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El Paso County, CO



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RESOLUTION NO. 18-351

BOARD OF COUNTY COMMISSIONERS  
COUNTY OF EL PASO, STATE OF COLORADO

APPROVE PRELIMINARY PLAN AND ESCROW AGREEMENT/GROUNDWATER  
PRODUCTION LEASE REQUEST FOR FLYING HORSE NORTH  
(SP-17-012)

WHEREAS, PRI2, LLC, did file an application with the El Paso County Planning and Community Development Department for the approval of a Preliminary Plan, which includes that Escrow Agreement/Groundwater Production Lease, attached hereto at **Exhibit B** and incorporated herein by this reference, for Flying Horse North Subdivision for property in the unincorporated area of El Paso County as described in **Exhibit A**, which is attached hereto and incorporated herein by reference; and

WHEREAS, a public hearing was held by the El Paso County Planning Commission on July 17, 2018, upon which date the Planning Commission did by formal resolution recommend approval of the subject Preliminary Plan application, including approval of the Escrow Agreement/Groundwater Production Lease, with conditions and notations; and

WHEREAS, a public hearing was held by this Board on September 4, 2018; and

WHEREAS, based on the evidence, testimony, exhibits, consideration of the master plan for the unincorporated area of the County, presentation and comments of the El Paso County Planning and Community Development Department and other County representatives, comments of public officials and agencies, comments from all interested persons, comments by the general public, comments by the El Paso County Planning Commission Members, and comments by the Board of County Commissioners during the hearing, this Board finds as follows:

1. The application was properly submitted for consideration by the Planning Commission and Board of County Commissioners.
2. Proper posting, publication and public notice were provided as required by law for the hearings before the Planning Commission and the Board of County Commissioners.
3. The hearings before the Planning Commission and the Board of County Commissioners were extensive and complete, that all pertinent facts, matters and issues were submitted and that all interested persons were heard at those hearings.
4. All exhibits were received into evidence.

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5. The proposed subdivision is in general conformance with the goals, objectives, and policies of the Master Plan.
6. The subdivision is consistent with the purposes of the El Paso County Land Development Code.
7. The subdivision is in conformance with the subdivision design standards and any approved sketch plan.
8. A conditional finding of sufficient water supply has been made in terms of quantity and dependability for the type of subdivision proposed, as determined in accordance with the standards set forth in statutory water supply standards [C.R.S. §30-28-133(6)(a)] and the requirements of Chapter 8 of the Land Development Code. Approval of the Escrow Agreement/Groundwater Production Lease enables the conditional finding of sufficiency as to water quantity and dependability. If the Water Court approves the Plan for Augmentation to enable Applicant to use not nontributary Denver Aquifer groundwater for its golf course uses within two years of recording the first final plat for the subdivision, and if Applicant timely provides evidence that it has satisfied the State Engineer's additional requirements, then upon written proof of these approvals provided by Applicant to the Planning and Community Development Department and the County Attorney's Office, and upon verification of the same, the Board hereby authorizes the conditional sufficiency finding to be converted to a full sufficiency finding upon direction from the County Attorney's Office without the need to obtain further approval from the Board.
9. A finding of sufficient water supply has been made in terms of water quality based on recommendation by the El Paso County Health Department.
10. A public sewage disposal system has been established or, if other methods of sewage disposal are proposed, the system complies with State and local laws and regulations [C.R.S. §30-28-133(6)(b)] and the requirements of Chapter 8 of the Land Development Code.
11. All areas of the proposed subdivision, which may involve soil or topographical conditions presenting hazards or requiring special precautions, have been identified and the proposed subdivision is compatible with such conditions [C.R.W. §30-28-133(6)(c)].
12. Adequate drainage improvements complying with State law [C.R.S. §30-28-133(3)(c)(VII)] and the requirements of the Land Development Code and the Engineering Criteria Manual are provided by the design.
13. The proposed subdivision has established an adequate level of compatibility by (1) incorporating natural physical features into the design and providing sufficient open spaces considering the type and intensity of the subdivision; (2)

incorporating site planning techniques to foster the implementation of the County's plans, and encouraging a land use pattern to support a balanced transportation system, including auto, bike and pedestrian traffic, public or mass transit if appropriate, and the cost effective delivery of other services consistent with adopted plans, policies and regulations of the County; (3) incorporating physical design features in the subdivision to provide a transition between the subdivision and adjacent land uses; (4) incorporating identified environmentally sensitive areas, including but not limited to, wetlands and wildlife corridors, into the design; and (5) incorporating public facilities or infrastructure, or provisions therefor, reasonably related to the proposed subdivision so the proposed subdivision will not negatively impact the levels of service of County services and facilities.

14. Necessary services, including police and fire protection, recreation, utilities, open space and transportation system, are or will be available to serve the proposed subdivision.
15. The subdivision provides evidence to show that the proposed methods for fire protection comply with Chapter 6 of the Land Development Code.
16. The proposed subdivision meets other applicable sections of Chapters 6 and 8 of the Land Development Code.
17. All data, surveys, analyses, studies, plans, and designs as are required by the State of Colorado and El Paso County have been submitted, reviewed, and found to meet all sound planning and engineering requirements of the El Paso County Subdivision Regulations.
18. The proposed subdivision of land conforms to the El Paso County Zoning Resolutions.
19. For the above-stated and other reasons, the proposed subdivision is in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of El Paso County.

NOW, THEREFORE, BE IT RESOLVED that the El Paso County Board of County Commissioners of El Paso County, Colorado, hereby approves the request by PRI2, LLC, for a Preliminary Plan of the Flying Horse North Subdivision, which includes approval of that Escrow Agreement/Groundwater Production Lease, attached hereto at **Exhibit B**, for property located within the unincorporated area of the County, more particularly described in **Exhibit A**, which is attached hereto and incorporated by reference.

BE IT FURTHER RESOLVED that the following conditions, notations, and waivers shall be placed upon this approval:

## **CONDITIONS**

1. Applicable traffic, drainage and bridge fees shall be paid with each final plat.
2. Applicable school and park fees shall be paid with each final plat.
3. Developer shall comply with federal and state laws, regulations, ordinances, review and permit requirements, and other agency requirements, if any, of applicable agencies including, but not limited to, the Colorado Division of Wildlife, Colorado Department of Transportation, U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service regarding the Endangered Species Act, particularly as it relates to the Preble's Meadow Jumping Mouse as a listed species.
4. The Subdivider(s) agrees on behalf of him/herself and any developer or builder successors and assigns that Subdivider and/or said successors and assigns shall be required to pay traffic impact fees in accordance with the Countywide Transportation Improvement Fee Resolution (Resolution 12-382), as amended, at or prior to the time of building permit submittals. The fee obligation, if not paid at final plat recording, shall be documented on all sales documents and on plat notes to ensure that a title search would find the fee obligation before sale of the property.
5. The County Attorney's Conditions of Compliance shall be adhered to at the appropriate time. Specifically, but without limitation, the following conditions shall be adhered to:
  - a. Applicant shall obtain the Water Court's approval of its pending plan for augmentation to be able to use not nontributary groundwater from the State Board of Land Commissioners Decree within two years of recording the first final plat for the subdivision.
  - b. Applicant shall provide written evidence to both Planning and Community Development Department and the County Attorney's Office prior to recording the first final plat for the subdivision that the SEO is satisfied that its additional requirements have been met.
6. The use of the open space shall be restricted by recording a use restriction covenant that shall be referenced by a plat note on all final plat filings which include open space.
7. If the water pumps located within the jurisdictional dam are removed, or are otherwise rendered inoperable, the HOA shall install an emergency drawdown pipe.

The construction plans for the emergency drawdown pipe and all necessary associated improvements shall be reviewed for conformance with the Engineering Criteria Manual and approved by the County Engineer prior to construction and/or installation. The emergency drawdown pipe shall be installed within 60 days from the date of removal of the pump or the pump being rendered inoperable.

8. All remaining technical issues shall be resolved and all engineering documents shall be approved by the County Engineer prior to the plat recordation.
9. Any future revisions to the landscaping plan may be reviewed and approved administratively by the PCD Director.

#### **NOTATION**

1. Approval of the Preliminary Plan will expire after twenty-four (24) months unless a final plat has been approved and recorded or a time extension has been granted.

#### **WAIVERS**

1. A waiver is being requested from Section 8.4.7.B.3.c.(i) of the Land Development Code requiring all water supplying the proposed subdivision to be owned by the applicant, or that they have the right to obtain the water rights. A portion of the water supply for the proposed subdivision is not owned by the applicant but is instead leased by the applicant from the State Board of Land Commissioners.

Justification for this requested waiver has been included in the applicant's letter of intent (attached) and associated water supply documents.

2. A waiver is being requested from Section 6.2.2, Table 6-1, Roadway Landscaping Requirement by Roadway Classification, of the Land Development Code. Table 6-1 would require a 20 foot landscape area with one tree per 25 feet. The waiver applies to plantings along Stagecoach Road, Black Forest Road, and Hodgen Road due to there being no way to water the trees until homes are constructed.

The applicant has provided the following justification:

"These three street frontages are in a Prairie environment where native grasses are the predominant vegetation. The applicant has planted trees along Stagecoach Road within the prairie. Homeowners will plant additional trees as they develop their lots per covenants and landscape design guidelines. Since there will be no way to irrigate plantings until

homes are occupied applicant does not propose plantings for which no water will be available."

Staff also notes that much of the Flying Horse North development is heavily treed.

AND BE IT FURTHER RESOLVED that the record and recommendations of the El Paso County Planning Commission be adopted.

DONE THIS 4<sup>th</sup> day of September, 2018, at Colorado Springs, Colorado.

BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO

By:   
President



## **EXHIBIT A**

### **LEGAL DESCRIPTION**

TWO (2) PARCELS OF LAND BEING ALL OF SECTION 36 AND A PORTION OF SECTION 34 AND SECTION 35, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, AND A PORTION OF SECTIONS 30 AND 31, TOWNSHIP 11 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, ALL IN EL PASO COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING MONUMENTED AT THE WEST END BY A 2" ALUMINUM CAP STAMPED "24964" AND THE EAST END BY A 2 1/2" ALUMINUM CAP STAMPED "CCES LLC PLS 30118", IS ASSUMED TO BEAR S89°51'39"E, A DISTANCE OF 1316.82 FEET.

