

Board of County Commissioners

Staff Report

Matters from Staff Agenda item #____

Meeting Date: October 18, 2016

Presenter: Brian Schilling

Submitting Dept: Engineering - Pathways

Subject: Consideration of Memorandums of Understanding with WYDOT MOU for Encroachment on South 89 Pathway Easements

Statement / Purpose:

Consideration of approval of two Memorandums of Understanding between the Wyoming Department of Transportation and Teton County for encroachment on Teton County easements.

Background / Description (Pros & Cons):

The Wyoming Department of Transportation (WYDOT) is in the process of a major construction project between South Park Loop Road and Hoback Junction that includes widening the highway from 2 lanes to sections of 3, 4, and 5-lane highway. WYDOT is seeking to install several drainage structures and acquire drainage facility easements outside of the WYDOT right-of-way which happen to conflict with existing easements held by Teton County for the pathway along Highway 89.

See the attached letter and MOUs (and exhibits) for terms.

Statement of Strategic Intent addressed by this item (Identify BCC goals accomplished/addressed):

Environmental Stewardship

- Support an integrated and efficient multi-modal transportation system
- Partner and collaborate with local, state, federal and other agencies

Economic Sustainability

- Partner to develop economic vitality consistent with community values as expressed in the Comprehensive Plan
- Deliver efficient government services to ensure the safety and welfare of residents and visitors

Attachments:

1. Cover letter from WYDOT
2. MOU for Melody Ranch area easement (5 pages plus Exhibits A and B)
3. MOU for CES area easement (5 pages plus Exhibits A and B)

Fiscal Impact:

There is no fiscal impact to the County.

Staff Impact:

Minimal

Legal Review:

The MOU draft has been reviewed and approved by the County Attorney.

Recommendation:

Staff recommends that the Board approve the MOUs with WYDOT.

Suggested Motion:

I move to approve the Memorandums of Understanding with the Wyoming Department of Transportation for installation of drainage structures as part of the Jackson South highway widening project.



Matthew H. Mead
Governor

Wyoming Department of Transportation

"Providing a safe, high quality, and efficient transportation system"

5300 Bishop Boulevard
Cheyenne, Wyoming 82009-3340



William T. Panos
Director

September 28, 2016

Brian Schilling
Teton County Pathways
P. O. Box 3594
Jackson, WY 83001

Dear Mr. Schilling:

Please find attached two Memorandums of Understanding (MOU) between the Wyoming Department of Transportation (WYDOT) and Teton County regarding two separate areas along Highway 26/89/191 south of Jackson. As part of our road project, we are acquiring drainage facility easements outside of our right-of-way for maintenance of pipes running under the highway. These easements conflict with existing easements to Teton County for pathway use. WYDOT acknowledges that if the pathway is damaged by WYDOT's operations while maintaining these pipes, the pathway will be replaced by WYDOT.

Please sign the enclosed MOUs and return to WYDOT in the enclosed postage pre-paid envelopes at your earliest convenience. I can be reached by phone or email if you have questions, 307-777-4122 or Roy.Weber@wyo.gov.

Sincerely,

By: Roy Weber
Project Manager

MEMORANDUM OF UNDERSTANDING
Between The
WYOMING DEPARTMENT OF TRANSPORTATION
And
TETON COUNTY

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the Wyoming Department of Transportation, herein referred to as the "Department" and Teton County, herein referred to as the "County".

1. **WHEREAS**, This MOU acknowledges the easement interests of the Transportation Commission of Wyoming, herein referred to as the "Commission" and the County at the location legally described below and shown on the attached Exhibit 'A':

All that portion of Tract 1 of Melody Ranch, Lower Ranch Tracts, located in the NW¼SW¼ of Section 21, T.40N., R.116W. of the 6th P.M., Teton County, Wyoming, described by metes and bounds as follows:

Commencing at the south 1/16 corner of between Sections 20 and 21, said corner being monumented by a 3¼ inch cap, unreadable, as shown on Record of Survey prepared by Cloey C. Wall, PLS 482, recorded on 12-06-04 in Document No. 0639075, Book 2map, Page 275 of the Teton County Records, from which the southwest 1/16 corner of said Section 21 bears S. 89°50'08.7" E. a distance of 1,325.63 feet, said corner being monumented by a 3¼ inch aluminum cap on 3/4 inch rebar stamped PLS 482, 2003;

thence N. 51°51'10.1" E. a distance of 469.07 feet to the southwesterly corner of a jog on the existing southwesterly right-of-way boundary of U.S. Highway No. 26, 89, 189 & 191, said corner being monumented by a 3¼ inch aluminum cap on a 2½ inch pipe stamped PLS 482, 2004, being the **TRUE POINT OF BEGINNING**;

thence along said jog N. 58°07'21.8" E., a distance of 16.40 feet to the northeasterly corner thereof and a point on a circular curve concave northeasterly, the radius of which is 2,964.79 feet and a line tangent to said curve bears S. 31°45'13.2" E.;

thence southeasterly along said curve through a central angle of 00°46'43.4", arc distance of 40.29 feet, a chord bearing of S. 32°08'34.9" E. and a chord distance of 40.29 feet;

thence S. 57°10'18.8" W. a distance of 35.00 feet to a point on a circular curve concave northeasterly, the radius of which is 2,999.79 feet and a line tangent to said curve bears N. 32°32'09.0" W.;

thence northwesterly along said curve through a central angle of 00°46'50.5", arc distance of 40.87 feet, a chord bearing of N. 32°08'46.1" W. and a chord distance of 40.87 feet;

thence N. 58°07'21.8" E. a distance of 18.60 feet to the point of beginning.

LESS AND EXCEPTING that part outside the existing 30 foot pathway easement recorded in Document No. 0421809, Book 322, Page 654-662 of the Teton County Records.

The above described parcel of land contains 1,216 sq. ft., more or less.

The County holds an existing easement interest pursuant to the recorded document titled Recreational Trail Access Easement and Agreement, dated 07-16-96, Doc. No. 0421809, Book 322, Pages 654-662 of the Teton County Records (attached as Exhibit 'B').

