

BOCC

DEVELOPMENT AGREEMENT

FOR OFF-SITE IMPROVEMENTS AND COST PARTICIPATION

FOR BIG R STORE MONUMENT, COLORADO

This Development Agreement For Off-Site Improvements and Cost Participation For the Big R Store in the unincorporated area of El Paso County, Colorado near Monument, Colorado, ("Agreement") is entered into and made effective this 11th day of October, 2012 by and between Monument Farm & Ranch, LLC, a Colorado limited liability company whose address is 7991 Shaffer Parkway, Suite 200, Littleton, CO 80127 ("Developer"), and El Paso County by and through the Board of County Commissioners of El Paso County, Colorado (the "Board" or the "County"). Developer and the County may collectively be referred to as the "Parties."

RECITALS

A. Developer is the record title holder of an approximate 10.2 acre parcel of real property located at the northeast corner of Struthers Road and Spanish Bit Drive in the unincorporated area of El Paso County, Colorado, near the Town of Monument, Colorado, Tax Schedule No. 71360-02-035, which property is subject to this Agreement and is legally described on **Exhibit A** and pictorially depicted on **Exhibit B**, both of which are attached hereto and incorporated herein by this reference (hereinafter "the Property").

B. The County approved Developer's rezoning of the Property in February 2012 to CC (Community Commercial), with conditions (*see*, February 28, 2012 Letter attached hereto at **Exhibit C** and incorporated herein by this reference).

C. The County approved Developer's Site Plan to build a Big R Store on the north approximately 5.8 acres of the Property (the "Big R Parcel"). The remaining approximately 4.4 acres on the south portion of the Property are currently vacant and have not been subdivided (the "Remainder Parcel").

D. One condition of approval of the rezoning includes the requirement that Developer of the existing parcel ". . . or any subsequent subdivision thereof shall be responsible for any off site improvements, specifically, construction of the northbound right turn lane and modification of the southbound left turn lanes on Struthers Road at Spanish Bit Drive that is proportional to the traffic generated, including but not limited to cost recovery pursuant to Section 8.7.2 of the Land Development Code as amended."

E. Another condition of approval of the rezoning includes the requirement that Developer ". . . shall pave Spanish Bit Drive from Struthers Road to his entrance with the construction of the proposed Big R (PPR-12-1); paving to the east property line

WAYNE W. WILLIAMS El Paso County, CO
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may be deferred until additional development occurs on the current parcel or any subsequent subdivision thereof outside of what is under review for PPR-12-1 as submitted 1/5/2012.”

F. Based on Developer’s Traffic Impact Study, the County has determined that development of the Big R Parcel will generate only 28% impacts towards requiring modification of the southbound left turn lanes on Struthers Road at Spanish Bit Drive (“South Turn Lanes”) and will generate only 20% impacts towards requiring completion of the construction of the northbound right turn lane on Struthers Road at Spanish Bit Drive (“North Turn Lane”)(collectively “the Struthers Off-Site Improvements”).

G. Developer has asserted that it is not economically feasible to either construct the Struthers Off-Site Improvements at this time and enter into cost recovery agreement with adjacent owners or to deposit sufficient collateral with the County to ensure that the Struthers Off-Site Improvements are completed at the appropriate time.

H. Developer requests instead that it be allowed to not construct the Struthers Off-Site Improvements at this time, but rather, upon approval by the County of any further land use activity on the Property as defined herein, it will construct the Struthers Off-Site Improvements and either participate in cost share or cost recovery with other developers or owners benefitting from said Struthers Off-Site Improvements.

I. Property located to the south of the Property and adjacent to Spanish Bit Drive, Tax Schedule No. 71360-01-045, is currently owned by Schmidt Uwe Helga I Living Trust (hereinafter referred to as the “Trust Adjacent Property” or “TAP”). Development of the Trust Adjacent Property may affect Developer’s responsibility to construct the Struthers Off-Site improvements as described herein.

J. The Development Services Director agreed to authorize Developer to obtain a building permit to proceed with vertical construction of the Big R Store on the Big R Parcel on the condition that Developer would enter into this Agreement; therefore, no Certificate of Occupancy will be issued until either the Board approves this Agreement or Developer meets the conditions of approval of the rezoning (*see*, July 16, 2012 Letter attached hereto at **Exhibit D** and incorporated herein by this reference).

K. The purpose of this Agreement is to establish a mechanism that assures the County that Developer will comply with the Board’s condition of approval and provides for completion of the Struthers Off-Site Improvements and paving of Spanish Bit Drive from the Property entrance to Struthers Loop.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants hereinafter set forth, which consideration the Parties agree is sufficient, as well as the above Recitals, which are a material part hereof, the Developer and the County agree, that pursuant to § 8.7.2, Land Development Code, they desire to enter into this

Agreement to provide for completion of the Struthers Off-Site Improvements and cost share responsibility for the same, that they agree that this Agreement is the appropriate method for such transaction, and in furtherance thereof, agree as follows:

1. Condition Precedent. As a condition precedent to the Board of County Commissioners considering this Agreement, the Developer shall execute this Agreement and provide said executed original to the County Attorney's Office at least ten (10) days prior to the Board of County Commissioners hearing regarding this Agreement. This Agreement shall not become binding on the Parties unless and until it is approved by the Board of County Commissioners in an open and public meeting. In the event that the Board does not approve this Agreement, then any Party's signature hereto shall be null, void, and without any force or effect and the outstanding obligation to comply with the conditions of approval and construction of the Struthers Off-Site Improvements shall remain for the Developer to address before any further building permits or certificate of occupancy are issued on the Property. As an additional condition precedent, the Developer shall provide to the County Attorney's Office at least ten (10) days prior to the Board hearing considering this Agreement a legal description and sketch of the Property, which shall be attached hereto at **Exhibits A and B**, respectively, and a current title commitment or ownership and encumbrance statement confirming that Developer is the title holder of record.

2. Controlling Regulations. The Parties agree that all land use approvals, specifically those requiring construction of the Struthers Off-Site Improvements, and any cost recovery provisions for the Property shall be in accordance with the El Paso County Land Development Code, the El Paso County Engineering Criteria Manual, applicable County Master Plan(s), and applicable development fees, all in effect at the time of approval of this Agreement.

3. No Assurance of County Approvals. The Developer understands and agrees that by executing this Agreement, there is no assurance that the Board of County Commissioners will execute the same; and there are no representations or promises or assurances made or implied herein by the County that by executing this Agreement the County will approve other zoning and/or preliminary plans and/or final plats and/or site development plans and/or building permits or certificates of occupancy for the Property.

