

Commissioner Gallagher moved adoption of the following Resolution:

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF EAGLE, STATE OF COLORADO
RESOLUTION NO. 2004 - 095
APPROVAL OF THE ZONE CHANGE AND THE
PLANNED UNIT DEVELOPMENT PRELIMINARY PLAN
FOR THE HERITAGE PARK PLANNED UNIT DEVELOPMENT**

FILE NOS. ZC-00065 and PDP-00026

WHEREAS, on or about November 6, 2003, the County of Eagle, State of Colorado, accepted for filing applications submitted by Heritage Park Building & Development, Inc., (hereinafter "Applicant") to re-zone the herein described property in Eagle County from the Resource [R] Zone District to the Planned Unit Development [PUD] Zone District per File No. ZC-00065, and for approval of the Planned Unit Development Preliminary Plan for the Heritage Park Planned Unit Development, File No. PDP-00026; and,

WHEREAS, the Applicant requested the approval of a Planned Unit Development (PUD) Preliminary Plan which would allow for the development of 24 single family lots and a common open space tract on 11.473 acres.

WHEREAS, notice of the Zone Change and Preliminary Plan was given to all proper agencies and departments as required by the *Eagle County Land Use Regulations*, Section 5-210.E; and,

WHEREAS, at its public hearings held on February 18 and March 3, 2004, the Eagle County Planning Commission, based upon its findings, recommended denial of the proposed zone change and the proposed PUD Preliminary Plan; and

WHEREAS, at its regular hearings of March 9, March 16, May 4 and June 15, 2004, the Eagle County Board of Commissioners (hereinafter "Board"), considered the proposed zone change and PUD Preliminary Plan; associated plans; and the statements and concerns of the Applicant, the Eagle County Community Development and Engineering staff, and other interested persons; and the recommendation of the Eagle County Planning Commission.



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Page: 1 of 23
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BASED ON THE EVIDENCE BEFORE IT, and with the modifications imposed by the conditions hereinafter described, **THE BOARD FINDS AS FOLLOWS:**

Pursuant to *Eagle County Land Use Regulations Section 5-240.F.3.e. Standards for the review of a Preliminary Plan PUD:*

1. ***Unified ownership or control.*** [Section 5-240.F.3.e (1)] – The title to all land that is part of a PUD is owned or controlled by one (1) person.
2. ***Uses.*** [Section 5-240.F.3.e (2)] – The uses that may be developed in the PUD are those uses that are designated as uses that are allowed, allowed as a special use or allowed as a limited use in Table 3-300, “Residential, Agricultural and Resource Zone Districts Use Schedule” for the zone district designation in effect for the property at the time of the application for PUD.
3. ***Dimensional Limitations.*** [Section 5-240.F.3.e (3)] – The dimensional limitations that shall apply to the PUD are not those specified in Table 3-340, “Schedule of Dimensional Limitations”, for the zone district designation in effect for the property at the time of the application for PUD. But, the Board may grant a variation from these dimensional limitations pursuant to Section 5-240 F.3.f., Variations Authorized.
4. ***Off-Street Parking and Loading.*** [Section 5-240.F.3.e (4)] – It has been demonstrated that off-street parking and loading provided in the PUD complies with the standards of Article 4, Division 1, Off-Street Parking and Loading Standards, without a necessity for a reduction in the standards.
5. ***Landscaping.*** [Section 5-240.F.3.e (5)] – It has been demonstrated that the landscaping proposed for the PUD complies with the standards of Article 4, Division 2, Landscaping and Illumination Standards.
6. ***Signs.*** [Section 5-240.F.3.e (6)] – The signs within the PUD will be as specified in Article 4, Division 3, Sign Regulations.
7. ***Adequate Facilities.*** [Section 5-240.F.3.e (7)] – It has been demonstrated that the development proposed in the PUD Preliminary Plan will be provided adequate facilities for potable water supply, sewage disposal, solid waste disposal, electrical supply, fire protection and roads and will be conveniently located in relation to schools, police and fire protection, and emergency medical services.



8. **Improvements.** [Section 5-240.F.3.e (8)] - It has been clearly demonstrated that the improvements standards applicable to the development will be as specified in Article 4, Division 6, Improvements Standards regarding: (a) safe, efficient access, (b) internal pathways, (c) emergency vehicles, (d) principal access points, and (e) snow storage.
9. **Compatibility With Surrounding Land Uses.** [Section 5-240.F.3.e (9)] - The development proposed for the PUD is compatible with the character of surrounding land uses.
10. **Consistency with Master Plan.** [Section 5-240.F.3.e (10)] - The PUD is consistent with the Master Plan, and is consistent with the Future Land Use Map (FLUM).
11. **Phasing.** [Section 5-240.F.3.e (11)] - A phasing plan is not required for this development.
12. **Common Recreation and Open Space.** [Section 5-240.F.3.e (12)] - The applicant has demonstrated that the PUD will comply with the common recreation and open space standards with respect to: (a) minimum area; (b) improvements required; (c) continuing use and maintenance; or (d) organization.
13. **Natural Resource Protection.** [Section 5-240.F.3.e (13)] - The PUD does demonstrate that the recommendations made by the applicable analysis documents available at the time the application was submitted, as well as the recommendations of referral agencies as specified in Article 4, Division 4, Natural Resource Protection Standards, have been considered.

