

COST SHARING AGREEMENT REGARDING RAW WATER IRRIGATION SYSTEM

This Cost Sharing Agreement Regarding Raw Water Irrigation System (the "Agreement") is made this 6th day of April, 2000, by and between Park East Development Company, LLC, a Colorado limited liability company ("PEDC"), Studio 3 Land Company, LLC, a Colorado limited liability company ("Studio 3"), the Roaring Fork School District RE-1 (the "District"), and the City of Glenwood Springs, Colorado, a Colorado home rule municipality (the "City") for the purposes recited herein.

RECITALS

- A. PEDC is the owner of real property for which it received approval from the City for a site specific development plan. The plan was memorialized by the execution and recording in the real property records of Garfield County, Colorado of certain documents. These included the Final Plat for Park East Subdivision recorded September 8, 1999, as Reception No. 551751, the Declaration of Protective Covenants for Park East Subdivision recorded September 8, 1999, at Book 1149 and Page 493, and that certain Subdivision Improvements Agreement recorded September 8, 1999, at Book 1149 and Page 452. The property of PEDC, which is related to the subject matter of this Agreement, shall be referred to herein as "Park East". The documents, which memorialize the City's approval of the Park East development plan, shall be referred to in this Agreement as the "Park East Approval Documents".
- B. Studio 3 is the owner of real property for which it received approval from the City for a site specific development plan. The plan was memorialized by the execution and recording in the real property records of Garfield County, Colorado of certain documents. These included the Final Plat for Cardiff Glen Subdivision recorded June 24, 1999, as Reception No. 547815, the Declaration of Protective Covenants for Cardiff Glen Subdivision recorded June 24, 1999, as Reception No. 547816, and that certain Subdivision Improvements Agreement recorded June 24, 1999, as Reception No. 547817. The property of Studio 3, which is related to the subject matter of this Agreement, shall be referred to herein as "Cardiff Glen". The documents, which memorialize the City's approval of the Cardiff Glen development plan, shall be referred to in this Agreement as the "Cardiff Glen Approval Documents".
- C. The District is the owner of real property located adjacent to Cardiff Glen upon which is located Sopris Elementary School, (the "SES Property"). The District currently irrigates 4.16 acres of the SES property with raw water diverted from Three Mile Creek through an existing pump station and pipeline (the "Three Mile Creek System") and wishes to replace the Three Mile Creek System with a new system.

- D. The City and the District entered into an Intergovernmental Agreement dated August 13, 1996, under which the City is entitled to develop and use three acres on the east end of the SES property for youth athletic fields (the "Ballfields"). The City and the District recently agreed to share the cost of irrigating the Ballfields equally (50% to the City and 50% to the District).
- E. The City has found that certain improvements, including the installation of a new raw water irrigation system, are necessary to promote the health, welfare and safety of local residents in light of the anticipated development of the southern section of the City.
- F. Establishment of a raw water irrigation system is being encouraged by the City utilizing untreated water from the Roaring Fork River for irrigation in Park East, Cardiff Glen, the SES Property, the Ballfields, the City playgrounds adjacent to Mount Sopris Drive, and future developments in the vicinity thereof. The parties hereto will promote the creation of this system according to the covenants made in this Agreement.

WHEREFORE, in exchange for the promises contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties covenant as follows:

1. Construction of a Raw Water Irrigation System. The Parties agree to cooperate in the construction of a raw water irrigation system. PEDC will construct and fully complete a raw water irrigation system with the capacity to serve the Park East Subdivision, the Cardiff Glen Subdivision, the SES Property, the Ballfields, the City playgrounds adjacent to Mount Sopris Drive and other properties to be developed in the future (the "Raw Water Irrigation System"). The Raw Water Irrigation System shall consist of a pump station at the Roaring Fork River on the Park East property, the main distribution lines providing raw water service to the parties to this agreement including appurtenant valves, transformers, etc. as generally described in the attached Exhibit A with a capacity to serve approximately 80 acres. The System shall be constructed to deliver water to the parties to this agreement at a minimum static pressure of 130 pounds per square inch and a minimum operating pressure of 100 pounds per square inch. The Raw Water Irrigation System has been designed to allow for future expansion to irrigate future developments in the vicinity by adding additional pumps to the pump station.

