

Ordinance 2012 - 13

AN ORDINANCE ANNEXING TO THE CITY OF FRUITA APPROXIMATELY 215 ACRES OF PROPERTY LOCATED SOUTH OF HIGHWAY 6 & 50 AND WEST OF 15 ROAD (Western Slope Industrial & Rail)

WHEREAS, the Fruita City Council finds that it is necessary to annex certain real property contiguous to the City of Fruita in order to:

1. Promote the public health, safety, and welfare of the community; and,
2. Insure efficient provision of municipal services and fair and equitable distribution of cost amongst those who use services provided by the community; and,
3. Provide for orderly growth of the community; and,

WHEREAS, the City Council adopted Resolution 2009-21 finding that the real property described on Exhibit A and shown on Exhibit B is eligible for annexation pursuant to C.R.S. 31-12-104 and 105, stating their intent to annex same and initiating the annexation procedures.

THE CITY OF FRUITA HEREBY ORDAINS:

Section 1: The Fruita City Council, having reviewed a properly constituted petition of all the owners of real property in the area proposed for annexation, hereby annexes the property as described on Exhibit A and shown on Exhibit B and the Fruita City limits are hereby modified to reflect said annexation.

Section 2: Conditions of said annexation include:

1. The annexation of the property described on Exhibit A and shown on Exhibit B shall be subject to an annexation and development agreement attached hereto as Exhibit C which is voluntarily made by and between the City of Fruita and 100% of the landowners of the property hereby annexed. Pursuant to Section 31-12-112, C.R.S., no election is required for the approval of the terms and conditions contained in such agreement.
2. Zoning of said property shall be established by future public hearing which will be held within ninety days (90) of the effective day of this ordinance.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL, THIS
2nd DAY OF JULY 2012.**

ATTEST:

City of Fruita

City Clerk

Lori Buck, Mayor

Exhibit A
Ordinance 2012-13
LEGAL DESCRIPTION
WESTERN SLOPE INDUSTRIAL AND RAIL PROPERTY ANNEXATION

A tract of land located in Section 11, Township 1 North, Range 3 West of the Ute Meridian, more particularly described as follows:

Commencing at the Northeast corner of said Section 11, whence the E $\frac{1}{4}$ corner of said Section 11 bears South 00°01'59" West, a distance of 2629.08 feet, for a basis of bearings, with all bearings contained herein relative thereto;
thence South 78°49'40" West, a distance of 2772.37 feet;
thence South 30°07'25" West, a distance of 981.87 feet;
thence South 09°47'03" West, a distance of 551.22 feet to the true Point of Beginning;
thence South 00°43'55" West, a distance of 318.00 feet;
thence South 59°03'33" East, a distance of 125.97 feet;
thence South 39°05'00" East, a distance of 131.38 feet;
thence South 09°29'47" East, a distance of 249.49 feet;
thence North 80°25'24" West, a distance of 501.53 feet;
thence North 20°38'57" East, a distance of 775.57 feet to the Point of Beginning,

INCLUDING:

A tract of land located in Section 11, Township 1 North, Range 3 West of the Ute Meridian, more particularly described as follows:

Commencing at the Northeast corner of said Section 11, whence the E $\frac{1}{4}$ corner of said Section 11 bears South 00°01'59" West, a distance of 2629.08 feet, for a basis of bearings, with all bearings contained herein relative thereto;
thence along the East line of said Section 11 South 00°01'59" West, a distance of 872.57 feet;
thence North 56°32'04" West, a distance of 1821.99 feet to the most Northerly corner of Parcel 2 of Tract A, Landmark Petroleum, Inc., as shown on Boundary Adjustment deposited in Book 1, Page 36, Deposit Number 1296-96 of the Mesa County Surveyor's records, the Point of Beginning;
thence along the Northwesterly line of said Boundary Line Adjustment the following twenty-eight (28) courses:

1. South 32°43'41" West, a distance of 152.28 feet;
2. South 56°27'12" East, a distance of 88.73 feet;
3. South 33°27'46" West a distance of 106.81 feet;
4. South 55°34'54" West, a distance of 33.39 feet;
5. South 43°19'31" West, a distance of 142.24 feet;
6. North 56°58'06" West, a distance of 76.98 feet;
7. South 32°31'41" West, a distance of 35.88 feet;
8. South 56°49'13" East, a distance of 89.51 feet;

Ex A Ord. 2012-13

9. South 32°40'58" West, a distance of 65.75 feet;
 10. South 56°49'07" East, a distance of 65.92 feet;
 11. South 33°31'45" West, a distance of 41.69 feet;
 12. North 56°20'11" West, a distance of 111.95 feet;
 13. North 33°06'47" East, a distance of 4.35 feet;
 14. North 56°53'13" West, a distance of 34.90 feet;
 15. North 33°09'56" East, a distance of 13.57 feet;
 16. North 56°17'03" West, a distance of 101.55 feet;
 17. South 33°52'02" West, a distance of 36.91 feet;
 18. South 56°46'32" East, a distance of 31.33 feet;
 19. South 33°13'28" West, a distance of 21.50 feet;
 20. North 56°26'27" West, a distance of 131.91 feet;
 21. South 33°38'41" West, a distance of 86.70 feet;
 22. North 60°35'36" West, a distance of 33.52 feet;
 23. South 33°42'48" West, a distance of 68.49 feet;
 24. South 56°53'46" East, a distance of 131.96 feet;
 25. South 33°42'37" West, a distance of 45.53 feet;
 26. North 44°22'06" West, a distance of 218.40 feet;
 27. South 32°15'48" West, a distance of 166.80 feet;
 28. North 58°56'44" West, a distance of 298.49 feet;
- thence North 33°27'56" East, a distance of 948.47 feet;
thence South 56°32'04" East, a distance of 626.05 feet to the Point of Beginning,

INCLUDING:

A tract of land located in Section 11, Township 1 North, Range 3 West of the Ute Meridian, more particularly described as follows:

Commencing at the Northeast corner of said Section 11, whence the E ¼ corner of said Section 11 bears South 00°01'59" West, a distance of 2629.08 feet, for a basis of bearings, with all bearings contained herein relative thereto;
thence along the East line of said Section 11 South 00°01'59" West, a distance of 872.57 feet to a point on the South line of a 200 foot wide railroad right-of-way;
thence along said South line of said railroad right-of-way North 56°32'04" West, a distance of 1473.79 feet to the Point of Beginning;
thence South 34°02'28" West, a distance of 384.57 feet;
thence South 56°25'06" East, a distance of 323.90 feet;
thence South 33°33'13" West, a distance of 473.02 feet;
thence South 56°26'46" East, a distance of 79.50 feet;
thence South 33°33'13" West, a distance of 115.46 feet;
thence South 57°31'52" East, a distance of 52.07 feet;
thence North 33°33'13" East, a distance of 90.58 feet;
thence South 56°08'14" East, a distance of 414.12 feet;
thence North 52°51'11" East, a distance of 81.06 feet;
thence South 57°55'14" East, a distance of 261.08 feet;
thence South 07°39'15" West, a distance of 94.49 feet;

Ex A Ord 2012-13

thence South 56°08'14" East, a distance of 418.13 feet;
thence South 31°28'29" West, a distance of 240.00 feet;
thence South 31°41'15" East, a distance of 115.86 feet;
thence North 33°51'46" East, a distance of 234.64 feet;
thence South 56°08'14" East, a distance of 289.73 feet;
thence South 00°01'56" East, a distance of 842.93 feet;
thence South 71°08'19" West, a distance of 383.97 feet;
thence South 00°01'58" West, a distance of 374.74 feet;
thence North 89°58'04" East, a distance of 363.28 feet;
thence South 16°55'29" West, a distance of 124.17 feet;
thence South 28°25'03" West, a distance of 115.12 feet;
thence South 46°21'41" West, a distance of 94.86 feet;
thence South 63°16'31" West, a distance of 80.27 feet;
thence North 79°24'54" West, a distance of 210.77 feet;
thence North 49°30'39" West, a distance of 269.34 feet;
thence North 26°47'56" East, a distance of 205.95 feet;
thence North 63°12'04" West, a distance of 409.62 feet;
thence South 27°45'47" West, a distance of 103.16 feet;
thence South 63°25'01" West, a distance of 1724.88 feet;
thence North 82°54'07" West, a distance of 368.94 feet;
thence North 62°56'25" West, a distance of 1481.39 feet;
thence North 57°38'44" West, a distance of 977.68 feet;
thence South 86°22'09" West, a distance of 158.38 feet;
thence North 41°52'24" East, a distance of 62.51 feet;
thence South 89°47'04" East, a distance of 767.57 feet;
thence South 01°04'35" East, a distance of 58.91 feet;
thence South 89°25'24" East, a distance of 1003.06 feet;
thence North 09°29'47" West, a distance of 249.49 feet;
thence North 39°05'00" West, a distance of 131.38 feet;
thence North 59°03'33" West, a distance of 125.97 feet;
thence North 00°43'35" East, a distance of 318.00 feet;
thence North 09°47'03" East, a distance of 551.22 feet;
thence North 30°07'25" East, a distance of 981.87 feet;
thence North 34°36'45" East, a distance of 271.33 feet;
thence South 58°56'44" East, a distance of 298.49 feet;
thence North 32°15'48" East, a distance of 166.80 feet;
thence South 44°22'06" East, a distance of 218.40 feet;
thence North 33°42'37" East, a distance of 45.53 feet;
thence North 56°53'46" West, a distance of 131.96 feet;
thence North 33°42'48" East, a distance of 68.49 feet;
thence South 60°35'36" East, a distance of 33.52 feet;
thence North 33°38'41" East, a distance of 86.70 feet;
thence South 56°26'27" East, a distance of 131.91 feet;
thence North 33°13'28" East, a distance of 21.50 feet;
thence North 56°46'32" West, a distance of 31.33 feet;
thence North 33°52'02" East, a distance of 36.91 feet;

