

AFTER RECORDING, RETURN TO:

Caroleen F. Jolivet, Esq.
Mulliken Weiner Berg & Jolivet, P.C.
102 South Tejon Street, Suite 900
Colorado Springs, CO 80903

FLAG LOT EASEMENT
AND
MAINTENANCE AGREEMENT
(Lots 6, 7, & 8 Flying Horse North Filing No. 1)

This FLAG LOT EASEMENT AND MAINTENANCE AGREEMENT, dated as of _____, 2018 (“Agreement”), is executed by **PRI #2 LLC**, a Colorado limited liability company (“**PRI#2**”).

RECITALS

- A. PRI#2 is the current owner of Lots 6, 7, and 8, Flying Horse North Filing No. 1, El Paso County, Colorado (respectively, “**Lot 6**”, “**Lot 7**” and “**Lot 8**”).
- B. Lot 7 contains an area to be utilized for access purposes as reflected on the Flying Horse North Filing No. 1 Plat (the “**Flag Stem**”).
- C. Lot 6 and Lot 8 are jointly referred to as the “**Use Lots**” and individually as the “**Use Lot**”).
- D. Lot 7 and the Use Lots (collectively, the “**Lots**” and individually, each a “**Lot**”) are located adjacent to each other, and the Use Lots will be best utilized if accessed through the Flag Stem.
- E. PRI#2 desires to create an access easement for the benefit of the Use Lots and to provide a maintenance agreement among all of the Lots regarding the Flag Stem.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, PRI#2, as the owner of all of the Lots and in anticipation of the sale of each Lot, hereby creates the following easement and establishes obligations and responsibilities associated with the maintenance, repair, and replacement of that easement.

I. EASEMENT

PRI#2, as the owner of Lot 7, hereby establishes a perpetual, non-exclusive easement and right of way over and across that portion of Lot 7 shown on **Exhibit A** attached hereto and incorporated herein by this reference (the “**Flag Lot Easement Area**”) for the benefit of the

respective owners of the Use Lots (the “**Easement**”). The Easement shall be solely for purposes of (i) providing the respective owners of the Use Lots and their respective visitors, guests, family members, invitees, and agents (collectively, “**Permittees**”), pedestrian and motor vehicle access to and from Stagecoach Road to each Use Lot, (ii) maintaining and repairing the Flag Lot Easement Area pursuant to the terms and condition contained in this Agreement, and (iii) for the construction, maintenance, repair, and/or replacement of utilities within the Flag Lot Easement Area to service the respective Use Lots. The respective owners of the Lots and his or her Permittees are expressly prohibited from parking within the Flag Lot Easement Area. The Easement and rights granted herein and the provisions of this Agreement shall run with and burden Lot 7 and each of the Use Lots, shall be appurtenant to each of the Use Lots, shall be binding upon Lot 7 and all present and future owners of Lot 7, and shall inure to the benefit of each of the Use Lots and all present and future owners of each Use Lot. The owners of the Lots shall collectively be referred to herein as the “**Flag Lot owners**” and individually as a “**Flag Lot owner,**” but each such owner will only be deemed to have become a Flag Lot owner for the construction purposes described in Article II and the maintenance purposes described in Article III of this Agreement upon the issuance of a building permit for the construction of a single family residence on the applicable Lot (“**Start Date**”).

II. CONSTRUCTION

2.1. The initial Flag Lot owner established pursuant to Article I shall be solely responsible for all costs and expenses, without reimbursement from any other Flag Lot owners, associated with the construction of a driveway and other Improvements, as defined below, within the Flag Lot Easement Area. The initial Flag Lot owner shall be required to complete construction of a driveway and other Improvements within the Flag Lot Easement area prior to the occupancy of his home within his Lot. All Improvements constructed within the Flag Lot Easement Area must comply with all applicable governmental requirements.

2.2. “**Improvements**” shall constitute, for purposes of this Agreement, all grading and fill, retaining walls, asphalt driveway surface, and landscaping, to the extent such landscaping is located within the Easement and installed for the purpose of revegetating any disturbed areas caused by the installation of the Improvements.

