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Melissa Heimerl\*\*  
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\*\* Licensed in New York & Idaho

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May 1, 2008

RECEIVED  
MAY 05 2008  
Department of Water Resources  
Eastern Region

Idaho Department of Water Resources  
Attn: Nate Arave  
900 N. Skyline Drive, Suite A  
Idaho Falls, ID 83402-1718

Re: Trapper's Ridge, Teton County, Idaho  
Shared Well Construction, Water and Easement Agreement

Dear Mr. Arave:

Jennifer Zung of Harmony Design & Engineering asked that I forward to you a copy of the recorded water agreement for the Trapper's Ridge subdivision.

If you have any questions, please contact Jennifer at 208-354-1331.

Sincerely,



Melissa Heimerl

Enclosure

cc: Jennifer Zung

1277059 APR 21 '08 PM 3:40

RECEIVED  
MAY 05 2008

Department of Water Resources  
Eastern Region

## SHARED WELL CONSTRUCTION, WATER AND EASEMENT AGREEMENT

This Agreement, made and entered into as of the 14<sup>th</sup> day of April, 2008 by and between West Ridge Ranch LLC, an Idaho limited liability company, 750 North 150 East, Teton, ID, 83452, party of the first part, hereinafter referred to as the "supplying party", and JDS Enterprises, LLC, Packsaddle Properties, LLC, a California Limited Liability Company, 19959 Villa Drive, Sonoma, CA, 95370, party of the second part, and Action Investors I, LLC, a Delaware limited liability company, party of the third part. The party of the second part and the party of the third part are hereinafter collectively referred to as the "supplied parties" unless specifically designated otherwise:

WITNESSETH:

THAT WHEREAS, the supplying party is now the owner of certain real property situated in Teton County, Idaho known as West Ridge Ranch as per the final plat thereof, recorded on May 18, 2007 in Teton County, ID as Instrument No. 187709, hereinafter referred to as "West Ridge", containing one hundred and twenty (120) individual lots and open space

and

WHEREAS, the party of the second part is now the owner of property known as Appaloosa Ridge Subdivision as per the record plat thereof, hereinafter referred to as "Appaloosa", containing forty-five (45) individual lots and open space, located in the County of Teton, State of Idaho, which property is more fully described as follows, to wit:

S 1/2 NE 1/4 and N 1/2 SE 1/4 of SECTION 33, TOWNSHIP 6 NORTH, RANGE 44  
EAST, BOISE MERIDIAN, TETON COUNTY IDAHO

WHEREAS, the party of the third part is now the owner of property known as Trapper's Ridge Subdivision as per the record plat thereof, hereinafter referred to as "Trapper's Ridge", containing twenty-five (25) individual lots and open space, located in the County of Teton, State of Idaho, which property is more fully described as follows, to wit:

S 1/2 SE 1/4 of SECTION 33, TOWNSHIP 6 NORTH, RANGE 44 EAST, BOISE  
MERIDIAN, TETON COUNTY IDAHO

and

WHEREAS, the undersigned parties and present owners, the future owners, their heirs, successors and assigns of the real property described above, hereinafter "parties", deem it necessary to provide a well system to service all lots in the three subdivisions described above,

Instrument # 197059

TETON COUNTY, IDAHO

4-21-2008 03:40:00 No. of Pages: 13

Recorded for: MELISSA HEIMERL

MARY LOU HANSEN

Ex-Officio Recorder Deputy

Index to: EASEMENT

Fee: \$39.00

signed

and an Agreement has been reached relative to the cost of constructing and supplying water from said well; and

WHEREAS, there is to be located a well upon West Ridge (the "Well"), together with water distribution facilities, hereinafter referred to as "Water Distribution System", for the purpose of supplying water to all properties connected to the said Water Distribution System in West Ridge, Appaloosa and Trapper's Ridge; and

WHEREAS, it is the intention and purpose of the undersigned parties that the Well and Water Distribution System shall be constructed, used, and operated to provide an adequate supply of water for each of the properties connected thereto, for the domestic consumption of the occupants of said properties, and to assure the continuous and satisfactory operation and maintenance of the Well and Water Distribution System for the benefit of the present and future owners, their heirs, successors and assigns of the properties connected thereto; and

WHEREAS, the parties have deemed that the Well be constructed of adequate capacity to supply all single family dwellings in all three subdivisions described herein with water from the Well for all domestic uses of a single family dwelling; and

WHEREAS, Teton County, Idaho, will not approve the subdivisions of the above-described properties unless proper assurance is given by the parties as demonstrated by execution of this Agreement, that the Well and Water Distribution System will have a continuous and satisfactory operation in accordance with the terms of this Agreement; and

WHEREAS, the Idaho Department of Environmental Quality, hereinafter "DEQ", is requiring that said Well undergo monitoring and inspection to determine said Well will supply safe and potable water; and

WHEREAS, the parties hereto desire to enter this Agreement for the purpose of reducing to writing their respective rights and obligations pertaining to said Well and Water Distribution System.