Pursuant to Eagle County Land Use Regulations Section 5-280.B.3.e. Standards for the review of a Preliminary Plan for Subdivision:

14. **Consistent with Master Plan.** [Section 5-280.B.3.e (1)] - The PUD is consistent with the Master Plan, and IS consistent with the Future Land Use Map (FLUM).
15. **Consistent with Land Use Regulations.** [Section 5-280.B.3.e (2)] - It has been demonstrated that the proposed subdivision complies with all of the standards of this Section and all other provisions of these *Land Use Regulations*, including, but not limited to, the applicable standards of Article 3, Zone Districts, and Article 4, Site Development Standards.
16. **Spatial Pattern Shall Be Efficient.** [Section 5-280.B.3.e (3)] - The proposed subdivision is located and designed to avoid creating spatial patterns that cause



inefficiencies in the delivery of public services, or require duplication or premature extension of public facilities, or result in a "leapfrog" pattern of development.

17. ***Suitability for Development.*** [Section 5-280.B.3.e (4)] - The property proposed to be subdivided is suitable for development, considering its topography, environmental resources and natural or man-made hazards that may affect the potential development of the property, and existing and probable future public improvements to the area.
18. ***Compatible With Surrounding Uses.*** [Section 5-280.B.3.e (5)] - The proposed subdivision is compatible with the character of existing land uses in the area and shall not adversely affect the future development of the surrounding area.

Pursuant to Eagle County Land Use Regulations Section 5-240.F.2.a.(8), Initiation:

19. The Applicant has submitted a PUD Guide that demonstrates that the requirements of this Section have been fully met.

Pursuant to Eagle County Land Use Regulations, Section 5-230.D., Standards for determining whether to adopt, adopt with modifications, or disapprove the proposed amendment to the Official Zone District Map:

20. ***Consistency With Master Plan.*** The proposed amendment is consistent with the purposes, goals, policies and FLUM of the Master Plan.
21. ***Compatible with surrounding uses.*** The proposed amendment is compatible with existing and proposed uses surrounding the subject land, and it is an appropriate zone district for the land, considering its consistency with the purpose and standards of the proposed zone district.
22. ***Changed conditions.*** There are changed conditions that require an amendment to modify the present zone district or its density/intensity.
23. ***Effect on natural environment.*** The proposed amendment does not result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife habitat, vegetation, and wetlands.
24. ***Community need.*** The proposed amendment meets a community need.



25. **Development patterns.** The proposed amendment does result in a logical and orderly development pattern, does not constitute spot zoning, and can logically be provided with necessary public facilities and services.
26. **Public interest.** The area to which the proposed amendment would apply has changed or is changing to such a degree that it is in the public interest to encourage a new use or density in the area.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF EAGLE, STATE OF COLORADO:

THAT, the petition of Heritage Park Building & Development, Inc., File No. ZC-00065, for a Zoning Amendment to change from the Resource [R] Zone District to the Planned Unit Development [PUD] Zone District be and is hereby **approved** for the following described property located in the unincorporated area of Eagle County:

The Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 5, Township 5 South, Range 82 West of the 6th Principal Meridian; and

The Easterly 65 feet of the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Southwest $\frac{1}{4}$ of Section 5, Township 5 South, Range 82 West of the 6th Principal Meridian.

THAT, the Board of County Commissioners directs the Director of Community Development to enter this amendment on the appropriate page of the Official Zone District Map and provide a copy of this Resolution to the Applicant;

THAT, subject to the conditions set forth below, the application for the Planned Unit Development Preliminary Plan for the Heritage Park PUD be and is hereby **approved**:

1. The PUD Guide shall be revised to provide that "home occupation", as that use is defined and otherwise regulated in the Land Use Regulations, shall be allowed as a use-by-right.
2. Items 1-7 of Section 4.H and Item 1 of Section 4.I of the PUD Guide shall be deleted and included in the Covenants for the development.
3. The following provisions regarding noxious weeds shall apply: [a] a provision should be included in the PUD Guide and the Covenants to the effect that "No County listed noxious weeds shall be planted or permitted to infest private lots and/or common areas"; [b] construction and earthmoving activities should be conducted in such a manner that topsoil is prevented from being removed from



the site, including that which contaminates construction equipment, to prevent the spread of noxious weeds, specifically diffuse knapweed (*Centaurea diffusa*), and that County listed noxious weeds are prevented from producing seed; and [c] if construction and chemical control of weeds set forth in the Landscape Plan do not occur during the 2004 growing season, the property owner should implement weed management practices sufficient to comply with the requirements of the *Colorado Noxious Weed Act* and the *Amended Weed Management Plan for Unincorporated Eagle County*.

4. A complete cost estimate for the approved landscape plan, including the cost of supplying and installing the materials, shall be provided which is satisfactory to the Director of Community Development with the initial application for approval of a final plat for this development.
5. The Applicant shall provide, with the application for the initial final plat for the development, complete engineering and construction drawings and other engineering detail which are satisfactory to the County Engineer.
6. The final plat for the development shall include a note authorizing Eagle County Weed and Pest Division Staff to enter onto and across the open space parcels from mid-April through mid-September for the purpose of inspecting for noxious weed infestations.
7. The hours of permitted access for large vehicles and related conditions should be modified as follows:

Hours When School is in Session

Weekdays – No deliveries within 30 minutes of scheduled school bus pick up times. No deliveries after 3:00 PM without a street flagger present to supervise movement of vehicles or equipment.

