

TOWN OF MARBLE
ORDINANCE NO. 5
SERIES 1983

AN ORDINANCE AMENDING ORDINANCE NO. 2, SERIES 1980 AND ORDINANCE NO. 6, SERIES 1980 PROVIDING FOR THE LEASE OF WATER RIGHTS AND WATER DISTRIBUTION FACILITY.

WHEREAS, the Town of Marble and the Marble Water Company entered into two lease agreements in 1980, one for the lease of water rights by the Town of Marble to the Marble Water Company and the other for the lease by the Town of Marble to the Marble Water Company of land for a water distribution facility and these two leases were adopted by the Town pursuant to Ordinance No. 2, Series 1980 and Ordinance No. 6, Series 1980 and,

WHEREAS, in order for prospective water users to secure financing through the Farmers Home Administration the Town of Marble and the Marble Water Company are desirous of extending those said leases.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF MARBLE that:

1. Short Title. This ordinance shall be known and be cited as the Water Lease Ordinance of 1983.
2. This Ordinance shall repeal and supercede Ordinance 6, Series 1980 and those portions of Ordinance 2, Series 1980 which are inconsistent with this Ordinance.
3. The Mayor of the Town of Marble hereby is authorized and directed to execute in the Town's behalf, that certain form of Lease (attached and incorporated hereto by this reference as Exhibit "1") and Lease Agreement (attached and incorporated hereto as Exhibit "2").

ADOPTED this 3rd day of October, 1983.

Charles A. Pahr
Mayor

Attested by:

Carol S. Parker
Clerk of the Town of Marble

Ordinance No. 5, Series 1983

Published Oct 13, 1983
Roaring Fork Valley Journal



EXHIBIT "1"

LEASE

TOWN OF MARBLE
407 W. MAIN ST.
MARBLE, CO 81623

This Lease made and entered into this 3 day of October, 1983, by and between the TOWN OF MARBLE, COLORADO, (Lessor) and THE MARBLE WATER COMPANY, a Colorado non-profit corporation, (Lessee),

WITNESSETH:

1. Leased Premises. In consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the Lessee to be observed and performed and the benefits to be conferred on the residents of Marble by Lessee hereunder, Lessors devise and lease unto the Lessee and Lessee rents from Lessors an undivided one-third interest in and to those certain three cubic feet per second of flow of water in the Marble Pipeline and Water System, Appropriation Date 1907, as decreed conditionally by the Water Court in and for Water Division 5, State of Colorado, in Case No. W-1848, on May 29, 1974; provided; however, that in the event that Lessor's conditional right in and to such flow shall have been abandoned or otherwise terminated, then in that event the property to which the Lessee's tenancy shall pertain shall be an undivided one-third interest in the three cubic feet per second of flow as granted absolutely in said decree.

2. Term. The term of this Lease shall commence at midnight on August 8, 1983, and terminate at midnight on August 8, 2028, or for such additional period of time as shall be required for Lessee to fully discharge any obligation it may have to the United States Department of Agriculture, Farmers Home Administration, or any successor to it.

3. Rental. Lessee agrees to pay Lessor a rental for the term in the amount of \$1.00 and other good and valuable consideration payable in advance on the first of each year of the within Lease throughout the term of the Lease.

4. Place of Payment. All rent shall be paid to Lessor at its ordinary place of business within the Town of Marble, Colorado.

5. Lessor's Obligation. Lessor represents and warrants that the water right known as the Marble Pipeline and Water System is in good standing with the Court and usable for purposes contemplated by Lessee herein and further that Lessor is the owner of such water right.

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6. Use of Lease Property. Lessee shall use the lease property solely for the purposes of providing municipal, domestic, and irrigation water supplies to persons situate within or adjacent to the Town of Marble; provided, however, that Lessee shall be required only to extend water service to persons in a fashion that is reasonable considering the need for said service and the cost of supplying the same. Lessee shall not fail to provide water to any person situate within the Town of Marble except for reasons as stated in this paragraph 6.

