

8875478 When recorded, mail to:  
Solitude Improvement District  
P.O. Box 71350  
Salt Lake City, Utah  
84171-0350

8875478  
10/31/2003 03:46 PM NO FEE  
Book - 8904 Pg - 8524-8532  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
SOLITUDE IMPROVEMENT DISTRICT  
BY: SBM, DEPUTY - WI 9 P.

## AGREEMENT and EASEMENT

This agreement is by and between the following parties: The **SOLITUDE IMPROVEMENT DISTRICT**, a special improvement district created pursuant to Title 17, Chapter 6, Utah Code Annotated, 1953, as amended, ("District or Grantee" herein); **Silver Glade LLC, a Utah limited liability corporation**, ("Silver Glade or Grantor" herein); and **Dieter E. Duennebeil and Margot E. Duennebeil, trustees of The Dieter E. and Margot E. Duennebeil Revocable Living Trust**, husband and wife, Utah residents, ("Duennebeil or Grantors" herein).

### RECITALS

WHEREAS, Silver Glade LLC is the owner of a proposed seven (7) lot subdivision, named Silver Glade Subdivision, Sidwell Number 24-21-255-025-0000 located in Dunnyon Dell, Silver Fork, Big Cottonwood Canyon, Salt Lake County, Utah, and;

WHEREAS, Silver Glade is desirous of constructing a sanitary sewer and pump station, at his own cost and expense, and not at District cost or expense, in Dunnyon Dell, Silver Fork, for the benefit of the Silver Glade Subdivision and a portion of the Dunnyon Dell Subdivision crossing and occupying a portion of real property owned by Dieter E. Duennebeil and Margot E. Duennebeil, trustees, Sidwell Number 24-21-252-001-0000, connecting its gravity collector system and pressure pump system to the District's collector system which is currently located at manhole Station 15+76, of the District's construction plan Phase IIIB, Part 2, located in Honeycomb Road in Silver Fork, and;

WHEREAS, the official Dunnyon Dell Plat "A" Subdivision, recorded as entry number #1772738, on April 18, 1961 in Book W, Page 77, Salt Lake County Records Office, specifically reserves for "Utility easement & Right of Way" for roads and utilities within the roads in the Dunnyon Dell area, and;

WHEREAS, the Cottonwood Improvement District ("Cottonwood" herein) is the agent contracted to maintain the facilities of the District, and;

WHEREAS, it is the desire of Silver Glade and Duennebeil that the District own, operate and maintain the 8" collector lines, manholes and pump station, once constructed, in perpetuity;

### BE IT THEREFORE RESOLVED, and the parties hereto agree as follows:

1. **Silver Glade LLC.** Silver Glade will prepare and submit plans and specifications to the District and Cottonwood for their review and approval, prior to. . .

..construction. Said plans and specifications shall be coordinated with the District so that once constructed, the Silver Fork community located on the south side of Big Cottonwood Creek and east of the Dunyon Dell Subdivision will be able to gravity flow to the collector system and the District will be able to provide service to the Silver Fork area located on the south side of Big Cottonwood Creek and east of the Dunyon Dell Subdivision should future occasion be warranted or desired. In addition, the Silver Glade construction contract, with regard to the pump station, shall provide for a second option, to "up size" the pump station "wet" well, the difference in cost to be paid by the District. District to advise in writing to Silver Glade, whether it accepts or rejects the optional additional cost for an "up sized" "wet" well prior to construction. Silver Glade will provide the District with a Performance and Payment Bond for the construction of such improvements together with evidence of insurance for Workman's Compensation by the contractor as well as pay any usual and customary inspection fee required by Cottonwood. Silver Glade shall also bear the costs of any legal, engineering or architectural review incurred by the District or any other required license, permit or fee's imposed by any other agency having lawful jurisdiction for the construction of this gravity flow collector system and pump station. Once necessary fee's, outside costs reimbursed, permits and approvals are obtained, Silver Glade shall proceed to construct the collector system according to the approved plans and specifications under the supervision of a construction engineer, not employed by the general contractor. Once constructed, an "as built" set of plans, prepared by the engineers, shall be supplied to the District, at no cost to the District. In addition, a mylar set of "as built" plans (or other form, such as CAD CD) shall be supplied to Cottonwood, at no cost to Cottonwood. Once the "as built" drawings have been supplied to the District and Cottonwood, all right title and interest in and to the constructed main 8" facilities, manholes and pump station shall pass to the District, subject to the one year warranty of the general contractor for the constructed facilities. Further, upon passage of title, Silver Glade warrants and represents to the District that all costs, expenses and fee's are undisputed and paid for the construction of the collector system and pump station. In the event that any costs, expenses, fee's or mechanic's liens arise out of the constructed facilities, then Silver Glade will indemnify and hold harmless the District from any and all such costs, expenses or disputes.

