

**EASEMENT AGREEMENT AND GRANT  
FOR LOT 2  
COBBLE CREEK**

This Easement Agreement and Grant for Lot 2 (" Agreement") is entered into as of the 15<sup>th</sup> day of May, 2020, by and between COBBLE CREEK HOMEOWNERS ASSOCIATION, INC., a Colorado non-profit corporation ("Grantor") and SPRUCE POINT HOMEOWNERS ASSOCIATION, INC., a Colorado non-profit corporation ("Grantee").

Recitals

A. Grantor is the homeowners' association for the Cobble Creek Subdivision, a Colorado Common Interest Community organized in accordance with C.R.S. § 38-33.3 -101 et. seq. ("Cobble Creek"). Grantee is further defined in the Amended and Restated Declaration of Covenants, Conditions and Restrictions recorded in the real property records of the Clerk and Recorder of Montrose County, Colorado on May 28, 2015 at Reception No. 865507. (the "CC Declaration").

B. Grantor is governed by an Executive Board, as defined in the CC Declaration (the "CC Executive Board "), which has the specifically enumerated powers provided under C.R.S. § 38-33.3- 303.

C. Grantee is the homeowners' association for the Spruce Point Subdivision, a Colorado Common Interest Community organized in accordance with C.R.S. § 38-33.3 -101 et. seq. ("Spruce Point"). Grantee is further defined in the Amended and Restated Declaration of Covenants, Conditions and Restrictions recorded in the real property records of the Clerk and Recorder of Montrose County, Colorado on January 25, 2017 at Reception No. 882718. (the "SP Declaration"). The SP Community is located immediately to the north of and adjacent to the CC Community.

D. Grantee is governed by an Executive Board, as defined in the SP Declaration (the "SP Executive Board "), which has the specifically enumerated powers provided under C.R.S. § 38-33.3- 303.

E. Grantor owns that certain real property described on Exhibit A attached hereto and incorporated herein (which may be referred to herein as "Grantor's Property" or as "Lot 2"), which property is also depicted on Exhibit B attached hereto and incorporated here by this reference. Lot 2 provides benefits to Grantor and its members in the nature of an open space area for recreational activities, including playground equipment for children and fishing in a pond.

F. Cobble Creek and Spruce Point are each considered to be part of the greater "Cobble Creek Golf Community." While Lot 2 is not a part of Spruce Point's platted open space, the area is periodically utilized by Grantee's members, and their guests and invitees (collectively referred to herein as "SP Members") and affords benefits to such SP Members by providing an additional area for such activities as fishing, walking or running, walking dogs, picnicking, and other similar recreational activities. In keeping with Grantor and Grantee's mutual belief that the Cobble Creek and Spruce Point effectively function as two areas within the contiguous Cobble Creek Golf Community, and for no monetary consideration, Grantor wishes to memorialize the rights of SP Members to utilize Lot 2 for the purposes

and subject to the terms and conditions further enumerated below.

G. Grantor is therefore prepared to grant an easement to Lot 2 for the benefit of Grantee and the SP Members on a non-exclusive basis, and Grantee is prepared to accept an easement to Lot 2 from Grantor on a non-exclusive basis. Such easement shall be on the terms and conditions set forth herein.

H. It is the intent of Grantor and Grantee that this Agreement constitutes an easement agreement wherein the SP Members are granted a right to use Lot 2 as specified and subject to the terms and conditions stated herein.

I. Reference is also made to that certain "Easement Agreement and Grants for Common Areas and Golf Course" by and between Weststar Development, LLC and Grantor dated effective as of November 30, 2015 (the "2015 Easement"), which is recorded in the records of the Clerk and Recorder of Montrose County, Colorado at Reception No. 870867, as the same may be amended from time to time.

#### Agreement

NOW, THEREFORE, in consideration of the foregoing and other good and valuable mutual consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants to Grantee and the SP Members, and Grantee hereby accepts from Grantor, the easement described in this Agreement, upon and subject to each and every one of the terms, covenants, agreements and conditions contained herein.

1. Easement from Grantor to Lot 2.

(a) Subject to the use limitations set forth below in Section 2, Grantor hereby grants a non-exclusive easement to Grantee and SP Members over and across Lot 2 ("Lot 2 Easement").

