PURCHASE AND SALE AGREEMENT
(BROOKS FARM)

THIS PURCHASE AND SALE AGREEMENT ("**Agreement**"), dated to become effective as of the ___ day of _____, 2022, is by and between L.G. EVERIST, INCORPORATED, a South Dakota corporation ("**LGE**" or "**Seller**") and the TOWN OF FIRESTONE, a Colorado municipal corporation, acting by and through its Town of Firestone Water Activity Enterprise, organized and existing as a "water activity enterprise" under C.R.S. 37-45.1-101 et seq. ("**TOF**" or "**Purchaser**"). LGE and TOF may hereinafter be referred to each individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

A. LGE currently owns certain real property located in Weld County, Colorado, more particularly defined and described in Paragraph 1.1 as the Brooks Farm Parcel, upon which LGE intends to conduct mining operations for Sand and Gravel (as defined in Paragraph 1.1) thereon and to complete any required reclamation obligations relating thereto, all in accordance with the Permits (as defined in Paragraph 1.1).

B. LGE, as a part of LGE's reclamation obligations under the Permits, is developing certain water storage facilities on the Brooks Farm Parcel, which will consist of a lined gravel pit and related facilities which can be used for the storage of water.

C. LGE owns various water rights and other rights which are appurtenant to or otherwise used in connection with the Brooks Farm Parcel, including but not limited to 1.9 shares of capital stock in the Rural Ditch Company, and LGE has obtained or has otherwise applied for certain conditional water storage rights evidenced by the LGE Storage Right Application/Decree (as defined in Paragraph 1.1).

D. LGE has the right to use certain excess carriage capacity in the Rural Ditch, subject to specific limitations thereon, for water diversion, storage, recharge and augmentation purposes.

E. TOF desires to acquire additional water storage capacity located in Weld County, Colorado, additional excess carriage rights within the Rural Ditch, and additional senior water rights.

F. TOF desires to acquire from LGE, and LGE desires to convey, transfer, assign and sell to TOF, subject to the terms of this Agreement, the following assets: (a) the LGE Water Rights (as such term is defined in Paragraph 1.1); (b) all of LGE's right, title and interest in and to the Brooks Farm Parcel, including but not limited to the Storage Capacity (as such term is defined in Paragraph 1.1) located on the Brooks Farm Parcel, but specifically excluding any mineral rights owned by LGE with respect to the Brooks Farm Parcel; (c) the Excess Carriage Rights (as such term is defined in Paragraph 1.1); and (d) certain easements and other rights related to and benefitting the above-described assets, all as provided for in this Agreement; and (e) the LGE Storage Right Application/Decree (as such term is defined in Paragraph 1.1).

AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. DEFINITIONS AND INCORPORATION OF RECITALS

1.1 Definitions. Capitalized terms used but not otherwise defined in this Agreement shall have the following meanings:

(a) "**Access Easement**" shall have the meaning ascribed in Paragraph 3.1(b)(i).

(b) "**Brooks Farm Closing**" shall have the meaning ascribed in Paragraph 7.3

(c) "**Brooks Farm Parcel**" shall have the meaning ascribed in Paragraph 1.1(jj).

(d) "**Close**" shall mean the acts of the Parties required to consummate any of the transactions contemplated by this Agreement to occur at a specified Closing.

(e) "**Closing**" shall mean the consummation of any of the transactions contemplated under this Agreement.

(f) "**Closing Date**" shall mean the date of each Closing.

(g) "**Commitment**" shall have the meaning ascribed in Paragraph 4.1.

(h) "**Completion Notice**" shall have the meaning ascribed in Paragraph 8.1.

(i) "**Construction Warranty**" shall have the meaning ascribed in Paragraph 9.2(a).

(j) "**Deed**" shall mean a Special Warranty Deed conveying marketable title in and to the real property described therein in the form attached hereto as Exhibit G.

(k) "**Delivery Date Earliest**" shall mean, with respect to the Brooks Farm Parcel, that date listed as the Delivery Date Earliest on the Delivery Schedule in Exhibit E.

(l) "**Delivery Date Expected**" shall mean, with respect to the Brooks Farm Parcel, that date listed as the Delivery Date Expected on the Delivery Schedule in Exhibit E.

(m) "**Delivery Date Outside**" shall mean, with respect to the Brooks Farm Parcel, that date listed as the Delivery Date Outside on the Delivery Schedule in Exhibit E.

(n) "**Delivery Schedule**" shall mean the schedule for completion by LGE of the Storage Cell located on the Brooks Farm Parcel attached hereto as Exhibit E and incorporated herein by this reference.

(o) "**Ditch Company**" shall mean the Rural Ditch Company.

(p) "**Down Payment Deed of Trust**" shall have the meaning ascribed in Paragraph 3.2(a)(vi).

(q) "**Down Payment Promissory Note**" shall have the meaning ascribed in Paragraph 3.2(a)(vi).

(r) "**Due Diligence Period**" shall have the meaning ascribed in Paragraph 5.1.

(s) "**Excess Carriage Purchase Price**" shall mean the purchase price to be paid by TOF for the RDC Carriage Rights. The RDC Excess Carriage Purchase Price shall have the meaning ascribed in Paragraph 3.2(a)(ii).

(t) "**Excess Carriage Rights**" shall mean those collective rights to divert waters (which are appropriated, unappropriated, owned or leased) through the Rural Ditch for storage, recharge, and augmentation purposes, only at such times as the aforementioned ditch has available carrying capacity and can safely carry additional water, subject to the primary right of the Ditch Company to use the ditch for the diversion of water, and further subject to the additional limitations thereon as may be imposed by any or all of the terms of this Agreement (specifically including any limitations set forth in any written assignments or grants of such Excess Carriage Rights to TOF as contemplated by this Agreement), and any and all liabilities, costs, limitations and requirements imposed thereon by the Ditch Company, LGE, the Water Courts of the State of Colorado and any other third parties having priority over or control of the use thereof.

(i) **Excess Carriage Rights in the Rural Ditch**. When used in this Agreement with reference to the Rural Ditch, the term "Excess Carriage Rights" shall mean those rights granted by the Rural Ditch Company in that certain Agreement dated June 10, 2005, between such Ditch Company and LGE, wherein the Rural Ditch Company (subject to the primary right of such Ditch Company to use the Rural Ditch for diversion of water) granted to LGE a right to divert waters which are appropriated, unappropriated, owned or leased through the Rural Ditch for storage, recharge, and augmentation purposes, only at such times as the Rural Ditch has available carrying capacity and when such ditch can safely carry additional water (defined therein as "Excess Capacity"), subject to certain limitations described therein, which include but are not limited to the right to use 7 cfs Excess Capacity up to a maximum of 6,088 acre feet of water per year through the Rural Ditch, such Agreement being recorded in the real property records of Weld County, Colorado on June 20, 2005 at Reception No. 3296147.

(u) "**Excess Carriage Rights Assignments**" shall have the meaning ascribed in Paragraph 3.1(c).

(v) "**Final Growth**" shall mean the process of growth of vegetation on the Revegetated Acreage, commencing at the time when the DRMS has approved LGE's initial seeding, fertilization and mulching of the Revegetated Acreage (including any reseeding, fertilization and mulching of any areas required by the DRMS to confirm that initial vegetation of the Revegetated Acreage has been established) and culminating when all such vegetation is capable of "self-regeneration" without continued dependence on irrigation, soil amendments or fertilizer, all as determined by the DRMS in accordance with its rules and regulations.

(w) "**Fixed Unit Price**" shall mean the value per acre foot of sealed water Storage Capacity located in a particular Storage Cell. The Fixed Unit Price for Storage Capacity located on the Brooks Farm Parcel will be equal to the Base Unit Price therefor (as such term is defined below) as adjusted for the aggregate increase, if any, in the Index (as such term is defined below) between the Base Date (as such term is defined below) and the earlier to occur of the date of the Brooks Farm Closing or the Delivery Date Expected. As used above:

(i) "**Base Unit Price**" shall mean $3,000.00 per acre foot of Storage Capacity;

(ii) "**Base Date**" shall mean the date which is five years after the date of that certain Option to Purchase (Brooks Farm) between the Parties dated December 20, 2018, to which the form of this Agreement was attached as Exhibit B, namely the "Base Date" is December 20, 2023; and

(iii) "**Index**" shall mean the Consumer Price Index, All Urban Consumers, U.S. City Average, all items (1982 – 84 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or if such index is no longer published, the U.S. Department of Labor's most comprehensive official index then in use which most nearly corresponds to the index named above. A copy of the Index as it existed in November 2016 is attached for reference as Exhibit M.

(x) "**Force Majeure**" shall have the meaning ascribed in Paragraph 11.28.

(y) "**Hazardous Substance**" shall mean (i) any substance or material defined in or governed by any federal, state or local law, statute, code ordinance, rule, regulation, requirement or guidance relating to the environment and/or to the impact thereof on human health or safety, or governing, regulating or pertaining to the generation, treatment, storage, handling, transportation, use or disposal of any Hazardous Substance whether now or hereafter enacted; (ii) any substance, the presence of which requires investigation, notification, reporting or remediation thereunder or under any theory of common law; (iii) any dangerous, toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, or mutagenic substance; (iv) any substance, the presence of which on the Property or on lands contiguous with the boundaries of the Property would pose a hazard to the environment or to the health or safety of persons on or about any property; (v) any substance, the presence of which could constitute a trespass; and (vi) specifically and without limitation, metals, lead, polychlorinated biphenyls, asbestos or asbestos-containing materials, petroleum and petroleum products.

(z) "**Initial Closing**" shall have the meaning ascribed in Paragraph 7.1.

(aa) "**Initial Closing Contingencies**" shall have the meaning ascribed in Paragraph 7.1.

(bb) "**Initial Materials**" and "**Materials**" shall have the meanings ascribed in Paragraph 5.2.

(cc) Intentionally omitted.

(dd) "**LGE Property**" shall mean, collectively, all assets being conveyed or otherwise granted by LGE to TOF pursuant to the terms of this Agreement including all of LGE's right, title and interest in and to the Brooks Farm Parcel, the LGE Water Rights, the Storage Capacity, the LGE Storage Right Application/Decree, and the Excess Carriage Rights.

(ee) "**LGE Storage Right Application/Decree**" shall mean all of LGE's right, title and interest in and to, and all claims and rights of LGE associated with, Colorado Water Court Case No. 16 CW 3191 concerning the water storage reservoir being developed on the Brooks Farm Parcel and all water, water rights, reservoirs and reservoir rights governed thereby, but only as such rights, interest and claims are applicable to the Brooks Farm Parcel (with all other rights, interest and claims of LGE with respect to other properties in such proceedings, if any, being retained by LGE or other third parties to such proceedings).

(ff) "**LGE Water Rights**" shall collectively mean 1.9 shares of capital stock in the Rural Ditch Company currently owned by LGE, and all other water and water rights appurtenant to or otherwise associated with the Brooks Farm Parcel, including but not limited to any and all water and water rights (including water storage rights), rights to use water, groundwater, 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 owned by LGE. In addition to the Subject Shares, the Water Rights appurtenant to the Brooks Farm Parcel specifically include all water and water rights, wells and well rights evidenced by and associated with any permitted or unpermitted water wells located on the Brooks Farm Parcel, if any.

(gg) "**LGE Water Rights Purchase Price**" shall have the meaning ascribed in Paragraph 3.2(b).

(hh) "**License to Enter**" shall have the meaning ascribed in Paragraph 5.3.

(ii) "**Lining Criteria**" shall mean the minimum performance standards of the State Engineer Guidelines for Lining Criteria for Gravel Pits, issued August, 1999.

(jj) "**Parcel**" shall mean those portions of real property, specifically including any Storage Cells associated with and located on such real property (if any), to be conveyed at the Closing described in Paragraph 7.3 of this Agreement. The Parcel to be conveyed is the "**Brooks Farm Parcel**", which is more particularly identified and legally described in Exhibit A, along with the estimated location of the Storage Cell to be located thereon, and which contains approximately 56.2 acres, all of which is located in the Town of Firestone, Weld County, Colorado. The Brooks Farm Parcel will contain, upon completion of mining and the Reclamation Obligations, one Storage Cell.

The Brooks Farm Parcel, fee title to which is to be conveyed to Purchaser in accordance with the terms of this Agreement, will specifically include with such conveyance at the Brooks Farm Closing therefor, as inclusions, all of the following to the extent then owned by Seller and located on or used in connection with or appurtenant to such Parcel: (1) the surface estate; (2) all remaining topsoil, overburden and aggregate resources (including Sand and Gravel) then situated thereon or therein; (3) any easements and other appurtenances thereto (unless specifically excluded by other provisions of this Agreement); and (4) unless otherwise specifically excluded by other provisions

of this Agreement and specifically subject to the terms of the last subparagraph of this Paragraph 1.1(jj) below, all improvements thereto, all residences and buildings, out buildings, fences, water wells, headgates, pipelines, ditches, laterals, gated pipe, flumes, reservoirs, reservoir outlet works, water tanks, wells, well casings, irrigation sprinklers, pumps and all other valuable manmade structures which are fixtures thereon or otherwise appurtenant thereto; but such conveyance will specifically exclude therefrom (and reserve to Seller) all oil, gas, minerals and mineral rights currently owned by Seller, if any, with respect to the Brooks Farm Parcel.

Unless otherwise expressly set forth in this Agreement, no personal or trade fixtures of Seller will be included in the conveyance of the Brooks Farm Parcel to Purchaser. For example, no mining equipment, or any batch plant or ready mix plant, or any components thereof, located on the Brooks Farm Parcel (or installed thereon by or with the consent of LGE prior to the applicable Closing) will be included as a part of the conveyance of the Brooks Farm Parcel to TOF by LGE. In order for any such items to be included in any such conveyance, the inclusion thereof must be specifically provided for by the terms of this Agreement. If not included with any such conveyance, all such items must be removed (or caused to be removed) by Seller from the Brooks Farm Parcel prior to the Brooks Farm Closing as conducted in accordance with Paragraph 7.3 of this Agreement.

(kk) "**Party**" and "**Parties**" shall have the meanings ascribed in the initial paragraph of this Agreement.

(ll) "**Permits**" shall mean all permits as are required by all federal, state, city, town, county or other governmental agencies for the excavation, mining and lining of the Storage Cells as water storage facilities including, but not limited to: (i) that certain Section 112(c) Reclamation Permit granted by the Colorado Division of Reclamation Mining and Safety for the Brooks Farm Parcel (Permit No. M-2001-017) as amended (the "**Section 112(c) Permit**"); and (ii) that certain Town of Firestone Conditional Use Permit titled "Conditional Use Permit Carbon Valley Resource – Brooks Farm Area" more particularly described on the recorded CUP recorded at Reception No. 4305245 on May 26, 2017 with the Weld County Clerk and Recorder, and any ancillary permits and/or overall development plans required by TOF in connection with LGE's development of the Brooks Farm Parcel; but specifically excluding therefrom any permits that may be required solely due to the future operation of the Storage Cells by TOF.

(mm) "**Permitted Exceptions**" shall have the meaning ascribed in Paragraph 4.2.

(nn) "**Policy**" shall have the meaning ascribed in Paragraph 4.1.

(oo) "**Purchaser**" shall have the meaning ascribed in the initial paragraph of this Agreement.

(pp) "**RDC Carriage Rights"** When used in this Agreement, the term "RDC Carriage Rights" shall have the meaning ascribed to the Excess Carriage Rights in the Rural Ditch by Paragraph 1.1(t)(i) of this Agreement.

(qq) "**Reclamation Obligations**" shall mean the obligation to complete the mining and reclaiming of the Brooks Farm Parcel in accordance with all of the Permits and as required by all applicable federal, state and local regulatory agencies, but specifically excluding

therefrom, the obligation contained in the Section 112(c) Permit to achieve Final Growth of the Revegetated Acreage.

(rr) "**Reclamation Plan**" shall mean the reclamation plan, as amended, submitted by LGE and approved by the DRMS for the Brooks Farm Parcel indicating how the affected mined lands located thereon will be reclaimed.

(ss) "**Revegetated Acreage**" shall mean that portion of the Brooks Farm Parcel where revegetation is required by the Reclamation Plan.

(tt) "**Sand and Gravel**" shall mean all aggregate, stone, rock, silt, clay, shale, overburden, topsoil and other solid minerals, including without limitation, sand and gravel.

(uu) "**Seller**" shall have the meaning ascribed in the initial paragraph of this Agreement.

(vv) "**SEO Certification**" shall mean correspondence from the Colorado State Engineer's Office (also referenced in this Agreement as the "**State Engineer**" or the "**SEO**") certifying that a Storage Cell enclosed by a Slurry Wall has passed the Slurry Wall Leakage Test.

(ww) "**Slurry Wall**" and "**Slurry Walls**" shall mean, but only as applicable to the Brooks Farm Parcel, any one or more Soil-Bentonite Slurry-Trench Cutoff Wall(s) and/or any other impermeable barrier(s) including, but not limited to, earth-berms and/or clay liners that have been designed, constructed and utilized to circumscribe, line and seal certain gravel pits located on the Parcel (but only those gravel pits which have been specifically designated in this Agreement as Storage Cells), so that the water Storage Cells thus created meet and/or exceed the criteria therefor set forth by the Office of the State Engineer in Paragraph 2.0 "Construction Standards" and Paragraph 3.0 "Performance Standards" in its "State Engineer Guidelines for Lining Criteria for Gravel Pits", August 1999. For purposes of clarity, the term "Slurry Wall(s)" will specifically exclude any temporary safety berm(s) which are or may be required to be constructed by LGE on the Brooks Farm Parcel during LGE's mining operations thereon in compliance with the regulations of the Mine Safety and Health Administration of the United States Department of Labor; the Parties hereby acknowledging that such temporary safety berm(s) will not in any event be able to satisfy the required design or construction requirements for Slurry Wall(s) set forth above, and cannot therefore be considered to be "Slurry Walls" as such term is defined herein.

(xx) "**Slurry Wall Leakage Tests**" shall mean those tests as specified by the State Engineer to determine compliance with the "State Engineer Guidelines for Lining Criteria for Gravel Pits" (August, 1999).

(yy) "**Storage Capacity**" shall mean, with respect to the Storage Cell, the cumulative volume of water capable of being impounded within such Storage Cell as measured from the elevation of the lowest surveyed point to the elevation of the high-water line of the Storage Cell as excavated, reclaimed and completed pursuant to the Permits, expressed in acre feet. For the purpose of calculating the Storage Capacity, the elevation of the high-water line shall be set as the elevation of the lowest point along the top of the Slurry Wall (or other lining system), as measured along the perimeter of the centerline of the Slurry Wall which circumscribes the Storage Cell.

(zz) "**Storage Cell**" shall mean the gravel pit located on the Parcel, which has been excavated and lined by LGE in accordance with the Permits, and which is circumscribed by a Slurry Wall, which will be conveyed to TOF as a part of the transactions described in this Agreement.

(aaa) "**Storage Purchase Price**" shall mean the Storage Capacity of an individual Storage Cell multiplied by the Fixed Unit Price per acre foot of the volume of water which can be stored therein, expressed in U.S. Dollars.

(bbb) "**Subject Shares**" shall mean the shares of capital stock in the Rural Ditch Company evidencing a portion of the LGE Water Rights.

(ccc) "**Survey**" shall have the meaning ascribed in Paragraph 6.1.

(ddd) **Supplemental Initial Closing**" shall have the meaning ascribed in Paragraph 7.2(b).

(eee) **Supplemental Initial Closing Contingencies**" shall have the meaning ascribed in Paragraph 7.2(a).

(fff) "**Temporary Access and Reclamation Easement**" shall have the meaning ascribed in Paragraph 3.1(b)(ii).

(ggg) "**Title Company**" shall have the meaning ascribed in Paragraph 4.1.

(hhh) "**Title Inspection Period**" shall have the meaning ascribed in Paragraph 4.1.

(iii) "**Title Response Time**" shall have the meaning ascribed in Paragraph 4.1.

1.2 Recitals Part of Agreement. The foregoing Recitals are hereby incorporated into this Agreement as a material part hereof.

2. INTENTIONALLY OMITTED

3. SALE OF LGE PROPERTY TO TOF AND OTHER RELATED AGREEMENTS

3.1 Purchase and Sale of LGE Property. In connection with and specifically contingent upon the various other transactions and Closings contemplated by the terms of this Agreement, LGE will convey or otherwise transfer to TOF the LGE Property, as described in this Paragraph 3.1.

(a) Real Property. TOF agrees to purchase, and LGE agrees to sell and convey to TOF, free and clear of any and all encumbrances other than the Permitted Exceptions, on the terms and conditions set forth in this Agreement, the Brooks Farm Parcel. Prior to the Brooks Farm Closing (described in Paragraph 7.3 of this Agreement), LGE reserves the right to extract all Sand and Gravel from the Storage Cell located on the Brooks Farm Parcel. LGE's right to mine, extract and use Sand and Gravel on the Brooks Farm Parcel shall expire at the Brooks Farm

Closing. The timing of the Brooks Farm Closing shall comply with the Delivery Schedule contained in Exhibit E attached hereto.

