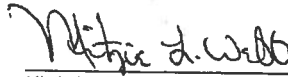



State of Colorado)
County of Elbert)

I, Amy L. Fordyce, County Clerk and Recorder in and for said County, in State aforesaid, do hereby certify that the forgoing is a complete and accurate image copy of a AMENDED DEVELOPMENT GUIDE AGREEMENT for WILD POINTE as the same appears in Book 669 Pages 102 upon the records of my office.

Given under my hand and official seal this 24TH day of FEBRUARY, 2005.




Mitzie L. Webb, Deputy
Elbert County Clerk and Recorder
215 Comanche Street, Kiowa, Colorado 80117


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**AMENDED AND RESTATED
WILD POINTE DEVELOPMENT GUIDE AGREEMENT**

DATED: 23rd day of February 2005

RECEIVED FEB 26 2005

PARTIES:

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ELBERT COUNTY ("County"), whose address is P. O. Box 597, Kiowa, Colorado 80117.

and

ELBERT AND HWY 86, LLC ("Developer"), whose address is 1777 South Harrison Street, Suite 908, Denver, Colorado 80210.

The County and the Developer are collectively referred to herein as the "Parties".

RECITALS:

A. WHEREAS, the Developer is the owner of a parcel of land within the County described in the attached Exhibit 1 (the "Property") and zoned as the Wild Pointe Planned Unit Development ("PUD"); and

B. WHEREAS, on January 8, 2003, the Development Guide Agreement was entered into by the Parties; and

C. WHEREAS, since the execution of the Development Guide Agreement, several changes have occurred, including, but not limited to, the amendment of the Elbert and Highway 86 Water District's service plan and the creation and approval of a charter school; and

D. WHEREAS, the Parties intend for this Amended and Restated Development Guide Agreement ("Agreement") to comprehensively address the development entitlements associated with the Property, and the terms, conditions and obligations to be imposed by the County as a condition to such development; and

E. WHEREAS, the Agreement shall amend and restate, in its entirety, the Development Guide Agreement, dated January 8, 2003, and shall serve as a technical amendment to the Development Guide Agreement as a result of the County's approval of the First Amendment to the Elbert and Highway 86 Water District's service plan, dated September 17, 2004; and

F. WHEREAS, the relationship of the County and the Developer is contractual, and the Developer is an independent contractor, and not an agent of the County. No form of joint venture or partnership exists between Developer and the County and nothing contained in this Agreement shall be construed as making the Developer and the County joint venturers or partners; and



G. **WHEREAS**, the authority for this Agreement is vested in Title 24, Articles 65, 67 and 68; Title 30, Article 28; Title 29, Article 20 C.R.S., and the Elbert County Land Use Regulations; and

H. **WHEREAS**, the Parties acknowledges the benefits and burdens to each; and

I. **WHEREAS**, on February 23, 2005 the Elbert County Board of County Commissioners considered this Agreement.

COVENANTS:

THEREFORE, in consideration of the mutual promises contained herein, the Parties agree and covenant as of February 23, 2005 ("Effective Date") as follows:

SECTION 1: DEFINED TERMS.

1.1 Purpose.

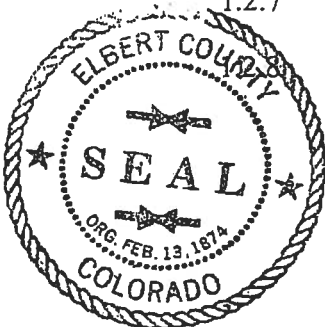
It is the purpose of this section to define words, terms and phrases contained within this Agreement.

1.2 Word Usage.

In the interpretation of this Agreement, the provisions and rules of this section shall be observed and applied, except when the context requires otherwise:

- 1.2.1 The particular controls the general.
- 1.2.2 In the case of any difference of meaning or implication between the text of this Agreement and any caption or table, the text shall control.
- 1.2.3 Words used or defined in one tense or form shall include other tenses and derivative forms.
- 1.2.4 Words in the singular number shall include the plural number and words in the plural number shall include the singular number.
- 1.2.5 The masculine gender shall include the feminine and the feminine shall include the masculine.
- 1.2.6 The word "shall" is mandatory.
- 1.2.7 The word "may" is permissive.

All words, terms and phrases not defined herein but defined in other resolutions or codes of the County relative to land development or construction shall be construed as defined in such resolution or code unless the context indicates that a different meaning was intended.



1.2.9 All words, terms and phrases neither defined herein nor in such other resolution and code shall be given their usual and customary meaning unless the context clearly indicates that a different meaning was intended.

1.3 Definitions.

Accessory Use - A use naturally and normally incidental to, subordinate to, and devoted exclusively to the main use of the premises.

Adjacent - When used to indicate land in the immediate vicinity of a parcel or lot.

Agreement - This Amended and Restated Development Guide Agreement and any amendments thereto.

Building Envelope - That area on a lot that encompasses all development, excluding ISDS leach fields but including excavation, fill, grading, storage, demolition, structures, buildings, roof overhangs, porches, patios and terraces, pools, accessways and parking.

Building Height - The vertical distance from the average finished grade to the highest point of the roof surface; the measurement to be calculated from the average of the two highest corners of the structure to the highest roof line. Measurement excludes the walk-out portion of the structure.

Building: Principal or Main - A building on which is conducted one or more of the principal permitted uses of the lot in which it is situated and including areas such as garages, storage sheds which are attached to or architecturally integrated with the principal building.

Commercial Metropolitan District - Elbert and Highway 86 Commercial Metropolitan District, formerly known as the Elbert and Highway 86 Water District.

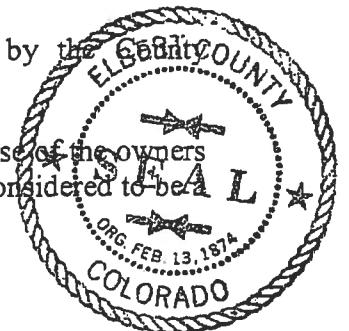
County Regulations - The ordinances, resolutions, road standards, rules and regulations of the County. Reference to County Regulations shall mean the County Regulations in effect at the time of a development application for final plat approval under the Wild Pointe Planned Unit Development, except as provided in Section 7, "Vesting of Certain Property Rights."

Density - A ratio of number of acres per dwelling unit calculated by dividing the number of acres within the residential area of the PUD by the number of dwelling units contained within the PUD, including all land within said Planning Area(s) or portions thereof reserved or dedicated for open space, recreation, community and public use, including public street rights-of-way, private street easements and utility/drainage tracts/easements.

Developer - Elbert and Hwy 86, LLC, a Colorado limited liability company.

Development Application - Request for an approval or permit required by the County Regulations.