Additionally, upon the passage of title to the District for the constructed facilities, Silver Glade (Grantor) grants, conveys and warrants to the District, a public improvement district, and to its successors and assigns, (Grantee), a perpetual permanent utility easement corridor and right-of-way appurtenant to and in, over, upon and across a portion of the real property described in

...Exhibit A, attached hereto and incorporated herein by this reference in which Grantor has an ownership or control interest, said easement to be TEN (10) FEET in width (Easement Property), the center line being the actual location of Grantee's sewer line as described in the concept document describing the approximate location of the proposed collector system. Grantee shall have the right to use the Easement Property to bury, locate, operate, maintain, alter, repair, relocate, inspect and remove any portion of Grantee's sewer system and related facilities (system) or other utilities. Grantee shall have the right of ingress, and egress to and from the Easement Property across any real property owned by the Grantor that is contiguous to the Easement Property, including adequate access for equipment necessary to perform installation, maintenance and repair of the system. Nothing shall be constructed on or over the top of said system without the prior written consent of the grantee. All provisions of this instrument, including the benefits and burdens, shall run with the land and shall be binding upon and shall inure to the benefit of the Grantor, the Grantee, their legal representatives, heirs, successors and assigns.

Subject to the duty of the Grantee to restore the surface to as close a natural state as possible under the circumstances and otherwise perform obligations imposed upon it by contract or by law, and to repair any surface damage caused by Grantee's invasion or occupancy to service the easement or the sewer line and fixtures contained therein, at its expense and within a reasonable time.

**2. Dieter E. Duennebeil and Margot E. Duennebeil, trustees.** The District and engineers have determined the most feasible site for the sewer pump station is on a portion of land owned by Duennebeil again identified as Sidwell Number 24-21-252-001-0000. In order to avoid contentious litigation and expense, Duennebeil and District have agreed upon the sum of TWENTY-FIVE THOUSAND and no/100 DOLLARS (\$25,000.00) for the purchase of a portion of Duennebeil' s land as identified in Exhibit B, attached hereto and incorporated herein by this reference. Upon payment of that sum by the District, Duennebeil will convey by Warranty Deed to the District that portion of land to be determined by a proper metes and bounds survey. Said survey shall be accomplished by a licensed land surveyor and paid for by the District. In addition, the District agrees the sewer connection fee for Duennebeil is \$3,500.00. All other connection fee expense or improvements shall be Duennebeil's.

**3. District.** Upon acquisition of the Duennebeil land, the District shall make available to Silver Glade, the acquired land for the purpose of constructing the sewer pump station.

The District shall accept the constructed facilities and pump station once they have passed the Cottonwood inspection, including, but not limited to: a.) That they have been previously video taped; b.) Previously flushed; c.) Previously passed a pressure test; d.) Previously test operate the pump station as required by the engineering specifications, and e.) The "as built" drawings have been supplied to the District and to Cottonwood. Then and in perpetuity the District shall be responsible for the operation, care, inspection, maintenance, repair and all things necessary for the continued operation of the constructed facility, limited only to the 8" main line, related manholes and sewer pump station.

The District will commence its customary monthly use fee to each connection when the facilities are constructed and connected to the collector system and each required property owner has completed the District Application and paid the required connection fee.

4. **Notices.** All notices shall be in writing and shall be deemed to have been duly given when deposited in the regular first class United States mail, postage prepaid, or hand delivered and addressed to the party in interest at the addresses listed as follows:

A. Solitude Improvement District  
Big Cottonwood Canyon  
P.O. Box 71350  
Salt Lake City, Utah 84171-0350

B. Silver Glade LLC  
P.O. Box 8053  
9800 East Martha Road  
Alta, Utah 84092

C. Dieter E. Duennebeil and Margot E. Duennebeil, trustees  
4333 South 1140 East  
Salt Lake City, Utah 84124

Any party to this agreement may change their address by providing written notice to the other parties to this agreement.

5. **Paragraph Titles.** Paragraph titles as to the subject matter of particular paragraphs herein are for convenience only and are in no way to be construed as part of this Agreement and Easement or as a limitation of the scope of the particular paragraphs to which they refer.

6. **Counterparts.** This Agreement and Easement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

7. **Situs.** This Agreement and Easement shall be construed and the rights and duties of the parties determined in accordance with the laws of the State of Utah.

