

RESOLUTION NO. 167 - 23

A RESOLUTION APPROVING AN AGREEMENT TO ANNEX AND
TO PROVIDE WATER AND WASTEWATER SERVICE OUTSIDE
THE CITY LIMITS TO 5315 SILVER DRIVE IN
UNINCORPORATED EL PASO COUNTY

WHEREAS, the property owners in unincorporated El Paso County at 5315 Silver Drive, (TSN: 6323103011) (the "Property") requested water and wastewater service directly from Colorado Springs Utilities for single-family residential use; and

WHEREAS, City Council has previously approved Agreements to Annex and water and wastewater service to other residences in this area, which is partially surrounded by the corporate limits of the City of Colorado Springs, Colorado in unincorporated El Paso County and Colorado Springs Utilities is providing water and wastewater service for other residences in the area; and

WHEREAS, there is sufficient water capacity and pressure available to serve the Property; and

WHEREAS, there is sufficient wastewater treatment capacity available to serve the Property; and

WHEREAS, water distribution facilities exist in the area and a main extension is not required to extend service to the Property; and

WHEREAS, wastewater distribution facilities do not exist in the area and a main extension is required to extend service to the Property; and

WHEREAS, the property owners have executed an Agreement to Annex and irrevocably consent to annex the Property to the City and have agreed to surrender groundwater rights as a condition of service; and

WHEREAS, the Property is outside the City limits but within an enclave that is surrounded by the City of Colorado Springs and Colorado Springs Utilities' water and wastewater service area; and

WHEREAS, Utilities Board has recommended extending the water service boundary to include the Property base on a finding that the proposed use will have a de minimis impact on the overall City's available water supply; and

WHEREAS, "Residential Service – Outside City Limits" of the Water Rate Schedules and Wastewater Rate Schedules of Colorado Springs Utilities' Tariff, requires prior City Council approval for Colorado Springs Utilities to provide end-use water service and wastewater service outside the corporate limits of the City of Colorado Springs in areas where water and wastewater service is available from Utilities

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The City Council finds, based on a substantiated and written record, that extension of the water service boundary to include the Property will have a de minimis impact on the overall city's available water supply.

Section 2. The City Council finds the request for water and wastewater service at the Property from Colorado Springs Utilities for single-family residential use is in the best interests of the City and meets all applicable requirements of the law.

Section 3. Pursuant to "Residential Service - Outside City Limits" of the Water Rate Schedules and Wastewater Rate Schedules of Colorado Springs Utilities' Tariff, City Council hereby approves water and wastewater service outside the corporate limits of the City of Colorado Springs to the Property for single-family residential use. The water and wastewater service may not be enlarged or the use changed without the prior written approval of the City. Any requests to enlarge service or change use shall be reviewed in accord with the then-current tariffs, rules, regulations, ordinances or other applicable law, and may require the property owners execute a new Agreement to Annex.

Section 4. The President of Council is hereby authorized to execute this Resolution and the Agreement to Annex in the form attached hereto on behalf of the City of Colorado Springs and the City Clerk is authorized to attest the President of Council's signature. The Chief Executive Officer of Utilities is authorized to administer the Agreement.

Dated at Colorado Springs, Colorado this 24th day of October, 2023.


Randy Helms, Council President

ATTEST:


Sarah B. Johnson, City Clerk



**AGREEMENT PROVIDING
WATER SERVICE AND/OR WASTEWATER SERVICE TO LAND LOCATED
OUTSIDE THE CITY LIMITS
OF THE CITY OF COLORADO SPRINGS
AND
AGREEMENT TO ANNEX**

WHEREAS, **Bruce W. Thomas and Cortney A. Thomas** (collectively "Owner") is/are the owner(s) of real property in El Paso County, Colorado, as shown on the location sketch map and as described and set forth in the attached Exhibit "A" (the "Property"); and

WHEREAS, a building (or other structure(s)) exists on the Property located at **5315 SILVER DRIVE** Colorado Springs, CO (**TSN 6323103011**) that is used for single-family residential purposes and Owner has recently requested water and/or wastewater service for the Property from the City of Colorado Springs, a home rule city and Colorado municipal corporation (the "City"); and

WHEREAS, the Property is subject to a deed of trust for which **NEWREZ, LLC, 1100 Virginia Drive, suite 125, Fort Washington, PA 19034**, is the beneficiary (the "Financial Institution") recorded **April 23, 2021** at **Reception No. 221080916** in the records of the El Paso County Clerk and Recorder; and