Ex. A Ord 2012-13

thence South 56°17'03" East, a distance of 101.55 feet;
thence South 33°09'56" West, a distance of 13.57 feet;
thence South 56°53'13" East, a distance of 34.90 feet;
thence South 33°06'47" West, a distance of 4.35 feet;
thence South 56°20'11" East, a distance of 111.95 feet;
thence North 33°31'45" East, a distance of 41.69 feet;
thence North 56°49'07" West, a distance of 65.92 feet;
thence North 32°40'58" East, a distance of 65.75 feet;
thence North 56°49'13" West, a distance of 89.51 feet;
thence North 32°31'41" East, a distance of 35.88 feet;
thence South 56°58'06" East, a distance of 76.98 feet;
thence North 43°19'31" East, a distance of 142.24 feet;
thence North 55°34'54" East, a distance of 33.39 feet;
thence North 33°27'46" East, a distance of 106.81 feet;
thence North 56°27'12" West, a distance of 88.73 feet;
thence North 32°43'41" East, a distance of 152.28 feet;
thence South 56°32'04" East, a distance of 348.20 feet to the Point of Beginning,

TOGETHER WITH Ingress and Egress Easement as evidenced in instrument recorded March 3, 1994 in Book 2052 at Page 589 as Reception No. 1673131.

AND TOGETHER WITH Ingress and Egress Easement as evidenced in instrument recorded April 30, 1996 in Book 2228 at Page 1 as Reception No. 1754925.

AND ALSO TOGETHER WITH an easement for rail car ingress and egress only upon Railroad Tracks #1, #2, #3, #4 and #6 as evidenced by instrument recorded April 30, 1994 in Book 2228 at Page 3 as Reception No. 1754926.

EXCEPT any portion of said rail car easement lying Westerly of the land described hereinabove.

AND ALSO TOGETHER WITH an Easement for Ingress and Egress as evidenced in instrument recorded April 3, 1996 in Book 2227 at Page 998 as Reception No. 1754924 only to the extent where such easement affects Lot 2 of Wesfrac Subdivision as shown on the official plat thereof, recorded in the office of the Mesa County Clerk and Recorder at Plat Book 18, Page 192.

LESS and EXCEPTING the following described parcel:

~~A parcel of land located in the E-½ of Section 11, Township 1 North, Range 3 West of the Ute Meridian, being more particularly described as follows:~~

Commencing at the E ¼ corner of Section 11, Township 1 North, Range 3 West, Ute Meridian, whence the Northeast corner of said Section 11 bears North 00°01'59" East, a distance of 2629.08 feet, with all bearings contained herein relative thereto;
thence South 12°22'06" West, a distance of 140.21 feet to a point on the Westerly Line of Lot 1 Wesfrac Subdivision, Book 18, Page 192 and the Point of Beginning;

Ex. A Ord 2012-13

thence South 71°08'19" West, along the West property line of said Lot 1 a distance of 383.97 feet;
thence South 00°01'58" West, a distance of 393.65 feet, along the West property Line of Lot 1 and its extension;
thence North 63°12'04" West, a distance of 619.30 feet;
thence North 65°04'50" West, a distance of 1176.99 feet;
thence North 33°29'02" East, a distance of 545.29 feet;
thence South 79°57'22" East, a distance of 437.31 feet;
thence North 75°42'26" East, a distance of 583.37 feet;
thence North 33°33'27" East, a distance of 435.42 feet; to a point on line of Lot 1;
thence along lot line of said Lot 1 the following six (6) courses:
South 56°08'14" East, a distance of 122.59 feet;
South 31°28'29" West, a distance of 240.00 feet;
South 58°41'15" East, a distance of 115.86 feet;
North 33°51'46" East, a distance of 234.64 feet;
South 56°08'14" East, a distance of 289.73 feet;
South 00°01'56" West, a distance of 842.93 feet to the Point of Beginning.

AND INCLUDING:

All of Lot 1, Wesfrac Subdivision, as shown on the official plat thereof, recorded in the office of the Mesa County Clerk and Recorder at Plat Book 18, Page 192.

All in Mesa County Colorado

Ex. B Ord 2012-13

Exhibit B
Ordinance 2012-13
Western Slope Industrial & Rail Annexation

LOCATION MAP

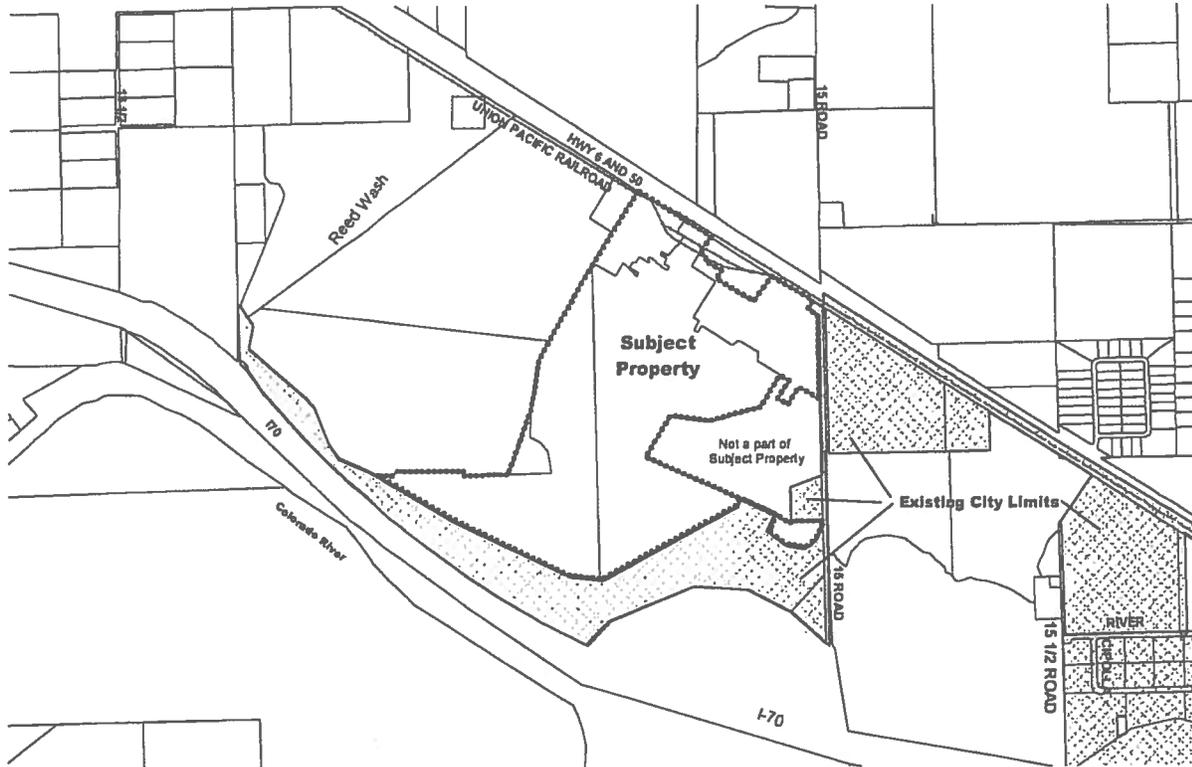


EXHIBIT C - ORDINANCE 2012-13

AGREEMENT RELATING TO THE ANNEXATION AND DEVELOPMENT OF PROPERTY KNOWN AS WESTERN SLOPE INDUSTRIAL AND RAIL PARK PUD SUBDIVISION TO THE CITY OF FRUITA, COLORADO

THIS ANNEXATION AND DEVELOPMENT AGREEMENT is entered into this ____ day of _____, 2012, by and between the CITY OF FRUITA, COLORADO, a Colorado municipal corporation, whose address is 325 E. Aspen Ave, Fruita, Colorado, 81521, (the "City") and FRUITA DEVELOPMENT, LLC, a Wisconsin limited liability company, whose address is 11990 San Vicente Blvd., Suite 200, Los Angeles, CA 90049 (the "Developer").

