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RE: Flying Horse North Sketch Plan Hearing Set for November
3rd, 2022, 9am before El Paso County Planning Commission

Dear El Paso County Commissioners and Planning Commissioners,

In August 2017 my wife Kathleen came here to El Paso County to find for us a new home after we both had been born, raised and spent our lives living in California. Unfortunately, California in our opinions was being adversely affected by one political party for decades being in control of the state in place of balance between people of different beliefs and philosophies. As occurred, what was a beautiful balanced state has resulted in unfortunate legislative decisions which have caused the middle class including ourselves, to leave. I closed a very successful law practice in leaving the state.

My wife was shown the property we settled upon here in Black Forest in the new development known as Flying Horse North on a 3.74-acre parcel amongst the ponderosa pine forest. Our property was put on the market in early October 2017, and we arranged for SaddleTree Homes, our builder to obtain the parcel on our behalf. We both love this development with parcels currently composing of 82 out of the original 283 sized from 2.5 acres to 5 acres, with remaining 201 undeveloped which the developer withheld from the market.

Additionally, one of the most beautiful golf courses I have ever seen was built, along with a promise to build a permanent golf club house which would have as well a gym, restaurant, and bar. Unfortunately, the permanent club house has yet to be built and the developer is claiming to include it within his desire to increase the density of the residential lots from the remaining 201 in order to afford to build his luxury hotel along with many hotel amenities yet undefined.

Many rumors abounded regarding what the developer was envisioning for the remaining acreage including forest and grasslands. From the beginning I made it clear to all interested individuals that I intended to maintain a completely open mind, not to prejudge, to find out the developer's intentions and to thereafter research and investigate the entire proposed project before drawing any conclusions. This is something over the past 54 years in my law practice I did and would do regarding any matters that came before me. I personally am neither pro nor anti-development. I believe in the necessity of balance and fully understand the differences of opinions people have including human nature in wanting to protect what some individuals have from being changed. For me that position is unreasonable and inappropriate.

I thus decided to do as thorough an investigation as I possibly could accomplish.

At first, commencing in January 2022 the developer through his spokespersons presented a series of public meetings to introduce his concept to the public and to those of us who resided in close communities such as Cathedral Pines, Flying Horse, Flying Horse North, Black Forest, High Forest and Monument to identify a few. At these meetings we were told the intent was to seek to increase the density from the remaining 201 units (originally 202 before filing #2 allowed for one additional residence) into 1200 new separate residential units with

various size lots. The information regarding a luxury hotel like a Ritz Carlton was for there to be 225 rooms and some casitas. In March 2022 however, the developer filed with the Planning department a letter of Intent and a sketch plan with instead of 1200 residential separate units, some 1571 units along with the Hotel and 16 Casitas. That Sketch Plan had attached a Water Resource Report dated March 2022 with an attached letter from Cherokee Metropolitan District, dated January 12, 2022, addressed to Jeff Smith the individual developer doing business under several Limited Liability Companies. This letter discussed an outline of general terms upon which Cherokee would be willing to provide the water and wastewater service for FHN for the development of the Hotel and the increased residential density. It made clear that there was no binding agreement regarding providing water and wastewater services.

Subsequently the Letter of Intent as well as the Sketch Plan further changed. No longer was the concept of increasing density from 201 individual residential units which were and are today still 2.5 acre to 5-acre parcels to some 1571 but instead at the beginning of August 2022 a new Letter of Intent was filed reducing the density increase request from 1571 individual residential units to 846 along with the 225-room hotel and 16 Casitas to 50 individual flats. No information was forthcoming as to how flats were defined, meaning they could be a combination of flats, townhomes, casitas, condos or some other residential structures. Thus, the number of residential units went from 1571 plus 16 casitas or a total of 1587 residential units along with the luxury hotel to now the hotel with 846 plus 50 or a total of 896 individual residential units.

On August 3, 2022, another Letter of Intent was filed by Flying Horse Development LLC via applicant HR Green Development, LLC. This was another 42-page Letter of Intent just as the Letter of Intent filed March 17, 2022, when the developer sought to increase the density not

including the Hotel to 1571 residential individual units. This August 3, 2022, sought to take the remaining 912.6 acres of the original 1459 acres and develop with 1121 units, consisting of 846 being estate, low and medium density residential units along with a luxury resort hotel 225 rooms with keys and 50 branded flats. The proposal included some commercial areas as well and a potential fire station near Black Forest Road and Hodgen. It also called for a new golf clubhouse, restaurant/bar and associated golf amenities without specifics. A Sketch plan was as well submitted. Unfortunately, again the permanent golf clubhouse, restaurant/bar and gym were represented to buyers of filing no 1 as going to be built as part of the initial development of Flying Horse North.

