

**PUBLIC FACILITIES CROSSING, CONSTRUCTION
AND MAINTENANCE AGREEMENT**

THIS PUBLIC FACILITIES CROSSING, CONSTRUCTION AND MAINTENANCE AGREEMENT (Agreement) is made this 15th day of June, 2005 and is between the **GRAND VALLEY IRRIGATION COMPANY**, a Colorado nonprofit corporation (GVIC), whose address is 688 26 Road, Grand Junction, Colorado 81506, **COLORADO HOMES & LIVING BY DESIGN, LLC**, a Colorado limited liability company (Owner), whose address is 1359 Chipeta Avenue, Grand Junction, Colorado 81501, and the **CITY OF GRAND JUNCTION**, a home rule municipality (City), whose address is 250 N. 5th Street, Grand Junction, Colorado 81501. Collectively the three shall be referred to as "Parties."

RECITALS

- A. GVIC is the owner and operator of a system of irrigation canals and related facilities located in Mesa County, Colorado (collectively referred to as the "Canal Facilities"). The Canal Facilities include the canal bed, banks, access roads and embankments, which collectively provide the structures for the delivery and containment of irrigation water.
- B. Owner owns real property in Mesa County, Colorado, described on Exhibit A, which is attached hereto and incorporated herein by this reference. Owner desires to develop the real property described on Exhibit A as a residential subdivision under the name and style of Arcadia North Subdivision (Subdivision). The Subdivision is burdened by a prescriptive easement for the Canal Facilities.
- C. As a condition of obtaining subdivision approval from the City (City Community Development file number FP-2004-198 and VR-2004-269), Owner is required to install, repair and maintain a sanitary sewer line and appurtenant facilities therefor (Improvements), connecting the Subdivision to the City sanitary sewer system.
- D. Owner desires to obtain from GVIC the consent to install, repair and maintain the Improvements.
- E. Upon construction and final acceptance by the City of the Improvements pursuant to the Development Improvements Agreement (DIA) and Maintenance Guarantee entered into by the Owner and the City as part of the development approval for the Subdivision, the City will agree to be responsible for maintaining and repairing the Improvements.

NOW THEREFORE, in consideration of the Recitals above, and the mutual covenants and promises set forth below, GVIC, Owner and the City agree as follows:

1. Consent. Subject to the terms and conditions of this Agreement, GVIC consents to the Owner's installation, repair and maintenance of the Improvements, and the City's operation, repair and maintenance of the Improvements following the City's acceptance of the same, over, under and across the real property described on Exhibit B attached hereto and incorporated herein by this reference, which shall hereafter be referred to as the "Crossing

Area.” The Parties acknowledge and agree that GVIC is giving its consent without warranty, express or implied, as to the merchantability of GVIC’s title to the Crossing Area, or the suitability of the Crossing Area for any use or purpose permitted under this Agreement

2. Use of the Crossing Area. The use of the Crossing Area shall be solely for the construction or installation and thereafter the repair and maintenance of the Improvements connecting the Subdivision to the City’s sanitary sewer system.

3. Construction of the Improvements.

a. Plans and Specifications.

i. Definition. The Plans and Specifications shall consist of the designs, drawings, plans and specifications prepared by and identified as Arcadia North Subdivision Outfall Sanitary Sewer Plan & Proposal prepared by Rolland Engineering dated May 9, 2005 identified as Project Number 3092 which shall hereafter be referred to as the “Plans and Specifications.” The Plans and Specifications shall include any subsequently developed designs, drawings, plans or specifications, including change orders, approved by GVIC.

ii. Owner’s Warranty of Plans and Specifications. Owner warrants the accuracy and suitability of the Plans and Specifications for the construction or installation of the Improvements and related facilities.

iii. GVIC Review. GVIC acknowledges that it has reviewed the Plans and Specifications and given its consent to the construction of the Improvements in reliance on this review. GVIC’s review of the Plans and Specifications is solely for the use and benefit of GVIC and is not intended, nor shall it be construed to be or constitute a certification or acceptance thereof as accurate or sufficient or constitute a waiver, release or other limitation upon the Owner’s warranty set forth in paragraph 3.a.ii. above, or a waiver, release or other limitation on GVIC’s rights to assert claims against the Owner or the consultants or engineers preparing the Plans and Specifications because of errors, omissions or defects therein.

b. The Work. The “Work” shall be and constitute all labor, materials, equipment, supplies and permits or licenses, including the fees and costs of any subcontractors or suppliers, reasonable or necessary for the commencement and completion of the Improvements in accordance with the Plans and Specifications.

c. Commencement, Completion and Construction Schedule. Work shall commence on June 17, 2005, and be completed on June 30, 2005. The timing, sequence and staging of the Work shall be coordinated by Owner with GVIC, and shall be subject to GVIC approval, to assure that all Work does not interfere with

GVIC's use, operation and maintenance of the Canal Facilities, and that the Improvements shall be completed by the completion dates set forth herein.

d. Conditions of Construction.

