

WATER FACILITIES EASEMENT AGREEMENT

This Water Facilities Easement Agreement ("Agreement") is executed this 21 day of June 1999, by and between GLENWOOD LAND COMPANY, LLC, a Colorado limited liability company ("Grantor"), whose address is 525 East Cooper Street, Aspen, Colorado 81611, and the CITY OF GLENWOOD SPRINGS ("City"), whose address is 806 Cooper Avenue, Glenwood Springs, CO 81601.

A. By that certain General Warranty Deed of even date herewith, Grantor has conveyed to Studio 3 Land Company, LLC, a Colorado limited liability company ("Developer") the real property in Garfield County, Colorado, known as Parcel 1, Second Amended Plat of Glenwood Limited Subdivision, Garfield County, Colorado ("Parcel 1"). Developer intends to develop Parcel 1 as a mixed-use development to be known as Cardiff Glen.

B. Grantor is the owner of the real property in Garfield County, Colorado located across County Road 116 from and to the south of Parcel 1 ("Property").

C. As a condition to the approval of the development of Cardiff Glen on Parcel 1, the City has required that Developer, in order to provide water service to Parcel 1 and to existing and future developments including those currently owned by Grantor within the City, (i) construct one 500,000-gallon water storage tank for treated water, one water storage tank of approximately 30,000 gallons for raw water, separate water pipelines for treated water and for raw water, and associated improvements on the Property ("Water Facilities") and (ii) obtain the right for the City to build two additional 500,000-gallon water storage tanks, water pipelines and associated improvements on the Property ("Additional Water Facilities").

D. After construction of the Water Facilities, the City will accept the Water Facilities and will own and operate the Water Facilities and construct, own and operate the Additional Water Facilities.

E. Grantor now desires to grant to City, and City desires to receive from Grantor, a non-exclusive easement for the Water Facilities and the Additional Water Facilities on a portion of the Property, subject to the terms, conditions, and covenants contained herein.

NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Grant of Easement. Grantor hereby grants, transfers, and conveys unto the City, its successors and assigns forever, a perpetual, non-exclusive easement over, across, under, and through those portions of the Property owned by Grantor and described in Exhibits A, B, and C and shown on Exhibits D and E attached hereto (collectively, "Easement Area") for the purpose of constructing, operating, maintaining, repairing, and reconstructing and for access to the Water Facilities and the Additional Water Facilities. The four water storage tanks shall be located within the portion of the Easement Area described in Exhibit C and shown on Exhibit E as the Water Tank Easement ("Water Tank Easement"). All Water Facilities and Additional Water

Facilities, except for the water storage tanks, may be located in the Water Tank Easement and the portion of the Easement Area described in Exhibits A and B and shown on Exhibit D as the 40' Utility and Access Easements A and B ("Utility and Access Easement"). Except for the water storage tanks, all Water Facilities and Additional Water Facilities shall be underground.

2. **Reservation.** Grantor hereby reserves all rights to the use and enjoyment of the Property and the Easement Area, so long as such use and enjoyment do not unreasonably interfere with the City's rights hereunder, provided that Grantor shall not construct or install any structure, improvement, or obstruction, other than roads providing reasonable access to the Property, within the Easement Area, and Grantor shall not obstruct the City's access to the Easement Area.

3. **Release of Excess Easement Area.** The Easement Area established by this Agreement is larger than necessary for the development of the Water Facilities and the Additional Water Facilities because of uncertainty regarding the precise location where such improvements will be constructed. Following the issuance by the City of a special use permit approval for the construction of the Water Facilities, the City shall (i) determine the portion of the Easement Area that is not required for the purposes established in Paragraph One of this Agreement ("Excess Easement Area") and (ii) release from the burden of this Agreement the Excess Easement Area by delivering to Grantor a quit claim deed for the Excess Easement Area. Grantor and the City shall then promptly execute and record an amendment to this Agreement revising the legal description of the Easement Area.

4. **Location and Relocation of Improvements and Easement Area.** In order to allow construction of the water storage tanks, the City shall be allowed at the City's expense and sole liability, to relocate the existing road which crosses the Water Tank Easement to a new location either within or without the Water Tank Easement, provided Grantor shall reasonably approve such relocation. Grantor shall have the right to relocate the existing roads within the Access and Utility Easement, provided that the Access and Utility Easement shall also be relocated to follow the path of the roads as relocated and provided that Grantor pays for the cost of relocating the water pipelines and associated improvements to the relocated Access and Utility Easement.

