

Annexation Agreement

THIS AGREEMENT is made and entered into this 19th day of July, 2004, by and between the City of Sheridan, Wyoming, a Wyoming municipality, hereinafter referred to as the "City", and Three Left Handers, LLC, its successors or assigns, herein referred to as the "Owners".

Recitals

- A. The Owners of certain real property commonly known as **Osprey Hill Annexation**, have petitioned that the property described in Exhibit "A" attached hereto and incorporated herein be annexed to the City of Sheridan.
- B. The Clerk of the City of Sheridan has considered such annexation petition and has certified acceptance of the annexation petition on March 15, 2004.
- C. In contemplation of such annexation, the parties enter into this agreement and agree to abide by the terms and conditions set forth herein.

Agreement

THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement, the legal sufficiency of which are hereby expressly acknowledged, the City and the Owners agree as follows:

1. **Annexation.** The City agrees that it will annex the Property only in accordance with the terms and conditions of this Agreement and only if the evidence sustained at the required public hearings supports such annexation and if the requirements of the Wyoming State Statutes are met. In the event the annexation is approved by the City Council, the parties agree to be bound by this Agreement. Any time prior to the time of the adoption of an Ordinance annexing the Property, the Owners may withdraw the petition for annexation.

2. **Purpose.** The purpose of this Agreement is to set forth the terms and conditions that shall apply to the Property upon annexation and initial development of the Property. Unless otherwise expressly provided to the contrary herein, all conditions herein are an addition to any and all requirements of the City of Sheridan Zoning Ordinance, Subdivision Regulations, as amended, and any and all state statutes, and other Ordinances of the City of Sheridan.

3. **Vested Rights.** The fact that the property has been annexed by the City shall not create detrimental reliance that will estop the City from modifying development

regulations or changing fees after execution of this Agreement. The property shall be subdivided according to a plat or plats submitted by the developer and approved by the City.

4. Zoning. The Owners have requested that the property be zoned R-1 Residential District. Upon annexation, the City will consider such zoning designation, but any zoning designation must be supported by the evidence presented at the required public hearings. If the property is not zoned R-1 Residence District at the zoning hearing or if the zoning of the property is successfully challenged by court proceeding or referendum, the parties shall have the right to disconnect the property from the City and shall then be released from all obligations hereunder. The City will cooperate in such disconnection, but the owner shall be responsible for all expenses of such disconnection.

- (a) The parties acknowledge that the current use of the property is a farm and ranch operation, and that after annexation, such use will become a pre-existing non-conforming use.

5. Services. The City and the Owners agree that the development shall be entitled to such services as the City currently provides to other residents of the City based upon availability. Extension of City utilities to serve this site will be the sole responsibility of the developer, his heirs or assigns unless mutual contracts for services are agreed upon by both the City and the Owners.

6. Easements and Rights of Way. All necessary easements and rights of way associated with any phase of this development shall be obtained and dedicated by the owner, and at owner's expense, prior to the commencement of that phase of the development. Easements and rights of way for each phase will be placed to accommodate the development of other properties previously annexed to the City and future annexations or development, where deemed necessary by the City and at the time of review and approval of each phase.

Easements currently in place within the property being annexed shall be confirmed be carried over into any future platting of the property so as to protect the infrastructure it is intended to cover.

7. Transportation Corridor Right of Way. The developer agrees to delay development for one year with the exception of twenty-nine (29) acres located off of Highway 331. Development of this section will require an access permit from WYDOT, based upon a complete and detailed Traffic Impact Study submitted by the developer and reviewed and approved by the department prior to issuing the access permit. The City agrees to meet with the Owners, WyDOT and representatives of Sheridan County, as needed, by December 31, 2004 to discuss the following issues regarding any possible future transportation corridor:

- (a) right-of-way width
- (b) access to adjacent lands

- (c) drainage
- (d) maintenance of improvements
- (e) extension of utilities
- (f) intersection improvements
- (g) timeline for development.