On September 8, 2022, another neighborhood meeting with the developer through his applicant HR Green Development, LLC., was held discussing the Letter of Intent and Sketch Plan filed with the County Planning department on August 3rd. At the time members of the public raised questions and when I asked about where the water was going to come from if not several of the four existing aquifers in the Denver Basin, I along with the rest of the public was informed no decision had been made as to where water would come from nor how wastewater would be treated. This is because there was no way to increase the single identifiable residences from the existing remaining 201 with private wells into the Dawson Aquifer and as well handle a luxury hotel. I had brought up the fact that the last time any measure of water remaining in the four aquifers was in 1987, in fact just estimates, some 35 years ago and I had further been informed the developer was considering ground water from a source in the southeast and in the northeast with the water to be piped to FHN for these individual residential units along with the Hotel, however no clarification was provided.

Just a few weeks later September 22, 2022, another 42-page Letter of Intent and Sketch Plan were filed with the Planning Department. This current Sketch Plan is what is now before the Planning Commissioners and County Commissioners.

In addition to the background, I have recited above I want you Commissioners to understand I spent well over a hundred hours researching and reviewing everything I could find before arriving at my position about this application for density increase and development of a luxury hotel.

I read the entire El Paso County Master Plan adopted May 26, 2021 and was impressed by the work of all those who took part in this Master Plan document. I was as well impressed that the revised Flying Horse North Letter of Intent dated July 2016 which I read is and was consistent with the Master Plan written five years later. The existing Flying Horse North is a wonderful development, preserves the forest and grass lands, nurtures the wildlife that is abundant and fits well within the entire Black Forest Community. I read every document filed with the Planning department by the Developer and his consultants including every Letter of Intent, Sketch Plan, Water Resource Reports, Traffic and Transportation Consultants reports, Project Review Comments, Impact Identification Report, Wastewater Disposal Report, Cherokee Metropolitan district letter to Jeff Smith dated January 12, 2022, Subdivision Summary Form, documents regarding Flying Horse North filings no 1 and 2, and communications by telephone as well as email with an Engineer from Cherokee Metropolitan District, email communication with Chief PJ Langmaid, Fire Chief of Black Forest Fire Rescue, email communications with the United States Agriculture Department including a Soil Conservation Technician at Natural Resources Conservation Services, email with Colorado Division of Water Resources including the Chief of Water Supply, Designated Basins, and others. I as well did online research of luxury hotels throughout the

world, including locations and amenities. I as well reviewed multiple articles about the 22 years on going drought experienced here in El Paso County with no end in sight.

In February 2022 I inquired of then planning employee Nina Ruiz as to how many pending applications existed for new residential units throughout the County. She informed me that they did not keep track of those figures and if I wanted to go on to the EDARP online web page I could count them. I did this both on February 18, 2022, as well as again on September 4, 2022. I only counted developments greater than single parcels seeking to create two buildable residential units. On February 18th there were 15,718 without counting the proposed 225-unit luxury hotel in FHN. On September 4, 2022, there were 139 projects with a total of 25,196 residential units with pending applications. My question which remains today is where the water is going to come from.

The Flying Horse North Impact Identification report dated September 22, 2022, describes the Sketch Plan as including 846 new residential units, a luxury resort hotel with 200 rooms with 75 detached rental units, while the Sketch Plan references 275 keyed rooms and the Letter of Intent at page 2 refers to a hotel with 225 keyed rooms and 50 branded flats. Is it 50 separate additional units along with the 846 or is it 75? This ambiguity needs clarification. Regardless of what we have is a total of 1121 residential units including the Hotel. In addition, the Master Traffic Impact Study dated July 2022 and revised September 2022 further describes an approximate 44,600 square foot fitness center and approximately 99,100 square feet of commercial land use.

Contained in the Water Resource Report Flying Horse North Sketch Plan Revised July 2022 being part of the Sketch plan currently before the Commissioners it states at page 2 under section II. Calculation of Quantity of Water Available the following: " Cherokee Metropolitan

District has signed a letter of intent (Exhibit 3) to provide water for the Flying Horse North Development. CMD has sufficient water available to supply the projected annual water demand shown in Table 1.” The letter from Cherokee is date January 12, 2022, and on its face states it is not binding on both parties. Further the last estimate of water contained in the four aquifers was made in 1987 some 35 years ago according to Hailey O’Neill, Soil Conservation Technician at the Natural Resources Conservation Services in the United States Department of Agriculture. She informed me that in 1987 it was estimated that the Denver Basin aquifers contained about 470 million acre-ft of water in storage with 48 million acre-ft in the Dawson; 89 million acre-ft in the Denver; 150 million acre-ft in the Arapahoe and 180 million acre-ft in the Laramie-Fox Hills Aquifers. All my research failed to show any estimates of water remaining in these aquifers. However, the population here in El Paso County, Colorado in 1987 was 394,848 and in 2021 the population was 737,867. This was an 86.9% increase whereas for this same time period the United States grew 37% and the entire state of Colorado grew 78.3%.