Driveway - A private vehicular access abutting a public road for the exclusive use of the owners and occupants of the lot or project and their invitees. A driveway shall not be considered to be a



street or private road if it serves two (2) or fewer single-family dwellings on a single parcel; however, a driveway shall be considered to be a street if it serves two (2) parcels.

Dwelling Unit, Single Family Detached - A type of dwelling unit designated for and occupied by not more than one family and having no roof, wall or floor in common with any other dwelling unit.

Easement - An acquired right-of-use, interest or privilege on land owned by another.

Elbert and Highway 86 Metropolitan District – The special district formed pursuant to and in accordance with the provisions of Title 32 of the Colorado Revised Statutes responsible for constructing roads and providing such other services, such as management of open space tracts and trails, to the Property.

Elbert and Highway 86 Commercial Metropolitan District – The special district (formerly known as the Elbert and Highway 86 Water District) formed pursuant to and in accordance with the provisions of Title 32 of the Colorado Revised Statutes, responsible for providing various metropolitan services and facilities to the Property, including, but not limited to, streets, traffic safety controls, street lighting, water, sanitary sewer, landscaping, storm drainage, mosquito control and television relay facilities and improvements.

Facilities – The infrastructure necessary to serve the PUD, including but not limited to public utilities, private utilities, roads, parks, open space, fire protection, drainage, water and wastewater.

Fence - An enclosing structure other than part of a building of sufficient strength and dimension to prevent straying from within or intrusion from without.

Landscape - Improvement to an area of land by the planting of a combination of trees, shrubs and ground covers, or the installation of other materials such as rock, bark, retaining walls and irrigation systems.

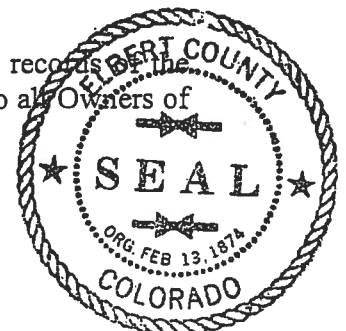
Lot - A portion of a subdivision intended as a unit for transfer of property ownership or for development and designated as a lot on a recorded plat or in the absence thereof, on a plat on file in the office of the Elbert County Assessor.

Metropolitan District – Elbert and Highway 86 Metropolitan District.

Open Space Tracts and Trails – Those open space areas of the PUD that are designated on the Final Plat as Open Space Tracts and Trail Easements that are dedicated to the public and maintained by the Metropolitan District and/or the Commercial Metropolitan District.

Open Space Dedicated to the Public – Open Space Tracts and Trails and Park.

Owner – The person(s) in title to any portion of the Property, according to the records of the Elbert County Clerk and Recorder. The use of the singular “Owner” shall refer to all Owners of the Property and includes Developer.



Plat or Final Plat - The approved final subdivision plat for Wild Pointe.

Preliminary Plat - The approved preliminary plan for Wild Pointe.

Private Open Space - The private open space areas of the PUD including those areas of each lot that are outside of the areas designated as the building envelope and the public open space easement on the plat.

Project – Wild Pointe PUD.

Property – The real property described in the attached Exhibit 1 “Legal Description of the Property”.

Public Open Space - The open space areas of the PUD that are designated as public open space on the plat and that are dedicated to the Metropolitan District, the Commercial Metropolitan District or the Elizabeth Park and Recreation District.

Public Utilities - The infrastructure necessary to extend services to the Property, which are provided by public or quasi-public utility providers, including but not necessarily limited to natural gas, electricity, telephone, and cable television.

PUD – Planned Unit Development for Wild Pointe.

Residential, Single Family – A structure designed for occupancy by one family.

Street, Public –Streets dedicated to and accepted by the County, the Metropolitan District and/or the Commercial Metropolitan District.

Structure - Anything constructed or erected in, under, over or upon the land, or attached to something in, under, over, or upon the land, but excluding therefrom off-street parking areas, fences and walls used as fences six feet in height or less and public utilities.

SECTION 2: SCOPE AND DURATION OF THE AGREEMENT.

2.1 Entire Agreement or Merger Clause.

This instrument embodies the whole agreement of the Parties, and is the final and complete expression of the Parties’ intentions. There are no promises, terms, conditions, or obligations other than those contained herein. This Agreement supersedes all previous communications, representations, or agreements, either verbal or written, with respect to the terms and conditions contained in this Agreement.

2.2 Statements of Incorporation by Reference.

The following documents and matters are incorporated into this Agreement.

2.2.1 The Preliminary Plat.

2.2.2 The Wild Pointe PUD





2.2.3 The Wild Pointe Final Plat.

2.2.4 The Board of County Commissioner's approval of the i.) Master Plan Amendment, ii.) Wild Pointe PUD Rezoning Resolution, iii.) Wild Pointe Preliminary Plat Approval, iv.) Wild Pointe New Communities "1041" Permit Resolution, v.) Final Plat and associated conditions of approval.

2.3 Duration of the Agreement.

The Agreement terminates at the date of signing, plus fifteen (15) years, coinciding with the end of the vesting period referred to in Section 8.3, "Term of Vested Rights. The Parties may, but are under no obligation to, extend the termination date by mutual written agreement. Extension of the termination date by the County is subject to the applicable notice and hearing requirements of County Regulations for subdivision and rezoning in effect at the time of the hearing to consider any extension of the termination date.

2.4 Applicable Requirements.

Development of the Property and other activities that require County approval shall be governed by any applicable state and federal laws and regulations, this Agreement, the Preliminary Plat, the 1041 Permit, the PUD Rezoning, the Final Plat any conditions of approval of the Preliminary Plat and Final Plat, and the County Regulations, except as otherwise specified herein. In addition, the Final Plat shall be governed by a subdivision improvement agreement between the Developer and the County.

SECTION 3: Residential Phasing.

The maximum number of dwelling units within Wild Pointe shall be one hundred eighty-one (181). The Project shall be constructed in phases in the order dictated by market conditions.

3.1 Phase IA. Lots 25 through 74.

3.2 Phase IB. Remainder of those lots in the northern portion of Wild Pointe consisting of lots 1 through 24, and lots 75 through 91.

3.3 Phase II. Lots 92 through 181.





SECTION 4: DENSITY AND USES.

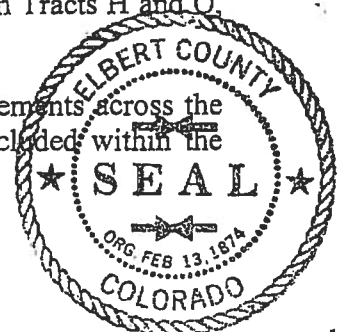
4.1 Density of Uses.