2. **NOW THEREFORE, IT IS MUTUALLY UNDERSTOOD AND AGREED UPON BY AND BETWEEN THE PARTIES THAT**, the Department intends to construct within the Commission's easement, shown in red on Exhibit 'A' (which area shall be hereinafter referred to as the "Easement Property"), a drainage facility easement. All construction costs associated with constructing the drainage facility shall be the sole responsibility of the Department. The Department shall be responsible for all future maintenance of the Easement Property. The Department agrees to construct the drainage facility in a good and workmanlike manner in compliance with all applicable federal, state and local laws and in a manner that has the potential for creating or causing the least interference with and disruption of the County's operations, including the use of its easement. The construction and/or use of the drainage facility shall not interfere with the County's business operations.
3. **THE DEPARTMENT** acknowledges that a portion of the parcel described above is already encumbered by the easement held by the County, as noted on Exhibit 'A'. The Department shall provide the County reasonable notice of any activities that may cause damage to the County, its operations, or the use of its easement as shown on Exhibit 'A'. The Department shall hold the County harmless from and against any and all claims, demands, costs, expenses, damages and liabilities for any injury to a person or, damage to real or personal property caused by, resulting from or arising out of any act, omission or neglect of Department or its agents, servants, employees or contractors in connection with the Department's use of the Easement Property. In addition, the Department hereby fully and totally releases, acquits and forever discharges the County (including without limitation, as applicable, any past, present and future officer's, directors, employees, agents, representatives, subsidiaries, parent and other affiliates, insurers, predecessors, successors and assigns) from any and all claims, lawsuits, demands, actions, causes of action or claims for relief, rights, damages, liabilities, costs, attorney's fees, expenses and compensation whatsoever relating to the Easement Property, known and unknown, foreseen and unforeseen, which previously existed or now exist.
4. **THE COUNTY** shall provide the Department with reasonable notice of activities that may cause damage to the Department, within the area described as the Easement Property and shown on Exhibit 'A'. The County and its successors and assigns shall have the right to use, maintain, construct and operate within the County easement.
5. **MUTUAL SOVEREIGN IMMUNITY**. The State of Wyoming, the Department and the Commission, do not waive sovereign immunity by entering into this MOU, and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. 1-39-104(a) and all other state law.

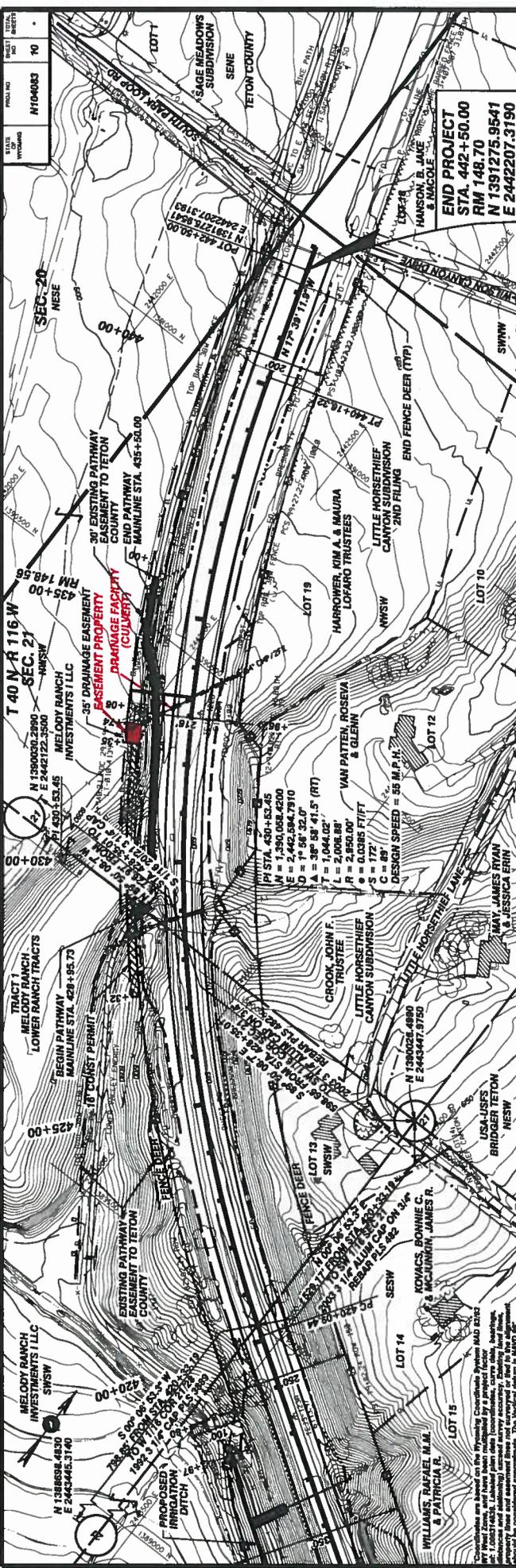
The County does not waive governmental immunity related to any issue governed by this MOU. The County specifically retains all immunities and defenses available to it.

Designations of venue, choice of law, enforcement action, and similar provisions should not be construed as waiver of governmental immunity.

6. **GOVERNING LAW.** This MOU shall be construed under the laws of the State of Wyoming.
7. **SEVERABILITY OF PROVISIONS.** If any of the terms or provisions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, then the remaining terms and provisions of this MOU shall not be affected thereby, shall remain in full force and effect, and shall be valid and enforceable to the full extent permitted by law.
8. **RECORDING.** A copy of this MOU shall be recorded by the Department in the Teton County Clerk's Office. The terms and conditions of this MOU shall "run with the land", and shall bind all parties hereto, including their successors and assigns.
9. **ENTIRE AGREEMENT; AMENDMENT.** This MOU constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof. This MOU may be modified or amended only by written instrument signed by the Department and the County, or their respective successors and assigns.
10. **EFFECTIVE.** This MOU is effective upon execution by both parties and recordation with the County Clerk of Teton County. All parties having read the entire MOU and having full knowledge of the MOU, its intent, content, and of all clauses contained herein, place their signatures below, acknowledging and giving full and complete approval of this MOU. This MOU shall be binding upon the parties hereto, their representatives, heirs, successors or assigns.

Approved as to Form and Execution

State of Wyoming



END PROJECT
 STA. 442+50.00
 RM 148.70
 N 1391275.9541
 E 2442207.3190

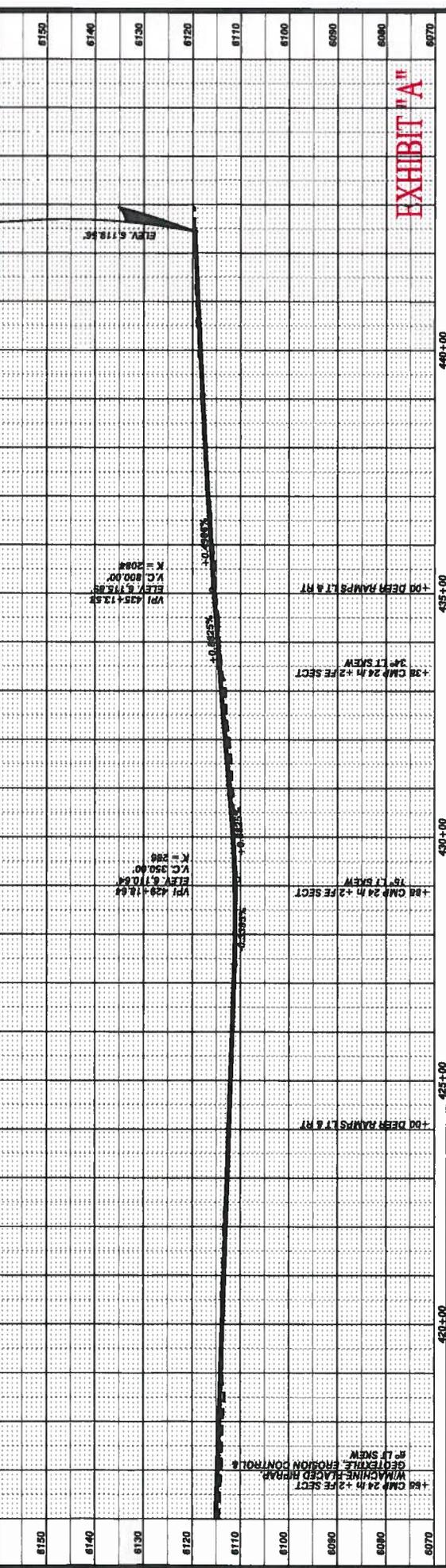


EXHIBIT "A"

