

TOWN OF LYONS, ON BEHALF OF ITS WATER ENTERPRISE  
CONTRACT TO BUY AND SELL REAL ESTATE

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1        **PARTIES DEFINED; CLOSING AGENT.** As used in this Contract, the term Seller or City means the City of Longmont, a Colorado municipal corporation, acting on behalf of its Water Utility Enterprise. The term Purchaser means the Town of Lyons, on behalf of its Water Enterprise, a Town-owned business as defined in Article X, Section 20 of the Colorado Constitution (“TABOR”). The Seller and the Purchaser are individually referred to herein as a “Party” and collectively referred to herein as the “Parties.” The Closing Agent and Title Company for this transaction is Land Title Guarantee Company (the “Closing Agent” or “Title Company”). The Closing Agent’s address is 916 South Main Street #301, Longmont, CO 80501.

This Contract shall be effective as of the date of mutual execution by the Parties, as indicated on the signature page to this Contract (“Effective Date”).

2        **PROPERTY; EARNEST MONEY.** Seller agrees to sell and Purchaser agrees to purchase the following described real estate in the County of Boulder, Colorado (“Property”), to wit:

See **Exhibit A**;

Together with all easements and rights of way appurtenant to the Property, and all improvements on the Property;

Together with fixtures of a permanent nature now on the Property, except as this Contract otherwise states, in their present condition, ordinary wear and tear excepted (also called the Property); and

Together with all minerals of whatever kind or character in, under, and upon or that might be produced from the Property (including any rights and royalties under any mineral leases), in accordance with the terms and conditions of this Contract.

Notwithstanding the foregoing, Seller shall convey the Property subject to two perpetual easements which Seller shall reserve to itself, as generally shown on the attached Exhibit D, for operating, maintaining, inspecting, repairing, altering, removing, and replacing overhead electric distribution lines, in whole or in part, and all necessary subsurface and surface appurtenances. This Contract is conditional upon the following occurring on or before closing: 1) receipt by the parties of the legal descriptions for the two easements; and 2) mutual agreement by the parties that the legal descriptions fairly and accurately depict the easements to be reserved by the Seller.

Within three (3) business days following the Effective Date, Purchaser shall deposit with the Closing Agent **Ten Thousand Dollars and No Cents (\$10,000.00)**, as earnest money and part payment for the Property. The Parties authorize delivery of the earnest money to the Closing Agent.

3 **PURCHASE AND SALE.** Subject to the following provisions, Purchaser agrees to buy, and Seller agrees to sell, the Property on the terms and conditions stated in this Contract.

4 **PRICE.** The purchase price shall be Nine Hundred Twenty-Five Thousand Dollars and No Cents (\$925,000.00), payable as follows: the earnest money and part payment acknowledged above, and the balance to be paid by Purchaser in good and valuable funds as set forth in this paragraph. Purchaser shall pay the purchase price in cash, certified funds, by wire transfer, or via other means upon which the Parties agree as set forth in the payment schedule below. Purchaser shall execute and deliver to Seller at closing a Promissory Note and a Deed of Trust, in the substantially the forms attached hereto as **Exhibit B** and **Exhibit C**, which shall incorporate the payment schedule below.

4.1 The price includes payment for the following personal property:

None,

to be conveyed by bill of sale at time of closing in their present condition, free and clear of all personal property taxes, liens and encumbrances, except:

None.

4.2 Payment schedule:

- Ten Thousand Dollars and No Cents (\$10,000.00) paid as earnest money in accordance with Paragraph 2 above;
- Three Hundred Five Thousand Dollars and No Cents (\$305,000.00) paid at closing;
- Three Hundred Five Thousand Dollars and No Cents (\$305,000.00) paid on or before February 15, 2018;
- Three Hundred Five Thousand Dollars and No Cents (\$305,000.00) paid on or before February 15, 2019.

4.3 PURCHASER'S RIGHT TO PAY IN FULL. Upon at least fifteen (15) days advance written notice to Seller, Purchaser reserves the right to pay the entire outstanding purchase price at any time after date of closing.

5 CLOSING. The Parties shall close this Contract on or before April 21, 2017, or another date to which the Parties may agree. The Parties shall mutually agree upon the hour and place of closing. Seller and Purchaser shall share equally all closing fees, escrow fees, and other customary closing costs, except that Purchaser shall pay per page recording costs and transfer taxes, if any. Purchaser's Board of Trustees will schedule a resolution authorizing the purchase of the Property at a regular or special meeting on a date following the mutual execution of this Contract. The Parties specifically agree that notwithstanding the date of closing set forth in this paragraph 5, Closing shall occur on a date following the effective date of a resolution authorizing Purchaser's purchase of the Property.

6 TITLE INSURANCE. If Purchaser elects, Purchaser shall cause to be performed and delivered to the Purchaser and Title Company an ALTA/ACSM improvement survey of the Property ("Survey"). Purchaser shall bear all costs associated with performing and delivering the Survey. At least forty (40) days before closing, Purchaser shall secure a current ALTA owner's title insurance commitment for the Property issued by the Title Company in favor of Purchaser for an amount equal to the purchase price, accompanied by true and accurate copies of all instruments and documents identified as creating insurance exceptions ("Title Documents"), and a current Treasurer's Certificate of Taxes due on the Property. Seller shall pay for Owner's coverage in an amount equal to the purchase price. If the Purchaser elects any endorsements on the title insurance commitment, including Owner's Extended Coverage ("OEC"), any additional premium expense to obtain such endorsements shall be at Purchaser's sole expense. If elected, such OEC coverage will commit to delete or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) unrecorded mechanics' liens, (5) gap period (period between the effective date and time of the title commitment to the date and time the deed is recorded), and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing. Purchaser shall give Seller written notice of unmerchantable title or of any other unsatisfactory title condition shown by any new, revised, or updated title insurance commitment or Title Documents within fifteen (15) days after receiving the title insurance commitment and any referenced Title

Document or any revised or updated title insurance commitment, or Purchaser shall be deemed to have waived any objection to title.

