



TOWN OF ELIZABETH

COMMUNITY DEVELOPMENT DEPARTMENT

To: Board of Trustees
From: Alexandra Cramer, AICP Planner/Project Manager
Date: August 11, 2026
Subject: Request for Approval – Amended and Restated Subdivision Agreement – 350 S Elbert Street Subdivision

Summary

The Town entered into a Subdivision Agreement for the Elbert Street Subdivision with the prior property owner, MBP Enterprises, Inc., approved by the Board of Trustees on October 14, 2025. MBP Enterprises failed to provide the performance guarantee required by Section 11 of that agreement within ninety (90) days of execution, and the final plat was therefore never recorded.

The property has since been acquired by DGH Holdings, LLC (Dan Henderson), which desires to complete the subdivision. Before the Board is an Amended and Restated Subdivision Agreement between the Town and DGH Holdings, LLC that amends, restates, and supersedes the October 2025 agreement in its entirety. The final plat has been updated by the surveyor to reflect DGH Holdings, LLC as owner.

The agreement provides that the Board's October 14, 2025 approval of the final plat remains in full force and effect, and that approval of this agreement constitutes reaffirmation of the final plat. The agreement requires the developer to provide a performance guarantee within ninety (90) days of execution; if the guarantee is not provided within that period, the plat approval becomes null and void without further Board action and the plat will not be recorded. The Town will record the final plat within fourteen (14) days after receiving and approving the performance guarantee. Public improvements must be completed on or before August 11, 2028.

The developer has proactively provided an irrevocable letter of credit in the amount of \$176,534 from American Bank of Freedom, an FDIC-insured institution, which equals one hundred ten percent (110%) of the estimated public improvement costs of \$160,485 set forth in Exhibit C, demonstrating that the required funds are available. Because the letter was issued before the agreement's execution, it will be amended following approval to name DGH Holdings, LLC as the developer, to reference the executed Subdivision Agreement, and to carry an expiry date beyond the August 11, 2028 completion deadline.

The amended letter is subject to review and approval as to form by the Town Attorney prior to recording of the plat.



TOWN OF ELIZABETH

COMMUNITY DEVELOPMENT DEPARTMENT

Staff Recommendation

Staff recommends approval of Resolution 26R22, a resolution for the Amended and Restated Subdivision Agreement between the Town of Elizabeth and DGH Holdings, LLC

Attachments

Resolution 26R22

Amended and Restated Subdivision Agreement – DGH Holdings, LLC

Elbert Street Subdivision Final Plat (revised with new signature block July 2026)

Irrevocable Letter of Credit No. 1906919 – American Bank of Freedom

RESOLUTION 26R22

A RESOLUTION APPROVING AN AMENDED AND RESTATED SUBDIVISION AGREEMENT WITH DGH HOLDINGS, LLC AND REAFFIRMING THE MINOR DEVELOPMENT SUBDIVISION FOR THE PROPERTY LOCATED AT 350 SOUTH ELBERT STREET

WHEREAS, on October 14, 2025, the Board of Trustees approved a Minor Development Subdivision to subdivide the property located at 350 South Elbert Street into four (4) residential lots, together with a Subdivision Agreement with MBP Enterprises Inc., the then-owner of the property; and

WHEREAS, MBP Enterprises Inc. failed to furnish the performance guarantee required by the Subdivision Agreement within ninety (90) days of execution, and the final plat was therefore never recorded; and

WHEREAS, DGH Holdings, LLC has since acquired the property and desires to complete the subdivision, and the final plat has been revised to reflect DGH Holdings, LLC as owner; and

WHEREAS, an Amended and Restated Subdivision Agreement between the Town and DGH Holdings, LLC, which amends, restates, and supersedes the original Subdivision Agreement in its entirety, has been presented to the Board.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ELIZABETH, COLORADO AS FOLLOWS:

Section 1. The recitals set forth above are hereby incorporated herein by this reference.

Section 2. The Board hereby approves the Amended and Restated Subdivision Agreement between the Town of Elizabeth and DGH Holdings, LLC, in substantially the form attached hereto as Exhibit A and incorporated herein by this reference, and authorizes the Mayor to execute the Agreement on behalf of the Town following execution by the Developer.

Section 3. The Board hereby reaffirms its approval of the Minor Development Subdivision and final plat for the property located at 350 South Elbert Street, creating four (4) residential lots, as revised to reflect DGH Holdings, LLC as owner and attached hereto as Exhibit B, subject to the terms of the Amended and Restated Subdivision Agreement.

PASSED, APPROVED, and ADOPTED this ____ day of _____ 2026, by the Board of Trustees of the Town of Elizabeth, Colorado, on first and final reading, by a vote of ____ for and ____ against.

Angela Ternus, Mayor

ATTEST:

Michelle M. Oeser, Town Clerk

AMENDED AND RESTATED SUBDIVISION AGREEMENT

THIS AMENDED AND RESTATED SUBDIVISION AGREEMENT is made this _____ day of _____, 2026, by and between the Town of Elizabeth, Colorado, a statutory municipality (the "Town"), and DGH Holdings, LLC, a Colorado limited liability company (the "Developer").

RECITALS:

A. The Developer is the owner of certain real property located in the Town of Elizabeth known as Elbert Street Subdivision, which is more particularly described in **Exhibit A**, attached hereto and incorporated herein (the "Property").

B. The Town and MBP Enterprises, Inc., the prior owner of the Property, entered into that certain Subdivision Agreement dated October 3, 2025, and approved by the Board of Trustees on October 14, 2025 (the "Original Agreement"), concerning the subdivision of the Property.

C. MBP Enterprises, Inc. failed to furnish the performance guarantee required by paragraph 11 of the Original Agreement within ninety (90) days of execution, and the final plat for the Property was therefore never recorded.

D. The Developer has since acquired the Property and desires to complete the subdivision. The Board of Trustees and the Planning Commission of the Town of Elizabeth held all necessary public hearings concerning the final plat for the Property, and the Board of Trustees approved the final plat on October 14, 2025. The parties acknowledge and agree that such approval remains in full force and effect, subject to the terms of this Agreement, and the Board of Trustees' approval of this Agreement shall constitute reaffirmation of its approval of the final plat, as revised to reflect the Developer as owner. A copy of the final plat is attached hereto as **Exhibit B** and incorporated herein.

E. The approvals cited above are contingent upon the express condition that all duties created by this Agreement are faithfully performed by the Developer.

AMENDED AND RESTATED SUBDIVISION AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the terms, conditions and fees to be paid by the Developer, upon subdivision of the Property. All conditions contained herein are in addition to any and all requirements of the Town of Elizabeth Subdivision Ordinance and Zoning Ordinance, any and all state statutes, and any other sections of the Elizabeth Municipal Code, and are not intended to supersede

any requirements contained therein.

2. Fees. The following fees shall be paid to the Town by the Developer.

a. The Developer hereby agrees to pay the Town the actual cost to the Town for plan review, engineering review, hydrological and surveying review, prior to and during the development process, and for construction observation, inspection and materials testing during the construction process for public improvements, and for construction observation, inspection and materials testing and electronic deliverable review during the warranty period for public improvements, and for legal services (the "actual costs") rendered in connection with the review of the subdivision of the Property, including related administrative fees not to exceed one-hundred fifteen percent (115%) of the actual costs. In addition, the Developer shall reimburse the Town for the costs of making corrections or additions to the master copy of the official Town map and for the fee for recording the final plat and accompanying documents with the Elbert County Clerk and Recorder.

b. The Developer shall pay the impact fees, as established by Town ordinances, in effect at the time this Agreement is executed. The Developer shall pay the foregoing impact fees in effect at the time specified by such ordinances.

c. The Developer acknowledges and agrees that the Town, pursuant to this Agreement, shall be granted construction easement(s) that are reasonably sufficient to complete the public improvements.

3. Specific Conditions. The Developer hereby agrees that:

a. Developer shall pay the amount of Six Thousand, Seven Hundred and Sixty One Dollars (\$6,761.00) within thirty (30) days of recording the final plat as satisfaction of Developer's open space requirement for the Property.

b. Developer shall construct vehicular access to E Poplar Street from the Property. Such vehicular access shall be constructed to Town of Elizabeth standards, and shall be located in a location generally centered between the individual lots to allow such vehicular access.

c. Developer shall construct a private stormwater detention pond in accordance with construction drawings approved by the Town, which pond shall control the release of developed stormwater runoff from all lots within the Property.

d. Developer shall construct and dedicate in accordance with Section 10 of this Agreement, those Public Improvements more particularly described in **Exhibit C**, attached hereto and incorporated herein by this reference, including the construction of domestic water and wastewater mains to serve the Property in accordance with construction drawings approved by the Town; and

e. Developer shall dedicate to the Town, concurrently with the

recording of the final plat pursuant to paragraph 11 of this Agreement, the following:

- i. The southwesterly corner of the Property, as laid out in the Subdivision Plat, free and clear of all liens and encumbrances, for the future widening and improvement of public sidewalk bordering S Elbert Street and E Poplar Street.

4. Title Policy. A title commitment for the Property shall be provided to the Town. The title commitment shall show that all property to be dedicated to the Town is, or shall be, subsequent to the execution and recording of the final plat, free and clear of all liens and encumbrances (other than real estate taxes which are not yet due and payable), which would make the dedications unacceptable as the Town, in its sole discretion, determines. The title policy evidenced by the title commitment shall be provided thirty (30) days after the recording of the final plat.

