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December 14, 2006

VIA HAND DELIVERY

Mr. Doug Holcomb, P.E., Section Manager
Texas Commission on Environmental Quality
Utilities and District Section, Water Supply Division
12100 Park 35 Circle, Bldg. F, 3rd Floor
Austin, Texas 78753

RECEIVED
#100
DEC 15 2006
P-036-6
UTILITIES & DISTRICTS
SECTION

RE Petition from Double Diamond, Inc. for an Expedited Release of Property from
the Retail Water CCN No. 12362 of Northwest Grayson County WCID No. 1

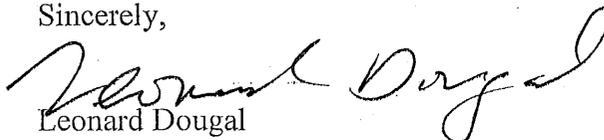
Dear Mr. Holcomb:

Pursuant to Texas Water Code § 13.254, Double Diamond, Inc. is filing the enclosed
Petition for Expedited Release (the "Petition") from CCN No. 12362 held by Northwest Grayson
County WCID No. 1. The Petition is requesting that property contained in the District's CCN
area be released so that the area may receive water service from an alternate water supplier.

Enclosed please find an original and three (3) copies of the Petition for use by your staff.
Accordingly, I am enclosing two (2) extra copies of the Petition and request that they be date-
stamped and returned by the courier.

We previously delivered, via certified mail, copies of the Petition to Mr. Wayne Nielson,
President, Northwest Grayson County WCID No. 1 and to Mr. Art Rodriguez, attorney for
Northwest Grayson County WCID No. 1.

Sincerely,


Leonard Dougal

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TCEQ WATER SUPPLY
2006 DEC 14 AM 11:43

Enclosures

cc: Mr. Wayne Nielson, President
Northwest Grayson County WCID No. 1
P. O. Box 715
Gordonville, Texas 76245

Mr. Art Rodriguez
Russell & Rodriguez, L.L.P.
102 West Morrow Street, Suite 103
Georgetown, Texas 78628

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TCEQ WATER SUPPLY

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DOUBLE DIAMOND, INC.'S	§	BEFORE THE TEXAS
PETITION FOR THE	§	
EXPEDITED RELEASE OF	§	
PROPERTY FROM THE RETAIL	§	COMMISSION ON
WATER CCN NO. 12362 OF	§	
NORTHWEST GRAYSON COUNTY	§	
WCID NO. 1	§	ENVIRONMENTAL QUALITY

PETITION FOR EXPEDITED RELEASE

TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Double Diamond, Inc. (the "Petitioner"), acting pursuant to Section 13.254, Water Code, and Section 291.113(b), Title 30, Texas Administrative Code, hereby respectfully petitions the Texas Commission on Environmental Quality (the "TCEQ" or the "Commission"), for the expedited release of certain real property it owns in Grayson County from within the area covered by Certificate of Convenience and Necessity No. 12362, and would show the following:

1. The Petitioner is acting pursuant to the authority granted to it by the Texas Legislature in Section 13.254 *et. seq.*, Texas Water Code, and asserts to the Commission that the real property that is the subject of this petition comprises approximately 1250 acres, and is located near FM 901 and Rock Creek Road in Grayson County, Texas (the "Property"). The Property is not in a platted subdivision actually receiving water service. The plats of the Property along with the legal descriptions are attached as Exhibit A.
2. Petitioner intends to develop a premier residential community and resort on the Property. The preliminary master plan of the development consists of approximately 2,300 residential lots. Future plans include the construction of a hotel, condominiums, and a restaurant. Petitioner will require a level of water service which is beyond the capability of the current CCN holder.
3. The holder of the certificate of convenience and necessity encompassing the entirety of the Property is Northwest Grayson County Water Control and Improvement District No. 1 (the "Certificate Holder"). The Certificate Holder has been issued retail water CCN No. 12362. The Certificate Holder does not hold a sewer CCN. A map of the area within CCN No. 12362 is attached as Exhibit B. Exhibit B also demonstrates the location of the Property in relation to the CCN area.
4. The Certificate Holder is a small rural water system, with only modest facilities, about 650 connections and limited resources. The Certificate Holder's water supply comes from only two groundwater wells. When last pump tested (many years ago), the two groundwater wells, combined, produced a maximum of 432 gallons per minute, barely enough to satisfy the requirements of the current customer base of the Certificate Holder.