1.1 Special Use Permit. PEDC prepared and submitted to the City an application for a Special Use Permit allowing the construction of a pump-house and maintenance access trail appurtenant thereto adjacent to the Roaring Fork River on land within Park East. The City was the "Applicant" and PEDC was the "Developer" under the application. The City approved the application on August 24, 1999.

1.2 Easements. PEDC upon the filing of the Final Plat for Park East Subdivision, referred to above, provided the easements necessary for the efficient

use of the Raw Water Irrigation System. Studio 3, the District and the City shall provide any further easements within their respective projects, which are reasonably necessary for the efficient use of the Raw Water Irrigation System. The City shall be responsible for obtaining other necessary easements to deliver the raw water to the easements provided by PEDC, Studio 3, or the District. The parties will utilize their best efforts to cooperatively locate all aspects of the system so as to minimize its negative impact on Park East, Cardiff Glen, the SES Property, the Ballfields, and the City property.

1.3 Water Rights. The City, having acquired all of the water rights related to Park East and Cardiff Glen upon annexation, shall provide the raw water necessary and adequate to service the Raw Water Irrigation System. Water will be made available by the City to the System when the system or any portion thereof becomes operational.

1.4 U.S. Army Corps of Engineers Permits. The City as the ultimate owner of the system shall be responsible for obtaining any necessary U.S. Army Corps of Engineers permits related to the Raw Water Irrigation System construction.

1.5 Construction. PEDC shall undertake the construction of the Raw Water Irrigation System, which shall include the pumphouse on the Roaring Fork River, a maintenance access trail thereto, and the main distribution lines through the Park East property with an extension to a point on the property line between Cardiff Glen and the District and another to a point on the property line between Cardiff Glen and the airport property (as generally indicated on the attached Exhibit A). At completion of the Raw Water Irrigation System, PEDC shall dedicate, and the City shall accept, the Raw Water Irrigation System as property of the City to be maintained by it for so long as it is necessary for the functioning of the Raw Water Irrigation System. The parties additionally agree to fund at their own expense the cost of any distribution systems required for the delivery of raw water to all areas to be landscaped by them.

1.6 Cost Sharing. The actual cost of construction of the Raw Water Irrigation System is to be shared by PEDC, Studio 3, the District and the City as set forth below.

1.6.1 Initial Funding. The system is estimated to cost \$572,817 as set forth on Exhibit B. PEDC, the District and the City agree to initially fund the construction of the Raw Water Irrigation System as follows. At the recording of the Final Plat for Park East, PEDC contributed \$68,000 to a Raw Water Irrigation Fund. Through the date of this Agreement PEDC has paid \$88,268 for the design, construction and other aspects of the System including the \$68,000 contributed to the Raw Water Irrigation Fund. PEDC's share of the Raw Water Irrigation System is estimated at \$207,646 as set forth on the attached Exhibit B. Within thirty days of the

signing of this agreement PEDC shall fund the additional amount of \$119,378 required to bring its total contribution to \$207,646, the District shall fund \$40,527 and the City shall fund \$324,644.

1.6.2 Studio 3 Funding. At the time construction commences on Phase Two of its development, as defined in the Subdivision Improvements Agreement recorded June 24, 1999, as Reception No. 547817, Studio 3 shall reimburse the City the amount of \$125,304 as its estimated share of the cost of the Raw Water Irrigation System.

1.6.3 Evening-Up Funding. At the time Studio 3 funds pursuant to Section 1.6.2, immediately above, the final acreage to be irrigated by each party shall be calculated by an engineer of the City's choice and the parties shall each pay their pro-rata share of the costs of the Raw Water Irrigation System into the Raw Water Irrigation Fund, based upon the proportion by which the land to be irrigated by each participant bears to the total capacity of the Raw Water Irrigation System, i.e. 80 acres. In addition to whatever acreage is currently being irrigated by the City, the City's irrigated acreage shall include the amount of 40 acres related to additional capacity developed in the System available to future users of the System. The amount due from PEDC, the District and the City shall be reduced by amounts funded by each of them for the Initial Funding plus an annual interest factor of ten percent (10%) calculated from the date of funding for the Initial Funding to the date of funding required under this Section 1.6.3. To the extent any of the parties have funded in excess of their pro-rata share of the expenses they shall be entitled to a prompt refund of the excess amount. To the extent that the final cost of completing the System exceeds the estimated cost on Exhibit B, the parties to this agreement shall pay the excess costs according to the evening-up pro-rata formula discussed in this Section 1.6.3. To the extent the District is not a participant in the funding, the land area, which forms the basis of the City's pro-rata share, shall include the irrigated land owned by the District.

