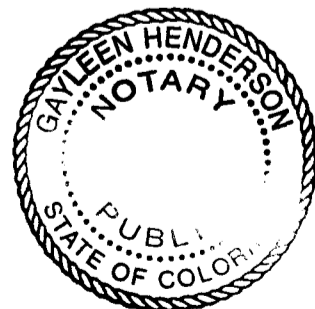
Eric Hahn by Kenneth E. Fischer 5/3/07
Public Works & Planning Department Date

The foregoing instrument was executed before me this 3rd day of May, 2007, by Kenneth E. Fischer, of the Public Works & Planning Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

Gayleen Henderson
Notary Public

My commission expires on 10/29/2009





Public Works & Planning
Planning Division

December 6, 2010

Bank of Colorado
Attn: Ms. Julie Hayden
PO Box 968
Grand Junction, CO 81502

Re: Cancellation of Letter of Credit **#2689004902, Redlands Mesa LLC**
Internal Reference: **Redlands Mesa Filing 5 Mariposa FFP-2003-108**

Dear Ms. Hayden:

Enclosed please find the original Letter of Credit **#2689004902** for **Redlands Mesa LLC**. As beneficiary, the City of Grand Junction informs you that the Letter of Credit is being returned to you for cancellation. The letter is being provided at the direction of the Director of Public Works and Planning Department for the City.

If you have any questions, or need additional information, please let me know.

Sincerely,



Greg Moberg, Planning Services Supervisor

Encl. Letter of Credit **#2689004902**

Pc: Planning File FPP-2003-108
Peggy Sharpe, Planning

Developer:

Redlands Mesa Development, LLC
Attn: Rochelle Mullen
14301 FNB Parkway, Suite 115
Omaha, NE 68154



Bank of Colorado

GRAND JUNCTION

IRREVOCABLE LETTER OF CREDIT

Affiliate of Pinnacle Bancorp

City of Grand Junction
c/o Director of Community Development
250 N. 5th Street
Grand Junction, CO 81501

Irrevocable Letter of Credit No. 2689004902
Dated: October 16, 2006
Expiration: June 26, 2007

Dear Sirs:

We hereby establish our Irrevocable Letter of Credit No. 2689004902 in favor of the City of Grand Junction at the request of and for the account of Redlands Mesa LLC (Developer) in the amount of Twenty Three Thousand Six Hundred & Sixty Six Dollars & No/00 (\$23,660.00) U.S. Dollars.

This Letter of Credit is subject to the following terms and conditions:

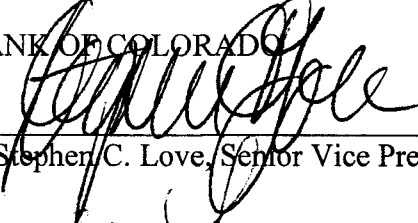
- 1) it is effective upon signature
2) it expires on June 26, 2007
3) this Letter of Credit is available by sight draft(s) drawn and marked "Drawn under Bank of Colorado (Bank) Letter of Credit No. 2689004902 dated October 16, 2006";
4) this Letter of Credit is established for the use and benefit of the City of Grand Junction by reason of the Redlands Mesa, LLC (Developer) being obligated to pay or perform in accordance with the provisions of the Grand Junction Zoning and Development Code;
5) the following statement signed by an authorized designee of the City of Grand Junction must accompany the sight draft;
6) (Developer) has failed to comply with the terms, conditions, provisions and requirements of the Grand Junction Zoning and Development Code and/or plans, specifications or agreements relating to the construction of improvements required by the City of Grand Junction. The monies received from this drawing are required to construct those improvements. The City of Grand Junction therefore requests the payment of \$
7) Except as stated above no modifications or revocations may be made by the undersigned to this Letter of Credit without the express written approval of the City's Director of Community Development or his designee;
8) this Letter of Credit is neither negotiable nor assignable;
9) partial drawings are permitted;
10) we hereby agree that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored on due presentation and delivery of

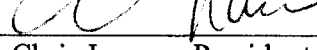
2963 F Road
Grand Junction
Colorado 81504
Tel (970) 245-1600
Fax (970) 263-2101
P.O. Box 968
Grand Junction
Colorado 81502
Tel (970) 245-1600
Fax (970) 245-9538

documents, which may be done by first class mail, facsimile, in person or by any other reasonable business practice on or prior to the expiration or any extension thereof of this Letter of Credit;

- 11) except as otherwise stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) and to the extent that it does not conflict with Article 5 of the Uniform Commercial Code of the State of Colorado

BANK OF COLORADO

By 
Stephen C. Love, Senior Vice President

By 
E. Chris Launer, President

From: Julie Hayden <btv1==9565caa3564==julie.hayden@bankofcolorado.com>
To: Leslie Ankrum <lesliea@ci.grandjct.co.us>
Date: 12/6/2010 9:13 AM
Subject: RE: Letter of Credit Redlands Mesa Filing 5 Mariposa

Good morning Leslie,
Please send it to PO Box 968. Thank you for your help.
Have a nice day.

Julie Hayden

Administrative Loan Assistant

Bank of Colorado-Grand Junction

970.245.1600 / 970.245.9538 fax

www.bankofcolorado.com<<http://www.bankofcolorado.com/>>

Tell us how we are doing: www.tellboc.com<<http://www.tellboc.com/>> U MATTER!

Check Out Our Low Mortgage Loan Rates!!
Logon to www.bankofcoloradomortgage.com<<http://www.bankofcoloradomortgage.com/>> and Apply Today!!
Member FDIC and Equal Housing Lender.

This communication along with any attachments, is covered by Federal and State law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you.

