

TOWN OF MARBLE

BOOK 588 PAGE 744

ORDINANCE NO. 2

Series 1980

AN ORDINANCE APPOINTING SPECIAL COUNSEL FOR THE TOWN OF MARBLE IN CONNECTION WITH CERTAIN WATER RIGHTS MATTERS, AUTHORIZING AN AGREEMENT WITH NON-PROFIT CORPORATION OF WATER USERS FOR LEASE OF MUNICIPAL WATER RIGHTS, AND GRANTING CORPORATION EASEMENT FOR WATERLINES IN CERTAIN TOWN STREETS.

WHEREAS, heretofore The Marble Water Company, a Colorado non-profit corporation, has been organized for the purpose of furnishing domestic/municipal water supplies for users in and around the site of the Town of Marble, Colorado;

AND WHEREAS, said corporation has proposed to lease certain water rights heretofore decreed to and owned by The Town of Marble, for use in connection with its corporate purposes;

AND WHEREAS, in connection with the aforesaid leasing of municipal water rights, it would or may be necessary and advisable for application to be made to the appropriate division of the Water Court, for the right to change the decreed point of diversion for said water rights;

AND WHEREAS also, if and whenever said lease shall have been entered into and said alternate point of diversion shall have been decreed, it will be necessary and desirable for said corporation to obtain easements necessary for transporting water by means of pipelines from the alternate point of diversion to site or sites of ultimate use within the corporate territory of said Town, and whereas from a practical standpoint the most economical and convenient route for such easements is and would be over, across and under public ways within said Town of Marble;

AND WHEREAS, the accomplishment of the aforesaid corporate purposes, the obtaining of decreed permission to change the point of diversion for such water rights, the leasing of said water rights, and the granting of easements for lines in connection therewith, all as specified hereinabove, would make available to certain citizens of the Town of Marble certain essential services which those citizens need, and which currently and in the foreseeable future the Town of Marble is and will be unable financially to provide by itself.

AND WHEREAS, the Board of Trustees of the Town of Marble is desirous of enabling said corporation to accomplish the aforesaid purposes, and thereby to provide such services to the citizens of said

Submitted for record this 4th day of January, A. D. 1983, at 1:00 P. M. Joanne M. Reitingger, Recorder, Town of Marble, Colorado. 371730

ORDINANCE NO. 2, Series 1980

Town,  
NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF MARBLE,  
COLORADO, that:

1. Short title. This ordinance shall be known and may be cited as the "Waterworks Ordinance of 1980".

2. Appointment of special counsel. There is hereby approved and ratified the previous action by the Mayor, namely, the entering into on behalf of the Town of Marble, and the Clerk hereby is authorized and directed to attest by counter-signature, an agreement by which the Town engaged as special legal counsel in this matter the firm of Delaney & Balcomb, attorneys at law, Glenwood Springs, Colorado, said counsel having authority to file in the Town's behalf and to prosecute to decree a petition for the right to change the point of diversion, for so much as shall have been recommended by the Town's engineering counsel engaged for this purpose, of those certain conditional rights to three (3) cubic feet per second of flow of water from Carbonate Creek awarded to Marble Pipeline and Water System by Division No. 5 of the Water Court in Colorado by means of decree made and entered May 29, 1974.

3. Purpose of point of diversion change. Those water rights for which permission to change the point of diversion shall have been granted pursuant to this ordinance, if any, shall be used only for the purpose of supplying investors in and customers of The Marble Water Company, at points of ultimate use within the territorial boundaries of the Town of Marble and also at points outside said corporate boundaries but within a reasonable distance therefrom.

4. Lease of water rights allowed. In order to accomplish the aforesaid change in point of diversion, and to make available to investors in and customers of The Marble Water Company an adequate supply of water for the foregoing purposes, the Mayor hereby is authorized and directed to sign, and the Clerk to attest by counter-signature, a lease agreement by and in behalf of the Town, with said water company, in the form and according to the terms and conditions shown and recited in Exhibit A attached and incorporated hereto by this reference.

5. Easements granted. The Mayor hereby is authorized and directed to sign, and the Clerk to attest by countersignature,

for purposes of granting to said water company the necessary easements for pipelines to be used in connection with the furnishing of water supplies to its investors and customers, an agreement granting such easements by and in behalf of the Town, with said water company, in the form and according to the terms and conditions shown and recited in Exhibit B attached and incorporated hereto by this reference.