The point is that currently no one knows how much water remains in these aquifers; let alone know how to determine the water will last 300 years even if the developer spends multi millions of dollars to have Cherokee Metro district create the wells as well as piping necessary to handle water and wastewater for this proposed development. What is clear to me is that the reason for the developer seeking density increase from the remaining 201 residential units remaining from the existing Flying Horse North development approved just a few years ago with parcels consisting of minimum acreage of 2.5 and up to 5 acres in size to what will amount to some 896 individual residential units is in order to be able to sell more parcels to raise the millions of dollars needed to cover the cost of water and wastewater treatment so a luxury hotel can be built.

On the EDARP online site is a document entitled Project Review Comments. It states under the comments from Cherokee Metro District the following:

“CMD and FHN signed a non-binding letter of intent dated January 12, 2022, outlining the general terms upon which CMD would be willing to provide water and wastewater service to FHN. At this time, CMD has not committed a specific quantity of water or wastewater service, and CMD has not analyzed or validated any aspect of the FHN Water Resource Report, including without limitation the demand quantities stated therein. CMD and FHN will evaluate the specific water demand quantities at the Preliminary Plan stage as required by the EPC Land Development Code. Any CMD commitment to future water or wastewater service to FHN is subject to the January 21, 2022, Letter of Intent and a future binding agreement between CMD and FHN. In the absence of an agreement between FHN and a utility that already has reserved capacity in the CMD Wastewater Reclamation Facility, new capacity will have to be constructed at some point in the future to meet FHN’s wastewater requirements.”

On this same Project Review Comments is a review by Black Forest Land Use Committee. While that review as well as the one from Cherokee were written regarding the Letter of Intent and Sketch Plan from March 17, 2022, other than a reduction of the overall density the Letters of Intent were very similar. What Black Forest Land Use Committee wrote is as follows:

“The Black Forest Land Use Committee has reviewed this proposal and recommends DENIAL. This proposal must be denied for several reasons: 1. The proposal totally violates the 2.5-acre density, conservation, and compatibility requirements of Your El Paso County Master Plan. 2. Using non-renewable water for a development of this size is risky and short-sighted. Developments such as this should be required to use renewable water. 3. The county must not allow this

development to move toward annexation because of the ripple effects it will have on further annexations. 4. Lack of fire impact fees places an undue burden on current residents of the fire district. 5. Increased traffic, congestion, light pollution and accompanying crime violates the rural, residential flavor of this area. "

In reviewing the filed document entitled "Chapter V-Section 55, Subdivision Summary Form dated 08/03/2022 it describes the Hotel/Golf Casitas as 225 taking up 26.6 acres. The 50 flats are described as part of the residential total instead of 846 it sets forth as 896 covering 655.5 acres. The Commercial and other non-residential take up 26.6 acres and the total indicated as Residential units total 1121.

Fire Hazards:

Under the current ingress and egress of FHN there are two avenues available. Highway 83 and Stagecoach Road is one and the other is Old Stagecoach Road and Black Forest Road. If there was a large forest fire and the entire community had to evacuate these would be the total outlets. Assuming each family had two automobiles and on average two children this means evacuating up to 4,484 people in two vehicles for 2242 cars all trying to get out with but two avenues of escape. As I previously indicated I communicated with Chief Langmaid, fire chief of Black Forest Fire Rescue. He advised me that currently BFFR staffs with a minimum strength of six firefighters and an authorized strength of eight firefighters, per shift, for the entire Black Forest Fire Rescue Protection District. He further advised me that they need to achieve a daily minimum strength of thirteen and authorized strength of fifteen to provide adequate services currently, let alone with the increased demand due to growth and various occupancy types.

In the developer's application, letter of intent and sketch plan he indicates a POSSIBLE additional fire house. Yet nowhere does the plan

indicate who would pay for such an additional fire station, let alone equip and man it. Is the developer going to pay for the cost of building the additional station, pay the cost of adding more fire fighters and equipping them? This is not addressed. Further the sketch plan shows a rendering of a hotel that is some four stories plus in height. Will additional firefighting equipment be necessary and if so, again how is it to be paid? Will these costs become costs of El Paso County?

Law Enforcement:

Adding substantially more residential units with high densities will result in greater need for law enforcement. This will require more sheriff deputies to patrol the streets especially where the higher densities will be created. Just consider the current crimes occurring in the residential developments west of highway 83 and east of highway 25 in all the residences where almost daily on the publication "Next Door" are reports of cars broken into, attempts to enter homes, and other crimes which have required law enforcement to be involved. With adding some 1121 residential units in place of 201 you need to understand this will increase criminal behavior. Again, how is this all to be paid for?