#### **PARCEL 1**

COMMENCING AT THE NORTHWEST CORNER OF SECTION 36, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, SAID POINT BEING THE POINT OF BEGINNING;

THENCE N89°06'04"E, ON THE SOUTHERLY BOUNDARY OF HIGH FOREST RANCH FILING NO. 2, RECORDED UNDER RECEPTION NO. 202134767, RECORDS OF EL PASO COUNTY, COLORADO AND THE NORTH LINE OF NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, A DISTANCE OF 1332.12 FEET TO THE SOUTHEASTERLY CORNER OF SAID HIGH FOREST RANCH FILING NO. 2, SAID POINT BEING THE WEST SIXTEENTH CORNER OF SAID SECTION 36;  
THENCE N89°07'00"E, ON THE NORTH LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 36, A DISTANCE OF 1331.92 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 36;  
THENCE N89°01'18"E, ON THE NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 36, A DISTANCE OF 1331.92 FEET TO THE EAST SIXTEENTH CORNER OF SAID SECTION 36;  
THENCE N89°03'58"E, ON THE NORTH LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 36, A DISTANCE OF 1332.09 FEET TO THE NORTHEAST CORNER OF SAID SECTION 36;  
THENCE N89°06'20"E, ON THE NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 11 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, A DISTANCE OF 1474.13 FEET TO THE WEST SIXTEENTH CORNER OF SAID SECTION 31;  
THENCE N00°08'36"E, ON THE WEST LINE OF THE SOUTHEAST QUARTER OF

THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 11 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, A DISTANCE OF 1325.48 FEET TO THE SOUTHWEST SIXTEENTH CORNER OF SAID SECTION 30;

THENCE N89°03'20"E, ON THE NORTH LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30, A DISTANCE OF 920.27 FEET TO THE SOUTHWEST CORNER OF THE EASTERLY TWELVE (12) ACRES OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 30;

THENCE N00°08'15"E, ON THE WEST LINE OF SAID EASTERLY (12) TWELVE ACRES OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30, A DISTANCE OF 1326.26 FEET TO THE NORTHWESTERLY CORNER OF SAID EAST (12) TWELVE ACRES OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30, SAID POINT BEING ON THE NORTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30 (HELD MONUMENTS DEPICTED ON LAND SURVEY PLAT DEPOSITED UNDER RECEPTION NO. 91000488 BY BERGE-BREWER & ASSOCIATES, INC ON JULY 30, 1991);

THENCE N89°01'31"E, ON THE NORTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30, A DISTANCE OF 399.42 FEET TO THE CENTER QUARTER OF SAID SECTION 30;

THENCE N00°08'48"E, ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 30, A DISTANCE OF 2604.74 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF A PARCEL OF LAND DESCRIBED IN A DOCUMENT RECORDED UNDER RECEPTION NO. 210081316;

THENCE ON SAID SOUTHERLY BOUNDARY, THE FOLLOWING (3) THREE COURSES:

1. N88°58'45"E, A DISTANCE OF 2270.00 FEET;
2. S71°21'27"E, A DISTANCE OF 29.72 FEET;
3. N88°58'45"E, A DISTANCE OF 299.96 FEET TO A POINT ON A LINE 30.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID NORTHEAST QUARTER OF SECTION 30;

THENCE S00°00'48"W, ON SAID PARALLEL LINE, A DISTANCE OF 2595.64 FEET TO A POINT ON A LINE 30.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE SOUTHEAST QUARTER SAID SECTION 30;

THENCE S00°00'53"W, ON SAID PARALLEL LINE, A DISTANCE OF 2656.67 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 30;

THENCE S89°04'37"W, ON SAID SOUTH LINE, A DISTANCE OF 1290.01 FEET TO THE EAST SIXTEENTH CORNER OF SAID SECTION 31;

THENCE S00°00'11"E, ON THE EAST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 31, A DISTANCE OF 1326.67 FEET TO THE NORTHEAST SIXTEENTH CORNER OF SAID SECTION 31;

THENCE N89°08'21"E, ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 31, A DISTANCE OF



1289.57 FEET TO A POINT ON A LINE 30.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 31;  
THENCE S00°00'54"W, ON SAID PARALLEL LINE, A DISTANCE OF 1328.09 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 31, SAID POINT BEING ON THE NORTHERLY BOUNDARY OF COUNTRY VIEW ESTATES, RECORDED UNDER RECEPTION NO. 99011204;  
THENCE S89°11'15"W, ON SAID SOUTH LINE AND THE NORTHERLY BOUNDARY OF SAID COUNTRY VIEW ESTATES AND ITS WESTERLY EXTENSION, A DISTANCE OF 2608.28 FEET TO THE CENTER QUARTER CORNER OF SAID SECTION 31;  
THENCE S89°11'00"W, ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 31, A DISTANCE OF 1320.84 FEET TO THE CENTER-WEST SIXTEENTH CORNER OF SAID SECTION 31;  
THENCE S00°00'34"W, ON THE EAST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 31, A DISTANCE OF 1329.16 FEET TO THE SOUTHWEST SIXTEENTH CORNER OF SAID SECTION 31, SAID POINT BEING ON THE NORTHERLY BOUNDARY OF PALMER DIVIDE, RECORDED UNDER RECEPTION NO. 205084216;  
THENCE S89°24'17"W, ON THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 31 AND SAID NORTHERLY BOUNDARY OF PALMER DIVIDE AND ITS WESTERLY EXTENSION, A DISTANCE OF 1440.81 FEET TO THE SOUTH SIXTEENTH CORNER OF SAID SECTION 31;  
THENCE S00°28'30"E, ON THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 36, A DISTANCE OF 1323.57 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 36, SAID POINT ALSO BEING THE NORTHEASTERLY CORNER OF EDMONDS SUBDIVISION, RECORDED IN PLAT BOOK H-3 AT PAGE 60;  
THENCE S89°20'59"W, ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 36, THE NORTHERLY BOUNDARY OF SAID EDMONDS SUBDIVISION AND THE NORTHERLY BOUNDARY OF CATHEDRAL PINES SUBDIVISION FILING NO. 2, RECORDED UNDER RECEPTION NO. 205164426, A DISTANCE OF 2674.51 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 36;  
THENCE S89°20'35"W, ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 30, CONTINUING ON SAID NORTHERLY BOUNDARY OF CATHEDRAL PINES SUBDIVISION FILING NO. 2 AND ON THE NORTHERLY BOUNDARY OF CATHEDRAL PINES SUBDIVISION FILING NO. 3, RECORDED UNDER RECEPTION NO. 206712390, A DISTANCE OF 2674.51 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 36;  
THENCE N00°14'34"W, ON THE WEST LINE OF SAID SECTION 36, A DISTANCE OF 5269.38 FEET TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 1346.825 ACRES.

## PARCEL 2

COMMENCING AT THE NORTHEAST CORNER OF SECTION 35, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, SAID POINT BEING THE POINT OF BEGINNING

THENCE S00°14'34"E, ON THE EAST LINE OF SAID SECTION 35, A DISTANCE OF 523.85 FEET TO A POINT ON CURVE;

THENCE ON THE ARC OF A CURVE TO THE LEFT WHOSE CENTER BEARS S33°01'51"W, HAVING A DELTA OF 38°24'48", A RADIUS OF 535.00 FEET AND A DISTANCE OF 358.69 FEET TO A POINT OF TANGENT;

THENCE S84°37'03"W, A DISTANCE OF 175.44 FEET TO A POINT OF CURVE;

THENCE ON THE ARC OF A CURVE TO THE RIGHT HAVING A DELTA OF 11°13'59", A RADIUS OF 615.00 FEET AND A DISTANCE OF 120.57 FEET TO A POINT OF TANGENT;

THENCE N84°08'58"W, A DISTANCE OF 684.98 FEET TO A POINT OF CURVE;

THENCE ON THE ARC OF A CURVE TO THE RIGHT HAVING A DELTA OF 25°13'51", A RADIUS OF 615.00 FEET AND A DISTANCE OF 270.82 FEET TO A POINT OF TANGENT;

THENCE N58°55'07"W, A DISTANCE OF 166.51 FEET TO A POINT OF CURVE;

THENCE ON THE ARC OF A CURVE TO THE LEFT HAVING A DELTA OF 31°18'40", A RADIUS OF 535.00 FEET AND A DISTANCE OF 292.37 FEET TO A POINT OF TANGENT;

THENCE S89°46'13"W, A DISTANCE OF 1674.58 FEET TO A POINT OF CURVE;

THENCE ON THE ARC OF A CURVE TO THE LEFT HAVING A DELTA OF 24°52'43", A RADIUS OF 1960.00 FEET AND A DISTANCE OF 851.06 FEET TO A POINT OF TANGENT;

THENCE S64°53'30"W, A DISTANCE OF 459.47 FEET TO A POINT OF CURVE;

THENCE ON THE ARC OF A CURVE TO THE RIGHT HAVING A DELTA OF 21°22'27", A RADIUS OF 1040.00 FEET AND A DISTANCE OF 387.97 FEET TO A POINT OF TANGENT;

THENCE S86°15'57"W, A DISTANCE OF 692.41 FEET TO A POINT OF CURVE;

THENCE ON THE ARC OF A CURVE TO THE LEFT HAVING A DELTA OF 51°05'38", A RADIUS OF 535.00 FEET AND A DISTANCE OF 477.09 FEET TO A POINT OF TANGENT;

THENCE S35°10'18"W, A DISTANCE OF 291.93 FEET TO A POINT OF CURVE;

THENCE ON THE ARC OF A CURVE TO THE RIGHT HAVING A DELTA OF 53°07'49", A RADIUS OF 615.00 FEET AND A DISTANCE OF 570.29 FEET TO A POINT OF TANGENT;

THENCE S88°18'07"W, A DISTANCE OF 160.75 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF STATE HIGHWAY 83;

THENCE N01°41'53"W, ON SAID EASTERLY RIGHT OF WAY LINE A DISTANCE OF 90.00 FEET TO THE SOUTHWESTERLY CORNER OF LOT 1 AS PLATTED IN WESCOTT FIRE STATION NO. 3, RECORDED UNDER RECEPTION NO. 212713192 RECORDS OF EL PASO COUNTY, COLORADO;

THENCE ON THE SOUTHERLY, EASTERLY AND NORTHERLY BOUNDARY OF SAID

LOT 1 THE FOLLOWING (5) FIVE COURSES;

1. N88°18'07"E, A DISTANCE OF 165.75 FEET TO A POINT OF CURVE;
2. ON THE ARC OF A CURVE TO THE LEFT HAVING A DELTA OF 54°10'43", A RADIUS OF 460.00 FEET AND A DISTANCE OF 434.97 FEET TO A POINT OF REVERSE CURVE;
3. ON THE ARC OF A CURVE TO THE RIGHT HAVING A DELTA OF 15°19'05", A RADIUS OF 560.00 FEET AND A DISTANCE OF 149.72 FEET TO A POINT ON CURVE;
4. N38°00'00"W, A DISTANCE OF 141.67 FEET;
5. S88°20'00"W, A DISTANCE OF 587.56 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY OF SAID STATE HIGHWAY 83;

THENCE ON SAID EASTERLY RIGHT OF WAY THE FOLLOWING (3) THREE COURSES;

1. N01°41'53"W, A DISTANCE OF 446.49 FEET;
2. N00°02'53"W, A DISTANCE OF 245.49 FEET TO A POINT ON CURVE;
3. ON THE ARC OF A CURVE TO THE RIGHT WHOSE CENTER BEARS S87°06'46"E, HAVING A DELTA OF 07°31'38", A RADIUS OF 1380.65 FEET AND A DISTANCE OF 181.38 FEET TO A POINT ON CURVE, SAID POINT BEING THE SOUTHWESTERLY CORNER OF HIGH FOREST RANCH FILING NO. 1, RECORDED UNDER RECEPTION NO. 201036672, SAID POINT ALSO BEING ON THE NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO;

THENCE N89°54'54"E, ON THE SOUTHERLY BOUNDARY OF SAID HIGH FOREST RANCH FILING NO. 1, AND SAID NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, A DISTANCE OF 584.61 FEET TO THE EAST SIXTEENTH CORNER OF SAID SECTION 34;