INTRODUCED, READ IN FULL, AND PASSED on the 11th day of April, 1980:

*David H. Dennis*  
Mayor of the Town of Marble

Attested by

*Luis Arim McCallum*  
Clerk of the Town of Marble

(SEAL)



# TOWN OF MARBLE

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EXHIBIT A

## LEASE

This Lease made and entered into this 11th day of April, 1980, by and between the TOWN OF MARBLE, Colorado, (Lessor) and THE MARBLE WATER COMPANY, a Colorado non-profit corporation, (Lessee),

WITNESSETH:

1. Leased Premises. In consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the Lessee to be observed and performed and the benefits to be conferred on the residents of Marble by Lessee hereunder, Lessors devise and lease unto the Lessee and Lessee rents from Lessors an undivided ~~one~~ one-third interest in and to those certain three cubic feet per second of flow of water in the Marble Pipeline and Water System, Appropriation Date 1907, as decreed conditionally by the Water Court in and for Water Division 5, State of Colorado, in Case No. W-1848, on May 29, 1974; provided, however, that in the event that Lessor's conditional right in and to such flow shall have been abandoned or otherwise terminated, then in that event the property to which the Lessee's tenancy shall pertain shall be an undivided one-third interest in the three cubic feet per second of flow as granted absolutely in said decree.

2. Term. The term of this Lease shall commence May 17, 1980, and expire at 12:00 o'clock midnight on May 17, 1990, or, at a minimum, whatever period of time shall have been required for all investors to be reimbursed for installing the system. Provided, however, that the leasehold has not been sooner terminated by the parties hereto as otherwise herein described, Lessee shall have the right with the consent of Lessor to extend this lease for two successive terms, each of which shall be identical in length to the primary term herein described.

3. Rental. Lessee agrees to pay Lessor a rental for the term in the amount of \$1.00 and other good and valuable consideration payable in advance on the first day of each year of the within Lease throughout the term of the Lease.

4. Place of Payment. All rent shall be paid to Lessor at its ordinary place of business within the Town of Marble, Colorado.

5. Lessor's Obligations. Lessor represents and warrants that the water right known as the Marble Pipeline and Water System is in good standing with the Court and usable for purposes contemplated by Lessee herein and further that Lessor is the owner of such water right.

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LEASE

EXHIBIT A

Page 2

6. Use of Lease Property. Lessee shall use the lease property solely for the purposes of providing municipal, domestic, and irrigation water supplies to persons situate within or adjacent to the Town of Marble; provided, however, that Lessee shall be required only to extend water service to persons in a fashion that is reasonable considering the need for said service and the cost of supplying the same.

7. Changes in Water Rights. Lessee shall, with Lessor as a co-applicant, be entirely responsible for obtaining alternate points of diversion and other changes of water rights if necessary for Lessee's intended use of the leased water right.

8. Preservation of Water Right. Lessee shall be responsible at all times to take any and all necessary action to preserve Lessor's rights as they are defined in said water right to the extent of the interest leased hereunder.
9. Indemnification. Lessee hereby indemnifies and agrees to hold Lessor harmless for any expenses, liability or damage which may come as a direct or indirect result of Lessee's use of the herein leased water right.
10. Surrender of Leasehold Water Right. At the expiration of the tenancy hereby created, Lessee shall surrender the leasehold water right up to Lessor in the same general condition as when leased herein. Lessee shall take no action in Water Court or otherwise to dilute Lessor's right of use of said water right as defined by their decree without the prior written consent of Lessor being first obtained.
11. Assignment and Subletting. Lessee shall not assign this lease in whole or in part nor sublet any portion of the leased water right without the prior written consent of Lessor being first obtained.
12. Holding Over. Any holding over after the expiration of the primary term hereof or any extension hereof shall be construed to be a tenancy from month to month at a rental to be paid for the month as shall be determined by the parties hereto and shall otherwise be on the same terms and conditions as herein stated.
13. Waiver. A waiver by Lessor's of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition of any subsequent breach of the same.
14. Binding Effect. The terms and conditions hereof shall extend to and be binding upon the parties hereto, their successor and assigns.

TOWN OF MARBLE

By 

THE MARBLE WATER COMPANY

By 

# TOWN OF MARBLE

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## GRANT OF EASEMENTS FOR WATER LINES

EXHIBIT B

THIS AGREEMENT, entered into by The Town of Marble, Colorado, a municipal corporation (hereinafter referred to as "Marble"), party of the first part, and The Marble Water Company, a Colorado non-profit corporation (hereinafter referred to as the "Company"), party of the second part.