WHEREAS, the Property is located within an enclave, which enclave is surrounded by the corporate limits of the City and which enclave is or will be eligible for unilateral annexation by the City under the provisions of the Municipal Annexation Act of 1965, Part 1 of Article 12 of Title 31, C.R.S., as amended (the "Annexation Act"), and Colo. Const. Art. II, § 30; and

WHEREAS, the City has considered Owner's request for Service, and has determined that the Property sought to be served is not presently eligible for annexation to the City or, if eligible for annexation, has determined that it is not in the best interests of the City to annex the Property at this time; and

WHEREAS, the City is under no obligation to furnish, but is agreeable to furnishing, Service upon the terms and conditions set forth below because the City has determined the extension of Service under the terms of this Agreement constitutes a community benefit.

NOW, THEREFORE, in consideration of the promises and in further consideration of the benefits which will accrue to the City and Owner, the City and Owner have entered into this Agreement Providing Water Service and/or Wastewater Service to Land Located Outside the City Limits of the City of Colorado Springs and Agreement to Annex (the "Agreement") under the following terms and conditions:

1. This Agreement shall constitute the unqualified and irrevocable consent of Owner to annex the Property to the City and the City shall not be required to seek legal

action to compel specific performance of this Agreement to Annex, but may proceed by ordinance to annex all or part of the Property as if Owner had petitioned for annexation, whenever the Property becomes eligible for annexation pursuant to the Annexation Act. Owner further agrees to execute a petition for annexation, prepare annexation plats, pay all required fees and execute any other documents the City determines are necessary to annex Owner's Property to the City. Owner agrees that the provisions of this Agreement are applicable to the Property described in Exhibit "A" or any portion of the Property. It is further agreed that Owner will not annex the Property or any portion, or incorporate the Property with any other municipality or special service district as described in Paragraph 10 without the prior written consent of the City.

2. It is specifically understood that the Service to be furnished by the City is for only the single-family residential use described in this Agreement and shall be in conformity with the regulations of the City in furnishing water and/or wastewater outside its corporate limits and in further conformity with all applicable resolutions, codes, ordinances, regulations and policies of the City. Owner expressly agrees to be bound by and to comply with any and all City ordinances pertaining to water shortages, outdoor watering restrictions and water-efficient landscaping. Owner understands and agrees that the City imposes charges for water service and/or wastewater service provided outside of its corporate limits at a higher rate than applicable to the provision of such services within the corporate limits of the City. Upon annexation of the Property to the City, charges for water service and/or wastewater service subsequent to annexation shall be at the rates applicable to the provision of such services within the corporate limits of the City.

3. If Owner or Owner's successor in interest desires a different water service and/or wastewater service than granted the Property in this Agreement, or desires to put the Property to a use other than single-family residential, a change request shall be made to City Council. If granted, the request shall be upon terms and conditions as may be imposed by City Council. If the use of the Property for which the change request is made involves subdividing the Property or developing the Property for other residential, commercial or industrial purposes, the conditions for granting Owner's request shall include full compliance with the code, ordinances, rules, regulations and policies of the City.

4. If necessary, Owner will extend water and/or wastewater main lines or service lines to the Property, at Owner's expense, in accord with the City's codes, ordinances, rules, regulations and policies in effect at the time of the specific water service and/or wastewater service request. A first-come, first-served policy will govern availability of supply.

5. In the event Owner is not required to extend water service and/or wastewater service and lines and connect to the City's water and/or wastewater system at the time of entering into this Agreement, Owner shall connect to the City's water and/or wastewater system at Owner's expense at the time of request or when required under applicable codes, ordinances, rules, regulations and policies of the City in effect at the time of the request for Service. Water distribution and treatment capacity, along with wastewater collection and treatment capacity, is not guaranteed by this Agreement, but

by Service availability at the time of request. The first-come, first-served policy will govern availability of supply.

Owner agrees to pay its pro rata share of applicable water and/or wastewater treatment plant facility costs through established Water and Wastewater System Development Charges. Owner will pay a pro rata share of any existing water and wastewater infrastructure or facility costs assessed through established recovery agreement charges when required by codes, ordinances, rules, regulations or policies of the City. Water distribution and/or wastewater collection facilities required to serve the Property must be designed and constructed at Owner's expense in accordance with applicable codes, ordinances, rules, regulations or policies of the City at the time of the request for Service.

