

May 21, 2020

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**VIA EMAIL AND REGULAR MAIL**

Town of Eagle  
200 Broadway | P.O. Box 609  
Eagle, CO 81631

RE: Red Mountain Ranch Partnership, LLLP ("RMR") Annexation, Planned Unit Development, and Preliminary Plan/Final Plat Application (the "Application") with the Town of Eagle (the "Town") – Request for Delay of Final Consideration

Dear Council Members:

This firm represents Trinity Red Eagle Development, LLC ("RED"), the owner of the property adjacent to RMR. RMR's Application with the Town includes property along Eagle River and Highway 6 (the "Property"). With this letter, we set forth a summary of RED's comments on RMR's Application, focusing specifically for purposes of this letter on the Preliminary Plan/Final Plat Application, for the consideration of the Town Council and for the record.

We ask the Town to delay final consideration of the Application until outstanding issues with respect to the Property can be resolved. If the Town approves the current Application without resolution of the issues, the Town would be approving a final plat based on incomplete and in some cases incorrect information about the Property. The Town also would be sanctioning development that cannot comply with the Final Plat Red Mountain Ranch Filing 5 (the "Final Plat"). Furthermore, the Town's approval would be inconsistent with procedural requirements in the Code of Ordinances of the Town (the "Code"). This letter explains each of the issues in greater detail.

Background and History

RED and RMR admittedly have a lengthy and complex history in the Town. While much of the history between the two parties is unrelated to the Application, some of it does have a direct impact on the Application. The principal transaction between these parties is the purchase and sales contract entered into by RED and RMR in 2005, amended by the Fourth Amendment to Agreement of Sale in 2008 (the "Amendment"). A Memorandum of Agreement (the "MOA") attached hereto as **Exhibit A-1** was recorded with the Clerk and Recorder of Eagle County on August 21, 2008.

The Amendment imposed several post-closing legal obligations on RED and RMR with respect to the Property. In the Amendment, RMR agreed to convey Tract A and Tract B for roundabout right-of-way and related purposes within 10 days of request by RED, one roundabout on Tract A and one roundabout on Tract B. A depiction of Tract A and Tract B is attached hereto as **Exhibit A-2**. Construction of these roundabouts never began due to a variety of obstacles, including economic repercussions of the 2008 recession. Also, certain of RED's vested rights associated with the development it planned to construct on the property purchased from RMR, Eagle River Station ("ERS"), ultimately expired. However, what is

relevant for purposes of the Application is that the Amendment expressly stated that RMR's obligation with respect to Tract A and Tract B was ongoing. In other words, RMR's obligation to convey Tract A and Tract B for roundabout right-of-way and related purposes remains intact even though vested rights for ERS may have expired.

RMR also agreed to encumber a portion of RMR's property with a permanent drainage easement (the "Drainage Easement") attached hereto as ***Exhibit B***. The Drainage Easement was recorded with the Clerk and Recorder of Eagle County on August 21, 2008. Like RMR's obligation to convey Tract A and Tract B to RED or dedicate the same, the Drainage Easement in favor of RED remains in place regardless of the status of entitlements for ERS.

In 2017, RMR submitted the Application to the Town to begin the approval process required to develop its Property. In 2019, RMR approached RED with potential alternative highway access points. RED responded by explaining that these proposed access points were infeasible because of previously-negotiated railroad crossings on the southern boundary of ERS. RED requested additional information from RMR, which RMR did not provide. Without following-up with RED to provide, RMR apparently approached Colorado Department of Transportation to secure alternative access points for the Property, and, based on the erroneous assumption that RED would not work with RMR regarding alternative highway access points, submitted this Application.

As part of its Application to the Town, RMR provided the Town with (1) application materials that fail to incorporate or acknowledge RMR's ongoing obligation with respect to Tract A and Tract B as memorialized in the MOA, and (2) a Final Plat depicting development that RMR cannot execute because the proposed nature center is located within property earmarked for a roundabout and the Drainage Easement. Finally, (3) one of the access points depicted on the Final Plat is impacted by another roundabout.

#### Approving a Deficient Application

First, if it were to approve the current Application prior to the resolution of these outstanding issues, the Town would be approving an application that conflicts with clearly delineated Code requirements which could expose the Town to legal liability. For reasons unknown to RED, the title reports submitted by RMR with its Application fail to identify the MOA. This omission conflicts with Code requirements. Specifically, Section 4.12.020.A.2.d of the Code requires a current title commitment dated no more than 30 days from the date of the sketch plan application; Section 4.12.020.B.2.d requires a current title commitment dated no more than 30 days from the date of the preliminary plan application; and Section 4.12.020.C.2.d requires a current title commitment dated no more than 30 days from the date of the sketch plan application. (We note that the final plat application in Section 4.12.020.C.2.d requires a current title commitment dated no more than 30 days from the date of the *sketch plan application*, but believe that the section more accurately should require a current title commitment dated no more than 30 days from the date of the *final plat application*.)

Because the MOA was properly recorded with the Clerk and Recorder of Eagle County in 2008, long before submission of the sketch plan application, the preliminary plan application, and the final plat application, the title commitment provided by RMR to the Town was not current, and therefore does not comply with the Code. Further, it is demonstrably and incontrovertibly incorrect in its omission of this key document. A current and accurate title commitment is required as part of a subdivision application to ensure that the development furthers the health, safety, and general welfare of Town residents. Without a title commitment including the MOA, the Application does not permit the Town to accurately gauge the development's potential impacts on the Town, its population, its services and facilities, its environment, its character, its existing and potential land uses, and its economy as required by Section 4.12.030 of the Code.

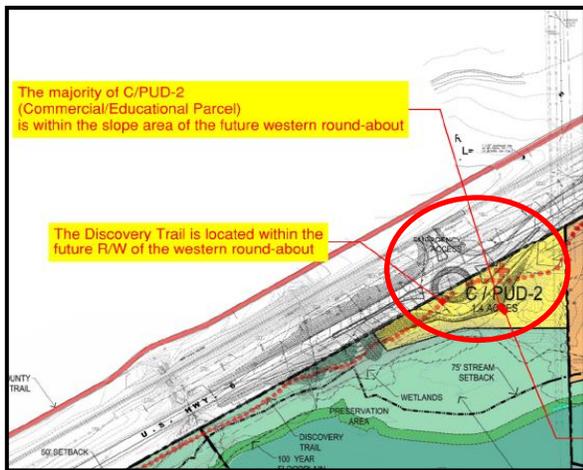
Moreover, if the Town were to approve the Final Plat based on this title commitment, which it knows to have omitted key documents showing a conflict with the property lines and development shown on the plat, it could expose the Town to a variety of claims that the Town acted unlawfully. For this reason alone, the Town should hesitate in approving RMR's Application without resolution of the outstanding issues. However, as explained below, several additional reasons exist why the Town should not approve the Application without such resolution.

