

AGENDA
SPECIAL BOARD OF EDUCATION MEETING
March 28, 2018
6:30 p.m.
Education Service Center – Board Room

- 1.00 Call to Order and Roll Call**
- 2.00 Welcome and Pledge of Allegiance**
- 3.00 Approval of Agenda**
- 4.00 Open Forum (3 minute time limit for each speaker)**
- 5.00 Other Business**
 - 5.01 Conveyance and Recording of Land in Banning Lewis Ranch Village 2 on Vista del Pico Boulevard (5 minutes)
 - 5.02 Quit Claim Deed on Parcels in Indigo Ranch (5 minutes)
- 6.00 Adjournment**

DATE OF POSTING: March 22, 2018

Donna Richer
Executive Assistant to the Board of Education

BOARD OF EDUCATION ITEM 5.01
OPPORTUNITY AND RISK: DECISION ANALYSIS FOR MAJOR DISCUSSION AND ACTION ITEMS

BOARD MEETING OF: March 28, 2018

PREPARED BY: Melissa Andrews, Community and Facility Planning Manager

TITLE OF AGENDA ITEM: Conveyance and Recording of Land in Banning Lewis Ranch
 Village 2 on Vista del Pico Blvd.

ACTION/INFORMATION/DISCUSSION: Action

BACKGROUND INFORMATION: DESCRIPTION OF EXPECTATION/NEED/ OPPORTUNITY: When Banning Lewis Ranch subdivision was proposed, an elementary school site was set aside in Village II for School District 49 on Vista del Pico Blvd.

RATIONALE:

After the successful passing of the MLO in 2016, it was decided that this was the best location to build an elementary school to provide a coordinated option and accommodate continued growth from development in Banning Lewis Ranch. Additionally, it will help offload some overcrowding from Ridgeview Elementary School.

RELEVANT DATA AND EXPECTED OUTCOMES:

All due diligence has been performed per State Statutes prior to acceptance of land dedication, to include soils testing, environmental site assessment, traffic study, topographic survey and boundary survey. A deed has been drafted and signed by the Developer. The deed now needs to be recorded by School District 49 for construction to commence.

INNOVATION AND INTELLIGENT RISK:

A new school with an arts focus will be built on this site. The Arts focus is new to our portfolio of schools. The risk is minimal due to the continued growth in District 49.

IMPACTS ON THE DISTRICT'S MISSION PRIORITIES—THE RINGS AND ROCKS:

Culture	Inner Ring—How we treat each other	
	Outer Ring—How we treat our work	
Strategy	Rock #1—Establish enduring <u>trust</u> throughout our community	Trust is established by doing our due diligence prior to accepting a land dedication, knowing as much about the site and what costs to expect before we commit to a particular location. Additionally, the District will strive to complete steps in the proper order to keep from having to go back and correct a process that could potentially be time consuming and costly.
	Rock #2—Research, design and implement programs for intentional <u>community</u> participation	
	Rock #3— Grow a robust <u>portfolio of</u> distinct and exceptional <u>schools</u>	
	Rock #4— Build <u>firm foundations</u> of knowledge, skills and experience so all learners can thrive	

BOE Special Meeting March 28, 2018
Item 5.01 continued

Rock #5 — Customize our educational systems to <u>launch each student toward success</u>	
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BUDGET IMPACT: There will be a minimal filing fee of approximately \$300, but acceptance of the land will not have a significant direct cost. The indirect costs would consist of liability and maintenance.

AMOUNT BUDGETED: The funding for the recording fee is included in the construction budget and future maintenance will be included the operations of the new school that will be complete in fall of 2019.

RECOMMENDED COURSE OF ACTION/MOTION REQUESTED: I move to approve the conveyance of the deed.

