

SURFACE USE AGREEMENT

This Surface Use Agreement ("Agreement") is dated and made effective this 19th day of July, 2011, between TOP Operating Co. ("Operator") with an address of 10881 W. Asbury, Suite 230, Lakewood, Colorado 80227, L.G. Everist, Incorporated ("LGE"), an Iowa Corporation with an address of 7321 E. 88th Avenue, Suite 200, Henderson, CO 80640, and the City of Aurora, Colorado, a municipal corporation of the Counties of Adams, Arapahoe and Douglas, acting by and through its Utility Enterprise, ("Aurora") with an address of 15151 E. Alameda Pkwy., Aurora, Colorado 80012. Operator, LGE and Aurora may collectively be referred to herein as "Parties" and each individually as a "Party".

Whereas:

A. LGE is the current owner of that certain tract of land located in Weld County, Colorado, more particularly described on Exhibit "A" attached hereto (hereinafter referred to as the "LGE Property"), the LGE Property is used as a sand and gravel mine pursuant to a Use By Special Review Permit, No. AM USR 1255, issued by Weld County, Colorado (the "USR Permit");

B. Aurora is the owner of that certain tract of land located in Weld County, Colorado, more particularly described on Exhibit "B" attached hereto (herein after referred to as the "Aurora Property") which land has a completed water storage reservoir. Additionally, LGE has an agreement with Aurora whereby the LGE Property will be conveyed to the City of Aurora, Colorado to be used as additional water storage reservoirs that will be an integral part of Aurora's municipal water supply system;

C. Surface ownership of the LGE Property and Aurora Property (collectively the "Property") is subject to the rights of the oil and gas mineral leasehold estate, a portion of which is currently now owned by Operator;

D. The parties recognize the important and significant value of the Property as it relates to the specific value that it provides individually to each Party, including but not limited to (i) the Operator's mineral leasehold estate, its right to explore for oil and gas, its future exploration rights, and its right to access the Property in order to utilize its aforementioned rights; (ii) LGE's right to mine, process and market sand, gravel and construction aggregate products and develop valuable water storage reservoirs; (iii) Aurora's right to enjoy the benefits of the aforementioned water storage reservoirs and water storage complex confined by valuable earthen barriers to be constructed and commonly referred to as a slurry wall or slurry walls.;

E. LGE holds a Section 112(c) Reclamation Permit No. [M-1999-120], issued by the State of Colorado Division of Reclamation Mining and Safety ("DRMS") for the purpose of sand and gravel mining and reclamation. The mined out Property is to be reclaimed according to DRMS Permit No. [M-1999-120] as it may be amended from time to time



F. Operator holds oil and gas leases affecting the Property (the "Leases"). Operator currently operates eight (8) wells on the Property commonly referred to as follows: DI-TA1 (API No. 05-123-08487), DI-TA2 (API No. 05-123-09092), DI-TA1A (API No. 05-123-09622), Counter 1-AD (API NO. 05-123-10282), Watkins 2 (API No. 05-123-09589), Schneider 1 (API No. 05-123-08139), Schneider 3 (API No. 05-123-08689), and Schneider 4 (API No. 05-123-09062) (collectively the "Existing Wells" and each as an "Existing Well") generally located at various locations at the Property described above, and has certain rights to develop its oil and gas leasehold estate by drilling additional wells (the "Future Wells" and together with the Existing Wells, the "Wells") on the Property; and

G. In recognition of the significant values in the property interests of the parties, this Agreement sets forth the parties' agreement concerning their mutual accommodation of each others' rights and obligations regarding the development of the Property by LGE and Operator's operation and development of its Leases, such rights and obligations to be binding upon the parties' successors and assigns and in lieu of any other rights and obligations the parties may otherwise have.

Now Therefore:

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. AREAS RESERVED FOR THE EXISTING WELLS AND FUTURE WELLS;
WELL LOCATIONS.**

LGE shall set aside and provide to Operator that portion of the LGE Property hereinafter referred to as the "Oil and Gas Operations Area", which is described on Exhibit "C" attached hereto. The Oil and Gas Operations Area is to be made available to Operator in a graded condition for any lawful operations conducted by Operator in connection with any Existing Well or Future Wells, including, but not limited to, drilling and production activities, workovers, well deepenings, recompletions, replacement wells and fracturing, provided that the fracturing methods are in compliance with then applicable law, rules and regulations. All Future Wells relating to the LGE Property and/or the Aurora Property will be limited to the Oil and Gas Operations Area shown on Exhibit "C", unless this Agreement is amended in writing by consent of the Parties. Except for the Oil and Gas Operations Area, the Production Facilities Areas (as defined below), the access roads, and Petroleum Pipeline Easements (as defined below) as provided in this Agreement, Operator shall not occupy the surface of the LGE Property and/or Aurora Property except in the event of an emergency or for reasonable incidental, temporary and non-damaging activities. Operator shall be strictly and solely responsible for any damages to the Property outside the Oil and Gas Operations Area arising due to Operator's occupation of the Property outside the Oil and Gas Operations Area. Operator is willing to limit its surface uses of the Property in reliance upon the continued and ongoing and future right to locate its wells, its future wells and facilities exclusively in the Oil and Gas Operations Area and/or facilities in the Production Facilities Areas.

Handwritten signature: JHS
RKD
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Operator shall have the right to drill Future Wells within the Oil and Gas Operations Area, including horizontal and directional wells that produce from and drain the LGE Property, the Aurora Property and/or lands other than the Property. As part of the consideration for this Agreement, LGE and Aurora hereby waive their rights to, and covenant that they shall not protest or object to any application for such wells, completions, workovers, recompletions or other lawful operation appropriate for the site which Operator may deem reasonably appropriate for the exploration of oil and gas by Operator, including "exception locations" as that term is defined in COGCC regulations, so long as such locations and applications are for Future Wells consistent with this Agreement. Operator shall not otherwise have the right to drill new wells on the LGE Property or the Aurora Property. The wellhead location for any Future Well drilled from the Oil and Gas Operations Area shall not be closer than 80 feet from the edge of the Oil and Gas Operations Area. Except as otherwise expressly provided in this Agreement, Operator will bear all of the costs associated with its oil and gas operations.

2. RELOCATION OF EXISTING WELLS, ABANDONMENT OF EXISTING WELLS

A. Well Relocation

LGE, at its option and in its sole discretion, may require Operator to relocate the DI-TA1, Watkins 2, Schneider 1, Schneider 3 and Schneider 4 wells and their ancillary facilities which are currently existing at the Property to the Oil & Gas Operations Area. Notwithstanding the foregoing, DI-TA1 will not be relocated before April 30, 2025. Any relocation of associated facilities and pipelines relating to DI-TA1 prior to April 30, 2025 will be at LGE's sole cost and expense and risk of damage to the earthen barriers and to a location acceptable to Operator. In the event LGE elects to require Operator to relocate any of the Existing Wells, LGE shall provide written notice to Operator of its election and identify therein the well(s) and their ancillary facilities which must be relocated. Operator shall, within thirty (30) days of receipt of such a notice shall submit any necessary documents to COGCC to approve the relocation.

redacted

For any Existing Well which is required to be relocated, LGE shall pay Operator's out of pocket costs to cap and abandon each such well. Any such costs up to redacted per well are hereby preapproved by LGE. In the event Operator discovers the cost exceeds redacted Operator shall obtain three (3) independent bids for such work, and LGE shall pay only the costs of the lowest bid per well.

redacted

Wells identified as DI-TA2 and DI-TA1A shall remain in existing well operations area as depicted on Exhibit D (the "Existing Well Operations Area") unless moved at a later date by Operator or upon mutual agreement between the parties to this Agreement.

B. Pipeline Relocation.

At any time during LGE's mining and construction of water storage reservoirs on the Property, LGE, at its option, may require Operator to relocate certain pipelines on the Property which are used in Operator's oil and gas operations. In such event, LGE shall give Operator written notice of its election and identify therein the new location(s) for the



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pipeline. Operator shall then, in a commercially reasonable fashion, relocate the pipeline as directed by LGE. LGE shall pay all of Operator's out of pocket costs for such pipeline relocation within ten (10) business days of receipt of an invoice from Operator. LGE shall bear the risk of damage to the earthen barriers resulting from pipeline relocation.

C. Site Improvements.

LGE, at its cost and expense, shall make certain initial improvements to the roads servicing the Existing Wells and the area surrounding the Existing Wells to improve the working areas of the roads and surface area surrounding the Existing Wells. If needed, LGE shall raise the Oil and Gas Operations Area to two (2) feet above the high water point (the lowest point along the top of a slurry wall/earthen barrier enclosing a storage cell) of the adjacent storage cell. The scope of such improvements will be within the sole discretion of LGE.

**3. EXTRACTION IN VICINITY OF OIL AND GAS OPERATIONS AREA;
SETBACK REQUIREMENTS.**

The Oil and Gas Operations Area will be excluded from the water storage cells by the slurry walls to be constructed on the Property by LGE. LGE may mine within the Oil and Gas Operations Areas in accordance with the terms of this Agreement, the Amended & Restated Purchase and Sale Agreement between LGE and Aurora, effective February 9, 2011, and the applicable permits relating to mining of the LGE Property. In the event that LGE elects to mine within the Oil and Gas Operations Area, LGE shall notify Operator in writing 30 days prior to commencing such mining operations, and shall first place temporary concrete and/or earth berm barriers around the Existing Wells prior to commencing any mining operations within any Oil and Gas Operations Area. In no event shall LGE mine within 80 feet of the Existing Well or within 50 feet of any Production Facilities (as such term is subsequently defined in section 6 below) and as identified on Exhibit D hereto, or within 25 feet of any pipelines. Excavation within the Oil and Gas Operations Area will be coordinated with Operator in a mutually acceptable manner so as to minimize conflict with Operator's oil and gas operations and to help ensure the existence of an appropriate safety plan and interim emergency procedures. LGE will bear all costs associated with any future mining operations, within any Oil and Gas Operations Area including permanent or temporary rerouting and replacement of access roads, flowlines and utility lines in order to prevent unnecessary interruption of production from any affected Well. In addition, LGE shall indemnify and hold Operator and Aurora harmless from any and all damage, loss or liability, including reasonable attorney's fees, incurred as a result of LGE's operations in an Oil and Gas Operations Area. Nothing contained herein shall be deemed to require Operator to shut in Wells for more than thirty (30) days at a time.

LGE and/or Aurora will not locate any lot line, building, or permanent structure within any Oil and Gas Operations Area. LGE and Aurora hereby waive their rights to object to the location of any of Operator's facilities on the basis of setback requirements in the rules and regulations of the COGCC, as they may be amended from time to time, so long as Operator's facilities are consistent with the terms of this Agreement and such COGCC rules do not impair or limit LGE's right to mine or otherwise use the LGE Property or Aurora's right to use the LGE Property or the Aurora Property in accordance with this Agreement. In the event of a conflict

between the COGCC rules and this Agreement, the terms of this Agreement shall control. LGE further and similarly waives its right to object to any other state or local setback requirements or other requirements or regulations that are or become inconsistent with this Agreement. Operator or its successors and assigns may cite the waiver in this paragraph in order to obtain a location exception or variance under COGCC rules or from any other state or local governmental body having jurisdiction. LGE and Aurora agree not to object to the use of the surface in the Oil and Gas Operations Areas so long as such use is consistent with this Agreement and rules, regulations, laws, statutes and ordinances otherwise applicable to Operator's operations, and LGE will provide Operator or its successors and assigns with whatever written support they may reasonably require to obtain permits from the COGCC or any local jurisdiction.

4. GATHERING LINES AND FLOWLINES.

Subject to the limitations set forth in this Agreement, Operator has a continuing right and entitlement to own, operate, maintain, repair and replace all existing and future flowlines, gathering lines and other pipelines that may be necessary or convenient to its operations on the Property ("Pipelines"). The initial construction and burying of relocated Pipelines shall be at the sole cost and expense of LGE if such Pipelines are being relocated pursuant to Section 2.B. above.