Desi ned B : 6070 6080 6090 6100 6110 6120 6130 6140 6150 6160 6170 6180 6190 6200 6210 6220 6230 6240 6250 6260 6270 6280 6290 6300 6310 6320 6330 6340 6350 6360 6370 6380 6390 6400 6410 6420 6430 6440 6450 6460 6470 6480 6490 6500 6510 6520 6530 6540 6550 6560 6570 6580 6590 6600 6610 6620 6630 6640 6650 6660 6670 6680 6690 6700 6710 6720 6730 6740 6750 6760 6770 6780 6790 6800 6810 6820 6830 6840 6850 6860 6870 6880 6890 6900 6910 6920 6930 6940 6950 6960 6970 6980 6990 7000 7010 7020 7030 7040 7050 7060 7070 7080 7090 7100 7110 7120 7130 7140 7150 7160 7170 7180 7190 7200 7210 7220 7230 7240 7250 7260 7270 7280 7290 7300 7310 7320 7330 7340 7350 7360 7370 7380 7390 7400 7410 7420 7430 7440 7450 7460 7470 7480 7490 7500 7510 7520 7530 7540 7550 7560 7570 7580 7590 7600 7610 7620 7630 7640 7650 7660 7670 7680 7690 7700 7710 7720 7730 7740 7750 7760 7770 7780 7790 7800 7810 7820 7830 7840 7850 7860 7870 7880 7890 7900 7910 7920 7930 7940 7950 7960 7970 7980 7990 8000 8010 8020 8030 8040 8050 8060 8070 8080 8090 8100 8110 8120 8130 8140 8150 8160 8170 8180 8190 8200 8210 8220 8230 8240 8250 8260 8270 8280 8290 8300 8310 8320 8330 8340 8350 8360 8370 8380 8390 8400 8410 8420 8430 8440 8450 8460 8470 8480 8490 8500 8510 8520 8530 8540 8550 8560 8570 8580 8590 8600 8610 8620 8630 8640 8650 8660 8670 8680 8690 8700 8710 8720 8730 8740 8750 8760 8770 8780 8790 8800 8810 8820 8830 8840 8850 8860 8870 8880 8890 8900 8910 8920 8930 8940 8950 8960 8970 8980 8990 9000 9010 9020 9030 9040 9050 9060 9070 9080 9090 9100 9110 9120 9130 9140 9150 9160 9170 9180 9190 9200 9210 9220 9230 9240 9250 9260 9270 9280 9290 9300 9310 9320 9330 9340 9350 9360 9370 9380 9390 9400 9410 9420 9430 9440 9450 9460 9470 9480 9490 9500 9510 9520 9530 9540 9550 9560 9570 9580 9590 9600 9610 9620 9630 9640 9650 9660 9670 9680 9690 9700 9710 9720 9730 9740 9750 9760 9770 9780 9790 9800 9810 9820 9830 9840 9850 9860 9870 9880 9890 9900 9910 9920 9930 9940 9950 9960 9970 9980 9990 10000

MELODY RANCH INVESTMENTS LLC
 T 40 N R 116 W
 SEC. 21
 SEC. 20
 TETON COUNTY
 SAGE MEADOWS SUBDIVISION
 HANSON, B. JAKE & ANACOLE
 HARROWER, KIM A. & MAURA
 VAN PATTEN, ROSA & GLENN
 CROOK, JOHN F. TRUSTEE
 LITTLE HORSE THIEF CANYON SUBDIVISION
 USA-JESSE BRIGGS TETON
 KOWACS, BONNIE C. & MCLUNNAN, JAMES R.
 WILLIAMS, RAFAEL M.M. & PATRICIA R.
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RECREATIONAL TRAIL ACCESS EASEMENT AND AGREEMENT

This Easement and Agreement is made effective the 15th day of ^{May} 1996, by and between Melody Ranch Investments III LLC, a Wyoming limited liability company ("Grantor") and Teton County, Wyoming ("Grantee").

WHEREAS, the Grantor is the owner in fee simple of that certain real estate situated in Teton County, Wyoming, more particularly described in Exhibit "A" attached hereto, over which the Grantee wishes to obtain a right for the public to enter and pass for recreational purposes, under circumstances where Grantor is provided the immunity from liability recorded by W.S. §34-19-101 (1977) *et seq*; and

WHEREAS, the Grantee is a governmental body whose body powers include the authority to receive easements in land for the public that has joined in the creation and funding of the Jackson/Teton County Parks and Recreation Department;

NOW, THEREFORE, for and in consideration of good and valuable consideration paid by the Grantee to the Grantor, receipt of which is hereby acknowledged, and in consideration of the covenants and undertakings, hereinafter set forth, the Grantor hereby does give, grant, bargain, sell, and confirm to the Grantee a perpetual Easement and right over and on the hereinafter described real estate, of the nature and character and to the extent hereinafter expressed, for the purpose of permitting the Grantee to construct and maintain trails for equestrian, pedestrian, bicycle and cross-country skiing passage and repassage by the public on and along a trail within an easement as described on the attached Exhibit "A", under the following terms and conditions:

The Grantee, for itself and for its successors and assigns, covenants and agrees that, once constructed, it will maintain the aforesaid trails for public recreational purposes, including equestrian, pedestrian, cross-country skiing and bicycle passage and repassage, and that;

1. There shall be no operation of motorcycles, all-terrain vehicles, snowmobiles, or any other type of motorized vehicle, except that the Grantor shall permit the operation of vehicles by the Grantee in a manner and to an extent satisfactory to the Grantor for the initial construction and periodic maintenance of trails.

2. There shall be no removal, destruction, cutting, or alteration of any vegetation, whether dead or alive, nor any disturbance or change in the natural habitat in any manner beyond that necessary for construction and maintenance of trail for public passage and prevention of trail deterioration or erosion.

Revised 5/1/96

RELEASED	1
INDEXED	
ABSTRACTED	

Grantor: MELODY RANCH INVESTMENTS III*
Grantee: TETON COUNTY
Doc 0421809 bk 322 pg 654-662 Filed at 4:24 on 07/16/96
V Jolynn Coonce, Teton County Clerk fees: 22.00
By LANI KAI MATTHEWS Deputy

3. There shall be only such spraying or application of biocides as are necessary to control noxious weeds or plants interfering with the use of the Easement.

