

**Board of County Commissioners Meeting
Agenda Item #__3__: Matters from Staff**

Staff Report

Meeting Date:	February 2, 2010	Presenter:	Keith Gingery
Submitting Department:	Attorney	Subject:	Driskell Cabin

Statement / Purpose: Lease to John Eastman for Driskell Cabin

Background / Description / Alternatives (Pros & Cons): John Eastman has rented the Driskell Cabin from the county for the past 4 years, which expired December 31, 2009. This is a new lease with new terms. The Driskell Cabin is located on Mercill Street next to Mr. Eastman's Inn on the Creek. Mr. Eastman uses the cabin seasonally for an office. The rent is below market because the cabin is in poor condition. The county had discussed tearing it down 4 years ago, but Mr. Eastman offered to use it as an office. New lease is for \$200/month. 2 terms of 2 years each.

Attachments: Proposed Lease

Fiscal Impact: Mr. Eastman is responsible for all maintenance and upkeep.

Staff Impact: None

Legal Review: Keith Gingery

Recommendation: Approve.

Suggested Motion: I move to approve the Lease Agreement with John Easement for the Driskell Cabin located on Mercill Street.

LEASE AGREEMENT

BETWEEN

TETON COUNTY, a duly organized county within the State of Wyoming

AND

JOHN EASTMAN

THIS LEASE AGREEMENT is entered into between Teton County, a duly organized county within the State of Wyoming (hereinafter referred to as the **County**) and John Eastman of P.O. Box 8099, Jackson, WY 83002. The purpose of this lease Agreement is to provide terms and conditions for the County to lease a structure and to provide for the disposal of the structure.

WHEREAS, pursuant to W.S. §18-2-101(iii) and 18-2-101(iv), the County may convey property owned by the County and make contracts relating to the property and concerns of the County; and

WHEREAS, the County owns a structure within the Town of Jackson, Teton County, Wyoming known as the Driskell Cabin; and

WHEREAS, John Eastman is a resident of Teton County; and

WHEREAS, John Eastman desires to lease the Driskell Cabin from the County and the County desires to lease the same; and

WHEREAS, John Eastman desires to take ownership of the Driskell Cabin at a later date, and the County desires to dispose of the Driskell Cabin.

NOW THEREFORE:

IN CONSIDERATION OF THE FOLLOWING TERMS AND CONDITIONS, THE PARTIES AGREE AS FOLLOWS:

I. LEASED PROPERTY

A. The County hereby leases to John Eastman the following property:

1. **Structures**

a. Driskell Cabin located at 105 Mercill Ave, Jackson, Wyoming

II. Term of Lease

- A. The term of this lease Agreement shall be for two (2) terms of two (2) years. The first term shall be until December 31 2011 and the second term shall be until December 31, 2013.
- B. John Eastman may remove the Driskell Cabin at his expense from the present Teton County owned land that the Driskell Cabin is placed on at any time during the term of the lease. The ownership of the Driskell Cabin shall be conveyed to John Eastman, so long as John Eastman removes the Driskell Cabin from Teton County property. John Eastman is under no obligation to move the Driskell Cabin, but if he so chooses to move the Driskell Cabin at any time prior to the end of the term of the lease, the County shall convey ownership to John Eastman through a Bill of Sale. The consideration for the Driskell Cabin shall be the cost that John Eastman expends in moving the Driskell Cabin.

III. Lease Payment

- A. John Eastman will pay \$200.00 per month to the County. It is understood that this amount is below market price for a commercial office rent, however, the cabin is not heated (does have a wood stove), has poor plumbing, and is used only seasonally as a an office by John Eastman. John Eastman shall pay the rent by the 15th of every month beginning February 15, 2010.

IV. Obligations of John Eastman

- A. The County shall not compensate John Eastman for any improvements upon the leased structure or surrounding real property, including but not limited to any and all structures, foundations, basements, landscaping, or any other improvement upon the leased real property. John Eastman will provide all maintenance and repair.
- B. John Eastman will pay all utilities on the leased structure.
- C. John Eastman shall maintain liability insurance for all claims arising out of the use of described premises, operations, sub-contractor's operations, products/completed operations, and all liability assumed by John Eastman under any contract or Agreement. John Eastman shall maintain liability insurance against claims for personal injury , death, or property damage occurring upon the leased property. The insurance policy shall contain a clause providing that it shall not be cancelled by the insurance company without thirty (30) days notice to the County of the intention to cancel. The County shall be named as an additional insured on the general liability policy. John Eastman shall provide certificates of insurance to the County at the signing of this Agreement. The policy shall be

written on the standard commercial general liability policy form with minimum limits of coverage as follows:

1.	General Aggregate	\$ 2,000,000.00
2.	Personal and/or advertising Injury limits	\$ 1,000,000.00
3.	Each occurrence limit	\$ 1,000,000.00
4.	Fire Legal Liability	\$ 50,000.00
5.	Premises Medical Payments Limit	\$ 5,000.00

- D. John Eastman agrees to indemnify and hold harmless the County from any and all liability, loss or damage the County may suffer as a result of claims, demands, costs, or judgments against it arising from John Eastman's use and occupation of the leased premises, occasioned wholly or in part by any act or omission of John Eastman, or of the guests, employees, assigns, or sub-lessees of John Eastman.
- E. John Eastman shall not allow the premises to become subject to any lien, charge or encumbrance whatsoever, without the prior written approval of the County, and shall indemnify the County against all such liens, charges, and encumbrances; it being expressly agreed that John Eastman shall have no authority, express or implied, to create any lien, charge or encumbrance upon the improvements thereon.
- F. John Eastman specifically acknowledges that the structure known as the Driskell Cabin may not be occupied for safety reasons. John Eastman may occupy the structure, known as the Driskell Cabin, if the Jackson Town Building Official grants permission for occupancy.

V. Agreement Conditions

- A. The waiver by either party of any breach, condition, or provision of this Agreement shall be limited to the particular condition or provision and shall not operate or be deemed to waive any further breach or breaches of said condition or provision
- B. Any of the following occurrences or acts shall constitute an event of default under this Lease if Lessee, at any time during the continuance hereof, shall (1) fail to make any payment of Basic Rent, additional rent, or other sum herein required to be paid by Lessee, and Lessee shall fail to make any such payment for a period of 5 days after delivery by Lessor of written notice to Lessee that any such payment has become due, or (2) fail to observe or perform any other provision hereof for 30 days after Lessor shall have delivered to Lessee notice of such failure (provided that in the case of any default referred to in this clause (2) which cannot

with diligence be cured within such 30-day period, if Lessee shall proceed promptly to cure the same and thereafter shall prosecute the curing of such default with diligence, the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence); or if the Leased Premises shall have been abandoned.

- C. If an event of default shall have happened and be continuing, Lessor shall have the right, at its election, then, or at any time thereafter while such event of default shall continue, to give Lessee written notice of Lessor's intention to terminate the term of this Lease on a date specified in such notice. Upon the giving of such notice, the term hereof and the estate hereby granted shall expire and terminate on such date as fully and completely and with the same effect as if such date were the date hereinbefore fixed for the expiration of the Term hereof, and all rights of Lessee hereunder shall expire and terminate.
- D. If an event of default shall have happened and be continuing, Lessor shall have the immediate right, whether or not the term hereof shall have been terminated, to re-enter and repossess the Leased Premises or any part thereof by force, summary proceedings, ejectment, or otherwise, and the right to remove all persons and property therefrom. Lessor shall be under no liability for or by reason of any such entry, repossession, or removal. No such re-entry or taking of possession of the Leased Premises by Lessor shall be construed as an election on Lessor's part to terminate the term hereof, unless a written notice of such intention be given to Lessee pursuant to paragraph , or unless the termination hereof be decreed by a court of competent jurisdiction.
- E. No party shall assign or in any way transfer their rights or obligations, nor shall they substitute another party in their place or otherwise subcontract their rights or obligations without the express written consent of the other party.
- F. John Eastman shall permit the County and its agents at all reasonable times to enter upon the premises to view the condition of the premises and improvements.
- G. In performing this Agreement, the parties shall comply with all applicable Federal, Wyoming, and local laws, ordinances, rules and regulations.
- H. The County does not waive its sovereign immunity by entering into this Agreement, and both parties retain all immunities and defenses provided by law with regard to any action based on or relating to the performance of this Agreement.
- I. The laws of the State of Wyoming shall be applied in the interpretation, execution, and enforcement of the Agreement. Venue under this Agreement shall be the Ninth Judicial District, Teton County, Wyoming.

- J. This Agreement may be amended only in writing, signed by both parties and specifically designated as an amendment to this Agreement.
- K. Notice to both parties under this Agreement shall be made to the following addresses:

Teton County	John Eastman
P.O. Box 1727	P.O. Box 8099
Jackson, WY 83001	Jackson, WY 83002

APPROVAL AND EXECUTION

IN WITNESS WHEREOF the parties have executed this Agreement on this ____ day of _____, 2010.

TETON COUNTY, WYOMING

Hank Phibbs, Chair
Teton County Board of Commissioners

Attest:

Sherry Daigle, Teton County Clerk

JOHN EASTMAN

John Eastman