The conveyance of the Brooks Farm Parcel by LGE to TOF shall be subject to the following terms:

(i) Storage Cells. Prior to the Brooks Farm Closing, LGE shall, in accordance with the terms of this Agreement, have excavated and lined a gravel pit circumscribed by a Slurry Wall, generally in the configuration for such Storage Cell depicted on Exhibit B attached hereto. The Storage Cell shall consist of that portion of the Brooks Farm Parcel circumscribed by the centerline of the Slurry Wall and/or the crest of the final reclamation slope as formed by the earth berm or clay liner constructed for such Storage Cell (as shown on the updated Survey as provided for under Paragraph 6.2). At the Brooks Farm Closing, Seller shall deliver to Purchaser use of such Storage Cell. The Parties hereby agree that the configuration of the Storage Cell described in Exhibit B may not constitute final design and that LGE may change the configuration of the Storage Cell to meet the requirements of: (A) the Permits, (B) field conditions encountered during the course of mining, construction and reclamation of the final Slurry Wall and Storage Cell construction, and/or (C) other requirements set by the Office of the State Engineer, including but not limited to the final design and alignment of each Slurry Wall, pit crest, pit slope design, pit depth, pit floor and rough grading, prior to the Brooks Farm Closing, unless such changes in configuration will materially diminish or increase the Storage Capacity of the Storage Cell, in which case such modifications will be subject to TOF's prior approval in TOF's commercially reasonable discretion. For purposes of the preceding sentence a "material" increase or decrease in the Storage Capacity of the Storage Cell will be an increase or decrease in such Storage Capacity of more than 150 acre feet.

(b) Access Easements. LGE and TOF agree to grant the following interests to the other as provided for below:

(i) At the Initial Closing, LGE shall grant to TOF, access and construction easements to, over, and across those portions of the Brooks Farm Parcel which are mutually agreeable to both Parties, for the purpose of installing, operating and maintaining those water transfer and related facilities on, over, through and under such properties which are necessary to transfer water into and out of the various Storage Cells to be acquired from LGE by TOF in the form of the Access and Improvements Easement Agreement attached hereto as Exhibit C (the "**Access Easement**").

(ii) In conjunction with the Brooks Farm Closing, but only as may be required or deemed necessary by LGE, TOF shall grant to LGE a temporary non-exclusive access easement to, over, and across those portions of the Brooks Farm Parcel conveyed or granted to TOF at such Closing for the purpose of performing LGE's obligations under this Agreement, including LGE's obligations to satisfy any remaining Reclamation Obligations under the Permits, which easement shall be in the form of the Temporary Access and Reclamation Easement Agreement attached hereto as Exhibit D (the "**Temporary Access and Reclamation Easement**").

(c) Excess Carriage Rights (Rural Ditch) and Last Chance Ditch Expansion of Permitted Use. At the Brooks Farm Closing, LGE shall: (1) assign to TOF the RDC Carriage

Rights in the Rural Ditch, subject to the consent of the Rural Ditch Company, pursuant to the terms of an Assignment and Assumption Agreement (Rural Ditch Company Agreement) substantially in the form attached hereto as Exhibit F; and (2) provide to TOF, certain expanded rights to use, for the benefit of the Brooks Farm Parcel, certain secondary excess carriage rights of LGE in the Last Chance Ditch (previously acquired by TOF from LGE exclusively for the benefit of and use on TOF's adjacent Carbon Valley Parcel) pursuant to the terms of that certain First Amendment to Unused Carriage Capacity Agreement (Last Chance Ditch) in the form attached hereto as Exhibit I (collectively, the "**Excess Carriage Rights Assignments**").

(d) Water Rights. TOF desires to purchase the 1.9 shares of capital stock currently owned by LGE in the Rural Ditch Company, which comprise a portion of the LGE Water Rights. At the Brooks Farm Closing, TOF agrees to purchase, and LGE agrees to sell and convey to TOF, free and clear of any and all encumbrances, the LGE Water Rights. Conveyance of the LGE Water Rights shall be by bargain and sale deed, and LGE's endorsement of the Subject Shares to TOF.

(e) Storage Rights. At the Brooks Farm Closing, or such earlier date as agreed upon by the Parties, LGE shall, as may be appropriate under the circumstances and as may be mutually agreed upon by LGE and TOF, either: (i) assign and convey to TOF the LGE Storage Right Application/Decree pursuant to the terms of an Assignment and Assumption Agreement (Colorado Water Court Case Rights) substantially in the form attached hereto as Exhibit H (the "**LGE Storage Rights Assignment**") and, upon request of TOF, by execution of a bargain and sale deed to TOF with respect thereto if the storage decree has been previously entered by the water court; or (ii) amend the filed application to include TOF as an applicant or to substitute TOF for LGE as the applicant; or (iii) dismiss the application so as to permit TOF to file TOF's own separate application with respect thereto.

3.2 Purchase Prices, Down Payment and Security for Down Payment Applicable to the Sale of the LGE Property. The purchase price to be paid by TOF to LGE for the LGE Property described in Paragraph 3.1 will be as follows:

(a) Brooks Farm Parcel. The purchase price for the entire right, title and interest of LGE in and to the Brooks Farm Parcel will be the sum of the Storage Purchase Price applicable to the Brooks Farm Storage Cell and the Excess Carriage Purchase Price for the RDC Carriage Right.

(i) Storage Purchase Price (Brooks Farm Parcel). The Storage Purchase Price applicable to the Brooks Farm Storage Cell will be the product of the total Storage Capacity of the completed Storage Cell located on the Brooks Farm Parcel (which total Storage Capacity is currently estimated to be 1,150 acre feet) times the Fixed Unit Price for Storage Capacity. The Fixed Unit Price for Storage Capacity located at the Brooks Farm Parcel from the effective date of this Agreement through the Base Date is fixed at $3,000.00 per acre foot. Thus, the currently estimated aggregate Storage Purchase Price for the Brooks Farm Parcel Storage Cell is $3,450,000.00.

(ii) Excess Carriage Purchase Price (Brooks Farm). The purchase price for the RDC Carriage Rights (the "**RDC Excess Carriage Purchase Price**") will be $6,000.00 per cubic foot per second (i.e., 7 CFS x $6,000.00 per CFS = $42,000.00.

(iii) Other Rights at No Additional Cost. Any additional real property rights or other rights referenced in this Agreement which are appurtenant to the Brooks Farm Parcel which are required to be granted or conveyed to TOF pursuant to the terms of this Agreement, will be granted or conveyed by LGE to TOF for no additional consideration.

(iv) Down Payment (LGE Property). The total amount of the down payment due by TOF to LGE for the LGE Property is $898,000.00. Subject to the satisfaction of the Initial Closing Contingencies, or as applicable, the Supplemental Initial Closing Contingencies, TOF shall deliver to LGE at the Initial Closing, or as applicable, the Supplemental Initial Closing, an earnest money deposit in the amount of $898,000.00 in cash by wire transfer. The full amount of the down payment actually received by LGE from TOF in accordance with the terms hereof will be applied to the purchase price of the LGE Property at the Brooks Farm Closing.

(v) Progress Payments. Due to the short time period anticipated by the Parties between the Supplemental Initial Closing and the Brooks Farm Closing, there will not be any progress payments required to be made to LGE by TOF in connection with the LGE Property transaction other than the down payment described above in Paragraph 3.2(a)(iv).

(vi) Security for Brooks Farm Down Payment. From the date of the Supplemental Initial Closing through the date of the Brooks Farm Closing, or the earlier termination of this Agreement and any required return of the Brooks Farm down payment, the Brooks Farm down payment made by TOF to LGE shall be secured by a Deed of Trust in first lien position against the Brooks Farm Parcel (the "**Down Payment Deed of Trust**"), which shall be in the form attached hereto as Exhibit J, and a lien, recorded on the stock certificate evidencing the Subject Shares, for the benefit of TOF to secure any potential refund to TOF of the down payment required by this Agreement. If LGE fails to convey the Brooks Farm Parcel and/or the LGE Water Rights to TOF or to return the down payment to TOF when and as required by the terms of this Agreement, then TOF shall, in addition to TOF's other rights and remedies under this Agreement, have the right to pursue such additional rights and remedies as may be available at law or in equity as a result of such failure, including without limitation, the right to foreclose on the Down Payment Deed of Trust and/or the Subject Shares. LGE hereby agrees to execute and deliver to TOF a promissory note or notes in the respective amounts of the Brooks Farm down payment, as and when made by TOF, evidencing LGE's obligation to apply the down payment received by LGE to the purchase price of the LGE Property, or to otherwise refund to TOF the down payment, if required, all pursuant to the requirements of this Agreement (the "**Down Payment Promissory Note**"), which shall be in the form attached hereto as Exhibit K, and to take such actions as are necessary to have the Rural Ditch Company note the TOF lien on the Subject Shares. The Down Payment Promissory Note, the Down Payment Deed of Trust, and lien on the Subject Shares will be cancelled and released to the commercially reasonable satisfaction of LGE at the Brooks Farm Closing or as otherwise required hereunder.

(b) LGE Water Rights and LGE Storage Rights Assignment. The purchase price applicable to the LGE Water Rights will be $365,336.00 per share of stock in the Rural Ditch

Company, resulting in a total purchase price for the LGE Water Rights of $694,138.40 (i.e., 1.9 x $365,336.00) (the "**LGE Water Rights Purchase Price**"). The LGE Storage Right Application/Decree will be amended, dismissed or assigned by LGE to TOF at the Closing, as applicable, for no additional consideration.

4. TITLE AND POLICIES

4.1 Preliminary Title Commitment. Within 30 days after the date of this Agreement, Seller will procure and deliver to Purchaser, at Seller's expense, a title commitment for the issuance of an ALTA extended coverage owner's title insurance policy with respect to the Brooks Farm Parcel to be conveyed to Purchaser pursuant to the terms of this Agreement, as issued by Stewart Title Guaranty Company of Denver, Colorado (the "**Title Company**"), together with copies of tax certificates and all recorded documents referenced therein (the "**Commitment**"). Pursuant to the Commitment, the Title Company will agree to issue to Purchaser an owner's policy insuring all of the real property interests to be acquired by Purchaser in the amount of the purchase price, without exception for any matters other than current taxes and assessments, easements, rights of way, covenants, conditions, restrictions, reservations, agreements and other matters of record, as shown in the Commitment and approved by Purchaser as a Permitted Exception (the "**Policy**"). The Commitment will affirmatively provide for the deletion, at Seller's sole expense, of all standard printed exceptions to the extent that the Title Company will agree to delete such exceptions after review of all information provided by Seller. Purchaser shall have until the date which is 10 days from the date of actual receipt of both the Commitment and the Survey by Purchaser (the "**Title Inspection Period**") in which to examine the Commitment and Survey and to give written notice to Seller of Purchaser's objection to any matter contained therein which Purchaser finds objectionable. Seller shall have 10 days from the actual receipt of such notice of title objection to elect either to: (i) cure some or all of the objections or defects so specified; or (ii) give notice that Seller elects not to cure such objections. If, within said 10 day period of time (the "**Title Response Time**"), Seller gives notice to Purchaser that Seller will not correct all such objections or defects prior to the Brooks Farm Closing, then Purchaser shall have, as its exclusive remedies, the right to terminate this Agreement, or to waive such objections or defects which Seller has elected not to cure and proceed with the Brooks Farm Closing. Within 10 days after the earlier of: (i) the expiration of Title Response Time; or (ii) the date of the giving by Seller to Purchaser of written notice that Seller elects not to cure all or any of such objections or defects, Purchaser shall give Seller written notice of which remedy Purchaser has elected, and if Purchaser's election is to waive such objections and defects and Close, then such defects and matters having been objected to shall be deemed Permitted Exceptions. If, prior to the expiration of such 10 day period, Purchaser has not given such written notice to Seller, Purchaser shall be deemed to have affirmatively elected to Close the transaction evidenced by this Agreement.

4.2 Permitted Exceptions. Seller shall grant or convey, as applicable, such title or interest to the Brooks Farm Parcel provided for under this Agreement at the Brooks Farm Closing subject only to such matters of title affecting the subject property that are either: (i) the result of Purchaser's acts or omissions; or (ii) approved by Purchaser pursuant to this Agreement (such matters hereinafter collectively referred to as "**Permitted Exceptions**"), provided that the term "Permitted Exceptions" shall not be deemed to include any liens (except the lien for real estate taxes not yet due or payable) or monetary encumbrances of any kind. Notwithstanding the foregoing, or any other contrary provision of this Agreement, Purchaser shall be obligated to

accept title to the Brooks Farm Parcel subject to the following exceptions to title, which shall for the purposes herein, specifically constitute Permitted Exceptions:

(a) real estate taxes and assessments not yet delinquent;

(b) the printed exceptions which appear in the form ALTA standard owner Policies issued by Title Company in the State of Colorado; and

(c) such other exceptions as are approved by Purchaser pursuant to the terms of this Agreement.

4.3 Updated Commitment. On or before the date of the Brooks Farm Closing described in Paragraph 7.3, Seller shall obtain and deliver to Purchaser, at Seller's expense, either an updated Commitment for the Brooks Farm Parcel, or an endorsement to the Commitment with a current effective date, in either case showing no exceptions affecting the Brooks Farm Parcel other than the Permitted Exceptions, providing for the appropriate title insurance amount, and confirming the deletion of all requirements that must be satisfied as a condition to the issuance of the Policy for the Brooks Farm Closing.

4.4 Title Policy. Within a reasonable time after the date of the Brooks Farm Closing described in Paragraph 7.3, Seller, at its expense, shall cause the Title Company to deliver the Policy to Purchaser, insuring Purchaser's title to the real property interests purchased at such Closing in an amount equal to the sum of the purchase price paid by Purchaser for the subject property at such Closing. The Policy shall be subject only to the Permitted Exceptions, and Seller shall pay, at such Closing, the premium for the Policy and any endorsements to the same which were requested by Seller to cure any title objections or defects identified by Purchaser during the Title Inspection Period and which Seller elected to cure.

5. DUE DILIGENCE AND ACCESS

5.1 Due Diligence. Purchaser shall have until the day which is 45 days following the date of this Agreement (the "**Due Diligence Period**"), to terminate this Agreement if Purchaser is dissatisfied with the property and/or the water rights to be acquired hereunder by Purchaser for any reason. Subject to any additional rights granted to TOF by the terms of Article 8 of this Agreement, it shall be conclusively presumed that Purchaser is satisfied with such property if Purchaser fails to send written notice to Seller to the contrary on or before the expiration of the Due Diligence Period. If Purchaser sends notice of its dissatisfaction with the Property on or before expiration of the Due Diligence Period, Seller shall have 10 days from the actual receipt of such notice of dissatisfaction to elect either to (i) give notice that Seller elects to cure some or all of the issues described in the notice prior to the applicable Closing, or (ii) give notice that Seller elects not to cure such issues. If, within said 10 day period of time (the "**Property Dissatisfaction Response Time**"), Seller gives notice to Purchaser that Seller will not cure all such issues prior to the Brooks Farm Closing, then Purchaser shall have, as its exclusive remedies, the right to terminate this Agreement, or to waive any issues raised in Purchaser's notice which Seller has elected not to cure and proceed with the Closing. Within 10 days after the earlier of: (i) the expiration of the Property Dissatisfaction Response Time; or (ii) the date of the giving by Seller to Purchaser of written notice that Seller elects not to cure all or any of the issues, Purchaser shall

give Seller written notice of which remedy Purchaser has elected, and if Purchaser's election is to waive such issues and Close, then such issues shall be deemed waived; and if Purchaser provides no written notice, then this Agreement will terminate in its entirety and both Parties will be relieved of all obligations under this Agreement except for those obligations which specifically survive termination.

5.2 Materials. Prior to the date of this Agreement, Seller may have delivered to Purchaser certain information regarding the Brooks Farm Parcel (such materials the "**Initial Materials**"). In connection with Purchaser's due diligence review, Seller shall deliver to Purchaser any information or materials reflecting a change to any of the Initial Materials, as well as all other information and materials in such Seller's possession or reasonable control with respect to the Brooks Farm Parcel (collectively the "**Materials**"). Furthermore, within 10 days after the execution of this Agreement, and thereafter during the remainder of the term of this Agreement, Seller shall promptly provide Purchaser with access to any Materials, or in Seller's reasonable discretion, final copies thereof, as may currently be or as may hereafter come into Seller's possession or control, including but not limited to:

(a) Copies of all permits, licenses, certificates, commitments, governmental applications, or agreements relating to the zoning, operation, maintenance, occupancy or use of the Parcel; provided however, that with respect to the Permits (as such term is defined in Paragraph 1.1(ll) of this Agreement), TOF hereby agrees and acknowledges that: (1) in order to inspect and examine complete copies of each of the Permits, TOF will be required to access such Permits at LGE's offices or at the respective offices of the jurisdictions granting such Permits; (2) any applicable zoning ordinances will not be available for inspection at the offices of LGE; and (3) due to the voluminous nature of same, LGE will not be providing copies of any of the Permits to TOF.

(b) Copies of any surveys, soils geotechnical and engineering reports, feasibility studies, site plats and plans, and other reports, studies or documents relating to the Parcel.

(c) Copies of any and all lease, occupancy or use agreements concerning the Parcel, including but not limited to any lease agreements concerning the development of oil and gas deposits underneath the Parcel, which have or will have any material application to or be binding on all or any portion of the Parcel to be acquired by Purchaser at the Closing hereunder, with all other agreements not so disclosed by Purchaser being required hereby to be terminated by Seller prior to or contemporaneously with the Closing hereunder conveying the Parcel from Seller to Purchaser. In other words, if such documentation will have no effect whatsoever on the Parcel subsequent to the Closing affecting the Parcel, or if such agreement(s) will be fully and effectively terminated by Seller at or prior to such Closing, then copies of such document(s) need not be provided to Purchaser as a part of the Materials, but in such cases such documents must not bind the Parcel or Purchaser in any way subsequent to such Closing.

(d) Copies of any and all other agreements concerning or related to the Parcel, which have or will have any material application to or be binding on all or any portion of the Parcel to be acquired by Purchaser at the Closing hereunder, with all other agreements not so disclosed by Purchaser being required hereby to be terminated by Seller prior to or contemporaneously with

the Closing hereunder conveying the Parcel from Seller to Purchaser. In other words, if such documentation will have no effect whatsoever on the Parcel subsequent to the Closing affecting the Parcel, or if such agreement(s) will be fully and effectively terminated by Seller at or prior to such Closing, then copies of such document(s) need not be provided to Purchaser as a part of the Materials, but in such cases such documents must not bind the Parcel or Purchaser in any way subsequent to the Closing.

(e) Copies of any deeds, abstracts, title opinions, title insurance policies, title opinions, stock certificates, agreements, assignments, permits, applications, pleadings, decrees, engineering reports, photographs, records of use, and correspondence with the State water officials or the Ditch Company, or any other documents that pertain to Seller's ownership or use of any water rights which are the subject of this Agreement, as the same may be requested by Purchaser, including but not limited to any evidence of historical use of any such water rights in connection with the Parcel which are in the possession or reasonable control of Seller.

(f) Copies of any engineering reports, administrative approvals, historical use information, water delivery information or any other information related to the historical use of the Subject Shares. LGE will reasonably cooperate with TOF to obtain access to any records of the Ditch Company that pertain to the Subject Shares, if requested by TOF.

Seller's obligations to deliver the Materials may be effected by the means provided for delivery of Notices pursuant to Paragraph 11.24 hereof; provided, however, that Seller shall be deemed to have satisfied its obligations to deliver the Materials by arranging for Purchaser to have access to such Materials (including to make copies of such Materials) or any portions thereof during normal business hours at the offices of Seller.

5.3 License to Enter. Seller hereby grants Purchaser, from the date of this Agreement until the Brooks Farm Closing, the right, license, permission and consent for Purchaser and Purchaser's employees, agents, contractors, subcontractors and consultants to enter upon the Parcel on a non-exclusive basis for the purposes of performing tests, studies and analyses thereon ("**License to Enter**"); provided that: (i) Purchaser shall give Seller at least 24 hours advance telephonic notice (which access and notice shall be during regular business hours); and (ii) such access will not interfere with Seller's business operations thereon and will be conducted in accordance with all applicable safety regulations. Purchaser hereby agrees that Purchaser will be responsible for any and all damages to Seller and the Parcel which result from any actions whatsoever of Purchaser, its employees, agents, contractors, subcontractors and consultants resulting from any entry onto the Parcel pursuant to this License to Enter. Purchaser agrees to promptly refill holes dug and otherwise to repair any damage to the Parcel as a result of any such activities. Purchaser will permit no lien to attach to any portion of the Parcel as a result of such activities. Purchaser hereby agrees that Purchaser will to the extent permitted by law indemnify and hold Seller harmless from and against any damage that may be incurred by Seller as a result of such activities of Purchaser. Copies of all non-privileged third party due diligence reports prepared with respect to the Parcel by or on behalf of Purchaser must be furnished to Seller promptly after Purchaser's receipt thereof.

6. SURVEY

6.1 Initial Survey. Within 30 days after the date of this Agreement, Seller shall provide to Purchaser, at Seller's expense, any existing surveys of the Parcel to be acquired by Purchaser prepared by a land surveyor duly licensed in the State of Colorado identifying the boundaries of the Parcel and dated no more than seven years prior to the date of this Agreement (collectively, the "**Survey**").