Impossible Final Plat

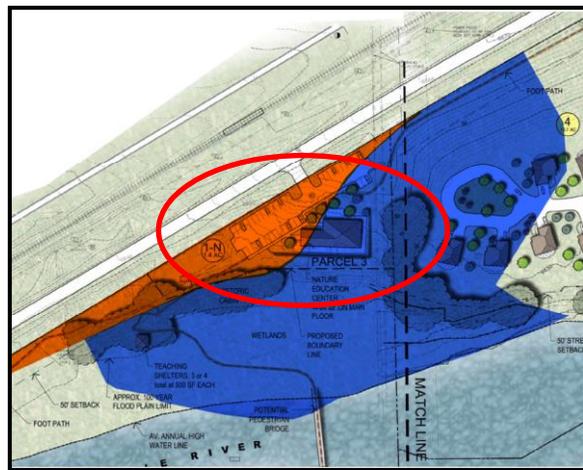
Second, by approving the Application without resolution of the outstanding issues presented by the MOA, the Town would be approving the Final Plat, a document with which RMR's proposed land uses cannot possibly comply. That the Town was not party to the MOA does not impact its effectiveness. One of the principal purposes of recording documents in the real property records is to provide notice to all parties of existing enforceable obligations that run with the land. One reason a current title commitment is required with subdivision applications is to ensure municipalities and counties are aware of all the existing legal obligations and rights of way affecting a property, prior to their approval of new, potentially conflicting, legal obligations and rights of way for the same property. Such a conflict clearly exists here.

The Final Plat depicts a 1.4-acre commercial/educational parcel (C/PUD-2), the entirety of which is encumbered with Tract A (per the MOA), and the Drainage Easement (see the right image below). These encumbrances impact RMR's proposed nature/educational center. We understand the nature/educational center is of importance to the Town in furtherance of its goals related to economic development and connection to open space. However, RMR has promised RED and the Town different uses for the exact same property. As the depictions below demonstrate, the nature/educational center building cannot coexist with the roundabout and Drainage Easement in Tract A.

Tract A

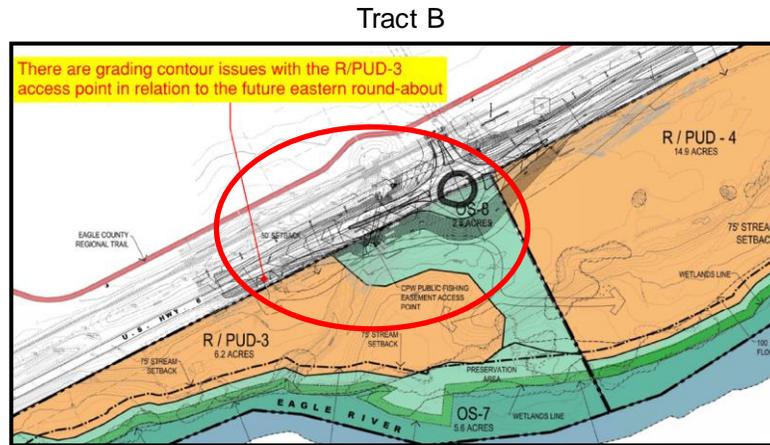


Conflict between the roundabout's grading and construction on the C/PUD-2 parcel



Conflict between the Drainage Easement and the nature center

Nor can the access point promised for RMR Parcel R/PUD-3 coexist with RMR's obligation to convey Tract B for a roundabout and related purposes.



While we understand that the Town is not a party to the MOA and its enforcement is not part of the Town's regulatory authority, it is equally clear that the reason the Town, like all jurisdictions with subdivision approval authority, requires a current and complete title commitment to be submitted as part of a subdivision application, is to ensure that the subdivision, if approved, does not create conflicts, create undevelopable parcels, or parcels without proper access or utilities. If the Town were to approve the Final Plat in this situation, it would be creating such a conflict.

Because there is no possible way RMR can comply with its obligations under both the Amendment and the Application without agreement between RED and RMR, RMR's current Application cannot stand, and the Town must delay it until these outstanding issues have been resolved.

### Procedural Concerns

Third, by approving the Application as it currently stands, the Town would not be following the Code's procedures for a final subdivision plat. Although the Code permits the Town's Planning Commission to waive certain submittal requirements for the sketch plan application and the preliminary plan application under certain circumstances, the Code does not permit such waiver for submittal requirements for a final plat application. Code § 4.12.020.D. Therefore, the Town cannot merely ignore the fact that the Final Plat application does not contain (1) a current title commitment showing all matters of title and (2) the extensive list of submittal materials required under Section 4.12.020.C of the Code. Per the Town Planner's testimony at the April 21, 2020 Planning and Zoning hearing, it is unclear what documents are still part of RMR's Application, and in the absence of clarity, it is difficult to tell if the Application is compliant with the Code. The Town should make public a checklist of what is required and why certain requirements were waived. Only then can a truly objective determination be made about the Application.

Should the Town approve the Application without clarity on what requirements are part of the Application, it would, in effect, be granting RMR a waiver from the requirements of the final plat application submittal, and overriding RMR's recorded contractual obligations. Therefore, the Town cannot lawfully approve the Application under these facts.

Conclusion

RED respectfully requests that the Town refrain from approving and delay further consideration of the Application until these and other outstanding issues with respect to the Property are resolved. A decision by the Town without resolution would create yet another obstacle to the development of RED's property, and would almost certainly result in approximately 100 acres of undeveloped property within the Town, if not permanently, at least for a very long time. Notwithstanding RMR's mischaracterization of RED's position with respect to the alternative highway access points, RED remains willing and able to participate in whatever conversations are necessary to achieve resolution.

Thank you for the opportunity to comment on the Application.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carolynne C. White".

