



## DEVELOPMENT AGREEMENT

In consideration of the mutual promises contained herein, the sufficiency of which is hereby acknowledged, El Paso County by and through the Board of County Commissioners of El Paso County, Colorado ("the County"), whose address is 27 E. Vermijo Avenue, Colorado Springs, CO 80903, Marksheffel Business Center, LLC, a Colorado limited liability company ("MBC"), whose address is 454 Riverview Circle, Coquitlam, British Columbia V3C 4X9, and BAN Limited Liability Company, a Colorado limited liability company authorized to transact business in Colorado ("BAN"), whose address is 1816 N. Marksheffel Road, Colorado Springs, CO 80951-9714, hereby enter into this Development Agreement ("Agreement"). The County, MBC, and BAN may be referred to individually as a Party or collectively as the Parties.

1. Related Agreements. The Board of County Commissioners, by Resolution No. 10-538 dated December 16, 2010, and recorded on December 27, 2010, at Reception No. 200131837, approved the Vacant Land Exchange Agreement dated December 2, 2010, between the County and MBC ("the MBC Agreement") and the Vacant Land Exchange Agreement dated December 14, 2010, between the County and BAN ("the BAN Agreement"). The MBC Agreement was also recorded separately on December 27, 2010, at Reception No. 210131839, and the BAN Agreement was also recorded separately on December 27, 2010, at Reception No 210131838 of the records of the El Paso County Clerk and Recorder's Office.

2. Subject Property. The Director of the El Paso County Development Services Department issued an Administrative Determination Letter dated 7-12-, 2011, and recorded at Reception No. 211096241 of the records of the El Paso County Clerk and Recorder's Office determining the relationship between the Ban Agreement and County subdivision and zoning regulations. Exhibit 1 to that Letter shows the area of property that is the subject of this Agreement, which is designated thereon as "Proposed Future Driveway Entrance." That Exhibit 1 is also attached hereto as Exhibit 1 and is incorporated herein by this reference. The subject property shall be referenced herein as the "Future Driveway."

3. MBC Property. MBC owns commercial property on the west side of Marksheffel Road located at 1930 Marksheffel Road North, Colorado Springs, El Paso County, Colorado, El Paso County tax schedule number 5405000048, and referred to herein either by the tax schedule number or "the MBC Property."

4. BAN Property. BAN owns commercial property on the west side of Marksheffel Road located at 1816 Marksheffel Road North, Colorado Springs, El Paso County, Colorado, El Paso County tax schedule number 5405000006, and referred to herein either by the tax schedule number or "the BAN Property."

5. Access Relocation. Pursuant to the requirements of Paragraph 4.d of the MBC Agreement and Paragraph 4 of the BAN Agreement, the Parties hereby agree to the following:



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(1)

A. Upon the owner or developer of El Paso County tax schedule number 5405000048 (the MBC Property) or some part thereof constructing an extension of Colorado Tech Drive, the owner of the BAN Property shall promptly close off its access via the Non-exclusive Permanent Easement Access Easement ("Access Easement") dated 9.29, 2011, and Recorded at Reception No. 211096234 of the records of the El Paso County Clerk and Recorder's Office, and move its access to the future intersection location proposed approximately 465 feet west of the centerline of Marksheffel Road identified herein as the Future Driveway location (*see*, Exhibit 1). The owner or developer of El Paso County tax schedule number 5405000048 or some part thereof shall not be required to bear any of the expense of closing off and moving the access point for the BAN Property.

B. The Access Easement, pursuant to Paragraph 2.b., of the MBC Agreement, provides that the Access Easement shall merge into, and shall immediately cease to be a legally binding and enforceable instrument by operation of law upon the area occupied by the Access Easement becoming dedicated and accepted for public road right-of-way by means of the recording of a subdivision plat by MBC that contains the appropriate formalities for the dedication and acceptance thereof.

C. This Agreement shall be recorded in the records of the El Paso County Clerk and Recorder's Office and a copy shall be maintained in the records of the El Paso County Development Services Department.

6. Requirements fulfilled. The Parties hereby agree that this Agreement, and specifically the provision in Paragraph 5 above, constitutes and fulfills the requirement of the County to enter into a Development Agreement to be provided to MBC as required in Paragraph 4.d of the MBC Agreement.

7. Changes or Modifications. No modification, amendment, novation, change, or other alteration of this Agreement shall be valid unless mutually agreed to by the Parties in writing and executed as an addendum to this Agreement.