- i. All construction shall be strictly in conformance with the Plans and Specifications, shall be pursued with diligence and in a good and workmanlike manner, and shall comply with all laws, ordinances, rules, regulations and orders of any applicable governmental authority bearing on the performance of the Work, including any applicable building or construction codes. Any Work not conforming thereto shall be corrected by Owner immediately at its sole expense.
- ii. Owner shall pay all costs, expenses, fees, taxes or other disbursements which are reasonable or necessary for the performance of the Work in a timely manner.
- iii. Owner shall be solely responsible for all construction means, methods, techniques and sequences and procedures, subject to Owner's obligation to coordinate with GVIC, and to complete all Work in accordance with this Agreement. Owner shall further be solely responsible for obtaining or contracting for all labor, materials, equipment, tools, machinery, utilities, transportation and other services necessary for the proper execution and completion of the Work, and shall be solely and absolutely obligated to pay any costs or expenses therefor.
- iv. Owner shall insure that all employees or subcontractors performing the Work shall at all times observe and conduct themselves in a disciplined and professional manner. Owner shall not employ any person or subcontractor, or suffer or permit the employment of any employee of any subcontractor that is unfit or not skilled for the task assigned to him/her. Owner shall furthermore be responsible for initiating, maintaining and supervising reasonable safety precautions and programs in connection with the Work to prevent bodily injury, death or property damage to any employees, subcontractors or members of the general public, or damage to the Canal Facilities or any property adjoining the Canal Facilities.
- v. Owner shall not cause or suffer any mechanic's lien or other encumbrance to be placed upon the Crossing Area, or any aspect of the Canal Facilities in connection with the performance of the Work or any operation, repair and maintenance of the Improvements thereafter. In the event any mechanic's lien or other encumbrance is asserted or filed on the Crossing Area, Owner shall immediately cause a removal thereof by bond under the Colorado Mechanic's Lien Act.

- vi. At all times during performance of the Work, Owner shall keep the Improvements and Crossing Area free from the accumulation of waste materials or rubbish. Upon completion of the Improvements, Owner shall remove all waste material and rubbish from the Crossing Area and the Canal Facilities, as well as all tools, construction equipment, machinery and surplus machinery and, to the extent that the Owner disturbs any Canal Facilities adjacent to the Improvement, to restore the land adjacent to the Improvements to the condition existing prior to the commencement of construction.

e. Subcontractors.

- i. Prior to commencement of the Work, Owner shall submit to GVIC a list of all subcontractors proposed for performance of the Work. Owner shall not employ any subcontractor to whom GVIC has made an objection.
- ii. Owner shall cause each contractor and subcontractor to maintain insurance against claims and liabilities arising under the laws of the State of Colorado pertaining to workers' compensation, unemployment compensation and occupational diseases. Prior to the commencement of the Work, Owner shall provide to GVIC certificates of insurance showing such coverage in effect and also providing that such insurance will not be canceled or modified except upon thirty (30) days' written notice to GVIC.

4. Owner's Obligation to Maintain and Repair. Owner shall, at its sole cost and expense, maintain and repair the Improvements, including all features, facilities and structural components thereof, so that they perform and function according to their intended uses and according to the Plans and Specifications, and in such a manner that they do not interfere with GVIC's use, operation, control and enjoyment of the Canal or the Canal Facilities, including any seasoning, testing and correction work related thereto. The Owner's obligation to keep, repair and maintain the Improvements shall continue until such time as the Improvements are accepted by the City and the City assumes the operation, maintenance and repair thereof. All repairs, maintenance, seasoning, testing and correction work performed by the Owner shall be coordinated with GVIC, shall be completed or undertaken during the non-irrigation season, and shall not interfere with GVIC's operation, maintenance, control or use of the Canal Facilities.

5. Indemnity, Insurance and Security.

- a. Indemnity. Owner shall indemnify and hold GVIC harmless against any and all loss, liability, claim or damage, including but not limited to claims for bodily injury, property damage or death, arising out of or resulting from construction, installation, seasoning, testing, maintenance or repair of the Improvements, including but not limited to, any loss or liability resulting from errors, omissions

or defects in the Plans or Specifications. This indemnity shall include GVIC's reasonable attorneys' fees paid or incurred to investigate, negotiate, mediate, litigate or settle any claim, whether pending or threatened, indemnified hereunder. This indemnity shall further specifically include any claims brought by members of the general public or adjoining property owners.