Saturday – No deliveries without a street flagger present to supervise movement of vehicles or equipment.

Sunday – No deliveries.

Hours When School is Out of Session

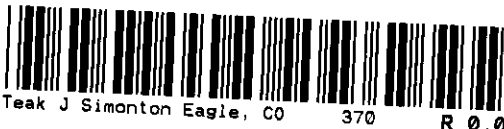
Weekdays and Saturdays – No deliveries without a street flagger supervising movement of vehicles or equipment.



Sundays – No deliveries.

Additional provisions are as follows:

- [a] Large vehicles are defined to include those in excess of 26,000 pounds GVW, per CDOT standard;
 - [b] Mr. Jim Guida has designated himself as the initial traffic control representative, and may name any employee of Heritage Building & Development, Inc., or Guida Construction to act as a representative in the future, provided that the owners of all the properties on Allen Circle and the Eagle County Director of Community Development be notified in advance; and
 - [c] Modifications or amendments to these restrictions may be allowed with the 3 days prior written notification, by U.S. Mail, of the owners of a majority of properties on Allen Circle, and with the concurrence of the Eagle County Director of Community Development. Such notice shall be deemed effective 3 days after deposit of the notices in the U.S. Mail.
8. All conditions of Resolution No. 2003-059 regarding a Variance from Improvement Standards shall be met in a timely manner, as determined by the County Engineer.
 9. Snow storage easements, 10 feet in width, shall be provided on the final plat along both sides of all streets which are a part of the development.
 10. A note shall be added to the final plat for this subdivision, satisfactory to the Director of Community Development, noting that snow storage easements exist along both sides of all streets within the subdivision and that removal of snow from any sidewalks within these snow storage easements is the responsibility of the property owners and/or the Heritage Park Homeowners Association and not of Eagle County.
 11. When the final plat is submitted for approval, the street entering the development from Allen Circle and that segment of the internal street referred to as "Heritage Park North" shall be named Heritage Park Lane (or "Place" or "Way"), and that segment of the internal street referred to as "Heritage Park West" shall be given a unique name consistent with the Eagle County Addressing Guidelines and the E-911 Street Naming Guidelines.



12. The final PUD Guide shall be revised to clearly include all of the recommended provisions of the Colorado Division of Wildlife in its letter dated December 10, 2001.
13. The recommendations of the Colorado Geological Survey in its letter dated February 2, 2004, shall be incorporated into the design and development of the site in a manner satisfactory to the County Engineer.
14. The Applicant shall, with the application for the initial final plat for the development, comply with the recommendations of Northwest Colorado Council of Governments in its letter dated January 26, 2004, in a manner which is satisfactory to the County Engineer and the Director of Community Development.
15. The Applicant shall provide and install traffic control and advisory signs (e.g., "Stop", "Caution: Children at Play") as shown on the sign plans submitted with the application materials and/or as required and approved by the County Engineer.
16. A note shall be added to the final plat requiring that homes built on lots requiring individual grinder pumps shall be equipped with sewage storage tanks with a capacity of at least 300 gallons.
17. The language contained within the Heritage Park Design Guidelines regarding restrictions on the height of buildings shall exactly match the language contained within the Homestead Ranch Architectural Standards for Filing 1. In a similar fashion, the language contained in the Planned Unit Development Guide for Heritage Park with regard to building height shall exactly match those contained in the Homestead Planned Unit Development Guide for Filing 1.
18. Maintenance of the open space contained within the Heritage Park Planned Unit Development shall be performed to the same or to a higher standard as the maintenance of the open space contained within the Homestead Planned Unit Development.
19. The Applicant is willing to work with the Claymon Family to provide berming and additional landscape treatment based on a mutually acceptable program. This effort shall be made between Preliminary Plan approval and Final Plat approval.
20. Except as otherwise modified by these conditions, all material representations of the Applicant in this application and all public meetings shall be adhered to and be considered conditions of approval.



889980

Page: 8 of 23

09/03/2004 04:13P

THAT, the *Heritage Park Site Plan* attached hereto as Exhibit "A" be and is hereby approved;

THAT, the *Heritage Park PUD Guide* dated August 16, 2004, attached hereto as Exhibit "B" be and is hereby approved.


THAT, the *Heritage Park PUD Agreement* attached hereto as Exhibit "C" be and is hereby approved.

THE BOARD further finds, determines and declares that this Resolution is necessary for the health, safety and welfare of the inhabitants of the County of Eagle, State of Colorado.


MOVED, READ AND ADOPTED by the Board of County Commissioners of the County of Eagle, State of Colorado, at its regular meeting held the 31 day of August, 2004, *nunc pro tunc* to the 15th day of June 2004.