8. Improvements. Owners shall develop the property according to any plat approved by the City of Sheridan and shall extend, install and provide at the Owner's expense the following infrastructure:

- (a) Paved streets, curb, gutter and sidewalks shall be required.
- (b) A drainage study shall be conducted (including information as to what storm water runoff impacts there may be on Highway 331 and other neighboring draws) and reviewed and approved by the City and WYDOT. A storm drainage system shall be built in compliance with the storm drainage study approved by the City's engineer.
- (c) A water distribution system adequate to serve the needs of the residents and businesses connected to the water mains of the City or other water utility, including fire hydrants, valves, and other required system structures and equipment.
- (d) A sanitary sewer system adequate to serve the needs of the residents and businesses connected to sanitary sewer mains of the City, including manholes and other required system structures and equipment.
- (e) Owner represents and warrants that none of the water rights appurtenant to the subject property have been transferred by the Owner nor are currently subject to any abandonment proceeding.
- (f) Street signs and a building address number system as may be agreed upon between the City and the Owners including traffic control devices.
- (g) All electrical, telephone and cable television service and any other utility shall be installed underground.
- (h) Appropriate designs, plans, specifications, engineering studies, or surveys as will be required to be approved by the City for any of the foregoing improvements.

All of the improvements described above shall be constructed in accordance with the specifications required by the City at the time of approval of the subdivision plans or specifications.

9. Recreational Amenities and Open Space. Owners agree to provide no less than 20% of the property for usable open space for recreational purposes as approved and accepted by the City. The Owner agrees to work with the Sheridan Pathways Project Trails system advisory group to identify the most suitable locations for the installation of usable trails for recreation and alternative transportation, should such trails be proposed in future development. Owner agrees to dedicate public access easements, tracts or rights-of-way for the identified trail sections as each phase with a trail section is approved and to work with the Sheridan Pathways Project Trails system advisory group to complete grading, site preparation and placement of base course on the segments of trail at the time of construction of improvements identified in section #8 of this document. The developer must provide the required 20% open space over the entire project although individual phases of the project may have more or less than 20% open space to equal no less than 20% at the completion of the project. The City may require that bike trails and open space be identified no later than the phase 3 subdivision of this property.

10. Designs and Studies Required. Prior to any development, the Owners shall submit detailed plans, both preliminary and final designs, based upon reasonable projections and based upon the information and the code standards and standard specifications for design and construction then in effect in the City. These designs and studies shall include projections for full build-out of the development as well as specifics on the phase being proposed at the time.

11. Design Standards and Specifications. All construction and installation of public improvements to be performed by the Owners shall be done and accomplished in accordance with the ordinances of the City and the design standard specifications, rules, and regulations in effect at the time of design approval and in conformance with this Agreement. Improvements upon private property shall be in accordance with the building code in effect at the time of application for private building permits. The City may refuse to issue certificates of occupancy and building permits for any improvements to be placed in the Property, unless construction of the public improvements or the phase of the development commenced is proceeding in good faith and in accordance with the projected timing for that development, any approved development agreements for that particular phase, and unless all terms of this Agreement have been otherwise faithfully complied with by the Owners or assigns.

12. Traffic Impact and Control.

- (a) Traffic flow volumes may require improvements at the offsite intersection of Loucks Street and Highland Avenue. The City is completing a warrant study at this site based upon pre-annexation conditions. If development of this site and other proposed developments are shown to negatively impact the traffic flow at this intersection, the Owners agree to contribute to the cost of

construction and installation of any appropriate traffic signalization at a rate consistent with their projected impact at the time of subdividing. The study and its results will be reviewed with each plat submittal to verify traffic projections.

- (b) The developer agrees that the entrance road from Big Goose Road to any development on this parcel shall be platted so that it is directly aligned with Westview Drive.
- (c) The developer agrees to coordinate with WYDOT on any physical improvements, including physical improvements for which WYDOT requires the developer to make, that may be necessary due to results of projected traffic impact study.

13. Quality of Construction. The Owners shall, during any period of construction, be responsible for using proper dust and erosion control, obtaining necessary local and state permits, and shall be responsible for maintaining the streets in such a manner that they may be traveled upon until dedication. Any damage to streets or public facilities shall be promptly repaired in a manner acceptable to the City. Owners shall not use any chemicals hazardous to the future residents of the annexed area, or which may remain in the soil for more than one growing season.

14. Cooperation. This agreement is the product of the cooperative effort of the City and the Owners and shall not be construed or interpreted against either party solely on the basis that that party drafted the Agreement. In the event the Owners require approvals from several levels of government before this property is developed, the parties therefore agree that they shall cooperate in securing such approvals as may be necessary.

