

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is entered into this ___ day of August, 2022 (“Effective Date”), by and between L.G. Everist, Incorporated, a South Dakota corporation, whose address is 7321 East 88th Avenue, Suite 200, Henderson, Colorado 80640 (“LGE” or “Seller”) and 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, Firestone, Colorado 80520 (“Firestone” or “Buyer”). LGE and Firestone may be referred to herein collectively as “Parties” or individually as “Party.”

RECITALS

WHEREAS, LGE owns a certain parcel of land located in Section 32, Township 3 North, Range 67 West, 6th P.M. Weld County, Colorado as more particularly depicted on **Exhibit A**, attached hereto and incorporated herein, and is developing thereon, among other improvements, a clay lined gravel pit which will be lawfully usable as a water storage reservoir known as the Firestone Pit in the areas further depicted on **Exhibit A** (the “Property”); and

WHEREAS, LGE also owns a certain parcel of land located in Section 32, Township 3 North, Range 67 West, 6th P.M. Weld County, Colorado known as the “Northwest Cell”, being adjacent to the Property and Firestone Pit as depicted on **Exhibit A**; and

WHEREAS, LGE owns certain shares of stock in the Last Chance Ditch Company, represented by Stock Certificates No. 80, 81, and 83, historically used on the Property (the “Water Right”); and

WHEREAS, LGE desires to develop a lined water storage reservoir in connection with its mining activities and sell the Property, water storage and associated Water Right, while retaining the short-term ability to complete its sand and gravel mining operations and development of the Firestone Pit; and

WHEREAS, Firestone desires to purchase the Property, the associated Water Right, and water storage capacity created after the completion of mining operations in the Firestone Pit;

NOW, THEREFORE, in consideration of the mutual promises of the Parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

ARTICLE I PROPERTY AND INCLUSIONS; DELIVERY REQUIREMENTS

1. Incorporation. The above Recitals are incorporated into this Agreement as if fully set forth herein.

2. Property. Seller agrees to sell and Buyer agrees to buy the Property and Water Right, on the terms and conditions set forth in this Agreement, specifically including the improvements located thereon and the water storage reservoir being developed therein known as the Firestone Pit.
 - 2.1. Inclusions. Unless specifically excluded by this Agreement, Buyer's acquisition of the Property and Firestone Pit shall include the following:
 - 2.1.1. All improvements, and any easements, servitudes, permits, licenses, and leases appurtenant to the Property. These improvements specifically include any compacted clay wall liner or other impervious liners installed by Seller within the mining area;
 - 2.1.2. All sand and gravel appurtenant to the Property, together with any and all surface use, access easements, and all rights in connection therewith and all other mineral, oil, gas and any other mineral rights thereon which are owned by the Seller, subject to all matters of record or other encumbrances related thereto; and provided, however, that Seller expressly disclaims any warranty of ownership of mineral, oil, gas, or other hydrocarbons lying beneath or otherwise appurtenant to the Property.
 - 2.1.3. All of Seller's interest in water, wells, well rights, well permits, springs, appurtenant to and/or enjoyed in connection with the Property, together with all of Seller's interest, if any, in easements or rights of way, appurtenant thereto or used in connection therewith, as well as all fixtures, apparatus and ancillary equipment, appurtenant thereto or used in connection with said water rights, specifically including any water conveyance structures, measuring equipment, inlets, outlets and pumps associated with the water and water rights.
 - 2.2. Exclusions. Seller shall not convey to Buyer any of Seller's personal property, trade fixtures, equipment, or any other property not a fixture to or improvement to the Property.

