

## WATER SERVICE AGREEMENT

THIS AGREEMENT made, dated, and signed this 15<sup>th</sup> day of December, 2009, by and between Michael Garneau, Brent E. Brooks, Douglas Carlton, and Stephen Miller hereinafter referred to as "Developers"), and the Sheridan Area Water Supply Joint Powers Board (hereinafter referred to as "SAWSJPB").

## WITNESSETH:

WHEREAS, Developers are the owners of the following land, to wit:

Tracts 10, 11, 22 and 23 of the Bozeman Trail Estates Development, located in Section 31, T56N, 84W and Section 36, T56N, R85W and as shown generally on the attached Exhibit A; and

WHEREAS, Developers desire to obtain domestic water service from SAWSJPB for said property (sometimes referred to herein as "Lands" or "the Lands"); and,

WHEREAS, following the execution of this Agreement, the Board shall not be obligated to actually provide water service to the Developers unless and until the Developers are 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 SAWSJPB system by SAWSJPB or its agents or representatives.

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

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

- A. The parties affirm that, at the time of execution of this Agreement by an authorized representative or agent of SAWSJPB, the Developers have fully complied with and met the following mandatory requirements:
  - i. The proposed service area within the lands is located within SAWSJPB's boundary.
  - ii. Specific identification and description have been made of the location of the actual connection(s) to the SAWSJPB system that the Developers propose and identification and description of which specific water supply line(s) the Developers propose to use to connect to SAWSJPB service to the Developers' lands.
  - iii. The Developers have provided SAWSJPB staff and City of Sheridan staff with sufficiently detailed preliminary engineering plans and construction specifications to allow staff and the SAWSJPB to determine and conclude that the SAWSJPB system has adequate available water, taps and pressure to provide the water service requested by the Developers, so long as all other requirements of this Agreement are met.
  - iv. The Developers expressly agree 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).
- B. It shall be a further and distinct express condition precedent to the provision of SAWSJPB supplying domestic water service to any of the Developers' lands that the Developers must verify in writing, and SAWSJPB must approve and agree in writing that the Developers have:
  - i. Completed and provided to SAWSJPB a detailed, accurate, and complete hydraulic system review and service simulation modeling report completed by Developers or Developers' qualified consultant(s) for the specific development(s) and service(s) that Developers propose to construct using the SAWSJPB system, and such review and modeling has been fully reviewed and accepted by SAWSJPB staff and City of Sheridan staff;
  - ii. Finally obtained an appropriate, necessary, and final "Permit to Construct" public water service facilities consistent with the specific plans and specifications provided to SAWSJPB to induce execution of

- this Agreement. Developers and/or their successors and assigns shall be solely responsible to defend any appeal of any such final permit(s) and to pay or reimburse any and all costs or attorneys fees incurred by SAWSJPB that are in any way associated with any formal or informal challenge or litigation concerning any such permit;
- iii. Complete and appropriate engineering construction management for Developers' proposed construction of improvements is in place, and documentation evidencing the establishment and activities under said management is followed and provided as per SAWSJPB 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 SAWSJPB;
  - 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 SAWSJPB, Sheridan County, the City of Sheridan, or any other agency with jurisdiction over the Developers' lands;
  - vii. Actually completed construction of the domestic water service facilities as specifically described in the Developers' application plan and permit materials that were provided to SAWSJPB to induce execution of this Agreement, and that such finally completed facilities have been appropriately tested and finally approved for domestic water service use within five hundred forty-five (545) days immediately following execution of this Agreement;
  - viii. Fully complied with all other applicable terms and requirements for the provision of domestic water service by SAWSJPB pursuant to this Agreement and all applicable SAWSJPB 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 SAWSJPB staff and/or City of Sheridan staff;
  - x. Pay the then-current Plant Investment Fee for each connection to the SAWSJPB system; and,
  - xi. Fully paid and/or reimbursed all fees, assessments, or costs required to be paid prior to commencement of SAWSJPB water service or thereafter.