4. Trigger For Completing Struthers Off-Site Improvements and Paving Spanish Bit Drive to Struthers Loop. The Board agrees that the Developer is not required to construct the Struthers Off-Site Improvements and complete paving of Spanish Bit Drive from the Property entrance to Struthers Loop at this time in conjunction with development of the Big R Parcel. Upon the occurrence of the earlier of any of the following land use applications being approved by the County, the Developer, for itself and for its successors and assigns, hereby agrees that Developer's Responsibilities under Paragraph 4.A below will be triggered:

- Rezoning of any portion of the Remainder Parcel

- Subdivision of any portion of the Remainder Parcel
- Site Development Plan for any portion of the Remainder Parcel
- Change in use of the Big R Parcel

No plat(s) or permit(s) related to the above triggering applications will be finally approved or recorded until Developer completes its Responsibilities under A below:

A. Developer's Responsibilities—Development of Remainder Parcel Prior to Development of the Trust Adjacent Property

1. Developer, its successors and assigns, shall complete paving Spanish Bit Drive from the entrance to the Property to the east property line of the Property (Struthers Loop); and

2. Developer, its successors and assigns, shall construct the Struthers Off-Site Improvements. Upon subsequent subdivision or development of the TAP, Developer may seek cost recovery from, or enter into a cost sharing agreement with, the owner/developer of the TAP to recover the TAP owner/developer's proportionate share of the cost of constructing and warranting the Struthers Off-Site Improvements.

3. Developer hereby agrees and stipulates that traffic warrants that would result from any of the land use triggering applications identified above will be sufficient to require completion of the improvements identified in Paragraphs 4.A.1 & 2 above.

B. Developer's Responsibilities—Development of the Trust Adjacent Property Prior to Development of Remainder Parcel

1. If the TAP is subdivided or developed before Developer submits any of the land use triggering applications identified above for the Remainder Parcel, then the owner/developer of the TAP may be required to build the Struthers Off-Site Improvements if traffic warrants are sufficient to require building the same.

2. If the owner/developer of the TAP is required to build the Struthers Off-Site Improvements, then upon completion of the Struthers Off-Site Improvements by the owner/developer of the TAP, its successors and assigns, Developer hereby agrees, for itself and for its successors and assigns, to pay the owner/developer of the TAP, its successors and assigns, the Developer's proportionate share of the cost of constructing and warranting the Struthers Off-Site Improvements based on traffic impacts generated from the use of the Big R Parcel.

3. If the owner/developer of the TAP is required to build the Struthers Off-Site Improvements, Developer also hereby agrees, for itself and for its successors and assigns, when any of the land use triggering applications identified above for the Remainder Parcel are approved by the County, Developer, its successors and assigns, shall participate in additional cost recovery or an additional cost sharing agreement with the owner/developer of the TAP for any additional proportionate share of the cost of constructing and warranting the Struthers Off-Site Improvements based on the additional traffic impacts generated from Developer's subsequent development of the Remainder Parcel.

4. If the owner/developer of the TAP is not required to build the Struthers off-site improvements when developing their property and the Developer subsequently constructs the Struthers Off-Site improvements, Developer may seek cost recovery from, or enter into a cost sharing agreement with, the owner/developer of the TAP to recover the TAP owner/developer's proportionate share of the cost of constructing and warranting the Struthers Off-Site improvements.

C. Developer's Responsibilities—For Cost Recovery and/or Cost Sharing Agreements

For any of the cost recovery and/or cost sharing agreements identified above, it shall be the responsibility of the Developer, its successors and assigns, and not the County, to bring an appropriate Cost Recovery Agreement or Cost Sharing Agreement to the County for review and approval should the Developer desire to obtain said cost recovery or cost sharing from the owner/developer of the TAP for the cost of constructing and warranting the Struthers Off-Site Improvements.

5. Time of Essence. Time is of the essence hereof, and all terms, conditions, obligations and covenants shall be tendered or performed as specified herein. If any obligation hereunder is not performed or waived as herein provided, the Parties shall have such remedies as are available under applicable law.

6. Developer Authority. Developer represents and covenants that Developer comprises all of the parties who have a fee interest in the Property, and that it has full and lawful authority to enter into this Agreement. The individual(s) signatory hereto on behalf of Developer has full authorization and power to bind the Developer to the terms and provisions hereof in all particulars, and evidence of such authorization and power has been submitted to the County prior to the date hereof.

7. Entire Agreement. This Agreement is an integration and expresses the entire agreement between the Parties, and the Parties hereto agree that none of them has made or authorized any agreement with respect to the subject matter of this instrument other than

expressly set forth herein, and no additional or different oral representation, promise agreements, or consideration shall be binding on any of the Parties hereto, or their agents, employees, successors and assigns.

8. Number and Gender. Whenever used herein, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

9. Governmental Immunity. The Parties hereto understand and agree that the County, its officers and its employees are relying on and do not waive or intend to waive, by any provision of this Agreement, any rights, protections, or privileges provided by the Colorado Governmental Immunity Act, §§24-10-101 *et seq.*, C.R.S. as it is from time to time amended or otherwise available to the County, its officers or employees.

10. Successors and Assigns; Runs With Land. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. It shall be binding upon the Property and shall run with the land.

11. 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.

12. 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.

13. 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.

14. Assignment. No Party shall assign its interest in this Agreement without the prior written consent of the other Parties.

15. Third Party Beneficiaries. This Agreement does not and shall not be deemed to confer on any third party the right to the performance of or proceeds under this Agreement, to claim any damages or to bring any legal action or other proceeding against the County or the Developer for any breach or other failure to perform this Agreement, except as to the owner/developer of the TAP as described in Paragraph 4.

16. 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, and in addition to any other available remedies, in the event of a breach of this Agreement, any Party may request from 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.

17. Costs of Enforcement. To the extent allowed by law, any costs incurred by the County in enforcing the terms of this Agreement against the Developer, its successors and assigns, including, without limitation, court costs, shall be borne by the defaulting Party. In any such action, each Party shall be responsible for its own attorney's fees regardless of which Party prevails in said action.

18. 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.

19. Recording. Should the Board of County Commissioners approve this Agreement, it shall be recorded by the County in the records of the El Paso County Clerk and Recorder's Office.

20. Notices. All notices or other communications to the Parties shall either be personally delivered or be sent by United States Mail, return receipt requested, postage prepaid, to the addresses set forth below or to any other address which the Parties may substitute in writing. Such notices shall be deemed received when personally delivered, or if mailed, notice shall be deemed received three (3) days after the date of mailing the same.