2. Use of Lot 2 Easement.

(a) Permitted Uses. Grantee and the SP Members may access and use Lot 2 for walking or running with or without dogs, picnics, low impact recreation, fishing in the pond(s), and other similar activities, provided that any and all such access and use do not adversely increase the cost of maintenance of Lot 2.

(b) Limitations on Use. Neither Grantee nor the SP Members may use Lot 2 for any purposes other than the purposes specifically provided for in subsection 2(a) above without Grantor's prior written consent. Specifically, it is the intent of Grantor and Grantee that under no circumstances will Grantee or SP Members engage in, authorize or permit any commercial, retail or other income producing activities anywhere on Lot 2 without the prior written consent of Grantor.

3. Obligation of Grantee to Adopt Rules, Reserved Rights of Grantor and General Restrictions.

(a) Rules Adoption. Within ninety (90) days of the date of this Agreement, Grantee shall adopt rules for the SP Members consistent with the permitted uses and limitations on use set forth in Section 2 of this Agreement and the restrictions set forth in subsection (c) of this Section 3. Grantee may fulfill this requirement by adopting by specific reference such rules as Grantor may have in effect governing CC Members' use of and access to Lot 2, provided such rules reflect the restrictions noted in the above-referenced provisions.

(b) Reserved Rights. Grantor hereby reserves the right to make all such changes to Lot 2 or any portion thereof as may be required by any governmental agency or as desired by the CC Executive Board. In addition, Grantee acknowledges that Weststar Development, LLC (“Weststar”), or its successor, has reserved the right, in its sole discretion, to maintain, repair, replace, or reconfigure including draining, the ponds and all water, diversion, measurement, and management structures and appurtenances located, partially or entirely, on or in Lot 2 as necessary or appropriate in connection with the use of the water stored in such ponds or passing through Lot 2 and the maintenance and preservation of the water rights of Weststar that involve, touch or concern Lot 2;

(c) General Restrictions. Neither Grantee nor any SP Members may deposit or dump yard waste or any other waste on or in any area of Lot 2. In addition, neither Grantee nor any SP Members may open, close, adjust or tamper in any way with any irrigation valve, gate, or other water diversion, measurement, or management equipment or facilities located on or serving Lot 2. Nothing in this Agreement nor any use permitted hereunder shall give Grantee or any SP Member any claim of use, right or ownership in any water right, whether undecreed or decreed conditional or absolute, stored in, used or flowing through any ditch or pond located on any portion of Lot 2.

4. Assumption of Risk, Indemnification and Insurance.

(a) By Grantee. To the fullest extent permitted by law, Grantee and the SP Members, by entry upon or use of Lot 2 Easement, assume all risk of personal injury or damage to property and waive any and all claims against Grantor arising out of or related to any personal injury or death or damage to property occurring as the result of entry upon or use of Lot 2. To the fullest extent permitted by law, Grantee hereby agrees to defend (with counsel approved by Grantor, which approval shall not be unreasonably withheld), indemnify and hold Grantor, its officers, agents and employees, harmless from and against any and all liability, claims, damage, penalties, actions, demands or expenses of any kind or nature, including, without limitation, damage to any property of third parties and injury (including death) to any person, arising from the use of or access to Lot 2 by Grantee, the SP Members, or any of Grantee's or SP Members' agents, employees, contractors, subcontractors or invitees, or from any litigation concerning any of the foregoing in which Grantor is made a party defendant. This obligation to indemnify shall include reasonable attorneys' fees and investigation costs and all other reasonable costs, expenses and liabilities incurred by Grantor or its counsel from the first notice that any claim or demand is to be made or may be made.

(b) Grantee's Insurance. Grantee, at all times, shall maintain public liability insurance covering Grantee and SP Members, and naming Grantor as an additional insured, for injury (including death) to a person or damage to property arising from or related to the use of Lot 2 with a minimum liability limit of One Million and no/100 Dollars (\$1,000,000.00) per occurrence. The insurance policy shall be issued by a company licensed to carry insurance in the State of Colorado. To the furthest extent possible, Grantor shall be provided with thirty (30) days advance written notice prior to termination or expiration of the term of the policy. A certificate of insurance showing Grantor as an additional insured shall be delivered to Grantor prior to the beginning of each calendar year.