Density within the PUD for each use shall be as indicated on the following chart:

PARCEL	ACRES	DUS	AC/DU	%
NON-RESIDENTIAL*				
O	36.84			
Subtotal	36.84			3.3%
SCHOOL				
N	10.61			
Subtotal	10.61			0.9%
WELL/TANK TRACTS				
H	2.01			
I	1.50			
K	2.00			
Subtotal	5.51			.5%
SINGLE FAMILY RESIDENTIAL				
	916.11	181	5.06	
Subtotal	916.11**	181	5.06	81.0%
OPEN SPACE TRACTS				
A	7.37			
B	18.87			
C	32.35			
D	3.09			
E	14.31			
F	12.29			
G	18.38			
R	40.46			
Subtotal	147.14***			***13.0%
FUTURE ROADWAY TRACTS				
J	.75			
L	7.23			
M	4.03			
P	3.03			
Q	.21			
Subtotal	15.25			1.3%
TOTAL	1131.46	181	5.06	100%

*A maximum of 300,000 square feet of commercial space may be permitted on Tracts H and O subject to the review and approval process in Section 6.

** 144.23 acres of Trails to be dedicated to the Metropolitan District are easements across the 916.11 acres of residential lots. Thus, the 144.23 acres of Trails is also included within the number acres shown as residential lots.



*** Total dedicated open space is the combination of 144.23 acres of trail easements and 147.14 acres of open space tracts. Total open space equals 291.37 acres, or 25.8% of the total project.

4.2. Residential Development Uses.

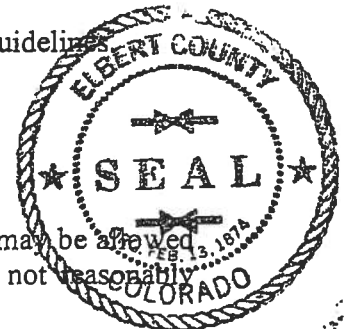
The following uses shall be permitted within the areas of the PUD that are designated as residential.

- 4.2.1. Single family detached dwelling units.
- 4.2.2. Private garages.
- 4.2.3. Commonly associated accessory uses, incidental to the principal use or building and located on the same site and the principal use or building, including but not limited to: storage sheds, barns, stables, corrals private greenhouses, private tennis courts, private swimming pools.
- 4.2.4. Signs as permitted under the standards set forth in the Design Guidelines.
- 4.2.5. Fences, hedges and walls.
- 4.2.6 Off-street parking.
- 4.2.7 Any other uses reasonably similar to the uses set forth herein may be allowed at the discretion of the Elbert County Planning Director. Other uses not itemized or not reasonably similar to those listed shall not be allowed unless and until the use is approved by the County in accordance with County Regulations.

4.3 Open Space – Public.

The following uses shall be allowed in the areas of the PUD designated as public open space.

- 4.3.1 Recreational uses.
- 4.3.2 Jogging, hiking, equestrian and/or bicycle trails.
- 4.3.3 Commonly associated project entryway features, including ornamental monuments, fountains, walls, fences, signs and landscape materials.
- 4.3.4 Picnic areas.
- 4.3.5 Signs as permitted under the standards set forth in the design guidelines.
- 4.3.6 Water wells and water storage to support the development.
- 4.3.7 Wastewater facilities and improvements.
- 4.3.8 Any other uses reasonably similar to the uses set forth herein may be allowed at the discretion of the Planning Director. Other uses not itemized or not reasonably



similar to those listed shall not be allowed unless and until the use is approved by the County.

4.4 Open Space - Private.

The following uses shall be allowed outside of the building envelopes on individual lots.

- 4.4.1 Passive recreational uses
- 4.4.2 Leech field
- 4.4.3 Other non-structural uses typically associated with a private backyard.

4.5 Non-Residential.

The purpose of the Non-Residential area is to allow for the creative mix of non-residential uses to be developed at such time and in such combinations that are justified by the market. The site design and integration of these uses into a unified development plan will be facilitated and controlled by the Site Plan Review Process set forth in Section 6 of this Agreement. The following non-residential uses shall be allowed in the areas designated as Non-Residential on the Final Plat.

- 4.5.1 Retail
- 4.5.2 Restaurant
- 4.5.3 Personal Service
- 4.5.4 Office
- 4.5.5 School facilities
- 4.5.6 Any other use reasonably similar to those listed may be allowed if approved pursuant to the Site Plan Review and Approval Process set forth in Section 6. "Industrial, manufacturing, product distribution, and similar uses shall be prohibited."

4.6 Borrow Sites.

Any area within the Property may be used as a borrow site solely for construction materials to be used internal to the property, and in compliance with overlot grading prohibitions imposed by the County. As soon as a borrow site becomes permanently inactive, it shall be regraded and reseeded.

SECTION 5: DEVELOPMENT STANDARDS.

5.1 General Development Standards.

The following General Development Standards will apply in all areas of Wild Pointe



5.1.1 Master Grading Plan.

A Master Grading Plan has been submitted for Wild Pointe as part of the final plat submittal. The Master Grading Plan shall respect and enhance the natural topography to create an aesthetically pleasing environment, taking into consideration the plan for development, the Master Drainage Plan, housing design and equestrian requirements.

5.1.2 Master Drainage Plan.

A Master Drainage Plan has been submitted for Wild Pointe as part of the Final Plat submittals that provides for retention of water within the boundaries of the PUD, that preserves natural drainage patterns to the greatest extent practical, and identifies the location of drainage facilities and easements.

5.1.3 Building Site Drainage and Grading.

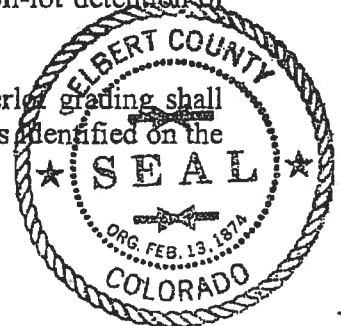
All structures and landscape elements shall be placed on the lot so that there is as little disturbance as possible to the finished grade as reflected on the Master Grading Plan and Master Drainage Plan. Building site design shall minimize site disturbance and grading shall prevent ponding or run-off across the site or onto adjacent property. Newly-graded areas shall be protected against erosion following the requirements stated below, and the process defined by the Weed Management Plan created for Wild Pointe. Proof of compliance with the Master Grading Plan and Master Drainage Plan shall be provided to the County at the time a request for a building permit is made, which proof shall be in the form of the Colorado Department of Public Health and Environment application, or other form acceptable to the County.

a. Each lot is responsible for accepting historical drainage from uphill lots and diverting it away from critical areas on the lot, including house foundations, driveways, and garden or walk-out level features. Each lot is also responsible for diverting runoff water to the front street borrow ditches or to the rear area of the lot or other acceptable drainage areas. Each lot is responsible for controlling silt with hay bales or other acceptable methods during construction.

b. The final site plan and/or grading plan for each lot shall show future contours and conform to the Master Grading Plan and Master Drainage Plan for Wild Pointe

c. Construction within areas identified as Headward Erosion Areas and designated as "HEA" on the subdivision plat is subject to special mitigation requirements. HEA shall be mitigated by one or more of the following practices: grading to redirect intermittent surface water flow, installation of erosion fabric, use of riprap, culverts with drop structures, and/or individual on-lot detention of run-off.

d. No overlot grading shall be allowed in the PUD. Overlot grading shall mean grading over or between two (2) or more lots or parcels, as identified on the Plat.



