

SCH971ST

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: EASEMENT

NAME OF AGENCY OR CONTRACTOR: TIMOTHY E. SCHMITZ

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: EASEMENT FOR
KANNAH CREEK FLOWLINE ACROSS LOT 5 BLOCK 1 BURNS
SUBDIVISION ON ORCHARD MESA

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1997

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

NOTICE OF RELEASE OF EASEMENT

RECITALS

On or about October 20, 1911, the City acquired an easement in order to locate, maintain and operate a waterline that is one of the primary domestic and fire protection water supply lines for the City's water system (the "Flowline"). That original Flowline easement by its terms, and in the way that it has been construed to apply for over 70 years, burdened the entirety of Lot 5, Block 1, Burns Subdivision being a portion of the Southeast Quarter of the Southeast Quarter of Section 32, Township 1 South, Range 1 East of the Ute Meridian in Mesa County, Colorado.

That original 1911 Flowline easement did not contain a legal description of the center line of the Flowline, but rather burdened the entire property.

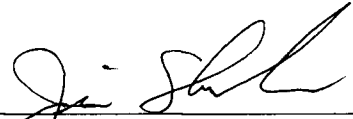
By Agreement dated February 12, 1997 between the City of Grand Junction and Timothy E. Schmitz, whose address is 20013 Briarwood Ct., Parker, Colorado 80134 and who is the current owner of said Lot 5 in Block 1, the City agreed to limit the extent of the 1911 easement Flowline.

NOW THEREFORE, NOTICE IS HEREBY GIVEN that, with respect to said Lot 5, Block 1 of the Burns Subdivision, Mesa County, Colorado and conditioned upon the February 12, 1997 Agreement between the City and Timothy E. Schmitz being fully effective and the City receiving the benefit of that Agreement in perpetuity so that the twenty-five foot (25') wide Flowline easement remains effective and in place,

The City hereby releases said Lot 5, Block 1, from the 1911 Flowline easement.

Further, concerning said Lot 5, Block 1, Burns Subdivision, the City hereby gives notice that the February 12, 1997 Agreement is the only operative easement with respect to the Flowline.

Dated this 15 day of April, 1997.

By: 

Jim Shanks, Director of Public Works and Utilities
City of Grand Junction

By: Mark K. Achen Date 3-7-97
Mark K. Achen, City Manager

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 12th day of February 1997 by Timothy E. Schmitz.



Witness my hand and official seal.

My commission expires: 5-6-98

[Signature]
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 7th day of March, 1997 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: 2-28-98



[Signature]
Notary Public

PERPETUAL EASEMENT AGREEMENT

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

RECITALS

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

Lot 5, Block 1, Burns Subdivision, as recorded at the Office of the Clerk and Mesa County, Colorado, and hereafter referred to as "the Property"; and that no other person has an interest in 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 to which the Grantor agrees, 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 as shown on the attached Exhibit "A" for the installation, operation, maintenance and repair of the Flowline, together with the right of ingress and egress for the City and its workers and equipment on, along, over, under, through and across the Property as described above, TO HAVE AND TO HOLD the said premises, with the appurtenances and privileges thereunto belonging unto the City, its successors and assigns.

2. Without the prior written consent of the City, the Grantor agrees that he shall not: erect any improvements nor store any personal property; plant, or allow to grow, any vegetation within the boundaries of the Easement herein granted; cause any other action to occur which may cause damage to the Flowline or otherwise interfere with the construction, reconstruction,

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installation, alteration, maintenance, repair, inspection, and operation of said Flowline or any replacement(s) to said Flowline.

3. The Grantor, for himself, his heirs, successors and assigns, 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 or caused by: the occupancy or use of the Property, or improvements, vegetation or personal property on the Property; any damage or injury to the Flowline; any liability or claim to others and the property of others including damages or losses occurring from a break or rupture in the Flowline. Grantor shall not, however, be required to indemnify or hold harmless the City in the event of the gross negligence of the City.

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.

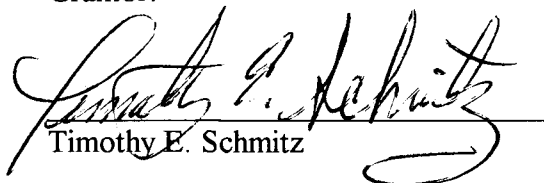
5. The Grantor hereby warrants and represents to the City: that he has good title to the parcel described in Exhibit "A"; that he has the good and lawful right to grant this Perpetual Easement; and that he will warrant and defend the granting of this easement and the rights granted to the City against the claims of all persons whomsoever.