5. **City's Use of Easement Area.** City's agents, employees, contractors, and other designated persons may go upon the Easement Area at all reasonable times to undertake construction, routine use, operation, maintenance and repairs of Water Facilities and Additional Water Facilities. Prior to construction, major repairs, or replacement of the Water Facilities and Additional Water Facilities, the City shall provide Grantor with reasonable advance notice of the work to be undertaken and the estimated time of completion. Notwithstanding the foregoing, the City may go upon the Easement Area at any time in the event of any emergency. If the City alters or disturbs any portion of the Easement Area in exercising its rights hereunder, the City shall promptly restore such portion of the Easement Area, as nearly as possible, to the condition it was in prior to such alteration or disturbance at City's sole cost and expense.

6. **Construction and Transfer of Water Facilities.** For the purpose of construction of the Water Facilities, Developer or Developer's successor in interest shall be a designated representative of the City and shall have all of the rights of access to and use of the Easement

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Area reasonably necessary for such construction. Upon completion of construction of the Water Facilities, the City shall accept in writing from Developer the Water Facilities, and following the one-year warranty period of Developer, Developer shall be released from all liability relating to the construction and operation of the Water Facilities. Grantor shall not be responsible for any of the cost of development or construction of the Additional Water Facilities, nor shall Grantor be liable for operation of the Water Facilities or the Additional Water Facilities. Additionally, Grantor shall not be liable for any personal injury or property damage arising from the development, construction, or operation of the Water Facilities or Additional Water Facilities.

7. Dedication of Easement Area. Upon the City's written request, Grantor shall promptly dedicate the Easement Area to the City as a public right of way and for the purposes set forth in paragraph 1, provided that the Easement Area so dedicated will not include any Excess Easement Area released by Grantee as provided in paragraph 3 and shall be as relocated pursuant to paragraph 4. The obligation to dedicate the Easement Area shall run with the Easement Area. The City shall be responsible for obtaining and paying all costs of any minor subdivision of or boundary adjustment to the Property that is required as a result of such dedication.

8. Support. The City shall have and exercise the right to reasonable subjacent and lateral support to whatever extent is necessary or desirable for the full, complete and unmolested enjoyment of its rights under this Agreement. It is specifically agreed between the parties that the Grantor shall take no action which would permanently and irreparably impair the earth cover over, or the lateral or subjacent support for any water pipeline or lines, and appurtenances within the Easement Area, provided, however, that upon obtaining the written permission of the City, the earth cover over any water pipeline or lines may be modified, but normally permission will not be granted for a modification involving a cover of less than five feet six inches nor greater than ten feet measured vertically from the top of any water pipeline or lines, and any modification undertaken by Grantor shall be upon terms which provide for reimbursement to the City of the cost of any alterations to any of the Water Facilities or Additional Water Facilities made necessary by the change.

9. Due Authority. Grantor and the City each represents to the other party that it has due authority to execute, deliver, and perform under this Agreement.

10. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective legal representatives, successors and assigns, as well as any and all successors in title to the Property.

11. Governing Law. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

12. Headings. The headings in this Agreement are inserted for convenience of reference only and are not intended to be part of or limit or affect the meaning or interpretation of this Agreement.

13. Counterparts. This Agreement may be executed in counterparts which together shall constitute but one and the same document.

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Date/Time of Last Edit
June 18, 1999 5:26 pm

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

GLENWOOD LAND COMPANY, LLC, a Colorado
limited liability company

By:

Its:

CITY OF GLENWOOD SPRINGS

By:

Its:

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

The foregoing instrument was acknowledged before me this ____ day of June, 1999, by
, as
of Glenwood Land Company, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

Notary Public

My commission expires:

[SEAL]

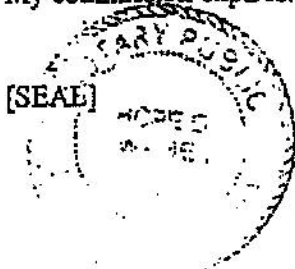
STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

The foregoing instrument was acknowledged before me this 23rd day of June, 1999, by Sam Skramstad as mayor of the City of Glenwood Springs.

WITNESS my hand and official seal.