7. Failure by the Lessee to comply with any term or condition hereof, shall, at the option of the Town of Marble, forthwith terminate this Lease.

8. Changes in Water Rights. Lessee shall, with Lessor as a co-applicant, be entirely responsible for obtaining alternate points of diversion and other changes of water rights if necessary for Lessee's intended use of the leased water right.

9. Preservation of Water Right. Lessee shall be responsible at all times to take any and all necessary action to preserve Lessor's rights as they are defined in said water right to the extent of the interest leased hereunder.

10. Indemnification. Lessee hereby indemnifies and agrees to hold harmless for any expenses, liability or damage which may come as a direct or indirect result of Lessee's use of the herein leased water right.

11. Surrender of Leasehold Water Right. At the expiration of the tenancy hereby created, Lessee shall surrender the leasehold water right up to Lessor in the same general condition as when leased herein. Lessee shall take no action in Water Court or otherwise to dilute Lessor's right of use of said water right as defined by their decree without the prior written consent of Lessor being first obtained.

12. Assignment and Subletting. Lessee shall not assign this Lease in whole or in part nor sublet any portion of the leased water right without the prior written consent of Lessor being first obtained.

13. Holding Over. Any holding over after the expiration of the primary term hereof or any extension hereof shall be construed to be a tenancy from month to month at a rental to be paid for the month as shall be determined by the parties hereto and shall otherwise be on the same terms and conditions as herein stated.

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MARBLE, CO 81623

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14. Maintenance of Water System. In addition to all other covenants contained herein, Lessee shall be responsible for maintaining and keeping in good repair all pipes and equipment necessary to transport the lease property (water) in good and workable condition.

15. Waiver. A waiver by Lessor's of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach of the same.

16. Binding Effect. The terms and conditions hereof shall extend to and be binding upon the parties hereto, their successor and assigns.

17. Prior Lease Superceded. This Lease shall modify and supercede all inconsistent provisions contained in the Lease executed by the parties on April 12, 1980.

DATED this 3 day of October, 1983.



ATTEST:

Charles A. Parker
Clerk

TOWN OF MARBLE, COLORADO, a Colorado corporation

By: Charles A. Parker
Mayor

ATTEST:

Clayton Kuhles
Secretary

THE MARBLE WATER COMPANY, a Colorado corporation

By: Clayton Kuhles
President

STATE OF COLORADO)
COUNTY OF)ss.

The foregoing instrument was subscribed, sworn to and acknowledged before me this 11th day of October, 1983, by Charles A. Parker as Mayor of the Town of Marble, Colorado, and by Clayton Kuhles as President of The Marble Water Company.

WITNESS my hand and official seal.
My commission expires: 12/16/84

Robert M. Smith
Notary
3158 County Rd. 3
Carbonade, CO 81623

STATE OF COLORADO)
COUNTY OF GARFIELD)ss

The foregoing instrument was subscribed, sworn to and acknowledged before me this 7th day of October 1983 by Clayton Kuhles, President of the Marble Water Company.

WITNESS MY HAND AND OFFICIAL SEAL.
My commission expires June 15, 1985.

Georgia Chamberlain
Notary

289 Main St.
Carbonade, CO 81623

EXHIBIT "2"

TOWN OF MARBLE
407 W. MAIN ST.
MARBLE, CO 81623

LEASE AGREEMENT

THIS AGREEMENT, entered into by and between the Town of Marble, Colorado, a municipal corporation (hereinafter referred to as the "Town"), Lessor, party of the first part, and The Marble Water Company, a Colorado corporation (hereinafter referred to as the "Company"), Lessee, party of the second part,

WITNESSETH that, for and in consideration of the Company's causing to be constructed a certain apparatus for a water distribution system serving residents of the Town with a domestic water supply, the Town hereby leases to the Company certain property in connection therewith, all as follows:

1. Leased Premises. The Town hereby demises and lets unto the Company, certain real property which is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference. The demised premises shall be used by the Company for purposes of constructing thereon, using, maintaining, repairing and inspecting a slow sand filtration facility and a pump house, all as shown on the diagram designated Exhibit "B" and attached and incorporated hereto by this reference.