5.1.4 Corner Vision Clearance at Intersections.

No fence, wall, sign, hedge or shrub planting will obstruct sight lines at intersections as identified in the Elbert County Roadway standards.

5.1.5 Screening and Enclosures.

All equipment, garbage cans, service yards, wood piles, storage piles, unsightly structures, loading facilities, maintenance and storage facilities, and equipment (including snow removal equipment and garden or maintenance equipment except when in actual use) shall be fenced in, walled in, enclosed within a structure or otherwise screened or enclosed. Design Standards for Wild Pointe will provide more information on enclosing the items mentioned above.

5.1.6 Pipes and Utility Lines.

Wires and other facilities for the transmission of electricity, and pipes for water, wastewater, gas, drainage or other purposes shall be kept and maintained underground.

5.1.7 Culverts.

Driveway and roadway culverts, where necessary, shall be designed and constructed to meet Elbert County Road and Bridge Department requirements.

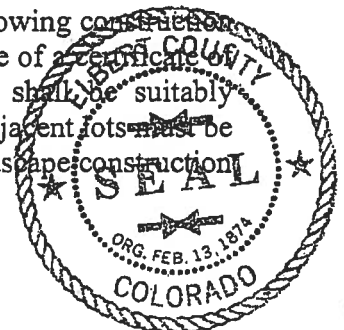
5.1.8 Tree Protection.

a. During construction of any improvements, the owner and/or builder shall take all reasonable and appropriate protective measures to prevent damage to any tree, including installation of a construction barrier around any tree located in close proximity to the construction activity. If damage to a tree occurs, the tree shall be replaced with a tree of similar size and species.

5.1.9 Landscaping.

a. Buildings will be constructed to minimize damage to existing foliage and natural growth. No trees may be removed, except as set forth hereafter, and the lots shall be maintained as nearly as possible in their natural state. All landscaping, including vegetable gardens, shall be permitted only within the lot's building envelope. Irrigated area on each lot shall not exceed one-eighth (1/8) acre (or five thousand four hundred (5,400) square feet) and shall be irrigated by an automatic sprinkler system.

b. At the time of, or as soon as reasonably practicable following construction of a house on a lot, but not later than one year after the issuance of a certificate of occupancy, the area within the building envelope of a lot shall be suitably landscaped. During and after landscape installation, lots and adjacent lots shall be kept clean, and all material and debris shall be moved after landscape construction is completed.





c. Each lot shall be landscaped with plant materials native or adapted to this climate or having water efficient characteristics, taking into consideration water availability as approved by the Office of the State Engineer. No artificial plants, grasses or flowers shall be utilized as exterior landscape materials. Landscaping shall conform to the following xeroscape principles:

- i. design landscaping comprehensively;
- ii. evaluate the soil and improve it if necessary for the type of plants to be used;
- iii. create turf areas that are reasonable in size;
- iv. use drought-resistant plants and group according to their water needs (hydro zoning);
- v. use organic mulches to reduce surface evaporation of water and weeds; and
- vi. irrigated area on each lot shall not exceed one-eighth (1/8) acre (or five thousand four hundred (5,400) square feet) and shall be irrigated by an automatic sprinkler system.

5.1.10 Lighting.

Residential exterior lighting shall be state-of-the-art, downcast, cutoff lighting and shall comply with the Wild Pointe Design Guidelines. Exterior lighting in non-residential areas shall be shaded, shielded or directed to not cause glare or other adverse impacts.

5.2 Residential Development Standards.

In addition to Section 5.1, "General Development Standards", Residential Single Family uses shall be subject to these development standards, the Covenants, Conditions and Restrictions, and the Wild Pointe Design Guidelines adopted by the Architectural Review Committee.

5.2.1 Building Envelopes.

For each lot, individual building envelopes are delineated on the Final Plat.

5.2.2 Building Height.

No buildings or structures shall exceed thirty-five (35) feet in height. Height shall be measured from the average of the two highest corners of the finished floor elevation of the structure to the highest roof-line and shall exclude the walk-out portion of the structure.



5.2.3 Garages and Driveways.

- a. The design of garages shall be compatible in materials and detailing with the main house, including the use of stone, windows and window trim, and roof slopes and materials.
- b. All residences shall have off-street parking spaces for at least two (2) cars; these spaces may be on the driveway. The Architectural Review Committee (ARC) shall approve the materials used for gravel driveways.

5.3 Non-Residential Development Standards.

In addition to Section 5.1 "General Development Standards," uses within the area of the PUD designated as Non-Residential shall be subject to the Site Plan Approval Process and Standards for Non-Residential Area set forth in Section 6 of this Agreement in lieu of any County site plan review or approval process that may be in effect.

SECTION 6: SITE PLAN REVIEW AND APPROVAL PROCESS AND STANDARDS FOR NON-RESIDENTIAL AREAS.

The following Site Plan Review and Approval Process and Standards shall apply to any land use proposed in the area of the PUD designated as Non-Residential. The purpose of this Site Plan process is to ensure that any uses that are approved within the Non-Residential Area are consistent with the intent of and uses allowed in the Non-Residential designation described in Section 4.5 of this Agreement. These standards are intended to ensure that there will be adequate facilities to serve development and that new uses are designed and developed to be compatible and integrated with adjacent uses. No use shall be allowed nor building permit issued within the Non-Residential Area until the Site Plan has been approved under this Section 6.

6.1 Site Plan Application Requirements for Non-Residential Areas.

An application for approval of the Site Plan for a use within the Non-Residential Area shall be submitted to the Planning Director and shall contain the following information.

6.1.1 Written Description.

A written description of the proposed land use change shall be submitted to the Planning Director. The written description shall include the type of land use proposed, and the total number of acres of the property within which the use shall occur.

6.1.2 Vicinity Map.

An 8 ½ x 11 vicinity map locating the parcel in the County. The vicinity map shall clearly show the boundaries of the subject property, and all property within a three-mile radius of the subject property.