III. MAINTENANCE

3.1. Maintenance of the Flag Lot Easement Area shall be the responsibility of the Flag Lot owners determined in accordance with Article I of this Agreement, subject to the cost sharing and responsibility described in this Article III.

3.2. All Improvements within the Flag Lot Easement Area shall be maintained in a condition equivalent to or better than that which shall exist at the time of initial construction of the Improvements, ordinary wear and tear excepted. Maintenance shall include preventative actions intended to extend the useful life of the Improvements as well as such repairs and replacement as shall be reasonably necessary (collectively “**Maintenance**”).

3.3. Except for emergency actions as determined to be necessary by a Flag Lot owner,

a Flag Lot owner who determines that maintenance of the Flag Lot Easement Area is reasonably necessary shall send a written notice to the other Flag Lot owners, if any, at least sixty (60) days prior to undertaking any Maintenance. Such notice shall describe the proposed Maintenance and the estimated cost of the proposed Maintenance. Any Flag Lot owner receiving such notice may send comments to the initiating Flag Lot owner within twenty (20) days following his or her receipt of the notice of the proposed Maintenance. If the comments cannot or have not been addressed by the initiating Flag Lot owner on or before thirty (30) days following the Flag Lot owner's receipt of the proposed Maintenance notice, the initiating Flag Lot owner shall have the right to proceed with the proposed Maintenance, subject to arbitration. Any Flag Lot owner objecting to the proposed Maintenance may bring an arbitration action pursuant to Article IV below, which must be commenced on or before forty-five (45) days following the Flag Lot owner's receipt of the applicable notice of proposed Maintenance. Commencement of arbitration shall occur upon the actual initiation of the arbitration and not upon the mere notice of intent to arbitrate. Arbitration as described in this Agreement shall be the sole remedy of Flag Lot owners who object to a proposed Maintenance item in connection with this Agreement.

3.4. Each Flag Lot owner shall be responsible for paying his or her Pro Rata Share of Maintenance. "**Pro Rata Share**" for purposes of this Agreement shall be the percentage that a Flag Lot owner represents of the then total number of Flag Lot owners as determined pursuant to Article I of this Agreement. Prior to a Flag Lot owner's Start Date, a Flag Lot owner shall have no responsibility for the cost of Maintenance. Such Pro Rata Share of the Maintenance for the Flag Lot Easement Area shall be paid to the Flag Lot owner who shall have undertaken the Maintenance on or before thirty (30) days following a Flag Lot owner's receipt of an invoice setting forth the Maintenance that shall have been performed and the cost thereof. Each Flag Lot owner may elect to make payments directly to the entities performing the Maintenance providing that notice of such payments are simultaneously sent to the applicable Flag Lot owner who shall have ordered the Maintenance. If, as of the Start Date, only one (1) Flag Lot owner exists, then such Flag Lot Owner shall be solely responsible for paying all Maintenance costs.

IV. ARBITRATION

4.1. If a Flag Lot owner reasonably determines that another Flag Lot owner is in violation of a term or condition of this Agreement, any Flag Lot owner who is not in violation of this Agreement shall have the right to institute an arbitration concerning the particular issue following sixty (60) days prior written notice to the Flag Lot owners who are in default stating the intent to arbitrate and describing the issue to be arbitrated. Such arbitration shall be initiated with one (1) arbitrator located in Colorado Springs, Colorado who is reasonably acceptable to all of the Flag Lot owners that are a party to the arbitration.

4.2. The Flag Lot owners, by acceptance of title to a Lot, shall be deemed to have consented to participate in binding arbitration proceedings related to this Agreement. Failure of a Flag Lot Owner to participate in an arbitration process concerning an issue related to this Agreement, which arbitration is commenced within the applicable time period, shall enable the initiating Flag Lot Owner to file a lien against the non-participating Flag Lot Owner(s) for the amount specified in the arbitration request. The lien described above may be foreclosed in the manner provided in Colorado for foreclosing mortgages.