4. Once they are constructed, Grantee shall be deemed to be in control of and shall maintain the trails at its expense in a neat and orderly condition, free of trash, rubbish, or any other unsightly materials, to the satisfaction of the Grantor, and it shall undertake periodic inspections to ensure that the trails are maintained in a neat and orderly manner and that the terms and conditions of the indenture are met.

5. Grantee shall save, defend, indemnify, and hold harmless Grantor and any and all its family members, affiliate companies, officers, employees, tenants, invitees, licensees, successors, assigns, or any other person or party claiming under it against any losses, damages, suits, claims, costs, judgments, and expenses, including attorneys' fees which any of them may directly or indirectly suffer, sustain, be liable for, or subject to, arising out of or connected with the exercise of the easement herein granted, unless caused by the willful or malicious failure of Grantor to warn or guard against a known dangerous condition, use, structure, or activity.

6. Prior to the execution of this indenture and throughout its duration, Grantee shall provide and maintain a liability insurance policy in the amount of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) containing a policy endorsement specifically insuring Grantee's indemnity of the Grantor against any and all suits or claims for damages or loss which the Grantor may directly or indirectly suffer, sustain, be liable for, or subject to, arising out of, or connected with, the exercise of the Easement herein granted. The Grantor shall have the right to prohibit the use of the Easement herein granted during any period for which Grantee fails to maintain the insurance coverage herein agreed to.

7. The parties understand that, by acceptance of the Easement and entering into this Agreement, Grantee is not obligated to construct any trail immediately, but must do so within five (5) years of the date hereof or this Easement shall be deemed to be abandoned and shall terminate. Grantor hereby authorizes Grantee to enter upon the property for purposes of clearing, grading, and constructing such trail improvements, including paving, culverts, bridges, etc., as may be necessary to utilize the Easement granted. However, there shall be no construction or placement of fences, billboards, or any other structures (except signs, interpretative or exercise stations) in addition to the trail improvements without the express consent of the Grantor.

8. In the event that the property or any part thereof shall ever be condemned or taken by eminent domain, or as a result of an inverse condemnation action, then the Easement herein granted shall terminate automatically as to the portion of

the property so taken, and in such event the Grantor, or its successors or assigns, shall be as fully compensated as though this Easement had never been granted, unless the rights conveyed herein were purchased by grantee or granted as a condition to any permit issued to Grantor by Grantee.

9. This grant shall be for recreational purposes, as defined and provided for under Wyoming's Recreational Use Statute (W.S. §34-19-101 (1977), et seq), and in the event such statute shall be repealed or amended so as to remove the immunity provided to Grantor, Grantor may immediately terminate this easement by written notice delivered to Grantee.

RESERVED RIGHTS

Notwithstanding any of the foregoing covenants to the contrary, the Grantor specifically reserves for itself, its family members, affiliate companies, officers, employees, tenants, invitees, licensee, successors, assigns, and other person or party claiming under it the following reserved rights:

1. The right to enter, pass, and repass the burdened lands at any time, including the superior right to use any prior easement affecting the property described herein.

2. The right to establish utility and road Easements over, upon and under the trail Easement as long as the trail is returned to its original condition after construction of the necessary utility and road facilities.

3. All rights as owner of the property, including the right to use the property for all purposes not inconsistent with this indenture.

4. The right, in a reasonable manner and at reasonable times, to enforce by proceedings at law or in equity the terms and conditions of this indenture. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantor for any changes to the granted easements due to causes beyond the Grantor's control, such as changes caused by fire storm, landslide, erosion, falling trees or branches, plant growth, water, or any other act of nature, or the unauthorized acts of third persons.

5. It is understood and agreed that this indenture shall not affect or reduce the total acreage of the property for any regulatory purposes, such as permitted or required site areas, Floor Area Ratios (F.A.R.), open space ratios, building coverage, site coverage or impervious surface calculations.

6. It is understood and agreed that this indenture imposes no other obligations or restrictions upon the Grantor, its family members, affiliate companies, officers, employees, tenants, invitees, licensee, successors, assigns, or any other person or

party claiming under it, and that neither the Grantor nor its family members, affiliate companies, officers, employees, tenants, invitee, licensees, successors, assigns, or any other person or party claiming under it shall be in any way restricted in their use of said lands for all purposes, present and future, not inconsistent with this grant.

7. Nothing herein shall be deemed to affect any mortgage, lien, or other interest in the lands described herein which were in existence at the time of the execution of this instrument.

8. In the event Grantee should no longer enjoy governmental immunity or provide the insurance coverage provided for herein, or in the event of the abandonment of the trail by failure to maintain it for a period of one (1) year, Grantor may, upon thirty (30) days' written notice and failure to cure the situation by Grantee, terminate this Easement.

TO HAVE AND TO HOLD the said granted and bargained Easement to the Grantee and to its successors and assigns throughout the term hereof for its proper use in accordance with the terms hereof. The provisions hereof shall bind and the benefits and advantages shall inure to the respective successors and assigns of the parties hereto.

GRANTOR:

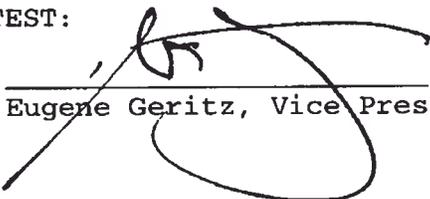
MELODY RANCH INVESTMENTS III LLC,
a Wyoming limited liability
company

BY: Melody Ranch Investments,
Inc., a Wyoming Corporation, as
Manager and Member

[NO SEAL]

By: Paul von Gontard By: David K. Larson
Paul von Gontard, President,
by David K. Larson as
Attorney-in-Fact

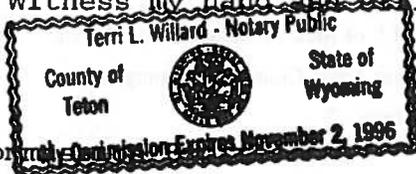
ATTEST:

BY: 
Eugene Geritz, Vice President

STATE OF WYOMING)
) ss.
COUNTY OF TETON)

The foregoing instrument was acknowledged before me by David K. Larson, as Attorney-in-Fact for Paul von Gontard, and Eugene Geritz, as President and Vice President, respectively, of Melody Ranch Investments, Inc., as Manager and Member of Melody Ranch Investments III LLC, this 15 day of May, 1996.

Witness my hand and official seal.



Terri L. Willard
Notary Public

My Commission Expires November 2, 1996

RECREATIONAL TRAIL ACCESS EASEMENT AGREEMENT

GRANTEE:

BOARD OF COUNTY COMMISSIONERS
OF TETON COUNTY, WYOMING

BY: M. A. S.



Attest:
V. Glynn Coonce
County Clerk

STATE OF WYOMING)
) ss
COUNTY OF TETON)

The foregoing Recreational Trail Access Easement and Agreement was acknowledged before me by Mike Herau, Chairman of the Board of County Commissioners of Teton County, Wyoming, this 15 day of May, 1996.

Witness my hand and official seal.



