

Control Number: 46247



Item Number: 130

Addendum StartPage: 0

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APPLICATION OF DOUBLE § BEFORE THE STATE OFFICE
DIAMOND PROPERTIES §
CONSTRUCTION CO. DBA ROCK § OF
CREEK FOR A WATER §
RATE/TARIFF CHANGE § ADMINISTRATIVE HEARINGS

PUBLIC UTILITY COMMISSION
HEARING CLERK

**ROCK CREEK HOMEOWNERS' MOTION TO COMPEL AND RESPONSE TO
DOUBLE DIAMOND PROPERTIES CONSTRUCTION CO. DBA ROCK CREEK
RESORT'S OBJECTIONS TO ROCK CREEK HOMEOWNERS' THIRD
REQUEST FOR INFORMATION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, the Rock Creek Homeowners ("RCH"), intervenor in the above-referenced matter, and respectfully files this Motion to Compel ("Motion") and Response to Double Diamond Properties Construction Co. dba Rock Creek Resort's ("DDPCC") Objections to RCH's Third Request for Information to DDPCC ("Objections"). RCH's Motion is being filed within five (5) business days of DDPCC's Objections pursuant to P.U.C. PROC. R. 22.144(e); therefore, this pleading is timely filed.¹

I. BACKGROUND

On April 6, 2017, RCH filed its Third Request for Information ("RFI") to DDPCC. RCH's Third RFI only posed two requests, as follows:

RFI No. 3-1: Provide all draft and final copies of real estate purchase agreements for the sale of the lots located in the Rock Creek Resort.

RFI No. 3-2: Provide all executed copies of real estate purchase agreements with the current or former property owners for the 76 water customers that were connected to the DDPC system at the end of the Test Year.

¹ "The party seeking discovery shall file a motion to compel no later than five working days after the objection is received." P.U.C. PROC. R. 22.144(e).

130

DDPCC's counsel contacted RCH's counsel by telephone regarding issues with the Third RFI on April 14, 2017. Specifically, DDPCC's counsel contended that RFI No. 3-1 was burdensome because it would require DDPCC to produce real estate purchase agreements for over 1,400 lots. RCH's counsel agreed to discuss the matter with RCH's expert and attempt to reduce the number of real estate purchase agreements so that the request would not be burdensome for DDPCC. RCH's counsel, after discussing the matter with RCH's expert, sent a correspondence to DDPCC's counsel stating that RCH only wants "to see how the draft real estate purchase agreement changes over time," and to avoid RFI No. 3-1 being burdensome RCH agreed to only request that DDPCC provide the "10 most recent purchase agreements" and one copy of each draft when a change was made to the draft purchase agreement language. *See Attachment 1* (correspondence between RCH's counsel and DDPCC's counsel regarding Third RFI). RCH's counsel assumed that these documents, plus the 76 real estate purchase agreements associated with the active connections at the end of the test year requested in RCH RFI No. 3-2, would number less than 100 total agreements, and would not be burdensome for DDPCC to produce.

DDPCC's counsel then sent a correspondence in reply, now objecting to RCH RFI No. 3-2. With respect to the real estate purchase agreements associated with the active connections requested in RFI No. 3-2, DDPCC's counsel stated, "the significant majority of those are your client I believe. Is there a reason that you can't get the agreements from your client?" *Id.* RCH's counsel responded that it was not known how many of the individual ratepayers had a copy of their purchase agreements, and for evidence authentication purposes it was better to request them in discovery. *Id.* ("I don't

want them to have to possibly testify to authenticate them at trial. If I get them from you in discovery, they are already authenticated.”). DDPCC’s counsel responded that “we are not going to send you documents that that your clients possess,” again objecting that the purchase agreements were “equally available” to RCH. *Id.* RCH’s counsel again tried to resolve this discovery dispute, sending another correspondence going into more detail regarding why it was important to obtain the purchase agreements from DDPCC through discovery for authentication purposes, and quoting a law review article that provided analysis on why DDPCC’s “equally available” objection was improper. *Id.* DDPCC did not respond, and instead filed its Objections on April 17, 2017.