From: Leslie Ankrum [lesliea@ci.grandjct.co.us]
Sent: Monday, December 06, 2010 8:47 AM
To: Julie Hayden; Lisa Cox
Cc: Eric Hahn
Subject: Re: Letter of Credit Redlands Mesa Filing 5 Mariposa

Good Morning Julie,

I pulled the old DIA file and found that we released the above referenced DIA on October 17, 2006. The original letter of credit should have been released to you at that time. Upon further examination of the file,

I located the original letter of credit. I will get that sent out to you immediately at your attention. Could you please let me know if I should send it to the PO address or the address on F Road?

Thank you,

Leslie Ankrum
City of Grand Junction
Public Works & Planning
Senior Administrative Assistant
(970) 244-1438 phone
(970) 256-4031 fax

>>> Lisa Cox 12/3/2010 4:30 PM >>>

Hi Julie.....Thanks for your email. We have someone in the office who manages the letters of credit and I've copied her on this email so that she can do some research on it. Leslie is terrific with the details so I'm sure she'll get back with you early next week with information on the project and status of the security.

Hope that helps.....let me know if I can be of further assistance.

Lisa Cox, AICP
Planning Manager
Public Works & Planning Dept
970.244.1448

>>> Julie Hayden <btv1==9534f7d2461==julie.hayden@bankofcolorado.com> 12/3/2010 3:56 PM >>>

Hi Lisa,

I don't know if you are the person I need to contact. We issued a letter of credit # 2689004903 in favor of The City of GJ for Redlands Mesa, LLC. This letter was issued 10-16-2007. We need to cancel this letter of credit and request the original document back from the city. Do you know what I need to do or who I need to contact to get this done? Thanks in advance for any help you can give me.

Julie Hayden

Administrative Loan Assistant

Bank of Colorado-Grand Junction

970.245.1600 / 970.245.9538 fax

www.bankofcolorado.com<<http://www.bankofcolorado.com/>>

Tell us how we are doing: www.tellboc.com<<http://www.tellboc.com/>> U MATTER!

Check Out Our Low Mortgage Loan Rates!!

Logon to www.bankofcoloradomortgage.com<<http://www.bankofcoloradomortgage.com/>> and Apply Today!!

Member FDIC and Equal Housing Lender.

MAINTENANCE GUARANTEE

1. **Parties:** The parties to this Maintenance Guarantee ("the Guarantee" or "Guarantee") are Redlands Mesa, LLC ("the 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 Redlands Mesa - Filing 5 Mariposa has been reviewed and approved under Community Development file # FFP-2003-108 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 his/her/its own expense, against defects in workmanship and materials for a period of one year from the date of City acceptance of the Improvements. 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 \$ 23,660.00 (Line G2, Exhibit B, 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 or as otherwise established by the City Engineer.

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 final approval 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 or that an Improvement(s) is otherwise defective.

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

two calendar days after mailing thereof by first class United States mail, postage prepaid.

8b. The Developer will have twelve (12) calendar days from the date of the notice to correct the defect.

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 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. Approval and/or acceptance of any Improvements does not constitute a waiver by the City of any rights it may have on account of any defect in or failure of the Improvement or maintenance of the same that is detected or which occurs after approval and/or acceptance. All warranties and/or guarantees shall be for a period of no less than 12 months from the date of acceptance of the Improvements.

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 guarantee period;

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

11d. As provided herein the City shall provide written notice to the Developer at the address on file with the development application. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

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 (in the amount of 20% of the repair, replacement and/or warranty work) 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. 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 will 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>Redlands Mesa</u>	
	<u>Development, LLC</u>	Name -Developer/Company
	<u>% Rochelle A. Mullen</u>	Address (Street and Mailing)
	<u>14301 FNB Pkwy., Ste. 115</u>	
	<u>Omaha, NE 68154</u>	City, State & Zip Code
	<u>(402) 496-7200</u>	Telephone and Fax Numbers
	<u>(402) 493-4486</u>	
	<u>rmullen@gwrwealth.com</u>	E-mail

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

Cc: Public Works and Utilities Department
250 North 5th 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.

By: Redlands Mesa, LLC

Rochelle Mullen 10-13-06
Developer Date

Name (printed): Rochelle Mullen

Title (position): Manager of Redlands Mesa Development, LLC

Attest:

Secretary Date

City of Grand Junction

Harmon M. Patton 10-17-06
Project Planner Date

Evo H.L. 10/17/06
Dept. of Public Works and Utilities Date

GUARANTEE2003

6/13/2003



PUBLIC WORKS
& PLANNING

Date: November 27, 2007

GWR Wealth Management
14301 FNB Parkway Suite 115
Omaha, NE 68154
Attn: Rachel Revoir

RE: **Notice of Final Acceptance -**
Project Name: Redlands Mesa Filing 5
Project Number: FP-2003-108

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 the final acceptance for 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 following improvements within the public right-of-way are accepted for future maintenance by the City:

Public streets:

- All public streets as shown on the Project plans.

Storm drainage system:

- Storm drain pipes, inlets and manholes within the public right of way.
- Maintenance of the detention pond and outlet works is the responsibility of the homeowners association.

Water distribution system:

- Water mains, fire hydrants, main line valves, service lines up to the meters, water meters, meter pits.

Sanitary sewer:

- Sewer mains, manholes

I will contact the Planner for release of the Development Improvements Agreement, the Maintenance Agreement and any financial security attached to the project.

Sincerely,

Mike Best, Project Specialist

Electronic copy:

Scott Peterson, Senior Planner
Peggy Sharpe, Administrative Assistant
David Van Wagoner, Street System
Ron Key, Water Distribution System
Jamie Beard, Assistant City Attorney

Mark Barslund, Development Inspector
Doug Cline, Streets Manager
Chris Spears, Storm Drainage System
Larry Brown, Sewage Collection System