AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Development Improvements Agreement; Keith Geffre;

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: BOCC and Keith Geffre

Term Begins: 9/5/17 **Term Ends:** 6/30/2018 **Grant Contract #:**

Summary:

Attached for approval and signature please find the Development Improvements Agreement for Paradise Campground. The Developer has provided cash security in the amount of $33,700.

Fiscal Impact: 0

Submitted by: Office of the County Attorney **Submitter's Email Address:** rmagruder@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns.

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 8/31/2017

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 8/30/17

Reveiwed by: Discharge Date: 8/30/2017 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 8/31/2017

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 9/5/2017

Revised April 2015

DEVELOPMENT IMPROVEMENTS AGREEMENT

FOR PARADISE CAMPGROUND

THIS DEVELOPMENT IMPROVEMENTS AGREEMENT ("Agreement") is entered into this ____ day of _____, 2017 by and between the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO, whose address is 200 E. Virginia, Gunnison, Colorado 81230 ("Gunnison County") and KEITH M. GEFFRE, whose address is 18201 Highway 133 Somerset, Colorado 81434 ("Developer"). The Parties understand and agree to the following terms, obligations and conditions:

1. Purpose. The Developer has submitted to Gunnison County Developer's application for Land Use Change Permit No: 15-00026 regarding the development of a primitive campground on five acres or less within a parcel of 36 acres known as Paradise Campground & Rentals ("Project"). The Project is a two phased project as identified on the *Phasing Site Plan For Paradise Campground & Rentals Within the SW1/4 of Sec. 8, T.12., R.89W., 6th P.M. Gunnison County, Colorado*, created by Wilmore & Company Professional Land Surveying, Inc., dated March 24, 2017, attached hereto and incorporated herein as Appendix "A".

This Agreement addresses only Phase 1 of the Project which includes the development of the access road and fifteen campsites, parking area, office, porta-potties and trash station. Future Phase II, should there be an acquisition of additional property, will be addressed in another Development Improvements Agreement and will include the development of fifteen additional campsites, porta-potties, trash station and parking area.

As valuable and sufficient consideration for this Agreement, Gunnison County and the Developer agree that approval of such application by Gunnison County is expressly conditioned on completion of the improvements described in paragraph 7 below ("Improvements") to the specifications described herein and by the times specified herein. Gunnison County and the Developer further agree that such Improvements are appropriate and necessary requirements to be required by Gunnison County, and to be performed by the Developer and which Developer shall perform. Gunnison County and Developer further agree that an agreement guaranteeing the Developer's performance secured by suitable security to protect the interests of Gunnison County, and the public in the amount set forth herein is an appropriate condition to Gunnison County's approval of such Land Use Change Permit. The parties have entered into this Agreement to memorialize such understandings and agreements. The relationship of the parties to

this Agreement is contractual; Developer is an independent contractor and is not an agent of Gunnison County.

2. Developer Bound. The Developer agrees to accept and be bound by the terms and conditions for Gunnison County's issuance of its approval of the Land Use Change Permit No: 2015-00026 and the terms and conditions of this Agreement. Developer accepts Gunnison County's review and permitting authority, process and performance of same in connection with Land Use Change Permit No: 2015-00026, as legal and valid and waives any defect therein.

3. Construction.

A. The Developer agrees to complete construction of the Improvements within the Project for Phase I in the locations and in accordance with the specifications as identified in paragraph 7 herein, by no later than June 30, 2018. Acts of God and any cause beyond the reasonable control of the Developer excepted, including without limitation labor disputes, laws, regulations, or orders of any governmental entity, orders of court, inability to obtain any required authorization, act of war or conditions arising out of or attributable to war, riot, civil strike, insurrection or rebellion, fire, explosion, earthquake, storm, flood or other adverse weather condition, delay or failure by suppliers or materialmen, contractors, or subcontractors, shortage of or inability to obtain labor, supplies or materials.

B. The completion deadline set forth in this paragraph 3 may be extended by Gunnison County in its sole discretion upon written request of Developer if Gunnison County determines that: (1) such extension of time will not operate to the detriment of Gunnison County, the public or the owners of property within the Project; and (2) Gunnison County's security is adequate to ensure full performance by Developer by the extended completion date; and (3) that such an extension would not be in conflict with the conditions of the approved Land Use Change Permit. Gunnison County may require Developer to provide, at Developer's cost, supplemental estimates by Developer's engineer of the costs of completion and to provide additional security as a prerequisite to its extension of any completion date. Any extended completion date granted by Gunnison County hereunder may be further extended in like manner.

C. Each contract entered into by Developer for construction of the Improvements shall provide that Gunnison County is a third party beneficiary with all rights to enforce such contracts in place of Developer in the event of a default by Developer. Developer shall provide to Gunnison County a copy of each such

contract upon its execution.

D. Developer shall not initiate or conduct the commercial operation of the Project until Gunnison County receives an affidavit of payment from the Developer or Developer's authorized representative stating that all materials and labor associated with the construction of Improvements for the Project have been paid in full pursuant to Paragraph 6.B herein.