To the County: Board of County Commissioners
200 South Cascade Avenue, Suite 100
Colorado Springs, CO 80903

With Copies to: M. Cole Emmons, Esq.
Assistant County Attorney
County Attorney's Office
200 South Cascade Avenue, Suite 150
Colorado Springs, CO 80903

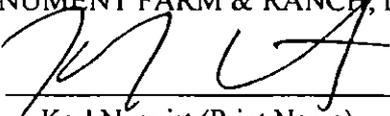
Development Services Department
El Paso County Development Services Director
2880 International Circle
Colorado Springs, CO 80910

To Developer: Karl Nyquist
Monument Farm & Ranch, LLC
7991 Shaffer Parkway, Suite 200
Littleton, CO 80127

21. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Colorado, and venue shall be maintained exclusively in the El Paso County District Court.

IN WITNESS WHEREOF, the Parties have set their hands and seals the day and year first above written.

MONUMENT FARM & RANCH, LLC

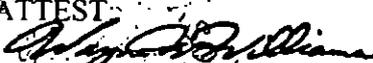
By: 
Karl Nyquist (Print Name)
Manager (Title)

DATE: 10/11/12

BOARD OF COUNTY COMMISSIONERS
EL PASO COUNTY, COLORADO

BY: 
Amy Lathen, Chair

DATE: 10-11-12

SEAL EL PASO COUNTY
ATTEST

County Clerk and Recorder 12-034

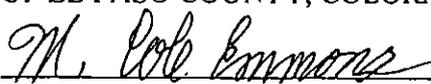
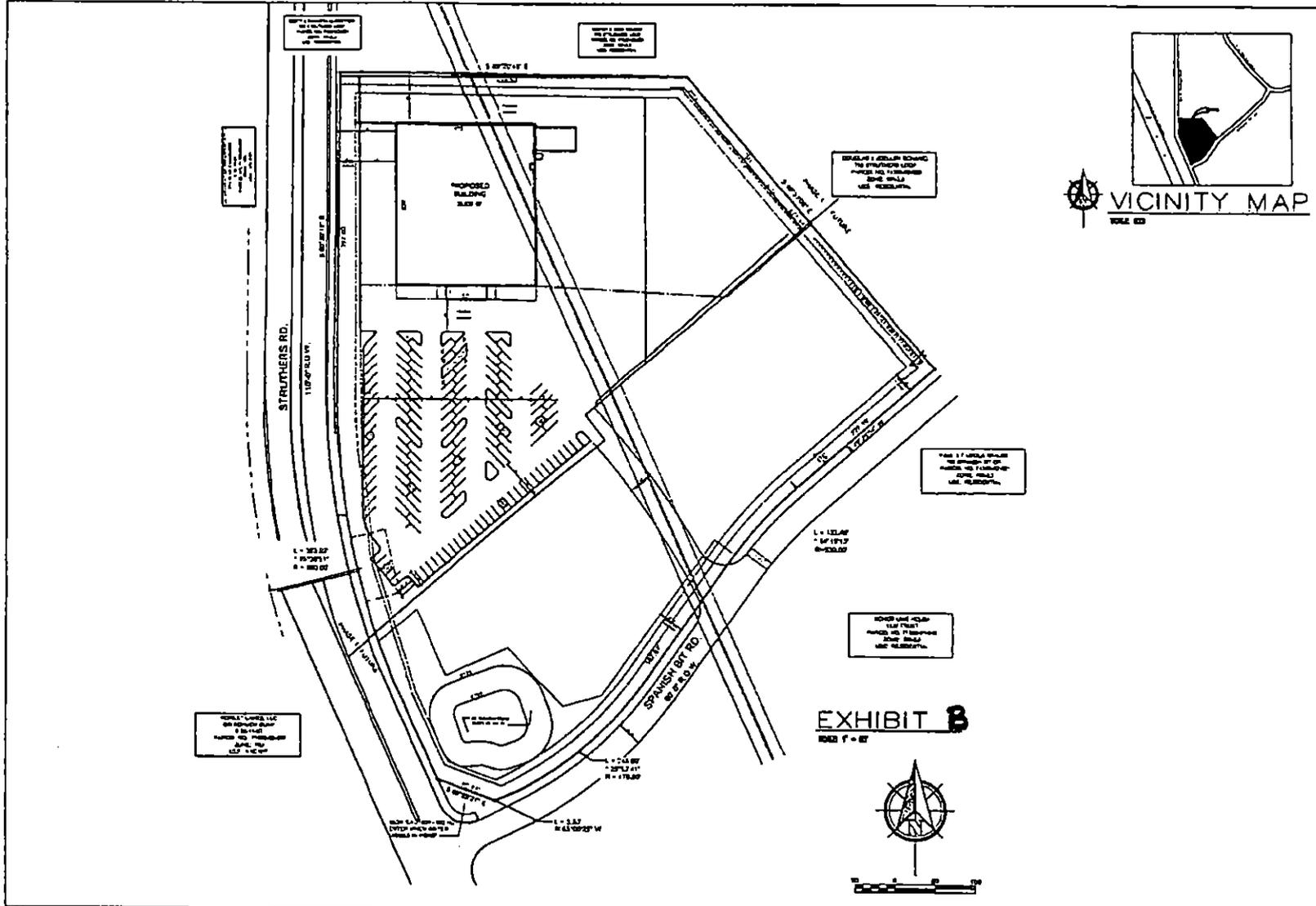
Approved as to Form:
OFFICE OF THE COUNTY ATTORNEY
OF EL PASO COUNTY, COLORADO

Assistant County Attorney

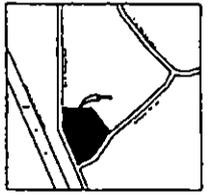
EXHIBIT A

A TRACT OF LAND IN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER IN SECTION 36, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT OF INTERSECTION WITH THE WEST LINE OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE NORTHEASTERLY LINE OF A TRACT DESCRIBED BY DEED TO THE DEPARTMENT OF HIGHWAYS, STATE OF COLORADO, RECORDED AUGUST 12, 1963 IN BOOK 1969 AT PAGE 746 UNDER RECEPTION NO. 301954 OF THE RECORDS OF EL PASO COUNTY, COLORADO; THENCE N 00 DEGREES 39 MINUTES 12 SECONDS E ON SAID WEST LINE, 745.58 FEET TO THE MOST WESTERLY CORNER OF LOT 28, CHAPARRAL HILLS, AS RECORDED IN PLAT BOOK T2 AT PAGE 2 IN THE RECORDS OF EL PASO COUNTY, COLORADO; THENCE S 09 DEGREES 20 MINUTES 40 SECONDS E, 485.53 FEET TO AN ANGLE POINT ON THE SOUTHERLY LINE OF SAID LOT 28; THENCE S 40 DEGREES 33 MINUTES 06 SECONDS E, 471.44 FEET TO A POINT OF INTERSECTION WITH THE NORTHWESTERLY LINE OF SPANISH BIT DRIVE AS PLATTED IN CHAPARRAL HILLS; THENCE ALONG SAID NORTHWESTERLY LINE OF SPANISH BIT DRIVE FOR THE FOLLOWING FIVE COURSES; SOUTH 49 DEGREES 26 MINUTES 54 SECONDS W, 227.19 FEET TO A POINT OF CURVE; THENCE ON A CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 14 DEGREES 19 MINUTES 10 SECONDS, HAVING A RADIUS OF 530.00 FEET, AN ARC DISTANCE OF 132.46 FEET; THENCE S 35 DEGREES 07 MINUTES 44 SECONDS W, 167.67 FEET TO A POINT OF CURVE; THENCE ON A CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 29 DEGREES 52 MINUTES 41 SECONDS, HAVING A RADIUS OF 470.00 FEET, AN ARC DISTANCE OF 245.09 FEET; THENCE S 65 DEGREES 00 MINUTES 25 SECONDS W, 166.60 FEET TO A POINT OF INTERSECTION WITH SAID RECORDED DEPARTMENT OF HIGHWAYS NORTHEASTERLY LINE; THENCE N 24 DEGREES 59 MINUTES 35 SECONDS W, 250.13 FEET TO THE POINT OF BEGINNING, EXCEPT THAT PORTION CONVEYED BY SPECIAL WARRANTY DEED RECORDED JANUARY 2, 2007 UNDER RECEPTION NO. 207000187, EL PASO COUNTY, COLORADO.