The pump tests are attached as Exhibit C. Certificate Holder has virtually no excess water supply capacity to serve Petitioner. If either well were to go down, Certificate Holder would be in dire circumstances. The Certificate Holder has no contracts for raw or treated water supply.¹

5. Although located within the Certificate Holder's CCN, the Property is not located within the political boundary of Northwest Grayson County Water Control and Improvement District No. 1, as depicted in Exhibit D. No resident of the Property is allowed to vote in any election by the Certificate Holder, and Petitioner has no representation on the Certificate Holder's governing board. Future residents of the Property will likewise have no voice in the Certificate Holder's management or operations. As an out-of-district property, Petitioner is subject to discrimination by the Certificate Holder in rates, charges and fees.
6. On August 15, 2005 and May 24, 2006, more than 90 days in the past, Petitioner submitted written requests for service to the Certificate Holder (the "Requests for Service"). The Requests for Service identified the area for which service is sought, the timeframe in which service is needed for current and projected service demands, and the level and manner of service needed for current and projected service demands in the subject area. Copies of the Requests for Service are attached as Exhibit E. These requests, collectively, contain the information required by Section 13.254(a-1), Water Code, and applicable regulations of the Texas Commission on Environmental Quality.
7. The proposed development is not speculative. Exhibit F contains documentation supporting the viability of the proposed development on the Property. Petitioner is in the final stages of obtaining approval of its subdivision plat for the initial phase of the development.
8. The Petitioner has identified Double Diamond Utilities as an alternate provider of water service (the "Alternate Provider"). The Alternate Provider is an existing retail public utility, holding Certificate of Convenience and Necessity No. 12087, and provides retail water service to over 800 customer connections located in Texas. The Alternate Provider is capable of providing continuous and adequate service within the time frame, at the level, and in the manner reasonably needed or requested by current and projected service demands in the area. Petitioner has worked with Alternate Provider in the past in the following developments: (a) Franklin County—Tall Tree, Pine Valley, and Tres Laogs; (b) Henderson County—Oakwood; (c) Hood County—Canyon Creek. The Petitioner has confidence in Alternate Provider's ability to operate and maintain the type of system Petitioner's development will require. A commitment letter and supporting documentation evidencing Alternate Provider's capability of providing continuous and adequate service within the time frame, at the level, and in the manner reasonably needed or requested by current and projected service demands in the area is attached as Exhibit G.

¹ In response to an Open Records Request dated September 6, 2006, which specifically requested "each contract for raw or treated water supply to which the District is a party," the Certificate Holder provided no written contract.

Based on information submitted by Alternate Provider, it can provide service to customers at a cost of approximately \$1,790 per water service connection, compared to Certificate Holder's cost of \$8,655.12 per water service connection, as noted below.