RECITALS

A. WHEREAS, Developer owns the real property described in Exhibit "A", attached hereto and incorporated herein (the "Property", the "Development" or "Western Slope Industrial and Rail Park PUD Subdivision(WSIRP)"), and

B. WHEREAS, on or about January 14, 2009, Developer submitted a Petition for Annexation of the Property to the City Clerk of the City of Fruita, Colorado, and

C. WHEREAS, on or about February 3, 2009, the City Council of the City (the "City Council") adopted Resolution No. 2009-07, wherein it determined that the petition for the proposed annexation complied with Section 31-12-107, C.R.S., as amended, or such parts thereof as may be required to establish eligibility under the terms of the Municipal Annexation Act of 1965, as amended, Sections 31-12-101, *et seq.*, C.R.S., and

D. WHEREAS, on March 17, 2009, the City Council conducted a public hearing at which it adopted Resolution No. 2009-21, wherein it determined the proposed annexation complies with Sections 31-12-104 and 31-12-105 C.R.S., an amended or such parts thereof as may be required to establish eligibility under the terms of the Municipal Annexation Act of 1965, as amended, Sections 31-12-101, *et seq.*, C.R.S., and

E. WHEREAS, Developer wishes to develop an industrial subdivision and rail park as more specifically described in the proposed Final Site Plan submittal for the Western Slope Industrial and Rail Park PUD Subdivision 1493 Highway 6 & 50 Fruita, Colorado attached as Exhibit "B" ("Site Plan") the Western Slope Industrial and Rail Park PUD Subdivision Phasing Plan attached as Exhibit "C" and the Final Plat of Western Slope Industrial and Rail Park PUD Subdivision attached as Exhibit "D" ("Final Plat"), and

F. WHEREAS, if the Property is annexed into the City, the City will have the authority to zone the Property and approve the subdivision of the Property in accordance with this Agreement, the City's Master Plan and the applicable City requirements and policies; and the City will have the authority to govern development of the WSIRP in

accordance with applicable state law, the Municipal Code, this Agreement, and other applicable City requirements and policies, and

G. WHEREAS, the City desires to annex the Property in order to provide for orderly growth in and around the City, and

H. WHEREAS, the City and Developer mutually agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by the City upon the Developer and its successors in connection with the acceptance and favorable annexation on the Developer's Petition for Annexation, the City recognizing and reciting that such matters are necessary to protect promote and enhance the public welfare, and

I. WHEREAS, the parties agree that it is desirable for the Developer to annex the Property to the City.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

SECTION 1
DEFINITIONS AND GENERAL PROVISIONS

1.1. Definitions.

1.1.1. Agreement. This Annexation Agreement between Developer and the City.

1.1.2. Annexation Petition. As defined in Recital B above.

1.1.3. City. The City of Fruita, Colorado, a home rule municipal corporation.

1.1.4. City Council. The City Council of the City of Fruita Colorado.

1.1.5. Developer. Fruita Development, LLC and, unless specifically excluded in this Agreement, its successors and assigns.

1.1.6. Development. As defined in Recital A above.

1.1.7. Effective Date. The date of the City Council Ordinance approving this Agreement.

1.1.8. Final Approval. As defined in subsection 2.2 below.

1.1.9. Municipal Code. The City's codification of its ordinances as in effect from time to time.

1.1.10. Property. The real property described in Exhibit "A" attached to this Agreement.

1.1.11. Uniform, Non-Discriminatory Regulations. Collectively, City ordinances, rules, regulations, policies and standards applicable in the same manner to all developments and real property within the City.

1.2. Covenants. The provisions of this Agreement shall constitute covenants or servitudes which shall touch, attach to and run with the land comprising the Property, and the burdens and benefits of this Agreement shall bind and inure to the benefit of all estates and interests in the Property and all successors in interest to the parties to this Agreement.

1.3. Amendment of Agreement. Except as otherwise set forth in this Agreement, this Agreement may be amended or terminated only by mutual consent in writing of the City and Developer following the public notice and public hearing procedures required for approval of this Agreement.

1.4. Cooperation in Defending Legal Challenges. If any legal or equitable action or other proceeding is commenced by a third party challenging the validity of any provision of this Agreement, Developer and the City agree to cooperate in defending such action or proceeding and to bear their own expenses in connection therewith. Unless the City and Developer otherwise agree, each party shall select and pay its own legal counsel to represent it in connection with such action or proceeding. If any part of this Agreement is held to be invalid or of no effect by a court of competent jurisdiction, such judicial determination shall not affect any other part of this Agreement which will continue in full force and effect, subject to subsection 8.11 of this Agreement. If any part of this Agreement is determined by a court of competent jurisdiction to be in excess of the City's power and authority, such part shall be unenforceable by either party to this Agreement. If any challenge to this Agreement results in disconnection of any portion of the Property from the City, this Agreement shall be null and void at the option of Developer. Each party represents to the other that it is unaware of any pending or threatened actions or circumstances which would void this Agreement or make any provision of it illegal or impossible to perform.

1.5. Scope of this Agreement.

1.5.1. This Agreement is intended to set forth the parties' understandings and agreements as to the annexation of the Property pursuant to the Municipal Annexation Act of 1965, as amended; as to the procedures, limitations, and standards applicable to the construction of future improvements that may be installed to serve the property; as to the responsibilities of the parties for various

costs, fees and charges; and to such other matters the parties believe can be adequately addressed at this time.

1.5.2. Except as otherwise provided in this Agreement, this Agreement is not intended to address those matters which are more appropriately considered at the time Developer submits to the City for its review and approval of Subdivision Final Plan applications for each development phase of the Property.

1.5.2.1 Subject to paragraphs 2.2 and 2.3 below, the parties contemplate the Property shall be zoned Planned Unit Development (PUD).

1.5.2.2. The City reserves all rights to review, approve or deny any future zoning application or future subdivision or any future land use application on any portion of the Property in accordance with State law and the Municipal Code in effect at that time.

1.5.3. It is not the intention of the parties in any way to diminish or limit the City's legislative, judicial, quasi-judicial or other non-delegable discretionary powers. Except as otherwise provided in this Agreement, it is not the intention of the parties to impose on the City any duty, beyond its ordinances and regulations as they may from time to time exist, nor to impose any special obligation on the City to approve or accept any items submitted by the Developer or Developer's successors and assigns including, but not limited to, future plans, drawings, reports, security documents, improvements, and conveyances. The parties expressly agree they will fully perform this Agreement.

SECTION 2 ANNEXATION

2.1. Annexation. Annexation of the Property shall be in accordance with this Agreement and the Colorado Municipal Annexation Act of 1965, as amended (Sections 31-12-101, *et seq.*, C.R.S.).

2.2. Conditions Precedent. As used in this Agreement, "Final Approval" shall mean the thirtieth (30th) day following the effective date of the latest of the ordinances or resolutions by which the City Council approves (i) this Agreement, (ii) annexation of the Property to the City, and (iii) the granting of vested rights in accordance with this Agreement and Chapter 17.47 of the Municipal Code. Final Approval shall be deemed not to have occurred if on or before such 30th day either (1) any third party commences any legal proceeding challenging any of such approvals, or (2) any third party submits a petition for a referendum seeking to reverse or nullify any of such approvals.

2.3. Failure of Conditions. Until all of the conditions set forth in subsection 2.2 above have been satisfied, this document shall constitute an offer by Developer and the City to enter into this Agreement (notwithstanding the parties' mutual execution and

delivery of this document) and the annexation of the Property to the City shall not be effective. Consequently, except as otherwise set forth in subsection 2.2 above, at any time before such conditions are satisfied, Developer may withdraw the Petition for Annexation and Developer or the City may withdraw its offer to enter into this Agreement. If Developer withdraws the Petition for Annexation, either party withdraws its offer to enter into this Agreement, or if Final Approval does not occur, then this Agreement shall be deemed void and of no force or effect, and the Property shall be deemed NOT annexed to the City.

SECTION 3 DEVELOPMENT

3.1. General Description. The Property is comprised of approximately 222.47 acres of land adjacent to the City of Fruita. Developer anticipates a development of an industrial subdivision and rail park subdivision.

3.2. Compliance with Current Regulations. Except as otherwise provided in this Agreement, including, without limitation, Section 3.7, allowing the continuation of non-conforming uses (as described in Exhibit F), prior to the City approving the Final Plat and building plans for the Property, Developer shall meet all then current Uniform, Non-discriminatory Regulations of the City (including but not limited to building, fire, plumbing, electrical and mechanical codes, public improvement design standards, the Municipal Code and other rules and regulations) unless varied pursuant to PUD approval; submit all required plans, specifications and other information; and pay all applicable review fees. Developer states that Developer has reviewed all applicable zoning, subdivision, building and other development regulations and ordinances of the City currently in effect. In consideration of the City granting Developer vested property rights for an extended period of ten (10) years as set forth in subsection 3.5 below, Developer agrees as a matter of contract and as a condition of the City's annexation of the Property to abide by the Uniform Non-Discriminatory Regulations of the City as they exist on the Effective Date and as they may be amended from time to time, unless otherwise explicitly provided in this Agreement, the PUD Guide, Site Plan (Exhibit "B") or Final Plat.

3.3. Construction of Public Improvements. Except as otherwise provided in this Agreement, in the subdivision and or development of the Property, the Developer hereby agrees to dedicate, develop and pay for construction of all public improvements and the extension of all required utility services as may be agreed to by the parties at the time of subdivision in a subdivision improvements agreement with each phase of construction which shall be consistent with this Agreement, the Site Plan (Exhibit "B") and as generally described in "Exhibit E", Construction Requirements. Developer shall not be required to provide the security for the public improvements associated with a particular phase of the Phasing Plan until an SIA for that phase is executed. Developer acknowledges that no lots can be sold until a subdivision improvements agreement is in place for the required public improvements for each phase or until the required improvements have been constructed and approved/accepted by the City.

