



# TOWN COUNCIL AGENDA DOCUMENTATION

**PREPARATION DATE:** August 1, 2018  
**MEETING DATE:** August 6, 2018

**SUBMITTING DEPARTMENT:** Legal  
**DEPARTMENT DIRECTOR:** Audrey Cohen-Davis  
**PRESENTER:** Audrey Cohen-Davis, Town Attorney

**SUBJECT:** Permanent Utility Easements on Budge Hillside

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## STATEMENT/PURPOSE

For the Town Council to consider approving three (3) Permanent Utility Easements to the Town in order to construct and operate a domestic water line and appurtenances thereto on the Budge Hillside.

## BACKGROUND

The Town has been working with three (3) property owners currently adjacent to the temporary road easement to provide additional access to properties on the Budge Hillside. Now that the Town has completed the remediation efforts from the landslide and Budge Drive is open for Budge Hillside residents, the Town wishes to lay out, construct, install, operate and maintain a domestic water line and appurtenances thereto for the benefit of the properties on Budge Hillside.

The three (3) easements attached hereto from Jody and Linda Burkes, Bluff Development Group, LLC and Wayboard, LLC will allow the Town to lay such a water line within the area that the temporary road easements currently exists and before it will restore the easement area to the reasonably same condition it was prior to the need for the temporary roadway, including but not limited to replacement of landscaping such as grass, bushes and other similar undergrowth. The three (3) Utility Easements are necessary in order for the public on the Budge Hillside to have sufficient domestic water service.

## FISCAL IMPACT

The monies for this waterline project were approved in the FY19 Budget which is all inclusive the work that needs to occur.

## ALIGNMENT WITH COUNCIL'S STRATEGIC INTENT

The Mission of the Town of Jackson is to provide municipal services necessary to support the residential, business, environmental, and historical interests that define our community and support economic development.

## STAFF IMPACT

The Staff impact has been in the Public Works Department (including the Town Engineer) and the Legal Department in negotiating and finalizing these easements.

## LEGAL ISSUES

Complete.

## ATTACHMENTS

1. Picture of overall easement area of the 3 easements.
2. Permanent Utility Easement from Jody and Linda Burkes, Trustees of the Burkes Family Trust to the Town.
3. Permanent Utility Easement from Bluff Development Group, LLC to the Town.
4. Permanent Utility Easement from Wayboard, LLC to the Town.

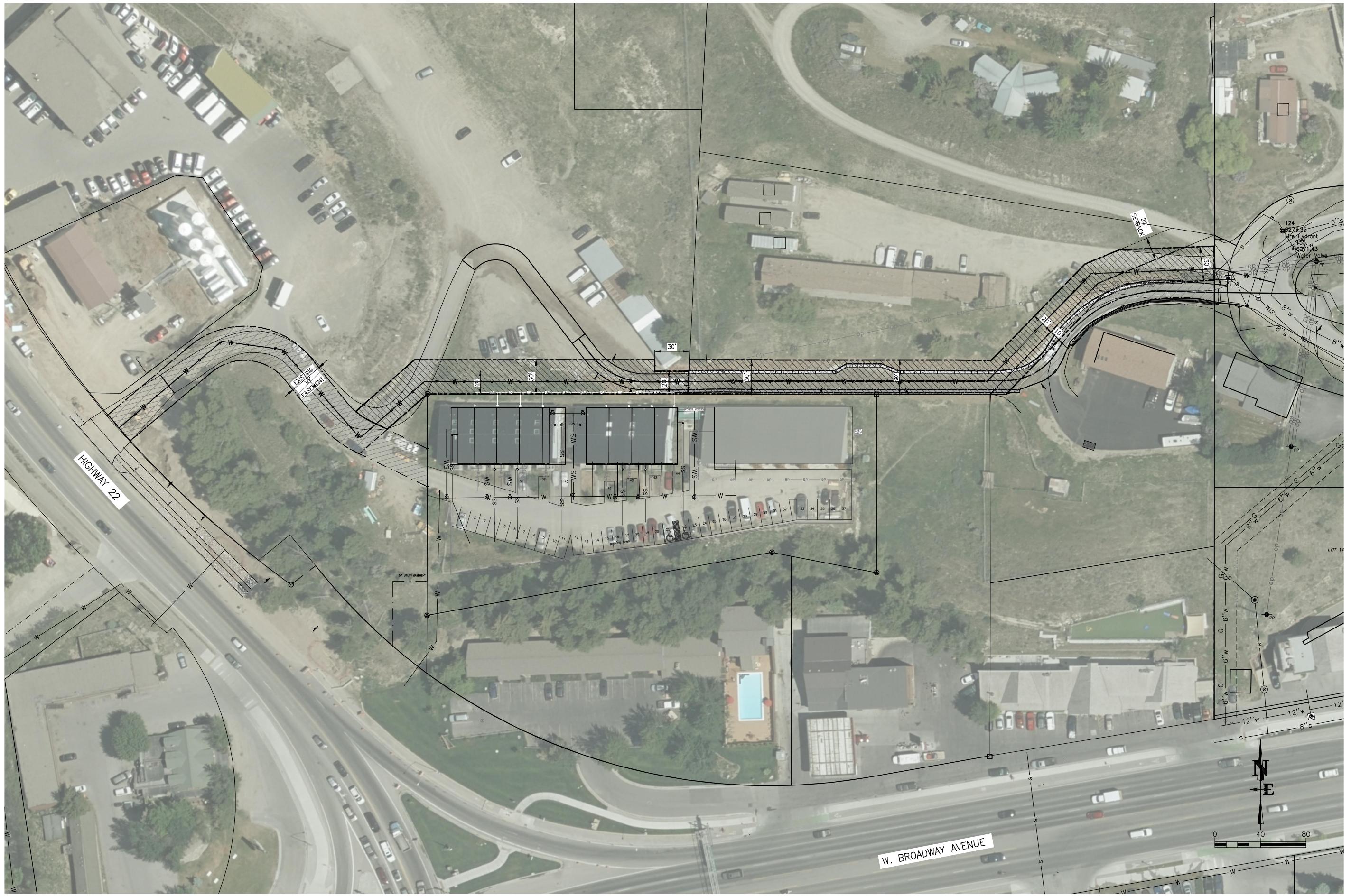
## RECOMMENDATION

Staff recommends approval of the attached three (3) Permanent Utility Easements from Jody and Linda Burkes, Bluff Development Group, LLC and Wayboard, LLC to the Town, subject to any minor changes deemed necessary by Staff.

## SUGGESTED MOTIONS

I move to approve of the attached three (3) Permanent Utility Easements from Jody and Linda Burkes, Bluff Development Group, LLC and Wayboard, LLC to the Town, and authorize the Mayor to execute the Easements subject to any minor changes deemed necessary by Staff.

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DRAWING NO	JOB TITLE	DATE	REV.
1	PROPOSED WATER LINE EASEMENT	3/13/17	1
14-175-02			
		SURVEYED	
		ENGINEERED	
		DRAWN	SK
		CHECKED	
		APPROVED	

**NELSON ENGINEERING**  
P.O. BOX 1599, JACKSON, WYOMING (307) 733-2087

## PERMANENT UTILITY EASEMENT

This **PERMANENT UTILITY EASEMENT** (this "Agreement") is made and entered into by and between **Jody R. and Linda S. Burkes, Trustees of the Burkes Family Trust U/T/A** of P.O. Box 7687, Jackson, WY 83002 (hereinafter referred to as "GRANTOR"), and the **Town of Jackson**, a Wyoming municipal corporation, whose address is P.O. Box 1687, Jackson, Wyoming 83001 (hereafter referred to as "GRANTEE").