5. Breach by the Developer; the Town's Remedies. In the event of a breach of any of the terms and conditions of this Agreement by the Developer, the Board of Trustees shall be notified immediately and the Town may take such action, as permitted and/or authorized by law, this Agreement or the ordinances of the Town, as the Town deems necessary to protect the public health, safety and welfare; to protect lot buyers and builders; and to protect the citizens of the Town from hardship and undue risk. The remedies include, but are not limited to:

- a. The refusal to issue any building permit or certificate of occupancy;
- b. The revocation of any building permit previously issued under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party;
- c. A demand that the security given for the completion of the public improvements be paid or honored; or
- d. Any other remedy available at law.

Unless necessary to protect the immediate health, safety, and welfare of the Town, or to protect the interest of the Town with regard to security given for the completion of the public improvements, the Town shall provide the Developer thirty (30) days' written notice of its intent to take any action under this paragraph, during which thirty-day period the Developer may cure the breach described in the notice and prevent further action by the Town.

6. Public Improvements and Warranty. All drainage structures, paved streets, including sidewalk, curb, gutter and slope easements, and necessary appurtenances, as shown on the final plat, landscape plans and the associated construction documents (the "Public Improvements"), as approved by the Director of

Public Works of the Town, shall be installed and completed at the expense of the Developer and dedicated and/or conveyed to the Town. The Public Improvements required by this Agreement and shown on the final plat, as well as associated construction documents approved by the Director of Public Works of the Town and the costs of these Public Improvements, are set forth on **Exhibit C**, attached hereto and incorporated herein. All Public Improvements covered by this Agreement shall be made in accordance with the final plat and associated construction documents drawn according to regulations and construction standards for such improvements and approved by the Director of Public Works of the Town.

The Developer shall warrant any and all Public Improvements, which are conveyed to the Town, pursuant to this Agreement, for a period of two (2) years from the date the Town's Director of Public Works grants probationary acceptance of the Public Improvements, as approved by the Town. The warranty period shall extend to the date final acceptance is granted in writing by the Town's Director of Public Works. The Developer shall be responsible for scheduling the necessary inspections for probationary and final acceptance. Specifically, but not by way of limitation, the Developer shall warrant the following:

- a. That the title conveyed shall be marketable and its transfer rightful;
- b. Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and
- c. Any and all facilities so conveyed shall be in conformity with the Town's specifications and shall be free of defects in materials or workmanship for a period of two (2) years, as stated above, including, but not limited to, cracks, breakage, settling, or other deterioration of the Public Improvements, no matter the cause, for a period of two (2) years, as stated above.

The Town will accept for maintenance all Public Improvements after the warranty period has expired, provided all warranty work has been completed. The Town shall accept for snow removal purposes only all dedicated public streets after probationary acceptance has been granted in writing by the Director of Public Works. The Developer shall make all corrections necessary to bring the Public Improvements into conformity with the Town's specifications, prior to final acceptance.

7. Observation. The Town shall have the right to make reasonable engineering observations at the Developer's expense, as the Town may request. Observation, acquiescence in, or approval by any engineering inspector of the construction of physical facilities at any particular time shall not constitute the approval by the Town of any portion of the construction of such Public Improvements. Such approval shall be made by the Town only after completion of construction and in the manner hereinafter set forth.

8. Completion of Public Improvements. The obligations of the Developer provided for in paragraph 6 of this Agreement, including the inspections hereof, shall

be performed on or before August 11, 2028, and proper application for acceptance of the Public Improvements shall be made on or before such date. Upon completion of construction by the Developer of such Public Improvements, the Town's Director of Public Works or his designee shall inspect the improvements and certify, with specificity, their conformity or lack thereof to the Town's specifications. The Developer shall make all corrections necessary to bring the improvements into conformity with the Town's specifications. Once approved by the Town's Director of Public Works, the Town shall accept said improvements upon conveyance, pursuant to paragraph 10; provided, however, the Town shall not be obligated to accept the Public Improvements until the actual costs described in paragraphs 2.a. and b. of this Agreement are paid in full by the Developer.

9. Related Costs – Public Improvements. The Developer shall provide all necessary engineering designs, surveys, field surveys and incidental services related to the construction of the Public Improvements, at its sole cost and expense, including reproducible "as built" drawings certified accurate by a professional engineer registered in the State of Colorado.

10. Improvements to be the Property of the Town. All Public Improvements for roads, concrete curbs and gutters, storm sewers, and drainage improvements accepted by the Town shall be dedicated to the Town and warranted for a period of two (2) years following probationary acceptance by the Town, as provided above. Upon completion of construction and conformity with the final plat and associated construction plans, and any properly approved changes, the Developer shall convey to the Town, by bill of sale, all installed physical facilities.

11. Performance Guarantee. In order to secure the construction and installation of the Public Improvements, the Developer shall, no later than ninety (90) days after the execution of this Agreement, furnish the Town, at the Developer's expense, with the performance guarantee described herein. The performance guarantee shall be in the form of cash or an irrevocable letter of credit in which the Town is designated as beneficiary, in an amount equal to one hundred ten percent (110%) of the estimated costs of the Public Improvements to be constructed and installed, as set forth in **Exhibit C**, to secure the performance and completion of the Public Improvements (the "Performance Guarantee"). The parties acknowledge that the final plat for the Property was approved by the Board of Trustees on October 14, 2025, and that such approval remains in full force and effect, subject to the terms of this Agreement. The Developer agrees that the continued validity of the Town's approval of the final plat is expressly contingent upon the Developer's provision of a Performance Guarantee to the Town within ninety (90) days of the execution of this Agreement, in the amount and form provided herein. The failure of the Developer to provide a Performance Guarantee to the Town within such ninety (90) day period shall render the Town's approval of the final plat null and void, without further action by the Board of Trustees, and the final plat shall not be recorded. The Town shall record the final plat in the real estate records of Elbert County within fourteen (14) days after the Town has received and approved the Performance Guarantee. Letters of credit shall be substantially in the form and content set forth in **Exhibit D-1**, attached hereto and incorporated herein, and shall be subject to the review and approval of the Town Attorney. The cash shall be paid to the

Town according to the terms and conditions of the "Financial Guarantee," which shall be substantially in the form and content set forth in **Exhibit D-2**, attached hereto and incorporated herein, and shall be subject to the review and approval of the Town Attorney. The Developer shall not start the construction of any public or private improvement on the Property, including, but not limited to, staking, earth work, overlot grading or the erection of any structure, temporary or otherwise, until the Town has received and approved the Performance Guarantee and the final plat has been recorded.

The estimated costs of the Public Improvements shall be a figure mutually agreed upon by the Developer and the Town's Director of Public Works, as set forth in Exhibit C. If, however, they are unable to agree, the Director of Public Works' estimate shall govern after giving consideration to information provided by the Developer, including, but not limited to, construction contracts and engineering estimates. The purpose of the cost estimate is solely to determine the amount of security. No representations are made as to the accuracy of these estimates and the Developer agrees to pay the actual costs of all such Public Improvements.

The estimated costs of the Public Improvements may increase in the future. Accordingly, the Town reserves the right to review and adjust the cost estimates on an annual basis. Adjusted cost estimates will be made according to changes in the Construction Costs Index, as published by the Engineering News Record. If the Town adjusts the cost estimate for the Public Improvements, the Town shall give written notice to the Developer. The Developer shall, within thirty (30) days after receipt of said written notice, provide the Town with a new or amended Performance Guarantee in the amount of the adjusted cost estimates. If the Developer refuses or fails to so provide the Town with a new or amended Performance Guarantee, the Town may exercise the remedies provided for in paragraph 5 of this Agreement; provided, however, that prior to increasing the amount of additional security required, the Town shall give credit to the Developer for all required Public Improvements which have actually been completed so that the amount of security required at any time shall relate to the cost of required Public Improvements not yet constructed.

In the event the Public Improvements are not constructed or completed within the period of time specified by paragraph 8 of this Agreement or a written extension of time mutually agreed upon by the parties to this Agreement, the Town may draw on the Performance Guarantee to complete the Public Improvements called for in this Agreement. In the event the letter of credit is to expire within fourteen (14) calendar days and the Developer has not yet provided a satisfactory replacement, the Town may draw on the letter of credit, and either hold such funds as security for performance of this Agreement, or spend such funds to finish the Public Improvements or correct problems with the Public Improvements, as the Town deems appropriate.

Upon completion of performance of such improvements, conditions and requirements within the required time and the approval of the Town Public Works Director, the Developer shall issue an irrevocable letter of credit to the Town in the amount of twenty percent (20%) of the total cost of construction and installation of the Public Improvements, to be held by the Town during the two-year warranty period or,

in the alternative, if the Performance Guarantee held by the Town is cash, the Town will reduce the cash amount to twenty percent (20%) of the total cost of construction and installation of the Public Improvements, to be held by the Town during the two-year warranty period. If the Public Improvements are not completed within the required time, the monies may be used to complete the improvements.

12. Nuisance Conditions. The Developer agrees to prevent the existence of any nuisances by way of its construction activities, as the same are defined by the Elizabeth Municipal Code. In the event the authorized inspector/designated Town authority determines that a nuisance exists, the Developer shall be subject to the provisions set forth in Elizabeth Municipal Code regarding the abatement of nuisances and the cost assessed for the abatement thereof.