(c) By Grantor. To the fullest extent permitted by law, Grantor hereby agrees to defend (with counsel approved by Grantee, which approval shall not be unreasonably withheld), indemnify and hold Grantee, its officers, agents and employees, harmless from and against any and all liability, claims, damage, penalties, actions, demands or expenses of any kind or nature, including, without limitation,

damage to any property of third parties and injury (including death) to any person, arising from the maintenance and/or repair of Lot 2 or from any activity, work or things done, permitted or suffered by Grantor or any omission of Grantor on or about Lot 2, or any of the foregoing acts or omissions by any of Grantor's agents, employees, contractors, subcontractors or invitees, or from any litigation concerning any of the foregoing in which Grantee is made a party defendant. This obligation to indemnify shall include reasonable attorneys' fees and investigation costs and all other reasonable costs, expenses and liabilities incurred by Grantee or its counsel from the first notice that any claim or demand is to be made or may be made.

(d) Grantor's Insurance. Grantor, at all times, shall maintain public liability insurance covering Grantor, and naming Grantee as an additional insured, for injury (including death) to a person or damage to the property arising from or related to the maintenance and/or repair of Lot 2, with a minimum liability limit of Two Million and no/100 Dollars (\$2,000,000.00) per occurrence. The insurance policy shall be issued by a company licensed to carry insurance in the State of Colorado. To the furthest extent possible Grantee shall be provided with thirty (30) days advance written notice prior to termination or expiration of the term of the policy. A certificate of insurance showing Grantee as an additional insured shall be delivered to Grantee prior to the beginning of each calendar year.

5. Transfer of Title.

(a) Transfer of Title. Upon transfer of title to Lot 2 by Grantor, all of Grantor's rights and obligations under this Agreement shall be automatically be vested in and transferred to Grantor's successor in title. Further, any successor in interest shall be deemed to have taken title subject to the terms of this Agreement.

6. Default by Grantee.

(a) Defined. Any of the following events shall constitute a default under this Agreement by Grantee:

(i) The failure by Grantee or SP Members to observe, perform or comply with any material term, condition or obligation in this Agreement, where such failure continues for thirty (30) days after Grantor gives Grantee written notice of such failure, unless such failure cannot reasonably be cured within such thirty (30) day period, in which event the cure period shall extend so long as Grantee commences action to cure such failure within thirty (30) days and thereafter prosecutes the same to completion with due diligence and in good faith.

(ii) The failure by Grantee to enact or enforce rules consistent with the use restrictions set forth and as specified in Section 2 above, and where such failure to enact such rules continues for thirty (30) days after Grantor gives written notice of such failure or where such failure to enforce rules continues for thirty (30) days after Grantor gives written notice of such failure, unless such enforcement cannot reasonably be accomplished within such thirty (30) day period, in which event the period shall extend so long as Grantee commences action to accomplish such enforcement within thirty (30) days and thereafter prosecutes the same to completion with due diligence and in good faith.

(iii) The termination of the 2015 Easement, as the same is defined therein.

(b) Grantor's Remedies. In the event of any default by Grantee, after the expiration of applicable cure periods, Grantor shall have the right, at its election, then or at any time thereafter, to

exercise any one or more of the following remedies:

(i) By giving Grantee prior written notice, Grantor may terminate the Lot 2 Easement as of the date of default, including any applicable cure periods, or as of any later date specified in the notice;

(ii) Grantor may prohibit use of the Lot 2 Easement until a default no longer exists

(iii) Grantor may pursue such other rights and remedies as may be available to Grantor at law or equity, including injunctive relief to prevent Grantee or the Members from the use or benefit of the Lot 2 Easement, which relief shall include reasonable attorneys' fees and costs incurred by Grantor in connection with pursuit of such rights, remedies or relief.

(c) Remedies Cumulative. Each of the remedies described above, and all remedies available to Grantor at law or equity for a default by Grantee, shall be cumulative with and in addition to one another and may be exercised simultaneously or successively, as Grantor may deem appropriate, without any exercise of one remedy being deemed an election of remedies or a waiver to the exclusion of any other remedy.

