

Rushing, Emalee

From: Kristin Moore [kmoore@rockymountainenvironmental.com]
Sent: Wednesday, July 28, 2010 2:14 PM
To: Rushing, Emalee
Subject: permit ownership

Emalee,

Attached is a development water agreement between the City of Driggs, Teton Creek Resort, LLC, and Douglas Investments, LLC. Teton Creek Resort was cancelled last year and is no longer in existence. Douglas Investment still currently exists, but their name is not on the permit. The property is no longer owned by either company, but it held by a bankruptcy trustee.

The permit in question is 22-7786.

And I believe I was mistaken, the agreement does have all the signatures on it, but the signature for Douglas Investment is in the wrong location. The notary language confirms that David Douglas signed the document.

Thank you for looking into this.

Kristin Moore
Water Rights Analyst
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E-Mail: kmoore@rockymountainenvironmental.com
VOICE: 208-524-2353 ||| FAX: 208-524-1795



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City of Driggs

60 South Main - P.O. Box 48

Driggs, Idaho

83422

Phone: (208) 354-2362 - FAX: (208) 354-8522

www.driggs.govoffice.com

Louis B. Christensen, Mayor

February 21, 2007

Teton Creek Resort
C/O Sean Moulton
Moulton Law Office
Driggs, Idaho 83422

Dear Gentlemen,

With the final approval of the Water Agreement, please remember that we will be needing the Transfer of Water Rights, and some documentation showing the City as owner of the well property.

Thank you very much for your help.

Sincerely,



Louis B. Christensen

TETON CREEK RESORT
DEVELOPMENT WATER AGREEMENT

THIS AGREEMENT, now made and entered into on this 20 day of February, 2007, by and between Teton Creek Resort, LLC, an Idaho Limited Liability Company ("Teton Creek"), Douglas Investments, LLC, an Idaho Limited Liability Company ("Douglas") and the City of Driggs, a municipality ("City").

RECITALS

WHEREAS, Teton Creek Resort, Planned Unit Development (PUD) is an approved phased development in Teton County Idaho;

WHEREAS, Phases one and two of the PUD have been approved and platted;

WHEREAS, City water and sanitary sewer facilities are accessible to Teton Creek's land;

WHEREAS, Teton Creek Resort, PUD and the City have an existing agreement for the City to provide sewer service to the PUD;

WHEREAS, Teton Creek Resort, Phase Two is connected to the City water system in accordance with an existing agreement;

WHEREAS, Teton Creek is desirous of connecting the entire PUD to the City's water system facilities;

WHEREAS, Douglas has purchased the remaining, undeveloped, phases of Teton Creek Resort, PUD;

WHEREAS, Teton Creek, Douglas and City have determined that it is in the interest of the general public and mutually beneficial to the parties themselves, to improve water services to Teton Creek Resort and increase capacity for the City;

WHEREAS, Teton Creek Resort has existing producing wells and water rights and facilities which could better benefit the City in consideration of the City's allowing Teton Creek Resort access to the City water system and water lines;

WHEREAS, the parties desire to use existing facilities for their mutual benefit and to otherwise ensure there is compliance with all applicable federal, state and local rules regulating water distribution and use;

NOW, THEREFORE, in consideration of the mutual promises hereafter set forth, and for other good and valuable consideration, Teton Creek, Douglas and City hereby promise and agree as follows:

1) AUTHORIZATIONS.

- a) City represents that consent for this Agreement was given by the City Council as reflected by minutes of meeting dated February 20, 2007 and that City's Mayor and Clerk, whose signatures appear hereon, were authorized to sign same on behalf of City.
- b) Teton Creek represents that entering into this Agreement is by the consent of its managers and members, and that the managing member is authorized to sign this Agreement on behalf of Teton Creek.
- c) Douglas represents that entering into this Agreement is by the consent of its managers and members, and that the member, David Douglas, is authorized to sign this Agreement on behalf of Douglas.

2) CONSTRUCTION AND DELIVERY OF WATER SYSTEM AND WELLS.