V. Glynn Coonce
Notary Public

My Commission Expires 11/1/99

Revised 5/1/96

EXHIBIT "A"
DESCRIPTION
OF A
RECREATIONAL TRAIL
ACCESS EASEMENT
AND
AGREEMENT

TO WIT:

Three parcels of land being parts of Lots 1, 3, 5, and 8 of Melody Ranch Lower Ranch Master Plat, a subdivision of record in the Office of the Clerk of Teton County, Wyoming as Plat No. 875 ; said parcels are more particularly described below:

PARCEL ONE is a thirty foot (30.00') wide strip of land being parts of Lots 3, 5 and 8 of said Melody Ranch Lower Ranch Master Plat; said strip being located in the SE1/4NE1/4, the W1/2NE1/4, the NE1/4NW1/4 of Section 28 and the SE1/4SW1/4 of Section 21, T40N, R116W, 6th P.M., Teton County, Wyoming;

the centerline of said strip is described as follows:

BEGINNING at a point which lies on the east line of said Lot 8, coincident with a portion of the east line of said SE1/4NE1/4 of Section 28, and from which the southeast corner of said SE1/4NE1/4 (identical with the one-quarter corner common to said Section 28 and Section 27 of said Township and Range) bears S00°04'38"E, 11.46 feet; said corner is monumented as described in a Corner Record filed in said Office; said point being the beginning of a circular curve, from which the radius point of said curve bears N02°22'01"E, 988.09 feet;

thence northwesterly along the arc of said curve, 546.69 feet through a central angle of 31°42'02" to the end of said curve, being the beginning of a compound circular curve, having a radius of 350.00 feet;

thence northwesterly along the arc of said curve, 257.32 feet through a central angle of 42°07'24" to the end of said curve, being the beginning of a reverse circular curve, having a radius of 699.90 feet;

thence northwesterly along the arc of said curve, 441.27 feet through a central angle of 36°07'23" to the end of said curve;

thence N49°55'57"W, 376.39 feet;

thence N58°25'10"W, 326.58 feet to the boundary line common to said Lots 8 and 5;

thence into said Lot 5, continuing N58°25'10"W, 48.35 feet to the beginning of a circular curve, concave to the northeast, having a radius of 144.50 feet;

thence northwesterly along the arc of said curve, 131.49 feet through a central angle of 52°08'20" to the end of said curve;

thence N06°16'50"W, 89.75 feet to the beginning of a circular curve, concave to the southwest, having a radius of 267.39 feet;

thence northwesterly along the arc of said curve, 125.80 feet through a central angle of 26°57'22" to the end of said curve;

thence N33°14'12"W, 315.20 feet to the beginning of a circular curve, concave to the southwest, having a radius of 354.53 feet;

thence northwesterly along the arc of said curve, 245.70 feet through a central angle of 39°42'25" to the end of said curve, being the beginning of a compound circular curve, having a radius of 897.25 feet;

thence northwesterly along the arc of said curve, 172.68 feet through a central angle of 11°01'36" to the end of said curve;

thence N83°58'14"W, 153.71 feet to the beginning of a circular curve, concave to the northeast, having a radius of 295.69 feet;

thence northwesterly along the arc of said curve, 333.93 feet through a central angle of 64°42'16" to the end of said curve, being the beginning of a reverse circular curve, having a radius of 345.82 feet;

thence northwesterly along the arc of said curve, 172.20 feet through a central angle of 28°31'50" to the end of said curve;

thence N47°47'48"W, 221.64 feet;

thence N56°54'45"W, 122.16 feet to the intersection with the boundary line common to said Lots 5 and 3;

thence into said Lot 3, continuing N56°54'45"W, 319.50 feet to the beginning of a circular curve, concave to the southwest, having a radius of 276.16 feet;

thence northwesterly along the arc of said curve, 90.98 feet through a central angle of 18°52'32" to the end of said curve, being the beginning of a reverse circular curve, having a radius of 155.45 feet;

thence northwesterly along the arc of said curve, 107.56 feet through a central angle of 39°38'41" to the end of said curve, being the beginning of a reverse circular curve, having a radius of 495.39 feet;

thence northwesterly along the arc of said curve, 217.69 feet, through a central angle of 25°10'39" to the end of said curve, being the beginning of a reverse circular curve, having a radius of 546.90 feet;

thence northwesterly along the arc of said curve, 100.61 feet, through a central angle of 10°32'27" to the end of said centerline, being the intersection with the boundary of said Lot 3, coincident with a portion of the westerly right-of-way line of U.S. Highway 26-89-189-191;

the west one-sixteenth corner common to said Section 21 and said Section 28 bearing S47°36'52"W, 483.64 feet from said intersection; said corner is monumented as described in a Corner Record filed in said Office;

the side lines of said strip being lengthened or shortened accordingly to meet at angle points and to meet the boundary of said Lot 8 at the south end of said strip and the boundary of said Lot 3 at the north end of said strip;

PARCEL TWO being a thirty foot (30.00') wide strip of land being part of Lot 1 and Lot 3 of said Melody Ranch Lower Ranch Master Plat; said strip is located in the SE1/4SW1/4 and the W1/2SW1/4 of Section 21, T40N, R116W, 6th P.M., Teton County, Wyoming;

the centerline of said strip is described as follows:

BEGINNING at a point on the boundary of said Lot 3, coincident with a portion of the westerly right-of-way line of U.S. Highway 26-89-189-191; the west one-sixteenth corner common to said Section 21 and Section 28 of said Township and Range bears S12°47'24"W, 592.70 feet from said point; said corner is monumented as described in a Corner Record filed in said Office; said point is on a circular curve, from which the radius point of said curve bears S28°00'10"W, 194.66 feet;

thence westerly along the arc of said curve, 92.84 feet through a central angle of 27°19'34" to the end of said curve;

thence N89°19'24"W, 275.65 feet to the beginning of a circular curve, concave to the northeast, having a radius of 129.40 feet;

thence northwesterly along the arc of said curve, 124.62 feet through a central angle of 55°10'47" to the end of said curve;

thence N34°08'37"W, 350.71 feet to the intersection with the boundary line common to said Lots 3 and 1;

thence into said Lot 1, continuing N34°08'37"W, 260.79 feet to the beginning of a circular curve, concave to the east, having a radius of 245.71 feet;

thence northerly along the arc of said curve, 150.01 feet through a central angle of 34°58'50" to the end of said centerline, being the intersection with the east line of said Lot 1, coincident with a portion of said westerly Highway right-of-way line; the radius point of said curve bears S89°09'47"E from said intersection; the northwest corner of the SW1/4SW1/4 of said Section 21 (identical with the south one-sixteenth corner common to said Section 21 and Section 20 of said Township and Range) bears N88°45'28"W, 608.87 feet from said intersection; said corner is monumented as described in a Corner Record filed in said Office;

the side lines of said strip being lengthened or shortened accordingly to meet at angle points and to meet the boundary of said Melody Ranch Lower Ranch Master Plat at both the southerly and northerly ends of said strip;