Owner agrees to participate with other developments on a fair share pro rata basis in present and future off-site relief or other water and/or wastewater facilities.

6. As provided in the Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater ("Deed"), which is attached to this Agreement as Exhibit B and hereby incorporated by reference, Owner grants to the City, all right, title and interest to any and all groundwater underlying or appurtenant to and used upon the Property, and any and all other water rights appurtenant to the Property (collectively referred to as the "Water Rights"), together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the City to appropriate, withdraw and use the Water Rights. The Deed conveying the Water Rights shall be executed by the Owner concurrently with this Agreement and shall be made effective immediately after execution by the City. The Deed shall be recorded at the El Paso County Clerk and Recorder's office.

Furthermore, pursuant to C.R.S. § 37-90-137(4), as now in effect or hereafter amended, on behalf of Owner and all successors in title, Owner irrevocably consents to the appropriation, withdrawal and use by the City of all groundwater underlying or appurtenant to and used upon the Property.

In the event the City chooses to use or further develop the Water Rights that have been conveyed, Owner agrees to provide any and all easements required by the City prior to the construction and operation of any City well or water-rights-related infrastructure on the Property. Wells constructed by the City outside the Property may withdraw groundwater under Owner's Property without additional consent from Owner. Utilities may authorize Owner to continue to utilize wells located on the Property that are permitted or decreed for domestic purposes, until the Property is connected to the City's water system. Owner agrees that any wells permitted or decreed for domestic purposes only that are located on the Property at the time of connection to the City's water system will be plugged and abandoned in accord with state rules and regulations. The City may permit Owner to continue to use wells for irrigation or livestock purposes only in accord with the permit or decree when the permit or decree includes use of the well for irrigation or livestock purposes, provided that the City may withdraw this authorization upon notification to Owner by Colorado Springs Utilities. No commingling of well and City water supply will be permitted.

7. Owner shall also construct facilities, if determined necessary by the City Engineer, for the safe discharge of all subsurface water into a drainage conveyance facility. These facilities are not eligible for drainage basin credit or reimbursement.

8. Owner and the City acknowledge that if the Property is not located within the corporate limits of the City at the time of its development, Owner nevertheless agrees to comply with all codes, ordinances, rules, regulations and policies of the City including, but not limited to, the City's Subdivision Code, Building Code, Fire Code, Drainage Ordinance, and Utility Extension Policies as now existing or subsequently amended, except to the extent that compliance would be unlawful under the applicable resolutions, codes and regulations of the El Paso County Board of County Commissioners or another governmental entity having jurisdiction. In the event compliance is unlawful under the applicable resolutions, codes and regulations of the El Paso County Board of County Commissioners or other governmental entity having jurisdiction over the Property, Owner shall post assurances to bring any improvements into compliance with City codes, ordinances, rules, regulations and policies upon annexation.

Compliance with City codes, ordinances, rules, regulations and policies pertaining to land development shall require, but shall not be limited to:

- a. Payment of all applicable Water and Wastewater Development Charges and fees.
- b. Payment of required park and/or school fees in lieu of dedication to the City.
- c. Dedication, design and construction of required streets, sidewalks, curbs, gutters, drainage and utilities, to City standards, or to the standards of the entity having responsibility for maintenance, whichever standard is more strict, or post acceptable financial assurances.
- d. Dedication of easements including, but not limited to, utility, drainage and other public improvements as required by the City Subdivision Code, or post acceptable financial assurances.
- e. Provision for necessary drainage facilities or the payment of drainage fees and arterial roadway bridge fees.
- f. Agreement to participate with other developments on a fair share pro rata basis in present and future drainage and/or off-site relief or other water facilities.

9. Owner agrees to pay fees, charges and take such other actions as set forth in Paragraph 8 at the time of annexation, when required under the provisions of the applicable City codes, ordinances, rules, regulations and policies or at any other time as requested by the City. Fees payable and requirements imposed under Paragraph 8 shall be those in effect at the time the fees are required to be paid or other action to be taken under the provisions of Paragraph 8 and not those fees in effect or requirements in effect at the time of execution of this Agreement. The City may require proof of payment or proper dedication of land prior to the connection of any water service and/or wastewater service under this Agreement. This Agreement shall not be interpreted to require the City

to install any park or drainage facility at any specific location or within any period of time, nor as relieving Owner of any liability or obligation to third persons to provide or to refrain from providing drainage. The City shall incur no obligation to Owner by reason of any claims, suits, judgments, or other liability or obligation resulting from Owner providing or failing to provide drainage. Owner specifically agrees to indemnify and hold the City harmless from all such claims.

