

Persephone Bakery, LLC Application for Restaurant Liquor License

Chris Hawks <chris@hawksassociates.net>

Wed 5/29/2019 1:35 PM

To: Board Of County Commissioners <commissioners@tetoncountywy.gov>;

Cc: Keith Gingery <keith@tetoncountyattorney.com>; Jim Eden <jeden@edenjh.com>; Jon Wylie <jon@wyliebaker.com>; Erika M Nash <enash@lrw-law.com>; Sherry Daigle <sdaigle@tetoncountywy.gov>; Shelley Fairbanks <sfairbanks@tetoncountywy.gov>;

📎 1 attachments (1 MB)

Teton Pines Letter to BOCC.pdf;

Dear Commissioners: In connection with your June 4, 2019 hearing on the above referenced application for restaurant liquor license, please see attached correspondence.

Thank you,

HAWKS & ASSOCIATES, LC
CHRISTOPHER HAWKS, P.C.

[HTTP://WWW.HAWKSASSOCIATES.NET/](http://www.hawksassociates.net/)

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HAWKS & ASSOCIATES, LC

ATTORNEYS AT LAW

May 29, 2019

VIA EMAIL ONLY

Teton County Board of Commissioners
200 South Willow Street
Jackson, WY 83001

RE: PERSEPHONE BAKERY, LLC APPLICATION FOR RESTAURANT LIQUOR LICENSE

Dear Commissioners:

I have been retained by the Teton Pines Limited Liability Company ("Teton Pines") in connection with the above referenced application for restaurant liquor license by Persephone Bakery, LLC. On July 15, 1997, Bland Hoke for the Teton Pines commercial area and Clark Nelson for the Teton Pines country club recorded a Supplemental Declaration of Covenants, Conditions and Restrictions for the Teton Pines Commercial Area (the "Covenants"), a copy of which is included herewith. The Covenants, among other things, state that "Without the prior written consent of Teton Pines, there shall be no fine dining restaurant/bar operation conducted on the Property which directly competes with the country club's operation in terms of menu, price, décor and service." The Covenants apply to the Persephone location and by email dated May 21, 2019, a copy of which is also included herewith, Persephone Bakery, LLC and their landlord were notified that Teton Pines will only approve a breakfast and lunch operation, with alcoholic beverages limited to beer and wine, on the condition that all service concludes at 3:00 p.m. daily. Neither Persephone Bakery, LLC nor their landlord have responded substantively. All other past and current restaurant operations in the Teton Pines commercial area have been reviewed by Teton Pines in accordance with the Covenants.

Because the commercial lease agreement between Miller Ventures LP and Persephone Bakery, LLC violates the Covenants by allowing direct competition with Teton Pines' food and beverage operation, Teton Pines vigorously opposes issuance of a restaurant liquor license to Persephone Bakery, LLC for their Teton Pines location and will take all actions necessary to enforce their exclusive rights if such license is granted.

Should you have any questions, please do not hesitate to let me know.

Sincerely,



Christopher Hawks, P.C.
Hawks & Associates LC

Enclosure

cc: Keith Gingery
Jim Eden
Jon Wylie
Erika Nash
Sherry Daigle
Shelley Fairbanks

CHRISTOPHER HAWKS, P.C.

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**SUPPLEMENTAL DECLARATION
OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR THE TETON PINES COMMERCIAL AREA**

This Supplemental Declaration is made and executed effective the 17th day of July, 1997, by Pines Lot 3 Joint Venture, a joint venture composed of Pines Realty Group LLC, a Wyoming limited liability company, and Pines Lot 3 LLC, a Wyoming limited liability company ("Declarants").

RELEASED	
INDEXED	
ABSTRACTED	
SCANNED	

Recitals / Declaration

Declarants are the Owners of certain real Property located in Teton County, Wyoming, which is described as Lots 1-6 of the Teton Pines Commercial Area, as defined and established on the subdivision plat thereof recorded on March 18, 1997 at Plat No. 893 (the "Property"). The Property has been designated for local convenience commercial uses by the Teton County Commissioners in their land development regulations. Declarants have adopted a primary set of covenants, recorded on February 6, 1997, in Book 331 of Photo at pages 1-16, to provide for the orderly and first class development of the Lots in the Property, and to provide for management, maintenance, repair and replacement of the landscaping and improvements located on the common Lot of the Property, and to provide for other matters regarding the use of the Property. Declarants are adopting this supplemental declaration of covenants to set forth additional specific limitations upon the use and development of the Property. By adopting this supplemental declaration, Declarants are making the Property subject to the additional covenants, conditions and restrictions set forth hereafter, all of which shall be enforceable as equitable servitudes and shall run with the land.