- a) **Phase I Metering of Water and Billing by the Town.** Existing Well No. 2. There is at Teton Creek Resort an existing well, identified by the parties as "well number 2". Said well produces approximately 175 gpm. This well and associated water rights will be conveyed to the City.
- b) **Additional capacity New Well(s).** Teton Creek has drilled and tested well #3 to supplement its needs and provide the City with additional capacity. Well #3 was pump tested in March of 2006 and produced in excess of 500 gpm. The results of the test have been provided to the Town.
- c) **Creekside Condominiums (Phase I, 60 units).** The Creekside Condominiums, which are comprised of 60 units in 4 buildings, will be metered at the expense of Teton Creek. One water meter for each of the four condominium buildings in Phase II of Teton Creek Resort (Creekside Condominiums) will be installed by Teton Creek. One meter may be installed for the Rendezvous Cabin located between the two northern condominium buildings. The Town will bill for each of the five meters. The Teton Creek Water Company or the Condominium Owner's Association will be responsible for the payments unless otherwise agreed by the Town.
- d) **Improvement Plans.** Prior to commencement of construction for any new water system improvements within the PUD, Teton Creek and/or Douglas will file with the City a complete set of improvement plans showing all water system improvements contemplated in that phase.
- e) **Inspection.** Teton Creek and/or Douglas will retain a professional engineer (hereafter referred to as the "Project Engineer") licensed within the State of Idaho to supervise, inspect and test the construction of all public improvements within the PUD in order to ensure such improvements are constructed in accordance with this Agreement, and the Improvement Plans. Teton Creek and/or Douglas will not materially deviate from the Improvement Plans without the express written approval of the City Engineer, which approval shall not be unreasonably withheld.
- f) **Corrected Improvement Plans.** Prior to acceptance of water system improvements located within the PUD, Teton Creek and/or Douglas will file "As Constructed" Improvement Plans (hereafter referred to as the "Corrected Improvement Plans") with the City Engineer. Such Corrected Improvement Plans shall be prepared by the Project Engineer and shall show the actual constructed location of all public improvements within the PUD including the horizontal and vertical location of all water lines and easements. Such Corrected Improvement Plans shall also specifically show all changes between the original Improvement Plans and the public improvements as actually constructed. The Project Engineer shall also certify upon the Corrected Improvement Plans that such Plans correctly show all public improvements as actually constructed and that such public improvements have been constructed in accordance with the Improvement Plans. The Project Engineer shall also deliver to the City Engineer all compaction reports, daily construction logs, reports, written tests, analysis and other data as may be necessary to verify or support the certification of the Project Engineer.
- g) **Costs and Expenses.** For purposes hereof, Teton Creek shall be solely responsible for the costs of construction of the water wells, lines and infrastructure and for securing necessary permits and approvals.
- h) **Acceptance of System.** Provided Teton Creek and/or Douglas constructs such well and lines in a manner acceptable to the City of Driggs and in conformity with all applicable Federal, State, and Local requirements, City agrees that the Teton Creek Resort's system will be connected to the City's water system. City will receive the lines and infrastructure unto its system by a separate "Notice of Formal Acceptance."
- i) **Transfer of well and system components.** The ownership, use and maintenance of said wells and

lines, with accompanying control systems and buildings will be transferred to City. The delivery of the documents for the transfer will be 60 days following completion, and upon City acceptance.

- j) **Town of Driggs Water Rates.** The water rates and fees for this agreement shall be in accordance with Resolution #86 of the City of Driggs, or such subsequent amendments or replacement Resolutions establishing water rates for users of the City system, determined by the applicable rates in effect at the time of connection for service.

3) PLANNED UNIT DEVELOPMENT, EXCESS CAPACITY CREDITS.

- a) Present PUD and subsequent phases of the PUD are/will seek approval for residential and commercial uses.
- b) Teton Creek has provided a report to the City prepared by Sunrise Engineering that shows a that the total residential portion of Phases I and 3 of the PUD generates a daily demand for water of 176 gpm (Phase I, 60 units=41 gpm, Phase 3, 167 units = 135 gpm.) The commercial area and recreational clubhouse are not expected to generate a demand in excess of 15 gpm (4 times the study projection of 3.5 gpm.) Phase 2 of the Teton Creek Resort has been added to the system in accord with an earlier agreement and paid all fees for capacity, Phase 2 domestic use demand is projected to be 9 gpm. If this is included in the demand on the water resource the sum for the project is 200 gpm. The difference between the sum of the total demand 200 gpm and the 500 gpm provided to the City per this agreement shall be the "excess capacity". The value of the excess capacity will be allocated to the hookup fees for the existing sixty condominium units and the small "Rendezvous" management office in the Phase One of the Project.
- c) The water supply for the remaining residential and commercial uses of Teton Creek Resort shall pay water and rate fees in accordance with Section 2 j above.

4) WARRANTY

Teton Creek warrants that the materials and workmanship employed in the construction of all public improvements within the PUD shall be good and sound and shall conform to generally accepted standards within the construction industry. Such warranty shall extend for a period of one (1) year after acceptance of the PUD by the City. Teton Creek, and Teton Creek's heirs, successors and assigns, shall and do hereby warrant and agree to defend the quiet and peaceful possession of the City in all easements, rights-of-way, street dedications or other estates conveyed pursuant to the terms of this Agreement or pursuant to the PUD which is the subject hereof, from and against all claims against Teton Creek and Teton Creek's successors or assigns and against every person whomsoever who lawfully holds, or who later lawfully claims to have held, rights in the premises as of the date of this agreement.