6.1.3 Site Plan.





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A site plan prepared at a scale acceptable to the Planning Director, which best conveys the conceptual aspects of the plan. The site plan must have the following elements:

- a. Date of preparation, revision box, written scale, graphic scale, and north arrow (designated as true north).
- b. Clearly identified boundary lines, corner pins, dimensions of the subject property, and distance of structures from property lines.
- c. Size of the parcel, in acres or square feet.
- d. Existing uses of the property and the adjacent properties.
- e. Location and dimension of all structures, existing and proposed.
- f. Existing and proposed parking areas, driveways, emergency turn-outs and emergency turn-arounds, sidewalks and paths, with locations and dimensions including all proposed grading for the property.
- g. Existing and proposed roads, irrigation ditches, fences, existing and proposed utility lines, and easements and rights-of-ways on or adjacent to the parcel, shown by location and dimension.
- h. Significant on-site features on the property where the proposed use will occur including, but not limited to contours, natural and artificial drainage ways, wetland areas, ditches, hydrologic features and aquatic habitat; geologic features and hazards, including slopes, alluvial fans, areas of subsidence, rock outcrops and, rockfall areas; soil types; vegetative cover; dams, reservoirs, excavations, and mines; and any other on-site and off-site features that influence the development.
- i. Location of lot lines.

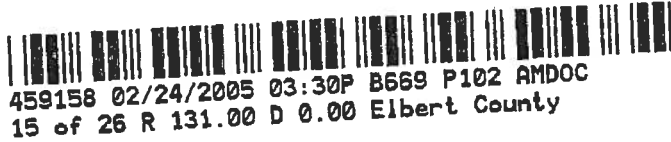
6.1.4 Wastewater System.

Description of the source and capacity of the proposed wastewater treatment system to serve the proposed use. Wastewater systems shall be limited to municipal or package plant systems.

6.1.5 Water Supply System.

Description of the source and capacity of the water supply, including location and size water lines to serve the proposed use.





6.1.6 Waiver of Site Plan Submittal Requirements.

The Planning Director may waive or alter any of these site plan submittal requirements if they are determined to be inappropriate or unnecessary to determining if the Site Plan satisfies applicable standards.

6.2 Site Plan Review and Approval Procedure for Non-Residential Areas.

6.2.1 Review by Planning Director.

Upon receipt of a complete application for approval of Site Plan, the Planning Director shall review the application for compliance with the Site Plan Development and Approval Standards set forth in Section 6.3.

6.2.2 Review by Planning Commission.

At a regular meeting within a reasonable time after the date the application is determined complete, the Planning Commission shall review the application for compliance with the Site Plan Development and Approval Standards in Section 6.3. The Commission may recommend approval, approval with conditions or denial of the application.

6.2.3 Notice of Hearing by the Board of County Commissioners.

a. Publication of Notice.

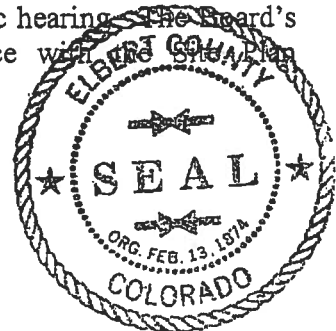
Notice of the public hearing by the Board of County Commissioners shall be published no less than thirty (30) days prior to the date of the public hearing on the application for approval of Site Plan. Publication of the public hearing notice shall be the responsibility of the applicant.

b. Notice to Adjacent Property Owners.

No less than thirty (30) days prior to the date of the public hearing by the Board on the application for approval of Site Plan, the applicant shall provide written notice to adjacent property owners within 500 feet of the subject property. The notice shall be mailed by certified mail to all owners of record.

6.2.4 Public Hearing and Action by Board of County Commissioners.

The Board of County Commissioners shall approve, approve with conditions or deny the application for approval of Site Plan at a properly noticed public hearing. The Board's decision on the application shall be based upon compliance with the Site Plan Development and Approval Standards set forth in Section 6.3.



6.3 Site Plan Development and Approval Standards.

In addition to the Development Standards in Section 5 of this Agreement, the following standards shall apply to development within the area of the PUD designated as Non-Residential. The maximum square footage that shall be allowed in the Non-Residential Area is three hundred thousand (300,000).

6.3.1 Compatibility.

The nature, scale, and intensity of the use are compatible with adjacent land uses and will not result in an adverse impact to adjacent land.

6.3.2 Access.

Access to and from the use shall be safe and in conformance with applicable County and state access standards. Roads serving the proposed use shall have the capacity to accept the additional traffic generated by the use safely and efficiently.

6.3.3 Water Quality.

The use shall not cause significant degradation of the quality of surface or groundwater resources.

6.3.4 Visual Impacts.

The use shall preserve views and vistas, and the design of the use shall be compatible with the surrounding natural environment.

6.3.5 Traffic.

The use shall not cause traffic congestion or unsafe traffic conditions and all impacts to the roadway system shall be mitigated through roadway improvements or impact fees, or both.

6.3.6 Erosion.

Erosion and sedimentation control measures shall be implemented that ensure that disturbed areas are stabilized and revegetated within one growing season pursuant to an approved vegetation plan.

6.3.7 Height Restrictions.

Heights of structures shall comply with the following:



a. Measurement.

Height shall be measured as the vertical distance in feet between the lowest point where the natural grade intersects the structure and the highest point on the roof.

b. Structures shall not exceed 50 feet in height.

6.3.8 Storage areas.

Storage areas shall be screened from view by fencing or landscaping.

6.3.9 Objectionable Emissions.

Dust, odors, gas, fumes, and glare shall not be emitted at levels that are objectionable to adjacent property.

6.3.10 Noise.

Noise as measured at the property boundary shall not exceed state noise standards and shall be buffered by landscaping or other screening devices.

6.3.11 Hours of Operation.

Hours of operation shall be established to minimize impacts to adjacent land uses.

6.3.12 Parking.

Parking shall comply with County parking standards applicable to the proposed use.

SECTION 7: FACILITIES AND COMMITMENTS.

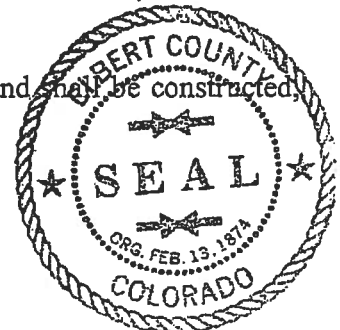
Unless otherwise indicated herein, it shall be the responsibility of the Developer to see that there are adequate facilities necessary to serve the development. The specific standards that will govern the design and construction of facilities shall be those County Regulations in effect at the time the application is made for any Plat to be served by those facilities.