E. Gunnison County reserves the right not to permit the development of Phase II of the Project prior to full completion of the Improvements for Phase I as described in paragraph 7 herein.

4. Estimated Cost. The total cost of the Improvements for Phase I to be constructed by the Developer is currently estimated to be in the amount of Twenty Seven Thousand and No/100 U.S. Dollars ($27,000) plus a contingency amount.

5. Security. In order to secure all obligations of the Developer herein, the Developer and Gunnison County agree that the Developer shall, at Developer's sole cost, and before starting work on any phase of the Project or Improvements, obtain and provide to Gunnison County either cash, a bond, an irrevocable letter of credit or other performance guarantee in a form and content satisfactory to Gunnison County to the benefit of Gunnison County in the amount of Thirty Three Thousand Seven Hundred Fifty and No/100 U.S. Dollars ($33,750.00) which is 125 percent (125%) of the currently estimated cost of the Improvements to include a reasonable contingency amount. If said security is in the form of cash, it will be placed by Gunnison County in an interest bearing account; the interest shall accrue to Developer at one percent (1%) less than received by Gunnison County.

If the contract(s) provided to Gunnison County pursuant to paragraph 3C indicate a substantially different total cost than estimated in paragraph 4, the amount of security may be increased or decreased. For the purposes of this paragraph 5, substantial is defined as 10 percent (10%) or more.

Pending full performance of all of the terms and conditions hereof by the Developer, Gunnison County shall retain said security and shall remain the beneficiary of such security. In the event of any uncured default hereunder Gunnison County in its sole discretion, and without any other authority required, may draw upon said security up to the full amount of Thirty Three Thousand Seven Hundred Fifty and No/100 U.S. Dollars ($33,750.00), upon presentation by Gunnison County to the issuer of a written

statement by Gunnison County that such uncured default exists. Upon timely performance of all terms and conditions hereof, said security shall be tendered by Gunnison County to the Developer, except as provided in paragraph 7C.

6. Certification.

A. Not later than July 15, 2018, a registered Colorado engineer retained by the Developer at its expense shall certify to Gunnison County whether the Developer's construction obligations regarding Improvements under this agreement have been fully and faithfully performed according to design and time specifications. Upon receipt by the Office of the Gunnison County Attorney of such certification and receipt of a complete paper and two (2) electronic copies of road and utility as-built specifications and drawings, Gunnison County shall review the same and shall make an independent judgment whether to accept the same in the sole discretion of Gunnison County. Developer agrees not to cover or otherwise prevent inspection of the Improvements constructed hereunder until Developer's engineer and Gunnison County's representative have had reasonable opportunity to inspect such Improvements.

B. Not later than July 15, 2018, Developer shall provide to Gunnison County Attorney a sworn affidavit, signed by the Developer or Developer's authorized representative, that the completed Improvements have been paid for, in full, by the Developer. The Developer shall be responsible for the information so provided. Said written certification will be reviewed by Gunnison County, but Gunnison County shall have no responsibility or liability to any party regarding the veracity of the information so provided.

7. Scope of Work.

A. The scope of work to be completed by the Developer for Phase 1 of the Project shall include, but not be limited to:

7.1 The *Phasing Site Plan For Paradise Campground & Rentals Within the SW1/4 of Sec. 8, T.12., R.89W., 6th P.M. Gunnison County, Colorado*, created by Wilmore & Company Professional Land Surveying, Inc., dated March 24, 2017, attached hereto as Appendix "A"; and

7.2 The road plans titled: *Paradise Campground Road Plan & Profile*, created by Thomas C. Anderson, dated July 1, 2016, attached hereto and incorporated herein by reference as Appendix "B"; and

7.3 The Engineers Cost Estimate prepared by Thomas C. Anderson, P.E., dated April 11, 2017 attached hereto and incorporated herein by reference as Appendix "C"; and

7.5 Those conditions of approval identified in the Gunnison County Planning Commission's Decision, dated October 7, 2016 and approved by the Board of Gunnison County Commissioners for Land Use Change Permit No: 2015-00026.

B. The conditions of this Agreement and Land Use Change Permit No: 2015-00026 are such that if the obligations hereunder of the Developer are well, truly, faithfully and timely performed by Developer, inspected and certified to by the Developer's engineer, and such performance is accepted by Gunnison County in Gunnison County's sole discretion, the Developer's obligations to Gunnison County under this Agreement except as set forth in 7C below shall be at an end; otherwise such conditions and obligations shall remain in full force and effect.

C. For a period of one year from and after the acceptance of all of the work described in paragraph 7A above, Developer shall, at its own expense, make all needed repairs and replacements to such work as shall, in Gunnison County's reasonable opinion, become necessary. Gunnison County shall have the right to retain up to Six Thousand Seven Hundred Fifty and No/100 U.S. Dollars ($6,750.00) of the security for up to one year following the acceptance of all of the
work described in paragraph 7A above, as security to ensure such repair and replacement.