3.4. Site Plan and Final Plat Review. The City acknowledges receipt of Developer's proposed Site Plan (Exhibit "B" of this agreement) and Final Plat (Exhibit "D" of this agreement). The City acknowledges that it has reviewed the Site Plan and Final Plat and confirms that they meet all requirements, goals and designs of the City and all applicable laws, including State and local statutes and ordinances, for (a) submission with a petition for annexation and (b) qualification as a "site specific development plan" as defined in C.R.S. § 24-68-102(4)(a). Developer will not convey any lots until the Final Plat is recorded and SIA for each phase of construction is in place.

3.5. Vested Property Rights-Duration. The City recognizes that the investments contemplated by the Site Plan and Final Plat require an immediate vesting of all development rights necessary to construct, develop, and operate the industrial subdivision and rail park contemplated by the Site Plan and Final Plat. Accordingly, the City agrees that (a) the Site Plan and Final Plat constitute a "site specific development plan" pursuant to Sections 24-68-101, *et. seq.*, C.R.S. and Chapter 17.47 of the Municipal Code, and (b) upon completion of the zoning set forth in Section 1.5.2 above, all rights and benefits contained in this Agreement and all rights to the development proposed in the Site Plan and Final Plat will immediately and fully vest with Developer without further action or delay. The vested rights with respect to the Property include, without limitation, all of the uses, rights, entitlements, or other actions permitted under the applicable zoning, to develop, construct, operate and occupy the industrial subdivision and rail park as contemplated in the Site Plan and Final Plat. The vested rights shall remain vested for an extended period of ten (10) years pursuant to subsection B of Section 17.47.070 of the Municipal Code and subsection 127 of Section 24-68-104, C.R.S.

3.6. No Obligation to Develop. Notwithstanding any other provision of this Agreement, Developer shall have no obligation under this Agreement to develop all or any portion of the Property and shall have no liability under this Agreement to the City or any other party for its failure to develop all or any part of the Property. Nothing in this Section 3.6 shall be construed as a waiver or release by the City of its right to require Developer, in conjunction with obtaining approval of the Final Plat within the Development to enter into a subdivision improvements agreement with each phase of construction setting forth public improvements and certain private improvements required to be constructed by the Developer and deadlines for the construction of such improvements. Nothing in this subsection 3.6 shall be construed as a waiver or release by the City to enforce against Developer the terms and conditions of a subdivision improvements agreement.

3.7. Continuation of Current Uses, Improvements. The Property is presently used for industrial and railroad uses and contains improvements that do not comply with the Uniform, Non-discriminatory Regulations. In reviewing this Agreement, the City has given due consideration to the continuation of such current uses and improvements. Accordingly, and notwithstanding any provision of this Agreement, the Annexation Petition, Zoning Ordinance or any other code, ordinance or regulation, now in effect or

subsequently adopted and notwithstanding the City's annexation or zoning of the Property pursuant to the terms hereof, the current uses and improvements at the Property shall be permitted to continue upon the property as a legal non-conforming use. Furthermore, any current uses (Exhibit "F" and Exhibit "B") on the Property that are not permitted uses within the LIRD zone shall be considered legal pre-existing non-conforming uses pursuant to Municipal Code Section 17.07.090. Any current land uses which require a Conditional Use Permit are deemed to have a Conditional Use Permit for the current operations.

3.8. Ability to Rely Upon Current Ordinances. The City agrees that, in order to allow Developer and its successors and assigns to rely upon the continued validity of the provisions of the zoning ordinances in effect upon the date of, and as modified by ordinances adopted pursuant to this Agreement regulating the development of the Property, the City shall, for a period of ten (10) years from the Effective Date of annexation, take no action that would result in subjecting the Property to a change in the provisions of the Land Use Code or to any rules, regulations or policies affecting the Property, in regard to uses allowed as a use by right or allowed as conditional use, or the approved densities and general layout of the Development as shown in the approved Site Plan, Phasing Plan, or Final Plat.

If any City code, ordinance or regulation is hereafter adopted, amended or interpreted to be less restrictive upon Developer with respect to the development, construction, occupation or operation of the Property than is allowed under existing law, then at the option of Developer, such less restrictive amendment or interpretation shall control.

3.9. No Restrictions on Building Permits or Other Necessary Approvals. In accordance with applicable law, the City shall timely issue any building permit as permitted by the City's building codes when Developer or its successors, assigns or agents may require for constructing, operating or occupying the Property as contemplated in the Site Plan. The City agrees that, for a period of ten (10) years after the effective date of this Agreement, it shall take no action which would result in restricting the availability of building permits, excavation permits, or other applicable permits or approvals necessary to allow construction and completion of development of the type of improvements and uses that are consistent with the Site Plan. Any such moratorium, restriction, or limitation on the availability of building permits or other applicable permits or approvals during the ten (10) year period set forth above shall be of no effect against the Property, the owner(s) or any other person or entity having any interest in the Property. The City reserves the right not to issue building permits if the building permit application does not comply with adopted building codes and other City laws in effect at the time.

3.10. Police Power; Taxing Power; Impact and Recapture Fees; Donations and Contributions. After the annexation agreement is signed, the City shall not impose or enact any additional conditions, exactions, dedications, development fees, or regulations, or any similar imposition, through the exercise of either the police power or the taxing

power related to development, construction, occupation or operation of the Property not otherwise required by the Land Use Code or other City regulations existing at the time of development or as they may be amended from time to time. The City represents and warrants to Developer that there are no impact fees, recapture fees, donations, contributions, or similar charges in connection with the annexation. These fees may be required through the subdivision and development process based on the regulations in effect at the time of development.

3.11. Failure of City to Approve Site Plan, Phasing Plan or Subdivision Improvements Agreement; Disconnection. If City determines not to approve the Site Plan, the Final Plat, the Phasing Plan, or a subdivision improvements agreement for development of the 1st Phase of the development of the Property, upon the request of Developer, the City shall consent to and take all action necessary for disconnection of the Property from the City. In such event, any unfulfilled obligations of Developer under this Agreement shall terminate, and Developer shall have no further obligations to City, and City shall release and hold harmless the Developer with respect hereto.

3.12 Environmental Remediation. The City is aware that the Property is subject to that certain Compliance Order on Consent In the Matter of Fruita Development, LLC, Number 08-04-30-01, (“Compliance Order”), the terms of the Compliance Order, and that Developer will not be finished with the remediation requirements contained therein at the time of annexation. The City agrees that the Colorado Department of Public Health and Environment has jurisdiction over the environmental remediation of the Property and that the City will not impose any additional or different requirements on this issue upon Developer or the Property than those contained in the Compliance Order.

3.13 City dedication of Right-of-Way. The City agrees to dedicate right-of-way as is necessary to extend Greenway Drive to 15 Road as described in Exhibit “G” of this agreement.

SECTION 4 CONSTRUCTION OF ROAD AND SIDEWALK IMPROVEMENTS

4.1. Developer’s Obligation. Developer agrees that immediately following annexation, the City shall have no obligation to provide any public access to or upon the Property, nor any obligation to maintain any roads or public access to the Property. The City shall provide public access and street maintenance on the Property when the Developer, at the Developer’s cost and expense shall have located and constructed streets, sidewalks, pedestrian paths or other access in accordance with a subdivision improvements agreements to be executed by the parties, and in accordance with such Uniform, Non-discriminatory Regulations as the City may from time to time adopt and in a manner and place acceptable to the City.

City shall dedicate that portion of the proposed right of way for Greenway Drive that passes through the City's property as shown on the Final Plat and described in Exhibit "G" of this Agreement, prior to recording the Final Plat for WSIRP.

4.2. Credit Against Off-Site Improvements. There are no Off-Site credits for improvements associated with the annexation of the subject properties.

SECTION 5 WASTEWATER AND WATER

5.1. Wastewater Service. The City agrees to provide wastewater collection and treatment service upon payment of applicable plant investment (tap) fees to the Property in quantity and quality sufficient to satisfy all of the present and future needs of the Property necessary for the development as contemplated in the Site Plan. Developer agrees to construct all wastewater lines on the Property including the sanitary sewer lift station and associated force main for which the City shall reimburse Developer once accepted by Colorado Department of Public Health and Environment and City of Fruita, no sooner than 365 days from notice by Developer to the City and no later than 45 days after 365 day notice for the total cost to construct the lift station and associated forced main. The costs of the lift station and the force main shall not exceed the cost estimate ~~identified in Exhibit "E"~~ ^{#150,000 - LS} ^{#79,332 - FM}. The Developer agrees to design and construct the wastewater lines necessary to serve the Property in accordance with the Site Plan and approved for construction drawings, and the City agrees to provide right-of-way as described in Exhibit "G" and an irrigation easement along 15 Road. The Developer shall obtain all necessary permitting to complete construction of the sewer lift station and force main in accordance with Colorado Department of Public Health and Environment requirements within one (1) year following the effective date of the signed SIA for that phase of construction. Developer agrees to construct the lift station in Phase 2 of the development. All existing development using individual sewage disposal systems shall connect to the City's wastewater collection and treatment service within one (1) year regardless of age, condition or cost of the existing individual sewage disposal systems.

5.2. Provisions of Domestic Water Service. The Developer at its sole expense shall design, purchase, and install all elements of a treated water distribution system to fully service the Development as more fully set forth in a subdivision improvements agreement, including but not limited to water mains, fire hydrants, service line laterals, pipelines and all appurtenant facilities necessary to provide treated water service to the property. Developer shall enter into an agreement with the Ute Water Conservancy District for the provision of domestic water service.

