

CIM95MIC

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENT AGREEMENT

NAME OF AGENCY OR CONTRACTOR: CIMARRON PROPERTIES, MARYLOU
KENNEDY, SECRETARY

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: MICAELA'S
VILLAGE 2980 UNAWEEP AVENUE

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1995

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

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1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement") are CIMARRON PROPERTIES ("the Developer") and THE CITY OF GRAND JUNCTION, Colorado ("the City").

THEREFORE, for valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

2. **Effective Date:** The Effective Date of the Agreement will be the date that this agreement is recorded which is not sooner than recordation of the Plat

RECITALS

The Developer seeks permission to develop property within the City to be known as MICHAEL'S VILLAGE, which property is more particularly described on Exhibit "A" attached and incorporated by this reference (the "Property"). The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the development and limiting the harmful effects of substandard developments. The purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself and is not executed for the benefit of materialmen, laborers, or others providing work, services or material to the development or for the benefit of the purchasers or users of the development. The mutual promises, covenants, and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and the City's land development ordinances.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer will design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit "B" attached and incorporated by this reference. The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. The Developer's obligation to complete the improvements is and will be independent of any obligations of the City contained herein.

4. **Security:** To secure the performance of its obligations under this Agreement (except its obligations for warranty under paragraph 6), the Developer will enter into an agreement which complies with either option identified in paragraph 28, or other written agreement between the City and the Developer.

5. **Standards:** The Developer shall construct the Improvements according to the standards and specifications required by the City Engineer or as adopted by the City.

filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; in such event the City may immediately declare a default without prior notification to the Developer;

- d. Notification to the City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer.

13. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. For improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit "B" will be prima facie evidence of the minimum cost of completion; however, neither that amount or the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow establish the maximum amount of the Developer's liability.

14. **City's Rights Upon Default:** When any event of default occurs, the City may draw on the letter of credit, escrowed collateral, or proceed to collect any other security to the extent of the face amount of the credit or full amount of escrowed collateral, cash, or security less ninety percent (90%) of the estimated cost (as shown on Exhibit "B") of all improvements previously accepted by the City or may exercise its rights to disbursement of loan proceeds or other funds under the improvements disbursement agreement. The City will have the right to complete improvements itself or it may contract with a third party for completion, and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining, and repairing such improvements. Alternatively, the City may assign the proceeds of the letter of credit, the improvements disbursement agreement, the escrowed collateral, cash, or other funds or assets to a subsequent developer (or a lender) who has acquired the development by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished improvements and provides reasonable security for the obligation. In addition, the City may also enjoin the sale, transfer, or conveyance of lots within the development, until the improvements are completed or accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

15. **Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees and assigns harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the development or the Property

23. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also will be binding on the heirs, successors, and assigns of the Developer, and shall be a covenant(s) running with the Property. There is no prohibition on the right of the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations under the improvements disbursement agreement if it accepts new security from any developer or lender who obtains the Property. However, no other act of the City will constitute a release of the original Developer from his liability under this Agreement.

24. **Notice:** Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

If to Developer: Cimareon Properties
2034 Broadway
Grand Jct., Co. 81503

If to City: City of Grand Junction
Community Development Director
250 N. 5th Street
Grand Junction, Colorado 81501

25. **Recordation:** Developer will pay for all costs to record a copy of this Agreement in the Clerk and Recorder's Office of Mesa County, Colorado.

26. **Immunity:** Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under any applicable law.

27. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement whether arising out of or relating to the Agreement, letter of credit, improvements disbursements agreement, or cash escrow agreement or any action to collect security will be deemed to be proper only if such action is commenced in Mesa County, Colorado. The Developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

28. The **improvements guarantee** required by the City Code to ensure that the improvements described in the improvements agreement are constructed to City standards may be in one of the following forms:

X (I) disbursement agreement between a bank doing business in Mesa County and the

City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501

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Sam Turner
Director of Community Development

8/14/95
Date

Attest:

Stephanie Nye
Stephanie Nye
City Clerk

8/14/95
Date

Nancy L. Denny - CIMARRON PROPERTIES 8/11/95
Developer Date
(If Corporation, to be signed by the President and attested to by the Secretary together with the Corporate seals)