7. Default by Grantor.

(a) Defined. The following shall constitute a default by Grantor under this Agreement:

(i) Grantor's failure to comply with any material term, condition or obligation of Grantor in this Agreement, if such failure to comply shall continue for a period of thirty (30) days after Grantee gives Grantor written notice of such failure, including a description of the location and details of such failure, unless such failure cannot reasonably be cured within such thirty (30) day period, in which event the cure period shall extend so long as Grantor begins to undertake action to cure such failure within such thirty (30) days and thereafter prosecutes such cure to completion with due diligence and in good faith.

(b) Grantee's Remedies. Upon the occurrence of any default by Grantor, after the expiration of applicable cure periods, Grantee shall have the right, at its election, then or at any time thereafter, to exercise any one or more of the following remedies:

(i) By giving Grantor written notice, Grantee may terminate this Agreement as of the date of the default by Grantor, or as of any later date specified in the notice.

(ii) Such other rights and remedies as may be available to Grantee at law or equity, which relief shall include reasonable attorneys' fees and costs incurred by Grantee in connection with pursuit of such rights, remedies or relief.

(c) Remedies Cumulative. Each of the remedies described above, and all remedies available to Grantee at law or at equity for a default by Grantor, shall be cumulative with and in addition to one another and may be exercised simultaneously or successively, as Grantee may deem appropriate, without any exercise of one remedy being deemed an election of remedies or a waiver to the exclusion of any other remedy.

8. Dispute Resolution. If a dispute ever arises between Grantor and Grantee in connection with this Agreement, the parties shall use the procedures set forth in the following provisions for any dispute that does not involve an imminent threat to the peace, health, or safety.

(a) Negotiation. Grantor and Grantee shall attempt in good faith to resolve any dispute promptly by negotiations between persons who have authority to settle the controversy ("Representatives"). Any party may give another party written notice of any dispute not resolved in the normal course of business. Within twenty (20) days after receipt of said notice, Representatives of the parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within forty-five (45) days of the notice of dispute, or if the parties fail to meet within twenty (20) days, any party to the dispute may initiate mediation of the controversy as provided below.

(b) Mediation. If the dispute has not been resolved by negotiation as provided above, either party may give written notice to mediate ("Mediation Notice") and the parties shall endeavor to settle the dispute by mediation between their respective Representatives with a neutral third-party mediator. If the parties encounter difficulty in agreeing on a neutral third party, each of Grantor and Grantee may appoint a neutral third party, and such third parties shall appoint a neutral third party to mediate.

(c) Arbitration. Any dispute which has not been resolved by mediation as set forth above within forty-five (45) days of the date of the Mediation Notice, shall be finally settled by binding arbitration conducted in accordance with the terms of this subsection, upon written demand for arbitration made by any party ("Arbitration Demand") provided, however, that if one party has requested the other to participate in mediation and the other has failed to participate, the requesting party may make demand for arbitration before expiration of such forty-five (45) days.

(i) As soon as reasonably possible following the Arbitration Demand, but not later than fifteen (15) days after the date of such Demand, the parties, in good faith, shall attempt to select a mutually acceptable arbitrator to hear and decide the matter or matters in controversy. In the event the parties cannot agree on a mutually acceptable arbitrator within thirty (30) days after the date of such Demand, each party shall appoint an unrelated third party within forty (40) days after the date of such Demand and, within fifteen (15) days of the date of the appointment of the last of such unrelated third parties, such third parties shall appoint an arbitrator to hear and settle the dispute in accordance with the terms and provisions hereof. If any party does not appoint an unrelated third party in a timely manner or if such third parties cannot or do not appoint an arbitrator in a timely manner, then any party may make application to the District Court for Montrose County, Colorado for appointment of an arbitrator.

(ii) The arbitration shall be conducted by a single arbitrator and the decision of the arbitrator shall be final, enforceable, binding and un-appealable to any court or tribunal, except as otherwise may be provided by Colorado law. Such decision shall be enforceable with the same force and effect as if issued by any court of competent jurisdiction. The decision of the arbitrator shall be based upon the evidence and facts presented by the parties and shall be in accordance with Colorado law. The arbitrator is not empowered to award damages in excess of compensatory damages.