5.3. Construction of Irrigation Water System. The Developer at its sole expense, shall design, purchase, and install all elements of a non-potable irrigation water system to service all areas of the Development, including open space, in accordance with a subdivision improvements agreement in accordance with all design drawings and specifications approved by the City.

SECTION 6
REIMBURSEMENT OF COSTS AND FEES

6.1. Developer Cost Recovery. Developer shall initially pay for all costs associated with all of the potable water, wastewater and road improvements required under this Agreement. To the extent that any such improvements installed by Developer as a result of a condition of annexation, subdivision or other development approval exceed the transmission capacity necessary to service the Property, Developer shall be eligible for cost recovery as provided for in the City of Fruita Municipal Code and as more specifically provided in a subdivision improvements agreement for that phase of construction.

6.2. Fees and other Requirements. The fees and other subdivision improvement requirements imposed by the City on the Property shall be as set forth in a City of Fruita subdivision improvements agreement for each phase of construction for the Western Slope Industrial and Rail Park PUD Subdivision based on regulations in effect at that time.

SECTION 7
DEFAULT; REMEDIES; TERMINATION

7.1. Default by the City. A “breach” or “default” by the City under this Agreement shall be defined as the City’s failure to fulfill or perform any material obligation of the City contained in this Agreement.

7.2. Default by Developer. A “breach” or “default” by Developer shall be defined as Developer’s failure to fulfill or perform any material obligation of Developer contained in this Agreement.

7.3. Notices of Default. In the event of a default by either party under this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of such default, at the address specified in subsection 8.7 below, and the defaulting party shall have thirty (30) days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such thirty (30) day period and the defaulting party gives written notice to the non-defaulting party within such thirty (30) day period that it is actively and diligently pursuing such cure, the defaulting party shall have a reasonable period of time given the nature of the default following the end of such thirty (30) day period to cure such default, provided that such defaulting party is at all times within such additional time period actively and diligently pursuing such cure.

7.4. Remedies. If any default under this Agreement is not cured as described above, the non-defaulting party shall have the right to enforce the defaulting party’s obligations hereunder by an action in equity for any equitable remedy, including injunction and/or specific performance. Only in the event that the remedy of specific performance is not available, either party may seek monetary award of its damages in

accordance with applicable law and as limited by the Agreement in lieu of such specific performance remedy.

SECTION 8
MISCELLANEOUS PROVISIONS

8.1. Voluntary Agreement. Developer agrees that the provisions and requirements of this Agreement are entered into with full knowledge, free will and without duress.

8.2. Recordation of Agreement. This Agreement shall be recorded in the records of the Mesa County Clerk and Recorder, and upon recording shall be deemed a covenant running with all the real property described in Exhibit "A", for the benefit of the City and the Developer and the Property.

8.3. Enabling Ordinances Required. To the extent required by law and by the terms of this Agreement, the obligations and covenants of the City are conditioned upon the adoption by the City of appropriate enabling ordinances.

8.4. Attorneys Fees. In the event that any action or proceeding is filed or maintained by either party in relation to this Agreement, the prevailing party shall be entitled to its costs and reasonable attorney's fees including legal assistant's fees. All rights concerning remedies or attorneys fees shall survive termination of this Agreement.

8.5. Complete Agreement. This Agreement contains all of the understandings, conditions, and agreements between the parties relating to annexation and development at this time, and no other prior or current representations, oral or written, shall be effective or binding upon the parties.

8.6. Authorization. The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meeting and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

8.7. Notices. All notices required or given by the terms of this Agreement shall be made by certified first class mail, postage prepaid, return receipt requested, to the parties at their address listed below. All notices shall be effective upon mailing. These addresses shall remain valid until notice of a change of address is given in accordance herewith.

If to the City:

City of Fruita, Colorado
325 E. Aspen Ave. #155
Fruita, Colorado 81521
Attention: Community Development Director

with a copy to: Garfield & Hecht, P.C.
450 West Avenue, Suite 204
Rifle, Colorado 81650
Attention: Edward P. Sands, Esq.

If to Developer: Fruita Development, LLC
Attn: Doug Brown
11990 San Vicente Blvd, Suite 200
Los Angeles CA 90049

with a copy to: Holland & Hart LLP
600 East Main Street, Suite 104
Aspen, Colorado 81611
Attention: Christopher J. Heaphey, Esq.

8.8. No additional Annexation Conditions Imposed. The City and the Developer acknowledge and affirm that this Agreement does not impose additional terms and conditions within the meaning of Section 31-12-107 (1)(g), C.R.S. To the extent that Section 31-12-107(1) (g), C.R.S. might be construed as being ambiguous as to what might be considered additional terms and conditions, Developer, as owner of 100% of the land described in Exhibit A, hereby declares that it has voluntarily entered into this Agreement and states that if an election were held, Developer would approve the terms and conditions of this Agreement at such election.

8.9. Waiver of Defects. In executing this Agreement, Developer waives all rights it may have concerning defects, if any, of the form or substance of the Agreement and the formalities whereby it is executed; concerning the power of the City to impose conditions on Developer as set forth herein; and concerning the procedure, substance, and form of the ordinances or set forth herein' and concerning the procedure, substance, and form of the ordinances or resolutions adopting this Agreement. Similarly, the City waives all rights it may have concerning defects, if any, of the form or substance of this Agreement, and the formalities whereby it is executed as well as defects, if any concerning the procedure, substance, and form of the ordinances or resolutions adopting this Agreement.

8.10. Colorado Law Applicable. This Agreement is made and delivered within the State of Colorado, and the laws of the State of Colorado shall govern its interpretation validity, and enforceability.

8.11. Provisions Deemed Severable. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision hereof unless a manifest injustice or inequity would result from applying or enforcing any such remaining provisions.

8.12. Binding on Successors, Assignees. This Agreement shall be binding upon and, except as otherwise stated in this Agreement, shall inure to the benefit of the successors in interest or the legal representatives of the parties hereto. Developer shall have the right to assign or transfer all or any portion of its interest, rights or obligations under this Agreement to third parties acquiring an interest or estate in the Property, including but not limited to, purchasers or long term ground lessees of individual lots, parcels, or of any improvements now or hereafter located within the Property. The express assumption of any of Developer's obligations under this Agreement by its assignee or transferee shall, upon approval by the City (which approval shall not be unreasonably withheld), relieve Developer of any further obligations under this Agreement with respect to the matter so assumed.

8.13. Execution of Other Documents. The parties agree to execute any additional documents and to take any additional actions necessary to carry out this Agreement.

8.14. Other Governmental Permits and Authorizations. The City shall not object to any efforts by Developer to obtain such other permits or approvals as may be required by other governmental or quasi-governmental entities having jurisdiction over aspects of the Property and in connection with the development of, provision of services to, or concerning environmental remediation within the Property.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

CITY OF FRUITA, COLORADO, a municipal
corporation acting by and through its City Council.

By: _____
Lori Buck, Mayor

ATTEST:

Margaret Steelman, City Clerk

Applicant

Applicant

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of Los Angeles

On April 24, 2012 before me, Stephanie S. Cohen, Notary Public

personally appeared Douglas Brown



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Stephanie S. Cohen

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Agreement Relating to the Annexation & Development of *

Document Date: April 24, 2012 Number of Pages: 40

Signer(s) Other Than Named Above: Lori Buck, Mayor

Capacity(ies) Claimed by Signer(s)

Signer's Name: Douglas Brown
[checked] Corporate Officer — Title(s): Managing Director

- Individual
Partner — Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing:

Signer's Name:
[] Corporate Officer — Title(s):

- Individual
Partner — Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing:

*property known as Western Slope Industrial and Rail Park PUB Sub-Div

STATE OF COLORADO)
)ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Lori Buck, as Mayor and City Clerk, respectively, of the City of Fruita, Colorado.

WITNESS MY HAND AND OFFICIAL SEAL.
My commission expires: _____

Notary Public

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Fruita Development, LLC.

WITNESS MY HAND AND OFFICIAL SEAL.
My commission expires: _____

Notary Public

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____.

