

MDS06650

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD: NAME OF PROPERTY	EASEMENT (STORM SEWER)
OWNER OR GRANTOR:	MDS REALTY I, LLC.
PURPOSE:	RANCHMANS DITCH DIVERSION STORM SEWER EASEMENT
ADDRESS:	2424 HWY 6 & 50
PARCEL #:	2945-092-03-008
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2006
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

WHEN RECORDED RETURN TO:
City of Grand Junction
Real Estate Division
250 North 5th Street
Grand Junction, CO 81501

RECEPTION #: 2358716, BK 4334 PG 320 01/16/2007 at
01:59:00 PM, 1 OF 4 R \$20.00 S \$1.00 EXEMPT Doc
Code: EASEMENT
Janice Rich, Mesa County, CO CLERK AND RECORDER

GRANT OF STORM SEWER EASEMENT

MDS Realty I, LLC, a Delaware limited liability company, Grantor, whose address is 122 S. Michigan Ave., Ste. 1000, Chicago, IL 60603, for and in consideration of the sum of Seventy-Five Thousand Six Hundred Three and 00/100 Dollars (\$75,603.00) the receipt and sufficiency of which is hereby acknowledged, has sold, granted and conveyed, and by these presents does hereby sell, grant and convey to **The City of Grand Junction, a Colorado home rule municipality, Grantee**, whose address is 250 North 5th Street, Grand Junction, Colorado 81501, a Perpetual Easement for the installation, operation, maintenance, repair and replacement of an underground stormwater and irrigation pipeline and stormwater drainage facilities, on, along, over, under, through and across the following described parcel of land, to wit:

A certain perpetual underground storm sewer easement located in the Northwest Quarter (NW 1/4) of Section 9, Township One South, Range One West of the Ute Principal Meridian, County of Mesa, State of Colorado, and being more particularly described as follows:

Commencing at the Southeast corner of the Northeast Quarter of the Northwest Quarter (NE 1/4 NW 1/4) of said Section 9 and assuming the East line of the of the NE 1/4 NW 1/4 of said Section 9 to bear N00°03'25"E with all bearings contained herein relative thereto; thence from said Point of Commencement N59°45'49"W a distance of 1013.68 feet to the Point of Beginning; thence N86°37'47"W a distance of 1.54 feet; thence N69°33'15"W a distance of 64.04 feet; thence N66°32'30"W a distance of 492.28 feet; thence N46°49'11"W a distance of 122.30 feet; thence N44°52'09"E a distance of 57.02 feet; thence S46°49'11"E a distance of 110.71 feet; thence S66°32'30"E a distance of 480.88 feet; thence S69°33'15"E a distance of 53.99 feet; thence S86°37'47"E a distance of 43.41; thence S44°52'09"W a distance of 76.10 feet to the Point of Beginning.

Said parcel contains 0.90 acres (39,021.00 square feet), more or less, as described herein and depicted on **Exhibit "A"**, attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereunto belonging or in anywise appertaining, unto the said Grantee and unto its successors and assigns forever, the said Grantor hereby covenants that it will warrant and defend the title to said premises unto the said Grantee and unto its successors and assigns forever, against the lawful claims and demands of all persons claiming by, through or under Grantor, together with the right of reasonably necessary ingress and egress for workers and equipment to survey, maintain, operate, repair, replace, and use said Easement, and to remove objects interfering therewith, including the trimming of trees and bushes as may be required to permit the operation of standard construction and repair machinery, subject to the terms and conditions contained herein.

1. Grantor reserves and shall have the right to use and occupy the real property burdened by this Easement for any lawful purpose which is not inconsistent with and which will not interfere with the full use and quiet enjoyment of the rights herein granted; provided, however, that Grantor hereby covenants with Grantee that the Easement area shall not be burdened or overburdened by the installation, construction or placement of any permanent structures or fixtures thereon which would damage the facilities of Grantee or which may act to prevent reasonable ingress and egress for workers and equipment on, along, over, under, through and across the Easement area.