THENCE S89°57'36"E, ON THE NORTH LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 34 AND CONTINUING ON SAID SOUTHERLY BOUNDARY OF HIGH FOREST RANCH FILING NO. 1, A DISTANCE OF 1319.30 FEET TO THE NORTHEAST CORNER OF SAID SECTION 34;

THENCE N89°46'13"E, CONTINUING ON SAID SOUTHERLY BOUNDARY OF HIGH FOREST RANCH FILING NO. 1 AND ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, A DISTANCE OF 2660.56 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 35;

THENCE N89°45'50"E, CONTINUING ON SAID SOUTHERLY BOUNDARY OF HIGH FOREST RANCH FILING NO. 1, ON THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 35 AND THE SOUTHERLY BOUNDARY OF HIGH FOREST RANCH FILING NO. 2, RECORDED UNDER RECEPTION NO. 202134767, A DISTANCE OF 2048.33 FEET;

THENCE ON SAID SOUTHERLY BOUNDARY OF HIGH FOREST RANCH FILING NO. 2, THE FOLLOWING (5) FIVE COURSES:

1. N44°21'15"E, A DISTANCE OF 120.12 FEET;
2. N27°42'44"E, A DISTANCE OF 30.37 FEET;
3. N83°51'56"E, A DISTANCE OF 62.76 FEET;
4. S79°32'21"E, A DISTANCE OF 69.45 FEET;
5. S46°40'23"E, A DISTANCE OF 153.82 FEET TO A POINT ON SAID NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 35;

THENCE N89°48'10"E, ON SAID SOUTHERLY BOUNDARY OF HIGH FOREST RANCH FILING NO. 2 AND SAID NORTH LINE OF THE NORTHEAST QUARTER OF SECTION 35, A DISTANCE OF 270.47 FEET TO THE POINT OF BEGINNING;

CONTAINING A CALCULATED AREA OF 70.926 ACRES.

CONTAINING A TOTAL CALCULATED AREA OF 1,417.751

## EXHIBIT B

AFTER RECORDING, RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### ESCROW AGREEMENT / GROUNDWATER PRODUCTION LEASE

This ESCROW AGREEMENT / GROUNDWATER PRODUCTION LEASE ("Agreement"), dated effective as of \_\_\_\_\_, (the "Effective Date") is made by and between THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO ("Board" or "County"), PRI #2 LLC, a Colorado limited liability company (referred to herein as the "Developer"), FLYING HORSE NORTH HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation ("HOA" or "Homeowners Association" or "Association"), and FLYING HORSE COUNTRY CLUB, LLC, a Colorado limited liability company ("Club" or "Country Club"). The above may occasionally be referred to herein singularly as "Party" or collectively as the "Parties."

#### RECITALS

A. WHEREAS, Developer is the owner and/or developer of certain real estate in El Paso County, Colorado, which Property is legally described on Exhibit A attached hereto and incorporated herein by this reference (the "Property" or "Subdivision");

B. WHEREAS, Developer desires to plat and develop on the Property a subdivision to be known as FLYING HORSE NORTH SUBDIVISION, FILINGS NO. 1 AND NO. 2 (Filings No. 1 and No. 2 shall be collectively referred to herein as the "Subdivision"); and

C. WHEREAS, it is in the interest of public health, safety, and welfare for the County to condition approval of this Subdivision on the Developer escrowing funds as an assurance for the dependability requirement for the water supply for the Subdivision to guarantee that certain lease payments will be made as more particularly set forth in this Agreement; and

D. WHEREAS, Chapter 8, Section 8.4 of the El Paso County Land Development Code, as periodically amended, promulgated pursuant to Section 30-28-133(1), Colorado Revised Statutes, 2000, as amended, requires the County to condition approval of all subdivisions on a developer's provision of a sufficient water supply for subdivisions in accordance with the water sufficiency requirement of C.R.S. § 30-28-133(3)(d); and

E. WHEREAS, the Developer is the current Lessee under that certain State of Colorado / State Board of Land Commissioners / Groundwater Production Lease NO. OT-109328, dated November 6, 2014, and recorded at Reception No. 214120413 of the records of the El Paso County Clerk and Recorder's Office (the "Groundwater Lease")(a copy is attached hereto at Exhibit B and incorporated herein by this reference) between the State of Colorado acting through its State Board of Land Commissioners ("SBLC")(the "Lessor") and the David Wismer and Mary Anne Wismer Trust ("Original Lessee").

The Groundwater Lease was assigned by the Original Lessee to Developer pursuant to that certain Lease Assignment, App. No. 3421 approved by the State of Colorado on June 14, 2017 (the "Groundwater Lease Assignment")(copies of both are attached hereto at Exhibit C and incorporated herein by this reference). The Groundwater Lease and the Groundwater Lease Assignment are jointly referred to in this Agreement as the "State Lease;" and

F. WHEREAS, pursuant to the State Lease, Developer is now responsible to make the annual payments required including both a minimum annual payment of \$21,050.00 (Water Opportunity Charge) and a charge of \$1.00 per 1,000 gallons, or \$325.85 per acre foot, for Leased Water produced (Volumetric Charge), which Volumetric Charge is subject to periodic increases beginning in 2024. Pursuant to provisions in the State Lease, if the Developer defaults on these payment requirements or any other conditions in the State Lease, the Developer shall peaceably surrender possession of the Leased Water to the SBLC, the water and water rights revert to the SBLC, which then has the right to sell, exchange, or otherwise dispose of all of any of the Leased Water. This creates a dependability issue for the proposed water supply; and

G. WHEREAS, the proposed water supply for the Subdivision includes using water from all aquifers adjudicated in Case No. 04CW098, Water Division 2, which are the subject of the State Lease. Dawson aquifer water will be used for primary on-lot supply, Denver aquifer and Arapahoe aquifer water will be used for the Golf Course, and Laramie-Fox Hills aquifer water will be used in the augmentation plan to replace post-pumping depletions from the use of groundwater from the Dawson aquifer. Therefore, in order for the proposed supply to continue to be viable during the life of the State Lease, and thus have a sufficient dependability, the annual payments for both the Water Opportunity Charge and the Volumetric Charge must be made by the Developer; and

H. WHEREAS, the purpose of this Agreement is to create a mechanism whereby sufficient funds will be available in an escrow account to be used by the County in order to make those annual payments if Developer, the HOA, or the Country Club fail to do so, and that those escrow funds will be replenished if any portion of them are used in any given year to make the annual payments should Developer fail to do so; and

I. WHEREAS, the intent of this Agreement is to enable the Board of County Commissioners to be able to make either a finding of conditional sufficiency or full sufficiency for the proposed water supply regarding sufficient dependability; and

J. WHEREAS, the Developer and the HOA have entered into a contract whereby Developer will sell to the Association certain water made available to Developer pursuant to the State Lease (the "Association Water Sales Agreement"); and

K. WHEREAS, the Developer and the Country Club have also entered into a contract whereby Developer will sell to the Country Club certain water made available to Developer pursuant to the State Lease (the "Country Club Water Sales Agreement"); and

L. WHEREAS, under both the **Association Water Sales Agreement** and the **Country Club Water Sales Agreement**, the Developer promises to make both of the annual payments under the State Lease: "PRI #2 shall keep in full force and effect the State Land Board Lease by complying with all terms and conditions therein, including, without limitation, making all payments required by the State Land Board Lease, for the entire term, through February 27, 2048." Both Water Sales Agreements further recite that if Developer fails to comply with the State Lease, the HOA and Country Club, respectively, may require Developer to comply, including pursuing litigation and making the payment with the right of reimbursement; and

M. WHEREAS, the County, in order to protect the public health, safety, and welfare, requires the Developer to establish and maintain an escrow of certain funds with an appropriate financial institution or title company agreed to by the County and Developer as an assurance that the Developer will make the required payments under the State Lease so that the Developer will have a dependable supply of water available to sell to the Association and the Country Club for the Subdivision pursuant to the respective Association and the Country Club Water Sales Agreements; and

N. WHEREAS, the County will condition approval of this Subdivision on the Board of County Commissioners' approval of this Agreement and performance by Developer, the HOA, and the Country Club of the obligations contained in this Agreement.

#### AGREEMENT

NOW, THEREFORE, in consideration of the mutual Promises contained herein, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals:** The Parties incorporate the Recitals above into this Agreement.
2. **Developer's Obligations:** Developer agrees that it is Developer's obligation to establish and maintain the Flying Horse Escrow ("**Escrow**") (as defined in Paragraph 6.a. of this Agreement). It is Developer's responsibility to make sure the Escrow is fully funded each year of the Term so that the November 6 annual payments (both Water Opportunity Charge and Volumetric Charge) under the State Lease are made, and made on time. It is Developer's responsibility to notify in writing the Executive Director, Planning and Community Development Department, with a copy to the County Attorney's Office, no later than September 1 of each year during the Term, that the Escrow is fully funded at the \$200,000.00 balance, and that the Developer will make the required annual payments under the State Lease by the November 6 deadline. It is the Developer's additional responsibility to execute and deliver to the Executive Director, Planning and Community Development Department, with a copy to the County Attorney's Office, no later than September 1 of each year during the Term, a statement acknowledging the amount of Funds then in the Escrow and, that to the Developer's knowledge, no currently due and owing payments are outstanding under the State Lease, or specifying any outstanding payments due and owing under the State Lease as of a date certain if such is the situation. The Developer's failure to deliver either the notice of intent to make the annual payments or the certificate of the Escrow status by the September 1 deadline shall be conclusive evidence that the Developer does not intend to make the annual payments, and therefore, the County shall have the option to exercise its rights under Para. 3.

For the Term of this Agreement (as defined in Paragraph 5), this Agreement, and all of the obligations set forth in this Agreement regarding the Escrow, shall be binding upon the Developer and its successors and assigns, and shall also be binding upon the HOA and the Country Club to the extent of

being responsible for making the annual payments under the State Lease, pursuant to their respective Water Sales Agreements with Developer, if the Developer fails to make such payments. In other words, if Developer does not make or intend to make the annual payments, the County shall have the right, but not the obligation, to seek remedy for payment from the HOA and Country Club first before using Disbursed Funds from the Escrow to make sure the annual payments are made. In the event the County has to use Disbursed Funds pursuant to the terms of Paragraph 3 of this Agreement, Developer or its successors or assigns shall be obligated, within thirty (30) days following receipt of written notice that the County has used Disbursed Funds, to replenish the Funds in the Escrow so that the total Funds in the Escrow shall be the amount provided for in Paragraph 6.b. of this Agreement ("**Replenish**").

3. **County's Rights and Obligations:** If Developer fails to provide either the notice of intent or the statement of Escrow status by September 1 of each year during the Term, or if at any other time the County determines, in the reasonable exercise of its discretion, that any payment required from Developer, as Lessee, under the State Lease will not be paid by the November 6 deadline or remains unpaid following all applicable notice and cure periods provided for in the State Lease, the County shall give reasonable written notice to the Developer, the HOA, and the Country Club that a payment is owing and unpaid under the State Lease. The notice shall provide a date certain by which the Developer, the HOA, or the Country Club shall be required to make the payment owing under the State Lease, which date shall not be less than forty-eight (48) hours following the delivery of such notice to Developer, the HOA, and the Country Club. Should the Developer, the HOA, or the Country Club fail to make the outstanding payment set forth in the notice as of the specified date certain and as required under the State Lease, the County may make the outstanding payment to meet the annual payment requirement under the State Lease as set forth in the notice by utilizing all or a portion of the Funds in the Escrow ("**Disbursed Funds**"). Following the County having made the payment from the Escrow with Disbursed Funds, the Developer shall be obligated to Replenish the Escrow as provided for in Paragraph 2 of this Agreement. This Agreement does not expressly impose on the County a duty to contact the State or otherwise insure timely payments under the State Lease.