WITNESS MY HAND AND OFFICIAL SEAL.
My commission expires: _____

Notary Public

LIST OF EXHIBITS
WESTERN SLOPE INDUSTRIAL AND RAIL PARK PUD SUBDIVISION

- Exhibit A: Legal Description (5 pages)
- Exhibit B: Site Plan (1 page)
- Exhibit C: Phasing Plan (1 page)
- Exhibit D: Final Plat (4 pages)
- Exhibit E: Construction Requirements (7 pages)
- Exhibit F: Existing Uses and Structures (4 pages)
- Exhibit G: Greenway Drive Legal Description (2 pages)

4501392_11.DOC

Exhibit A-1A – Annexation Agreement

Legal Description

A tract of land located in Section 11, Township 1 North, Range 3 West of the Ute Meridian, more particularly described as follows:

Commencing at the Northeast corner of said Section 11, whence the E ¼ corner of said Section 11 bears South 00°01'59" West, a distance of 2629.08 feet, for a basis of bearings, with all bearing contained herein relative thereto;
thence South 78°49'40" West, a distance of 2772.37 feet;
thence South 30°07'25" West, a distance of 981.87 feet;
thence South 09°47'03" West, a distance of 551.22 feet to the true Point of Beginning;
thence South 00°43'35" West, a distance of 318.00 feet;
thence South 59°03'33" East, a distance of 125.97 feet;
thence South 39°05'00" East, a distance of 131.38 feet;
thence South 09°29'47" East, a distance of 249.49 feet;
thence North 89°25'24" West, a distance of 501.53 feet;
thence North 20°38'57" East, a distance of 775.57 feet; to the Point of Beginning,

INCLUDING:

A tract of land located in Section 11, Township 1 North, Range 3 West of the Ute Meridian, more particularly described as:

Commencing at the Northeast corner of said Section 11, whence the E ¼ corner of said Section 11 bears South 00°01'59" West, a distance of 2629.08 feet, for a basis of bearings, with all bearings contained herein relative thereto;
thence along the East line of said Section 11 South 00°01'59" West, a distance of 872.57 feet;
thence North 56°32'04" West, a distance of 1821.99 feet to the most Northerly corner of Parcel 2 of Tract A, Landmark Petroleum, Inc., shown on Boundary Line Adjustment deposited in Book 1, Page 36, Deposit Number 1296-96 of the Mesa County Surveyor's records, the Point of Beginning;
thence along the Northwesterly line of said Boundary Line Adjustment the following twenty-eight (28) courses:

- 1) South 32°43'41" West, a distance of 152.28 feet;
- 2) South 56°27'12" East, a distance of 88.73 feet;
- 3) South 33°27'46" West, a distance of 106.81 feet;
- 4) South 55°34'54" West, a distance of 33.39 feet;
- 5) South 43°19'31" West, a distance of 142.24 feet;
- 6) North 56°58'06" West, a distance of 76.98 feet;
- 7) South 32°31'41" West, a distance of 35.88 feet;
- 8) South 56°49'13" East, a distance of 89.51 feet;
- 9) South 32°40'58" West, a distance of 65.75 feet;

Exhibit A-1B – Annexation Agreement

- 10) South 56°49'07" East, a distance of 65.92 feet;
- 11) South 33°31'45" West, a distance of 41.69 feet;
- 12) North 56°20'11" West, a distance of 111.95 feet;
- 13) North 33°06'47" East, a distance of 4.35 feet;
- 14) North 56°53'13" West, a distance of 34.90 feet;
- 15) North 33°09'56" East, a distance of 13.57 feet;
- 16) North 56°17'03" West, a distance of 101.55 feet;
- 17) South 33°52'02" West, a distance of 36.91 feet;
- 18) South 56°46'32" East, a distance of 31.33 feet;
- 19) South 33°13'28" West, a distance of 21.50 feet;
- 20) North 56°26'27" West, a distance of 131.91 feet;
- 21) South 33°38'41" West, a distance of 86.70 feet;
- 22) North 60°35'36" West, a distance of 33.52 feet;
- 23) South 33°42'48" West, a distance of 68.49 feet;
- 24) South 56°53'46" East, a distance of 131.96 feet;
- 25) South 33°42'37" West, a distance of 45.53 feet;
- 26) North 44°22'06" West, a distance of 218.40 feet;
- 27) South 32°15'48" West, a distance of 166.80 feet;
- 28) North 58°56'44" West, a distance of 298.49 feet;

thence North 33°27'56" East, a distance of 948.47 feet;

thence South 56°32'04" East, a distance of 626.05 feet to the Point of Beginning,

INCLUDING:

A tract of land located in Section 11, Township 1 North, Range 3 West of the Ute Meridian and being more particularly described as follows:

Commencing at the Northeast corner of said Section 11, whence the E ¼ corner of said Section 11 bears South 00°01'59" West, a distance of 2629.08 feet, for a basis of bearings, with all bearings contained herein relative thereto;
thence along the East line of said Section 11 South 00°01'59" West, a distance of 872.57 feet to a point on the South line of a 200 foot wide railroad right-of-way;
thence along said South line of said right-of-way North 56°32'04" West, a distance of 1473.79 feet to the Point of Beginning;
thence South 34°02'28" West, a distance of 384.57 feet;
thence South 56°25'06" East, a distance of 323.90 feet;
thence South 33°33'13" West, a distance of 473.02 feet;
thence South 56°26'46" East, a distance of 79.50 feet;
thence South 33°33'13" West, a distance of 115.46 feet;
thence South 57°31'52" East, a distance of 52.07 feet;
thence North 33°33'13" East, a distance of 90.58 feet;
thence South 56°08'14" East, a distance of 414.12 feet;
thence North 52°51'11" East, a distance of 81.06 feet;
thence South 57°55'14" East, a distance of 261.08;

Exhibit A-1C – Annexation Agreement

thence South 07°39'15" West, a distance of 94.49 feet;
thence South 56°08'14" East, a distance of 418.13 feet;
thence South 31°28'29" West, a distance of 240.00 feet;
thence South 58°41'15" East, a distance of 115.86 feet;
thence North 33°51'46" East, a distance of 234.64 feet;
thence South 56°08'14" East, a distance of 289.73 feet;
thence South 00°01'56" East, a distance of 842.93 feet;
thence South 71°08'19" West a distance of 383.97 feet;
thence South 00°01'58" West, a distance of 374.74 feet;
thence North 89°58'04" East, a distance of 363.28 feet;
thence South 16°55'29" West, a distance of 124.17 feet;
thence South 28°25'03" West, a distance of 115.12 feet;
thence South 46°21'41" West, a distance of 94.86 feet;
thence South 63°16'31" West, a distance of 80.27 feet;
thence North 79°24'54" West, a distance of 210.77 feet;
thence North 49°30'39" West, a distance of 269.34 feet;

thence North 26°47'56" East, a distance of 205.95 feet;
thence North 63°12'04" West, a distance of 409.62 feet;
thence South 27°45'47" West, a distance of 103.16 feet;
thence South 63°25'01" West, a distance of 1724.88 feet;
thence North 82°54'07" West, a distance of 368.94 feet;
thence North 62°56'25" West, a distance of 1481.39 feet;
thence North 57°38'44" West, a distance of 977.68 feet;
thence South 86°22'09" East, a distance of 158.38 feet;
thence North 41°52'24" East, a distance of 62.51 feet;
thence South 89°47'04" East, a distance of 767.57 feet;
thence South 01°04'35" East, a distance of 58.91 feet;
thence South 89°25'24" East, a distance of 1003.06 feet;
thence North 09°29'47" West, a distance of 249.49 feet;
thence North 39°05'00" West, a distance of 131.38 feet;
thence North 59°03'33" West, a distance of 125.97 feet;
thence North 00°43'35" East, a distance of 318.00 feet;
thence North 09°47'03" East, a distance of 551.22 feet;
thence North 30°07'25" East, a distance of 981.87 feet;
thence North 34°36'45" East, a distance of 271.33 feet;
thence South 58°56'44" East, a distance of 298.49 feet;
thence North 32°15'48" East, a distance of 166.80 feet;
thence South 44°22'06" East, a distance of 218.40 feet;
thence North 33°42'37" East, a distance of 45.53 feet;
thence North 56°53'46" West, a distance of 131.96 feet;
thence North 33°42'48" East, a distance of 68.49 feet;
thence South 60°35'36" East, a distance of 33.52 feet;
thence North 33°38'41" East, a distance of 86.70 feet;

Exhibit A-1D – Annexation Agreement

thence South 56°26'27" East, a distance of 131.91 feet;
thence North 33°13'28" East, a distance of 21.50 feet;
thence North 56°46'32" West, a distance of 31.33 feet;
thence North 33°52'02" East, a distance of 36.91 feet;
thence South 56°17'03" East, a distance of 101.55 feet;
thence South 33°09'56" West, a distance of 13.57 feet;
thence South 56°53'13" East, a distance of 34.90 feet;
thence South 33°06'47" West, a distance of 4.35 feet;
thence South 56°20'11" East, a distance of 111.95 feet;
thence North 33°31'45" East, a distance of 41.69 feet;
thence North 56°49'07" West, a distance of 65.92 feet;
thence North 32°40'58" East, a distance of 65.75 feet;
thence North 56°49'13" West, a distance of 89.51 feet;
thence North 32°31'41" East, a distance of 35.88 feet;
thence South 56°58'06" East, a distance of 76.98 feet;
thence North 43°19'31" East, a distance of 142.24 feet;
thence North 55°34'54" East, a distance of 33.39 feet;
thence North 33°27'46" East, a distance of 106.81 feet;
thence North 56°27'12" West, a distance of 88.73 feet;
thence North 32°43'41" East, a distance of 152.28 feet;
thence South 56°32'04" East, a distance of 348.20 feet to the Point of Beginning.

TOGETHER WITH Ingress and Egress Easement as evidenced in instrument recorded March 3, 1994 in Book 2052 at Page 589 as Reception No. 1673131.

AND TOGETHER WITH Ingress and Egress Easement as evidenced in instrument recorded April 30, 1996 in Book 2228 at Page 1 as Reception No. 1754925.

AND ALSO TOGETHER WITH an easement for rail car ingress and egress only upon Railroad Tracks #1, #2, #3, #4 and #6 as evidenced by instrument recorded April 30, 1994 in Book 2228 at Page 3 as Reception No. 1754926.

EXCEPT any portion of said rail car easement lying Westerly of the land described hereinabove.

