

Contingent Water Service Agreement – SAWS-JPB

THIS AGREEMENT made, dated, and signed this 12th day of March, 2008, by and between, Powder Horn Ranch, LLC, a Wyoming limited liability company of 51 Powder Horn Rd., Sheridan, WY 82801 ("Developer" or "PHR"), and the Sheridan Area Water Supply Joint Powers Board ("SAWS-JPB").

WITNESSETH:

WHEREAS, Developer is the owner of the following land located in Sheridan County, Wyoming, to wit:

Real property improvements and fixtures located within the N1/2NW1/4 and NW1/4NE1/4 of Section 3, the NE1/4NE1/4 of Section 4, Township 54 North, and S1/2SW1/4 of Section 34, Township 55 North, all in Range 84 West of the 6th P.M.

Referred to herein as "the Lands".

WHEREAS, Developer desires to obtain domestic water service from Board for the Lands to supply a proposed PUD based residential housing development, platted and developed in distinct phases under an existing PUD thereon. The execution of this Contingent Water Service Agreement ("Agreement") shall hereafter be expressly conditional upon certain specific requirements.

WHEREAS, following the execution of this Agreement, the Board shall not be obligated to actually provide water service to the Developer unless and until the Developer is in full compliance with all of the terms, obligations and conditions of this Agreement, has completed construction of the water service facilities approved herein, and said facilities have been approved for use in the SAWS-JPB system by SAWS-JPB or its agents or representatives.

NOW, THEREFORE, IT IS HEREBY AGREED AMONG THE PARTIES AS FOLLOWS:

1. The parties expressly acknowledge and agree that this Agreement is expressly conditioned as follows:

A. First, the parties affirm that at the time of execution of this Agreement by an authorized representative or agent of SAWS-JPB the Developer has fully complied with and met the following mandatory requirements:

- i. The proposed service area within the lands is located within SAWS-JPB boundary;
- ii. Specific identification and description of the location of the actual connection(s) to the SAWS-JPB system that the Developer proposes and identification and description of which specific water supply line(s) the Developer proposes to use to connect to SAWS-JPB service to the Developer's lands;
- iii. The Developer has provided SAWS-JPB staff and City of Sheridan staff with sufficiently detailed preliminary engineering plans and construction specifications to allow staff and the SAWS-JPB Board to determine and conclude that the SAWS-JPB system has adequate available water, taps and pressure to provide the water service requested by the Developer so long as all other requirements of this Agreement are met;
- iv. The Developer expressly agrees to be bound by and to perform all of the additional specific terms and conditions set forth in the attached Appendix A (which Appendix A is expressly adopted by the parties and incorporated herein by reference).

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BOOK 494 PAGE 0355
RECORDED 03/27/2008 AT 10:20 AM
AUDREY KOLTISKA, SHERIDAN COUNTY CLERK

B. Second, It shall be a further and distinct express condition precedent to the provision of SAWS-JPB will supply domestic water service to any of the Developer's lands that the Developer must verify in writing, and SAWS-JPB must approve and agree in writing that the Developer has:

- i. Completed and provided to SAWS-JPB a detailed, accurate, and complete hydraulic system review and service simulation modeling report has been completed by the Developer or the Developer's qualified consultant(s) for the specific development(s) and service(s) that the Developer proposes to construct using the SAWS-JPB system and such review and modeling has been fully reviewed and accepted by SAWS-JPB staff and City of Sheridan staff;
- ii. Finally obtained and/or maintained an appropriate and final Wyoming DEQ Permit to Construct domestic water service facilities consistent with the specific plans and specifications provided to SAWS-JPB to induce execution of this Agreement. The Developer and/or its successors and assigns shall be solely responsible to defend any appeal of any such final DEQ permit and to pay or reimburse any and all costs or attorneys fees incurred by SAWS-JPB that are in any way associated with any formal or informal challenge or litigation concerning any such DEQ permit;
- iii. Complete and appropriate engineering construction management is in place and documentation evidencing the establishment and activities under said management is followed and provided as per DEQ and SAWS-JPB rules and regulations and/or City of Sheridan construction and operation specifications;
- iv. System fitness related performance for pressure, bacteria and other engineering issues are deemed fully acceptable by the City of Sheridan and SAWS-JPB;
- v. Finally obtained, conveyed and recorded, as necessary, all permits, variances, plats, covenants, other similar zoning and planning approvals necessary to legally construct subdivision improvements and to sell or convey any lands to any third-parties consistent with the requirements of Wyoming law and applicable Sheridan County or City of Sheridan regulations, ordinances, and/or laws;
- vi. Finally obtained, conveyed and recorded, as necessary, all easements and rights-of-way required by SAWS-JPB, Sheridan County, the City of Sheridan or any other agency with jurisdiction over the Developer's development;
- vii. Actually completed construction of the domestic water service facilities for each phased plat under the Developer's existing approved PUD as specifically described in the Developer's initial PUD application plan and permit materials that were provided to SAWS-JPB to induce execution of this Agreement. In compliance with the existing Sheridan County, Wyoming PHR PUD agreement and approval for the Lands, distinct PHR PUD Phases using parts of the Lands will be submitted and platted by the Developer in the future. For each distinct PHR PUD phased plat that is finally approved and recorded under the PHR PUD, the specific water distribution facilities necessary to serve each such distinct PUD phased plat shall be finally constructed, appropriately tested and finally approved for domestic water service use within five hundred forty-five (545) consecutive calendar days immediately following the final acceptance of each distinct PHR PUD phased plat by Sheridan County;
- viii. Fully complied with all other applicable terms and requirements for the provision of domestic water service by SAWS-JPB pursuant to this Agreement and all applicable SAWS-JPB rules and regulations and other applicable law;
- ix. Provided or committed to timely provide as-built drawings for all domestic water facilities constructed pursuant to this Agreement to SAWS-JPB staff and/or City of Sheridan staff; and,

- x. Fully paid and/or reimbursed all fees, assessments, or costs required to be paid prior to commencement of SAWS-JPB domestic water service or thereafter.

2. Developer shall install necessary water mains and related appurtenances extending from the existing permitted, installed, and accepted Powder Horn Water Distribution system. These line extensions are specifically described in the respective Phase Plat. Specific improvements (line size, location, and other city and county planning issues) shall be determined, evaluated and approved through the applicable City of Sheridan and/or Sheridan County PUD/subdivision design and review permitting process. Installation shall be in accordance with the City of Sheridan Standard Construction/Operation Specifications and any additional requirements resulting from the subdivision, PUD or other applicable planning, zoning or development review and approval process. In addition to the subdivision review and approval process, the plans and specifications must be approved by SAWS-JPB, or its duly authorized agent or successor in interest, and the Wyoming Department of Environmental Quality prior to commencing construction of the domestic water system. Prior to acceptance of the work by the Board, its duly authorized agent or successor in interest, a professional engineer registered to practice in the State of Wyoming shall certify that the work was performed in accordance with the approved construction and operation plans and specifications described herein. Developer shall provide full-time inspection of all underground facilities to assure that the work was in fact performed in accordance with the approved construction and operation plans and specifications described herein.

Upon final acceptance of the work by SAWS-JPB, all water mains and related appurtenances shall become the property and responsibility of SAWS-JPB, or its successor in interest. Similarly, all water meters shall become the property and responsibility of the SAWS-JPB, or its successor in interest. All service lines and related appurtenances shall become the property and responsibility of the owners of the respective lots receiving domestic water service, in accordance with all applicable SAWS-JPB rules and regulations.

3. Developer shall provide and finally convey to SAWS-JPB, its successor in interest, or another appropriate public entity expressly approved by SAWS-JPB in writing, any and all utility, access, construction and/or maintenance easements necessary for the provision of domestic water service to the Developer's lands at no cost to SAWS-JPB or its successor in interest. Such easements shall be prepared in accordance with the minimum horizontal distances shown in the following table or, if necessary, shall be of an appropriate size and character to meet and fully comply with any and all existing and applicable City of Sheridan and/or Sheridan County zoning and planning standards for such utility easements, including but not necessarily limited to:

Depth of water main measured from finished grade to top of pipe (feet).	Minimum distance (feet) from center of proposed water main to edge of building, edge of easement, or edge of dedicated public right-of-way.
6.0 and less	15.0
6.0 to 10.0	20.0
Greater than 10.0 feet	At least 20.0 feet, and function of soil type

4. Developer or any successor owners of the respective lots receiving domestic water service from SAWS-JPB pursuant to this Agreement, shall make application for service and pay to SAWS-JPB, or its successor in interest, the then-current water tap installation/service activation fees for each lot or property to be served at the time of receipt of a building permit from Sheridan County, or upon commencement of construction of the residential dwelling unit upon the individual lot to be served, whichever occurs first. Billing for domestic water service shall commence at the time of connection to SAWS-JPB's domestic water system (at the time of installation of corporation stop and meter by the City of Sheridan). Once connection has been made to the SAWS-JPB domestic water system and SAWS-JPB has actually begun providing domestic water to a connection as otherwise required herein, the owner(s) of the property to be served by such connection shall be obligated thereafter to pay all fees and charges in full compliance with the applicable rate schedule as established by SAWS-JPB.