II. MOTION TO COMPEL

DDPCC makes objections to both RCH RFI No. 3-1 and RCH RFI No. 3-2 in RCH’s Third RFI. DDPCC’s objections were as follows:

DDPCC’s Objection to RFI No. 3-1: DDPC objects to this request because it is overly broad and unduly burdensome. The burden or expense of collecting this information on DDPC far outweighs the benefit, taking into account the needs of the case, the amount in controversy, and the importance of these documents. Tex. R. Civ. P. 192.4. Moreover, some of the documents sought are in the possession of the Protestants, including the contracts between DDPC and existing homeowners who are represented by the Protestants. Tex. R. Civ. P. 192.4. DDPC uses a standard form real estate purchase agreement for its lot sales. All draft and final copies of real estate purchase agreements for over 1,400 lots would require hours of DDPC’s staffs time and would not reveal any additional information than that revealed by a sample of the standard form agreements. Requesting every agreement, and all drafts, is merely a fishing expedition. *See Loflin v. Martin*, 776 S.W.2d 145, 148 (Tex. 1989). Finally, DDPC objects to producing draft copies of the real estate purchase agreements as such documents are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Tex. R. Civ. P. 192.

DDPCC’s Objection to RFI No. 3-2: DDPC objects to this Request on the grounds that it seeks information which is equally available to the Protestants. Tex. R. Civ. P. 192.4. DDPC further objects that this Request is overly broad and unduly burdensome and some of the information that

is sought is duplicative of RFI 3-1. Again, the burden and expense to DDPCC of supplying all 76 real estate purchase agreements outweighs the benefit taking into account the needs of the case, the amount in controversy and the importance of these documents. Tex. R. Civ. P. 192.4.

Essentially, DDPCC has 3 objections to RCH's Third RFI: (1) that the real estate purchase agreements requested by RCH are not relevant; (2) that producing these agreements would be unduly burdensome or that RCH's requests were overly broad; and (3) that the documents requested are equally available to RCH. DDPCC's Objections are all without merit, for the following reasons:

A. Relevance and Importance of Purchase Agreements

DDPCC argues that the purchase agreements requested by RCH "are not relevant," and RCH's requests are "not reasonably calculated to lead to the discovery of admissible evidence." DDPCC's Objection at 1. To the contrary, the purchase agreements requested by RCH in the Third RFI may be the most important and relevant evidence in this case.

As previously stated by RCH, a key issue in this case is whether there were developer contributions of assets. This issue was described in *Pub. Util. Com'n of Texas v. Sw. Water Services, Inc.*, 636 S.W.2d 262 (Tex. App.—Austin 1982, writ ref'd n.r.e.) as follows:

Water and sewer utilities serving suburban or rural areas normally acquire their facilities, particularly the water and sewer pipe mains and their connections to individual houses or businesses, from the developer of a subdivision. The developer will normally incur the original cost of installing the pipe and setting up the system. More often than not, the developer will recoup the cost of installation of the system when he sells houses in the subdivision. For federal income tax purposes, the developer is also allowed to deduct the cost of the system from the income he receives from the sale of lots or houses. The developer will then sell or donate the in-place water and sewer system to a newly created utility

company. Often, this utility company will be one of several affiliate companies owned by the developer or the development company.

Later, when the utility company is operating and seeks to increase the rates it charges its customers, the company will seek to include this property in its rate base as invested capital. Of course, inclusion of this property in the rate base will expand the rate base and increase the amount of return on the invested capital the utility is entitled to receive in the form of increased rates. Customers of the utility often complain that they are charged twice for the same property—once when they buy the house or lot (and the developer has computed the cost of the system into the purchase price) and second when the utility is allowed an increased return on invested capital because the property is included in the rate base.

Id. at 263, fn. 1 (emphasis added).

See also Sunbelt Utilities v. Pub. Util. Comm'n, 589 S.W.2d 392, 394 (Tex. 1979)

(“[W]hen a developer has recovered all or a part of the cost of the utility system through the sale of lots, the regulatory body has excluded that amount from the utility’s rate base.”).