APPROVED BY: Brett Ridgway, Chief Business Officer

DATE: March 19, 2018

SPECIAL WARRANTY DEED

CLAYTON PROPERTIES GROUP II, INC., a Colorado corporation (**Grantor**), with an address of 4908 Tower Road, Denver, Colorado 80249, for the consideration of \$10.00 and other good and valuable mutual consideration, the receipt and sufficiency of which Grantor hereby acknowledges, hereby sells and conveys to FALCON SCHOOL DISTRICT 49, a political subdivision of the State of Colorado (**Grantee**), with an address of 10850 E Woodmen Road, Peyton, Colorado 80831, the real property located in the County of El Paso, State of Colorado, more particularly described in Attachment 1 hereto, with all its appurtenances, and warrants the same against all persons claiming by, through, or under the Grantor, subject to the matters set forth in Attachment 2 hereto. The foregoing sale and conveyance of the Property is subject to the following reservations, restrictions, and reversions:

1. Reservation of Mineral Rights and Water Rights. The Property specifically does not include, and Grantor hereby reserves for itself and its specifically designated successors and assigns, in perpetuity, all of the Grantor's right, title and interest in and to all mineral, gravel, oil and gas, and geothermal rights (the **Mineral Rights**) and all water rights, both tributary and nontributary, ground water, reservoirs, ditches and well rights, effluent and storm water located on or serving other real property (**Grantor Property**) owned by the Grantor as of the date of the recording of this Special Warranty Deed and all other portions of the Grantor Property, or otherwise recovered from activities in connection with the Grantor Property, whether adjudicated or unadjudicated, and including, without limitation, all water court applications, state engineer filings, well registration statements and well permits and any and all well equipment or other equipment for storage, treatment or distribution of water on or in connection with the Grantor Property (collectively, **Water Rights**). The foregoing reservation of Mineral Rights and Water Rights is subject to the covenant by Grantor, its successors and assigns, that it shall not cause material disturbance of or material damage to the surface of the Property or any improvements thereon, except within any designated easement areas, and such activities and easements shall not materially and adversely impair the intended development of the Property by the Grantee or the construction or use of the Property for an educational facility or school.

2. Colorado Springs Airport. By its acceptance of this Special Warranty Deed, the Grantee hereby acknowledges that (a) noise caused by aircraft operating into and out of the Colorado Springs Airport may affect the Property and (b) Grantee is familiar with the potential impact and the ramifications thereof.

3. Use Restriction. The foregoing grant and conveyance of the Property by Grantor is subject to the restriction that, for a period of forty-five years after the recording of this Special Warranty Deed (the **Use Period**), the Property shall be subject to the restriction (the **Use Restriction**) that Grantee and its assigns, lessees, and successors (collectively, **Grantee**) shall only use the Property as an educational facility or school (**School**) provided that the foregoing Use Restriction shall not require (i) the continuous operation of the School during periods in which comparable facilities are not in operation or use or (ii) the operation of a School if Grantee decides to cease such operations. During the Use Period, Grantee shall not use the Property for use other than as a School in accordance with the Use Restriction and Grantee shall not apply for, or consent to, the rezoning of the Property for any purpose or use other than for use as an educational facility or school in

accordance with the Use Restriction. By acceptance of this Deed, Grantee accepts such grant and conveyance of the Property subject to the Use Restriction.

[The signature and acknowledgment of Grantor follow this page]

Executed and delivered on March __, 2018.

CLAYTON PROPERTIES GROUP II, INC., a
Colorado corporation

By: _____

Name: _____

Title: _____

STATE OF COLORADO

)

)

ss.

COUNTY OF EL PASO

)

The foregoing instrument was acknowledged before me this _____ day of March, 2018, by
_____ as _____ of Clayton Properties Group II, Inc., a Colorado
corporation.

Witness my hand and official seal.