4.3. The initiating Flag Lot Owner shall be obligated to pay all costs associated with the arbitration process, including, but not limited to, the cost of the arbitrator's fees and any accommodations required in connection with the arbitration process, and specifically excluding attorneys' fees incurred by the Flag Lot owner alleged to be in violation of this Agreement. The prevailing party in any arbitration shall be entitled to recover from the losing party all costs incurred by the prevailing party in such an action, including reasonable attorneys' fees and costs to be fixed by the arbitrator. Notwithstanding the provisions of this Section 4.3, the parties hereby acknowledge that arbitration shall be the sole course of action available to Flag Lot owners who object to maintenance costs or actions. Arbitration of Maintenance issues shall also only be available if requested in the manner and time period provided in this Article IV. Nothing contained herein shall obligate an owner who does not yet constitute a Flag Lot owner to participate in any arbitration.

V. LIEN

If any Flag Lot owner is in breach of its obligation to pay (i) its Pro Rata Share of Maintenance costs which are not arbitrated pursuant to Article IV in a timely manner or (ii) amounts which are determined to be owing by an arbitrator or by a court of law, the Flag Lot owner or Flag Lot owners to whom the funds are owing shall be entitled to place a lien against the real property owned by the Flag Lot owner in question following delivery to the owner thereof, at least thirty (30) days prior to filing such a lien, of a notice of intent to file a lien pursuant to the terms of this Article V. The lien shall be for an amount equal to the funds outstanding plus interest thereon at the rate of fifteen percent (15%) per annum from the date such amount was originally due and owing (the "**Lien Amount**"). The Flag Lot owner or Flag Lot owners to whom the funds are owing shall be entitled to bring an action at law for recovery of the Lien Amount, plus costs of collection, against the Flag Lot owner personally obligated to pay the amounts at issue. In addition, the Flag Lot owner or Flag Lot owners to whom the funds are owing may bring an action to foreclose the lien against the real property owned by the Flag Lot owner in question and there shall be added to the amount of such obligation the cost of preparing and filing the complaint in such action, and the judgment in any such action shall include interest as above provided and reasonable attorneys' fees, together with the cost of the action. The foregoing specified rights and remedies shall not limit the right of any Flag Lot owner to enforce these provisions as otherwise may be provided at law or in equity.

VI. RIGHT TO ENFORCE THIS AGREEMENT

This Agreement is for the benefit of the Flag Lot owners, jointly and severally, and may be enforced, except as expressly limited in Article IV, by an action for damages, suit for injunction, mandatory and prohibitive, and other relief, and by any other appropriate legal remedy, instituted by any Flag Lot owner. All costs, including reasonable attorneys' fees, incurred by the Flag Lot owner in connection with any successful enforcement proceeding initiated by a Flag Lot owner shall be paid by the party determined to have violated this Agreement.

VII. SEVERABILITY

If any of the provisions of this Agreement shall be held invalid or become unenforceable, the other provisions shall in no way be affected or impaired but shall remain in full force and effect.

VIII. ACTION AND WRITING

Notices, approvals, consents, and other action provided for or contemplated by this Agreement shall be in writing and shall be signed on behalf of the party who originates the notice, approval, consent or other action.

IX. NOTICES

Any writing described in Article VIII above, including but not limited to any communication with a Flag Lot owner regarding proposed Maintenance, shall be sufficiently served if hand-delivered, sent by email or facsimile and provided that "answer back" confirmation is received by sender, national overnight courier service, or by United States certified mail, postage prepaid, and shall be effective upon the date of hand-delivery, the date sent by email or facsimile, or the date deposited with the overnight courier or placed in the mail as stated above and addressed to the respective parties at the dwelling situated on an applicable Lot, or if there is no dwelling, then to the last address furnished by the respective Flag Lot owners.

Any party may, from time to time, change the address to which notice shall be sent by like notice given to the other party hereto, except that no party may change its address to other than a street address. Any notice given that does not conform to this Article IX shall be effective only upon receipt.

X. RUNNING WITH THE LAND

This Agreement shall run with the land and shall benefit and burden each Lot and the respective owners thereof.

[Signature Page Follows]

EXHIBIT A
DEPICTION OF FLAG LOT EASEMENT AREA

The driveway access area of Lot 7, Flying Horse Filing No. 1, El Paso County, Colorado
reflected on the Flying Horse Filing No, 1 Plat.