15. Acceptance. If upon completion any improvements are dedicated to the City, such improvements shall be warranted for a period of one (1) year from the date of completion of the improvement. If improvements are to be transferred to a homeowners' association, the Owners shall warrant that the improvements will be free from defects for a period of one (1) year from the date of completion of the improvement. Record drawings of infrastructure improvements shall be provided to the City upon completion of said improvements.

16. Improvements Guarantee. At the time of development, the then owner of the property shall provide an improvements guarantee in the form of a performance bond, cash deposit, irrevocable letter of credit or other method of guarantee acceptable to the City and as set forth in the Subdivision Regulations in an amount equal to the estimated engineer's cost of the public improvements plus 10% contingency allowance prior to final plat recording. The bond may be released in total upon completion of the project or in increments based upon the dollar value of the improvements installed in the subdivision or for each phase of the subdivision. The full contingency amount will not be released until final acceptance of improvements.

17. Project Phasing. The annexation contemplated by this Agreement shall be constructed in phases, beginning at the south portion of the property. The Owners will continue to work with the City to determine the best method for providing water and sewer service to this area with minimal impact to other areas of the City's infrastructure. Prior to approval of the first phase, the Owner and the City shall agree upon the concept for water and sewer infrastructure extension to this development. The approved method of service shall contemplate the capacity of relevant infrastructure to determine the threshold for phased in development until key infrastructure improvements can be accomplished as necessary to support further development. Infrastructure and public improvements shall be completed for each phase prior to the issuance of building permits for that phase, except those that are allowed in the Sheridan City Code. Infrastructure which is not necessary for a particular phase need not be completed prior to the completion of the public improvements for that particular phase. Owners recognize that each phase must be approved by the City and that the City may require a certain level of completion of one phase before approving commencement of an additional phase.

18. Owners. As used in this Agreement, the term Owners shall include any of the heirs, transferees, successors or assigns of the Owners and all such parties shall have the right to enforce this Agreement, and shall be subject to the terms of this Agreement as if they were the original parties thereto. In the event of a transfer of all or any portion of the property, the transferring Owners shall be relieved of any and all obligations under this Agreement which are to be performed after the date of such transfer with respect to the transferred property.

19. Miscellaneous Provisions.

(a) Captions. The captions for sections used in this Agreement are for convenience of reference only and shall not be considered a material part of this Agreement, nor shall they be used as an aid in interpreting the Agreement.

(b) Term. All rights and obligations set forth in this Agreement shall continue in perpetuity and shall not be considered completed at the time of annexation or at the time of complete development of the subdivision.

(c) Remedies. If the City is in default under this Agreement and does not cure the default within thirty (30) days following written notice from Owners, then the Owners shall be entitled to injunctive relief, specific performance or disconnection from the City as provided by law. If the Owners are in default under this Agreement and do not cure the default within thirty (30) days following written notice from the City, then the City will be entitled to remedies which may be cumulative, including injunctive relief and actual damages. If a petition of initiative or referendum is filed, at any time, which seeks to amend or alter this Agreement and/or the terms of the ordinance annexing the property, the Owners shall immediately be entitled to disconnect the property in the manner described in this section and the City shall not object to such disconnection, but such disconnection shall be at the cost of the Owners.

(d) Benefit. The rights and obligations created by this Agreement shall inure to the benefit of the Owners, their successors and assigns unless stated otherwise herein. The parties expressly agree that a "successor" includes, but is not limited to, any person or party who acquires a portion of property from Owners in fee simple. Such successor's or assign's obligation shall extend not only to the lot or parcel acquired by that successor, but shall include all applicable requirements of this Agreement.

(e) Severability. If any term, condition or provision of this Agreement is held by a Court of competent jurisdiction to be invalid and unenforceable, the remainder of this Agreement shall continue in full force and effect as if the offending term, condition or provision were never a part of this Agreement.

(f) Future Acts. Following execution of this Agreement, City and Owners agree to do all acts, including the execution of appropriate documents, when requested by the other, where such acts are reasonably required to fulfill the performing party's obligations, under this Agreement.

