

FAS93KNN

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: EASEMENT

NAME OF AGENCY OR CONTRACTOR: DOUGLAS M. FASSBINDER AND THE
CITY OF GRAND JUNCTION

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: KANNAH CREEK
[FLOWLINE] RIGHT-OF-WAY 148 HILL DRIVE

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1993

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

PERPETUAL EASEMENT AGREEMENT

THIS PERPETUAL EASEMENT AGREEMENT is made and entered into between DOUGLAS M. FASSBINDER, ("the Grantor"), and THE CITY OF GRAND JUNCTION, COLORADO, a Colorado home rule city ("the City").

RECITALS

1634684 12:30 PM 04/07/93
MONIKA TODD CLK&REC MESA COUNTY CO
DOC EXEMPT

A. Grantor represents that he is the owner of the following described real property in the County of Mesa, State of Colorado, to wit:

Beginning at a point which is S 89°59' W a distance of 696.6 feet from the E $\frac{1}{4}$ corner of Section 31, Township 1 South, Range 1 East of the Ute Meridian; thence South a distance of 127.1 feet; thence S 84°24' E a distance of 48.2 feet; thence S 87°27' W a distance of 169.89 feet; thence North a distance of 139.32 feet; thence N 89°59' E a distance of 121.75 feet,

also known as 148 Hill Drive, Grand Junction, Colorado 81503, and hereafter referred to as "the property".

B. The Property is presently and entirely encumbered by an easement ("the existing easement") for the installation, construction, operation, maintenance and repair of a high pressure water pipeline commonly known as the Kannah Creek Flowline and hereinafter referred to as "the Flowline".

C. The Grantor desires to construct and install a single-family residential structure and related appurtenances on the Property (hereinafter "the improvements" or "any improvements"). The Grantor acknowledges that the City, by virtue of its rights under the existing easement, has the legal authority to operate, maintain and repair the Flowline for the health safety and welfare of the citizens of the City of Grand Junction.

D. The purpose of this Agreement is to set forth the terms, covenants and conditions, which the Grantor agrees to attorn to, under which the Grantor may be allowed to proceed with the construction and installation of improvements on the Property.

NOW, THEREFORE, based on the recitals above, and the mutual promises below, the parties agree as follows:

1. For and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor has granted, and by these presents does hereby grant, unto the City, its successors and assigns forever, a 25-foot wide Perpetual Easement for the installation, operation, maintenance and repair of the water pipeline commonly known as the Kannah Creek Flowline, together with the right of ingress and egress for workers and equipment, on, along, over, under, through and across that parcel of land located on the

Recorder's Note: No Exhibit A Attached at time of Recording

Property as described in Exhibit "A" attached hereto and incorporated herein by reference, TO HAVE AND TO HOLD the said premises, with the appurtenances and privileges thereunto belonging unto the City, its successors and assigns.

2. The Grantor agrees that he shall not erect any improvements within the boundaries of the Easement herein granted, and that he shall not cause any other action to occur which may cause damage to the Flowline or otherwise interfere with the construction, reconstruction, installation, alteration, maintenance, repair, inspection, and operation of said Flowline or any replacement(s) to said Flowline.

3. The Grantor hereby covenants and agrees to indemnify the City, its officers, employees and agents and to hold the City, its officers, employees and agents harmless from any liability relating to the occupancy of the Property by the Flowline, including damages or losses occurring from a break or rupture in the Flowline, if such liability, damage or loss is caused by the negligence of Grantor, his agents or employees.

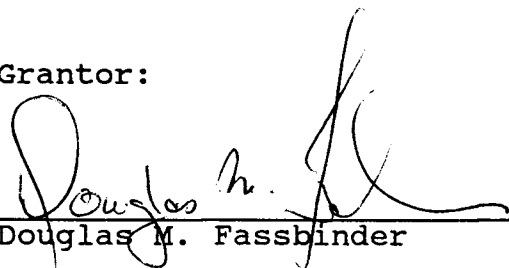
4. The Grantor hereby covenants and agrees that he has no ownership rights in the Flowline, the water contained and transmitted thereby, and any taps or connections thereto.

5. The Grantor hereby covenants with the City that he has good title to the parcel described in Exhibit "A"; that he has the good and lawful right to grant this Perpetual Easement; and that he will warrant and defend the title and quiet possession thereof against the claims of all persons whomsoever.

6. Notwithstanding anything herein to the contrary, the City agrees that Grantor may be allowed to construct and install improvements on the Property, provided that the same meet the zoning and building codes of the appropriate jurisdiction, such as the County of Mesa and State of Colorado, and also provided that the Grantor shall diligently pursue to completion a grading and drainage plan, and the work described therein, which is acceptable to the City to effectuate the proper and effective drainage of water which may be released as a result of a rupture or break in the Flowline.

7. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective parties, their heirs, personal representatives, successors and assigns.