- b. Insurance. Owner, or its contractor, shall purchase and maintain commercial general liability insurance against any loss, liability, property damage, bodily injury or death arising from or in connection with the Work, including claims for damages arising from the ownership, maintenance or use of a motor vehicle, in an amount not less than \$2,000,000.00, including products liability and completed property operations, and combined single limit automobile coverage in the amount of \$1,000,000.00 for each accident. Owner, or its contractor, shall also purchase and maintain insurance against any casualty loss to the Work. The insurance coverage provided herein shall not exclude or except claims for earth movement, subsidence, collapse or other event of a similar type. In addition, Owner, or its contractor, shall purchase and maintain insurance claims and liabilities arising under the laws of the State of Colorado pertaining to workers' compensation, unemployment compensation and occupational diseases. The Owner or its contractor shall provide GVIC with a certificate of insurance for the coverage required hereunder, and further provide that such coverage will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to GVIC. The Certificate of Insurance shall name GVIC as an additional insured for all coverage required hereunder.
- c. Security. To secure the Owner's performance of all of its duties and obligations set forth in this Agreement, including but not limited to payment and performance obligations as set forth herein, Owner shall provide to GVIC an irrevocable line of credit, letter of credit or cash deposit available to GVIC to draw upon to pay or reimburse GVIC for any cost of expense or damages caused by or arising from the construction of the Improvements hereunder or to satisfy Owner's payment or performance obligations as set forth in this Agreement. The amount of security shall be in the sum of \$ 20,000.00, and be in a form approved by GVIC. The security shall continue until the City accepts the Improvements and undertakes the operation, maintenance and repair thereof.
- d. Personal Guarantee. Owner's representatives, Marc R. Winger does hereby personally guarantee Owner's performance of the obligations set forth in this Agreement, such guarantee to remain in force and effect until such time as the City accepts the Improvements and assumes the operation, repair and maintenance thereof.

6. Default and Remedies—Owner. Time is of the essence for the performance of Owner's obligations pursuant to this Agreement. A default shall be deemed to have occurred on the part of the Owner in the event the Owner shall fail or refuse to perform any obligation pursuant to this Agreement following seven (7) business days' written notice of such failure

or refusal. Without limitation on any other remedy available to GVIC, in the event Owner shall fail or refuse to cure any nonperformance, noncompliance or other breach of this Agreement within seven (7) business days' notice thereof, then GVIC may, in its sole and absolute discretion, and without limitation on any other remedies available, to GVIC, undertake the following action:

- a. Terminate and/or suspend use of the Crossing Area;
- b. Undertake such actions as GVIC determines reasonable and necessary to cure any nonperformance or noncompliance by the Owner, including but not limited to, taking physical possession of the Crossing Area and all material, equipment, tools and other things thereon to complete any or all portions of the Improvements, or the undertaking of seasoning, testing and corrective work to the Improvements, or the undertaking of repairs and/or maintenance thereto, all of the foregoing to be exercised in whole or in part in GVIC's sole and absolute discretion; and/or
- c. To commence legal proceedings for the recovery of damages and/or for injunction or specific performance as is appropriate in the circumstances, resulting from Owner's breach of this Agreement, including but not limited to, any costs, expenses or other fees paid or incurred by GVIC in exercising its remedies hereunder, including GVIC's use of equipment, personnel and the administrative expenses for the same.

In the event GVIC or Owner seek to enforce any term or provision of this Agreement by legal proceedings, the prevailing party in such legal proceeding shall be entitled to recover its reasonable attorneys' fees and costs for the same.

7. City's Obligation to Operate, Maintain and Repair.

- a. Agreement to Operate, Maintain and Repair. Following the acceptance of the Improvements by the City, the City agrees to operate, maintain and repair the same at its sole cost and expense such that the Improvements function and perform according to their intended uses and according to the Plans and Specifications.
- b. No Unreasonable Interference. The City's operation, maintenance and repair of the Improvements shall not unreasonably interfere with GVIC's use of the Crossing Area or the operation, maintenance and repair of the Canal Facilities. In further explanation of this subparagraph, the Parties agree as follows:
 - i. Irrigation Season. During the irrigation season (April 1 to October 31), the parties agree that it shall be an unreasonable interference for the City's operation, maintenance and repair of the Improvements to be conducted below water level, or to affect the water flowing in the canals, or to involve the excavation or penetration of the Canal Facilities, in, under or upon the Crossing Area, or to block or obstruct or close the

passage of equipment, personnel or vehicles upon the Canal Access Road for any period in excess of eight (8) hours per day or for more than one (1) day per week or to cause or threaten structural failure or instability of the Canal Facilities or the Improvements, except for emergency situations defined below.