In addition to the provisions above, if the nuisance is not abated or an abatement plan is not submitted to the satisfaction of the Town, the Town may, upon thirty (30) days' notice under this Agreement, exercise the right to draw upon the performance guarantee specified in paragraph 11 of this Agreement. The Town may draw on the performance guarantee in order to pay the cost of abating the nuisance, including any expenses and penalties incurred under the Elizabeth Municipal Code. The Town may exercise this right in addition to, or in lieu of, the withholding of permits and/or the withholding of certificates of occupancy. The right to draw on the performance guarantee shall be subject to the sole discretion of the Town, provided the Developer has received thirty (30) days' notice, as provided herein.

The Town Planning Department and Public Works Department shall be authorized to cease processing any land use or permit applications submitted by the same developer for the property that is contained within the same subdivision, until the nuisance is abated. This shall include, but not be limited to, acceptance of applications, sending referrals, scheduling meetings or hearings, or conducting reviews of projects.

13. Indemnification. The Developer shall indemnify and hold harmless the Town, its officers, employees, agents or servants from any and all suits, actions and claims of every nature and description caused by, arising from, or on account of, any act or omission of the Developer, or of any other person or entity for whose act or omission the Developer is liable, with respect to construction of the Public Improvements; and the Developer shall pay any and all judgments rendered against the Town as the result of any suit, action or claim, together with all reasonable expenses and attorney fees incurred by the Town in defending any such suit, action or claim.

The Developer shall pay all property taxes on the Property dedicated to the Town, and shall indemnify and hold harmless the Town for any property tax liability.

The Developer shall require that all contractors and other employees engaged in construction of Public Improvements shall maintain adequate workers' compensation insurance and public liability coverage and shall faithfully comply with the provisions of the Federal Occupational Safety and Health Act.

14. Waiver of Defects. In executing this Agreement the Developer waives

all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the Town to impose conditions on the Developer, as set forth herein, and concerning the procedure, substance and form of the ordinances or resolutions adopting this Agreement.

15. Modifications. This Agreement shall not be amended, except by subsequent written agreement of the parties.

16. Release of Liability. It is expressly understood that the Town cannot be legally bound by the representations of any of its officers or agents, or their designees, except in accordance with the Elizabeth Municipal Code and the laws of the State of Colorado.

17. Captions. The captions to this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns, as the case may be.

19. Invalid Provision. If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect. It is the intention of the parties hereto, that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other which would render the provision valid, then the provision shall have the meaning which renders it valid.

20. Governing Law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in Elbert County, Colorado.

21. Attorney Fees. Should this Agreement become the subject of litigation to resolve a claim of default of performance by the Developer and a court of competent jurisdiction determines that the Developer was in default in the performance of the Agreement, the Developer shall pay the attorney fees, expenses and court costs of the Town.

22. Notice. All notice required under this Agreement shall be in writing and shall be hand delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address, as set forth below. Either party, by notice so given, may change the address to which future notices shall be sent.

Notice to the Town: Town of Elizabeth
 Attn: Town
 Administrator
 PO Box 159
 151 S. Banner
 Street
 Elizabeth, Colorado
 80107

With copy to: Corey Y. Hoffmann, Esq.
 Hoffmann, Parker, Wilson &
 Carberry, P.C. 511 16th Street, Suite
 610
 Denver, Colorado 80202

Notice to Developer: DGH Holdings, LLC
 Attn: Dan Henderson
 10497 Ammons St
 Broomfield, CO 80021
 danogh1959@gmail.com

23. Force Majeure. Whenever the Developer is required to complete the construction, repair or replacement of Public Improvements by an agreed deadline, the Developer shall be entitled to an extension of time equal to a delay in completing the foregoing, due to unforeseeable causes beyond the control and without the fault or negligence of the Developer, including, but not limited to, acts of God, weather, fires and strikes.

24. Approvals. Whenever approval or acceptance of the Town is necessary, pursuant to any provision of this Agreement, the Town shall act reasonably and in a timely manner in responding to such request for approval or acceptance.

25. Assignment or Assignments. There shall be no transfer or assignment of any of the rights or obligations of the Developer under this Agreement, without the prior written approval of the Town. The Developer agrees to provide the Town with at least fourteen (14) days' advance written notice of the transfer or assignment of any of the rights and obligations of the Developer under this Agreement.

26. Recording of Agreement. This Agreement shall be recorded in the real estate records of Elbert County and shall be a covenant running with the Property, in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

27. Title and Authority. The Developer expressly warrants and represents to the Town that it is the recorded owner of the property constituting the Property and further represents and warrants, together with the undersigned individuals, that the undersigned individuals have full power and authority to enter into this Subdivision Agreement. The Developer and the undersigned individuals understand that the Town is relying on such representations and warranties in entering into this Agreement.

28. Effect on Original Agreement. This Agreement amends, restates, and supersedes in its entirety the Original Agreement, which shall be of no further force or effect.

WHEREFORE, the parties hereto have executed this Agreement on the day and year first above written.

TOWN OF ELIZABETH, COLORADO

By: _____
Angela Ternus, Mayor

ATTEST:

Michelle Oeser, Town Clerk

Corey Y. Hoffmann, Town Attorney

By: _____
***Dan Henderson, Manager of DGH Holdings,
 LLC***

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, as _____ of _____.

(SEAL)

Notary Public

EXHIBIT A

Lots 7, 8, 9 and 10, all in Block 12, Elizabeth Amended, also commonly known as the Town of Elizabeth Amended, County of Elbert, State of Colorado.

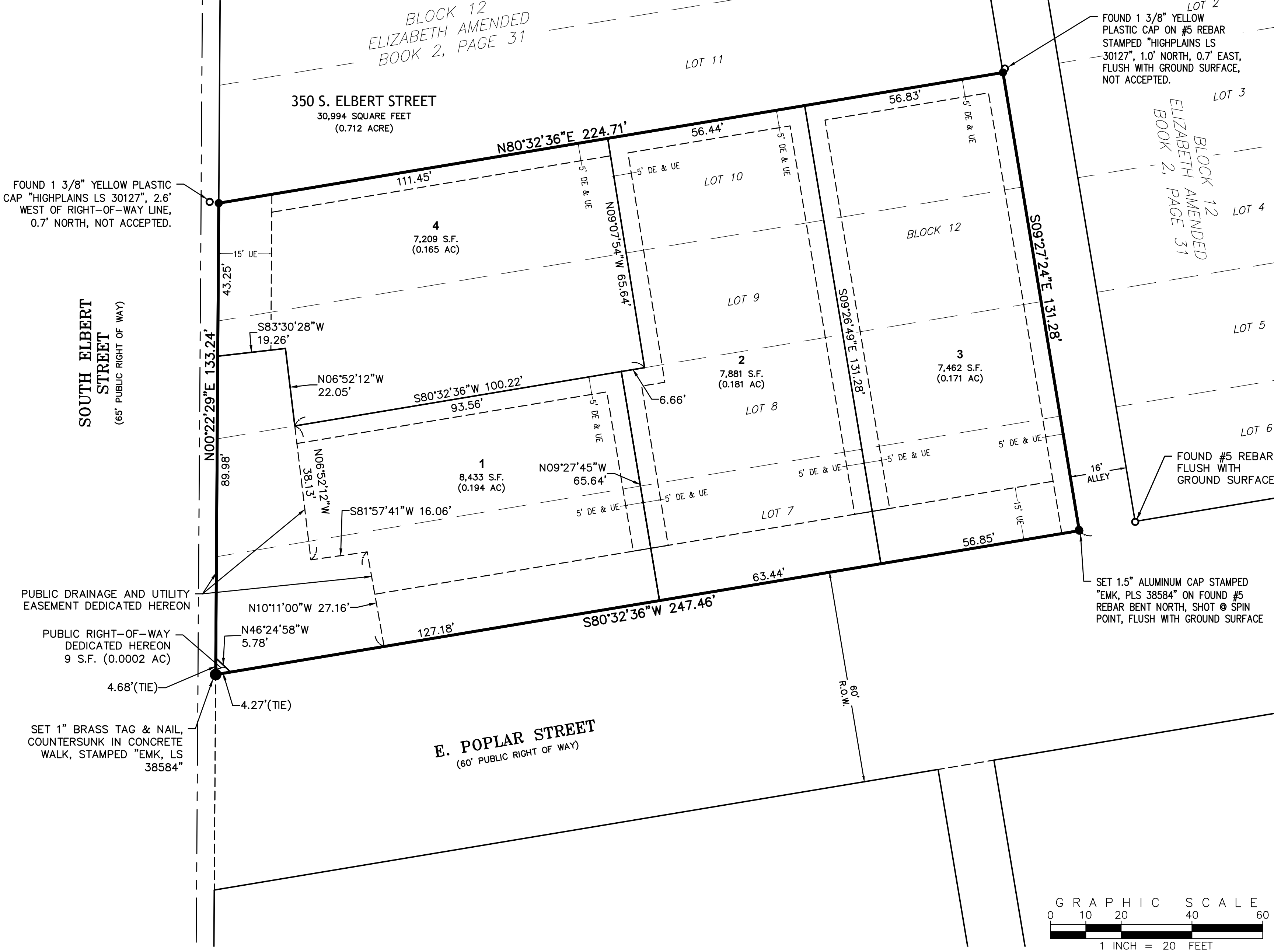
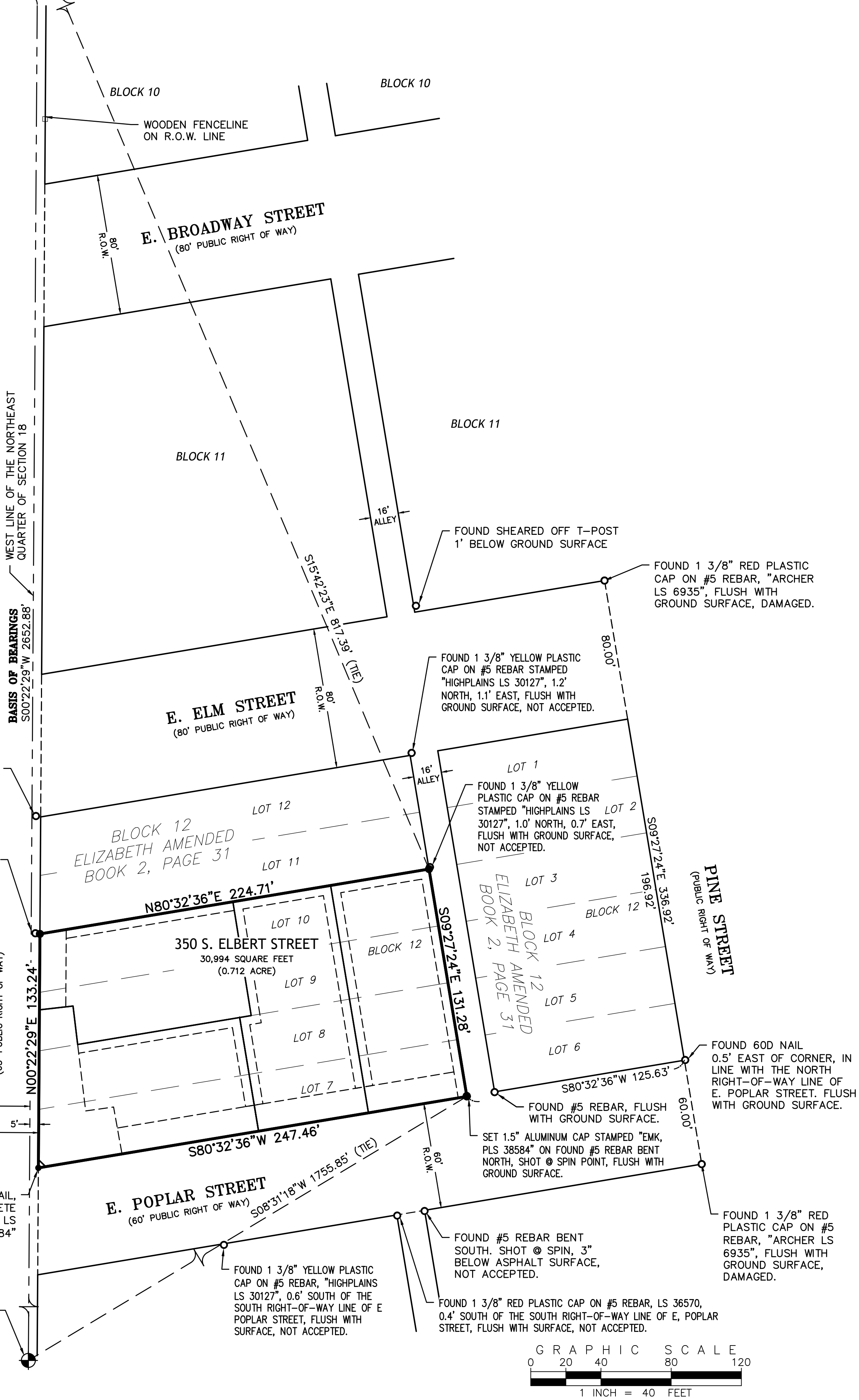
ELBERT STREET SUBDIVISION
FINAL PLAT

