

WATER SERVICE AGREEMENT

04/03/96

This Water Service Agreement is entered into as of this 1st day of July, 1995, by and between Timber Creek Water Company, a Colorado corporation, P.O. Box 3665, Breckenridge, CO 80424, hereinafter referred to as "TCWC," and THE DOT CONDOMINIUM HOMEOWNERS ASSOCIATION, INC., d/b/a Blue River Condominiums, P.O. Box 1942, Breckenridge, CO 80424, a Colorado non-profit corporation, hereinafter referred to as "DCHA."

WHEREAS, TCWC owns and operates a domestic water supply system which currently supplies domestic water to DCHA, and others; and

WHEREAS, TCWC and DCHA are desirous of entering into an agreement whereby TCWC will continue to provide domestic water to DCHA on a permanent basis, and whereby TCWC will, on or before July 1, 2005, convey all of its assets to a Colorado non-profit corporation, or other similar entity, to be owned by the owners of all properties served by TCWC.

NOW, THEREFORE, for valuable consideration, consisting in part of the promises and covenants set forth herein, the Timber Creek Water Company and THE DOT CONDOMINIUM HOMEOWNERS ASSOCIATION, INC., hereby agree and covenant as follows:

1. TCWC shall provide water to DCHA from and after July 1, 1995, based upon the terms and conditions set forth herein.
2. TCWC shall establish a schedule for determining the Single Family Equivalent (SFE) for each individually owned property for which water service will be provided, with that schedule to be identical to the Single Family Equivalent Unit Conversion Schedule used by the Breckenridge Sanitation District. This schedule shall be applied uniformly to all properties served by TCWC, whether those properties are in Timber Creek Estates, the Blue River (DOT) Condominiums, the DOT Subdivision, or the other subdivisions serviced by TCWC.
3. Each SFE shall entitle the property owner to which such SFE is allocated to 7,500 gallons of water per month.
4. TCWC will, at its expense, cause one or more water meters, as necessary, to be installed at the Blue River (DOT) Condominiums in order to measure the water usage by DCHA, with such water meter, or meters, to be installed by no later than January 1, 1998. If this can be accomplished with the use of one meter for the entire project, it will be done in that fashion. Otherwise, one meter will be installed for each building.
5. All water users served by TCWC will be subject to water metering.
6. Water usage charges for DCHA will, effective July 1, 1995, be \$15 per SFE. That rate will increase to \$18.50 per SFE effective July 1, 1996.
7. For a period of five years from and after July 1, 1996, the water usage charge to be paid by DCHA for one SFE shall not exceed \$18.50, which is the current Town of Breckenridge rate, multiplied times a percentage, the numerator of which is the Consumer Price Index, All Urban Consumers, U.S. City Average, specified for "All Items" (1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), for the month immediately prior to the month in which any adjustment in basic water usage charges is to occur, and the denominator of which is the Index for June, 1996.
8. At no time during the term of this Agreement shall the water usage charges per SFE to be paid by DCHA exceed the water usage charges per SFE to be paid by any other water users served by TCWC.

9. Once a property being served by TCWC is metered for water usage, water usage in excess of 7,500 gallons per month per SFE will be charged an excess usage fee, which fee will, initially, be at the rate of \$6.00 per 1,000 gallons of water usage, or any part thereof. This "penalty" rate is intended to encourage conservation of water so that the properties served by TCWC do not use more water than the water rights allow.
10. Determination of any excess water usage fee for DCHA will be determined based upon the total water usage of all condominium units as compared to the total water allocation for DCHA based upon the number of SFEs allocated to DCHA.
11. TCWC shall continue to own and operate the water system serving DCHA until such time as all assets of the Water Company are transferred to a nonprofit corporation, or other similar entity, to be owned by the owners of all properties served by TCWC.
12. On or before July 1, 2005, the water system serving DCHA, as well as others, and owned by TCWC, shall be conveyed to a Colorado nonprofit corporation, or other similar entity, to be owned by the owners of the properties served by that water system.
13. DCHA shall not be required to bear any of the cost or expense for capital improvements which are made to TCWC water plant, storage facilities, and water distribution system which are required or undertaken in order to increase the capacity of the water system so as to serve Timber Creek Estates or other new water users that may be added to the system. Nothing contained in this paragraph shall, however, prevent TCWC from passing along to its water users, including DCHA, any proportionate cost of improvements or additions to the water plant and/or system which, after a new plant is constructed to serve Timber Creek Estates, are required to be added by any state, county, or federal governmental agency, which improvements or additions were not required at the time of the construction of the new plant.
14. So long as the water plant serving DCHA is owned by TCWC, all revenues of TCWC resulting from water usage charges paid by DCHA, which revenues exceed the actual operating expenses of TCWC, shall be placed in a reserve fund to be used solely for the repair, maintenance, and improvement of the water system owned by TCWC and serving, in addition to others, DCHA.
15. Until the water system serving DCHA, as well as others, is turned over to the nonprofit corporation, or other similar entity, described in paragraph 12 above, TCWC shall be free to adopt such rules and regulations as may be appropriate for the sound operation of the water system. The fact that any rule or regulation adopted by TCWC has been adopted by any municipality or water district operating in Summit County shall constitute prima facie evidence of the reasonableness of such rule or regulation.
16. So long as the water plant serving DCHA is owned by TCWC, the Board of Directors of TCWC will not exceed five (5) members, of which one (1) member will be an individual selected by DCHA.
17. In order to ensure that the monthly water user charges being paid by the existing units being served by the plant do not absorb operational expenses required by a larger plant, which is not yet serving additional properties, once the new plant is in place, there will be a readiness to serve charge of not less than \$8 per month for each undeveloped lot for which TCWC is obligated to provide water service because of a Plant Investment Fee having been paid.

18. Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach thereof shall be submitted to mediation. . In such event, TCWC and DCHA shall each appoint a representative to select an independent mediator. The representatives of each party shall then meet and select a mediator and establish the ground rules for the mediation process. If those representatives cannot agree on either the mediator or the rules for the mediation process, the parties shall submit to mediation through the American Arbitration Association. Costs of mediation shall be paid by the parties on a 50/50 basis.
19. Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach thereof, which cannot be resolved through mediation, shall be settled by binding arbitration in accordance with the rules then obtaining of the American Arbitration Association. Judgment upon the award rendered by said arbitration may be entered in any court having jurisdiction thereof. Costs of arbitration and any preceding mediation shall be awarded to the prevailing party.
20. This Agreement may be modified from time to time, necessary, only by the written agreement of the Parties hereto.
21. The provisions of this Agreement are severable and separate, and if one or more is voidable or void by statute or rule of law, the remaining provisions shall be severed therefrom and shall remain in full force and effect.
22. In the event that any party is required to commence any action or proceeding against the other in order to enforce the provisions of this Agreement or in order to obtain damages for the alleged breach of any provisions of this Agreement, the prevailing party therein shall be entitled to recover, in addition to any amounts or relief otherwise awarded, all reasonable costs incurred in connection therewith, including reasonable attorney's fees.
23. TCWC and DCHA hereby expressly agree that the terms and conditions hereof, and performance hereunder, shall be construed and controlled by the laws of the state of Colorado, that the sole and exclusive jurisdiction and venue of any action brought by either TCWC or DCHA against the other with respect to this Contract or the Property, shall be in the District Court of Summit County, state of Colorado.

TIMBER CREEK WATER COMPANY, a Colorado corporation

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H. Gene Brown, President

TIMBER CREEK WATER COMPANY
RULES AND REGULATIONS

December 1, 1998

ARTICLE I. WATER SERVICE AND CHARGES

SECTION 1. Service Area.

- a. Timber Creek Water Company shall provide service to all lot owners within the Timber Creek Estates Development who are not in default under these Rule and Regulations.
- b. Nothing in these Rules and Regulations shall obligate the Timber Creek Water Company to furnish service to any property outside of the limits of the Development nor otherwise limit or restrict the Timber Creek Water Company's authority to set conditions on, assess additional charges and fees for, and in all other regards regulate the use of the Company's Water System.
- c. Timber Creek Water Company may provide water service to property outside the Timber Creek Estates Development on a contract basis as long as there is sufficient capacity to serve the residential lots within Timber Creek Estates.

SECTION 2. Payments for Service:

- a. Monthly fees. The Timber Creek Water Company shall have the option to issue monthly statements or issue no statements at all under a written contract for service. All charges for service are due and payable monthly with or without Statements. Charges for late payments, service line repair and other extraordinary charges may be added to the statements.
- b. Service Charges. Service Fees not paid by the tenth day of the month, will be charged an additional one and one-half percent (1.5%) per month as a carrying charge.

SECTION 3. Service Shutoff:

- a. In the event the charges for water service are not paid when due and the property owner fails to pay or cure the delinquency within ten (10) days of written notice, the water service to the premises or property served in connection with the delinquent account may be shutoff or discontinued in any manner by which disconnection or discontinuance of such service can reasonably be accomplished.

- b. Prior to any Shutoff or discontinuance of Service, the Timber Creek Water Company will deliver a shutoff notice by hand or regular first class mail to the owner or occupant. Such notice will require that the delinquent charges be paid within seventy-two (72) hours of the time of service of the notice. If neither the owner nor the occupant can be located for personal service, it shall be permissible to attach the notice to the front door of the property, or in some other prominent place. In the event the default is not cured within said 72 hours, Timber Creek Water Company may shutoff or discontinue service to the property or properties in default.
- c. Resumption of Service. After service has been discontinued, no person or entity shall reconnect or resume service without the consent of the Timber Creek Water Company and upon payment all fees and charges due on the account for the delinquent property.
- d. Charges for shutoff notices and reconnection of service shall be \$50 per property or unit served.

