

DITCH AGREEMENT

Agreement made on the date appearing below by and between the Eastside Ditch Company (hereinafter Eastside) and Powder Horn Ranch - 2, LLC (hereinafter Powder Horn).

WHEREAS:

Eastside is a Wyoming Ditch Company, organized and existing under the laws of the State of Wyoming; and

Powder Horn owns lands described as:

A tract of land located in the S1/2 N1/2 and S1/2 of Section 33, Township 55 North, Range 84 West and in the N1/2 and SE1/4 of Section 4, Township 54 North, Range 84 West of the Sixth Principal Meridian, Sheridan County, Wyoming, being more particularly described as:

Beginning at the East 1/16 corner between said Sections 33 and 4;  
thence S01°16'18"E, 2186.64 feet; thence S89°02'00"E, 16.34 feet;  
thence S50°28'44"E, 705.12 feet; thence S89°38'07"E, 251.43 feet;  
thence S31°24'57"E, 478.18 feet; thence N77°55'47"E, 129.47 feet;  
thence S48°32'53"E, 117.07 feet; thence S00°12'45"W, 803.17 feet;  
thence S89°42'59"W, 32.55 feet; thence S00°17'01"E, 719.24 feet;  
thence N67°09'14"W, 856.35 feet; thence N67°07'01"W, 909.22 feet;  
thence N65°52'42"W, 120.68 feet; thence N00°25'01"E, 346.61 feet;  
thence N90°00'00"E, 77.88 feet; thence N00°05'10"W, 240.00 feet;  
thence S89°06'42"W, 200.04 feet; thence S00°14'53"W, 528.76 feet;  
thence N65°52'42"W, 21.51 feet; thence S00°09'00"E, 32.94 feet;  
thence N65°45'00"W, 640.02 feet; thence N67°28'00"E, 693.84 feet;  
thence N36°17'00"W, 782.92 feet; thence N89°12'49"E, 36.85 feet;  
thence along a curve to the right having a radius of 278.66 feet, a length of 41.12 feet, a delta of 08°27'19" with a chord bearing and distance of N23°06'05"W, 41.09 feet;  
thence along a curve to the left having a radius of 550.88 feet, a length of 234.32 feet, a delta of 24°22'16" with a chord bearing and distance of N31°03'32"W, 232.55 feet;  
thence N43°14'41"W, 40.45 feet;  
thence N58°37'30"E, 45.61 feet; thence N32°02'54"E, 265.10 feet;  
thence N05°03'29"E, 71.31 feet; thence S89°31'43"W, 39.34 feet;  
thence N27°00'58"E, 306.56 feet; thence S56°01'20"E, 378.00 feet;  
thence N33°31'06"E, 217.58 feet; thence N24°36'12"E, 736.57 feet;  
thence N89°57'51"W, 79.87 feet; thence N34°33'36"E, 120.61 feet;  
thence N10°47'08"E, 39.16 feet; thence N28°39'11"E, 214.51 feet;  
thence N17°57'46"W, 42.71 feet; thence N61°25'21"W, 244.85 feet;  
thence N70°44'10"W, 157.35 feet; thence N18°51'43"W, 70.78 feet;  
thence N65°15'54"W, 51.71 feet; thence N65°15'54"W, 193.49 feet;  
thence N31°36'03"W, 221.43 feet; thence S77°15'19"W, 38.06 feet;  
thence N29°09'24"W, 282.02 feet; thence N77°09'56"E, 82.16 feet;  
thence N12°50'04"W, 77.17 feet; thence N34°48'04"W, 90.61 feet;  
thence N80°18'49"W, 76.09 feet; thence N38°47'51"W, 104.64 feet;  
thence N20°54'12"W, 92.60 feet; thence N00°47'54"E, 62.22 feet;