### WITNESSETH THAT:

For and in consideration of the sum of ten (10) dollars in hand paid, receipt of which hereby is acknowledged, and also in consideration of the fact that the Company will make use of the rights granted herein for the purpose of providing to citizens and property owners in the Town of Marble, water services which said Town currently and in the foreseeable future is unable financially to provide, Marble has this day bargained and sold and by these presents hereby does grant, bargain, sell, convey, transfer and deliver unto the Company, permanent easements and non-exclusive rights of way, sixty-six (66) feet in width, in, over and upon and across those two certain parcels of land described by centerlines as follows, namely:

### Centerline of Parcel No. 1

Commencing at the site of a proposed water wellhead, which site is a point, at which point there intersect the centerlines of Park Street and West First Street, which point is the TRUE POINT OF BEGINNING;

Thence northerly along the centerline of said West First Street, to a point, at which point there intersect the centerlines of Marble Street and said First Street,

All situated in the Town of Marble, Colorado, according to the plat thereof at Page 93 of the Book of Plats kept by the Clerk and Recorder in and for the County of Gunnison, State of Colorado.

### Centerline of Parcel No. 2

Commencing at a point, at which point there intersect the centerlines of Silver Street and West First Street, which point is the TRUE POINT OF BEGINNING;

Thence westerly along the centerline of said Silver Street, to a point, at which point there intersect the centerlines of said Silver Street and West Fourth Street;

Thence northerly along the centerline of said West Fourth Street, to a point, at which point there intersect the centerlines of said West Fourth Street and Marble Street,

All situated in the Town of Marble, Colorado, according to the plat thereof at Page 93 of the Book of Plats kept by the Clerk and Recorder in and for the County of Gunnison, State of Colorado.

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Said easement shall be only for the purpose of entering upon said land to construct and install underground water service lines, mains and conduits, and to inspect, maintain, repair, remove and re-place same.

TO HAVE AND TO HOLD said easements and rights of way unto the Company and unto its successors and assigns forever.

The Company hereby is provided with, and accepts, notice that title with respect to some or all of the real property over, across and in which the aforesaid easements traverse, has not been quieted in Marble, there are or may be questions concerning whether the public ever acquired any rights in all or portions of such ways or whether the public ever abandoned all or any portion of such rights, and therefore Marble disclaims any and all warranties with respect to the merchantability, sufficiency or other adequacy of its title thereto.

IN WITNESS WHEREOF, the parties hereunto affix their signatures on the dates appearing opposite thereto, respectively:

THE TOWN OF MARBLE,  
a Colorado municipal corporation,

By [Signature]  
its Mayor.

(Date) April 12, 1980



Attested by

[Signature]  
its Clerk

(Date) April 12, 1980

(SEAL)

THE MARBLE WATER COMPANY,  
a Colorado nonprofit corporation,

By [Signature]  
its President.

(Date) April 12, 1980

Attested by

[Signature]  
its Secretary

(Date) April 12, 1980

(SEAL)





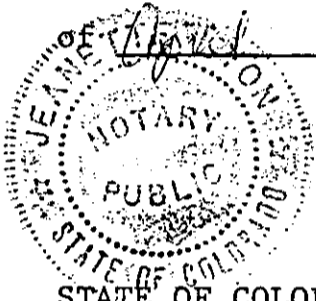
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STATE OF COLORADO )  
County of GUNNISON ) ss

The foregoing Grant of Easements For Water Lines was acknowledged before me on the 12<sup>th</sup> day of APRIL, 1980 by David H. Beamis, as Mayor of the Town of Marble, Colorado, and by Lois Ann McCollum, as Clerk of the Town of Marble, Colorado.

My commission expires 5-25-82.

WITNESS my hand and official seal affixed hereto this 12 day of April, 1980.



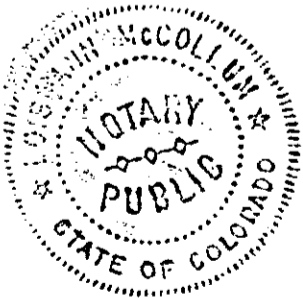
Jeannette Lyon  
Notary Public

STATE OF COLORADO )  
County of GUNNISON ) ss.

The foregoing Grant of Easements For Water Lines was acknowledged before me on the 12<sup>th</sup> day of APRIL, 1980, by OSCAR D. McCollum, as President of The Marble Water Company, a Colorado nonprofit corporation, and by JEANNETTE LYON, as Secretary of said corporation.

My commission expires My Commission expires Sept. 20, 1980.

WITNESS my hand and official seal affixed hereto this 12<sup>th</sup> day of APRIL, 1980.



Lois Ann McCollum  
Notary Public