Traffic and Controls:

If this proposed density increase is allowed there will be more vehicles on both Hodgen and highway 83. Currently there are several entries and exits on both streets for ingress and egress from High Forest subdivision. This may require installation of traffic lights on the intersections of Black Forest Road and Hodgen, as well as the two entrance/exits to High Forest on Hodgen, on the entrance/exist to High Forest on highway 83 and maybe as well traffic lights at both entrances and exits into FHN, one at highway 83 and Stagecoach Road with the second one at the intersection of Black Forest Road and Old Stagecoach. It also may be possible to build roundabouts at all these

spots. Regardless, again someone must pay the cost of creating these controls. Will this as well fall on the County?

Schools:

Given the proposal for higher residential density and assuming two children families at least within the 846 units; thus, an additional 1692 students, maybe more or less, where are they to attend school? Will more classrooms or even another school have to be built? How will that be paid for, and will that be passed on to the taxpayers in their real property tax bills? Just currently in our real estate tax bill some 46% is for the school district. With this density increase more teachers will need to be hired, school equipment, and once again a cost whereas the current existing plan of FHN does not require a new school. It will however if this density is increased and approved.

Public Works:

Currently during the winter months when it snows, the County Department of Public Works regularly plows the main two streets of ingress and egress here in Flying Horse North and if there is time occasionally plows the side streets. If this density increase is allowed resulting in multiple streets, sidewalks and the like, how is the Department of Public Works going to be able to handle these additional streets without obtaining additional employees and snow removal equipment?

Wildlife:

Currently here in FHN there is a tremendous variety of wildlife. Herds of Elk, and Antelope during parts of the year will travel and graze within this beautiful forest. Families of wild turkeys visit daily bringing their young. Different variety of squirrels are always present and seem to get along with the turkeys. Racoons, porcupines, field mice live here in FHN and seem to thrive with homes sitting on 2.5 acre to 5-acre parcels. Cattle graze on the ranch bordering Stagecoach Road.

Occasionally you see coyotes playing in the street and an occasional black bear will drop by. Multiple varieties of birds including hawks are seen daily. There are also the pesky voles, gophers and even a weasel. Families of Deer come around. This entire area with the existing FHN development to consist of no more than 283 residential units on parcels from 2.5 acres to 5 acres in size have allowed people and wildlife to live harmoniously together sharing the forest as well as grasslands. On any given day herds of antelope and Elk can be seen grazing on the native grasses in the meadows, particularly in the acreage bordered by Hodgen Road and Black Forest Road. With the proposed density increase that area will be lost to the herds of Antelope and Elk.

Luxury Hotel:

If the developer can build the hotel, he envisions, without needing to increase the density from the existing remaining 201 individual residential units than I would not oppose the same. I think such a hotel does not make any sense given the main attraction would be the golf course which is closed six or seven months of the year resulting from weather conditions. However, given the millions it seems it would take to handle water and wastewater for such a hotel, the density increase being sought from the existing 201 remaining units to some additional 896 exclusive of the Hotel rooms has no benefit for the community nor the entire County and only adversely affects the entire area.

Water:

Throughout this report of my research, I have discussed the concerns about lack of water in order to supply the needs for the density increase as being sought by the developer. In this regard I made inquiry of Colorado Division of Water Resources specifically to Mr. Kevin G. Rein, P.E. State Engineer, Director. Mr. Rein's name was given to us at the neighborhood meeting with the developer's representative on September 8, 2020, provided at that meeting by Kevin Mastin, acting

planning executive director. Mr. Mastin represented that the decision as to whether there is adequate water to service the proposed density increase sought by the developer of FHN was not up to El Paso County and was a decision to be made by the Colorado Division of Water Resources.

I emailed Mr. Rein and asked him for any information about available water for this density increase being sought by the developer of FHN as well as what specifically must the developer prove to the Division of Water Resources to obtain approval, especially the requirement to prove there existed enough water for the next 300 years. In replying to my inquiry, Mr. Rein informed me that their agency does not have approval authority for a subdivision and its water supply but in many cases, they do provide an opinion to the county regarding the water supply. He made it clear however that the county is the ultimate approval authority for the subdivision. He further put me in contact with Joanna Williams their Chief of Water Supply.

Ms. Williams emailed me and advised me that section 30-28-136, C.R.S. provided that upon receipt of a complete preliminary plan submission, the board of county commissioners or its authorized representative shall distribute copies of prints of the plan as follows: (h) (I) To the state engineer for an opinion regarding material injury likely to occur to decreed water rights by virtue of diversion of water necessary or proposed to be used to supply the proposed subdivision and adequacy of proposed water supply to meet requirements of the proposed subdivision. The state engineer if he finds injury or inadequacy shall express his findings in an opinion in writing to the board of county commissioners and state his reason for his findings. She provided me with further explanation of the process from the state position as well as the County. She also confirmed that for subdivisions in El Paso County the county Land development Code requires that a developer

must show that the supply can meet the average annual demand of the proposed subdivision for a period of 300 years.