6.2 Updated Survey of the Brooks Farm Parcel by LGE. On or before the date which is 30 business days prior to the Brooks Farm Closing, LGE will obtain and deliver to TOF, at LGE's expense, an updated Survey of the Brooks Farm Parcel which Survey: (i) shall depict and provide a legal description of the boundary line of the Storage Cell which is located on the Brooks Farm Parcel (which boundary is agreed by the Parties for the purpose of this Agreement to be defined as the centerline of the as-built Slurry Walls constructed as of such date); (ii) will be certified to TOF and Title Company by a surveyor's certificate in commercially acceptable form and substance; and (iii) will otherwise conform to the initial Survey as provided for in Paragraph 6.1 above. In the event the updated Survey of the Brooks Farm Parcel raises issues that cannot be resolved in the time remaining before the Brooks Farm Closing, the Parties will agree upon a rescheduled date for such Closing, such date not to exceed 90 days after the originally scheduled date of the Brooks Farm Closing. Prior to the date of the Brooks Farm Closing, LGE (at LGE's sole cost and expense) will cause the Brooks Farm Parcel to be subdivided or otherwise legally separated into a separate legal parcel capable of being conveyed to and owned separately by TOF.

7. CLOSINGS

7.1 Initial Closing. Except as otherwise specifically provided in this Paragraph 7.1, the granting by LGE of the Access Easement to TOF (the "**Initial Closing**") will be held on a date mutually agreeable to both Parties which is no later than 6 months after the date of this Agreement. The Parties will agree to the form of all the closing documents in advance of such Closing. The Initial Closing is subject to the satisfaction of the conditions and delivery of the documents as listed below (the "**Initial Closing Contingencies**"):

(a) TOF shall deliver to Title Company the following:

(i) an executed Access Easement;

(ii) such affidavits, instruments and materials as may be reasonably required by the Title Company, if any;

(iii) unless delayed until the Supplemental Initial Closing pursuant to the terms of Paragraph 7.2 below, the down payment of $898,000.00 for the LGE Property as more particularly described in Paragraph 3.2(a)(iv);

(iv) unless delayed until the Supplemental Initial Closing pursuant to the terms of Paragraph 7.2 below, payment for the recording of the Down Payment Deed of Trust; and

(v) an executed amendment to the Delivery Schedule (Exhibit E hereto) amending the Delivery Date Outside to a date which is two calendar years after the date of the Initial Closing, unless a Supplemental Initial Closing will be required in accordance with the terms of Paragraph 7.2, in which case the required amendment to the Delivery Date Outside will not

constitute an Initial Closing Contingency, but instead, such amendment will then constitute a Supplemental Initial Closing Contingency.

(b) LGE shall deliver to Title Company, the following:

(i) an executed Access Easement;

(ii) payment for the recording of the Access Easement;

(iii) a stock assignment executed by LGE evidencing LGE's request to the Rural Ditch Company to include on the Subject Shares a lien in favor of TOF to secure the Down Payment Promissory Note;

(iv) such affidavits, instruments and materials as may be reasonably required by the Title Company, if any;

(v) unless delayed until the Supplemental Initial Closing pursuant to the terms of Paragraph 7.2 below, the Down Payment Promissory Note required to evidence the Brooks Farm down payment received, and the Down Payment Deed of Trust required to secure such Down Payment Promissory Note; and

(vi) an executed amendment to the Delivery Schedule (Exhibit E hereto) amending the Delivery Date Outside to a date which is three and a half calendar years after the date of the Initial Closing, unless a Supplemental Initial Closing will be required in accordance with the terms of Paragraph 7.2, in which case the required amendment to the Delivery Date Outside will not constitute an Initial Closing Contingency, but instead, such amendment will then constitute a Supplemental Initial Closing Contingency.

(c) In conjunction with the Initial Closing, Title Company will be directed to and will record the Access Easement in the real property records of Weld County, Colorado for the benefit of TOF; deliver to TOF the original of the Access Easement (after recording), along with providing copies of the recorded Access Easement to both LGE and TOF, all at the expense of LGE; and, unless delayed until the Supplemental Initial Closing pursuant to the terms of Paragraph 7.2 below, deliver to TOF the original Down Payment Promissory Note; record the Down Payment Deed of Trust in the real property records of Weld County, Colorado for the benefit and at the expense of TOF; deliver to TOF the original Down Payment Deed of Trust (after recording), with copies to LGE; and deliver to LGE by wire transfer the sum of all cash down payments actually received by Title Company from TOF, less the closing expenses which LGE may direct Title Company to pay with such funds.

7.2 Supplemental Initial Closing. Notwithstanding the terms and conditions of Paragraph 7.1, under any circumstances where the Initial Closing is required to occur, but upon the date thereof, LGE is not in a position to complete the Storage Cell located on the Brooks Farm Parcel within three and a half calendar years of the date of such Initial Closing (and, therefore, is not in a position to amend the Delivery Schedule to provide that the Delivery Date Outside will occur three and a half calendar years after the date of the Initial Closing), then the Parties hereby agree as follows:

(a) The Initial Closing shall occur in accordance with the terms of Paragraph 7.1, except that: (i) TOF's delivery of the down payment for the LGE Property, TOF's payment for recording of the Down Payment Deed of Trust, and TOF's execution and delivery of the required amendment to the Delivery Schedule; and (ii) LGE's execution and delivery of the Down Payment Promissory Note, the Down Payment Deed of Trust, the stock assignment evidencing a lien on the Subject Shares (in favor of TOF and securing the Down Payment Promissory Note), and the required amendment to the Delivery Schedule (collectively, the "**Supplemental Initial Closing Contingencies**") will be deferred until the date of the Supplemental Initial Closing as determined in accordance with this Paragraph 7.2.

(b) If at the Initial Closing, for the reasons described in this Paragraph 7.2, LGE is unable to execute an amendment of the Delivery Schedule (agreeing to deliver the Storage Cell to TOF no later than three and a half calendar years after the date of the Initial Closing), then the Parties hereby agree to conduct a supplemental closing (the "**Supplemental Initial Closing**"), which will be held on a date mutually agreeable to both Parties, but which is no later than 30 days after LGE provides TOF with written notice that LGE is prepared to amend the Delivery Schedule to provide that the Delivery Date Outside will not be more than three and a half calendar years after the date of the Supplemental Initial Closing. The Parties will agree to the form of all closing documents in advance of such Closing. The Supplemental Initial Closing is subject to the satisfaction of the conditions and delivery of the Supplemental Initial Closing Contingencies, and the requirements of Paragraph 7.1(c) which apply thereto.

7.3 Final/Brooks Farm Closing. In addition to completion of the Initial Closing described in Paragraph 7.1 and, as applicable, the Supplemental Initial Closing described in Paragraph 7.2, this Agreement contemplates and requires a final Closing described as follows: the Closing, wherein TOF acquires from LGE, the Brooks Farm Parcel including the Storage Cell developed or to be developed by LGE on the Brooks Farm Parcel, the Excess Carriage Rights, the LGE Storage Right Application/Decree and the LGE Water Rights (referred to herein as the "Brooks Farm Closing").

The Brooks Farm Closing shall occur on the date which is 30 business days after TOF's receipt of a valid Completion Notice from LGE for the Storage Cell located on the Brooks Farm Parcel as provided for under Paragraph 8.1 below, or such other date as the Parties shall mutually agree. The following events shall take place at the time and place of such Closing. No payment or delivery shall be deemed made until after all the following events have been completed:

(a) TOF shall deliver to Title Company the following:

(i) an amount equal to the Brooks Farm Storage Purchase Price, the RDC Excess Carriage Purchase Price and the LGE Water Rights Purchase Price credited for all down payments, credits and offsets as provided for herein, in cash, via wire transfer;

(ii) an executed Assignment and Assumption Agreement (Rural Ditch Company Agreement) concerning the RDC Carriage Rights substantially in the form attached hereto as Exhibit F, an executed First Amendment to Unused Carriage Capacity Agreement (Last Chance Ditch) substantially in the form attached hereto as Exhibit I, an executed Assignment and Assumption Agreement (Colorado Water Court Case Rights) substantially in the form attached

hereto as Exhibit H (under the circumstances where required by the terms of Paragraph 3.1(e) of this Agreement), or an appropriate amendment or dismissal of the subject application, as applicable, and an executed successor operator agreement in the form attached hereto as Exhibit L (under the circumstances more particularly described in Paragraph 8.4(c));

(iii) the original Down Payment Promissory Note marked "cancelled" or "paid in full" and a full release of the Down Payment Deed of Trust sufficient for recording in the Weld County real property records;

(iv) an executed Temporary Access and Reclamation Agreement (as applicable);

(v) such assignments to, acceptances/assumptions of, and other documentation necessary to convey to TOF in such form(s) as mutually agreed to by the Parties with respect to any appurtenant rights applicable to the Brooks Farm Parcel, as may be reasonably requested by TOF;

(vi) a letter, affidavit or other instrument releasing TOF's lien on the stock certificates of the Subject Shares as necessary to transfer clear title to the Subject Shares to TOF;

(vii) such affidavits, instruments and materials as may be reasonably required by the Title Company in its issuance of the applicable Policy including, without limitation, settlement statements for the Closing; and

(viii) an instruction letter for the Title Company prepared by TOF consistent with the terms of this Agreement.

(b) LGE shall deliver to Title Company the following:

(i) an executed Deed conveying to TOF marketable title in and to the Brooks Farm Parcel, and any appurtenant rights thereto, and, subject to the specific exceptions thereto set forth in Paragraph 1.1 (jj), any fixtures located on or within the Brooks Farm Parcel, free and clear of any and all liens, taxes or encumbrances of any kind whatsoever except for: (1) the Permitted Exceptions; and (2) any reservations more particularly described in Paragraph 1.1(jj) and Paragraph 3.1 of this Agreement;

(ii) an executed Assignment and Assumption Agreement (Rural Ditch Company Agreement) concerning the RDC Carriage Rights substantially in the form attached hereto as Exhibit F, an executed First Amendment to Unused Carriage Capacity Agreement (Last Chance Ditch) substantially in the form attached hereto as Exhibit I, an executed Assignment and Assumption Agreement (Colorado Water Court Case Rights) substantially in the form attached hereto as Exhibit H (under the circumstances where required by the terms of Paragraph 3.1(e) of this Agreement), or an appropriate amendment or dismissal of the subject application, as applicable, and an executed successor operator agreement in the form attached hereto as Exhibit L (under the circumstances more particularly described in Paragraph 8.4(c));

(iii) in conjunction with the conveyance of the LGE Water Rights to TOF, a bargain and sale deed describing the LGE Water Rights and any other water rights appurtenant to the Brooks Farm Parcel, and LGE's assignment and endorsement of the Subject Shares to TOF on the original certificate evidencing the Subject Shares and a share assignment agreement from LGE to TOF for the Subject Shares in a form mutually agreed upon by the Parties, including the appointment of TOF as attorney-in-fact with authority to change the ownership records of the Rural Ditch Company with respect to the Subject Shares conveying the LGE Water Rights and Subject Shares free and clear of all liens and encumbrances, including the most recent assessments made by the Rural Ditch Company during the year of Closing and all prior years;

(iv) an executed Temporary Access and Reclamation Agreement (as applicable);

(v) such assignments and other documentation necessary to convey to TOF in such form(s) mutually agreed to by the Parties with respect to any appurtenant rights which are applicable to the Brooks Farm Parcel as may be reasonably requested by TOF;

(vi) such affidavits, instruments and materials as may be reasonably required by the Title Company in its issuance of the applicable Polices including, without limitation, settlement statements for the Closing; and

(vii) an instruction letter for the Title Company prepared by LGE consistent with the terms of this Agreement.

7.4 Intentionally omitted.

7.5 Title Company Instructions. In conjunction with the Brooks Farm Closing, the Title Company will be directed to and will: (1) record any of the documents described above in Paragraph 7.3 in the real property records of Weld County, Colorado, as directed by instruction letters prepared by each of the Parties which are consistent with the terms of this Agreement at the cost and expense of the Party for whose benefit such documents are being recorded; and (2) disburse any sums due to the Parties as described above in Paragraph 7.3, as directed by instruction letters prepared by each of the Parties which are consistent with the terms of this Agreement.

7.6 General Provisions Regarding Closings. The following provisions will apply to the Closing.

(a) Prorations. Real property taxes and assessments on the Brooks Farm Parcel for the year of Closing shall be prorated to the date of the Closing; provided, however, that if, as of the Closing Date, the actual tax bill for the year is not available and the taxes to be prorated cannot be ascertained, then the most recent known rates, millages and assessed valuations (which amounts shall relate to the same tax year) shall be conclusive as to the property taxes and assessments to be prorated.

(b) Closing Costs. The title insurance premium and endorsements required to delete title exceptions objected to by Purchaser and agreed to be cured by Seller pursuant to Paragraph 4 for the applicable Policy will be paid by Seller. Seller shall pay the title insurance premium for the Policy and for any applicable endorsement, if able to be provided by Title

Company, to provide extended coverage. All other endorsements as may be requested or required by Purchaser will be paid for by Purchaser. The costs of any transfer fees, transfer taxes or escrow fees and charges shall be shared equally between the Parties. Fees for real estate closing services shall be paid by Purchaser and Seller equally. Each Party shall pay the recording fees applicable to those documents recorded in favor of such Party. Any other costs of closing not expressly addressed hereunder shall be apportioned or paid for by Purchaser or Seller as is customary in the State of Colorado. All closing costs shall be paid by the Parties in good funds at or before Closing.

(c) Payment of Encumbrances. Any lien or encumbrance required to be paid by Seller shall be paid at or before Closing from the proceeds of this transaction or from any other Seller source.

8. COMPLETION OF STORAGE CELLS BY LGE

8.1 Completion and Purchaser Approval. Upon the completion of mining of the Storage Cell which is located or to be located on the Brooks Farm Parcel and those Reclamation Obligations of LGE set forth in the Section 112(c) Permit with respect thereto (specifically excluding achieving Final Growth on the Revegetated Acreage), LGE shall give TOF written notice that LGE is prepared to convey the Brooks Farm Parcel to TOF at a Closing (the "**Completion Notice**"). The Completion Notice shall include the following: (i) copies of documentation from the Colorado Division of Reclamation, Mining and Safety ("**DRMS**") evidencing that agency's reduction of LGE's bond for LGE's obligation to complete the applicable Section 112(c) Permit Reclamation Obligations with respect to the Brooks Farm Parcel (excluding Final Growth); (ii) copies of documentation confirming SEO Certification for the subject Storage Cell; and (iii) an as-built area-capacity survey of the Storage Cell with one-foot contours representing the Storage Capacity of the Storage Cell stamped and signed by a licensed surveyor. If the Parties are unable to proceed to a Closing on or before the applicable Delivery Date Outside, then TOF may elect to: (i) extend such Delivery Date Outside; (ii) file a claim against LGE for specific performance of the terms of this Agreement, or such other remedies as may be otherwise provided for herein or by law; or (iii) following not less than 15 days' notice thereof given by TOF to LGE, require LGE to convey to TOF the LGE Water Rights in exchange for the payment by TOF to LGE of the LGE Water Rights Purchase Price at a Closing therefor scheduled by TOF to occur no less than 15 days and no more than 30 days after LGE's receipt of such notice, and under such circumstances, at such Closing, the Parties will agree to otherwise extend the Delivery Date Outside to a date (no later than one calendar year thereafter) mutually agreed to by the Parties (or if the Parties cannot mutually agree to a date for such extension, then the Delivery Date Outside will automatically be extended for a period of nine months after the date of such Closing) with LGE being required to provide a Status Notice (as such term is defined in Paragraph 8.2(b) below) to TOF on the date of such Closing and, thereafter, on or before the first day of each calendar month subsequent to such Closing until a Completion Notice has been issued by LGE with respect to the Storage Cell.

8.2 Delivery Schedule. LGE shall complete the Storage Cell and the Section 112(c) Permit Reclamation Obligations with respect to the Brooks Farm Parcel and deliver a Completion Notice with respect to the same, in sufficient time so that the Parties can Close on the Brooks Farm Parcel on or before the Delivery Date Outside, but in no event shall such notice be delivered after the date which is 30 days before the Delivery Date Outside. Notwithstanding anything to the

contrary herein, TOF shall not be required to close before the Delivery Date Earliest; provided, however, that TOF may Close on such earlier date in TOF's sole discretion. If any Force Majeure event occurs which directly delays LGE's ability to deliver a Completion Notice and effect a Closing for the Brooks Farm Parcel, then to the extent that LGE has delivered timely notice of such Force Majeure event and complied with all other provisions of Paragraph 11.28, LGE may extend the Delivery Date Outside for such Storage Cell by one day for each day that LGE's performance was actually delayed by such Force Majeure event.

8.3 Permits and Reclamation Plan. LGE has obtained and disclosed to TOF, prior to the date of this Agreement, those Permits identified in Paragraph 1.1(ll), and TOF has reviewed and accepted these Permits prior to such date. However, the Parties agree that such review and acceptance by TOF is for the convenience of the Parties, LGE shall not rely thereon and any reliance by LGE upon such acceptance by TOF shall not create or give rise to any liability of or claim by LGE against TOF. LGE shall not obtain any additional Permits not identified in or otherwise contemplated by the terms of this Agreement nor further amend (specifically excluding technical revisions thereof) any Permit of the type identified in Paragraph 1.1(ll) without TOF's written consent and approval, which consent and approval shall not be unreasonably withheld provided that such amendment, modification or new Permit is consistent with the transactions contemplated under this Agreement. TOF acknowledges and agrees that any other permit(s) necessary for TOF's use of the Storage Cell as a water storage facility is the sole obligation of TOF. To the extent LGE's consent or approval is required in connection with TOF's efforts to obtain land use authorizations pertaining to the Storage Cell or the Brooks Farm Parcel as a whole that will become effective after conveyance thereof to TOF, LGE further agrees to cooperate with TOF by providing such consents and approvals which do not interfere with LGE's mining and reclamation activities thereon as contemplated by this Agreement and the Permits.

8.4 Mining and Reclamation of the Real Property. LGE recognizes and agrees that LGE will be responsible for mining and reclaiming the Brooks Farm Parcel in accordance with all of the Reclamation Obligations. Pursuant to the Temporary Access and Reclamation Easement, LGE shall continue to have access to the Brooks Farm Parcel subsequent to the Closing applicable thereto as may be reasonably necessary for the purpose of satisfying any Reclamation Obligations which remain after the Brooks Farm Closing. Subsequent to the Brooks Farm Closing, LGE will complete the remainder of LGE's Reclamation Obligations with respect to the Brooks Farm Parcel in accordance with the terms of this Paragraph 8.4.

(a) TOF Acceptance of Completion of Reclamation Obligations by LGE. Subsequent to LGE's issuance of a Completion Notice, LGE intends to seek a return or a full release of LGE's DRMS bond without being required to achieve Final Growth on the Brooks Farm Parcel, and a corresponding release of the Section 112(c) Permit by the DRMS (collectively, the "**DRMS Release**"). In order to request the DRMS Release, LGE will require TOF to execute and deliver to LGE an "**Acceptance of Reclamation**" in form and substance similar to that attached hereto as Exhibit N, whereby TOF will acknowledge that TOF is willing to accept the Brooks Farm Parcel in its "as-is" condition at the Brooks Farm Closing (i.e., without having Final Growth achieved). In consideration for TOF's execution and delivery of the Acceptance of Reclamation, LGE has agreed to reduce the Storage Purchase Price as set forth in Paragraph 8.4(b). LGE and TOF hereby agree and acknowledge that, in and of itself, TOF's execution and delivery of the

Acceptance of Reclamation will in no way obligate TOF to Close on the Brooks Farm Parcel, such obligation being solely determined by the other provisions of this Agreement.

(b) Reduction of Storage Purchase Price/Acceptance of Reclamation. Upon receipt by LGE of the conformed Acceptance of Reclamation from TOF, LGE hereby agrees to reduce the Storage Purchase Price by an amount of $5,500.00, which has been calculated to equal $500 per acre for each acre of Revegetated Acreage contained within the Brooks Farm Parcel. The purpose of such reduction being LGE's estimated cost for TOF to achieve Final Growth on all of the Revegetated Acreage over time.

(c) TOF as Successor Operator. If, prior to the Brooks Farm Closing, LGE is unable to obtain the DRMS Release, then TOF agrees to execute an agreement at the Brooks Farm Closing in the form attached hereto as Exhibit L, whereby TOF, as the "Successor Operator" thereunder, assumes all remaining liability and obligations under the Section 112(c) Permit for achieving Final Growth on the Brooks Farm Parcel, as provided for by C.R.S. § 34-32.5-119, with LGE retaining any other then-remaining Reclamation Obligations under any other Permits concerning the Brooks Farm Parcel subsequent to the Brooks Farm Closing.

9. SELLER REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 General Representations and Warranties. Seller makes the following representations and warrants and covenants as of the date of this Agreement and as of the date of the Closing with respect to any property or property rights to be conveyed at such Closing, which representations and warranties shall survive the Closing for a period of one year, unless a different period of time is stated below.

(a) Further Encumbrances. From the date of this Agreement until each Closing or the earlier termination of this Agreement, and except for the Permitted Exceptions and any applicable Down Payment Deed of Trust required to be provided hereunder by LGE, Seller agrees that it will not encumber any property or any other interests being conveyed to Purchaser by the terms of this Agreement in any way, nor grant any property or contract right relating to such property or other such interests, nor alter the zoning of approved land uses on such property without the prior written consent of Purchaser.