5) NOTICES

Any notice required by this Agreement shall be mailed to the receiving party at the address set forth above or such other address as may be delivered to the sending party in writing. Such notice shall be mailed by certified mail, return receipt requested, postage prepaid and addressed as set forth above and shall be deemed received upon its deposit in the United States mail in such manner.

6) RECORDING FEES

Prior to the approval and acceptance of any additional phase of Teton Creek Resort PUD, Teton Creek shall have this Agreement recorded with the Teton County Recorder in the public records.

7) COVENANTS APPURTENANT TO THE LAND

All Covenants and conditions set forth herein shall be appurtenant to and run with the PUD and the

land and shall be binding upon Teton Creek's successors or assigns.

8) ASSIGNMENT

This Agreement shall not be assigned to any other party, other than Douglas, without the written consent of the City, which consent shall not be unreasonably withheld.

9) DEFAULT

In the event either party should default in any of the terms and conditions hereof and the non-defaulting party is required to bring any action to enforce the same, the prevailing party and any such action shall be entitled to recover reasonable attorneys fees and costs from the non-prevailing party.

10) GOVERNING LAW

The laws of the State of Idaho shall govern disagreements. The venue for any action arising out of this Agreement shall be exclusively in the District Court of the Seventh Judicial District of the State of Idaho, Teton County.

11) ENTIRE AGREEMENT

This writing evidences the final and complete agreement between the parties and no other prior statement, representation or understanding shall be binding upon the parties unless expressly set forth herein.

12) EFFECTIVE DATE

This Agreement shall become valid and binding only upon its approval by the City Council of the City and upon its execution by the Mayor.

Dated this 20 day of February, 2007.

City of Driggs

by 
Mayor

by 
Clerk

Teton Creek Resort, LLC

by 
Its Manager

Douglas Investments, LLC

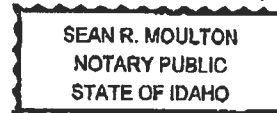
by _____
Its Member

STATE OF IDAHO)
)
 County of Teton)

On this ___ day of February, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Louis B. Christensen known to me to be the Mayor of the City of Driggs, the municipality that executed the foregoing document and acknowledge to me that such city executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Sean R. Moulton
 NOTARY PUBLIC for Idaho
 Residing at: Driggs, Idaho
 My commission expires: 2/13 2/2013 sm

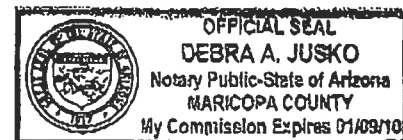


STATE OF ARIZONA)
)
 County of MARICOPA)

On the 14 day of February, 2007, personally appeared before me, Peter L. Cook, and duly sworn did say that s/he is known by me to be the Manager of TETON CREEK RESORT, LLC, the Limited Liability Company that s/he is the person who executed the foregoing instrument for and behalf of said Limited Liability Company; s/he has read the same and knows the contents thereof; and said Limited Liability Company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Debra A. Jusko
 NOTARY PUBLIC FOR ARIZONA
 Residing at: 6441 Kings Ranch Rd. Glendale, AZ
 My commission expires: _____



, and duly sworn did say that s/he is known by me to be the Manager of TETON CREEK RESORT, LLC, the Limited Liability Company that s/he is the person who executed the foregoing instrument for and behalf of said Limited Liability Company; s/he has read the same and knows the contents thereof; and said Limited Liability Company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

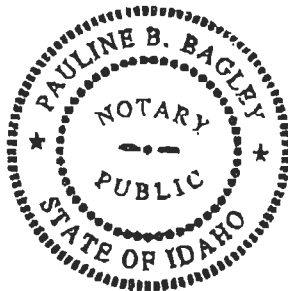
NOTARY PUBLIC FOR IDAHO
Residing at:

My commission expires:

STATE OF IDAHO)
County of Teton)

On the 20 day of February, 2007, personally appeared before me, David Douglas, and duly sworn did say that he is known by me to be a Member of DOUGLAS INVESTMENTS, LLC, the Limited Liability Company that he is the person who executed the foregoing instrument for and behalf of said Limited Liability Company; he has read the same and knows the contents thereof; and said Limited Liability Company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Pauline Bagley
NOTARY PUBLIC FOR IDAHO

[Handwritten signature]

Residing at: Victor

My commission expires: 8/2011

