

VIL0926R

TYPE OF RECORD:

PERMANENT

CATEGORY OF RECORD:

EASEMENT

NAME OF PROPERTY
OWNER OR GRANTOR:

VILLAGE HOMES OF COLORADO, INC.
AND GRAND VALLEY WATER USERS

PURPOSE:

IRRIGATION AND DRAINAGE AGREEENT
AS PART OF THE 26 ROAD
RECONSTRUCTION PROJECT AND
JACOBSON'S POND SUBDIVISION

CITY DEPARTMENT:

PUBLIC WORKS AND PLANNING

YEAR:

2009

EXPIRATION DATE:

NONE

DESTRUCTION DATE:

NONE

AGREEMENT (JACOBSON'S POND PROPERTY)

This AGREEMENT is made and entered into effective June 12, 2009, by and between **VILLAGE HOMES OF COLORADO, INC.**, a Colorado Corporation, 6000 Greenwood Plaza Blvd., Suite 200, Greenwood Village, Colorado 80111, Fax No.303-795-1467 (“Owner”), the **CITY OF GRAND JUNCTION, COLORADO**, 250 N. 5th Street, Grand Junction, CO 81501, Fax No. ~~970-244-1456~~ (“City”), and **GRAND VALLEY WATER USERS ASSOCIATION**, 1147 - 24 Road, Grand Junction, CO 81505, Fax No. 970-243-4871 (“Association”).

RECITALS

A. The City has constructed a project known as the 26 Road Reconstruction Project (“Project”). The Project involved work on and improvements to a portion of 26 Road between G Road and G-1/2 Road in Grand Junction, Colorado.

B. Owner owns real property located on the east side of 26 Road adjacent to the Project, which real property is described as follows (“Property”):

The North 30 acres of the NW¹/₄ SW¹/₄ of Section 35, Township 1 North, Range 1 West of the Ute Meridian; AND All that part of the SW¹/₄ NW¹/₄ of Section 35, Township 1 North, Range 1 West of the Ute Meridian lying South of Interstate Highway No. 70 and lying South of the Drainage Ditch “E” of United States Reclamation Survey Map; ALSO EXCEPTING THEREFROM tracts conveyed to The Department of Highways, State of Colorado by instruments recorded July 8, 1964 in Book 871 at Page 423, December 12, 1963 in Book 860 at Page 382 and March 25, 1964 in Book 867 at Page 238, Mesa County, Colorado.

C. Owner plans to subdivide the Property and develop it as a subdivision currently known as Jacobson’s Pond Subdivision. The Project will benefit the Jacobson’s Pond Subdivision development.

D. The Grand Valley Project is a federal reclamation project owned by Reclamation of America, Department of Interior, Bureau of Reclamation (“Reclamation”) and operated and maintained by the Association pursuant to a contract between the Association and Reclamation.

E. Lateral 7 is one of the features of the Grand Valley Project. Lateral 7 crosses the Property and then crosses under 26 Road in a siphon (the “Siphon”) in the area of the Project.

F. Certain easements for the use and benefit of the Grand Valley Project currently exist on, over, under and across the Property pursuant to a Subscription Agreement recorded at Book 130, Page 155 of the Mesa County Records (the “Subscription Agreement”), including an easement for

Lateral 7 (the “Lateral 7 Easement,” also sometimes known as the “Grand Valley Project Easements”).

G. The City has replaced and relocated the Siphon as part of the Project. In order to complete the relocation of the Siphon, a portion of the Lateral 7 Easement on the Property must also be relocated. The Association and Owner are willing to allow a portion of the Lateral 7 Easement to be relocated pursuant to the terms and conditions set forth herein.

Now, therefore, the parties agree as follows:

1. Relocation of Lateral 7 Easement. The City, Owner and the Association agree that the portion of the Lateral 7 Easement that is adjacent to 26 Road may be relocated, subject to the following terms and conditions:

A. The new location of the portion of Lateral 7 Easement that is adjacent to 26 Road shall be the location described on Exhibit B and illustrated on Exhibit A, attached hereto and incorporated herein by reference. The portion of the Lateral 7 Easement, when relocated to the location described and illustrated on Exhibits A and B, shall be referred to herein as the “Relocated Lateral 7 Easement,” also sometimes known as the “Relocated Easement.”