(Notarial Seal)

Notary Public

My commission expires: _____

ATTACHMENT 1
(Legal Description of Property)

The following described real property located in the County of El Paso, State of Colorado:

A PARCEL OF LAND BEING A PORTION OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF COLORADO SPRINGS; EL PASO COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE NORTH LINE OF LOT 1, BANNING LEWIS RANCH CHARTER SCHOOL FILING NO. 1, RECORDED UNDER RECEPTION NUMBER 216713802, RECORDS OF EL PASO COUNTY, COLORADO, BEING MONUMENTED AT BOTH ENDS BY A 1-1/2" ALUMINUM SURVEYOR'S CAP STAMPED "CCES LLC PLS 30118" AND IS ASSUMED TO BEAR N90°00'00"E, A DISTANCE OF 960.30 FEET.

COMMENCING AT THE NORTHWEST CORNER OF LOT 1, BANNING LEWIS RANCH CHARTER SCHOOL FILING NO. 1 RECORDED UNDER RECEPTION NUMBER 216713802, RECORDS OF EL PASO COUNTY, COLORADO, SAID POINT BEING THE **POINT OF BEGINNING**;

THENCE N00°29'06"W, A DISTANCE OF 421.97 FEET TO A POINT ON CURVE, SAID POINT BEING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF VISTA DEL PICO BOULEVARD, AS PLATTED IN BANNING LEWIS RANCH FILING NO. 1, RECORDED UNDER RECEPTION NO. 205087777;

THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE THE FOLLOWING (3) THREE COURSES;

1. ON THE ARC OF A CURVE TO THE RIGHT WHOSE RADIUS BEARS S08°06'03"E, HAVING A DELTA OF 17°57'32", A RADIUS OF 964.00 FEET AND A DISTANCE OF 302.16 FEET TO A POINT OF TANGENT;
2. S80°08'31"E, A DISTANCE OF 258.39 FEET TO A POINT OF CURVE;
3. ON THE ARC OF A CURVE TO THE RIGHT, HAVING A DELTA OF 65°06'36", A RADIUS OF 514.00 FEET AND A DISTANCE OF 584.10 FEET TO POINT ON CURVE SAID POINT BEING THE NORTHEASTERLY CORNER OF SAID LOT 1;

THENCE S90°00'00"W, ON THE NORTHERLY BOUNDARY OF SAID LOT 1, A DISTANCE OF 960.30 FEET TO THE **POINT OF BEGINNING**.

COUNTY OF EL PASO,
STATE OF COLORADO.

ATTACHMENT 2
(Exceptions to Special Warranty of Title)