Step D. White
Notary Public

My commission expires: 2/24/2003



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EXHIBIT - A

Description of 40' Access and Utility Easement - A

A strip of land situated in the NW1/4 of Section 27, Township 6 South, Range 89 West, 6th P.M., Garfield County, Colorado said strip of land being 40 feet in width lying 20 feet each side of the following described center line:

Beginning at the northeasterly end of said center line being on the southwesterly Right-of-Way of Midland Avenue whence the witness corner for the N1/4 corner of said Section 27, a BLM brass cap bears N 14° 25' 28" E, 1292.51 feet and from which said witness corner the True N1/4 corner bears S 88° 39' 27" E, 303.08 feet;

1. Thence S 29° 54' 15" W, 31.65 feet;
2. Thence S 70° 39' 39" W, 61.49 feet;
3. Thence N 86° 08' 29" W, 83.37 feet;
4. Thence N 80° 26' 19" W, 111.27 feet;
5. Thence N 71° 01' 39" W, 169.55 feet;
6. Thence N 79° 30' 38" W, 60.44 feet;
7. Thence N 90° 00' 00" W, 45.12 feet;
8. Thence S 73° 28' 06" W, 146.93 feet;
9. Thence S 60° 50' 15" W, 54.19 feet;
10. Thence S 40° 58' 40" W, 55.38 feet;
11. Thence S 19° 21' 46" W, 43.15 feet;
12. Thence S 00° 52' 06" W, 72.62 feet;
13. Thence S 14° 25' 25" E, 159.05 feet;
14. Thence S 05° 58' 55" E, 116.16 feet;
15. Thence S 04° 27' 36" E, 240.58 feet;
16. Thence S 03° 51' 59" E, 96.29 feet to the southerly end of 40' Access and Utility Easement - B described hereinafter in EXHIBIT - B;
17. Thence continuing along said center line S 03° 51' 59" E, 66.92 feet;
18. Thence S 07° 46' 00" W, 36.44 feet to the intersection of the easterly Right-of-Way of Four Mile Road;
19. Thence continuing along said center line S 07° 46' 00" W, 12.42 feet;
20. Thence S 30° 28' 15" W, 21.70 feet to the southerly end of said center line

This strip of land as described above contains 1.490 acres more or less. Also, the sidelines of said strip of land shall be lengthened or shortened to terminate on the southwesterly Right-of-Way of Midland Avenue and the easterly Right-of-Way of Four Mile Road.

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EXHIBIT - B

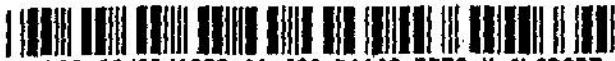
Description of 40' Access and Utility Easement - B

A strip of land situated in the NW1/4 of Section 27, Township 6 South, Range 89 West, 6th P.M., Garfield County, Colorado said strip of land being 40 feet in width lying 20 feet each side of the following described center line:

Beginning at the northerly end of said center line being on the southerly line of the Water Tank Easement hereinafter described in EXHIBIT - C whence the witness corner for the N1/4 corner of said Section 27, a BLM brass cap bears N 31° 30' 30" E, 1858.76 feet and from which said witness corner said N1/4 corner bears S 88° 39' 27" E, 303.08 feet;

1. Thence S 03° 07' 38" W, 29.37 feet;
2. Thence S 00° 00' 00" W, 93.07 feet;
3. Thence S 02° 09' 42" W, 133.41 feet;
4. Thence S 00° 00' 00" W, 45.28 feet;
5. Thence S 05° 49' 04" E, 154.80 feet to the center line of 40' Access and Utility Easement - A heretofore described in EXHIBIT - A;

This strip of land as described above contains 0.304 acres more or less. Also, the sidelines of said strip of land shall be lengthened or shortened to terminate on the southerly line of said Water Tank Easement and the easterly sideline of said 40' Access and Utility Easement - A.



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EXHIBIT B

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EXHIBIT - C

Water Tank Easement

A parcel of land situated in the NW1/4 of Section 27, Township 6 South, Range 89 West, 6th P.M., Garfield County, Colorado being more particularly described as follows:

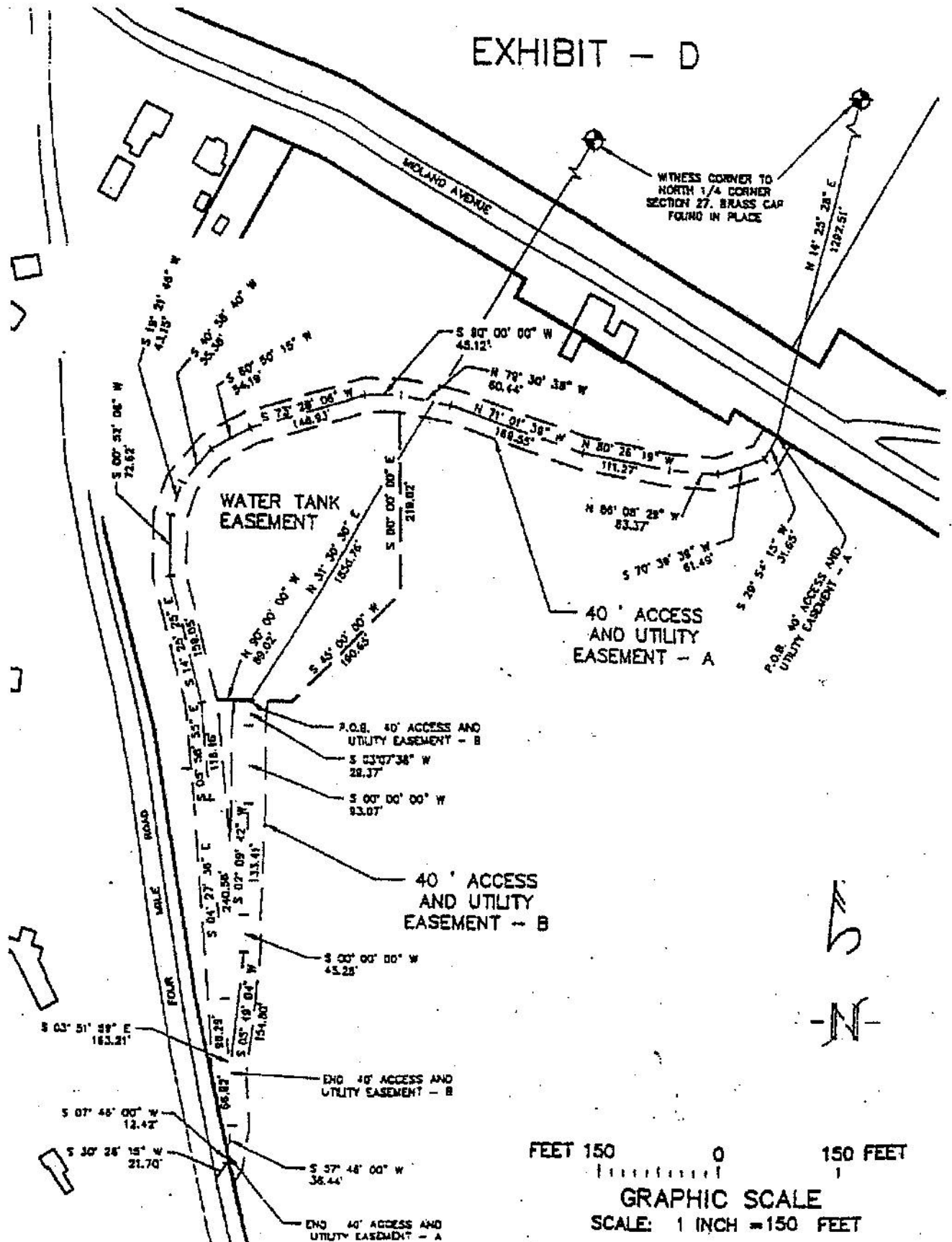
Beginning at the northeasterly corner of said parcel, being an angle point on the southerly line of 40' Access and Utility Easement - A heretofore described in EXHIBIT - A, whence the witness corner for the N1/4 corner of said Section 27, a BLM brass cap bears N 32° 36' 36" E, 1461.24 feet and from which said witness corner said N1/4 corner bears S 88° 39' 27" E, 303.08 feet;

1. Thence S 00° 00' 00" E, 219.02 feet;
2. Thence S 45° 00' 00" W, 190.65 feet;
3. Thence N 90° 00' 00" W, 49.13 feet to the northerly end of 40' Access and Utility Easement - B heretofore described in EXHIBIT - B;
4. Thence N 90° 00' 00" W, 39.89 feet;
5. Thence N 14° 25' 25" W, 157.84 feet;
6. Thence N 00° 52' 06" E, 66.68 feet;
7. Thence N 19° 21' 46" E, 36.08 feet;
8. Thence N 40° 58' 40" E, 48.06 feet;
9. Thence N 60° 50' 15" E, 48.47 feet;
10. Thence N 75° 28' 06" E, 141.82 feet;
11. Thence S 90° 00' 00" E, 40.38 feet to the point of beginning.

This parcel of land as described above contains 1.651 acres more or less.

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EXHIBIT - D





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EXHIBIT - E

WATER TANK EASEMENT

40' ACCESS
AND UTILITY
EASEMENT - A

WITNESS CORNER TO
NORTH 1/4 CORNER
SECTION 27, BRASS CAP
FOUND IN PLACE

P.O.B. WATER
TANK EASEMENT

WATER TANK EASEMENT

71,907 sq.ft.
1.651 acres

FEET 50 0 50 FEET
GRAPHIC SCALE
SCALE: 1 INCH = 50 FEET

40' ACCESS
AND UTILITY
EASEMENT - B

6
-N-