8. **Binding Effect.** This Agreement and Easement shall inure to the benefit of and be binding upon the parties and their respective successors, heirs and assigns. Nothing in this Agreement and Easement, express or implied, is intended to confer upon any other person any rights under or by reason of this Agreement and Easement.

9. **Enforceability.** All parties have all such rights and remedies provided by law or in equity for the enforcement of any term contained in this Agreement and Easement.

10. **Attorney's Fees.** In the event any party to this Agreement and Easement must bring a legal action to enforce any of the terms of this Agreement and Easement against any other party to this Agreement and Easement, the prevailing party shall be entitled to recover reasonable attorney's fees, costs and all reasonable expenses.

11. **Entire Agreement and Easement.** This Agreement and Easement constitutes the entire Agreement and Easement between all parties signatory hereto. This Agreement and Easement may not be amended in any fashion except by written instrument, executed by the parties hereto, specifically providing for amendment hereof. No warranties, express or implied, are represented other than the express warranties contained in this Agreement and Easement. No representation or statement not expressly contained in the Agreement and Easement or incorporated herein by reference shall be binding upon any party as a warranty or otherwise.

AGREED TO AND EXECUTED as of this 30th day of October, 2003.

Silver Glade LLC

By Edward A. Pauls  
Edward A. Pauls, Manager

The Dieter E. and Margot E. Duennebeil Revocable Living Trust

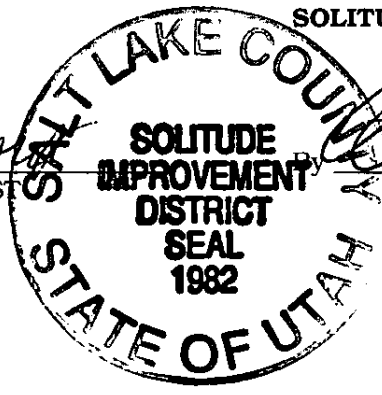
By Dieter E. Duennebeil By Margot E. Duennebeil Trustee  
Dieter E Duennebeil, trustee Margot E. Duennebeil, trustee

Trustee -5-

ATTEST:

SOLITUDE IMPROVEMENT DISTRICT

*[Signature]*  
CARYL L. BESELDHORST  
District Clerk



*[Signature]*  
WILLIAM G. LAPSLEY  
Director

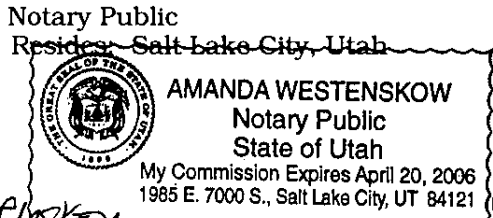
**NOTARY PUBLIC ACKNOWLEDGMENTS**

State of Utah )  
                          ) ss  
County of Salt Lake )

On this 30 day of October, 2003 personally appeared before me ~~Edward A. Pauls~~ <sup>in Amanda Westenskow</sup> the ~~Edward A. Pauls~~ Notary Public in and for the State of Utah, Edward A. Pauls who represents he is the Manager of the Silver Glade LLC and who, before me, executed this Agreement and Easement.

*Amanda Westenskow*

Commission Expires: 04/20/06  
  
State of Utah )  
                          ) ss  
County of Salt Lake )

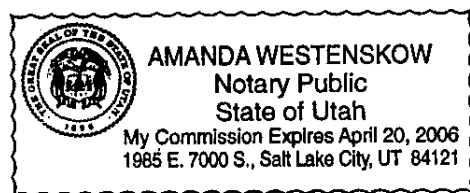


On this 31 day of October, 2003 personally appeared before me ~~Dieter E. Duennebeil and Margot E. Duennebeil~~ <sup>Amanda Westenskow</sup> the ~~Dieter E. Duennebeil and Margot E. Duennebeil~~ Notary Public in and for the State of Utah, Dieter E. Duennebeil and Margot E. Duennebeil, trustees of the Dieter E. and Margot E. Duennebeil Revocable Living Trust who represent they are the authorized trustees and they have executed this Agreement and Easement pursuant to the authority vested in them by the trust agreement.

*Amanda Westenskow*

Commission Expires: 04/20/06

Notary Public  
Resides: Salt Lake City, Utah



State of Utah )  
 )  
 ) ss  
County of Salt Lake )

On this 31<sup>ST</sup> day of October, 2003 personally appeared before me Megan P. Dever a Notary Public in and for the State of Utah, William G. Lapsley and Gary L. DeSeelhorst who represent they are the Director and District Clerk respectively for the Solitude Improvement District and they have executed this Agreement and Easement pursuant to the authority of a properly passed resolution of the Board of Trustees.