1. REAL PROPERTY TAXES FOR 2018, A LIEN NOT YET DUE OR PAYABLE, AND REAL PROPERTY TAXES AND ASSESSMENTS FOR SUBSEQUENT YEARS.
2. THE RIGHT OF A PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES GRANTED HEREBY AND RIGHTS OF WAY FOR DITCHES AND CANALS CONSTRUCTION BY AUTHORITY OF THE UNITED STATES RESERVED IN UNITED STATES PATENTS RECORDED AS FOLLOWS: AUGUST 10, 1877 IN BOOK 25 AT PAGE 4 AND JANUARY 22, 1891 IN BOOK 72 AT PAGE 390 AND FEBRUARY 16, 1894 IN BOOK 143 AT PAGE 188.
3. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, OBLIGATIONS AND EASEMENTS AS SET FORTH IN THE RULE AND ORDER RECORDED MARCH 12, 2004, AT RECEPTION NO. 204040734, AND AS SHOWN ON THAT CERTAIN LAND SURVEY PLAT PREPARED BY JEFFREY E. KISTNER, PLS, DATED NOVEMBER 8, 2004, LAST REVISED MARCH 31, 2005, AS PROJECT NO. 110-054.
4. TERMS, CONDITIONS AND PROVISIONS OF ANNEXATION AGREEMENT RECORDED SEPTEMBER 23, 1988 IN BOOK 5557 AT PAGE 405. ANNEXATION ORDINANCES IN CONNECTION THEREWITH RECORDED SEPTEMBER 23, 1988 IN BOOK 5557 AT PAGES 605 AND 624 AND ANNEX TO THE CITY OF COLORADO SPRINGS RECORDED JUNE 13, 2005 AT RECEPTION NOS. 205087762 AND RECEPTION NO. 205087763, ORDINANCE NO. 04-130 ANNEXATION TO THE CITY OF COLORADO SPRINGS AS RECORDED JUNE 13, 2005 AT RECEPTION NO. 205087759, AND SPECIFIED UNDER THE ORDER AND JUDGMENT BY AND BETWEEN C. RANDEL LEWIS AND DAVID S. COHEN, CO-RECEIVERS OF THE POWERS BOULEVARD/DRENNAN ROAD LOCAL IMPROVEMENT DISTRICT 1985-2, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO, PLAINTIFFS AND THE CITY OF COLORADO SPRINGS, A MUNICIPALITY, ET AL, DEFENDANT, RECORDED MARCH 16, 2005 AT RECEPTION NO. 205037381.
5. ANY ASSESSMENT OR LIEN OF BANNING LEWIS RANCH METROPOLITAN DISTRICT NO. 2, AS DISCLOSED BY THE INSTRUMENT RECORDED DECEMBER 16, 2005 AT RECEPTION NO. 205199128 AND DISTRICT DISCLOSURE BANNING LEWIS RANCH METROPOLITAN DISTRICTS RECORDED FEBRUARY 14, 2008 AT RECEPTION NO. 208017358, JOINT RESOLUTION NO. 09-01 IMPOSING FEES AS RECORDED JANUARY 4, 2010 AT RECEPTION NO. 210000329, ORDER OF EXCLUSION AS RECORDED JULY 5, 2013 AT RECEPTION NO. 213086977.
6. COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS AND LIEN RIGHTS, WHICH DO NOT INCLUDE A FORFEITURE OR REVERTER CLAUSE, SET FORTH IN THE MASTER DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS FOR BANNING LEWIS RANCH, RECORDED MARCH 5, 2007 AT

RECEPTION NO. 207030103 AND ANY AMENDMENTS OR SUPPLEMENTS THERETO. ASSIGNMENT OF DECLARANT RIGHTS AS RECORDED NOVEMBER 16, 2011 AT RECEPTION NO. 211113034, AND RECORDED MAY 23, 2012 AT RECEPTION NO. 212059823 AND RECORDED MAY 23, 2012 AT RECEPTION NO. 212059827.

7. SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AS RECORDED SEPTEMBER 21, 2015 AT RECEPTION NO. 215102523.
8. MODIFIED AND RESTATED WASTEWATER FACILITIES PARTICIPATION, UTILIZATION, AND SERVICE AGREEMENT RECORDED FEBRUARY 20, 2009 AT RECEPTION NO. 209017179, FIRST AMENDMENT TO MODIFIED AND RESTATED WASTEWATER FACILITIES PARTICIPATION, UTILIZATION, AND SERVICE AGREEMENT, RECORDED JULY 15, 2009 AT RECEPTION NO. 209081602, SECOND AMENDMENT TO MODIFIED AND RESTATED WASTEWATER FACILITIES PARTICIPATION, UTILIZATION, AND SERVICE AGREEMENT, RECORDED JULY 20, 2009 AT RECEPTION NO. 209084033. THIRD AMENDMENT TO MODIFIED AND RESTATED WASTEWATER FACILITIES PARTICIPATION, UTILIZATION, AND SERVICE AGREEMENT, RECORDED DECEMBER 23, 2009 AT RECEPTION NO. 209147154, FOURTH AMENDMENT TO MODIFIED AND RESTATED WASTEWATER FACILITIES PARTICIPATION, UTILIZATION, AND SERVICE AGREEMENT, RECORDED JUNE 24, 2010 AT RECEPTION NO. 210060212 AND ASSIGNMENT AGREEMENT RECORDED AUGUST 11, 2010 AT RECEPTION NO. 210077136.
9. RESOLUTION NO. 07-119 REGARDING THE AIRPORT OVERLAY REZONING RECORDED JULY 18, 2007 AT RECEPTION NO. 207095753.
10. ANY TAX, FEE, LIEN OR ASSESSMENT BY REASON OF INCLUSION IN THE BANNING LEWIS RANCH REGIONAL METROPOLITAN DISTRICT AS EVIDENCED BY ORDER OF INCLUSION AS RECORDED APRIL 30, 2009 AT RECEPTION NO. 209046235, AND ORDER OF NAME CHANGE RECORDED OCTOBER 6, 2010 AT RECEPTION NO. 210099814.
11. NOTICE CONCERNING UNDERGROUND FACILITIES OF THE MOUNTAIN VIEW ELECTRIC ASSOCIATION, INC., RECORDED MAY 9, 1983 IN BOOK 3718 AT PAGE 812.
12. EASEMENT AND RIGHT OF WAY FOR COMMUNICATION PURPOSES GRANTED TO THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY BY RAYMOND W. LEWIS BY INSTRUMENT RECORDED JULY 1, 1938 IN BOOK 936 AT PAGE 429.
13. DETERMINABLE EASEMENT AGREEMENT AS GRANTED TO THE CITY OF COLORADO SPRINGS IN INSTRUMENT RECORDED NOVEMBER 22, 2005 AT

