

**AGREEMENT TO BUY AND SELL WILSON RIGHTS**

This Agreement (“Agreement”) is made this \_\_\_\_ day of September, 2006 by and between Fortune I, LLC, a Washington limited liability company (“Seller”) and \_\_\_\_\_ (“Buyer”):

1. Agreement. Pursuant to the terms of this Agreement, Buyer agrees to buy, and Seller agrees to sell, the Wilson Rights (as defined below) on the terms and conditions set forth in this Agreement.

2. Wilson Rights. The “Wilson Rights” are the rights of Seller under the Recreational Reservoir Lease between Seller and Singing River Ranch dated May 8, 2009, a copy of which is attached hereto and incorporated herein as Exhibit A.

3. Purchase Price. The Purchase Price for the Wilson Rights is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ .00), payable as follows:

a. Earnest money. Earnest money paid herewith in the amount of \$10,000.00 which shall be held by Dotter Abstract Company, 506 Main Street, Walsenburg, Colorado, 81089 (“Closing Company”) pending closing under the terms of this agreement.

b. The balance of the Purchase Price, \$ \_\_\_\_\_ .00 shall be due and payable in good U.S. funds at Closing.

4. Disposition of Earnest Money. The earnest money held by Closing Company Seller shall be applied to the Purchase Price due at Closing. If Closing does not occur due to an exercise by Singing River Ranch of its right of first refusal, the earnest money held shall be returned to Buyer. If Closing does not occur due to a failure of Buyer to close, the earnest money held shall be paid to Seller. If Closing does not occur due to a failure of Seller to close, other than as the result to an exercise by Singing River Ranch of its right of first refusal, the earnest money held shall be paid to Buyer.

5. Preconditions to Closing. This agreement is a “back-up” purchase contract. Buyer’s right to purchase the Wilson Rights is conditioned upon the failure of Singing River Ranch, Inc. to exercise its right of first refusal on or before 5 p.m. MDT October 28, 2012. If Singing River Ranch, Inc. fails to exercise its right of first refusal on or before 5 p.m. MDT October 28, 2012, Seller shall notify Buyer of this fact on or before 5 p.m. October 31, 2012. Provided that Singing River Ranch fails to exercise its right of first refusal, the Closing shall occur at 10 a.m. November 17, 2012 at the Closing Company.

6. Deed. Conveyance of the Wilson Rights shall be by a bargain and sale warranty deed.

7. Transfer Fees. Buyer shall pay any fees or charges assessed by any party to transfer ownership of the Wilson Rights.

8. Liens and Encumbrances. Seller warrants that it holds full ownership of the Wilson Rights, that the Wilson Rights are free and clear of all liens, mortgages, judgments, debts, encumbrances, leases, licenses, covenants, assessments, adverse claims, and any other burdens.

9. Future Cooperation. Seller, for itself, its agents, representatives and assigns, agrees to provide to Buyer, its agents, representatives, experts and attorneys, such information in Seller's possession as may be reasonably requested by Buyer in order to prosecute a water rights application should such be determined necessary by Buyer in order to fully utilize the Wilson Rights. Furthermore, Seller, at its sole expense, shall provide testimony or other assistance reasonably requested by Buyer in order to complete prosecution of the application, except that Seller shall be reimbursed by Buyer, upon presentation of receipts documenting such expenses, for any travel or other out-of-pocket expenses incurred by Seller in meeting the requirements of this Section. In addition, to the extent such agreements may be assignable, Seller shall assign to Buyer Seller's full right, and interest in and to any agreements with prior owners of the Wilson Rights regarding such cooperation. Seller makes no warranty or representation as to the veracity or adequacy of such information for use by Buyer.

10. Not Assignable. This Agreement shall not be assignable by Buyer, prior to Closing, without Seller's prior written consent. This Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

11. Mediation. If a dispute arises relating to this Contract, prior to or after Closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree, in writing, before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the other at the party's last known address. This section shall not alter any date in this Contract, unless otherwise agreed.

12. Remedies. In the event of any breach or default in the provisions of this Agreement by Seller, Buyer shall have the right, as its sole and exclusive remedy, to either demand and have specific performance of this Agreement or to demand the immediate return of the earnest money; provided, however, that Seller shall be entitled to fifteen (15) days written notice of any alleged breach during which time Seller may cure the default and restore the Agreement to good standing. Buyer shall not be provided any other remedy and expressly shall not be entitled to any damages for breach or default. In the event of breach or default in the provisions of this Agreement by Buyer, Seller shall receive as its sole and exclusive remedy the earnest money as liquidated damages for the breach; provided, however, that Buyer shall be entitled to fifteen (15) days written notice of any alleged breach during which time Buyer may cure the default and restore the Agreement to good standing. If any action is brought to enforce

the provisions of this Agreement, or to collect damages there under, the prevailing party shall be entitled to reasonable attorney fees in addition to the costs of suit.

13. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

14. Modification of Agreement. No subsequent modification of any of the terms of this Agreement shall be valid or enforceable unless made in writing and signed by both parties hereto.

15. Entire Agreement. This Agreement constitutes the entire understanding between the parties relating to the subject thereof and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement.

16. Seller's Representations. Seller warrants that it is the lawful holder of title to the Wilson Rights. Seller specifically disclaims, however, and Buyer shall accept the Wilson Rights without any representations or warranties regarding the quality of water associated with the Wilson Rights, the adequacy of the Wilson Rights for the Buyer's intended use, the outcome of any water court change proceeding concerning the Wilson Rights or any other warranty whatsoever other than those expressly set forth herein.

Seller:  
Fortune I, LLC, a Washington limited liability company

\_\_\_\_\_

Date \_\_\_\_\_

Buyer:

\_\_\_\_\_

Date \_\_\_\_\_

Exhibit A  
Recreational Reservoir Lease  
(Wilson Reservoir)

RECREATIONAL RESERVOIR LEASE  
(Wilson Reservoir)

This Recreational Reservoir Lease ("Lease") is made and entered into as of the 8<sup>th</sup> day of May 2009, by and between Fortune I LLC, a Washington Limited Liability Company whose address is 111 South Tejon Street, Suite 701, Colorado Springs, Colorado 80903 ("Lessor") and Singing River Ranch LLC 1228 15<sup>th</sup> Street, Suite 304, Denver, Colorado 80202 ("Lessee").

Recitals

1. Wilson Reservoir is a 35 acre foot reservoir located in Section 14, Township 27 South, Range 72 West of the 6<sup>th</sup> P.M. on Sheep Creek, a tributary of the Huerfano River in Colorado. The water right was adjudicated in the District Court of Huerfano County Case No. 1414 with an appropriation date of 11-15-1910 and an adjudication date of 10-3-1921. The original decree was amended to include recreation, fish and fire protection use in Case No. 0884. The Wilson Reservoir water right provides for storage of 35 acre feet of water which is decreed for the following uses: irrigation, fish, recreation and fire protection.

2. Lessee is purchasing approximately 3,480 fee simple acres of the Fortune Ranch located in Township 27 South, Range 72 West of the 6<sup>th</sup> P.M., Huerfano County, Colorado (the "Property"). Lessee is not purchasing the Wilson Reservoir, the dam, the underlying land, a 100 foot strip of land surrounding the Wilson Reservoir or the Wilson Reservoir water right. Lessor will retain the ownership of the Wilson Reservoir, the dam, the underlying land, the 100 foot strip of land surrounding the Wilson Reservoir and other necessary structures and the water right. Lessor will also obtain an easement on the land of the Lessee to access the Wilson Reservoir by an existing road. Lessee will obtain the exclusive right to recreational and fishery uses in and on the Wilson Reservoir on the Property as defined in this Lease.

3. Contemporaneously with this Lease, Lessee shall convey an access easement to Lessor for use of an existing road from County Road 580 to the Wilson Reservoir.

Agreement

1. Leased Property. Lessor leases to Lessee and Lessee leases from Lessor the use of Wilson Reservoir for recreational purposes, as defined below. All other purposes for the use of Wilson Reservoir, its water and water right, stated or unstated, adjudicated or not adjudicated, are retained by the Lessor. Lessor also leases to Lessee the following real property: the real property underlying the Wilson Reservoir and dam and the real property extending 100 feet beyond the high water line of the Wilson Reservoir along the circumference of the Wilson Reservoir. A map depicting the Wilson Reservoir and the access road to the Wilson Reservoir is attached hereto as Exhibit 1.
2. Term. The term of this Lease shall be for a period of 20 years beginning on May 8, 2009 and ending on May 7, 2029 at midnight. This Lease may be renewed once, for the same term and under the same conditions if requested in writing by the Lessee prior to the expiration of the original lease term but after May 7, 2028.
3. Rate. Lessee shall pay Lessor \$100.00 annually as consideration for this Lease. Such payment shall be due and payable in good funds on June 1, 2010 and each June 1 thereafter for the first 20 year term of the Lease. If the Lease is renewed for a second 20 year term, the annual consideration shall be \$200.00 due and payable in good funds on each June 1 during the term of the Recreational Lease.
4. Recreational Purposes. Recreational purposes for the term of this Lease shall be nonconsumptive uses of the water defined as follows: fishing, boating, canoeing, kayaking, floating, swimming, scuba diving, hunting of water fowl and other similar pursuits.
5. Rights of Lessee.