8. Partial Release of Security.

A. Gunnison County recognizes that as work proceeds upon the Improvements, Gunnison County's need for security shall be reduced. Accordingly, Gunnison County may make a reasonable partial release of the security to be delivered to Gunnison County pursuant to paragraph 5 herein upon receipt of a written certification by Developer's engineer stating the estimated cost of remaining completion; upon receipt of such certification, Gunnison County shall review the same and shall make an independent judgment whether to accept the same in the sole discretion of Gunnison County. If Gunnison County does make a partial release, Gunnison County shall retain security equal to: (a) 125 percent (125%) of such estimated cost of remaining completion of Improvements plus 25 percent

(25%) of the original estimated cost of the Improvements; and (b) all the estimated costs of all of the Reclamation; and shall release the balance of all security held by Gunnison County.

B. Upon Developer's entering into a contract or contracts for construction of Improvements hereunder, Developer and Gunnison County may negotiate an addendum to this Agreement setting forth such reasonable schedule for partial releases of the security in accordance with the anticipated construction schedule. In such circumstance, Gunnison County shall designate and authorize Gunnison County Manager to make the partial release(s) hereunder after consultation with appropriate Gunnison County staff.

9. Developer's Default. In the event of any default hereunder by the Developer, Gunnison County shall give notice to the Developer specifying the nature of such default, which notice shall be given by facsimile transmission or by certified mail with return receipt requested addressed to the Developer at: 18201 Highway 133, Somerset, Colorado 81434. In the event the Developer does not remedy such default to the satisfaction of Gunnison County within 14 days following such notice, Gunnison County may elect, in its discretion to exercise all remedies available to it, including but not limited to:

A. To specifically enforce the terms and conditions of this Agreement;

B. To draw upon or otherwise obtain the benefit of the security;

C. To exercise any other rights and obtain any other remedies provided by law;

D. To obtain from the Developer either an extension of Gunnison County's security hereunder to guarantee the completion of the Improvements only on the conditions: (1) that suitable additional security is provided to Gunnison County to guarantee the construction of said Improvements within the new time period determined by Gunnison County; and (2) that Gunnison County determines that it would not be detrimental to the interest of Gunnison County, the public or the owners of property within the Project to allow such extension; and (3) that Gunnison County determines that it would not be in conflict with the conditions of the approved Land Use Change Permit.

E. To engage a manager to supervise the completion of improvements as identified herein. The costs incurred for hiring a manager shall be the responsibility of the Developer and may be withdrawn by Gunnison County from

the security. Furthermore, all Gunnison County staff time spent thereafter on this Project shall be calculated at an hourly rate and shall be charged to the Developer and may be withdrawn from security.

10. Notice. All notices and other communications required or permitted under this Agreement shall be in writing and shall be, as determined by the person giving such notice, either hand delivered, mailed by registered or certified mail, return receipt requested to the required party at the following addresses:

Gunnison County:	Board of Gunnison County Commissioners of the County of Gunnison, Colorado c/o Gunnison County Attorney 200 East Virginia Gunnison, CO 81230
Developer:	Keith M. Geffre 18201 Highway 133 Somerset, Colorado 81434

11. Recording of Agreement. Upon its execution, this Agreement shall be recorded by the Developer and shall be a covenant running with the property herein described in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

12. Retention of Police Powers. Gunnison County retains the power and right to impose additional requirements upon Developer with regard to the Project if the failure to do so would place the public or owners of property within the Project in a perilous condition, or in the event of substantially changed conditions; that is, nothing in this Agreement is or shall be construed to be a bargaining away of Gunnison County's police power.

13. Transfer or Assignment. No transfer or assignment of any of the rights or obligations of the Developer under this Agreement shall be permitted without prior written approval of Gunnison County which approval shall not unreasonably be withheld.

14. Title and Authority. The Developer expressly warrants and represents to Gunnison County that it is the record owner of the real property constituting the Project. The Developer understands that Gunnison County is relying on such representations and warranties in entering into this Agreement.

15. Litigation. Nothing contained herein shall prevent either party from obtaining a judicial determination of the violation of its rights hereunder; provided however, that written notice to the other party advising the other party of the alleged violation, and advising that in the event the matter is not resolved by the parties within 14 days thereafter, shall be a condition precedent to the commencement of any litigation.

16. Time of Essence. It is mutually agreed that time of performance is an essential part of this Agreement and that all terms, covenants and conditions herein shall extend to and become obligatory upon the successors and assigns of the respective parties hereto.

17. Venue and Choice of Law. This Agreement is entered into in Gunnison County, Colorado and it is agreed that the exclusive jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Agreement shall be in the District Court of Gunnison County, Colorado. The exclusive choice of law pertaining to this transaction shall be that of the State of Colorado without giving effect to Colorado choice of law principles.

18. Severability. If any term or provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement and the terms and provisions thereof shall not be affected thereby and all other terms and provisions of this Agreement shall be valid and enforceable to the full extent permitted by law.