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thence N07°29'47"E, 41.05 feet; thence N24°17'31"E, 64.48 feet;  
 thence N63°13'23"E, 174.52 feet; thence N86°48'47"E, 105.02 feet;  
 thence S77°01'42"E, 66.30 feet; thence N70°16'18"E, 144.16 feet;  
 thence S88°34'15"E, 69.45 feet; thence S33°37'39"E, 35.85 feet;  
 thence S28°11'07"W, 68.87 feet; thence S30°34'04"E, 45.70 feet;  
 thence N63°52'09"E, 133.19 feet; thence N37°01'23"E, 50.34 feet;  
 thence S69°31'17"E, 35.96 feet; thence N01°01'31"W, 117.64 feet;  
 thence N87°50'30"E, 122.67 feet; thence N02°50'35"W, 1027.59 feet;  
 thence N82°54'21"W, 783.88 feet; thence N39°16'33"E, 2119.81 feet;  
 thence S47°34'56"E, 744.07 feet; thence S00°11'34"E, 173.55 feet;  
 thence N89°01'44"E, 359.05 feet; thence S01°05'36"E, 2739.75 feet to the point of  
 beginning, said tract contains 330.75 acres more or less.

Powder Horn plans to develop the lands above described for residential, recreational and golf course use; and

Eastside owns a right of way for the operation, repair, replacement, cleaning and maintenance including the removal of vegetation and trees, of a ditch for the conveyance of irrigation water across the lands of Powder Horn; and

The line of said ditch, the Eastside Ditch, across the lands of Powder Horn shall be depicted on the Plats of the Powder Horn Planned Unit Development II as will be recorded in the office of the County Clerk in and for Sheridan County, Wyoming.

The escape of water from the Eastside Ditch could potentially cause damage to the lands, residences, recreation areas, and golf course of the Powder Horn as presently existing or as may exist in the future; and

Eastside has the right and duty to keep the Eastside Ditch in good condition; and

Eastside is entitled to convey up to 26 cubic feet per second of water in the Eastside Ditch; and

Powder Horn recognizes the right of Eastside, its members, agents and contractors to traverse the lands of Powder Horn along the line of the Eastside Ditch for purposes necessary and convenient to keep said ditch in good condition; and

The continuous and unobstructed flow of water in the Eastside Ditch is vital to the users, owners and permittees of said water during the irrigation seasons; and

The Eastside Ditch may present attractive hazards to children or others; and Powder Horn's ownership and development of its lands, above described is subsequent and subject to Eastside's right of way for the Eastside Ditch.

WHEREFORE, premises considered, it is agreed:

1.

The right of way for the Eastside Ditch Company across the lands of Powder Horn is as set forth and described on Exhibit "A" attached.

2.

The ditch, as described, is aligned in a manner acceptable to Eastside and Powder Horn.

3.

Any portions of the ditch that Powder Horn in the future relocates or places underground by utilization of pipe shall be maintained, designed, installed and/or retrofitted, by Powder Horn, at its cost, to meet the following terms:

- a. At all times, the underground portions of the ditch shall be maintained, repaired and replaced by Powder Horn, at its cost, to maintain a flow of a minimum of 26 cubic feet per second of water and prevent the escape of water.
- b. The inlet and outlet for each portion of the ditch that is underground shall have rock riprap installed to prevent scouring and erosion, to the satisfaction of Eastside.
- c. Inlet trash racks shall be installed on each underground portion. Said racks must be removable for cleaning and of adequately strong construction to the satisfaction of Eastside.
- d. Outlet screens shall be installed on each underground portion of the ditch in a manner that will prevent children or others from entering.
- e. All relocation or realignment of the Eastside Ditch across lands of Powder Horn may be performed only upon the written authority of Eastside.

- f. Powder Horn shall bear the cost and expense, whether done by Eastside or itself, of cleaning, repair, replacement and maintenance of all portions of Eastside Ditch that Powder Horn places or placed underground or relocated.