My concern is given it has been 35 years since the water in these aquifers was estimated and the population of El Paso County has grown 86.9% in this time, how can anyone prove and establish water from the aquifer or aquifers being considered for supplying water will be available for the next 300 years, especially without any knowledge of how many users of water from these aquifers have accessed the same over these 35 years.

Ms. Williams sent me a letter she sent to Nina Ruiz dated April 11, 2022, following review of a proposed sketch plan sent to her for review on March 28, 2022. That was apparently in connection with the sketch plan calling for a density increase from the 201 residential units to 1571. The source of water was indicated as to come from the Arapahoe and Laramie-Fox Hills aquifers and to be supplied by Cherokee Metropolitan District. That correspondence makes it clear that the Cherokee Metro district did not currently have the capacity to supply the full build-out demand of FHN development plan. It did set forth what Cherokee would require providing water and wastewater for the development. Ms. Williams pointed out that the applicant, the developer did not provide information as to whether any of the terms listed were met thus their state office had no comments regarding whether the Cherokee Metro District had ability to provide water to the development. We know that the sketch plan changed however unknown is whether the developer has met any of the requirements of Cherokee Metropolitan District to support the district in setting forth whether it can or cannot provide water and wastewater services.

As a result, I have to ask, how can either planning commissioners or County Commissioners consider the current sketch plan without the water and wastewater aspects clearly set forth? It seems that the

sketch plan hearing currently set for November 3, 2022, is premature just as to water and wastewater issues.

Flying Horse North Declarations of Covenants, Conditions, Restrictions and Easements Should prevent density increase:

When the parcels in filing no 1 being 81 residential properties of a minimum lot size of 2.5 acres up to 5 acres, all purchasers became subject to the CC&Rs. Filing no 2 consisted of one residential parcel which then also became subject to these CC&Rs. These CC&Rs became effective as of October 29, 2018. The first parcels were sold beginning in October 2017. These declarations were made by Elite Properties of America, Inc., with the consent of PRI#2 LLC the owner of the Community Area described as the properties encompassed in Exhibit A. These were the first 81 parcels. There was as well labeled Expansion Property described on Exhibit B which allowed the declarant being Elite Properties of America Inc., to add all or portions of the Expansion Property to the Community Area from time to time. This is how filing no 2 added the 82nd parcel. It further set forth that the Expansion property to the extent not added to the Community Area did not become a part of the Community area and the Declaration of CC&Rs did not apply to Expansion property. Further section 10.1 of the CC&Rs provided the declarant with retention and reservation of a number of rights for a twenty-year period including the Association meaning the Homeowners Association.

Section 10.8 set forth under the title "Maximum Number of Lots" the following: "Notwithstanding any other provision of this Declaration, the maximum number of Lots that Declarant may create within the entire Community Area is 283 Lots."

The entire subdivision was approved for a total of 283 lots with minimum size of 2.5 acres to 5 acres. However, the above section 10.8 seems to create an ambiguity because Community Area refers to lots on Exhibit A being the 81 lots of filing no 1 and subsequent addition of another lot from Exhibit B becoming the 82nd lot part of the Community Area. However, given the fact that the lots in exhibit B were not part of the Community Area creates a conflict between a total of 283 lots and the Declarant which is the developer seeking to increase the density of the so called remaining 201 parcels into now 896 parcels.

The question is should this ambiguity be charged to the drafter of these CC&Rs thus meaning that no more than 283 individual residential parcels should ever be allowed in Flying Horse North, given the ambiguity created by the developer/declarant. Should the developer be denied any attempt to expand the remaining 201 parcels into more residential units as currently attempting of 896 in the sketch plan and Letter of Intent currently before the planning commission and County Commissioners?

A basic rule of contract law strictly interprets an ambiguity against the drafter of the contract as the ambiguity was created by the drafter. In this case the developer should not be allowed to use this ambiguity for his or its advantage. Thus, I request herein that the planning commissioners as well as the County Commissioners deny the developer's seeking to increase the density from what otherwise is a limit to no more than 283 parcels from minimum size of 2.5 acres up to 5 acres as currently exist. Whether the developer as the drafter of the CC&Rs was purposely attempting to mislead buyers of filing no 1 or innocently created this ambiguity does not matter under principles of contract law. The attempt to increase the density of the entire acreage from more than a total of 283 independent residential properties should be denied and the application, sketch plan and letter of intent denied.