5. SAWS-JPB, its duly-authorized agent, or successor(s) in interest, shall have the ongoing unfettered right to inspect all water main and water service line construction. Construction of any residential dwelling unit on any part of the lands described in this Agreement shall not begin unless and until the domestic water system facilities serving each respective lot or dwelling unit established on the lands described in this Agreement has been finally completed, tested if necessary, and accepted by SAWS-JPB, its duly authorized agent, or successor(s) in interest. Occupancy of any residential dwelling unit shall not begin unless and until the domestic water system facilities serving each respective lot or dwelling unit established on the lands described in this Agreement has been finally completed, tested if necessary, and accepted by SAWS-JPB, its duly authorized agent, or successor(s) in interest. All water meters for SAWS-JPB domestic water service shall be obtained from SAWS-JPB, its duly authorized agent, or successor(s) in interest, and installed according to the regulations of SAWS-JPB or its successor(s) in interest.

6. Developer hereby fully warrants to SAWS-JPB all of the materials, and construction and installation work, associated with its water system (expressly exclusive of any water connections or facilities installed by Developer or subsequent landowners from the actual water supply system line or vale to a home or other improvement) for one (1) calendar year from the date of actual activation of domestic water service to any logical portion or unit of the domestic water system installed by the Developer or the Developer's successors or assigns that SAWS-JPB or its successors or assigns shall obtain ownership of pursuant to this Agreement and/or SAWS-JPB rules or regulations. Said warranty shall include the Developer's responsibility to repair, maintain and service said facilities at the Developer's sole cost and expense. The Developer shall further fully defend and indemnify SAWS-JPB against any and all claims or liabilities associated with such facilities during the relevant warranty period.

7. Developer expressly agrees that all applicable SAWS-JPB rules and regulations (as they exist now or as they are amended in the future) governing domestic water provided by SAWS-JPB to the Developer's lands pursuant to this Agreement are incorporated herein as binding and enforceable terms of this Agreement. Developer and its successor agree to abide by all applicable SAWS-JPB rules and regulations at all times.

8. The parties to this Agreement expressly acknowledge and agree that given current growth and projected in the development of land in the SAWS-JPB service area, the capacity of the SAWS-JPB domestic water system in the area of the Subdivision is or may be limited. Therefore, in recognition of that circumstance, Developer expressly agrees to perform the following in order to reduce the demands placed upon SAWS-JPB's domestic water system as a result of the development of this subdivision.

A. Developer shall not exceed 150 individual three-quarter inch (3/4") residential domestic connections, or the equivalent for the Lands described in this Agreement.

B. Developer shall include within the covenants of any subdivision of the lands governed by this Agreement sufficient language controlling, regulating and defining the use of domestic water supplied by SAWS-JPB for the purpose of irrigating or applying any and all exterior lawns, gardens, and landscaping consistent with SAWS-JPB rules, regulations and system operation policies and procedures. Developer agrees that domestic water from the SAWS-JPB system should not be used for the purpose of supplying irrigation water for any and all exterior lawns, gardens, and/or landscaping within the Subdivision except as authorized by SAWS-JPB. It shall be an express condition precedent to the provision of domestic water service to the Developer or Developer's lands or to the Developer's successors or assigns or their lands hereunder that the Developer or the Developer's successors or assigns shall provide SAWS-JPB with a final copy of its covenants, bearing evidence that they have been properly recorded and are applicable to all lands described in this Agreement.

C. Developer shall verify in writing that it has submitted and/or filed all petitions or other documentation necessary to bring the Developer into full compliance with all laws and regulations of the State of Wyoming, the Wyoming State Engineer's Office or the State of Wyoming Board of Control concerning the use, conveyance and/or abandonment of any water rights associated with the Developer's lands and that Developer shall implement all orders therefrom fully and promptly.