4. **Reimbursement of County's Costs:** The Developer agrees and covenants for itself and its successors and assigns, that, during the Term, it will reimburse the County for its reasonable costs and expenses, including reasonable attorney fees, incurred in enforcing the terms of this Agreement, including but not limited to, the process of making annual or outstanding payments under the State Lease following the notice and cure periods described in Paragraph 3 of this Agreement.

5. **Term:** The term of this Agreement (the "**Term**") shall commence on the Effective Date and shall continue until the expiration or earlier termination of the State Lease, which expiration date is February 27, 2048. On or before sixty (60) days following the expiration of the Term, pursuant to written instructions mutually agreeable between the Developer and the County, the balance of Funds in the Escrow will be disbursed to Developer after all costs to the County, and to the extent applicable, to the HOA and the Country Club, have been reimbursed.

6. **Definitions:**

a. **Flying Horse Escrow.** The term "**Flying Horse Escrow**" or "**Escrow**" shall mean the account to be established by the Developer pursuant to Paragraph 2 of this Agreement to hold Funds in a segregated, interest bearing account during the Term (defined below) pursuant to the terms and conditions set forth in this Agreement.



b. Funds. The term "Funds" shall mean the funds held in the Escrow pursuant to the terms described herein, including without limitation, all interest earned thereon. On or before five (5) business days following the Effective Date, Developer will deliver Two Hundred Thousand and 00/100 Dollars (\$200,000.00) of Funds to the financial institution or title company mutually agreed upon by the Developer and the County to be held in the Escrow. The Parties agree that the County is the only Party that is authorized to use the Funds to make the annual payments under the State Lease pursuant to Paragraph 3 of this Agreement.

c. Actual Costs and Expenses. The term "actual costs and expenses" shall be liberally construed in favor of the County, and shall include, but shall not be limited to, labor costs and attorney's fees regardless of whether the County uses its own personnel to correct the matter. In the event the County initiates any litigation or engages the services of legal counsel in order to enforce the provisions arising herein, the County shall be entitled to its reasonable attorney fees and costs as part of actual costs and expenses, regardless of whether the County contracts with outside legal counsel or utilizes in-house legal counsel for the same.

7. Recording: The Parties agree that this Agreement shall be recorded in the public records of the El Paso County Clerk and Recorder's Office.

8. Contingencies of Subdivision Approval: Developer's execution of this Agreement is a condition of Subdivision approval.

9. Condition Precedent: As a condition precedent to the Board of County Commissioners hearing the Preliminary Plan and Final Plat, Filing No. 1, of the Subdivision, the Developer, the HOA, and the Country Club shall execute this Agreement and provide said executed copy to the Executive Director, Planning and Community Development Department, with a copy to the County Attorney's Office, no later than ten (10) days prior to the Board of County Commissioners hearing. This Agreement shall not become binding on the Parties unless and until it is approved by the Board of County Commissioners in an open and public meeting. In the event that the Board does not approve both this Agreement and the Preliminary Plan and Final Plat, Filing No. 1, of the Subdivision, then this Agreement and any Party's signature hereto shall be null, void, and without any force or effect.

10. No Assurance of County Approvals: The Parties understand and agree that by executing this Agreement, there is no assurance that the Board of County Commissioners will approve the Preliminary Plan and Final Plat, Filing No. 1, of the Subdivision, and there are no representations or promises or assurances made or implied herein by the County that by executing this Agreement the County will approve other zoning and/or final plats for the Flying Horse North Subdivision.

11. Notice: Any notice required to be given hereunder to El Paso County shall be effective when sent provided that any such notice is deposited in the United States mail, postage prepaid, certified mail, return receipt requested to the Executive Director, El Paso County Planning and Community Development Department, 2880 International Circle, Suite 110, Colorado Springs, CO 80910, with a copy to the County Attorney, El Paso County Attorney's Office, 200 South Cascade Avenue, Suite 150, Colorado Springs, CO 80903. To the extent the El Paso County Planning and Community Development Department may from time to time change its address, any person or entity attempting to send notice to the County is charged with the duty to obtain the new address before sending notice pursuant to the method described in the sentence immediately above. Any notice required to be given to the Developer shall be in writing and shall be addressed as follows or as Developer may subsequently designate by written notice

to the County. All notices shall be transmitted either by personal delivery, reliable overnight courier (such as Federal Express or UPS), or through the facilities of the United States Post Office, postage prepaid, certified or registered mail, return receipt requested. Any such notice shall be effective upon delivery, if delivered by personal delivery or overnight courier, and seventy-two (72) hours after dispatch, if mailed in accordance with the above. Notices to the Developer shall be sent to the following addresses unless written notice of a change of address has been previously given pursuant hereto:

If to Developer: PRI #2 LLC  
c/o Elite Properties of America, Inc.  
6385 Corporate Drive, Suite 200  
Colorado Springs, Colorado 80919  
Phone: (719) 592-9333  
DStimple@classichomes.com

With copy to: Caroleen F. Jolivet, Esq.  
Mulliken Weiner Berg & Jolivet P.C.  
102 South Tejon Street, Suite 900  
Colorado Springs, Colorado 80903  
Phone: (719) 635-8750  
Jolivet@mullikenlaw.com

12. **Indemnification and Hold Harmless:** To the extent authorized by law, Developer agrees, for itself and its successors, that it will indemnify, defend, and hold the County harmless from any and all loss, costs, damage, injury, liability, claim, lien, demand, action, and causes of action whatsoever, whether at law or in equity, arising from or related to Developer's negligent or intentional acts, errors or omissions, or the negligent or intentional acts, errors, or omissions of its agents, officers, servants, or employees in or related to the State Lease; however, the obligation and liability of the Developer hereunder shall only continue during the Term. Nothing in this Paragraph, except as expressly provided below, shall be deemed to waive or otherwise limit the defense available to the County pursuant to the Colorado Governmental Immunity Act, Sections 24-10-101, *et. seq.* C.R.S., 2000, as amended, or as otherwise provided by law. .

13. **Severability:** In the event any Court of competent jurisdiction declares any part of this Agreement to be unenforceable, such declaration shall not affect the enforceability of the remaining parts of this Agreement.

14. **Third Parties:** This Agreement does not and shall not be deemed to confer upon or grant to any third party any right to claim damages or to bring any lawsuit, action, or other proceeding against either the County, the Developer, the HOA, or the Country Club because of any breach hereof or because of any terms, covenants, agreements, or conditions contained herein.

15. **Applicable Law and Venue:** The laws, rules, and regulations of the State of Colorado and El Paso County shall be applicable in the enforcement, interpretation, and execution of this Agreement, except that Federal law may be applicable regarding solid or hazardous wastes. Exclusive venue shall be in the El Paso County District Court.

16. **Remedies:** The Parties hereby agree that they may pursue any and all remedies available to them at law or in equity. The Parties further agree and acknowledge that this Agreement may be enforced at law or in equity. In addition to any other available remedies, in the event of a breach of this

Agreement, any Party may request a court of competent jurisdiction to enter a writ of mandamus to compel the breaching Party to perform under this Agreement, and any Party may seek from a court of competent jurisdiction temporary and/or permanent restraining orders, or orders for specific performance, to compel the other to perform in accordance with the obligations set forth in this Agreement, upon proof of entitlement to such relief in accord with the standards of applicable law. Any costs incurred by the County in enforcing the terms of the this Agreement against Developer, its successors or assigns, the HOA or the Country Club including, without limitation, court costs, shall be borne by Developer, its successors and assigns, the HOA, or the Country Club.

17. Amendment: This Agreement may be amended by mutual agreement of the Parties only if the amendment is in writing, signed by the Developer, the HOA, and the Country Club, and is approved by the Board of County Commissioners in an open and public meeting.

18. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages shall all be attached to a single original instrument.

*[Signature Page Follows]*

[Signature Pages – Escrow Agreement / Groundwater Production Lease]

IN WITNESS WHEREOF, the Parties affix their signatures below.

Executed this 31<sup>st</sup> day of July, 2018, by:

**DEVELOPER:**

**PRI #2 LLC,**  
a Colorado limited liability company

By: Elite Properties of America, Inc.,  
a Colorado corporation, Manager

By: 

Name: Douglas Stimples

Title: CEO

STATE OF COLORADO )  
 ) SS:  
COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of July, 2018, by Douglas Stimples as CEO, of Elite Properties of America, Inc., a Colorado corporation, as Manager for PRI #2 LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 12-02-2021




Christine L. Wise  
Notary Public

Executed this 31<sup>st</sup> day of July, 2018, by:

**HOMEOWNERS ASSOCIATION:**

**Flying Horse North Homeowners Association,  
Inc.,  
a Colorado non-profit corporation**

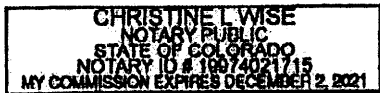
By:   
Name: Drew Blasick  
Title: President

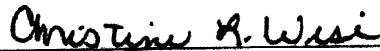
STATE OF COLORADO    )  
                                      ) SS:  
COUNTY OF EL PASO    )

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of July, 2018, by Drew Blasick, as President, of Flying Horse North Homeowners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 12-02-2021



  
Notary Public

Executed this 31<sup>st</sup> day of July, 2018, by:

**COUNTRY CLUB:**

**Flying Horse Country Club, LLC,**  
a Colorado limited liability company

*JB* By: *JB* **JBS Family Enterprises, LP, LLC,**  
a Colorado limited liability partnership, as Manager

By: \_\_\_\_\_

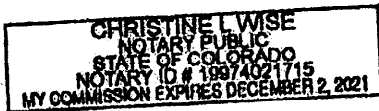
Name: Jeffrey B. Smith, General Partner

STATE OF COLORADO    )  
                                  ) SS:  
COUNTY OF EL PASO    )

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of July, 2018, by Jeffrey B. Smith as General Partner of **JBS Family Enterprises, LP, LLC**, a Colorado limited liability partnership, as Manager for **Flying Horse Country Club, LLC**, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 12-02-2021



Christine B. Wise  
Notary Public

Executed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by:

**BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk and Recorder

STATE OF COLORADO    )  
                                  ) SS:  
COUNTY OF EL PASO    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by  
\_\_\_\_\_, as \_\_\_\_\_ of the Board of County Commissioners of El  
Paso County, Colorado.

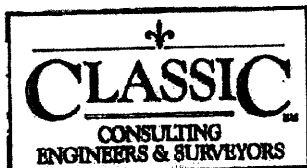
Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Approved as to Form:

\_\_\_\_\_  
Assistant County Attorney



619 N. Cascade Avenue, Suite 200  
Colorado Springs, Colorado 80903  
(719)785-0790 (719)785-0799(fax)

JOB NO. 1096.02-06  
MARCH 15, 2016  
PAGE 1 OF 4

#### LEGAL DESCRIPTION: PRELIMINARY PLAT

TWO (2) PARCELS OF LAND BEING ALL OF SECTION 38 AND A PORTION OF SECTION 34 AND SECTION 35, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, AND A PORTION OF SECTIONS 30 AND 31, TOWNSHIP 11 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, ALL IN EL PASO COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BASIS OF BEARINGS:** THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING MONUMENTED AT THE WEST END BY A 2" ALUMINUM CAP STAMPED "24984" AND THE EAST END BY A 2 1/2" ALUMINUM CAP STAMPED "CCES LLC PLS 30118", IS ASSUMED TO BEAR S89°51'39"E, A DISTANCE OF 1316.82 FEET.