(iii) The costs of the arbitration, including reasonable attorney fees, shall be awarded to the prevailing party. If there is no prevailing party, such fees and costs may be awarded at the discretion of the arbitrator who, in making such award, shall assess the relative good or bad faith of the parties throughout the dispute.

(iv) All arbitration proceedings shall be conducted to expedite resolution and minimize cost. Disclosures shall be required and discovery shall be allowed and both shall be governed by Rules 26-37 of the Colorado Rules of Civil Procedure, as amended, except that upon application of either party, the arbitrator, in the interest of justice and efficiency, may limit discovery as such arbitrator deems appropriate.

(v) The place of arbitration shall be Montrose County, Colorado.

(d) Provisional Remedies. Except as otherwise provided for herein, the procedures specified in this section entitled Dispute Resolution shall be the sole and exclusive procedures for the resolution of disputes between Grantor and Grantee, provided, however, that a party may seek a preliminary injunction or other provisional judicial relief if in its judgment such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action, the parties will continue to participate in good faith in the procedures specified herein.

(e) Performance to Continue. Each party is required to continue to perform its obligations under this Agreement pending final resolution of any dispute.

(f) Extension of Deadlines. All deadlines specified in this section may be extended by written mutual agreement.

(g) Costs. Each party shall pay its own costs with respect to negotiation and mediation. The Parties shall share any fees charged by a mediator equally. The prevailing party in any arbitration or provisional judicial relief shall be entitled to reimbursement from the other party for all reasonable costs and expenses, including attorney fees in connection with such arbitration or provisional judicial relief.

#### 9. Miscellaneous.

(a) No Implied Waiver. No failure by Grantor or Grantee to insist upon the strict performance of any term, covenant, or agreement contained in this Agreement or to exercise any right or remedy in connection therewith, and no acceptance of full or partial payment by Grantor during the continuance of any default by Grantee or default by Grantor, shall constitute a waiver of any such term, covenant, or agreement or any such right or remedy or any such default by Grantee or default by Grantor, it being understood and agreed by the parties hereto that any such waiver shall be effective only to the extent expressly and specifically set forth in a written instrument executed by the party against whom such waiver is sought. Any waiver of a default by Grantee or default by Grantor or any right or remedy applied thereto shall not serve to waive any other default by Grantee or default by Grantor or the same default by Grantee or default by Grantor arising in the future or other rights or remedies or the same rights or remedies as applied to any future default by Grantee or default by Grantor.

(b) Compliance With Laws. Grantee and SP Members in their use of the Lot 2 Easement shall comply promptly and fully with all laws, ordinances, notices, orders, rules, regulations, and requirements of all federal, state, municipal and local governments and with all terms, covenants and conditions of the Declaration.

(c) Survival of Provisions. Notwithstanding any termination of this Agreement, the same shall continue in force and effect as to any provisions hereof which require observance or performance by Grantor or Grantee subsequent to termination.

(d) Binding Effect. This Agreement shall extend to and be binding upon the successors and

permitted assigns of the respective parties hereto. The terms, covenants, agreements, and conditions in this Agreement shall be construed as covenants running with the land.

(e) Notice and Demands. All notices required or permitted under this Agreement shall be given by registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial carrier delivery, or by telecopies directed as follows:

If intended for Grantee to:

Spruce Point HOA

c/o President

704 Prospect Drive

Montrose, CO 81403

Email address: medfrapierco@gmail.com

Telephone number: 303-875-5078

If intended for Grantor to:

Cobble Creek HOA

c/o President

Montrose, CO 81403

Email address: paul\_story824@yahoo.com

Telephone number: 970.249.7485

Any notice delivered by mail in accordance with this section shall be deemed to have been duly given on the second business day after the same is deposited in any post office or postal box regularly maintained by the United States postal service. Any notice delivered by electronic mail in accordance with this section shall be deemed to have been duly given upon sending, if concurrently with sending by electronic mail, such sending is confirmed orally by telephone and a copy of said notice is sent by certified mail, return receipt requested, on the same day to that intended recipient. Any notice delivered by hand or commercial carrier shall be deemed to have been duly given upon actual receipt. Either party, by notice given as above, may change the address to which future notices may be sent.