- ii. Non-irrigation Season. During the non-irrigation season (November 1 through March 31), GVIC and the City shall coordinate their respective operations, maintenance or repairs to the Improvements and the Canal Facilities so as to avoid any conflict in the respective activities of the City and GVIC in regard to the operation, repairs or maintenance of the Improvements or the Canal Facilities or the running of GVIC's domestic water right during the non-irrigation season. All repair or maintenance work performed in the non-irrigation season shall be completed on or before March 15 of such year.
 - iii. Emergency Situations. An emergency situation shall be deemed to mean any event, including a break, leak or failure for any reason in the Improvements or the Canal Facilities that creates a danger to persons, property and/or the environment as reasonably determined by the City, any governmental entity or agency having or asserting jurisdiction thereof or GVIC. In the event of an emergency situation, the City and/or GVIC and/or other governmental entity or agency shall immediately undertake such action as is reasonable or necessary to commence repair of the Improvements or Canal Facilities as the case may be, and to diligently pursue repair efforts so as to eliminate, minimize and reduce the actual or threat of loss or damage to persons, property and/or the environment.
 - iv. Disagreements. In the event there is a disagreement as to whether or not the City's operation, maintenance or repair of the Improvements is or is not an unreasonable interference with GVIC's use, operation and maintenance of the Canal Facilities, then either party may petition the Mesa County, Colorado District Court for a declarative determination of such issue.
- c. Indemnity. The City shall indemnify and hold GVIC harmless from any and all loss, liability, claim or damage arising from or in connection with the negligence of the City in the operation, repair or maintenance of the Improvements.
- d. Default and Remedies.
- i. Default. A default on the part of the City shall be deemed to have occurred in the event the City shall fail or refuse to perform the operation, maintenance and repair of the Improvements, or any other obligation of the City pursuant to this Agreement following GVIC's

giving thirty (30) days' written notice of such failure or refusal, specifying with reasonable particularity the acts or omissions constituting such failure and refusal.

ii. Remedies. Without limitation of any other remedy available to GVIC, in the event the City shall fail or refuse to cure any nonperformance or noncompliance or other breach of this Agreement following thirty (30) days' written notice thereof, then GVIC may undertake the following remedies:

1. Undertake such actions as GVIC determines reasonable and necessary to cure any nonperformance or noncompliance, including the undertaking of emergent or non-emergent repairs and/or maintenance to the Improvements;
2. Commence legal proceedings against the City for the recovery of all costs, expenses or other damages resulting from the City's breach of this Agreement, including but not limited to, any costs, expenses or other fees paid or incurred by GVIC in curing any nonperformance or noncompliance by the City, including the cost of GVIC's use of equipment, personnel and administrative expenses; and/or
3. Commence legal proceedings for injunction or specific performance as is appropriate in the circumstances.

iii. Attorneys' Fees. In the event the City or GVIC seeks to enforce any term or provision hereof by legal proceedings, the prevailing party in such legal proceeding shall be entitled to recover its reasonable attorneys' fees and costs for the same.

8. Miscellaneous.

- a. Benefit. The terms of this Agreement shall inure to the benefit of and be binding upon the Parties and their successors, legal representatives and assigns.
- b. Notice. Whenever required hereunder, notice shall be deemed sufficiently given if in writing, upon mailing, United States mail, postage prepaid, certified and return receipt requested, to the Parties addresses set forth below:

GVIC : 688 26 Road, Grand Junction, Colorado 81506
Owner : 1359 Chipeta Avenue, Grand Junction, Colorado 81501
City : 250 North 5th Street, Grand Junction, Colorado 81501.

c. Integration. This Agreement is intended be the full, complete and integrated expression of the Parties' agreements in regard to the subject matter hereof, all prior agreements, negotiations and discussions being merged herein.

DATED the year and date first above written.

**GRAND VALLEY
IRRIGATION COMPANY,**
a Colorado nonprofit corporation

CITY OF GRAND JUNCTION,
a home rule municipality

By: Robert Raymond
Robert Raymond, President

By: Bruce Hill
Bruce Hill, Mayor

COLORADO HOMES & LIVING BY DESIGN, LLC,
a Colorado Limited Liability Company

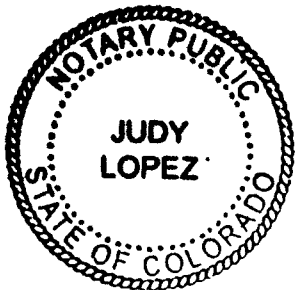
By: Marc R. Winger
Marc R. Winger, Member

Marc R. Winger
Marc R. Winger, individually as guarantor

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 31st day of May, 2005, by Robert Raymond President for Grand Valley Irrigation Company.

Witness my hand and official seal.
My commission expires: 04/09/07.