19. Hold Harmless Clause. The Developer shall indemnify, defend and hold harmless Gunnison County, its officials, employees and agents from and against liability for damages, injury or death which may arise from the direct or indirect operations of the owner, Developer, contractors or subcontractors, which relate to the Project.

20. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto.

21. Electronic Signature. An electronic signature shall have the same principle, force, and effect as an authentic ink signature by any party in the instant Agreement.

22. Entire Agreement. This Agreement contains the entire and only Agreement between the parties regarding development improvements, and no oral statements or representations not contained in this Agreement shall be of any force and effect between the parties. This Agreement shall not be modified or amended in any manner except by written instrument executed by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

BOARD OF GUNNISON COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Phil Chamberland, Chairperson

ATTEST:

_____
Deputy County Clerk

DEVELOPER:

By: _____
Keith M. Geffre

STATE OF COLORADO)
)ss.
COUNTY OF ~~GUNNISON~~ Mesa)

The foregoing instrument was acknowledged before me this 21st day of August, 2017 by Keith M. Geffre, Developer herein.

Witness my hand and seal.
My commission expires: May 20, 2020.

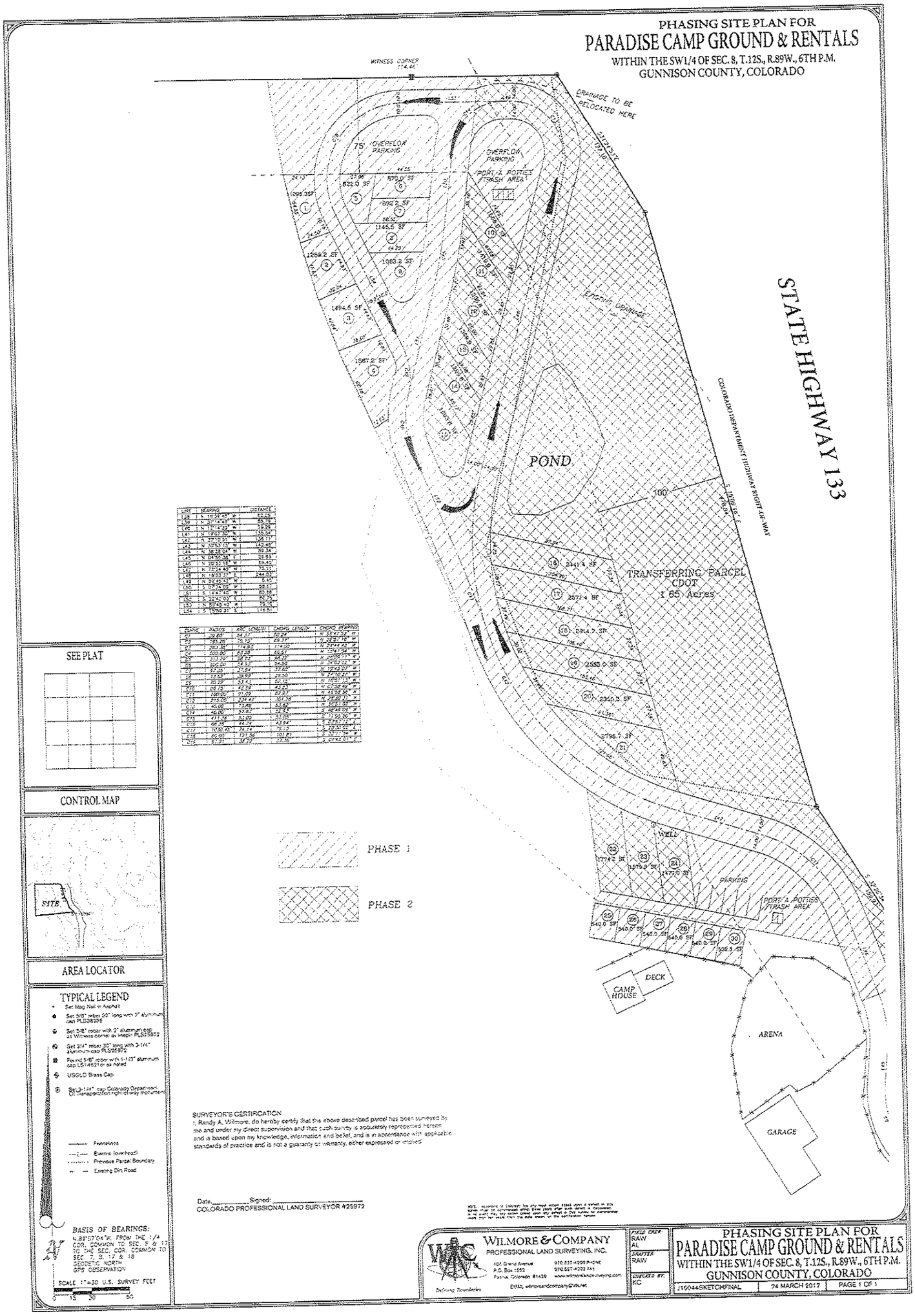
KRISTIN LEE
Notary Public - State of Colorado
Notary ID 20164019514
My Commission Expires May 20, 2020