SECTION 4. Default Under Service Contract:

- a. In the event the Timber Creek Water Company has a Contract for Service of a development or group of users outside the Timber Creek Estates Development and the contracting party is in default under the Contract for service, Timber Creek Water Company shall give the party contracting for service, notice of said default. If said Contract party fails to cure all defaults and pay all charges due after demand for payment, the Timber Creek Water Company shall have the option to terminate the Service Agreement or deliver the shutoff Notice provided in Subsection 3b and terminate water service, or both. If the default is not cured or corrected within the time indicated in said Subsection, the Timber Creek Water Company may discontinue service, terminate the Contract and take any other appropriate measures as provided by Law.
- b. The above provision 4a shall not apply to the Contract between Timber Creek Water Company and the Timber Creek Estates Homeowners Association.

SECTION 5. Liability for Payment:

- a. The owner of any property or premises served by the Timber Creek Water Company's Water System shall be held personally liable for any and all charges imposed under the provisions of these Rules and Regulations from the time such become due. Where permitted by law until paid, all rates, fees and charges together with any interest thereon shall constitute a first and perpetual lien on and against the property served, and any such lien may be foreclosed in the manner provided by law.

- b. In addition to these Rules and Regulations, the Timber Creek Water Company shall have all other rights and powers to collect delinquent charges and to enforce any Service Contracts it may have as provided elsewhere by Law.
- c. Notwithstanding any provisions in any contracts for service, arbitration is not an option nor required in the event of default by a contracting party for the failure to pay for water service.

SECTION 6: Enforcement:

- a. The Company may summarily and without notice under Section two above, terminate service, connection for said use or lines to any person, party or organization who is taking water from the Timber Creek Water Company facilities without a contract or authorization to take such water.
- b. Any party who takes water from the Company facilities and does not pay for the same, shall be liable for civil action as provided hereunder and for civil and criminal penalties as provided by Colorado Statutes.
- c. In the event the Company incurs cost and expenses in enforcing collection of Fees or Charges under these regulations or any Service Contract, in addition to the fees and interest indicated in these regulations, the Company shall have the right to recover from the user or owner of any property, the cost of disconnection, reconnection, collection costs, court costs, and attorneys fees.

SECTION 7: Effective Date:

The effective date of these Rules and Regulations shall be December 1, 1998. Section 6 Enforcement effective date December 15, 1998

ARTICLE II.

CONNECTION AND TECHNICAL REQUIREMENTS

SECTION 1: Additional Rules and Regulations:

Additional Rules and Regulations pertaining to the technical requirements for connecting to the Timber Creek Water Company may be promulgated at such time as there is new construction within the Timber Creek Water Company service area.

9/22/08

Discussion with Gerry Cooney regarding Timber Creek Water Company and Timber Creek Estates

Financial Statements-No statements have yet been prepared. Lucke and Co (CPA firm) is preparing audited financial statements. Gerry agreed to turn these over when completed. Liability-The Water Company is a subchapter S corporation. So the board does not have any liability.

Bills-Currently the Water Company pays 4 bills on a monthly basis-Xcel Energy for the utilities used, a lease payment for water rights (\$13,000) annual cost, payment to Tom McClellan (a certified water engineer) for maintenance of the facility (he visits every week)(\$425 per month), and an insurance bill for the infrastructure.

Other items discussed-

The purchase price of the water rights is \$120,000. Gerry feels that the Water Company could easily obtain financing for this requirement from a local bank. He estimates there are 120 users, and the Water Company could assess each user \$1,000 each or amortize over 4 years at \$250 plus interest each over 4 years.

Some former members of the Timber Creek HOA board have not paid their water bills.

The condos, Town of Blue River, and fire department will be part of the Water Company, and the anticipated turn over date is 12/31/3008.

The developers invested \$500k in the water system which they know they will not receive back. Under the terms of the turnover, they intend to retain the water taps so that they can recover some of their investment.

The idea of water meters has been explored but was found to be cost prohibitive (\$2,000 to \$3,000) per unit. The water usage is metered at the source, and if a leak occurs, it can be determined there.

Additional Information obtained 9/20/2008

I asked Gerry about backflow preventers. Gerry stated that these are not required. He pointed out that the town of Breckenridge does not have these and they are not required. Since the water company is a non-profit organization, they could add these but they would simply pass 100% of the costs back to the users.

I asked about a letter sent to the condo board. Gerry explained that originally they were charged at a lower rate than the homes. The reasoning behind this is that the condos are 2 bedroom and the homes are much larger. His recent letter to the condo board requires that the condos pay the same rate as the homeowners.

He reiterated that the water plant is metered.

I asked about the water tap problems on Cooney Court. Gerry explained that general contractor missed these. The problem was related to lots 4A and 5A. One of the lot lines was adjusted to make the water tap accessible. Gerry assures us that there are no other missing taps.

There are two perpetual leases with a ditch company in Nevada.

There are approximately 109 shares in the water company broken down as follows:

Timber Creek homes 75, condo units, 30, Fire Department 1, Town of Blue River 1, and Larry Nelson duplex 2

I asked about the delay in turning over the water company since this was to take place in 2005. Gerry explained that this was delayed by ongoing litigation by the second developer in the subdivision which was finally resolved.

Gerry agreed to provide copies of the water services agreement and water district agreement which we can post to the website.