- a. Lessee may use Wilson Reservoir for recreational purposes defined in paragraph 4 above for its family members, guests, licensees and invitees. This right is exclusive in the Lessee and the Lessor agrees not to exercise the recreation uses as defined in this Lease. In no event shall the number of users of the Wilson Reservoir for recreation purposes exceed 20 in any 24 hour period.
- b. Lessee may construct boat docks, set up fishing camps and similar recreational facilities or construct boat storage facilities so long as Lessee complies with all state and local zoning regulations and such facilities do not impede Lessor's use of the Wilson Reservoir, dam, water and access rights as set forth in paragraph 6 below.
- c. Lessee may use the water in Wilson Reservoir for emergency fire protection. Replacement of water used for fire protection or payment at fair market rates for water used for fire protection may be required at the option of the Lessor.

6. Rights of Lessor.

- a. Right to drain reservoir. Lessor shall retain the right to use all water stored in the Wilson Reservoir for irrigation and may drain the entire Wilson Reservoir at any time solely at Lessor's discretion with the sole exception of retaining a minimum pool for protection of the fishery as defined herein. Lessor may also elect not to fill the Wilson Reservoir in any year or series of years solely at Lessor's discretion. No payment or other compensation whatsoever is to be made to Lessee for fish loss or loss of other recreational use or damage to docks or other facilities as a result of the draining of the Wilson Reservoir.
- b. Access. Lessor shall have vehicular and pedestrian access upon reasonable advance notice to the Wilson Reservoir on the land of the Lessee for the purposes in 6(c), which shall be conveyed in a separate document simultaneously with this Lease, for use of the historic access road which connects from County Road 580 as shown on the map attached as Exhibit 1. The road is estimated to be 2 miles long.

- c. Right to operate and repair. Lessor shall have the right at its sole discretion to operate, maintain, repair or replace all facilities at the Wilson Reservoir. Lessor may take such actions on the dam structure, headgates and conveyance structures, flumes, ditches and other facilities and ditches to or from the Wilson Reservoir and to have equipment and supplies stored on the Property during such repairs, operation or maintenance.
  - d. Water rights. Lessor shall, at his sole option, maintain, renew or change all conditional or absolute water right decrees or shall have the right to add additional water rights and uses to the Reservoir without the consent of the Lessee. Lessee shall not oppose or protest Lessor's renewal, adjudication or use of water rights or water decrees concerning Wilson Reservoir in the Courts or in administrative proceedings of the State of Colorado.
7. Minimum Fish Pool. Notwithstanding the provisions of paragraph 6a above concerning draining of the Wilson Reservoir, Lessor agrees to install within 5 years of the date of this Lease, a staff gage in the Wilson Reservoir at or near the drain of the Wilson Dam which will allow the depth of the Wilson Reservoir to be measured. Only after installation of such staff gage Lessor agrees to use reasonable efforts to maintain a water level at or above 8 feet as measured on such staff gage for fish uses. The Lessor and Lessee acknowledge that the Wilson Reservoir requires cleaning at this time to allow it to operate at its full decreed capacity of 35 acre feet. The five year delay in the operation of the minimum fish pool is to allow draining and cleaning of the Wilson on one or more occasions as needed in the sole discretion of the Lessor to provide for full operational capacity.
8. Water Quality. Lessor makes no guarantees whatsoever pertaining to Wilson Reservoir water quality or whether the water is of adequate quality for any use including recreational uses whether defined herein or not. Lessor makes no agreement to maintain the water quality that exists at the Wilson Reservoir at the date of the signing of this Recreational Lease.
9. Insurance and Indemnification. Lessee must maintain during the full term of this Lease and any renewal period and provide proof of \$2

million dollars of liability insurance per occurrence with no annual aggregate for any and all claims and actions from recreational use and all other activities concerning the Wilson Reservoir. Lessor shall be listed as an additional insured in such insurance policy. The policy shall be provided to Lessor annually or upon request by Lessor. Lessee shall at all times indemnify, protect and save harmless the Lessor against any and all claims and actions from recreational use by Lessee, its family members, guests, licensees and invitees, and all other activities by Lessee, its family members, guests, licensees and invitees, including attorneys' fees and costs, concerning the Wilson Reservoir.