ARTICLE II PURCHASE PRICE

1. Earnest Money. Within fourteen (14) days of mutual execution of this Agreement, Buyer shall deliver and deposit with Stewart Title Guaranty Company earnest money payable in the sum of One Hundred Thousand Dollars (\$100,000.00), which shall be applied to the Purchase Price at Closing ("Earnest Money"). The Earnest Money shall become nonrefundable upon completion of the Due Diligence Period as defined in Article 4, Paragraph 1 of this Agreement.
2. Purchase Price. The total purchase price for the Property shall be Twenty Million Dollars (\$20,000,000.00) paid in two installments as described herein ("Total Purchase Price"). The Total Purchase Price shall include the Water Right and Seller's interest in all Inclusions identified in Article I, Paragraph 2.1 of this Agreement. Buyer shall deliver to Seller at Closing Seventeen Million Dollars (\$17,000,000.00) to be paid in cash or good funds, less any earnest money previously provided by Buyer. The remaining Three Million Dollars (\$3,000,000.00)

of the Total Purchase Price, shall be deposited into an escrow account by Buyer at Closing, and will become payable to Seller, less any amounts owed to Buyer pursuant to the terms of this Agreement, upon Seller's delivery of the Firestone Pit on or before December 31, 2031 and in accordance with the terms of this Agreement (hereinafter "Escrow Funds").

ARTICLE III TITLE AND CLOSING

1. Time and Place of Closing. Subject to and in accordance with the provisions of this Agreement, closing of the purchase and sale of the Property ("Closing") shall be held on December 10, 2022, being one hundred and twenty (120) days from the Effective Date, at a time and place determined by the Parties, or at such sooner or later time as may be mutually agreed upon by the Parties ("Closing Date"). Provided, however, the Closing Date shall be automatically extended for a period of thirty (30) days or until such date as mutually agreed upon by the Parties in the event that Buyer is awaiting distribution of funds from an approved loan for the Total Purchase Price.
2. Title Insurance. Within twenty (20) days of the Effective Date, Seller shall deliver to Buyer one or more title commitments(s) for an ALTA Owners Policy of Title Insurance ("Commitment") committing the Stewart Title Guaranty Company ("Title Company") to issue a policy insuring title to the Property in accordance with the Commitment in the name of the Buyer. The Commitment shall bear an effective date subsequent to the Effective Date and shall include complete, legible copies of all documents referred to therein. Buyer hereby agrees that Seller may satisfy its obligation to deliver the Commitment by delivery of a commitment which is subject to approval of the Title Company's underwriter but which otherwise satisfies the conditions of the Commitment; provided that if the final Commitment issued by the Title Company includes additional exceptions to title then Buyer shall be entitled to object to such additional matters as provided for herein and the dates for title review, objection, and response shall be similarly extended at Buyer's discretion.
3. Objections. Within sixty (60) days of receiving the Commitment, Buyer shall deliver to Seller written notice of Buyer's objections to title, if any. Permissible exceptions to title shall include only: (1) zoning laws, applicable governmental rules and regulations and building ordinances; (2) title exceptions shown on the Commitment to which Buyer has not objected or is deemed to have accepted by failing to object (collectively "Permitted Exemptions"); and (3) real property taxes and assessment for the year of Closing and subsequent years. If Buyer fails to so deliver a title objection notice on or before the above-stated date then Buyer shall be deemed to have waived its rights to object to the exceptions listed in the Title Commitment.
4. Cure. If Seller will not cure, remove, or commit to removing Buyer's objections or otherwise fails to respond to Buyer's notice of title objections on or before fourteen (14) days following Buyer's notice of objections, then Buyer may terminate this Agreement by written notice to Seller on or before the date which is seven (7) days after the end of said fourteen (14) day period, whereupon the Parties shall be released from all further obligations under this Agreement. In the event Buyer does not so terminate this Agreement, Buyer shall be deemed

to have waived such objections (other than any objections Seller has agreed in writing to cure), and such objections shall be deemed Permitted Exceptions under this Agreement.

5. Title Insurance Policy. Seller shall cause a title insurance policy consistent with the Commitment to be issued or committed to be issued by the Title Company as of the date of Closing and shall show no exceptions other than the Permitted Exceptions (the “Title Policy”).
6. Delivery of Documents. On or before the Closing Date, Seller and Buyer shall accomplish the following:

6.1. Seller shall deliver or cause to be delivered to the Title Company:

6.1.1. A special warranty deed (the “Deed”) conveying to Buyer the Property, any and all appurtenances and improvements thereto, including all sand, gravel, and any other aggregate or hard rock mineral deposits lying on, in, under and appurtenant to the Property, any and all appurtenances and improvements related thereto, duly executed and acknowledged by Seller, free and clear of all taxes and assessments and other liens and encumbrances except non-delinquent general property taxes for the year of Closing and the Permitted Exceptions. Buyer acknowledges that the Deed shall contain no warranty of title by Seller for the conveyance of any oil, gas or other hydrocarbon interests appurtenant to or lying beneath the Property.