VICINITY MAP
SHEET 03



T. BONE
DESIGN & DEVELOPMENT CONSULTANTS
11111 W. 12TH AVE., SUITE 100
DENVER, CO 80202
TEL: 303.751.1111
WWW.TBOBONE.COM

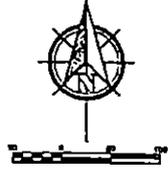
**BIG R MONUMENT
RETAIL STORE**

CS - 0033
DATE: 05/11/11
BY: T. BONE

THE B. MONUMENT RETAIL STORE	11/11/11
SITE DEVELOPMENT PLAN	
AND SPANISH BIT DR. MONUMENT C	
PROJECT NO. 11111	
DATE: 05/11/11	

SHEET
1
1 01

EXHIBIT B
SHEET 1 OF 17



EL PASO COUNTY

COMMISSIONERS:
AMY LATHEN (CHAIR)
SALLIE CLARK (VICECHAIR)



DENNIS HISEY
DARRYL GLENN
PEGGY LITTLETON

DEVELOPMENT SERVICES DEPARTMENT
MAX L. ROTHSCHILD P.E. DIRECTOR

February 28, 2012

Uwe & Helga Schmidt Living Trust
c/o Kenneth Barber
5011 Lyda Lane
Colorado Springs, CO 80904

RE: Big R Rezone (CC-11-002)

This is to inform you that the above-referenced request for approval of a map amendment (rezoning) from the R-4 (Planned Development) to the CC (Community Commercial) zone district was heard and approved by the Board of County Commissioners on February 28, 2012. The map amendment will change the allowed uses on the 10.22 acre site from multifamily residential in accordance with the existing zoning to allow commercial and retail uses. Regarding condition number 3, The Baptist Road Rural Transportation Authority Fee is collected at building permit authorization. The reduction of fees referred to in the Applicant's Traffic Impact Study referred to the County Wide Transportation Impact Fee, which would be triggered by the subdivision of the property.

This approval is subject to the following:

CONDITIONS OF APPROVAL

1. The property owner(s) of the existing parcel (Schedule # 71360-02-035) or any subsequent subdivision thereof shall be responsible for any off site improvements, specifically, construction of the northbound right turn lane and modification of the southbound left turn lanes on Struthers Road at Spanish Bit Drive that is proportional to the traffic generated, including but not limited to cost recovery pursuant to Section 8.7.2 of the Land Development Code as amended.
2. Applicant shall pave Spanish Bit Drive from Struthers Road to his entrance with the construction of the proposed Big R (PPR-12-1); paving to the east property line may be deferred until additional development occurs on the current parcel or any subsequent subdivision thereof outside of what is under review for PPR-12-1 as submitted 1/5/2012.
3. The property and any subsequent development is subject to fees from the Baptist Road Rural Transportation Authority and in the event of subdivision, the Countywide Transportation Impact Fee program. (This condition has been included because the TIS has implied that these fees should be reduced. No such commitment has been made, nor can it be made, by staff. These issues will be determined during any subdivision phase of development.)

2880 INTERNATIONAL CIRCLE, SUITE 110
PHONE: (719) 520-6300



COLORADO SPRINGS, CO 80910-3127
FAX: (719) 520-6695

WWW.ELPASOCO.COM

EXHIBIT C

4. The applicant shall provide landscaping, lighting, and architectural control guidelines applicable for the undeveloped portion of the zone district as depicted on County file PPR-12-1.

NOTATIONS

1. If a rezone petition is disapproved by the Board of County Commissioners, resubmittal of the previously denied petition will not be accepted for a period of one (1) year if it pertains to the same parcel of land and is a petition for a change to the same zone that was previously denied. However, if evidence is presented showing that there has been a substantial change in physical conditions or circumstances, the Planning Commission may reconsider said petition. The time limitation of one (1) year shall be computed from the date of final determination by the Board of County Commissioners or, in the event of court litigation, from the date of the entry of final judgment of any court of record.

This represents the Development Services Department's understanding of the action taken by the Board of County Commissioners.

Should you have any questions, or if I can be of further assistance, please contact me at 719-520-6300.

Sincerely,

Raimere Fitzpatrick, Planner II

cc: Jeremy Hammers
1411 Woolsey Heights
Colorado Springs, CO 80915

File: CC-11-002

EXHIBIT C

EL PASO COUNTY



COMMISSIONERS:
AMY LATHEN (CHAIR)
SALLIE CLARK (VICE CHAIR)

DENNIS HISEY
DARRYL GLENN
PEGGY LITTLETON

DEVELOPMENT SERVICES DEPARTMENT
MAX L. ROTHSCHILD P.E. DIRECTOR

July 16, 2012

Monument Farm and Ranch, LLC
7991 Shaffer Parkway, Suite 200
Littleton, CO 80127

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El Paso County, CO



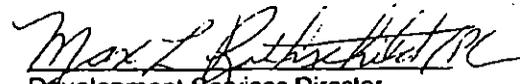
County File No. PPR-12-005
Schedule No. 71360-02-035

Legal Description: TR IN NE4SW4 SEC 36-11-67 LY SWLY OF CHAPARRAL HILLS SUB,
NELY OF INTERSTATE HWY 25, NWLY OF SPANISH BIT DR, EX RW CONV TO COUNTY
BY REC #207000187

To Whom It May Concern:

This letter is to inform you that the site development plan for the Big R of Monument has been approved by the Development Services Director, July 16, 2012. Approval of the site development plan is subject to the following conditions, to which the applicant and/or representatives agree:

1. Approval is limited to authorization of building permit only. Approval neither authorizes nor implies approval of any construction permits related to off site improvements associated with paving of Spanish Bit Drive
2. No certificate of occupancy shall be authorized by Development Services until an approved development agreement is entered into between El Paso County and the developer which addresses cost sharing and/or financial obligations of the developer to participate in the construction of offsite improvements including, but not limited to the construction of a northbound right hand turn lane on Struthers Ranch Road onto Spanish Bit Drive. Offsite improvements triggered by additional development of the site will be addressed on a case by case basis
3. The applicant may appeal any decision of the Development Services Director to the Board of County Commissioners subject to the appeal provisions of the Land Development Code, as amended.