B. The City has relocated the Siphon under 26 Road as part of the Project. The relocation of the Siphon will be the subject of a separate Agreement between the City and the Association (the “City-Association Agreement”). As part of the City-Association Agreement, the City is obligated to connect the relocated Siphon to Lateral 7 on the Property.

C. The City has completed the connection of the relocated Siphon to Lateral 7 on the Property by constructing facilities within the Relocated Lateral 7 Easement. Accordingly, the parties agree that the portion of the Lateral 7 Easement between 26 Road and the point at which the relocated Siphon is connected to Lateral 7 is hereby relocated to the Relocated Lateral 7 Easement. The Relocated Lateral 7 Easement shall be perpetual and nonexclusive, subject to the provisions of Paragraph 5, below. No portion of the Lateral 7 Easement across the Property will be relocated pursuant to this Agreement except for the portion that is adjacent to 26 Road.

2. Purpose of Relocated Lateral 7 Easement. The Relocated Lateral 7 Easement is for the use and benefit of Reclamation, the Association and their successors and assigns, and represents a continuation, clarification and location of the rights held by Reclamation and the Association under the Subscription Agreement. The Relocated Lateral 7 Easement is for the purposes set forth in the Subscription Agreement and by applicable law, including without limitation the construction, reconstruction, operation, repair and maintenance of irrigation and drainage facilities. Reclamation and the Association shall have all rights and privileges regarding the Relocated Lateral 7 Easement as they enjoyed at the original location of the Lateral 7 Easement.

3. Conditions Relating to Relocated Lateral 7 Easement.

A. Owner shall not (i) place or construct any permanent structures, improvements, roads, or sidewalks within the Relocated Lateral 7 Easement area; (ii) plant any trees or bushes in the Relocated Lateral 7 Easement area; (iii) construct any fences or gates within or across the Relocated Lateral 7 Easement area; or (iv) construct or place any other obstructions within or make any other uses of the Relocated Lateral 7 Easement area that unreasonably interfere with the rights of Reclamation and the Association within the Relocated Lateral 7 Easement.

B. Reclamation and the Association shall not be responsible for nor have any obligation to compensate Owner or its successors or assigns for damages related to or arising out of the Association's reasonable use of the Relocated Lateral 7 Easement, the reasonable operation of the facilities in the Relocated Lateral 7 Easement, or from other reasonable activities of Association in the Relocated Lateral 7 Easement.

C. The City agrees that the City's replacement and relocation of the Siphon was performed with due care using commonly accepted standards and techniques without cost to Owner; and, at the City's sole cost and expense, the City shall, in a timely manner, reasonably repair and restore the surface and condition of those portions of the Property affected or damaged by the City's activities and return said affected areas to Owner in a condition reasonably approximate to that which existed prior to entry by the City.

D. To the extent allowed by law, the City hereby agrees to indemnify, defend and hold harmless Owner from and against any and all claims, liabilities, losses, costs, damages or expenses of any kind, including without limitation reasonable attorneys' fees, arising from or in anyway related to the City being negligent in its activities with respect to the Property and/or the City's being negligent in exercising its rights under this Agreement.

4. Rights and Duties to Run with Land. The rights and duties set forth herein shall run with the Property and shall be binding on and shall inure to the benefit of the parties to this Agreement and their respective heirs, successors, or assigns.

5. Future Development of the Property. Owner intends to develop the Property in the future. Such development may require that the Lateral 7 Easement, including the Relocated Lateral 7 Easement, be relocated, since, as it is currently designed, the Relocated Lateral 7 Easement interferes with the proposed future development. The parties agree that any further relocation of the Lateral 7 Easement, including the Relocated Lateral 7 Easement, shall be accomplished pursuant to a separate agreement between Owner and the Association, upon such terms and conditions as are acceptable to Owner and the Association, as contemplated by the Agreement between Owner and the Association dated June 4, 2007, and recorded on January 10, 2008 in Book 4584 at Page 180 of the records of Mesa County. The Association agrees that it shall not unreasonably withhold its agreement to relocate the Lateral 7 Easement, including the Relocated Lateral 7 Easement.

6. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, by overnight air express service or by certified mail, postage prepaid, return receipt requested, addressed to the parties at their respective addresses set forth in the introductory paragraph of this Agreement. Such notice or other communication shall be deemed given (i) upon receipt if delivered personally, (ii) one business day after tendering to a reputable overnight air express service, (iii) three business days after mailing if by certified mail or (iv) immediately when sent by facsimile transmission, provided receipt is confirmed and a confirming copy of the transmission is simultaneously deposited for delivery by U.S. Mail. Notice of change of address or facsimile number shall be given by written notice in the manner detailed above.

7. Miscellaneous Provisions.

A. Guaranty Bank is the beneficiary of a deed of trust against the Property, recorded in Book 3856 at Page 914 of the records of Mesa County. Guaranty Bank has signed a Consent of Beneficiary of Deed of Trust, consenting to the relocation of the Lateral 7 Easement (which is referred to in the Consent as the Grand Valley Project Easements). That Consent is attached hereto and incorporated herein by this reference.

B. In the event of legal proceedings under this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys fees and costs in addition to all other damages and remedies available at law.

C. This Agreement shall be governed under, and construed pursuant to, the laws of the State of Colorado.

D. Failure of any party to enforce any provision of this Agreement shall not act as a waiver to prevent enforcement of the same provisions at some later time.

E. Each party warrants and represents to the other parties that such party has taken all actions necessary to make this Agreement a valid obligation binding upon the party, and that all requirements of any applicable charter, ordinance, statute, or constitutional provision regarding the approval and execution of this Agreement have been met.

F. The paragraph headings are for convenience only and the substantive portions hereof control without regard to the headings.

G. This Agreement shall be modified by writing only, which writing must be executed by the parties hereto in order to be effective.

H. This Agreement was produced as a result of negotiations between the parties and should not be construed against either party as the drafter of this Agreement.

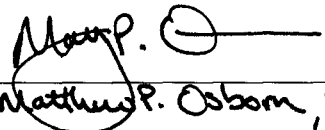
I. This Agreement shall be effective on the last date it is signed by the parties.

J. This Agreement may be executed in counterparts, all of which taken together shall be considered one instrument.

IN WITNESS THEREOF, each party to this Agreement has caused it to be executed as of the date set forth above.

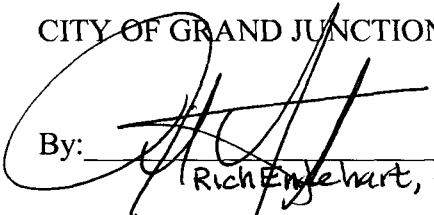
OWNER:

VILLAGE HOMES OF COLORADO, INC.

By:  _____
Matthew P. Osborn, President

CITY:

CITY OF GRAND JUNCTION, COLORADO

By:  _____
Rich Engelhart, Acting City Manager

ASSOCIATION:

GRAND VALLEY WATER USERS ASSOCIATION

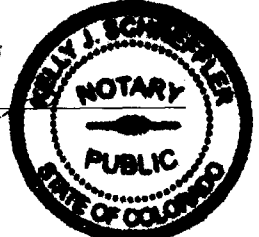
By:  _____
Richard Proctor, Manager

STATE OF COLORADO)
) ss.
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 19 day of May, 2009, by Matthew Osborn as President of Village Homes of Colorado, Inc.

WITNESS my hand and official seal.
My commission expires: April 29, 2012

Kelley Schuff
Notary Public

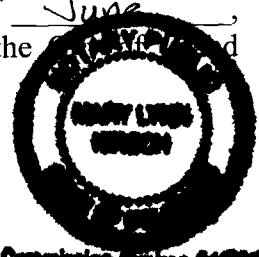


STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 12th day of June, 2009, by Rich Englehart as Acting City Manager of the City of Grand Junction, Colorado.

WITNESS my hand and official seal.
My commission expires:

Mary Lynn Kirsch
Notary Public

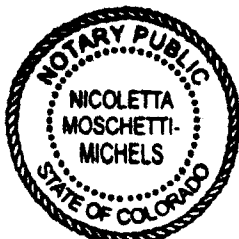


STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 27th day of May, 2009, by Richard Proctor, the Manager of Grand Valley Water Users Association.

