

## TRAIL EASEMENT AGREEMENT

THIS TRAIL EASEMENT AGREEMENT ("this Agreement") effective as of the date of the last signature affixed hereto (the "Agreement Date") is by and between ERA Carroll Realty Co, Inc. ("the undersigned Owner or Owners") and Sheridan County, Wyoming (the "Holder").

### Article I. Background

#### 1.01 Property

The undersigned Owner or Owners are the sole owners in fee simple of the property identified below and more fully described and shown in Exhibit "A" (the "Property").

Street Address: 232 Soldier Creek Rd.  
Municipality: Sheridan  
Parcel Identifier: 56851440002733  
County: Sheridan  
State: Wyoming

#### 1.02 Easement Area

The portion of the Property that is subject to this Agreement (the "Easement Area") is shown on the survey attached as Exhibit "B".

#### 1.03 Purposes

The purposes of this Agreement are to set forth the terms under which the Trail Facilities described in Article II can be established and maintained for activities and uses by the general public described in Article III.

#### 1.04 Consideration

The undersigned Owner or Owners acknowledge receipt of the sum of \$1.00 in consideration of the grant of easement to Holder under this Agreement.

### Article II. Grant of Easement for Trail Facilities

#### 2.01 Grant

The undersigned Owner or Owners, intending to be legally bound, grant and convey to Holder the perpetual right to create the Trail identified below. Holder shall have the right and authority to enter the Easement Area at any time to construct, install, maintain and repair any one or more of the items described below (collectively, with the Trail, the "Trail Facilities"):

- (a) A trail not to exceed approximately 20 feet in width together with steps, railings, and other surface structures which, as to wet areas, may include bridges and culverts (collectively, the "Trail").
- (b) Signs to mark the Trail, to provide information related to the Trail and for interpretive purposes.
- (c) Fencing, gates, and barriers to control access.
- (d) Benches, picnic tables, wastebaskets, bicycle racks, and similar trail amenities.

#### 2.02 Exercise of Rights

Creation of the Trail and other construction, installation, maintenance and repair of the Trail Facilities may include installation of signage; mowing, cutting or removal of soil, rock or vegetation; application of gravel, crushed stone, wood chips or paving; or other means of creating the Trail surface (if any) and/or identifying the Trail's path. These activities may include the use of motorized vehicles and mechanized equipment. However, Holder shall have no obligation or duty to construct the Trail Facilities. Should the Trail Facilities be constructed Holder shall:

- (a) have no duty or obligation to remove snow or ice from the Trail Facilities.
- (b) promptly restore and reclaim to its original condition all areas within the Easement Area disturbed by construction or maintenance of the Trail Facilities which are not occupied by the Trail Facilities.
- (c) not enter upon, use or cast any substance upon any portion of the Grantor's land which is not in the Easement Area.

### Article III. Grant of Easement for Public Access

#### 3.01 Grant of Easement

The undersigned Owner or Owners, intending to be legally bound, grant to Holder the right to make available to the public a perpetual easement and right-of-way over the Trail and the right to use Trail Facilities for the purposes ("Permitted Trail Uses") described below:

- (a) walking, hiking, jogging, bicycling, bird watching, horse-back riding, nature study;

- (b) wheelchairs, manually operated or power-driven, used by an individual with a mobility impairment for the primary purpose of locomotion in typical indoor and outdoor pedestrian areas;
- (c) authorized Holder vehicles for periodic patrol, inspection, and necessary maintenance; and
- (d) emergency vehicles in the case of emergency within the Easement Area.

The Easement Area, including the Trail Facilities may be relocated under joint agreement between Holder and Grantor or its successors, at Grantor's cost, at the time or times land adjoining the pathway is platted.

**3.02 No Charge for Access**

No Person is permitted to charge a fee for access to the Trail or use of the Trail Facilities.

**Article IV. Rights of Owners**

**4.01 Owner Improvements**

Owners must not construct, install or maintain any facility or improvement within the Easement Area except the following (collectively, "Owner Improvements")

- (a) fencing abutting the easement area with Owners bearing all responsibility for construction and maintenance of this fencing which shall not impede wildlife movement and shall not be higher than 4.5 feet and shall be constructed in a manner not to impede views of the surrounding land from the easement area;
- (b) fencing across the easement with Owners bearing all responsibility for construction and maintenance of this fencing which shall contain cattle guards measuring a minimum of 10 feet or similar pass-throughs, and which will allow for horses to pass through at each location where fencing crosses the Easement Area;
- (c) items to which Holder, without any obligation to do so, gives its consent in writing; and
- (d) structures, pipes, ditches and similar structures intended to be used for irrigation, or to convey return flows to streams.