### RECITALS

**WHEREAS**, Grantor owns and desires to declare and establish in, over, across, and through that certain real property in Teton County, Wyoming, generally known as Lot 2 Crystal Valley Addition, Plat 1051 that being as described in Teton County Clerk Land Records as S ½ NE ¼ Section 32, T41N, R116W, 6<sup>th</sup> P.M. Town of Jackson, Teton County WY (the "Burdened Property") an express permanent utility access easement in gross to and for the benefit of Grantee, subject to existing easements as of the date this document is executed, according to the terms and conditions set forth herein; and,

**WHEREAS**, the Easement as described in Exhibits A and B provides Grantee a 0.14 acre of land for maintenance of a domestic waterline and appurtenances thereto constructed on the adjacent parcel, Lot 1 Crystal Valley Addition; and,

**WHEREAS**, the Grantor and Grantee have agreed to work together to construct the waterline improvements to Budge Drive.

### AGREEMENTS

**NOW, THEREFORE, IT IS HEREBY AGREED** that for and in consideration of the aforesaid Burdened Property and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, paid by each of the said parties, Grantors on their own behalf or any successor in interest or assign, and the Town do mutually covenant and agree as follows:

1. **Grant of Utility Easement.** Grantor hereby declares and establishes for the benefit of Grantee and Grantee's employees, agents, contractors and licensees;, a permanent utility access easement in gross in, over, across, and through that portion of the Burdened Property described on the Easement Legal Description **Exhibit A** and Easement Sketch **Exhibit B** attached hereto and by this reference made a part hereof (the "Easement") for the right to access the burden property to allow the Grantee to lay out, construct, install, operate, and maintain a domestic water line and appurtenances thereto located on the adjacent parcel Lot 1 Crystal Valley Addition, and the further right of access, ingress and egress to and from the said described property over and across reasonable routes approved by Grantor in order that the Grantee might exercise the rights granted by this Easement on the Burdened Property (collectively, the "Utility Easement"), subject to any existing easements as of the date this document is executed.
2. **Engineering, Installation, Operation and Maintenance.** The necessary construction of any improvements to the Access for Grantees use shall be completed by Grantee at Grantee's sole cost and expense, except as otherwise agreed to in this Easement. Grantee shall not permit any mechanic's or materialmen's lien to be placed upon or remain upon the Burdened Property. The construction of or improvements to the access, if any, shall be performed in a good and workman-like manner by persons qualified to perform such work and in accordance with all applicable approvals and permits, and in a manner to minimize interference to the Burdened Property. Grantee shall be permitted to operate all reasonably necessary equipment, including all reasonably necessary trucks and grading equipment, within the Easement during the term of the Easement. After substantial completion of construction of the Utility Improvements on the adjacent parcel, Grantee or its agents shall promptly restore the Easement area affected thereby to the reasonably same condition it was prior to such operations, including but not limited to restoring the surface grade, replacing landscaping such as, grass, bushes and other similar undergrowth, if removed or damaged.

3. **Reservation.** Grantor hereby reserves unto itself, its guests, invitees, and legal representatives, the right to use the surface and subsurface of the Easement, including but not limited to landscaping, future ingress and egress driveways to Grantor's property, planting and associated irrigation, water and sewer services, wire utility services, and storm water systems, pursuant to any future approved development plan, building or grading permits, provided such use does not unreasonably impair, interfere with or obstruct the use of the Easement by Grantee.
4. **Restrictions.** The grant of the Easement shall be subject to the following restrictions:
  - 4.1. Grantee shall use the rights granted above, with due regard to the rights of others and their use thereof, and shall not use the Easement in any way that would impair the rights of Grantor or others to the use of the same;
  - 4.2. Grantor shall not construct any building, structure, or improvement within the Easement, without the express written approval of Grantee, which shall not be unreasonably withheld;
  - 4.3. Grantor shall not construct any landscaping that impairs, interferes with, or obstructs the use of the Easement by Grantee;
  - 4.4. Grantor may park movable vehicles and equipment on the Easement in a manner that will not obstruct the passage by Grantee, when necessary, to access the waterline on adjacent property.
5. **Declaration.** The Grantor and Grantee hereby declare that the Easement shall inure to the benefit of the Grantee and its legal representatives. Grantor hereby declares that the Burdened Property hereto shall be owned, sold, conveyed, encumbered, leased, used, occupied and developed subject to the Easement and the terms and conditions set forth herein, which shall run with the land and shall be binding on all parties having or acquiring legal title or an equitable interest in the Burdened Property.
6. **No Merger.** This Agreement and the Easement and rights declared and established herein are intended to remain separate from the Grantor's fee simple interest in the Burdened Property and shall not merge therewith.
7. **Construction.** Any recitals in this Agreement are represented by the parties to be accurate and constitute a part of the substantive agreement. This Agreement shall be construed in accordance with the laws of the State of Wyoming. Venue is in Teton County, Wyoming.
8. **Enforcement.** If any party hereto fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, all court costs and all reasonable attorneys' fees (including the costs of in-house counsel) regardless of whether litigation is commenced.
9. **Term.** The easements, covenants, conditions and restrictions contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the Office of the Clerk of Teton County, Wyoming and shall be perpetual so long as it is used for the above described purposes; unless this Agreement is modified, amended, canceled or terminated by an instrument in writing signed by the Grantor and the Grantee.
10. **No Assumption of Liability.** Grantor, by granting, declaring and establishing the Easement, does not assume any responsibilities or liabilities with respect thereto, nor shall Grantor at any time incur any liability for failure to comply with any law, ordinance, regulation or order with respect to this Agreement and the Easement contained herein.
11. **Easement In Gross.** The Easement granted herein is an easement "in gross." Grantee shall not have the right to lease or otherwise permit the use of the Easement by any other person or entity other than to Grantee's employees, agents, contractors and licensees, nor shall Grantee assign any of the rights, privileges, duties or obligations of Grantee hereunder except as provided for herein, without the prior written consent of Grantor.
12. **Warranties.** Grantor makes no representations or warranties, express or implied, in connection with the Easement, whether of title, fitness of use, condition, purpose, or of any other nature.

Notwithstanding the foregoing, Grantor represents and warrants that Grantor has the authority to grant the Easement contained herein.

13. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
14. **Entire Agreement; Modification.** This Agreement embodies and constitutes the entire agreement with respect to the subject matters hereof and all prior or contemporaneous agreements, understandings, representations, statements are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated in whole or in part, except by an instrument in writing signed by the Grantor and the Grantee.
15. **Counterparts.** This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement.
16. **Binding Effect.** This Agreement shall be binding on the parties hereto, their heirs, successors and assigns.
17. **Indemnification.** Grantee agrees to indemnify, defend and hold harmless Grantor, its beneficiaries, employees, successors and assigns (the "Grantor Indemnities") from and against any and all liability, loss, claims, demands, liens, damages, penalty, fines, interest, costs and expenses, and for any and all damage to property, personal injury claims, or death, arising out of, or attributable to the use, construction, maintenance, restoration or repair of Access and Utility Improvements within the Easement by Grantee and its employees, agents, contractors, representatives, and the public. This indemnity shall include the costs and expenses including reasonable attorney fees in defending any such actions or lawsuits, and reimbursement for any and all damages suffered by Grantor. All indemnification provided for herein shall not include indemnification for negligence of Grantor and its employees, agents, contractors and representatives or for actions of Grantor and its employees, agents, contractors and representatives, which would otherwise make the indemnification void pursuant to Wyoming State Statutes, Wyoming law or any other applicable law.