NOW THEREFORE, in consideration of the promises and covenants herein contained, it is agreed that the Well and Water Distribution System situated on West Ridge shall be constructed and used by the parties to this Agreement, as well as by all future owners and occupants of lots in each of the three subdivisions described herein, upon the following terms and conditions:

1. That the parties hereto, their heirs, successors, assigns, purchasers or transferees of any parcels of real estate located in West Ridge, Appaloosa and Trapper's Ridge, for the exclusive benefit of each of the parcels of real estate located in West Ridge, Appaloosa and Trapper's Ridge, and for the exclusive use of the households residing thereon, are hereby granted

the right in common with the other parties to this Agreement, to draw water from the Well located on West Ridge for common domestic use excluding the right to draw water to fill swimming pools of any type.

2. That the owners or residents of the dwellings located in West Ridge, Appaloosa and Trapper's Ridge, as of the date of this Agreement shall:

a. Pay or cause to be paid promptly to the water board, as described in paragraph 4 below, or to the supplying party if the water board is not yet established, a prorated share of all expenses for the drilling and construction of the Well and Water Distribution System that may become necessary to supply water to the boundaries of the supplied parties' property. All water system work shall be done by competent contractors, all of whom shall be properly licensed, bonded and insured, with all necessary permits obtained, and all work to be performed in conformity with professionally prepared and approved plans and specifications. Each respective share of expenses for the drilling and construction of the Well and Water Distribution System shall be determined by prorating the amount of each expense as follows: West Ridge — sixty-three percent (63%); Appaloosa — twenty-four percent (24%); Trapper's Ridge — thirteen percent (13%). It being understood that the supplying party and the supplied parties shall pay the prorated amount of the total as previously described of such necessary cost of drilling and construction of the Well and Water Distribution System. None of the parties shall be responsible for the cost of constructing the water delivery infrastructure that solely benefits and is unique to the individual subdivisions. Attached, and incorporated herein by reference, is an estimate for the drilling and construction of the Well and Water Distribution System (Exhibit "A"). In addition to the attached exhibit, the parties also agree to pay their prorated share of the costs as above-stated for three-phase power from Fall River Electric for the pump house, erosion control as required by DEQ, and the legal fees incurred for the drafting of this Agreement. Despite the attached estimate for construction, the parties agree to pay their aforementioned prorated share of the actual expenses incurred. In the event that payment for the drilling and construction of the Well and Water Distribution System remains unpaid for a period of 20 days after written request for payment has been made to any party, the water board (described in paragraph 4 below) may terminate the supply of water to the offending property until the water board or the supplying party receives all arrearages in payment for the drilling and construction of the Well and Water Distribution System.

b. Pay or cause to be paid promptly to the water board, or to the supplying party if the water board is not yet established, a share of all expenses, for the operation and maintenance of the Well and Water Distribution System that may become necessary. Each respective share shall be determined based upon the actual water used as indicated

by each subdivision's separate meter, apportioning the expense to each subdivision by the actual use of water in such subdivision. "Shared expenses" shall include the cost of electricity for pumping, repairs and maintenance on said Well and Water Distribution System. None of the parties shall be responsible for the cost of operation and maintenance of water delivery infrastructure that solely benefits and is unique to the individual properties. In the event that expenses are incurred and no homes are constructed on any of the properties, the parties hereby agree to apportion the shared expenses as prorated in paragraph 2(a) above.

3. That each of the parties hereby agrees that they will promptly repair, maintain and replace all water pipes or mains serving their respective properties and/or individual lots.