_____
Notary Public
Address: 422 White Ave.
G.J. CO 81501

PHASING SITE PLAN FOR

PARADISE CAMP GROUND & RENTALS

WITHIN THE SW1/4 OF SEC. 8, T.12S., R.89W., 6TH P.M.
GUNNISON COUNTY, COLORADO

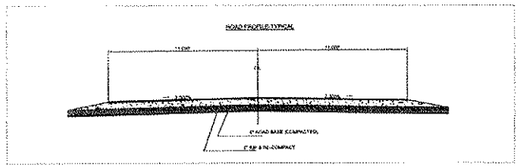


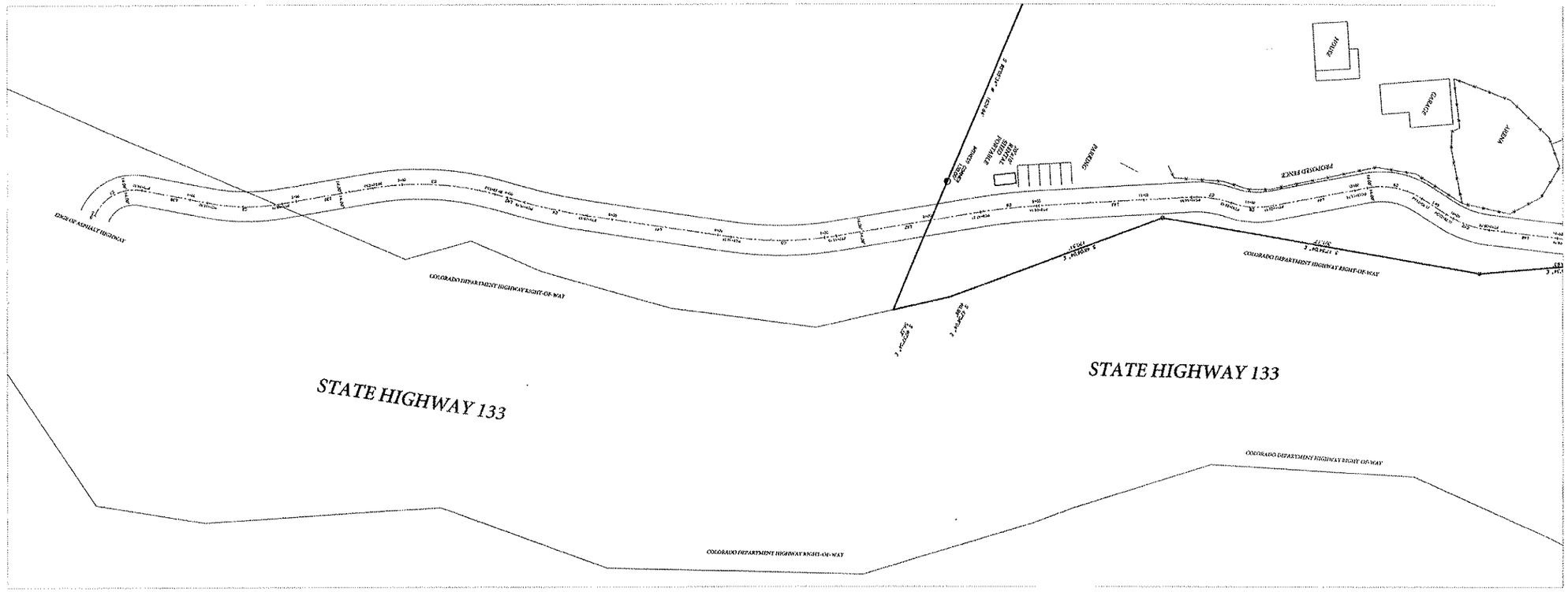
LINE	BEARING	DISTANCE
L28	N. 16°39'45" W.	60.05
L30	N. 37°14'45" W.	65.79
L40	N. 17°14'59" W.	79.26
L41	N. 19°07'50" W.	135.04
L42	N. 32°12'51" W.	136.11
L43	N. 30°53'10" W.	142.49
L44	N. 38°38'24" W.	59.34
L45	N. 04°50'38" E.	26.59
L46	N. 26°53'18" W.	69.45
L47	N. 13°04'40" W.	33.11
L48	N. 18°03'37" E.	244.07
L49	N. 39°45'42" W.	2.45
L50	S. 02°24'00" W.	28.51
L51	S. 14°47'18" E.	60.98
L52	S. 22°42'03" E.	80.79
L53	N. 87°45'42" W.	75.16
L54	S. 15°59'31" E.	116.81

