

Ent 165274 Bk 407 Pg 296
Date: 22-FEB-2024 3:13:19PM
Fee: \$40.00 Credit Card Filed By: JM
BRENDA NELSON, Recorder
MORGAN COUNTY
For: MITCHELL MARK

When recorded, mail to:
Morgan City Recorder
90 West Young Street
Morgan, UT 84050

Affects Parcel and Serial No(s): Parcel # 00-0002-3596, Serial # 01-004-638

WATER CONVEYANCE AND DEVELOPMENT AGREEMENT
(Como Springs Resort, Morgan, Utah)

This Water Conveyance and Development Agreement ("Agreement") is entered into by and between: Morgan City, a Utah municipal corporation ("City"); Como Springs Resort LLC ("Resort"); and Granda Real Estate ("Granda").

Resort and Granda are each a "Grantor," and collectively referred to herein as the "Grantors." The City, Resort, and Granda are each a "Party," and collectively referred to herein as the "Parties."

RECITALS

- A. Morgan City is a municipal corporation, delegated the authority and responsibility to provide for the general welfare of the City's citizens, including passing and enforcing ordinances, entering into contracts, and agreeing to other forms of land use controls that are necessary or appropriate for the use and development of land within the municipality. *See Utah Code Ann. §§ 10-1-202, 10-8-84, & 10-9a-102.*
- B. The City owns and maintains main culinary lines on 500 West street, as well as on 100 South street.
- C. The Resort owns property that is located outside the City boundary, namely parcel 00-0002-3596, with serial number 01-004-638, at or near 805 E. Como Springs Road, Morgan, Utah, approximately 30 acres (the "Property"). *(See Attachment "A" - Legal Description)*
- D. The Grantors desire to improve and re-develop the Property.
- E. The Property is currently serviced by a private sewer system, which outfalls into the City's sewer system.
- F. The Property is currently serviced by a private culinary water system, which draws from a spring on the Property.
- G. The private culinary water system does not adequately serve the existing resort, nor the proposed improvements.
- H. The Grantors have proposed to connect the private culinary system to the City's nearby main culinary lines, and install other improvements noted below, such that it would loop the two lines located on 500 West and 100 South.
- I. Based on calculations performed by the Grantors' engineering firm, and as confirmed by the City's engineering firm, to connect to the City's water system, the City would need 9.9 ac-ft of water to the City to allow it to provide culinary water service to the Resort.

- J. The Grantors claim ownership of various water rights, including WR 35-2838. The point of diversion authorized by WR 35-2838 is an underground well or spring, from 0 to 26 feet deep, which is located on the Property.
- K. The Grantors would like to dedicate a portion of its right to the City, such that it would result in having the City receive 9.9 ac-ft of authorized, usable water.
- L. Grantors affirm that any water received from the City's water system is intended to be used only for culinary needs on the Property and that any water needed for other purposes will be obtained elsewhere.
- M. To effectuate the intent of the Parties, the City would need to change the point of diversion from the Property, such that the 9.9 ac-ft could be diverted from the City's deep ground wells, as well as change the authorized use to municipal.
- N. This would require a report of conveyance and change application to be filed with the Utah Division of Water Rights ("State Engineer").
- O. There is a risk that when the State Engineer reviews the change application, that he or she may authorize less than the proposed amount after the change, such that the City may end up with less than the proposed 9.9 ac-ft.
- P. To mitigate that risk, the Parties have reached a mutually agreeable resolution, which is memorialized herein. In sum, the Parties have agreed that the Grantors shall convey enough water to the City to allow it to eventually be authorized to divert the additional amount necessary to total 9.9 ac-ft, but not to exceed an additional 2 ac-ft.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby adopted as being true and correct and incorporated herein as part of the Agreement, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grantors hereby agree to grant an initial conveyance of 9.9 ac-ft of water from WR 35-2838, to the City (the "Initial Conveyance"). Grantors expressly acknowledge that such a conveyance is irrevocable, regardless of future events. *See* Utah Const. art. XI § 6 (commanding that municipalities may not sell, transfer, or alienate water and shall preserve and maintain those water rights and sources of water supply to supply water to the municipality's inhabitants and others within the municipality's designated water service area). Under no set of circumstances will the Initial Conveyance, or other completed conveyances contemplated herein, be deemed or elected to be reimbursed, revocable, voidable, void, or otherwise unwound.
 - a. As a condition precedent, Grantors shall obtain a title policy and insurance that shows clean title to WR 35-2838, and which shall list the City as an intended beneficiary. If clean title is not demonstrated, this Agreement shall be void.