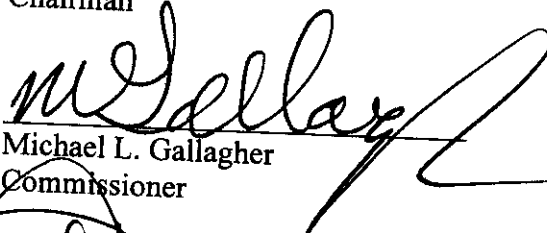
COUNTY OF EAGLE, STATE OF
COLORADO, by and Through Its
BOARD OF COUNTY COMMISSIONERS

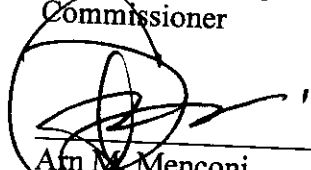
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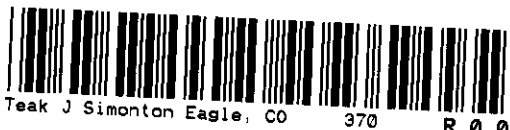

Teak J. Simonton
Clerk to the Board of
County Commissioners




Tom C. Stone
Chairman


Michael L. Gallagher
Commissioner


Arn M. Menconi
Commissioner



Commissioner Menconi seconded adoption of the foregoing resolution. The roll having been called, the vote was as follows:

Commissioner Michael L. Gallagher ay
Commissioner Arn M. Menconi aye
Commissioner Tom C. Stone ay

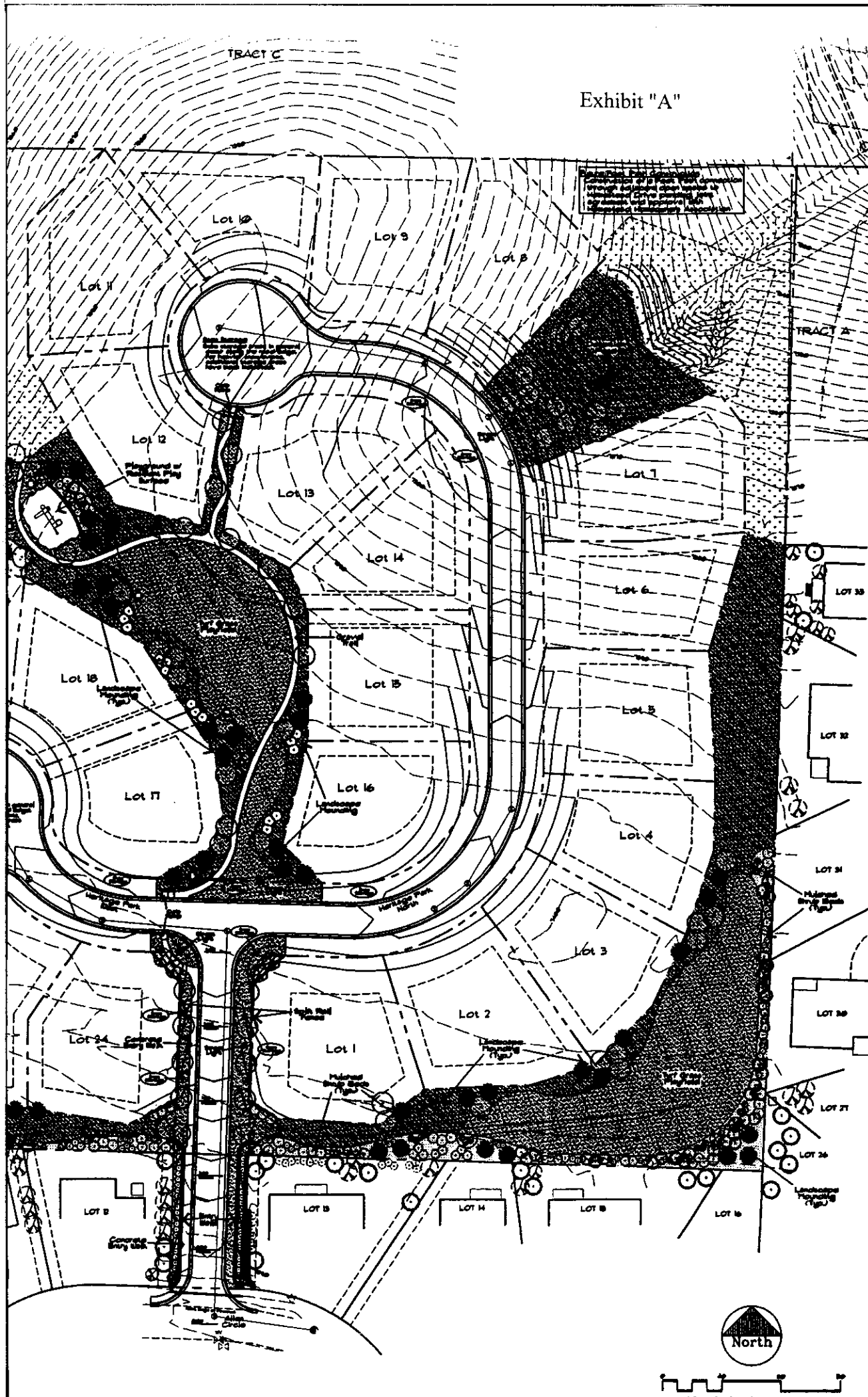
This Resolution passed by 3/3 vote of the Board of County Commissioners of the County of Eagle, State of Colorado.