6.1 RIGHT TO CURE. If Purchaser gives notice of unmerchantable title or any other unsatisfactory title condition as provided above, Purchaser may require Seller to use reasonable efforts to correct said unsatisfactory title condition(s) before the closing date. If Seller, after notice that Purchaser requires it, fails to cure unsatisfactory title condition(s) by the closing date, this Contract shall terminate, unless Seller receives Purchaser's written notice, by the closing date, that Purchaser waives its objection, and elects to close this Contract. If Purchaser terminates this Contract under this paragraph, Seller and Closing Agent shall promptly refund all amounts paid by Purchaser toward the Purchase price, and the Parties shall have no further obligation or liability to each other.

6.2 DOCUMENTS. Seller shall provide Purchaser with a true and accurate copy of the following documents to the extent in Seller's possession:

- a. Leases, lease forms, and other leasehold-related items affecting the Property; and
- b. Documents that securitize or encumber the Property; and
- c. Environmental, subdivision, and zoning documents; and
- d. Pond maintenance documents, agreements, or correspondence; and
- e. The name(s) of the Seller's representative(s), together with telephone and email contacts for said representative(s), that are most familiar with the Property, to aid the Purchaser in completing additional environmental inspections and/or investigations of the Property; and
- f. Appraisals, environmental reports, and geotechnical engineering reports; and
- g. Surveys, improvement location certificates, maps, and plats; and
- h. A list of all actions, lawsuits legal, or administrative proceedings or other claims against the Property; and
- i. A written disclosure of all known adverse matters, if any, regarding the Property.

7 TITLE AND EXCEPTIONS. Except as stated in this Contract, title shall be good and merchantable in Seller. Subject to Purchaser's payment or tender, as above provided, and Purchaser's compliance with the other terms of this Contract, Seller shall execute and deliver to Purchaser a good and sufficient special warranty deed at closing, conveying the Property free and clear of all taxes and liens, and other encumbrances, but subject to applicable building and zoning regulations, and those specific exceptions described by reference to recorded documents as reflected in the title commitment.

8 ENCUMBRANCES. Closing Agent may use the proceeds of this transaction or any other Seller's funds to remove any encumbrance not permitted by this Contract at closing. However, if the total obligations secured by liens or encumbrances exceed the purchase price, then this Contract, at the election of Purchaser, shall become void and of no effect. Such election shall release each party from their respective obligations to buy and sell, and Seller and Closing Agent shall return to Purchaser all payments and other things of value given under this Contract.

9 POSSESSION. Purchaser shall take title to and possession of the Property upon closing.

10 DEFAULT. Time is of the essence. If any note or check given as earnest money or any other payment due under this Contract is not paid, honored or tendered when due, or if any party fails to perform any other obligation under this Contract, the Parties may resort to the following remedies:

- If Seller defaults, Purchaser may elect to treat this Contract as being in full force and effect and Purchaser may pursue all remedies at law or in equity.
- If Purchaser defaults, Seller may elect to cancel this Contract and all earnest money will be paid to Seller and retained by Seller. It is agreed that the earnest money is not a penalty, and the Parties agree the amount is fair and reasonable.

11 PROPERTY SOLD AS IS. Except as this Contract otherwise expressly states, Seller makes no warranty regarding the condition of the Property or its fitness for a particular purpose. The Property is sold "as is."

11.1 Without limiting the foregoing, Purchaser acknowledges receipt of copies of the following Site Assessments and Asbestos Surveys prepared by Terracon Consultants Inc., obtained by the City for the Property: 1) the Phase I Environmental Site Assessment, October 3, 2011; 2) Limited Site Investigation, January 3, 2012; and 3) the Asbestos Survey, January 5, 2012 (collectively, the "Environmental Assessments"). Seller also acknowledges receipt of the Colorado Department of Public Health and Environment No Action Determination. Purchaser accepts the Property subject to all of the conditions described in the Environmental Assessments including, but not limited to, asbestos containing material (both friable and non-friable) determined to be present in the buildings currently on the Property. The Environmental Assessments also identified two areas that may warrant further assessment: the backwash settling ponds on the North Plant Site, and South Plant Building Elevator where PCBs were identified in the elevator hydraulic fluid and on a stained concrete slab. The Seller expressly disclaims any warranties as to the accuracy or completeness of the Environmental Assessments. Purchaser may, at its sole cost and expense, update these assessments or obtain new assessments, subject to the requirements for a written release set forth in paragraph 18 below.

11.2 Notwithstanding this provision, Seller warrants that as of the date of closing that:

- a. There are no actions, suits, proceedings or investigations pending or, to Seller's knowledge threatened, against, or affecting the Property;

- b. To the best of Seller's knowledge, Seller is in compliance with the laws, orders, and regulations of each governmental entity having jurisdiction over the Property;
- c. Seller is not party to or subject to or bound by any agreement, contract or lease of any kind relating to the Property, that has not been specifically disclosed to and expressly acknowledged and agreed to by the Purchaser;
- d. To the best of Seller's knowledge, no representation or statement made herein by Seller contains any untrue statement of any material fact or omits to state any material fact necessary in order to make such representation or statement not misleading; and
- e. Seller is duly authorized and has taken all necessary actions to execute and perform this Contract and this Contract is enforceable against Seller in accordance with its terms.

11.3 Purchaser shall be responsible for demolishing the buildings currently on the Property at its sole cost and expense.

12 REAL ESTATE COMMISSION. As there are no brokers involved in the transaction that is the subject of this Contract, neither Party shall incur any real estate commission due upon closing, or as a condition of closing.

13 PROPERTY TO REMAIN UNENCUMBERED. Seller will not, while this Contract is effective, encumber or burden any part of the Property.