6.1.2. A bargain and sale deed conveying to Buyer the Water Right, and any and all appurtenances and improvements associated therewith, duly executed and acknowledged by Seller, free and clear of all taxes and assessments and other liens and encumbrances except the Permitted Exceptions.

6.1.3. A Stock Assignment conveying to Buyer three and one-sixth (3 & 1/6) shares in the Last Chance Ditch Company represented by Stock Certificates No. 80, 81, and 83 (otherwise referred to herein as the “Water Right”) duly executed and acknowledged by Seller, free and clear of all liens and encumbrances.

6.1.4. Any and all other documents and instruments required to be executed by Seller Pursuant to the terms of this Agreement or requested by Title Company in connection with the transaction contemplated under this Agreement or as may otherwise be required pursuant to applicable law.

6.2. Buyer shall deliver or cause to be delivered to the Title Company:

6.2.1. The Mining Lease for Sand, Gravel and Aggregate attached hereto as **Exhibit B** (“Mining Lease”).

6.2.2. The Augmentation Water Lease attached hereto as **Exhibit C**.

6.2.3. The Water Carriage Agreement attached hereto as **Exhibit D**.

7. Closing Costs. The Title Policy premium shall be paid by Seller. Buyer shall pay for any requested endorsements to the Title Policy. The cost of any transfer fees, taxes or escrow fees and charges shall be shared equally among the Parties. Buyer shall pay for all recording fees. Buyer and Seller shall sign and complete all customary or required documents at or before the Closing Date. Fees for real estate closing services shall be paid by Buyer.
8. Payment of Encumbrances. Any encumbrances required to be paid shall be paid at or before the Closing Date from the proceeds of this transaction or from any other source. All unpaid utility bills for service up to the Closing Date shall be paid by Seller.

ARTICLE IV CONDITIONS TO CLOSING

1. Buyer's Conditions. Buyer's obligation to purchase the Property is subject to the fulfillment of each of the following conditions to be completed within a period of sixty (60) days, beginning fourteen (14) days from the Effective Date of this agreement and Buyer's receipt of the following described documents (the "Due Diligence Period"), each of which is for the benefit of Buyer and any of which may be waived by Buyer at its sole option:
 - 1.1. Document Review. Buyer's review and approval of the following documents and materials within the Due Diligence Period, which documents Seller shall use its best efforts to obtain and cause to be delivered to Buyer contemporaneously with the execution of this Agreement, but no later than fourteen (14) days after the Effective Date:
 - 1.1.1. Seller shall provide Buyer with a current ALTA survey and preliminary title report for the Property, accompanied by copies of all documents referred to in such reports, or if not available as of the deadline required by this paragraph, copies of all work completed by the Title Company;
 - 1.1.2. Prior to the Closing Date, Seller shall cause to be filed with the appropriate entities in Weld County, Colorado all required documentation to subdivide those certain parcels of land depicted on **Exhibit A**, known as the Northwest Cell parcel and the Property including the Firestone Pit, so that the Firestone Pit/Property can be legally conveyed to Buyer. Seller shall bear all costs associated with subdividing same and take all necessary measures to ensure completion of the same prior to, or after the Closing Date. Buyer agrees to reasonably cooperate with any and all actions necessary to complete such subdivision process.
 - 1.1.3. Copies of all applications, approvals, permits, licenses, certificates, leases, or agreements relating to zoning, operation, occupancy or any use of the Property; especially as the same relate to any mining or storage and use of water on the Property; and