RECEPTION NO. 205187102 AND IN INSTRUMENT RECORDED NOVEMBER 28, 2005 AT RECEPTION NO. 205188940.

14. TERMS, CONDITIONS AND PROVISIONS OF ANNEXATION AGREEMENT OF THE BANNING-LEWIS RANCH NO. 10 AS RECORDED JUNE 13, 2005 AT RECEPTION NO. 205087763 AND ANNEXATION PLAT OF BANNING-LEWIS RANCH NO. 10 AS RECORDED JUNE 13, 2005 AT RECEPTION NO. 205087764.
15. UTILITY EASEMENT AGREEMENT DATED JULY 1996, GRANTED TO THE CITY OF COLORADO SPRINGS, FOR UTILITIES AND INCIDENTAL PURPOSES AS RECORDED FEBRUARY 13, 2006 AT RECEPTION NO. 206022301.
16. AVIGATION EASEMENTS AS GRANTED TO THE CITY OF COLORADO SPRINGS IN INSTRUMENTS RECORDED OCTOBER 11, 2007 AT RECEPTION NO. 207132629, AND 207132630.
17. PERMANENT EASEMENT AGREEMENTS, FOR UTILITIES AND INCIDENTAL PURPOSES, BY AND BETWEEN BANNING LEWIS RANCH DEVELOPMENT I & II, LLC, AND THE CITY OF COLORADO SPRINGS, A COLORADO MUNICIPAL CORPORATION, ON BEHALF OF ITS ENTERPRISE COLORADO SPRINGS UTILITIES, RECORDED NOVEMBER 16, 2006 AT RECEPTION NO. 206168295, JUNE 26, 2007 AT RECEPTION NO. 207085941.
18. TERMS, CONDITIONS AND PROVISIONS OF DOCUMENT ENTITLED TERMS CONDITIONS APPLICABLE TO UTILITY EASEMENTS GRANTED BY PLAT AND TO UTILITY EASEMENTS RESERVED BY ORDINANCE VACATING PUBLIC RIGHT-OF-WAY AS RECORDED SEPTEMBER 26, 2012 AT RECEPTION NO. 212112548.
19. TERMS, CONDITIONS AND PROVISIONS OF ADMINISTRATIVELY APPROVED PERMIT TO THE CHEROKEE METROPOLITAN DISTRICT AS RECORDED JULY 31, 2014 AT RECEPTION NO. 214068509.
20. ANY TAX FEE LIEN OR ASSESSMENT BY REASON OF INCLUSION IN THE BANNING LEWIS RANCH METROPOLITAN DISTRICT NO. 3, AS DISCLOSED BY THE INSTRUMENT RECORDED OCTOBER 14, 2015 AT RECEPTION NO. 215111985.
21. NOTES AND EASEMENTS AS SET FORTH ON THE PLAT OF BANNING LEWIS RANCH FILING NO. 1 AS RECORDED JUNE 13, 2005 AT RECEPTION NO. 205087777.