Although this Agreement is intended to confine the placement of the Pipelines to certain specified locations within the LGE Property and the Aurora Property, nothing herein shall be construed as a limitation on Operator's ultimate right to make all necessary well connections to any Existing or Future Well so long as such connections are within the Petroleum Pipeline Easements (the "Petroleum Pipeline Easements") and/or Oil and Gas Operations Area and Production Facilities Areas consistent with this Agreement. The general locations of the Petroleum Pipeline Easements for existing pipelines and for relocated and future Pipelines have been depicted on Exhibit D hereto. The approximate location of the Petroleum Pipeline Easement for a relocated pipeline associated with an Existing Well that LGE has already determined it will move and those it will not move also are identified on Exhibit D. Prior to LGE's completion of mining on the Property, LGE will determine which Existing Wells and associated existing Pipelines, if any, will not be relocated, and LGE and/or Aurora will grant Existing Petroleum Pipeline Easements for such Pipelines based on the location information then available. Any replacement of an existing Pipeline must be located within the applicable Existing Petroleum Pipeline Easement. However, Operator shall not be required to ensure that a Pipeline existing as of the date of this Agreement is in fact located within an Existing Petroleum Pipeline Easement. Each Petroleum Pipeline Easement shall be approximately fifty feet (50') in width during construction, installation or relocation operations and otherwise be reduced to approximately thirty feet (30') in width for post-construction usage. The boundaries of said easements will be aligned to minimize contact with the slurry walls being constructed by LGE. Each Petroleum Pipeline Easement shall be nonexclusive easements. Easements affecting property that has been conveyed to Aurora will require City Council approval. Except as otherwise set forth above, Operator shall be responsible to maintain, repair, replace or move any pipeline and shall not damage any valuable earthen barriers or other manmade structures. Additionally, in the event Owner damages any pipeline or other facility of Operator, Owner shall be responsible for repair of such facilities and/or pipelines.



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5. ACCESS.

a. Except as modified herein, historic access to existing wells and Production Facilities shall remain available for use by Operator. However, LGE may modify historic access to existing wells and existing Production Facilities as it mines the Property so long as some access to those wells and facilities exists at any given time. LGE and Aurora shall provide Operator with continuous access to all of the Oil and Gas Operations Area, the Production Facilities Areas and the Petroleum Pipeline Easements, except to the extent they are prevented from doing so by force majeure events. The access roads to be used by Operator will either be those roads that currently are in place or those that are anticipated to be constructed by LGE at its sole cost and expense. The general location of the easement(s) for access to the Oil and Gas Operations Area, the Production Facilities Areas and the Petroleum Pipeline Easements have been designated on Exhibit D hereto. LGE may grant additional temporary access easements to be effective during the conduct of its mining operations on the Property if determined necessary by Operator and LGE. Prior to LGE's completion of mining on the Property and after consulting with Operator, LGE will determine which Existing Wells and associated existing Pipelines, if any, will not be relocated, and LGE and/or Aurora (after City Council approval) will grant easements for reasonable access to such Existing Wells and associated existing Pipelines, and in such event Operator shall accept such designation.

Prior to delivery of all water storage reservoirs on the Property to Aurora, LGE shall maintain and keep any access jointly used by LGE and Operator in a condition and state of repair that serves the needs of LGE. In the event such joint access roads need to be improved in order to serve the needs of Operator, the parties agree to coordinate any such improvements as may be required by Operator in order to conduct its operations, provided that any such improvements shall be at Operator's sole cost and expense. In the event Operator damages the joint access roads or road structures by other than normal wear and tear usage, Operator shall, at its cost and expense, repair or replace said roads or road structures. Neither Operator nor LGE nor Aurora shall unreasonably interfere with the use by the other party of access roads.

6. BATTERIES AND EQUIPMENT.

Operator shall have the right to locate, build, repair and maintain tanks, separators, dehydrators, compressors and other equipment ("Production Facilities") reasonably appropriate for the storage and treatment of produced fluids from Existing Wells and Future Wells and the operation and production of the Wells in the production facilities areas designated within the Property (the "Production Facilities Areas") or the Oil and Gas Operations Area at the locations depicted on Exhibit D.

With respect to Operator's Production Facilities other than flowlines or pipelines:

a. Operator shall install and maintain, at its sole cost and expense, all fences around the Existing Wells and any Future Wells if any fences are required by the Rules and Regulations of the COGCC;



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b. Operator shall install and maintain, at its sole cost and expense, all gates and locks reasonably necessary for the security of any Wells or Production Facilities in the Oil and Gas Operations Area and/or the Production Facilities Areas. Such gates and locks shall be the standard gates and locks used by Operator as may be required by the Rules and Regulations of the COGCC; and

c. Operator shall paint any Production Facilities for any Wells, including wellhead guards, with paint that may be required by the Rules and Regulations of the COGCC.

Neither LGE nor Aurora shall inhibit Operator's access to the Oil and Gas Operations Area or the Production Facility Areas or inhibit Operator's operations within the Oil and Gas Operations Area or the Production Facility Area or in the vicinity of the Production Facilities by landscaping or other improvements, unless otherwise agreed upon between LGE and Operator. LGE shall place temporary concrete or earth berm barriers around all Production Facilities as directed by Operator before any future mining operations commence within 150 feet of wellheads or Production Facilities. In no event shall LGE mine within 80 feet of any Production Facilities or stockpile mined materials within a radius of 50 feet of any Production Facilities.

7. NOTICE OF FUTURE OPERATIONS.

Operator shall provide at least thirty (30) days prior written notice to LGE and Aurora of any operations in connection with the drilling, redrilling, completion, recompletion, fracturing, deepening or other operation on a Well requiring the mobilization of heavy equipment. The foregoing notice requirements shall not operate to prevent Operator from responding to an emergency at any Well or Production Facilities. Regardless of the foregoing notice requirements, Operator shall always have immediate access to any of its facilities for routine operation and maintenance purposes, as provided in Paragraph 5.

After receipt of the above notice, but not less than five (5) working days prior to Operator's mobilization on the applicable Oil and Gas Operations Area, Operator or LGE or Aurora may request an on-site meeting. The purpose of the meeting shall be to inform the other Parties of the expected activity and to coordinate site access, hazards, barricades, restoration or any other issues that affect the use and safety of LGE's existing mining activities and future development and use of the Property by LGE and Aurora.

8. COMPLIANCE WITH SAFETY REGULATIONS .

Operator understands that LGE surface mining operations on the Property are subject to certain Mine Safety and Health Administration ("MSHA") regulations. Operator agrees that while conducting operations on Property, it shall comply with applicable MSHA requirements, if any. Operator also agrees to inform its contractors and subcontractors about such requirements.

9. DRILLING AND COMPLETION OPERATIONS.

Operator shall endeavor to diligently pursue any drilling operations, and to avoid rig relocations or startup during the course of drilling, to minimize the total drilling time period for



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any Well. LGE and Aurora waive any objections to continuous (i.e., 24-hour) drilling operations.

10. GOVERNMENTAL PROCEEDINGS.

LGE and Aurora shall not oppose Operator in any agency or governmental proceedings, including without limitation any proceedings before the COGCC, Weld County, or other governing body related to Operator's operations on the Property, provided that Operator's position in such proceedings is consistent with this Agreement.

Operator shall not oppose LGE or Aurora in any agency or governmental proceeding, including without limitation any proceeding before Weld County, the DMRS, Mined Land Reclamation Board or other governmental body related to LGE's or Aurora's operations on the LGE Property or the Aurora Property, provided that their position in such proceedings is consistent with this Agreement.

11. DEVELOPMENT PLANS.

LGE and Aurora may obtain and/or modify land use permits affecting the Property and submit other development applications to applicable governmental authorities. Operator shall not oppose or object to such applications provided that the position of LGE and/or Aurora in such proceedings and its proposed development applications are consistent with this Agreement. LGE and Aurora acknowledge that Operator may conduct oil and gas activities within the applicable Oil and Gas Operations Area as provided herein and shall not oppose Operator before any agency or governmental proceeding if such oil and gas activities are proposed and carried out in accordance with the terms of this Agreement. Operator acknowledges that LGE and/or Aurora may use the property for sand and gravel mining, municipal water storage, and otherwise use the Property as they see fit and shall not oppose LGE and/or Aurora before any agency or governmental proceedings so long as their use and/or proposed uses are in accordance with the terms of this Agreement.

12. LIMITATION OF LIABILITY, RELEASE AND INDEMNITY.

a. No party shall be liable for, or be required to pay for, special, punitive, exemplary, incidental, consequential or indirect damages to any other party for activities undertaken within the scope of this Agreement;

b. Except as to "Environmental Claims" (which claims are defined in and governed by Section 13 below) or out of other provisions of this Agreement (which claims shall be governed by the terms of this Agreement), each Party shall be and remain responsible for its own liability for all losses, claims, damages, demands, suits, causes of action, fines, penalties, expenses and liabilities, including without limitation attorneys' fees and other costs associated therewith (all of the aforesaid herein referred to collectively as "Claims"), arising out of or connected with each such party's ownership or operations on the Property, no matter when asserted, subject to applicable statutes of limitations. LGE and Operator shall release, defend, indemnify and hold the other

Parties, their officers, directors, employees, successors and assigns, harmless against all such Claims. This provision does not, and shall not be construed to, create any rights in persons or entities not a party to this Agreement, nor does it create any separate rights in parties to this Agreement other than the right to be indemnified for Claims as provided herein. Aurora's liability for losses, claims, damages, etc., is limited and governed by the sovereign immunity afforded by the Colorado Governmental Immunity Act, §§ 24-10-101 et seq., C.R.S. Nothing herein is intended as a waiver of protections afforded by said Governmental Immunity Act, or Article XI of the Colorado Constitution;

c. Upon the assignment or conveyance of a Party's entire interest in the Property (subject to all applicable contractual limitations on such assignment or conveyance), that Party shall be released from its indemnification in Section 12.b. above, for all actions or occurrences happening after such assignment or conveyance.

13. ENVIRONMENTAL INDEMNITY.

The provisions of Section 12 above, except for Section 12.a, shall not apply to any environmental matters, which shall be governed exclusively by the following, subject to the limitations of Section 12.a. above:

a. "Environmental Claims" shall mean all Claims asserted by governmental bodies or other third parties for pollution or environmental damage of any kind, arising from operations on or ownership of the Property or ownership of the oil and gas leasehold interest, whichever is applicable, and all cleanup and remediation costs, fines and penalties associated therewith, including but not limited to any Claims arising from Environmental Laws or relating to asbestos or to naturally occurring radioactive material. Environmental Claims shall not include the costs of any remediation undertaken voluntarily by any party, unless such remediation is performed under the imminent threat of a Claim by a governmental body or other third party;

b. "Environmental Laws" shall mean any laws, regulations, rules, ordinances, or order of any governmental authority(ies), which relate to or otherwise impose liability, obligation, or standards with respect to pollution or the protection of the environment, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901 et seq.), the Clean Water Act (33 U.S.C. §§ 466 et seq.), the Safe Drinking Water Act (14 U.S.C. §§ 1401-1450), the Hazardous Material Transportation Act (49 U.S.C. §§ 1801 et seq.), the Clean Air Act, and the Toxic Substances Control Act (15 U.S.C. §§ 2601-2629); and

c. Environmental Indemnification. Operator shall protect, indemnify, and hold harmless LGE and Aurora, and subsequent purchasers from LGE and Aurora, from any Environmental Claims relating to the LGE Property or the Aurora Property or oil and gas leasehold thereunder that arise out of Operator's ownership and operation of the Oil and Gas Operations Areas and its ownership and operation of its Petroleum Pipeline Easements or rights-of-way on the Property. LGE shall fully protect, defend, indemnify and hold harmless Operator from any and all Environmental Claims relating to the Property that arise out of LGE's mining and development of the Property.



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14. EXCLUSION FROM INDEMNITIES.

The indemnities of the parties herein shall not cover or include any amounts which the indemnified party is actually reimbursed by any third party. The indemnities in this Agreement shall not relieve any party from any obligations to third parties.

15. NOTICE OF CLAIM FOR INDEMNIFICATION.

If a Claim is asserted against a Party for which the other Party would be liable under the provisions of Section 12 above, it is a condition precedent to the indemnifying Party's obligations hereunder that the indemnified party give the indemnifying party written notice of such Claim setting forth all particulars of the Claim, as known by the indemnified Party, including a copy of the Claim (if it is a written Claim). The indemnified Party shall make a good faith effort to notify the indemnifying party within five days of receipt of a Claim and shall affect such notice in all events within such time as will allow the indemnifying Party to defend against such Claim.