Flying Horse North Letter of Intent April 2016 (Revised July 2016):

According to the revised letter of intent when the developer sought to create Flying Horse North, 1417 acres of the 2600-acre Shamrock Ranch was acquired for this entire development. As set forth the proposal was for a new community with a golf club. The intent was to create a lifestyle both unique to the Colorado Springs area and to the Black Forest. The focus as stated "will be a signature golf course and associated recreational facilities designed to attract buyers looking for a secluded lifestyle with family oriented recreational and community amenities." The plan further calls for a planned community of 283 lots. Lot sizes would be 2.5 to 8 acres. Further the Land use plan called for a density of one unit per five gross acres of land and this density was represented to be in conformance with density recommendations of the Black Forest Land Use Plan. In fact, Heights were set at a maximum of 35 feet with a 45 foot Maximum for the Golf clubhouse. Lot coverage was limited to 20% maximum. A golf club house was also called for with all accessories uses commonly found at private golf clubs would be allowed. Additionally, the Letter of Intent called for Stagecoach Road through the prairie environment to have a landscape treatment consistent with the theme of one tree per 50 feet of linear roadway, placed in a clustered design. Reference is made to this being a rural subdivision along with the focal point of the golf course and internal parks and trails. As stated, "Upon development of this property, Flying Horse North will be seen as a unique rural residential neighborhood and as a part of the Black Forest." The Letter of Intent confirms the fact that the two school districts which Flying Horse North is within given the development are not in need of a school site previously dedicated by the developer for such use. With the current density increase proposal it is doubtful the lack of need of an additional school will remain. Further this initial development of Flying Horse North claimed it conformed in general with the El Paso County Master Plan.

The development known as Flying Horse North has after approval by El Paso County had homes being built including to the present time on these 82 parcels in accordance with the rural residential atmosphere within Black Forest. The Developer commencing in late 2021 has sought to increase the density of the remaining 201 undeveloped parcels along with a luxury hotel. This is now an attempt to completely change the vision presented to El Paso County when approval of this subdivision was first made. This attempt happening in less than five years of this wonderful subdivision. The developer promised a permanent club house with amenities of a pro shop, restaurant, bar and gym; however, has failed to produce what was promised. In fact, a trailer with a large painted sign of a proposed permanent club house sits at the corner of Allen Road and Old Stagecoach road where it has sat for years. Now, however the proposal for the density increase along with the luxury hotel is to build this promised club house as part of the current application. Regardless of the current application, sketch plan and Letter of intent that promised permanent club house, restaurant, bar and gym should be compelled to be built before any other approvals for any changes as being requested are considered let allowed.

Flying Horse North Sketch Plan Submittal Letter of Intent, September 22, 2022

At page 3 of this Letter of Intent the developer lists conclusions not facts regarding how the proposal meets criteria for Approval. As an example item D states: "The water supply report provides sufficient information to identify compliance with the water supply standards and identifies any need for additional water supplies;" Looking at the water resource report part of the sketch plan, dated revised July 2022 the first section indicates the residential units will be roughly 846 which is shy some 50 let alone a 225 room Hotel. This report further states that

Cherokee Metropolitan District signed a letter of intent to provide water for this project and has sufficient water available to supply the projected annual water demand. Meanwhile as already pointed out there is no binding commitment for Cherokee to supply water let alone handle wastewater. This has been the situation since January 12, 2022, and nothing has to date been disclosed to establish any actual commitment. Previously as I set forth in this report I referenced and quoted from the Project Review Comments from Cherokee Metropolitan District which shows there currently is no agreed upon arrangement between the developer and Cherokee Metro district nor that the district has even the means to provide the needed water and handle the wastewater.

I further previously referenced the letter to Nina Ruiz dated April 11, 2022, from Ms. Joanna Williams, P.E., Chief of Water Supply, of the Colorado Division of Water Resources where Ms. Williams opined that their department had not received enough information to render an opinion regarding the potential for causing material injury to decreed water rights, or the adequacy of the proposed water supply. The letter states the following:

“Prior to further review of the subdivision water rights, or the adequacy of the proposed water supply plan the following information is required: 1. Clarification of the source of the water supply that satisfies El Paso County’s 300-year water supply requirement. 2. Clarification on the specific amounts and the decreed water rights that will be dedicated to this development. 3. A complete summary of the water rights owned and controlled by the District and evidence of that ownership or control. (Reference to district is to Cherokee Metro district) 4. The anticipated demand due to commitments for service entered into by the District that are not yet supplied. 5. The amount of uncommitted firm supply the District has available for future commitment and development. 6. Provide proof that the development was included within the District’s service area.”

At page 6 of the Letter of Intent again misrepresents the maximum number of residential units at 846 when it fails to mention the additional 50 for a total of 896. This same Letter of Intent fails to indicate that what is classified as casitas could in fact be individually sold as opposed to be dealt with as hotel rooms or rental units. Again, at this same page 6 it indicates a golf clubhouse/restaurant/bar as though not already promised to the purchasers of the first 81 units sold, including a gym.