7.1 Water and Wastewater.

7.1.1 Water.

a. No residential lot shall be serviced by an individual water well. All development requiring water shall be serviced by a central water system constructed, owned and operated by the Commercial Metropolitan District.

b. Water storage tanks shall be constructed in two phases and shall be constructed, owned and operated by the Commercial Metropolitan District.



7.1.2 Wastewater.

a. All residential lots shall be serviced by individual sewage disposal systems ("ISDS"). Uses within the Non-Residential area shall be serviced by a package wastewater plant or municipal sewer service.

b. The Park shall use a septic tank, which septic tank shall be pumped periodically during its seasonal use, as determined by the County, the Commercial Metropolitan District, the Metropolitan District and/or the Elizabeth Park and Recreation District.

7.2 Roadways.

7.2.1 County Road 3.

County Road 3 shall be constructed in conformance with County Regulations, concurrently with Phase IB, from State Highway 86 to the northwest corner of the entrance to Phase II.

7.2.2 Streets and Roads.

With the exception of the length of Chaparral Circle cul-de-sac which is designated on the Final Plat, all streets and roads shall be constructed in accordance with County Regulations and shall be dedicated to the County. All designated road and right-of-way and sixty foot (60') access egress easements shall be available for road construction, present or future.

7.2.3 Signalization

A traffic light shall be installed at the intersection of SH 86 and Cimarron Trail and/or SH 86 and Pinto as soon as a signal is warranted by the Colorado Department of Transportation.

7.3 Utilities.

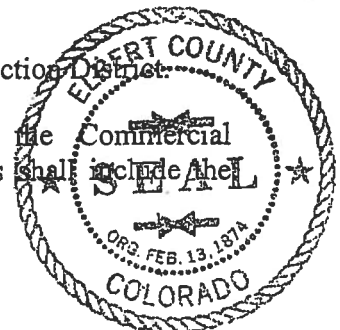
7.3.1 Electricity shall be provided by the appropriate local provider. All proposed electric transmission and/or distribution lines shall be underground.

7.3.2 Phone shall be provided by the appropriate local provider. All proposed phone service shall be underground.

7.3.3 Gas service shall be provided by the local provider.

7.3.4 Fire protection shall be provided by the Elizabeth Fire Protection District.

7.3.5 Water facilities and services shall be provided by the Commercial Metropolitan District. The provision of water facilities and services shall include the school and Park sites.



7.4 Water Conservation.

The amount of outdoor residential lawn to be watered shall not exceed a maximum of one-eighth (1/8) acre per lot and shall be served by an automatic sprinkler system.

7.5 Parks and Recreation Facilities. The area designated as Tract A/Regional Park on the Final Plat shall be dedicated to the Elizabeth Park and Recreation District. Prior to the transfer of the Regional Park, park improvements shall be constructed by Developer in accordance with an agreement between the Developer and the Elizabeth Park and Recreation District.

7.6 Responsibility of Owner, Acceptance by County.

All Facilities to be dedicated or conveyed to the County by Developer shall be accepted by the County only in accordance with County Regulations.

7.7 Responsibility of County, Operation and Maintenance of Facilities.

County shall be responsible for the operation and maintenance of all Facilities owned or accepted by the County.

7.8 Responsibility of Metropolitan District.

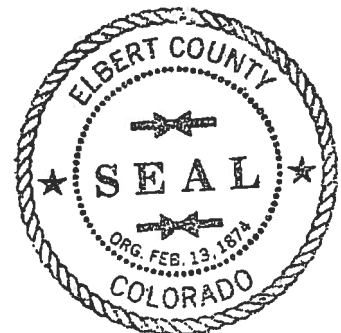
The Metropolitan District shall be responsible for the operation and maintenance of the Open Space Tracts and Trails with the exception of the Regional Park which shall be the responsibility of the Elizabeth Park and Recreation District.

7.9 Responsibility of the Commercial Metropolitan District.

The Commercial Metropolitan District shall be responsible for the operation and maintenance of the facilities associated with the wastewater treatment, wells, water storage and water distribution system.

7.10 Financial Assurances.

The Developer shall enter into a subdivision improvements agreement with the County following Final Plat approval that describes those facilities to be built by Developer and financial assurances necessary to guaranty the construction of those facilities. No financial assurances shall be required of the Developer for those Facilities to be financed by the Metropolitan District, the Commercial Metropolitan District or other service providers.



SECTION 8 VESTING OF CERTAIN PROPERTY RIGHTS.

8.1 Vesting of Certain Property Rights.

The Parties hereby agree that the Developers of the Property shall have a vested property right to the extent provided in this Agreement to undertake and complete development and use of the Property.

8.1.1 Intent of Vesting System.

The vesting system set forth in Section 8.2 balances the County's obligation to protect the public health, safety and welfare of the community and its desire to facilitate the highest quality development with the Developer's private property rights and his need to rely on County approvals to achieve an economically viable project.

8.1.2 Overview of Vesting System.

a. Creation of Vested Rights.

Following approval of the PUD and this Agreement, the rights granted under this Agreement will vest upon execution of this Agreement by both Parties.

b. Nature of Vested Rights.

During the vesting period, Developer will have the right to develop uses at such densities and in the general locations described in the approved Preliminary Plat, Final Plat and this Agreement.

8.2 Rights That are Vested.

The rights identified herein or as may hereafter be acquired by operation of any state or local vested property rights law shall constitute vested property rights under this Agreement and shall not be taken by the County without just compensation. These rights are as follows:

8.2.1 Rights - No Downzoning.

The maximum number of residential dwelling units and acres for residential use, the total gross acres for non-residential uses for the Property, as set forth in the Preliminary Plat, Final Plat and this Agreement, are hereby vested.

8.2.2 Rights - Uses, Densities and Locations.

The right to develop the Property in accordance with the uses, densities and locations set forth in the Preliminary Plat, the Final Plat and this Agreement is hereby vested.



8.2.3 Rights - Development Standards.

The right to develop the Property in accordance with the Development Standards set forth in Section 5 of this Agreement and to develop the Non-Residential area in accordance with the Section 6 of this Agreement are hereby vested.

8.2.4 Rights - Timing of Development.

The right to commence and complete development of the property at such time in such order and at such rate as the market dictates is hereby vested. This provision of the Agreement supersedes any County rules or regulations that require development to be commenced or completed in any specific time frame.

8.2.5 Rights - Site Specific Development Plan.

As to the matters vested under this section and under County Regulations, this Agreement, the Preliminary Plat and Final Plat shall be considered a site-specific development plan for the purposes of the Colorado Vested Property Rights Act. The following statement is therefore incorporated as required by Section VI of the Elbert County Subdivision regulations.

