

DITCH AGREEMENT

Agreement made on the date appearing below by and between the Eastside Ditch Company (hereinafter Eastside) and Powder Horn Ranch, LLC and Powder Horn Homeowners Association, Inc. (hereinafter Powder Horn, collectively).

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 situated in the East½ of Section 33 and the SW¼NW¼ and SW¼ of Section 34, Township 55 North, Range 84 West; NW¼, Lot 2, and N½SW¼ of Section 3; E½NE¼ and NE¼SE¼ of Section 4, Township 54 North, Range 84 West, 6th P.M., Sheridan County, Wyoming; said tract being more particularly described as follows:

Beginning at the north quarter corner of said Section 3; thence N89°26'40"E, 1307.86 feet along the north line of said Lot 2 of Section 3 to a point, said point being the northeast corner of said Lot 2; thence S00°29'23"E, 1342.71 feet along the east line of said Lot 2 to a point, said point being the southeast corner of said Lot 2; thence S89°32'08"W, 1311.45 feet along the south line of said Lot 2 to a point, said point being the southwest corner of said Lot 2; thence S00°20'10"E, 2654.78 feet along the east line of said NW¼ and said N½SW¼ of Section 3 to a point; thence S89°38'57"W, 1106.47 feet along a fence line to a point; thence N00°04'33"W, 1461.06 feet along said fence line to a point; thence S89°54'56"W, 1354.56 feet along said fence line to a point; thence S18°34'44"W, 365.47 feet along said fence line to a point; thence S44°08'18"W, 223.46 feet along said fence line to a point; thence S77°55'47"W, 129.47 feet along said fence line to a point; thence N31°24'57"W, 478.18 feet along said fence line to a point; thence N89°38'07"W, 251.43 feet along said fence line to a point; thence N50°28'44"W, 705.12 feet along said fence line to a point; thence N89°02'00"W, 16.34 feet along said fence line to a point; thence N01°16'18"W, 2186.64 feet along said fence line to a point, said point being the southwest corner of the E½SE¼ of said Section 33; thence N01°05'36"W, 2739.76 feet along said fence line to a point; thence S88°59'56"W, 359.05 feet along said fence line to a point, said point being the southeast corner of a tract of land described in Book 324 of Deeds, Page 410; thence N00°11'34"W, 173.55 feet along the east line of said tract described in Book 324 of Deeds, Page 410 to a point; thence N47°34'56"W, 744.07 feet along the northeasterly line of said tract described in Book 324 of Deeds, Page 410 to a point, said point lying on the southeasterly right of way line of State Highway No. 335; thence N39°16'46"E, 2187.60 feet along said southeasterly right of way line of State Highway No. 335 to a point; thence along said southeasterly right of way line of State Highway No. 335 through a spiral curve to the left having a centerline curve radius of 2,864.79, a centerline spiral length of 280.00 feet, a centerline curve length of 85.80 feet, a curve delta of 7°19'00", a chord bearing of N38°20'36"E, and a chord length of 281.58 feet to a point; thence along said southeasterly

right of way line of State Highway No. 335 through a curve to the left having a radius of 2897.79 feet, a central angle of 01°12'32", an arc length of 61.14 feet, a chord bearing of N35°52'30"E, and a chord length of 61.14 feet to a point, said point lying on the north line of said Section 33; thence N88°24'34"E, 588.62 feet along said north line to a point, said point being the northeast corner of said Section 33; thence S00°01'27"W, 1676.10 feet along a fence line agreement described in Book 243 of Deeds, Page 482 to a point; thence S30°51'06"W, 162.45 feet along said fence line agreement line to a point; thence S26°31'14"E, 331.41 feet along said fence line agreement line to a point; thence S00°25'00"E, 526.88 feet along said fence line agreement line to a point; thence S89°18'26"E, 375.05 feet along said fence line agreement line to a point; thence S71°57'34"E, 517.36 feet along said fence line agreement line to a point, said point lying on the westerly line of Knode Ranch Third Subdivision to the County of Sheridan, Wyoming; thence S64°31'32"E, 195.05 feet along said westerly line of Knode Ranch Third Subdivision to a point; thence S85°51'45"E, 264.48 feet along said westerly line of Knode Ranch Third Subdivision to a point; thence S11°55'05"E, 1144.01 feet along said westerly line of Knode Ranch Third Subdivision to a point, said point being the southwest corner of said Knode Ranch Third Subdivision; thence S88°41'35"E, 1035.90 feet along the south line of said Knode Ranch Third Subdivision to a point, said point being the northwest corner of a tract of land described in Book 357 of Deeds, Page 29; thence S03°20'08"E, 1347.14 feet along the west line of said tract described in Book 357 of Deeds, Page 29 to the POINT OF BEGINNING.