2. Grantee's work and act of installing, operating, maintaining, repairing and replacing said storm water drainage facilities shall be performed with due care using commonly accepted standards and techniques. Without limiting the foregoing, prior to commencing any construction, alteration, repair, renovation or reconstruction work on or about the area of the

Easement, Grantee shall give Grantor thirty (30) days prior written notice of (i) its intent to commence such construction, (ii) the scope, nature and extent of the work, the duration of the work, and (iii) the area in which the work is to be performed. All construction, alteration, repair, renovation or reconstruction work, undertaken by Grantee within the Easement, shall be performed in a neat, safe and workmanlike manner. In connection with the foregoing, Grantee shall take all reasonable measures to minimize any disruption or inconvenience caused by such work to Grantor's operations and shall make adequate provisions for the safety and convenience of all lessees and occupants of the Grantor's Property and their invitees and customers. Such work shall be accomplished by Grantee, to the extent reasonably possible, in such a manner so as to minimize any damage or adverse effect, including dust and noise, which might be caused by such work to Grantor and the lessees and other occupants of Grantor's Property, provided, that any work or installation, alteration, replacement or repair within the Easement which requires interference with the paving in the parking area or driveways of the Grantor's Property shall be undertaken with particular care so as to minimize the impact upon traffic circulation within the parking areas of Grantor's Property and access of all users to the various business establishments operating from Grantor's Property. Without limiting the foregoing, the maximum length of any trench in the area of the Easement that may be open at any given time shall be sixty (60) lineal feet. Grantee shall fence off or cause to be fenced off with a security fence any construction, alteration, repair or reconstruction work performed by or on behalf of Grantee. Fencing shall be of such construction sufficient to prevent inadvertent entry into the work area by members of the public and to protect persons located outside the work area from safety hazards resulting from such work. Notwithstanding anything to the contrary herein, no construction, alteration, repair or reconstruction shall be performed by Grantee within the Easement during the months of October, November and December of any calendar year unless such construction activity is required in connection with emergency repairs or as a result of a casualty.

3. Grantee hereby acknowledges and agrees that the Easement is being acquired by Grantee on a special warranty basis, that the said Grantor covenants that it will warrant and defend the title to said premises unto the said Grantee and unto its successors and assigns forever, against the lawful claims and demands of all persons claiming by, through or under the Grantor. Grantee hereby further acknowledges and agrees that Grantor (i) has made no warranties or representations with respect to the condition of the Grantor's Property, (ii) has not agreed to do or perform any act, except as expressly stated herein, and (iii) shall be under no obligation to perform any work or provide any materials to prepare any area of the Grantor's Property for use by Grantee in connection with the Project and/or the Easement.

4. Grantee hereby agrees, on behalf of itself and its contractor, (a) to indemnify, defend and hold Grantor harmless from any damages or losses based upon, arising out of or related to the Grantee or of any of the Grantee's contractors agents, employees, licensees, subcontractors or invitees contractors work performed on or about the Grantor's Property or any acts, omissions, negligence or willful misconduct of the contractor , (b) that in no event shall the Grantor be liable to the contractor for any loss or damage that may be occasioned by or through the acts or omissions of tenants or other licensees of the Grantor's Property or of any other persons whomsoever accessing the Grantor's Property, regardless of causation, and (c) that the Grantee shall not allow the contractor to commence work on this project until the contractor provides the Grantor with a certificate or certificates of insurance evidencing that the contractor maintains, in full force and effect, insurance to cover its activities in connection with the Project and access to the Grantor's Property for bodily injury, personal injury and property damage as follows: (i) business auto liability for autos owned, hired, scheduled or non-owned with a combined single limit no less than One Million Dollars (1,000,000) per occurrence; (ii) commercial general liability with a combined single limit no less than Five Million Dollars (\$5,000,000) (Bodily Injury, Property Damage), (iii) product/completed operations with an aggregate limit of no less than Five Million Dollars (\$5,000,000), and (iv) pollution liability insurance on a occurrence basis with minimum limits of Five Million Dollars (\$5,000,000) for each loss, for bodily injury, property damage, clean-up costs and claim expenses. The contractor shall maintain the insurance described in item (c) of the preceding sentence at all times during the performance of any work on the Grantor's Property.

Executed and delivered this 7th day of December, 2006.

MDS Realty I, LLC
a Delaware limited liability company

By: Martha Amesbury
Martha Amesbury

State of Illinois)
)ss.
County of Cook)

The foregoing instrument was acknowledged before me this 7th day of December, 2006 by Martha Amesbury, MDS Realty I, LLC, a Delaware limited liability company.

My commission expires 1-5-2010.

Witness my hand and official seal.