10. Owner understands that certain infrastructure and/or easements serving the Property may be required by the City to meet appropriate City standards at the time of utility service extension to the Property or at the time of annexation of the Property to the City, or at another subsequent time as the City determines is appropriate to be upgraded to meet City standards. Infrastructure may include public utilities and public works projects including, but not limited to, paving and improvements of streets, curb, gutters, drainage facilities, and water and/or wastewater systems necessary to serve the Property subject to this Agreement. Infrastructure may be designed, financed, constructed, and/or maintained by special districts or other entities. These entities may include, but are not limited to, special districts, general improvements districts, limited improvement districts, special improvement maintenance districts, metropolitan districts, and building authorities or another district by whatever name, whether established pursuant to or subsequent to the annexation of the Property to the City or established prior to the annexation of the Property to the City. This Agreement shall constitute Owner's unqualified and irrevocable consent to including the Property within any of the foregoing entities and assessing the Property a fair share of the cost of any improvements as determined by City Council or the governmental authority having jurisdiction. In addition to or in lieu of the construction of improvements by the foregoing entities, the City may at any time require Owner to execute an agreement obligating Owner and the Property to pay for some or all of the improvements and a fair share as the City in its sole discretion may determine is appropriate.

11. The covenants and agreements contained in this Agreement shall run with the land described and affected by this Agreement, and shall extend to and be binding upon the Owner's heirs, assigns, legal representatives and successors and Owner for himself and his heirs, assigns, legal representatives and successors in interest. This Agreement shall be recorded with the El Paso County Clerk and Recorder.

☐ **The Financial Institutions expressly accepts and approves these covenants and agreements.**

12. As further consideration for the City providing Service, if all or part of the Property is eligible for annexation and if for any reason Owner or Owner's successor in interest does not or cannot abide by the terms and conditions of this Agreement, then the subject Service provided may be terminated by and at the sole option of the City.

13. Nothing in this Agreement shall abridge or shall be construed as a limitation on the City's authority to adopt different ordinances, rules, regulations, resolutions, policies or codes that apply generally or to the Property specifically.

14. Owner will comply with all ordinances, codes, rules, regulations and policies

of the City as now exist or may be amended or adopted in the future which are applicable to the Property under the terms of this Agreement, or are otherwise applicable to the Property after the annexation to the City.

15. Extension of water service and/or wastewater service under the terms of this Agreement is for the sole benefit of Owner and shall not be interpreted to create rights in a third party beneficiary or constitute City Council's determination of any policy pertaining to extension of water service and/or wastewater service to other similarly situated individuals or property.

16. As used in this Agreement, the term "Owner" shall also mean any of Owner's heirs, executors, personal representatives, successors, transferees or assigns and shall also include the Financial Institutions, if the Financial Institutions, their successors, transferees, or assigns becomes owner of the Property through foreclosure or otherwise. A subsequent owner of the Property shall have the right to enforce this Agreement subject to its provisions to the same extent as the original Owner of the Property.

17. This Agreement may be amended by Owner and the City with the concurrence of the Financial Institutions. Should the Financial Institutions no longer hold an interest in the Property and an affidavit to that effect is filed with the City and the El Paso County Clerk and Recorder, their concurrence with any amendment will not be required.

Any amendment shall be recorded in the records of El Paso County, shall run with the land and shall be binding upon all persons or entities now having or later acquiring an interest in the Property subject to the amendment unless otherwise specified in the amendment.

18. By executing this Agreement, the Financial Institutions agree that: (1) should it become Owner of the Property through foreclosure or otherwise, it will be bound by the terms and conditions of this Agreement to the same extent as Owner; and (2) should it become Owner of the Property, any provisions in its deed of trust or other agreements pertaining to the Property in conflict with this Agreement shall be subordinate to and superseded by the provisions of this Agreement.

19. The parties to this Agreement agree that for breach of any covenant, term or condition of this Agreement by any Owner, damages are not to be considered an adequate or exclusive remedy, and the City may compel specific performance of this Agreement.

20. If any part of this Agreement is declared void by a Court of competent jurisdiction, the parties agree that the void provision shall not affect the remaining terms and conditions of this Agreement, which shall continue in full force and effect.