4. The directors of the homeowners associations for the respective subdivisions, or if any such subdivision does not have a homeowners association, then such subdivision's developer, shall appoint by May 15, 2008, one member as a representative from each subdivision to create a water board to make all decisions relating to the construction, maintenance, repair, replacement or enhancement of the Well and Water Distribution System and all financial matters or any other issues relating to the Well and Water Distribution System and the usage thereof, including collection of money due. Such members of the water board serve at the pleasure of its subdivision's homeowners association, or the developer if no such association exists. The water board will devise a course of action to follow in the event that any party fails to timely meet any financial or contractual obligation relating to the Well and Water Distribution System or the usage thereof. Such procedures shall include written notice to the defaulting party with a reasonable time to cure such default, and interest added of 8% per annum to all unpaid accounts 20 days overdue, which default interest earned shall be put into the Well and Water Distribution System's general maintenance fund or account. If any dispute, including failure to pay any financial obligation, is not resolved within a reasonably stated number of days after the water board sends written notice of default, the water board, or the defaulting party with a dispute made in good faith, may request that binding arbitration be conducted as set forth in paragraph 20 below. If the arbitrator finds in favor of the water board, the arbitrator will set a date by which the defaulting party must comply with the arbitrator's ruling. The arbitrator may permit the water board to take, among other things, the following actions: file a lien on the defaulting party's property and/or shut off water supply to the defaulting party until such party complies with the arbitrator's ruling.

5. That the water board must obtain the consent of the homeowners associations for the respective subdivisions, or the developer of any subdivision without a homeowners association, to pay the shared expenses prior to embarking upon expenditures for the Well and the Water Distribution System maintenance, replacement or improvement, except in emergency situations. An arbitrator shall be chosen by the homeowners associations or the developer for the

respective subdivisions, pursuant to paragraph 20 below; and shall be consulted in the event the parties cannot agree regarding the said expenditures; and the arbitrator's decision shall be definitive.

6. That the supplied parties shall pay to the supplying party their portion of the "shared expenses" for the cost of energy for the operations of the pumping equipment. Once a water board has been established, the future homeowners' associations of all three developments, or the developer if no such association exists, shall pay their respective share of ongoing expenses to the water board. A separate meter shall be installed for each of the three subdivisions which shall determine this cost of energy.

7. That it is the agreement of the parties hereto that the payment for energy cost shall be made not later than the 20<sup>th</sup> day of each succeeding month during the term of this Agreement. Failure of any party to pay its share of energy cost shall be handled by the water board in the same manner as described in paragraph 4 above.

8. That it is the agreement of the parties that they shall permit a third party to cure a default of payment or other obligation and shall permit water distribution service to be reinstated upon such curative action.

9. That each of the parties to this Agreement does hereby grant and convey to each of the others, its heirs, successors, assigns, purchasers or transferees of any kind, a non-exclusive perpetual easement over, across and through each of the party's real property described in this Agreement, as shall be reasonably necessary for the construction and maintenance of the Well and Water Distribution System, including but not limited to maintenance of water pipes, pumping equipment, mains, electrical wiring and conduit consistent with the purposes of this Agreement. No improvements shall be constructed within a 7.5 foot radius of the Well and Water Distribution System.

10. That no party may install landscaping or improvements that will impair the use of said easements.

11. That each party shall have the right to act to correct an emergency situation and shall have access to the pertinent parcel in the absence of the other. An emergency situation shall be defined as the failure of any shared portion of the system to deliver adequate water upon demand.

12. That only those parcels of real estate hereinabove described and the dwellings located thereon shall be permitted to receive water from said Well and pumping equipment; and each of the parties hereto does hereby covenant and agree that he/she will not allow or permit other persons, to take, draw, use or receive water from the Well, nor permit other persons to connect to the Water Distribution System serving the hereinabove described properties.

13. That in the event the Well shall become contaminated and shall no longer supply water suitable for domestic consumption, or shall no longer supply water adequate for the needs of all relevant parties, then the water board shall determine what reasonable course of action to take, which may include, but is not limited to, remediation to purify the contaminated water, enhancement of the Well or Water Distribution System, further drilling of the existing Well, or cancellation of the rights and obligations of the parties created by this Agreement. If any party to this Agreement chooses not to participate in such remediation or curative measures, such party may choose to terminate their participation in this Agreement and incur no costs of such remediation or curative measures except in the event that such party's actions or the actions of such party's agents, employees or independent contractors directly caused harm to the Well or Water Distribution System that necessitated such remediation or curative measures. If any dispute arises regarding the financial responsibilities of any party under this paragraph, the parties shall submit such dispute to binding arbitration, as described in paragraph 20 below.

14. That the respective rights and obligations of the parties shall continue until the parties who wish to terminate their participation in this Agreement have provided written notification 90 days in advance to the water board, and have executed and filed a written statement of termination at the Office of the Recorder of the County of Teton, State of Idaho. Upon termination of participation in this Agreement, the owner and occupant of each residence that is terminated from the Agreement shall have no further right to the use of the Well. The terminated parties shall disconnect their respective lateral connection from said Well and Water Distribution System and shall have no further obligation to pay or collect for maintenance and related expenses incurred thereafter. The costs of disconnection from the Well and Water Distribution System shall be borne by the owner of the pertinent parcel.