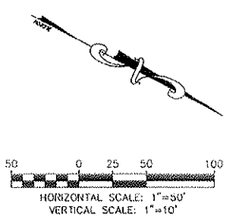
CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING
C1	39.00	54.17	50.04	N. 55°47'59" W.
C2	195.00	75.15	69.77	N. 72°57'15" W.
C3	262.38	114.85	113.90	N. 72°44'43" W.
C4	203.00	60.33	60.01	N. 19°41'04" W.
C5	203.00	98.23	97.30	N. 30°05'11" W.
C6	327.00	71.53	71.40	N. 17°02'02" W.
C7	327.00	71.64	71.50	N. 18°42'07" W.
C8	14.00	39.69	28.00	N. 27°10'21" W.
C9	70.00	52.41	51.19	N. 16°51'13" W.
C10	66.13	42.58	41.84	N. 21°06'49" W.
C11	100.00	91.09	87.91	N. 43°08'34" W.
C12	215.00	124.49	122.78	N. 28°48'13" W.
C13	40.00	73.46	63.58	N. 15°51'00" W.
C14	40.00	32.82	31.93	N. 06°46'00" W.
C15	111.00	53.09	52.59	N. 11°55'56" W.
C16	68.38	44.79	43.94	N. 11°51'17" E.
C17	10.00	15.71	14.14	N. 44°57'04" W.
C18	60.00	121.56	101.41	N. 31°54'34" W.
C19	5.00	34.79	32.00	N. 64°45'01" W.

APPENDIX A

PARADISE CAMPGROUND
ROAD PLAN & PROFILE

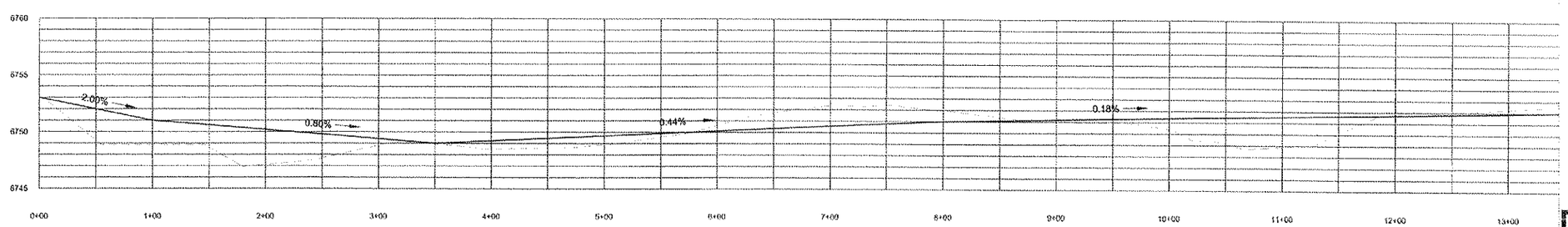






The drawings are a true and accurate representation of the work to comply with the Paradise Campground requirements at the time of the certification, to the best of my knowledge and belief, Thomas C. Anderson, P.E.

P.O. Box 1504 Paonia, Colorado 81428 Telephone 970-527-5618 Fax 3029



NO	DATE	DESCRIPTION	BY

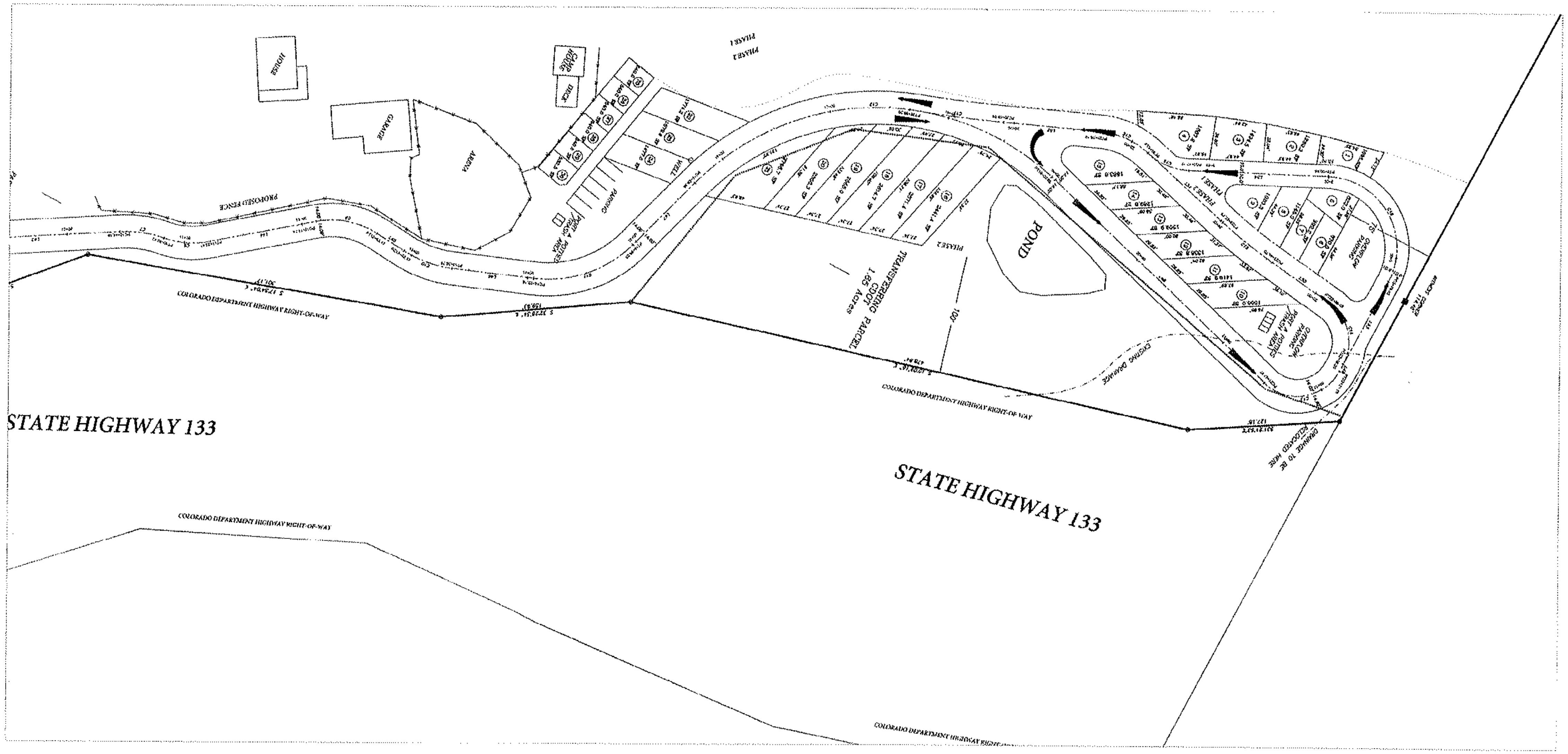
Thomas C. Anderson, P.E.