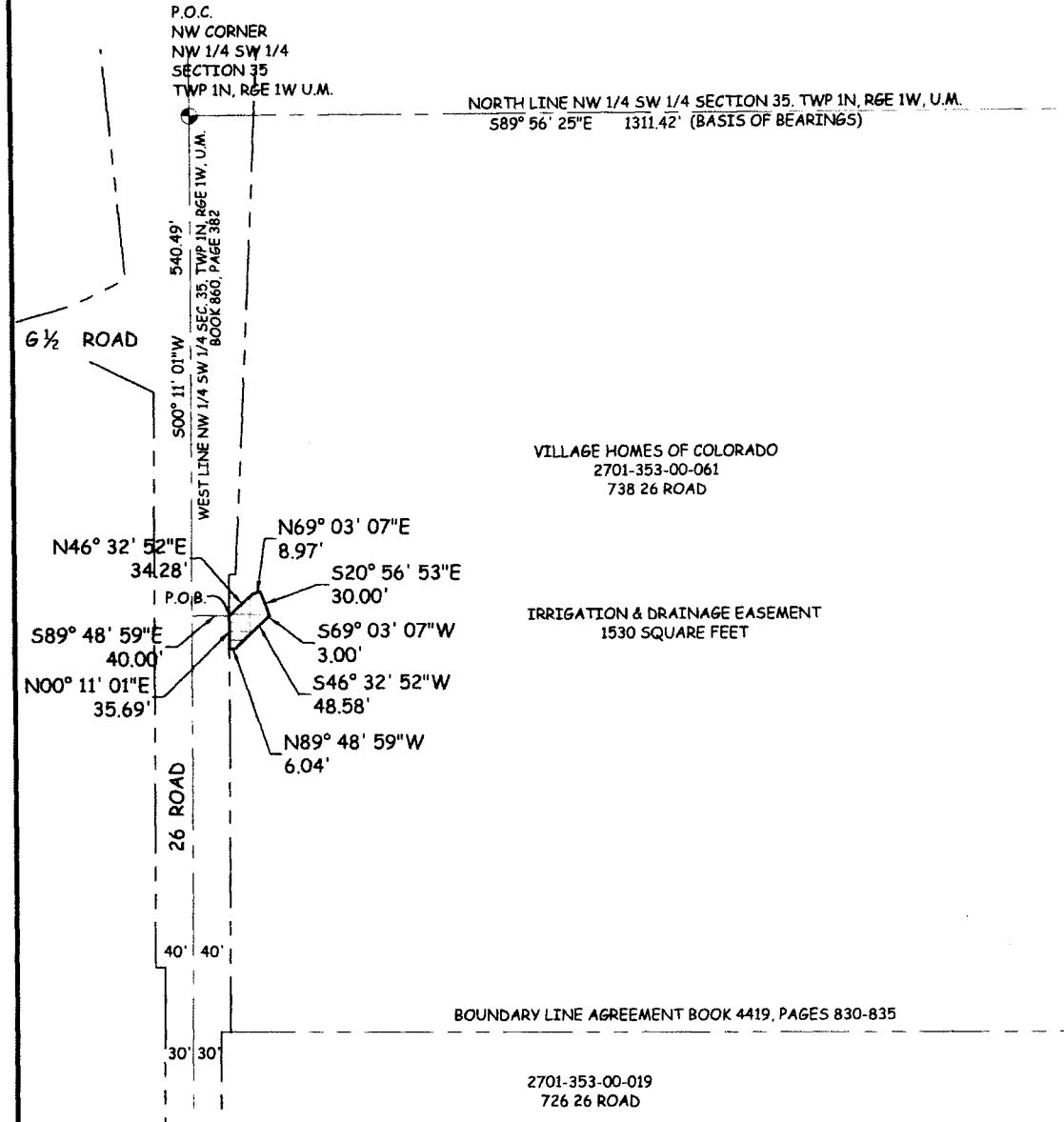
WITNESS my hand and official seal.
My commission expires: 05/08/2009

Nicoletta Moschetti Michels
Notary Public




My Commission Expires 05/08/2009
2013


EXHIBIT "A"



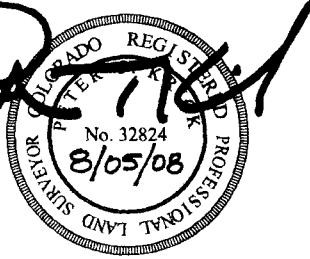
- ABBREVIATIONS**
- P.O.C. POINT OF COMMENCEMENT
 - P.O.B. POINT OF BEGINNING
 - R.O.W. RIGHT OF WAY
 - SEC. SECTION
 - TWP. TOWNSHIP
 - RGE. RANGE
 - U.M. UTE MERIDIAN

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.