- 1.1.4. Copies of any surveys, soils and/or engineering reports, feasibility studies, site plats and plans, and other reports, studies or documents relating to the Property, mining activities and water use thereon.
- 1.1.5. Objections. On or before expiration of the Due Diligence Period, Buyer shall deliver to Seller written notice of Buyer's objections to the above-described documents, if any. If Buyer fails to so deliver an objection notice on or before the expiration of the Due Diligence Period, then Buyer shall be deemed to have waived its rights to such object.
- 1.1.6. Right to Cure. If Seller will not cure, remove, or commit to removing Buyer's objections or otherwise fails to respond to Buyer's notice of objections on or before fourteen (14) days following Buyer's notice of objections, then Buyer may terminate this Agreement by written notice to Seller on or before the date which is seven (7) days after the end of said fourteen (14) day period, whereupon the Parties shall be released from all further obligations under this Agreement. In the event Buyer does not so terminate this Agreement, Buyer shall be deemed to have waived such objections (other than any objections Seller has agreed in writing to cure), and such objections shall be deemed Permitted Exceptions under this Agreement.
- 1.2. Physical Inspection and Condition of Property. Within sixty (60) days of the Effective Date, Buyer, its agents and employees shall have the right to enter onto the Property for the purpose of inspection, review and approval of the physical and environmental condition of the Property; including the ability to commission and take all necessary actions to conduct and complete a phase one environmental site assessment of the Property; provided that: (i) Buyer shall give Seller at least 24 hours advance 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. Buyer hereby agrees that Buyer will be responsible for any and all damages to Seller and the Property which result from any negligent actions of Buyer, its employees, agents, contractors, subcontractors and consultants resulting from any entry onto the Property pursuant to this paragraph. Buyer agrees to promptly refill holes dug and otherwise to repair any damage to the Property as a result of any such activities. Buyer will permit no lien to attach to any portion of the Property as a result of such activities. Buyer hereby agrees that Buyer 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 Buyer. Copies of all non-privileged third party due diligence reports prepared with respect to the Property by or on behalf of Buyer regarding Buyer's inspection, review and approval of the physical and environmental condition of the Property must be furnished to Seller promptly after Buyer's receipt thereof.
- 1.3. Buyer's Right to Termination Upon Changes to Condition of Property. Upon notice to Seller, Buyer shall be entitled to the return of all Earnest Money and shall have the right

to terminate this Agreement should any material adverse change(s) in the condition of the Property result between the Effective Date and the Closing Date that cannot otherwise be cured by Seller to Buyer's satisfaction and acceptance prior to the Closing Date.

- 1.4. Engineering Evaluation. Buyer shall have the opportunity to review any engineering done by Seller regarding Seller's mining, reclamation and development of the Firestone Pit for water storage purposes. Within fourteen (14) days of the Effective Date, Seller shall provide Buyer with copies of all engineering done on or for the Firestone Pit and the compacted clay wall liner or other impervious liner and shall give Buyer and its engineers access to the Property to conduct its own related investigations, as deemed necessary by Buyer. Buyer shall provide Seller with written notice of any defects or objections to said engineering documents provided by Seller regarding Seller's mining, reclamation and development of the Firestone Pit for water storage purposes, including its proposed lining of the same with a compacted clay wall liner or other impervious liner on or before the expiration of the Due Diligence Period. In the event Buyer determines there is any such defect with any engineering, Seller shall have fourteen (14) days from receipt of notice thereof to provide Buyer with a plan to cure said defects, and Buyer shall have seven (7) days to accept said plan or propose an alternative plan upon which it will proceed to Closing. If no agreement to cure defects in Seller's engineering is reached among the Parties within seven (7) days of Seller's receipt of Buyer's proposed plan to cure said defects and upon which Buyer will proceed to Closing, Buyer shall have the option of canceling the Closing, obtaining a refund of all Earnest Money and terminating this Agreement.
- 1.5. Approvals. This Agreement shall have been approved by the Town of Firestone Board of Trustees at their August 10, 2022 regularly scheduled meeting. In the event this Agreement is not approved in its entirety by the Town of Firestone Board of Trustees, neither the Buyer, nor Seller, shall be bound by the terms of this Agreement.
- 1.6. Financing Contingency. This Agreement shall be contingent on Buyer's acquisition of appropriate financing on or before sixty (60) days after the Effective Date for payment of the Total Purchase Price at Closing ("Financing Commitment Deadline"). If, on or before the Financing Commitment Deadline, Buyer notifies Seller that Buyer has failed to obtain financing required for payment of the Purchase Price at Closing, then (1) either party may terminate this Agreement and the Earnest Money shall be returned to Buyer, or (2) the parties may agree, in writing, to amend and extend the Financing Commitment Deadline, Closing Date and any other corresponding deadlines for such time as may be necessary for Buyer to obtain appropriate financing but not to exceed forty five (45) days from the Closing Date initially contemplated by the terms of this Agreement.
- 1.7. Return of Earnest Money. If, within the Due Diligence Period, Buyer elects not to proceed with this transaction for any reason, or on the basis of any above any of the above-described conditions or otherwise in accordance with the terms of this Agreement, specifically including Seller's failure to cure defects raised by Buyer that Seller has agreed