Development Services Director

T-Bone Construction


Monument Farm and Ranch, LLC

2880 INTERNATIONAL CIRCLE, SUITE 110
PHONE: (719) 520-6300



COLORADO SPRINGS, CO 80910-3127
FAX: (719) 520-6695

WWW.ELPASOCO.COM

Exhibit D

RECEIVED

OCT 17 2012

COPY

EPC DEVELOPMENT SERVICES

DEVELOPMENT AGREEMENT

FOR OFF-SITE IMPROVEMENTS AND COST PARTICIPATION

FOR BIG R STORE MONUMENT, COLORADO

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El Paso County, CO



212120180

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F. Based on Developer’s Traffic Impact Study, the County has determined that development of the Big R Parcel will generate only 28% impacts towards requiring modification of the southbound left turn lanes on Struthers Road at Spanish Bit Drive (“South Turn Lanes”) and will generate only 20% impacts towards requiring completion of the construction of the northbound right turn lane on Struthers Road at Spanish Bit Drive (“North Turn Lane”)(collectively “the Struthers Off-Site Improvements”).

G. Developer has asserted that it is not economically feasible to either construct the Struthers Off-Site Improvements at this time and enter into cost recovery agreement with adjacent owners or to deposit sufficient collateral with the County to ensure that the Struthers Off-Site Improvements are completed at the appropriate time.

H. Developer requests instead that it be allowed to not construct the Struthers Off-Site Improvements at this time, but rather, upon approval by the County of any further land use activity on the Property as defined herein, it will construct the Struthers Off-Site Improvements and either participate in cost share or cost recovery with other developers or owners benefitting from said Struthers Off-Site Improvements.

I. Property located to the south of the Property and adjacent to Spanish Bit Drive, Tax Schedule No. 71360-01-045, is currently owned by Schmidt Uwe Helga I Living Trust (hereinafter referred to as the “Trust Adjacent Property” or “TAP”). Development of the Trust Adjacent Property may affect Developer’s responsibility to construct the Struthers Off-Site improvements as described herein.

J. The Development Services Director agreed to authorize Developer to obtain a building permit to proceed with vertical construction of the Big R Store on the Big R Parcel on the condition that Developer would enter into this Agreement; therefore, no Certificate of Occupancy will be issued until either the Board approves this Agreement or Developer meets the conditions of approval of the rezoning (*see*, July 16, 2012 Letter attached hereto at **Exhibit D** and incorporated herein by this reference).

K. The purpose of this Agreement is to establish a mechanism that assures the County that Developer will comply with the Board’s condition of approval and provides for completion of the Struthers Off-Site Improvements and paving of Spanish Bit Drive from the Property entrance to Struthers Loop.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants hereinafter set forth, which consideration the Parties agree is sufficient, as well as the above Recitals, which are a material part hereof, the Developer and the County agree, that pursuant to § 8.7.2, Land Development Code, they desire to enter into this

Agreement to provide for completion of the Struthers Off-Site Improvements and cost share responsibility for the same, that they agree that this Agreement is the appropriate method for such transaction, and in furtherance thereof, agree as follows:

1. Condition Precedent. As a condition precedent to the Board of County Commissioners considering this Agreement, the Developer shall execute this Agreement and provide said executed original to the County Attorney's Office at least ten (10) days prior to the Board of County Commissioners hearing regarding this Agreement. This Agreement shall not become binding on the Parties unless and until it is approved by the Board of County Commissioners in an open and public meeting. In the event that the Board does not approve this Agreement, then any Party's signature hereto shall be null, void, and without any force or effect and the outstanding obligation to comply with the conditions of approval and construction of the Struthers Off-Site Improvements shall remain for the Developer to address before any further building permits or certificate of occupancy are issued on the Property. As an additional condition precedent, the Developer shall provide to the County Attorney's Office at least ten (10) days prior to the Board hearing considering this Agreement a legal description and sketch of the Property, which shall be attached hereto at **Exhibits A and B**, respectively, and a current title commitment or ownership and encumbrance statement confirming that Developer is the title holder of record.

2. Controlling Regulations. The Parties agree that all land use approvals, specifically those requiring construction of the Struthers Off-Site Improvements, and any cost recovery provisions for the Property shall be in accordance with the El Paso County Land Development Code, the El Paso County Engineering Criteria Manual, applicable County Master Plan(s), and applicable development fees, all in effect at the time of approval of this Agreement.

3. No Assurance of County Approvals. The Developer understands and agrees that by executing this Agreement, there is no assurance that the Board of County Commissioners will execute the same; and there are no representations or promises or assurances made or implied herein by the County that by executing this Agreement the County will approve other zoning and/or preliminary plans and/or final plats and/or site development plans and/or building permits or certificates of occupancy for the Property.

4. Trigger For Completing Struthers Off-Site Improvements and Paving Spanish Bit Drive to Struthers Loop. The Board agrees that the Developer is not required to construct the Struthers Off-Site Improvements and complete paving of Spanish Bit Drive from the Property entrance to Struthers Loop at this time in conjunction with development of the Big R Parcel. Upon the occurrence of the earlier of any of the following land use applications being approved by the County, the Developer, for itself and for its successors and assigns, hereby agrees that Developer's Responsibilities under Paragraph 4.A below will be triggered:

- Rezoning of any portion of the Remainder Parcel

- Subdivision of any portion of the Remainder Parcel
- Site Development Plan for any portion of the Remainder Parcel
- Change in use of the Big R Parcel

No plat(s) or permit(s) related to the above triggering applications will be finally approved or recorded until Developer completes its Responsibilities under A below:

A. Developer's Responsibilities—Development of Remainder Parcel Prior to Development of the Trust Adjacent Property

1. Developer, its successors and assigns, shall complete paving Spanish Bit Drive from the entrance to the Property to the east property line of the Property (Struthers Loop); and

2. Developer, its successors and assigns, shall construct the Struthers Off-Site Improvements. Upon subsequent subdivision or development of the TAP, Developer may seek cost recovery from, or enter into a cost sharing agreement with, the owner/developer of the TAP to recover the TAP owner/developer's proportionate share of the cost of constructing and warranting the Struthers Off-Site Improvements.