8. Severability. If any paragraph, section, subsection, clause or phrase of this Agreement is, for any reason, held to be invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement.

9. Waiver. The waiver of a breach of any of the provisions of this Agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or other provision of this Agreement.

10. No Third Party Beneficiaries. This Agreement does not and shall not be deemed to confer on any third party the right to the performance of this Agreement, to claim any damages or to bring any legal action or other proceeding against the County, MBC or BAN for any breach or other failure to perform this Agreement.

11. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

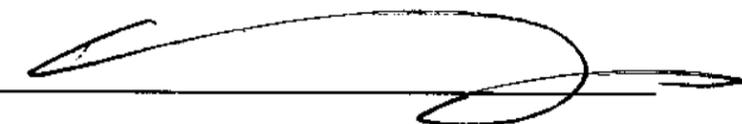
12. Remedies. The Parties hereby agree that if any dispute cannot be resolved by mutual agreement of the Parties, such dispute may be resolved at law or in equity. The Parties further agree and acknowledge that this Agreement may be enforced at law or in equity. In addition to any other available remedies, in the event of a breach of this Agreement, any Party may request a court of competent jurisdiction to enter a writ of mandamus to compel the breaching Party to perform under this Agreement, and any Party may seek from a court of competent jurisdiction temporary and/or permanent restraining orders, or orders for specific performance, to compel the other to perform in accordance with the obligations set forth in this Agreement.

13. Applicable Law and Jurisdiction. The laws, rules, and regulations of the State of Colorado and El Paso County shall be applicable in the enforcement, interpretation, and execution of this Agreement. The Parties understand and agree that, in the event of any litigation that may arise under this Agreement, jurisdiction and venue shall lie in the District Court of El Paso County, Colorado.

14. Execution. This Agreement, including facsimile copies of this Agreement, may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In the event facsimile copies of this Agreement are executed, the original signatures shall be compiled and attached to form the original Agreement.

DATED this 29 day of September, 2011.

MARKSHEFFEL BUSINESS CENTER, LLC,  
a Colorado Limited Liability Company

By: 

Grant Langdon as Managing Agent of KB Cheyenne Development, LLC,  
as Managing Agent of Marksheffel Business Center, LLC

DATED this 29 day of September, 2011.

BAN Limited Liability Company,  
a Colorado limited liability company

By: Kevin Moore Manager  
Kevin Moore, Manager

DATED this 29 day of September, 2011.

ATTEST:  
By: Debra Ratteree  
Deputy County Clerk and Recorder



BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO

By: Amy Lathen  
Amy Lathen, Chair

APPROVED AS TO FORM:

OFFICE OF THE COUNTY ATTORNEY  
OF EL PASO COUNTY, COLORADO

M. Cole Emmons  
Assistant County Attorney

BESQCP Not Required  
by DKM on 5/26/2011

ANY APPROVAL GIVEN BY EL PASO COUNTY DOES NOT OBTAIN THE RIGHT TO COMPLY WITH APPLICABLE FEDERAL, STATE, OR LOCAL LAWS AND/OR REGULATIONS

CALL UTILITY NOTIFICATION CENTER OF COLORADO  
1-800-822-1987  
CALL 3 BUSINESS DAYS IN ADVANCE BEFORE YOU DIG, GRADE OR EXCAVATE FOR THE MARSH OF UNDISBURSED MEMBER UNPLUED

**Computer file Information**

Order Date:	12/7/2010	Package:	RWD
Last Modification Date:	5/26/2011	Package:	RWD
File Path:	P:\proj-0-20-2011\Ban LJC Site Survey		
Drawing File Name:	Ban LJC-PPWD-1.dwg		
Appr. Ver.:	0-20 11	Scale:	As Shown

**Index of Revisions**


**El Paso County Public Services Department**  
Division of Transportation  
2272 West Drive, Odessa 79721-1247  
Colorado Springs, CO 719-530-1400  
Fax: 719-530-4278