#### PARCEL 1

COMMENCING AT THE NORTHWEST CORNER OF SECTION 38, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, SAID POINT BEING THE POINT OF BEGINNING;

THENCE N89°06'04"E, ON THE SOUTHERLY BOUNDARY OF HIGH FOREST RANCH FILING NO. 2, RECORDED UNDER RECEPTION NO. 202134787, RECORDS OF EL PASO COUNTY, COLORADO AND THE NORTH LINE OF NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 38, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, A DISTANCE OF 1332.12 FEET TO THE SOUTHEASTERLY CORNER OF SAID HIGH FOREST RANCH FILING NO. 2, SAID POINT BEING THE WEST SIXTEENTH CORNER OF SAID SECTION 38;  
THENCE N89°07'00"E, ON THE NORTH LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 38, A DISTANCE OF 1331.92 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 38;  
THENCE N89°01'18"E, ON THE NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 38, A DISTANCE OF 1331.92 FEET TO THE EAST SIXTEENTH CORNER OF SAID SECTION 38;  
THENCE N89°03'58"E, ON THE NORTH LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 38, A DISTANCE OF 1332.09 FEET TO THE NORTHEAST CORNER OF SAID SECTION 38;  
THENCE N89°06'20"E, ON THE NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 11 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, A DISTANCE OF 1474.13 FEET TO THE WEST SIXTEENTH CORNER OF SAID SECTION 31;  
THENCE N00°08'36"E, ON THE WEST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 11 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, A DISTANCE OF 1325.48 FEET TO THE SOUTHWEST SIXTEENTH CORNER OF SAID SECTION 30;  
THENCE N89°03'20"E, ON THE NORTH LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30, A DISTANCE OF 920.27 FEET TO THE SOUTHWEST CORNER OF THE EASTERLY TWELVE (12) ACRES OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 30;  
THENCE N00°08'15"E, ON THE WEST LINE OF SAID EASTERLY (12) TWELVE ACRES OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30, A DISTANCE OF 1326.26 FEET TO THE NORTHWESTERLY CORNER OF SAID EAST (12) TWELVE ACRES OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30, SAID POINT BEING ON THE NORTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30 (HELD MONUMENTS DEPICTED ON LAND SURVEY PLAT DEPOSITED UNDER RECEPTION NO. 91000488 BY BERGE-BREWER & ASSOCIATES, INC ON JULY 30, 1991);

EXHIBIT A



THENCE N89°01'31"E, ON THE NORTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30, A DISTANCE OF 399.42 FEET TO THE CENTER QUARTER OF SAID SECTION 30;

THENCE N00°08'48"E, ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 30, A DISTANCE OF 2804.74 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF A PARCEL OF LAND DESCRIBED IN A DOCUMENT RECORDED UNDER RECEPTION NO. 210081318;

THENCE ON SAID SOUTHERLY BOUNDARY, THE FOLLOWING (3) THREE COURSES:

1. N88°58'45"E, A DISTANCE OF 2270.00 FEET;
2. S71°21'27"E, A DISTANCE OF 29.72 FEET;
3. N88°58'45"E, A DISTANCE OF 299.98 FEET TO A POINT ON A LINE 30.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID NORTHEAST QUARTER OF SECTION 30;

THENCE S00°00'48"W, ON SAID PARALLEL LINE, A DISTANCE OF 2595.64 FEET TO A POINT ON A LINE 30.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE SOUTHEAST QUARTER SAID SECTION 30;

THENCE S00°00'53"W, ON SAID PARALLEL LINE, A DISTANCE OF 2656.67 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 30;

THENCE S89°04'37"W, ON SAID SOUTH LINE, A DISTANCE OF 1290.01 FEET TO THE EAST SIXTEENTH CORNER OF SAID SECTION 31;

THENCE S00°00'11"E, ON THE EAST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 31, A DISTANCE OF 1326.67 FEET TO THE NORTHEAST SIXTEENTH CORNER OF SAID SECTION 31;

THENCE N89°08'21"E, ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 31, A DISTANCE OF 1289.57 FEET TO A POINT ON A LINE 30.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 31;

THENCE S00°00'54"W, ON SAID PARALLEL LINE, A DISTANCE OF 1328.09 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 31, SAID POINT BEING ON THE NORTHERLY BOUNDARY OF COUNTRY VIEW ESTATES, RECORDED UNDER RECEPTION NO. 99011204;

THENCE S89°11'15"W, ON SAID SOUTH LINE AND THE NORTHERLY BOUNDARY OF SAID COUNTRY VIEW ESTATES AND ITS WESTERLY EXTENSION, A DISTANCE OF 2608.28 FEET TO THE CENTER QUARTER CORNER OF SAID SECTION 31;

THENCE S89°11'00"W, ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 31, A DISTANCE OF 1320.84 FEET TO THE CENTER-WEST SIXTEENTH CORNER OF SAID SECTION 31;

THENCE S00°00'34"W, ON THE EAST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 31, A DISTANCE OF 1329.18 FEET TO THE SOUTHWEST SIXTEENTH CORNER OF SAID SECTION 31, SAID POINT BEING ON THE NORTHERLY BOUNDARY OF PALMER DIVIDE, RECORDED UNDER RECEPTION NO. 205084216;

THENCE S89°24'17"W, ON THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 31 AND SAID NORTHERLY BOUNDARY OF PALMER DIVIDE AND ITS WESTERLY EXTENSION, A DISTANCE OF 1440.81 FEET TO THE SOUTH SIXTEENTH CORNER OF SAID SECTION 31;

THENCE S00°28'30"E, ON THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 36, A DISTANCE OF 1323.57 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 36, SAID POINT ALSO BEING THE NORTHEASTERLY CORNER OF EDMONDS SUBDIVISION, RECORDED IN PLAT BOOK H-3 AT PAGE 60;

THENCE S89°20'59"W, ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 36, THE NORTHERLY BOUNDARY OF SAID EDMONDS SUBDIVISION AND THE NORTHERLY BOUNDARY OF CATHEDRAL PINES SUBDIVISION FILING NO. 2, RECORDED UNDER RECEPTION NO. 205164426, A DISTANCE OF 2674.51 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 36;

THENCE S89°20'35"W, ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 30, CONTINUING ON SAID NORTHERLY BOUNDARY OF CATHEDRAL PINES SUBDIVISION FILING NO. 2 AND ON THE NORTHERLY BOUNDARY OF CATHEDRAL PINES SUBDIVISION FILING NO. 3, RECORDED UNDER RECEPTION NO. 206712390, A DISTANCE OF 2674.51 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 36;

THENCE N00°14'34"W, ON THE WEST LINE OF SAID SECTION 36, A DISTANCE OF 5269.38 FEET TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 1346.825 ACRES.

**PARCEL 2**

COMMENCING AT THE NORTHEAST CORNER OF SECTION 35, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, SAID POINT BEING THE POINT OF BEGINNING

THENCE S00°14'34"E, ON THE EAST LINE OF SAID SECTION 35, A DISTANCE OF 523.85 FEET TO A POINT ON CURVE;

THENCE ON THE ARC OF A CURVE TO THE LEFT WHOSE CENTER BEARS S33°01'51"W, HAVING A DELTA OF 38°24'48", A RADIUS OF 535.00 FEET AND A DISTANCE OF 358.69 FEET TO A POINT OF TANGENT;

THENCE S84°37'03"W, A DISTANCE OF 175.44 FEET TO A POINT OF CURVE;

THENCE ON THE ARC OF A CURVE TO THE RIGHT HAVING A DELTA OF 11°13'59", A RADIUS OF 615.00 FEET AND A DISTANCE OF 120.57 FEET TO A POINT OF TANGENT;

THENCE N84°08'58"W, A DISTANCE OF 684.98 FEET TO A POINT OF CURVE;

THENCE ON THE ARC OF A CURVE TO THE RIGHT HAVING A DELTA OF 25°13'51", A RADIUS OF 615.00 FEET AND A DISTANCE OF 270.82 FEET TO A POINT OF TANGENT;

THENCE N58°55'07"W, A DISTANCE OF 166.51 FEET TO A POINT OF CURVE;

THENCE ON THE ARC OF A CURVE TO THE LEFT HAVING A DELTA OF 31°18'40", A RADIUS OF 535.00 FEET AND A DISTANCE OF 282.37 FEET TO A POINT OF TANGENT;

THENCE S89°46'13"W, A DISTANCE OF 1674.58 FEET TO A POINT OF CURVE;

THENCE ON THE ARC OF A CURVE TO THE LEFT HAVING A DELTA OF 24°52'43", A RADIUS OF 1960.00 FEET AND A DISTANCE OF 851.06 FEET TO A POINT OF TANGENT;

THENCE S84°53'30"W, A DISTANCE OF 459.47 FEET TO A POINT OF CURVE;

THENCE ON THE ARC OF A CURVE TO THE RIGHT HAVING A DELTA OF 21°22'27", A RADIUS OF 1040.00 FEET AND A DISTANCE OF 387.97 FEET TO A POINT OF TANGENT;

THENCE S86°15'57"W, A DISTANCE OF 692.41 FEET TO A POINT OF CURVE;

THENCE ON THE ARC OF A CURVE TO THE LEFT HAVING A DELTA OF 51°05'38", A RADIUS OF 535.00 FEET AND A DISTANCE OF 477.08 FEET TO A POINT OF TANGENT;

THENCE S35°10'18"W, A DISTANCE OF 291.93 FEET TO A POINT OF CURVE;

THENCE ON THE ARC OF A CURVE TO THE RIGHT HAVING A DELTA OF 53°07'49", A RADIUS OF 615.00 FEET AND A DISTANCE OF 570.28 FEET TO A POINT OF TANGENT;

THENCE S88°18'07"W, A DISTANCE OF 160.75 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF STATE HIGHWAY 83;

THENCE N01°41'53"W, ON SAID EASTERLY RIGHT OF WAY LINE A DISTANCE OF 90.00 FEET TO THE SOUTHWESTERLY CORNER OF LOT 1 AS PLATTED IN WESCOTT FIRE STATION NO. 3, RECORDED UNDER RECEPTION NO. 212713192 RECORDS OF EL PASO COUNTY, COLORADO;

THENCE ON THE SOUTHERLY, EASTERLY AND NORTHERLY BOUNDARY OF SAID LOT 1 THE FOLLOWING (5) FIVE COURSES:

1. N88°18'07"E, A DISTANCE OF 165.75 FEET TO A POINT OF CURVE;
2. ON THE ARC OF A CURVE TO THE LEFT HAVING A DELTA OF 54°10'43", A RADIUS OF 460.00 FEET AND A DISTANCE OF 434.97 FEET TO A POINT OF REVERSE CURVE;
3. ON THE ARC OF A CURVE TO THE RIGHT HAVING A DELTA OF 15°19'05", A RADIUS OF 560.00 FEET AND A DISTANCE OF 149.72 FEET TO A POINT ON CURVE;
4. N38°00'00"W, A DISTANCE OF 141.67 FEET;
5. S88°20'00"W, A DISTANCE OF 587.56 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY OF SAID STATE HIGHWAY 83;