“Approval of this plan may create a Vested Property Right pursuant to Article 68 of Title 2 C.R.S., as amended.”

8.2.6 Rights - Colorado Law Vesting Reserved.

Nothing in this Agreement shall be construed to abrogate or diminish any development rights that may hereafter vest in conjunction with Plat approval by operation of law.

8.2.7 Rights - County Regulations.

Except as otherwise provided in this Agreement, any application to develop portions of the PUD shall be subject to the County facilities requirements in effect at the time of application for Final Plat approval.

8.3 Term of Vested Rights.

In recognition of the size of the development contemplated by the Preliminary Plat, the time required to complete the development, the need to proceed in phases and varying economic cycles and market conditions likely to occur during the course of development, the County agrees that the rights identified as vested rights in section 8.2, “Rights which are Vested” shall be vested for a period of fifteen (15) years from the time of approval of this Agreement (February 23, 2020).



SECTION 9: MISCELLANEOUS PROVISIONS.

9.1 Assignments and Transfers.

Developer shall be permitted to sell, assign, transfer or convey freely any part or all of its rights and obligations under this Agreement in connection with, and as it applies to, sale of all or portions of the Property.

9.2 Amendments, Termination or Cancellation.

Any and all changes to this Agreement, including termination or cancellation, in order to be mutually effective and binding upon the Parties and their successors, must be in writing and duly executed by the signatories or the respective representatives, heirs, successors, or assigns.

9.2.1 Minor Amendments.

Upon agreement of the Parties, Minor Amendments to this Agreement may be made following approval by the Planning Director, without notice or public hearing. Minor Amendments shall include:

- a. Variances from the standards set forth in Section 5, "Development Standards";
- b. Changes of less than 5% in the amount of acres committed to different land uses as described in Section 4, "Land Uses and Density;"
- c. Corrections of typographical, grammatical or other unintended errors.
- d. Modifications to building envelopes designated on the Final Plat and approved pursuant to the County subdivision plat amendment regulations.

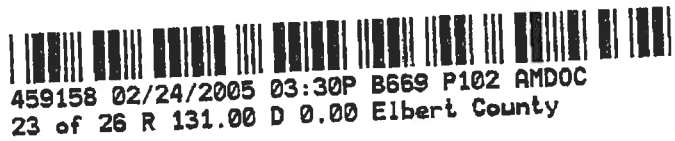
9.2.2 Major Amendments.

Any amendment to this Agreement not deemed a Minor Amendment will not be effective until it has been reviewed and approved in accordance with County Regulations applicable to the amendment of a Development Guide and/or Development Agreement.

9.2.3 Inconsistent Amendment Prohibited.

No amendment to this Agreement shall be made unless the Amendment would be consistent with the character and intent of the Wild Pointe PUD and Preliminary Plat.





9.3 Binding Effect.

This Agreement shall apply to the Property and shall be binding upon the successors and assigns of the Developers in the same manner and to the same effect as if such successors and assigns were signatories to this Agreement. The Parties acknowledge that the Property is both benefited and burdened by the mutual covenants of this Agreement, and such covenants shall constitute real covenants binding upon successors in interest to the Property, including any mortgagees or lien holders, irrespective of whether a specific reference to this Agreement or its covenants is made in any document of conveyance to the Property.

9.4 Enforcement.

This Agreement shall be enforceable, unless lawfully terminated or canceled, by any party to this Agreement or any party's successor in interest, notwithstanding any subsequent changes in any applicable law adopted by the County, which alters or amends the laws, ordinances, resolutions, rules or policies as to vested rights under Section 8 "Vesting of Certain Property Rights." Nothing herein shall be intended to create any third-party beneficiaries to this Agreement.

9.5 Notice to Parties.

The addresses of the Parties to this Agreement are as listed below. Any and all notices allowed or required to be given in accordance with this Agreement are deemed to have been given when delivered to the other Parties (by hand delivery or facsimile transmission) or the date the same is deposited in the United States mail, certified mail, postage prepaid, return receipt requested addressed to the other Parties at the addresses noted, or such address as is subsequently provided by notice given in accordance with this Agreement.

COUNTY:

County of Elbert
P. O. Box 597
Kiowa, CO 80117

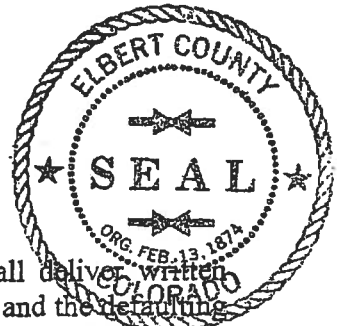
DEVELOPER:

Elbert and Hwy 86, LLC
c/o C & A Companies, Inc.
1777 South Harrison St., Suite 908
Denver, CO 80210

9.6 Default, Cure and Remedies.

9.6.1 Notice.

In the event of default by either party, the non-defaulting party shall deliver written notice to the defaulting party specifying the exact nature of the default, and the defaulting party shall have thirty (30) days from the receipt of such notice to cure the default. The time to cure the default may be extended upon agreement of the non-defaulting party.





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9.6.2 Cure and Remedies.

If the default is not cured as described herein, the non-defaulting party shall have the right to enforce the defaulting party's obligations by an action on law or in equity including, but not limited to, injunction and/or specific performance and damages. In any such legal action, to the extent permitted by law, the prevailing party shall be entitled to recover its reasonable attorneys' fees and litigation costs from the other party.

9.6.3. County Enforcement: Withholding Approvals.

In addition to such legal remedies, County shall have the right to withhold any requested Development Application (including but not limited to building permits) or Plat approvals for any Planning Area in the event that Developers have not fully complied with the obligations and covenants under this Agreement.

9.7 Severability.


If any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be invalid.

9.8 Verification.

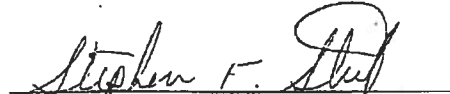
The County and Developers shall provide the other written verification regarding the status, performance or completion of any action required of the County or the Developers under this Agreement or by the terms of any other agreement.

EXECUTED by the lawful representatives of the Parties, as of the date indicated above.