11.09
(as compared to the approximately 20 acres owned by the City at the Initial Funding, so that the City's pro rata share ~~debt~~ increases and the pro rata share of the other parties is reduced at Evening-Up Funding) Studio 3 By: JRB

1.7 Credit Toward Water System Improvement Fees. In exchange for its payments to the Raw Water Irrigation Fund, PEDC and Studio 3 shall be entitled to a credit toward future water system improvement fees. The amount of the credit shall be established by dividing the amount of the contribution to the Raw Water Irrigation Fund by the cost of an "EQR" as offered by the City at the time funding under this Agreement is made. Water system improvement fee credits established through this Section 1.7 shall be utilized by PEDC and Studio 3 after the exhaustion of the credits earned through that certain Cost Sharing Agreement between PEDC, the City and Studio 3 related to the construction of a water storage facility which was recorded September 8, 1999 at Book 1149 and Page 529.

1.8 Cardiff Glen Water System Improvement Fee Reduction. Following payment to the Raw Water Irrigation Fund, contemplated in Section 1.6.2 above, the City agrees to a 25% reduction in the Water System Improvement Fees for Cardiff Glen. Notwithstanding any other provision of this Agreement, no party may receive reimbursement under Sections 1.7 and 1.8 of this Agreement for more than the contributions made by said party under this Agreement.

1.9 Dependence on Raw Water Irrigation System. Subject to the continued adequate supply of raw water by the City, upon completion of the Raw Water Irrigation System, all irrigation within Park East, Studio 3, the SES Property and the Ballfields shall utilize only the Raw Water Irrigation System

1.10 Operating Charges. The unit price charged to PEDC, Studio 3 and the District shall be no greater than the unit price charged by the City for water delivered to the City's portion of the land to be irrigated by the System.

1.11 Result If Raw Water Irrigation System Not Constructed. In the event that the Raw Water Irrigation System is not completed: (1) moneys contributed to the Raw Water Irrigation Fund shall be transferred to the water system improvement fee fund, to be used consistent with the purposes of that fund, and (2) the parties who have funded pursuant to Section 1.6 above may use domestic water for irrigation purposes, provided that this provision does not eliminate Studio 3's rights to purchase from the City up to 92,000 gallons of treated water for outdoor irrigation use as provided in Section 13 of the Cardiff Glen Subdivision Improvement Agreement, recorded June 24, 1999, Book 1136, Page 905.

2. General Provisions.

2.1 Notices. Any and all notices, designations, consents, offers, acceptances, or any other communication provided for herein, shall be given, in writing by facsimile transmission, overnight delivery by a nationally-recognized delivery service, prepaid certified mail, return receipt requested, or by hand delivery, addressed or sent as follows:

Studio 3
By: JRB

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gmk

If to PEDC: Park East Development Company, LLC
Attn: James A. Horn
24398 Highway 82
P.O. Box 620
Basalt, Colorado 81621
Fax (970) 927-8274

If to Studio 3: Studio 3 Land Company, LLC
Attn: John R. Baker
1001 Grand Avenue, Suite 211
Glenwood Springs, Colorado 81601
Fax (970) 928-9709

and to: Studio 3 Land Company, LLC

Attn: Tom Stevens
580 Main Street, Suite 220
Carbondale, Colorado 81623
Fax (970) 963-6717

If to the
District: Roaring Fork School District RE-1
Attn: Superintendent
1405 Grand Avenue
Glenwood Springs, Colorado 81601

And to: Caloia & Houpt, P.C.
1204 Grand Avenue
Glenwood Springs, Colorado 81601
Fax (970) 945-6292

If to the City: City of Glenwood Springs
Attn: City Manager
806 Cooper Avenue
Glenwood Springs, Colorado 81601
Fax (970) 945-2597

Notice shall be considered to have been delivered on the date hand delivered or sent by facsimile transmission, on the next business day if sent by overnight delivery service (provided oral or written acknowledgment of receipt has been received from the delivery service) and on the third day after being deposited in the mails of the United States.