14 CONTRACT TO SURVIVE CLOSING. Except such of the terms, conditions, covenants and agreements under this Contract which are, by their very nature, fully and completely performed upon the closing of the purchase and sale, all of the terms, conditions, representations, warranties, covenants, and agreements stated in this Contract shall survive the closing and shall continue, after closing, to be binding upon and inure to the benefit of the Parties, their heirs, successors, and assigns.

15 ADDITIONAL DOCUMENTS. The parties agree to execute any additional documents necessary to carry out the purposes of this Contract, consistent with its terms, including, but not limited to assignments of all rents and royalties under any existing mineral or other leases.

16 GOVERNING LAW. The law of the State of Colorado shall govern interpretation, construction, and enforcement of this Contract and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

17 CONSTRUCTION. In this Contract, words of the masculine gender include the feminine and neuter gender and words of the neuter gender refer to any gender. Words in the singular include the plural and *vice versa*. This Contract shall be construed according to its fair meaning, as if prepared by both Parties, and not in favor of or against either Party. This document and any other documents incorporated by reference contain the entire understanding and agreement between the Parties. There are no other terms, conditions, promises, understandings, statements, or

representations, expressed or implied, concerning the subject of this Contract unless stated in writing and signed by both Parties.

18      **INSPECTION.** The Purchaser, or any person Purchaser designates, may make inspections of the physical condition of the Property and the improvements, at Purchaser's expense. Such inspection is conditional upon Purchaser agreeing in writing, to the extent allowed by law, to release and indemnify, defend and hold harmless the Seller, its agents, officers, employees, and volunteers from and against all damages, claims, actions, causes of action, demands, judgments, costs, expenses of every kind and nature, predicated upon injury to or death of any person or loss of or damage to any property, arising, in any manner, from the Purchaser's inspection. Such inspections may include, but are not limited to, inspections for appraisal and compliance with environmental protection, pollution or land use laws, ordinances, rules and regulations, and for the disposal or existence, in or on the Property, of any pollution or hazardous substance. Such inspections may include reasonable sub-surface boring and excavation. If Purchaser gives written notice of unsatisfactory condition of the physical condition of the Property and any improvements, as determined in Purchaser's reasonable discretion, by thirty (30) days before closing, Seller shall either cure such conditions, or this Contract shall then terminate. Notwithstanding the foregoing, the conditions described in the Environmental Assessments identified in paragraph 11.1 above shall not constitute unsatisfactory conditions within this paragraph. Upon termination, Seller and Closing Agent shall return to Purchaser all payments and things of value received hereunder by Seller, including interest accrued on the escrowed earnest money and part payment. If Purchaser does not give written notice of unsatisfactory condition of the physical condition of the Property and any improvements, by thirty (30) days before closing, Purchaser shall be deemed to have waived any objection to the condition of the Property.

19      **SELLER'S WARRANTIES SUBJECT TO PURCHASER'S ACTIONS.** Seller's warranties are subject to any encumbrances, restrictions, and rights to possession or exceptions to title created by Purchaser.

20      **ADDITIONAL PROVISIONS:**

20.1      **WATER RIGHTS.** The sale of the Property to Purchaser does not include any water rights. The Property has an existing raw water well, with an associated water right that was originally appropriated in Water Court Case #W-65, with an alternate point of diversion and approval of a plan of augmentation in Water Court Case #82CW226. This well is referred to as "Well #3" in these cases. The Seller does not intend to convey any interest in either the well facilities or the water right to Well #3 as part of this Contract. The Seller will retain the water right to Well #3 and apply for an alternate point of diversion in the future. The Seller will also remove the existing pumping equipment in the well, plug the existing well manhole, and disconnect this facility from the Seller's current Raw Water Lines within ninety (90) days after closing.

20.1.1      **Existing Carter Pond Pipeline, Treated Water Effluent Pipeline and Raw Water Pipeline Fire Hydrant.** The Seller will cap and abandon in place the Carter Pond Pipeline, Treated Water Effluent Pipeline and Raw Water Pipeline Fire Hydrant on the Property within ninety (90) days after closing.

20.2 SELLER MATCH FOR CREEK RESTORATION GRANT. Boulder County (the "County") has received a Natural Resource Conservation Service Emergency Watershed Protection grant ("Grant") for restoring the bank of the St. Vrain Creek, known as the Boulder County Reach 3 St. Vrain Restoration Project, and the County has or will seek to amend the Grant to include restoration on the southern tract of the Property. The Parties agree to cooperate with and support the County regarding all matters pertaining to the application and fulfillment of the Grant. Seller agrees to pay any and all matching funds required by the Grant, up to a maximum of \$10,000. Seller agrees to work with the County and Purchaser to limit the scope of work on the Property so that the matching funds required by the Grant do not exceed \$10,000, but in no event shall Seller's obligation to pay matching funds exceed \$10,000.

20.3 ELECTRIC UTILITY SERVICE AREA. The Parties agree that notwithstanding any annexation of the Property by Purchaser, the Property shall remain within the Seller's authorized electric service area until the Parties execute a service territory transfer agreement.

20.4 FURTHER DOCUMENTS. The Parties hereby instruct the Closing Agent to use this Contract as closing instructions. The Parties shall each perform such other actions or deliver such other documents, including additional closing instructions, as may be reasonable and necessary to complete the sale under this Contract. Terms of this Contract shall prevail over any inconsistent additional instruction, unless Parties specifically waive the inconsistency in writing.

20.5 NOTICE. Any notices required by this Contract shall be effective if made in writing and either hand-delivered; sent by certified or registered United States mail, return receipt requested; or sent by USPS Express Mail to the following:

Purchaser: Town of Lyons Water Enterprise  
Attention: Town Administrator  
432 5<sup>th</sup> Avenue  
Lyons, CO 80540

With a copy to: Town of Lyons  
c/o Michow Cox & McAskin, LLP  
Attention: Kathie Guckenberger  
6530 S. Yosemite Street, Suite 200  
Greenwood Village, CO 80111

Seller: City of Longmont  
Attention: General Manager of Public Works and Natural Resources  
1100 S. Sherman Street  
Longmont, CO 80504

All notices shall be deemed received on the date of the return receipt or acknowledgment of delivery.