A RESUBDIVISION OF LOTS 7 THROUGH 10, INCLUSIVE, BLOCK 12, ELIZABETH AMENDED, LYING IN THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 64 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF ELIZABETH, COUNTY OF ELBERT, STATE OF COLORADO, 0.712 ACRE, 4 SINGLE FAMILY RESIDENTIAL LOTS, AND 0 TRACTS.

NORTHEAST CORNER OF SECTION 18
FOUND 3.25" ALUMINUM CAP ON #6 REBAR, STAMPED "COLO DEPT OF TRANSPORTATION T8S R64W S7[S8+S18]S17 2001 LS 31548", IN RANGE BOX

NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SECTION 18
FOUND 3.25" ALUMINUM CAP ON #5 REBAR, STAMPED "COLO DEPT OF TRANSPORTATION T8S R64W 1/4 S7[S18 2001 LS 31548", IN RANGE BOX

N89°45'35"E 2642.35'
NORTH LINE OF THE NORTHEAST QUARTER OF SECTION 18



NOTE:

IN JANUARY OF 2016, A SURVEY PLAT WAS PERFORMED AND CERTIFIED BY KEITH WESTFALL, PLS 30127. THE ONLY PROPERTY PIN WAS A #5 REBAR AT THE SOUTHEAST CORNER. THE SUBJECT PROPERTY WAS THEN MONUMENTED ON THE OTHER THREE CORNERS PER THAT SURVEY PLAT. HOWEVER, NO OTHER EXPLANATION OR EVIDENCE IS SHOWN AS TO THE RESOLUTION OF THE BOUNDARIES ON SAID SURVEY PLAT. THE NORTH AND SOUTH LINES EXCEED THE PLATTED DISTANCES BY 30-40 FEET. THE EAST LINE WAS SET PER RECORD DISTANCE, BUT THE SOUTH AND NORTH LINES WERE NOT.

ON FEBRUARY 21, 2022, AN IMPROVEMENT SURVEY PLAT WAS PERFORMED BY JOSEPH STICE III. THIS SURVEY PLAT ACCEPTED THE MONUMENTS SET AND THE REBAR FOUND BY THE PREVIOUS SURVEY, BUT FAILED TO GIVE AN EXPLANATION OR EVIDENCE AS TO WHY THE PROPERTY LINES ARE 30-40 FEET LONGER THAN PLATTED.

I GATHERED BOUNDARY EVIDENCE AND FOUND THAT THE PREVIOUS TWO SURVEYS WERE DEFICIENT IN EVIDENCE AND RESOLUTION. FURTHER INVESTIGATION SHOWS THAT THE NORTHWEST PROPERTY CORNER PIN LIES 2.6 FEET INTO THE RIGHT-OF-WAY OF SOUTH ELBERT STREET (AS DOES A SIMILAR MONUMENT FOUND NORTH OF IT). PLATS RECORDED TO THE WEST OF SOUTH ELBERT STREET NOTE A 5-FOOT RIGHT-OF-WAY EAST OF THE WEST LINE OF THE NORTHEAST QUARTER OF SECTION 18, AND A 60-FOOT RIGHT-OF-WAY WEST OF SAID LINE. THIS IS ALSO SUBSTANTIATED BY THE ORIGINAL PLAT OF ELIZABETH, AMENDED THAT SHOWS A SMALL GAP BETWEEN THE ALIQUOT SECTION LINE AND THE BLOCKS, AS WELL AS FENCELINES SHOWN HEREON.

USING OLDER MONUMENTATION ALONG PINE STREET AND E. POPLAR STREET, TOGETHER WITH THE CORRECT RIGHT-OF-WAY DELINEATED, THE BOUNDARY IS RESOLVED HEREON.

LEGEND

- DE DRAINAGE EASEMENT
- UE UTILITY EASEMENT
- EXISTING LOT LINE
- PROPOSED EASEMENT
- PROPOSED LOT LINE
- LAND CORNER FOUND AS NOTED
- FOUND MONUMENT AS NOTED
- SET 1.5" ALUMINUM CAP STAMPED "EMK, PLS 38584" ON 18" LONG #5 REBAR, UNLESS OTHERWISE NOTED

PREPARED BY



EMK CONSULTANTS, INC.
LAND DEVELOPMENT
ENGINEERING & SURVEYING
7006 SOUTH ALTON WAY, BLDG. F
CENTENNIAL, COLORADO 80112-2019
(303)694-1520 www.EMKC.com

ELBERT STREET SUBDIVISION

DATE PREPARED: JUNE, 2025

APPLICANT/DEVELOPER

DGH HOLDINGS, LLC
10497 AMMONS ST
BROOMFIELD, COLORADO 80021
ATTN: DAN HENDERSON

EXHIBIT C

ENGINEER'S ESTIMATE OF COST - RAPTOR CIVIL ENGINEERING					
PROJECT NAME:		350 Elbert Street			
DATE	8/7/2025	BY	ERIC BURTZLAFF, PE		
PUBLIC IMPROVEMENTS					
ITEM		QUANTITY	UNIT	UNIT COST	COST
IMPROVEMENTS					
Asphalt Patching/Pavement		720	SY	\$50	\$36,000
Concrete Paving		303	SY	\$100	\$30,300
6" Curb , Gutter		114	LF	\$36	\$4,104
Sidewalk (5.5' Width)		70	SY	\$42	\$2,940
20' Curb Cut		3	EA	\$5,000	\$15,000
SEWER					
48" Sewer Manhole		3.0	EA	\$4,250	\$12,750
6" PVC Sewer Main		246	LF	\$77	\$18,819
WATER					
Fire Hydrant		1.0	EA	\$3,500	\$3,500
6" PVC Water Main		256	LF	\$49	\$12,544
6" Fire Hydrant Lateral (C900 PVC)		23	LF	\$50	\$1,150
6" Gate Valve		1	EA	\$275	\$275
STORM/DRAINAGE					
12" Class IV RCP Storm Pipe		72	LF	\$26	\$1,879
		PUBLIC RIGHT OF WAY IMPROVEMENTS COST:			\$139,261
		15% CONTINGENCY:			\$20,889
		TOTAL COST:			\$160,150