889980

Page: 10 of 23
09/03/2004 04:13P
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Exhibit "A"



ISSUED FOR:		
No.	Date	Comment
1	02/03/04	Final Plan
2	02/03/04	Final Plan
3	02/03/04	Final Plan
4	02/03/04	Final Plan

REVISIONS:		
No.	Date	Comment

David Beadle
 Landscape Architect
 Site Planning
 5543 Bitterbush Way, Loveland, Colorado 80537
 Phone (970) 663-4170 / Fax (970) 663-5229
 Email: drbeadle@quest.net

Heritage Park P.U.D.

889980

Page: 12 of 23
 09/03/2004 04:13P

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Landscape Plan	
PROJECT NO: 03214.00	DATE: 02/03/04
DRAWN BY: DRS	CHECKED BY: DRS
SHEET NO: L1	

HERITAGE PARK

PLANNED UNIT DEVELOPMENT GUIDE

August 16, 2004

SECTION 1. PURPOSE

A. Statement of Intent

This Development Guide sets forth the land use and development standards for Heritage Park Planned Unit Development. Heritage Park is an in-fill residential site consisting of 24 single-family homes on approximately 11.4 acres within the Edwards community. Heritage Park is being developed around a continuous park and open space that meanders throughout the neighborhood and connects to adjacent open space system. This Development Guide defines the permitted use of the land and establishes the development standards for this neighborhood.

SECTION 2. DEFINITIONS

A. General

1. The land use restrictions set forth in this section shall apply to all real property located and included within the Heritage Park Planned Unit Development.
2. The provisions and regulations of this section shall govern and control the development of Heritage Park.

B. General Clarification of Terms and Uses

1. *Basement*; shall mean and refer to the space below the main floor of a dwelling. Basements are excluded from the Floor Area Ratio (see Section 3-B of this guide) provided that a minimum of 60% of the foundation perimeter is backfilled to within 12" of the top of the foundation wall. Mounding up of dirt around foundation wall to satisfy this definition is prohibited. However, grading of the property to accommodate the building is permitted. Site grading around the building must be integrated with the overall grading of the lot in a comprehensive manner and be fully coordinated with the approved landscape plan.



889980

Page: 13 of 23
09/03/2004 04:13P

2. *Home Occupation*; shall mean home occupation as defined in Section 2-110 and as regulated in Section 3-310.F.2 of the Eagle County Land Use Regulations, as amended.
3. *Neighborhood Park / Open Space*; shall mean and refer to all common property (including the improvements thereon) owned by the Heritage Park Homeowners for their common use and enjoyment.
4. *Owner / Homeowner*; shall mean and refer to the person or persons of recorded title to any vacant lot or dwelling located within the defined boundaries of Heritage Park.
5. *Property / Lot*; shall mean and refer to a certain plot of land or real property as defined within the boundaries of Heritage Park.
6. *Single Family Home*; shall mean and refer to a building or dwelling occupied by one family and used for residential purposes.

SECTION 3. ALLOWABLE USES

A. Uses-By-Right

1. Single-family residential dwellings including accessories such as fences, hedges, gardens, walls, and other landscaping features.
2. Attached or partially detached garage with a maximum of 3-car capacity.
3. Neighborhood Park, Open Space or Greenbelt, Health Fitness Trail.
4. Home Occupation.

B. Storage and Temporary Structures

1. Trailers, campers (whether on a truck or one which can be towed), snowmobiles, boats, recreational equipment, and snow removal equipment shall be stored inside the residence or its garage. Outside storage of these vehicles and/or equipment is prohibited.
2. Storage of construction equipment or other materials for immediate use on the lot pursuant to an Eagle County Building Permit or county approved Subdivision Improvements Agreement is permitted.



3. Trash or garbage stored outside, or in detached sheds or garages shall be placed within a bear proof trash container. Trash stored in the residential structure or attached garage shall comply with wildlife resistant refuse container requirements found in Section 4-410 of the Eagle County Land Use Regulations. Construction waste stored on the lot during construction of a residence is permitted.
4. There shall be no dumps or underground disposal of refuse within the Heritage Park Planned Unit Development.
5. Temporary construction trailers are permitted during construction.
6. Real estate sales of properties within the Heritage Park Planned Unit Development are permitted from an office located within a modular unit or home to be temporarily located / housed within Heritage Park.

SECTION 4. BUILDING RESTRICTIONS AND GUIDELINES

A. Building Height

No structure shall be erected or maintained on any lot which in excess of 35 feet in height. Height shall be the vertical distance of the structure measured from the lowest point of a finished grade on the lot within two feet of the structure to the uppermost point of the structure. Chimneys, if allowed, shall be excluded in determining the height of a structure.

B. Floor Area Ratio / Floor Area

1. Maximum floor area ratio is 30% or 3,200 square feet, whichever is greater.

C. Building Footprint / Massing

1. A maximum of 35% of each lot may be covered by permanent structures.
2. Building massing should emphasize horizontal scale and form. A single continuous unbroken building form is prohibited. Building scale should integrate varied heights, offsets in elevation, lot specific layouts, and proportionate use of porches, decks and outdoor living space. One large continuous roof form is prohibited.