9. The Certificate Holder's responses to the Request for Service are attached as Exhibit H.
10. As demonstrated by the Certificate Holder's responses in Exhibit H, the Certificate Holder has conditioned the provision of service to the Property on the payment of costs not properly allocable directly to the Petitioner's service demands, as set forth below.
 - A. Certificate Holder would charge Petitioner the cost to construct approximately 30,000 feet of off-site 12" water line to the south of the Property. Exhibit I is the Certificate Holder's conceptual plan for improvements to serve the Property. The subject water line serves to benefit Certificate Holder, by allowing it to serve adjacent properties, while the costs for the line are to be borne solely by Petitioner.
 - B. Certificate Holder would require Petitioner to bear the full cost to construct over 6,000 feet of off-site 12" water line (along Liberty Road) to connect the Property to the rest of Certificate Holder's system, despite the fact that Certificate Holder has insufficient water supply to benefit Petitioner's property. The Liberty Road line only benefits Certificate Holder, not Petitioner.
 - C. Certificate Holder would require Petitioner to pay engineering, construction and facility costs totaling \$14,015,200 to serve 2277 connections (\$6155.12 per connection). In addition to the \$14,015,200, Certificate Holder has stated that it will also charge Petitioner (as the land developer) a tap fee of \$700 and a "capital contribution fee" of \$1800 per meter. Certificate Holder's charge to Petitioner would therefore total an astronomical \$8,655.12 per water service connection.
 - i. Certificate Holder, as a district, has no authority to charge a "capital contribution fee." Therefore, the imposition on Petitioner of the \$1800 per meter "capital contribution fee" is a cost not properly allocable to Petitioner.
 - ii. Petitioner has requested that Certificate Holder provide a copy of any authorization or approval for Certificate Holder's tap fee and capital contribution, which together total \$2,500 per connection. Certificate Holder has provided no evidence of any TCEQ approval of an impact fee or of any effort of Certificate Holder to comply with the requirements of Chapter 395 of the Local Government Code. Petitioner believes that Certificate Holder's tap fee and capital recovery fee constitute an illegal impact fee. As such, Certificate Holder's attempt to impose such illegal fees on Petitioner are costs not properly allocable to Petitioner.
 - D. Certificate Holder brings nothing to the table, except for its CCN. Certificate Holder essentially proposes to construct, at Petitioner's expense, an entirely new

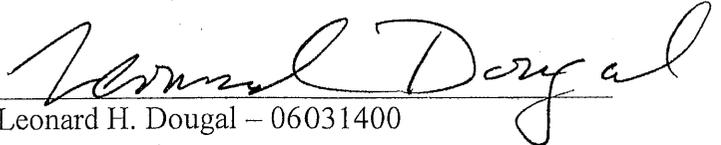
stand-alone water system to serve Petitioner's property. In addition to requiring Petitioner to pay the above costs, Certificate Holder proposes no reimbursement or compensation to Petitioner for the benefits to Certificate Holder from the water supply wells and treatment plant, which will plainly benefit Certificate Holder and its existing customers.

11. Certificate Holder is not capable of providing service to Petitioner on a continuous and adequate basis within the time frame, at the level, or in the manner reasonably needed or requested by current and projected service demands in the area, as evidenced by the fact that Certificate Holder has virtually no excess water supply capacity to serve Petitioner. *See Exhibit C.*
12. The chronology of negotiations between Petitioner and Certificate Holder is attached as Exhibit J.
13. Additional, related correspondence, between Petitioner and Certificate Holder is attached as Exhibit K.
14. Pursuant to 30 TAC §291.113(b) and (g) and consistent with the intent of HB 2876, Petitioner requests that, in approving this Petition, that the Commission at the same time transfer the portion of the CCN for the Property to the Alternate Provider. Petitioner requests the Order approving this Petition to specifically grant the CCN area to the Alternate Provider and also order the Alternate Provider to provide service to the Property.
15. Exhibit L contains the name and contact information of an appraiser who Petitioner would propose to use to appraise the value of the CCN for the Property.
16. The Petitioner has served on Certificate Holder, via certified mail, return receipt requested, a copy of this Petition prior to the date of filing with the Commission.
17. Petitioner has submitted a filing fee in the amount of one hundred dollars (\$100) to the Commission.

WHEREFORE, Petitioner prays that the Commission grant this Petition, order the decertification of the Property, transfer the CCN to the Alternate Service Provider, and thereafter, the Commission proceed to set the compensation, if any is required, for the value of the CCN area at issue.