**IN WITNESS WHEREOF**, my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**GRANTOR:**

Amended and Restated Burkes Family Trust U/T/A dated January 1, 2014

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Jody R. Burkes, Trustee

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Linda S. Burkes, Trustee

**GRANTEE:**

**TOWN OF JACKSON**

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By: Pete Muldoon  
Its: Mayor

**ATTEST:** \_\_\_\_\_  
Sandra P. Birdyshaw, Town Clerk

STATE OF WYOMING )  
                      ) ss.  
COUNTY OF TETON  )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018  
by Jody R. Burkes, Trustee of the Amended and Restated Burkes Family Trust U/T/A dated January  
1, 2014 who does verify that the foregoing instrument is signed in the name of and on behalf of  
the Burkes Family Trust U/T/A.

WITNESS my hand and official seal.

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Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF WYOMING )  
                      ) ss.  
COUNTY OF TETON  )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018  
by Linda S. Burkes, Trustee of the Amended and Restated Burkes Family Trust U/T/A dated  
January 1, 2014 who does verify that the foregoing instrument is signed in the name of and on  
behalf of the Burkes Family Trust U/T/A.

WITNESS my hand and official seal.

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Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF WYOMING )  
                      ) ss.  
COUNTY OF TETON  )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 2018 by Pete Muldoon, Mayor of the Town of Jackson.

WITNESS my hand and official seal.

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Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF WYOMING )  
                    ) ss.  
COUNTY OF TETON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018  
by Sandra P. Birdyshaw, Town Clerk of the Town of Jackson.

WITNESS my hand and official seal.

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Notary Public  
My Commission Expires: \_\_\_\_\_

## EXHIBIT A

### DESCRIPTION FOR A UTILITY EASEMENT FROM BURKES FAMILY TRUST TO THE TOWN OF JACKSON

A strip of land located in the S ½ NE ¼, Section 32, Township 41 North, Range 116 West, 6<sup>th</sup> P.M., Town of Jackson, Teton County, Wyoming, being located in Lot 2 of Crystal Valley Addition to the Town of Jackson, Plat No. 1051, record of the Office of the Teton County Clerk, and being described as follows:

Beginning at the northwest corner of Said Lot 2, thence S89°53'11"E, a distance of 13.87 feet;

Thence N69°53'13"E, a distance of 35.64 feet to a non-tangent circular curve to the left;

Thence along said non-tangent circular curve to the left, having a radius of 49.47 feet, a central angle of 28°24'15", a chord of N42°16'52"E and a chord distance of 24.27 feet, through an arc length of 24.52 feet to a non-tangent reverse curve to the right;

Thence along said reverse curve to the right, having a radius of 69.00 feet, a central angle of 38°56'45", a chord of N39°50'04"E and a chord distance of 46.00 feet, through an arc length of 46.90 feet to a non-tangent circular curve to the right;

Thence along said circular curve to the right, having a radius of 140.30 feet, a central angle of 43°53'10", a chord of N81°15'01"E and a chord distance of 104.86 feet, through an arc length of 107.47 feet to the east boundary line of Said Lot 2;

Thence along the east boundary line of Said Lot 2, N00°03'37"W, a distance of 48.68 feet to the northeast corner of Said Lot 2;

Thence along the north boundary line of Said Lot 2, S87°49'08"W, a distance of 25.67 feet;

Thence S67°30'18"W, a distance of 82.57 feet;

Thence S44°10'01"W, a distance of 136.03 feet to the point of beginning.

Said strip of land contains 0.14 acres, more or less, and is subject to any easements, rights-of-way, reservations or restrictions of sight and/or of record

As shown on Exhibit "B" attached hereto and by this reference made a part hereof.

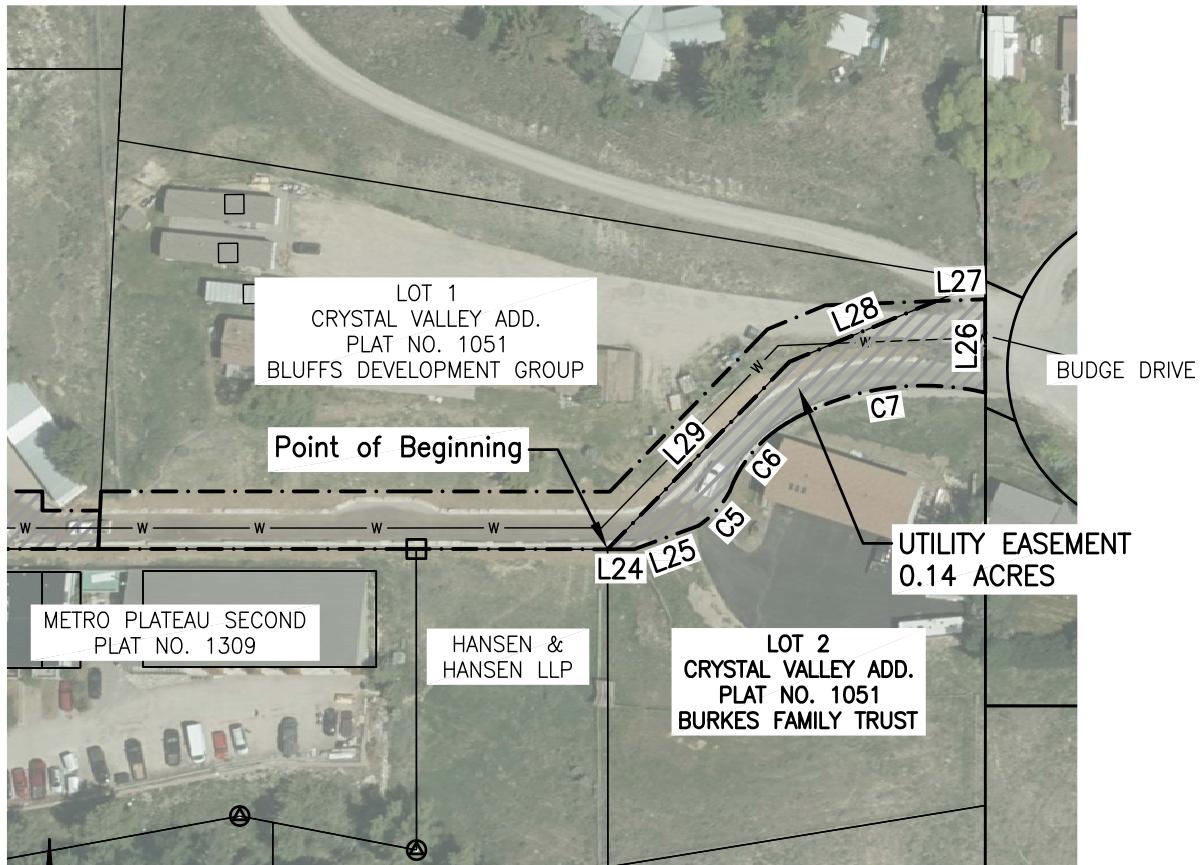
Robert Norton  
Wyoming PE&LS 2910  
Nelson Engineering  
Project 14-175-01  
April 11, 2018