Now, therefore, Declarants hereby declare that each and every Lot of the Property shall be held, sold, conveyed, leased, transferred, encumbered, used and occupied subject to the provisions of this Supplemental Declaration, which shall be construed as covenants of equitable servitude and shall run with the land and shall be binding on all parties having any right, title or interest in the Property or any part thereof, and their heirs, successors and assigns.

1. **Definitions.** The following terms and phrases used in this Supplemental Declaration are defined as follows:

- 1.1 "Association" shall mean the Lodges at Teton Pines Commercial Area Owners Association, a Wyoming non-profit corporation, and its successors and assigns.
- 1.2 "Declarants" shall mean the Owners of the Property on the date hereof.
- 1.3 "Lot" shall mean a developable commercial Lot (Lots 1-5) as defined and depicted on the recorded subdivision plat of the Property, Plat No. 893, as said Plat may be amended from time to time in accordance with applicable rules and regulations.
- 1.4 "Owner" shall mean the record Owner, whether one or more, of a fee simple title to a Lot, including contract buyers of record but excluding mortgagees or others having an interest merely as security for performance of an obligation.
- 1.5 "Property" shall mean Lots 1-5 as defined and described on the recorded

Grantor: PINES LOT 3 JOINT VENTURE ETAL
 Grantee: THE PUBLIC
 Doc 843868 bk 337 pg 487-412 Filed at 4:17 on 07/15/97
 V Jodyne Cooney, Teton County Clerk fees: 16.88
 By JULIE HODGES Deputy

subdivision plat of the Property, Plat No. 893, as said Plat may be amended from time to time in accordance with applicable rules and regulations.

1.6 "Board of Directors" or "Board" shall mean the board of directors of the Association.

2. **Exclusive Rights.** Exclusive use rights, which limit the use of the Lots, are set forth on the recorded subdivision plat of the Property, Plat No. 893 recorded on February 6, 1997. Such exclusive rights are incorporated herein by reference and shall limit the use of each and every Lot of the Property.

In addition to the foregoing exclusive rights, the Property shall also be subject to the following additional exclusive right: Teton Pines Limited Liability Company, a Wyoming limited liability ("Teton Pines"), owns and operates a country club on Lots 2, 5, 6, 7 and 8 of Teton Pines Commercial Area, according to Plat No. 741 recorded with the Teton County Clerk on January 23, 1992. In connection with the operation of its country club, Teton Pines owns and operates a first-class clubhouse including a fine dining restaurant and bar. Without the prior written consent of Teton Pines, there shall be no fine dining restaurant/bar operation conducted on the Property which directly competes with the country club's operation in terms of menu, price, decor and service. Notwithstanding the foregoing, bar/restaurant operations which are not directly competitive with Teton Pines shall be allowed on the Property.

3. **Maximum Building Size Limitations / Additional Payments for Larger Buildings.** The following building maximum size limitations shall apply to the Lots of the Property as set forth below. No building shall be constructed, moved onto, or modified on any Lot except in compliance with the applicable maximum building size limitations. Building sizes shall be measured from the outside surfaces of exterior building walls.

<u>Lot Number</u>	<u>Maximum Building Size</u>
1	4200 square feet
2	7700 square feet
3	5600 square feet
4	15,200 square feet
5	10,000 square feet

In the event that the Owner of Lot 1, 2 or 3 desires to construct and/or enlarge a building on such Lot which is larger than the maximum building size for such Lot as set forth above, such Owner shall be required to make the following payments at the time such Owner receives approval from the Association:

The Owner shall pay the sum of Fifty Dollars (\$50) per square foot of building size in excess of the limits set forth above to Teton Pines Limited Partnership, or its successor or assign;

The Owner shall pay the sum of Twenty Five Dollars (\$25) per square foot of building size in excess of the limits set forth above to Pines Lot 3 Joint Venture, or its successor or assign.

In the event that the Owner of Lot 4 desires to construct or enlarge a building on Lot 4 in excess of 8500 square feet, or in the event that the Owner of Lot 5 desires to construct or enlarge a building on Lot 5 in excess of 6500 square feet, such Owner shall be required to make the following payments at the time such Owner receives approval from the Association:

The Owner shall pay the sum of Fifty Dollars (\$50) per square foot of building size in excess of the limits set forth above to Teton Pines Limited Partnership, or its successor or assign;

The Owner shall pay the sum of Twenty Five Dollars (\$25) per square foot of building size in excess of the limits set forth above to Pines Lot 3 Joint Venture, or its successor or assign.

For purposes of the above additional payment requirements, building sizes shall be measured from the outside surfaces of exterior walls.