BOARD OF EDUCATION ITEM 5.02
OPPORTUNITY AND RISK: DECISION ANALYSIS FOR MAJOR DISCUSSION AND ACTION ITEMS

BOARD MEETING OF: March 28, 2018

PREPARED BY: Melissa Andrews, Community and Facility Planning Manager

TITLE OF AGENDA ITEM: Quit Claim Deed on Parcels in Indigo Ranch

ACTION/INFORMATION/DISCUSSION: Action

BACKGROUND INFORMATION: DESCRIPTION OF EXPECTATION/NEED/ OPPORTUNITY: The District received an inquiry from the Developer of Indigo Ranch, Classic Companies, on two parcels of land set aside for school site dedication in July 2017, the middle school site consisting of two parcels Schedule No. 5317100020(8.3 acres) and Schedule No. 5317100028 (10.39 acres) and the elementary site Schedule No. 5317400018 (12.48 Acres minus a 5 acre park). The parcels were evaluated per board policy and deemed to be located in areas that would be a disservice to our community. The Developer made a formal offer to pay the required fee-in-lieu of land rate to retain the land for development. The offer was accepted and an MOU signed in November 2017. We are now requesting the Quit Claim Deed be signed and approve the collection of fees for the land.

RATIONALE:

Though the District does not hold the land in question, the Quit Claim Deed relinquishes any legal attachment we would have to the properties. Once executed and the Developer receives all City required approvals of a development plan and plat, payment for the parcels will be made within 5 days of plat.

RELEVANT DATA AND EXPECTED OUTCOMES:

The District will receive the Fee-in-lieu of land rate from the developer within 5 days of platting the land. The Elementary parcel has already been platted and they are ready to cut a check. The Middle School site should be platted in July or August of 2018.

INNOVATION AND INTELLIGENT RISK:

The risk involved is minimal due to the number and close proximity of other schools in the area. The funding generated allows for opportunities that would normally not be options.

IMPACTS ON THE DISTRICT'S MISSION PRIORITIES—THE RINGS AND ROCKS:

Relinquishing rights to the two school sites in question will have a moderate impact to the school District. We will no longer have the land, however the fees being paid are equivalent to the value of the land.

Culture	Inner Ring—How we treat each other	
	Outer Ring—How we treat our work	
Strategy	Rock #1—Establish enduring <u>trust</u> throughout our community	Trust is established by evaluating our impact on the community and neighborhoods. The location of the sites in question are in areas with excessive traffic congestion and adding two additional schools is doing a disservice to the community. Other school site locations would better serve our families.
	Rock #2—Research, design and implement programs for intentional <u>community</u> participation	
	Rock #3— Grow a robust <u>portfolio of</u> distinct and exceptional <u>schools</u>	

BOE Special Meeting March 28, 2018
Item 5.02 continued

Rock #4 — Build <u>firm foundations</u> of knowledge, skills and experience so all learners can thrive	
Rock #5 — Customize our educational systems to <u>launch each student toward success</u>	

BUDGET IMPACT: There will be no cost to the school District and will receive approximately \$2 Million.

AMOUNT BUDGETED: N/A

RECOMMENDED COURSE OF ACTION/MOTION REQUESTED: I move to approve the conveyance of the quit claim deed and accept payment on the parcels.

APPROVED BY: Brett Ridgway, Chief Business Officer

DATE: March 19, 2018

FEE IN LIEU OF LAND DEDICATION AGREEMENT

THIS FEE IN-LIEU OF LAND DEDICATION AGREEMENT ("Agreement") is entered into and effective as of _____, 2018 ("Effective Date") between ELITE PROPERTIES OF AMERICA, INC., a Colorado corporation ("Elite") and EL PASO COUNTY SCHOOL DISTRICT NO. 49 (the "School District") (collectively, the "Parties").