2. Developers shall install necessary water mains and related appurtenances extending from the existing water main located on the north side of Wyoming State Highway No. 331. Any change in expected service demands will require prior written notification to, and approval by, SAWSJPB. Installation of all water mains and related appurtenances shall be in accordance with the City of Sheridan Standard Construction/Operation Specifications and any additional requirements resulting from the applicable planning, zoning or development review and approval process. The plans and specifications must also be approved by SAWSJPB, or its duly authorized agent or successor in interest, and the City of Sheridan (which has been delegated by the Wyoming Department of Environmental Quality to issue permits to construct water facilities) prior to commencing construction of any public water system. Prior to acceptance of the work by the SAWSJPB, 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. Developers shall provide timely and appropriate 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 SAWSJPB, all water mains and related appurtenances shall become the property and responsibility of SAWSJPB, or its successor in interest. Similarly, all water meters shall become the property and responsibility of the SAWSJPB, 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 SAWSJPB rules and regulations.

3. Developers shall provide and finally convey to SAWSJPB, its successor in interest, or another appropriate public entity expressly approved by SAWSJPB in writing, any and all utility, access, construction and/or maintenance easements necessary for the provision of domestic water service to Developers' lands and improvements at no cost to SAWSJPB 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:

<b>Depth of water main measured from finished grade to top of pipe (feet).</b>	<b>Minimum distance (feet) from center of proposed water main to edge of building, edge of easement, or edge of dedicated public right-of-way.</b>
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

3. Developers, or any successor owners of the respective lots receiving domestic water service from SAWSJPB pursuant to this Agreement, shall make application for service and pay to SAWSJPB, 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 SAWSJPB's domestic water system (at the time of installation of water meter by the City of Sheridan). Once connection has been made to the SAWSJPB domestic water system and SAWSJPB 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 SAWSJPB.

4. SAWSJPB, its duly-authorized agent, or successor(s) in interest, shall have the ongoing, unfettered right to inspect all water main and 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 SAWSJPB, 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 SAWSJPB, its duly authorized agent, or successor(s) in interest. All water meters for SAWSJPB domestic water service shall be obtained from SAWSJPB, its duly authorized agent, or successor(s) in interest, and installed according to the regulations of SAWSJPB or its successor(s) in interest.

5. Developers hereby fully warrant to SAWSJPB all of the materials, and construction and installation work, associated with its water system for one (1) calendar year from the date that SAWSJPB acknowledges the transfer of ownership from Developers to SAWSJPB. The warranty shall apply to any logical portion or unit of the public water system installed by Developers or Developers' successors or assigns that SAWSJPB or its successors or assigns shall obtain ownership of pursuant to this Agreement and/or SAWSJPB rules or regulations. Said warranty shall include Developers' responsibility to repair, maintain and service said facilities at Developers' sole cost and expense. Developers shall further fully defend and indemnify SAWSJPB against any and all claims or liabilities associated with such facilities during the relevant warranty period.

6. Developers expressly agree that all applicable SAWSJPB rules and regulations (as they exist now or as they are amended in the future) governing domestic water provided by SAWSJPB to the Developers' lands pursuant to this Agreement are incorporated herein as binding and enforceable terms of this Agreement. Developers and their successors agree to abide by all applicable SAWSJPB rules and regulations at all times.

7. Developers shall be provided four (4) 3/4" residential connections, or the equivalent, for the Lands described in this Agreement, with each tract to receive one connection.

8. In the event that the Developers or any of the Developers' 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, SAWSJPB 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, SAWSJPB shall have no obligation to perform hereunder, and SAWSJPB shall have no other obligation or liability to the Developers or the Developers' successors or assigns whatsoever.

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

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

11. 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.

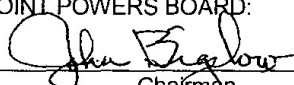
12. All parties executing this Agreement expressly represent to all other parties that they are fully authorized, without legal disability of any kind, to enter into this Agreement and be bound by it in all respects. All parties hereto enter into this Agreement expressly relying upon such representations.

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



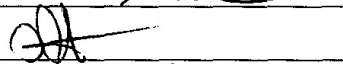

IN WITNESS WHEREOF, the parties to this agreement execute it as of the date first above written.