- b. The Initial Conveyance shall be memorialized in a Warranty Deed, which shall include a warranty that Grantors own WR 35-2838 free and clear of any encumbrances and that the water represented thereby is not duplicated in other water rights or water shares.
 - c. Grantors hereby agree and warrant that they shall permanently cease to use the water represented by the Initial Conveyance.
 - d. Grantors hereby agree and warrant that they are the only persons or entities with an interest in the water involved in the Initial Conveyance, and that said interest is not duplicated in or otherwise authorized by any other water rights or water shares.
 - e. If, in the event, it is determined that the water involved in the Initial Conveyance is or was duplicated in any other water rights or water shares, or is or was otherwise authorized by any other water rights or water shares, Grantors hereby agree to grant to the City any such duplicative ownership interests (if owned by Grantors). If such duplicative ownership interests are not owned by Grantors, Grantors hereby agree to purchase the duplicative ownership interests, and convey them to the City. If such duplicative ownership interests are not obtainable, Grantors hereby agree to purchase or otherwise obtain enough additional, unencumbered and unduplicated usable water rights, such that after they are conveyed and changed in use and place as contemplated herein, the City will be able to use the originally intended amount of 9.9 ac-ft in its deep ground wells.
- 2. Grantors and the City shall work together to report the Initial Conveyance to the State Engineer, which may include segregating a portion of the water.
 - 3. The City shall then file a change application, proposing to change the point of diversion to the City's deep ground wells, as well as to change any other pertinent information, including the period of use to year-round, and the proposed use to municipal.
 - 4. If the State Engineer authorizes the City to use any amount less than 9.9 ac-ft from the Initial Conveyance, then Grantors hereby agree that within 30 days of the State Engineer's final decision regarding the Initial Conveyance, Grantors shall grant a second conveyance of water, from WR 35-2838 or equivalent, up to but not to exceeding an additional 2 ac-ft, such that this second conveyance shall dedicate enough water to the City to bring the total amount authorized for use in the City's deep ground wells to be 9.9 ac-ft, after any reduction or disallowance by the State Engineer (the "Second Conveyance").
 - 5. Grantors' connection to the City's water system shall be regulated by at least one master meter, if not more, as determined by the City, and subject to any applicable fees or regulations.
 - 6. Grantors hereby agree that they shall fully disconnect their culinary infrastructure from any other system, and especially any other source (culinary, secondary, or otherwise, such as the water sources that are on the Property). Grantors hereby agree that they shall not cross-connect their culinary infrastructure to any other system.