4. Additional Maximum Building Size Limitations on Lots 4 and 5.

Lot 4. No building permit shall be approved or issued by the Association for a building on Lot 4 which is larger than 8500 square feet, nor shall any approval be granted by the Association for the enlargement of an existing building on Lot 4 which would make the total square footage of the building on Lot 4 greater than 8500 square feet unless and until a written statement is filed of public record, signed by an authorized member of Declarant or its successors or assigns, which statement specifically references this provision and confirms that all conditions required for enlargement of the building on Lot 4 have been satisfied. In addition, no building permit shall be approved or issued by the Association for construction of a building on Lot 4 in excess of 14,000 square feet in size, or enlargement of an existing building on Lot 4 which results in a total building size in excess of 14,000 square feet, unless a building has been constructed on Lot 5 which is 10,000 square feet in size, under which are located not less than 22 underground parking spaces

Lot 5. No building permit shall be approved or issued by the Association for a building on Lot 5 which is larger than 6500 square feet, nor shall any approval be granted by the Association for the enlargement of an existing building on Lot 5 which would make the total square footage of the building on Lot 5 greater than 6500 square feet unless and until a written statement is filed of public record, signed by an authorized member of Declarant or its successors or assigns, which statement specifically references this provision and confirms that all conditions required for enlargement of the building on Lot 5 have been satisfied.

5. Parking Limitations Applicable to all Lots. Parking spaces have been provided to and are allocated to each of the Lots based upon the maximum building size applicable to each Lot as set forth in ¶ 3 hereof. Some of the parking spaces are to be located on the Lots and some are located in the common area ("Lot 6"). The Declarant shall construct the parking on the common area, and Lot owners shall be responsible for constructing parking on their Lots, as and when required by building size or building use. The table below is based upon maximum building size and retail use. In the event that a building less than the maximum size is constructed on a lot and/or a use less intense than retail use is conducted on a lot, the parking spaces required to be constructed on that lot shall be reduced accordingly. In the event that a Lot owner constructs more parking on a Lot than is designated below, such Owner shall be entitled to the use and benefit of such additional parking spaces. The number of parking spaces applicable to each Lot is set forth below, and limits the uses which can be conducted thereon, according to applicable Teton County regulations. In the event that an Owner desires to conduct a use on the Owner's Lot which requires parking spaces beyond those allocated herein, the Owner shall not be permitted to conduct such use unless and until the Owner has arranged for or provided the additional parking to the satisfaction of the Teton County Commissioners.

<u>Lot Number</u>	<u>Parking Spaces on Lot</u>	<u>Parking Spaces in Common Area</u>
1	4	16
2	12	24
3	15	11
4	34	38
5	44	3

6. **Enforcement.** The limitations and requirements for land use and development set forth in this Supplemental Declaration shall be enforceable by the Board, or by any Owner of a Lot within the Property. Every Owner of a Lot within the Property hereby consents to the entry of an injunction against him or her or his or her tenants or guests, to terminate and restrain any violation of these Covenants. Any Owner who uses or allows his or her Lot to be used or developed in violation of these Covenants further agrees to pay all costs incurred by the Board or the Declarant or other Owner in enforcing these Covenants, including reasonable attorney's fees.

7. **Amendment.** Except as otherwise expressly provided herein, the provisions of this document may only be amended by an instrument in writing signed and acknowledged by eighty percent (80%) of the Owners, which amendment shall be effective upon recordation in the Office of the Teton County Clerk.

8. **Invalidity of any Provision.** In the event any condition or restriction herein contained be invalid or held invalid or void by any court of competent jurisdiction, such invalidity or nullity shall in no way effect any other condition or restriction herein contained.

9. **Binding Effect of Covenants, Conditions and Restrictions.** Each Owner and any successor in interest to said Owner takes his right, title, interest and estate subject to all of the covenants, conditions and restrictions set forth in this Declaration, and agrees to perform and be bound thereby. The covenants, conditions, restrictions and burdens imposed hereby constitute a general scheme for the benefit of each and every Owner. Said covenants, conditions and restrictions may be enforced by the Board or by any Owner or any combination of Owners. Said covenants, conditions and restrictions shall be burden upon and a benefit to not only each of the original purchasers of a Lot, but also his grantees and all subsequent Owners. All covenants, conditions and restrictions herein are intended to and shall constitute covenants running with the land or equitable servitudes upon the land, as the case may be, and are intended to and shall be binding upon any and all future Owners.