2.2 Invalid Provision. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof and the Agreement shall be construed in all respects as if such invalid or unenforceable provision had been committed.

2.3 Integration. It is understood between the parties that this Agreement: (a) supercedes all prior agreements whether written or oral, (b) contains the entire understanding of the parties, and (c) no change or modification of this Agreement shall be valid unless the same be in writing and signed by all the parties hereto.

2.4 Binding Effect. The terms and provisions contained herein shall run with the land and be binding upon the parties hereto and their respective heirs, legal representatives, successors, and assigns. This Agreement shall be recorded in the office of the Garfield County Clerk and Recorder.

2.5 Termination of Agreement. This Agreement shall terminate only upon the completion of the Raw Water Irrigation System, the funding required in Section 1.6 of this Agreement, and the dedication and acceptance of the improvements as contemplated by this Agreement.


2.6 Attorney Fees. In the event either party institutes litigation against the other party hereto for a breach of any provision of this Agreement, the prevailing party shall be reimbursed by the other party for all costs related thereto, including reasonable attorney fees.

2.7 Authority. By signing this Agreement, the parties acknowledge and represent that all procedures necessary to validly contract and execute this Agreement have been performed and that the persons signing for each party have been duly authorized so to do.

2.8 Counterparts/Facsimile. The Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile signature shall have the same effect as an original signature.

IN WITNESS WHEREOF, the parties have set their hands and seals on the date first written above.

PARK EAST DEVELOPMENT COMPANY, LLC,
a Colorado limited liability company

BY: 
Name:
Member - Manager

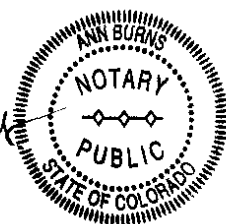
STATE OF COLORADO)
) ss.
COUNTY OF PITKIN)

This document was acknowledged before me on April 6, 2000, by James A. Horn, Member-Manager of Park East Development Company, LLC, a Colorado limited liability company.

My Commission expires: January 30, 2003

(SEAL)

Notary Public



MY COMMISSION EXPIRES:
January 30, 2003

STUDIO 3 LAND COMPANY, LLC,
a Colorado limited liability company

BY:

Am R Baker -

~~Name:~~

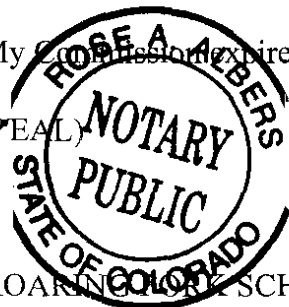
~~Member~~ - Manager

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This document was acknowledged before me on August 15, 2000, by John R. Bavor, Member-Manager of Studio 3 Land Company, LLC, a Colorado limited liability company.

My Commission expires: 10-5-2002.

(REAL)



Notary Public

ROARING ROCK SCHOOL DISTRICT RE-1

BY:

Robin Darvick

Name: Robin Garvik

Title Board President

[illegible]

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EXHIBIT B
COST SHARING AGREEMENT REGARDING
RAW WATER IRRIGATION SYSTEM

ESTIMATED COSTS AND FUNDING

ESTIMATED COSTS:

Pump Station at Roaring Fork River	402,000
Electrical	29,900
Irrigation Main	91,093
Engineering	30,850
Electrical and Telephone Trench	2,430
Electric Vault and Transformer	800
Irrigation Main Valves	7,095
Connection to Treated Water System	7,149
Contribution Fund to U.S. Fish and Wildlife Recovery Act	1,500
Total Estimated Costs	572,817