3. Developer hereby agrees and stipulates that traffic warrants that would result from any of the land use triggering applications identified above will be sufficient to require completion of the improvements identified in Paragraphs 4.A.1 & 2 above.

B. Developer's Responsibilities—Development of the Trust Adjacent Property Prior to Development of Remainder Parcel

1. If the TAP is subdivided or developed before Developer submits any of the land use triggering applications identified above for the Remainder Parcel, then the owner/developer of the TAP may be required to build the Struthers Off-Site Improvements if traffic warrants are sufficient to require building the same.

2. If the owner/developer of the TAP is required to build the Struthers Off-Site Improvements, then upon completion of the Struthers Off-Site Improvements by the owner/developer of the TAP, its successors and assigns, Developer hereby agrees, for itself and for its successors and assigns, to pay the owner/developer of the TAP, its successors and assigns, the Developer's proportionate share of the cost of constructing and warranting the Struthers Off-Site Improvements based on traffic impacts generated from the use of the Big R Parcel.

3. If the owner/developer of the TAP is required to build the Struthers Off-Site Improvements, Developer also hereby agrees, for itself and for its successors and assigns, when any of the land use triggering applications identified above for the Remainder Parcel are approved by the County, Developer, its successors and assigns, shall participate in additional cost recovery or an additional cost sharing agreement with the owner/developer of the TAP for any additional proportionate share of the cost of constructing and warranting the Struthers Off-Site Improvements based on the additional traffic impacts generated from Developer's subsequent development of the Remainder Parcel.

4. If the owner/developer of the TAP is not required to build the Struthers off-site improvements when developing their property and the Developer subsequently constructs the Struthers Off-Site improvements, Developer may seek cost recovery from, or enter into a cost sharing agreement with, the owner/developer of the TAP to recover the TAP owner/developer's proportionate share of the cost of constructing and warranting the Struthers Off-Site improvements.

C. Developer's Responsibilities—For Cost Recovery and/or Cost Sharing Agreements

For any of the cost recovery and/or cost sharing agreements identified above, it shall be the responsibility of the Developer, its successors and assigns, and not the County, to bring an appropriate Cost Recovery Agreement or Cost Sharing Agreement to the County for review and approval should the Developer desire to obtain said cost recovery or cost sharing from the owner/developer of the TAP for the cost of constructing and warranting the Struthers Off-Site Improvements.

5. Time of Essence. Time is of the essence hereof, and all terms, conditions, obligations and covenants shall be tendered or performed as specified herein. If any obligation hereunder is not performed or waived as herein provided, the Parties shall have such remedies as are available under applicable law.

6. Developer Authority. Developer represents and covenants that Developer comprises all of the parties who have a fee interest in the Property, and that it has full and lawful authority to enter into this Agreement. The individual(s) signatory hereto on behalf of Developer has full authorization and power to bind the Developer to the terms and provisions hereof in all particulars, and evidence of such authorization and power has been submitted to the County prior to the date hereof.

7. Entire Agreement. This Agreement is an integration and expresses the entire agreement between the Parties, and the Parties hereto agree that none of them has made or authorized any agreement with respect to the subject matter of this instrument other than

expressly set forth herein, and no additional or different oral representation, promise agreements, or consideration shall be binding on any of the Parties hereto, or their agents, employees, successors and assigns.

8. Number and Gender. Whenever used herein, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

9. Governmental Immunity. The Parties hereto understand and agree that the County, its officers and its employees are relying on and do not waive or intend to waive, by any provision of this Agreement, any rights, protections, or privileges provided by the Colorado Governmental Immunity Act, §§24-10-101 *et seq.*, C.R.S. as it is from time to time amended or otherwise available to the County, its officers or employees.

10. Successors and Assigns; Runs With Land. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. It shall be binding upon the Property and shall run with the land.

11. 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.

12. 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.

13. 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.

14. Assignment. No Party shall assign its interest in this Agreement without the prior written consent of the other Parties.

15. Third Party Beneficiaries. This Agreement does not and shall not be deemed to confer on any third party the right to the performance of or proceeds under this Agreement, to claim any damages or to bring any legal action or other proceeding against the County or the Developer for any breach or other failure to perform this Agreement, except as to the owner/developer of the TAP as described in Paragraph 4.

16. 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, and in addition to any other available remedies, in the event of a breach of this Agreement, any Party may request from 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.

17. Costs of Enforcement. To the extent allowed by law, any costs incurred by the County in enforcing the terms of this Agreement against the Developer, its successors and assigns, including, without limitation, court costs, shall be borne by the defaulting Party. In any such action, each Party shall be responsible for its own attorney's fees regardless of which Party prevails in said action.

18. 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.

19. Recording. Should the Board of County Commissioners approve this Agreement, it shall be recorded by the County in the records of the El Paso County Clerk and Recorder's Office.

20. Notices. All notices or other communications to the Parties shall either be personally delivered or be sent by United States Mail, return receipt requested, postage prepaid, to the addresses set forth below or to any other address which the Parties may substitute in writing. Such notices shall be deemed received when personally delivered, or if mailed, notice shall be deemed received three (3) days after the date of mailing the same.

To the County: Board of County Commissioners
 200 South Cascade Avenue, Suite 100
 Colorado Springs, CO 80903

With Copies to: M. Cole Emmons, Esq.
 Assistant County Attorney
 County Attorney's Office
 200 South Cascade Avenue, Suite 150
 Colorado Springs, CO 80903

Development Services Department
El Paso County Development Services Director
2880 International Circle
Colorado Springs, CO 80910

To Developer: Karl Nyquist
 Monument Farm & Ranch, LLC
 7991 Shaffer Parkway, Suite 200
 Littleton, CO 80127

21. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Colorado, and venue shall be maintained exclusively in the El Paso County District Court.

IN WITNESS WHEREOF, the Parties have set their hands and seals the day and year first above written.