16. REPRESENTATIONS.

Each Party represents that it has the full right and authority to enter into this Agreement. Operator does not represent that it has rights to settle matters for all of the mineral owners or any other lessees in the Property and this Agreement shall only apply to and bind the Operator leasehold interest in the Property and any associated easement interest in the Property. Operator represents, however, that it will not voluntarily surrender its leasehold interest in the Property unless such surrender is subject to this Agreement.

17. SUCCESSORS.

The terms, covenants, and conditions hereof shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, devisees, executors, administrators, successors and assigns; provided, as to Operator, successors and assigns shall be deemed to be limited to lessees under the oil and gas leases which Operator owns. No Party shall have any ongoing liability hereunder (but shall continue to have liability under other agreements or applicable laws, rules or regulations) in the event such Party no longer has any interest in the Property or its minerals.

18. TERM.

This Agreement shall become effective when it is fully executed and shall remain in full force and effect until the occurrence of both of the following: a] Operator's leasehold estate expires or is involuntarily terminated, and; b] Operator, its successors or assigns, has plugged and abandoned all wells and complied with the requirements of all applicable oil and gas leases pertaining to removal of equipment, reclamation, cleanup and all other applicable provisions of the leases and existing laws and regulations. When this Agreement ceases to be in full force and effect, the Parties shall execute any and all releases necessary to evidence the fact that this Agreement shall no longer apply to the Property.

19. NOTICES.

Any notice or other communication required or permitted under this Agreement shall be sufficient if deposited in U.S. Mail, postage prepaid, addressed to each of the following:

If to Operator:

TOP Operating Co.
Attn: Rodney Herring
10881 W. Asbury, Suite 230
Lakewood, CO 80227

If to L.G. Everist, Inc.:

L. G. Everist, Inc.
Attn: James A. Sittner
7321 E. 88th Ave., Ste. 200
Henderson, CO 80640

With a Copy to:

Robert J. Bruce, Esq.
Lawlis & Bruce, LLC
1875 Lawrence St., Ste. 750
Denver, CO 80202

If to Aurora:

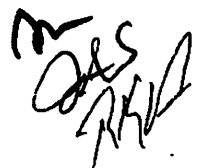
Manager of Real Property Services
City of Aurora
15151 East Alameda Parkway
Aurora, CO 80012

And

Director, Aurora Water
City of Aurora
15151 East Alameda Parkway
Aurora, CO 80012

And

City Attorney
City of Aurora
15151 East Alameda Parkway
Aurora, CO 80012

A handwritten signature in black ink, appearing to be "M. S. R. H." or similar, located in the bottom right corner of the page.

With a Copy to:

Austin Hamre, Esq.
Duncan, Ostrander & Dingess, P.C.
3600 S. Yosemite Street, Ste 500
Denver, CO 80237-1829

Any party may, by written notice so delivered to the other parties, change the address or individual to which delivery shall thereafter be made.

20. RECORDING.

This Agreement, and any amendments hereto shall be recorded by LGE, and LGE shall provide Operator and Aurora with a copy showing the recording information as soon as practicable thereafter.

21. ACKNOWLEDGEMENT OF COMPLIANCE WITH STATUTORY NOTICE, CONSULTATION AND ACCOMMODATION REQUIREMENTS; SURFACE DAMAGES.

LGE and Aurora expressly acknowledge that this Agreement satisfies Operator's obligation under applicable statutes and OGCC regulations to consult in good faith with LGE and Aurora concerning the proposed oil and gas operations. LGE and Aurora further acknowledge that this Agreement shall be deemed to be specifically applicable to, and fully satisfy, the statutory, regulatory, and common law obligation of Operator to accommodate LGE's and Aurora's use of the surface of the Property, existing or future.

LGE and Aurora hereby waive all surface damage payments pursuant to any COGCC or local regulation, state statute, common law or prior agreement, for each and every well that is drilled within the Oil and Gas Operations Area and for any access road, flowline, or pipelines constructed on the Property. Nothing contained herein shall be deemed a waiver of any obligations arising out of this Agreement. Operator may provide a copy of this Agreement to the COGCC as evidence of this waiver.

21. APPLICABLE LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without reference to its conflict of laws provisions.

22. ENTIRE AGREEMENT.

This Agreement sets forth the entire understanding among the Parties hereto regarding the matters addressed herein, and supersedes any previous communications, representations or agreement, whether oral or written. This Agreement shall not be amended, except by written document signed by all Parties. Notwithstanding the foregoing, LGE and TOP acknowledge and agree that they are parties to that certain Set-Back Agreement dated September 17, 2004 (the "Set-Back Agreement") which Set-Back Agreement shall remain in full force and effect.



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Further, in the event of a conflict between this Surface Use Agreement and the Set-Back Agreement, the terms of this Surface Use Agreement shall control. LGE and Aurora agree that the Amended and Restated Purchase and Sale Agreement between Aurora and LGE effective February 9, 2011 is not amended by the execution of this Agreement.

23. EXECUTION AND BINDING EFFECT

This Agreement may be executed in any number of counterparts each of which shall be deemed an original instrument but all of which together shall constitute one and the same instrument, and shall be binding upon and inure to the benefit of the parties, and each of their respective heirs, executors, administrators, successors and assigns and is executed by the parties as of the Effective Date set forth above.

24. SOLE OBLIGATION OF AURORA'S UTILITY ENTERPRISE


The obligations of Aurora under this Agreement are the sole obligations of the City of Aurora, acting by and through its Utility Enterprise and, as such, shall not constitute a general obligation or other indebtedness of the City of Aurora or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City of Aurora within the meaning of any constitutional, statutory or charter limitation. In the event of a default by Aurora or failure to meet any of its obligations under the terms of this Agreement, LGE and Operator shall have no recourse to any funds or revenues of the City except for the net revenues of the water utility system available therefor in the City of Aurora Utility Enterprise water fund, or any successor enterprise fund, remaining after payment of all expenses of operation and maintenance of the water utility system and all payments in connection with bonds, loans or other obligations of the City acting by and through its Utility Enterprise. Notwithstanding anything herein to the contrary, nothing in this Agreement shall be construed as creating a lien against any revenues of the Utility Enterprise or the City.




3782269 07/26/2011 11:31A Weld County, CO
14 of 20 R 106.00 D 0.00 Steve Moreno Clerk & Recorder

The parties have executed this Agreement on the day and year first above written.

OPERATOR:


By: 
Rodney K. Herring, President

L.G. EVERIST, INC.:

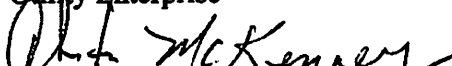
BY: 
James A. Sittner
Assistant Secretary

AURORA

City of Aurora, Colorado
Acting by and through its Utility Enterprise


George K. Noe, City Manager
Dated: 7/12/11

Approved as to Form for the City
Of Aurora, by and through its
Utility Enterprise


Christine McKenny, Assistant City Attorney
Date: 7/18/11

ACS # 11005789


Austin Hamre, Special Counsel





3782289 07/26/2011 11:31A Weld County, CO
15 of 20 R 106.00 D 0.00 Steve Moreno Clerk & Recorder

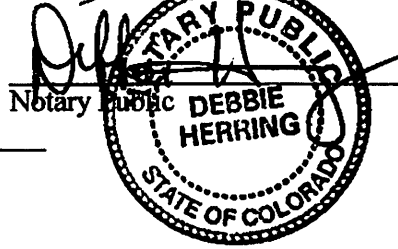
ACKNOWLEDGMENTS

STATE OF COLORADO)
CITY AND) ss.
COUNTY OF Jefferson)

The foregoing instrument was acknowledged before me this 12th day of July, 2011, by Rodney K Herring as President of TTOP Operating Co.

Witness my hand and official seal.

My Commission Expires: 2/11/2015

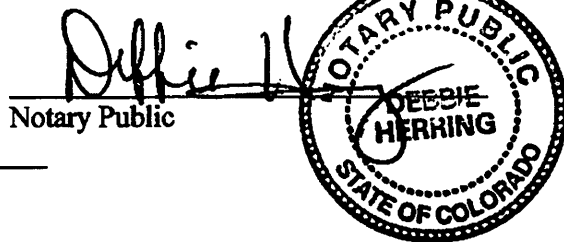


STATE OF COLORADO)
) ss.
COUNTY OF Jefferson)

The foregoing instrument was acknowledged before me this 12th day of July, 2011, by James A. Sittler as Assistant Secretary of L.G. Everist, Inc., on behalf of such company.

Witness my hand and official seal.

My Commission Expires: 2/11/2015



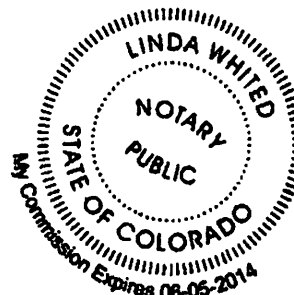
STATE OF COLORADO)
) ss.
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 19 day of July, 2011, by George K. Noe as City Manager of the City of Aurora, acting by and through its Utilities Enterprise.

Witness my hand and official seal.

My Commission Expires: 6/5/2014

Linda White
Notary Public



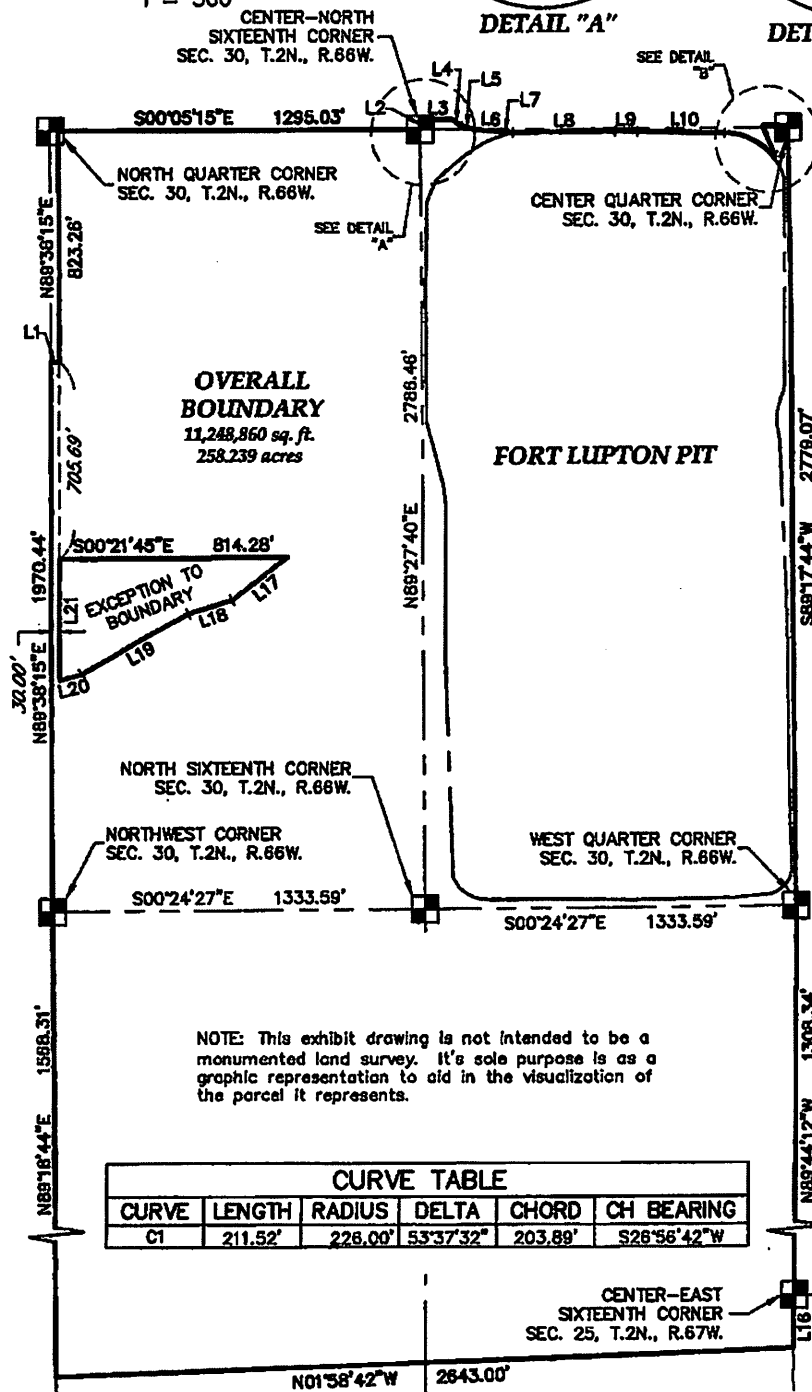
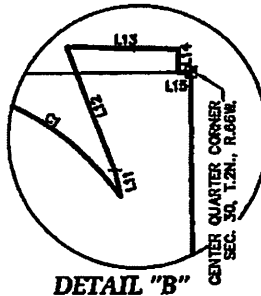
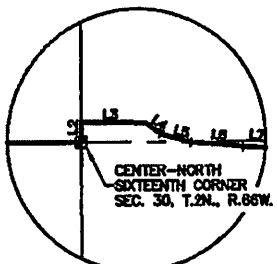
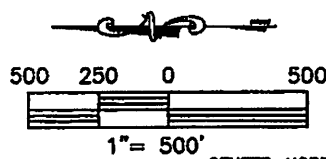
RRR GAS

3782269 07/26/2011 11:31A Weld County, CO
 16 of 20 R 106.00 D 0.00 Steve Moreno Clerk & Recorder

L.G. EVERIST PROPERTY

EXHIBIT A

SECTION 30, T.2N., R.66W.



CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CH BEARING
C1	211.52'	228.00'	53°37'32"	203.89'	S26°56'42"W

LINE TABLE			LINE TABLE			LINE TABLE		
LINE	BEARING	LENGTH	LINE	BEARING	LENGTH	LINE	BEARING	LENGTH
L1	S00°23'20"E	30.00'	L8	S00°28'42"E	388.08'	L15	S00°05'11"E	2.50'
L2	N89°28'20"E	36.20'	L9	S00°47'22"W	77.31'	L16	N89°44'35"W	187.58'
L3	S01°17'08"W	115.49'	L10	S01°12'36"W	317.29'	L17	N37°38'44"W	246.74'
L4	S35°03'51"W	33.95'	L11	N78°02'36"E	21.14'	L18	N16°52'44"W	164.86'
L5	S15°31'24"W	55.73'	L12	N67°38'04"E	104.14'	L19	N28°52'44"W	438.69'
L6	S04°45'00"W	94.26'	L13	S01°17'08"W	88.51'	L20	N14°38'44"W	80.54'
L7	S03°32'50"W	44.73'	L14	S88°21'59"W	4.50'	L21	N89°38'15"E	432.36'



KING SURVEYORS, INC.
 650 Garden Drive | Windsor, Colorado 80550
 phone: (970) 686-5011 | fax: (970) 686-5821
 www.kingsurveyors.com

PROJECT NO: 2010372
DATE: 2/17/2011
CLIENT: L.G. EVERIST
DWG: 2010372EXH-A
DRAWN: CSK **CHECKED:** SAL

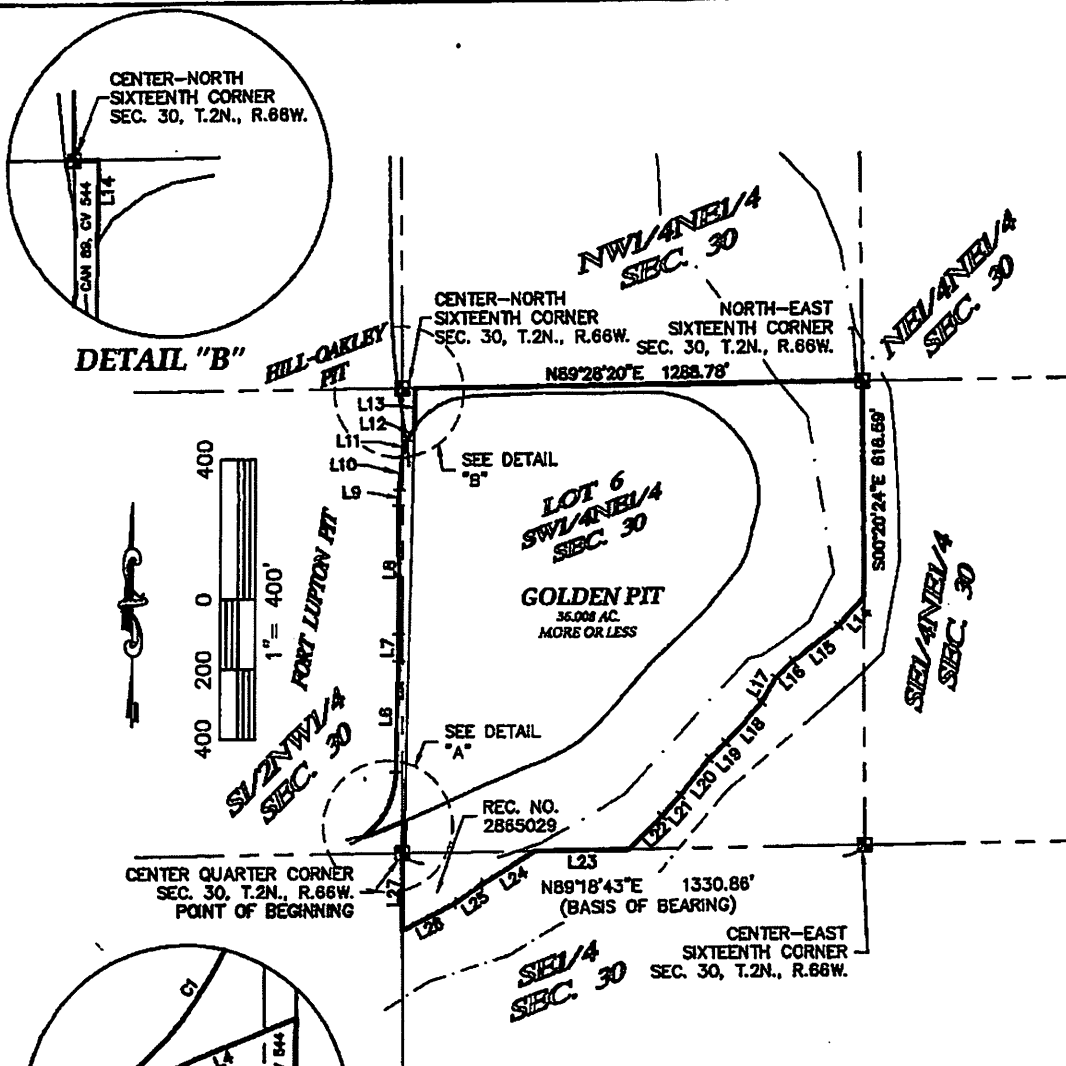
Handwritten signature: R.K.R. GAS

3782269 07/26/2011 11:31A Weld County, CO
17 of 20 R 106.00 D 0.00 Steve Moreno Clerk & Recorder

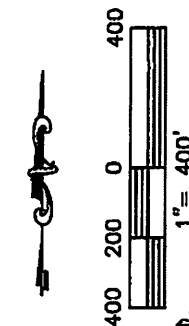
CITY OF AURORA PROPERTY

EXHIBIT B

SECTION 30, T.2N., R.66W.



DETAIL "B"



DETAIL "A"

Steven A. Lund - on behalf of King Surveyors, Inc.
Colorado Registered Professional
Land Surveyor #34995

NOTE: This exhibit drawing is not intended to be a monumented land survey. It's sole purpose is as a graphic representation to aid in the visualization of the written property description which it accompanies. The written property description supersedes the exhibit drawing.

LINE TABLE		
LINE	BEARING	LENGTH
L1	N00°05'11"W	2.50'
L2	N89°21'58"E	4.50'
L3	N01°17'08"E	89.51'
L4	S87°38'04"W	104.14'
L5	S78°02'38"W	21.14'
L6	N01°12'38"E	317.28'
L7	N00°47'22"E	77.31'
L8	N00°28'42"W	366.08'
L9	N03°32'50"E	44.73'
L10	N04°45'00"E	84.28'
L11	N18°31'24"E	55.73'
L12	N35°03'51"E	33.95'
L13	N01°17'08"E	115.49'
L14	S42°02'48"W	107.52'
L15	S52°05'47"W	185.48'
L16	S48°25'25"W	67.15'
L17	S30°15'36"W	81.28'
L18	S41°39'23"W	154.06'
L19	S48°48'50"W	64.82'
L20	S39°08'20"W	132.09'
L21	S42°11'53"W	79.44'
L22	S44°17'07"W	131.78'
L23	S89°18'43"W	270.90'
L24	S58°32'28"W	180.20'
L25	S54°31'33"W	94.45'
L26	S83°09'17"W	172.35'
L27	N00°04'14"W	221.18'

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	211.52'	278.00'	53°37'52"
			203.85'
			N28°56'42"E



KING SURVEYORS, INC.

650 Garden Drive | Windsor, Colorado 80550
phone: (970) 686-5011 | fax: (970) 686-5821
www.kingsurveyors.com

PROJECT NO: 2010372
DATE: 2/17/2011
CLIENT: L.G. EVERIST
DWG: 2010372EXH-AURORA
DRAWN: BTB CHECKED: SAL

TRK
SAL



3782269 07/26/2011 11:31A Weld County, CO
18 of 20 R 106.00 D 0.00 Steve Moreno Clerk & Recorder

EXHIBIT C

PROPERTY DESCRIPTION
Oil and Gas Lease Area

A parcel of land within a portion of Lot 2 of the Lupton Meadows Land Company Map of Division No. 3, recorded June 12, 1909 as Reception No. 142526 of the Records of Weld County, said parcel situate in the North Half of the Northwest Quarter of Section 30, Township 2 North, Range 66 West of the 6th P.M., County of Weld, State of Colorado, more particularly described as follows:

COMMENCING at the Northwest Corner of said Section 30 and assuming the North line of the Northwest Quarter of said Section 30 to bear North 89°38'15" East, a grid bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2793.63 feet with all other bearings herein relative thereto;

THENCE South 00°24'27" East along the West line of the North Half of the Northwest Quarter of said Section 30 a distance of 1333.59 feet to the South line of the North Half of the Northwest Quarter of said Section 30;

THENCE North 89°27'40" East along the South line of the North Half of the Northwest Quarter of said Section 30 a distance of 1079.92 feet to the **POINT OF BEGINNING**;

THENCE North 06°25'53" West a distance of 192.31 feet to a Point of Curvature;
THENCE along the arc of a curve concave to the Southwest a distance of 68.68 feet, said curve has a Radius of 45.00 feet, a Delta of 87°26'36" and is subtended by a Chord bearing North 50°09'11" West a distance of 62.20 feet to a Point of Reverse Curvature;

THENCE along the arc of a curve concave to the East a distance of 263.31 feet, said curve has a Radius of 80.00 feet, a Delta of 188°34'53" and is subtended by a Chord bearing North 00°24'58" East a distance of 159.55 feet to a Point of Reverse Curvature;

THENCE along the arc of a curve concave to the Northwest a distance of 161.82 feet, said curve has a Radius of 90.00 feet, a Delta of 103°00'58" and is subtended by a Chord bearing North 43°11'55" East a distance of 140.89 feet to the end point of said curve;

THENCE South 45°10'16" East along a line non-tangent to the aforesaid curve a distance of 190.00 feet;

THENCE South 29°20'56" East a distance of 175.00 feet;

THENCE South 22°11'53" East a distance of 60.00 feet;

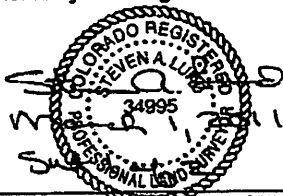
THENCE South 19°51'29" East a distance of 157.48 feet to the South line of the North Half of the Northwest Quarter of said Section 30;

THENCE South 89°27'40" West along the South line of the North Half of the Northwest Quarter of said Section 30 a distance of 325.00 feet to the **POINT OF BEGINNING**.

Said parcel of land contains 127,370 sq. ft. 2.924 acres, more or less (±), and is subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

SURVEYOR'S CERTIFICATE

I, Steven A. Lund, a Colorado Registered Professional Land Surveyor do hereby state that this Property Description was prepared under my personal supervision and checking, and that it is true and correct to the best of my knowledge and belief.