(b) Compliance with Government Regulations. Except as previously disclosed in writing to Purchaser, Seller has not received any uncured notices, demands or deficiency comments from any state, municipal or county government or any agency thereof with regard to the property or any other interests therein being conveyed to Purchaser, including without limitation, any notices of any violations of any ordinances. Seller has received no written notice of or impending expropriation or condemnation of such property or other interests. During the term of this Agreement, Seller shall promptly forward copies of any such notices, demands or deficiency comments to Purchaser pursuant to Paragraph 11.24.

(c) Condition of Property. To Seller's knowledge, and except as otherwise provided for in this Paragraph 9.1(c), there are no material defects or conditions affecting the use, development or value of the property being conveyed to Purchaser as regards its use for mining and/or storage of water. Seller warrants that such property has not been used by Seller and to the

best of Seller's knowledge has not been used in the past, as a waste disposal or landfill facility, and that no underground storage tanks are or have been present. Seller further warrants that, to the best of Seller's knowledge, such property is free of Hazardous Substances. Seller further warrants that during Seller's ownership of such property, and to the best of Seller's knowledge prior to Seller's ownership, no petroleum products, including motor vehicle fuels and equipment maintenance fluids have been spilled or released on such property or that if such spills or releases have occurred, they have been fully reported to the appropriate regulatory agencies and necessary cleanup or remedial actions have been completed. Purchaser and Seller hereby acknowledge and agree that certain portions of such property may have contained in the past, waste disposal or landfill facilities, as well as underground septic tanks and leach fields common to rural farms in Weld County, Colorado. Seller hereby agrees to remove any and all such items encountered and dispose of such items within the Parcel in a lawful manner on or before delivery of possession of such Parcel(s) to Purchaser.

(d) Litigation. Seller represents and warrants that there is no dispute, action or litigation, pending or threatened, respecting the ownership or use of any property, or which would prevent Seller from performing Seller's obligations under this Agreement.

(e) Contracts, Leases and Agreements. Except as disclosed in writing to Purchaser as part of the Materials, there are no contracts, leases, licenses, commitments, or undertakings affecting the property or any part thereof, nor any other right, title or interest in or to such property granted to any other individual or entity which will obligate Purchaser subsequent to the Closing. Unless accepted by Purchaser in writing, as of the Closing, Seller will not enter into any contracts, leases, licenses, commitments, or undertakings respecting the use or maintenance of such property or performance of services on such property which would survive the Closing or by which Purchaser would become obligated or liable to any third party.

(f) Compliance with Law. Seller warrants that Seller has complied in all material respects with all laws, rules, regulations, ordinances, orders, judgments and decrees applicable to the property, and Seller warrants that there is no proposed order, judgment, decree, governmental taking, or other proceeding applicable to Seller which might materially adversely affect the property.

(g) Utilities. Seller warrants that Seller has not received any written notice of the curtailment of any utility service supplies to the property.

(h) Zoning. Seller warrants that there are no pending requests for zoning variances or changes with respect to the property or its zoning.

(i) Seller Status. Seller, as of the date of this Agreement and for the duration of this Agreement: (i) is an entity duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation, formation or registration; (ii) has all requisite power and authority to own its assets and carry on its business as now being or as proposed to be conducted; and (iii) is qualified to do business in the State of Colorado. Seller has the corporate power and authority to execute, deliver, and perform Seller's obligations under this Agreement and the other documents which Seller is required to deliver and execute as provided for under this Agreement.

(j) No Conflicts. The execution, delivery, and performance by Seller of this Agreement (and the other documents which it is required to deliver and execute as provided for under this Agreement) and compliance with the terms and provisions hereof and thereof have been duly authorized by all requisite corporate or governmental action on the part of Seller and will not: (i) violate or conflict with, or result in a breach of, or require any consent under (x) the articles of incorporation or bylaws or other governing documents of such entity, (y) any applicable law, rule, or regulation or any order, writ, injunction, or decree of any governmental authority or arbitrator, or (z) any agreement or instrument to which such entity is a party or by which any of them or any of their property is bound or subject; or (ii) constitute a default under any such agreement or instrument.

(k) Seller's Disclaimer. Seller hereby disclaims any warranty or representation as to water quality of whatsoever nature with respect to the future use of the property as a water storage facility. Seller further disclaims any warranty or representation as to Purchaser's intended future use for any purpose.

(l) Materials. Seller has delivered or made available all of the Materials to Purchaser as provided for under Paragraph 5.2 of this Agreement.

(m) Title to LGE Water Rights. LGE represents and warrants to TOF that LGE will warrant and defend title to the LGE Water Rights in the quiet and peaceable possession of TOF against all and every person or persons claiming the whole or any part thereof, by, through or under LGE for a period of one year after the Brooks Farm Closing.

9.2 Construction Warranty. In addition to the generic Seller WARRANTIES SET FORTH IN Paragraph 9.1, LGE hereby represents, warrants and covenants to TOF as follows with respect to the construction of the Storage Cell:

(a) Warranty. LGE shall warrant the design, installation and construction of each of the Slurry Walls as well as the associated earthwork used to construct the final reclamation slopes within each Storage Cell (the "**Construction Warranty**") and any other ancillary Storage Cell facilities constructed by LGE as being in compliance all applicable Permits as follows:

(i) Slurry Walls: LGE warrants that each Slurry Wall constructed pursuant to this Agreement will comply with the Lining Criteria for 24 months after the SEO Certification for that Storage Cell.

(ii) Side Slopes: All side slopes will be reclaimed to a 3:1 slope. LGE warrants the earthwork associated with construction of the final reclamation slopes within each Storage Cell, and any other ancillary Storage Cell facilities constructed by Seller (specifically including the berm referenced in Paragraph 11.1), for a period of 24 months after the Closing for the Brooks Farm Parcel.

(b) Limitation of Warranty. LGE's Construction Warranty is specifically limited by and shall not cover any failure of the Lining Criteria to the extent arising from any damage to such Slurry Wall, final reclamation slopes and/or the Storage Cell to the extent occurring after the date of the Brooks Farm Closing, and caused by: (A) TOF, its contractors, subcontractors, consultants, suppliers and/or materialman (except to the extent caused by LGE);

(B) an act of God; or (C) any third party not acting on behalf of LGE, its agent, contractor or other related party, including but not limited to the following events, items and/or work:

(i) TOF allowing or causing the perforation of the Slurry Wall by, utility companies, and/or other third parties;

(ii) TOF allowing or causing grading or other work to occur (other than such work as performed by LGE, its agents or contractors) that changes the design, configuration, integrity or stability of the final reclamation slopes, Slurry Wall or Storage Cell as built and approved by the Office of the State Engineer;

(iii) TOF allowing or causing the plantings of vegetation (other than grass) within thirty feet of the final reclamation slopes or the centerline of the Slurry Wall;

(iv) TOF allowing or causing surcharge loads to be placed on or within thirty feet of the final reclamation slopes or the centerline of the Slurry Wall;

(v) TOF allowing or causing deep foundations to be placed within 100 feet of the centerline of the Slurry Wall;

(vi) TOF allowing or causing any type of operation or work that could create or results in erosion of the final reclamation slopes, Slurry Wall or Storage Cell as built and approved by the Office of the State Engineer; and

(vii) TOF allowing or causing the said Storage Cell to be filled, operated, maintained or drawn down in a manner that is not consistent with the Lining Criteria.

9.3 Veracity of Representations and Warranties. No representation or warranty made by Seller in this Agreement or any schedule or exhibit attached hereto or in any certificate or other document furnished by Seller pursuant to this Agreement contains any untrue statement of material fact or omits any material fact.

10. PURCHASER REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 General Representations and Warranties. Purchaser makes the following representations and warrants and covenants as of the date of this Agreement and as of the date of the Closing, which representations and warranties shall survive the Closing for a period of one year, unless a different time period is stated below.

(a) Purchaser Status. Purchaser, as of the date of this Agreement and for the duration of this Agreement: (i) is an entity duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation, formation or registration; (ii) has all requisite power and authority to own its assets and carry on its business as now being or as proposed to be conducted; and (iii) is qualified or otherwise in good standing to do business in the State of Colorado. Purchaser has the power and authority to execute, deliver, and perform its obligations under this Agreement and the other documents which Purchaser is required to deliver and execute as provided for under this Agreement.

(b) No Conflicts. The execution, delivery, and performance by Purchaser of this Agreement (and the other documents which it is required to deliver and execute as provided for under this Agreement) and compliance with the terms and provisions hereof and thereof have been duly authorized by all requisite corporate of governmental action on the part of Purchaser and will not: (i) violate or conflict with, or result in a breach of, or require any consent under (x) the articles of organization, formation documents or other governing documents of such entity, (y) any applicable law, rule, or regulation or any order, writ, injunction, or decree of any governmental authority or arbitrator, or (z) any agreement or instrument to which such entity is a party or by which any of them or any of their property is bound or subject; or (ii) constitute a default under any such agreement or instrument.

(c) Litigation. Purchaser represents and warrants that there is no dispute, action or litigation, pending or threatened, which would prevent Purchaser from performing its obligations under this Agreement.

10.2 Veracity of Representations and Warranties. No representation or warranty made by Purchaser in this Agreement or any schedule or exhibit attached hereto or in any certificate or other document furnished by Purchaser pursuant to this Agreement contains any untrue statement of material fact or omits any material fact.

11. MISCELLANEOUS

11.1 Minimum Operating Freeboard. In order to maximize below grade storage volume in the Storage Cell, LGE hereby agrees to construct, as may be mutually agreed upon by the Parties, an approximately two foot above ground perimeter berm around approximately the northern half of the Storage Cell designed to provide TOF with approximately one foot of minimum operational freeboard for the Storage Cell. Such berm will be constructed by LGE at no additional cost to TOF and the exact location, specifications, slopes and heights of such berm (as it will be constructed by LGE) will be based upon and subject to drawings and specifications therefor provided by LGE to TOF and reasonably approved by TOF in writing prior to the construction of the berm by LGE. TOF hereby agrees to respond to any final drawings, plans and specifications with respect to the berm within 15 days after submission thereof by LGE to TOF. Written approval thereof by TOF or a failure by TOF to timely object to such plans and specifications within the 15-day time period therefor set forth above, will constitute approval thereof by TOF. If TOF has any comments or objections to such final drawings, TOF will provide TOF's specific comments and/or objections to LGE within such 15-day period and, thereafter, LGE and TOF hereby agree to work together in good faith to resolve same within 10 days after TOF provides TOF's written comments and objections with respect thereto to LGE. If mutual agreement concerning the final drawings cannot be reached within such 10-day period, resolution thereof will be rendered by an independent engineer mutually agreed to by both LGE and TOF, or in the event the Parties cannot mutually agree on such engineer, then by an independent engineer selected by two engineers (one each appointed respectively by TOF and LGE) for the express purpose of selecting the independent engineer, within 10 days thereafter. Each Party will pay the cost of its own engineer selected in connection with this process and both Parties will split equally the cost of any independent engineer required hereunder.

11.2 Additional Infrastructure. TOF, at TOF's sole cost and expense, will be required to design and construct any infrastructure which may be required by TOF to transfer water into and/or out of the subject Storage Cell. LGE will not be responsible for providing any such services to TOF pursuant to the terms and conditions of this Agreement and the Fixed Unit Price will not include any cost to be incurred by TOF in connection therewith. Notwithstanding the foregoing, since LGE has worked with its own engineers to design and construct certain inlet and outlet structures for LGE's own use at other reservoirs owned and operated by LGE, LGE is willing to consider assisting TOF with such matters under the terms of a separate agreement therefor between the Parties.

11.3 Access, Information and Inspection. Seller agrees to provide Purchaser any access desired to inspect any of the interests to be conveyed or otherwise transferred to Purchaser by the terms of this Agreement prior to the Closing. Purchaser hereby agrees that Purchaser shall be responsible for, pay for and to the extent permitted by law indemnify Seller against any damages that Purchaser causes as a result of any inspections or activity Purchaser conducts on the Parcel, and Purchaser hereby further agrees to comply with any applicable governmental requirements with respect to any entry by Purchaser onto the Parcel. Notwithstanding the foregoing, (i) this indemnity shall not apply to the extent any liability arises in connection with the negligence or willful misconduct of Seller, and (ii) Purchaser shall not have any liability or indemnification obligation to Seller, or to any other person or entity, by reason of having discovered any adverse condition with respect to the Parcel, unless such condition was caused by Purchaser.

11.4 Intentionally omitted.

11.5 Casualty Damage. If, before the Brooks Farm Closing, any portion of the Brooks Farm Parcel or Storage Cell is substantially damaged by fire, flood or other casualty, Seller shall be required to repair such damage to the reasonable satisfaction of Purchaser, in which event Purchaser shall continue this Agreement.

11.6 Amendment. This Agreement may be modified, amended, changed or terminated in whole or in any part only by an agreement in writing duly authorized and executed by both Parties with the same formality as this Agreement.

11.7 Waiver. The waiver of any breach of any provision of this Agreement by any Party shall not constitute a continuing waiver with respect to any subsequent breach of said Party, or for any other breach of the same or any other provision of this Agreement.

11.8 Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to all matters set forth herein and neither Party has relied upon any fact or representation not expressly set forth herein. This Agreement supersedes all other prior agreements and understandings of any type, both written and oral, among the Parties with respect to the subject matter hereof. All exhibits attached hereto are hereby incorporated herein.

11.9 Headings for Convenience Only. Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

11.10 Non-Severability and Effect of Invalidity. Each section of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties. If any provision of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the Parties is not destroyed or rendered ineffective thereby, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

11.11 Assignability. Seller may not assign its rights or delegate its duties hereunder without the prior written consent of Purchaser. Purchaser may not assign its rights or delegate its duties hereunder without the prior written consent of Seller to be granted or withheld in Seller's sole discretion, but such assignment shall not relieve Purchaser of any liability hereunder unless so specified in a writing signed by Seller.

11.12 Binding Effect. This Agreement and the rights and obligations created hereby shall be binding upon and shall inure to the benefit of the Parties hereto and their permitted respective successors and assigns, if any.

11.13 Governing Law and Venue. This Agreement and its application shall be construed in accordance with the laws of the State of Colorado. The Parties agree that venue for any litigated disputes regarding this Agreement shall be the District Court in and for Weld County Colorado, unless any such issues are water matters as defined by C.R.S. § 37-92-203, for which the Parties agree the venue for any litigated disputes shall be the District Court, Water Division 1. However, Purchaser and Seller may avail themselves of the procedures provided in C.R.S. § 13-3-111.

11.14 Multiple Originals. This Agreement may be simultaneously executed in any number of counterparts, each of which shall be deemed original but all of which constitute one and the same Agreement.

11.15 Survival of Representations. Each and every covenant, promise or payment contained in this Agreement shall not merge in any deed or other instrument conveying any interest herein described but shall survive each deed and transfer and be binding upon each of the Parties hereto, and unless otherwise specifically limited by other provisions of this Agreement, each and every representation and warranty contained in this Agreement shall be binding and obligatory upon each of the Parties hereto for a period of one year after the Brooks Farm Closing, unless a different period of time is stated above.

11.16 Exchange. Seller or Purchaser may elect to have the closing of any property effected through a tax-deferred exchange in compliance with the Internal Revenue Code § 1031 and/or § 1033 and the regulations promulgated thereunder. In the event of such election each Party hereby agrees to cooperate with the other Party. Such agreement to provide reasonable cooperation in effecting any such tax-deferred exchange shall be on the condition that the exchange transaction shall not create any liability on, or exposure to liability by the Party who is not conducting the exchange, which would not be created but for the proposed exchange, shall be without any additional expense to the Party who is not conducting the exchange, and shall not require or result in any extension or delay of the Closing Date.

11.17 Attorneys' Fees or Costs. In the event of any litigation, mediation, arbitration or other dispute resolution process arising out of this Agreement, the Parties agree that the prevailing Party in such action shall be awarded from the non-prevailing Party, the prevailing Party's reasonable attorney's fees and costs incurred in any such proceedings.

11.18 Fees and Expenses and Apportionment. Except as otherwise expressly set forth in this Agreement, each of the Parties will bear its own expenses in connection with the transactions contemplated by this Agreement.

11.19 Joint Draft. The Parties agree they drafted this Agreement jointly with each having the advice of legal counsel and an equal opportunity to contribute to its content.

11.20 Intent of Agreement. This Agreement is intended to describe the rights and responsibilities of and between the Parties and is not intended to, and shall not be deemed to, confer rights upon any persons or entities not signatories hereto, nor to limit, impair, or enlarge in any way the powers, regulatory authority and responsibilities of either Party or any other governmental entity not a party hereto.

11.21 Remedies. If prior to the Initial Closing, Purchaser fails to perform any of its material obligations under this Agreement, for any reason other than default by Seller or the termination of this Agreement as provided herein, Seller may, following not less than 15 days' notice and right to cure to Purchaser, terminate this Agreement, as its exclusive remedy, hereby waiving all other remedies. If prior to the Initial Closing, Seller fails to perform any of its material obligations under this Agreement, for any reason other than default by Purchaser or the termination of this Agreement as provided herein, Purchaser may, following not less than 15 days' notice and right to cure to Seller: (a) enforce specific performance of this Agreement against Seller; or (b) terminate this Agreement. If after the Initial Closing, Purchaser fails to perform any of its material obligations under this Agreement for any reason other than default by Seller or the termination of this Agreement as provided herein, Seller may, following not less than 15 days' notice and right to cure to Purchaser, seek specific performance of this Agreement. If after the Initial Closing, Seller fails to perform any of its material obligations under this Agreement for any reason other than default by Purchaser or the termination of this Agreement as provided herein, Purchaser may, following not less than 15 days' notice and right to cure to Seller, enforce specific performance of this Agreement against Seller. These remedies are in addition to any other rights or remedies provided at law or in equity, in the event of litigation, mediation, arbitration or other dispute resolution process concerning this Agreement. Upon any termination of this Agreement by LGE, other than for the reason that TOF has failed to perform any of its material obligations under this Agreement, LGE shall be required to return any then unused portion of the Brooks Farm down payment to TOF. Likewise, such unused portion of the down payment shall be returned by LGE to TOF if TOF terminates this Agreement as a result of LGE's failure to perform any of its material obligations hereunder (unless, as a remedy for such breach by LGE hereunder, TOF is seeking specific performance by LGE of the terms and provisions hereof). Upon the return of such down payment to TOF by LGE, TOF shall promptly release the Down Payment Deed of Trust in the real property records of Weld County, Colorado and return the original Down Payment Promissory Note to LGE marked "paid" or "cancelled." Upon any termination of this Agreement resulting from the default of TOF of its material obligations under the terms and conditions hereof, LGE shall be entitled to retain any portion of the Brooks Farm down payment then in possession of LGE

and TOF shall promptly release the Down Payment Deed of Trust in the real property records of Weld County, Colorado and return the original Down Payment Promissory Note to LGE marked "paid" or "cancelled." If at any time prior to the Brooks Farm Closing, TOF revokes the Valley License (as such term is defined in Paragraph 1.1(lll) of that certain Purchase, Sale and Exchange Agreement dated October 12, 2016 between LGE and TOF), then this Agreement will immediately terminate upon such revocation and LGE will be entitled to retain any portion of the Brooks Farm down payment then in possession of LGE and TOF shall promptly release the Down Payment Deed of Trust in the real property records of Weld County, Colorado and return the original Down Payment Promissory Note to LGE marked "paid" or "cancelled". The terms of this Paragraph 11.21 are in addition to any other remedies or rights of the Parties as set forth elsewhere in this Agreement.

11.22 Condemnation. If prior to the Brooks Farm Closing, any of the property or property interests which are the subject of this Agreement are acquired by a party having the power of eminent domain, or any individual or entity with the power of eminent domain initiates or gives notice that it intends to initiate condemnation proceedings with respect to any interest in such property or property interests, or any portion thereof, Seller shall notify Purchaser thereof in writing within five days and provide Purchaser copies of all correspondence, pleadings and other documents regarding the proposed condemnation. If and only if such condemnation would prevent Purchaser from reasonably using the affected property or property interests for the purposes described therefor in this Agreement (as determined in Purchaser's reasonable discretion after consultation with Seller), then Purchaser may elect to either terminate this Agreement as to the Brooks Farm Parcel, at Purchaser's option, or proceed with the Closing(s), subject to the other provisions of this Agreement by delivering written notice thereof to Seller within five days after Purchaser's receipt of Seller's notice. If Purchaser elects to proceed with the Closing, then Purchaser shall be entitled to any award or settlement of compensation paid to the extent the same may be necessary or appropriate, and Seller shall assign to Purchaser at Closing Seller's rights to such portion of such awards as may be applicable. If, however, despite such condemnation, Purchaser is able to reasonably use the affected property or property interests for the intended purposes, then Purchaser shall be required to proceed with the Closing.

11.23 No Limitation on Ability to Raise Funds. Nothing in this Agreement is intended to limit Purchaser's ability to raise necessary funds to pay all or any portion of any purchase price through any form of borrowing that may be available to it.