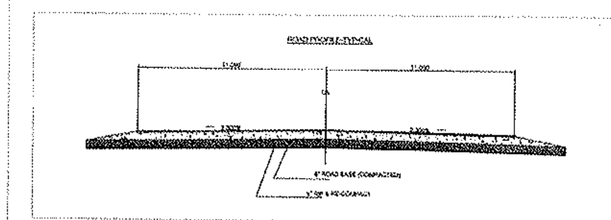
Plan & Profile for
PARADISE CAMPGROUND
Somerset, Colorado

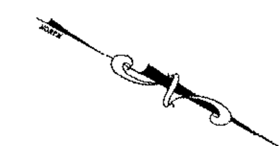
Campground Road Plan And Profile	July 1, 2016
	Sheet 1 of 3

APPENDIX B

PARADISE CAMPGROUND
ROAD PLAN & PROFILE







50 0 25 50 100

HORIZONTAL SCALE: 1"=50'
VERTICAL SCALE: 1"=10'

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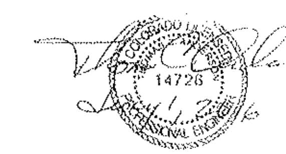
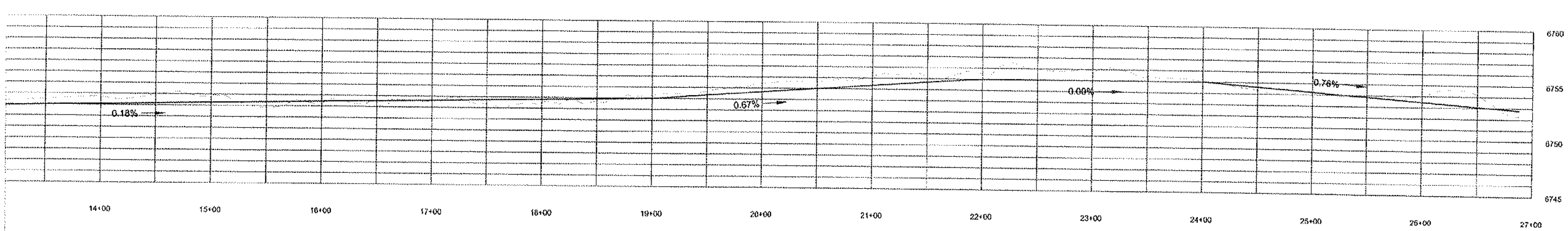