Judy Lopez
Notary Public

My Commission Expires 04/09/2007

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 25th day of May, 2005, by Bruce Hill, as Mayor of City of Grand Junction.

Witness my hand and official seal.
My commission expires: 3/13/09.

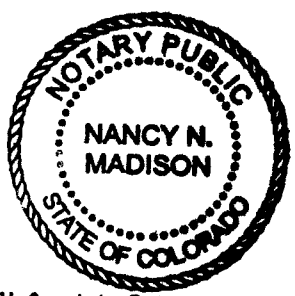
Rebecca M. Kemp
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 26th day of May, 2005, by Marc R. Winger, individually as guarantor and as Member for Colorado Homes & Living By Design, LLC.

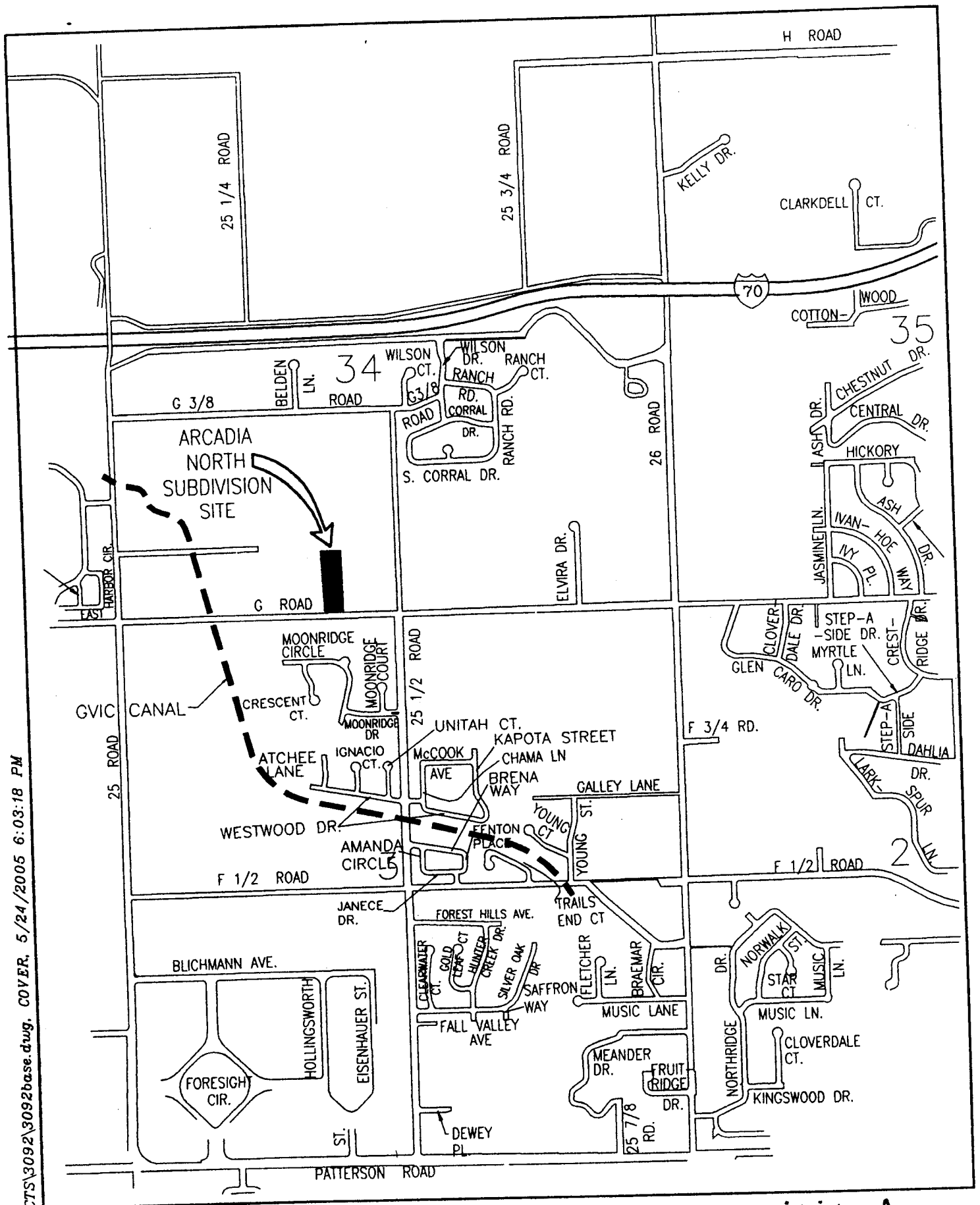
Witness my hand and official seal.
My commission expires: 1/12/08.