to cure through the objections provided for in Articles VIII and IV herein, written notice shall be given to Seller and this transaction shall be null and void unless otherwise agreed upon by the Parties hereto and all Earnest Money shall be returned to Buyer. If Buyer elects to proceed with the transaction, then no notification is required, and this contingency shall be deemed waived unless otherwise provided by the terms of this Agreement.

ARTICLE V REPRESENTATIONS AND WARRANTIES

1. Encumbrances. From the Effective Date until the Closing Date, Seller will not sell, assign, or convey any right, title or interest whatsoever in or to the Property or otherwise encumber the Property or other interests therein in any way nor grant any rights or contractual rights relating to the Property or other interests therein without the prior written consent of Buyer. Seller warrants that it will deliver to Buyer at Closing marketable title to the Property free and clear of all taxes and assessments and other liens or encumbrances except the Permitted Exceptions and taxes for the then-current year.
 - 1.1. Notwithstanding the foregoing provision, Seller shall be entitled to extract and sell sand, gravel and other aggregate resources from the Property in accordance with the terms of the Mining Lease.
2. Compliance with Governmental Regulations. To Seller's current, actual knowledge there are no orders or directives of any town, city, county, state, federal authority or other governmental authority for repairs, maintenance work, improvements, or compliance to be performed on the Property or in relation to Seller's activities thereon. To Seller's current, actual knowledge Seller has received no such written notice from any municipal, state, or other statutory or governmental authority relating to defects in any improvement or noncompliance with any zoning or building code restriction, applicable to the Property that has not been corrected, or any threat of or impending expropriation or condemnation of the Property.
3. Condition of Property. To Seller's current, actual knowledge, Seller is not aware of any material defect or condition affecting the use, development or value of the Property, including the presence of any hazardous wastes, toxic substances or other contamination. To Seller's current actual knowledge, the Property has not been used as a waste disposal or landfill for hazardous materials or sanitary landfill purposes.
4. Compliance with Law. To Seller's current, actual knowledge, Seller has complied in all material respects with all laws, rules, regulations, ordinances, orders, judgments, and decrees applicable to the Property and Seller's use thereof, and Seller has no current actual knowledge of any proposed order, judgment, decree, governmental action or taking, or other proceeding applicable to Seller which might materially and adversely affect the Property.
5. Contracts, Leases, and Agreements. Except as otherwise shown in the Commitment or in the documents provided to Buyer, there are no leases, subleases, contracts, or other agreements,

written or oral, regarding the Property, or granting to any party or parties the right to use or occupy the Property, which will survive Closing. From the Effective Date through the Closing Date, Seller shall not enter into any lease or contract with respect to the Property without Buyer's written consent.