Carolynne C. White

**Exhibit A-1**

4

When recorded, return to:  
Eagle Development, Inc.  
c/o Katz Law Firm  
J. Richard Crawford, Esq.  
435 Nichols Road, Suite 200  
Kansas City, MO 64112

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### MEMORANDUM OF AGREEMENT

Notice is hereby given that Eagle Development, Inc., a Colorado corporation ("EDI") and Red Mountain Ranch Partnership, LLLP, a Colorado limited liability limited partnership ("RMR"), have entered into a certain Fourth Amendment to Agreement of Sale (the "Fourth Amendment") dated August 20, 2008, which includes certain provisions regarding the future conveyance of the land legally described in Exhibit A, attached hereto (individually an "RMR Tract" and collectively the "RMR Tracts"). Interested parties are directed to consult with EDI and RMR concerning the affect of the Fourth Amendment on the RMR Tracts. The terms of this Memorandum shall expire upon the conveyance or dedication of each RMR Tract as to the RMR Tract so conveyed or dedicated pursuant to the terms of the Fourth Amendment.

IN WITNESS WHEREOF, this Memorandum of Agreement has been executed as of the 20<sup>th</sup> day of August, 2008.

(Signatures on following page)

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FATC  
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## EXHIBIT A

### NORTH I-70 INTERCHANGE LAND

A parcel of land located within Tracts 58 and 62, Section 27, Township 4 South, Range 84 West of the Sixth Principal Meridian, according to the Supplemental Plat of the Independent Resurvey thereof accepted in the U.S. Surveyor General's Office, June 20, 1922, Eagle County, Colorado, with the bearings described hereon based on a bearing of S89°54'19"E for the 1 - 2 line of said Tract 62 between Corner No. 1 and Corner No. 2 of said Tract 62, both being a 2 1/2" GLO brass caps on 1" iron pipe, found in place, said parcel being more particularly described as follows:

Beginning at a point from which said Corner No. 1 of Tract 62 also being Corner No. 2 of said Tract 58 bears N50°31'16"W, 372.82 feet; thence N87°23'28"E, 595.77 feet; thence S82°43'35"E, 577.05 feet to a point on the northerly right-of-way of Interstate 70 (I-70); thence along said northerly right-of-way line the following two (2) courses:

- 1) S77°08'41"W, 981.93 feet;
- 2) along a non-tangent curve to the left having a length of 1213.70 feet, a radius of 5879.57 feet, a tangent of 609.02 feet, a delta of 11°49'39" and a chord of 1211.55 feet that bears S71°13'56"W;

thence departing said northerly right-of-way N51°41'52"E, 267.66 feet; thence N56°06'22"E, 875.64 feet to the Point of Beginning. Said parcel containing 8.158 acres, more or less.

AND

### TRACT A

A parcel of land located in Tract 59, Section 33 and 34, Township 4 South, Range 84 West of the Sixth Principal Meridian, County of Eagle, State of Colorado, being a portion of the land described in Book 327 at Page 290, with the bearings described herein based on a bearing of S89°52'27"W for the 3 - 4 line of said Tract 59, Corner No. 3 being a 2 1/2 inch GLO brass cap on 1 inch iron pipe, found in place and Corner No. 4 being a 2 1/2 inch aluminum cap on 2 1/4 inch aluminum pipe, PE\PLS #23089, found in place, said parcel of land being more particularly described as follows:

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Beginning at a point on the southerly right-of-way line of Highway 6 and 24, from which said Corner No. 3 of said Tract 59 bears N13°03'47"W, 297.70 feet; thence departing said southerly right-of-way line the following seven (7) courses:

- 1) S55°44'50"W, 34.69 feet;
- 2) along a curve to the left having a length of 285.80 feet, a radius of 550.00 feet, a tangent of 146.21 feet, a delta of 29°46'23" and a chord of 282.60 feet that bears S40°51'38"W;
- 3) S25°58'26"W, 2.79 feet
- 4) along a curve to the right having a length of 135.34 feet, a radius of 134.00 feet, a tangent of 74.08 feet, a delta of 57°52'09" and a chord of 129.66 feet that bears S54°54'31"W;
- 5) S83°50'35"W, 41.51 feet;
- 6) along a curve to the left having a length of 64.03 feet, a radius of 200.00 feet, a tangent of 32.29 feet, a delta of 18°20'33" and a chord of 63.75 feet that bears S74°40'18"W;
- 7) S65°30'02"W, 596.03 feet

to a point on said southerly right-of-way line; thence along said right-of-way line N59°02'29"E, 1008.77 feet; thence along a curve to the right having a length of 117.34 feet, a radius of 11410.00 feet, a tangent of 58.67 feet, a delta of 0°35'21" and a chord of 117.34 feet that bears N59°20'10"E to the Point of Beginning. Said parcel containing 1.175 acres, more or less.

AND

EAGLE RIVER STATION  
TRACT B

A parcel of land located in Tract 58 and 59, Section 27, Township 4 South, Range 84 West of the Sixth Principal Meridian, County of Eagle, State of Colorado, being a portion of the land described in Book 327 at Page 290; Book 340 at Page 139; and Book 378 at Page 880, with the bearings described herein based on a bearing of S89°52'27"W for the 3 - 4 line of said Tract 59, Corner No. 3 being a 2 1/2 inch GLO brass cap on 1 inch iron pipe, found in place and Corner No. 4 being a 2 1/2 inch aluminum cap on 2 1/4 inch aluminum pipe, PE\PLS #23089, found in place, said parcel of land being more particularly described as follows:

Beginning at a point on the southerly right-of-way line of Highway 6 and 24, from which said Corner No. 3 of Tract 59 bears S70°05'26"W, 2212.63

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feet; thence along said right-of-way line N63°08'29"E, 1168.55 feet; thence departing said southerly right-of-way line the following five (5) courses:

- 1) S49°50'09"W, 345.81 feet;
- 2) along a curve to the right having a length of 235.19 feet, a radius of 1100.00 feet, a tangent of 118.04 feet, a delta of 12°15'01" and a chord of 234.74 feet that bears S55°57'39"W;
- 3) along a non-tangent curve to the right having a length of 265.10 feet, a radius of 155.00 feet, a tangent of 178.29 feet, a delta of 97°59'42" and a chord of 233.95 feet that bears S66°43'15"W;
- 4) along a non-tangent curve to the right having a length of 190.31 feet, a radius of 1100.00 feet, a tangent of 95.39 feet, a delta of 09°54'46" and a chord of 190.07 feet that bears S75°08'34"W;
- 5) S80°05'56"W, 187.89 feet

to the Point of Beginning. Said parcel containing 2.021 acres, more or less.