AND ALSO TOGETHER WITH an Easement for Ingress and Egress as evidenced in instrument recorded April 3, 1996 in Book 2227 Page 998 as Reception No. 1754924 only to the extent where such easement affects Lot 2 of Wesfrac Subdivision as shown on the official plat thereof, recorded in the office of the Mesa County Clerk and Recorder at Plat Book 18, Page 192.

LESS AND EXCEPTING the following described parcel:

A parcel of land located in the E ½ of Section 11, Township 1 North, Range 3 West of the Ute Meridian, being more particularly described as follows:

Exhibit A-1E – Annexation Agreement

Commencing at the E ¼ corner of Section 11, Township 1 North, Range 3 West, Ute Meridian, whence the Northeast corner of said Section 11 bears North 00°01'59" East, a distance of 2629.08 feet, with all bearings contained herein relative thereto;
Thence South 12°22'06" West, a distance of 140.21 feet to a point on the Westerly Line of Lot 1 Wesfrac Subdivision, Book 18, Page 192 and the Point of Beginning;
thence South 71°08'19" West, along the West property line of said Lot 1 a distance of 383.97 feet;
thence South 00°01'58" West, a distance of 393.65 feet, along the West property line of Lot 1, and its extension;;
thence North 63°12'04" West, a distance of 619.30 feet;
thence North 65°04'50" West, a distance of 1176.99 feet;
thence North 33°29'02" East, a distance of 545.29 feet;
thence South 79°57'22" East, a distance of 437.31 feet;
thence North 75°42'26" East, a distance of 583.37 feet;
thence North 33°33'27" East, a distance of 435.42 feet; to a point on line of Lot 1;
thence along lot line of said Lot 1 the following six (6) courses:
South 56°08'14" East, a distance of 122.59 feet;
South 31°28'29" West, a distance of 240.00 feet;
South 58°41'15" East, a distance of 115.86 feet;
North 33°51'46" East, a distance of 234.64 feet;
South 56°08'14" East a distance of 289.73 feet;
South 00°01'56" West, a distance of 842.93 feet to the Point of Beginning.

AND INCLUDING:

All of Lot 1, Wesfrac Subdivision, as shown on the official plat thereof, recorded in the office of the Mesa County Clerk and Recorder at Plat Book 18, Page 192.

All in Mesa County Colorado

EXHIBIT E-1A - Annexation Agreement

CONSTRUCTION REQUIREMENTS

DATE: April 9, 2012

DEVELOPMENT NAME: Western Slope Industrial and Rail

LOCATION: **Project Summary Sheet for Sanitary Sewer Lift Station**

PRINTED NAME OF PERSON PREPARING: R. Steve Austin

Item#	Item Description	Unit	Quantity
A. SANITARY SEWER			
1	10" PVC Sanitary Sewer Main	LF	
2	8" PVC Sanitary Sewer Main	LF	
3	6" PVC Sanitary Sewer Main	LF	
4	6" Sewer Services	LF	
5	Sanitary Sewer Manhole	EA	
6	Sanitary Sewer Drop Manhole	EA	
7	Force Main Cleanouts	EA	7
8	Bore / Carrier Pipe Under Rail Road	LF	
9	6" Sanitary Sewer Force Main	LF	3606
10	Sanitary Sewer Lift Station Improvements	LS	1
Subtotal Part A - Sanitary Sewer			
B. DOMESTIC WATER			
1	12" PVC Water Main	LF	0
2	10" PVC Water Main	LF	
3	8" PVC Water Main	LF	0
4	6" PVC Water Main	LF	0
5	12" Gatevalve	EA	0
6	10" Gatevalve	EA	
7	8" Gatevalve	EA	0
8	6" Gatevalve	EA	
9	Fire Hydrant with Valve	EA	
10	6" Water Services Lines	LF	
11	Blowoff	EA	
12	Water Meter Vault	EA	

EXHIBIT E-2A - Annexation Agreement

CONSTRUCTION REQUIREMENTS

13	Wet Tap Connection	EA	
14	Bore / Steel Encasement	LF	0
15	Testing / Flushing / Disinfection	LS	
16			
Subtotal Part B - Domestic Water			
Item#	Item Description	Unit	Quantity
C1 STREETS			
1	4" PVC Utility/Irrigation Sleeves	LF	
2	_____ "PVC Utility/Irrigation Sleeves	LF	0
3	Reconditioning	SY	0
4	Aggregate Base Course (Class 3)	TN	0
5	Aggregate Base Course (Class 6) 12" Compacted Thickness	TN	
6	Subgrade Stabilization	SY	
7	6" Hot Bituminous Paving, Grading SX	TN	
8	Hot Bituminous Paving, Grading _____ (_____ "Thick)	SY	
9	Hot Bituminous Paving, Patching _____ (_____ "Thick)	SY	
10	Geotextile	SY	
11	Concrete Curb (6" wide by 6" High)	LF	
12	Concrete Curb and Gutter (2' Wide)	LF	
13	Concrete Curb and Gutter (1.5' Wide)	LF	
14	Monolithic, Vertical Curb, Gutter and Sidewalk (7' Wide)	LF	
15	Drive Over Curb, Gutter, and Sidewalk (_____ 'Wide)		
16	Concrete Sidewalk (_____ 'Wide)	LF	
17	Concrete Gutter and Driveway Section (6" Thick)	SY	
18	Concrete Drainage Pan (6' Wide, (8" Thick)	LF	
19	Concrete Corner Fillet	SY	

EXHIBIT E-3A - Annexation Agreement

CONSTRUCTION REQUIREMENTS

20	Concrete Curb Ramp	SY	
21	Complete Concrete Corner	SY	
22	Concrete Driveway (_____"Thick)	SY	
23	Driveway/Concrete Repair	SY	
24	Retaining Walls	LF	
25	Street Signs	EA	
26	Striping (New, Remove/Replace)	LF	
27	Street Lights	EA	
28	Signal Construction or Reconstruction	LS	
29	Flowable Fill	CY	
30	Sleeves, _____", _____ PVC		
Item#	Item Description	Unit	Quantity
C2 BRIDGES			
1	Box Culvert Pre-Cast	LS	
2	Box Culvert Cast-in -Place	LS	
3	Wingwalls	LS	
4	Parapet Wall	LS	
5	Railing (Handrail, Guardrail)	LS	
Subtotal Part C - Streets and Bridges			
D1. EARTHWORK			
1	Mobilization	LS	
2	Clearing and Grubbing	LS	
3	Unclassified Excavation	CY	
4	Unclassified Embankment	CY	
D2. REMOVALS AND RESETTING			
1	Removal of Asphalt	SY	
2	Removal of Miscellaneous Concrete	SY	
3	Remove Curb and Gutter	LF	

EXHIBIT E-4A - Annexation Agreement

CONSTRUCTION REQUIREMENTS

4	Removal of Culverts	LF	
5	Remove Structures	EA	
6	Remove Signs	EA	
7	Remove Fence	LF	
8	Adjust Manhole	EA	
9	Adjust Valvebox	EA	
10	Relocate or Adjust Utilites	LS	
D3. EXOSION CONTROL, SEEDING AND SOIL RETENTION			
1	Sod	SY	
2	Seeding (Native)	SY or AC	
3	Seeding (Bluegrass/Lawn)	SY or AC	
4	Hydraulic Seed and Mulching	SY or AC	
5	Soil Retention Blanket	SY	
6	Silt Fence	LF	
7	Straw Waddles	LF	
8	Temporary Berms	LF	
9	Inlet Proetection	EA	
10	Sediment Trap/Basin	EA	
11	Monthly Maintenance/Inspection	Month	
12	Watering (Dust Control)	AC or LS	
13	Temporary Irrigation		
Item#	Item Description	Unit	Quantity
D4. STORM DRAINAGE FACILITIES			
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY	
2	12" Storm Drain Pipe	LF	
3	12" Flared End Section	EA	
4	18" Storm Drain Pipe	LF	
5	18" Flared End Section	EA	
6	24" Storm Drain Pipe	LF	
7	30" Storm Drain Pipe	LF	
8	36" Storm Drain Pipe	LF	

EXHIBIT E-5A - Annexation Agreement

CONSTRUCTION REQUIREMENTS

9	48" Storm Drain Pipe	LF	
10	48" Flared End Section	EA	
11	48" Storm Drain Manhole	EA	
12	60" Storm Drain Manhole	EA	
13	72" Storm Drain Manhole	EA	
14	Manhole with Box Base	EA	
15	Connection to Existing MH	EA	
16	Single Curb Opening Storm Drain Inlet	EA	
17	Double Curb Opening Storm Drain Inlet	EA	
18	Area Storm Drain Inlet	EA	
19	2' V-PAN	LF	
20	Rip-Rap D ₅₀ = 12"	CY	
21	Sidewalk Trough Drain	EA	
22	Pump Systems Including Electrical	LS	
23	Bore / Cassement	LF	
Subtotal Part D - Grading and Drainage			
Item#	Item Description	Unit	Quantity
E1. IRRIGATION			
1	Connect to Existing Pipe	LS	0
2	12" C900 Irrigation Pipe	LF	0
3	4" PIP Irrigation Pipe	LF	4316
4	Fittings and Valves	LS	1
5	Services	EA	0
6	Pump System and Concrete Vault	LS	1
7	Irrigation Structure	EA	0
8	Vacuum Relief and/or Air Release Valve	EA	
E2. LANDSCAPING			
1	Design/Architecture	LS	
2	Earthwork	CY	
3	Hardscape Features	LS	
4	Plant Material & Pumping	LS	