15. That the undersigned parties shall permit periodic well water sampling and testing by a responsible authority at the request of DEQ.

16. Said Well Agreement currently serves 190 single family dwelling units. At such time as a proposal should be made to increase the service to 260 single family dwelling units, said proposal would need to meet the approval of and require the signatures of West Ridge Subdivision, Appaloosa Ridge Subdivision and Trapper's Ridge Subdivision. This Agreement, if amended, shall serve no more than 260 single family dwelling units, notwithstanding the ability of the parties to make other amendments to this Agreement.

17. That the parties may amend this Agreement to assure equitable distribution of shared costs and responsibilities.

18. That the term of this Agreement shall be perpetual, except as herein limited.

19. That the benefits and burdens of this Agreement shall constitute a covenant running with the parcels of land herein described and shall be binding upon and inure to the

benefit of each party's heirs, successors in title, assigns, purchasers or transferees of any kind of the real property described in this Agreement. Notwithstanding the foregoing, the parties agree that each party's rights and obligations under this Agreement shall be assigned to the future homeowners associations of West Ridge Ranch, Appaloosa and Trapper's Ridge (each referred to as a "subdivision") at the same time that such party assigns all of its rights and obligations of its subdivision to its homeowners association. At the time that each party assigns all of its rights and obligations of its subdivision to its homeowners association, then such party shall be released from all of its obligations in this Agreement.

20. That any controversy arising out of or related to this Agreement or the breach thereof shall be settled by binding arbitration in accordance with the then current rules of The American Arbitration Association (the "AAA"). The arbitration shall take place in Teton County, Idaho, or if there is not an acceptable arbitrator available in Teton County, then at another location that is mutually convenient to all parties. The parties in dispute shall agree on an arbitrator within 20 days after any party sends written notice of its desire to arbitrate. If the parties cannot agree on an arbitrator, then the arbitrator shall be chosen by the office of The American Arbitration Association which services Idaho, which arbitrator shall be experienced in the area of real estate and who shall be knowledgeable with respect to the subject matter area of the dispute. If the AAA does not have an appropriate arbitrator available in Teton County, Idaho, then the AAA shall choose an arbitrator in another location that is mutually convenient to all parties. The losing party shall bear any fees and expenses of the arbitration and reasonable attorney's fees of the winning parties, as determined by the arbitrator. The arbitrator's decision shall be final and binding on the parties. Judgment entered upon the award rendered may be enforced by appropriate judicial action pursuant to Idaho law.

21. Any notice given in connection to this Agreement must be in writing and must be given by personal delivery, overnight delivery, confirmed facsimile or United States certified or registered mail, addressed to the parties at the following addresses (or at another address that any party may designate in writing):

For West Ridge:

West Ridge Ranch LLC  
c/o Jeffrey Borer  
750 N. 150 E.  
Tetonia ID 83452  
Facsimile: 208-456-9207

For Appaloosa:

B. Don Smith, Member  
JDS Enterprises, LLC  
19959 Villa Drive  
Sonora, CA 95370  
Facsimile: 209-533-3069

Packsaddle Properties  
David M. Polanco  
PO Box 1176  
Sonora, CA 95370  
Facsimile: 209-588-8004

For Trapper's Ridge:

Action Investors I, LLC  
c/o Peter Lawyer  
Wayzata, MN 55391  
Facsimile: 612-605-6185

22. This Agreement and the other documents referred to herein shall contain the entire understanding among the parties with respect to the transactions contemplated hereby and shall supersede all other agreements and understandings among the parties.

23. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Idaho without regard to choice of law rules.

24. In the event of breach of this Agreement, the party found at fault hereby agrees to pay the costs and reasonable attorney's fees incurred in the enforcement thereof.

25. Any exhibits referred to herein, attachments and other documents to be delivered by the parties hereto are hereby incorporated in this Agreement by this reference.

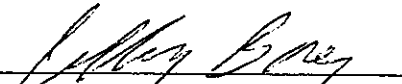
26. If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be held by a court in an action between the Parties or otherwise affecting this Agreement to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

27. This Agreement may be executed in counterparts, each of which, when taken together, shall be deemed one fully executed original.

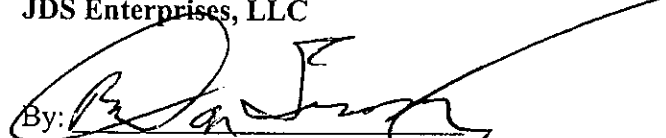
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IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first above written.