10. **Duration.** All of the limitations, restrictions, covenants, and conditions of this Declaration shall continue and remain in full force and effect at all times with respect to the Property, and each part thereof, subject to the right to amend as provided for herein, for a period of twenty (20) years; provided, however, that unless within one (1) year prior to the expiration of said twenty (20) years, there shall be recorded an instrument directing the termination of this Supplemental Declaration signed by Owners of not less than eighty percent (80%) of the Lots, this Supplemental Declaration in effect immediately prior to the expiration date shall be continued automatically, without any further notice, for an additional period of ten (10) years and thereafter for successive periods of ten (10) years unless within one (1) year prior to the expiration of any such period this Supplemental Declaration is terminated as herein provided.

11. **Non Waiver-Breach.** The waiver of a breach of any of the covenants, conditions and restrictions hereof shall not be construed as a waiver of any succeeding breach or violation thereof or of any other covenants, conditions or restrictions.

Chris Hawks

From: Chris Hawks
Sent: Tuesday, May 21, 2019 4:26 PM
To: 'Jon Wylie'; Erika M Nash
Subject: Teton Pines - Persephone

Dear Jon and Erika: The Teton Pines Limited Liability Company ("Teton Pines"), pursuant to the rights granted to them in the Supplemental Declaration of Covenants, Conditions and Restrictions for the Teton Pines Commercial Area, has reviewed Persephone's proposed breakfast, lunch and dinner menus for their location in the Teton Pines Commercial Area. Subject to review and approval of a revised lunch menu, Teton Pines does not object to Persephone's proposed breakfast and lunch operations with the exception that they will agree to beer and wine service only but no spirits. I am very sorry to inform you but Teton Pines will not consent to a dinner service and will require that lunch and beverage service conclude at 3:00 p.m.

I know this is not the answer you were hoping for and it has been an incredibly difficult decision for Teton Pines, particularly knowing the Cohane's and Carolyn and that your clients signed a lease in December and have commenced construction on tenant improvements. Notwithstanding that, Teton Pines has a fiduciary duty to operate the Club in the best interests of its members, which includes enforcing restrictive covenants that benefit the Club. The restrictive covenant was put in place to provide Teton Pines the ability to protect its food and beverage operations and it has been in place and regularly enforced since 1997. Since the development opened, other food service operations such as Starbucks, Elevated Grounds, Butter, Sudachi, and Subway have all occupied spaces in the Miller Ventures LP buildings and all of them were reviewed and approved by Teton Pines. These operations were all approved because they were not perceived as being directly competitive with Teton Pines. When Teton Pines first heard Persephone was considering the Westbank location, they incorrectly assumed that it would be a breakfast and lunch operation similar to their location on Broadway, and it was not until Carolyn Miller presented the dinner menu that Teton Pines became aware that Persephone intended to offer dinner service. And, it was not until I pulled their liquor license application that Teton Pines became aware of Persephone's intended bar service. It is very unfortunate, but Carolyn Miller told Jim Eden (the President of Teton Pines) that she "forgot about the restrictive covenant" and the need to secure the Teton Pines' approval for any restaurant operations in her buildings in the Teton Pines Commercial Area. When I reviewed your lease, I noted the permitted use was for breakfast and lunch only which I presume was hold-over language from the prior lease, but which is there because of the restrictive covenant.

This covenant is not unique to the Teton Pines or Aspens Commercial Areas. The Jackson Hole Mountain Resort owns the exclusive right for property management, Randall Feagin owns the exclusive right for travel agencies, and Sotheby's owns the exclusive right for real estate. These covenants relate back to the original Jackson Hole Racquet Club covenants that burden the Aspens and Teton Pines and grant further exclusivity to Steigler's, the Westside Store and the Teton Sports Club. All of the owners at the time (1984 for the original Racquet Club Covenants and 1997 for the Teton Pines covenants) consented to the restrictive covenants to protect their property rights and business interests and they have all been uniformly enforced since inception.

It is also important to note that there are restaurant operations flanking either end of Teton Pines (the old Stiegler's and Roadhouse locations) both of which have full retail liquor licenses and both of which are expected to reopen. Calico also has a full retail liquor license. Teton Pines has no control over those operations which makes their rights under the restrictive covenant all the more important. Thus, given the concentration of competitive food service establishments in the area, Teton Pines simply cannot approve another bar and dinner operation that will directly compete with their bar and dinner service.

The Teton Pines' approval of Persephone's breakfast and lunch operation is conditioned on the additional requirement that the current lunch menu be revised and that future changes to Persephone's breakfast and lunch menus and operating plan be submitted to Teton Pines for review and approval pursuant to the restrictive covenant. This could be handled with a simple agreement between the parties.

Again, I know this is not the answer you were looking for and am sorry to be the one to deliver the message. Please let me know if or when you would like to discuss.

HAWKS & ASSOCIATES, LC
CHRISTOPHER HAWKS, P.C.

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