20.6 NO LIABILITY OF PURCHASER. Notwithstanding any other provision of the Contract, neither the Purchaser nor any elected official, officer, employee, consultant or contractor in or of Purchaser shall have any personal liability for the performance of any obligation of Purchaser under this Contract, and no action for damages or other monetary relief, or for specific performance, shall be brought or maintained against any of such persons in any forum whatever.

20.7 ASSIGNMENT. No assignment by a Party hereto of any rights under or interest in the Contract will be binding on another Party hereto without the prior written consent of the Party sought to be bound.

20.8 SUCCESSORS AND ASSIGNS. This Contract shall be binding upon and inure to the benefit of the respective successors and authorized assigns of the Parties.

## 21 MISCELLANEOUS.

21.1 No amendment or modification of this Contract shall be valid or binding unless expressed in writing and executed by the parties hereto in the same manner as the execution of this Contract.

21.2 If any clause or provision of this Contract is illegal, invalid or unenforceable under present or future laws effective during the term of this Contract, then and in that event, it is the intention of the parties hereto that the remainder of this Contract shall not be affected thereby.

21.3 Absolutely no third-party beneficiaries are intended by this Contract. Any third party receiving a benefit from this Contract is an incidental and unintended beneficiary only.

21.4 Nothing in this Contract shall be construed as a waiver of the rights and privileges of the Parties pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Parties and their officers or employees.

22 AUTHORITY. The signatories to this Contract represent that they are vested with valid and sufficient authority to enter into and execute this Contract.

23 COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF LONGMONT, COLORADO, ACTING ON BEHALF OF ITS WATER UTILITY ENTERPRISE, SELLER:

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

\_\_\_\_\_  
DEUPTY CITY ATTORNEY

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PROOFREAD

\_\_\_\_\_  
DATE

APPROVED AS TO FORM AND SUBSTANCE:

\_\_\_\_\_  
ORIGINATING DEPARTMENT

\_\_\_\_\_  
DATE

CA File: 10288

State of Colorado     )  
                                  ) ss:  
County of Boulder     )

I attest that the foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by \_\_\_\_\_, as the Mayor of the City of Longmont.

Witness my hand and official seal.

\_\_\_\_\_  
CITY CLERK, Notary Public

My commission expires: \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

TOWN OF LYONS ON BEHALF OF ITS WATER ENTERPRISE:

\_\_\_\_\_  
MAYOR

Pursuant to Resolution 2017-28

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
TOWN COUNSEL

State of \_\_\_\_\_ )  
 ) ss:  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by \_\_\_\_\_,  
(Name of party signing)

as \_\_\_\_\_ of \_\_\_\_\_, a municipal  
(Title of party signing) (Name of corporation)

corporation, on behalf of the corporation, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Witness my hand and official Seal.

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

My Commission expires \_\_\_\_\_.

## EXHIBIT A

### EXHIBIT A LEGAL DESCRIPTION

North WTP

Order No.: 200700140

#### Tract 2264A:

Beginning at the Northwest Corner of the Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 21, Township 3 North, Range 70 West of the 6<sup>th</sup> P.M., thence West 148.5 feet; thence South 285 feet to the TRUE POINT OF BEGINNING, thence North 81 degrees 00' West 210 feet, thence North 73 degrees 57' West 36.84 feet, thence South 1 degree 34' West 552.76 feet, thence North 85 degrees 35' East 261.63 feet, thence North 489.37 feet, thence West 2.95 feet to the TRUE POINT OF BEGINNING; plus the area contained in a strip along the West side and included in the above description, said strip being 1.5 feet wide, County of Boulder, State of Colorado; EXCEPTING THEREFROM that portion of said land conveyed to the Department of Highways by Deed recorded January 15, 1968 as Reception No. 868672.

#### Tract 2267A2:

A tract of land in the West Half of the Southeast Quarter of the Northeast Quarter of Section Twenty, Township 3 North, Range 70 West of the 6<sup>th</sup> P.M., County of Boulder, State of Colorado, described as follows: Beginning at a point on the North right of way line of Highway 66 whence the Northeast Corner of the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of said Section 20 bears North 39 degrees 49' East 1032.99 feet; thence North 1 degree 34' East 405.87 feet, thence Westerly parallel to the North line of said Highway 66 214.6 feet; thence South 1 degree 34' West 405.87 feet more or less to the North right of way line of said Highway 66, thence Easterly along the North right of way of said State Highway 66 to the point of beginning; EXCEPTING THEREFROM that portion of said land conveyed to the Department of Highways by Deed recorded January 15, 1968 as Reception No. 868672.

#### Tract 2272:

That part of the East  $\frac{1}{2}$  Southeast  $\frac{1}{4}$  Northeast  $\frac{1}{4}$  of Section 20, Township 3 North, Range 70 West, County of Boulder, State of Colorado, that lies North of Railroad and South of Palmerton Ditch, described as follows:

Beginning at the Northeast Corner of the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 20, Township 3 North, Range 70 West of the 6<sup>th</sup> P.M., thence West 148.5; thence South 285 feet; thence North 81 degrees and 00' West 210 feet; thence North 73 degrees and 57' West 36.84 feet to the TRUE POINT OF BEGINNING; thence North 73 degrees 57' West 267.06 feet; thence South 1 degree 34' West 646.6 feet; thence North 85 degrees and 35' East 260 feet; thence North 1 degree 34' East 552.76 feet to the TRUE POINT OF BEGINNING; EXCEPTING THEREFROM that portion of said land conveyed to the Department of Highways by Deed recorded January 15, 1968 as Reception No. 868672.