**4.02 Owner Uses and Activities**

Owners have the rights accorded to the general public to use the Trail Facilities

**Article V. Enforcement; Liability Issues**

**5.01 Enforcement**

Holder may, in addition to other remedies available at law or in equity, compel Owners to make the Easement Area available for the purposes set forth in Article II and Article III by exercising any one or more of the following remedies, without any need to show that a civil action for damages is not available to furnish compensation:

- (a) Injunctive Relief – Seek injunctive relief to specifically enforce the terms of this Agreement; to restrain present or future violations of this Agreement; and/or to compel restoration of Trail Facilities or other resources destroyed or altered as a result of the violation.
- (b) Self Help – Enter the Property to remove any barrier to the access provided under this Agreement and do such other things as are reasonably necessary to protect and preserve the rights of Holder under this Agreement.

**5.02 Warranty**

The undersigned Owner or Owners warrant to Holder that:

- (a) Liens and Subordination – The Easement Area is, as of the Agreement Date, free and clear of all Liens
- (b) Existing Agreements – No one has the legally enforceable right (for example, under a lease, easement or right-of-way agreement in existence as of the Agreement Date) to prevent the installation of Trail Facilities or the use of Trail Facilities for Permitted Trail Uses.
- (c) Hazardous Materials – To the best of Owner's knowledge, the Easement Area is not contaminated with materials identified as hazardous or toxic under applicable law (collectively, "Hazardous Materials") and no Hazardous Materials have been stored or generated within the Easement Area.

**5.03 Immunity under Applicable Law**

Nothing in this Agreement limits the ability of Owners and Holder to avail themselves of the protections offered by any applicable law affording immunity to Owners and Holder including but not limited to W.S. 34-10-101 et seq. (as may be amended from time to time).

**5.04 Public Enters at Own Risk**

Use of any portion of the Easement Area by members of the general public is at their own risk. Neither Holder nor Owners by entering into this Agreement assume any duty to or for the benefit of the general public: (1) for defects in the location, design, installation, maintenance or repair of

the Trail Facilities; for any unsafe conditions within the Easement Area; (2) for the failure to inspect for or warn against possibly unsafe conditions; or (3) to close the Trail Facilities to public access when unsafe conditions may be present. Holder will endeavor to repair damaged Trail Facilities but has no duty to do so unless and until Holder receives actual notice given in accordance with Article VI of this Agreement of the need to repair an unreasonably dangerous condition.

**5.05 Costs and Expenses**

All costs and expenses associated with Trail Facilities are to be borne by Holder except for items included in Owner Responsibility Claims (defined below in this Article).

**5.06 Responsibility for Losses and Litigation Expenses**

- (a) **Public Access Claims; Owner Responsibility Claims** – If a claim for any Loss for personal injury or property damage occurring within the Easement Area after the Agreement Date (a “Public Access Claim”) is asserted against either Owners or Holder, or both, it is anticipated that they will assert such defenses as are available to them under applicable law. The phrase “Public Access Claim” excludes all claims (collectively, “Owner Responsibility Claims”) for Losses and Litigation Expenses arising from, relating to or associated with (i) personal injury or property damage occurring prior to the Agreement Date; (ii) activities or uses engaged in by Owners, their family members, contractors, agents, employees, tenants and invitees or anyone else entering the Property by, through or under the express or implied invitation of any of the foregoing; or (iii) structures, facilities and improvements within the Easement Area (other than improvements installed by Holder).
- (b) **Indemnity** – If immunity from any Public Access Claim is for any reason unavailable to Owners, Holder agrees to indemnify, defend and hold Owners harmless from any Loss or Litigation Expense if and to the extent arising from a Public Access Claim. Owners agree to indemnify, defend and hold the Holder harmless from any Loss or Litigation Expense if and to the extent arising from an Owner Responsibility Claim.
- (c) **Loss; Litigation Expense** –
  - (i) The term “Loss” means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge other than a Litigation Expense.
  - (ii) The term “Litigation Expense” means any court filing fee, court cost, arbitration fee or cost, witness fee and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Agreement including in each case, attorneys’ fees, other professionals’ fees and disbursements.

**Article VI. Miscellaneous**

**6.01 Beneficiaries and Agents**

The rights of Holder under this Agreement may be exercised by Holder, any Person identified by Holder as a beneficiary of this Agreement and who accepts this designation by recordation in the Public Records of a joinder to this Agreement (a “Beneficiary”), or any of the contractors, agents, and employees of Holder or Beneficiary.

**6.02 Binding Agreement**

This Agreement is a servitude running with the land binding upon the undersigned Owner or Owners and, upon recordation in the Public Records, all subsequent Owners of the Easement Area or any portion of the Easement Area are bound by its terms whether or not the Owners had actual notice of this Agreement and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Agreement. Subject to such limitations (if any) on Holder's right to assign as may be set forth in this Agreement, this Agreement binds and benefits Owners and Holder and their respective personal representatives, successors and assigns.