11.24 Notices. All notices, requests, demands, or other communications (collectively, "Notices") hereunder shall be in writing and given by: (i) hand delivery; or (ii) certified or registered mail, postage prepaid, return receipt requested; or (iii) nationally-recognized overnight delivery service, to the Parties at the following address, or at such other address as the parties may designate by Notice in the above manner.

If to Purchaser: Town of Firestone
P.O. Box 100
9950 Park Avenue
Firestone, Colorado 80520
Attn: Town Manager

with copy to: Bradley C. Grasmick, Esq.
Lawrence Jones Custer Grasmick, LLP
5245 Ronald Reagan Blvd., Suite 1
Johnstown, Colorado 80534

If to Seller: L.G. Everist, Incorporated
Mountain Division Office
7321 East 88th Avenue, Suite 200
Henderson, Colorado 80640
Attn: Matthew Noteboom, VP-Mountain Division

with copy to: Mike Fredregill
Welborn Sullivan Meck & Tooley, P.C.
1401 Lawrence Street, Suite 1800
Denver, Colorado 80202

Notices shall be effective: (i) upon receipt by the addressee of a hand delivery; or (ii) three days following the date of mailing via certified or registered mail, postage prepaid, return receipt requested; or (iii) one day after sending by nationally-recognized overnight delivery service.

11.25 Third Party Rights. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies whatsoever upon any person, other than Seller and Purchaser and their respective successors, assigns and transferees as may be allowed hereunder.

11.26 Brokerage. Seller and Purchaser hereby warrant to each other that no real estate agent or other broker or finder is involved in this transaction. Each Party hereby agrees to the extent permitted by law to indemnify the other Party and hold the other Party harmless from any loss, liability, damage, cost or expense (including, without limitation, reasonable attorney's fees and costs) paid or incurred by the other Party by reason of any claim to any broker's finder's or other fee in connection with the transaction by any third party, successors or assigns claiming by, through or under the Party by, through or under whom the claim is being made.

11.27 Non-business Days. If the date for any action under this Agreement falls on a Saturday, Sunday or a day that is a Colorado state holiday ("Holiday"), then the relevant date shall be extended automatically until the next day that is not a Saturday, Sunday or Holiday.

11.28 Force Majeure. Subject to the terms and conditions in this Paragraph 11.28, no Party to this Agreement shall be liable for any delay or failure to perform under this Agreement due solely to conditions or events of Force Majeure, as that term is specifically defined with regard to each Party below; provided that: (i) the non performing Party gives the other Party written

notice describing the particular of the occurrence of the Force Majeure within 30 days of such occurrence; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure event or condition; and (iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing the actions taken to remedy the consequences of the Force Majeure event or condition. As used herein, the term "Force Majeure" shall mean the following causes beyond the reasonable control of the Party: acts of God, strikes or work stoppages directly affecting the Party, unavailability of or delay in receiving labor or materials, material adverse weather conditions, fire or other casualty affecting the Property, or stop-work action of governmental authorities. In addition, and solely for the benefit of TOF, LGE hereby agrees that, for the purposes of this Agreement only, the term "Force Majeure" as it applies to TOF will specifically include: (a) any rule, statute or law applicable to TOF which would operate to require this Agreement to be approved by a referendum of the voters of TOF, which referendum requirement legally arises and becomes obligatory on TOF no later than 45 days after execution of this Agreement; and (b) any litigation filed by a party with standing prior to the date of the Brooks Farm Closing which challenges the right or authority of TOF to legally enter into this Agreement and/or close the transactions evidenced hereby (collectively, the "Legal Process Force Majeure Events"). Upon the occurrence either (or, as applicable, each) Legal Process Force Majeure Event, the requirements set forth in subparagraphs (i)-(iii) above in this Paragraph 11.28 will apply, except that the maximum suspension of performance to be granted by LGE to TOF for any (each) such Legal Process Force Majeure Event cannot and will not exceed, under any circumstances, a period of six months from the date of the occurrence of such Legal Process Force Majeure Event.

11.29 Further Assurances. Each Party agrees to execute, approve and adopt any and all instruments, documents and resolutions as may be reasonably necessary to effectuate the covenants, terms, conditions and provisions contained in this Agreement. Such instruments, documents and resolutions shall be in a form and substance reasonably acceptable to the other Party.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

TOF:
Town of Firestone, a Colorado municipal corporation, acting by and through its Town of Firestone Water Activity Enterprise, organized and existing as a "water activity enterprise" under C.R.S. 37-45.1-101 et seq.

By: _____
Name Printed: _____
Title: _____
Date: _____

LGE:
L.G. Everist, Incorporated, a South Dakota corporation

By: _____
Name: _____
Its: _____
Date: _____

LIST OF EXHIBITS

EXHIBIT A

Legal Description/Depiction of Brooks Farm Parcel

[See following pages]

Legal Description

EXHIBIT A
(1 of 3)
BROOKS FARM PARCEL PROPERTY DESCRIPTION

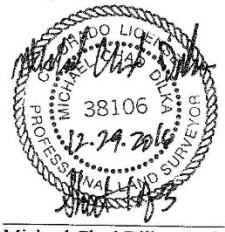
A parcel of land being part of Tract A, Block 1, Minor Plat of Brooks Farm First Subdivision, recorded October 3, 2002 as Reception No. 2993165 of the records of Weld County Clerk and Recorder, located in the Northwest Quarter (NW1/4) of Section Six (6), Township Two North (T.2N.), Range Sixty-seven West (R.67W.) of the Sixth Principal Meridian (6th P.M.), Town of Firestone, County of Weld, State of Colorado.

That portion of said Tract A lying Northerly of the centerline of the Last Chance Ditch as it existed on December 6, 2016.

Said parcel of land contains 56.375 acres, more or less (±), and may be subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

SURVEYOR'S STATEMENT

I, Michael Chad Dilka, a Colorado Licensed 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.



Michael Chad Dilka - on behalf of King Surveyors
Colorado Licensed Professional Land Surveyor #38106

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

JN: 20160170

P:\20160170\prop descs\20160170 EXH A.doc
Last printed 12/29/2016 10:14:00 AM

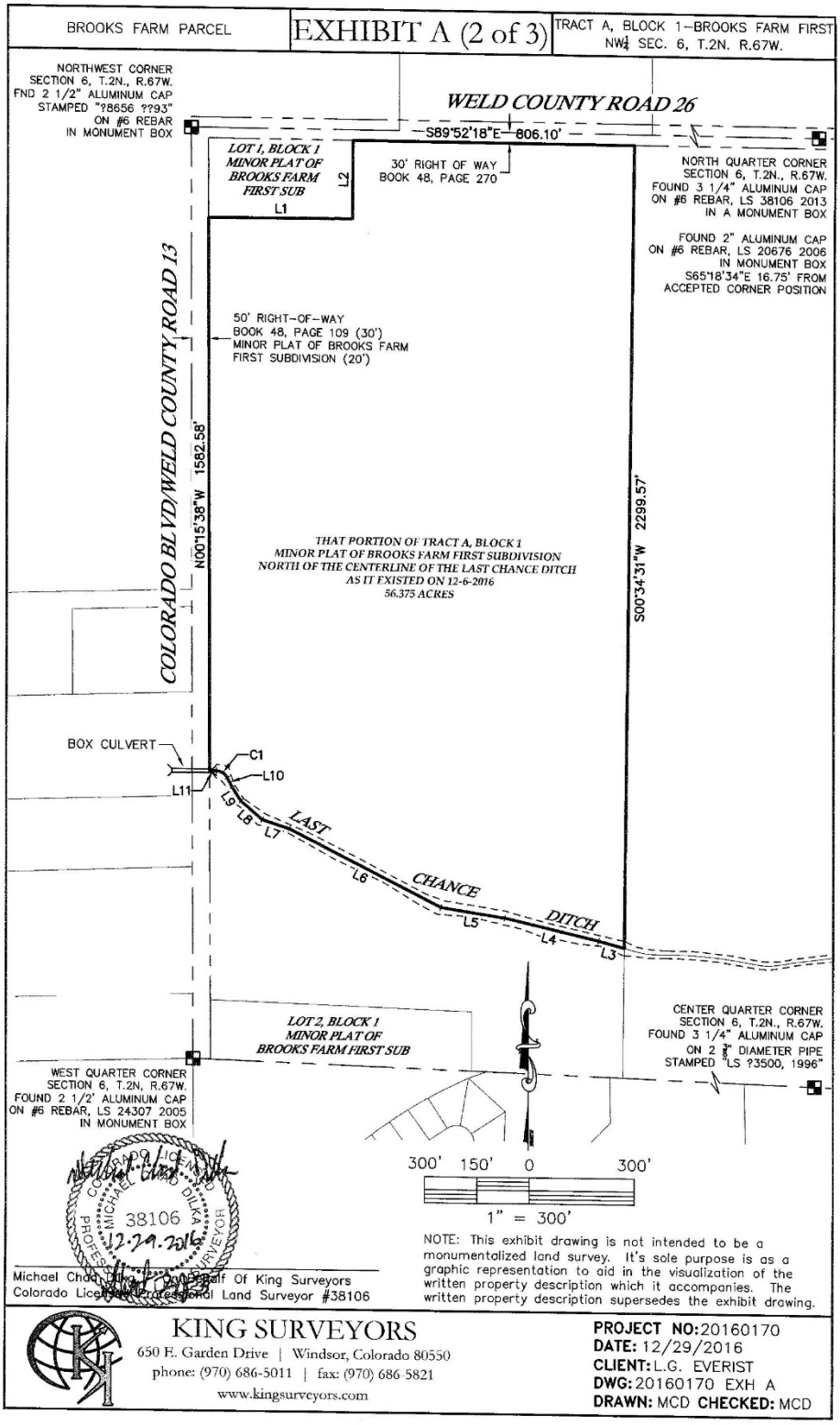

BROOKS FARM PARCEL
EXHIBIT A (2 of 3)
TRACT A, BLOCK 1–BROOKS FARM FIRST
NW¼ SEC. 6, T.2N. R.67W.
NORTHWEST CORNER
SECTION 6, T.2N., R.67W.
FND 2 1/2" ALUMINUM CAP
STAMPED "?8656 ??93"
ON #6 REBAR
IN MONUMENT BOX
WELD COUNTY ROAD 26
S89°52'18"E 806.10'
LOT 1, BLOCK 1
MINOR PLAT OF
BROOKS FARM
FIRST SUB
L1
30' RIGHT OF WAY
BOOK 48, PAGE 270
NORTH QUARTER CORNER
SECTION 6, T.2N., R.67W.
FOUND 3 1/4" ALUMINUM CAP
ON #6 REBAR, LS 38106 2013
IN A MONUMENT BOX
FOUND 2" ALUMINUM CAP
ON #6 REBAR, LS 20676 2006
IN MONUMENT BOX
S65°18'34"E 16.75' FROM
ACCEPTED CORNER POSITION
50' RIGHT-OF-WAY
BOOK 48, PAGE 109 (30')
MINOR PLAT OF BROOKS FARM
FIRST SUBDIVISION (20')
COLORADO BLVD/WELD COUNTY ROAD 13
N00°15'38"W 1582.58'
S00°34'31"W 2299.57'
THAT PORTION OF TRACT A, BLOCK 1
MINOR PLAT OF BROOKS FARM FIRST SUBDIVISION
NORTH OF THE CENTERLINE OF THE LAST CHANCE DITCH
AS IT EXISTED ON 12-6-2016
56.375 ACRES
BOX CULVERT
C1
L10
L11
L9
L8
L7
L6
L5
L4
L3
LAST
CHANCE
DITCH
LOT 2, BLOCK 1
MINOR PLAT OF
BROOKS FARM FIRST SUB
CENTER QUARTER CORNER
SECTION 6, T.2N., R.67W.
FOUND 3 1/4" ALUMINUM CAP
ON 2 ½" DIAMETER PIPE
STAMPED "LS ?3500, 1996"
WEST QUARTER CORNER
SECTION 6, T.2N., R.67W.
FOUND 2 1/2' ALUMINUM CAP
ON #6 REBAR, LS 24307 2005
IN MONUMENT BOX
300' 150' 0 300'
1" = 300'
NOTE: This exhibit drawing is not intended to be a monumentalized 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.
STATE OF COLORADO
MICHAEL CHAD DILKA
38106
PROFESSIONAL LAND SURVEYOR
12-29-2016
Michael Chad Dilka, On Behalf Of King Surveyors
Colorado Licensed Professional Land Surveyor #38106
KING SURVEYORS
650 E. Garden Drive | Windsor, Colorado 80550
phone: (970) 686-5011 | fax: (970) 686-5821
www.kingsurveyors.com
PROJECT NO: 20160170
DATE: 12/29/2016
CLIENT: L.G. EVERIST
DWG: 20160170 EXH A
DRAWN: MCD CHECKED: MCD

EXHIBIT A-2

BROOKS FARM PARCEL	EXHIBIT A (3 of 3)	TRACT A, BLOCK 1–BROOKS FARM FIRST NW¼ SEC. 6, T.2N. R.67W.

LINE TABLE		
LINE	BEARING	LENGTH
L1	N89°44'03"E	412.08'
L2	N00°08'08"E	222.86'
L3	N74°53'31"W	76.14'
L4	N76°54'55"W	276.00'
L5	N81°23'00"W	185.00'
L6	N63°03'44"W	488.00'
L7	N71°51'59"W	81.00'
L8	N49°21'02"W	81.00'
L9	N32°38'45"W	46.00'
L10	N27°48'16"W	31.00'
L11	S89°59'19"W	19.44'

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CH BEARING
C1	38.00'	35.00'	62°12'25"	36.16'	N58°54'28"W

COLORADO LICENSED MICHAEL CHAD DILKA 38106 PROFESSIONAL LAND SURVEYOR 12-29-2016

Michael Chad Dilka – On Behalf Of King Surveyors
Colorado Licensed Professional Land Surveyor #38106

NOTE: This exhibit drawing is not intended to be a monumentalized 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.

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

PROJECT NO: 20160170
DATE: 12/29/2016
CLIENT: L.G. EVERIST
DWG: 20160170 EXH A
DRAWN: MCD **CHECKED:** MCD

EXHIBIT B
Depiction of Water Storage Cell
[See following page]

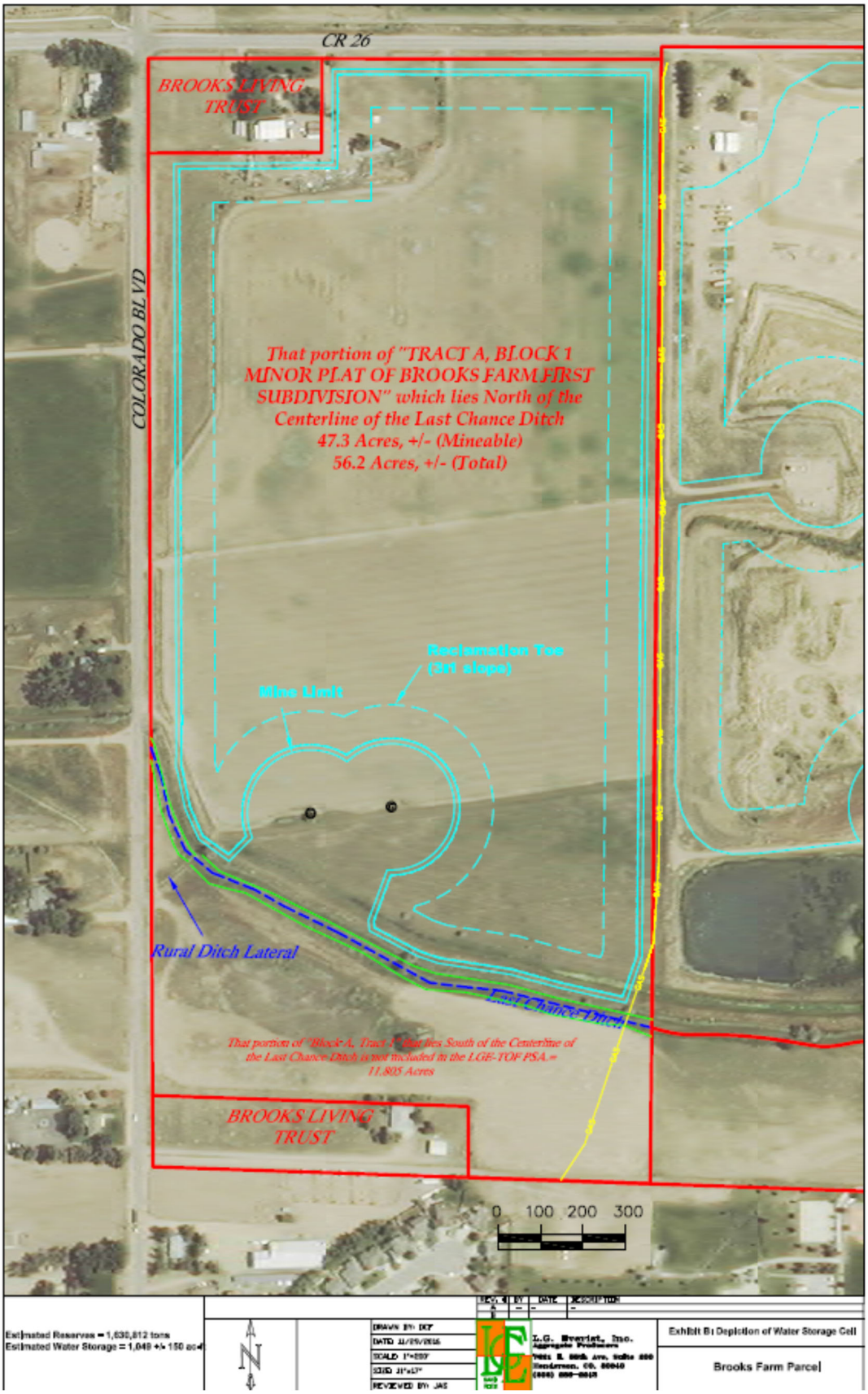

CR 26
BROOKS LIVING TRUST
COLORADO BLVD
That portion of "TRACT A, BLOCK 1 MINOR PLAT OF BROOKS FARM FIRST SUBDIVISION" which lies North of the Centerline of the Last Chance Ditch
47.3 Acres, +/- (Mineable)
56.2 Acres, +/- (Total)
Reclamation Toe (2rl slope)
Mine Limit
Rural Ditch Lateral
Last Chance Ditch
That portion of "Block A, Tract A" that lies South of the Centerline of the Last Chance Ditch is not included in the LGE-TOF PSA.= 11.825 Acres
BROOKS LIVING TRUST
0 100 200 300
Estimated Reserves = 1,630,812 tons
Estimated Water Storage = 1,048 +/- 150 ac-ft
N
DRAWN BY: DCF
DATE: 11/25/2015
SCALE: 1"=200'
SIZE: 11"x17"
REVIEWED BY: JAS
REV. #
BY
DATE
DESCRIPTION
L.G. Everist, Inc.
Aggregate Producers
Exhibit B: Depiction of Water Storage Cell
Brooks Farm Parcel

EXHIBIT B-1

EXHIBIT C

Form of Access and Improvements Easement Agreement

[See following pages]

WHEN RECORDED RETURN TO:

_____
_____
_____
_____

ACCESS AND IMPROVEMENTS EASEMENT AGREEMENT

THIS ACCESS AND IMPROVEMENTS EASEMENT AGREEMENT (this **Easement Agreement**) is made as of the _____ day of _____, 20___, by and between L.G. EVERIST, INCORPORATED, a South Dakota corporation, with its Colorado corporate offices at 7321 East 88th Avenue, Suite 200, Henderson, Colorado 80640 (**Grantor**), and the TOWN OF FIRESTONE, a Colorado municipal corporation, acting by and through its Town of Firestone Water Activity Enterprise, organized and existing as a "water activity enterprise" under C.R.S. 37-45.1-101 et seq., whose address is 9950 Park Avenue, P.O. Box 100, Firestone, Colorado 80520, Attention: AJ Krieger, Town Manager (**Grantee**). Grantor and Grantee are sometimes referred to herein individually as a **Party** or collectively as the **Parties**.

RECITALS:

A. WHEREAS, Grantor owns certain real property located in Weld County, Colorado, hereinafter referred to as the **Easement Property**, as more specifically defined in Exhibit A attached hereto;

B. WHEREAS, Grantor and Grantee have entered into that certain Purchase and Sale Agreement (Brooks Farm) effective as of _____, 20___ (the **Purchase Agreement**), whereby the Grantor has agreed to excavate, install and construct a lined water storage cell on the Easement Property (the **Cell**) and to subsequently convey the Cell and the Easement Property to Grantee;

C. WHEREAS, Grantee desires to develop a functioning water storage and transport facility on the Easement Property (the **Project**) which may include certain related infrastructure, including pumps, pipelines, valves, augmentation structure(s) for the diversion of water and other improvements which Grantee deems, in its sole discretion, as necessary or desirable in connection with its development of the Project (collectively, the **Improvements**); and

D. WHEREAS, Grantee desires to obtain from Grantor, and Grantor desires to grant to Grantee, an easement on, over, under and across the Easement Property for the purpose of designing, developing and operating the Project within the Easement Property (such activities, collectively, the Easement Activities as more specifically defined herein);

EASEMENT:

NOW, THEREFORE, for and in consideration of the foregoing recitals and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby confessed and acknowledged, Grantor and Grantee agree as follows:

GRANT OF EASEMENT. Grantor does hereby declare, establish and create for the benefit of Grantee and Grantee's agents, employees, contractors, concessionaires, representatives, successors and assigns, a perpetual, non-exclusive easement (the **Easement**) on, over, across and under the Easement Property for the purpose of: (a) installing, constructing, reconstructing, locating, relocating, surveying, maintaining, enlarging, altering, repairing, replacing, using, operating, controlling, inspecting, and removing the Improvements and the Project, and (b) access, ingress, and egress reasonably necessary to accomplish the foregoing (collectively, the **Easement Activities**).