PARCEL THREE is a thirty foot (30.00') wide strip of land being part of Lot 1 of said Melody Ranch Lower Ranch Master Plat; said strip is located in the NE1/4SE1/4 of Section 20 and the W1/2SW1/4 of Section 21, T40N, R116W, 6th P.M., Teton County, Wyoming;

said strip is parallel with and adjoins the east line of said Lot 1 extending from the north boundary of said Lot 1 to the intersection with Parcel 2 described herein;

the **BASE BEARING** for this description is N00°15'20"W along the west line of the NW1/4 of Section 20, T40N, R116W, 6th P.M., Teton County, Wyoming;

portions of said **PARCEL ONE** are **SUBJECT TO** the terms and conditions of that Declaration of Wildlife Migration Corridor to be recorded in said Office concurrently with the instrument to which this description is attached; portions of said **PARCEL THREE** are **SUBJECT TO** that Reservation For Future Easements created by said Melody Ranch Lower Ranch Master Plat for pathways, utilities, landscaping, signs, drainage, temporary construction activities related to improvements for the South Park County Road No. 22-1 and other purposes; said **PARCELS** are **SUBJECT TO** any other easements, rights-of-way, covenants, conditions, restrictions, reservations, agreements, or encumbrances of sight and/or record;

said **PARCELS** are shown on said plat of the Melody Ranch Lower Ranch Master Plat.



John J. Warren
Wyoming Professional Land Surveyor No. 4530
Jorgensen Engineering and Land Surveying, P.C.

Prepared December 19, 1995; Last Revision April 15, 1996
d.91085/d.wp/bp.wp
Project No. 91085.09

MEMORANDUM OF UNDERSTANDING
Between The
WYOMING DEPARTMENT OF TRANSPORTATION
And
TETON COUNTY

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the Wyoming Department of Transportation, herein referred to as the "Department" and Teton County, herein referred to as the "County".

1. **WHEREAS**, This MOU acknowledges the easement interests of the Transportation Commission of Wyoming, herein referred to as the "Commission" and the County at the location legally described below and shown on the attached Exhibit 'A':

All that portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T.40N., R.116W. of the 6th P.M., Teton County, Wyoming, described by metes and bounds as follows:

Commencing at the southwest 1/16 corner of said Section 27, said corner being monumented by a 3 $\frac{1}{2}$ inch brass cap stamped U.S. Dept. of Interior (BLM) 1966, as shown on Record of Survey prepared by Cloey C. Wall, PLS 482, recorded on 12-06-04 in Document No. 0639075, Book 2map, Page 275 of the Teton County Records, from which the south 1/16 corner between Section 27 and 28 bears N. 89°28'49.4" W. a distance of 1,324.52 feet, said corner being monumented by a 3 $\frac{1}{2}$ inch brass cap stamped U.S. Dept. of Interior (BLM)1966;

thence S. 27°45'19.8" W. a distance of 374.87 feet to the easterly corner of a jog on the existing westerly right-of-way boundary of U.S. Highway No. 26, 89, 189 & 191, also being the southeasterly corner of the existing pathway easement described in Book 336, Page 1033, Document No. 443024 of the Teton County Records, said corner being monumented by a 6 inch x 6 inch concrete monument with 3 $\frac{1}{4}$ inch brass tablet stamped PLS 482, 2003, also being the **TRUE POINT OF BEGINNING**;

thence westerly along said existing right-of-way jog and southerly boundary of said existing pathway easement S. 69°56'32.5" W. a distance of 25.00 feet;

thence N. 20°30'59.1" W. a distance of 121.18 feet;

thence N. 69°29'00.9" E. a distance of 25.00 feet to a point on said existing westerly right-of-way boundary of highway;

thence along said existing right-of-way boundary S. 20°30'59.1" E. a distance of 121.38 feet to the point of beginning.

The above described parcel of land contains 3,032 sq. ft., more or less.

The County holds an existing easement interest pursuant to the recorded document titled Recreational and Transportation Access Easement and Agreement, dated 07-02-97, Doc. No. 0443024, Book 336, Pages 1033-1038 of the Teton County Records (attached as

Exhibit 'B').

2. **NOW THEREFORE, IT IS MUTUALLY UNDERSTOOD AND AGREED UPON BY AND BETWEEN THE PARTIES THAT**, the Department intends to construct within the Commission's easement, shown in red cross hatch on Exhibit 'A' (which area shall be hereinafter referred to as the "Easement Property"), a drainage facility easement. All construction costs associated with constructing the drainage facility shall be the sole responsibility of the Department. The Department shall be responsible for all future maintenance of the Easement Property. The Department agrees to construct the drainage facility in a good and workmanlike manner in compliance with all applicable federal, state and local laws and in a manner that has the potential for creating or causing the least interference with and disruption of the County's operations, including the use of its easement. The construction and/or use of the drainage facility shall not interfere with the County's business operations.
3. **THE DEPARTMENT** acknowledges that a portion of the parcel described above is already encumbered by the easement held by the County, as noted on Exhibit 'A'. The Department shall provide the County reasonable notice of any activities that may cause damage to the County, its operations, or the use of its easement as shown on Exhibit 'A'. The Department shall hold the County harmless from and against any and all claims, demands, costs, expenses, damages and liabilities for any injury to a person or, damage to real or personal property caused by, resulting from or arising out of any act, omission or neglect of Department or its agents, servants, employees or contractors in connection with the Department's use of the Easement Property. In addition, the Department hereby fully and totally releases, acquits and forever discharges the County (including without limitation, as applicable, any past, present and future officer's, directors, employees, agents, representatives, subsidiaries, parent and other affiliates, insurers, predecessors, successors and assigns) from any and all claims, lawsuits, demands, actions, causes of action or claims for relief, rights, damages, liabilities, costs, attorney's fees, expenses and compensation whatsoever relating to the Easement Property, known and unknown, foreseen and unforeseen, which previously existed or now exist.
4. **THE COUNTY** shall provide the Department with reasonable notice of activities that may cause damage to the Department, within the area described as the Easement Property and shown on Exhibit 'A'. The County and its successors and assigns shall have the right to use, maintain, construct and operate within the County easement.
5. **MUTUAL SOVEREIGN IMMUNITY**. The State of Wyoming, the Department and the Commission, do not waive sovereign immunity by entering into this MOU, and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. 1-39-104(a) and all other state law.

The County does not waive governmental immunity related to any issue governed by this MOU. The County specifically retains all immunities and defenses available to it.

Designations of venue, choice of law, enforcement action, and similar provisions should not be construed as waiver of governmental immunity.