South WTP

**EXHIBIT A  
LEGAL DESCRIPTION**

Order No.: 200700141

Tract 2259:

Beginning at a point on the East line of Section 20, Township 3 North, Range 70 West of the 6<sup>th</sup> P.M., on the South boundary line of the Chicago, Burlington and Quincy Railway Company right of way, said point being 500 feet North of the East Quarter Corner of said Section, thence South 85 degrees 35' West, (variation 14 degrees 30' East) along the South line of said right of way 123 feet to true point of beginning; thence South parallel to the said East line of Section 20, 328 feet to the middle of St. Vrain Creek, thence in a Westerly direction up the center of said St. Vrain Creek to the West line of the East ½ of the Southeast ¼ of the Northeast ¼ of said Section 20, thence North along said West line 130 feet to the South line of said right of way; thence North 85 degrees 35' East, along said right of way, 533 feet to said true point of beginning, County of Boulder, State of Colorado.

Tract 2260A:

A tract of ground located in the East Half (E1/2) of the Southeast Quarter (SE1/4) of the Northeast Quarter (NE1/4) of Section Twenty (20), Township Three (3) North, Range Seventy (70) West of the 6<sup>th</sup> P.M., County of Boulder, State of Colorado, described as follows:

Beginning at a point on the East line of Section Twenty (20) on the South boundary line of the Chicago, Burlington and Quincy Railroad right of way, said point being 500 feet North of the East Quarter (1/4) Corner of said Section Twenty (20); thence South 85 degrees 35' West (variation 14 degrees 30' East) along the South line of said right of way 123 feet; thence South along the East line of tract deeded to the City of Longmont by Deed recorded in Book 602, Page 432, Boulder County records, 240 feet to the St. Vrain River Bank; thence Southeasterly along said River Bank to a point 262 feet South of the point of beginning; thence North along the East line 262 feet to point of beginning.

**EXHIBIT B**  
**PROMISSORY NOTE**

Date: \_\_\_\_\_

Town of Lyons, on behalf of its Water Enterprise  
Borrower

\$610,000.00

**1. BORROWER'S PROMISE TO PAY**

FOR VALUE RECEIVED, the undersigned (the "Borrower") promise to pay to the order of the City of Longmont its successors and assigns ("Lender") the principal sum of **Six Hundred Ten Thousand Dollars** (\$610,000.00), plus 0% simple interest, payable as set forth herein.

**2. SECURITY**

This Note is secured by a deed of trust (the "Deed of Trust") of even date herewith encumbering the certain real property ("Property") more particularly described as follows:

See Exhibit A

**3. PAYMENTS**

Principal shall be payable in two equal annual payments of Three Hundred Five Thousand (\$305,000.00), with the first payment due and payable on or before February 15, 2018 and the second payment due and payable on or before February 15, 2019.

In addition, this Note shall be immediately due and payable upon the earliest to occur of either of the following events:

A. All or part of the Borrower's interest in the Property is sold or otherwise transferred, including a sale by foreclosure; for purposes of this Note, transfer includes a sale, gift, or any other transaction involving the conveyance of the legal and equitable title to the real estate hereinafter described, and shall specifically include but not be limited to a lease with an option to purchase, an installment sales contract, a deed transferred to escrow, and any other transaction designed to transfer the legal or equitable title or interest to the real estate immediately or effective at a future date; or

B. Default by Borrower in the performance or observance of any covenant contained in this Note or the Deed of Trust.

All payments shall be made on time and in full. Payments shall be made by mailing payment to the City of Longmont at the City Manager's Office, 350 Kimbark Street, Longmont, Colorado 80501, Attn: City Manager, or by delivering it to the same at such other address as the Lender may designate to Borrower in writing.

The Borrower reserves the right to prepay at any time any or all of the remaining balance of this Note, without payment of penalties or premiums.

#### **4. BORROWER'S FAILURE TO PAY AS REQUIRED**

If the Borrower does not pay the full amount of the Note on the date it is due, the Borrower will be in default. As of the date of default, at the option of the Lender, the whole of the principal sum then remaining unpaid, and any other amounts which may be outstanding under this Note, the Deed of Trust or any other document securing payment of this Note, shall immediately become due and payable without notice, and the liens given to secure the payment of this Note may be foreclosed. In addition, the Borrower shall pay interest on the unpaid balance due of twelve percent (12%) per annum until payment is made in full. If this Note is not paid when due or if suit is brought, Borrower agrees to pay upon demand all reasonable costs of collection, including reasonable attorney's fees.

#### **5. RELEASE**

Upon payment of all sums secured by this Note, Lender shall release this Note without charge to Borrower. Borrower shall pay any recordation costs.

#### **6. WAIVERS**

The Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Lender to demand payment of amounts due. "Notice of dishonor" means the right to require the Lender to give notice to other persons that amounts due have not been paid.

No failure on the part of Lender to exercise, and no delay in exercising any right hereunder shall operate as a waiver of such right; nor shall any single or partial exercise by Lender of any right hereunder preclude the exercise of any other right. The remedies herein provided for are cumulative and not exclusive of any remedies provided by law.

This Note is made in and shall be governed by and interpreted in accordance with the laws of the State of Colorado.

This Note has been made by the Borrower as of the date first stated above.

Town of Lyons, on behalf of its Water Enterprise:

By: \_\_\_\_\_

Mayor

Pursuant to Resolution 2017-28

State of \_\_\_\_\_)  
County of \_\_\_\_\_) ss:

The foregoing instrument was acknowledged before me by \_\_\_\_\_,  
(Name of Party Signing)

as \_\_\_\_\_ of \_\_\_\_\_,  
(Title of Party Signing) (Name of Corporation)

a municipal corporation, on behalf of the corporation, this \_\_\_\_\_ day of  
\_\_\_\_\_, 2017.

Witness my hand and official Seal.

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

My Commission expires \_\_\_\_\_.