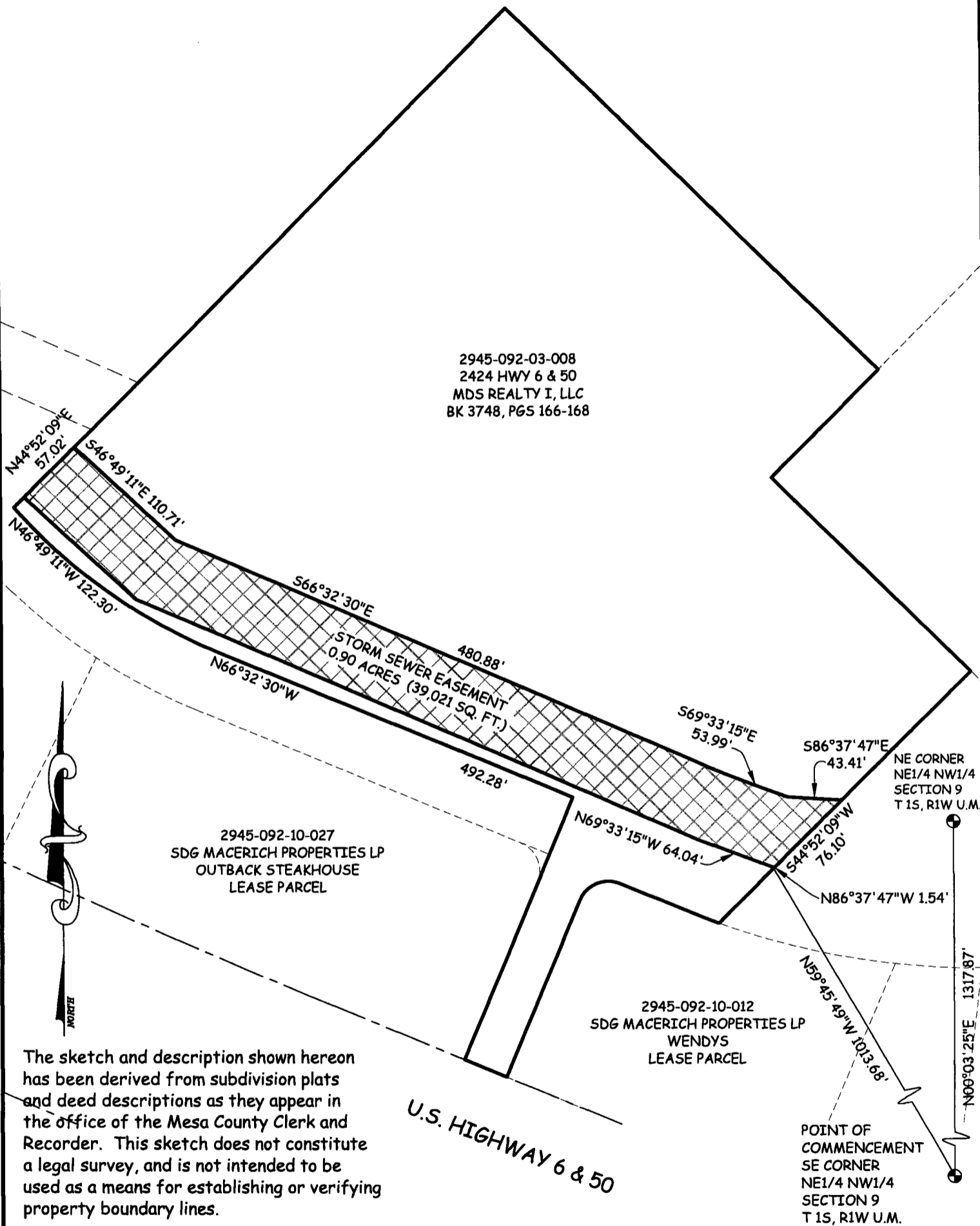
Karen M. Fork
Notary Public



EXHIBIT "A"

LOT A
MESA MALL SECOND MINOR SUBDIVISION
(PB 14, PG 351)

2945-092-03-008
2424 HWY 6 & 50
MDS REALTY I, LLC
BK 3748, PGS 166-168



The sketch and description shown hereon has been derived from subdivision plats and deed descriptions as they appear in the office of the Mesa County Clerk and Recorder. This sketch does not constitute a legal survey, and is not intended to be used as a means for establishing or verifying property boundary lines.

DRAWN BY: T.L.P.
DATE: 4-17-06
SCALE: 1" = 100'
APPR. BY: P.T.K.

**RANCHMANS DITCH DIVERSION
STORM SEWER EASEMENT**
MDS REALTY I, LLC
(2945-092-03-008)

CITY OF
Grand Junction
COLORADO