6. **GOVERNING LAW.** This MOU shall be construed under the laws of the State of Wyoming.
7. **SEVERABILITY OF PROVISIONS.** If any of the terms or provisions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, then the remaining terms and provisions of this MOU shall not be affected thereby, shall remain in full force and effect, and shall be valid and enforceable to the full extent permitted by law.
8. **RECORDING.** A copy of this MOU shall be recorded by the Department in the Teton County Clerk's Office. The terms and conditions of this MOU shall "run with the land", and shall bind all parties hereto, including their successors and assigns.
9. **ENTIRE AGREEMENT; AMENDMENT.** This MOU constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof. This MOU may be modified or amended only by written instrument signed by the Department and the County, or their respective successors and assigns.
10. **EFFECTIVE.** This MOU is effective upon execution by both parties and recordation with the County Clerk of Teton County. All parties having read the entire MOU and having full knowledge of the MOU, its intent, content, and of all clauses contained herein, place their signatures below, acknowledging and giving full and complete approval of this MOU. This MOU shall be binding upon the parties hereto, their representatives, heirs, successors or assigns.

EXHIBIT "B"

**RECREATIONAL AND TRANSPORTATION
ACCESS EASEMENT AND AGREEMENT**

This Easement and Agreement is made effective the 17th day of June, 1997, by and between Community Entry Services (CES) ("Grantor") and the TOWN OF JACKSON and TETON COUNTY, WYOMING (collectively referred to as "Grantee").

WHEREAS, the Grantor is the owner in fee simple of that certain real estate situated in Teton County, Wyoming, more particularly described in Exhibit "A" attached hereto, over which the Grantee wishes to obtain a right for the public to enter and pass for recreational purposes, under circumstances where Grantor is provided the immunity from liability recorded by W.S. §34-19-101 (1977) *et seq*; and

WHEREAS, the Grantee is a governmental body whose powers include the authority to receive easements in land for the public that has joined in the creation and funding of the Jackson/Teton County Parks and Recreation Department;

NOW, THEREFORE, for and in consideration of good and valuable consideration paid by the Grantee to the Grantor, specifically the construction of a new post-and-two-rail-fence along the westerly edge of this easement, receipt of which is hereby acknowledged, and in consideration of the covenants and undertakings hereinafter set forth, the Grantor hereby does give, grant, bargain, sell, and confirm to the Grantee a perpetual easement and right over and on the hereinafter described real estate, of the nature and character and to the extent hereinafter expressed, for the purpose of permitting the Grantee to construct and maintain pathways for bicycle, pedestrian, equestrian, and ski passage and repassage by the public on and along a pathway easement as described in Exhibit "A", and shown on the Easement Sketch, Exhibit "B", attached hereto, under the following terms and conditions:

The Grantee, for itself and for its successors and assigns, covenants and agrees that, once constructed, it will maintain the aforesaid pathways for public recreational purposes, including bicycle, pedestrian, equestrian, and ski passage and repassage, and that:

1. There shall be no operation of motorcycles, all-terrain vehicles, snowmobiles, or any other type of motorized vehicle, except that the Grantor shall permit the operation of vehicles by the Grantee in a manner and to an extent satisfactory to the Grantor for the initial construction and periodic maintenance of pathways.
2. There shall be no removal, destruction, cutting, or alteration of any vegetation, whether dead or alive, nor any disturbance or change in the natural habitat in any manner beyond that necessary for construction and maintenance of pathways for public passage and prevention of trail deterioration or erosion.
3. There shall be only such spraying or application of biocides as are necessary to control noxious weeds or plants interfering with the use of the easement.
4. Once they are constructed, Grantee shall be deemed to be in control of and shall maintain the pathways at its expense in a neat and orderly condition, free of trash, rubbish, or any other unsightly materials, to the satisfaction of the Grantor, and it shall undertake periodic inspections to ensure that the pathways are maintained in a neat and orderly manner and that the terms and conditions of this indenture are met.
5. Grantee shall save, defend, indemnify, and hold harmless Grantor and any and all of its family members, affiliate companies, officers, employees, tenants, invitees, licensees, successors, assigns, or any other person or party claiming under it against any losses, damages, suits, claims, costs, judgments, and expenses, including attorneys' fees which any of them may directly or

RELEASED	
INDEXED	
ABSTRACTED	
SCANNED	

Grantor: COMMUNITY ENTRY SERVICES
Grantee: TOWN OF JACKSON ET AL
Doc 0443024 bk 336 pg 1033-1038 Filed at 4:07 on 07/02/97
V Jolynn Coonce, Teton County Clerk fees: 0.00
By JULIE HODGES Deputy

indirectly suffer, sustain, be liable for, or subject to, arising out of or connected with the exercise of the easement herein granted, unless caused by the willful or malicious failure of Grantor to warn or guard against a known dangerous condition, use, structure, or activity.

6. Prior to the execution of this indenture and throughout its duration, Grantee shall provide and maintain a liability insurance policy in the amount of not less than two hundred fifty thousand dollars (\$250,000.00) for any number of claims arising out of a single transaction or occurrence; and five hundred thousand dollars (\$500,000) for all claims of all claimants arising out of a single transaction or occurrence; containing a policy endorsement specifically insuring Grantee's indemnity of the Grantor against any and all suits or claims for damages or loss which the Grantor may directly or indirectly suffer, sustain, be liable for, or subject to, arising out of or connected with the exercise of the easement herein granted. The Grantor shall have the right to prohibit the use of the easement herein granted during any period for which Grantee fails to maintain the insurance coverage herein agreed to.

7. There shall be no hunting, discharging of firearms, killing, trapping, or harassing of wildlife in any manner on or from the easement.

8. The parties understand that, by acceptance of this Easement and entering into this Agreement, Grantee is not obligated to construct any trail immediately, but must do so within five (5) years of the date hereof or this Easement shall be deemed to be abandoned and shall terminate. Grantor hereby authorizes Grantee to enter upon the property for purposes of clearing, grading, and constructing such trail improvements, including paving, culverts, bridges, etc., as may be necessary to utilize the Easement granted. However, there shall be no construction or placement of fences, billboards, or any other structures (except signs, interpretative or exercise stations) in addition to the trail improvements without the express consent of the Grantor.

9. In the event that the property or any part thereof shall ever be condemned or taken by eminent domain, or as a result of an inverse condemnation action, then the Easement herein granted shall terminate automatically as to the portion of the property so taken, and in such event the Grantor, or its successors or assigns, shall be as fully compensated as though this Easement had never been granted.

10. This grant shall be for recreational purposes, as defined and provided for under Wyoming's Recreational Use Statute (W.S. §34-19-101 (1977), *et seq.*), and in the event such statute shall be repealed or amended so as to remove the immunity provided to Grantor, and Grantor is not adequately protected by insurance or by other means, Grantor may immediately terminate this Easement by written notice delivered to Grantee.

RESERVED RIGHTS

Notwithstanding any of the foregoing covenants to the contrary, the Grantor specifically reserves for itself, its family members, affiliate companies, officers, employees, tenants, invitees, licensees, successors, assigns, and any other person or party claiming under it the following reserved rights:

1. The right to enter pass, and repass the burdened lands at any time, including the superior right to use any prior easement affecting the property described herein.

2. All rights as owner of the property, including the right to use the property for all purposes not inconsistent with this indenture.