**Exhibit A-2**



**Exhibit B**

THIS INSTRUMENT PREPARED BY:

J. Richard Crawford, Esq.  
The Katz Law Firm, LC  
435 Nichols Road, Suite 200  
Kansas City, MO 64112

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**PERMANENT DRAINAGE EASEMENT AGREEMENT**

This Permanent Drainage Easement Agreement ("Agreement") is entered into on the date written below by and between, **THE RED MOUNTAIN RANCH PARTNERSHIP, LLLP**, a Colorado limited liability partnership ("Adjacent Owner"), and **EAGLE DEVELOPMENT, INC.**, a Colorado corporation ("RED"), as follows:

**WHEREAS**, Adjacent Owner owns certain real property depicted on Exhibit A and more particularly described on Exhibit B (the "Adjacent Tract");

**WHEREAS**, RED owns certain real property depicted on Exhibit A and more particularly described on Exhibit C (the "RED Tract");

**WHEREAS**, Adjacent Owner wishes to grant to RED permanent drainage easements over and across a portion of the Adjacent Tract for the benefit of the RED Tract as set forth below.

**NOW THEREFORE**, for Ten and No/100 United States Dollars (\$10.00) and other good and valuable consideration including the terms, conditions, covenants, and provisions contained herein, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. **Incorporation of Recitals**. The recitals set forth in this Agreement are not mere recitals of fact but are contractual in nature and incorporated into this Agreement by reference, except in the event of a conflict between the incorporated recitals and the numbered sections of this Agreement, the numbered sections of this Agreement shall control.
2. **Conveyance of Permanent Drainage Easement**. Adjacent Owner does hereby immediately grant, bargain, sell and convey unto RED, TO HAVE AND TO HOLD the same unto RED, its successors and assigns, the following permanent drainage easements over and across the Adjacent Tract upon the terms contained hereinbelow:
  - a. Permanent drainage easements (the "Fixed Drainage Easements") within the three (3) locations depicted and described on Exhibit D (the "Fixed Drainage Easements Areas"). Portions of the Fixed Drainage Easement Areas may be improved by RED with drainage features such as discharge pipes, rip-rap, sedimentation control and erosion control features or other drainage structures as may be required of RED by any governmental authority or agency having jurisdiction (collectively the "Improvements"). RED may channel and drain water from the RED Tract (and water discharging onto the RED Tract from other locations) through and on to the Fixed Drainage Easement Areas and Improvements installed therein with such water ultimately migrating to the Eagle River. Adjacent Owner hereby grants RED the right to enter the Fixed Drainage Easement

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THIS INSTRUMENT PREPARED BY:

J. Richard Crawford, Esq.  
The Katz Law Firm, LC  
435 Nichols Road, Suite 200  
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WHEREAS, Adjacent Owner owns certain real property depicted on Exhibit A and more particularly described on Exhibit B (the "Adjacent Tract");

WHEREAS, RED owns certain real property depicted on Exhibit A and more particularly described on Exhibit C (the "RED Tract");

WHEREAS, Adjacent Owner wishes to grant to RED permanent drainage easements over and across a portion of the Adjacent Tract for the benefit of the RED Tract as set forth below.

NOW THEREFORE, for Ten and No/100 United States Dollars (\$10.00) and other good and valuable consideration including the terms, conditions, covenants, and provisions contained herein, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. **Incorporation of Recitals.** The recitals set forth in this Agreement are not mere recitals of fact but are contractual in nature and incorporated into this Agreement by reference, except in the event of a conflict between the incorporated recitals and the numbered sections of this Agreement, the numbered sections of this Agreement shall control.
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  - a. Permanent drainage easements (the "Fixed Drainage Easements") within the three (3) locations depicted and described on Exhibit D (the "Fixed Drainage Easement Areas"). Portions of the Fixed Drainage Easement Areas may be improved by RED with drainage features such as discharge pipes, rip-rap, sedimentation control and erosion control features or other drainage structures as may be required of RED by any governmental authority or agency having jurisdiction (collectively the "Improvements"). RED may channel and drain water from the RED Tract (and water discharging onto the RED Tract from other locations) through and on to the Fixed Drainage Easement Areas and Improvements installed therein with such water ultimately migrating to the Eagle River. Adjacent Owner hereby grants RED the right to enter the Fixed Drainage Easement

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H0211640

Areas for purposes of installing and maintaining (as provided in subsection (c) below) such Improvements as RED deems necessary within the Fixed Drainage Easement Areas. It is the intention that the Fixed Drainage Easement described in Exhibit "D" as "Drainage Easement A" (referred to herein as such) extend from the south side of a future roundabout ("Eastern Roundabout") which will be dedicated by Grantor to the appropriate governmental authority at a later date. In the event the location of the Eastern Roundabout changes resulting in a gap between the southern boundary of the Eastern Roundabout and the northern boundary of Drainage Easement A, Grantor agrees to execute a permanent drainage easement in favor of Grantee to cover such area.

- b. Adjacent Owner reserves the right to utilize the Fixed Drainage Easement Areas for any and all purposes including drainage not inconsistent with RED's uses.
3. **Binding Effect; Duration; Enforcement.** The easements and obligations created hereby shall: (i) touch, concern, encumber and run with the Adjacent Tract in perpetuity; (ii) be binding upon all successor owners of the Adjacent Tract; (iii) be enforceable by RED, Adjacent Owner and all subsequent owners of the RED Tract and the Adjacent Tract; and (iv) be modified or terminated only by written agreement executed by RED and the owners of the Adjacent Tract, such modification thereafter being recorded in the real estate records of Eagle County, Colorado.
4. **No Adequate Remedy at Law.** Adjacent Owner agrees (i) violation or threatened violation of any provision of this Agreement by Adjacent Owner cannot be adequately compensated solely by monetary damages; (ii) RED shall be entitled to equitable relief in the form of temporary restraining order, injunction or otherwise for the sole and exclusive purpose of enforcing RED's rights in and to the easements created hereby; and (iii) RED shall additionally be entitled to a claim for monetary damages for breach hereof. In no event whatsoever shall Adjacent Owner, or any other party, have the right to prevent RED from using the Fixed Drainage Easements for drainage purposes as set forth herein, the parties agreeing RED's use of the easements can never be enjoined or terminated for any reason whatsoever.
5. **Not a Public Dedication.** This Agreement shall not be deemed a dedication to the general public of any portion of the Fixed Drainage Easements.
6. **Severability.** If any part of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be deemed inapplicable and deemed omitted to the extent so contrary, prohibited or invalid but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.
7. **Governing Law.** This Agreement shall be governed by the laws of the State of Colorado and any disputes arising hereunder shall be adjudicated in the State of Colorado.
8. **No Oral Agreements.** This written agreement may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreement of the parties. There are no unwritten oral agreements between the parties. Each of the parties hereto hereby acknowledges no other party, or agent or attorney of any other party, has made any promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof, to induce the other party to execute this Agreement or any of the other documents referred to herein and each party hereto acknowledges it has not executed this Agreement or

such other documents in reliance upon any such promise, representation or warranty not contained herein. This Agreement may be executed in counterparts.