NOTE: All costs shown hereon shall be reviewed by a licensed contractor for formal bid. This estimate is for informational purposes only and not intended to be a bid

ENGINEER'S ESTIMATE OF COST - RAPTOR CIVIL ENGINEERING					
PROJECT NAME:		350 Elbert Street			
DATE	8/7/2025	BY	ERIC BURTZLAFF, PE		
PUBLIC IMPROVEMENTS - LANDSCAPE					
ITEM		QUANTITY	UNIT	UNIT COST	COST
IMPROVEMENTS					
Seeding for 8' Tree Lawn		0.049	ACRE	\$6,000	\$292
		LANDSCAPE IMPROVEMENTS COST:			\$292
		15% CONTINGENCY:			\$44
		TOTAL COST:			\$335

NOTE: All costs shown hereon shall be reviewed by a licensed contractor for formal bid. This estimate is for informational purposes only and not intended to be a bid

EXHIBIT D-1
FORM- IRREVOCABLE LETTER OF CREDIT

Issuing Bank's Letterhead

Irrevocable Letter of Credit

Issuing Bank: [Type in bank name.]

Letter of Credit No.: [Type letter of credit number.]

Amount: [Type in aggregate amount.]

Issuance Date: [Type loc issuance date.]

Expiry Date: [Type loc expiration date.]

Name of Developer: [Type in name of
developer.]

Town of Elizabeth

[Address]

Attention: Mayor and Town Attorney

Ladies and Gentlemen:

We hereby establish this Irrevocable Letter of Credit in your favor for an amount up to the aggregate sum of \$_____ U.S. Dollars.

Funds under this credit are available to you by your draft or drafts drawn at sight on us containing the number of this Letter of Credit, as set forth above, in the Form of Sight Draft attached hereto as Exhibit 1 and incorporated by this reference. Partial drawings are permitted. The amount of the funds available under this Letter of Credit may not be reduced, except by payment of drafts drawn hereunder, or pursuant to written authorization given to us by the Town. The sole condition for payment of any draft under this Letter of Credit is that the draft be accompanied by a letter, on the Town's letterhead, signed by the Mayor or designee, stating that one or more of the following conditions exist:

a. The Town has determined that the Developer is in default of its obligations under that certain *[type in "agreement" or "permit"]*, to secure the performance of the *[type in the name and date of the agreement, such as "Site Improvement Agreement between the Town and Developer" and the name of the project, or "Development Agreement between the Town and Developer" and the name of the project]* or *[for permit, type in the name of the project]*;

or

b. That the expiry date of this Irrevocable Letter of Credit is less than fourteen (14) days from the date of the Mayor or designee's letter and the Developer

The foregoing instrument was acknowledged before me this _ day of
20 _ , by , as of

My commission expires: _____ —

SEAL

Notary Public

EXHIBIT 1

FORM OF SIGHT DRAFT

Date: _____

At sight, pay to the order of Town of Elizabeth _____
Dollars

(\$ _____), for value received and charge to the account of *[name of Developer]*.

Drawn under Letter of Credit No _____
[type letter of credit issuance date].

To: *[name of Issuing Bank]* _____, Town of Elizabeth, beneficiary,

[Address of Issuing Bank] _____

By: *[type Mayor or designee]*

EXHIBIT D-2

FINANCIAL GUARANTEE AGREEMENT

THIS FINANCIAL GUARANTEE AGREEMENT (the "Agreement") is entered into this ____ day of _____, 20__, by and between the Town of Elizabeth, Colorado, a statutory _____ municipality (the "Town"), and _____ (the "Developer").

RECITALS

WHEREAS, the Town and the Developer have entered into that certain Subdivision Agreement (the "Subdivision Agreement") dated _____, 20__, concerning that certain real property known as _____, which is more particularly described in **Exhibit A**, which is attached to the Subdivision Agreement (the "Property"); and

WHEREAS, pursuant to the Subdivision Agreement, the Developer has agreed to install and complete at its expense certain Public Improvements (as that term is defined in the Subdivision Agreement) on the Property and to provide the Town with a financial guarantee, in an amount equal to one-hundred ten percent (110%) of the costs of the Public Improvements naming the Town as the designated beneficiary, to secure the performance and completion of the Public Improvements.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby acknowledged and confessed, the parties hereto covenant and agree as follows:

1. Purpose. The purpose of this Agreement is to provide for a financial guarantee to the Town for the performance and completion of the Public Improvements described in the Subdivision Agreement and, accordingly, to supplement the terms and conditions of the Subdivision Agreement. Defined terms within the Subdivision Agreement shall have the same meaning when used herein.

2. Financial guarantee. In order to secure the performance and completion of the Public Improvements, the Developer agrees to deposit with the Town the sum of _____ Dollars (\$_____), which represents one hundred ten percent (110%) of the estimated cost of the Public Improvements (the "Financial Guarantee Funds"). All Financial Guarantee Funds shall be deposited in the Town's General Fund. The Town shall not be required to pay the Developer any interest on the Financial Guarantee Funds.

The estimated costs of the Public Improvements shall be a figure mutually agreed upon by the Developer and the Town's Director of Public Works. If, however, they are unable to agree, the Director of Public Works' estimate shall govern after giving consideration to information provided by the Developer including, but not limited to, construction contracts and engineering estimates. The purpose of the cost estimate is solely to determine the amount of the financial guarantee. No representations are made as to the accuracy of these estimates, and the Developer agrees to pay the actual costs of all such Public Improvements.

The estimated costs of the Public Improvements may increase in the future. Accordingly, the Town reserves the right to review and adjust the cost estimate prior to the issuance of any grading permit for the Property and on an annual basis thereafter. Adjusted cost estimates will be made according to changes in the Construction Costs Index as published by the *Engineering News Record* or based upon actual construction bids, as determined by the Town in the exercise of its sole discretion. If the Town adjusts the cost estimate for the Public Improvements, the Town shall give written notice to the Developer. The Developer shall, within thirty (30) days after receipt of said written notice, provide the Town with new funds in the amount of the adjusted cost estimates. If the Developer refuses or fails to so provide the Town with additional Financial Guarantee Funds, the Town may exercise the remedies provided for in paragraph 5 of the Subdivision Agreement; provided, however, that prior to increasing the amount of additional Financial Guarantee Funds required, the Town shall give credit to the Developer for all required Public Improvements which have actually been completed so that the amount of Financial Guarantee Funds required at any time shall relate to the cost of required Public Improvements not yet constructed.

3. Release of Financial Guarantee Funds.

a. The Developer intends to enter into several different contracts with different contractors to install the Public Improvements. It is the intent of the parties hereto that Financial Guarantee Funds will be released as work is completed on each individual contract. In the event the Public Improvements are not constructed or completed within the period of time specified by paragraph 8 of the Subdivision Agreement or a written extension of time mutually agreed upon by the parties to this Agreement, the Town may draw on the Financial Guarantee Funds to complete the Public Improvements called for in this Agreement.

b. The Financial Guarantee Funds are to be used solely and exclusively for the completion of the Public Improvements or as provided in Section 12 of the Subdivision Agreement. The Town will disburse up to ninety percent (90%) of the estimated cost of the Public Improvements as progress payments according to the schedule of values attached as **Exhibit 1** and incorporated by this reference (the "Schedule of Values"), upon the Developer's satisfaction of the following draw requirements:

1. The Developer delivers an application to the Town (which includes a certification signed by the Developer of the percentage of the total Public Improvements completed according to the Schedule of Values), which application will be made no more than once per month and shall be tied to progress toward the completion of the Public Improvements, as identified in the application (the "Application").

2. Upon receipt of the Application, the Town shall have thirty (30) calendar days within which to provide written acknowledgement from the Public Works Director or designee of the Town that the Application may be paid, partially paid, or denied. The Town's affirmation and payment will not constitute approval by the Town of the completion and/or acceptance of Public Improvements, or any portion thereof. Such acknowledgement shall not be unreasonably denied or withheld by the Town and shall be given if the Public Improvements described in the Application are completed in accordance with the construction plans approved by the Town.

3. The Town shall have no obligation to provide probationary acceptance of the Public Improvements, until all of the Public Improvements are completed and all deficiencies, of any type, including, but not limited to, maintenance, materials or workmanship, that are identified by the Public Works Director at the final inspection are corrected (regardless of the cause of the deficiency).

4. Upon the Town's probationary acceptance of the Public Improvements, the Developer has the option of substituting a letter of credit for twenty percent (20%) of the cost of the Public Improvements that the Town is holding for the two-year warranty period, as described in the Subdivision Agreement, in a form and from a financial institution acceptable to the Town.

c. That portion of the Financial Guarantee Funds which represents twenty percent (20%) of the estimated costs of the Public Improvements shall be retained by the Town during the two-year warranty period described in the Subdivision Agreement. At the end of the warranty period and upon final acceptance by the Town, the remaining Financial Guarantee Funds shall be released to the Developer. The Town may draw on the Financial Guarantee Funds during the warranty period to correct any problems with the Public Improvements which have not been corrected by the Developer, as provided by the Subdivision Agreement.