1 inch = 150 ft.



DRAWN BY: TLP
 DATE: 8-04-08
 SCALE: 1" = 150'
 APPR. BY: PTK

IRRIGATION & DRAINAGE EASEMENT

VILLAGE HOMES OF COLORADO
 2701-353-00-061

CITY OF
Grand Junction
 COLORADO

EXHIBIT B

30' Irrigation and Drainage Easement from Village Homes of Colorado, Inc.
To
Grand Valley Water Users Association

A certain parcel situated in the Northwest Quarter of the Southwest Quarter (NW 1/4 SW 1/4) of Section 35, Township One North, Range One West of the Ute Principal Meridian, County of Mesa, State of Colorado and being more particularly described as follows:

Commencing at the Northwest corner of the NW 1/4 SW 1/4 of said Section 35 and assuming the North line of the NW 1/4 SW 1/4 of said Section 35 to bear S89°56'25"E with all bearings contained herein relative thereto; thence S00°11'01"W along the West line of the NW 1/4 SW 1/4 of said Section 35 a distance of 540.49 feet; thence S89°48'59"E a distance of 40.00 feet to a point on the Easterly right of way of 26 Road and the Point of Beginning; thence N46°32'52"E a distance of 34.28 feet; thence N69°03'07"E a distance of 8.97 feet; thence S20°56'53"E a distance of 30.00 feet; thence S69°03'07"W a distance of 3.00 feet; thence S46°32'52"W a distance of 48.58 feet; thence N89°48'59"W a distance of 6.04 feet returning to the Easterly right of way line of 26 Road; thence N00°11'01"E along the Easterly right of way of said 26 Road a distance of 35.69 feet to the Point of Beginning.

Said parcel contains 1,530 square feet, more or less, as described.

Prepared by:
Tony Pollack
250 N. 5th street
Grand Junction, CO 81501

CONSENT OF BENEFICIARY
OF DEED OF TRUST

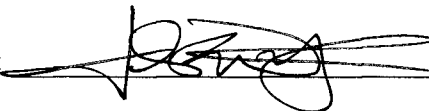
Guaranty Bank, 8333 Douglas Avenue, Dallas, TX 75225 ("Bank") is the beneficiary of a deed of trust recorded in Book 3856 at Page 914 of the records of Mesa County, Colorado (the "Deed of Trust"). The Deed of Trust encumbers the following property ("Jacobson's Pond Property"):

The North 30 acres of the NW¼ SW¼ of Section 35, Township 1 North, Range 1 West of the Ute Meridian; AND All that part of the SW¼ NW¼ of Section 35, Township 1 North, Range 1 West of the Ute Meridian lying South of Interstate Highway No. 70 and lying South of the Drainage Ditch "E" of United States Reclamation Survey Map; ALSO EXCEPTING THEREFROM tracts conveyed to The Department of Highways, State of Colorado by instruments recorded July 8, 1964 in Book 871 at Page 423, December 12, 1963 in Book 860 at Page 382 and March 25, 1964 in Book 867 at Page 238, Mesa County, Colorado.

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, Bank hereby consents to the relocation of the Grand Valley Project Easements, the construction of any facilities, and the conveyance of any facilities to the Association, all as set forth in the Agreement (Jacobson's Pond Property). The Bank agrees that it shall have no ownership, security or other interest in the facilities, that the Relocated Easements shall be and are prior and paramount to all rights of the Bank under the Deed of Trust, and that any foreclosure and sale of the Jacobson's Pond Property pursuant to the Deed of Trust shall be subject to the Relocated Easements and the rights of the Association in and to the facilities. Capitalized terms in this Consent shall have the same meaning as set forth for those terms in the Agreement (Jacobson's Pond Property).

Dated: April 2, 2009.

GUARANTY BANK

By: 

STATE OF TEXAS)
) ss.
COUNTY OF DALLAS)

The foregoing instrument was acknowledged before me this 2ND day of April, 2009, by John K. Wedemeyer as Vice President of Guaranty Bank.

WITNESS my hand and official seal.
My commission expires: 01-10-2010


Notary Public