The purchase agreements requested by RCH in the Third RFI are relevant and important to this case because they are direct evidence that the developer of the Rock Creek development, Double Diamond, Inc., provided/contributed the water system utilities and recovered the cost of the utility system through the sale of the lots. RCH provided one of these agreements in its prefiled testimony. *See* RCH-20 (Real Estate Sales Contract, March 12, 2011). Section 8 of the contract contains a table that states what Double Diamond entity is obligated to “provide and complete” certain items within the Rock Creek Resort. *See* Attachment 2. This table in Section 8 clearly states that the “Seller” (the developer Double Diamond, Inc.) is the “PARTY RESPONSIBLE FOR PROVIDING” the “Central Water System,” including water lines, water wells and storage tanks. The table also makes the distinction that the utility, DDPCC, is only the “PARTY RESPONSIBLE FOR MAINTAINING” the Central Water System. This

clearly shows the developer represented that it would provide/contribute these water system assets when the buyers purchased the lots, and the buyers were certainly relying on these representations when they agreed to the purchase price. This is vital evidence indicating that the Double Diamond companies are attempting to charge the RCH ratepayers twice for the same property—once when they bought the lot (and the developer Double Diamond, Inc. represented it was providing/contributing the water system implying that it has computed the cost of the water system into the purchase price) and second when the utility DDPCC is seeking an increased return on invested capital because the property is included in the rate base in DDPCC’s application for a water rate increase.

For these reasons, the agreements requested by RCH in the Third RFI are most certainly relevant to this case. Specifically, they are a key piece of evidence on the issue of developer contributions.

B. Requests are Not Burdensome

DDPCC argues that RCH’s RFI No. 3-1 is unduly burdensome. “The burden or expense of collecting this information on DDPC far outweighs the benefit, taking into account the needs of the case, the amount in controversy, and the importance of the documents.” DDPCC’s Objections at 1. DDPCC also argues that providing all the executed copies of the real estate purchase agreement for the 76 active connections as requested in RFI No. 3-2 is “overly broad and unduly burdensome.” *Id.* at 2.

As detailed in the “Background” Section I above, RCH already agreed to limit the number of purchase agreements requested in RFI No. 3-1 to only the 10 most recent associated with the Rock Creek Resort, and any draft agreements where changes were

made to the purchase agreements. DDPCC admits that it “uses a standard form real estate purchase agreement for its lot sales.” *Id.* at 1. If that is the case, then DDPCC should only have to provide a total of 11 documents in response to RFI No. 3-1. As for RFI No. 3.2, there are only 76 active connections, so DDPCC should only have to provide around 76 agreements to fully respond to that request. Therefore, in total, DDPCC will only have to provide less than 100 documents to comply with RCH’s Third RFI. In RCH’s view, this is not unduly burdensome.

Additionally, RCH already detailed the importance and relevance of these purchase agreements in Section II.A. By obtaining the most recent agreements, the draft agreement(s), and the agreements associated with the active connections, RCH will be able to ascertain for certain if Double Diamond represented that the developer would contribute the water system facilities to all the active connections, and continued doing so even to the most recent purchasers. Also, the Section 8 table in the contract RCH obtained from one of the ratepayers lists the specific water lines that are being contributed by the developer. *See* Attachment 2. Having access to the additional agreements requested will allow RCH to determine whether additional lines were added to this table as the development expanded, providing proof of exactly what water system assets were contributed by the developer for the Rock Creek development.

C. “Equally Available” is Not a Proper Objection in this Situation

DDPCC also objects to RCH’s Third RFI because some of the purchase agreements requested are “equally available” to RCH. Basically, DDPCC argues that the RCH ratepayers should already have copies of the real estate purchase agreements from when they purchased their individual lots; therefore, DDPCC should not have to provide

those in response to a discovery request now. This is not a valid objection for several reasons.