(f) Time of the Essence. Time is of the essence under this Agreement for the performance and observance of all obligations of Grantor and Grantee hereunder, and all provisions of this Agreement shall be strictly construed.

(g) Captions for Convenience. The headings and captions hereof are for convenience only and shall not be considered in interpreting the provisions hereof.

(h) Severability. If any provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, it being the intent of the parties hereto that the provisions of this Agreement shall be enforceable to the fullest extent permitted by law. There shall be deemed substituted for any invalid or unenforceable provision a valid and enforceable provision as similar as possible to the invalid provision.

(i) Governing Law and Venue. This Agreement shall be interpreted and enforced according



to the laws of the State of Colorado. Venue is proper in Montrose County District Court.

(j) No Oral Amendment or Modifications. No provision of this Agreement may be amended or modified except to the extent any such amendment or modification is expressly and specifically set forth in a written instrument executed by the party against whom the amendment or modification is sought.

(k) Integration. This Agreement, Exhibits A hereto, and the other documents expressly referenced herein constitute the entire agreement between the parties hereto with regard to the subject matter hereof, and any extrinsic covenants, agreements, representations, warranties, conditions or terms are superseded hereby and shall be of no force or effect.

(l) No Adverse Construction. Both parties acknowledge having had the opportunity to participate in the preparation of this Agreement and, therefore, agree that this Agreement shall not be construed against either party based on authorship.

(m) Authority. The signatory on this Agreement for Grantor represents and warrants to Grantee that Grantor has all inherent legal power and authority requisite to entering into this Agreement, has taken all action necessary to authorize the execution of this Agreement and to perform and satisfy the transactions and obligations contained herein, and has duly authorized the signatories to execute and deliver this Agreement on behalf of Grantor. The signatories on this Agreement for Grantee represent and warrant to Grantor that Grantee has all inherent legal power and authority requisite to entering into this Agreement, has taken all actions necessary to authorize the execution and delivery of this Agreement and to perform and satisfy the transactions and obligations contained herein, and has duly authorized the signatories to execute and deliver this Agreement on behalf of Grantee.

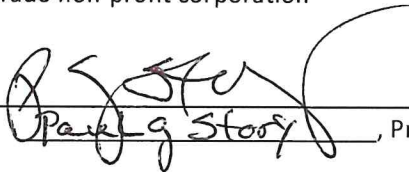
(n) Termination By Right. Whenever this Agreement is terminated by the exercise of any right, election or option hereunder in favor of either party, any corresponding release of the parties from "all further obligations" hereunder shall apply only to such obligations which have not then accrued and shall not relieve either party of liability for any pre-existing breach or default by that party of its respective obligations hereunder. Furthermore, each party hereto expressly acknowledges and agrees that, in connection with any such termination by right, each party shall have rights of reimbursement or repayment against the other only to the extent expressly provided herein.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first above written.

**[Remainder of page intentionally left blank - Separate signature pages follow]**

GRANTOR:

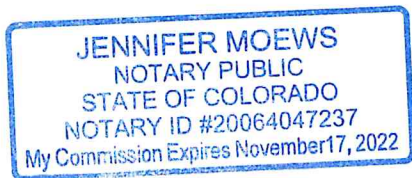
COBBLE CREEK HOMEOWNERS ASSOCIATION, INC.,  
a Colorado non-profit corporation


By: , President

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF MONTROSE        )

The foregoing was acknowledged before me this 14<sup>th</sup> day of May, 2020 by  
Paul Story as President of Cobble Creek Homeowners Association,  
Inc.

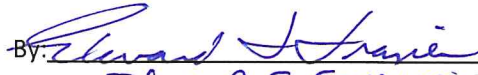
My commission Expires: 11-17-2022



  
Notary Public

GRANTEE:

SPRUCE POINT HOMEOWNERS ASSOCIATION, INC.,  
a Colorado non-profit corporation

By:   
Edward F. FRAZER, President

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF MONTROSE        )

The foregoing was acknowledged before me this 15<sup>th</sup> day of May, 2020 by  
Edward F. Frazer as President of Spruce Point Homeowners Association,  
Inc.