EXHIBIT E-6A - Annexation Agreement

CONSTRUCTION REQUIREMENTS

5	Irrigation System	LS	
6	Curbing	LF	
7	Retaining Walls & Structures	LS	
8	1 Year Maintenance Agreement		
9	Topsoil		
Subtotal Part E - Landscaping and Irrigation			
Item#	Item Description	Unit	Quantity
F. MISCELLANEOUS ITEMS			
1	Engineering and Design	%	2.00%
2	Construction Staking/Surveying	%	1.00%
3	Developer's Inspection Cost	%	1.00%
4	General Construction Supervision	%	1.50%
5	Quality Control Testing	%	1.00%
6	Construction Traffic Control	%	0.10%
7	City Inspection Fees	%	0.50%
8	As-Builts	%	0.50%

NOTES

- 1 All prices shall be for items complete in place and accepted.
- 2 All pipe shall include excavation, pipe, bedding, backfill, and compaction.
- 3 Water main shall include pipe, excavation, bedding, backfill, bends, and appurtenances not itemized elsewhere.
- 4 All concrete items shall include Aggregate Base Course where required by the drawings.
- 5 Fill in the pipe type for irrigation pipe and sleeve.
- 6 Reconditioning shall be calculated to at least 6" outside of back of walk on both sides.
- 7 Units can be changed if desired, simply annotate what is used.
- 8 Additional lines or times may be added as needed.

EXHIBIT E-7A - Annexation Agreement

CONSTRUCTION REQUIREMENTS

Signature of Developer

Date

(If corporation, to be signed by President and attested to by Secretary together with the corporate seals.)

I have reviewed the estimated costs and time schedule shown above and based on the construction drawings submitted to date and the current cost of construction, I take no exception to the above.

City Development Engineer

Date

Community Development

Date

**Exhibit F-1A - Annexation Agreement
Existing Uses and Structures**

Lot #	Structure	Size	Current Use	Occupied By	Remain	Remove
1	No structures		None			
2	No structures		None			
3	Office Building	7,047 Sq. Ft.	Office	Regent Properties	X	
4	Modular Unit	1,056 Sq. Ft.	Vacant		X	
	Pre-formed Concrete Building	100 Sq. Ft.	Vacant			X
	Pre-formed Concrete Building	480 Sq. Ft.	Vacant			X
5	Metal Building	80 Sq. Ft.	Guard Shack			X
	Concrete Building	2,560 Sq.Ft.	Vehicle Storage		X	
	Tank	2,000 Barrels	Empty		X	
6	Former Control Building	1,330 Sq. Ft.	Vacant			X
	Metal Building	225 Sq. Ft.	Vacant			X
	Metal Frame, Plastic Covered Building	684 Sq. Ft.	Asbestos Removal			X
	Cement Building	320 Sq. Ft.	Vacant			X
	Tank	2,000 Barrels	Empty		X	
7	"Little Blue Barr"	5,140 Sq. Ft.	Supply Fracing Sand	Illini State	X	
	Scale house	700 Sq Ft.	Office	Illini State	X	
	Scale	224 Sq. Ft.	Scale		X	
	Tank	40,000 Barrels	Empty		X	
	Metal Building	210 Sq. Ft.	Storage	CBH Welding	X	
	Metal Building	504 Sq. Ft.	Storage	CBH Welding	X	
	Welding Shop	5,140 Sq. Ft.	Welding & Storage	CBH Welding	X	
	Former Lab	7,616 Sq. Ft	Office & Equip. Storage	CFMI	X	

**Exhibit F-1B - Annexation Agreement
Existing Uses and Structures**

Lot #	Structure	Size	Current Use	Occupied By	Remain	Remove
8	Tank	33,000 Barrels	Empty		X	
	Tank	15,000 Barrels	Empty		X	
	Tank	1,500 Barrels	Empty		X	
	Tank	1,000 Barrels	Empty		X	
	Tank	1,000 Barrels	Empty		X	
	Metal Building	8,578 Sq. Ft.	Welding Facility	Badgerow	X	
	Tank	4,500 Barrels	Empty		X	
	Tank	4,500 Barrels	Empty		X	
9	No Structures		None			
10	Metal Building	768 Sq. Ft.	Heavy Equip. Storage	Regent Properties		X
	Metal Building	336 Sq. Ft.	Vacant	Regent Properties		X
11	Tank	2,100 Barrels	Empty		X	
	Tank	1,100 Barrels	Empty		X	
	Tank	4,000 Barrels	Empty		X	
	Tank	1,000 Barrels	Empty		X	
	"Big Blue" Metal Building	78,596 Sq. Ft.	Insulation Storage	Hughes	X	
12	No Structures		None			
13	Wooden Building	96 Sq. Ft.	Pump House	Regent Properties		X
14	No Structures		None			
15	No Structures		None			

**Exhibit F-1C - Annexation Agreement
Existing Uses and Structures**

Lot #	Structure	Size	Current Use	Occupied By	Remain	Remove
16	No Structures		None			
17	Tank	1,000 Barrels	Empty		X	
	Tank	1,000 Barrels	Empty		X	
	Tank	1,000 Barrels	Empty		X	
	Tank	10,000 Barrels	Empty		X	
	Tank	15,000 Barrels	Empty		X	
	Tank	10,000 Barrels	Empty		X	
	Tank	10,000 Barrels	Empty		X	
	Tank	10,000 Barrels	Empty		X	
	Tank	10,000 Barrels	Empty		X	
	Tank	10,000 Barrels	Empty		X	
	Flare & Flare Pit	1,000 Barrels	Empty			X
	Metal Building	96 Sq. Ft.	Guard Shack			X
18	Tank	10,000 Barrels	Empty		X	
	Metal Building	80 Sq. Ft.	Guard Shack			X
19	Tank	40,000 Barrels	Empty		X	
20	Tank	21,000 Barrels	Petroleum Products		X	
	Tank	55,000 Barrels	Petroleum Products	Suncor	X	
	Tank	55,000 Barrels	Petroleum Products	Suncor	X	
	Tank	28,000 Barrels	Petroleum Products	Suncor	X	
	Tank	80,000 Barrels	Petroleum Products	Suncor	X	
	Tank	55,000 Barrels	Petroleum Products	Suncor	X	

**Exhibit F-1D - Annexation Agreement
Existing Uses and Structures**

Lot #	Structure	Size	Current Use	Occupied By	Remain	Remove
20	Tank Metal Building	55,000 Barrels 80 Sq. Ft.	Petroleum Products Guard Shack	Suncor	X	X
21	No Structures		None			
Tract A	Pump House	640 Sq. Ft.	Pump House		X	
Tract B	Pump House	328 Sq. Ft.	Pump House		X	
Tract C	No Structures		None			
Tract D	No Structures		None			
Tract E	No Structures		None			
Tract F	No Structures		None			
Tract G	No Structures		None			

Exhibit G-1A - Annexation Agreement

LEGAL DESCRIPTION

A tract of land situate in the Northeast Quarter of the Southwest Quarter of Section 11, Township 1 North, Range 3 West, of the Ute Meridian, Mesa County, Colorado and being more particularly described as follows:

Commencing at the East Quarter Corner of said Section 11 from whence the Northeast Corner of said Section 11 bears $N0^{\circ}01'59''E$ a distance of 2629.18 feet; thence $S2^{\circ}40'26''W$ a distance of 650.08 feet to a point on the West line of Lot 1 Wesfrac Subdivision as described in Plat Book 18 at Page 192 of the Mesa County Clerk's Office and the Point of Beginning; thence $S0^{\circ}01'42''W$ a distance of 129.00 feet; thence $N51^{\circ}32'59''W$ a distance of 44.47 feet; thence $N16^{\circ}55'33''E$ a distance of 101.51 feet; thence $N51^{\circ}36'28''E$ a distance of 6.81 feet to the Point of Beginning.

Said tract of land contains 2,444 square feet as described.

Above legal description written by:
Patrick W. Click
Colorado registered Professional Surveyor No. 37904
3194 Mesa Ave #B
Grand Junction, Colorado 81504

Exhibit G-1B - Annexation Agreement

LEGAL DESCRIPTION

A tract of land situate in the Northeast Quarter of the Southwest Quarter of Section 11, Township 1 North, Range 3 West, of the Ute Meridian, Mesa County, Colorado and being more particularly described as follows:

Commencing at the East Quarter Corner of said Section 11 from whence the Northeast Corner of said Section 11 bears $N0^{\circ}01'59''E$ a distance of 2629.18 feet; thence $S46^{\circ}01'57''W$ a distance of 806.93 feet to a point on the Southern line of that property as described in Book 4683 at Page 804 of the Mesa County Clerk's Office and the Point of Beginning; thence $S26^{\circ}47'56''W$ a distance of 60.00 feet; thence $N63^{\circ}12'04''W$ a distance of 408.64 feet; thence $N65^{\circ}04'50''W$ a distance of 2.00 feet; thence $N27^{\circ}45'47''E$ a distance of 60.07 feet; thence $S63^{\circ}12'04''E$ a distance of 409.62 feet to the Point of Beginning.

Said tract of land contains 24,608 square feet as described.

Above legal description written by:
Patrick W. Click
Colorado registered Professional Surveyor No. 37904
3194 Mesa Ave #B
Grand Junction, Colorado 81504