Said tract contains 606.53 acres more or less.

Powder Horn plans to develop and/or has developed areas of the lands above described for residential, recreational and golf course use; and

Powder Horn Planned Unit Development Phase I, as recorded in the office of the County Clerk for Sheridan County, Wyoming at Plat Drawer P, number 36, is part of said Powder Horn lands; and

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

Powder Horn has, with the concurrence of Eastside, relocated a portion of the ditch and installed culverts and pipes through which water can flow, and may wish to conduct relocation and lining of the ditch as part of future development of its lands; and

The line of said ditch, the Eastside Ditch, across the lands of Powder Horn, is depicted on the Plats of the Powder Horn Planned Unit Development as recorded in the office of the County Clerk in

and for Sheridan County, Wyoming at Plat Drawer P, Number 26, and is on the East side of Phase I of said development.

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 has placed or in the future 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 repair, maintain and clean 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. 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, an 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, 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 of April 15 to September 15 of each year, 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 any officer of Eastside. During the non-irrigation season, September 16 to April 14, 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 it 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.

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 Rd  
Sheridan, WY 82801

or

Roy V. Garber  
218 McCormick Rd.  
Big Horn, WY 82834

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.

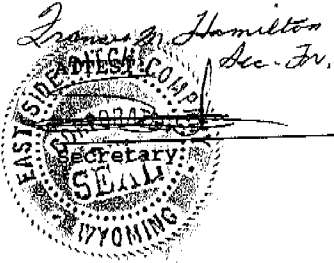
11.

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 I.

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 expense incurred to enforce this agreement, whether by action or otherwise.

## EASTSIDE DITCH COMPANY

By: Ray Barber  
Its: President

## POWDER HORN RANCH, LLC

By: Home Owners Assoc  
Its: MANAGER

ATTEST:

## POWDER HORN HOMEOWNERS ASSOCIATION, INC.

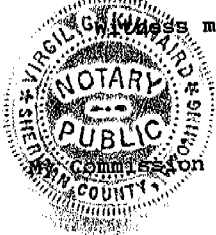
By: James M. Jones  
Its: President

Sade S. S. S.  
Secretary

STATE OF WYOMING )  
County of Sheridan ) ss.

Before me this 2 day of June, 1996,  
appeared Ray Barber, personally known to me and being  
sworn and upon oath represented that she/he 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

GIVENNESS my hand and official seal.

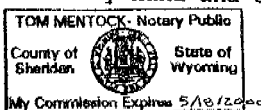


Virgil G. Kinnel  
Notary Public  
February 2, 1998

STATE OF WYOMING )  
 ) ss.  
County of Sheridan )

Before me this 5<sup>th</sup> day of JUNE, 1996,  
appeared Homer Scott, Jr., personally known to me and being sworn  
and upon oath represented that he/she is the MANAGER  
of the Powder Horn Ranch and that the foregoing instrument was  
executed on behalf of said limited liability company by the  
authority of its members as the free act and deed of said  
corporation.

Witness my hand and official seal.



My Commission Expires:

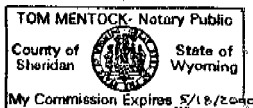
Tom Mentock  
Notary Public

MAY 18, 2000

STATE OF WYOMING )  
 ) ss.  
County of Sheridan )

Before me this 5<sup>th</sup> day of JUNE, 1996,  
appeared James M. Scott, personally known to me and being sworn  
and upon oath represented that he/she is the PRESIDENT  
of the Powder Horn Homeowners Association, Inc. and that 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.