My commission Expires: 11-17-2022



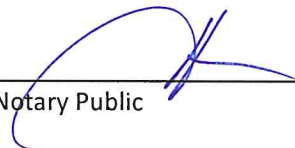
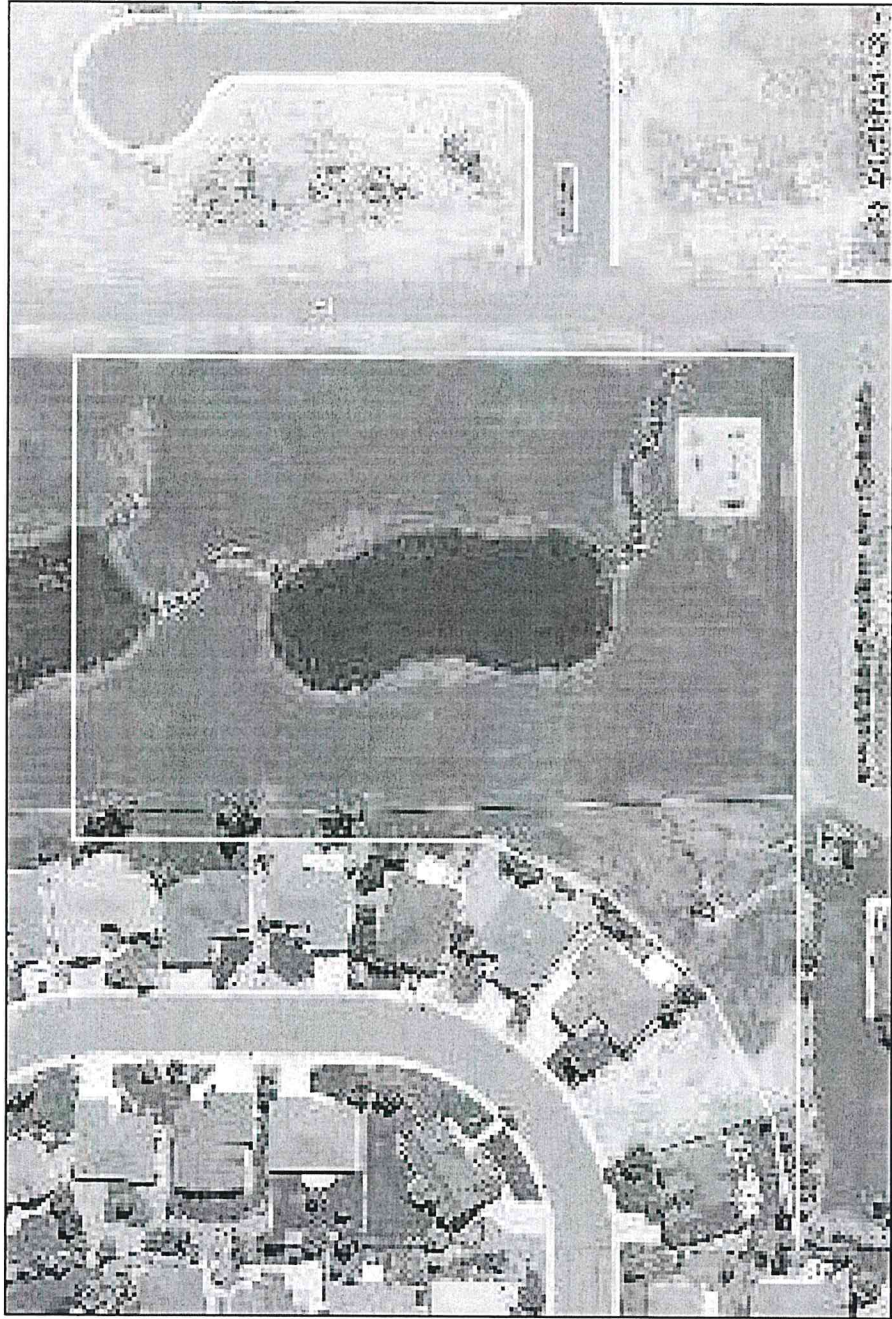
  
Notary Public

EXHIBIT A

Legal Description of Grantor's Property

Open Space Lot 2, Cobble Creek Minor Subdivision,  
City of Montrose, Montrose County, Colorado ("Lot 2").

EXHIBIT B



North  
↑