COVENANTS OF GRANTEE. In exercising the rights granted hereunder, performing the Easement Activities, and otherwise accessing the Easement Property, Grantee agrees to each of the following covenants:

Grantee shall protect the Easement Property and any adjacent lands of Grantor or others from damage caused in whole or in part by acts or omissions of Grantee, its agents, employees, contractors, concessionaires, representatives, successors and assigns (collectively, and together with Grantee, **Grantee's Responsible Parties**). Grantee shall clean, cure, repair and correct any such damage to any elements of the Easement Property or the above referenced adjacent lands, including, but not limited to, any utilities, structures and other improvements situate therein or thereon, and shall keep all of such property reasonably clean and clear of equipment, building materials, dirt, debris, and similar materials.

All Easement Activities shall be performed at Grantee's sole cost and expense.

Grantee's Responsible Parties shall enter onto the Easement Property and utilize the Easement granted hereunder at their own risk and they further assume all risks related to the same. Grantor shall have no liability to Grantee's Responsible Parties for any and all claims, damages, losses, liens, costs, liabilities, fines, and expenses (including reasonable attorneys' fees and court costs), damage to or destruction of property, and death of or injury to any person related to or arising from entry onto the Easement Property and Grantor is hereby irrevocably and forever released from the same.

In all actions undertaken on the Easement Property by any of Grantee's Responsible Parties, all work shall be completed in a workmanlike manner, free of all liens (including mechanics' liens) and encumbrances on the Easement Property.

Grantee shall not cause, or permit to be caused by any of Grantee's Responsible Parties, any Hazardous Materials (as defined below) to be transported to, or dumped, spilled, released, permanently stored, or deposited on, over or beneath the Easement Property or any other lands owned by Grantor. **Hazardous Materials** means substances, materials or waste the generation, handling, storage, treatment or disposal of which is regulated by any local, state or federal government authority or laws, as a hazardous waste, hazardous material, hazardous substance, pollutant or contaminant and including, without limitation, those designated as a hazardous substance under Section 311 or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Secs. 1321, 1317), defined as a hazardous waste under Section 1004 of the Resource Conservation

and Recovery Act (42 U.S.C. Sec. 6903), or defined as a hazardous substance under Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sec. 9601), and, including, without limitation, petroleum products and byproducts, PCBs and asbestos.

Grantee shall comply with all applicable federal, state and local laws, rules and ordinances in connection with its use of the Easement Property and shall obtain all permits and approvals required by applicable governmental or quasi-governmental entities in connection with Grantee's Easement Activities and use of the Easement Property as permitted hereunder.

The Easement and rights granted herein shall not be used in such a manner as to violate any county regulation, city ordinance or state or federal law, rule or regulation.

Grantee shall utilize the Easement in such a manner so as to avoid any interruption of or interference with Grantor's mining operations and/or reclamation of the Easement Property as provided for under Grantor's mining and reclamation permits or as otherwise provided for under the Purchase Agreement.

Grantee shall to the extent permitted by law indemnify and hold Grantor harmless from and against any damage that may be incurred by Grantor as a result of the activities of Grantee under the Easement, provided, however, that nothing herein shall be construed as a waiver of any of Grantee's rights and privileges under the Colorado Governmental Immunity Act, C.R.S. 24-10-101et. seq as same may be amended.

GRANTOR'S OBLIGATIONS.

Grantor shall not disturb, without obtaining Grantee's prior written consent (which consent shall not be unreasonably withheld), any Improvements nor permit to be built, created or constructed, any obstruction, building, improvement or other structure on, over or under any Improvements so long as: (i) such Improvements were installed by Grantor pursuant to its obligations under the Purchase Agreement; (ii) Grantor has consented to the installation of such Improvements by or on behalf of Grantee; or (iii) such Improvements are not located within an area to be excavated as part of Grantor's mining operations and/or reclamation of the Easement Property.

Subject to Grantor's obligations under the Purchase Agreement, Grantor covenants and agrees that Grantee shall have the right to subjacent and lateral support of the Easement Property to whatever extent is necessary or desirable for the full, complete and undisturbed enjoyment of the rights of Grantee under this Easement Agreement and performance of the Easement Activities. It is specifically agreed between the Parties that Grantee's rights as provided for in this Section are subject to Grantor's obligations under the Purchase Agreement.

Grantor shall not perform or permit any action on or upon the Easement Property that will compromise the structural integrity of any slurry walls, earth-berms, clay liners or other low permeability linings constructed by Grantor thereon.

GENERAL PROVISIONS.

Easement to Run with Land. This Easement Agreement, including the Easement and all other covenants, agreements, rights and obligations created hereby, shall run with the Easement Property, and shall be binding on and inure to the benefit of all persons having or acquiring fee title to the Easement Property, all upon the terms, provisions and conditions set forth herein. The rights granted hereunder to Grantee are personal to Grantee and may not be assigned by Grantee without Grantor's prior written consent.

Successors and Assigns. This Easement Agreement shall be binding on Grantor's and Grantee's respective successors and assigns; provided, however, that Grantee may not assign this Easement Agreement or its rights or delegate its obligations hereunder except as provided above.

Section Headings. The Section headings herein are inserted only for convenience and reference and shall in no way define, limit, or prescribe the scope or intent of any provisions of this Easement Agreement.

Severability. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision herein and any present or future statute, law, ordinance or regulation contrary to which the Parties have no legal right to contract, the latter shall prevail, but the provision of this Easement Agreement affected shall be limited only to the extent necessary to bring it within the requirements of such statute, law, ordinance or regulation.

Counterparts. This Easement Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

Governing Law. The terms and provisions of this Easement Agreement, and the interpretation and enforcement thereof, shall be governed by the laws of the State of Colorado, with venue to be the District Court in and for Weld County.

Waiver. No term or condition of this Easement Agreement will be deemed to have been waived or amended unless expressed in writing, and the waiver of any condition or the breach of any term will not be a waiver of any subsequent breach of the same or any other term or condition.

Amendment. This Easement Agreement may not be amended or terminated except by a written instrument signed by the fee-owner(s) of the Easement Property and the Grantee.

Entire Agreement. This Easement Agreement, together with the exhibits attached hereto and the applicable provisions of the Purchase Agreement, contains the entire agreement of the Parties with respect to the subject matter hereof and no prior written or oral agreement shall have any force or effect or be binding upon the Parties. This Easement Agreement shall be binding upon, and inure to the benefit of, the Parties, their heirs, executors, personal representatives, nominees, successors or permitted assigns.

Notices. All notices, requests, demands, or other communications (collectively, **Notices**) hereunder shall be in writing and given by (i) established express delivery service which maintains delivery records requiring a signed receipt, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested to the Parties at the following address, or at such other address as the parties may designate by Notice in the above manner.

If to Grantor: L.G. Everist, Inc.
Mountain Division Office
7321 East 88th Avenue Suite 200
Henderson, CO 80640
Attn: Matthew Noteboom, VP-Mountain Division

With a copy to: Welborn Sullivan Meck & Tooley, P.C.
1401 Lawrence Street, Suite 1800
Denver, CO 80202
Attn: Mike Fredregill

If to Grantee: Town of Firestone
9950 Park Avenue
P.O. Box 100
Firestone, CO 80520
Attn: Town Manager

With a copy to: Bradley C. Grasmick, Esq.
Lawrence Jones Custer Grasmick, LLP
5245 Ronald Reagan Blvd., Suite 1
Johnstown, CO 80534

Notices shall be effective (x) upon receipt if sent by an established express delivery service which maintains delivery records requiring a signed receipt, (y) upon receipt by the addressee of a hand delivery, or (z) three days following the date of mailing via certified or registered mail, postage prepaid, return receipt requested.

Default. If any Party breaches any provision of this Easement Agreement and fails to cure such breach within 10 days after written notice thereof, the non-breaching Party shall be entitled to any and all remedies, legal or equitable, which may be available including, without limitation, specific performance. All such remedies, including those set forth in this Easement Agreement, shall be cumulative.

No Attorney's Fees or Costs. In the event of any litigation, mediation, arbitration or other dispute resolution process arising out of this Easement Agreement, the Parties agree that each shall be responsible for their own costs and fees associated with any such legal action.

Authority to Execute. Each person executing this Easement Agreement represents and warrants that he is duly authorized to execute this Easement Agreement by the Party on whose behalf he is so executing.

Recordation. Either Party may record this Easement Agreement against the Easement Property in the appropriate jurisdiction. Notwithstanding the foregoing, in the event this Easement Agreement is terminated and either Party desires to record an instrument evidencing such termination, the Parties shall prepare, execute and record, at the shared expense of both Parties, any reasonable instrument necessary to release this Easement Agreement of record.

Disclaimer of Joint Venture. This Easement Agreement is not intended to create a joint venture, partnership or agency relationship between Grantor and Grantee, and such joint venture, partnership, or agency relationship is specifically hereby disclaimed.

Incorporation of Recitals. The above Recitals are true and correct and incorporated herein.

Construction. The Parties have participated jointly in the negotiation and drafting of this Easement Agreement. In the event an ambiguity or question of intent or interpretation arises, this Easement Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Easement Agreement.

[Signature pages follow.]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Easement Agreement as of the date first above written.

GRANTOR:

L.G. EVERIST, INCORPORATED,
a South Dakota corporation

By: _____
Name: _____
Its: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Easement Agreement was acknowledged before me this _____ day of _____, 20___, by _____ of L.G. EVERIST, INCORPORATED, a South Dakota corporation.

Witness my hand and official seal.
My commission expires: _____

_____
Notary Public

GRANTEE:

TOWN OF FIRESTONE,
a Colorado municipal corporation, acting
by and through its Town of Firestone Water
Activity Enterprise, organized and existing
as a "water activity enterprise" under
C.R.S. 37-45.1-101 et seq.

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Easement Agreement was acknowledged before me this _____ day of _____, 20___, by _____ as _____ of the Town of Firestone, a Colorado municipal corporation, acting by and through its Town of Firestone Water Activity Enterprise, organized and existing as a "water activity enterprise" under C.R.S. 37-45.1-101 et seq.

Witness my hand and official seal.
My commission expires: _____

_____
Notary Public

EXHIBIT A

Legal Description of Easement Property

[to be inserted]

EXHIBIT D

Form of Temporary Access and Reclamation Easement

[See following pages]

WHEN RECORDED RETURN TO:
Mike Fredregill
Welborn Sullivan Meck & Tooley, P.C.
1401 Lawrence Street, Suite 1800
Denver, CO 80202

TEMPORARY ACCESS AND RECLAMATION EASEMENT AGREEMENT

THIS TEMPORARY ACCESS AND RECLAMATION EASEMENT AGREEMENT (this **Easement Agreement**) is made as of the _____ day of _____, 20___, by and between the TOWN OF FIRESTONE, a Colorado municipal corporation, acting by and through its Town of Firestone Water Activity Enterprise, organized and existing as a "water activity enterprise" under C.R.S. 37-45.1-101 et seq., whose address is 9950 Park Avenue, P.O. Box 100 Firestone, Colorado 80520, Attention: AJ Krieger, Town Manager (**Grantor**), and L.G. EVERIST, INCORPORATED, a South Dakota corporation, with its Colorado corporate offices at 7321 East 88th Avenue, Suite 200, Henderson, Colorado 80640 (**Grantee**). Grantor and Grantee are sometimes referred to herein individually as a **Party** or collectively as the **Parties**.

RECITALS:

A. WHEREAS, Grantor and Grantee have entered into that certain Purchase and Sale Agreement (Brooks Farm) effective as of _____, 20___ (the **Purchase Agreement**), whereby the Grantee has agreed to install and construct one or more lined water storage cells (the **Cell**) on certain real property located in Weld County, Colorado, hereinafter referred to as the **Project Property** and to convey the Easement Property (as such term is defined in Recital B) to Grantor as required by the terms and conditions of the Purchase Agreement;

B. WHEREAS, Pursuant to the Purchase Agreement, Grantee has conveyed to Grantor, contemporaneously herewith, the Project Property, hereinafter referred to as the **Easement Property**, as more specifically defined in Exhibit A attached hereto;

C. WHEREAS, Grantee has continuing rights and obligations under the Purchase Agreement with respect to the Easement Property, including but not limited to the right to conduct Grantee's reclamation obligations thereon as contemplated by Grantee's existing mining permits applicable to the Easement Property, such remaining reclamation activities being referred to herein collectively as **Grantee's Work**;

D. WHEREAS, Grantor desires to develop a functioning water storage and transport facility (the **Project**) on the Easement Property;

E. WHEREAS, Grantee desires to obtain from Grantor, and Grantor desires to grant to Grantee, an easement on, over, through, under and across the Easement Property for the purpose of conducting and completing the Grantee's Work on and within the Easement Property (all as more specifically described below);

EASEMENT:

NOW, THEREFORE, for and in consideration of the foregoing recitals and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby confessed and acknowledged, Grantor and Grantee agree as follows:

1. **GRANT OF EASEMENT**. Grantor does hereby declare, establish and create for the benefit of Grantee and Grantee's agents, employees, contractors, concessionaires, representatives, successors and assigns, a temporary, non-exclusive easement (the **Easement**) on, over, through, across and under the Easement Property for the purposes of: (a) conducting, installing, constructing, locating, surveying, maintaining, altering, repairing, replacing, using, operating, controlling, and inspecting, Grantee's Work; and (b) all access, ingress and egress, reasonably necessary to accomplish the foregoing (collectively, the **Easement Activities**).

TERM. The Easement shall commence on the date first written above and shall terminate on the earlier of: (a) the date that Grantee completes the reclamation of the Easement Property in accordance with requirements of all applicable regulatory agencies including, but not limited to the requirements of the Colorado Division of Reclamation Mining and Safety, or its predecessor, the Colorado Division of Minerals and Geology, and any applicable county or local land use regulations; or (b) the date that Grantee receives a release of all reclamation bonds posted in connection with the Easement Property as required by the regulatory agencies referenced in the preceding subsection (the **Term**). Grantee hereby agrees that, following the end of the Term of the Easement Agreement and upon Grantor's request, Grantee shall execute such documentation as may be necessary to evidence the termination of this Easement Agreement.

COVENANTS OF GRANTEE. In exercising the rights granted hereunder, performing the Easement Activities, and otherwise accessing the Easement Property, Grantee agrees to each of the following covenants:

Except for conducting and completing the Easement Activities, which shall be specifically permitted if performed in accordance with the terms of the Purchase Agreement, Grantee shall protect the Easement Property and any adjacent lands of Grantor or others from damage caused in whole or in part by acts or omissions of Grantee, its agents, employees, contractors, concessionaires, representatives, successors and assigns (collectively, and together with Grantee, **Grantee's Responsible Parties**). For purposes of clarification, any owners or operators (or any agents, employees or invitees thereof) of natural gas pipelines or any oil and gas drilling, exploration or production equipment which may be located on the Easement Property (or any adjacent or contiguous properties), if any, will not be included within or associated with Grantee's Responsible Parties. Grantee shall clean, cure, repair and correct any such damage caused by any of Grantee's Responsible Parties to any elements of the Easement Property or the above referenced adjacent lands, including, but not limited to, any utilities, structures and other improvements situate therein or thereon, and shall keep all of such property reasonably clean and reasonably clear of equipment, building materials, dirt, debris, and similar materials deposited or caused to be deposited thereon by any of Grantee's Responsible Parties in excess of those required to conduct and complete Grantee's Work on the Easement Property.

All Easement Activities shall be performed at Grantee's sole cost and expense.

Grantee's Responsible Parties shall enter onto the Easement Property and utilize the Easement granted hereunder at their own risk and they further assume all risks related to the same. Grantor shall have no liability to Grantee's Responsible Parties for any and all claims, damages, losses, liens, costs, liabilities, fines, and expenses (including reasonable attorneys' fees and court costs), damage to or destruction of property, and death of or injury to any person related to or arising from entry onto the Easement Property and Grantor is hereby irrevocably and forever released from the same.

In all actions undertaken on the Easement Property by any of Grantee's Responsible Parties, all work shall be completed in a workmanlike manner, free of all liens (including mechanic's liens) and encumbrances on the Easement Property.

Grantee shall not cause, or permit to be caused by any of Grantee's Responsible Parties, any Hazardous Materials (as defined below) to be transported to, or dumped, spilled, released, permanently stored, or deposited on, over or beneath the Easement Property or any other lands owned by Grantor. **Hazardous Materials** means substances, materials or waste the generation, handling, storage, treatment or disposal of which is regulated by any local, state or federal government authority or laws, as a hazardous waste, hazardous material, hazardous substance, pollutant or contaminant and including, without limitation, those designated as a hazardous substance under Section 311 or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Secs. 1321, 1317), defined as a hazardous waste under Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. Sec. 6903), or defined as a hazardous substance under Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sec. 9601), and, including, without limitation, petroleum products and byproducts, PCBs and asbestos.

Grantee shall comply with all applicable federal, state and local laws, rules and ordinances in connection with its use of the Easement Property and has or shall obtain all permits and approvals required by applicable governmental or quasi-governmental entities in connection with Grantee's Easement Activities and use of the Easement Property as permitted hereunder.

The Easement and rights granted herein shall not be used in such a manner as to violate any county regulation, town ordinance or state or federal law, rule or regulation.

Grantee shall utilize the Easement in such a manner reasonably necessary in Grantee's sole discretion to conduct and complete Grantee's Work on the Easement Property in accordance with the terms of the Purchase Agreement.

OBLIGATIONS.

Grantor shall not disturb or impede Grantee's completion of Grantee's Work to the extent that Grantee's Work is performed in accordance with the terms of this Easement Agreement and the Purchase Agreement.

Grantee shall to the extent permitted by law indemnify and hold Grantor harmless from and against any damage that may be incurred by Grantor as a result of the activities of Grantee under the Easement.

GENERAL PROVISIONS.

Easement to Run with Land. This Easement Agreement, including the Easement and all other covenants, agreements, rights and obligations created hereby, shall run with the Easement Property, and shall be binding on and inure to the benefit of all persons having or acquiring fee title to the Easement Property, all upon the terms, provisions and conditions set forth herein. The rights granted hereunder to Grantee are personal to Grantee and except as otherwise set forth herein, may not be assigned by Grantee without Grantor's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

Successors and Assigns. This Easement Agreement shall be binding on Grantor's and Grantee's respective successors and assigns; provided, however, that Grantee may not assign this Easement Agreement or its rights or delegate its obligations hereunder except as provided above.

Section Headings. The Section headings herein are inserted only for convenience and reference and shall in no way define, limit, or prescribe the scope or intent of any provisions of this Easement Agreement.

Severability. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision herein and any present or future statute, law, ordinance or regulation contrary to which the Parties have no legal right to contract, the latter shall prevail, but the provision of this Easement Agreement affected shall be limited only to the extent necessary to bring it within the requirements of such statute, law, ordinance or regulation.

Counterparts. This Easement Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

Governing Law. The terms and provisions of this Easement Agreement, and the interpretation and enforcement thereof, shall be governed by the laws of the State of Colorado, with venue to be the District Court in and for Weld County.

Waiver. No term or condition of this Easement Agreement will be deemed to have been waived or amended unless expressed in writing, and the waiver of any condition or the breach of any term will not be a waiver of any subsequent breach of the same or any other term or condition.

Amendment. This Easement Agreement may not be amended or terminated except by a written instrument signed by the fee-owner(s) of the Easement Property and the Grantee.

Entire Agreement. This Easement Agreement, together with the exhibits attached hereto and the applicable provisions of the Purchase Agreement, contains the entire agreement of the Parties with respect to the subject matter hereof and no prior written or oral agreement shall have any force or effect or be binding upon the Parties. This Easement Agreement shall be binding upon, and inure to the benefit of, the Parties, their heirs, executors, personal representatives, nominees, successors or permitted assigns.

Notices. All notices, requests, demands, or other communications (collectively, Notices) hereunder shall be in writing and given by (i) established express delivery service which maintains delivery records requiring a signed receipt, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested to the Parties at the following address, or at such other address as the parties may designate by Notice in the above manner.

If to Grantee: L.G. Everist, Inc.
Mountain Division Office
7321 East 88th Avenue Suite 200
Henderson, CO 80640
Attn: Matthew Noteboom, VP – Mountain Division

With a copy to: Welborn Sullivan Meck & Tooley, P.C.
1401 Lawrence Street, Suite 1800
Denver, CO 80202
Attn: Mike Fredregill

If to Grantor: Town of Firestone
9950 Park Avenue
P.O. Box 100
Firestone, CO 80520
Attn: Town Manager

With a copy to: Bradley C. Grasmick, Esq.
Lawrence Jones Custer Grasmick, LLP
5245 Ronald Reagan Blvd., Suite 1
Johnstown, CO 80534

Notices shall be effective (x) upon receipt if sent by an established express delivery service which maintains delivery records requiring a signed receipt, (y) upon receipt of a hand delivery, or (z) three days following the date of mailing via certified or registered mail, postage prepaid, return receipt requested.