Attest by:

  
Secretary

SHERIDAN AREA WATER SUPPLY  
JOINT POWERS BOARD:  
  
Chairman

DEVELOPERS

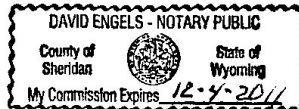
STATE OF WYOMING )  
 : ss.  
 COUNTY OF SHERIDAN )

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of December, 2009, by John Bigelow,  
 Chairman of the Sheridan Area Water Supply Joint Powers Board.

Witness my hand and official seal.

  
 Notary Public

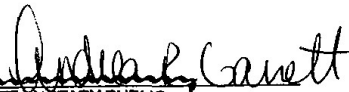
My Commission Expires: 12-4-2011



STATE OF WYOMING )  
 : ss.  
 COUNTY OF SHERIDAN )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of December, 2009, by Michael Carneau

Witness my hand and official seal.



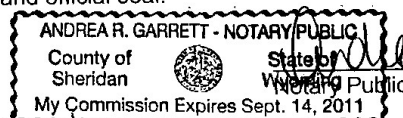
My Commission Expires: Sept 14, 2011



STATE OF WYOMING )  
 : ss.  
 COUNTY OF SHERIDAN )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of December, 2009, by Brent E. Brooks

Witness my hand and official seal.

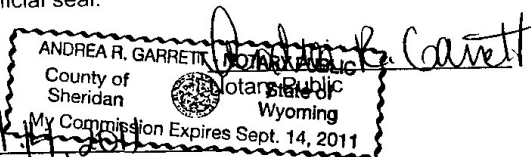


My Commission Expires: Sept. 14, 2011

STATE OF WYOMING )  
 : ss.  
 COUNTY OF SHERIDAN )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of December, 2009, by Douglas Carlton

Witness my hand and official seal.

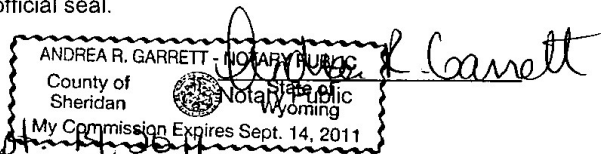


My Commission Expires: Sept. 14, 2011

STATE OF WYOMING       )  
                                  : ss.  
COUNTY OF SHERIDAN    )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of December, 2009 by Stephen Miller.

Witness my hand and official seal.



My Commission Expires: Sept. 14, 2011

## APPENDIX A – Additional Requirements and Conditions

1. The maximum finish floor elevation at which Developers or Developers' successor in interest may construct a residence shall be 4066'. SAWSJPB will not provide water service to any residence for which the finish floor elevation is above this elevation without the express written permission of the SAWSJPB.
2. If any owners of any lots or parcels adjacent to the water main extensions actually installed and paid for by Developers desire to connect service lines directly to the water main extensions, they shall be required to pay a recapture fee to the Developers. The amount of the recapture fee shall be 20% of the design and construction cost of the water main extensions, as demonstrated by the Developers. The recapture fee shall not apply if the SAWSJPB requires water main extensions connecting to the water system installed by Developers to serve the adjacent property or properties. Developers may not collect recapture fees in an amount more than 100% of their actual design and construction costs paid by them for their water main extensions. Developers shall share equally in any recapture payments made.

The SAWSJPB agrees that water tap permits will not be issued for service to adjacent properties until verification of collection of said fees are provided by the Developers to the City.

It is understood by the Developers that all recapture fees collected shall be done according to applicable Wyoming Statutes and rules and regulations of the SAWSJPB. Recapture fees may be collected by the Developers pursuant to this Agreement only upon or after SAWSJPB verifies its final acceptance of the installation of the water system being constructed by the Developers.

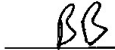
Subject to all other terms and conditions of this Agreement, this recapture agreement shall extend for a period not to exceed a period of fifteen (15) years from the date of this Agreement.