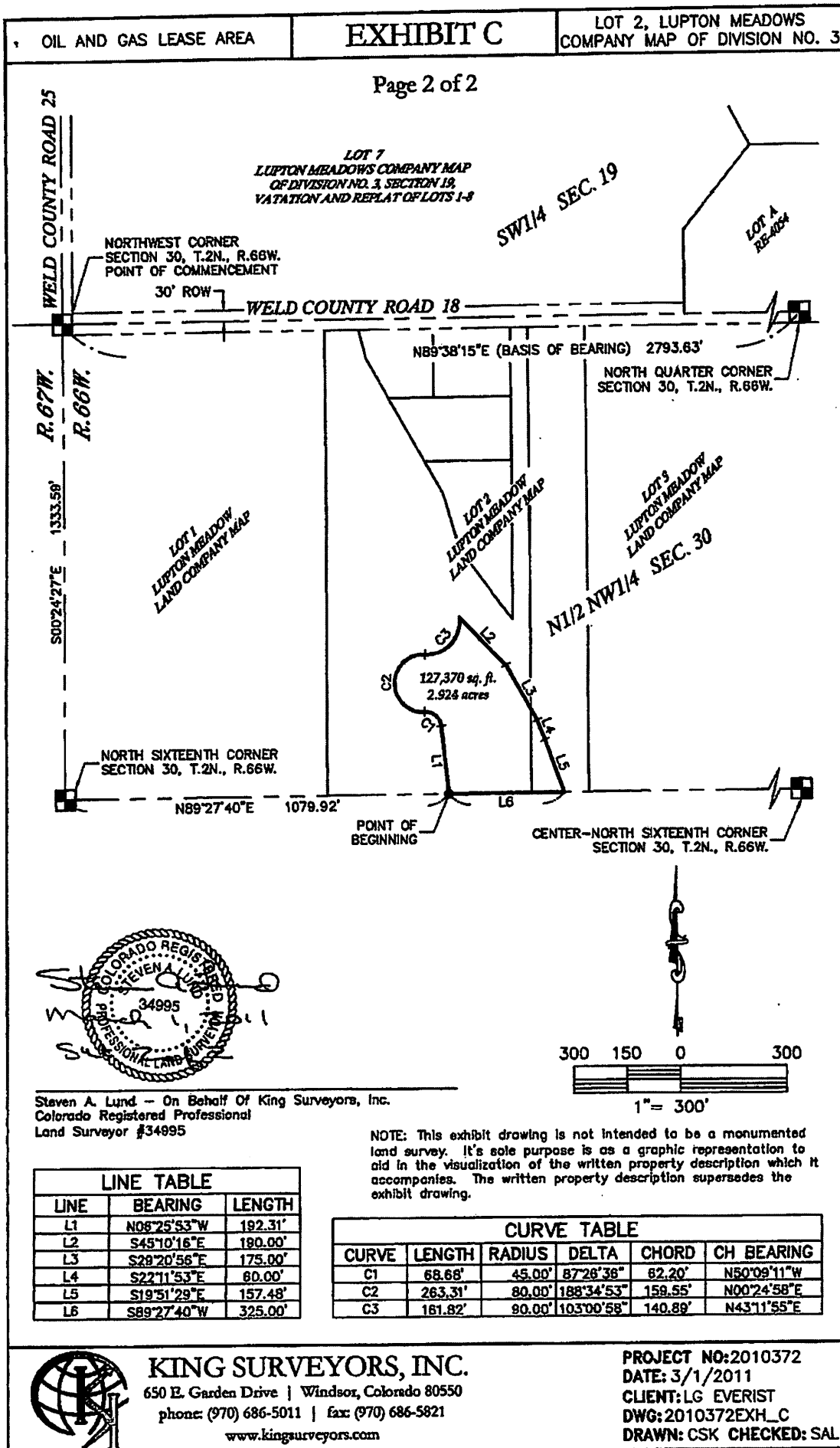


Steven A. Lund on behalf of King Surveyors, Inc.
Colorado Registered Professional
Land Surveyor #34995

KING SURVEYORS, INC.
650 Garden Drive
Windsor, Colorado 80550
(970) 686-5011

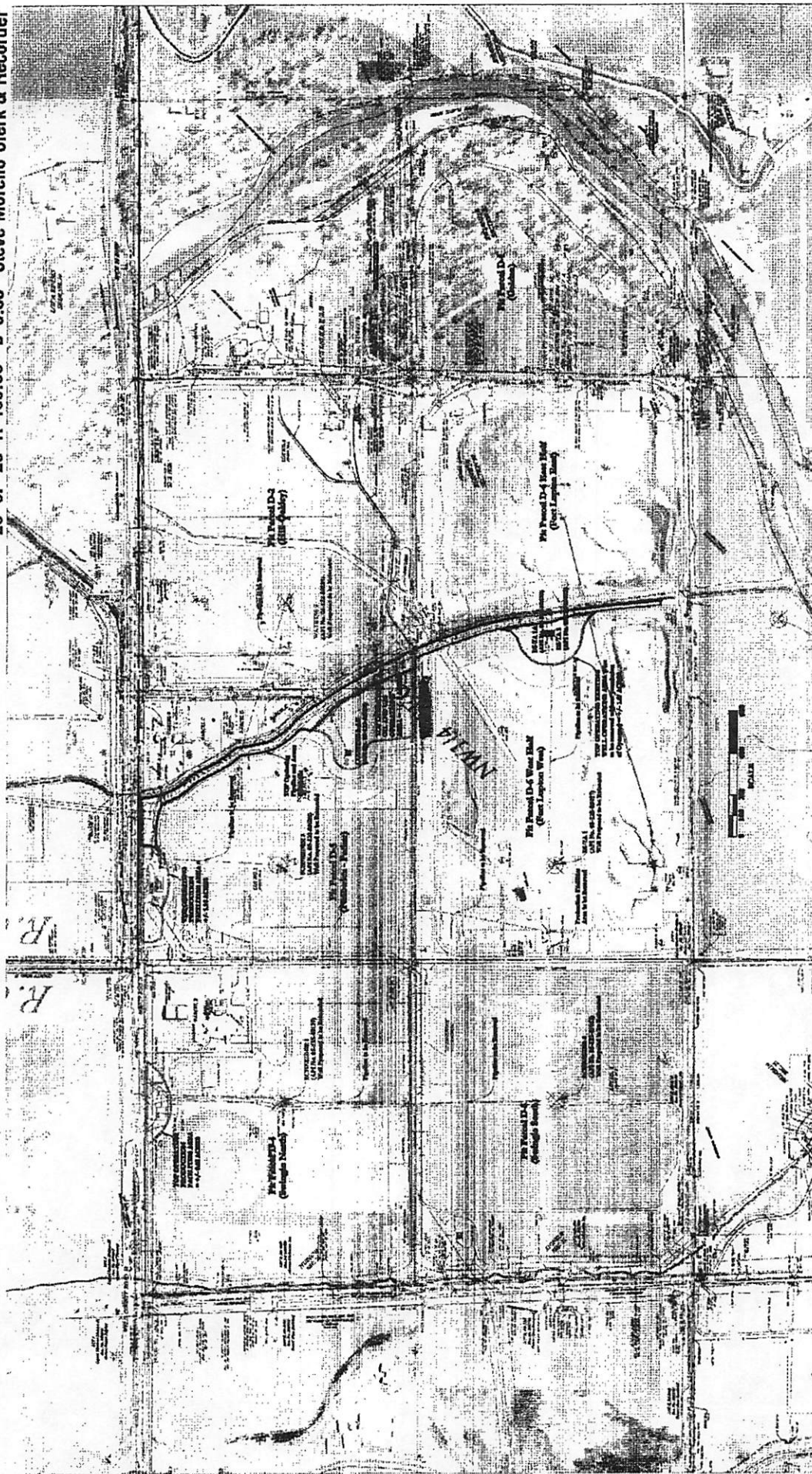
Handwritten signatures and initials

3782269 07/26/2011 11:31A Weld County, CO
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3782269 07/26/2011 11:31A Weld County, CO
20 of 20 R 106.00 D 0.00 Steve Moreno Clerk & Recorder



REV. #	BY	DATE	DESCRIPTION
A			
B			

 SAND ROCK	DRAWN BY: MSN		<p>Indicate or Proposed Survey Well Name, Location or Water Source on Chart The oil is 1 inch = 200 feet</p>
	DATE: 04/2011		
	SCALE: 1"=200'		
	CAD FILE:		

SURFACE USE AGREEMENT EXHIBIT D: AERIAL DEPICTION WITH OIL AND GAS OPERATIONS AREA & PIPELINE AND ACCESS EASEMENTS	
Fort Lupton and Lupton Meadows Sand and Gravel Pit	

L.G. Everist, Inc. Aggregate Producers 7321 E. 88th Ave, Suite 200 Henderson, CO, 80640 (303) 286-2245	
--	--

FIRST AMENDMENT TO SURFACE USE AGREEMENT

THIS FIRST AMENDMENT to Surface Use Agreement ("First Amendment") is dated and effective this 17th day of July, 2015, between TOP Operating Co. ("Operator") with an address of 10881 W. Asbury Avenue, Suite 230, Lakewood, Colorado 80227, L.G. Everist Incorporated, an Iowa corporation ("LGE") with an address of 7321 E. 88th Avenue, Suite 200, Henderson, Colorado 80640, and the City of Aurora, Colorado, a municipal corporation of the Counties of Adams, Arapahoe, and Douglas, acting by and through its Utility Enterprise ("Aurora") with an address of 15151 E. Alameda Parkway, Aurora, Colorado 80012.

RECITALS

WHEREAS, the parties and party to that certain Surface Use Agreement dated July 19, 2011 and recorded with the Clerk and Recorder for Weld County, Colorado on July 26, 2011 at Reception No. 3782269 (the "SUA"); and

WHEREAS, the parties desire to amend the description of the Property to include the real property described in Exhibit A attached hereto and incorporated herein by reference such that Exhibit B reflects the entire Property governed by the SUA, as amended; and

WHEREAS, the parties desire to modify, supplement and amend the SUA as provided on this First Amendment and otherwise ratify and affirm the SUA.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Defined Terms:** Except as modified herein, all defined terms as set forth in the SUA shall have their same definition in this First Amendment.
2. **Ewing No. 2:** TOP has an oil and gas well known as Ewing No. 2, API No. 05-123-10818, and its ancillary facilities on property owned by LGE and as described on Exhibit C hereto. TOP agrees to use its best efforts to initiate the process to cap and abandon the Ewing No. 2 well and its ancillary facilities at the request of LGE. The process to cap and abandon the Ewing No. 2 well shall begin within thirty (30) days after TOP's receipt of written notice from LGE to cap the Ewing No. 2 well. The capping and abandonment shall proceed in a timely and commercially reasonable fashion. TOP may relocate the Ewing No. 2 well and its ancillary facilities to the Oil & Gas Operations Area. LGE shall pay TOP's out-of-pocket costs to cap and abandon the Ewing No.

01330-672618
#016.023

2 well. Any such costs up to [redacted] are hereby preapproved by LGE. In the event TOP discovers the cost exceeds [redacted] TOP shall obtain three (3) independent bids for such work, and LGE shall pay only the cost of the lowest bid. In capping and abandoning the Ewing No. 2 well, TOP shall (i) obtain any and all necessary permits from COGCC; (ii) arrange with United Power to disconnect all power lines to the well and its ancillary facilities; (iii) remove all tanks, separators and ancillary equipment from the Property; and (iv) flush all flow or other lines for removal by LGE upon completion of the cap and abandonment process.

3. **Hitchings No. 1:** TOP has an oil and gas well known as Hitchings No. 1, API No. 05-123-09795, and its ancillary facilities on property owned by LGE and as described on Exhibit D hereto. TOP agrees to use its best efforts to initiate the process to cap and abandon the Hitchings No. 1 well and its ancillary facilities at the request of LGE. The process to cap and abandon the Hitchings No. 1 well shall begin within thirty (30) days after TOP's receipt of written notice from LGE to cap the Hitchings No. 1 well. The capping and abandonment shall proceed in a timely and commercially reasonable fashion. TOP may relocate the Hitchings No. 1 well to the Oil & Gas Operations Area. LGE shall pay TOP's out-of-pocket costs to cap and abandon the Hitchings No. 1 well. Any such costs up to [redacted] are hereby preapproved by LGE. In the event TOP discovers the cost exceeds [redacted] TP shall obtain three (3) independent bids for such work, and LGE shall pay only the costs of the lowest bid. In capping and abandoning the Hitchings No. 1 well, TOP shall (i) obtain any and all necessary permits from COGCC; (ii) arrange with United Power to disconnect all power lines to the well and its ancillary facilities; (iii) remove all tanks, separators and ancillary equipment from the Property; and (iv) flush all flow or other lines for removal by LGE upon completion of the cap and abandonment process.
4. **Ratification/Superseding Effect:** Except as modified herein, the Parties hereby ratify and affirm the SUA. In the event of a conflict between the terms of the SUA and this First Amendment, the terms of this First Amendment shall control.
5. **Governing Law:** This First Amendment shall be governed by the laws of the State of Colorado.