RECITALS

WHEREAS, the Parties entered into a Memorandum of Understanding approximately on November 16, 2017, regarding the future use and development relative to two parcels of land, as described on Exhibit A attached hereto (individually referred to as "Mustang Rim" and "Issaquah Drive" and collectively, referred to as the "School Sites"), within the Indigo Ranch master plan and whereby the School District definitively determined that it no longer required use of the School Sites in the master planned community of Indigo Ranch; and

WHEREAS, the School Sites originally were to be dedicated to the School District in lieu of fees by Elite, however, title was never transferred to the School District and the Parties now desire to execute this Agreement in order fulfill the requirements of a fee in lieu of land dedication under Part Twelve of Article Seven of Chapter Seven of the Colorado Springs City Code.

NOW, THEREFORE, for valuable consideration given and received, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

SECTION 1. FEE IN LIEU OF LAND

1.1 Elite agrees to pay the fee in lieu of land rate of \$76,602 per acre (the "Fee") for the School Sites and more particularly determined to be:

- (a) \$1,431,691.38 for Mustang Rim; and
- (b) \$572,982.96 for Issaquah Drive.

SECTION 2. CONTINGENCIES & CLOSING

2.1 **City Approvals.** Elite shall pay the Fee for each individual parcel within thirty (30) business days of: (a) Elite obtaining all City required approvals of a development plan and plat, and (b) the recording of such plat for the respective parcel.

2.2 **Closing.** Upon satisfaction of Elite obtaining the approvals and recording a plat, as mentioned above, Elite shall pay the Fee for the respective parcel and the School District shall execute a quit claim deed for such parcel ("Closing"). Upon the Closing of a parcel, the School District agrees that Elite has fulfilled all of its obligations owed to the School District relative to this Agreement, and furthermore, the School District agrees to indemnify, hold harmless, and defend Elite against any claims brought by any person or entity claiming otherwise.

SECTION 3. DEFAULT AND REMEDIES.

In the event of default by either party under this Agreement, the Parties agree as follows:

3.1 **Default by Elite.** If Elite shall default in the performance of its obligations hereunder, the School District's sole and only remedy shall be to terminate this Agreement.

3.2 **Default by the School District.** If the School District shall default in the performance of its obligations hereunder, Elite shall have the right to either (a) terminate this Agreement, or (b) enforce this Agreement through an action for specific performance and damages.

SECTION 4. MISCELLANEOUS.

4.1 **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, executors, personal representatives, successors and permitted assigns.

4.2 **Entire Agreement.** This Agreement, constitutes the entire agreement between the Parties, and may not be modified in any manner except by an instrument in writing signed by both parties.

4.3 **Headings.** The section and subsection headings contained in this Agreement are inserted only for convenient reference and do not define, limit or proscribe the scope of this Agreement or any exhibit attached hereto.

4.4 **Counterparts.** This Agreement may be executed in any number of counterparts which together shall constitute one and the same instrument.

4.5 **Unenforceable Provisions.** If any provision of this Agreement, or the application thereof to any person or situation shall be held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to persons or situations other than those to which it shall have been held invalid or unenforceable, shall continue to be valid and enforceable to the fullest extent permitted by law.

4.6 **Waivers.** No waiver by either party of any provision hereof shall be effective or shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by either party of the same or any other provision unless it is made in writing.

4.7 **Attorneys' Fees and Costs.** In the event of litigation between the Parties arising out of the enforcement of or a default under this Agreement, the prevailing party shall be entitled to judgment for court costs and reasonable attorneys' fees in an amount to be determined by the court.

4.8 **Governing Law; Construction of Agreement.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. The Parties have reviewed, revised and approved this Agreement. Accordingly, the normal rule of construction that any

of this Agreement or any amendments or exhibits hereto.