## 4.

In order to allow the quiet enjoyment of its lands, Powder Horn at its cost shall clean, repair and maintain all portions of the Eastside Ditch, that cross Powder Horn lands, in good condition that will allow the unimpeded and continuous flow of a minimum of 26 cubic feet per second of water and will prevent the escape of water from said ditch. In the event that any water escapes from the Eastside Ditch on or under the lands of Powder Horn, Powder Horn will perform whatever actions necessary to immediately stop, prevent and eliminate such escape. Powder Horn will perform all activities as may be necessary, on Powder Horn premises, in order to assure the flow or prevent escape of water.

## 5.

Eastside shall at all times have the right of ingress and egress to the lands of Powder Horn to inspect, repair, maintain, and clean the Eastside Ditch to keep said ditch in good condition and remove any impediment to the flow of water, including vegetation, brush and trees by proper application of herbicides or mechanical means. Traverse of the ditch right of way shall be along the right of way of said ditch and may be accessed by roads and trails established by Powder Horn or from adjacent lands. It is the intent of the parties that wherever a Powder Horn road or street crosses Eastside Ditch or is laid out in a manner that would allow access without crossing private lots, Eastside may use the roads and streets of Powder Horn for access to the said ditch. Ingress and egress by Eastside may be by and for personnel, vehicles and equipment.

## 6.

In the event that there is an escape of water from Eastside Ditch, and impediment to the flow of water in said ditch, or a need for repair, replacement, maintenance or cleaning, Eastside shall be entitled to take whatever measures and actions that it deems necessary to stop such

escape of water, remove such an impediment to the flow of water, including vegetation and trees, or perform repair, replacement, maintenance or cleaning by such means, methods and equipment as may be necessary and convenient, and Eastside shall not be liable or responsible for any damages, direct, indirect or consequential, to the lands of Powder Horn in their present condition or as developed for future uses. This right is subject to the requirement that during the irrigation season Eastside shall give Powder Horn 24 hours notice of its intent and Powder Horn may elect to undertake the corrective action at its cost if such can be completed within 48 hours of notice, and Eastside will cooperate in the operation of the ditch headgates or other ditch devices in coordination with Powder Horn's corrective action. For purposes of the foregoing, notice may be oral and is effective when given to any officer, agent or attorney of Powder Horn, or its successors in interest, by an officer of Eastside. Outside the irrigation season, if the above mentioned activities are necessary or convenient, Powder Horn shall have the same right to elect to undertake action, upon 30 days notice by Eastside, provided that Powder Horn can complete the action no later than April 1.

7.

Eastside, at its expense, may install measuring devices within the Eastside Ditch upon lands of Powder Horn.

8.

Powder Horn shall cause all development and/or use of lands across which Eastside Ditch runs to be designed and accomplished in a manner that maintains the lateral support and integrity of said ditch, including the requirement that the drainage of all Powder Horn lands shall remain such that the ditch is not used to drain lands above the ditch (drainage from lands above the ditch to be maintained through natural and existing routes across the ditch through culverts and flumes, or the like).

9.

Any notices or communications necessary or convenient for the parties to give to each other shall be made as follows:

To Eastside:

Frances Hamilton  
Secretary  
43 McCormick Road  
Sheridan, WY 82801

or Roy G. Garber  
218 McCormick Road  
Big Horn, WY 82833

To Powder Horn:

161 Highway 335  
Sheridan, WY 82801

10.

This agreement shall be recorded in the records of the County Clerk for Sheridan County, Wyoming.

11.

This agreement shall be binding and effective upon all successors in interest to the lands of Powder Horn, which shall cause a notice of this agreement to be included in all conveyances of any or all of the Powder Horn lands, including Powder Horn Planned Unit Development Phase II.

12.

In the event of default by Powder Horn in the performance of its obligations hereunder, Eastside shall be entitled to recover from Powder Horn all of Eastside's attorney fees, costs and expenses incurred to enforce this agreement, whether by action or otherwise.

DATED this 31 day of May, 2002.