Dated as first set forth above.

TOP OPERATING CO.,
a Colorado Corporation

L.G. EVERIST, INC.,
an Iowa corporation

By: [Signature]
Its: Pres.

AURORA

By: James A. Sittner
Its: Assistant Secretary

City of Aurora, Colorado
Acting by and through its Utility Enterprise

[Signature]
George K. Noe, City Manager
Dated: 7-17-15

Attested:

for [Signature], Deputy
Janice Napper
City Clerk

Approved as to Form for the City
Of Aurora, by and through its
Utility Enterprise

[Signature]
Christine McKenny, Assistant City Attorney
Date: 7-16-15

ACS # 10009021

[Signature]
Austin Hamre, Special Counsel

ACKNOWLEDGMENTS

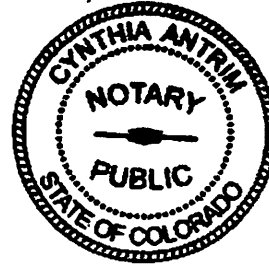
STATE OF COLORADO)
) ss.
 COUNTY OF Adams)

The foregoing instrument was acknowledged before me this 7 day of July, 2014, by Rodney Keith Herring.

Witness my hand and official seal.

Cynthia Antrim
 Notary Public

My Commission Expires: 02/19/2016



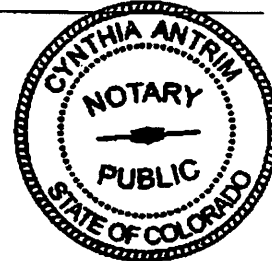
STATE OF COLORADO)
) ss.
 COUNTY OF Adams)

The foregoing instrument was acknowledged before me this 29 day of April, 2013, by James G. Sittner as Asst. Secretary of L.G. Everist, Inc., on behalf of such company.

Witness my hand and official seal.

Cynthia Antrim
 Notary Public

My Commission Expires: 02/19/2016



STATE OF COLORADO)
) ss.
 COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 17 day of July, 2015, by George K. Noe as City Manager of the City of Aurora, acting by and through its Utilities Enterprise.

Witness my hand and official seal.

Leiana Baker
 Notary Public

My Commission Expires: 7-28-17

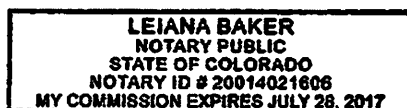


EXHIBIT A

Parcels A, B, C, D and E of the Northwest Quarter (NW ¼) of Section Thirty (30), Township Two North (T 2N) Range Sixty-six West (R. 66W.) of the Sixth Principal Meridian (6th P.M.) County of Weld, State of Colorado, the perimeter of said parcels more particularly described by notes and bounds as follows:

COMMENCING at the Northwest Corner of said Section 30 and assuming the North line of the Northwest Quarter (NW ¼) to bear North 89°38'15" East, a grid bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2793.63 feet with all other bearings herein relative thereto;

THENCE North 89°38'15" East along the North line of the NW ¼ of said Section 30 a distance of 1264.76 feet;

THENCE South 00°21'45" East along a line perpendicular to said North line a distance of 30.00 feet to the South Right of Way (ROW) line of Weld County Road #18 (WCR #18) and the TRUE POINT OF BEGINNING;

THENCE South 00°21'45" East continuing along said perpendicular line a distance of 814.28 feet;

THENCE North 37°38'44" West a distance of 246.74 feet;

THENCE North 16°52'44" West a distance of 164.96 feet;

THENCE North 29°52'44" West a distance of 438.69 feet;

THENCE North 14°38'44" West a distance of 80.34 feet to the South ROW line of WCR #18;

THENCE North 89°38'15" East along said South ROW line a distance of 432.36 feet to the TRUE POINT OF BEGINNING.

Said parcel of land contains 4,389 acres, more or less (+/-), and subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

AND

The North One Half of the Southeast Quarter of Section 25, Township 2 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado, together with 100 foot right of way in The Northeast Quarter of said Section 25, Township 2 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado as described in Deed recorded October 28, 1948 in Book 1236 at Page 404;

AND

EXHIBIT A
(page 2)

Parcel 1:

Lot B of Recorded Exemption No. 1311-25-3-RE1406 recorded May 27, 1992 in Book 1337 as Reception No. 2289234 of the Records of Weld County, being a portion of the Southwest Quarter of the Southeast Quarter and the Southeast Quarter of the Southwest Quarter of Section 25, Township 2 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado, more particularly described by metes and bounds and referenced to the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92 as follows:

COMMENCING at the Southeast Corner of said Section 25 and assuming the South line of the Southeast Quarter of said Section 25 to bear North 89°46'30" West, a grid bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2634.58 feet with all other bearings herein relative thereto;

THENCE North 89°46'30" West along the South line of the Southeast Quarter of said Section 25 a distance of 1430.12 feet to the Southeast corner of said Lot B and to the POINT OF BEGINNING;

THENCE North 89°46'30" West along the South line of the Southeast Quarter of said Section 25 a distance of 1204.46 feet to the South Quarter corner of said Section 25;

THENCE North 89°44'58" West along the South line of the Southwest Quarter of said Section 25 a distance of 613.11 feet to the Westerly line of said Lot B;

The next Eight (8) courses are along the Westerly lines of Lot B of Recorded Exemption No. 1311-25-3-RE1406;

THENCE North 19°53'31" West a distance of 342.46 feet;

THENCE North 23°51'31" West a distance of 215.54 feet;

THENCE North 12°38'23" West a distance of 104.24 feet;

THENCE North 01°10'16" East a distance of 83.13 feet;

THENCE North 13°37'14" East a distance of 133.59 feet;

THENCE North 26°30'27" East a distance of 198.70 feet;

THENCE North 45°32'46" East a distance of 354.83 feet;

THENCE North 58°35'18" East a distance of 111.72 feet to the North line of the Southeast Quarter of the Southwest Quarter of said Section 25;

THENCE South 89°44'47" East along the North line of the Southeast Quarter of the Southwest Quarter of said Section 25 a distance of 362.17 feet to the Center-South Sixteenth corner of said Section 25;

THENCE South 89°45'52" East along the North line of the Southwest Quarter of the Southeast Quarter of said Section 25 a distance of 1164.21 feet to the Westerly line of that parcel of land described in a Quit Claim Deed recorded December 30, 1987 as Reception No. 02126425 of the Records of Weld County;

THENCE South 02°02'59" East along said Westerly line a distance of 1320.19 feet to the POINT OF BEGINNING

TOGETHER WITH an easement for ingress, egress and regress to Lot B of Recorded Exemption No. 1311-25-3-RE1406 recorded May 27, 1992 in Book 1337 as Reception No. 2289234 of the Records of Weld County across the South 60 feet of Lot A of Recorded Exemption No. 1311-25-3-RE1406 recorded May 27, 1992 in Book 1337 as Reception No. 2289234, of the Records of Weld County, more particularly described by metes and bounds and referenced to the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92 as follows:

EXHIBIT A
(page 3)

COMMENCING at the Southeast Corner of said Section 25 and assuming the South line of the Southeast Quarter of said Section 25 to bear North 89°46'30" West, a grid bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2634.58 feet with all other bearings herein relative thereto;

THENCE North 89°46'30" West along the South line of the Southeast Quarter of said Section 25 a distance of 2634.58 feet to the South Quarter corner of said Section 25;
THENCE North 89°44'58" West along the South line of the Southwest Quarter of said Section 25 a distance of 613.11 feet to the Southeast corner of said Lot A and to the POINT OF BEGINNING

THENCE North 89°44'58" West continuing along the South line of the Southwest Quarter of said Section 25 a distance of 709.94 feet to the Southwest corner of said Lot A;

THENCE North 00°04'29" West along the West line of said Lot A a distance of 60.00 feet;

THENCE South 89°44'58" East along a line parallel with and 60.00 feet Northerly of, as measured at a right angle to the South line of the Southwest Quarter of said Section 25 a distance of 688.27 feet to the Easterly line of said Lot A;

THENCE South 19°53'31" East along the Easterly line of said Lot A a distance of 63.91 feet to the POINT OF BEGINNING

Parcel 2:

Together with Easement for purposes of ingress and egress from Weld County Road 18 to Lot B of Recorded Exemption No. 1406, more particularly described in instrument recorded September 18, 1998 at Reception No. 2641195.

AND

EXHIBIT A
(page 4)

PARCEL 1

Lot B of Recorded Exemption No. 1311-25-4-RE986, recorded February 17, 1988 in Book 1185 as Reception No. 02131167, being a part of the following described property: The SE1/4 of the SE1/4 of Section 25, Township 2 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado, and that part of the SE1/4 of Section 25, Township 2 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado, more particularly described as follows:

Beginning at a point 1320 feet described (1317.22 as measured) West of the Southeast corner of the SE1/4 of said Section 25, said point being the Southwest corner of the SE1/4 of the SE1/4; thence North 89 degrees 20 minutes 05 seconds West along the South line of the SE1/4 a distance of 112.90 feet as measured to the East line of the abandoned Denver, Laramie and Northwestern Railway Company R.O.W., said R.O.W. being 50.00 feet East of the centerline as located from existing bridge remains of said railway; said centerline as described in Deed recorded January 26, 1909 in Book 292 at Page 203 indicates that it is to be 1270 feet East of the SW corner of the SW1/4SE1/4 and an additional 50.00 feet to the East R.O.W. equals 1320.00 feet, but it measures 1204.32 feet; thence North 01 degree 37 minutes 00 seconds West along said East R.O.W. line a distance of 1327.00 feet described (1319.97 measured) to the North line of said SW1/4SE1/4; thence South 89 degrees 19 minutes 23 seconds East along said North line a distance of 68 feet described (148.74 measured) to the Northwest corner of said SE1/4SE1/4; thence South 00 degrees 03 minutes 39 seconds East along the West line of said SE1/4SE1/4 a distance of 1320.00 feet described (1319.00 measured) to the Place of Beginning;

ALSO THAT PART of the SW1/4 of Section 30, Township 2 North, Range 66 West of the 6th P.M., County of Weld, State of Colorado, more particularly described as follows:

Beginning at the Northwest corner of the SW1/4 of the SW1/4 of said Section 30; thence North 89 degrees 44 minutes 40 seconds East perpendicular with the West line of said SW1/4 of Section 30 a distance of 210.00 feet; thence South 00 degrees 15 minutes 20 seconds East parallel with said West line a distance of 210.00 feet; thence South 31 degrees 30 minutes 00 seconds West a distance of 362.00 feet; thence South 08 degrees 30 minutes 00 seconds West described (South 06 degrees 44 minutes 17 seconds West measured) a distance of 160.00 feet to a point on said West line of the SW1/4 of Section 30; thence North 00 degrees 15 minutes 20 seconds West along said West line a distance of 700.00 feet described (676.62 measured) to the Point of Beginning

EXHIBIT A
(page 5)

PARCEL 2

Together with an access road and utility easement for ingress, egress and utilities easement over and across the following described tract of land: All that part of Lot A of Recorded Exemption No. 1311-25-4-RE986 recorded February 17, 1988 in Book 1185 as Reception No. 02131167, in the SE1/4 of the SE1/4 of Section 25, Township 2 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado, described as follows:

Beginning at the Southeast corner of said Section 25; thence North 89 degrees 20 minutes 05 seconds West along the South line of said SE1/4 of the SE1/4, a distance of 280.00 feet to the Southwest corner of said Lot "A"; thence North 00 degrees 15 minutes 20 seconds West along the West line of said Lot "A" a distance of 30.00 feet; thence South 89 degrees 20 minutes 05 seconds East parallel with said South line a distance of 214.00 feet; thence North 50 degrees 46 minutes 15 seconds East a distance of 84.89 feet to the East line of said SE1/4 of the SE1/4; thence South 00 degrees 15 minutes 20 seconds East along the East line of said SE1/4 of the SE1/4 a distance of 84.45 feet to the Point of Beginning.