2. Terms. The term of this lease shall commence at midnight on August 8, 1983 and continue until midnight on August 8, 2028, or for such additional period of time as shall be required for the Company to fully discharge any obligation it may have to the United States Department of Agriculture, Farmers Home Administration, or any successor to it.

3. There shall be no monetary rental due and payable, in consideration of the within lease. As noted in the preface hereto, the consideration furnished by the Company being the construction and furnishing of water distribution facilities servicing citizens of the Town.

4. The Company hereby covenants that it does and will, throughout the term of the within tenancy, hold the Town harmless from any and all losses and other liability arising from the Company's construction and use of improvements upon the premises, and that it shall carry liability insurance for that purpose.

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MARBLE, CO 81623

Lease Agreement - page 2

5. The Company shall not violate any applicable statutes, regulations or ordinances, in or about said premises.

6. The Company shall not sublet the demised premises nor assign its interest therein, or any part thereof, without first having obtained prior written consent of the Town; and such permission will not arbitrarily be withheld.

7. The Company shall keep and maintain the premises in a clean, safe and sanitary condition at all times, and on the termination of the tenancy shall surrender the premises to the Town in as good condition as when received, ordinary wear and tear excepted.

8. Failure by the Company to comply with any term or condition hereof, shall, at the option of the Town, forthwith terminate this tenancy.

9. This Lease Agreement shall modify and supercede the Lease Agreement executed by the parties on August 22, 1980.

DATED this 3 day of October, 1983.

ATTEST:

Charles A. Parker
Clerk

TOWN OF MARBLE, COLORADO, a
Colorado corporation

By: Charles A. Parker
Mayor

ATTEST:

Clayton Kuhles
Secretary

THE MARBLE WATER COMPANY, a
Colorado corporation

By: Clayton Kuhles
President

STATE OF COLORADO)
COUNTY OF Gunnison) ss.

The foregoing instrument was subscribed, sworn to and acknowledged before me this 7th day of October, 1983, by Charles A. Parker as Mayor of the Town of Marble, Colorado, and Clayton Kuhles as President of the Marble Water Company.

WITNESS my hand and official seal.
My commission expires: 12-16-84

Delores M. Besard
Notary
0158 County Rd. 3
Castle Dale, CO 81623

STATE OF COLORADO)
COUNTY OF GARFIELD) ss.

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 7th day of October, 1983, by Clayton Kuhles as President of the Marble Water Company.

WITNESS MY HAND AND OFFICIAL SEAL.

Georgia Chamberlain
Notary

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MARBLE, CO 81623

LEASE AGREEMENT

Exhibit A

Description of Leased Area

Commencing at a point, which point is the center of the intersection of West First Street and West Marble Street; thence northerly along the centerline of West First Street to the town limits; Thence easterly along the town limits to a point, which point is on an extension of the eastern boundary of West First Street; thence southerly along the eastern boundary of West First Street to the northern boundary of West Marble Street; thence easterly along the northern boundary of West Marble Street, to a point, which point is a distance of fifty (50) feet east of the northeast corner of the intersection of West First Street and West Marble Street; thence southerly to a point, which point is on the centerline of West Marble Street; thence westerly along the centerline of West Marble Street to the point of beginning, which point is the center of the intersection of West First Street and West Marble Street.

LEASE AGREEMENT
Exhibit B

TOWN OF MARBLE
407 W. MAIN ST.
MARBLE, CO 81623

33'

Town Limits

34'

West Hill St.

Block
6

167'

100'

Block 7



50'

33'

83'

West Marble St.

Block
9

West First St.

Block 8