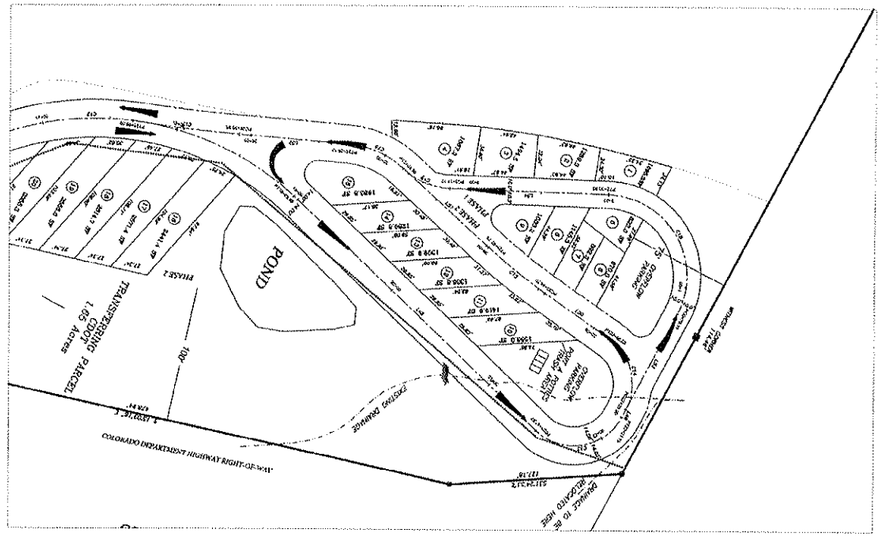
NO	DATE	DESCRIPTION	BY

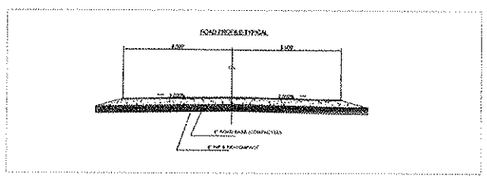
Thomas C. Anderson, P.E.

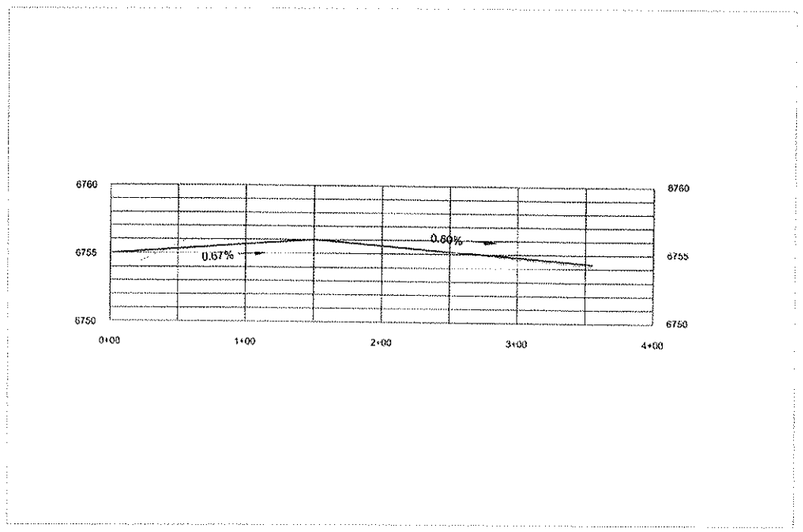
Plan & Profile for
PARADISE CAMPGROUND
Somerset, Colorado

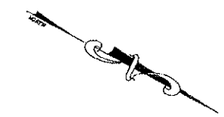
Campground Road Plan And Profile	July 1, 2016
	Sheet 2 of 3

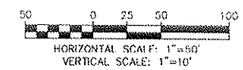
PARADISE CAMPGROUND
ROAD PLAN & PROFILE
ALTERNATE LOOP











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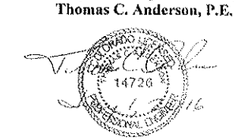

P.O. Box 1504 Paonia, Colorado 81428 Telephone: 970-527-5641 Sales 20.29

NO.	DATE	DESCRIPTION	BY

Thomas C. Anderson, P.E.

Plan & Profile for
PARADISE CAMPGROUND
Somerset, Colorado

Campground Road Plan And Profile	July 1, 2016
	Sheet 3 of 3

Thomas C. Anderson, P.E.

April 11, 2017

Ms. Cathie Pagano, AICP CEP
Senior Planner
Gunnison County Community Development
221 North Wisconsin Street, Suite D
Gunnison CO 81230

Telephone: 970-641-7385
Website: www.onevalleyprosperity.com
Email: CPagano@gunnisoncounty.org

Re: Paradise Campground, LUC-15-00026, Cost Estimate

Dear Ms. Pagano:

Based upon information supplied by the Applicant, and other sources, the following Cost Estimate for the proposed road and infrastructure improvements is provided:

Item	**Phase 1**	**Phase 2**	**Total**
Road Base Materials, approximately 1,200 cubic yards	$13,000	$5,300	$18,300
Trucking	$5,500	$2,500	$8,000
Grading and Compaction	$3,000	$2,000	$5,000
Electrical Service	$3,000	$2,000	$5,000
Subtotal	$24,500	$11,800	$36,300
Miscellaneous and Contingency @ 10%	$2,450	$1,180	$3,630
Total	$26,950	$12,980	$39,930
For Budgetary Purposes	**$27,000**	**$13,000**	**$40,000**

Sincerely,
Thomas C. Anderson, P.E.

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APPENDIX C