ATTEST:

Frances M. Hamilton  
Secretary

EASTSIDE DITCH COMPANY

BY:

ITS:

Roy Garber  
President

POWDER HORN RANCH - 2, LLC

BY: [Signature]

ITS: Partner

STATE OF WYOMING )

) ss.

County of Sheridan )

Before me this 31<sup>st</sup> day of MAY, 2002, appeared Roy Garber, personally known to me and being sworn and upon oath represented that he/she is the President of the Eastside Ditch Company and the foregoing instrument was executed on behalf of said corporation by the authority of its board of directors as the free act and deed of said corporation.

Witness my hand and official seal.

[Signature]  
Notary Public

My Commission Expires: February 2, 2006

STATE OF WYOMING )

) ss.

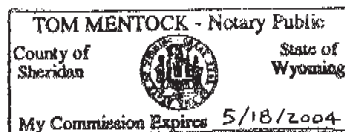
County of Sheridan )

Before me this 11<sup>th</sup> day of MARCH, 2002, appeared JIM M. SCOTT, personally known to me and being sworn and upon oath represented that he/she is the PARTNER of the Powder Horn Ranch - 2 and the foregoing instrument was executed on behalf of said corporation by the authority of its board of directors as the free act and deed of said corporation.

Witness my hand and official seal.

[Signature]  
Notary Public

My Commission Expires: May 18, 2004



## LEGAL DESCRIPTION

THE CENTERLINE OF THE EASTSIDE DITCH, SAID DITCH BEING LOCATED IN THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, NORTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE NORTH HALF OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 54 NORTH, RANGE 84 WEST OF THE SIXTH PRINCIPAL MERIDIAN, SHERIDAN COUNTY, WYOMING, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT A POINT ON THE EASTERLY BOUNDARY OF POWDER HORN RANCH II, SAID POINT BEING LOCATED S 34°48'52" E, 4618.99 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 4; THENCE N66°16'36"W, 116.41 FEET; THENCE N66°33'19"W, 136.19 FEET; THENCE N58°10'23"W, 126.83 FEET; THENCE N28°32'53"W, 55.99 FEET; THENCE N03°54'50"E, 66.47 FEET; THENCE N25°10'52"W, 51.98 FEET; THENCE N38°32'01"W, 106.51 FEET; THENCE N78°30'37"W, 102.44 FEET; THENCE N76°35'01"W, 116.52 FEET; THENCE N65°12'09"W, 256.77 FEET; THENCE N70°49'10"W, 209.32 FEET; THENCE N76°30'09"W, 133.56 FEET; THENCE N49°25'29"W, 308.09 FEET; THENCE N51°34'36"W, 259.48 FEET; THENCE N55°27'33"W, 103.97 FEET; THENCE N66°53'05"W, 171.48 FEET; THENCE N67°34'34"W, 120.13 FEET; THENCE N81°17'36"W, 133.30 FEET; THENCE S84°04'48"W, 163.15 FEET; THENCE S79°16'08"W, 115.52 FEET; THENCE S61°47'08"W, 38.62 FEET; THENCE N78°15'29"W, 128.43 FEET; THENCE S82°26'18"W, 114.79 FEET; THENCE S55°49'13"W, 33.78 FEET; THENCE S15°04'38"W, 28.92 FEET; THENCE S18°18'23"E, 46.76 FEET; THENCE S32°12'03"E, 98.84 FEET; THENCE S05°38'38"W, 29.14 FEET; THENCE S27°00'26"W, 87.04 FEET; THENCE S40°05'41"W, 222.02 FEET; THENCE S21°30'00"W, 55.86 FEET; THENCE S03°59'58"W, 179.91 FEET; THENCE S10°25'27"E, 136.99 FEET TO THE SOUTHERLY BOUNDARY OF THE POWDER HORN RANCH II, SAID POINT BEING LOCATED S03°39'35"W, 3433.97 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 4.