EXHIBIT "B"**IMPROVEMENT LIST/DETAIL**

(page 1 of 2)

Date: 6/15/95Name of development: Micaela's VillageLocation: 2980 Unawee ave Grand JunctionPrint name of person preparing: Eric Marquez

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
I. SANITARY SEWER				
1. Clearing and grubbing				
2. Cut and remove asphalt				
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	L.F.	1560	\$4.63	\$7,223
4. Sewer Services (incl. trenching, bedding, & backfill)	ea	37	\$65.11	\$2,409
5. Sanitary sewer manholes	ea	10	\$746	\$7,460
6. Connection to existing manholes				
7. Aggregate Base Course				
8. Pavement replacement				
9. Driveway restoration				
10. Utility adjustments				
II. DOMESTIC WATER				
1. Clearing and grubbing				
2. Cut and remove asphalt				
3. Water Main (incl. excavation, bedding, backfill, valves and appurtenances)	L.F.	1,675	7.52	\$12,596
4. Water services (incl. excavation, bedding backfill, valves, and appurtenances)	F.A.	37	\$340	\$12,580
5. Connect to existing water line	ea.	1	\$500	\$500
6. Aggregate Base Course	C.Y.	2	\$202	\$404
7. Pavement Replacement				
8. Utility adjustments				
III STREETS				
1. Clearing and grubbing				
2. Earthwork, including excavation and embankment construction	C.Y.	6148	.86	\$5,287
3. Utility relocations				
4. Aggregate sub-base course				
5. Aggregate base course	C.Y.	1,200	\$12	\$14,400
6. Sub-grade stabilization	ea.	1	\$2700	\$2,700
7. Asphalt or concrete pavement	ton	920	\$23	\$21,160
8. Curg, gutter & sidewalk	L.F.	3,300	\$12	\$39,600
9. Driveway sections				
10. Crosspans & fillets	ea.	12	\$312	\$3,744

11. Storm drainage system	L.S.	1	\$9,300	\$9,300
12. Signs and other traffic control devices	ea.	8	\$200	\$1,600
13. Construction staking	L.S.	1	\$5,000	\$5,000
14. Dust control	L.S.	1	\$1000	\$1000
15. Street lights	ea.	2	\$1000	\$2000
IV MISCELLANEOUS				
1. Design/Engineering	%		6.8	\$17,967
2. Surveying	%		4.8	\$14,228
3. Developer's inspection costs	%		0.7	\$3,000
4. Quality control testing	%		1.2	\$3,500
5. Construction traffic control				
6. Rights-of-way/Easements				
7. City inspection fees	%		12	\$500
8. Permit fees				
9. Recording costs				
10. Bonds				
11. Newsletters				
12. General construction supervision				
13. Other (as built drawings)				\$2,000
14. Other (Testing)				\$10,000

TOTAL ESTIMATED COST OF IMPROVEMENTS \$199,158

Nancy Lou Kennedy
Signature of developer

8/11/95
date

I have reviewed the estimated costs and time schedule shown above and, based on the plan layouts submitted to date and the current costs of construction, I take no exception to the above.

Jay W. [Signature]
CITY ENGINEER

8-11-95
DATE

Jerry Timm
COMMUNITY DEVELOPMENT

8/14/95
DATE

DISBURSEMENT AGREEMENT
(Improvements Guarantee)

DEVELOPER: *Cimarron Properties*

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1726282 02:57 PM 08/14/95
MONIKA TODD CLK&REC MESA COUNTY CO

BANK: *NORWEST Down Town*

PROPERTY: *MICHAELA'S Village*

DISBURSEMENT AMOUNT: *\$199,158⁰⁰*

This Agreement is entered into by and between *Cimarron Properties* ("the Developer"), *Norwest Bank Grand Junction - Downtown* (the "Bank"), and the City of Grand Junction, Colorado ("the City").

RECITALS

Developer has been required by the City to construct certain improvements to *Micacela's Village* (the "Improvements") in accordance with the Zoning and Development Code, Improvements Agreement and subdivision approval.