At page 8 under item 4. Identify and acknowledge any applicable overlay zoning, the representation that Filing 1 area show 2.5 acre lots in the forested area north of Cathedral Pines community is a misrepresentation. When FHN with no more than 283 residential units was proposed and approved the individual parcels were to be a minimum of 2.5 acres and larger up to some 8 acres. I believe they all are a minimum of 2.5 acres up to 5 acres in size. The last sentences in this paragraph 4 state "With the change of this proposed Sketch Plan the total unit count is increased by 563 residential units. There is also the hotel rooms, casitas and flats which comprise of 275 rooms (keys)." This again seems to be an intentional misrepresentation. Currently there are 201 remaining undeveloped residential lots from a minimum of 2.5 acres to 5 acres in size. The Sketch Plan proposal is for 846 individual residential lots plus 50 residential units associated with the hotel which is to be 225 rooms. Thus, not counting the hotel rooms themselves the actual individual residential units total 896 and that is an increase of 695 not as stated in this Letter of Intent 563.

At page 9 of the Letter of Intent again misrepresents when discussing the El Paso County Master Plan (2021). It claims that the largest estate lots are 2.5 acres and basically ignores the fact that the minimum 2.5 acres to 5-acre parcels are between Cathedral Pines and these undeveloped remaining 201 lots for which this developer is seeking to increase to 896. For whatever reason this Letter of Intent just ignores

the current residential properties in FHN which are between Cathedral Pines and these remaining 201 undeveloped parcels. Again, at page 10 the letter refers to large estate lots meaning 2.5 acres placed within the forested areas and adjacent to Cathedral Pines. Again, the existing residential parcels comprising the first 81 units are a minimum of 2.5 acres and up to at least 5 acres in size. Cathedral Pines is just south of the filing 1 residential FHN developed properties. While referencing Goal 1.3 of the Master Plan the fact remains that the existing total FHN subdivision of both developed lots and the remaining 201 lots meet all the goals of the Master Plan; thus, why change what is good for the area.

At the bottom of page 10 it states "The utilities and infrastructure for this project will be provided by the developer through multiple mechanisms such as the FHN Metropolitan District, Cherokee Metropolitan District (or similar water/wastewater provider) and with the setup of an HOA (Homeowners Association) for the long term maintenance of those facilities." This is an admission that there are no in place agreements for water and wastewater which should be a requisite before considering this entire application for density increase and the hotel. There already is in place the Flying Horse North homeowner Association where 82 homeowners are current members. This Sketch plan including Letter of Intent is seeking to create a separate Homeowner Association for the remaining 201 undeveloped lots in order to get a higher density and a hotel when he could sell these existing lots and in fact move them into the already existing homeowner association.

The Letter of Intent discusses under Goal 2.4 providing multiple housing types as detached residential with various lot sizes, square footage, densities and price ranges. What is not said is the fact that in order to pay for the building of the infrastructure, such as streets, sidewalks, gutters, fire hydrants, handling water and wastewater the total expenses will be passed on to the buyers of these properties which will

avoid all affordable housing regardless of the square footage size of the homes to be built.

At page 13 of the Letter of Intent the developer refers to the luxury resort hotel of high quality to serve a large geographic region beyond Colorado claiming this will enhance the quality of life for future residents of the community. Ask yourself what will make this property a resort as opposed to a hotel. What amenities is the developer calling for to make this qualify as a luxury resort? These are questions which the developer should be compelled to answer before any consideration is given to this proposed density increase and luxury hotel. The community is entitled to know just what the developer is proposing. The rendering shown at neighborhood meetings was of a hotel structure some four or five stories high. What happened with the height limitation of 45 feet currently within the CC&Rs as to the golf club house, still not built? Is the proposal now to avoid not only the density requirement of parcels no smaller than 2.5 acres and up to 5 acres in size, is also to avoid all height restrictions?

At page 14 is a discussion of water and wastewater. Again, no agreements have been entered into binding the developer with Cherokee Metropolitan District for supplying either water or handling wastewater. Yet this letter of intent claims that FHN anticipates having wastewater treated by Cherokee at their existing Water Reclamation Facility. Set forth as a general term before Cherokee would handle the wastewater is item 6 in the January 12, 2022, non-binding letter agreement between Cherokee and the developer. Item 6 states: "To the extent an expansion of wastewater treatment capacity at Cherokee's Water Reclamation Facility is necessary to provide wastewater service to FHN, FHN will fund FHN's proportionate costs associated with planning, design, and construction of an expansion of the wastewater treatment capacity at Cherokee's Water Reclamation

Facility, as well as any necessary upsizing of any wastewater collection and /or delivery infrastructure.”

Even after eight months between the non-binding letter between Cherokee Metro and the developer, and the Letter of Intent dated September 22, 2022, there is still nothing definitive about where water will come from and how wastewater will be handled. I again ask how any consideration can be given for this Sketch Plan without answers to these basic questions.