9. **Compliance.** The parties hereby warrant and represent to each other that each shall comply fully with any federal, state or local laws, regulations, ordinances, permits or other authorizations or approvals or other requirements relating to stormwater discharges or the control of erosion or sediment discharges from construction projects, including but not limited to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and the Storm Water General Permit for Discharges Associated with Construction Activities (collectively the "Storm Water Requirements") (including without limitation preparing a Storm Water Pollution Prevention Plan (if applicable) to avoid negatively impacting any erosion or sediment controls during earth-disturbing activities, if any) in exercising any rights or privileges under this Agreement, Adjacent Owner recognizing and affirming RED would not enter into this Agreement or any related agreements without this warranty and representation.
10. **Status of Title.** Adjacent Owner hereby represents and warrants to RED that there are no mortgages, deeds of trust or other liens which are superior to the terms of this Agreement. This Agreement shall at all times remain superior to any mortgages, deeds of trust or other liens affecting the Adjacent Tract.
11. **Counterparts.** Adjacent Owner and RED agree that this Agreement may be signed in counterparts, with the same force and effect as if all required signatures were contained in a single, original instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this 20<sup>th</sup> day of August, 2008.



"RED"

**EAGLE DEVELOPMENT, INC.,**  
a Colorado corporation

By: 

Name: Dan Lowe

Title: President

STATE OF MISSOURI     )  
                                  )ss:  
COUNTY OF JACKSON    )

On this day, before me, a Notary Public, duly commissioned, qualified and acting, with and for said County and State, appeared in person the within named Dan Lowe, to me well known, who stated that he was the President of EAGLE DEVELOPMENT, INC., a Colorado corporation, and was duly authorized in that capacity to execute the foregoing instrument for and in the name and on behalf of said company, and further stated and acknowledged that he/she had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 13 day of Aug, 2008.

  
Notary Public

My Commission Expires:

\_\_\_\_\_  
(SEAL)  
DOREEN C. HANSEN  
Notary Public-Notary Seal  
STATE OF MISSOURI  
Jackson County  
My Commission Expires: Oct 28, 2011  
Commission # 07384893

**EXHIBIT A**

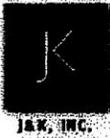
**Depiction of RED Tract and Adjacent Tract Attached**

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**EXHIBIT B**

**Legal Description of Adjacent Tract Attached**



**EXHIBIT B**  
**Legal Description of Adjacent Land**

All that portion of land within Tracts 58 and 59, Sections 27, 33 and 34, Township 4 South, Range 84 West of the 6<sup>th</sup> Principal Meridian, (including therein Lot 1, Filing No. 1, Red Mountain Ranch as described on the Final Plat thereof recorded May 7, 1982 in Book 340 at Page 139 at the Eagle County Clerk and Recorder's Office, Eagle, Colorado; the land described in Exhibit B of the Deed recorded August 6, 1981 in Book 327 at Page 290; and the land described in the Deed recorded February 8, 1984 in Book 378 at Page 88), that lies South of the southerly right-of-way for U.S. Highway 6 & 24 and North of the centerline for the Eagle River.

**INTEGRITY FROM THE GROUND UP™**

P 970 328 6368 F 970 328 1095 POST OFFICE BOX 109 1286 CHAMBERS AVENUE, SUITE 200 EAGLE, COLORADO 81631 JG-BY-COM

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EXHIBIT C

Legal Description of RED Tract

Parcel 1:

EAGLE RIVER STATION  
ANNEXATION 1

A parcel of land located within Tracts 59, 60, 61 and 62, Sections 27, 28, 33 and 34, Township 4 South, Range 84 West of the Sixth Principal Meridian, according to the Supplemental Plat of the Independent Resurvey thereof accepted in the U.S. Surveyor General's Office, June 20, 1922, Eagle County, Colorado, with the bearings described hereon based on a bearing of N00°37'32"W for the West line of said Tract 59 between Corner No. 4 being a 2 1/2" aluminum cap on 2 1/4" aluminum pipe, PE\PLS No. 23089, found in place and Corner No. 5 being a 2 1/2" GLO brass cap on 1" iron pipe, found in place, said parcel being more particularly described as follows:

Beginning at said Corner No. 4 of Tract 59 also being Corner No. 3 of said Tract 60, Corner No. 4 of said Tract 61 and the northeast corner of Eagle Valley Commercial Park, Filing No. 2, according to the Final Plat thereof recorded in Book 702 at Page 365 at the Eagle County Clerk and Recorder's Office, Eagle, Colorado; thence along the south line of said Tract 61 also being the northeasterly line of said Eagle Valley Commercial Park, Filing No. 2, S89°05'16"W, 390.68 feet to a point on the southerly right-of-way line of Interstate Highway No. 70; thence along said southerly right-of-way line the following two (2) courses:

- 1) N60°24'00"E, 2611.72 feet;
- 2) N69°50'12"E, 143.40 feet;

thence departing said southerly right-of-way line S24°14'54"W, 1628.00 feet to the northerly right-of-way line of the Union Pacific Railroad, being 50.00 feet from the center of the existing tracks; thence along said northerly right-of-way S59°13'37"W, 1554.84 feet to the southeasterly corner of said Eagle Valley Commercial Park, Filing No. 2 also being a point on the 4 - 5 line of said Tract 59; thence along said 4 - 5 line also being the easterly line of said Eagle Valley Commercial Park, Filing No. 2 N00°37'32"W, 946.69 feet to the Point of Beginning.