4.9 **Survival.** All covenants, agreements, representations and warranties made hereunder shall survive the Closing.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

“ELITE”

“School District”

ELITE PROPERTIES OF AMERICA, INC.,
a Colorado limited liability company

EL PASO COUNTY SCHOOL DISTRICT NO.
49



Douglas M. Stimple, CEO

Brett Ridgeway

EXHIBIT A
(School Sites Description)

Mustang Rim

Known as:

El Paso County Assessor Schedule No. 5317100020 (8.3 acres) and 5317100028 (10.39 acres); bordered by Dublin Blvd on the North, Hawk Wind Blvd. on the South, Mustang Rim Drive on the West, and roughly by Van Winkle Drive & Diamond Hitch on the East.

And legally described as:

TR IN NE4 SEC 17-13-65 DESC AS FOLS: COM AT NW COR OF NE4 OF SD SEC 17, TH S 89<36'55" E 1279.62 FT, S 00<00'00" E 540.00 FT M/L, N 89<56'09" W 1291.12 FT TO W LN OF NE4 OF SEC 17, TH NLY 430.00 FT M/L TO POB, EX THAT PT PLATTED TO PETERSON RD AT INDIGO RANCH FIL NO 1 & INDIGO RANCH AT STETSON RIDGE FIL NO 4

"Issaquah Drive"

Known as:

El Paso County Assessor Schedule No. 5317400018 (12.48 acres); bordered by Issaquah Drive on the North, Manistique Drive on the South, Sonesta Drive on the West, and Antelope Ridge Drive on the East;

And legally described as:

TR OF LAND IN SE4 SEC 17-13-65 DES AS FOLS: COM AT SE COR OF SEC 17-13-65, TH N 89<21'12" W ON S LN OF SE4 OF SD SEC 17, A DIST OF 912.02 FT FOR POB, TH CONT N 89<21'12" W 596.65 FT TO A POC, TH ALG ARC OF CUR TO R HAVING A RAD OF 1300.00 FT A C/A OF 19<34'21" AN ARC DIST OF 444.09 FT TO A PT OF TANG, TH N 69<46'51" W 136.93 FT TO A POC, TH ALG ARC OF CUR TO L HAVING A RAD OF 1800.00 FT A C/A OF 19<01'40" AN ARC DIST OF 597.78 FT, N 88<48'30" W 7.60 FT TO A PT ON W LN OF SE4 OF SD SEC 17, TH N 01<11'23" E 2415.37 FT TO CENTER 4 COR OF SEC 17, TH N 89<41'53" E 1655.17 FT, S 00<57'54" W 478.95 FT TO A POC, TH ALG ARC OF CUR TO R HAVING A RAD OF 333.00 FT A C/A OF 33<18'30" AN ARC DIST OF 193.59 FT TO A PT OF TANG, TH S 34<16'24" W 12.01 FT TO A PT ON BDRY OF REC #200026433, TH ALG SD BDRY THE FOL (5) COURSES: N 55<43'36" W 33.00 FT, S 34<16'24" W 223.38 FT TO A POC, ALG ARC OF CUR TO L HAVING A RAD OF 300.00 FT A C/A OF 33<18'30" AN ARC DIST OF 174.40 FT TO A PT OF TANG, S 00<57'54" W 142.29 FT, S 89<02'06" E 33.00 FT, S 00<57'54" W 261.08 FT TO A POC, TH ALG ARC OF CUR TO L HAVING A RAD OF 267.00 FT A C/A OF 35<00'21" AN ARC DIST OF 163.13 FT TO A PT OF TANG, S 34<02'27" E 330.10 FT TO A POC, TH ALG ARC OF CUR TO R HAVING A RAD OF 433.00 FT A C/A OF 34<41'15" AN ARC DIST OF 262.14 FT TO A PT OF TANG, TH S 00<38'48" W 571.68 FT TO POB, EX TR CONV BY REC #201170440 & PT PLATTED TO INDIGO RANCH AT STETSON RIDGE FIL NO 1, 2 & 3, EX PART LATTED TO #12104 - ANTELOPE RIDGE DRIVE FIL NO 1, EX THAT PT CONV BY REC #210009893