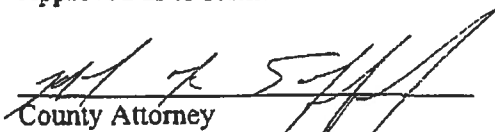
ATTEST:


Amy L. Fordyce, Clerk and Recorder

COUNTY OF ELBERT


Steven F. Stutz, Chairman of the Board of County Commissioners

Approved as to form:


County Attorney





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Exhibit 1
Legal Description of the Property

A TRACT OF LAND SITUATED IN SECTIONS 13, 14, 15, 22 AND 27, ALL IN TOWNSHIP 2 SOUTH, RANGE 65 WEST OF THE 6TH P.M., ELBERT COUNTY, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE NORTHEAST CORNER OF SAID SECTION 22 AND CONSIDERING THE EAST LINE OF SAID SECTION 22 TO BEAR S 00 DEG 52'19" E WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO:
THENCE S 89 DEG 45'16" E ALONG A FENCELINE A DISTANCE OF 2654.59 FEET TO A POINT ON THE EAST LINE OF THE SW 1/4 OF SECTION 14, SAID POINT BEING 10 FEET NORTHERLY FROM THE SOUTHEAST CORNER OF SAID SW 1/4;
THENCE S 89 DEG 19'22" E ALONG A FENCELINE A DISTANCE OF 2654.83 FEET TO THE SOUTHEAST CORNER OF SECTION 14; THENCE N 00 DEG 02'53" W A DISTANCE OF 2541.12 FEET TO THE EAST 1/4 CORNER OF SECTION 14; THENCE S 89 DEG 21'49" E ALONG THE SOUTH LINE OF THE NW 1/4 OF SECTION 13 A DISTANCE OF 1117.50 FEET; THENCE N 02 DEG 30'50" W A DISTANCE OF 1323.05 FEET; THENCE N 89 DEG 16'42" E A DISTANCE OF 839.07 FEET; THENCE N 05 DEG 41'30" W A DISTANCE OF 35.33 FEET; THENCE N 17 DEG 19'43" E A DISTANCE OF 412.93 FEET; THENCE N 12 DEG 35'08" E A DISTANCE OF 352.18 FEET; THENCE N 00 DEG 00'00" E A DISTANCE OF 487.29 FEET TO THE SOUTH RIGHT OF WAY FENCE FOR STATE HIGHWAY 86; THENCE WESTERLY ALONG SAID SOUTH RIGHT OF WAY FENCE FOR THE NEXT SEVEN (7) COURSES:

1. THENCE N 89 DEG 30'21" W A DISTANCE OF 1178.37 FEET;
2. THENCE S 04 DEG 16'03" W A DISTANCE OF 26.62 FEET;
3. THENCE N 86 DEG 57'59" W A DISTANCE OF 453.75 FEET;
4. THENCE S 85 DEG 30'46" W A DISTANCE OF 99.71 FEET;
5. THENCE N 88 DEG 52'28" W A DISTANCE OF 600.22 FEET;
6. THENCE N 69 DEG 26'51" W A DISTANCE OF 104.85 FEET;
7. THENCE N 89 DEG 03'42" W A DISTANCE OF 1004.94 FEET TO A FENCELINE;

THENCE S 01 DEG 18'08" E ALONG A FENCELINE A DISTANCE OF 1286.40 FEET TO A FENCE CORNER; THENCE N 89 DEG 34'20" W ALONG A FENCELINE A DISTANCE OF 1355.08 FEET TO A FENCE CORNER; THENCE S 00 DEG 00'53" W ALONG A FENCELINE A DISTANCE OF 1299.89 FEET TO A FENCE CORNER; THENCE N 89 DEG 46'51" W ALONG A FENCELINE A DISTANCE OF 24.14 FEET TO THE WEST LINE OF THE SW 1/4 NE 1/4 OF SECTION 14; THENCE S 00 DEG 12'31" E A DISTANCE OF 19.47 FEET TO THE SOUTHWEST CORNER OF SAID SW 1/4 NE 1/4; THENCE N 89 DEG 16'21" W ALONG THE NORTH LINE OF THE NE 1/4 SW 1/4 OF SECTION 14 A DISTANCE OF 1295.27 FEET TO A FENCELINE; THENCE S 01 DEG 01'15" E ALONG A FENCELINE A DISTANCE OF 1334.36 FEET TO A FENCE CORNER; THENCE N 89 DEG 27'03" W ALONG A FENCELINE A DISTANCE OF 1394.18 FEET TO A FENCE CORNER; THENCE N 89 DEG 18'15" W ALONG A FENCELINE A DISTANCE OF 2629.66 FEET TO THE NORTHWEST CORNER OF THE S 1/2 SE 1/4 OF SECTION 15; THENCE S 00 DEG 32'01" E A DISTANCE OF 1324.12 FEET TO THE SOUTHWEST CORNER OF SAID S 1/2 SE 1/4; THENCE S 00 DEG 32'45" E A DISTANCE OF 2639.36 FEET TO THE NORTHEAST CORNER OF THE SW 1/4 OF SECTION 22; THENCE N 89 DEG 27'40" W ALONG THE NORTH LINE OF SAID SW 1/4 A DISTANCE OF 48.12 FEET TO A FENCELINE; THENCE S 00 DEG 00'00" W ALONG SAID FENCELINE A DISTANCE OF 20.88 FEET TO A FENCE CORNER; THENCE N 89 DEG 59'04" W ALONG A FENCELINE A DISTANCE OF 2604.26 FEET TO THE WEST LINE OF THE SW 1/4 OF SECTION 22; THENCE S 00 DEG 13'21" E ALONG SAID WEST LINE A DISTANCE OF 2599.23 FEET TO A FENCELINE; THENCE S 89 DEG 43'30" E ALONG SAID FENCELINE A DISTANCE OF 2595.55 FEET TO A FENCE CORNER; THENCE S 01 DEG 32'29" E ALONG A FENCELINE A DISTANCE OF 7.47 FEET TO THE SOUTH LINE OF THE SW 1/4 OF SECTION 22; THENCE S 89 DEG 42'41" E A DISTANCE OF 71.72 FEET TO THE SOUTHEAST CORNER OF THE SW 1/4 OF SECTION 22; THENCE S 00 DEG 00'56" E ALONG THE WEST LINE OF THE N 1/2 NW 1/4 OF SECTION 27 A DISTANCE OF 1258.61 FEET TO A FENCELINE; THENCE S 88 DEG 52'05" E ALONG A FENCELINE A DISTANCE OF 2664.69 FEET TO THE EAST LINE OF SAID N 1/2 NE 1/4; THENCE N 00 DEG 07'42" E A DISTANCE OF 1297.05 FEET TO THE SOUTHEAST CORNER OF SECTION 22; THENCE N 00 DEG 52'19" W A DISTANCE OF 5257.61 FEET TO THE POINT OF BEGINNING; EXCEPT ANY PORTIONS THEREOF CONVEYED TO THE STATE DEPARTMENT OF HIGHWAY BY DEEDS RECORDED FEBRUARY 28, 1958 IN BOOK 205 AT PAGE 125 AND OCTOBER 9, 1981 IN BOOK 342 AT PAGE 644; ALL IN THE COUNTY OF ELBERT, STATE OF COLORADO