Nancy N. Madison
Notary Public



My Commission Expires 01/12/2008

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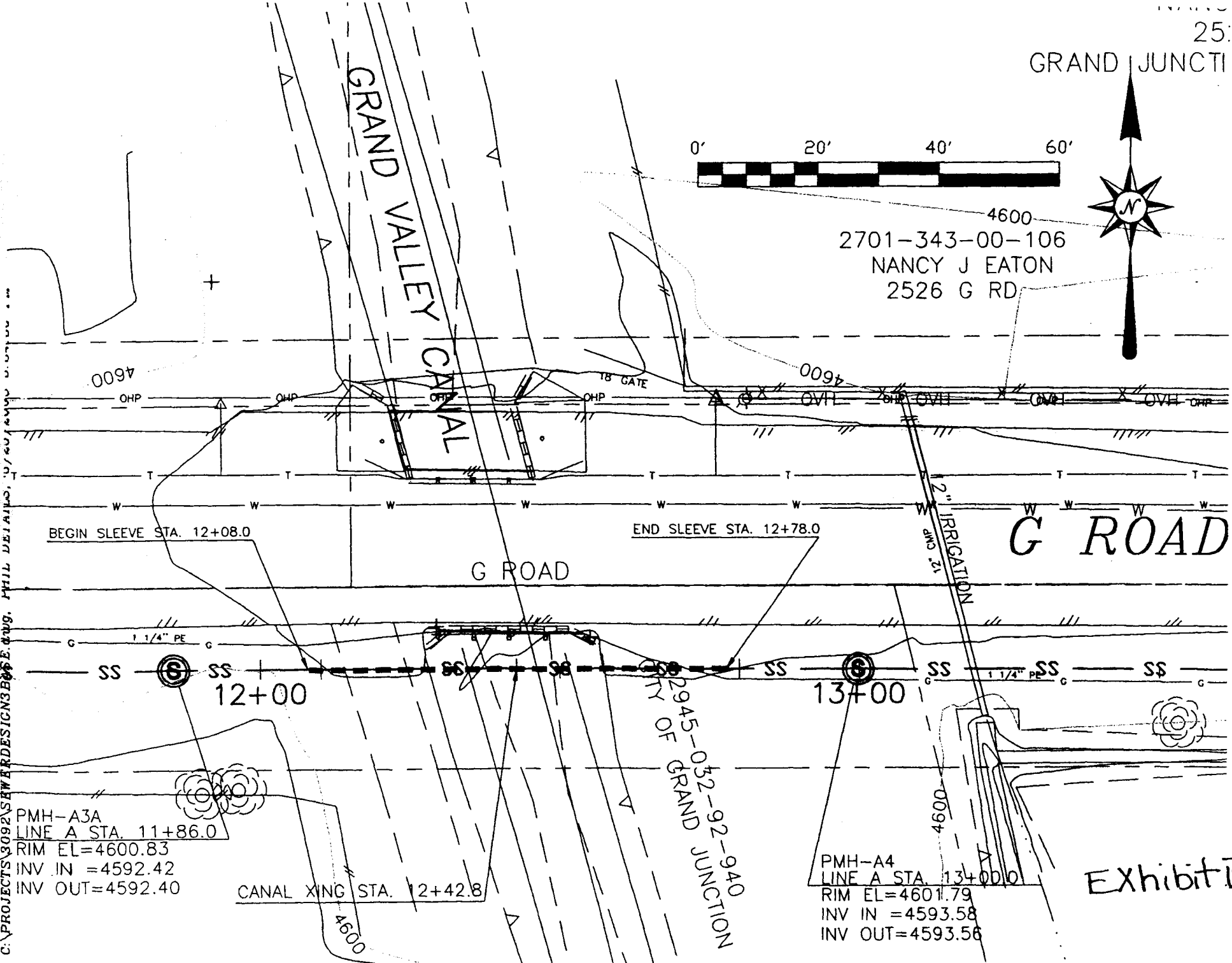
LOCATION MAP Exhibit A