(g) Notice. Any notice required or permitted, under this Agreement, will be deemed to be received when delivered personally in writing or five (5) days after notice has been deposited with the U.S. Postal Service, postage prepaid, certified and return receipt requested, and addressed as follows:

if to Owners: Three Left Handers, LLC
237 North Main Street
Sheridan, WY 82801

if to City: City of Sheridan
55 Grinnell Plaza
P.O. Box 848
Sheridan, WY 82801

Either party may change the address to which notice is to be sent by providing notice to the other party

(h) No Merger. No part of this Agreement shall be considered to have merged or to have been completed at the annexation if the portion of the Agreement is contemplated to have survived the annexation.

(i) Binding Effect. This Agreement shall be recorded with the Clerk and Recorder of the County of Sheridan, State of Wyoming, and shall constitute a covenant running with the land. This Agreement shall be binding on future assigns and Owners and all persons who may purchase land described herein from the Owners or any persons hereafter having interest in the property.

(j) Integrated Agreement. This agreement supersedes any and all prior agreements between the parties, whether written or oral. Any modifications to this agreement shall be memorialized either in a writing executed by both parties or printed in the minutes of a regular or special meeting of the Board of Trustees of the City of Sheridan.

(k) Sovereign Immunity The City of Sheridan does not waive its sovereign immunity by entering into this agreement and specifically retains all immunities and defenses available to it as a sovereign, pursuant to W.S. 1-39-104(a) and all other state laws.

AGREED to this 19th day of July, 2004 by:

OWNERS:

Paul R. DeRose

Thomas Bush

State of Wyoming)
County of Sheridan) SS

Jim Wilson

Subscribed and sworn to (or affirmed) before me this 19th day of September, 2004, by

Jim Wilson
Arthur W. Elkins

CITY OF SHERIDAN:

Jim Wilson
MAYOR

Jackie L. Roush
Notary Public

My commission expires 9.30.2006

ATTEST:

Carol
CITY CLERK

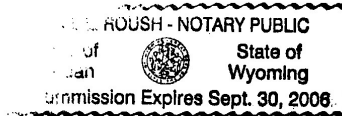


Exhibit A

A tract of land situated in the S1/2 of the SE1/4 of Sec. 29, SW1/4 SW1/4 Section 28, and NW1/4 NW1/4 Section 33, T56N R84W, 6th PM Sheridan County, Wyoming; said tract included as Exhibit A and more particularly described as follows:

Beginning at a point located S35°22'44" E, 1279.08 feet from the Northwest corner of said Section 33, said point being located on the Northerly right-of-way line of State Highway No. 1701 (Big Goose Road); Thence N 20°56'30" W, 914.70 feet; Thence N 55°40'48" W, 2806.31 feet to a point on the North line of the S1/2SE1/4 of said Section 29; Thence along the North line of said S1/2SE1/4 S 88°25'10" E, 1923.51 feet to the South one-sixteenth corner between said Section 28 and said Section 29; Thence along the North line of the SW1/4SW1/4 of said Section 28 S 89°21'51" E, 522.51 feet; Thence S46°52'18" E, 816.91 feet; Thence S35°12'41" E, 63.43 feet; Thence S 32°23'52" E, 60.01 feet; Thence S 32°13'06" E, 50.54 feet; Thence S 23°34'51" E, 47.94 feet; Thence S 11°36'18" E, 45.18 feet; Thence S 04°47'00" W, 32.35 feet; Thence S 18°50'20" W, 63.31 feet; Thence S 40°02'12" W, 49.02 feet; Thence S 18°47'52" W, 77.23 feet; Thence S 21°08'24" E, 92.52 feet; Thence S 25°37'33" E, 226.08 feet; Thence S 14°42'46" E, 98.51 feet; Thence N 84°59'38" E, 60.34 feet to a point on the East line of the NW1/4NW1/4 of said Section 33; Thence along said East line S 01°15'19" E, 763.47 feet to a point on the Northerly right-of-way of State Highway No. 1701 (Big Goose Road); Thence along said Northerly right-of-way along a curve to the right having a radius of 2814.79 feet; a central angle of 07°58'30", and arc length of 391.79 feet, with chord bearing and distance of S 68°38'03" W, 391.47 feet; Thence continuing along said Northerly right-of-way S 72°37'18" W, 324.41 feet to the point of BEGINNING, said tract containing 79.328 acres, more or less.

Basis of Bearings is Wyoming State Plane East (East Central Zone).