7. For the first 9.9 ac-ft of metered water used by the Grantors, Grantors agree to pay the standard extra-territorial rates, as determined by the City, and as amended from time to time. For any water above 9.9 ac-ft of water used by the Grantors, Grantors shall pay 150% of the standard extra-territorial rates, as determined by the City, and as amended from time to time, as overage and to cover operating and maintenance, and as an agreed-upon incentive to use less than or equal to the amount of water Grantors conveyed to the City. Further, Grantors, after paying said 150% for an assessed overage from any annual period, may, at its own discretion, convey an additional amount of ac-ft based on Grantors' sole determination of future water usage. Said additional amount of ac-ft is subject to the same conditions outlined herein.
8. If, within any ten (10) year period, Grantors use more than 9.9 ac-ft on an annual basis three (3) or more times, then Grantors hereby agree that within 90 days of delivery of written notice from the City, Grantors shall grant an additional conveyance of water from water right WR 35-2828 or equivalent, such that the conveyance shall dedicate enough water to the City to bring the total amount authorized for use in the City's deep ground wells to be equal to highest annual usage during the ten-year period, after any reduction or disallowance by the State Engineer, not to exceed an additional 2 ac-ft (the "Third Conveyance"). The obligation of this paragraph shall continue in perpetuity, and may be repeatedly required.
9. Grantors hereby agree that any development on the Property is premised on an adequate conveyance of water contemplated herein. Grantors agree that the terms and conditions contained herein shall be binding on them, the Property, and any successors in interest, in perpetuity, and shall be treated as conditions of approval and/or land use restrictions subject to enforcement under Utah Code Ann. § 10-9a-611 (as amended). As such, Grantors agree to record this document against the Property, to provide notice to all current and future owners, and their agents, successors, assigns, etc.
10. Grantors hereby agree to reimburse the City for its legal costs and engineering review costs incurred in preparing this Agreement and preparation or execution of documents to complete the report of conveyance, segregation, or First, Second, or Third Conveyance contemplated herein (the "Preparation and Review Fees").
11. As part of this Agreement, Grantors hereby re-affirm their promise and obligation to construct a main culinary water loop between 500 West and 100 South, adequate electrical power infrastructure, and proper sewer infrastructure, at their expense, and to the proper City and State codes and standards, as recommended or required previously in various discussions, filings, and emails, which are incorporated herein by reference.
12. The City shall own and maintain the portion of the culinary water system on the Property up to the metered connection point(s). The City shall own and maintain the electrical service equipment up to a main disconnect point for the Property. The City shall own and maintain the sewer collection system up to the point where it enters the Property. The Grantors shall own and properly maintain the associated utility infrastructure beyond those points. All City owned utility infrastructure on the Property shall be granted proper utility easements needed for the city to operate, repair, and replace utility lines.

13. Grantors acknowledge that improvements and utility lines on the Property are located within FEMA Special Flood Hazard Areas (SFHA) which are mapped or otherwise known to be at risk of flooding. Such improvements and utilities are subject to regulatory review and enforcement by regulatory entities, including FEMA, Morgan City, and Morgan County. Grantors agree to regular inspection of any private utilities or improvements located in these areas and shall adhere to any agency having interest in the improvements that are subject to SFHA standards and regulations.
14. Improper management of privately owned utilities may endanger any user on the respective systems. Grantors agree to properly disinfect and flush culinary water mains that are operated seasonally and connected to the City's system (*See* Administrative Rule R309-550-13(4)). Grantors agree to prevent and manage infiltration and inflow on the Property from groundwater such that groundwater usage is limited to adequate watering of trees, shrubs, plants, grass along with cleaning of property roads, structures, equipment and hereto Grantors agree to manage said groundwater and, storm water, and/or water from the adjacent river which could cause undue burden on the City's sewer collection system or risk to users. To help resolve safety concerns, any privately owned utility systems or laterals which are connected to City-provided utilities are subject to inspection by City personnel or their designees at the City's discretion. To protect utility system users, service from the City may be terminated upon evidence of improper maintenance and management of the privately connected systems.
15. Grantors hereby agree to pay customary impact fees and other scheduled fees associated with the Property, including any fees customary with development, inspection, or approval.
16. If the Property's current land use authorization is modified, Grantors agree to convey additional ac-ft from water right WR 35-2838, or equivalent, if the changes to the land use authorization require more water. All other provisions shall remain in effect.

GENERAL PROVISIONS

17. This Agreement shall take effect only after Owners have signed, and after review and approval by the appropriate City authority, and upon the date the City signs the Agreement, and not before (the "Effective Date").
18. Amendment and Termination. This Agreement may not be amended or modified except with the consent of the Owners and the City, and only by written instrument duly executed and acknowledged and recorded in the office of the County Recorder of Morgan County, Utah.
19. Waiver. The failure of a party to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said person party may have, and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions or agreements contained herein by the same or any other person or party.
20. No Joint Venture; Merger. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create a joint venture, partnership, or any similar relationship between the parties. No separate legal entity is created by this

Agreement. This Agreement contains the entire agreement between the parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party. The Parties recognize and acknowledge the City is covered by the Governmental Immunity Act of Utah, codified at Section 63G-7-101, et seq., Utah Code Annotated, as amended, and nothing herein is intended to waive or modify any and all rights, defenses, or provisions provided therein. Officers and employees performing services pursuant to this agreement shall be deemed officers and employees of the party employing their services, even if performing functions outside of the territorial limits of such party and shall be deemed officers and employees of such party under the provisions of the Utah Governmental Immunity Act, if applicable.