**6.03 Governing Law**

The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be the Fourth Judicial District, Sheridan County, Wyoming.

**6.04 Definition and Interpretation of Capitalized and Other Terms**

The following terms, whenever used in this Agreement, are to be interpreted as follows:

- (a) “Owners” means the undersigned Owner or Owners and all Persons after them who hold any interest in the Easement Area.
- (b) “Person” means an individual, organization, trust, or other entity.
- (c) “Public Records” means the public records of the office for the recording of deeds in and for the county in which the Easement Area is located.
- (d) “Including” means “including, without limitation”



(e) "May" is permissive and implies no obligation; "must" is obligatory.

**6.05 Incorporation by Reference**

Each exhibit or schedule referred to in this Agreement is incorporated into this Agreement by this reference.

**6.06 Amendments; Waivers**

No amendment or waiver of any provision of this Agreement or consent to any departure by Owners from the terms of this Agreement is effective unless the amendment, waiver or consent is in writing and signed by an authorized signatory for Holder. A waiver or consent is effective only in the specific instance and for the specific purpose given. Any waiver by either party of any breach of any covenant herein to be kept and performed by the other party shall not be deemed as a continuing waiver and shall not operate to prevent the non-breaching party from declaring a forfeiture for any succeeding breach, either of the same or other covenant. An amendment must be recorded in the Public Records.

**6.07 Severability**

If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain valid, binding, and enforceable. To the extent permitted by applicable law, the parties waive any provision of applicable law that renders any provision of this Agreement invalid, illegal, or unenforceable in any respect.

**6.08 Entire Agreement**

This is the entire agreement of Owners, Holder and any Beneficiary pertaining to the subject matter of this Agreement. The terms of this Agreement supersede in full all statements and writings between Owners, Holder, and others pertaining to the transaction set forth in this Agreement.

**6.09 Notices**

Notice to Holder under this Agreement must be in writing and given by one of the following methods: (i) personal delivery; (ii) certified mail, return receipt requested and postage prepaid; or (iii) nationally recognized overnight courier, with all fees prepaid. In an emergency, notice may be given by phone (307-674-2900) or electronic communication (bocc@sheridancounty.com) followed by one of the methods in the preceding sentence.

**6.10 Beyond Term**

This Agreement provides a definable benefit to Sheridan County and its citizens and County desires to enter into this agreement beyond the term of this Board of County Commissioners so that the full benefit to Sheridan County might be realized.

**6.11 Governmental Immunity**

Nothing in this Agreement shall in any way be deemed a waiver of any of the requirements or immunities provided by the Wyoming Governmental Claims Act.

INTENDING TO BE LEGALLY BOUND, the undersigned Owner or Owners and Holder, by their respective duly authorized representatives, have signed and delivered this Agreement as of the Agreement Date.

Witness/Attest: Wayne G. Carter

Owner's Name: Tom Bodier Date: 3-5-12

Owner's Name: Boyd Date: 3-5-12

Owner's Name: Jane Clark Date: 3-5-12

[Name of Holder - Sheridan County]

Sheridan County By: Mike Nickel

Name of signatory: Mike Nickel  
 Title of signatory: Chairman, Bocc

STATE OF WYOMING )  
COUNTY OF SHERIDAN )

On this 5<sup>th</sup> day of March 2012, before me, the undersigned officer, personally appeared Dixie J. See, Jane P. Clark and Tom Belus known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Marjorie L. Carter, Notary Public

Print Name(s): Dixie See, Jane Clark, Tom Belus



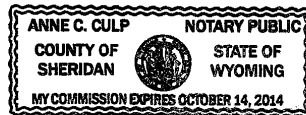
STATE OF WYOMING )  
COUNTY OF SHERIDAN )

On this 6<sup>th</sup> day of March 2012, before me, the undersigned officer, personally appeared Mike Nickel, who acknowledged himself to be the Chairman of the Board of County Commissioners for Sheridan County, Wyoming, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