Not to Scale



4600
 2701-343-00-106
 NANCY J EATON
 2526 G RD

C:\PROJECTS\3092\SAW\DESIGN\3092.DWG, PHIL DELANO, 12/20/00 11:55 AM



BEGIN SLEEVE STA. 12+08.0

END SLEEVE STA. 12+78.0

G ROAD

G ROAD

12+00

13+00

PMH-A3A
 LINE A STA. 11+86.0
 RIM EL=4600.83
 INV IN =4592.42
 INV OUT=4592.40

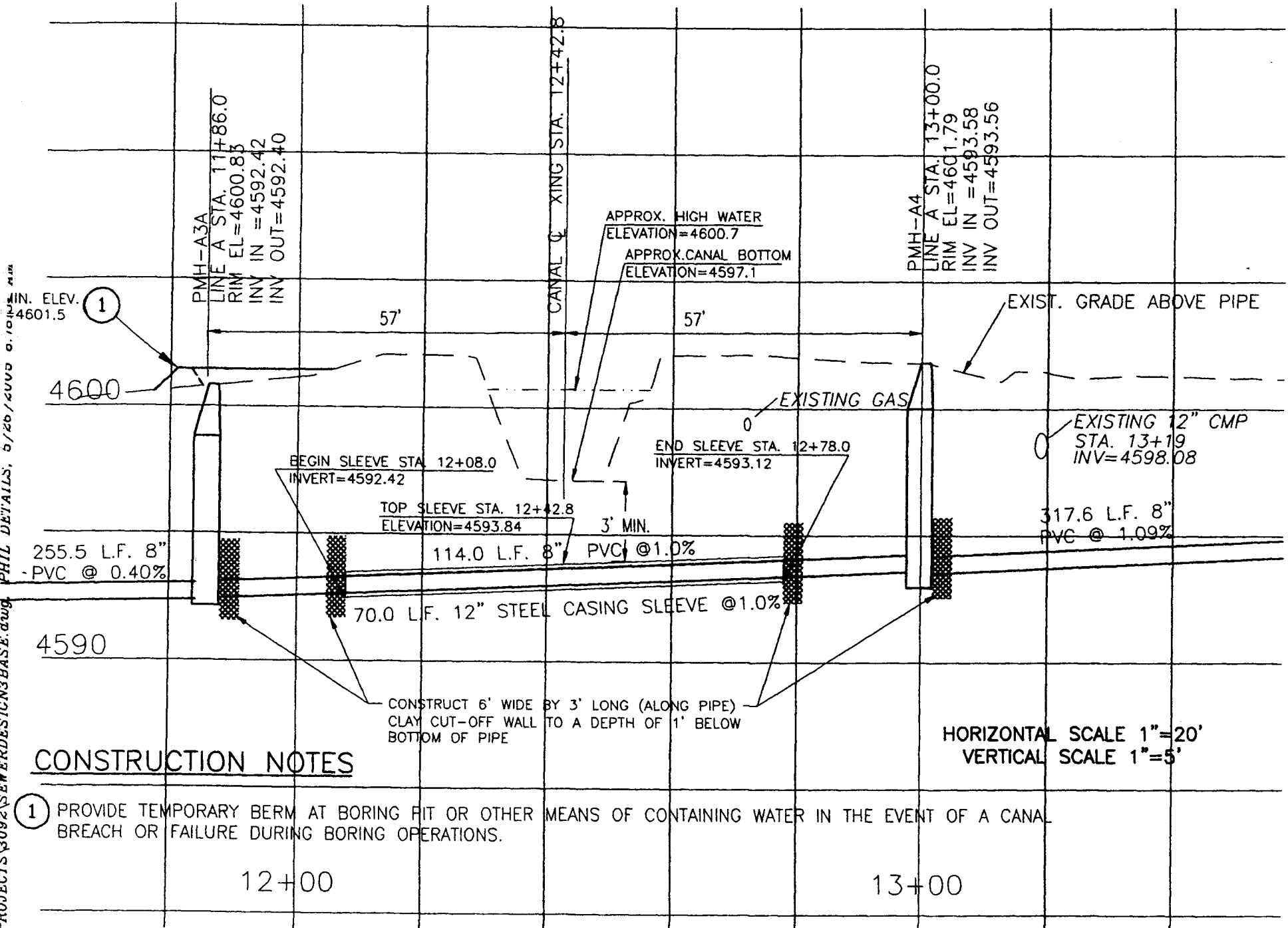
CANAL XING STA. 12+42.8

PMH-A4
 LINE A STA. 13+00.0
 RIM EL=4601.79
 INV IN =4593.58
 INV OUT=4593.56

Exhibit B

2945-032-92-940
 OF GRAND JUNCTION

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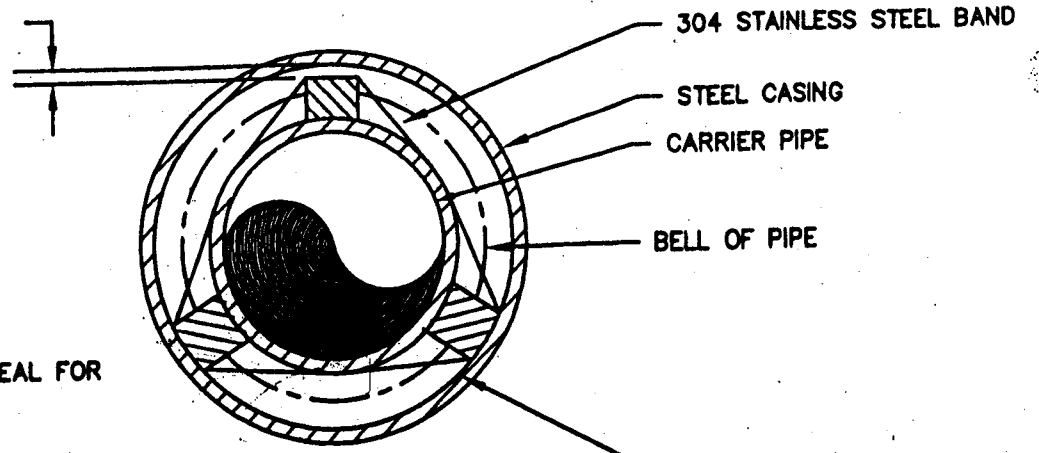
CONSTRUCTION NOTES

- 1 PROVIDE TEMPORARY BERM AT BORING PIT OR OTHER MEANS OF CONTAINING WATER IN THE EVENT OF A CANAL BREACH OR FAILURE DURING BORING OPERATIONS.