21. Choice of Law; Recordation. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. This Agreement shall be recorded in the records of the County Recorder of Morgan County, Utah.
22. Professional Costs and Fees. Except as noted above regarding the Preparation and Review Fees, each Party shall bear its own costs, expenses, and attorneys' fees in connection with the negotiation, preparation, execution, litigation, or enforcement of this Agreement and the transactions contemplated herein.
23. Successors and Assigns; Run with the Land. All of the provisions in this Agreement, including the benefits and burdens, shall be and are binding upon and inure to the benefit of the successors and assigns of the parties hereto. All obligations of each party under this Agreement, if more than one person or entity is the successor or assign of such party, shall be jointly and severally binding on each such person or entity. The covenants agreed to and the restrictions imposed herein shall continue as a servitude running in perpetuity with the Properties and shall survive any death or termination of any party's existence. The easements, agreements, duties, responsibilities, and covenants herein contained shall be easements and covenants running with the land.
24. No Third-Party Beneficiaries. Nothing in this Agreement is intended to create an enforceable right, claim or cause of action by any third party against any party to this Agreement.
25. Authority of Signatory. In entering into this Agreement, the Parties acknowledge and agree and represent and warrant to each other as follows: (a) that they will perform their duties and obligations in a commercially reasonable and good faith manner and that this commitment is being relied upon by each other Party. Each person executing this Agreement certifies that he or she is duly authorized to execute this Agreement on behalf of the party for which he or she is signing, and that the person has the authority to bind said party to the terms of this Agreement.
26. Independent Provisions. If any provision herein is held invalid or unenforceable, such a finding shall not affect the validity of the remainder of the Agreement, the parties hereto hereby stipulate that all provisions are deemed severable and independent.
27. Performances. Time is of the essence of this Agreement and for the performance of each of the duties and obligations provided herein.

28. Counterparts. This Agreement and any originals of exhibits referred to herein may be executed in any number of duplicate originals or counterparts, each of which (when the original signatures are affixed together with the applicable acknowledgment) shall be an original but all of which shall constitute one and the same instrument.
29. Miscellaneous. The paragraph and other headings contained in this Agreement are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any of the provisions of this Agreement. Whenever the context reasonably permits, the singular shall include the plural, the plural shall include the singular, and the whole shall include any part thereof. Further, the masculine gender shall include the female gender and neuter, and vice versa. The recital paragraphs set forth above are expressly incorporated in this Agreement by this reference. This Agreement represents the wording selected by the parties to define their agreement and no rule of strict construction shall apply against either party. Each party represents that it has had or has been advised to have the representation of its legal counsel in connection with the preparation of this Agreement. The words "hereof," "hereto," "herein" and "hereunder" and words of similar meaning, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Any terms defined in this Agreement in the singular shall have a comparable meaning when used in the plural, and vice versa.
30. Notices. All notices, demands, and requests required or permitted to be given hereunder shall be in writing and shall be deemed duly given if delivered or if mailed by registered or certified mail, postage prepaid, addressed to the following:

Resort: C. Grant Mackay
2160 S 3270 W
WVC, UT 84119

City: Morgan City
c/o City Manager
90 West Young Street
Morgan, UT 84050

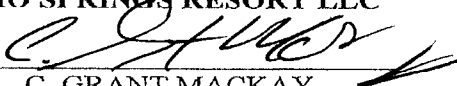
Granda: C. Grant Mackay
2160 S 3270 W
WVC, UT 84119

Any party shall have the right to specify in writing another name or address to which subsequent notices to such party shall be given. Any notice given hereunder shall be deemed to have been given as of the date delivered or mailed to the other party.