Party Initials

SAWSJPB



Developers









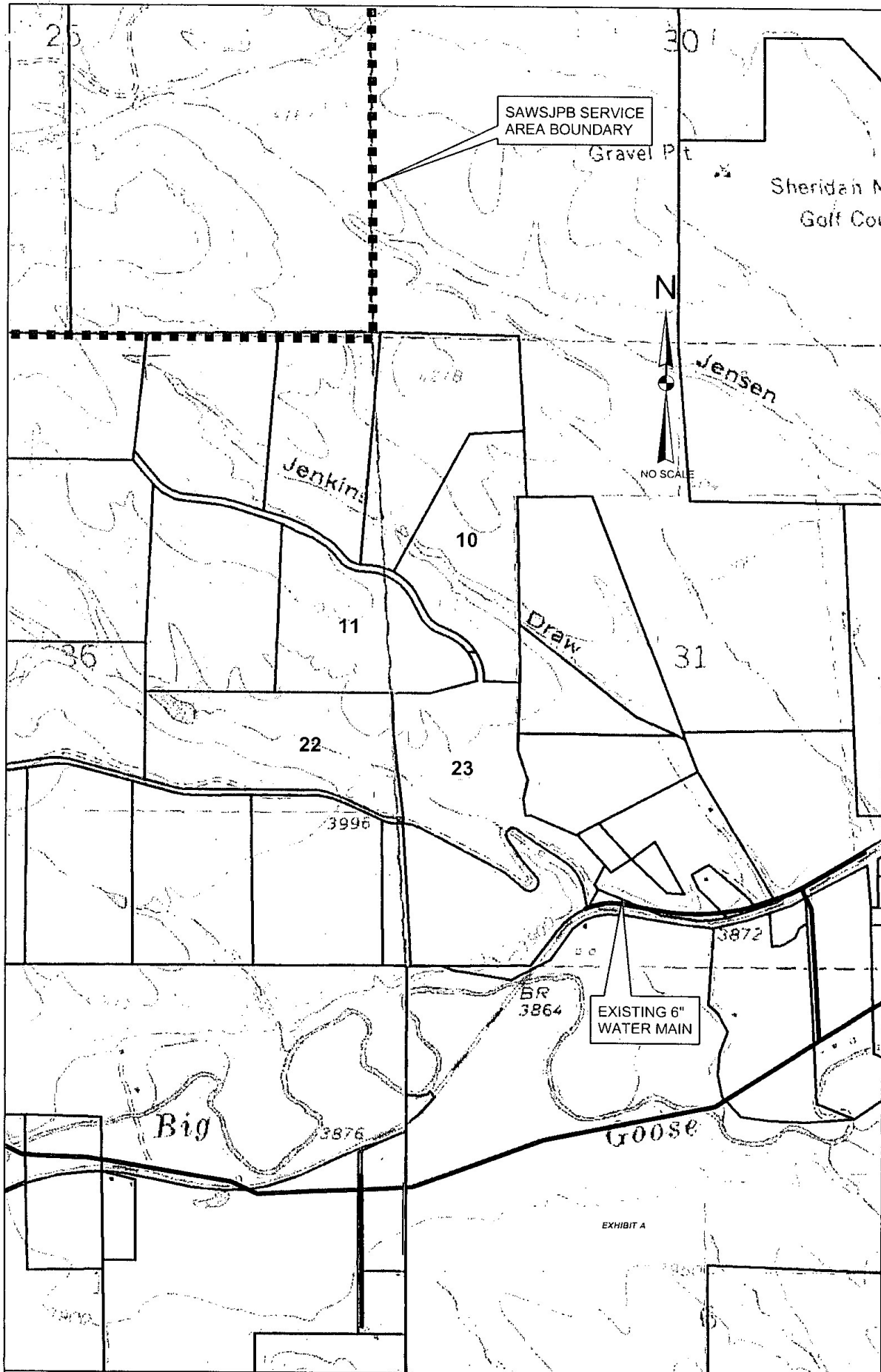


EXHIBIT A

TRACTS 10, 11, 22 AND 23  
BOZEMAN TRAILS ESTATES DEVELOPMENT