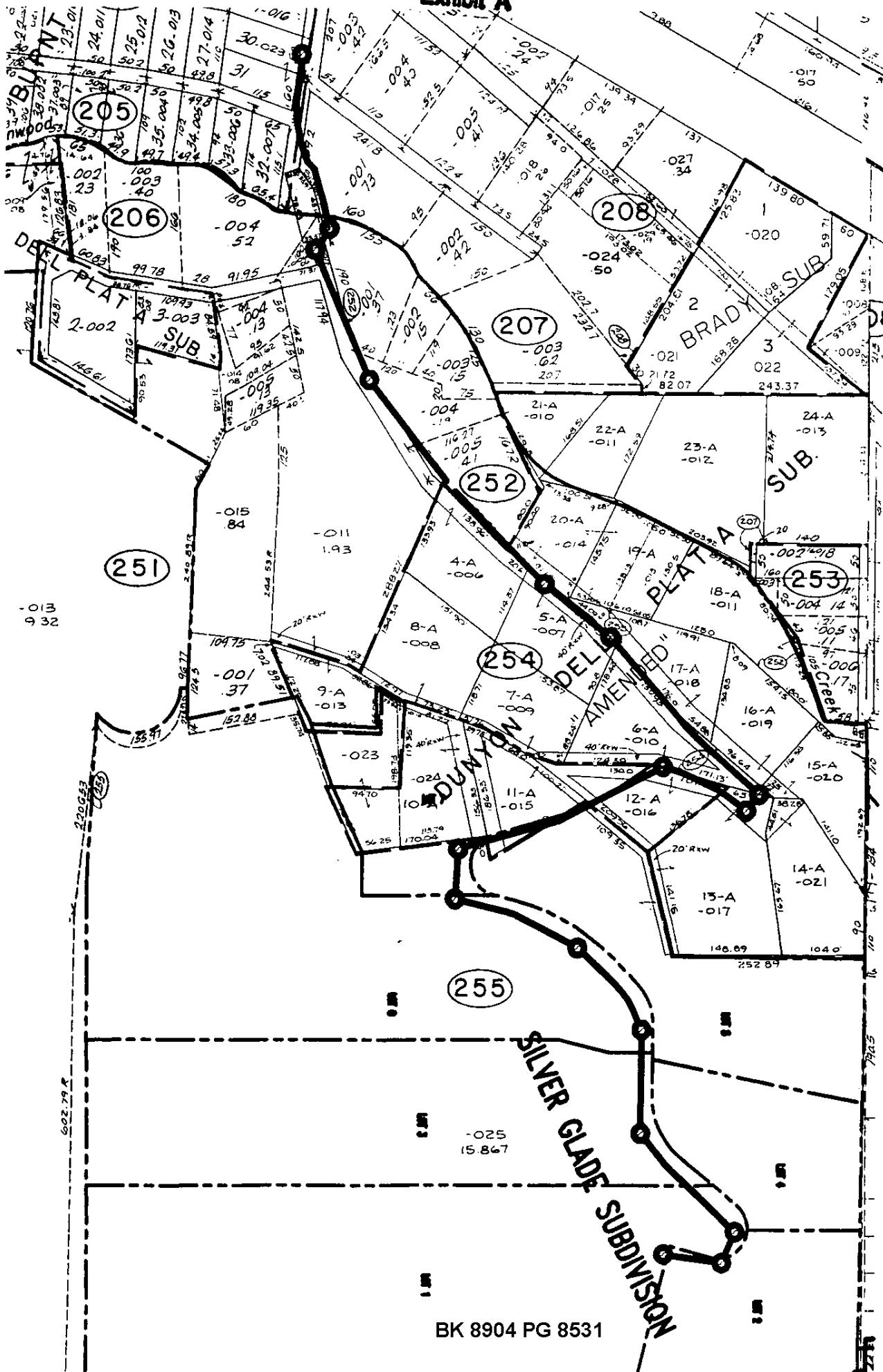


Commission Expires: Sept. 17, 2006

A handwritten signature in cursive script that reads 'Megan P. Dever'. The signature is written over a horizontal line.

Notary Public  
Resides: Salt Lake City, Utah

Exhibit A



FOR COPY  
CO RECORDER



Exhibit B

POOR COPY  
CO. RECORDER

Sidwell No. 24-21-252-001-0000

- A. Approximate portion sold subject to survey.
- B. Remainder parcel.