# EXHIBIT B

A UTILITY EASEMENT  
FROM BURKES FAMILY TRUST  
TO THE TOWN OF JACKSON

LINE TABLE		
LINE #	BEARING	DISTANCE
L24	S89°53'11"E	13.87
L25	N69°53'13"E	35.64
L26	N00°03'37"W	48.68
L27	S87°49'08"W	25.67
L28	S67°30'18"W	82.57
L29	S44°10'01"W	136.03

CURVE TABLE					
CURVE #	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C5	24.52	49.47	28°24'15"	N42°16'52"E	24.27
C6	46.90	69.00	38°56'45"	N39°50'04"E	46.00
C7	107.47	140.30	43°53'10"	N81°15'01"E	104.86



LOCATED IN LOT 2  
CRYSTAL VALLEY ADDITION  
PLAT NO. 1051  
IN THE S 1/2 NE 1/4,  
SECTION 32  
T41N, R116W, 6TH P.M.  
TOWN OF JACKSON  
TETON COUNTY, WY

DRAWING NO 1	DRAWING TITLE BURKES FAMILY TRUST UTILITY EASEMENT TOWN OF JACKSON	NELSON ENGINEERING P.O. BOX 1599, JACKSON WYOMING (307) 733-2087	DATE 4/06/18
JOB NO 14-175-01			ENGINEERED
			DRAWN SK
			CHECKED RRN
			APPROVED RRN

## PERMANENT UTILITY EASEMENT

This **PERMANENT UTILITY EASEMENT** (this "Agreement") is made and entered into by and between Bluff Development Group, LLC, a Wyoming limited liability company, whose address is P.O. Box 551, Jackson, WY 83001 (hereinafter referred to as "GRANTOR"), and the **Town of Jackson**, a Wyoming municipal corporation, whose address is P.O. Box 1687, Jackson, Wyoming 83001 (hereafter referred to as "GRANTEE").

### RECITALS

**WHEREAS**, Grantor owns and desires to declare and establish in, under, over, across, and through that certain real property in Teton County, Wyoming, generally known as Lot 1 Crystal Valley Addition, that being as described in Teton County Clerk Land Records on Plat No. 1051 in the S ½ NE ¼ Section 32, T41N, R116W, 6<sup>th</sup> P.M. Town of Jackson, Teton County WY and on **Exhibits A and B hereto** (the "Burdened Property") an express and exclusive permanent construction, utility and maintenance easement in gross to and for the benefit of Grantee and the public, subject to existing easements as of the date this document is executed, according to the terms and conditions set forth herein; and,

**WHEREAS**, the Easement as described in Exhibits A and B provides Grantee a 0.27 acre strip of land for domestic waterline improvements; and,

**WHEREAS**, the Grantor and Grantee have agreed to work together to construct the waterline improvements to Budge Drive to the current LDR standards.

### AGREEMENTS

**NOW, THEREFORE, IT IS HEREBY AGREED** that for and in consideration of the aforesaid Burdened Property and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, paid by each of the said parties, Grantors on their own behalf or any successor in interest or assign, and the Town do mutually covenant and agree as follows:

1. **Grant of Exclusive Easement.** Grantor hereby declares and establishes for the benefit of Grantee and Grantee's employees, agents, contractors and licensees; and the public, a permanent exclusive utility easement in gross in, under, over, across, and through that portion of the Burdened Property described on the Easement Legal Description **Exhibit A** and Easement Sketch **Exhibit B** attached hereto and by this reference made a part hereof (the "Easement") for the right to: lay out, construct, install, operate, and maintain a domestic water line and appurtenances thereto, together with the right to remove trees, bushes, undergrowth, and other obstructions interfering with the installation, construction, and maintenance of said water systems and appurtenances thereto, and the further right of access, ingress and egress to and from the said described property over and across reasonable routes approved by Grantor in order that the Grantee might exercise the rights granted by this Easement on the Burdened Property (collectively, the "Access and Utility Improvements"), subject to any existing easements as of the date this document is executed.
2. **Engineering, Installation, Operation and Maintenance.** The construction, maintenance and/or any improvements to the Access and Utility Improvements shall be completed by Grantee at Grantee's sole cost and expense, except as otherwise agreed to in this Easement. All underground public water mains, and necessary appurtenances constructed or installed by the Grantee within the Easement shall be and shall at all times remain the property of Grantee. Grantee shall not permit any mechanic's or materialmen's lien to be placed upon or remain upon the Burdened Property. The construction, maintenance or improvements to the Utility Improvements shall be performed in a good and workman-like manner by persons qualified to perform such work and in accordance with all applicable approvals and permits, and in a manner to minimize interference to the Burdened Property. Grantee shall be permitted to operate and temporarily park all reasonably necessary equipment, including all reasonably necessary trucks and grading equipment, within the Easement during the term of the Easement. After substantial completion of construction of the Utility Improvements,

Grantee or its agents shall promptly restore the Easement area affected thereby to the reasonably same condition it was prior to such operations, including but not limited to restoring the surface grade, replacing landscaping such as, grass, bushes and other similar undergrowth, if removed or damaged.

3. **Reservation.** Grantor hereby reserves unto itself, its guests, invitees, and legal representatives, the right to use the surface and subsurface of the Easement, including but not limited to landscaping, future ingress and egress driveways to Grantor's property, planting and associated irrigation, water and sewer services, installation of utilities and storm water systems, pursuant to any future approved development plan, building or grading permits, provided such use does not unreasonably impair, interfere with or obstruct the use of the Easement by Grantee.
4. **Restrictions.** The grant of the Easement shall be subject to the following restrictions:
  - 4.1. Grantee shall use the rights granted above, with due regard to the rights of others and their use thereof, and shall not use the Easement in any way that would impair the rights of Grantor or others to the use of the same;
  - 4.2. Grantor shall not construct any building, structure, or improvement within the Easement, without the express written approval of Grantee;
  - 4.3. Grantor shall not construct any landscaping that impairs, interferes with, or obstructs the use of the Easement by Grantee;
  - 4.4. Grantor shall not replace existing development or uses within the Easement without the express written approval of Grantee which shall not be unreasonably withheld;
  - 4.5. Grantor shall at its sole cost and expense pay for private improvements required by the Town of Jackson Land Development Regulations, any approved development plan, building or grading permit, unless a cost share agreement is executed; and,
  - 4.6. Grantor may park movable vehicles and equipment on the Easement in a manner that will not obstruct the passage by Grantee, when necessary, to access the waterline.
5. **Declaration.** The Grantor and Grantee hereby declare that the Easement shall inure to the benefit of the Grantee and its legal representatives. Grantor hereby declares that the Burdened Property hereto shall be owned, sold, conveyed, encumbered, leased, used, occupied and developed subject to the Easement and the terms and conditions set forth herein, which shall run with the land and shall be binding on all parties having or acquiring legal title or an equitable interest in the Burdened Property.
6. **No Merger.** This Agreement and the Easement and rights declared and established herein are intended to remain separate from the Grantor's fee simple interest in the Burdened Property and shall not merge therewith.
7. **Construction.** Any recitals in this Agreement are represented by the parties to be accurate and constitute a part of the substantive agreement. This Agreement shall be construed in accordance with the laws of the State of Wyoming. Venue is in Teton County, Wyoming.
8. **Enforcement.** If any party hereto fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, all court costs and all reasonable attorneys' fees (including the costs of in-house counsel) regardless of whether litigation is commenced.
9. **Term.** The easements, covenants, conditions and restrictions contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the Office of the Clerk of Teton County, Wyoming and shall be perpetual so long as it is used for the above described purposes; unless this Agreement is modified, amended, canceled or terminated by an instrument in writing signed by the Grantor and the Grantee.