4. Modifications. This Agreement shall not be amended, except by subsequent written agreement of the parties.

5. Release of Liability. It is expressly understood that the Town cannot be legally bound by the representations of any of its officers or agents or their designees, except in accordance with the Elizabeth Municipal Code and the laws of the State of Colorado.

6. Captions. The captions to this Agreement are inserted only for the purpose of convenient reference and in no way define, limit, or prescribe the scope or intent of this Agreement or any part thereof.

7. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns as the case may be.

8. Invalid Provision. If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of the other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Agreement is capable of two (2) constructions, one of which would render the provision void, and the other which would render the provision valid, then the provisions shall have the meaning which renders it valid.

9. Governing law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in Elbert County, Colorado.

10. Notice. All notice required under this Agreement shall be in writing and shall be hand delivered or sent by registered or certified mail, return receipt requested, postage prepaid,

to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party, by notice so given, may change the address to which future notices shall be sent.

Notice to the Town: Town of Elizabeth
Attn: Town Administrator
PO Box 159
151 S. Banner Street
Elizabeth, Colorado 80107

With a copy to: Corey Y. Hoffmann, Esq.
Hoffmann, Parker, Wilson & Carberry, P.C.
511 16th Street, Suite 610
Denver, Colorado 80202

Notice to Developer: _____

With a copy to: _____

11. Assignment or Assignments. There shall be no transfer or assignment of any of the rights or obligations of the Developer under this Agreement without the prior written approval of the Town. The Developer agrees to provide the Town with at least fourteen (14) days' advance written notice of the transfer or assignment of any of the rights and obligations of the Developer under this Agreement.

12. Title and Authority. The Developer expressly warrants and represents to the Town that it is the record owner of the property constituting the Property and further represents and warrants, together with the undersigned individual(s) that the undersigned individuals(s) has or have full power and authority to enter into this Financial Guarantee Agreement. The Developer and the undersigned individual(s) understand that the Town is relying on such representations and warranties in entering into this Agreement.

13. Conflict with Subdivision Agreements. In the event there is a conflict between the language contained within the Financial Guarantee Agreement and the language contained within the Subdivision Agreement, the language contained in the Subdivision Agreement shall control.

WHEREFORE, the parties hereto have executed this Agreement on the day and year first above written.

TOWN OF ELIZABETH, COLORADO

By: _____
Angela Ternus, Mayor

ATTEST:

Michelle Oeser, Town Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, Town Attorney

DEVELOPER: [COMPANY NAME]

By: _____
[Name, title]

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
20__, by _____, as _____ of _____.

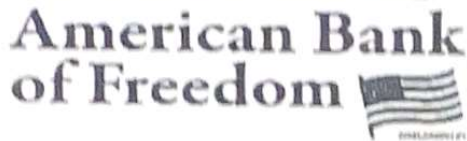
My commission expires: _____.

SEAL

Notary Public

EXHIBIT D-1
FORM- IRREVOCABLE LETTER OF CREDIT

www.americanbankoffreedom.bank



Irrevocable Letter of Credit

Issuing Bank: American Bank of Freedom

Letter of Credit No.: 1906919

Amount: \$ 176,534.00

Issuance Date: 06/11/2026

Expiry Date: 06/11/2027

Name of Developer: Daniel G Henderson

Town of Elizabeth

Attn: Town Administrator

PO Box 159

151 S. Banner Street

Elizabeth, Colorado 80107

Attention: Mayor and Town Attorney

Ladies and Gentlemen:

We hereby establish this Irrevocable Letter of Credit in your favor for an amount up to the aggregate sum of \$176,534.00 U.S. Dollars.

Funds under this credit are available to you by your draft or drafts drawn at sight on us containing the number of this Letter of Credit, as set forth above, in the Form of Sight Draft attached hereto as Exhibit 1 and incorporated by this reference. Partial drawings are permitted. The amount of the funds available under this Letter of Credit may not be reduced, except by payment of drafts drawn hereunder, or pursuant to written authorization given to us by the Town. The sole condition for payment of any draft under this Letter of Credit is that the draft be accompanied by a letter, on the Town's letterhead, signed by the Mayor or designee, stating that one or more of the following conditions exist:

a. The Town has determined that the Developer is in default of its obligations under that certain agreement to secure the performance of the site development agreement, to secure the performance between the town of Elizabeth and Danial G Henderson

b. That the expiry date of this Irrevocable Letter of Credit is less than fourteen (14) days from the date of the Mayor or designee's letter and the Developer

has not provided the Town with a replacement letter of credit in an amount and form acceptable to the Town to secure the performance of the site development agreement described herein.

Drafts for payment by the Town, pursuant to this Letter of Credit, shall be deemed timely presented if, prior to the date of expiration of the Letter of Credit, the draft is deposited in the U.S. mail or otherwise delivered for transmission by any other usual means of communication with postage or cost of transmission prepaid and properly addressed to the above letterhead address.

We hereby agree with the Town that such drafts will be processed in good faith and duly honored, upon presentation to us, as provided herein. In case of wrongful dishonor, we agree to reimburse the Town for all court costs, investigative costs and reasonable attorney's fees the Town may incur in obtaining payment, according to the terms of this Letter of Credit. This Letter of Credit shall be governed by and construed in accordance with the laws of the State of Colorado. We further agree that the exclusive venue for any action concerning this Letter of Credit shall be the District Court for Elbert County, Colorado.

Very truly yours,
American Bank of Freedom

By: 
Signature of Authorized Signing Officer

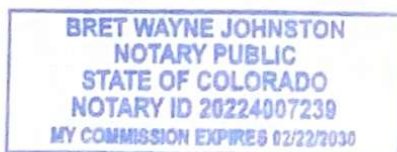
Dan J. Kiel
Print

STATE OF COLORADO)
)ss.
COUNTY OF Adams)

The foregoing instrument was acknowledged before me this 11th day of June
2026 by Dan J. Kiel as _____ of _____.

My commission expires: 2/22/30

SEAL



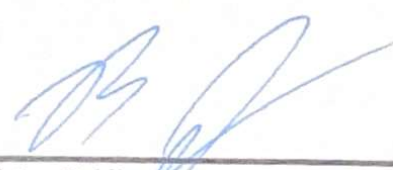

Notary Public

EXHIBIT 1

FORM OF SIGHT DRAFT

Date: _____

At sight, pay to the order of Town of Elizabeth One Hundred Seventy-Six Thousand Five Hundred Thirty-Four Dollars (\$176,534.00), for value received and charge to the account of Daniel G Henderson

Drawn under Letter of Credit No 1906919 dated June 11, 2026.

To: American Bank of Freedom, Town of Elizabeth beneficiary, 14 Bell Rd, Wright City, MO 63390

By: *[type Mayor or designee]*

RESOLUTION 26R22

A RESOLUTION APPROVING AN AMENDED AND RESTATED SUBDIVISION AGREEMENT WITH DGH HOLDINGS, LLC AND REAFFIRMING THE MINOR DEVELOPMENT SUBDIVISION FOR THE PROPERTY LOCATED AT 350 SOUTH ELBERT STREET

WHEREAS, on October 14, 2025, the Board of Trustees approved a Minor Development Subdivision to subdivide the property located at 350 South Elbert Street into four (4) residential lots, together with a Subdivision Agreement with MBP Enterprises Inc., the then-owner of the property; and

WHEREAS, MBP Enterprises Inc. failed to furnish the performance guarantee required by the Subdivision Agreement within ninety (90) days of execution, and the final plat was therefore never recorded; and

WHEREAS, DGH Holdings, LLC has since acquired the property and desires to complete the subdivision, and the final plat has been revised to reflect DGH Holdings, LLC as owner; and

WHEREAS, an Amended and Restated Subdivision Agreement between the Town and DGH Holdings, LLC, which amends, restates, and supersedes the original Subdivision Agreement in its entirety, has been presented to the Board.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ELIZABETH, COLORADO AS FOLLOWS:

Section 1. The recitals set forth above are hereby incorporated herein by this reference.

Section 2. The Board hereby approves the Amended and Restated Subdivision Agreement between the Town of Elizabeth and DGH Holdings, LLC, in substantially the form attached hereto as Exhibit A and incorporated herein by this reference, and authorizes the Mayor to execute the Agreement on behalf of the Town following execution by the Developer.

Section 3. The Board hereby reaffirms its approval of the Minor Development Subdivision and final plat for the property located at 350 South Elbert Street, creating four (4) residential lots, as revised to reflect DGH Holdings, LLC as owner and attached hereto as Exhibit B, subject to the terms of the Amended and Restated Subdivision Agreement.

PASSED, APPROVED, and ADOPTED this ____ day of _____ 2026, by the Board of Trustees of the Town of Elizabeth, Colorado, on first and final reading, by a vote of ____ for and ____ against.

Angela Ternus, Mayor

ATTEST:

Michelle M. Oeser, Town Clerk

AMENDED AND RESTATED SUBDIVISION AGREEMENT

THIS AMENDED AND RESTATED SUBDIVISION AGREEMENT is made this _____ day of _____, 2026, by and between the Town of Elizabeth, Colorado, a statutory municipality (the "Town"), and DGH Holdings, LLC, a Colorado limited liability company (the "Developer").

RECITALS:

A. The Developer is the owner of certain real property located in the Town of Elizabeth known as Elbert Street Subdivision, which is more particularly described in **Exhibit A**, attached hereto and incorporated herein (the "Property").