3. The right, in a reasonable manner and at reasonable times, to enforce by proceedings at law or in equity the terms and conditions of this indenture. Nothing herein shall be construed to

(Seal) 
 Attest: *V. Salomon Coonce*
 County Clerk

GRANTEE: BOARD OF COUNTY
 COMMISSIONERS OF TETON COUNTY,
 WYOMING

By: *[Signature]*

STATE OF WYOMING)
) SS.
 County of Teton)

The foregoing Recreational Access Easement and Agreement was acknowledged before me by *William G. Cline*, Chairman of the Board of County Commissioners of Teton County, Wyoming, this *20* day of *July*, 1997.

WITNESS my hand and official seal.

SEAL

Julie A. Hodges
 Notary Public

My commission expires: *July 19 2000*



This agreement is entered into only with the following change made to the fourth paragraph of the easement agreement: The Grantee will construct the new post-and-rail fence the entire distance that Old West Cabins property connects to Pathways.

=EXHIBIT A=
DESCRIPTION FOR PATHWAY EASEMENT
WITHIN
THE COMMUNITY ENTRY SERVICES PROPERTY
LOCATED WITHIN THE
W1/2SW1/4 SECTION 27, T40N, R116W, 6th P.M.
TETON COUNTY, WYOMING

TO WIT:

A twenty-five foot (25.00') wide strip of land located within the W1/2SW1/4 of Section 27, T40N, R116W, 6th P.M., Teton County, Wyoming; said strip being a portion of that tract of land conveyed to Community Entry Services and recorded in the Office of the Clerk of Teton County, Wyoming in Book 288 of Photo, pages 831-832; the easterly line of said strip being more particularly described as follows:

BEGINNING at the southeast corner of said record tract; said corner being a point on the westerly right-of-way line of U.S. Highway 26-89-189-191;

thence along the easterly boundary of said record tract, coincident with said westerly right-of-way line, N20°46'30"W, 438.22 feet to the **POINT OF TERMINUS**, being an angle point on said easterly boundary;

the westerly line of said strip to be lengthened or shortened accordingly to meet the southerly boundary of said record tract and to meet the projection of the boundary line of said record tract S69°14'47"W from said **POINT OF TERMINUS**;

said strip being **SUBJECT TO** any other easements, rights-of-way, covenants, conditions, restrictions, reservations, agreements or encumbrances of sight and/or record;

the **BASIS OF BEARING** being N00°04'44"W along the west line of the NW1/4 of said Section 27;

all as shown on "**EXHIBIT B**" the "**ILLUSTRATIVE MAP TO ACCOMPANY DESCRIPTION OF PATHWAY EASEMENT**" attached hereto.

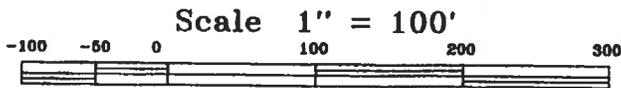
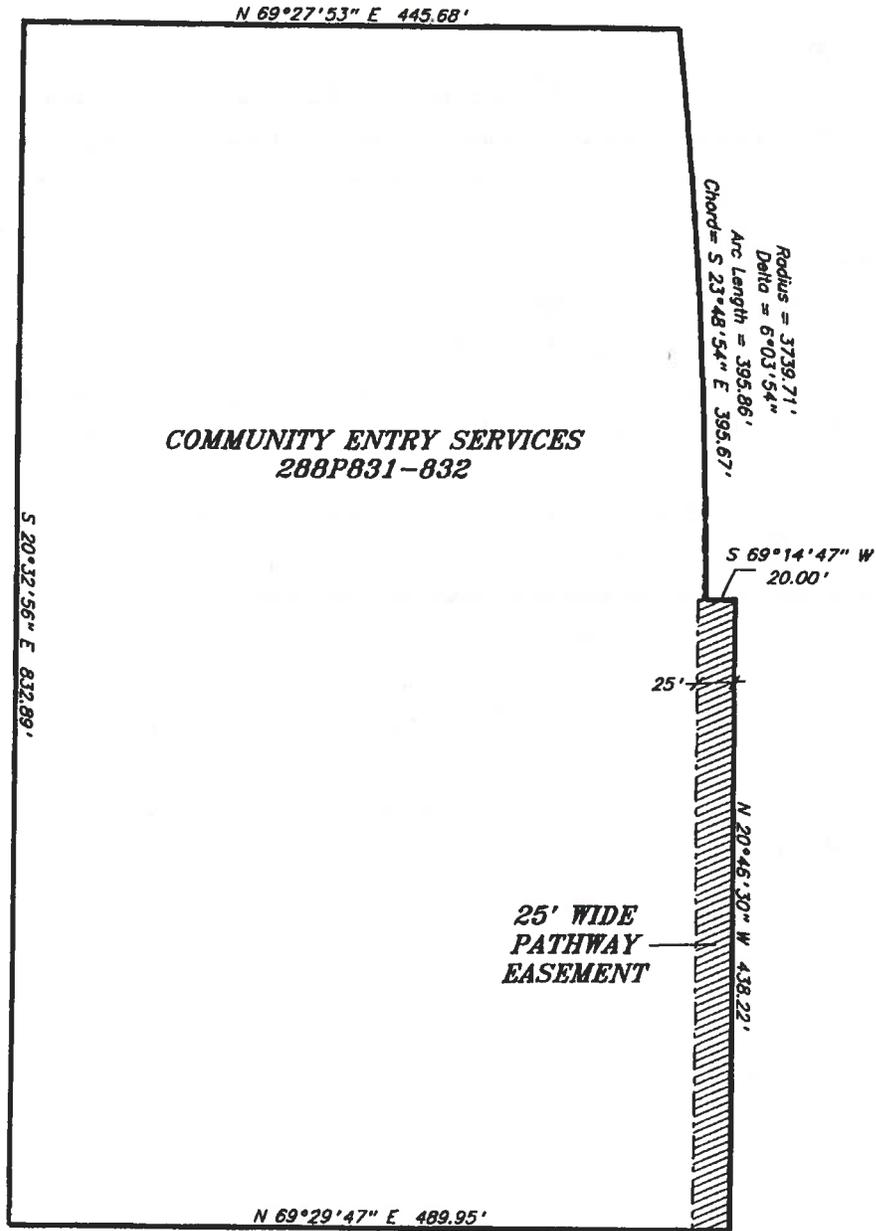
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John J. Warren
Wyoming Professional Land Surveyor No. 4530
Jorgensen Engineering & Land Surveying P.C.
Project No. 96117.00 June 12, 1997
Ref. d.96117/d.csmt west/34 path1.wp

JORGENSEN ENGINEERING & LAND SURVEYING P.C.
JACKSON, WYOMING
=EXHIBIT B=

U.S. HIGHWAY 26-89-189-191



**ILLUSTRATIVE MAP TO ACCOMPANY
DESCRIPTION OF PATHWAY EASEMENT WITHIN
COMMUNITY ENTRY SERVICES PROPERTY
LOCATED WITHIN THE
W1/2SW1/4 SECTION 27, T40N, R116W, 6th P.M.
TETON COUNTY, WYOMING**