ALSO TOGETHER WITH access road easement over and across the following described tract of land:

The East 15.00 feet of the NE1/4 of the NE1/4 of Section 36, Township 2 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado, being part of Tracts 2 and 13, as shown on Map of Lupton Garden Tracts, recorded December 13, 1921 in Book 6 of Maps at Page 53 as Filing No. 368977; and The East 15.00 feet of the S1/2 of the NE1/4 of Section 36, Township 2 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado;

and The West 15.00 feet of the NW1/4 of the NW1/4 of Section 31, Township 2 North, Range 66 West of the 6th P.M., County of Weld, State of Colorado, being part of Tracts 3 and 12, as shown on Map of Lupton Garden Tracts, recorded December 13, 1921 in Book 6 of Maps at Page 53 as Filing No. 368977; and The West 15.00 feet of the S1/2 of the NW1/4 of Section 31, Township 2 North, Range 66 West of the 6th P.M., said easement corresponding to the existing traveled road

PARCEL 3

Lot B of Recorded Exemption No. 1309-30-3-RE976, recorded April 23, 1987 in Book 1154 as Reception No. 2096824, being a part of the S1/2 of Section 30 and the NE1/4 of Section 31, Township 2 North, Range 66 West of the 6th P.M., County of Weld, State of Colorado.

Together with access road easement over and across Lot A of Recorded Exemption No. 1309-30-3-RE976 recorded April 23, 1987 in Book 1154 as Reception No. 02096824, being a part of the SW1/4 of Section 30, Township 2 North, Range 66 West of the 6th P.M., County of Weld, State of Colorado, as shown on said Plat.

EXHIBIT A

(page 6)

PARCEL 4

Together with an access road easement over and across the SE1/4 of the NW1/4 of Section 31, Township 2 North, Range 66 West of the 6th P.M. and Tracts 7 and 8, as shown on Map of Lupton Garden Tracts, recorded December 13, 1921 in Book 6 of Maps at page 53 as Filing No. 368977, located in the NE1/4 of the NW1/4 of Section 31, Township 2 North, Range 66 West of the 6th P.M., County of Weld, State of Colorado, said easement being 30 feet wide from Weld County Road 14 1/2 to the SW1/4 of Section 30, Township 2 North, Range 66 West of the 6th P.M., the Westerly line of said 30 foot road being more particularly described as: Beginning at the center of Section 31, Township 2 North, Range 66 West; thence South 89 degrees 48 minutes 26 seconds West on an assumed bearing along the East-West centerline of said Section 31 a distance of 994.86 feet to the True Point of Beginning; thence Northerly along said Westerly line of an existing traveled road the following courses: North 14 degrees 35 minutes 41 seconds East, 241.76 feet; North 02 degrees 05 minutes 34 seconds West, 240.42 feet; North 06 degrees 39 minutes 13 seconds East, 303.32 feet; North 27 degrees 50 minutes 57 seconds East, 174.85 feet; North 52 degrees 05 minutes 28 seconds East, 141.79 feet; North 57 degrees 27 minutes 11 seconds East, 252.92 feet; North 23 degrees 56 minutes 56 seconds East, 295.13 feet; North 31 degrees 58 minutes 06 seconds East, 380.63 feet;

North 10 degrees 07 minutes 03 seconds East, 258.49 feet; North 14 degrees 36 minutes 54 seconds West, 360.05 feet; North 24 degrees 28 minutes 31 seconds West, 205.52 feet; North 00 degrees 15 minutes 37 seconds West, 42.63 feet to a point on the South line of said SW1/4 of Section 30, Township 2 North, Range 66 West and the end of said Access road Easement.

PARCEL 5

Lot A of Recorded Exemption No. 1311-25-4-RE 986, recorded February 17, 1988 in Book 1185 at Reception No. 2131167, being a part of the Southeast Quarter of the Southeast Quarter of Section 25, Township 2 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado.

AND

EXHIBIT A
(page 7)

LOT B, RECORDED EXEMPTION NO. 1311-25-1 RE-3302, RECORDED JUNE 24, 2002 AT RECEPTION NO. 2963716 OF THE RECORDS OF THE WELD COUNTY CLERK AND RECORDER, LOCATED IN THE NORTHEAST QUARTER (NE 1/4) OF SECTION TWENTY-FIVE (25), TOWNSHIP TWO NORTH (12N), RANGE SIXTY-SEVEN WEST (R.67W) OF THE SIXTH PRINCIPAL MERIDIAN (6TH P.M.), COUNTY OF WELD, STATE OF COLORADO.

AND

Lot 7 of the Vacation and Replat of Lots 1-8 of Lupton Meadows Land Company Subdivision according to the Map of Division 3, which Plat of the Vacation and Replat of Lots 1-8 is dated November 21, 1996, recorded December 3, 1996, at Reception No. 2523286 in Book 1579 at Page 574,
County of Weld,
State of Colorado

AND

EXHIBIT A
(page 8)

A tract of land located in the North Half (N1/2) of Section Thirty-six (36), Township Two North (T 2N.), Range Sixty-seven West (R 67W) of the Sixth Principal Meridian (6th P.M.), County of Weld, State of Colorado and being more particularly described as follows:

BEGINNING at the North Quarter corner of said Section 36 and assuming the North line of the Northeast Quarter of said Section 36 as bearing South 89°46'30" East being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/2007, a distance of 2634.58 feet with all other bearings contained herein relative thereto;

THENCE South 89°46'30" East along said North line a distance of 1204.46 feet to the East line of the Denver, Laramie and Northwestern Railroad right-of-way as described in deeds recorded in Book 292 at Page 368 and Book 305 at Page 583; THENCE South 02°02'59" East along said East line a distance of 1318.74 feet to the South line of the North Half of said Northeast Quarter; THENCE North 89°43'18" West along said South line a distance of 1244.44 feet to the Center-North Sixteenth corner of said Section 36; THENCE North 89°42'49" West along the South line of the North Half of the Northwest Quarter of said Section 36 a distance of 29.86 feet to the Centerline of Weld County Road 23.5 as it now exists and the beginning point of a curve, non-tangent to the aforesaid line; THENCE along said Centerline by the following Eleven (11) courses and distances:

- 1) THENCE along the arc of a curve concave to the Northwest a distance of 138.56 feet, said curve has a Radius of 400.00 feet, a Delta of 19°50'47" and is subtended by a Chord that bears North 14°06'43" East a distance of 137.86 feet to a Point of Tangency (PT);
- 2) THENCE North 04°11'19" East a distance of 107.92 feet to a Point of Curvature (PC);
- 3) THENCE along the arc of a curve concave to the West a distance of 75.45 feet, said curve has a Radius of 275.00 feet, a Delta of 15°43'09" and is subtended by a Chord that bears North 03°40'16" West a distance of 75.21 feet to a Point of Tangency (PT);
- 4) THENCE North 11°31'51" West a distance of 17.37 feet to a Point of Curvature (PC);
- 5) THENCE along the arc of a curve concave to the Southwest a distance of 156.88 feet, said curve has a Radius of 200.00 feet, a Delta of 44°56'33" and is subtended by a Chord that bears North 34°00'07" West a distance of 152.89 feet to a Point of Tangency (PT);
- 6) THENCE North 56°28'24" West a distance of 101.18 feet to a Point of Curvature (PC);

EXHIBIT A

(page 9)

7) THENCE along the arc of a curve concave to the Northeast a distance of 312.08 feet, said curve has a Radius of 412.50 feet, a Delta of $43^{\circ}20'51''$ and is subtended by a Chord that bears North $34^{\circ}47'58''$ West a distance of 304.69 feet to a Point of Tangency (PT);

8) THENCE North $13^{\circ}07'32''$ West a distance of 131.78 feet to a Point of Curvature (PC);

9) THENCE along the arc of a curve concave to the Southwest a distance of 217.22 feet, said curve has a Radius of 570.00 feet, a Delta of $21^{\circ}50'06''$ and is subtended by a Chord that bears North $24^{\circ}02'36''$ West a distance of 215.91 feet to a Point of Tangency (PT);

10) THENCE North $34^{\circ}57'39''$ West a distance of 189.83 feet to a Point of Curvature (PC);

11) THENCE along the arc of a curve concave to the Southwest a distance of 106.57 feet, said curve has a Radius of 250.00 feet, a Delta of $24^{\circ}25'27''$ and is subtended by a Chord that bears North $47^{\circ}10'23''$ West a distance of 105.77 feet to the North line of aforesaid Northwest Quarter; THENCE South $89^{\circ}44'54''$ East along said North line which is non-tangent to the aforesaid curve a distance of 637.43 feet to the POINT OF BEGINNING;

Said described tract of land contains 44.422 Acres, more or less (\pm), and is subject to any rights of-way or other easements of record or as now existing on said described parcel of land.

AND

EXHIBIT A
(page 10)

The South Half of the Northwest Quarter of Section 31, Township 2 North, Range 66 West of the 6th P.M., County of Weld, State of Colorado, EXCEPTING THEREFROM that parcel of land as conveyed in deed recorded January 12, 1996 under Reception No. 2471548, County of Weld, State of Colorado;

APN: 130931200004
Street Address: vacant land

And

Lots 3, 4, 5, 10, 11 and 12, according to the Lupton Garden Tracts Plat, being part of Section 31, Township 2 North, Range 66 West of the 6th P.M., County of Weld, State of Colorado;

APN: 130931001001
Street Address: 6879 Weld County Road 25, Fort Lupton, Colorado

And

Lots 1, 2, 13, 14 and 15, according to the Lupton Garden Tracts Plat, being part of Section 36, Township 2 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado;

APN: 131113600059
Street Address: vacant land

And

Lots A and B of Recorded Exemption No 1311-36-1 RE-4145 recorded November 30, 2007 at Reception No 3520579, being part of the South ½ of the Northeast ¼ of Section 36, Township 2 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado.

APN (Lot A): 131136100001
Street Address: 11851 WCR 14 5, Fort Lupton, Colorado

APN (Lot B): 131136100002
Street Address: vacant land

AND

EXHIBIT A
(page 11)

The Real Property described below, and specifically including but not limited to all rights to all sand, gravel, aggregate, stone, rock, silt, clay, shale, overburden and topsoil, lying in, on and under the Real Property, and all minerals and mineral rights owned by Grantor in the Real Property; and

Further specifically including any and all water and water rights, wells and well rights, ditch and ditch rights, reservoir and reservoir rights, whether adjudicated or not, and whether tributary, nontributary or not-nontributary, which are appurtenant to or associated with the Real Property;

PARCEL 1

Tracts 6, 7, 8 and 9,
as shown on Map of Lupton Garden Tracts, recorded December 13, 1921 in Book 6 of Maps at
Page 53 as Reception No. 368977,
County of Weld,
State of Colorado.