6. 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, in its sole discretion, to effectuate the proper and effective drainage of water which may be released as a result of a rupture or break in the Flowline. No such work shall be commenced without the prior written consent of the City.

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.

8. If the City engages or uses an attorney or attorneys to enforce the City's rights hereunder, grantor agrees to pay the City's reasonable attorneys fees.

Grantor:


Timothy E. Schmitz

2/12/97
Date

For The City of Grand Junction,
Colorado

AGREEMENT

THIS AGREEMENT is made this 12 day of ~~January~~ ^{February}, 1997
between the City of Grand Junction, Colorado (the "City") and Timothy E. Schmitz,
whose address is 20013 Briarwood Ct., Parker, Colorado 80134.

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"). Schmitz 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. Schmitz 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; it burdened the entire Property. It is to Schmitz's benefit to replace said Easement with an easement that is limited to only twenty-five (25) feet in width along the Flowline.

1. The Recitals, stated above, are agreed upon.
2. Schmitz 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. Schmitz 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 or is ineffective, or that this Agreement is not binding on him or the Property. Schmitz agrees that he will pay for the reasonable fees of an attorney selected by the City to prosecute such defense or holding harmless.
3. Schmitz shall execute and cause to be recorded the Easement at the same time as this agreement is signed. The language of the easement is attached hereto. The legal description of the center-line of the Flowline, in place, has been written and is described in Exhibit "A" attached hereto. The easement width is 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. Schmitz shall perform such grading work as may be required to comply with his proposed grading plan, which he shall submit to the Public Works Department within 20 days hereof. Before making any improvements on or to the property, Schmitz shall obtain the written approval of the City. Schmitz 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.
5. Schmitz 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 Schmitz is in full and complete compliance with the terms of this Agreement, Schmitz 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 this Easement has been executed and recorded, the City will execute and record a notice to the effect that the Easement is the only operative easement with respect to the Flowline and the Property.
8. Schmitz hereby agrees to release and hold the City, its employees, officers and agents ("City"), 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; any claims for any "taking" or inverse condemnation, however stated, relating to the location of the Flowline or any Flowline

easements; and damages or injuries to persons or property from flooding or other cause relating to the operation or maintenance of the Flowline.

9. Each party shall have the right to sue for specific performance of the promises and provisions hereof. In the event the City engages or uses any attorney to enforce its rights under this agreement, Schmitz agrees to pay the City's reasonable attorneys fees.

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

11. If any provision or section hereof is determined to be unenforceable, such provision or section shall be deemed stricken; however, the balance of the agreement shall remain in full force and effect.

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

CITY OF GRAND JUNCTION, COLORADO

By Marie E. Achen
Title City Manager
Date 3-7-97

Timothy E. Schmitz
Timothy E. Schmitz
Address 20013 BRIMWOOD Ct. Parker Co 80134
Date 2/12/97

Timothy E. Schmitz

EXHIBIT "A"



BURNS SUBDIVISION

LOT 4
BLOCK 1

LOT 5
BLOCK 1

LOT 6
BLOCK 1

N90°00'00"E 50.00'

72.21'

84.02'

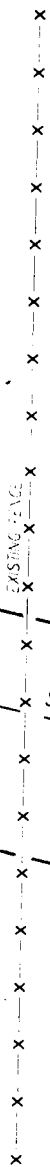
N00°10'00"E

S00°10'00"W

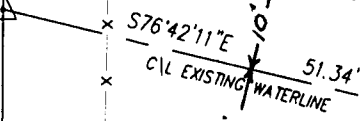
52.79'

40.98'

S90°00'00"W 50.00'



EXISTING FENCE



S76°42'11"E 51.34'

C/L EXISTING WATERLINE

FOUND #4 REBAR
SOUTHWEST CORNER
LOT 5, BLOCK 1
BURNS SUBD.