Even if a requesting party already has a document in its possession, there are many legal justifications for the requesting party to seek production of that document by a responding party during discovery. As one commenter correctly summarized when discussing certain improper objections to interrogatories and production requests:

11. The Requested Information or Material Is in the Requesting Party's or a Non-Party's Possession.

Oftentimes a responding party will object to an interrogatory or a production request because the information or material already is in the requesting party's possession or is equally available from a nonparty or a public source. **Such an objection is almost always improper** because the requesting party is entitled to ascertain what information and documents the responding party has and to review the responsive documents to determine if they are the same as those in its possession and whether they have any notes or other markings on them.

Robert K. Wise, *Ending Evasive Responses to Written Discovery: A Guide for Properly Responding (and Objecting) to Interrogatories and Document Requests Under the Texas Discovery Rules*, 65 Baylor L. Rev. 510, 601 (2013) (emphasis added and internal footnotes/citations omitted).

In this case, RCH is entitled to know whether the purchase agreements in Double Diamond's possession match the copies of the agreements in the possession of the RCH ratepayers. There may be notes or markings made by Double Diamond on its versions that may not appear on the copies of the ratepayers, especially if the ratepayers signed their versions before they were executed by Double Diamond. This cannot be ascertained without RCH being able to review Double Diamond's copies of the purchase agreements.

Additionally, as a practical matter, it is simply much easier for the Double Diamond companies to produce the contracts than for the ratepayers to all conduct searches to locate each of their individual agreements. Double Diamond is a business that almost certainly has an established filing system with document retention procedures.

RCH assumes it already has these documents scanned electronically, saved in the same location, and can easily copy these files and provide them to RCH. The individual ratepayers may not have copies readily available. If a ratepayer did retain a copy of his or her purchase agreement, he or she may not recall where it is located, and it may have to be scanned to be reviewed and distributed electronically. Even assuming that all the RCH ratepayers did retain copies of their purchase agreements, RCH does not include all the potential ratepayers in the Rock Creek development. RCH wants to ascertain whether the Double Diamond companies have represented to all the potential ratepayers that the developer is providing the water system facilities in all of their purchase agreements. This can only be determined through the discovery requests in the Third RFI.

Finally, as was pointed out repeatedly by RCH's counsel in attempts to resolve this discovery issue without objections being filed, receiving the purchase agreements from DDPCC through discovery is the most straightforward legal method to authenticate these documents so that they may be utilized by RCH as evidence during the hearing. "To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." Tex. R. Evid. 901(a). One example of evidence that would satisfy the authentication requirement is testimony of a witness with knowledge. *See* Tex. R. Evid. 901(b)(1). RCH must be able to use the purchase agreements as evidence during the upcoming hearing. It would be difficult for RCH to have all the individual ratepayers to attend and testify at the hearing only for the purpose of having each ratepayer authenticate his or her own purchase agreement. Therefore, RCH would rather obtain the documents in such a manner so that they are self-authenticating. That can be

accomplished by obtaining the purchase agreements directly from Double Diamond through the discovery process. “A party's production of a document in response to written discovery authenticates the document for use against that party in any pretrial proceeding or at trial unless—within ten days or a longer or shorter time ordered by the court, after the producing party has actual notice that the document will be used—the party objects to the authenticity of the document, or any part of it, stating the specific basis for objection.” Tex. R. Civ. P. 193.7.

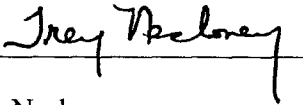
DDPCC argues that the burden and expense of it producing the real estate agreements outweighs the benefit taking into account the needs of the case. *See* DDPCC’s Objections at 2. However, when RCH notified DDPCC that one of the reasons it requested these documents was so they could be self-authenticated through discovery, DDPCC did not offer to agree to some type of stipulation that would allow RCH to use the documents at trial without having to produce witnesses authenticating these documents, or agree to a stipulation conceding that the purchase agreements prove that the Double Diamond companies represented to all the lot purchasers that the developer would be contributing the assets associated with the water system. RCH must protect itself against a potential authentication objection by DDPCC at trial. The best way to address this issue is by having the purchase agreements self-authenticated by obtaining the documents from DDPCC through discovery.