The Bank has agreed to loan funds to the Developer for construction of the improvements.

The City Engineer has approved an estimate of the costs of the Improvements, and that amount or an amount not to exceed \$ *199,158*, whichever is greater, shall be referred to as the "Funds."

The parties desire to secure the performance of the Developer's obligations and that the funds are disbursed only to pay for the Improvements.

NOW, THEREFORE, THE PARTIES AGREE:

1. Bank shall dedicate or set aside the funds on behalf of Developer and for the City's benefit within forty-eight hours of execution of this Disbursement Agreement. Bank warrants that the funds are to be held in trust solely to secure Developer's obligations under the Improvements Agreement; that the Bank shall

act as agent of the City in holding the funds; that the funds will not be paid out or disbursed to or on behalf of the Developer except as set forth in this document or as set forth in the Improvements Agreement; and that the Bank may not modify or revoke its obligation to disburse funds to or on behalf of the Developer or the City. The Bank warrants that the funds are and will be available exclusively for payment of the costs of satisfactory completion of the improvements.

A. **DISBURSEMENT PROCEDURES.** Funds shall be advanced for payment of costs incurred for the construction of Improvements on the Property in accordance with the Improvements List/Detail, evidenced as "Exhibit A." All disbursements must comply with the following procedures:

(1) **Request for Advance.** Developer shall deliver to the Bank a written request for the disbursement of funds on forms acceptable to the Bank. Such requests shall be signed by Developer, Developer's General Contractor, Project Engineer and Architect, if applicable, and shall certify that all costs for which the advance is being requested have been incurred in connection with the construction of the improvements on the Property; that all work performed and materials supplied are in accordance with the plans and specifications submitted to and approved by the City; that the work has been completed in a workmanlike manner; that no funds are being requested for work not completed or for material not installed; and that Project Engineer has inspected the improvements for which payment is requested; and that such has been completed in accordance with all terms, specifications and conditions of the approved plans.

(2) **Documentation, Waivers and Checks.** Each request for disbursement of funds shall be accompanied by: (i) one original and one copy of each invoice to be paid; (ii) checks drawn on Developer's construction loan account with the Bank, made payable to the payee and for the amount of each invoice presented for payment; (iii) lien waivers in a form approved by the Bank prepared for signature by each payee; (iv) postage paid envelopes addressed to each payee for the mailing of checks presented to the Bank; and (v) receipt by the Bank of all lien waivers relating to any prior disbursements, which lien waivers shall be properly executed and contain no alterations or modifications from those lien waivers that have been previously presented to the Bank.

Upon approval by Developer, the Project Architect and the Bank of the invoices being presented to the Bank, the Bank shall advance funds into the checking account designated for the payment of the invoices and mail the checks to the payees in the envelopes presented to the Bank, together with lien waivers and copies of supporting invoices.

Under no circumstances shall the Bank make a disbursement for the payment of an invoice if it in good faith believes that: (i) the work has not been completed; (ii) the work has not been completed in a workmanlike manner; (iii) written approval has not been received from the Project Architect; or (iv) any lien waiver has been altered or modified or has not been returned to the Bank.

(3) **Default.** Upon default of the Developer on any obligation to Bank or under the Improvements Agreement, Bank shall disburse no funds to, or at the direction of, the Developer except to the City under the terms of the Improvements Agreement. Bank shall immediately notify the City, in writing, of any event of default as provided for in the Improvements Agreement as provided herein.

(4) **Disbursement to City.** In the event the improvements are not satisfactorily and timely constructed, or upon any default, the City shall notify the Bank to immediately cease disbursement of funds to the Developer and disburse the full amount of the remaining undisbursed funds to the City. Upon such notice, the Bank shall promptly honor the demand of the City to disburse the funds to the City or a third party or parties. Upon final completion and acceptance of the performance required under the Improvements Agreement, the City shall refund to the Bank any funds disbursed, if any, which are not actually expended to pay all costs, expenses and liabilities, including attorney fees, incurred in completing the improvements.

DEVELOPER CONSENT: The Developer, by the signature of the Manager, consents to disbursements and other actions authorized and provided for by the terms of this Agreement.