AND

Parcel 2:

EAGLE RIVER STATION  
ANNEXATION 2

A parcel of land located within Tracts 58, 59, 60, and 62, Sections 27 and 34, Township 4 South, Range 84 West of the Sixth Principal Meridian, according to the Supplemental Plat of the Independent Resurvey thereof accepted in the U.S. Surveyor General's Office, June 20, 1922, Eagle County, Colorado, with the bearings described hereon based on a bearing of N00°37'32"W for the West line of said Tract 59 between Corner No. 4 being a 2 1/2" aluminum cap on 2 1/4"

aluminum pipe, PE\PLS No. 23089, found in place and Corner No. 5 being a 2 1/2" GLO brass cap on 1" iron pipe, found in place, said parcel being more particularly described as follows:

Beginning at a point on the southerly right-of-way line of Interstate Highway No. 70 from which said Corner No. 4 of Tract 59 also being Corner No. 3 of said Tract 60, Corner No. 4 of said Tract 61 and the northeast corner of Eagle Valley Commercial Park, Filing No. 2, according to the Final Plat thereof recorded in Book 702 at Page 365 at the Eagle County Clerk and Recorder's Office, Eagle, Colorado, bears S56°30'26"W, 2416.03 feet; thence along said southerly right-of-way line of Interstate Highway No. 70 the following five (5) courses:

- 1) N69°50'12"E, 143.40 feet;
- 2) along a non-tangent curve to the right having a length of 1013.48 feet, a radius of 5579.60 feet, a tangent of 508.14 feet, a delta of 10°24'26" and a chord of 1012.09 feet that bears N68°28'52"E;
- 3) N75°42'18"E, 333.13 feet;
- 4) N69°59'51"E, 319.78 feet;
- 5) N76°25'05"E, 926.49 feet;

thence departing said southerly right-of-way S67°31'26"W, 1092.56 feet to a point on the East line of Lot 2 of the Red Mountain Ranch Exemption as described on the plat thereof recorded in Book 372 at Page 753 at said Clerk and Recorder's Office; thence along said East line S26°52'08"E, 501.89 feet; thence departing said East line S69°57'11"E, 190.49 feet to the northerly right-of-way line of the Union Pacific Railroad, being 50.00 feet from the center of the existing tracks; thence along said northerly right-of-way the following two (2) courses:

- 1) S63°04'44"W, 2197.11 feet;
- 2) along a curve to the left having a length of 806.00 feet, a radius of 11988.63 feet a tangent of 403.15 feet, a delta of 3°51'07" and a chord of 805.85 feet that bears S61°09'11"W;

thence departing said northerly right-of-way N24°14'54"E, 1628.00 feet to the Point of Beginning,

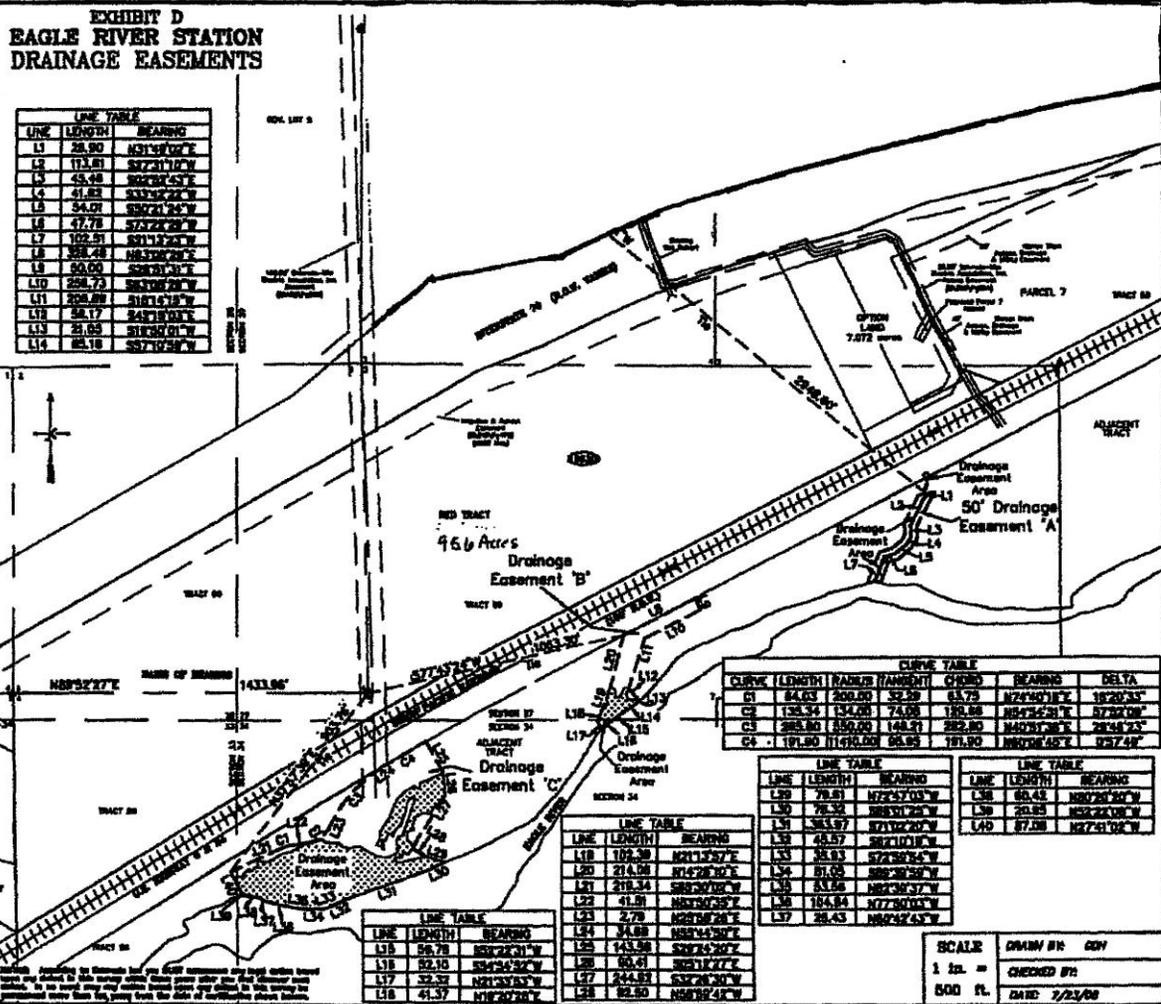
**EXHIBIT D**

**Depiction of Fixed Drainage Easements and Legal Descriptions on Following Pages**

K:\RED\Eagle, CO\Easements\Drainage Easement\Final\Drainage Easement August12a\Final.doc