III. PRAYER

For the reasons stated herein, RCH respectfully requests that the ALJ overrule DDPCC’s Objections to RCH’s Third RFI, and direct DDPCC to comply with RCH’s requests by providing, within the time allowed by law:

- 1) The 10 most recent purchase agreements for lots located in the Rock Creek development;
- 2) All versions of the draft purchase agreement utilized by the Double Diamond companies associated with the Rock Creek development; and
- 3) All the documents requested in RCH No. 3-2, which are the purchase agreements associated with the 76 active connections at the end of the test year.

Respectfully submitted,

By: 

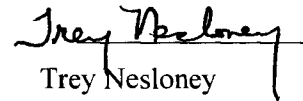
Trey Nesloney
State Bar No. 24058017
Fred B. Werkenthin, Jr.
State Bar No. 21182015
Michael J. Booth
State Bar No. 02648500

BOOTH, AHRENS & WERKENTHIN, P.C.
206 E 9th Street, Suite 1501
Austin, TX 78701-3503
(512) 472-3263 Telephone
(512) 473-2609 Facsimile

**ATTORNEYS FOR ROCK CREEK
HOMEOWNERS**

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2017, by my signature below, that a true and complete copy of RCH's Motion to Compel and Response to DDPCC's Objections to RCH's Third Requests For Information was served via email, facsimile, U.S. mail, and/or hand delivery to all parties of record as stated below.


Trey Nesloney

SERVICE LIST

| | |
|--|--|
| State Office of Administrative Hearings: <i>Via E-Filing and U.S. mail</i> 300 W. 15th ST STE 504 Austin, TX 78701-1649 P.O. Box 13025 Austin, Texas 78711-3025 512-475-4993 512-475-4994 FAX | Public Utility Commission: <i>Via E-Filing and U.S. mail</i> <i>(original and 10 copies)</i> Public Utility Commission of Texas 1701 N. Congress Ave. P.O. Box 13326 Austin, Texas 78711-3326 |
| For Double Diamond Properties Construction Co.: <i>Via E-Mail</i> Ali Abazari Mallory Beck Jackson Walker, L.L.P. 100 Congress, Suite 1100 Austin, TX 78701 512-236-2239 512-391-2197 FAX aabazari@jw.com mbeck@jw.com | Public Utility Commission Legal Division: <i>Via E-mail</i> Michael Crnich Vera Dygert Attorney-Legal Division Public Utility Commission of Texas 1701 N. Congress Ave. STE 8-110 P.O. Box 13326 Austin, Texas 78711-3326 512-936-7230 512-936-7268 FAX michael.crnich@puc.texas.gov vera.dygert@puc.texas.gov |

ATTACHMENT 1

From: Trey Nesloney tnesloney@baw.com
Subject: Re: Issues with second discovery request...
Date: April 15, 2017 at 1:47 AM
To: Ali Abazari aabazari@jw.com
Cc: Mallory Beck mbeck@jw.com

Ali,

I'm trying to work with you here. I agreed with you that sending all 1400+ agreements was burdensome. However, I don't think asking your client to send what is probably going to be less than 100 agreements total (all the purchase agreements associated with active connections, the 10 most recent, and any drafts with changes) is overly burdensome. Also, as I said before, this automatically authenticates them for us to use at trial. I don't know for sure that the witnesses you are bringing will be able to authenticate the agreements in my clients' possession. I also can't ask all the homeowners to attend the hearing just to authenticate each and every purchase agreement. This way I get them as one set, and they are authenticated as a response to discovery by your client and ready to use as evidence.

If you feel you need to file an objection, you can do that. This is an important piece of evidence for my client, so I'm going to try to obtain it. I'll file a response to your objections and a motion to compel. This quote from a law review article I found contains some of my arguments on the issue, which I'll use in my motion:

From Robert K. Wise, *Ending Evasive Responses to Written Discovery. A Guide for Properly Responding (and Objecting) to Interrogatories and Document Requests Under the Texas Discovery Rules*, 65 Baylor L. Rev. 510, 601 (2013):

"11. The Requested Information or Material Is in the Requesting Party's or a Non-Party's Possession.