LIABILITY FOR LOSS: If the Bank fails to disburse funds in accordance with the procedures set forth and the City suffers loss, the Bank shall be liable to the City for the City's direct and consequential damages.

BINDING EFFECT: This Agreement shall be binding on the heirs, successors, receivers and assigns of all parties and shall terminate when the City has accepted the Improvements and has recorded a release of the Improvements Agreement.

IMMUNITY: Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under applicable state law.

Dated this 10th day of August, 1995.

(BANK) Northwest Bank Grand Junction - Downtown

By: Thad Ritter
Title Thad Ritter, A.U.P.

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(DEVELOPER) Cimarron Properties

By: Mary Lou Kennedy

CITY OF GRAND JUNCTION

By: James Tamm 8/14/95
Director of Community Development

s:disburse

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between Cimarron Properties Developer, NORWEST as Bank, and the City of Grand Junction, the following are the individuals authorized to sign written requests for the disbursement of the Funds:

DEVELOPER:

(name) Cimarron Properties

Mary Lou Kennedy
(signature)

(name)

(signature)

(name)

(signature)

DEVELOPER'S GENERAL CONTRACTOR:

Cimarron Properties
(name)

Ed Kuebler
(signature)

DEVELOPER'S PROJECT ENGINEER:

Wayne H. Lizer PE PLS 14113
(name)

Wayne H. Lizer
(signature)

DEVELOPER'S ARCHITECT:

NONE
(name)

(signature)

CITY ENGINEER:

Jody Kliska
(name)

Jody Kliska
(signature)

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration is made on the date hereinafter set forth by MARY LOU KENNEDY hereinafter referred to as "DECLARANT"

WITNESSETH:

WHEREAS, the Declarant is the owner of certain property in the county of Mesa, State of Colorado, which includes all lots included in MICAELA'S VILLAGE situated in the SE 1/4 SE 1/4 SECTION 23, T1S, R1W, U.M.

NOW, THEREFORE, the Declarant hereby declares that all of the above said properties shall be held, sold and conveyed subject to the following easement restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performances of an obligation.

Section 2: "Properties" shall mean and refer to that certain real property herein above described, and such additions thereto as may hereafter be brought within the jurisdiction of the development.

Section 3: "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties.

Section 4: "Declarant" shall mean and refer to Mary Lou Kennedy, her successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

ARTICLE II

BUILDING RESTRICTIONS

Section 1: The erection of more than one dwelling per lot is prohibited.

Section 2: All building setback lines are to be as follows:

Front = 20' From property line
Rear = 15' From property line (except where easements are larger)
Side = 5' From property line
Along UnawEEP = 25' From property line

Section 3: No trailer, camper, basement, tent, shack, garage, barn or any other outbuilding erected on any lot shall at anytime be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence. Exception: one trailer on lot 2 block 4 shall be used for security purpose.

Section 4: No dwelling shall be erected, altered, placed or permitted to remain on any lot other than one single-family dwelling of ranch style of not less than 1,200 square feet or if multistory not less than 1500 square feet plus a private garage for not more than three cars and any other building incidental to residential use of the tract or lot.

Section 5: Exterior paints shall be colors known to be earth shades (and subject to the approval of the homeowners association). No bright or garish colors shall be permitted on the exterior of any structure in the subdivision.

Section 6: Vehicle parking in driveways and on the streets in front of houses shall be limited to temporary parking of guest or resident vehicles in current use and currently licensed. Storing automobiles, trucks, campers, boats, snowmobiles, motorcycles, motor bikes or any other vehicle of any other description in the street, driveway, yards or residences, in front of the principle building set back lines is specifically prohibited. Such vehicles may be stored behind the privacy fencing within the boundaries of such lot. Vehicular maintenance or repair which renders the vehicle inoperable for more than seventy-two hours is prohibited on streets, driveways or in front of any privacy fencing of the residences. This provision shall not permit the commercial repair of any type of vehicle, such activity being expressly prohibited.

Section 7: No sign of any kind shall be displayed to the public view on any lot except one sign of not more than six (6) square feet advertising a property for resale.