IN WITNESS WHEREOF, the City, Owner and Financial Institutions have executed this Agreement on the 29 day of OCT, 2023.

CITY OF COLORADO SPRINGS

Randy Helms
Randy Helms, City Council President

ATTEST:

BY: Sarah Johnson
Sarah Johnson, CITY CLERK



APPROVED AS TO FORM:

Office of the City Attorney

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by _____, Mayor of the City of Colorado Springs, on behalf of the City of Colorado Springs.

My commission expires: _____.

Notary Public

OWNER:

Bruce W. Thomas

Cortney A. Thomas

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by _____ and _____, as Owner.

My commission expires: _____.

Notary Public

NEWREZ, LLC, as holder of a Deed of Trust from **Bruce W. Thomas and Cortney A. Thomas** dated **April 23, 2021** and recorded among the real property records of El Paso County, Colorado at **Reception No. 221080916**, hereby joins in the aforesaid Agreement Providing Water Service and/or Wastewater Service to Land Located Outside of the City of Colorado Springs and Agreement to Annex for the sole purpose of expressing its consent thereto and of binding, subjecting and subordinating the aforesaid Deed of Trust and its interests in any portion of the subject property to the terms thereof.

STATE OF _____)
) ss.
COUNTY OF _____)

Thomas (2023)