9. In the event that the Developer or any of the Developer's successors and/or assigns fail to fulfill one or more of the conditions precedent set forth herein or otherwise defaults under the terms of this Agreement, SAWS-JPB shall have the immediate right pursuant to its governing rules and regulations, to declare this Agreement terminated, null and void in all respects. In such circumstance, SAWS-JPB shall have no obligation to perform hereunder and SAWS-JPB shall have no other obligation or liability to the Developer or the Developer's successors or assigns whatsoever.

10. This Agreement shall be governed in all respects by the laws of the State of Wyoming. SAWS-JPB fully reserves, and does not expressly or impliedly waive any governmental and/or sovereign immunity available to it under applicable law.

11. This Agreement shall be binding upon all of the parties heirs, successors in interest, and assigns at all times.

12. In the event that a Court of competent jurisdiction finally determines that any part of this Agreement is unenforceable, such unenforceable provision shall be severable from the remainder of this Agreement and the Agreement shall otherwise remain in full force and effect between the parties to the maximum extent allowed by applicable law.

13. All parties executing this Agreement expressly represent to all other parties that they are fully authorized, without legal disability of any kind, to enter into this Agreement and be bound by it in all respects. All parties hereto enter into this Agreement expressly relying upon such representations.

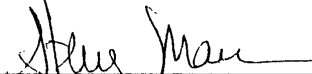
14. All parties executing this Agreement do so voluntarily and only after availing themselves of the advice of their respective legal counsel.

IN WITNESS WHEREOF, the parties to this agreement execute it as of the date first above written.

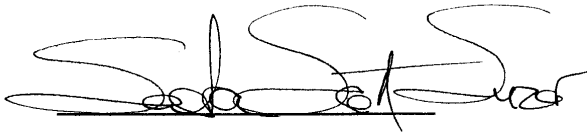
Attest by:

SHERIDAN AREA WATER SUPPLY
JOINT POWERS BOARD:


Secretary


Chairman

DEVELOPER:



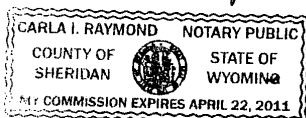
STATE OF WYOMING)
 : ss.
COUNTY OF SHERIDAN)

The foregoing instrument was acknowledged before me this 17th day of March, 2008, by Steve Maier, Chairman of the Sheridan Area Water Supply Joint Powers Board.

Witness my hand and official seal.


Notary Public

My Commission Expires: April 22, 2011



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STATE OF WYOMING)
 : ss.
COUNTY OF SHERIDAN)

The foregoing instrument was acknowledged before me this 12th day of March, 2008, by Gandra Scott Sizer, personally known to me as the authorized member or agent representing Powder Horn Ranch, LLC.

Witness my hand and official seal.



Janet Korpela
Notary Public

My Commission Expires: May 17, 2011

APPENDIX A – Additional Requirements and Conditions

Developer shall install, at its own cost, a properly designed and functional irrigation system within the PUD/Subdivision that utilizes a source of water separate and distinct from the domestic water supply to be provided by SAWS-JPB hereunder. This irrigation system shall be utilized by the Developer and the Developer's successors and assigns for the purpose of supplying irrigation water for any and all exterior lawns, gardens, and landscaping for the lands described in this Agreement. Said irrigation system shall not be physically connected in any manner to the SAWS-JPB system. Said irrigation system serving each property or lot within the lands described in this Agreement shall be fully operational to any lots or other portion of the Developer's lands for which actual SAWS-JPB service is to be provided prior to the actual provision of domestic water service for each such respective lot or property by SAWS-JPB. The Developer and/or its successors and assigns hereby agrees to and shall fully indemnify and defend SAWS-JPB and its successors and assigns against any and all casualty, property damage, personal injury or other actual or contingent liability associated with the existence, operation or maintenance of said irrigation system.

In the event that said irrigation system, servicing any distinct and finally platted Phase of the PHR PUD is not fully constructed as required herein within five hundred forty-five (545) consecutive calendar days immediately following the final acceptance of each distinct PHR PUD phased plat by Sheridan County, then SAWS-JPB fully reserves, and Developer expressly assents, to SAWS-JPB's ongoing right and authority to require Developer to provide other non-domestic irrigation water or to require payment in lieu of provision of non-domestic irrigation water pursuant to SAWS-JPB rules and regulations.

Party Initials

SS
Developer

SA
SAWS-JPB