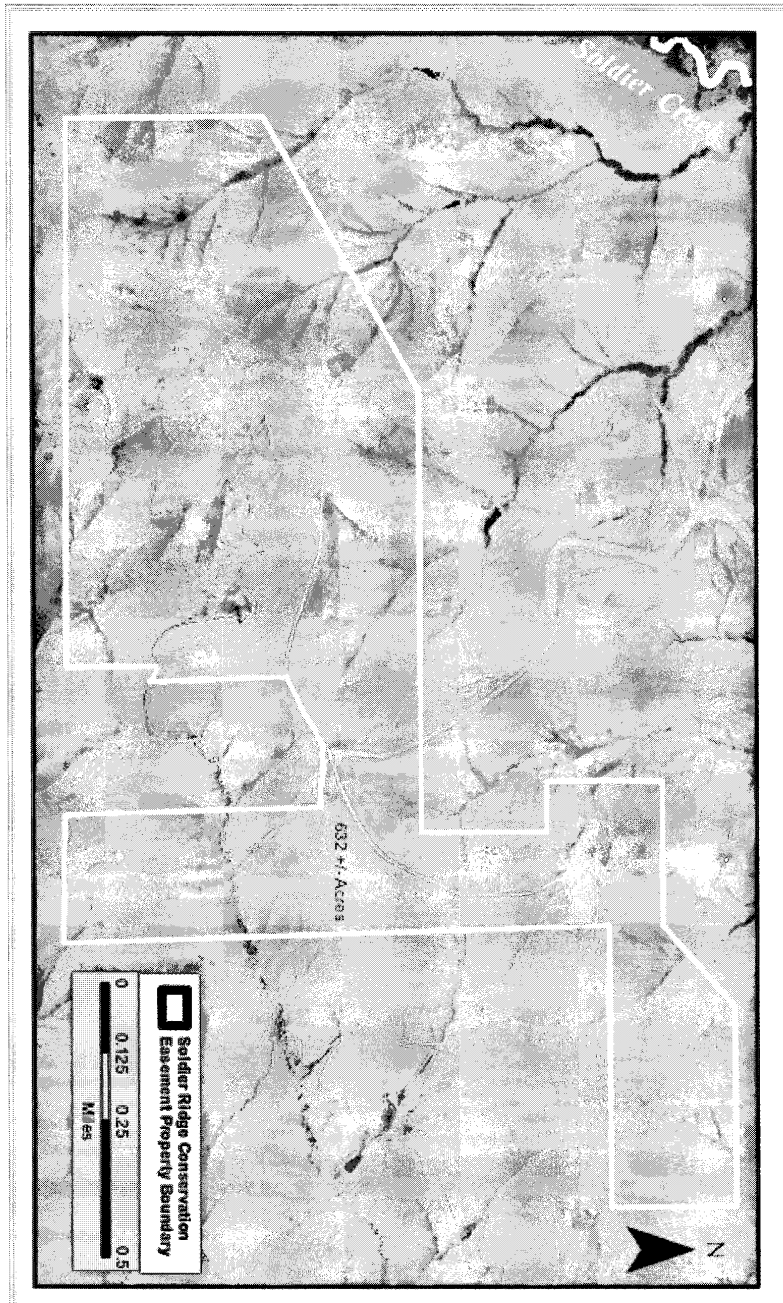
Anne Culp, Notary Public

Print Name: Anne Culp



## Exhibit A

That part of Section 26, Section 24, and the West 1/2 of Section 25, T56N, R85W, 6<sup>th</sup> Principal Meridian, Sheridan County, Wyoming, described as: BEGINNING at the Southwest corner of said Section 26; thence N00°21'37"W 1908.00 feet along the west line of said Section 26; thence N60°32'36"E 3018.27 feet; thence N90°00'00"E 4240.67 feet; thence N00°03'14"E 1216.84 feet; thence N90°00'00"W 488.37 feet; thence N00°00'04"E 1115.11 feet; thence S89°59'38"E 1393.93 feet; thence N48°47'52"E 1047.32 feet; thence N89°48'40"E 1920.10 feet; thence S00°13'23"E 1209.47 feet along the East line of said Section 24; thence S89°54'49"W 2712.80 feet along the South line of said Section 24; thence S01°40'28"E 5274.62 feet along the East line of the West 1/2 of said Section 25; thence N89°08'58"W 1244.74 feet along the South line of said Section 25; thence N01°27'33"W 2466.97 feet; thence N87°29'32"W 117.70 feet; thence N88°27'12"W 56.79 feet; thence N82°13'48"W 144.30 feet; thence Westerly 187.17 feet along a 500.00 foot radius curve to the left, the chord of which bears S87°02'54"W 186.08 feet; thence Westerly 21.11 feet along a 29.96 foot radius curve to the right, the chord of which bears N83°29'54"W 20.68 feet; thence N63°21'07"W 44.35 feet; thence Southwesterly 27.05 feet along a 50.02 foot radius curve to the right, the chord of which bears S51°21'24"W 26.72 feet; thence S66°48'09"W 190.87 feet; thence S54°30'50"W 134.69 feet; thence S63°37'22"W 339.59 feet; thence Southwesterly 86.49 feet along a 414.66 foot radius curve to the right, the chord of which bears S69°35'57"W 86.33 feet; thence S01°57'47"E 1324.83 feet; thence N59°44'13"W 123.92 feet; thence N89°16'25"W 47.24 feet; thence S00°22'11"E 872.66 feet; thence N89°42'27"W 5252.53 feet along the South line of said Section 26 to the place of beginning. This parcel contains 632.01 acres.



Soldier Ridge - Exhibit A