EXHIBIT A

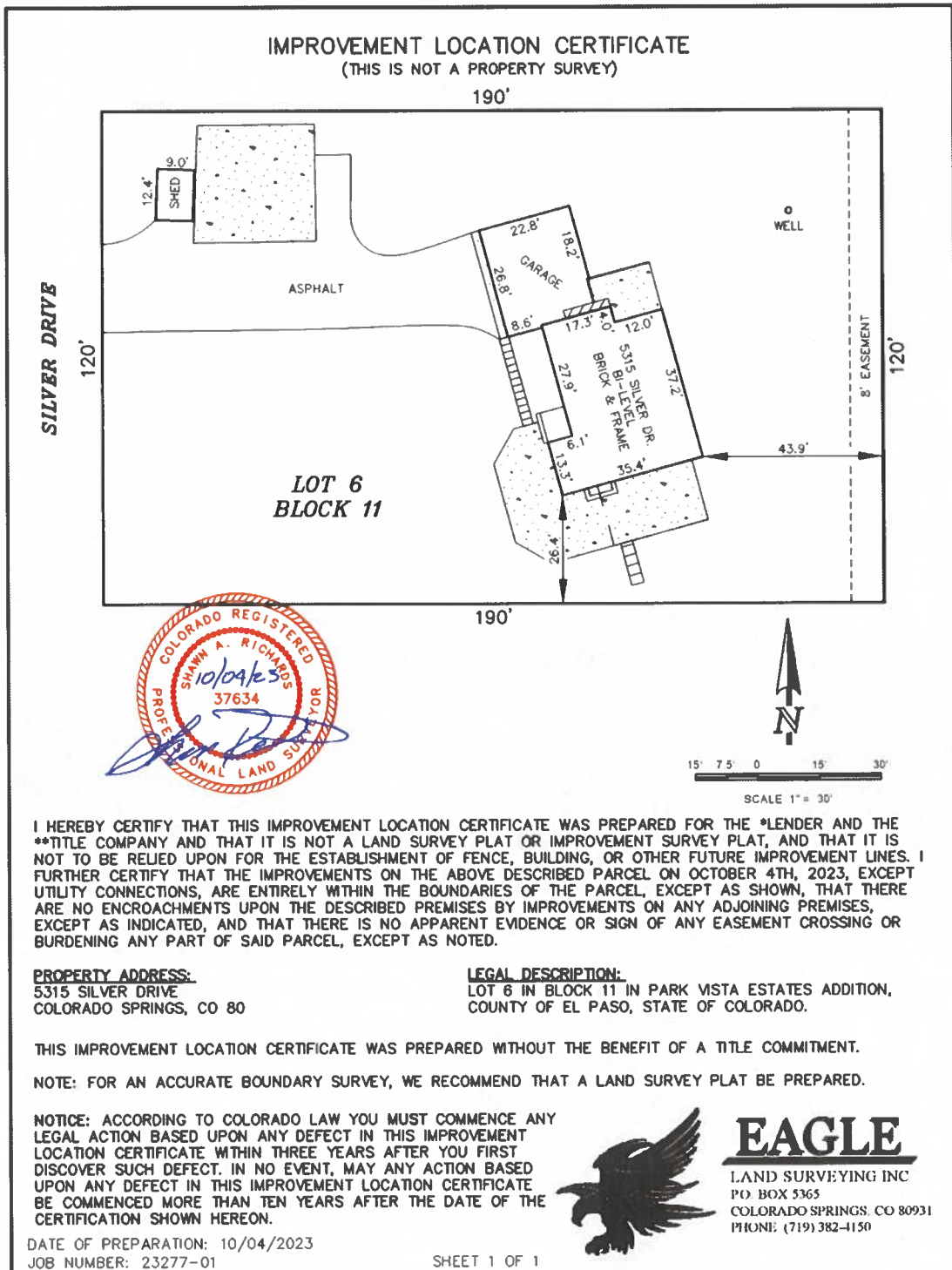


EXHIBIT B

SPECIAL WARRANTY DEED AND IRREVOCABLE CONSENT
TO THE APPROPRIATION, WITHDRAWAL AND USE OF GROUNDWATER
5315 Silver Drive Agreement to Annex

Bruce W. Thomas and Cortney A. Thomas ("Grantor(s)"), whose address is **5315 Silver Drive**, in consideration of the benefits received pursuant to the 5315 Silver Drive Agreement Providing Water Service and/or Wastewater Service to Land Located Outside the City Limits of the City of Colorado Springs and Agreement to Annex dated _____ ("Annexation Agreement"), which is executed by Grantor(s) concurrently with this Special Warranty Deed, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, sell and convey to the City of Colorado Springs, Colorado ("Grantee"), whose address is 30 S. Nevada Avenue, Colorado Springs, CO 80903, all right, title, and interest in any and all groundwater underlying or appurtenant to and used upon the property described in Exhibit A ("Property") and any and all other water rights appurtenant to the Property, collectively referred to as the "Water Rights," together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the Grantee to appropriate, withdraw and use the Water Rights; and Grantor(s) warrants title to the same against all claims arising by, through, or under said Grantor(s). The Water Rights include, but are not limited to, those described in Exhibit B hereto.

Furthermore, pursuant to C.R.S. § 37-90-137(4), as now exists or may later be amended, Grantor(s), on behalf of Grantor(s) and any and all successors in title, hereby irrevocably consent in perpetuity to the appropriation, withdrawal and use by Grantee of all groundwater underlying or appurtenant to and used upon the Property.

This Special Warranty Deed and the consent granted herein shall be effective upon its execution.

Executed this _____ day of _____, 2023.

GRANTOR(s):

By: _____

Bruce W. Thomas

By: _____

Cortney A. Thomas

SPECIAL WARRANTY DEED AND IRREVOCABLE CONSENT
TO THE APPROPRIATION, WITHDRAWAL AND USE OF GROUNDWATER
5315 Silver Drive Agreement to Annex (Cont.)

STATE OF)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____day of _____, 2023, by **Bruce W. Thomas and Cortney A. Thomas**, Grantor(s).

My commission expires: _____.

Notary Public

Accepted by the City of Colorado Springs

By: _____ this _____ day of _____, 2023
Real Estate Services Manager

By: _____ this _____ day of _____, 2023

Approved as to Form:

By: _____ Date: _____
City Attorney's Office

NEWREZ, LLC as holder of a Deed of Trust from **Bruce W. Thomas and Cortney A. Thomas**, dated **April 23, 2021** and recorded among the real property records of El Paso County, Colorado at **Reception No. 221080916**, hereby joins in the aforesaid Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater for the sole purpose of expressing its consent thereto and of binding, subjecting and subordinating the aforesaid Deed of Trust and its interests in any portion of the subject property to the terms thereof.

NEWREZ, LLC,

By: _____

Name: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____, as _____ of and on behalf of **NEWREZ, LLC**.

My commission expires: _____.