Default. If any Party breaches any provision of this Easement Agreement and fails to cure such breach within 10 days after written notice thereof, the non-breaching Party shall be entitled to any and all remedies, legal or equitable, which may be available including, without limitation, specific

performance. All such remedies, including those set forth in this Easement Agreement, shall be cumulative.

No Attorney's Fees or Costs. In the event of any litigation, mediation, arbitration or other dispute resolution process arising out of this Easement Agreement, the Parties agree that each shall be responsible for their own costs and fees associated with any such legal action.

Authority to Execute. Each person executing this Easement Agreement represents and warrants that he is duly authorized to execute this Easement Agreement by the Party on whose behalf he is so executing.

Recordation. Either Party may record this Easement Agreement against the Easement Property in the appropriate jurisdiction. Notwithstanding the foregoing, in the event this Easement Agreement is terminated and either Party desires to record an instrument evidencing such termination, the Parties shall prepare, execute and record, at the shared expense of both Parties, any reasonable instrument necessary to release this Easement Agreement of record.

Disclaimer of Joint Venture. This Easement Agreement is not intended to create a joint venture, partnership or agency relationship between Grantor and Grantee, and such joint venture, partnership, or agency relationship is specifically hereby disclaimed.

Incorporation of Recitals. The above Recitals are true and correct and incorporated herein.

Construction. The Parties have participated jointly in the negotiation and drafting of this Easement Agreement. In the event an ambiguity or question of intent or interpretation arises, this Easement Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Easement Agreement.

[Signature pages follow.]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Easement Agreement on the date first above written.

GRANTOR:

TOWN OF FIRESTONE,
a Colorado municipal corporation, acting by and through its Town of Firestone Water Activity Enterprise, organized and existing as a "water activity enterprise" under C.R.S. 37-45.1-101 et seq.

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Easement Agreement was acknowledged before me this _____ day of _____, 20___, by _____ as _____ of the Town of Firestone, a Colorado municipal corporation, acting by and through its Town of Firestone Water Activity Enterprise, organized and existing as a "water activity enterprise" under C.R.S. 37-45.1-101 et seq.

Witness my hand and official seal.
My commission expires: _____

_____
Notary Public

GRANTEE:

L.G. EVERIST, INCORPORATED,
a South Dakota corporation

By: _____
Name: _____
Its: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Easement Agreement was acknowledged before me this _____ day of _____, 20___, by _____ of L.G. EVERIST, INCORPORATED, a South Dakota corporation.

Witness my hand and official seal.
My commission expires: _____

_____
Notary Public

EXHIBIT A

Legal Description of Easement Property

[To be inserted.]

EXHIBIT E

Delivery Schedule

[See following page]

Delivery Schedule

Delivery Date Earliest:	November 30, 2022
Delivery Date Expected:	September 30, 2023
Delivery Date Outside:	November 30, 2025

EXHIBIT F

Form of Assignment and Assumption Agreement (Rural Ditch Company Agreement)

[See following pages]

ASSIGNMENT AND ASSUMPTION AGREEMENT
(Rural Ditch Company Agreement)

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this **Assignment**) is entered into this _____ day of _____, 20___, by and between L.G. EVERIST, INCORPORATED, a South Dakota corporation (**Assignor**), and the TOWN OF FIRESTONE, a Colorado municipal corporation, acting by and through its Town of Firestone Water Activity Enterprise, organized and existing as a "water activity enterprise" under C.R.S. 37-45.1-101 et seq., whose address is 9950 Park Avenue P.O. Box 100, Firestone, Colorado 80520, Attention: AJ Krieger Town Manager (**Assignee**).

Assignor and Assignee entered into that certain Purchase and Sale Agreement (Brooks Farm) dated _____, 20___ (the **Purchase Agreement**), in which Assignor has agreed to sell and Assignee has agreed to purchase the real property described in Exhibit A attached hereto (the **Real Property**). Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Purchase Agreement.

Pursuant to the Purchase Agreement, Assignor has agreed to assign to Assignee any and all rights of Assignor in and to that certain Agreement dated June 10, 2005 by and between the Rural Ditch Company, as one party thereto, and Assignor as the other party thereto, recorded at Reception No. 3296147 of the real property records of Weld County, Colorado on June 20, 2005 (collectively, the **Ditch Agreement**).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment. Assignor hereby assigns, transfers and conveys to Assignee any and all rights, title and interest of Assignor in and to the Ditch Agreement. Any and all payments due to the Rural Ditch Company thereunder for calendar year 20___ shall be the sole responsibility of Assignor. Assignor shall be responsible for requesting the consent of the Rural Ditch Company to this Assignment. Assignee shall be solely responsible for all costs, if any, associated with obtaining the consent of Rural Ditch Company to the assignment of the Ditch Agreement from Assignor to Assignee. Upon approval of the assignment of such Ditch Agreement to Assignee by the Rural Ditch Company, any and all payments due thereunder for any year subsequent to calendar year 20___ shall be the sole responsibility of Assignee.

2. Assumption. Subject to the foregoing, Assignee hereby assumes all liabilities, obligations, rights, title and interests granted by Assignor to Assignee herein from and after the date hereof.

3. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, and both of which together shall constitute one and the same instrument.

4. Applicable Law. This Assignment shall be governed by and interpreted in accordance with the laws of the State of Colorado with venue to be the District Court in and for Weld County.

5. Binding Effect. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective transferees, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have duly executed and sealed this Assignment as of the date set forth above.

ASSIGNOR:

L.G. EVERIST, INCORPORATED,
a South Dakota corporation

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Agreement was acknowledged before me this _____ day of _____, 20___, by _____ of L.G. EVERIST, INCORPORATED, a South Dakota corporation.

Witness my hand and official seal.

_____
Notary Public
My commission expires: _____

ASSIGNEE:

TOWN OF FIRESTONE,
a Colorado municipal corporation, acting by and through its Town of Firestone Water Activity Enterprise, organized and existing as a "water activity enterprise" under C.R.S. 37-45.1-101 et seq.

By: _____
Name printed: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Agreement was acknowledged before me this _____ day of _____, 20___, by _____ as _____ of the Town of Firestone, a Colorado municipal corporation, acting by and through its Town of Firestone Water Activity Enterprise, organized and existing as a "water activity enterprise" under C.R.S. 37-45.1-101 et seq.

Witness my hand and official seal.

_____
Notary Public
My commission expires: _____

[CONSENT ON FOLLOWING PAGE]

CONSENT OF RURAL DITCH COMPANY TO ASSIGNMENT OF DITCH AGREEMENT FROM ASSIGNOR TO ASSIGNEE

The Rural Ditch Company hereby consents to and approves of the assignment of all of Assignor's rights in and to that certain Agreement dated June 10, 2005 by and between the Rural Ditch Company, as one party thereto, and L.G. Everist, Incorporated as the other party thereto, recorded at Reception No. 3296147 of the real property records of Weld County, Colorado on June 20, 2005.

RURAL DITCH COMPANY

By: _____
Name printed: _____
Title: _____

EXHIBIT A

Description of the Real Property

[to be inserted]

EXHIBIT G

Form of Special Warranty Deed

[See following pages]

WHEN RECORDED RETURN TO:

SPECIAL WARRANTY DEED

_____, a _____ (Grantor), for and in consideration of the sum of Ten and No/100 Dollars ($10.00) cash and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, paid by _____, a _____ (Grantee), whose legal address is _____, Attention: _____, HAS GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents DOES GRANT, BARGAIN, SELL and CONVEY unto Grantee that certain tract of land (the Land) situated in the County of Weld, State of Colorado, and described on Exhibit A which is attached hereto and incorporated herein by reference for all purposes, together with all improvements and fixtures thereon (except as specifically reserved by Grantor below) including, without limitation, any and all low permeability linings installed on the Land, all residences and buildings, out buildings, fences, water wells, headgates, pipelines, ditches, laterals, gated pipe, flumes, reservoirs, reservoir outlet works, water tanks, wells, well casings, irrigation sprinklers, pumps and all other valuable manmade structures owned by Grantor which are fixtures thereon or otherwise appurtenant thereto, and together with all right, title and interest of Grantor, if any, in and to any other rights and appurtenances pertaining to the Land including, without limitation, all right, title and interest of Grantor in and to any adjacent roadways and easements benefiting the Land, and all sand, gravel, aggregate, stone, rock, silt, clay, overburden and topsoil lying in, on and under the Land, but specifically excluding from such conveyance, any mining equipment, or any batch plant or ready mix plant, or any components thereof located thereon, (such improvements, fixtures, rights, and appurtenances, together with the Land, being referred to herein as the Property).

This conveyance is specifically made SUBJECT to the following exceptions and reservations made by Grantor:

1. Excepting the matters set forth on Exhibit B attached hereto and incorporated herein by this reference for all purposes (including all rights and interests of Grantor arising under those matters), and;

2. Reserving unto Grantor all of Grantor's rights, if any, in and to any and all oil, gas and other hydrocarbons associated with and/or appurtenant to the Land, and any and all minerals, mineral interests and mineral rights owned by Grantor, if any, associated with and/or appurtenant to the Land.

TO HAVE AND TO HOLD the Property unto Grantee, and Grantee's successors and assigns forever, and Grantor does hereby bind Grantor, and Grantor's successors and assigns, to WARRANT and FOREVER DEFEND, all and singular the Property unto Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise, and subject, however, to the matters set forth on Exhibit B attached hereto, as aforesaid.

This Deed shall be governed by and construed in accordance with the laws of the State of Colorado.

IN WITNESS WHEREOF, the Grantor has caused its name to be hereunto subscribed on the day and year first above written.

GRANTOR:

_____,
a _____

By: _____
Name Printed: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The forgoing Deed was acknowledged before me this _____ day of _____, 20___, by _____, _____ of _____, a _____.

Witness my hand and official seal.
My commission expires: _____

_____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

PERMITTED EXCEPTIONS

EXHIBIT H

Form of Assignment and Assumption Agreement (Colorado Water Court Case Rights)

[See following pages]

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

(Colorado Water Court Case Rights/Case No. _____)

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this **Assignment**) is entered into this _____ day of _____, 20___, by and between L.G. EVERIST, INCORPORATED, a South Dakota corporation (**Assignor**), and the Town of Firestone, a Colorado municipal corporation, acting by and through its Town of Firestone Water Activity Enterprise, organized and existing as a "water activity enterprise" under C.R.S. 37-45.1-101 et seq. (**Assignee**).

Assignor and Assignee entered into that certain Purchase and Sale Agreement (Brooks Farm) dated _____, 20___ (the **Purchase Agreement**), in which Assignor has agreed to sell and Assignee has agreed to purchase the real property described in Exhibit A attached hereto (the **Real Property**). Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Purchase Agreement.

Pursuant to the Purchase Agreement, Assignor has agreed to assign to Assignee all of Assignor's right tile and interest in and to, and all claims and rights of Assignor associated with Colorado Water Court Case No. _____ concerning only the water storage reservoir being developed on the Real Property and all water, water rights, reservoirs and reservoir rights associated therewith.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment. Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's right, title and interest in and to, and all claims and rights of Assignor associated with Colorado Water Court Case No. _____ concerning ONLY the water storage reservoir being developed on the Real Property and all water, water rights, reservoirs and reservoir rights associated therewith. All other rights of Assignor in such proceedings, if any, as they are applicable to properties other than the Real Property, are hereby specifically reserved and retained by Assignor.

2. Assumption. Assignee hereby assumes all liabilities, obligations, rights, title and interests granted herein from and after the date hereof.

3. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, and both of which together shall constitute one and the same instrument.

4. Applicable Law. This Assignment shall be governed by and interpreted in accordance with the laws of the State of Colorado with venue to be the District Court in and for Weld County.

5. Binding Effect. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective transferees, successors, and assigns.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have duly executed and sealed this Assignment as of the date set forth above.

ASSIGNOR:

L.G. EVERIST, INCORPORATED,
a South Dakota corporation

By: _____

Name Printed: _____

Title: _____

ASSIGNEE:

TOWN OF FIRESTONE,
a Colorado municipal corporation, acting by and through its Town of Firestone Water Activity Enterprise, organized and existing as a "water activity enterprise" under C.R.S. 37-45.1-101 et seq.

By: _____

Name Printed: _____

Title: _____

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT I

Form of First Amendment to Unused Carriage Capacity Agreement (Last Chance Ditch)

[See following pages]

FIRST AMENDMENT TO UNUSED CAPACITY AGREEMENT
(Last Chance Ditch)

THIS FIRST AMENDMENT TO UNUSED CAPACITY AGREEMENT ("**First Amendment"**) is entered into this _____ day of _____, 20___, by and between L.G. EVERIST, INCORPORATED, a South Dakota corporation (**LGE**) and the TOWN OF FIRESTONE, a Colorado municipal corporation, acting by and through its Town of Firestone Water Activity Enterprise, organized and existing as a "water activity enterprise" under C.R.S. 37-45.1-101 et seq. ("**TOF"**), each a **Party** and collectively, the **Parties**.

RECITALS

A. LGE and TOF are parties to that certain Unused Capacity Agreement (Last Chance Ditch) dated _____, 20___, (the "**Original Unused Capacity Agreement**"), wherein LGE agreed to allow TOF to utilize certain Secondary Excess Carriage Rights (as such term is defined in the Original Unused Capacity Agreement) of LGE in the Last Chance Ditch solely in connection with TOF's use and operation of certain water storage facilities located on the real property described in the Original Unused Capacity Agreement (such real property which is the subject of the Original Unused Capacity Agreement being referred to in this First Amendment as the "**Carbon Valley Parcel**").

B. Subsequent to the execution of the Original Unused Capacity Agreement, LGE and TOF entered into that certain Purchase and Sale Agreement (Brooks Farm) dated _____, 20___ (the "**Purchase Agreement"**) in which LGE has agreed to sell and TOF has agreed to purchase that certain real property described in Exhibit A attached hereto (the "**Real Property"**). The Real Property which is the subject of the Purchase Agreement is adjacent to and lies directly to the east of the Carbon Valley Parcel, and will be developed by LGE and sold to TOF pursuant to the terms of the Purchase Agreement for TOF's use and operation of certain water storage facilities to be constructed on the Real Property by LGE prior to the sale thereof to TOF.

C. Pursuant to the terms of the Purchase Agreement, LGE has agreed to permit TOF to use the Secondary Excess Carriage Rights granted to TOF under the Original Unused Capacity Agreement in connection with TOF's use and operation of the water facilities located on the Real Property (i.e., use by TOF of the Secondary Excess Carriage Rights to no longer be limited solely in connection with TOF's use and operation of the Carbon Valley Parcel, but to be expanded to utilization by TOF of such Secondary Excess Carriage Rights in connection with TOF's use and operation of the water storage facilities located on both the Carbon Valley Parcel and the Real Property, subject to the limitations thereon imposed by the terms of the Original Unused Capacity Agreement).

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises of LGE and TOF set forth in the Purchase Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LGE and TOF hereby agree as follows:

1. INCORPORATION OF RECITALS. THE FOREGOING RECITALS ARE INCORPORATED HEREIN AS THOUGH FULLY SET FORTH.

2. DEFINITIONS. CAPITALIZED TERMS NOT OTHERWISE DEFINED HEREIN SHALL EACH HAVE THE MEANING ASCRIBED TO SUCH TERM IN THE ORIGINAL UNUSED CAPACITY AGREEMENT.

3. AMENDMENT OF ORIGINAL UNUSED CAPACITY AGREEMENT. SECTION 3(E) OF THE ORIGINAL UNUSED CAPACITY AGREEMENT IS HEREBY AMENDED TO PERMIT TOF'S UTILIZATION OF THE SECONDARY EXCESS CARRIAGE RIGHTS IN CONNECTION WITH TOF'S USE AND OPERATION OF THE WATER STORAGE FACILITIES LOCATED ON BOTH THE CARBON VALLEY PARCEL AND THE REAL PROPERTY, SUBJECT TO ALL OF THE LIMITATIONS IMPOSED THEREON BY THE TERMS OF THE ORIGINAL UNUSED CAPACITY AGREEMENT.

4. RATIFICATION. ALL PROVISIONS OF THE ORIGINAL UNUSED CAPACITY AGREEMENT, EXCEPT AS SPECIFICALLY MODIFIED BY PARAGRAPH 3 OF THIS FIRST AMENDMENT, SHALL REMAIN IN FULL FORCE AND EFFECT AND ARE HEREBY ADOPTED RATIFIED AND CONFIRMED BY THE PARTIES.

5. GOVERNING LAW AND VENUE. THIS FIRST AMENDMENT AND ITS APPLICATION SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF COLORADO. THE PARTIES AGREE THAT VENUE FOR ANY LITIGATED DISPUTES REGARDING THIS FIRST AMENDMENT SHALL BE THE DISTRICT COURT IN AND FOR WELD COUNTY COLORADO, UNLESS ANY SUCH ISSUES ARE WATER MATTERS AS DEFINED BY C.R.S. § 37-92-203, FOR WHICH THE PARTIES AGREE THE VENUE FOR ANY LITIGATED DISPUTES SHALL BE THE DISTRICT COURT, WATER DIVISION 1.

6. MULTIPLE ORIGINALS. THIS FIRST AMENDMENT MAY BE SIMULTANEOUSLY EXECUTED IN ANY NUMBER OF COUNTERPARTS, EACH OF WHICH SHALL BE DEEMED ORIGINAL BUT ALL OF WHICH CONSTITUTE ONE AND THE SAME AGREEMENT.

7. JOINT DRAFT. THE PARTIES AGREE THEY DRAFTED THIS FIRST AMENDMENT JOINTLY WITH EACH HAVING THE ADVICE OF LEGAL COUNSEL AND AN EQUAL OPPORTUNITY TO CONTRIBUTE TO ITS CONTENT.

8. THIRD PARTY RIGHTS. NOTHING IN THIS FIRST AMENDMENT, EXPRESS OR IMPLIED, IS INTENDED TO CONFER ANY RIGHTS OR REMEDIES WHATSOEVER UPON ANY PERSON, OTHER THAN LGE AND TOF AND THEIR RESPECTIVE SUCCESSORS, ASSIGNS AND TRANSFEREES AS MAY BE ALLOWED HEREUNDER.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

TOF:

Town of Firestone,
a Colorado municipal corporation, acting by and through its Town of Firestone Water Activity Enterprise, organized and existing as a "water activity enterprise" under C.R.S. 37-45.1-101 et seq.

By: _____
Name: _____
Title: _____

LGE:

L.G. Everist, Incorporated,
a South Dakota corporation

By: _____
Name: _____
Its: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing agreement was acknowledged before me this _____ day of _____, 20___, by _____ of L.G. EVERIST, INCORPORATED, a South Dakota corporation.

Witness my hand and official seal.

_____
Notary Public
My commission expires: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The forgoing agreement was acknowledged before me this _____ day of _____, 20___, by _____ as _____ of the Town of Firestone, a Colorado municipal corporation, acting by and through its Town of Firestone Water Activity Enterprise, organized and existing as a "water activity enterprise" under C.R.S. 37-45.1-101 et seq.

Witness my hand and official seal.

_____
Notary Public
My commission expires: _____

Exhibit A
Description of the Real Property

[to be inserted]

EXHIBIT J

Form of Down Payment Deed of Trust

[See following pages]

DEED OF TRUST
(Due on Sale)

THIS DEED OF TRUST is made this _____ day of _____, 20____, between L.G. Everist, Incorporated, a South Dakota corporation (**Borrower**), whose address is 7321 East 88th Avenue, Suite 200, Henderson, Colorado 80640; and the Public Trustee of the County in which the Property (see Paragraph 1) is situated (**Trustee**); for the benefit of the Town of Firestone, a Colorado municipal corporation, acting by and through its Town of Firestone Water Activity Enterprise, organized and existing as a "water activity enterprise" under C.R.S. 37-45.1-101 et seq. (**Lender**), whose address is 9950 Park Avenue P.O. Box 100, Firestone, Colorado 80520, Attention: AJ Krieger, Town Manager.

Borrower and Lender covenant and agree as follows:

1. Property in Trust. Borrower, in consideration of the indebtedness herein recited and the trust herein created, hereby grants and conveys to Trustee in trust, with power of sale, the following described property located in the County of Weld, State of Colorado, together with all of its appurtenances (the **Property**):

See Exhibit A attached hereto and incorporated herein.

2. Note; Other Obligations Secured. This Deed of Trust is given to secure to Lender for the following:

a. The repayment of the indebtedness evidenced by Borrower's Promissory Note and Evidence of Indebtedness (the **Note**) dated _____, 20___, in the principal sum of _____ and ___/100 Dollars ($_____) pursuant to the terms of the Note and, by reference therein, to that certain Purchase and Sale Agreement (Brooks Farm) between Borrower and Lender, dated _____, 2015 (the **Purchase Agreement**). For purposes of C.R.S. §38-39-201, the date on which the final payment of the principal sum secured by this Deed of Trust shall be _____, 20___.

b. The payment of all other sums, with simple interest thereon at four percent (4%) per annum, disbursed by Lender in accordance with this Deed of Trust to protect the security of this Deed of Trust.

c. The performance of the convents and agreements of Borrower as contained in this Deed of Trust.