THENCE ON SAID EASTERLY RIGHT OF WAY THE FOLLOWING (3) THREE COURSES;

1. N01°41'53"W, A DISTANCE OF 446.49 FEET;
2. N00°02'53"W, A DISTANCE OF 245.49 FEET TO A POINT ON CURVE;
3. ON THE ARC OF A CURVE TO THE RIGHT WHOSE CENTER BEARS S87°06'46"E, HAVING A DELTA OF 07°31'38", A RADIUS OF 1380.66 FEET AND A DISTANCE OF 181.38 FEET TO A POINT ON CURVE, SAID POINT BEING THE SOUTHWESTERLY CORNER OF HIGH FOREST RANCH FILING NO. 1, RECORDED UNDER RECEPTION NO. 201036672, SAID POINT ALSO BEING ON THE NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO;

THENCE N89°54'54"E, ON THE SOUTHERLY BOUNDARY OF SAID HIGH FOREST RANCH FILING NO. 1, AND SAID NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, A DISTANCE OF 584.81 FEET TO THE EAST SIXTEENTH CORNER OF SAID SECTION 34;  
THENCE S88°57'36"E, ON THE NORTH LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 34 AND CONTINUING ON SAID SOUTHERLY BOUNDARY OF HIGH FOREST RANCH FILING NO. 1, A DISTANCE OF 1319.30 FEET TO THE NORTHEAST CORNER OF SAID SECTION 34;  
THENCE N89°48'13"E, CONTINUING ON SAID SOUTHERLY BOUNDARY OF HIGH FOREST RANCH FILING NO. 1 AND ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, A DISTANCE OF 2660.66 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 35;  
THENCE N89°48'50"E, CONTINUING ON SAID SOUTHERLY BOUNDARY OF HIGH FOREST RANCH FILING NO. 1, ON THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 36 AND THE SOUTHERLY BOUNDARY OF HIGH FOREST RANCH FILING NO. 2, RECORDED UNDER RECEPTION NO. 202134787, A DISTANCE OF 2048.33 FEET;

THENCE ON SAID SOUTHERLY BOUNDARY OF HIGH FOREST RANCH FILING NO. 2, THE FOLLOWING (5) FIVE COURSES:

1. N44°21'15"E, A DISTANCE OF 120.12 FEET;
2. N27°42'44"E, A DISTANCE OF 30.37 FEET;
3. N83°51'58"E, A DISTANCE OF 62.76 FEET;
4. S79°32'21"E, A DISTANCE OF 69.45 FEET;
5. S46°40'23"E, A DISTANCE OF 153.82 FEET TO A POINT ON SAID NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 35;



THENCE N89°48'10"E, ON SAID SOUTHERLY BOUNDARY OF HIGH FOREST RANCH FILING NO. 2 AND SAID NORTH LINE OF THE NORTHEAST QUARTER OF SECTION 35, A DISTANCE OF 270.47 FEET TO THE POINT OF BEGINNING;

CONTAINING A CALCULATED AREA OF 70.926 ACRES.

CONTAINING A TOTAL CALCULATED AREA OF 1,417.751

**LEGAL DESCRIPTION STATEMENT:**

I, DOUGLAS P. REINELT, A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE ABOVE LEGAL WAS PREPARED UNDER MY RESPONSIBLE CHARGE AND ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF, IS CORRECT.

  
  
DOUGLAS P. REINELT, PROFESSIONAL LAND SURVEYOR  
COLORADO P.L.S. NO. 15154  
FOR AND ON BEHALF OF MUSIC CONSULTING  
ENGINEERS AND SURVEYORS

MARCH 15, 2016  
DATE



STATE OF COLORADO  
STATE BOARD OF LAND COMMISSIONERS

Groundwater Production Lease No. QT-109328

WAYNE W. WILLIAMS  
12/31/2014 04:07:52 PM  
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Rec \$46.00 1 of 8 214120413

THIS LEASE (the "Lease") is entered into on November 6, 2014, (the "Effective Date") by and between the State of Colorado, acting through its State Board of Land Commissioners ("the Board" or the "Lessor"), whose address is 1127 Sherman Street, Room 300, Denver, CO 80203, and the David Wismer and Mary Anne Wismer Trust ("the "Wismer Trust" or "Lessee", whether one or more), whose address is 15555 State Highway 83, Colorado Springs, CO 80921.

WHEREAS, the Board granted Patent 8167 on February 27, 1998 transferring Section 36, Township 11 South, Range 66 West of the 6<sup>th</sup> P.M.; in El Paso County, Colorado, to David A. Wismer and Mary Anne Wismer in which the Board reserved all waters under the parcel for a term of fifty years (50 yrs) until February 27, 2048, as well as rights of ingress and egress for the purpose of exploring for water together with enough of the surface as may be necessary for the proper and convenient working of such water, and,

WHEREAS, on August 22, 2012, the Board and the Wismer Trust (together the "Parties") entered into a three-year agreement (the "Agreement") to allow the Wismer Trust to perform due diligence and planning to consider seeking a long term water lease and whereby the Board agreed not to lease the subject water rights to any third party during the term of the Agreement and the Parties may negotiate a water lease before the expiration date of the Agreement, and,

WHEREAS, pursuant to the terms of the Agreement, the Wismer Trust has requested that the Parties negotiate a groundwater lease for all decreed nontributary and not nontributary groundwater rights in the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying said Section 36,

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. DESCRIPTION OF THE LEASED WATER

The Board leases to the Wismer Trust, exclusively for the term and purposes indicated herein, all the not nontributary ("NNT") and nontributary ("NT") groundwater decreed in Case Number 2004-CW-098, Water Division 1 dated May 24, 2005, ("the Decree"), underlying Section 36, Township 11 South, Range 66 West of the 6<sup>th</sup> P.M. (the "Leased Water") from the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers in the approximate depths as indicated in the Decree. Development and use of the Leased Water is subject to the terms of the Lease and of the Decree, including the average annual amounts available for withdrawal from each aquifer as follows:

Dawson	515 acre-feet per year (NNT)
Denver	577 acre-feet per year (NNT)
Arapahoe	239 acre feet per year (NT)
Laramie-Fox Hills	182 acre feet per year (NT)

2. USE OF THE LEASED WATER

The use of the Leased Water shall be limited to and controlled by the terms of the Decree. Lessee shall have the exclusive right to use, recapture and reuse all such groundwater produced and to take credit for any and all return flows generated by the use of such produced groundwater.

3. LEASE TERM

This Lease shall have a Term beginning with the effective date first written above and ending on February 27, 2048, the date on which all the groundwater rights revert to the Wismer Trust, subject to the payment of compensation and compliance with covenants and agreements contained herein.

QT 109328

EXHIBIT B

4. COMPENSATION

- A. Bonus: A one-time bonus in the amount of \$0.00.
- B. Lessee will pay a minimum annual payment of \$21,050.00, payable regardless of annual water production volumes ("Water Opportunity Charge")
- C. Lessee will pay a charge of \$1.00 per 1000 gallons, or \$325.85 per acre foot, for Leased Water produced, as measured at the wellheads. ("Volumetric Charge")

The Water Opportunity Charge payment is due on the Effective Date and annually thereafter on the anniversary date of the Effective Date. The Volumetric Charge is due annually within 30 days after the anniversary date for the preceding lease year.

Effective on November 6, 2024 and every five years thereafter, Lessor may increase the Volumetric Charge based on the increase in the Consumer Price Index - All Urban Consumers, "CPI-U" (CUUR0000SA4), (Base Period 1982-84=100) (the "Index"), as first published by the U. S. Department of Labor, Bureau of Labor Statistics, for the preceding ten year period for the 2024 adjustment, and for the preceding five year period for adjustments thereafter. The increase shall not exceed 10% for the 2024 adjustment or 5% for each 5 year period thereafter.

5. SURFACE ACCESS

The Board does not own the surface of Section 36-11S-66W. In Patent 8167, however, the Board reserved all waters under the parcel and access rights to develop this water. The Wisner Trust will have the sole responsibility for obtaining surface use rights and agreements to allow for the development of the Leased Water. Nothing in this Lease shall diminish the rights reserved by the Board in Patent 8167.

6. CARRIAGE LOSS

Lessee is responsible for, and shall bear, any carriage loss or charge, transit loss, ditch loss (whether by seep, evaporation, or otherwise) or similar loss of the amount of water from measurement of the water at the wellhead.

7. MEASUREMENT DEVICES

Lessee must install all necessary measurement devices and maintain the measurement devices in good working condition.

8. USE OF LEASED WATER

Lessee may not take any actions or fail to act in a manner which could result in the abandonment or diminution of the historic use of the Leased Water or that violates the terms of the Decree or the augmentation plan.

9. NO RIGHTS CONVEYED

This Lease does not convey or confer rights or ownership in the Leased Water other than as specifically stated in this Lease, nor shall any future needs of Lessee for water enable Lessee to make claim against Lessor for any water rights owned or controlled by Lessor.

10. PARTNERSHIP

Nothing in this Lease shall cause the Board in any way to be construed as a partner, a joint venture or associated in any way with the Lessee, or subject the Board to any obligation, loss, charge or expense connected with or arising from the operation or use of the Leased Water or any part thereof.

11. LIABILITY AND INDEMNITY

The Lessee assumes all liability arising directly or indirectly from the Lessee's use or development of the Leased Water under this Lease. This assumption includes, but is not limited to, liability for all personal injuries (including death) and environmental and property damage and destruction caused by or arising out of Lessee's operations, or caused by or arising out of operations conducted by any party at the direction of Lessee; with the exception of any injuries, damage, or destruction caused by the gross negligence or intentional misconduct of Lessor. Lessee agrees to defend, indemnify and hold harmless Lessor from and against liability, damage, expense, claim and judgment arising under this Lease caused by Lessee, or by any party acting at the direction of Lessee, or Lessee's designated operators, agents, employees or assigns. Lessee further agrees to indemnify Lessor for any costs, including costs of suit and fees for consultants, experts, and attorneys, incurred by Lessor in terminating or canceling, enforcing obligations or defending itself against any matter arising under this Lease. This provision shall survive termination, cancellation or relinquishment of this Lease and any cause of action by Lessor to enforce it shall not be deemed to accrue until Lessor's actual discovery of said liability, claim, loss, damage, or exposure.

**12. RESERVATIONS TO THE BOARD**

This Lease is subject to any and all presently existing easements, rights of way and other interests, whether or not visible on the ground; and, in addition to its reversion upon termination of this Lease, the Board hereby reserves:

- A. Upon termination of this Lease, the right to sell, exchange, or otherwise dispose of all or any portion of the Leased Water subject to this Lease and the Decree.
- B. Ownership of all water, water rights, ditch rights, water stock and/or ditch stock appurtenant to or used in connection with the Leased Water including wells, rights in ditch, water in canal organizations or companies, except those structures constructed or completed by the Lessee. All such rights shall be and remain the property of the Board, except as stated herein.
- C. The right to lease all or any portion of the mineral estate to other persons for the purposes of exploring for and removing minerals, ores, metals, coal, asphaltum, oil, gas, sand, gravel, clay, quarry products, peat, geothermal resources, and all other naturally occurring resources, together with reasonable and adequate rights of entry and surface rights necessary or convenient to exercise such reserved rights, subject to the terms of the Long-Term Agreement to Restrict Mineral Development # LT-3484 between the Board and Shamrock SS, LLC, dated March 31, 2011.
- D. All rights, privileges and uses of every kind or nature not specifically granted to Lessee by this Lease or the Decree.