MONUMENT FARM & RANCH, LLC

By: *Karl Nyquist*
Karl Nyquist (Print Name)
Manager (Title)

DATE: 10/11/12

BOARD OF COUNTY COMMISSIONERS
EL PASO COUNTY, COLORADO

BY: *Amy Lathen*
Amy Lathen, Chair

DATE: 10.11.12

SEAL EL PASO COUNTY
ATTEST
Debra Williams
County Clerk and Recorder 12-034

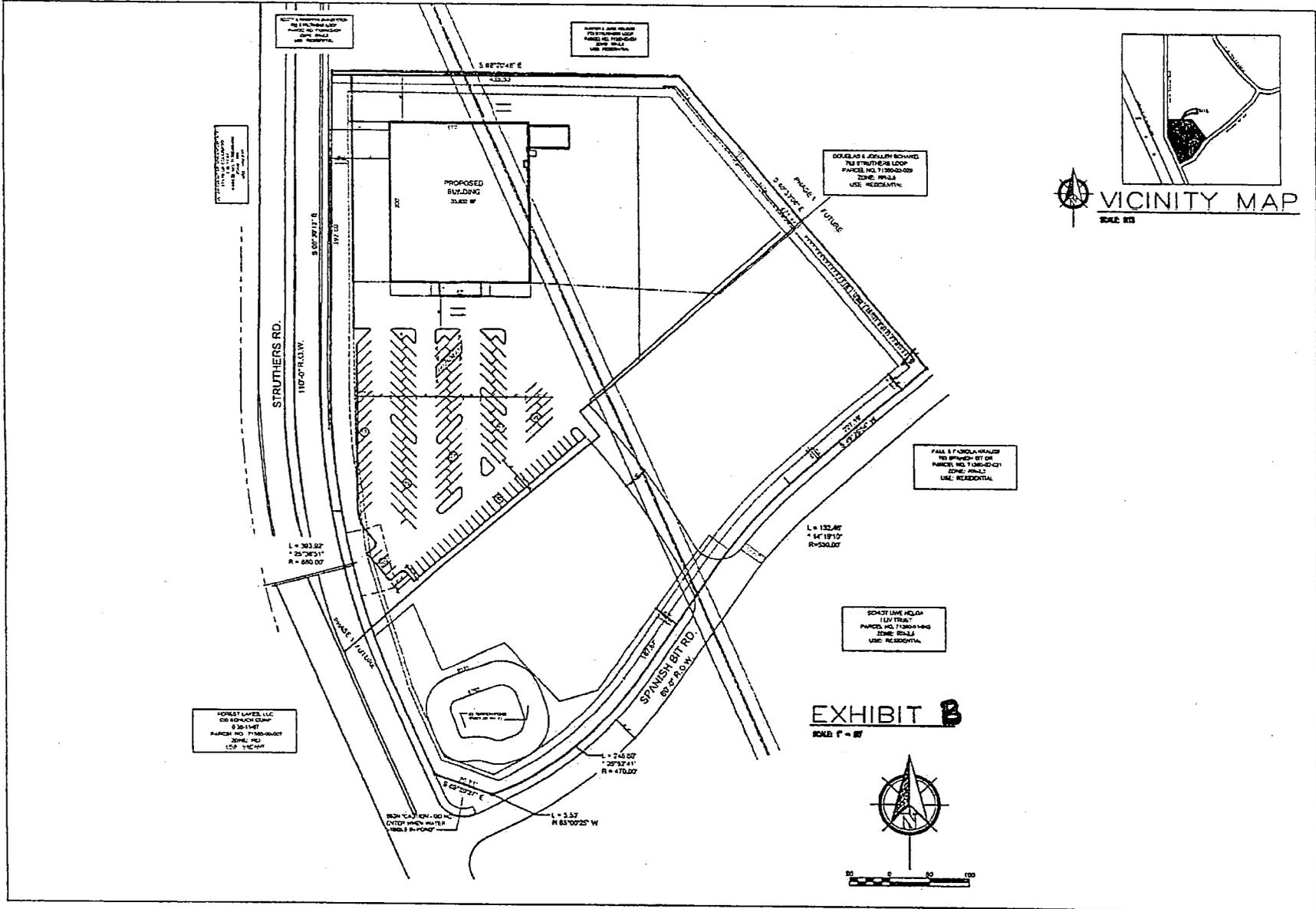
Approved as to Form:
OFFICE OF THE COUNTY ATTORNEY
OF EL PASO COUNTY, COLORADO

M. Cole Emmons
Assistant County Attorney

EXHIBIT A

A TRACT OF LAND IN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER IN SECTION 36, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT OF INTERSECTION WITH THE WEST LINE OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE NORTHEASTERLY LINE OF A TRACT DESCRIBED BY DEED TO THE DEPARTMENT OF HIGHWAYS, STATE OF COLORADO, RECORDED AUGUST 12, 1963 IN BOOK 1969 AT PAGE 746 UNDER RECEPTION NO. 301954 OF THE RECORDS OF EL PASO COUNTY, COLORADO; THENCE N 00 DEGREES 39 MINUTES 12 SECONDS E ON SAID WEST LINE, 745.58 FEET TO THE MOST WESTERLY CORNER OF LOT 28, CHAPARRAL HILLS, AS RECORDED IN PLAT BOOK T2 AT PAGE 2 IN THE RECORDS OF EL PASO COUNTY, COLORADO; THENCE S 89 DEGREES 20 MINUTES 48 SECONDS E, 485.53 FEET TO AN ANGLE POINT ON THE SOUTHERLY LINE OF SAID LOT 28; THENCE S 40 DEGREES 33 MINUTES 06 SECONDS E, 471.44 FEET TO A POINT OF INTERSECTION WITH THE NORTHWESTERLY LINE OF SPANISH BIT DRIVE AS PLATTED IN CHAPARRAL HILLS; THENCE ALONG SAID NORTHWESTERLY LINE OF SPANISH BIT DRIVE FOR THE FOLLOWING FIVE COURSES; SOUTH 49 DEGREES 26 MINUTES 54 SECONDS W, 227.19 FEET TO A POINT OF CURVE; THENCE ON A CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 14 DEGREES 19 MINUTES 10 SECONDS, HAVING A RADIUS OF 530.00 FEET, AN ARC DISTANCE OF 132.46 FEET; THENCE S 35 DEGREES 07 MINUTES 44 SECONDS W, 167.67 FEET TO A POINT OF CURVE; THENCE ON A CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 29 DEGREES 52 MINUTES 41 SECONDS, HAVING A RADIUS OF 470.00 FEET, AN ARC DISTANCE OF 245.09 FEET; THENCE S 65 DEGREES 00 MINUTES 25 SECONDS W, 166.60 FEET TO A POINT OF INTERSECTION WITH SAID RECORDED DEPARTMENT OF HIGHWAYS NORTHEASTERLY LINE; THENCE N 24 DEGREES 59 MINUTES 35 SECONDS W, 250.13 FEET TO THE POINT OF BEGINNING, EXCEPT THAT PORTION CONVEYED BY SPECIAL WARRANTY DEED RECORDED JANUARY 2, 2007 UNDER RECEPTION NO. 207000187, EL PASO COUNTY, COLORADO.