Grantor:



Douglas M. Fassbinder

4/7/93

Date

For the City of Grand Junction,
Colorado

BOOK 1966 PAGE 942

By: Mark K. Achen
Mark K. Achen, City Manager

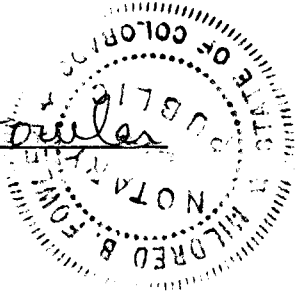
4-7-93
Date

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 7th
day of April, 1993 by Douglas M. Fassbinder.

Witness my hand and official seal.
My commission expires: 10-26-96

Mildred B Fowler
Notary Public

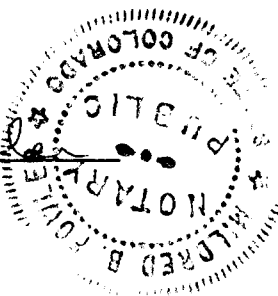


STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 7th
day of April, 1993 by Mark K. Achen as City Manager of
the City of Grand Junction, Colorado, a Colorado home rule city.

Witness my hand and official seal.
My commission expires: 10-26-96

Mildred B Fowler
Notary Public



A G R E E M E N T

BOOK 1958 PAGE 339

1630651 03:20 PM 02/26/93

MONIKA TODD CLK® MESA COUNTY CO

THIS AGREEMENT is made this 14th day of December, 1992, between the **City of Grand Junction, Colorado** (the "City") and **Doug Fassbinder** ("Fassbinder"), whose address is 3505 N. 12th Street, A-9, Grand Junction, Colorado 81506.

RECITALS

For over 70 years, the City has owned and operated an eighteen inch diameter water line that is one of the primary domestic and fire protection water supply lines for the City and its residents ("the Flowline"). Fassbinder recently purchased the land described in the attached Perpetual Easement Agreement (the "Easement") (the "Property") and did so with actual knowledge of the location and use of the Flowline. Fassbinder also had actual knowledge that there existed an easement giving the City the right to enter the Property to operate, maintain and perform repairs on the Flowline. It appears that said Easement did not contain a legal description of the center-line of the pipeline but, rather, may have burdened the entire Property. It is to Fassbinder's benefit to replace said Easement with an easement that is limited to only twenty-five (25) feet in width along the Flowline. Notwithstanding the foreknowledge of Fassbinder, and notwithstanding the instructions of the City's Pipeline Superintendent, Fassbinder began excavation of a foundation for a house within ten (10) feet of the pipeline. Because the City was concerned lest the activities of Fassbinder would cause damage to or cause the rupture of the Flowline, the City requested that the Building Official of Mesa County not issue a building permit until safety provisions were agreed upon.

The purpose of this Agreement is to identify needs of the parties and the reasons the parties enter into it.

IN CONSIDERATION of the benefits and burdens contained herein, and in consideration of the work that the City has agreed to perform, and the promises that Fassbinder has made, the parties agree as follows:

1. The Recitals, stated above, are agreed upon.
2. Fassbinder warrants and represents that he, and only he, has the exclusive right and power to enter into the Agreement and to affect the title to the Property. Fassbinder agrees that he will defend and hold the City harmless from any claims by any person, including persons claiming through him, that the Easement is not valid and effective, or that this Agreement is not binding and affects the Property.
3. Fassbinder shall execute and cause to be recorded the Easement within three (3) business days of the time that the City makes the completed Easement available to him. The language of the Easement is hereby agreed upon, in the form of the Easement attached hereto. The legal description of the center-line of the Flowline, in place, has to be written. Such legal description shall be prepared by the City and shall describe the center-line of the Flowline in place and a corridor parallel to the Flowline with boundaries ten (10) feet to the north of the Flowline and fifteen (15) feet to the south of the Flowline.
4. Fassbinder shall perform such grading work as may be required to comply with his proposed grading plan, which he has submitted to the Public Works Department and is on file there. Fassbinder agrees that, thereafter so long as the Easement is effective, the earth within the Easement shall never be disturbed or moved, without the prior written consent of the City.

Recorder's Note: No attached Easement Agmt at time of Recording

5. Fassbinder shall take such steps and precautions as may be reasonably required to ensure that the agreements and requirements set forth herein are abided by.

6. The parties agree that, so long as Fassbinder is in full and complete compliance with the terms of this Agreement, that Fassbinder may be issued a building permit and may construct in accordance with the building permit and grading plan. The parties agree that the terms of this Agreement are conditions of any such building permit.

7. Once the Easement has been executed and recorded, the City will execute and record the notice to the effect that the Easement is the only operative easement with respect to the Flowline and the Property.

8. Fassbinder hereby agrees to release and hold the City, its employees, officers and agents, harmless from any claims he has or could state with regard to any delays in construction or issuance of the building permit, any taps or tap fees or rights he may have for the supply of water from the Flowline, and any claims for any "taking" or inverse condemnation, however stated, relating to the location of the Flowline or any Flowline easements.

9. Each party shall have the right to sue for specific performance of the promises and provisions hereof.

10. This Agreement is binding on the parties and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CITY OF GRAND JUNCTION, COLORADO

By James R. Smith
Title: Director of Public Works

Doug Fassbinder
DOUG FASSBINDER