

MSA95MIC

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: EASEMENT

NAME OF AGENCY OR CONTRACTOR: MESA COUNTY VALLEY SCHOOL  
DISTRICT NO. 51 AND MARY LOU KENNEDY

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: EASEMENT FOR  
WATER DRAINAGE MICAELA'S SUBDIVISION NORTH OF SANTA CLARA  
OFF RIVER CIRCLE LAMP LITE PARK NO. ONE AMENDED

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1995

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

**DRAINAGE EASEMENT AND AGREEMENT**

**BOOK 2164 PAGE 742**

THIS AGREEMENT, made and entered into this 1st day of August 1995, by and between MESA COUNTY VALLEY SCHOOL DISTRICT NO. 51, a Colorado Public School District, whose address is 2115 Grand Avenue, Grand Junction, CO 81501, herein the "District," and MARY LOU KENNEDY, whose address is 2034 Broadway, Grand Junction, CO 81503, herein the "Developer."

**WITNESSETH**

Whereas, the District owns the following tract of land (herein "District Property") located within the boundary of the City of Grand Junction, herein "City", in Mesa County, Colorado, to wit:

Beginning at a point North 00°12'06" East 379.8 feet and West 178.2 feet from the Southeast corner of Lot 4 in Section 23, Township 1 South, Range 1 West of the Ute Meridian, thence North 00°12'06" East along a line 178.2 feet West of the East line of Section 23 to the South bank of the Colorado River, thence Southwest along the South bank of the Colorado River to a point 300 feet East of the West line of said Lot 4, thence South 00°21'12" East 195.20 feet to a point West of the point of beginning, thence East to the point of beginning, EXCEPT that portion of the above described property lying within LAMP LITE PARK NO. ONE AMENDED,

generally described as North of Santa Clara (off River Circle); and

WHEREAS, Developer owns real property located immediately south of the District Property which she wishes to subdivide (herein "Micaela's Subdivision"); and

WHEREAS, Developer is seeking subdivision approval for Micaela's Subdivision; and

WHEREAS, as a condition for such approval the City requires that Developer submit an acceptable storm drainage plan for the Micaela's Subdivision; and

WHEREAS, Developer has submitted a storm drainage plan which would channel surface water drainage from Micaela's Subdivision along a course across District Property which has historically served as a natural drainage channel for the land located south of the District Property. Development of drainage pursuant to and consistent with the storm drainage plan will serve to increase surface water

drainage by approximately forty percent upon full development of streets and other residential improvements in Micaela's Subdivision; and

WHEREAS, the Developer's storm drainage plan requires that the District grant a nonexclusive surface water drainage easement across District Property along a course described as follows:

A 30.0 foot wide nonexclusive easement for surface water drainage from Micaela's Subdivision being 15.0 feet on each side of the following described centerline:

Beginning at a Point which lies N29°17'45"E 858.51 feet from the Southwest corner of Government Lot 4, Section 23, Township 1 South, Range 1 West of the Ute Meridian and considering the South line of said Lot 4 to bear N90°00'00"E and all bearings contained herein to be relative thereto, thence N13°07'10"E 26.79 feet, thence N39°42'53"E 6.06 feet, thence N08°10'2"E 13.55 feet, thence N01°13'25"E 25.85 feet, thence N04°11'27"E 14.17 feet, thence N15°23'33"E 36.81 feet, thence N40°26'16"W 17.49 feet, thence N09°41'15"E 21.02 feet, thence in a Northerly direction 50.00 feet more or less to the South edge of water of the Colorado River,

herein called the "Easement"; and

WHEREAS, the District holds title to the District Property under an instrument recorded November 30, 1994, in Book 2114 at Page 213 of the Mesa County Records, which instrument contains a restriction specifying that the District may receive and hold title only:

FOR SO LONG AS the District 51 School District maintains the property forever in a predominantly natural and open condition as wildlife habitat and does not utilize the property for any purpose inconsistent therewith, except for the construction of trails, signs, and other limited facilities necessary so that the property can be used as an outdoor education classroom, but if the District 51 School District fails to maintain the property forever in a predominantly natural and open condition as wildlife habitat, then the property shall immediately vest in the Colorado Division of Wildlife, which is also a governmental entity for purposes of §15-11-1105(1)(e), C.R.S. (1993 Supp.), and all right, title, and interest of the District 51 School District in the property shall be terminated;

and

WHEREAS, the District is willing to grant the Easement provided that the Developer installs certain improvements according to specifications contained in the Storm Drainage Plan and Profile for Micaela's Subdivision which Developer has filed with the City in conjunction with the subdivision application, and also provided that the Developer agrees to use the Easement in a manner consistent with the purpose stated herein such that the use will not trigger a violation of the condition of the grant in the above-mentioned instrument under which the District took title.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein, the parties agree:

1. The District hereby grants the following easement to the Developer, and to the future owners of lots in Micaela's Subdivision, and their successors and assigns:

A 30.0 foot wide nonexclusive easement for surface water drainage from Micaela's Subdivision being 15.0 feet on each side of the following described centerline:

Beginning at a Point located in Mesa County, Colorado, which lies N29°17'45"E 858.51 feet from the Southwest corner of Government Lot 4, Section 23, Township 1 South, Range 1 West of the Ute Meridian and considering the South line of said Lot 4 to bear N90°00'00"E and all bearings contained herein to be relative thereto, thence N13°07'10"E 26.79 feet, thence N39°42'53"E 6.06 feet, thence N08°10'2"E 13.55 feet, thence N01°13'25"E 25.85 feet, thence N04°11'27"E 14.17 feet, thence N15°23'33"E 36.81 feet, thence N40°26'16"W 17.49 feet, thence N09°41'15"E 21.02 feet, thence in a Northerly direction 50.00 feet more or less to the South edge of water of the Colorado River.

SUBJECT TO the terms of that certain instrument recorded November 30, 1994, in Book 2114 at Page 213 of the Mesa County Records, requiring that the property subject to the easement forever remain in a predominantly natural and open condition as wildlife habitat and that the property not be utilized for any purpose inconsistent therewith, except for the construction of trails, signs, and other limited facilities necessary so that the property can be used as an outdoor education classroom, and if the District fails to maintain the property forever in a predominantly natural and open condition as wildlife habitat, then the property shall immediately vest in the Colorado Division of Wildlife, which is also a governmental entity for purposes of §15-11-1105(1)(e), C.R.S. (1993 Supp.), and all right, title, and interest of the District, the

Developer and the future owners of lots in Micaela's Subdivision shall be terminated.

It is specifically agreed and understood that the granting of the Easement will allow discharge of surface water drainage from Micaela's Subdivision at a rate exceeding maximum historical flow by up to forty percent.

2. The Developer, for herself and on behalf of all the future owners of lots in Micaela's Subdivision, agree that they will refrain from using the Easement for any purpose or in any manner which would violate the condition of reversion set forth in the above-mentioned instrument. The Developer, for herself and on behalf of all the future owners of lots in Micaela's Subdivision, agrees that neither she nor they will discharge or allow others to discharge any water or Hazardous Material onto, under or across District Property and/or into the Colorado River in violation of the requirements, limitations and standards of local, state or federal environmental protection and water quality laws and regulations, now existing or hereafter enacted, including, but not limited to, the Federal Water Pollution Control Act (33 U.S.C. §1321), or any amendments thereto, the Colorado Water Quality Control Act (§ 25-8-101, C.R.S.), the Resource Conservation and Recovery Act (42 U.S.C. § 6991, et seq.) as amended, and the Solid Waste Disposal Act (42 U.S.C. §6901, et seq.), as amended. The provisions of this paragraph shall be deemed a covenant running with the land in any and all filings of Micaela's Subdivision and shall be binding and enforceable, at law or in equity, against the Developer and her successors in interest to said land.

As used herein, the term "Hazardous Material" means any hazardous or toxic substance, pollutant, material, or waste which is or becomes regulated by any local, state or federal governmental agency, department or authority, including, but not by way of limitation:

(a) any "hazardous waste", "medical waste", "solid waste", "underground storage tanks", "petroleum", "regulated substance", or "used oil" as defined by the Solid Waste Disposal Act (42 U.S.C. §6901, et seq.), as amended, and the Resource Conservation and Recovery Act (42 U.S.C. § 6991, et seq.) as amended, or by any regulations promulgated thereunder;

(b) any "hazardous substance" or "pollutant or contaminant" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, et seq.) as amended, or by any regulations promulgated thereunder;

(c) any "regulated substance", as defined by the Underground Storage Tank Act, C.R.S. 1973 §25-18-101, et seq., as amended, or by any regulations promulgated thereunder;

(d) any "hazardous waste" as defined by § 25-15-101, C.R.S. et seq., as amended, or by any regulations promulgated thereunder;

(e) any water containing an amount or concentration of a substance or contaminant which is prohibited, regulated or restricted by any law similar to those set forth above; and

(f) any other substance which by law, regulation or ordinance requires special handling or treatment in its collection, storage, release or disposal, including asbestos-containing materials and mill tailings.