D. Maximum Coverage of Impervious Material

1. Maximum coverage of impervious materials is 55%.



889980

Page: 15 of 23
09/03/2004 04:13P

E. Building Setback Requirements

1. Front setbacks along all streets and cul-de-sacs will be 25 feet from the property line.
2. Side setbacks are to be a minimum of 12½ feet with the exception of the easterly side of Lot 24, which is 15 feet and the westerly side of Lot 1 which is 25 feet.
3. Rear setbacks are to be a minimum of 15 feet as shown on the final plat.
4. Building setback lines indicated on Final Plat shall apply to buildings and outdoor living space such as decks and patios.

F. Drainage and Grading

All plans and specifications for the construction of improvements on a lot, and the actual construction of such improvements, shall keep all drainage easements and rights-of-way clear and unobstructed. All grading on a lot shall be done with a minimum of disruption to the lot and shall not drain surface water to adjoining lots unless along a natural drainage path, nor shall grading cause soil erosion.

G. Parking

Off-street parking shall be as provided based on the standards identified in the Eagle County Land Use Regulations in effect at the time of building permit application. Each dwelling shall provide a minimum of 3 spaces.

H. Landscaping

A landscape plan must be submitted to and approved by the Heritage Park Design Review Board prior to obtaining a building permit from Eagle County.

Noxious Weed Controls:

- a. No Eagle County listed noxious weeds shall be planted or permitted to infest private lots and/or common areas.
- b. Construction and earth moving activities shall be conducted in such a manner that topsoil is prevented from being removed from the site, including that which contaminates construction equipment, to prevent the spread of noxious weeds, specifically diffuse knapweed, so that the County listed noxious weeds are prevented from producing seed.



889980

Page: 16 of 23
09/03/2004 04:13P
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- c. If construction and chemical control of weeds set forth in the Landscape Plan do not occur during the 2004 growing season, the property owner shall implement weed management practices sufficient to comply with the requirements of the Colorado Noxious Weed Act and the Amended Weed Management Plan for Unincorporated Eagle County.

I. Special Provisions

1. Homes constructed on Lots 8, 9, 10, 11, 19, 20 and 21 shall step the foundation of their living areas down the slope to create a building form that responds to the sloping characteristic of the lot.
2. The underside of any decks larger than 200 square feet constructed along the downhill side of a home on the above-referenced lots shall be enclosed unless constructed over a lower level living area.
3. The construction of an unbroken vertical three-story façade on the downhill side of the above-referenced lots is prohibited.
4. No wood burning fireplaces or wood stoves are allowed.
5. Residences are prohibited from having compost piles unless in an approved bear proof receptacle.
6. Pets shall not be fed outside.
7. With the exception of bird feeders, the feeding, baiting, salting or other means of attracting wildlife to individual yards is prohibited.
8. Architectural plans must be submitted to and approved by the Heritage Park Design Review Board prior to obtaining a building permit from Eagle County.

SECTION 5. DRIVEWAYS

- A. All driveways shall be surfaced with asphalt or concrete and comply with Eagle County standards for grade, width and connection to a County Road. No more than one connection for access to a Dwelling shall be allowed for each single-family lot. Joint usage of driveways by adjacent owners is permitted.



SECTION 6. ANIMALS

- A. No horses or agricultural animals of any kind are permitted on any lot or within the common open space provided within the Heritage Park Neighborhood. Owners may keep up to two domestic animals. In no event shall pets be kept for commercial purposes.

SECTION 7. MANAGEMENT

- A. A Property Owners Association shall be created representing the Owners of each of the 24 lots within the Heritage Park Planned Unit Development. Each lot owner will have one vote. The Property Owners Association shall create a Design Review Board responsible for the Heritage Park Architectural Design Guidelines, building design review, landscaping design review and other design related matters within the Planned Unit Development.

The Property Owners Association shall be responsible for establishing the rules and regulations for the management of the open space. It shall also be responsible for the maintenance of the park, all open space, the sidewalk connecting the park to Allen Circle, and the drainage easements including the detention pond. The maintenance of the open space and park areas within the Heritage Park Planned Unit Development shall be performed to the same or higher standards than the maintenance of open space and park areas contained within the Homestead Planned Unit Development. The Property Owners Association shall establish the required annual assessments necessary to provide such maintenance.

SECTION 8. AUTHORITY

- A. Where this Planned Unit Development Guide is not full and explicit, the Eagle County Land Use Regulations, as amended from time to time, shall apply.



889980

Page: 18 of 23
09/03/2004 04:13P

**PLANNED UNIT DEVELOPMENT AGREEMENT
COUNTY OF EAGLE, STATE OF COLORADO**

AGREEMENT NUMBER: _____

Heritage Building and Development, Inc.