My Commission Expires:

Tom Mentock  
Notary Public

MAY 18, 2000



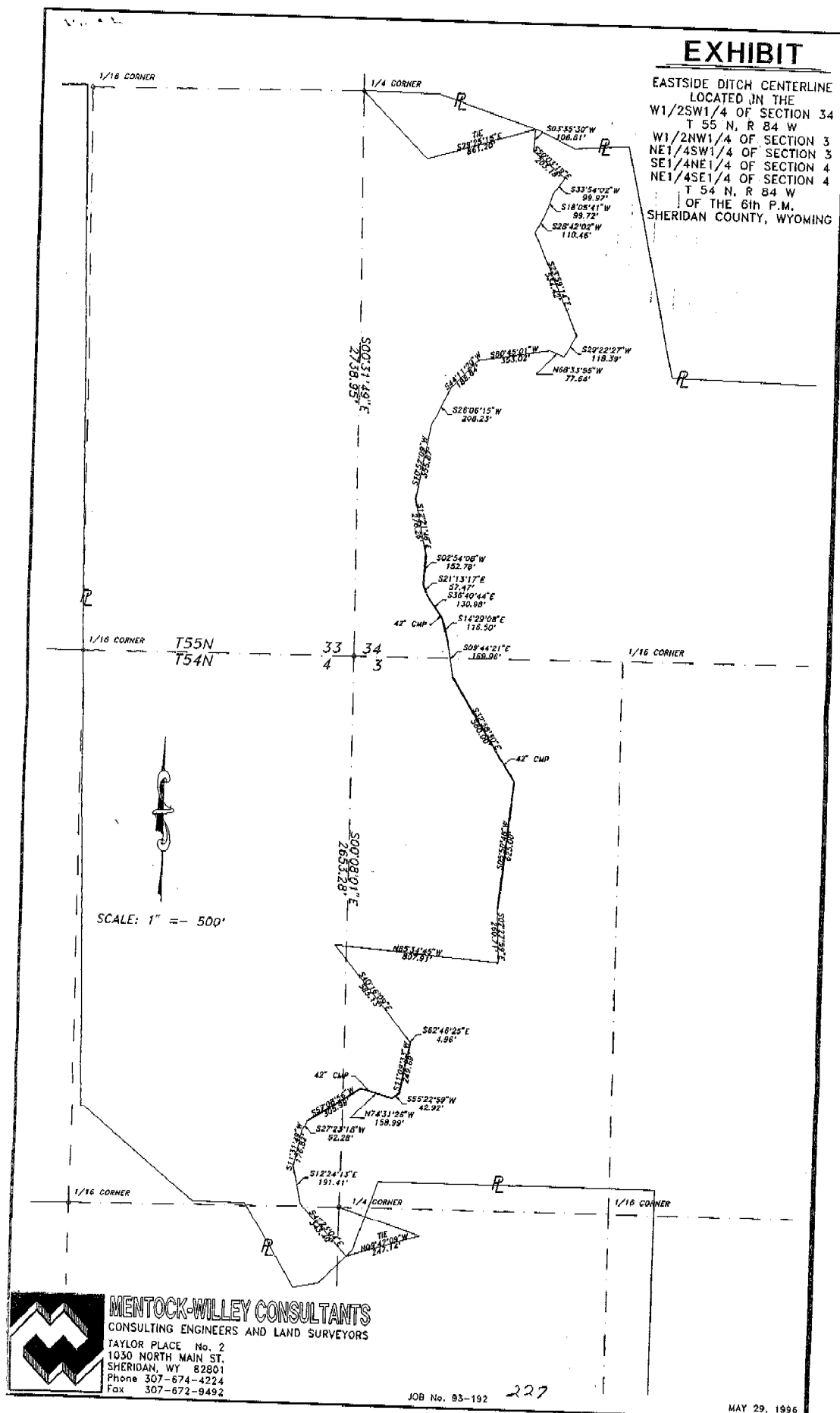
## LEGAL DESCRIPTION

The centerline of the Eastside Ditch, said ditch being located in the  $W\frac{1}{2}SW\frac{1}{4}$  of Section 34, T55N, R84W, and in the  $W\frac{1}{2}NW\frac{1}{4}$  and the  $NE\frac{1}{4}SW\frac{1}{4}$  of Section 3, and the  $SE\frac{1}{4}NE\frac{1}{4}$  and  $NE\frac{1}{4}SE\frac{1}{4}$  of Section 4, all in T 54 N, R 84 W of the 6th P.M., Sheridan County, Wyoming being more particularly described as follows:

Beginning at a point on the northerly boundary of Powder Horn Ranch, said point being located  $S79^{\circ}25'15''E$ , 861.20 feet from the  $\frac{1}{4}$  Corner common to Sections 33 and 34, T55N, R84W; thence  $S03^{\circ}35'30''W$ , 106.61 feet; thence  $S50^{\circ}03'19''E$ , 203.18 feet; thence  $S33^{\circ}54'02''W$ , 99.97 feet; thence  $S18^{\circ}05'41''W$ , 99.72 feet; thence  $S28^{\circ}42'02''W$ , 110.46 feet; thence  $S23^{\circ}59'14''E$ , 534.42 feet; thence  $S29^{\circ}22'27''W$ , 118.39 feet; thence  $N68^{\circ}33'55''W$ , 77.64 feet; thence  $S80^{\circ}45'01''W$ , 353.02 feet; thence  $S44^{\circ}11'20''W$ , 188.84 feet; thence  $S26^{\circ}06'15''W$ , 208.23 feet; thence  $S10^{\circ}52'09''W$ , 355.87 feet; thence  $S12^{\circ}21'46''E$ , 276.26 feet; thence  $S02^{\circ}54'08''W$ , 152.78 feet; thence  $S21^{\circ}13'17''E$ , 57.47 feet; thence  $S36^{\circ}40'44''E$ , 130.98 feet; thence  $S14^{\circ}29'08''E$ , 116.50 feet; thence  $S09^{\circ}44'21''E$ , 169.96 feet; thence  $S32^{\circ}58'30''E$ , 580.00 feet; thence  $S05^{\circ}50'48''W$ , 625.00 feet; thence  $S02^{\circ}27'59''E$ , 260.71 feet; thence  $N85^{\circ}34'45''W$ , 807.91 feet; thence  $S40^{\circ}16'09''E$ , 585.13 feet; thence  $S62^{\circ}46'25''E$ , 4.96 feet; thence  $S11^{\circ}09'33''W$ , 249.69 feet; thence  $S55^{\circ}22'59''W$ , 42.92 feet; thence  $N74^{\circ}31'26''W$ , 158.99 feet; thence  $S57^{\circ}08'56''W$ , 305.99 feet; thence  $S27^{\circ}23'18''W$ , 52.28 feet; thence  $S11^{\circ}31'49''W$ , 176.82 feet; thence  $S12^{\circ}24'13''E$ , 191.41 feet; thence  $S42^{\circ}23'04''E$ , 343.40 feet to the Southerly boundary of Powder Horn Ranch, said point being located  $N09^{\circ}42'09''W$ , 247.14 feet from the  $\frac{1}{4}$  Corner common to said Sections 3 and 4, T54N, R84W.

# EXHIBIT

EASTSIDE DITCH CENTERLINE  
LOCATED IN THE  
W1/2SW1/4 OF SECTION 34  
T 55 N, R 84 W  
W1/2NW1/4 OF SECTION 3  
NE1/4SW1/4 OF SECTION 3  
SE1/4NE1/4 OF SECTION 4  
NE1/4SE1/4 OF SECTION 4  
T 54 N, R 84 W  
OF THE 6th P.M.  
SHERIDAN COUNTY, WYOMING



**MENTOCK-WILEY CONSULTANTS**  
CONSULTING ENGINEERS AND LAND SURVEYORS  
TAYLOR PLACE No. 2  
1030 NORTH MAIN ST.  
SHERIDAN, WY 82801  
Phone 307-674-4224  
Fax 307-672-9492

JOB No. 93-192 227

MAY 29, 1996