3. The Developer, for herself and on behalf of all the future owners of lots in Micaela's Subdivision, agree that they will refrain from using the Easement or allowing the Easement to be used for the transportation, discharge or drainage of waters from properties other than Micaela's Subdivision, except as established by historical usage, provided however that nothing herein shall be interpreted to allow an increase of the rates of flow of water from such other properties beyond that established by historical usage. The provisions of this paragraph shall be deemed a covenant running with the land in Micaela's Subdivision and shall be binding and enforceable, at law or in equity, against the Developer and her successors in interest to said land.

4. The Developer agrees that she will, at her sole cost and expense, install and make the improvements specified in the Storm Drainage Plan and Profile for Micaela's Subdivision which Developer has filed with the City in conjunction with the subdivision application. The Developer, for herself and on behalf of all the future owners of lots in Micaela's Subdivision, agrees that she and they will in the future maintain such improvements at their sole and absolute expense in such condition that water will be fully and completely conveyed from the Subdivision consistent with the Storm Drainage Plan And Profile and maintain the condition of the Easement so as to prevent erosion resulting from surface water drainage from Micaela's Subdivision. The District grants the Developer and her successors and assigns a temporary construction and a permanent maintenance easement for the performance of the requirements of this paragraph provided that all such improvements and maintenance shall be accomplished in a manner consistent with the terms of that certain instrument recorded November 30, 1994, in Book 2114 at Page 213 of the Mesa County Records. The provisions of this paragraph shall be deemed a covenant running with the land in any and all filings of Micaela's Subdivision and shall be binding and enforceable, at law or in equity, against the Developer and her successors in interest to said land.

5. The District reserves the right to use and occupy the Easement for any purpose not inconsistent with the Developer's or the Developer's successors in interest full enjoyment of the rights hereby granted. The Developer and the Developer's successors in interest shall conduct their activities in a reasonable and

prudent manner that will not unreasonably limit the joint use of the easement area by the District, persons occupying the area with the consent of the District, the Developer and the Developer's successors in interest. The District hereby covenants with the Developer and with the Developer's successors in interest that the Easement area shall not be burdened or overburdened by the District erecting or placing any improvements thereon which might prevent reasonable ingress and egress to and from the Easement area, or interfere, impose or prevent the conveyance or disposal of surface water drainage. The District further covenants that it will WARRANT AND DEFEND the title and quiet possession of the Easement against the lawful claims of all persons whomsoever claiming by, through or under it.

DATED as of the day and year first written above.

DISTRICT:

MESA COUNTY VALLEY SCHOOL  
DISTRICT NO. 51

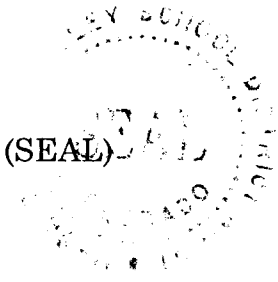
By Debra D. Johns  
Debra D. Johns  
President, Board of Education

ATTEST:

Mary K. Kalenian  
Mary K. Kalenian  
Secretary, Board of Education

DEVELOPER:

Mary Lou Kennedy  
Mary Lou Kennedy



Approved as to form and content.

CITY:

CITY OF GRAND JUNCTION  
By Mark Cleben  
City Manager

ATTEST:

Stephanie Nye  
City Clerk

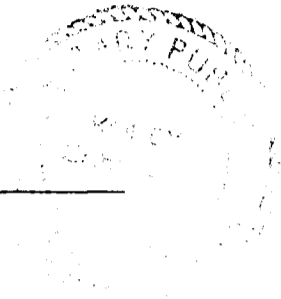


STATE OF COLORADO )  
: ss.  
COUNTY OF MESA )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of August, 1995, by Debra D. Johns and Mary K. Kalenian, President and Secretary, respectively, of the Board of Education of Mesa County Valley School District No. 51.

Witness my hand and official seal.  
My commission expires: 01/18/98

Korey Sheridan  
Notary Public



STATE OF COLORADO )  
: ss.  
COUNTY OF MESA )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of Aug; 1995, by Mary Lou Kennedy.

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_  
**Dee Goodsell, Notary Public**  
**State of Colorado**  
**My Commission Expires 6/9/99**

Dee Goodsell  
Notary Public