10. **No Assumption of Liability.** Grantor, by granting, declaring and establishing the Easement, does not assume any responsibilities or liabilities with respect thereto, nor shall Grantor at any time incur any liability for failure to comply with any law, ordinance, regulation or order with respect to this Agreement and the Easement contained herein.
11. **Easement In Gross.** The Easement granted herein is an easement "in gross." Grantee shall not have the right to lease or otherwise permit the use of the Easement by any other person or entity other than to Grantee's employees, agents, contractors and licensees, nor shall Grantee assign any of the rights, privileges, duties or obligations of Grantee hereunder except as provided for herein, without the prior written consent of Grantor.
12. **Warranties.** Grantor makes no representations or warranties, express or implied, in connection with the Easement, whether of title, fitness of use, condition, purpose, or of any other nature. Notwithstanding the foregoing, Grantor represents and warrants that Grantor has the authority to grant the Easement contained herein.
13. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
14. **Entire Agreement; Modification.** This Agreement embodies and constitutes the entire agreement with respect to the subject matters hereof and all prior or contemporaneous agreements, understandings, representations, statements are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated in whole or in part, except by an instrument in writing signed by the Grantor and the Grantee.
15. **Counterparts.** This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement.
16. **Binding Effect.** This Agreement shall be binding on the parties hereto, their heirs, successors and assigns.
17. **Indemnification.** Grantee agrees to indemnify, defend and hold harmless Grantor, its beneficiaries, employees, successors and assigns (the "Grantor Indemnities") from and against any and all liability, loss, claims, demands, liens, damages, penalty, fines, interest, costs and expenses, and for any and all damage to property, personal injury claims, or death, arising out of, or attributable to the use, construction, maintenance, restoration or repair of Access and Utility Improvements within the Easement by Grantee and its employees, agents, contractors, representatives, and the public. This indemnity shall include the costs and expenses including reasonable attorney fees in defending any such actions or lawsuits, and reimbursement for any and all damages suffered by Grantor. All indemnification provided for herein shall not include indemnification for negligence of Grantor and its employees, agents, contractors and representatives or for actions of Grantor and its employees, agents, contractors and representatives, which would otherwise make the indemnification void pursuant to Wyoming State Statutes, Wyoming law or any other applicable law.

**IN WITNESS WHEREOF**, my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**GRANTOR:**

**BLUFF DEVELOPMENT GROUP, LLC**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**GRANTEE:**

**TOWN OF JACKSON**

---

By: Pete Muldoon  
Its: Mayor

**ATTEST:** \_\_\_\_\_  
Sandra P. Birdyshaw, Town Clerk

STATE OF WYOMING )  
                      ) ss.  
COUNTY OF TETON    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018  
by \_\_\_\_\_, the \_\_\_\_\_ of Bluff Development  
Group, LLC who does verify that the foregoing instrument is signed in the name of, on behalf  
Bluff Development Group, LLC.

WITNESS my hand and official seal.

---

Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF WYOMING )  
                      ) ss.  
COUNTY OF TETON    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 2018 by Pete Muldoon, Mayor of the Town of Jackson.

WITNESS my hand and official seal.

---

Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF WYOMING )  
                      ) ss.  
COUNTY OF TETON    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018  
by Sandra P. Birdyshaw, Town Clerk of the Town of Jackson.

WITNESS my hand and official seal.

---

Notary Public  
My Commission Expires: \_\_\_\_\_

## EXHIBIT A

### DESCRIPTION FOR A UTILITY EASEMENT FROM BLUFF DEVELOPMENT GROUP LLC A WYOMING LIMITED LIABILITY COMPANY TO THE TOWN OF JACKSON

A strip of land located in the S ½ NE ¼, Section 32, Township 41 North, Range 116 West, 6<sup>th</sup> P.M., Town of Jackson, Teton County, Wyoming, being located in Lot 1 of Crystal Valley Addition to the Town of Jackson, Plat No. 1051, record of the Office of the Teton County Clerk, and being described as follows:

Beginning at the southwest corner of Said Lot 1, thence S89°58'28"E along the south boundary line of said Lot, a distance of 165.61 feet, to the northeast corner of Metro Plateau Second Addition, Plat No. 1309, a subdivision of record in Said Office;

Thence continuing along the south boundary line of Said Lot 1 the following bearing and distances, S89°53'11"E, a distance of 99.68 feet;

Thence N44°10'01"E, a distance of 136.03 feet;

Thence N67°30'18"E, a distance of 82.57 feet;

Thence leaving said south boundary line, S87°49'08"W, a distance of 57.66 feet;

Thence S67°30'17"W, a distance of 32.66 feet;

Thence S44°10'00"W, a distance of 117.77 feet;

Thence N89°53'11"W, a distance of 100.85 feet;

Thence N89°58'28"W, a distance of 164.16 feet, to the westerly boundary line of Said Lot 1;

Thence along the western boundary line, S02°49'47"W, a distance of 30.04 feet, to the point of beginning.

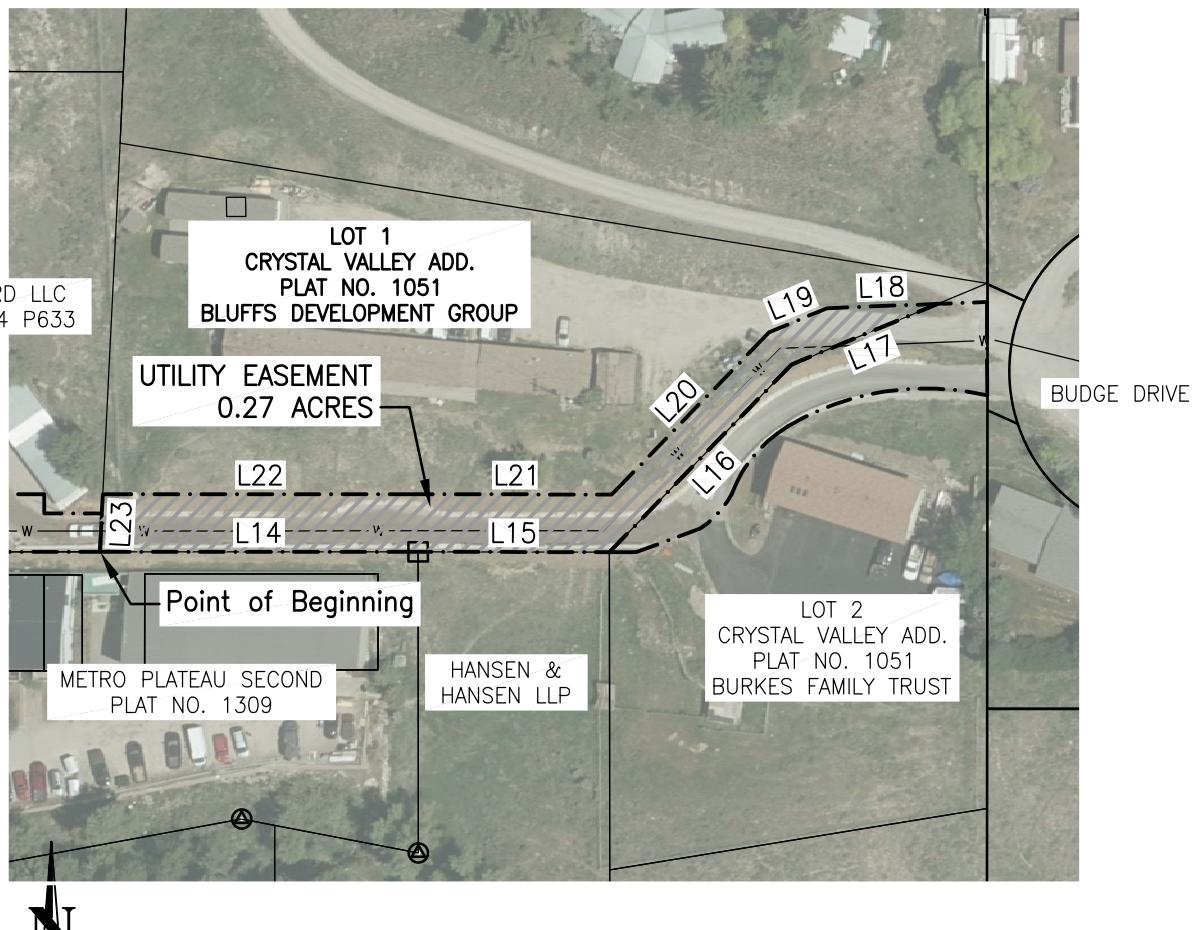
Said strip of land contains 0.27 acres, more or less, and is subject to any easements, rights-of-way, reservations or restrictions of sight and/or of record