Section 8: No fence, foliage, trees or hedge in the nature of a fence shall be planted, maintained, constructed or erected nearer than twenty (20) feet to the front Residential Building lot line or nearer than twenty (20) feet to the side street Residential building lot line. Fences and hedges in the nature of a fence not closer to the front Residential Building Lot Line than the minimum set back line shall not be higher than six (6) feet.

Section 9: No noxious or offensive trade or activity or unlawful activities shall be carried on upon any lot nor shall anything be done thereon which may be an annoyance or nuisance to the neighborhood.

Section 10: No animals, included but not limited to, horses, cows, pigs, goats, chickens, ducks, rabbits, or any other domesticated animals, except household pets, shall be maintained temporarily or permanently on any said lot.

Section 11: Landscaping, including but not limited to grass, sod, rock, shrubs, or any other plants, shall have been completed on the front and side yards of said Lot within one (1) year of transferring of the deed from the Declarant to the Owner. Lawns, trees, shrubs and such shall be watered, fertilized trimmed and maintained in such a manner as to keep all such vegetation green and attractive in looks

Section 12: Perimeter lots will be required to put up a five (6) foot wood fence of the same material and construction.

Section 13: Construction requirements. Exterior siding must consist of one of the following: brick, stucco, natural stone or natural wood. Use of not less than 10% brick is encouraged on the front exterior of the structure.

Section 14: Homeowner Association. A homeowners association will own and maintain the irrigation system.

ARTICLE III

GENERAL PROVISIONS

Section 1: ENFORCEMENT. Any owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges not or hereafter imposed by the provisions of this Declaration. Failure by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2: SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment of Court Order shall in no way affect any other provision which shall remain in full force and effect.

Section 3: AMENDMENT. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for

successive period of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (75%) percent of the lot owners, and thereafter by an instrument signed by not less than seventy-five (75%) percent of the lot owners. Any amendment must be recorded.

Section 4: PUBLIC UTILITIES. All lots are subject to and bound by Public Service Company tariffs which are now and may be in the future filed with the Public Utilities Commission of the State of Colorado relating to street lighting in this subdivision, together with rates, rules, and regulations, therein provided and subject to all future amendments and changes thereto. The owner or owners shall pay as billed a portion of the cost of public street lighting in the subdivision according to Public Service Company rates, on file with the Public Utilities Commission of the State of Colorado.

Section 5: These Covenants specifically prohibit the discrimination against any person who is a prospective purchaser of a lot, due to racial, ethnic or religious reasons. It is the intention of the Covenants to insure that persons of varying racial, ethnic or religious background are made welcome as prospective purchasers and homeowners.

Dated this 9th day of August, 1995

By Mary Lou Kennedy
Mary Lou Kennedy

State of Colorado

County of Mesa

Subscribed and sworn to before me, in my presence, this 9th day of August, 1995, a Notary Public in and for the State of Colorado.

Dee Goodsell

Dee Goodsell, Notary Public
State of Colorado
My Commission Expires 6/9/99

DRAINAGE EASEMENT AND AGREEMENT

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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.

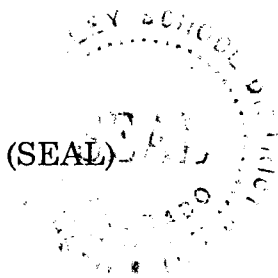
DISTRICT:

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 K. [unclear]
City Manager

ATTEST:

Stephanie Nye
City Clerk



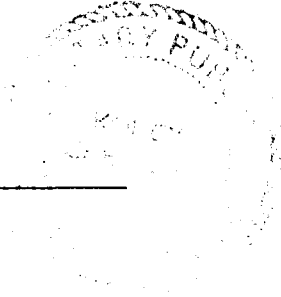
STATE OF COLORADO)
: ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 9th 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 8th day of Aug; 1995, by Mary Lou Kennedy.

Dee Goodsell, Notary Public
State of Colorado
My Commission Expires 6/9/99

Witness my hand and official seal.

My commission expires: _____

Dee Goodsell
Notary Public