

Drive Way, Cul-de-sac Easement and Maintenance Agreement

This Drive Way, Cul-de-sac Easement and Maintenance Agreement is executed this ___ day of November 2018 by and between the Owners who are identified below and have executed this Agreement below.

RECITALS

WHEREAS, the Owners are the current Owners of the lots 2, 3 4 and 5 (the "Lots") identified on Exhibit A attached hereto (collectively the "Property").

WHEREAS, the Owners are desirous of granting an easement for the drive way and cul-de-sac noted on exhibit A attached hereto by this reference.

WHEREAS, the Owners are desirous of granting a maintenance agreement for the drive way and cul-de-sac noted on exhibit A.

WHEREAS, subject to the express terms and provisions of this Agreement, the parties desire to (i) create a non-exclusive drive way and cul-de-sac easement over and across certain portions of the Property as noted on Exhibit A (ii) impose a maintenance agreement for the maintenance and upkeep of the drive way and Cul-de-sac with respect to the granted easement as provided herein.

NOW, THEREFORE, for valuable consideration given and received, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE I

Creation and Use of Easement

1.1 Incorporation. The Recitals set forth above are hereby incorporated herein as if fully set forth in this Article.

1.2 Grant of Drive way and cul-de-sac Easement. Each Owner does hereby sell, convey, grant, assign and transfer unto each other Owner, their agents, guests, invitees, and licensees, a non-exclusive easement for the accommodation of the **Drive Way, Cul-de-sac Easement** across that portion of the Properties that is delineated on Exhibit A herein as the "**Drive Way, Cul-de-sac Easement**" ("**Agreement**") in order to provide vehicular and pedestrian access on and off of Otero Avenue to and from Lots 2, 3, 4 and 5 as depicted on Exhibit A.

1.3 No Barriers or Impediments. No Owner or subsequent owners of any of the referenced lots construct, erect or install any fences, barriers, impediments, gates or other improvements ("Impediments") within the **Drive Way, Cul-de-sac Easement** Area which would impede the use of the Easement Area. Any original party to this Agreement or any Owner of a Lot if there is no original party (or its successor in interest) to this Agreement that still owns a Lot shall have the right to remove any Impediments from the **Drive Way, Cul-de-sac Easement** Area, and such party shall have any liability to the other party constructing, erecting or installing any Impediment for any damage caused to such Impediment. If a party has caused or allowed an Impediment to be constructed, erected, installed or maintained in either the **Drive Way, Cul-de-sac Easement** Area, such party shall bear the costs of the removal of such Impediment.

1.4 Individual Vehicular Entry ways. Each property owner shall be responsible to design,

construct, install and maintain their respective vehicular entryways for their lot/home site onto and off of the Driveway Easement area.

ARTICLE II

Maintenance and Repair

2.1 **Maintenance and Repair.** The owners of lots 2, 3, 4 and 5 as depicted on Exhibit A agree to exercise all ordinary and reasonable care in its use of the Easement and agrees to exercise all ordinary and reasonable care in its use of the **Drive Way, Cul-de-sac Easement Area.** The owners of lots 2, 3, 4 and 5 agree to pay to maintain and repair the Drive Way, Cul-de-sac Easement area in order to maintain the easement in a good and useable condition.

2.2 **Indemnity.** Each Owner shall indemnify, defend and hold the other Owners harmless from and against any and all claims, expenses, liabilities, loss, damage and costs, including reasonable attorneys' fees, and any actions or proceedings in connection therewith, incurred in connection with, arising from, due to or as a result of the indemnifying Owner's breach of this Agreement.

2.3 **Mechanics' Liens.** Nothing contained herein shall authorize any party, or any person or entity acting through, with, or on behalf of such parties, to subject another party's property, or any portion thereof, to mechanics liens. If any such lien shall be filed against another party's parcel the party causing such lien shall cause the lien to be discharged. In the event that the enforcement of such lien is not discharged within twenty (20) days after receipt of written notice of the lien by the party charged with causing the lien, then the party whose property is subject to the lien, at its option, and at the reasonable cost and expense of the other party, may enter into, defend, prosecute or pursue any effort or action (whether or not litigation is involved) which such party deems reasonably necessary to defend its property from and against such lien.