As shown on Exhibit "B" attached hereto and by this reference made a part hereof.

Robert Norton  
Wyoming PE&LS 2910  
Nelson Engineering  
Project 14-175-01  
April 11, 2018

**EXHIBIT B**  
 A UTILITY EASEMENT  
 FROM BLUFF DEVELOPMENT GROUP LLC  
 A WYOMING LIMITED LIABILITY COMPANY  
 TO THE TOWN OF JACKSON

LINE TABLE		
LINE #	BEARING	DISTANCE
L14	S89°58'28"E	165.61
L15	S89°53'11"E	99.68
L16	N44°10'01"E	136.03
L17	N67°30'18"E	82.57
L18	S87°49'08"W	57.66
L19	S67°30'17"W	32.66
L20	S44°10'00"W	117.77
L21	N89°53'11"W	100.85
L22	N89°58'28"W	164.16
L23	S02°49'47"W	30.04



LOCATED IN LOT 1  
CRYSTAL VALLEY ADDITION  
PLAT NO. 1051  
IN THE S 1/2 NE 1/4,  
SECTION 32  
T41N, R116W, 6TH P.M.  
TOWN OF JACKSON  
TETON COUNTY, WY

DRAWING NO 1	DRAWING TITLE BLUFF DEVELOPMENT GROUP LLC UTILITY EASEMENT TOWN OF JACKSON	NELSON ENGINEERING P.O. BOX 1599, JACKSON WYOMING (307) 733-2087	DATE 4/06/18
JOB NO 14-175-01			ENGINEERED RRN
			DRAWN SK
			CHECKED RRN
			APPROVED RRN

## PERMANENT UTILITY EASEMENT

This **PERMANENT UTILITY EASEMENT** (this "Agreement") is made and entered into by and between Wayboard, LLC, a Montana limited liability company, whose address is c/o Andy Wilcox, 2000 W. Broadway, Missoula, MT 59808 (hereinafter referred to as "GRANTOR"), and the Town of Jackson, a Wyoming municipal corporation, whose address is P.O. Box 1687, Jackson, Wyoming 83001 (hereafter referred to as "GRANTEE").

### RECITALS

**WHEREAS**, Grantor owns and desires to declare and establish in, under, over, across, and through that certain real property in Teton County, Wyoming, generally known as Lot 1 Crystal Valley Addition, that being as described in Teton County Clerk Land Records on Plat No. 1051 in the S ½ NE ¼ Section 32, T41N, R116W, 6<sup>th</sup> P.M. Town of Jackson, Teton County WY (the "Burdened Property") an express and exclusive permanent construction, utility, and maintenance easement in gross to and for the benefit of Grantee and the public, subject to existing easements as of the date this document is executed, according to the terms and conditions set forth herein; and,

**WHEREAS**, the Easement as described in Exhibits A and B provides Grantee a 0.39 acre strip of land for domestic waterline improvements; and,

**WHEREAS**, the Grantor and Grantee have agreed to work together to construct the waterline improvements to Budge Drive to the current LDR standards.

### AGREEMENTS

**NOW, THEREFORE, IT IS HEREBY AGREED** that for and in consideration of the aforesaid Burdened Property and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, paid by each of the said parties, Grantors on their own behalf or any successor in interest or assign, and the Town do mutually covenant and agree as follows:

1. **Grant of Exclusive Easement.** Grantor hereby declares and establishes for the benefit of Grantee and Grantee's employees, agents, contractors and licensees; and the public, a permanent exclusive utility easement in gross in, under, over, across, and through that portion of the Burdened Property described on the Easement Legal Description **Exhibit A** and Easement Sketch **Exhibit B** attached hereto and by this reference made a part hereof (the "Easement") for the right to: lay out, construct, install, operate, and maintain a domestic water line and appurtenances thereto, together with the right to remove trees, bushes, undergrowth, and other obstructions interfering with the installation, construction, and maintenance of said water systems and appurtenances thereto, and the further right of access, ingress and egress to and from the said described property over and across reasonable routes approved by Grantor in order that the Grantee might exercise the rights granted by this Easement on the Burdened Property (collectively, the "Access and Utility Improvements"), subject to any existing easements as of the date this document is executed.
2. **Engineering, Installation, Operation and Maintenance.** The construction, maintenance and/or any improvements to the Access and Utility Improvements shall be completed by Grantee at Grantee's sole cost and expense, except as otherwise agreed to in this Easement. All underground public water mains, and necessary appurtenances constructed or installed by the Grantee within the Easement shall be and shall at all times remain the property of Grantee. Grantee shall not permit any mechanic's or materialmen's lien to be placed upon or remain upon the Burdened Property. The construction, maintenance or improvements to the Utility Improvements shall be performed in a good and workman-like manner by persons qualified to perform such work and in accordance with all applicable approvals and permits, and in a manner to minimize interference to the Burdened Property. Grantee shall be permitted to operate and temporarily park all reasonably necessary equipment, including all reasonably necessary trucks and grading equipment, within the Easement during the term of the Easement. After substantial completion of construction of the Utility Improvements,

Grantee or its agents shall promptly restore the Easement area affected thereby to the reasonably same condition it was prior to such operations, including but not limited to restoring the surface grade, replacing landscaping such as, grass, bushes and other similar undergrowth, if removed or damaged.