Respectfully submitted,

JACKSON WALKER L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
Telephone: (512) 236-2000
Facsimile: (512) 236-2002

By: 
Leonard H. Dougal - 06031400

ATTORNEYS FOR DOUBLE DIAMOND, INC

CERTIFICATE OF SERVICE

This is to certify that on the 13 day of December, 2006, a true and correct copy of the foregoing Petition for Expedited Release was served upon the following by certified mail:

Mr. Wayne Nielson, President
Northwest Grayson County WCID No. 1
P. O. Box 715
Gordonville, Texas 76245

Art Rodriguez
Russell & Rodriguez, L.L.P.
102 West Morrow Street, Suite 103
Georgetown, Texas 78628
Telephone: (512) 930-1317
Facsimile: (512) 930-7742
Attorney for Northwest Grayson County WCID No. 1


Leonard H. Dougal

VERIFICATION

STATE OF TEXAS §

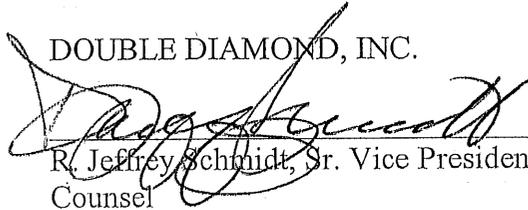
§

COUNTY OF DALLAS §

BEFORE ME, the undersigned Notary Public, on this day personally appeared R. Jeffrey Schmidt, who, upon having first been duly sworn, did under oath depose and state:

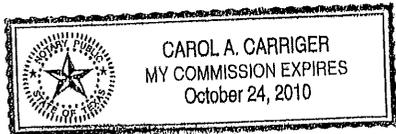
1. I am the Senior Vice President and General Counsel of Double Diamond, Inc. and have served in this capacity since January, 2002. In my capacity as Senior Vice President and General Counsel, I am aware of negotiations between Double Diamond, Inc. and Northwest Grayson County Water Conservation and Improvement District No. 1, and Double Diamond, Inc.'s plans for development as related to matters that are the subject of the foregoing Petition for Expedited Release. I have personal knowledge of the facts contained in the foregoing Petition for Expedited Release, and to the best of my knowledge they are true and correct.

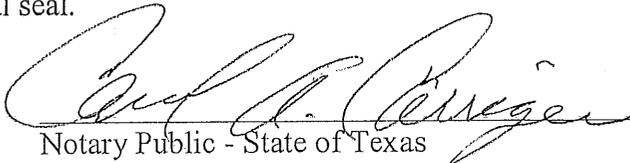
2. As the Senior Vice President and General Counsel of Double Diamond, Inc. I am an authorized representative for Double Diamond, Inc. and I am authorized to sign this Verification.

DOUBLE DIAMOND, INC.


R. Jeffrey Schmidt, Sr. Vice President/General Counsel

SUBSCRIBED AND SWORN TO BEFORE ME on the 12th day of December, 2006, to certify which witness my hand and official seal.





Notary Public - State of Texas

LIST OF EXHIBITS

Exhibit A – Plats and legal description of the Property

Exhibit B – Map of area within CCN No. 12362, including the Property and the District boundaries of Certificate Holder

Exhibit C - Certificate Holder's Pump Test results

Exhibit D – Map of property in relation to the district jurisdictional boundary of the Certificate Holder

Exhibit E – Petitioner's Requests for Service to the Certificate Holder

Exhibit F – Supporting documentation regarding the viability of the property development

Exhibit G – Commitment letter and supporting documentation from the Alternate Provider

Exhibit H – Certificate Holder's response to Request for Service

Exhibit I – Certificate Holder's conceptual plan for facilities to serve the Property

Exhibit J – Chronology of negotiations between Petitioner and Certificate Holder

Exhibit K – Additional, related correspondence between Petitioner and Certificate Holder

Exhibit L – Appraiser information