WHEREFORE, the Parties hereto hereby sign and execute this Agreement as of the Effective Date.

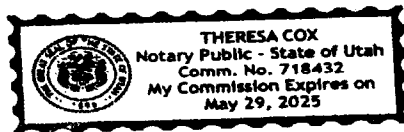
[Signature Pages to Follow]

COMO SPRINGS RESORT LLC


By: C. GRANT MACKAY
Title: Manager


STATE OF UTAH)
: ss.
COUNTY OF ~~MORGAN~~ SALT LAKE

PERSONALLY APPEARED before me C. GRANT MACKAY this 5th day of September, 2022, who duly acknowledged to me that he is the MANAGER of the COMO SPRINGS RESORT LLC, and that the document was signed by him in behalf of said entity and acknowledged to me that said entity executed the same.



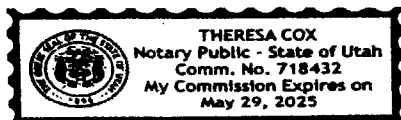

NOTARY PUBLIC

GRANDA REAL ESTATE LLC


By: C. GRANT MACKAY
Title: Manager

STATE OF UTAH)
: ss.
COUNTY OF ~~MORGAN~~ SALT LAKE

PERSONALLY APPEARED before me C. GRANT MACKAY this 5th day of September, 2022, who duly acknowledged to me that he is the MANAGER of GRANDA REAL ESTATE LLC, and that the document was signed by him in behalf of said entity and acknowledged to me that said entity executed the same.




NOTARY PUBLIC

MORGAN CITY CORPORATION

SGale
STEVE GALE
Mayor

ATTEST:

Denise Woods
DENISE WOODS
City Recorder

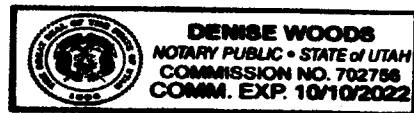
STATE OF UTAH)
 : ss.
COUNTY OF MORGAN)

On the 10th day of August, 2022, personally appeared before me STEVE GALE, who duly acknowledged to me that he is the MAYOR of MORGAN CITY, and that the document was signed by him in behalf of said corporation and acknowledged to me that said corporation executed the same.

Denise Woods
NOTARY PUBLIC IN WITNESS

APPROVED AS TO FORM:

Gary R. Crane
GARY R. CRANE
City Attorney



ATTACHMENT "A"

LEGAL DESCRIPTION

PARCEL #: 00-0002-3596 SERIAL #: 01-004-638

SIT IN MORGAN COUNTY, UTAH, IS LOC IN PT OF THE S1/2NW1/4 & N1/2SW1/4 OF SEC 31, T4N, R3E, SLB&M, & IS MORE PART DESC AS FOLS: COM AT A PT ON THE N SIDE OF THE ROUND VALLEY ROAD 27.5 CHS (1815') N & 1.42 CHS (93.72') N 50° E OF THE SW COR OF SD SEC 31; TH RUN N 50° E 7.88 CHS (520.08') TO THE CTR OF THE WEBER RIVER; TH UP THE CTR OF THE WEBER RIVER 3 COUR AS FOLS: N 61° E 271 FT; N 37° E 470 FT; N 64° E 340 FT TO E LN OF SW1/4NW1/4; TH N 20 FT ALG SD 1/41/4 SEC LN; TH N 41° E 14 CHS (924'); TH S 56° E 6 CHS (396'); TH S 33° W 10 CHS (660'); TH S 12° W 3 CHS (198'); TH S 32° W 9 CHS (594'); TH S 52°30' W 9.5 CHS (627'); TH N 78° W 10 CHS (660'); TH N 87° W 4.67 CHS (308.22'); TO THE POB. LESS & EXCEPT LOTS 1, 2, 3, 4 & 5, COMO SPRINGS SUB. LEAV 30.14 AC, M. OR L.