VICINITY MAP
SCALE 8:1

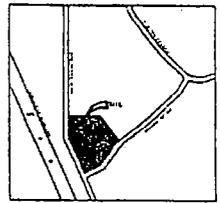
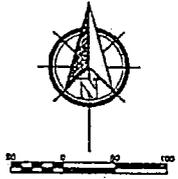


EXHIBIT B





T-BONE
CONSULTANTS

Design & Development
Consultants

**BIG R MONUMENT
RETAIL STORE**

C.S. - 003.3

BIG R MONUMENT RETAIL STORE

SITE DEVELOPMENT PLAN

840 SPANISH BIT DR., MONUMENT CA

DATE: 11/11/2022

SHEET 1

1 of 7

EL PASO



COUNTY

COMMISSIONERS:
AMY LATHEN (CHAIR)
SALLIE CLARK (VICECHAIR)

DENNIS HISEY
DARRYL GLENN
PEGGY LITTLETON

DEVELOPMENT SERVICES DEPARTMENT
MAX L ROTHSCHILD P.E. DIRECTOR

February 28, 2012

Uwe & Helga Schmidt Living Trust
c/o Kenneth Barber
5011 Lyda Lane
Colorado Springs, CO 80904

RE: Big R Rezone (CC-11-002)

This is to inform you that the above-referenced request for approval of a map amendment (rezoning) from the R-4 (Planned Development) to the CC (Community Commercial) zone district was heard and approved by the Board of County Commissioners on February 28, 2012. The map amendment will change the allowed uses on the 10.22 acre site from multifamily residential in accordance with the existing zoning to allow commercial and retail uses. Regarding condition number 3, The Baptist Road Rural Transportation Authority Fee is collected at building permit authorization. The reduction of fees referred to in the Applicant's Traffic Impact Study referred to the County Wide Transportation Impact Fee, which would be triggered by the subdivision of the property.

This approval is subject to the following:

CONDITIONS OF APPROVAL

1. The property owner(s) of the existing parcel (Schedule # 71360-02-035) or any subsequent subdivision thereof shall be responsible for any off site improvements, specifically, construction of the northbound right turn lane and modification of the southbound left turn lanes on Struthers Road at Spanish Bit Drive that is proportional to the traffic generated, including but not limited to cost recovery pursuant to Section 8.7.2 of the Land Development Code as amended.
2. Applicant shall pave Spanish Bit Drive from Struthers Road to his entrance with the construction of the proposed Big R (PPR-12-1); paving to the east property line may be deferred until additional development occurs on the current parcel or any subsequent subdivision thereof outside of what is under review for PPR-12-1 as submitted 1/5/2012.
3. The property and any subsequent development is subject to fees from the Baptist Road Rural Transportation Authority and in the event of subdivision, the Countywide Transportation Impact Fee program. (This condition has been included because the TIS has implied that these fees should be reduced. No such commitment has been made, nor can it be made, by staff. These issues will be determined during any subdivision phase of development.)

2880 INTERNATIONAL CIRCLE, SUITE 110
PHONE: (719) 520-6300



COLORADO SPRINGS, CO 80910-3127
FAX: (719) 520-6695

WWW.ELPASOCO.COM

EXHIBIT C

4. The applicant shall provide landscaping, lighting, and architectural control guidelines applicable for the undeveloped portion of the zone district as depicted on County file PPR-12-1.

NOTATIONS

1. If a rezone petition is disapproved by the Board of County Commissioners, resubmittal of the previously denied petition will not be accepted for a period of one (1) year if it pertains to the same parcel of land and is a petition for a change to the same zone that was previously denied. However, if evidence is presented showing that there has been a substantial change in physical conditions or circumstances, the Planning Commission may reconsider said petition. The time limitation of one (1) year shall be computed from the date of final determination by the Board of County Commissioners or, in the event of court litigation, from the date of the entry of final judgment of any court of record.

This represents the Development Services Department's understanding of the action taken by the Board of County Commissioners.

Should you have any questions, or if I can be of further assistance, please contact me at 719-520-6300.

Sincerely,

Raimere Fitzpatrick, Planner II

cc: Jeremy Hammers
1411 Woolsey Heights
Colorado Springs, CO 80915

File: CC-11-002

EXHIBIT C

EL PASO COUNTY



COMMISSIONERS:
AMY LATHEN (CHAIR)
SALLIE CLARK (VICE CHAIR)

DENNIS HISEY
DARRYL GLENN
PEGGY LITTLETON

DEVELOPMENT SERVICES DEPARTMENT
MAX L ROTHSCHILD P.E. DIRECTOR

July 16, 2012

Monument Farm and Ranch, LLC
7991 Shaffer Parkway, Suite 200
Littleton, CO 80127

WAYNE W. WILLIAMS
07/16/2012 10:35:42 AM
Doc \$0.00 Page
Rec \$11.00 1 of 1

El Paso County, CO



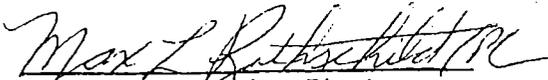
County File No. PPR-12-005
Schedule No. 71360-02-035

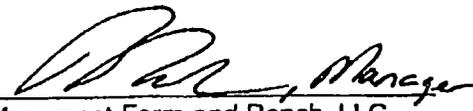
Legal Description: TR IN NE4SW4 SEC 36-11-67 LY SWLY OF CHAPARRAL HILLS SUB,
NELY OF INTERSTATE HWY 25, NWLY OF SPANISH BIT DR, EX RW CONV TO COUNTY
BY REC #207000187

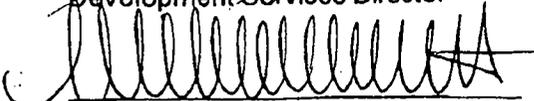
To Whom It May Concern:

This letter is to inform you that the site development plan for the Big R of Monument has been approved by the Development Services Director, July 16, 2012. Approval of the site development plan is subject to the following conditions, to which the applicant and/or representatives agree:

1. Approval is limited to authorization of building permit only. Approval neither authorizes nor implies approval of any construction permits related to off site improvements associated with paving of Spanish Bit Drive
2. No certificate of occupancy shall be authorized by Development Services until an approved development agreement is entered into between El Paso County and the developer which addresses cost sharing and/or financial obligations of the developer to participate in the construction of offsite improvements including, but not limited to the construction of a northbound right hand turn lane on Struthers Ranch Road onto Spanish Bit Drive. Offsite improvements triggered by additional development of the site will be addressed on a case by case basis
3. The applicant may appeal any decision of the Development Services Director to the Board of County Commissioners subject to the appeal provisions of the Land Development Code, as amended.


Development Services Director


Monument Farm and Ranch, LLC


T-Bone Construction

2880 INTERNATIONAL CIRCLE, SUITE 110
PHONE: (719) 520-6300



COLORADO SPRINGS, CO 80910-3127
FAX: (719) 520-6695

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Exhibit D