**EXHIBIT A**  
**(To Promissory Note)**

**EXHIBIT A**  
**LEGAL DESCRIPTION**

North WTP

Order No.: 200700140

Tract 2264A:

Beginning at the Northwest Corner of the Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 21, Township 3 North, Range 70 West of the 6<sup>th</sup> P.M., thence West 148.5 feet; thence South 285 feet to the TRUE POINT OF BEGINNING, thence North 81 degrees 00' West 210 feet, thence North 73 degrees 57' West 36.84 feet, thence South 1 degree 34' West 552.76 feet, thence North 85 degrees 35' East 261.63 feet, thence North 489.37 feet, thence West 2.95 feet to the TRUE POINT OF BEGINNING; plus the area contained in a strip along the West side and included in the above description, said strip being 1.5 feet wide, County of Boulder, State of Colorado; EXCEPTING THEREFROM that portion of said land conveyed to the Department of Highways by Deed recorded January 15, 1968 as Reception No. 868672.

Tract 2267A2:

A tract of land in the West Half of the Southeast Quarter of the Northeast Quarter of Section Twenty, Township 3 North, Range 70 West of the 6<sup>th</sup> P.M., County of Boulder, State of Colorado, described as follows: Beginning at a point on the North right of way line of Highway 66 whence the Northeast Corner of the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of said Section 20 bears North 39 degrees 49' East 1032.99 feet; thence North 1 degree 34' East 405.87 feet, thence Westerly parallel to the North line of said Highway 66 214.6 feet; thence South 1 degree 34' West 405.87 feet more or less to the North right of way line of said Highway 66, thence Easterly along the North right of way of said State Highway 66 to the point of beginning; EXCEPTING THEREFROM that portion of said land conveyed to the Department of Highways by Deed recorded January 15, 1968 as Reception No. 868672.

Tract 2272:

That part of the East  $\frac{1}{4}$  Southeast  $\frac{1}{4}$  Northeast  $\frac{1}{4}$  of Section 20, Township 3 North, Range 70 West, County of Boulder, State of Colorado, that lies North of Railroad and South of Palmerton Ditch, described as follows:

Beginning at the Northeast Corner of the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 20, Township 3 North, Range 70 West of the 6<sup>th</sup> P.M., thence West 148.5; thence South 285 feet; thence North 81 degrees and 00' West 210 feet; thence North 73 degrees and 57' West 36.84 feet to the TRUE POINT OF BEGINNING; thence North 73 degrees 57' West 267.06 feet; thence South 1 degree 34' West 646.6 feet; thence North 85 degrees and 35' East 260 feet; thence North 1 degree 34' East 552.76 feet to the TRUE POINT OF BEGINNING; EXCEPTING THEREFROM that portion of said land conveyed to the Department of Highways by Deed recorded January 15, 1968 as Reception No. 868672.

South WTP

**EXHIBIT A  
LEGAL DESCRIPTION**

Order No.: 200700141

Tract 2259:

Beginning at a point on the East line of Section 20, Township 3 North, Range 70 West of the 6<sup>th</sup> P.M., on the South boundary line of the Chicago, Burlington and Quincy Railway Company right of way, said point being 500 feet North of the East Quarter Corner of said Section, thence South 85 degrees 35' West, (variation 14 degrees 30' East) along the South line of said right of way 123 feet to true point of beginning; thence South parallel to the said East line of Section 20, 328 feet to the middle of St. Vrain Creek, thence in a Westerly direction up the center of said St. Vrain Creek to the West line of the East ½ of the Southeast ¼ of the Northeast ¼ of said Section 20, thence North along said West line 130 feet to the South line of said right of way; thence North 85 degrees 35' East, along said right of way, 533 feet to said true point of beginning, County of Boulder, State of Colorado.

Tract 2260A:

A tract of ground located in the East Half (E1/2) of the Southeast Quarter (SE1/4) of the Northeast Quarter (NE1/4) of Section Twenty (20), Township Three (3) North, Range Seventy (70) West of the 6<sup>th</sup> P.M., County of Boulder, State of Colorado, described as follows:

Beginning at a point on the East line of Section Twenty (20) on the South boundary line of the Chicago, Burlington and Quincy Railroad right of way, said point being 500 feet North of the East Quarter (1/4) Corner of said Section Twenty (20); thence South 85 degrees 35' West (variation 14 degrees 30' East) along the South line of said right of way 123 feet; thence South along the East line of tract deeded to the City of Longmont by Deed recorded in Book 602, Page 432, Boulder County records, 240 feet to the St. Vrain River Bank; thence Southeasterly along said River Bank to a point 262 feet South of the point of beginning; thence North along the East line 262 feet to point of beginning.

## **EXHIBIT C DEED OF TRUST**

THIS DEED OF TRUST is made on \_\_\_\_\_. The grantor is the Town of Lyons, on behalf of its Water Enterprise, a Town-owned business as defined in Article X, Section 20 of the Colorado Constitution ("TABOR") ("Borrower"). The trustee is the Public Trustee of Boulder County, Colorado ("Trustee"). The beneficiary is the City of Longmont, County of Boulder, Colorado, organized and existing under the laws of the State of Colorado, and whose mailing address is 350 Kimbark Street, Longmont, CO 80501 (the "Lender" or "Beneficiary").

WITNESSETH, the Borrower owes Lender the principal sum of Six Hundred Ten Thousand (\$610,000.00) (the "Loan") and has executed a promissory note dated the same as this Deed of Trust, hereinafter referred to as the "Note," for the principal sum of \$610,000.00 payable to the order of the City of Longmont, whose address is 350 Kimbark Street, Longmont, CO 80501, plus 0% simple interest. The Note provides for payment in two equal annual payments of Three Hundred Five Thousand (\$305,000.00), with the first payment due and payable on or before February 15, 2018 and the second payment due and payable on or before February 15, 2019.

AND WHEREAS, the Borrower is desirous of securing payment of the principal and interest of said promissory Note in whose hands soever the said Note may be.

NOW THEREFORE, the Borrower, in consideration of the premises and for the purpose aforesaid, does hereby grant, bargain, sell and convey unto the said Public Trustee in trust with power of sale for the benefit and security of Lender, forever, the following described property, situate in the County of Boulder, State of Colorado, to wit:

See Exhibit A.