ARTICLE III

Default: Right to Cure; Liens

3.1 **Default: Right to Cure.** If any party defaults in the performance of any of its obligations under this Agreement, including but not limited to the obligation to maintain and repair the **Drive Way, Cul-de-sac Easement Area** as provided in paragraph 2.1 above, any non-defaulting party shall have the right, but not the obligation, upon fifteen (15) days written notice, to cure such default for the account of and at the expense of the defaulting party; provided, however, that in the event of emergency conditions constituting default, the non-defaulting party acting in good faith shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. Any notice hereunder shall specify with particularity the nature of the default claimed and shall set forth in detail the action which the non-defaulting party will take in order to cure the default, including but not limited to, entering upon the parcel of the defaulting party to cure such default.

3.2 **Legal and Equitable Relief.** Any party shall have the right to prosecute any proceedings at law or in equity against any other party, or any other person, violating or attempting to violate or defaulting upon any of the provisions contained in this Agreement, in order to prevent the violating or defaulting party, or any such person, from violating or attempting to violate or defaulting upon the provisions of this Agreement and to recover damages for any such violation or default. The remedies available under this Paragraph shall include, by way of illustration but not limitation, ex parte applications for temporary restraining order, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default.

3.3 **Costs of Cure.** All costs and expenses reasonably incurred by the non-defaulting party to cure a default of a defaulting party under this Agreement, together with interest thereon at the

rate of 18% per annum and all costs and expenses of any proceedings at law or in equity, including reasonable attorney's fees awarded by order of the court, shall be assessed against and be immediately due and payable by the defaulting or violating party.

3.4 **Lien.** Costs and expenses accruing and/or assessed pursuant to this Agreement shall constitute a lien against the defaulting party's property. The lien shall attach and take effect upon recordation of a claim of lien in the office of the El Paso County Recorder by the party making the claim. The claim of lien shall include (i) the name of the lien claimant; (ii) a statement concerning the basis for the claim of lien and identifying the lien claimant; (iii) an identification of the owner of the parcel or interest therein against which the lien is claimed; (iv) a description of the parcel against which the lien is claimed; (v) a description of the work performed or action taken which has given rise to the claim of lien and a statement itemizing the amount thereof; and (vi) a statement that the lien is claimed pursuant to the provisions of this Agreement. The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the party against whom the lien is claimed, by personal service or mailing to the address given for the mailing of tax statements in the El Paso County Assessor's office for the parcel or interest against which the lien is claimed. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any manner allowed by law, including without limitation, suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the laws of the State of Colorado.

3.5 **Waiver and Remedies Cumulative.** No waiver by a party of any default under this Agreement shall be effective or binding on such party unless made in writing and no such waiver shall be implied from any omission by a party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provisions contained in this Agreement. All of the remedies permitted or available to the parties under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

ARTICLE IV **Miscellaneous**

4.1 **Amendment and Termination.** This Agreement is perpetual and may only be amended or terminated by recordation of a written instrument in the official real property records of El Paso County, Colorado, mutually agreed (100% agreement of all of the then current owners of lots 2, 3, 4 and 5) to and executed by the Owners of Lots 2, 3, 4 and 5 as noted on exhibit A..

4.2 **Default; Attorneys' Fees.** The failure of any party to this Agreement to comply with its responsibilities or obligations herein shall entitle the non-defaulting party to pursue any and all appropriate legal recourse, including the rights of injunction, damages, specific performance or any or all of the above. Should any party institute legal action or proceeding for the enforcement of the any responsibilities or obligations herein, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in the preparation and prosecution of such action or proceeding.

4.3 **Governing Law; Venue.** The laws of the State of Colorado shall govern the interpretation, validity, performance and enforcement of this Agreement. Venue shall be in El Paso County, Colorado.

4.4 **No Joint Venture.** Nothing in this Agreement shall be deemed or construed to create the relationship of partnership, joint venture, principal and agent, or any other association between

or among the parties.

4.5 **No Third Party Beneficiaries.** Nothing in this Agreement shall be deemed to constitute a gift, grant or dedication of any portion of the **Drive Way, Cul-de-sac Easement** Area to the general public or for any public purpose. The provisions of this Agreement are for the exclusive benefit of the parties hereto (and their successors and assigns) and shall not be deemed to have conferred any rights, express or implied, upon any third person.

4.6 **Run With the Land.** The access easement and maintenance agreement granted in this document shall run with the land, shall be appurtenant to the Lots 2, 3, 4 and 5 and shall bind the Owners, and shall inure to the benefit of and be binding upon the Owners' heirs, personal representatives, successors and assigns.

4.7 **Exhibits.** Each of the exhibits referenced herein and attached hereto are made part of this Agreement as if fully set forth herein.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement the day and year first above written.