**EXHIBIT D  
EAGLE RIVER STATION  
DRAINAGE EASEMENTS**

| LINE | LENGTH | BEARING     |
|------|--------|-------------|
| L1   | 28.90  | N31°19'02"E |
| L2   | 113.81 | S72°21'10"W |
| L3   | 45.48  | S22°28'45"E |
| L4   | 41.82  | S33°22'22"W |
| L5   | 34.01  | S20°21'24"W |
| L6   | 47.78  | S73°22'22"W |
| L7   | 102.91 | S21°12'24"E |
| L8   | 381.48 | N83°28'22"E |
| L9   | 50.00  | S28°31'41"E |
| L10  | 258.73 | S21°05'20"W |
| L11  | 208.28 | S18°15'19"W |
| L12  | 34.17  | S43°18'01"E |
| L13  | 21.85  | S17°30'01"W |
| L14  | 85.18  | S57°10'24"W |



| CURVE | LENGTH | RADIUS  | TANGENT | CHORD  | BEARING     | DELTA     |
|-------|--------|---------|---------|--------|-------------|-----------|
| C1    | 84.03  | 200.00  | 32.59   | 63.75  | N72°30'11"E | 18°20'33" |
| C2    | 136.34 | 134.00  | 74.08   | 130.88 | N87°25'26"E | 87°20'00" |
| C3    | 283.80 | 180.00  | 148.21  | 282.80 | N40°21'36"E | 78°34'23" |
| C4    | 101.90 | 1140.00 | 65.93   | 781.90 | N80°28'45"E | 87°27'47" |

| LINE | LENGTH | BEARING     |
|------|--------|-------------|
| L15  | 78.81  | N72°37'03"W |
| L16  | 78.38  | N83°11'28"W |
| L17  | 383.97 | N71°26'20"W |
| L18  | 48.87  | S22°10'11"E |
| L19  | 102.30 | N21°12'57"E |
| L20  | 214.08 | N14°28'02"E |
| L21  | 218.34 | S82°30'02"W |
| L22  | 41.91  | N82°30'37"E |
| L23  | 2.79   | N82°30'24"E |
| L24  | 34.88  | N82°44'50"E |
| L25  | 143.28 | S29°24'30"E |
| L26  | 85.61  | S29°12'27"E |
| L27  | 244.83 | S32°28'30"W |
| L28  | 82.50  | N82°39'43"W |

| LINE | LENGTH | BEARING     |
|------|--------|-------------|
| L29  | 86.43  | N82°28'20"W |
| L30  | 20.83  | N82°24'08"W |
| L40  | 87.08  | N27°51'02"W |

| LINE | LENGTH | BEARING     |
|------|--------|-------------|
| L35  | 86.78  | N82°22'31"W |
| L36  | 82.10  | S24°24'32"E |
| L37  | 32.32  | N21°28'43"W |
| L38  | 41.37  | N18°20'28"W |

| LINE | LENGTH | BEARING     |
|------|--------|-------------|
| L39  | 82.50  | N82°39'43"W |
| L41  | 82.50  | N82°39'43"W |
| L42  | 82.50  | N82°39'43"W |
| L43  | 82.50  | N82°39'43"W |
| L44  | 82.50  | N82°39'43"W |
| L45  | 82.50  | N82°39'43"W |
| L46  | 82.50  | N82°39'43"W |
| L47  | 82.50  | N82°39'43"W |
| L48  | 82.50  | N82°39'43"W |
| L49  | 82.50  | N82°39'43"W |
| L50  | 82.50  | N82°39'43"W |
| L51  | 82.50  | N82°39'43"W |
| L52  | 82.50  | N82°39'43"W |
| L53  | 82.50  | N82°39'43"W |
| L54  | 82.50  | N82°39'43"W |
| L55  | 82.50  | N82°39'43"W |
| L56  | 82.50  | N82°39'43"W |
| L57  | 82.50  | N82°39'43"W |
| L58  | 82.50  | N82°39'43"W |
| L59  | 82.50  | N82°39'43"W |
| L60  | 82.50  | N82°39'43"W |
| L61  | 82.50  | N82°39'43"W |
| L62  | 82.50  | N82°39'43"W |
| L63  | 82.50  | N82°39'43"W |
| L64  | 82.50  | N82°39'43"W |
| L65  | 82.50  | N82°39'43"W |
| L66  | 82.50  | N82°39'43"W |
| L67  | 82.50  | N82°39'43"W |
| L68  | 82.50  | N82°39'43"W |
| L69  | 82.50  | N82°39'43"W |
| L70  | 82.50  | N82°39'43"W |
| L71  | 82.50  | N82°39'43"W |
| L72  | 82.50  | N82°39'43"W |
| L73  | 82.50  | N82°39'43"W |
| L74  | 82.50  | N82°39'43"W |
| L75  | 82.50  | N82°39'43"W |
| L76  | 82.50  | N82°39'43"W |
| L77  | 82.50  | N82°39'43"W |
| L78  | 82.50  | N82°39'43"W |
| L79  | 82.50  | N82°39'43"W |
| L80  | 82.50  | N82°39'43"W |
| L81  | 82.50  | N82°39'43"W |
| L82  | 82.50  | N82°39'43"W |
| L83  | 82.50  | N82°39'43"W |
| L84  | 82.50  | N82°39'43"W |
| L85  | 82.50  | N82°39'43"W |
| L86  | 82.50  | N82°39'43"W |
| L87  | 82.50  | N82°39'43"W |
| L88  | 82.50  | N82°39'43"W |
| L89  | 82.50  | N82°39'43"W |
| L90  | 82.50  | N82°39'43"W |
| L91  | 82.50  | N82°39'43"W |
| L92  | 82.50  | N82°39'43"W |
| L93  | 82.50  | N82°39'43"W |
| L94  | 82.50  | N82°39'43"W |
| L95  | 82.50  | N82°39'43"W |
| L96  | 82.50  | N82°39'43"W |
| L97  | 82.50  | N82°39'43"W |
| L98  | 82.50  | N82°39'43"W |
| L99  | 82.50  | N82°39'43"W |
| L100 | 82.50  | N82°39'43"W |