TOGETHER WITH all the Borrower's interests in the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Deed of Trust. All of the foregoing is referred to in this Deed of Trust as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and the Property is unencumbered. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to such encumbrances of record.

BORROWER FURTHER COVENANTS AND AGREES that until payment or performance in full of all the obligations of this Deed of Trust and the Note, Borrower shall:

1. Duly and punctually pay or cause to be paid in lawful money of the United States, the principal of and interest on the Note on the dates, in the place and in the manner set forth therein, and perform and observe all other covenants and obligations of the Borrower under this Deed of Trust and the Note.

2. Should the Beneficiary hereunder be a party to any action affecting this Deed of Trust or the title to said Property, the Borrower agrees that all court costs and a reasonable attorney's fee paid by the Beneficiary shall become additional indebtedness due hereunder.
3. Borrower shall maintain the Property in good condition and shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property, except that Borrower may demolish and remove all of the structures existing on the Property as of the date first set forth above, as long as the structures are removed in total.
4. If the Property shall be sold by the Public Trustee, or shall be foreclosed by appropriate proceedings in a court of competent jurisdiction, there shall be allocated and included, as additional indebtedness hereunder, together with interest at the default rate of twelve (12) percent per annum, all expenses which may be paid or incurred by, or on behalf of, the Public Trustee or Beneficiary for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimates as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examination, title insurance policies and similar data and assurances with respect to title, as the Public Trustee or Beneficiary may deem reasonably necessary either to prosecute such suit or to evidence to bidders at the sales which may be had pursuant to such proceedings the true condition of the title to, or the value of, the Property, together with and including reasonable compensation to the Public Trustee.
5. That in case of default in payment of principal or interest or a breach of any of the covenants herein or in the Note, then said principal sum hereby secured and interest thereon may at the option of the Lender become due and payable at once, and said Property will thereupon be sold in the manner and with the same effect as if said indebtedness had matured, and that if foreclosure is made by the Public Trustee a reasonable attorney's fee for supervision of the foreclosure proceedings shall be allowed by the Public Trustee, and if foreclosure be made through the courts, a reasonable attorney's fee shall be taxed by the court as part of the cost of such foreclosure proceedings.
6. Borrower shall promptly pay when due the principal on the debt evidenced by the Note, any interest and any late default interest and late charges due under the Note.
7. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over the Note. Borrower shall promptly discharge any other lien which shall have attained priority over the Note unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to the Note. If Lender determines that any part of the Property is subject to a lien which may attain priority over the Note, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy such lien or take one or more of the actions set forth above within ten (10) days of the giving of notice.
8. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other

hazards for which Lender requires insurance for the amount of Nine Hundred Twenty Five Thousand Dollars (\$925,000.00) through February 15, 2019 ("Required Insurance"), provided that this requirement shall not apply to the structures existing on the Property that Borrower may demolish and remove pursuant to paragraph 3 and subject to exclusions in the Borrower's property insurance policy, which may include land values, land on which property is located, water, growing crops, lawns, standing timber, and roads and sidewalks as of the date first set forth above. Borrower shall obtain the Required Insurance from the Colorado Intergovernmental Risk Sharing Agency ("CIRSA"). If Borrower desires to obtain the Required Insurance from an insurance carrier other than CIRSA, then the insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 10.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgagee clause. Lender shall be named as a loss payee as its interest may appear and shall be named as an additional insured. If Lender requires, Borrower shall promptly give to Lender copies of all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by the Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by the Note, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within thirty (30) days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by the Note, whether or not then due. The 30-day period will begin when the notice is given.

9. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by the Note or Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 17 by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by the Note or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note.

10. If Borrower fails to perform the covenants and agreements contained in this Deed of Trust and Note, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over the Note, appearing in court, paying reasonable attorneys' fees and

entering on the Property to make repairs. Although Lender may take action under this paragraph 10, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 10 shall become additional debt of Borrower secured by the Note. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest at 12% per annum and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

11. Lender or its agent may make reasonable entries upon and inspections of the Property upon giving notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

12. If any proceeding in condemnation is filed, Borrower shall promptly notify Lender in writing, and Borrower shall promptly take such steps as may be necessary to defend the action and obtain the award. Borrower may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Borrower will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within thirty (30) days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by the Note, whether or not then due.

13. Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust and the Note granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by the Note by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

14. Any notice to Borrower provided for in this Deed of Trust and the Note shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to:

Town Administrator  
Town of Lyons  
P.O Box 49  
Lyons, CO 80540

Any notice to Lender shall be given by first class mail to:

City Manager  
Civic Center Complex  
350 Kimbark Street  
Longmont, CO 80501

Either party may designate another address by written notice as provided in this section.

15. This Deed of Trust and the Note shall be governed by the law of the State of Colorado. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision. To this end the provisions of this Deed of Trust and the Note are declared to be severable.

16. If all or any part of the Property or any interest in it is sold or transferred, Lender will require immediate payment in full of all sums secured by the Note.

17. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Deed of Trust and the Note discontinued at any time prior to the earlier of: (a) five (5) days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Deed of Trust and the Note; or (b) entry of a judgment enforcing this Deed of Trust and the Note. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Deed of Trust and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Deed of Trust and the Note, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust and the Note, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust and the Note shall continue unchanged. Upon reinstatement by Borrower, this Deed of Trust and the Note and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply if this Deed of Trust and the Note has otherwise become due and payable according to the conditions stated therein.