OWNERS:

Lot s 2, 3, 4 and 5 per Exhibit A

Hunsinger Development Corporation

Steven Glenn Hunsinger, President

Date

EXHIBIT "A"

FINAL PLAT HUNSINGER SUBDIVISION

A VACATION AND REPLAT OF LOT 10, BLOCK B, AMENDED PLAT OF SPRING CREST AND OF LOTS L AND K, BLOCK B, FILING No. 2 OF SPRING CREST LOCATED IN A PORTION OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO

KNOW ALL MEN BY THESE PRESENTS:

That The Glenn W. Hunsinger and Mary V. Hunsinger Traust, dated August 14, 1997, being the owner of the following described tracts of land to wit:

Parcel A:

Lot 10, Block B, Amended Filing of Spring Crest, County of El Paso, State of Colorado. Together with that portion of vacated Otero Avenue adjoining subject property according to Resolution recorded February 15, 1972 in Book 2467 at Page 843.

Parcel B:

Lot K, Block B, Filing No. 2 of Spring Crest, County of El Paso, State of Colorado. Together with that portion of vacated Otero Avenue adjoining subject property according to Resolution recorded February 15, 1972 in Book 2467 at Page 843.

Parcel C:

Lot L, Block B, Filing No. 2 of Spring Crest, County of El Paso, State of Colorado. Together with that portion of vacated Otero Avenue adjoining subject property according to Resolution recorded February 15, 1972 in Book 2467 at Page 843.

Containing a calculated area of 681,415 square feet (15.643136 acres), more or less.

OWNERS CERTIFICATION:

The undersigned, being all the owners, mortgages, beneficiaries of deeds of trust and holders of other interests in the land described herein, have laid out, subdivided, and platted said lands into a lot and easements as shown hereon under the name and subdivision of HUNSINGER SUBDIVISION. The utility easements shown hereon are hereby dedicated for public utilities and communication systems and other purposes as shown hereon. The entities responsible for providing the services for which the easements are established are hereby granted the perpetual right of ingress and egress from and to adjacent properties for installation, maintenance, and replacement of utility lines and related facilities.

_____ Date

STATE OF COLORADO }
COUNTY OF EL PASO } SS

Acknowledged before me this _____ day of _____, 2018 by

My commission expires _____

Witness my hand and official seal _____
Notary Public

DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT CERTIFICATE:

This plat for HUNSINGER SUBDIVISION was approved for filing by the El Paso County, Colorado Planning and Community Development Department Director on the

_____ day of _____, 2018, subject to any notes or conditions specified hereon.

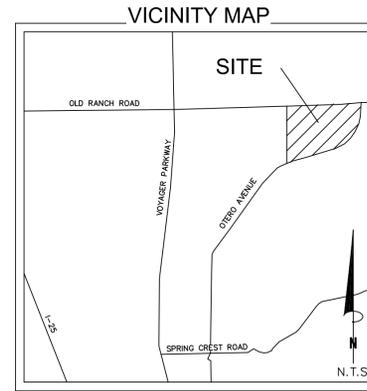
Director Of Planning and Community Development _____ Date

SURVEYOR'S CERTIFICATION:

I Mark S. Johannes, a duly registered Professional Land Surveyor in the State of Colorado, do hereby certify that this plat truly and correctly represents the results of a survey made on the date of survey shown hereon, by me or under my direct supervision and that all monuments exist as shown hereon; that mathematical closure errors are less than 1:10,000; and that said plat has been prepared in full compliance with all applicable laws of the State of Colorado dealing with monuments, subdivision, or surveying of land and all applicable provisions of the El Paso County Land Development Code.

This certification is neither a warranty nor guarantee, either expressed or implied.

Mark S. Johannes
Colorado Professional Land Surveyor No. 32439
For and on behalf of Compass Surveying and Mapping, LLC



NOTES:

- 1) The reason for this vacation and replat is to create 5 lots out of 3 existing lots.
- 2)
 - - Denotes found monument, marked as noted
 - o - Denotes set #5 rebar and plastic cap marked "PLS 32439", unless otherwise noted.
 - (1149) - Denotes street address.
- 3) This survey does not constitute a title search by Compass Surveying & Mapping, LLC to determine ownership or easements of record. For all information regarding easements, rights of way and title of record, Compass Surveying & Mapping, LLC relied upon a Commitment for Title Insurance prepared by Land Title Guarantee Company, File No. SR55056593-2 with an effective date of 03-18-2016 at 05:00:00.
- 4) Basis of bearings is the west line of the property, monumented as shown and assumed to bear North 0 degrees 08 minutes 30 seconds West, 709.44 feet.
- 5) This property is located within Zone AE special flood hazard areas inundated by 100-year flood, base flood elevations determined and Zone X areas determined to be outside the 500-year floodplain) as established by FEMA per FIRM panel 08041C0506F, effective date, March 17, 1997. The approximate flood zone boundary is shown hereon by map measure only.
- 6) Notice: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.
- 7) The linear units used in this drawing are U.S. Survey feet.
- 8) The approval of this replat vacates all prior plats for the area described by this replat.
- 9) No driveway shall be established unless an access permit has been granted by El Paso County.
- 10) All structural foundations shall be located and designed by a Professional Engineer, currently registered in the State of Colorado.
- 11) The following reports have been submitted and are on file at the County Planning Department: Soils and Geological study; Water Availability study; Drainage Report; Wildfire Hazard Report; Natural Features Report; Erosion Control Report.
- 12) Public drainage easements as specifically noted on the plat shall be maintained by the individual lot owners unless otherwise indicated. Structures, fences, materials or landscaping that could impede the flow of runoff shall not be placed in drainage easements.
- 13) No lot, or interest therein, shall be sold, conveyed or transferred, whether by deed or by contract, nor shall building permits be issued, until and unless the required public improvements have been constructed and completed in accordance with the subdivision improvements agreement between the applicant and El Paso County as recorded at Reception No. _____, or in the alternative, other collateral is provided which is sufficient in the judgment of the Board of County Commissioners, to make provision for the completion of said improvements.
- 14) The addresses (1149) exhibited on this plat is for informational purposes only. It is not the legal description and is subject to change.
- 15) There shall be no direct lot access to Old Ranch Road.
- 16) Unless otherwise indicated, all side, front and rear lot lines are hereby platted on each side with a 10 foot public utility and drainage easement. All exterior subdivision boundaries are hereby platted with a 20 foot public utility and drainage easement. The sole responsibility of maintenance is hereby vested in the individual property owners.
- 17) Developer shall comply with federal and state laws, regulations, ordinances, review and permit requirements, and other agency requirements, if any, of applicable agencies including, but not limited to, the Colorado Division of Wildlife, Colorado Department of Transportation, US Army Corps of Engineers and the US Fish and Wildlife Service regarding the Endangered Species Act, particularly as it relates to the listed species (e.g. Prebles Meadow Jumping Mouse).
- 18) Mailboxes shall be installed in accordance with all El Paso County and United States Postal Service regulations.
- 19) The subdividers agree on behalf of him/herself and any developer or builder successors and assigns shall be required to pay traffic impact fees in accordance with the countywide transportation improvement fee (Resolution No. 16-454), as amended at or prior to the time of building permit submittals. The fee obligation, if not paid at final plat recording shall be documented on all sale documents and on plat notes to ensure that a title search would find the fee obligation before sale of the property.
- 20) Individual lot purchasers are responsible for constructing driveways including necessary drainage culverts from Otero Road per Land Development Code Section 6.3.3.c.2 and 6.3.3.c.3 due to their length, some of the driveways will need to be specifically approved by the Donald Prescott Fire Protection District.
- 21) Lots 1 and 2 will access Otero Road via a private shared access easement recorded at Reception No. _____.

RECORDING:

STATE OF COLORADO }
COUNTY OF EL PASO } SS

I hereby certify that this instrument was filed for record in my office at _____ o'clock _____M., this _____ day of _____, 2018, A.D., and is duly recorded under Reception No. _____ of the records of El Paso County, Colorado.

CHUCK BROERMAN, RECORDER

BY: _____
Deputy

SURCHARGE: _____

FEE: _____

FEES:

Drainage Fee: _____ School Fee: _____

Bridge Fee: _____ Park Fee: _____

PCD FILE NO. VR-18-014



COMPASS SURVEYING & MAPPING, LLC
721 SOUTH 23RD STREET, SUITE B
COLORADO SPRINGS, CO 80904
719-354-4120
WWW.CSAMLIC.COM

REVISIONS:	
No.	County comments.
1	10/23/18

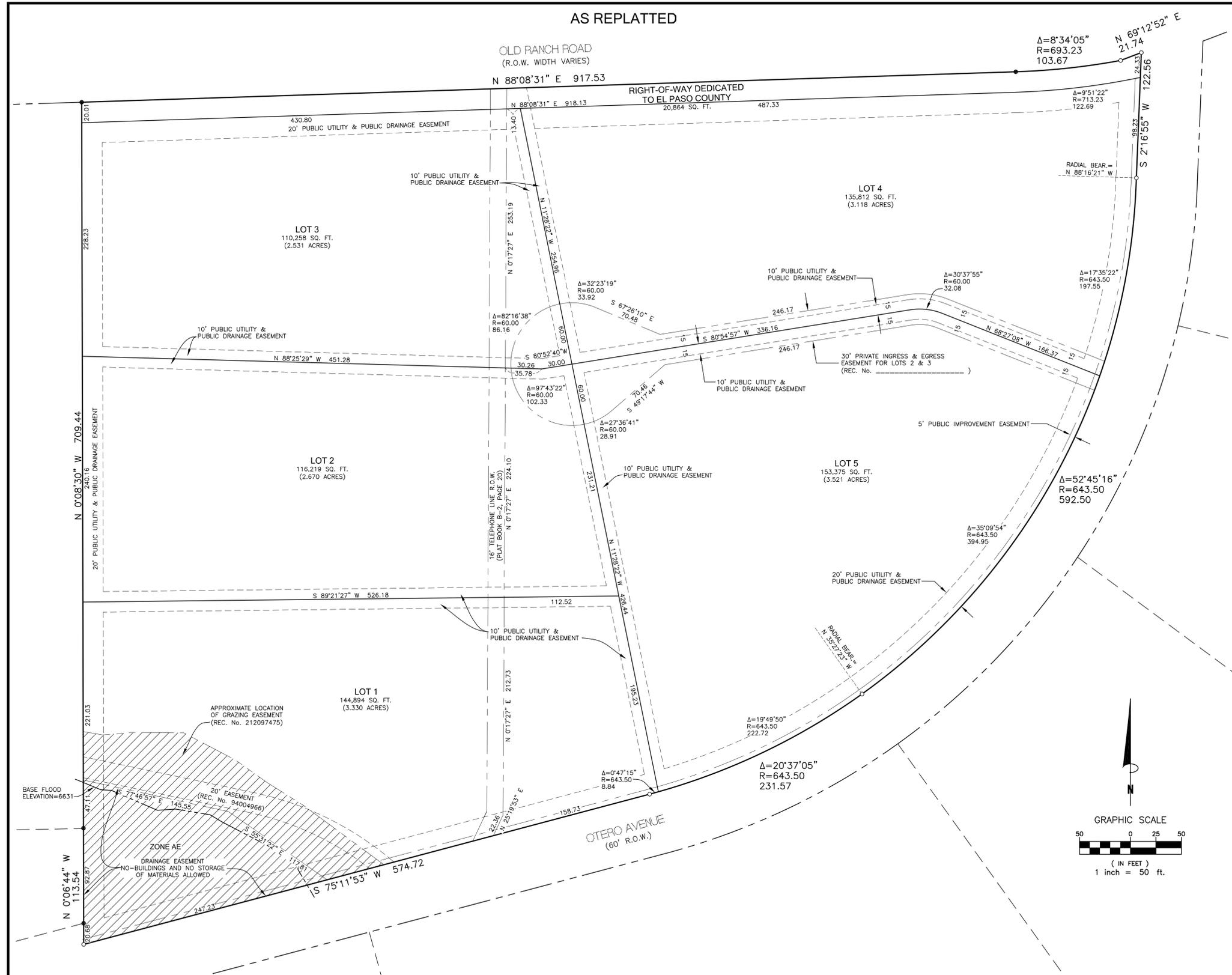
PROJECT No. 18029
MAY 23, 2018
SHEET 1 OF 2

EXHIBIT "A"

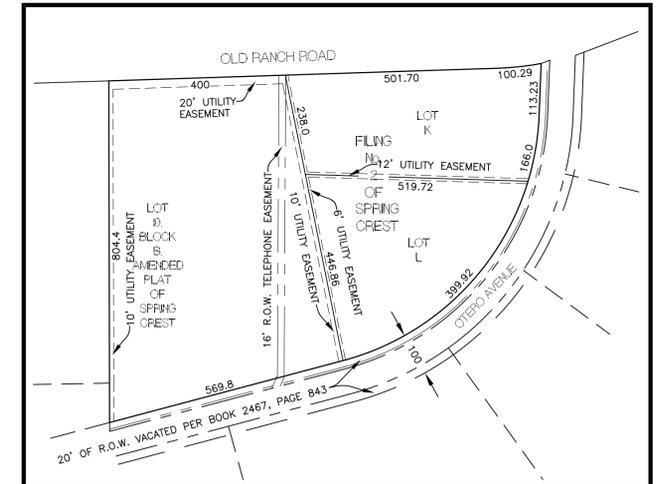
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AS REPLATTED



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1	10/23/18 County comments.

PCD FILE NO. VR-18-014

PROJECT No. 18029
MAY 23, 2018
SHEET 2 OF 2