10. Assignment. This Lease shall be assignable by Lessee only upon consent of the Lessor and in conjunction with the sale of the Property. Lessee must provide notification to Lessor no fewer than 60 days prior to any intended assignment which consent to the assignment shall not be unreasonably withheld by the Lessor.

11 Exclusive use. The Wilson Reservoir shall not be open to the public at any time for any purpose.

12. Right of First Refusal. Lessee shall have a right of first refusal on the Wilson Reservoir, water right, and on the following real property: the real property underlying the Wilson Reservoir and dam and the real property extending 100 feet beyond the high water line of the Wilson Reservoir along the circumference of the Wilson Reservoir. Upon written notification from the Lessor that a sale or transfer contract to a third party has been entered into, Lessee shall have 30 days to exercise its right of first refusal to purchase on the same terms and conditions by delivery of a written notice thereof to Lessor whereupon Lessee shall be deemed in contract to purchase. In the event that the right of first refusal is not exercised, Lessor is free to sell the interest to a third party with no further obligation to notify or contact the Lessee.

13. Dispute Resolution. In the even either party contends that the other party is in default under the Lease, the non defaulting party shall give written notice of the alleged default to the other party. The alleged

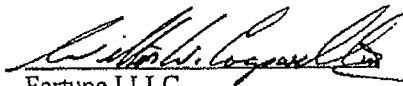
12. Waiting Attorney  
Opinion on First  
Right of Refusal

defaulting party shall be allowed a period of 15 days within which to correct or commence correcting the default. If the dispute cannot be resolved Lessor and Lessee agree to enter into AAA arbitration concerning the dispute.

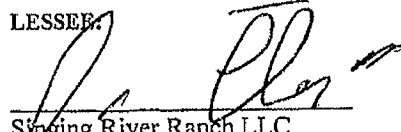
14. Record Lease in Huerfano County, Colorado. Lessor or Lessee may record this Recreational Lease with the Huerfano County Clerk and Recorder.
15. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Colorado.
16. Complete Agreement. This Lease consists of all the agreements, understandings, and promises between Lessor and Lessee, and there are no agreements, understandings, or promises between Lessor and Lessee other than those set forth in this Lease.
17. Amendments or Modification. Any amendments or modifications to this Lease must be in writing and executed by all parties to be valid and binding.

Dated May 8, 2009.

LESSOR:

  
Fortune I LLC  
By its: Assistant Manager  
Wilton W. Cogswell III

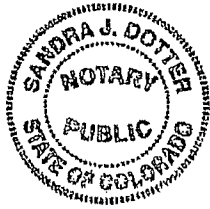
LESSEE:

  
Singing River Ranch LLC  
By its: Manager  
Joseph W. Luter III

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Huerfano )

Wilton W. Cogswell III personally appeared before me this 8<sup>th</sup> day of May, 2009, as Assistant Manager of Fortune I, LLC (Lessor).

My commission expires 12/30/12



Sandra J. Dotter  
Notary Public

STATE OF Virginia )  
 ) ss.  
COUNTY OF Isle of Wight

Joseph Luter III personally appeared before me this 26<sup>th</sup> day of May, 2009 (Lessee).

My commission expires June 30, 2012

Lythi Edwards  
Notary Public # 346049

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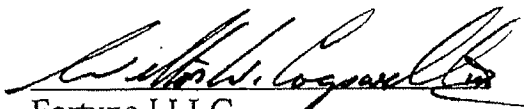
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Dated May 8, 2009.

LESSOR:

LESSEE:



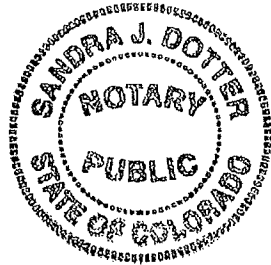
Fortune I LLC  
By its: Assistant Manager  
Wilton W. Cogswell III

\_\_\_\_\_  
Singing River Ranch LLC  
By its: \_\_\_\_\_  
Joseph W. Luter III

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Huerfano )

Wilton W. Cogswell III personally appeared before me this 8<sup>th</sup> day of May, 2009, as Assistant Manager of Fortune I, LLC (Lessor).

My commission expires 12/30/12



*Sandra J. Dotter*  
\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_ personally appeared before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (Lessee).

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