3. Title. Borrower covenants that Borrower owns and has the right to grant and convey the Property, and warrants title to the same, subject to those matters listed on Exhibit B attached hereto and incorporated herein.

4. Payment of Principal. Borrower shall promptly pay when due the principal of and interest (if any) on the indebtedness evidenced by the Note and shall perform all of Borrower's other covenants contained in the Note.

5. Application of Payments. All payments received by Lender under the terms hereof shall be applied by Lender first in payment of amounts disbursed by Lender pursuant to Paragraph 8 (Protection of Lender's Security), and the balance in accordance with the terms and conditions of the Note.

6. Prior Charges and Liens. Subject to the terms of the Purchase Agreement, Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may have or attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any, by Borrower making payment when due, directly to the payee thereof.

7. Preservation and Maintenance of Property. Subject to the terms of the Purchase Agreement, Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property. Borrower's mining of the Property for sand, gravel and aggregate as provided for under the Purchase Agreement shall not be considered to be waste, impairment or deterioration of the Property. Borrower shall perform all of Borrower's obligations under any declarations, covenants, bylaws, rules, or other documents governing the use, ownership or occupancy of the Property.

8. Protection of Lender's Security. If the Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, with notice to Borrower if required by law, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest.

Any amounts disbursed by Lender pursuant to this Paragraph 8, shall become additional indebtedness of Borrower secured by this Deed of Trust. Such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and Lender may bring suit to collect any amounts so disbursed plus interest specified in Paragraph 2(b). Nothing contained in this Paragraph 8 shall require Lender to incur any expense or take any action hereunder.

9. Inspection. Lender may make or cause to be made reasonable entries upon and inspection of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to Lender's interest in the Property.

10. Condemnation. Subject to the terms of the Purchase Agreement, the proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender as herein provided. However, all of the rights of Borrower and Lender hereunder with respect to such proceeds are subject to the rights of any holder of a prior deed of trust.

In the event of a total taking of the Property and subject to the terms of the Purchase Agreement, the proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property and subject to the terms of the Purchase Agreement, the proceeds shall be divided between Lender and Borrower, in the same ratio as the amount of the sums secured by this Deed of Trust immediately prior to the date of taking bears to Borrower's equity in the Property immediately prior to the date of taking.

Borrower's equity in the Property means the fair market value of the Property less the amount of sums secured by this Deed of Trust, all at the value immediately prior to the date of taking.

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 and subject to the terms of the Purchase Agreement, Borrower fails to respond to Lender within 30 days after the date such notice is given, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Any such application of proceeds to principal shall not extend or postpone the due date of the installments referred to in Paragraph 4 nor change the amount of such installments, if any.

11. Borrower Not Released. Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower, nor Borrower's successors in interest, from the original terms of this Deed of Trust. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower nor Borrower's successors in interest.

12. Forbearance by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by law, shall not be a waiver or preclude the exercise of any such right or remedy.

13. Remedies Cumulative. Each remedy provided in the Note and this Deed of Trust is distinct from and cumulative to all other rights or remedies under the Note and this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

14. Successors and Assigns Bound; Joint and Several Liability, Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

15. Notice. Except for any notice required by law to be given in another manner any notice either party provided for in this Deed of Trust shall be in the manner set forth in the Purchase Agreement.

16. Governing Law; Severability. The Note and this Deed of Trust shall be governed by the law of Colorado. In the event that any provision or clause of this Deed of Trust or the Note conflicts with the 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, and to this end the provisions of the Deed of Trust and Note are declared to be severable.

17. Foreclosure; Other Remedies. Upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, Lender may invoke the power of sale and any other remedies permitted by law. Lender shall be entitled to collect all reasonable costs and expenses

incurred in pursuing the remedies provided in this Deed of Trust, including, but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of such election. Trustee shall give such notice to Borrower of Borrower's rights as is provided by law. Trustee shall record a copy of such notice as required by law. Trustee shall advertise the time and place of the sale of the Property, for not less than four weeks in a newspaper of general circulation in each county in which the Property is situated, and shall mail copies of such notice of sale to Borrower and other persons as prescribed by law. After the lapse of such time as may be required by law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place (which may be on the Property or any part thereof as permitted by law) in one or more parcels as Trustee may think best and in such order as Trustee may determine. Lender or Lender's designee may purchase the Property at any sale. It shall not be obligatory upon the purchaser at any such sale to see to the application of the purchase money.

Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto. In the event the proceeds from the Trustee's Sale are insufficient to satisfy the sum secured by the Deed of Trust, Lender shall have the right to obtain a deficiency judgment against Borrower for the remainder due Lender, including costs and expenses.

18. Borrower's Right to Cure Default. Whenever foreclosure is commenced for nonpayment of any sums due hereunder, the owners of the Property or parties liable hereon shall be entitled to cure said defaults by paying all delinquent principal and interest payments due as of the date of cure, costs, expenses, late charges, attorney's fees and other fees all in the manner provided by law. Upon such payment, this Deed of Trust and the obligations secured hereby shall remain in full force and effect and the foreclosure proceedings shall be discontinued.

19. Appointment of Receiver; Lender in Possession. Lender or the holder of the Trustee's certificate of purchase shall be entitled to a receiver for the Property during the time covered by foreclosure proceedings and the period of redemption, if any; and shall be entitled thereto as a matter of right without regard to the solvency or insolvency of Borrower or of the then owner of the Property, and without regard to the value thereof. Such receiver may be appointed by any Court of competent jurisdiction upon *ex parte* application and without notice such notice being hereby expressly waived.

Upon abandonment of the Property, Lender, in person, by agent or by judicially-appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied, first, to payment of the costs of preservation and management of the Property, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those installments actually received.

20. Release. Upon payment of all sums secured by this Deed of Trust, Lender shall cause Trustee to release this Deed of Trust and shall produce for Trustee the Note. Borrower shall pay all costs of recordation and shall pay the statutory Trustee's fees.

21. Waiver of Exemptions. Borrower hereby waives all right of homestead and any other exemption in the Property under state or federal law presently existing or hereafter enacted.

22. Transfer of the Property; Assumption. The following events shall be referred to herein as a **Transfer**: (i) a transfer or conveyance of title (or any portion thereof, legal or equitable) of the Property (or any part thereof or interest therein); (ii) the execution of a contract or agreement creating a right to title (or any portion thereof, legal or equitable) in the Property (or any part thereof or interest therein); (iii) or an agreement granting a possessory right in the Property (or any portion thereof), in excess of three (3) years; (iv) a sale or transfer of, or the execution of a contract or agreement creating a right to acquire or receive, more than fifty percent (50%) of the controlling interest or more than fifty percent (50%) of the beneficial interest in the Borrower; and (v) the reorganization, liquidation or dissolution of the Borrower. Notwithstanding the foregoing, the following shall not be included as a Transfer: (i) the creation of a lien or encumbrance subordinate to this Deed of Trust; or (ii) a transfer by devise, descent or by operation of the law upon the death of a joint tenant; or (iii) any Transfer contemplated by the terms and conditions of the Purchase Agreement. At the election of Lender, in the event of each and every Transfer:

(a) All sums secured by this Deed of Trust shall become immediately due and payable (Acceleration).

(b) If a Transfer occurs and should Lender not exercise Lender's option pursuant to this Paragraph 22 to Accelerate, Transferee shall be deemed to have assumed all of the obligations of Borrower under this Deed of Trust including all sums secured hereby whether or not the instrument evidencing such conveyance, contract or grant expressly so provides. This covenant shall run with the Property and remain in full force and effect until said sums are paid in full. The Lender may without notice to the Borrower deal with Transferee in the same manner as with the Borrower with reference to said sums without in any way altering or discharging the Borrower's liability hereunder for the obligations hereby secured.

(c) Should Lender not elect to Accelerate upon the occurrence of such Transfer, then, subject to (b) above, the mere fact of a lapse of time or the acceptance of payment subsequent to any such events, whether or not Lender had actual or constructive notice of such Transfer, shall not be deemed a waiver of Lender's right to make such election nor shall Lender be estopped therefrom by virtue thereof.

[Signature page follows.]

BORROWER:

L.G. EVERIST, INCORPORATED, a South Dakota corporation

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Easement Agreement was acknowledged before me this _____ day of _____, 20___, by _____ of L.G. EVERIST, INCORPORATED, a South Dakota corporation.

Witness my hand and official seal.
My commission expires: _____

_____
Notary Public

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B
EXCEPTIONS TO TITLE

EXHIBIT K

Form of Down Payment Promissory Note

[See following pages]

PROMISSORY NOTE AND EVIDENCE OF INDEBTEDNESS

US $_____ Date: _____

FOR VALUE RECEIVED, the undersigned (**Maker**) promises to pay to the order of the Town of Firestone, a Colorado municipal corporation, acting by and through its Town of Firestone Water Activity Enterprise, organized and existing as a "water activity enterprise" under C.R.S. 37-45.1-101 et seq. (**Holder**), whose address is 9950 Park Avenue P.O. Box 100, Firestone, Colorado 80520, Attention: AJ Krieger, Town Manager, the principal sum of _____ and _____/100 Dollars ($_____) such principal amount hereinafter referred to as the **Indebtedness**. The Indebtedness shall be payable at the office of Holder referenced above, or such other place as the holder of this Note may designate, at such time and on such terms as provided under that certain Purchase and Sale Agreement (Brooks Farm) between Maker and Holder dated _____, 2021 (the **Purchase Agreement**) for the return or credit to Holder of the Down Payment (as defined in the Purchase Agreement).

Except as otherwise provided herein and in the Purchase Agreement, all terms, conditions and provisions of this Note and any Deed of Trust that secures this Note shall remain in full force and effect until such time as the Down Payment is either paid in full or no longer due and owing pursuant to the terms of the Purchase Agreement. Any Deed of Trust that secures this Note shall serve as security for the payment of the entire Indebtedness evidenced by this Note including any and all extensions, renewals or modifications thereof.

Maker and all other makers, sureties, guarantors, and endorsers hereby waive presentment, notice of dishonor and protest, and they hereby agree to any extensions of time of payment and partial payments before, at, or after maturity. This Note shall be the joint and several obligation of Maker and all other makers, sureties, guarantors and endorsers, and, their successors and assigns

Any notice to Maker provided for in this Note shall be in writing and shall be given and be effective upon those terms and conditions provided for notices under the Purchase Agreement and addressed to Maker at the Maker's address stated below, or to such other address as Maker may designate by notice to the Holder. Any notice to the Holder shall be in writing and shall be given and be effective upon those terms and conditions provided for notices under the Purchase Agreement and addressed to the Holder at the address stated in the first paragraph of this Note, or to such other address as Holder may designate by notice to Maker.

MAKER:

L.G. EVERIST, INCORPORATED,
a South Dakota corporation

By: _____

MAKER'S ADDRESS:

L.G. EVERIST, INC.
7321 East 88th Avenue, Suite 200
Henderson, Colorado 80640

EXHIBIT K-1

EXHIBIT L

ASSIGNMENT AND ASSUMPTION AGREEMENT
(Rights Under Section 112(c) Permit)

[See following pages]

ASSIGNMENT AND ASSUMPTION AGREEMENT

(Rights Under Section 112(c) Permit)

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment") is entered into this _____ day of _____, 20___, by and between L.G. EVERIST, INCORPORATED, a South Dakota corporation ("Assignor") and the TOWN OF FIRESTONE, a Colorado municipal corporation, acting by and through its Town of Firestone Water Activity Enterprise, organized and existing as a "water activity enterprise" under C.R.S. 37-45.1-101 et seq. ("Assignee").

Assignor and Assignee entered into that certain Purchase and Sale Agreement (Brooks Farm) dated _____, 2021 (the "Purchase Agreement"), in which Assignor has agreed to sell and Assignee has agreed to purchase the real property described in Exhibit A attached hereto (the "Real Property"). Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Purchase Agreement.

Pursuant to the Purchase Agreement, Assignor has agreed to assign to Assignee and Assignee has agreed to assume all of Assignor's remaining reclamation obligations associated with Assignee's existing Mine Reclamation Permit (DRMS Permit No. M-2001-017), as such permit may have been amended and/or extended (collectively "Assignee's Permits").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment. Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's remaining rights, title and interest to Assignee's Permits.

2. Assumption. Assignee hereby assumes all remaining liabilities, obligations, rights, title and interests granted to Assignee by this Assignment from and after the date hereof, and Assignee hereby agrees to comply and shall comply with the requirements relating to such assumption by Assignee as provided for by C.R.S. § 34-32.5-119.

3. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, and both of which together shall constitute one and the same instrument.

4. Applicable Law. This Assignment shall be governed by and interpreted in accordance with the laws of the State of Colorado with venue to be the District Court in and for Weld County.

5. Binding Effect. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective transferees, successors, and assigns.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have duly executed and sealed this Assignment as of the date set forth above.

ASSIGNOR:

L.G. EVERIST INCORPORATED,
a South Dakota corporation

By: _____
Name printed: _____
Title: _____

ASSIGNEE:

TOWN OF FIRESTONE,
a Colorado municipal corporation, acting by and through its Town of Firestone Water Activity Enterprise, organized and existing as a "water activity enterprise" under C.R.S. 37-45.1-101 et seq.

By: _____
Name printed: _____
Title: _____

EXHIBIT A

Description of the Real Property

EXHIBIT M

Consumer Price Index, All Urban Consumers, U.S. City Average, all items (1982 – 84 = 100)

[See following pages]

4825-6632-2305.4

EXHIBIT M-1

U.S. Department of Labor
Bureau of Labor Statistics
Washington, D.C. 20212

Consumer Price Index
All Urban Consumers (CPI-U)
U.S. City Average
All Items
1982-84=100

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg	Percent Change Dec.-Dec.	Percent Change Avg.-Avg.
1990	127.4	128.0	128.7	128.9	129.2	129.9	130.4	131.6	132.7	133.5	133.8	133.8	130.7	6.1	5.4
1991	134.6	134.8	135.0	135.2	135.6	136.0	136.2	136.6	137.2	137.4	137.8	137.9	136.2	3.1	4.2
1992	138.1	138.6	139.3	139.5	139.7	140.2	140.5	140.9	141.3	141.8	142.0	141.9	140.3	2.9	3.0
1993	142.6	143.1	143.6	144.0	144.2	144.4	144.4	144.8	145.1	145.7	145.8	145.8	144.5	2.7	3.0
1994	146.2	146.7	147.2	147.4	147.5	148.0	148.4	149.0	149.4	149.5	149.7	149.7	148.2	2.7	2.6
1995	150.3	150.9	151.4	151.9	152.2	152.5	152.5	152.9	153.2	153.7	153.6	153.5	152.4	2.5	2.8
1996	154.4	154.9	155.7	156.3	156.6	156.7	157.0	157.3	157.8	158.3	158.6	158.6	156.9	3.3	3.0
1997	159.1	159.6	160.0	160.2	160.1	160.3	160.5	160.8	161.2	161.6	161.5	161.3	160.5	1.7	2.3
1998	161.6	161.9	162.2	162.5	162.8	163.0	163.2	163.4	163.6	164.0	164.0	163.9	163.0	1.6	1.6
1999	164.3	164.5	165.0	166.2	166.2	166.2	166.7	167.1	167.9	168.2	168.3	168.3	166.6	2.7	2.2
2000	168.8	169.8	171.2	171.3	171.5	172.4	172.8	172.8	173.7	174.0	174.1	174.0	172.2	3.4	3.4
2001	175.1	175.8	176.2	176.9	177.7	178.0	177.5	177.5	178.3	177.7	177.4	176.7	177.1	1.6	2.8
2002	177.1	177.8	178.8	179.8	179.8	179.9	180.1	180.7	181.0	181.3	181.3	180.9	179.9	2.4	1.6
2003	181.7	183.1	184.2	183.8	183.5	183.7	183.9	184.6	185.2	185.0	184.5	184.3	184.0	1.9	2.3
2004	185.2	186.2	187.4	188.0	189.1	189.7	189.4	189.5	189.9	190.9	191.0	190.3	188.9	3.3	2.7
2005	190.7	191.8	193.3	194.6	194.4	194.5	195.4	196.4	198.8	199.2	197.6	196.8	195.3	3.4	3.4
2006	198.3	198.7	199.8	201.5	202.5	202.9	203.5	203.9	202.9	201.8	201.5	201.8	201.6	2.5	3.2
2007	202.416	203.499	205.352	206.686	207.949	208.352	208.299	207.917	208.490	208.936	210.177	210.036	207.342	4.1	2.8
2008	211.080	211.693	213.528	214.823	216.632	218.815	219.964	219.086	218.783	216.573	212.425	210.228	215.303	0.1	3.8
2009	211.143	212.193	212.709	213.240	213.856	215.693	215.351	215.834	215.969	216.177	216.330	215.949	214.537	2.7	-0.4
2010	216.687	216.741	217.631	218.009	218.178	217.965	218.011	218.312	218.439	218.711	218.803	219.179	218.056	1.5	1.6
2011	220.223	221.309	223.467	224.906	225.964	225.722	225.922	226.545	226.889	226.421	226.230	225.672	224.939	3.0	3.2
2012	226.665	227.663	229.392	230.085	229.815	229.478	229.104	230.379	231.407	231.317	230.221	229.601	229.594	1.7	2.1
2013	230.280	232.166	232.773	232.531	232.945	233.504	233.596	233.877	234.149	233.546	233.069	233.049	232.957	1.5	1.5
2014	233.916	234.781	236.293	237.072	237.900	238.343	238.250	237.852	238.031	237.433	236.151	234.812	236.736	0.8	1.6
2015	233.707	234.722	236.119	236.599	237.805	238.638	238.654	238.316	237.945	237.838	237.336	236.525	237.017	0.7	0.1
2016	236.916	237.111	238.132	239.261	(r)240.229	(r)241.018	(r)240.628	(r)240.849	241.428	241.729					

(r) Revised.

EXHIBIT N

Form of Acceptance of Reclamation

[See following pages]

L.G. EVERIST, INC.
Rock Solid Since 1876

7321 E. 88th Avenue, Suite 200
Henderson, Colorado 80640
Phone 303-287-9606 • Fax 303-289-1348

June 11, [redacted]

[redacted]

RE: Acceptance of Reclamation of L.G. Everist, Inc.'s [redacted] Sand and Gravel Mine, DRMS Permit M-1999-[redacted] - [redacted] Phase and [redacted] Phase

Dear Ms. [redacted]:

Reclamation has been completed on the [redacted] and [redacted] Phases of L.G. Everist, Inc.'s [redacted] Sand and Gravel Mine, M-1999-[redacted] - including the slurry wall liners, backfilling, sloping, grading and seeding of the site. The slurry wall liners of both phases have passed the leak test required by the Colorado Office of the State Engineer (SEO) and have continued to meet the SEO design standard. [redacted]
The initial seeding was completed around the upper reaches of the reservoirs in April-2012. Copies of the two SEO approval letters and the seeding invoice are attached for your reference.

[redacted], [redacted] Projects Manager, inspected the areas on Monday, June 10, [redacted], and found them to be more than satisfactory. So, with reclamation complete and site inspection done on the [redacted] and [redacted] Phases, L. G. Everist, Inc. respectfully requests an acknowledgment of acceptance from [redacted] to receive the reclaimed areas *as is*.

As you know, L.G. Everist modified our Division of Reclamation, Mining, and Safety (DRMS) reclamation permit on the [redacted] site with Technical Revision [redacted], in 2009. The revision states, "*Modify final vegetation standard to allow release prior to full vegetation establishment, all other reclamation standards remain in effect.*" Of course, DRMS appreciates knowing that acreage released from the permit will be taken over by a responsible party, hence why we would like to include this acceptance letter in our DRMS acreage release request for the [redacted] and [redacted] Phases.

Thank you for acknowledging acceptance of the [redacted] and [redacted] Phases as is, and please return a signed copy of the letter to me so that I can include it in my release request to the DRMS.

If you have any questions, please contact me at 303-286-2247 or by email (lmshults@lgeverist.com).

Sincerely,

Lynn Mayer Shults
Regulatory Manager

cc: [redacted] Esq. Special Water Counsel for [redacted]
Dennis Fields, L.G. Everist, Inc.

FL-DRMS-[redacted]061113.doc

RE: **Acceptance of Reclamation of L.G. Everist, Inc.'s [redacted] Sand and Gravel Mine, DRMS Permit M-1999-[redacted] Phase and [redacted] Phase**

[redacted] Acknowledgement:

Please provide a notarized signature from a representative of [redacted] to show acknowledgement of approval of the reclamation as is of the [redacted] Phase and [redacted] phase. This acknowledgment does not change or nullify any previously signed contracts, letters, or agreements between [redacted] and L.G. Everist, Inc .

Signature [redacted] Date: 6/20/[redacted]

Representative

STATE OF COLORADO)
) ss
COUNTY OF [redacted])

Subscribed and sworn before this 20 day of June [redacted]

by [redacted] of the [redacted]

Notary Public Tammy Hoyle (notary seal)

My Commission expires 4/15/15

TAMMY HOYLE NOTARY PUBLIC STATE OF COLORADO

My Commission Expires 04/15/2015