SCALE: DRAWN BY: GCH  
1 in. = CHECKED BY:  
500 ft. DATE: 7/23/08

K

**J&K, INC.**  
ARCHITECTURE  
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MULTIMEDIA DEVELOPMENT

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EAGLE RIVER STATION  
DRAINAGE EASEMENTS

JOB NO. 8109  
DRAWING NO. 1

**EXHIBIT D Continued**

**Legal Description of Fixed Drainage Easements**

'Drainage Easement 'A''

A Permanent 50' Drainage Easement located within Tract 59, Section 27, Township 4 South, Range 84 West of the 6<sup>th</sup> Principal Meridian, Eagle County, Colorado, with the bearings described herein based on a bearing of N89°54'19"W for the 1 – 2 line of Tract 62, Section 27, Township 4 South, Range 84 West of the 6<sup>th</sup> Principal Meridian, with both monuments for Corner No. 1 and Corner No. 2 of said Tract 62 being 2 1/2 inch G.L.O. brass caps on 1 inch iron pipe, found in place, said Drainage Easement centerline being more particularly described as follows:

Beginning at a point from which said Corner No. 2 of Tract 62 bears N51°22'41"W, 2948.60 feet; thence continuing the following seven (7) courses:

- 1) S31°49'02"W, 26.90 feet;
- 2) S27°31'10"W, 113.61 feet;
- 3) S02°52'43"E, 45.46 feet;
- 4) S33°42'22"W, 41.92 feet;
- 5) S50°21'24"W, 54.01 feet;
- 6) S73°22'29"W, 47.76 feet;
- 7) S21°13'23"W, 102.51 feet

to the northerly side of the Eagle River.

'Drainage Easement 'B''

A Permanent Drainage Easement located within Tract 59, Sections 27 & 34, Township 4 South, Range 84 West of the 6<sup>th</sup> Principal Meridian, Eagle County, Colorado, with the bearings described herein based on a bearing of N89°52'27"E for the 3 – 4 line of said Tract 59 with Corner No. 3, being a 2 1/2 inch G.L.O. brass cap on 1 inch iron pipe, found in place and Corner No. 4, being a 2 1/2 inch aluminum cap on 2 1/4 inch aluminum pipe, PE\PLS #23089, found in place, said Drainage Easement being more particularly described as follows:

Beginning at a point on the southerly right-of-way line for U.S. Highway 6 & 24 from which said Corner No. 3 of said Tract 59 bears S77°43'24"W, 1063.30 feet; thence along said right-of-way N63°08'29"E, 328.48 feet; thence departing said right-of-way the following five (5) courses:

- 1) S26°51'31"E, 50.00 feet;
- 2) S63°08'29"W, 256.73 feet;
- 3) S18°14'15"W, 206.89 feet;
- 4) S42°15'03"E, 56.17 feet;
- 5) S19°50'01"W, 21.05 feet

to the northerly side of the Eagle River; thence along said Eagle River the following three (3) courses:

- 1) S57°10'59"W, 65.16 feet;
- 2) S52°22'31"W, 59.78 feet;
- 3) S54°54'52"W, 52.10 feet;

thence departing said Eagle River the following four (4) courses:

- 1) N21°33'53"W, 32.32 feet;
- 2) N19°20'28"E, 41.37 feet;
- 3) N21°13'57"E, 102.39 feet;
- 4) N14°26'10"E, 214.06 feet

to said southerly right-of-way line of said U.S. Highway 6 & 24 and the Point of Beginning.

'Drainage Easement 'C''

A Permanent Drainage Easement located within Tract 59, Sections 33 & 34, Township 4 South, Range 84 West of the 6<sup>th</sup> Principal Meridian, Eagle County, Colorado, with the bearings described herein based on a bearing of N89°52'27"E for the 3 - 4 line of said Tract 59 with Corner No. 3, being a 2 1/2 inch G.L.O. brass cap on 1 inch iron pipe, found in place and Corner No. 4, being a 2 1/2 inch aluminum cap on 2 1/4 inch aluminum pipe, PE\PLS #23089, found in place, said Drainage Easement being more particularly described as follows:

Beginning at a point from which said Corner No. 3 bears N37°57'39"E, 903.76 feet; thence continuing the following seven (7) courses:

- 1) N65°30'02"E, 219.34 feet;
- 2) along a curve to the right having a length of 64.03 feet, a radius of 200.00 feet, a tangent of 32.29 feet, a delta of 18°20'33" and a chord of 63.75 feet that bears N74°40'18"E;
- 3) N83°50'35"E, 41.51 feet;
- 4) along a curve to the left having a length of 135.34 feet, a radius of 134.00 feet, a tangent of 74.08 feet, a delta of 57°52'09" and a chord of 129.66 feet that bears N54°54'31"E;
- 5) N25°58'26"E, 2.79 feet;
- 6) along a curve to the right having a length of 285.80 feet, a radius of 550.00 feet, a tangent of 146.21 feet, a delta of 29°46'23" and a chord of 282.60 feet that bears N40°51'38"E;
- 7) N55°44'50"E, 34.69 feet

to a point on the southerly right-of-way for U.S. Highway 6 & 24; thence along said right-of-way along a non-tangent curve to the right having a length of 191.90 feet, a radius of 11410.00, a tangent of 95.95 feet, a delta of 0°57'49", and a chord of 191.90 feet that bears N60°06'45"E; thence departing said right-of-way the following five (5) courses:

- 1) S29°24'20"E, 143.58 feet;
- 2) S05°12'27"E, 90.41 feet;
- 3) S32°26'30"W, 244.92 feet;
- 4) S58°59'42"E, 62.50 feet;
- 5) S72°47'03"E, 79.61 feet

to the northerly side of the Eagle River; thence along said Eagle River the following nine (9) courses:

- 1) S66°01'25"W, 78.32 feet;
- 2) S71°02'20"W, 363.97 feet;
- 3) S62°10'19"W, 45.57 feet;
- 4) S72°59'54"W, 35.93 feet;
- 5) S89°39'59"W, 81.05 feet;
- 6) N82°39'37"W, 53.56 feet;
- 7) N77°50'03"W, 104.84 feet;
- 8) N60°42'43"W, 26.43 feet;
- 9) N80°20'20"W, 60.42 feet;

thence departing said Eagle River N52°22'08"W, 20.65 feet; thence N27°41'02"W, 87.08 feet to the southerly right-of-way of U.S. Highway 6 & 24 and the Point of Beginning.

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