**Heritage Park Planned Unit Development
File Number: PDP 00026**

WHEREAS, on or about November 6, 2003, Heritage Building and Development, Inc., (hereinafter referred to as the "Developer"), did file an application with the Eagle County Department of Community Development, State of Colorado, pursuant to Article 5 of the Eagle County Land Use Regulations, for a Preliminary Plan for the Heritage Park Planned Unit Development (hereinafter referred to as "PUD"), said development is a residential development on a 11.473 acre parcel consisting of twenty-four (24) single-family lots and a common open space tract adjacent to Homestead Filings 1 and 3; and

WHEREAS, concurrent with the approval of a Preliminary Plan for PUD, the Developer and the Board of County Commissioners shall enter into a Planned Unit Development Agreement (hereinafter referred to as the "Agreement"), binding the PUD to any conditions placed in the Resolution and this Agreement; and

WHEREAS, said Agreement shall include a Common Open Space Plan, Park and Recreation Area Plan; and

WHEREAS, said Agreement shall set forth how the landscaping proposed for the PUD will comply with Eagle County Land Use Regulations Section 4-240 Installation and Maintenance Requirements; and

WHEREAS, said Agreement shall ensure installation of necessary public improvements planned to accommodate the development; and

WHEREAS, pursuant to Article 5-240.F.3.h items (1) through (4) of the Eagle County Land Use Regulations, the Eagle County Board of Commissioners finds that the following shall set forth the performance section of this Planned Unit Development Agreement.

NOW, THEREFORE, in consideration of approval of the Preliminary Plan for PUD, and the promises, covenants, and agreements to be kept and performed by the parties hereto, it is agreed:

1. CONDITIONS IN THE RESOLUTION

The PUD, including Developer and successive owners of any part thereof, is bound to all of the conditions placed in the Resolution approving the PUD Preliminary Plan.



889980

Page: 19 of 23
09/03/2004 04:13P

2. COMMON PARK AND OPEN SPACE AREAS

2.1 Common Park and Open Space Areas Plan. Developer agrees to be bound by its verbal and written assurances as to its Common Open Space, Park and Recreation Area Plans. The Plans must outline the areas of common open space, parks, trails and recreation lands. The Plan must specify how the preservation of these lands is to be implemented, identify deed or other restrictions against development and include terms by which any common areas are to be maintained. The Plan must be submitted with the application for Final Plat approval and must be approved by the Board of Eagle County Commissioners before approval of the Final Plat.

3. LANDSCAPE AND PUBLIC IMPROVEMENT GUARANTEE.

3.1 Landscape Plan. Developer agrees to submit with the application for Final Plat approval a Landscape Plan that complies with the landscape plan submitted with the Preliminary Plan and found to be in compliance with Section 4-240 Installation and Maintenance Requirements. Minor modifications may be approved provided that the plan continues to comply with Section 4-240 Installation and Maintenance Requirements. The Landscape Plan must be approved by the Board of Eagle County Commissioners as part of a Subdivision Improvements Agreement prior to approval of the Final Plat.

3.2 Agreement to Collateralize Landscaping. The Developer agrees to provide collateral in a form acceptable to the County Attorney to ensure landscaping complying with the approved Landscape Plan will be installed. Developer agrees to provide collateral for no less than one hundred and twenty-five percent (125%) of the estimated cost of the landscaping improvements. The Developer may provide collateral for each phase of a phased PUD. Developer agrees that the guarantee shall be provided prior to initiation of any land clearing or infrastructure development for the phase or the PUD, whichever is applicable.

3.3 Release of Landscape Collateral. As portions of the landscape improvements are completed, the Community Development Director shall inspect them, and upon approval and acceptance, shall authorize the release of the agreed estimated cost for that portion of the improvements, except that the ten percent (10%) shall be withheld until all proposed improvements are completed and approved, and an additional twenty-five percent (25%) shall be retained until the improvements have been maintained in a satisfactory condition for two (2) years.

3.4 Public Improvements Agreement. Developer agrees to execute a Subdivision Improvements Agreement (hereinafter referred to as the "SIA") prior to approval of a Final Plat for PUD. The SIA will contain, among others, the following provisions:

- A. Specification of Improvements. The improvements to be installed shall be specified, and shall include requirements as set forth in Condition 5 of that Resolution approving File No. PDP – 00026.
- B. Certificates of Insurance. The Developer shall secure from any contractor or subcontractor engaged in the work necessary to comply with the SIA a Certificate of Insurance providing for liability protection in the minimum amount of \$150,000 per individual and \$600,000 per occurrence, naming



889980

Page: 20 of 23
09/03/2004 04:13P

the County as an additionally named insured. The Developer, if it serves as the contractor for the PUD Improvements, shall provide insurance in the same form and amounts as required of the general contractor. Said limits shall be adjusted to comply with any changed limits in the Colorado Governmental Immunity Act, Title 24, Article 10, Colorado Revised Statutes.