PARCEL 2

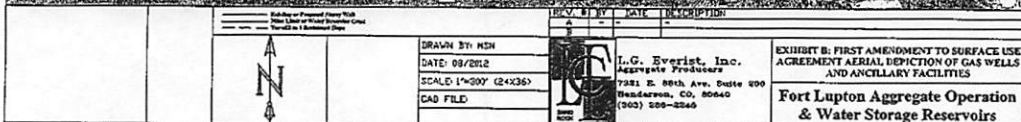
Together with an access road easement over and across the NW1/4 of Section 31, Township 2 North, Range 66 West of the 6th P.M., County of Weld, State of Colorado, said easement being recorded October 17, 1986 in Book 1132 at Reception No. 02013770, said easement being 30 feet wide from Weld County Road 14-1/2 in the SW1/4 of Section 30, Township 2 North, Range 66 West of the 6th P.M., the Western line of said 30 foot road being more particularly described as:

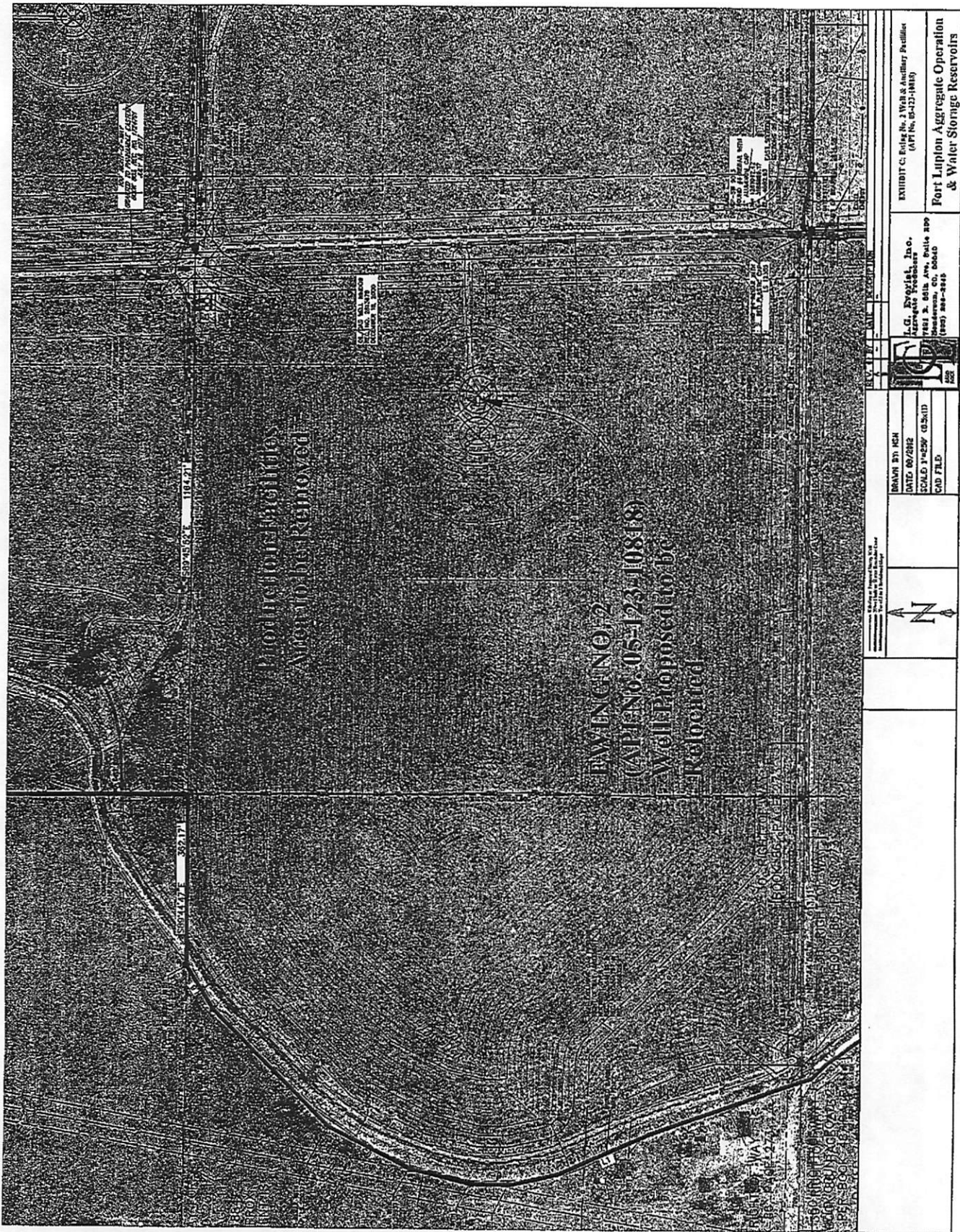
Beginning at the center of Section 31, Township 2 North, Range 66 West, thence South 89°48'26" West on an assumed bearing along the East-West centerline of said Section 31 a distance of 994.86 feet to the Line Point of Beginning;

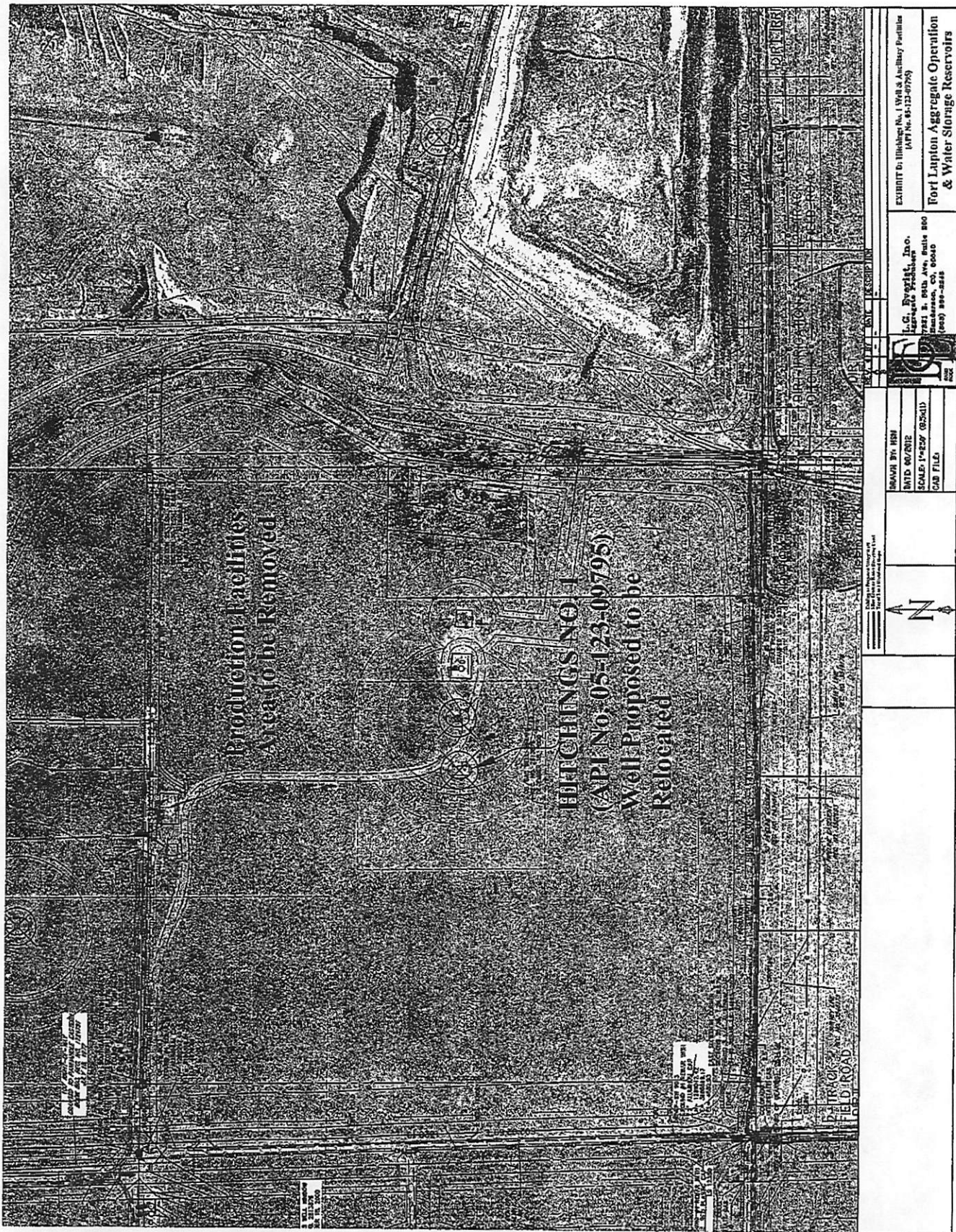
thence Northerly along said Western line of an existing traveled road the following courses:

North 14°35'41" East, 241.76 feet;
North 02°05'34" West, 240.42 feet;
North 06°39'13" East, 303.32 feet;
North 27°50'57" East, 174.85 feet;
North 52°03'28" East, 141.79 feet;
North 37°27'11" East, 252.92 feet;
North 23°56'56" East, 295.13 feet;
North 31°58'06" East, 380.63 feet;
North 10°07'03" East, 258.49 feet;
North 14°36'54" West, 360.05 feet;
North 24°28'31" West, 205.52 feet;

North 00°15'37" West, 42.63 feet to a point on the South line of said SW1/4 of Section 30, Township 2 North, Range 66 West and the end of said access road easement,
County of Weld,
State of Colorado.







ASSIGNMENT OF SURFACE USE AGREEMENT

THIS ASSIGNMENT OF SURFACE USE AGREEMENT is made and entered into as of this ____ day of March 2019 and is by and between TOP Operating Co., a Colorado corporation (referred to as "TOP") and Petro Operating Company, LLC, a Colorado limited liability company (referred to as "Petro Operating").

RECITALS

WHEREAS, TOP, as Operator of various existing oil and gas wells, entered into a Surface Use Agreement with L.G. Everist Inc. and the City of Aurora dated July 19, 2011 and recorded on July 19, 2011 at reception number 3782269 and a First Amendment to Surface Use Agreement with L.G. Everist Inc. and the City of Aurora dated July 7, 2015 and recorded on July 26, 2011 at reception number 4129145. The Surface Use Agreement and First Amendment of Surface Use Agreement give TOP, and its successors and assigns, the right to conduct oil and gas operations in connection with existing oil and gas wells and future oil and gas wells, install pipelines, use access routes, and install and maintain production facilities on the surface of certain lands located in Weld County, Colorado and described in said Surface Use Agreement and First Amendment (referred to as the "Lands");

WHEREAS, subject to the conditions described below, along with the related Oil and Gas Leases, TOP wishes to assign to Petro Operating the rights as Operator under the above Surface Use Agreement, as amended, as to future horizontal oil and gas wells on said lands and leases and Petro Operating agrees to assume all obligations under the Surface Use Agreement, as amended, related to such wells.

ASSIGNMENT AND AGREEMENT

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are acknowledged herein, the parties agree as follows:

- (1) The parties adopt and incorporate by reference herein the Recitals above.
- (2) TOP hereby assigns to Petro Operating TOP's rights as Operator in and under the above described Surface Use Agreement, as amended, as to future horizontal oil and gas wells, including the right to drill, complete, produce, conduct operations on, access, and install and maintain pipelines and production facilities as to such wells.
- (3) Petro Operating agrees to assume all obligations under the Surface Use Agreement, as amended, related to such future horizontal wells.
- (4) TOP expressly reserves and retains its rights and obligations as Operator under the Surface Use Agreement, as amended, in connection with the existing oil and gas wells, including the right to drill, complete, produce, conduct operations on (such as



plugging and abandoning), access, and install and maintain pipelines and production facilities as to such wells.

- (5) Concurrently with execution of the Assignment, TOP and Petro Operating are entering into an Acquisition and Development Agreement and TOP is executing an Assignment of Oil and Gas Leases to Petro Operating. Should Petro Operating fail for any reason to satisfy the requirement in the Acquisition and Development Agreement of drilling a horizontal test well by January 1, 2020, unless that date is mutually extended by the parties, Petro Operating shall immediately assign back to TOP all the rights under the Surface Use Agreement, as amended, that are assigned to Petro Operating herein.

Petro Operating Company

By: 

Roger A. Parker - Manager

Print Name and Title

TOP Operating Company

BY: 

Rodney K. Herricks, President

Print Name and Title

ACKNOWLEDGEMENTS

STATE OF COLORADO

COUNTY OF

Jefferson

§
§
§

The foregoing instrument was acknowledged before me this 26 day of June, 2019, by Rodney K. Herring as Owner of TOP Operating Co., on behalf of such company.

Witness my hand and official seal.

My Commission expires:

11-14-21

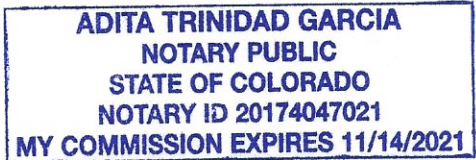
Adita Trinidad Garcia

Notary Public

STATE OF COLORADO

CITY AND COUNTY OF DENVER

§
§
§



The foregoing instrument was acknowledged before me this 17 day of June, 2019, by Roger Parker as Manager of Petro Operating Company on behalf of such company.

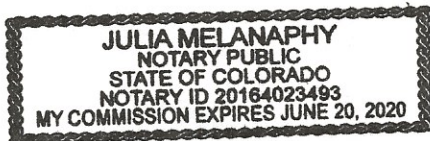
Witness my hand and official seal.

My Commission expires:

6/20/20

Julia Melanaphy

Notary Public



[Signature]