18. Borrower shall not cause or permit the material presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to any Hazardous Substances existing on the Property as of the date first set forth above. Notwithstanding the limitations set forth in this paragraph 18, Lender specifically acknowledges and agrees that Borrower will be constructing and operating on the Property a building that will house equipment, materials, and supplies necessary for the operations of a municipal public

works department, including but not limited to gasoline, other petroleum products or petroleum derivatives, fertilizers, pesticides, and solvents, and Lender specifically consents to such use and the presence of such materials on the Property for such purpose; provided, however, that Purchaser employs best management practices regarding the Hazardous Substances, including without limitation appropriate containment of the Hazardous Substances, and complies with all applicable federal, State and local Environmental Laws.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 19, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

19. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Deed of Trust and the Note. The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than thirty (30) days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and the Note and sale of the Property. If the default is not cured by the Borrower on or before the date specified in the notice, then Lender at its option may require immediate payment in full of all sums secured by this Deed of Trust and the Note without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 19, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

20. Notwithstanding the provision of Paragraph 19 above, Borrower may assign Borrower's interest in the property to Lender if Lender agrees, by executing, within sixty (60) days of any default under this Deed of Trust, a deed in lieu of foreclosure or other documents. Borrower understands that if Borrower assigns such interest, Borrower will forfeit all equity interest in the property.

21. Borrower shall be given one signed and executed copy of this Deed of Trust and the Note.

22. Upon payment of all sums secured by this Deed of Trust, Lender shall release this Deed of Trust without charge to the Borrower. Borrower shall pay any recordation costs.

WHENEVER USED HEREIN the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. All of the covenants herein shall be





**EXHIBIT A**  
**(To Deed of Trust)**

**EXHIBIT A**  
**LEGAL DESCRIPTION**

North WTP

Order No.: 200700140

**Tract 2264A:**

Beginning at the Northwest Corner of the Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 21, Township 3 North, Range 70 West of the 6<sup>th</sup> P.M., thence West 148.5 feet; thence South 285 feet to the TRUE POINT OF BEGINNING, thence North 81 degrees 00' West 210 feet, thence North 73 degrees 57' West 36.84 feet, thence South 1 degree 34' West 552.76 feet, thence North 85 degrees 35' East 261.63 feet, thence North 489.37 feet, thence West 2.95 feet to the TRUE POINT OF BEGINNING; plus the area contained in a strip along the West side and included in the above description, said strip being 1.5 feet wide, County of Boulder, State of Colorado; EXCEPTING THEREFROM that portion of said land conveyed to the Department of Highways by Deed recorded January 15, 1968 as Reception No. 868672.

**Tract 2267A2:**

A tract of land in the West Half of the Southeast Quarter of the Northeast Quarter of Section Twenty, Township 3 North, Range 70 West of the 6<sup>th</sup> P.M., County of Boulder, State of Colorado, described as follows: Beginning at a point on the North right of way line of Highway 66 whence the Northeast Corner of the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of said Section 20 bears North 39 degrees 49' East 1032.99 feet; thence North 1 degree 34' East 405.87 feet, thence Westerly parallel to the North line of said Highway 66 214.6 feet; thence South 1 degree 34' West 405.87 feet more or less to the North right of way line of said Highway 66, thence Easterly along the North right of way of said State Highway 66 to the point of beginning; EXCEPTING THEREFROM that portion of said land conveyed to the Department of Highways by Deed recorded January 15, 1968 as Reception No. 868672.

**Tract 2272:**

That part of the East  $\frac{1}{2}$  Southeast  $\frac{1}{4}$  Northeast  $\frac{1}{4}$  of Section 20, Township 3 North, Range 70 West, County of Boulder, State of Colorado, that lies North of Railroad and South of Palmerton Ditch, described as follows:

Beginning at the Northeast Corner of the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 20, Township 3 North, Range 70 West of the 6<sup>th</sup> P.M., thence West 148.5; thence South 285 feet; thence North 81 degrees and 00' West 210 feet; thence North 73 degrees and 57' West 36.84 feet to the TRUE POINT OF BEGINNING; thence North 73 degrees 57' West 267.06 feet; thence South 1 degree 34' West 646.6 feet; thence North 85 degrees and 35' East 260 feet; thence North 1 degree 34' East 552.76 feet to the TRUE POINT OF BEGINNING; EXCEPTING THEREFROM that portion of said land conveyed to the Department of Highways by Deed recorded January 15, 1968 as Reception No. 868672.

South WTP

**EXHIBIT A  
LEGAL DESCRIPTION**

Order No.: 200700141

Tract 2259:

Beginning at a point on the East line of Section 20, Township 3 North, Range 70 West of the 6<sup>th</sup> P.M., on the South boundary line of the Chicago, Burlington and Quincy Railway Company right of way, said point being 500 feet North of the East Quarter Corner of said Section, thence South 85 degrees 35' West, (variation 14 degrees 30' East) along the South line of said right of way 123 feet to true point of beginning; thence South parallel to the said East line of Section 20, 328 feet to the middle of St. Vrain Creek, thence in a Westerly direction up the center of said St. Vrain Creek to the West line of the East ½ of the Southeast ¼ of the Northeast ¼ of said Section 20, thence North along said West line 130 feet to the South line of said right of way; thence North 85 degrees 35' East, along said right of way, 533 feet to said true point of beginning, County of Boulder, State of Colorado.

Tract 2260A:

A tract of ground located in the East Half (E1/2) of the Southeast Quarter (SE1/4) of the Northeast Quarter (NE1/4) of Section Twenty (20), Township Three (3) North, Range Seventy (70) West of the 6<sup>th</sup> P.M., County of Boulder, State of Colorado, described as follows:

Beginning at a point on the East line of Section Twenty (20) on the South boundary line of the Chicago, Burlington and Quincy Railroad right of way, said point being 500 feet North of the East Quarter (1/4) Corner of said Section Twenty (20); thence South 85 degrees 35' West (variation 14 degrees 30' East) along the South line of said right of way 123 feet; thence South along the East line of tract deeded to the City of Longmont by Deed recorded in Book 602, Page 432, Boulder County records, 240 feet to the St. Vrain River Bank; thence Southeasterly along said River Bank to a point 262 feet South of the point of beginning; thence North along the East line 262 feet to point of beginning.



**EXHIBIT D**  
**EASEMENTS TO BE RESERVED BY SELLER**