**13. ASSIGNMENTS, SUBLEASING AND ENCUMBRANCES**

This Lease shall be binding on the parties hereto, their heirs, representatives, successors and permitted assigns. This Lease shall not be assigned, transferred or sold, voluntarily or by operation of law, without the prior written consent of the Board. Consent to an assignment shall be at the Board's sole discretion and upon such terms and conditions as determined by the Board, including the payment of an assignment fee not to exceed \$100.00, and such consent shall not be unreasonable withheld. Any name change, or changes in ownership of the Lessee shall be considered an assignment.

Assignment or other transfer without written consent of the Board shall not affect a novation of this Lease, and shall, nevertheless, make the assignee responsible and liable, along with the Lessee, for performing this Lease. The acceptance by the Board of any payment due hereunder from any person other than the Lessee shall not be deemed a waiver by the Board of any provision of this Lease or to be consent to any assignment.

**14. DEFAULTS AND REMEDIES**

- A. Defaults. The occurrences of any one or more of the following events shall constitute a default hereunder by the Lessee:
  1. Failure by the Lessee to make any payment of rental or other payment required under the Lease when due.

- ii. Use of the Leased Water by the Lessee, its successors and assigns or attempted use of the Leased Water for any other purpose than those permitted by this Lease and the Decree.
- iii. Failure by the Lessee to perform any and all of the covenants, conditions or requirements contained herein.

Any of the above events of default may be cured by the Lessee within thirty (30) days after written notice thereof from the Board to the Lessee in accordance with Paragraph 24.1 - "Miscellaneous, Notices" section of this Lease. If the nature of the Lessee's default is such that more than thirty (30) days are reasonably required to cure such default then the Lessee shall not be deemed to be in default if the Lessee shall commence such cure within said thirty (30) day period and thereafter diligently pursue such cure to completion.

- B. Remedies. In any event of default and in addition to any or all other rights or remedies of the Board hereunder or by the law provided, the Board may exercise the following remedies at its sole option:
  - i. Termination. Terminate the Lessee's right to possession of the Leased Water by any lawful means, in which case this Lease shall terminate and the Lessee shall immediately surrender possession of the Leased Water to the Board according to the terms of Paragraph 15 - "Surrender" section of this Lease. In such event of termination the Board shall be entitled to recover from the Lessee:
    - a. The unpaid rental, and other payments owed pursuant to this Lease which have accrued together with interest; and,
    - b. Any other amount necessary to compensate the Board for the Lessee's failure to perform its obligations under this Lease or which would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Leased Water, expenses of reletting, reasonable damages, reasonable attorneys fees, and any other reasonable costs,
    - c. Compensation for costs incurred for use of the Leased Water, including ongoing obligations under the Decree,
    - d. Interest - The interest shall be one and one half percent (1-1/2%) compounded monthly. Said interest shall accrue from the dates such amounts accrued to the Board until paid by the Lessee.
  - ii. Cumulative Rights. The rights and remedies reserved to the Board, including those not specifically described, shall be cumulative, and the Board may pursue any or all of such rights and remedies, at the same time or separately.

#### 15. SURRENDER

Upon expiration or termination of this Lease prior to February 27, 2048, the Lessee shall peaceably and quietly surrender possession of the Leased Water to the Board.

#### 16. LIENS AND CLAIMS

##### A. Mechanics' Liens

The Lessee shall not suffer or permit to be enforced against the Leased Water, or any part thereof, or any improvements, any mechanics', material men's, contractors', or subcontractors' liens arising from, or any claim for damage growing out of the work of any construction, or improvement related to the Leased Water, or any other claim or demand howsoever the same may arise, but the Lessee shall pay or cause to be paid all of said liens, claims, or demands before any action is brought to enforce the same against the Leased Water or improvements. The Lessee agrees to defend, indemnify and hold the Board and the Leased Water free and harmless from all liability for any and all such liens, claims, demands, and actions (collectively, the "liens") together with reasonable attorneys fees and all costs and expenses in connection herewith.

##### B. Rights to Contest

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Notwithstanding the foregoing, if the Lessee shall in good faith contest the validity of any such lien, then the Lessee shall at its sole expense defend itself and the Board against the same and shall pay and satisfy any adverse expense or cost or adverse judgment that may be rendered thereon before the enforcement thereof against the Board or the Leased Water, upon the condition that if the Board shall require, the Lessee shall furnish a surety bond satisfactory in form and amount to the Board. Said bond shall not be less than one hundred twenty percent (120%) of such contested lien indemnifying the Board against liability for the same, and holding the Leased Water free from the effect of such lien.

**17. NO REPRESENTATIONS OR WARRANTIES**

Lessor makes no representations or warranties as to the Leased Water, its quantity, quality, or availability. Lessee may terminate this Lease if the Leased Water does not satisfy the requirements of Lessee in any way. Such termination is the sole recourse. All prior rent and royalty payments will be forfeited.

**18. RECORDS**

Lessee agrees to keep and to have in possession complete and accurate books and records regarding the Lessee's payment obligations under this Lease, including, but not limited to, contracts and agreements for the sale or exchange, or other disposition of the Leased Water, and records showing the production, water levels, sale, exchange and disposition of any and all Leased Water, including all information necessary to determine the Volumetric Charge for the Leased Water and all information and accounts required under the Decree. In conjunction with the payment of the annual Volumetric Charge, Lessee shall provide to Lessor an annual summary report containing such information as may be necessary to confirm the accuracy of the payment. Lessee shall permit Lessor, at all reasonable hours, to audit, examine, or copy such books, accounts, and records, or to furnish copies of same to Lessor within 10 days of request. Any confidential information reviewed during such audit or examination shall be kept confidential by Lessor to the extent allowed by law. Lessor will not be unreasonable with requests. All said books, accounts, and records shall be retained by Lessee and made available in Colorado to Lessor for a period of not less than 7 years.

**19. SURVIVAL OF TERMS, CONDITIONS, RESTRICTIONS, RESERVATIONS, AND COVENANTS**

Any term, condition, restriction, reservation or covenant that gives rise to any rights or claims of Lessor against Lessee shall be deemed to survive the termination, relinquishment, surrender, or abandonment of this Lease until all claims and issues have been settled or resolved. Upon termination, surrender, or abandonment of this Lease for any reason, provided Lessor does not expressly take over or assume any of Lessee's obligations hereunder, Lessor shall not be liable or responsible for compliance with the Decree, any laws, rules, regulations, orders, local ordinances or resolutions applicable to this Lease.

**20. NO WAIVER**

Failure or delay by either party to exercise any right, power or privilege hereunder will not operate as a waiver hereof, nor will any single or partial exercise of any right or privilege hereunder preclude further exercise of the same right or the exercise of any right hereunder. A waiver on one or more occasions of any of the provisions hereof shall not be deemed a continuing one. Acceptance of payments by Lessor shall not be deemed to effect (a) a ratification, renewal, extension, or amendment of this Lease, or (b) a waiver of any rights granted to Lessor, the obligations imposed upon Lessee, express or implied, or the remedies for Lessee's breach, or (c) an estoppel against Lessor preventing Lessor from enforcing Lessor's rights or Lessee's obligations hereunder, express or implied, or from seeking damages for Lessee's breach thereof. No instrument executed by Lessor shall be effective to constitute ratification, renewal, extension or amendment of this Lease unless the instrument is clearly titled to indicate its purpose and intent.

**21. INSURANCE**

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The Lessee at its sole cost and expense shall, during the entire term hereof procure, pay for and keep in full force and effect a comprehensive policy of public liability insurance covering the Leased Water and the improvements, insuring the Lessee in an amount that complies with the policy of the Board, currently one million dollars (\$1,000,000.00), protecting the Board and covering bodily injury, including death to persons, personal injury and property damage liability. Such coverage shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Leased Water and shall name the Board as an additional or co-insured.

The policy shall contain a provision that it cannot be cancelled or materially altered either by the insured or the insurance company until thirty (30) days prior written notice thereof is given to the Lessee and the Board. The Lessee shall furnish a duplicate original of such policies or renewal thereof with proof of premium payment to the Board.

No policy of insurance shall include a deductible clause in an amount greater than 1% of the face amount of the policy.

Notwithstanding anything to the contrary contained herein, the Lessee's obligation to carry insurance as provided herein may be brought within the coverage of a "blanket" policy or policies of insurance carried and maintained by the Lessee, so long as such policy(s) segregates the amount of coverage applicable to the Leased Water.

**22. NO THIRD PARTY BENEFICIARY**

Nothing in this Lease is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Lease.

**23. COMPLIANCE WITH LAW**

Lessee shall comply fully with all provisions, terms, conditions of all laws, whether local, state or federal, and orders issued thereunder, including but not limited to the rules and regulations of the Colorado Division of Water Resources, the Colorado Ground Water Commission, any ground water management district, and any other state, local, or federal agency or commission with authority to regulate activities pursuant to this Lease. In the event that the Lessee is required to file applications, instruments, and documents with other agencies, Lessee shall notify Lessor of said filing and Lessor reserves the right to request and obtain copies of such applications, instruments, and documents from the Lessee.

**24. MISCELLANEOUS**

**A. False Statements**

Any false certification or statement by the Lessee in the application, public disclosure statement or qualification of financial responsibility statement required to be submitted with the application for the Lease, or in any other document or report required to be submitted under this Lease or under the Decree, shall, at the discretion of the Board, result in termination of this Lease and an action for damages.

**B. Controlling Documents**

In the event of inconsistency or conflict between this Lease and documents incorporated herein by reference, this Lease shall control. In the event of inconsistency or conflict between this Lease and the Decree, the Decree shall control.

**C. Compliance with Laws**

The Lessee shall comply with the Decree and all applicable federal, state and local ordinances, rules, regulations, and laws regarding the Leased Water and activities conducted in the use thereof. Furthermore the Lessee shall not use or permit the Leased Water to be used in violation of the Decree and any rule, regulation or law or for any purpose tending to damage or harm the Leased Water.