B. The Town and MBP Enterprises, Inc., the prior owner of the Property, entered into that certain Subdivision Agreement dated October 3, 2025, and approved by the Board of Trustees on October 14, 2025 (the "Original Agreement"), concerning the subdivision of the Property.

C. MBP Enterprises, Inc. failed to furnish the performance guarantee required by paragraph 11 of the Original Agreement within ninety (90) days of execution, and the final plat for the Property was therefore never recorded.

D. The Developer has since acquired the Property and desires to complete the subdivision. The Board of Trustees and the Planning Commission of the Town of Elizabeth held all necessary public hearings concerning the final plat for the Property, and the Board of Trustees approved the final plat on October 14, 2025. The parties acknowledge and agree that such approval remains in full force and effect, subject to the terms of this Agreement, and the Board of Trustees' approval of this Agreement shall constitute reaffirmation of its approval of the final plat, as revised to reflect the Developer as owner. A copy of the final plat is attached hereto as **Exhibit B** and incorporated herein.

E. The approvals cited above are contingent upon the express condition that all duties created by this Agreement are faithfully performed by the Developer.

AMENDED AND RESTATED SUBDIVISION AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the terms, conditions and fees to be paid by the Developer, upon subdivision of the Property. All conditions contained herein are in addition to any and all requirements of the Town of Elizabeth Subdivision Ordinance and Zoning Ordinance, any and all state statutes, and any other sections of the Elizabeth Municipal Code, and are not intended to supersede

any requirements contained therein.

2. Fees. The following fees shall be paid to the Town by the Developer.

a. The Developer hereby agrees to pay the Town the actual cost to the Town for plan review, engineering review, hydrological and surveying review, prior to and during the development process, and for construction observation, inspection and materials testing during the construction process for public improvements, and for construction observation, inspection and materials testing and electronic deliverable review during the warranty period for public improvements, and for legal services (the "actual costs") rendered in connection with the review of the subdivision of the Property, including related administrative fees not to exceed one-hundred fifteen percent (115%) of the actual costs. In addition, the Developer shall reimburse the Town for the costs of making corrections or additions to the master copy of the official Town map and for the fee for recording the final plat and accompanying documents with the Elbert County Clerk and Recorder.

b. The Developer shall pay the impact fees, as established by Town ordinances, in effect at the time this Agreement is executed. The Developer shall pay the foregoing impact fees in effect at the time specified by such ordinances.

c. The Developer acknowledges and agrees that the Town, pursuant to this Agreement, shall be granted construction easement(s) that are reasonably sufficient to complete the public improvements.

3. Specific Conditions. The Developer hereby agrees that:

a. Developer shall pay the amount of Six Thousand, Seven Hundred and Sixty One Dollars (\$6,761.00) within thirty (30) days of recording the final plat as satisfaction of Developer's open space requirement for the Property.

b. Developer shall construct vehicular access to E Poplar Street from the Property. Such vehicular access shall be constructed to Town of Elizabeth standards, and shall be located in a location generally centered between the individual lots to allow such vehicular access.

c. Developer shall construct a private stormwater detention pond in accordance with construction drawings approved by the Town, which pond shall control the release of developed stormwater runoff from all lots within the Property.

d. Developer shall construct and dedicate in accordance with Section 10 of this Agreement, those Public Improvements more particularly described in **Exhibit C**, attached hereto and incorporated herein by this reference, including the construction of domestic water and wastewater mains to serve the Property in accordance with construction drawings approved by the Town; and

e. Developer shall dedicate to the Town, concurrently with the

recording of the final plat pursuant to paragraph 11 of this Agreement, the following:

- i. The southwesterly corner of the Property, as laid out in the Subdivision Plat, free and clear of all liens and encumbrances, for the future widening and improvement of public sidewalk bordering S Elbert Street and E Poplar Street.

4. Title Policy. A title commitment for the Property shall be provided to the Town. The title commitment shall show that all property to be dedicated to the Town is, or shall be, subsequent to the execution and recording of the final plat, free and clear of all liens and encumbrances (other than real estate taxes which are not yet due and payable), which would make the dedications unacceptable as the Town, in its sole discretion, determines. The title policy evidenced by the title commitment shall be provided thirty (30) days after the recording of the final plat.

5. Breach by the Developer; the Town's Remedies. In the event of a breach of any of the terms and conditions of this Agreement by the Developer, the Board of Trustees shall be notified immediately and the Town may take such action, as permitted and/or authorized by law, this Agreement or the ordinances of the Town, as the Town deems necessary to protect the public health, safety and welfare; to protect lot buyers and builders; and to protect the citizens of the Town from hardship and undue risk. The remedies include, but are not limited to:

- a. The refusal to issue any building permit or certificate of occupancy;
- b. The revocation of any building permit previously issued under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party;
- c. A demand that the security given for the completion of the public improvements be paid or honored; or
- d. Any other remedy available at law.

Unless necessary to protect the immediate health, safety, and welfare of the Town, or to protect the interest of the Town with regard to security given for the completion of the public improvements, the Town shall provide the Developer thirty (30) days' written notice of its intent to take any action under this paragraph, during which thirty-day period the Developer may cure the breach described in the notice and prevent further action by the Town.

6. Public Improvements and Warranty. All drainage structures, paved streets, including sidewalk, curb, gutter and slope easements, and necessary appurtenances, as shown on the final plat, landscape plans and the associated construction documents (the "Public Improvements"), as approved by the Director of

Public Works of the Town, shall be installed and completed at the expense of the Developer and dedicated and/or conveyed to the Town. The Public Improvements required by this Agreement and shown on the final plat, as well as associated construction documents approved by the Director of Public Works of the Town and the costs of these Public Improvements, are set forth on **Exhibit C**, attached hereto and incorporated herein. All Public Improvements covered by this Agreement shall be made in accordance with the final plat and associated construction documents drawn according to regulations and construction standards for such improvements and approved by the Director of Public Works of the Town.

The Developer shall warrant any and all Public Improvements, which are conveyed to the Town, pursuant to this Agreement, for a period of two (2) years from the date the Town's Director of Public Works grants probationary acceptance of the Public Improvements, as approved by the Town. The warranty period shall extend to the date final acceptance is granted in writing by the Town's Director of Public Works. The Developer shall be responsible for scheduling the necessary inspections for probationary and final acceptance. Specifically, but not by way of limitation, the Developer shall warrant the following:

- a. That the title conveyed shall be marketable and its transfer rightful;
- b. Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and
- c. Any and all facilities so conveyed shall be in conformity with the Town's specifications and shall be free of defects in materials or workmanship for a period of two (2) years, as stated above, including, but not limited to, cracks, breakage, settling, or other deterioration of the Public Improvements, no matter the cause, for a period of two (2) years, as stated above.

The Town will accept for maintenance all Public Improvements after the warranty period has expired, provided all warranty work has been completed. The Town shall accept for snow removal purposes only all dedicated public streets after probationary acceptance has been granted in writing by the Director of Public Works. The Developer shall make all corrections necessary to bring the Public Improvements into conformity with the Town's specifications, prior to final acceptance.

7. Observation. The Town shall have the right to make reasonable engineering observations at the Developer's expense, as the Town may request. Observation, acquiescence in, or approval by any engineering inspector of the construction of physical facilities at any particular time shall not constitute the approval by the Town of any portion of the construction of such Public Improvements. Such approval shall be made by the Town only after completion of construction and in the manner hereinafter set forth.

8. Completion of Public Improvements. The obligations of the Developer provided for in paragraph 6 of this Agreement, including the inspections hereof, shall

be performed on or before August 11, 2028, and proper application for acceptance of the Public Improvements shall be made on or before such date. Upon completion of construction by the Developer of such Public Improvements, the Town's Director of Public Works or his designee shall inspect the improvements and certify, with specificity, their conformity or lack thereof to the Town's specifications. The Developer shall make all corrections necessary to bring the improvements into conformity with the Town's specifications. Once approved by the Town's Director of Public Works, the Town shall accept said improvements upon conveyance, pursuant to paragraph 10; provided, however, the Town shall not be obligated to accept the Public Improvements until the actual costs described in paragraphs 2.a. and b. of this Agreement are paid in full by the Developer.

9. Related Costs – Public Improvements. The Developer shall provide all necessary engineering designs, surveys, field surveys and incidental services related to the construction of the Public Improvements, at its sole cost and expense, including reproducible "as built" drawings certified accurate by a professional engineer registered in the State of Colorado.

10. Improvements to be the Property of the Town. All Public Improvements for roads, concrete curbs and gutters, storm sewers, and drainage improvements accepted by the Town shall be dedicated to the Town and warranted for a period of two (2) years following probationary acceptance by the Town, as provided above. Upon completion of construction and conformity with the final plat and associated construction plans, and any properly approved changes, the Developer shall convey to the Town, by bill of sale, all installed physical facilities.