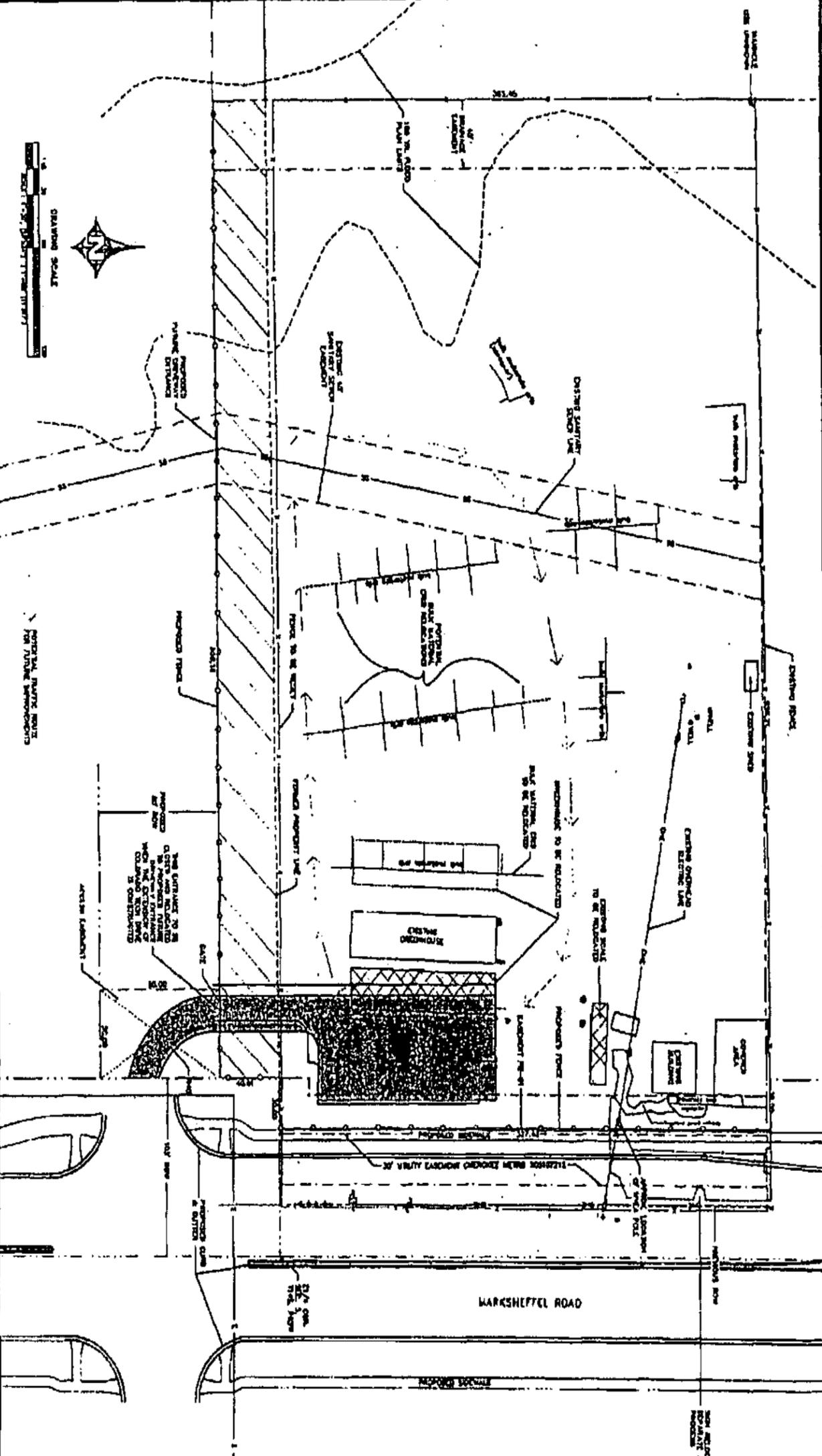
**As Constructed**

No. Revisions:	
Revised:	

**Boundary Line Adjustment**

Owner:	Ban LJC
Project:	Homastoke Nursery Exhibit

**Project No./Code**

**APPROVED**  
BY DKM DATE 5/26/2011  
FOR SITE PLAN  
NOTES ASSOCIATED  
WITH BOUNDARY  
LINE ADJUSTMENT  
EL PASO COUNTY  
DEVELOPMENT SERVICES

**DENIED**  
PEXOL 11-002  
ADM 11-002  
PPR 11-013

Development services are/are to contingent upon compliance with all applicable notes on the recorded plat.

An access permit must be granted by the Development Services Engineering Division prior to the establishment of any driveway onto a County Road.

Division of blockage of any drainageway is not permitted without the approval of the Development Services Engineering Division.

EXHIBIT 1