**West Ridge Ranch LLC**

By:   
Jeffrey Borer, Member

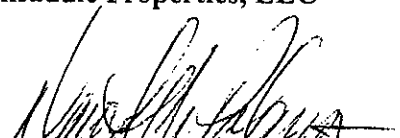
**JDS Enterprises, LLC**

By:   
B. Don Smith, Member

**Action Investors I, LLC**

By:   
John P. Puckett, III, Managing Director

**Packsaddle Properties, LLC**

By:   
David M. Polanco, Member

State of Idaho )  
 ) ss:  
County of Teton )

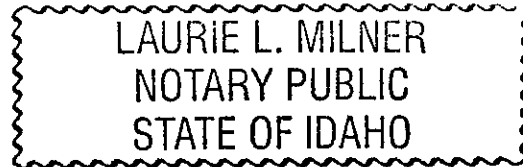
On this 9 day of April, 2008, before me, a Notary Public, personally appeared JEFFREY BORER known or identified to me (or proved to me on the oath of) to be the person whose name is subscribed to the within instrument and acknowledged to me that he had the authority to sign this instrument and that he executed the same.

WITNESS my hand and official seal.

Laurie L. Milner

Notary Public

My Commission Expires: 8/19/2011

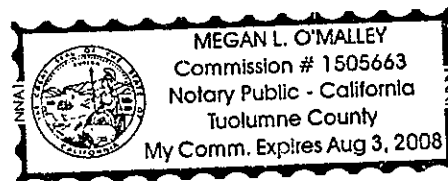


State of CALIFORNIA )  
 ) ss:  
County of TUOLUMNE )

On this 3<sup>rd</sup> day of April, 2008, before me, a Notary Public, personally appeared B. DON SMITH known or identified to me (or proved to me on the oath of) to be the person whose name is subscribed to the within instrument and acknowledged to me that he had the authority to sign this instrument and that he executed the same.

WITNESS my hand and official seal.

Megan L. O'Malley  
Notary Public  
My Commission Expires: August 3, 2008



State of Texas )  
 ) ss: mw  
County of Dallas )

On this 14 day of April, 2008, before me, a Notary Public, personally appeared JOHN P. PUCKETT, III known or identified to me (or proved to me on the oath of) to be the person whose name is subscribed to the within instrument and acknowledged to me that he had the authority to sign this instrument and that he executed the same.

WITNESS my hand and official seal.

Marci Lynnette Willard  
Notary Public

My Commission Expires: January 07, 2010



State of CALIFORNIA )  
 ) ss:  
County of Tuolumne )

On this 3rd day of April, 2008, before me, a Notary Public, personally appeared DAVID M. POLANCO known or identified to me (or proved to me on the oath of) to be the person whose name is subscribed to the within instrument and acknowledged to me that he had the authority to sign this instrument and that he executed the same.

WITNESS my hand and official seal.

Megan L. O'Malley  
Notary Public  
My Commission Expires: August 3, 2008

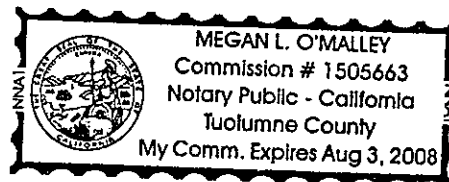


**EXHIBIT A**  
**ESTIMATE OF DRILLING/CONSTRUCTION**  
**OF WELL AND WATER SYSTEM**  
**WEST RIDGE RANCH**

|                        |                   |
|------------------------|-------------------|
| Trenching              | 107800            |
| 10" Water Line         | 161504            |
| 10" Gate valves        | 4800              |
| Misc parts             | 4000              |
| Well bldg              | 131455            |
| Plumbing in bldg       | 46816             |
| 12" well               | 73912             |
| 10" well               | 61688             |
| 20hp pump              | 3846              |
| 25hp pump              | 3846              |
| 7.5hp pump             | 1690              |
| 120000 gal tank        | 159000            |
| Gen set                | 30956             |
| 3 phase power          | 9156              |
| Elec in bldg           | 26122             |
| Denning well drilling  | 16672             |
| Engineering            | 34600             |
| <b>TOTAL</b>           | <b>877,863.00</b> |
|                        |                   |
| West Ridge share (63%) | 553,053.69        |
| Appaloosa share (24%)  | 210,687.12        |
| Trapper's share (13%)  | 114,122.19        |