11. Performance Guarantee. In order to secure the construction and installation of the Public Improvements, the Developer shall, no later than ninety (90) days after the execution of this Agreement, furnish the Town, at the Developer's expense, with the performance guarantee described herein. The performance guarantee shall be in the form of cash or an irrevocable letter of credit in which the Town is designated as beneficiary, in an amount equal to one hundred ten percent (110%) of the estimated costs of the Public Improvements to be constructed and installed, as set forth in **Exhibit C**, to secure the performance and completion of the Public Improvements (the "Performance Guarantee"). The parties acknowledge that the final plat for the Property was approved by the Board of Trustees on October 14, 2025, and that such approval remains in full force and effect, subject to the terms of this Agreement. The Developer agrees that the continued validity of the Town's approval of the final plat is expressly contingent upon the Developer's provision of a Performance Guarantee to the Town within ninety (90) days of the execution of this Agreement, in the amount and form provided herein. The failure of the Developer to provide a Performance Guarantee to the Town within such ninety (90) day period shall render the Town's approval of the final plat null and void, without further action by the Board of Trustees, and the final plat shall not be recorded. The Town shall record the final plat in the real estate records of Elbert County within fourteen (14) days after the Town has received and approved the Performance Guarantee. Letters of credit shall be substantially in the form and content set forth in **Exhibit D-1**, attached hereto and incorporated herein, and shall be subject to the review and approval of the Town Attorney. The cash shall be paid to the

Town according to the terms and conditions of the "Financial Guarantee," which shall be substantially in the form and content set forth in **Exhibit D-2**, attached hereto and incorporated herein, and shall be subject to the review and approval of the Town Attorney. The Developer shall not start the construction of any public or private improvement on the Property, including, but not limited to, staking, earth work, overlot grading or the erection of any structure, temporary or otherwise, until the Town has received and approved the Performance Guarantee and the final plat has been recorded.

The estimated costs of the Public Improvements shall be a figure mutually agreed upon by the Developer and the Town's Director of Public Works, as set forth in Exhibit C. If, however, they are unable to agree, the Director of Public Works' estimate shall govern after giving consideration to information provided by the Developer, including, but not limited to, construction contracts and engineering estimates. The purpose of the cost estimate is solely to determine the amount of security. No representations are made as to the accuracy of these estimates and the Developer agrees to pay the actual costs of all such Public Improvements.

The estimated costs of the Public Improvements may increase in the future. Accordingly, the Town reserves the right to review and adjust the cost estimates on an annual basis. Adjusted cost estimates will be made according to changes in the Construction Costs Index, as published by the Engineering News Record. If the Town adjusts the cost estimate for the Public Improvements, the Town shall give written notice to the Developer. The Developer shall, within thirty (30) days after receipt of said written notice, provide the Town with a new or amended Performance Guarantee in the amount of the adjusted cost estimates. If the Developer refuses or fails to so provide the Town with a new or amended Performance Guarantee, the Town may exercise the remedies provided for in paragraph 5 of this Agreement; provided, however, that prior to increasing the amount of additional security required, the Town shall give credit to the Developer for all required Public Improvements which have actually been completed so that the amount of security required at any time shall relate to the cost of required Public Improvements not yet constructed.

In the event the Public Improvements are not constructed or completed within the period of time specified by paragraph 8 of this Agreement or a written extension of time mutually agreed upon by the parties to this Agreement, the Town may draw on the Performance Guarantee to complete the Public Improvements called for in this Agreement. In the event the letter of credit is to expire within fourteen (14) calendar days and the Developer has not yet provided a satisfactory replacement, the Town may draw on the letter of credit, and either hold such funds as security for performance of this Agreement, or spend such funds to finish the Public Improvements or correct problems with the Public Improvements, as the Town deems appropriate.

Upon completion of performance of such improvements, conditions and requirements within the required time and the approval of the Town Public Works Director, the Developer shall issue an irrevocable letter of credit to the Town in the amount of twenty percent (20%) of the total cost of construction and installation of the Public Improvements, to be held by the Town during the two-year warranty period or,

in the alternative, if the Performance Guarantee held by the Town is cash, the Town will reduce the cash amount to twenty percent (20%) of the total cost of construction and installation of the Public Improvements, to be held by the Town during the two-year warranty period. If the Public Improvements are not completed within the required time, the monies may be used to complete the improvements.

12. Nuisance Conditions. The Developer agrees to prevent the existence of any nuisances by way of its construction activities, as the same are defined by the Elizabeth Municipal Code. In the event the authorized inspector/designated Town authority determines that a nuisance exists, the Developer shall be subject to the provisions set forth in Elizabeth Municipal Code regarding the abatement of nuisances and the cost assessed for the abatement thereof.

In addition to the provisions above, if the nuisance is not abated or an abatement plan is not submitted to the satisfaction of the Town, the Town may, upon thirty (30) days' notice under this Agreement, exercise the right to draw upon the performance guarantee specified in paragraph 11 of this Agreement. The Town may draw on the performance guarantee in order to pay the cost of abating the nuisance, including any expenses and penalties incurred under the Elizabeth Municipal Code. The Town may exercise this right in addition to, or in lieu of, the withholding of permits and/or the withholding of certificates of occupancy. The right to draw on the performance guarantee shall be subject to the sole discretion of the Town, provided the Developer has received thirty (30) days' notice, as provided herein.

The Town Planning Department and Public Works Department shall be authorized to cease processing any land use or permit applications submitted by the same developer for the property that is contained within the same subdivision, until the nuisance is abated. This shall include, but not be limited to, acceptance of applications, sending referrals, scheduling meetings or hearings, or conducting reviews of projects.

13. Indemnification. The Developer shall indemnify and hold harmless the Town, its officers, employees, agents or servants from any and all suits, actions and claims of every nature and description caused by, arising from, or on account of, any act or omission of the Developer, or of any other person or entity for whose act or omission the Developer is liable, with respect to construction of the Public Improvements; and the Developer shall pay any and all judgments rendered against the Town as the result of any suit, action or claim, together with all reasonable expenses and attorney fees incurred by the Town in defending any such suit, action or claim.

The Developer shall pay all property taxes on the Property dedicated to the Town, and shall indemnify and hold harmless the Town for any property tax liability.

The Developer shall require that all contractors and other employees engaged in construction of Public Improvements shall maintain adequate workers' compensation insurance and public liability coverage and shall faithfully comply with the provisions of the Federal Occupational Safety and Health Act.

14. Waiver of Defects. In executing this Agreement the Developer waives

all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the Town to impose conditions on the Developer, as set forth herein, and concerning the procedure, substance and form of the ordinances or resolutions adopting this Agreement.

15. Modifications. This Agreement shall not be amended, except by subsequent written agreement of the parties.

16. Release of Liability. It is expressly understood that the Town cannot be legally bound by the representations of any of its officers or agents, or their designees, except in accordance with the Elizabeth Municipal Code and the laws of the State of Colorado.

17. Captions. The captions to this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns, as the case may be.

19. Invalid Provision. If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect. It is the intention of the parties hereto, that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other which would render the provision valid, then the provision shall have the meaning which renders it valid.

20. Governing Law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in Elbert County, Colorado.

21. Attorney Fees. Should this Agreement become the subject of litigation to resolve a claim of default of performance by the Developer and a court of competent jurisdiction determines that the Developer was in default in the performance of the Agreement, the Developer shall pay the attorney fees, expenses and court costs of the Town.

22. Notice. All notice required under this Agreement shall be in writing and shall be hand delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address, as set forth below. Either party, by notice so given, may change the address to which future notices shall be sent.

Notice to the Town: Town of Elizabeth
 Attn: Town
 Administrator
 PO Box 159
 151 S. Banner
 Street
 Elizabeth, Colorado
 80107

With copy to: Corey Y. Hoffmann, Esq.
 Hoffmann, Parker, Wilson &
 Carberry, P.C. 511 16th Street, Suite
 610
 Denver, Colorado 80202

Notice to Developer: DGH Holdings, LLC
 Attn: Dan Henderson
 10497 Ammons St
 Broomfield, CO 80021
 danogh1959@gmail.com

23. Force Majeure. Whenever the Developer is required to complete the construction, repair or replacement of Public Improvements by an agreed deadline, the Developer shall be entitled to an extension of time equal to a delay in completing the foregoing, due to unforeseeable causes beyond the control and without the fault or negligence of the Developer, including, but not limited to, acts of God, weather, fires and strikes.

24. Approvals. Whenever approval or acceptance of the Town is necessary, pursuant to any provision of this Agreement, the Town shall act reasonably and in a timely manner in responding to such request for approval or acceptance.

25. Assignment or Assignments. There shall be no transfer or assignment of any of the rights or obligations of the Developer under this Agreement, without the prior written approval of the Town. The Developer agrees to provide the Town with at least fourteen (14) days' advance written notice of the transfer or assignment of any of the rights and obligations of the Developer under this Agreement.

26. Recording of Agreement. This Agreement shall be recorded in the real estate records of Elbert County and shall be a covenant running with the Property, in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

27. Title and Authority. The Developer expressly warrants and represents to the Town that it is the recorded owner of the property constituting the Property and further represents and warrants, together with the undersigned individuals, that the undersigned individuals have full power and authority to enter into this Subdivision Agreement. The Developer and the undersigned individuals understand that the Town is relying on such representations and warranties in entering into this Agreement.

28. Effect on Original Agreement. This Agreement amends, restates, and supersedes in its entirety the Original Agreement, which shall be of no further force or effect.

WHEREFORE, the parties hereto have executed this Agreement on the day and year first above written.

TOWN OF ELIZABETH, COLORADO

By: _____
Angela Ternus, Mayor

ATTEST:

Michelle Oeser, Town Clerk

Corey Y. Hoffmann, Town Attorney

By: _____
***Dan Henderson, Manager of DGH Holdings,
 LLC***

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, as _____ of _____.

(SEAL)

Notary Public