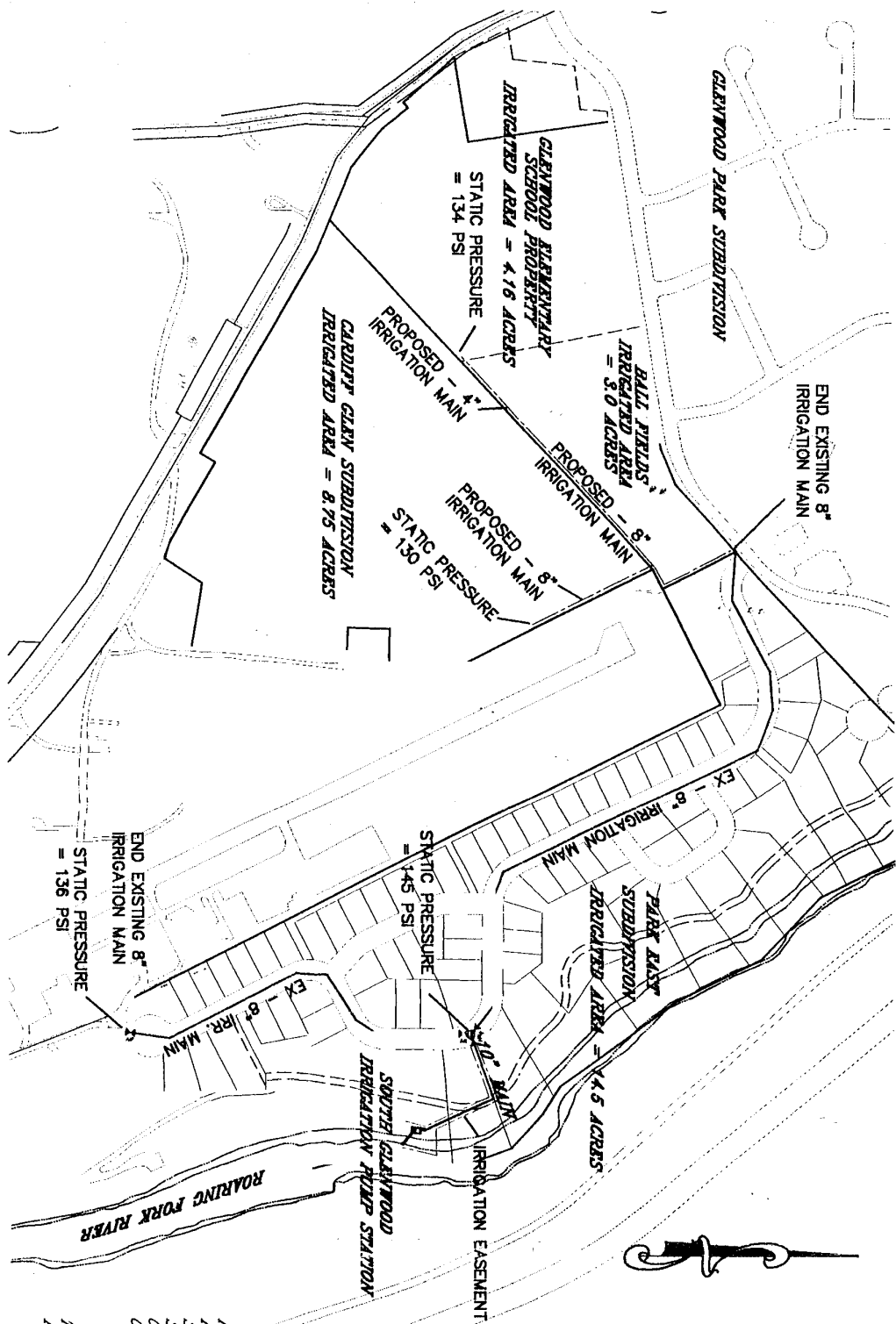
INITIAL FUNDING:

Park East	207,646
Roaring Fork School District RE-1	40,527
City of Glenwood Springs	324,644
Total Phase I Funding	572,817

STUDIO 3 FUNDING:

Studio 3 Reimbursement to the City of Glenwood Springs	125,304
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INITIAL BASIS FOR ALLOCATING COST:	Estimated Acres To Be <u>Irrigated</u>	% Of <u>Total</u>
Park East Development Company	14.50	36.25%
Cardiff-Glen	8.75	21.88%
Roaring Fork School District RE-1	5.66	14.15%
City of Glenwood Springs	11.09	27.73%
Total	40.00	100.00%



IRRIGATED AREAS
 PARK EAST 14.5 ACRES
 SCHOOL DISTRICT 4.16 ACRES
 OF BALL FIELDS 1.5 ACRES
 CAMPY GLEN 8.75 ACRES

TOTAL SYSTEM CAPACITY
 FULL BUILD OUT 80 ACRES

EXHIBIT "A"
 SCALE 1" = 300 ft