3. **Reservation.** Grantor hereby reserves unto itself, its guests, invitees, and legal representatives, the right to use the surface and subsurface of the Easement, including but not limited to landscaping, future ingress and egress driveways to Grantor's property, planting and associated irrigation, water and sewer services, installation of utilities and storm water systems, pursuant to any future approved development plan, building or grading permits, provided such use does not unreasonably impair, interfere with or obstruct the use of the Easement by Grantee.
4. **Restrictions.** The grant of the Easement shall be subject to the following restrictions:
  - 4.1. Grantee shall use the rights granted above, with due regard to the rights of others and their use thereof, and shall not use the Easement in any way that would impair the rights of Grantor or others to the use of the same;
  - 4.2. Grantor shall not construct any building, structure, or improvement within the Easement, without the express written approval of Grantee;
  - 4.3. Grantor shall not construct any landscaping that impairs, interferes with, or obstructs the use of the Easement by Grantee;
  - 4.4. Grantor shall not replace existing development or uses within the Easement without the express written approval of Grantee, which shall not be unreasonably withheld;
  - 4.5. Grantor shall at its sole cost and expense pay for private improvements required by the Town of Jackson Land Development Regulations, any approved development plan, building or grading permit, unless a cost share agreement is executed; and,
  - 4.6. Grantor may park movable vehicles and equipment on the Easement in a manner that will not obstruct the passage by Grantee, when necessary, to access the waterline.
5. **Declaration.** The Grantor and Grantee hereby declare that the Easement shall inure to the benefit of the Grantee and its legal representatives. Grantor hereby declares that the Burdened Property hereto shall be owned, sold, conveyed, encumbered, leased, used, occupied and developed subject to the Easement and the terms and conditions set forth herein, which shall run with the land and shall be binding on all parties having or acquiring legal title or an equitable interest in the Burdened Property.
6. **No Merger.** This Agreement and the Easement and rights declared and established herein are intended to remain separate from the Grantor's fee simple interest in the Burdened Property and shall not merge therewith.
7. **Construction.** Any recitals in this Agreement are represented by the parties to be accurate and constitute a part of the substantive agreement. This Agreement shall be construed in accordance with the laws of the State of Wyoming. Venue is in Teton County, Wyoming.
8. **Enforcement.** If any party hereto fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, all court costs and all reasonable attorneys' fees (including the costs of in-house counsel) regardless of whether litigation is commenced.
9. **Term.** The easements, covenants, conditions and restrictions contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the Office of the Clerk of Teton County, Wyoming and shall be perpetual so long as it is used for the above described purposes; unless this Agreement is modified, amended, canceled or terminated by an instrument in writing signed by the Grantor and the Grantee.

10. **No Assumption of Liability.** Grantor, by granting, declaring and establishing the Easement, does not assume any responsibilities or liabilities with respect thereto, nor shall Grantor at any time incur any liability for failure to comply with any law, ordinance, regulation or order with respect to this Agreement and the Easement contained herein.
11. **Easement In Gross.** The Easement granted herein is an easement "in gross." Grantee shall not have the right to lease or otherwise permit the use of the Easement by any other person or entity other than to Grantee's employees, agents, contractors and licensees, nor shall Grantee assign any of the rights, privileges, duties or obligations of Grantee hereunder except as provided for herein, without the prior written consent of Grantor.
12. **Warranties.** Grantor makes no representations or warranties, express or implied, in connection with the Easement, whether of title, fitness of use, condition, purpose, or of any other nature. Notwithstanding the foregoing, Grantor represents and warrants that Grantor has the authority to grant the Easement contained herein.
13. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
14. **Entire Agreement; Modification.** This Agreement embodies and constitutes the entire agreement with respect to the subject matters hereof and all prior or contemporaneous agreements, understandings, representations, statements are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated in whole or in part, except by an instrument in writing signed by the Grantor and the Grantee.
15. **Counterparts.** This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement.
16. **Binding Effect.** This Agreement shall be binding on the parties hereto, their heirs, successors and assigns.
17. **Indemnification.** Grantee agrees to indemnify, defend and hold harmless Grantor, its beneficiaries, employees, successors and assigns (the "Grantor Indemnities") from and against any and all liability, loss, claims, demands, liens, damages, penalty, fines, interest, costs and expenses, and for any and all damage to property, personal injury claims, or death, arising out of, or attributable to the use, construction, maintenance, restoration or repair of Access and Utility Improvements within the Easement by Grantee and its employees, agents, contractors, representatives, and the public. This indemnity shall include the costs and expenses including reasonable attorney fees in defending any such actions or lawsuits, and reimbursement for any and all damages suffered by Grantor. All indemnification provided for herein shall not include indemnification for negligence of Grantor and its employees, agents, contractors and representatives or for actions of Grantor and its employees, agents, contractors and representatives, which would otherwise make the indemnification void pursuant to Wyoming State Statutes, Wyoming law or any other applicable law.

IN WITNESS WHEREOF, my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**GRANTOR:**

**WAYBOARD, LLC**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**GRANTEE:**

**TOWN OF JACKSON**

---

By: Pete Muldoon  
Its: Mayor

**ATTEST:** \_\_\_\_\_  
Sandra P. Birdyshaw, Town Clerk

STATE OF WYOMING )  
                      ) ss.  
COUNTY OF TETON    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018  
by \_\_\_\_\_, the \_\_\_\_\_ of Wayboard, LLC who  
does verify that the foregoing instrument is signed in the name of, on behalf Wayboard, LLC.

WITNESS my hand and official seal.

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Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF WYOMING )  
                      ) ss.  
COUNTY OF TETON    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 2018 by Pete Muldoon, Mayor of the Town of Jackson.

WITNESS my hand and official seal.

---

Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF WYOMING )  
                      ) ss.  
COUNTY OF TETON    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018  
by Sandra P. Birdyshaw, Town Clerk of the Town of Jackson.

WITNESS my hand and official seal.

---

Notary Public  
My Commission Expires: \_\_\_\_\_

## EXHIBIT A

### DESCRIPTION FOR A UTILITY EASEMENT FROM WAYBOARD LLC A MONTANA LIMITED LIABILITY COMPANY TO THE TOWN OF JACKSON

A strip of land located in the S 1/2 NE 1/4, Section 32, Township 41 North, Range 116 West, 6<sup>th</sup> P.M., Town of Jackson, Teton County, Wyoming, being a part of Wayboard LLC, parcel of land described in Book 834 of Photo, page 633, records of the Office of the Teton County Clerk, and being described as follows:

Beginning at the northwest corner of Metro Plateau Second Addition, Plat No. 1309, a subdivision of record in the Office of the Teton County Clerk,

Thence along the north boundary line of said Subdivision, S89°58'28"E, a distance of 228.64 feet, to the southwest corner of Lot 1 of Crystal Valley Addition, Plat No. 1051, a subdivision of record in Said Office;

Thence along the westerly boundary of Said Subdivision, N02°49'46"E, a distance of 20.02 feet;

Thence N89°58'28"W, parallel with the north boundary line of Said subdivision Metro Plateau Second Addition a distance of 30.00 feet;

Thence N00°01'32"E, a distance of 10.00 feet;

Thence N89°58'28"W, parallel with the north boundary line of Said subdivision Metro Plateau Second Addition a distance of 210.96 feet;

Thence S48°37'22"W, a distance of 69.86 feet, to an existing 30 foot wide access easement described in Book 734, pages 715-724, records of the Clerk of Teton County, being a non-tangent circular curve to the right;

Thence coincident with said 30 foot wide access easement the following description;

Along Said non-tangent circular curve to the right, having a radius of 60.00 feet, a central angle of 10°54'52", a chord of S44°06'51"E and a chord distance of 11.41 feet, through an arc length of 11.43 feet;