- C. County Incurs No Liability. The County shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage happening or occurring to the PUD and/or PUD Improvements specified in the final PUD Agreement prior to the completion and acceptance of the same; nor shall the County, nor any officer or employee thereof, be liable for any persons or property injured or damaged by reasons of the nature of said work on the PUD Improvements, but all of said liabilities shall be and are hereby assumed by the Applicant. The Developer hereby agrees to indemnify and hold harmless the County and any of its officers, agents and employees against any losses, claims, damages or liabilities for which the County or any of its officers, agents, or employees may become subject to, insofar as any such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any performance by the Developer hereunder; and the Developer shall reimburse the County for any and all legal and other expenses incurred by the County in connection with investigating or defending any such loss, claim, damage, liability or action. This indemnity provision shall be in addition to any other liability which the Developer may have.
- D. Collateral. Developer agrees to provide collateral in a form acceptable to the Eagle County Attorney to ensure public improvements are installed according to the development approval for no less than one hundred percent (100%) of the estimated cost of public facility improvements, as estimated by the Developer and approved by the County Engineer. As portions of the public facilities improvements are completed, the County Engineer shall inspect them, and upon approval and acceptance, shall authorize the release of the agreed cost for that portion of the improvements except that ten percent (10%) shall be withheld until all proposed improvements are completed and approved by the County Engineer.
- E. Warranty. The SIA shall provide for a warranty period of two (2) years following completion of the last of the improvements.
- F. Compliance with Land Use Regulations. The Developer shall be required to obtain all necessary permits and comply with the provisions of the Land Use Regulations, including but not limited to the Regulations for Construction within the Public Ways of Eagle County (Chapter V), as the same are in effect at the time of commencement of construction of the PUD Improvements referred to herein.



889980

Page: 21 of 23
09/03/2004 04:13P

- G. Sole Responsibility of Applicant Prior to County Acceptance. The Developer agrees and understands that at all times prior to the completion and acceptance of the on and off-site PUD Improvements set forth in this Agreement and the SIA by the County, each of said improvements not accepted as complete shall be the sole responsibility and charge of the Developer. When it is necessary to allow the general public to utilize the roadways under construction by the Developer, traffic control and warning devices shall be placed upon such roadways by the Developer in accordance with the Manual on Uniform Traffic Control Devices for Streets and Highways as prepared by the U.S. Department of Transportation, Federal Highway Administration.

4. GENERAL PROVISIONS.

4.1 Severability. Whenever possible, each provision of this Agreement and any other related documents shall be interpreted in such a manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of such subsection or document.

4.2 Amendment and Modification. The parties hereto mutually agree that this Agreement may be amended or modified from time to time, provided that such amendment or modification is in writing and signed by all parties hereto.

4.3 Assignability. This Agreement shall be enforceable against the Developer, provided however, that in the event the Developer sells, transfers or assigns all or part of the subject PUD, the obligations of the Developer under this Agreement as to that portion of the subject PUD may be assumed in writing by the purchaser of the parcel, and the Developer shall have no further obligations hereunder. It is agreed, however, that no such assumption of these obligations shall be effective unless the County gives its prior written approval to such assumption following an investigation of the financial condition of the purchaser. The Developer shall not otherwise assign, transfer, convey, pledge or otherwise dispose of this Agreement without prior written consent of the County, which consent shall not be unreasonably withheld.

4.4 Binding upon Successors. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors, and assigns.

4.5 No Rights to Third Parties. This Agreement does not and shall not be deemed to confer upon or grant to any third party any right to claim damages or to bring any lawsuit, action or other proceedings against either the County or its officers, employees or agents because of any breach hereof or because of any terms, covenants, agreements or conditions contained herein.

4.6 Enforcement. At its sole option, the County may enforce the provisions of this Agreement and of any applicable deed restrictions and covenants in the same manner and with the same remedies applicable to the enforcement of land use regulations pursuant to the Eagle County Land Use Regulations, as they may be amended from time to time, or as otherwise



889980

Page: 22 of 23
09/03/2004 04:13P

provided by law. Alternatively, the terms of this Agreement and of any applicable deed restrictions and covenants shall be enforceable by the Board or its designee by any appropriate equitable or legal action, including but not limited to specific performance, mandamus, abatement, injunction, or forcible entry and detainer. The remedies explicitly provided herein are cumulative, and not exclusive, of all other remedies provided by law.

4.7 Notice. Notice required pursuant to the terms of this Agreement shall be deemed given on the day that the same is placed in the United States Mails, postage prepaid, certified or registered mail, return receipt requested.

Address for giving notice to County:
Eagle County Attorney's Office
P.O. Box 850
500 Broadway
Eagle, CO 81631
(970) 328-8685

Address for giving notice to Developer:
Jim Guida
Heritage Building & Development, Inc.
P.O. Box 760
Vail, Colorado 81658

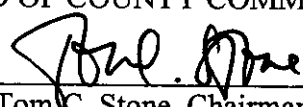
IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 31
day of August, 2004.

ATTEST:


Clerk to the Board of
County Commissioners

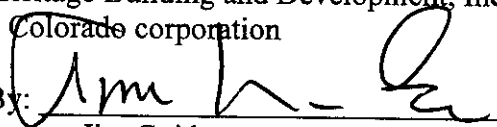
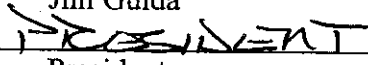


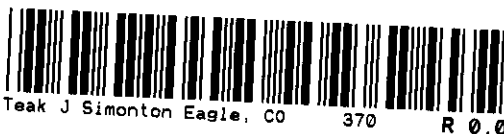
**EAGLE COUNTY DEPARTMENT OF
COMMUNITY DEVELOPMENT, Colorado**
By and Through Its
BOARD OF COUNTY COMMISSIONERS

By: 
Tom C. Stone, Chairman

DEVELOPER:

Heritage Building and Development, Inc.
a Colorado corporation

By: 
Jim Guida

President



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Page: 23 of 23
09/03/2004 04:13P
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