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- D. **Lessee's Authority**  
If the Lessee is an entity other than an individual, each individual executing this Lease on behalf of said entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said entity and that this Lease is binding upon said entity in accordance with its terms. The Lessee shall deliver a certified copy of the appropriate document evidencing authorization for such execution.
- E. **Entire Agreement**  
This Lease and all documents incorporated herein by reference represent the entire agreement between the Parties. No oral agreement or implied covenant shall be held to vary the provisions hereof.
- F. **Amendments.**  
This Lease shall not be amended or ratified except by written document executed by the Parties hereto.
- G. **Certain Rules of Construction**  
Time is of the essence in the performance of this Lease. Unless the context clearly implies otherwise, each and every act to be performed or obligation to be fulfilled by the Lessee under this Lease shall be performed or fulfilled at the Lessee's sole cost and expense.
- H. **Governing Law and Venue**  
This Lease shall be governed by and construed in accordance with the laws of the State of Colorado and Venue shall be in the City and County of Denver.
- I. **Notices**  
Every notice, demand, request, designation, consent, approval or other document or instrument required or permitted to be served hereunder shall be in writing, shall be deemed to have been duly served on the day of receipt and shall be sent by certified United States mail, postage prepaid, return receipt requested, as addressed to the parties hereto. The Parties may change the place for serving of such papers on it, or provide for the delivery of not more than two (2) additional copies, by giving the other party at least ten (10) days prior written notice to such effect.
- J. If for any reason provisions of this Lease or the application thereof to any person or circumstances, shall to any extent, be deemed invalid or unenforceable, the remainder of this Lease shall not necessarily be affected thereby and each provision of the Lease shall be valid and enforceable to the fullest extent permitted by law.
- K. **Costs of Suit: Attorneys Fees**  
In the event that the Board shall, without fault on the Board's part, be made party to any litigation instituted by the Lessee or by any third party against the Lessee, or by or against any person holding under or using the Leased Water by license of the Lessee, or for the foreclosure of any lien for labor or material furnished to or for the Lessee or any such other person or otherwise arising out of or resulting from any action or transaction of the Lessee or of any such other person, the Lessee hereby indemnifies and holds the Board harmless from and against any judgment rendered against the Board or the improvements or any part thereof, and all costs and expenses, including reasonable attorneys fees, incurred by the Board in or in connection with such litigation.
- L. **Board's Authority**  
This Lease is entered into pursuant to the authority granted to the Board by Colorado law.

IN WITNESS WHEREOF, the Board and the Wismer Trust, by their signatures below, agree to the terms of this Lease:

LESSOR: State Board of Land Commissioners

Pete Milonas  
Pete Milonas  
Minerals Director

State of Colorado  
City & County of Denver

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of December, 2014, by Pete Milonas, Minerals Director, State Board of Land Commissioners.

Witness my hand and official seal.



[Signature]  
Notary Public  
My commission expires: 4/22/2015

LESSEE: David Wismer and Mary Anne Wismer Trust

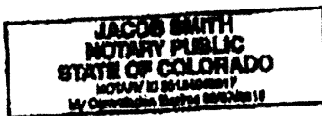
David Wismer  
David Wismer

Mary Anne Wismer  
Mary Anne Wismer

State of Colorado  
City & County of Colorado Springs, El Paso

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of November, 2014, by David and Mary Anne Wismer.

Witness my hand and official seal.



[Signature]  
Notary Public  
My commission expires: 8/7/2014

**COLORADO**

State Land Board

Department of Natural Resources

APP NO. 3421

LEASE ASSIGNMENT - Groundwater

ASSIGNMENT OF LEASE NO. OT-109328Please check if this is a full or partial assignment: FULL ☒ PARTIAL ☐

If there is a conflict between the full/partial box checked above and the acreage assigned indicated below, the specific acreage assigned will control.

In consideration of good and valuable consideration agreed to between the Assignor and Assignee (named below), this lease assignment ("Assignment") is entered into between the Assignor and Assignee and they agree as follows:

ASSIGNOR ("Assignor")(Name) The David Wismer and Mary Anne Wismer Trust(Address) c/o Shamrock Preserve, LLC, Attn: David Wismer, 15555 State Highway 83(City, State, Zip) Colorado Springs, CO 80921

hereby assigns and transfers, subject to approval from the State of Colorado, acting by and through its State Board of Land Commissioners ("State Land Board"), all right, title and interest as "Lessee of Record" on the State Land Board's groundwater lease identified above (the "Lease") in

640.00 of the Lease lands located in El Paso County, Colorado ("County"), RL (Subdivision)of: (Acreage Assigned) Section 36 Township 11S, Range 66W (collectively, the "Assigned Lands"),

including all stipulations and requirements attached and incorporated into the Lease, unto:

ASSIGNEE ("Assignee")(Name) PRI #2, LLC, by Elite Properties of America, Inc. as Manager(Address) 6385 Corporate Drive, Suite 200(City, State, Zip) Colorado Springs, CO 80919

Reserving unto the Assignor all previously reserved minority reservations of Lease ownership and/or overriding royalties made and filed by the Assignor in the clerk and recorder's office of the County ("Clerk & Recorder's Office"), to the extent that such reservations comply with the terms of the Lease. The parties acknowledge that the State Land Board has one "Lessee of Record" on the Lease and does not track minority assignments of overriding royalties or minority leasehold interests in the Lease; however, pursuant to the terms of the Lease, the State Land Board acknowledges that separate contracts for minority leasehold interests and overriding royalties in the Lease may exist between the Assignor, the Assignee and/or other minority owners in documents filed in the Clerk & Recorder's Office and this Assignment does not purport to assign those interests.

As of the Effective Date (as defined below), the Assignee hereby agrees to accept and assume all title, responsibility, liability and interest in, and to abide by all terms and conditions of the Lease being assigned, and will herein be the new "Lessee of Record" for all, or part of the Lease assigned (as specified above). However, pursuant to the terms of the Lease, the State Land Board's approval of this Assignment shall not release the Assignor from any liability for known or unknown waste or damage to the Assigned Lands, including, but not limited to, environmental damage which arose from, or in connection with Assignor's use or occupancy of the Assigned Lands and/or from any liability for violations of the Lease and/or of applicable federal, state, and local laws, regulations, rule, and ordinances including without limitation the rules and regulations of the Colorado Division of Water Resources during Assignor's use or occupancy of the Assigned Lands.

As of the Effective Date, the Assignor represents and warrants to the State Land Board that all rents, royalties and advanced minimum royalties under the Lease are paid up to date, and there are no outstanding reclamation issues.

Consideration Amount: \$100.00 (refer to lease terms), and submit affidavit stating the value of any consideration tendered to Assignor by Assignee.

Lease No. OT-109328

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EXHIBIT C



# COLORADO

State Land Board

Division of Natural Resources

The Assignor and Assignee acknowledge that the State Land Board has the right to deny this Assignment, in its sole discretion, and that the State Land Board must approve this Assignment by execution below before this Assignment becomes effective. Further, the Assignor and Assignee agree that the State Land Board's approval of this Assignment does not modify any terms or conditions of the Lease which may be implied by documents provided to the State Land Board related to this Assignment, other than the "Lessee of Record" for the Assigned Lands.

The Assignor and Assignee, by their signatures below, agree to the terms and conditions of this Assignment.

## ASSIGNOR:

Assignor Name: The David Wismer and Mary Anne Stimpel Trust

Signature: [Signature]

Printed Name: David Wismer

Title: Trustee

Date Signed: 4-18-2017

STATE OF COLORADO

COUNTY OF EL PASO

ss. ASSIGNOR ACKNOWLEDGMENT

On this 19<sup>th</sup> day of April, 2017, before me, personally appeared David Wismer to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged to me that he/she executed the same as his/her free act and deed.

My commission expires: 12-02-2017

STATE OF COLORADO

COUNTY OF EL PASO

ss. ASSIGNEE ACKNOWLEDGMENT

On this 24<sup>th</sup> day of April, 2017, before me, personally appeared Douglas M. Stimpel to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged to me that he/she executed the same as his/her free act and deed.

My commission expires: 12-02-2017

## ASSIGNEE:

Assignee Name: Douglas M. Stimpel

Signature: [Signature]

Printed Name: Douglas Stimpel

Title: CEO of Manager

Date Signed: 4-20-17

Phone: 714 592 9333

Christine L. Wise  
Notary Public

CHRISTINE L. WISE  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID # 18974021715  
MY COMMISSION EXPIRES DECEMBER 02, 2017

Christine L. Wise  
Notary Public

CHRISTINE L. WISE  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID # 18974021715  
MY COMMISSION EXPIRES DECEMBER 02, 2017

## APPROVAL OF ASSIGNMENT

In consideration of One Hundred dollars (\$100.00) and other valuable consideration, the State Land Board consents to this Assignment of the Lease from the Assignor to the Assignee effective this 14<sup>th</sup> day of June, 2017 (the "Effective Date").

State of Colorado, acting by and through the  
State Board of Land Commissioners

By: [Signature]  
Name & Title: Phillip J. Courtney, Leasing Manager

Lease No. OT-109328

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## ASSIGNMENT OF STATE WATER LEASE

THIS ASSIGNMENT OF STATE WATER LEASE ("Assignment"), is made as of February 2, 2016 ("Effective Date"), from Shamrock Preserve, LLC, a Colorado limited liability company, as successor in interest to The David Wisner and Mary Anne Wisner Trust, whose address is Shamrock Preserve, LLC, Attn. Eric Ryan, 230 Mayfield Lane, Colorado Springs, CO 80906 ("Assignor"), to PRI #2 LLC, a Colorado limited liability company, whose address is 6385 Corporate Drive, Suite 200, Colorado Springs, CO 80919 ("Assignee").

### RECITALS

A. Assignor and Assignee have entered into that certain Purchase and Sale Agreement (Shamrock Ranch East), dated as of December 1, 2015 (the "Agreement").

B. This Assignment is being made pursuant to the terms of the Agreement for the purpose of assigning to Assignee any and all of Assignor's rights, title and interest in and to that certain State of Colorado State Board of Land Commissioners Groundwater Production Lease No. OT-109328, dated November 6, 2014, between The David A. Wisner and Mary Anne Wisner Trust and the State Board of Land Commissioners (the "State Water Lease").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Representation. Assignor hereby represents, warrants and covenants to Assignee that it has not assigned, pledged or otherwise granted, transferred or conveyed to any other party any interest in or to the State Water Lease.

2. Assignment of Lease. Assignor hereby grants, assigns, transfers, conveys and delivers to Assignee any and all right, title, interest, benefits and privileges of Assignor in, to, and under the State Water Lease, and Assignee hereby accepts such Assignment. The State Water Lease is hereby being transferred to Assignee "AS IS," without any representations or warranties, express or implied.

3. Assumption of Obligations. By acceptance of this Assignment, Assignee hereby assumes and agrees to perform and to be bound by all of the terms, covenants, conditions and obligations imposed upon or assumed by Assignor under the State Water Lease. Said assumption shall have application only to those obligations under the State Water Lease first accruing or arising on or after the Effective Date and shall have no application to obligations accruing or arising prior to the Effective Date.

4. Additional Documents. Assignee and Assignor hereby agree to execute such further documents and take such further actions as the other party or its counsel may reasonably request to effectuate the intent of this Agreement.

5. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, heirs and legatees of the respective parties hereto.

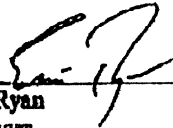
6. Counterparts. This Assignment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

7. Governing Law. This Assignment shall be governed by, interpreted under, and construed and enforceable with, the laws of the State of Colorado.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date first written above.

"ASSIGNOR"

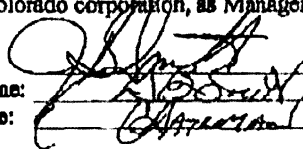
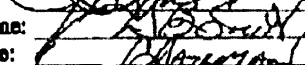
Shamrock Preserve, LLC,  
a Colorado limited liability company

By:   
Name: Eric Ryan  
Title: Manager

"ASSIGNEE"

PRI #2 LLC,  
a Colorado limited liability company

By: Elite Properties of America, Inc.,  
a Colorado corporation, as Manager

By:   
Name:   
Title: 