Thence continuing along Said northern line of Said Easement, N38°39'25"W, a distance of 49.64 feet, to a non-tangent circular curve to the left;

Thence along said non-tangent circular curve to the left, having a radius of 75.00 feet, a central angle of 91°26'39", a chord of N84°22'45"W and a chord distance of 107.39 feet, through an arc length of 119.70 feet;

Thence continuing along Said Access Easement, S49°53'56"W, a distance of 93.41 feet, to the east right-of-way line of U.S. Highway 22;

Thence along said east right-of-way line, S40°06'04"W, a distance of 30.00 feet; Thence N49°53'56"E, a distance of 93.41 feet, to a non-tangent circular curve to the right and the southern line of Said Access Easement;

Thence along said non-tangent circular curve to the right, having a radius of 45.00 feet, a central angle of 91°26'39", a chord of S84°22'45"E and a chord distance of 64.44 feet, through an arc length of 71.82 feet;

Thence S38°39'25"E, a distance of 49.64 feet, to a non-tangent circular curve to the left;

Thence along said non-tangent circular curve to the left, having a radius of 90.00 feet, a central angle of 25°31'15", a chord of S51°25'03"E and a chord distance of 39.76 feet, through an arc length of 40.09 feet;

Thence S64°10'40"E, a distance of 3.99 feet;

Thence leaving Said Access Easement, N48°37'22"E, a distance of 79.56 feet, to the point of beginning.

Said strip of land contains 0.39 acres, more or less, and is subject to any easements, rights-of-way, reservations or restrictions of sight and/or of record.

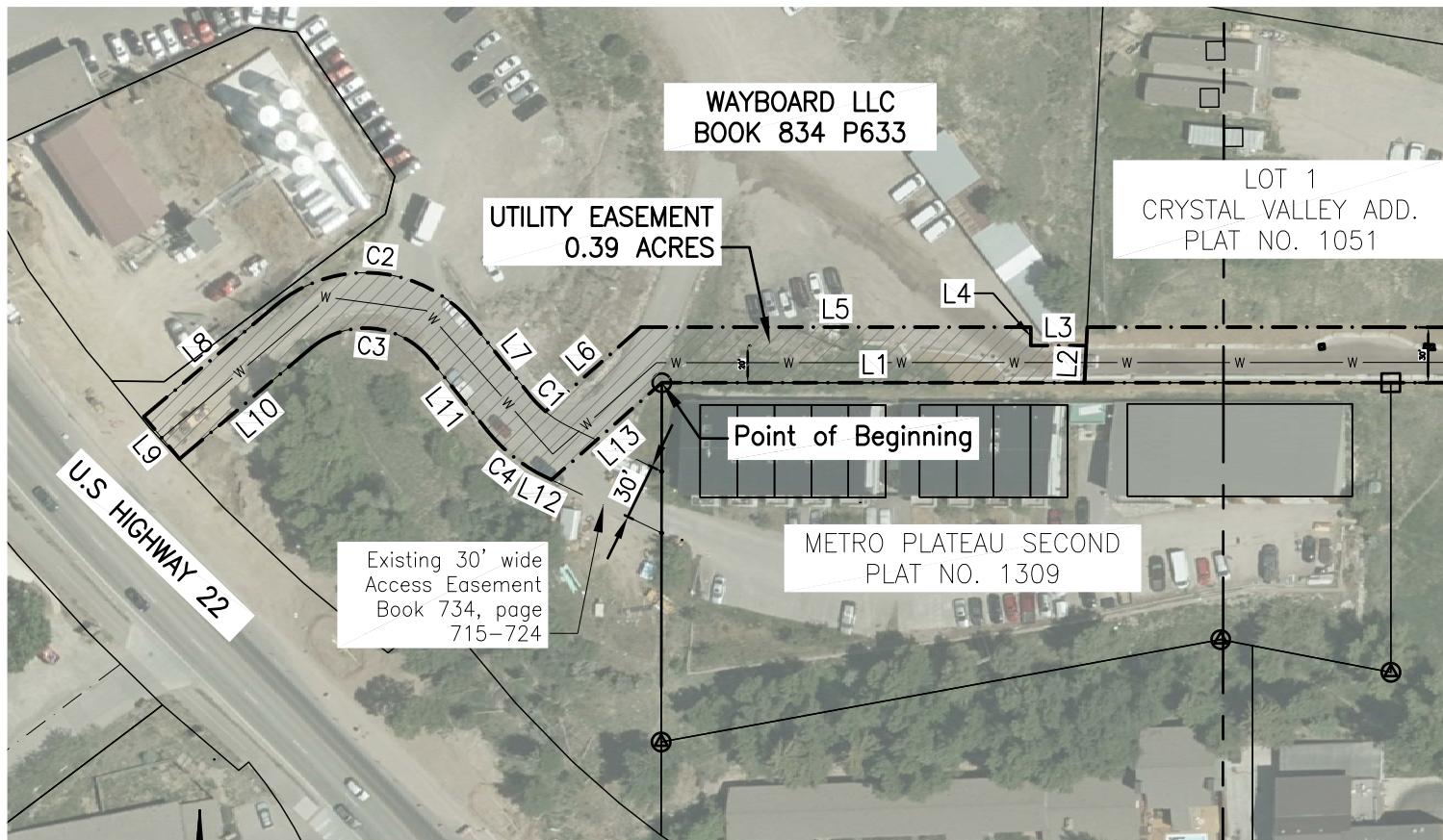
As shown on Exhibit "B" attached hereto and by this reference made a part hereof.

Robert Norton  
Wyoming PE&LS 2910  
Nelson Engineering  
Project 14-175-01  
April 11, 2018

**EXHIBIT B**  
 A UTILITY EASEMENT  
 FROM WAYBOARD LLC  
 A MONTANA LIMITED LIABILITY COMPANY  
 TO THE TOWN OF JACKSON

LINE TABLE		
LINE #	BEARING	DISTANCE
L1	S89°58'28"E	228.64
L2	N02°49'46"E	20.02
L3	N89°58'28"W	30.00
L4	N00°01'32"E	10.00
L5	N89°58'28"W	210.96
L6	S48°37'22"W	68.86
L7	N38°39'25"W	49.64
L8	S49°53'56"W	93.41
L9	S40°06'04"E	30.00
L10	N49°53'56"E	93.41
L11	S38°39'25"E	49.64
L12	S64°10'40"E	3.99
L13	N48°37'22"E	79.56

CURVE TABLE					
CURVE #	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	11.43	60.00	10°54'52"	N44°06'51"W	11.41
C2	119.70	75.00	91°26'39"	N84°22'45"W	107.39
C3	71.82	45.00	91°26'39"	S84°22'45"E	64.44
C4	40.09	90.00	25°31'15"	S51°25'03"E	39.76



LOCATED IN THE  
S 1/2 NE 1/4,  
SECTION 32  
T41N, R116W, 6TH P.M.  
TOWN OF JACKSON  
TETON COUNTY, WY

DRAWING NO 1	DRAWING TITLE WAYBOARD LLC UTILITY EASEMENT TOWN OF JACKSON	NELSON ENGINEERING P.O. BOX 1599, JACKSON WYOMING (307) 733-2087	DATE 4/06/18
JOB NO 14-175-01			ENGINEERED RRN
			DRAWN SK
			CHECKED RRN
			APPROVED RRN