This Letter of Intent discusses at page 14 that the development will provide quality outdoor recreation with a fitness club, amenity center, parks, open space and trails. As to parks, open spaces and trails the existing FHN subdivision already provide the same with construction of trails currently on going. What fitness center and what is an amenity center? Is a fitness center going to be built and available to all citizens of El Paso County or is it going to be limited to the property owners of the existing 82 residential units and as well available to golf members, and hotel guests and owners of the increased density residential units?

At page 18 the Letter of Intent points to the southwest corner of Black Forest Road and Hodgen Road for a proposed commercial development including a potential fire station. However, no indication as to how the fire station is to be paid for. Further such a commercial development will again create traffic issues requiring stop lights and or roundabouts which will affect traffic going east and west bound on Hodgen. Nothing is addressed about all the wildlife currently grazing in the open meadows of that area of the property. At any given time, herds of Elk and Antelope can be seen grazing.

The Letter of Intent seeks to minimize the affect upon wildlife; however, the existing 283 residential unit development known as Flying Horse North made up of residential rural parcels no smaller than 2.5

acres up to 5 acres and maybe even larger with single family homes have worked in conformity with all the wildlife; thus, why change a good thing, why not just leave well enough alone. Currently all 82 home sites are on private wells into the Dawson aquifer with the remaining 201 individual lots having access as well to private wells to the Dawson and all compatible with the El Paso County General Plan. Why not just leave everything as it is? It seems the entire desire to increase density is so the developer can raise the money from selling more lots in order to pay the millions of dollars to obtain a water and wastewater system so he can build a luxury resort hotel. I have continually asked myself and researched online luxury hotels and resorts wondering what is going to bring people to what will be a very expensive luxury high end hotel resort and during winter months when even the golf course is closed. I have come up with no answers except the selling of time shares, maybe condo rooms/apartments and what would be needed, a heliport at the hotel to bring people to and from the Denver airport.

The Letter of Intent discusses revenue for the County and how the proposed development will add to that revenue. However, quality of life seems to be the most important concern of the citizens of El Paso County and even this Letter of Intent clearly in its arguments for the development concedes to that primary goal of the residents of our County.

At page 26 the Letter of Intent declares in a bold print **“THE FHN DENSITY FOR THE ENTIRE PROPERTY (INCLUDING FILING 1 AND THE GOLF COURSE) WILL BE APPROXIMATELY ONE (1) UNIT PER ACRE, WELL BELOW THE 5 UNITS/ACRE.”** What is not stated is the fact that represented in the Flying Horse North Letter of Intent April 2016 (revised July 2016) was the fact that the development would have an overall density of 5 acres per lot. This of course included the currently existing 82 units as well as the remaining 201 undeveloped parcels. In

other words, we already with the existing FHN development are 5 acres per lot as opposed to 5 parcels per acre.

The Letter of Intent discusses beginning at page 34 the formation of a FHN Metropolitan District to provide bonding to fund construction of the roads, utility infrastructure, waterways/wetlands, parks and trails and to provide ongoing services for these facilities. It is further contemplated that Cherokee Metropolitan District provide sewer service. All these improvements and services will be at the expense of the owners of these residential units including streets, sidewalks, gutters and fire hydrants. No indication is forthcoming as to the cost and one of the reasons is still no indication where the water is going to come from nor an agreement for the same, let alone wastewater services. On page 35 in a highlighted box, it states that services are or will be available to meet the needs of the subdivision, including, roads, police and fire protection, schools, recreation facilities and utility service facilities. How can these representations be made without any facts to support them. Given the property is in the county currently, police must refer to sheriff.

In Conclusion regarding the Letter of Intent is replete with self-serving statements that all the items in the El Paso County General Plan are met. These are all opinions and conclusions of the developer without substantial factual support. I understand it is the purview of the Commissioners to determine whether this application including the entirety of the Sketch Plan should be approved or rejected. I submit that there are many negatives which offset the only benefit I see to the County in the form of tax revenues including the cost increase on many services required to be provided, as well as the aesthetic damage to the rural and forested area which provides so much benefit for members of the community. Most important is the fact that this developer after creating a wonderful development known as Flying Horse North for a total of 283 individual residential properties minimally 2.5 acres to 8

acres in size along with one of the most beautiful golf courses in existence wants to harm this wonderful development in order to be able to build a luxury resort hotel.

Finally I want to remind each of you of the fact this developer created a document binding on all current 82 property owners, being the CC&Rs where he caused an ambiguity which legally should be held against his position; thus as set forth in Section 10.8 of that document the total number of lots to be allowed should not exceed 283, thus the remaining 201 are all that can be sold and residences built upon. This alone should terminate the entire application, Sketch Plan once and for all.

Thank you for allowing me to share my research and investigation with each of you. Wishing you all well, I remain, Sincerely, Phil Shecter