Oftentimes a responding party will object to an interrogatory or a production request because the information or material already is in the requesting party's possession or is equally available from a nonparty or a public source. Such an objection is almost always improper because the requesting party is entitled to ascertain what information and documents the responding party has and to review the responsive documents to determine if they are the same as those in its possession and whether they have any notes or other markings on them."

If you can cite to a case or other secondary source that contradicts this article and indicates my discovery request is not proper, then let me know, and I'll consider it.

Trey

On Apr 14 2017, at 1:04 PM, Abazari, Ali <aabazari@jw.com> wrote

Trey, we are not going to send you documents that your clients possess. I can send you a discovery request asking you to send me your agreements and I'm fairly certain you would object based on the fact that the documents are equally available to us. We have the same objection.

Ali

From: Trey Nesloney [mailto:tnesloney@baw.com]
Sent: Friday, April 14, 2017 11:48 AM
To: Abazari, Ali
Cc: Beck, Mallory
Subject: Re: Issues with second discovery request...

I don't how many have them readily available. Also, I don't want them to have to possibly testify to authenticate them at trial. If I get them from you in discovery, they are already authenticated.

On Apr 14, 2017, at 11:25 AM, Abazari, Ali <aabazari@jw.com> wrote:

Trey, with respect to (1), the significant majority of those are your client I believe. Is there a reason that you can't get the agreements from your client?

Ali

From: Trey Nesloney (<mailto:tnesloney@baw.com>)
Sent: Friday, April 14, 2017 11:23 AM
To: Abazari, Ali
Cc: Beck, Mallory
Subject: Issues with second discovery request...

Ali,

I spoke with my expert, and she just wants to see how the draft real estate purchase agreement changes over time. I think this can be accomplished through you sending me only:

- 1) All the documents in RCH No. 3-2, which are the 76 purchase agreements with the current active customers in the Test Year;
- 2) The 10 most recent purchase agreements for lots located in the Rock Creek Resort; and
- 3) Any changes to the draft purchase agreement over time (in other words, you don't need to send me all 1400 agreements since it looks like DD has a draft agreement they give to everyone that they just update periodically when new subdivisions open up, so just give me one copy of every draft when there was an update or change to the draft, like when they add a new water line to the Section 8 table).

I assume this will be around 100 agreements, which I don't think is burdensome. Let me know if you agree or if there is something I'm not thinking of.

Trey Nesloney
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Austin, Texas 78701
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ATTACHMENT 2

REAL ESTATE SALES CONTRACT

THE STATE OF TEXAS
COUNTY OF GRAYSON

ROCK CREEK RESORT

This REAL ESTATE SALES CONTRACT is entered into on *March 12, 2011* by and between DOUBLE DIAMOND, INC., a Texas corporation, 10100 N. Central Expressway, Suite 600, Dallas, Texas 75231 (hereinafter referred to as the "Seller") and

NAME(S) *Steven M. Curran and wife Gina M. Curran*
STREET ADDRESS *11382 Grand Pine Drive*
CITY, STATE & ZIP *Montgomery, Texas 77356*
TELEPHONE *936-448-7248*

(hereinafter referred to as the "Purchaser," whether one or more) upon the following terms and conditions:

1. **SALE AND PURCHASE.** Seller hereby promises and agrees to sell and convey to Purchaser, and Purchaser hereby promises and agrees to purchase from Seller the surface estate only of:

LOT(S) 31, Block D of the ROCK CREEK RESORT, Proghorn ADDITION, according to the subdivision plat thereof filed for record in the Plat Records of Grayson County, Texas;

(such lot(s) referred to hereinafter as the "Property").

2. **PURCHASE PRICE.** The purchase price for the Property shall be *\$96,903.00* (the "Purchase Price").