~~NORTH STREET~~

MECKER

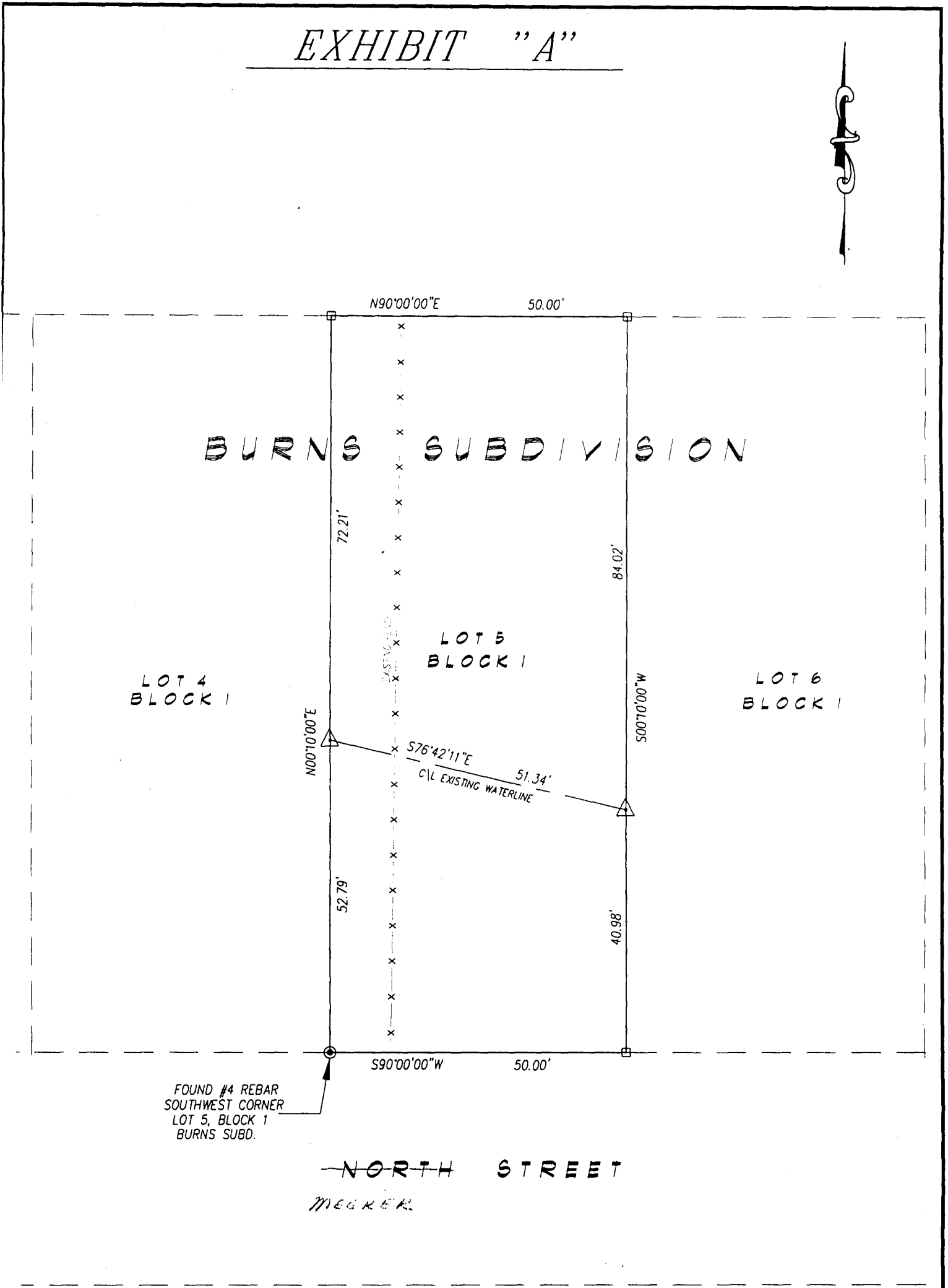
DRAWN BY: SRP
DATE: 12-30-96
SCALE: 1" = 20'
APPR. BY: IW
FILE NO: BURNS5.DWG

EASEMENT DESCRIPTION MAP

LOT 5, BLOCK 1, BURNS SUBDIVISION

DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION
CITY OF GRAND JUNCTION

EXHIBIT "A"



DRAWN BY: SRP
 DATE: 12-30-96
 SCALE: 1" = 20'
 PPR. BY: TW
 FILE NO: BURNS5.DWG

EASEMENT DESCRIPTION MAP

LOT 5, BLOCK 1, BURNS SUBDIVISION

DEPARTMENT OF PUBLIC WORKS
 ENGINEERING DIVISION
 CITY OF GRAND JUNCTION