HORIZONTAL SCALE 1"=20'
 VERTICAL SCALE 1"=5'

Exhibit B

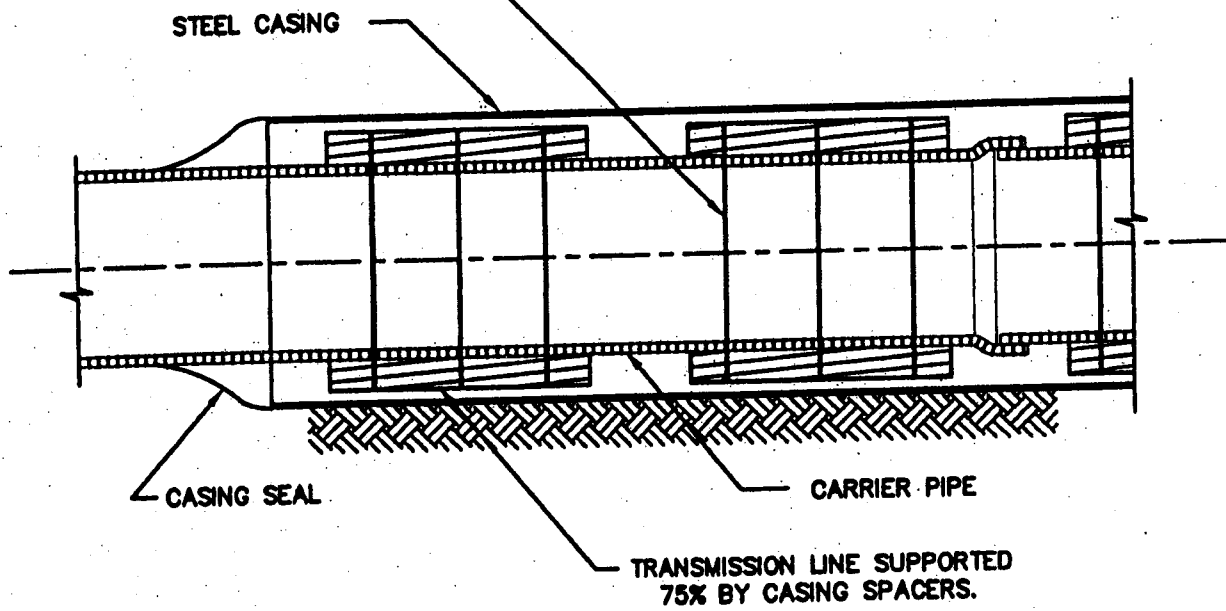
1/2" MAXIMUM



NOTE:
PROVIDE CAP OR SEAL FOR
OPEN END OF CAP.

PROVIDE CASING CHOCKS
EACH INDEPENDENTLY BANDED
TO PIPE BARREL

0.015 304 STAINLESS STEEL STRAPS
(TO BE USED WITH REDWOOD SKIDS)



TRANSMISSION LINE SUPPORTED
75% BY CASING SPACERS.

NOTE: CASING SPACERS MAY BE EITHER REDWOOD OR STAINLESS
STEEL PIPE INSULATORS WITH POLYMER RUNNERS.

Exhibit B

STANDARD PIPE CASING / NON-RESTRAINED JOINTS

DEPARTMENT OF PUBLIC WORKS AND UTILITIES
ENGINEERING AND TECHNICAL SERVICES DIVISIONS
CITY OF GRAND JUNCTION, COLORADO

GENERAL UTILITY
DETAIL

APPROVED: *DN*
DATE: *FEB 2000*
DRAWN: *TOP/DEW*

PAGE
GU-06

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