Notary Public

Exhibit A
to the
Special Warranty Deed and Irrevocable Consent to the Appropriation,
Withdrawal and Use of Groundwater executed by
Bruce W. Thomas and Cortney A. Thomas, Grantor(s) on _____

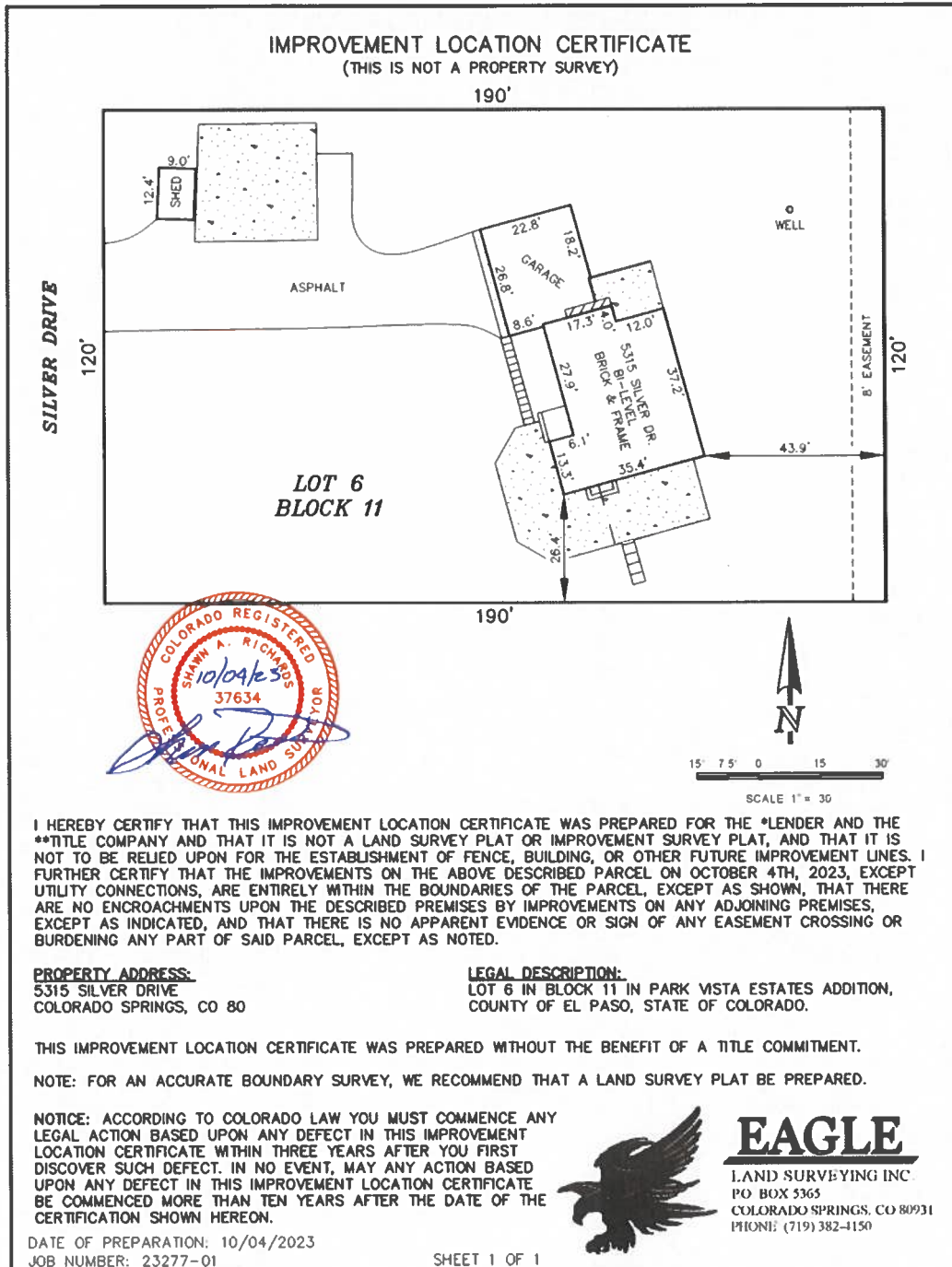


Exhibit B
to the
Special Warranty Deed and Irrevocable Consent to the Appropriation,
Withdrawal and Use of Groundwater Executed by
Bruce W. Thomas and Cortney A. Thomas Grantor(s) on _____.

Decreed Groundwater Rights

N/A

Permitted Groundwater

Permit No. 144356
Date of Permit: December 19, 1986
Source: Unknown
Amount: 15 GPM (Household use only, NO Irrigation Use Allowed)
Name of Owner: Jim Palone

Legal Description of Well or other Structure: well located at distances of 2150 feet from the north section line and 1422 feet from the west section line in the WE1/4 of the NW1/4, Section 23, Township 13S, Range 66 West of the 6th P.M..

Surface Water Rights

N/A