3. **METHOD OF PURCHASE.** Purchaser elects to purchase the Property:

☒ by payment of the Purchase Price in full.

☐ by deferred installments (the "Deferred Payment Plan") which includes a cash down payment of *\$96,903.00* made this date, and Purchaser's promise to pay Seller, its successors and assigns, the original principal balance of *\$.00*, at the rate of *Five and One Half (5.5%)* percent per annum, amortized principal and interest payable in *(12) twelve* consecutive monthly installments of *\$.00* each, then *(228) two hundred twenty-eight* consecutive monthly installments months at the rate of *Eight and One Half (8.5%)* percent per annum, amortized principal and interest payable in consecutive monthly installments of *\$.00* as more fully described and evidenced by that certain promissory note executed contemporaneously herewith by Purchaser (the "Note"). All payments due under the Note shall be made in Dallas County, Texas at Seller's address unless another address shall be furnished to Purchaser by Seller. A late fee of \$25.00 is charged on all accounts if not paid within 15 days of each monthly due date. Prior to conveyance of title to the Property, Seller shall retain legal title to the Property as security for Purchaser's full performance of all the terms and conditions herein. After conveyance of title to the Property, as security for full performance by Purchaser of all applicable terms, conditions and obligations herein, Seller shall retain a deed of trust lien covering the Property, as provided in that certain Deed of Trust executed contemporaneously herewith by Purchaser (the "Deed of Trust"). Said Deed of Trust shall also secure other and future indebtedness, if any, of Purchaser to Seller.

4. **DELIVERY OF DEED.** Within 180 days of the date of this Contract, Seller shall deliver to Purchaser a General Warranty Deed (the "Deed") conveying fee simple title to the Property (save and except oil, gas and other minerals) free and clear of any liens (other than Purchaser's deed of trust lien if the Property is purchased from Seller under the Deferred Payment Plan) but subject to all reservations, restrictions, easements and rights-of-way which may affect the Property as recorded in the Public Records of Grayson County, Texas.

5. **CLOSING COSTS AND RECORDING FEES.** Purchaser agrees to pay Seller \$25.00 for recording fees and costs of filing the documents to be recorded hereunder. No other closing fees or costs are payable by Purchaser.

6. **TAXES.** Purchaser shall be responsible for paying property taxes next due and payable after the date of this Contract. Purchaser agrees and promises to promptly pay, when due, all such property taxes and other taxes which may hereafter be taxed against the Property.

7. **TITLE INSURANCE.** Seller does not provide title insurance covering the Property. Purchaser should either obtain title insurance from a title company authorized to do business in Grayson County, Texas or have the abstract covering the Property examined by an attorney of Purchaser's choice.

Purchaser(s) initials:

SMC
GMC

8. **ROADS, RECREATIONAL FACILITIES AND CENTRAL SYSTEMS.** The following is Seller's good faith estimate with respect to, and the obligation to provide and complete, certain items within the Rock Creek Resort:

| ITEM | YEAR OF COMPLETION | PARTY RESPONSIBLE FOR PROVIDING | PARTY RESPONSIBLE FOR MAINTAINING |
|--|--------------------------------------|---------------------------------|--|
| A. Roads Muirfield, Pronghorn, Wynstone, Toscana Bear Lakes, Sherwood, Roaring Fork | To be determined Complete 2010 | Seller | Property Owners Assn. ("POA") out of annual maintenance fee funds |
| B. Recreation Facilities (swimming pool(s), tennis courts, marina and others as determined by Seller) | To be determined (if constructed) | Seller | POA out of maintenance fee funds |
| C. Eighteen hole golf course | To be determined | Seller | POA out of maintenance fee funds |
| D. Central Water System (1) Water lines Muirfield, Pronghorn Wynstone, Toscana Bear Lakes, Sherwood, Roaring Fork (2) Water wells & storage tanks | Complete 2010 Complete | Seller | Double Diamond Utilities ("Utility Co.") or public utility company |
| E. Central Sewer System (1) Sewer Lines Muirfield, Pronghorn Wynstone, Toscana Bear Lakes, Sherwood, Roaring Fork (2) Storage & Treatment Plants | Complete 2010 Complete | Seller | Utilities Co. or public utility company |

9. **CENTRAL WATER & SEWER SYSTEMS.** Potable water will be provided to all lots in the subdivision from a central water system presently under construction. Presently under construction is a sewage collection and disposal which will be provided to all lots in the subdivision.

10. **PREPAYMENT OF NOTE.** Purchaser may prepay the principal amount remaining due in whole or in part without penalty. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date of any subsequent monthly installments or change the amount of such installments, unless the holder of the Note shall otherwise agree in writing. Accrued interest hereon shall be calculated on the basis of a 360-day year composed of twelve 30 day months and charged through the date of payoff. The above notwithstanding, in no event whatsoever shall the amount paid or agreed to be paid hereunder exceed the maximum rate of interest permitted under applicable law. If, from any circumstance whatsoever, fulfillment of any provision hereunder shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall automatically be reduced to the limit of such validity.

11. **DEFAULT.** If Purchaser defaults in making any payment(s) or in discharging any obligation under this Contract, Seller may (a) accelerate and mature the full amount then remaining unpaid, after giving Purchaser a refund of any unearned finance charge; (b) seek foreclosure of Seller's lien and security interests; (c) pursue other remedies available to it by law or contract; or (d) terminate this Contract and retain any payments made; and seek reimbursement for any reasonable attorneys fees and court costs incurred in exercising any of the foregoing remedies. Seller agrees to give Purchaser written notification of any default or breach of this Contract and Purchaser shall have 30 days from receipt of such notification to correct such default or breach, or such additional time as may be required by applicable law.

12. **PROPERTY OWNERS' ASSOCIATION.** Purchaser shall, upon purchase of the Property, be a member of the Rock Creek Resort Property Owners Association, Inc. (the "Property Owners Association"). Purchaser agrees and promises to (a) comply with the rules and regulations prescribed by the Property Owners Association and the restrictive covenants affecting the Property, (b) pay the prescribed annual maintenance fees to the Property Owners Association when due, and (c) pay any prescribed late fees if maintenance fees are not paid when due.

13. **ASSIGNMENT.** Purchaser agrees that no future sale, transfer, lease or disposition of the Property shall be consummated unless and until the name and address of such purchaser or transferee has been properly provided to the Property Owners Association. Seller shall have the right to assign any of its interests or obligations contained in this Contract to any reasonably responsible third party.

**SOAH DOCKET NO. 473-17-0067.WS
PUC DOCKET NO. 46247**

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|----------------------------------|---|--------------------------------|
| APPLICATION OF DOUBLE | § | BEFORE THE STATE OFFICE |
| DIAMOND PROPERTIES | § | |
| CONSTRUCTION CO. DBA ROCK | § | OF |
| CREEK FOR A WATER | § | |
| RATE/TARIFF CHANGE | § | ADMINISTRATIVE HEARINGS |

**ORDER GRANTING ROCK CREEK HOMEOWNERS'
MOTION TO COMPEL**

THE HONORABLE ADMINISTRATIVE LAW JUDGE ("ALJ"), having considered the Rock Creek Homeowners' ("RCH") Motion to Compel ("Motion"), is of the opinion that the Motion should be in all things, granted. It is, therefore:

ORDERED that Double Diamond Properties Construction Co. dba Rock Creek Resort's ("DDPCC") Objections to RCH's Third Requests for Information ("RFI") are OVERRULED. It is, further,

ORDERED that DDPCC will provide timely discovery responses to RCH RFI Nos. 3-1 and 3-2 by providing the following documents:

- 1) The 10 most recent purchase agreements for lots located in the Rock Creek development;
- 2) All versions of the draft purchase agreement utilized by the Double Diamond companies associated with the Rock Creek development; and
- 3) All the documents requested in RCH No. 3-2, which are the purchase agreements associated with the 76 active connections at the end of the test year.

SIGNED this _____ day of _____, _____.

**WENDY K. L. HARVEL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**