6. Condemnation. In the event any portion of the Property is condemned, or access thereto shall be taken or proceedings or negotiation therefore are commenced prior to Closing, if Buyer, in Buyer's sole discretion, concludes that such taking renders the remainder of the Property unsuitable for Buyer's purposes, and Buyer notifies Seller in writing of such conclusion prior to Closing, then this Agreement shall terminate. If the Agreement is not so terminated, the Purchase Price shall not be affected, and (1) if a condemnation award is paid prior to the Closing, then at Closing, Seller shall assign such award to Buyer, and (2) at Closing, Seller shall assign all claims to Buyer, and Buyer shall have the right to contest the condemnation of the Properties and/or the award resulting therefrom.
7. Litigation. To Seller's current, actual knowledge, no litigation is pending, or to the best of Seller's knowledge, proposed, threatened, or anticipated with respect to any matter affecting the Property.
8. Utilities. To Seller's current, actual knowledge, Seller has not received any written notice of the curtailment of any utility service supplied to the Properties.
9. Representations and Warranties. Seller shall not take any action, or omit to take any action, that would have the effect of violating any of its representations, warranties, covenants, mutual promises and agreements contained herein.
10. Existing Financing. Seller shall continue to make all payments required under the terms of any existing financing on the Property or otherwise related its activities thereon and shall not suffer a default or permit any default to arise thereunder.
11. Disclaimer, Sale "As Is". Except for the representations and warranties contained in this Agreement and Seller's agreement to convey and deliver the Property in the condition and for the purposes specifically contemplated by this Agreement, THE PROPERTY IS SOLD AS-IS, WHERE-IS, AND WITH ALL FAULTS, WITH NO EXPLICIT OR IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR AS TO THE PHYSICAL, STRUCTURAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY OR ITS COMPLIANCE WITH LAWS.
12. Knowledge. For purposes of this Agreement and any document or instrument delivered at the Closing, whenever the phrase "to the best of Seller's knowledge" or "to Seller's knowledge", or the "knowledge of Seller" or words of similar import are used, they shall solely be deemed to refer to facts within the actual, current knowledge, without duty of inquiry or investigation of Matthew Noteboom, who is the Vice President – Mountain Division of Seller. In no case

shall Matthew Noteboom be personally liable for any Seller indemnification obligations under this Agreement.

13. Survival. All of the representations and warranties of Seller described in this Article V, and all of the respective rights and remedies with respect to the breach or incorrectness of such representations and warranties shall survive the Closing Date for a period of twenty-four (24) months (the "Survival Period") unless otherwise carried forward by Seller's instruments of conveyance described in Article III, Paragraph 6 herein. If, after Closing, Buyer brings an action against Seller for breach of any of Seller's representations or warranties under this Article V during the Survival Period, then, Buyer shall be entitled, as its sole remedy with respect to such breaches of Seller's representations and warranties, to pursue an action against Seller for the recovery of Buyer's actual, direct damages; provided, however, under no circumstances shall Seller be liable to buyer for more than One Million and 00/100 Dollars (\$1,000,000.00) in any individual instance, or in the aggregate. Additionally, notwithstanding the foregoing, if Buyer obtains actual knowledge prior to the Closing that any Seller Article V representation or warranty is untrue, and Buyer nonetheless proceeds to close its purchase of the Property, then Buyer shall be deemed to have irrevocably and absolutely waived, relinquished and released all rights and claims against Seller for any damage or other loss arising out of or resulting from such untrue Article V representation or warranty or such unfulfilled or unsatisfied covenant or condition. Seller shall have no further liability to Buyer after the Survival Period except as otherwise described in this Agreement. The Parties hereby acknowledge and agree that certain representations and warranties of Seller may otherwise survive expiration of the Survival Period by virtue of that certain agreements attached hereto as Exhibit B.

13.1. Notwithstanding the foregoing limitations on Seller's representations and warranties described in this Paragraph 13, the Survival Period shall remain in effect and be extended for a period of twelve (12) months after December 31, 2031 (or such earlier time as may be applicable under the terms of this Agreement), as to Seller's representations and warranties regarding Condition of Property as provided in Paragraph 3 above.

14. Buyer Representations and Warranties.

14.1. Buyer represents and warrants that Buyer has the full right and authority to enter into this Agreement and to consummate the transaction contemplated hereby in accordance with the terms hereof. Unless this Agreement is otherwise terminated in accordance with the terms hereof, all requisite approvals have or will be obtained by Buyer in connection with the entering into of this Agreement and the instruments referenced herein, and the person signing this Agreement on behalf of Buyer is authorized to do so.

14.2. In entering into this Agreement, Buyer has not relied on any representation, warranty, promise or statement, express or implied, of Seller, or anyone acting for or on behalf of Seller, other than as expressly set forth in this Agreement, AND THAT, AS A MATERIAL INDUCEMENT TO THE EXECUTION AND DELIVERY OF THIS AGREEMENT BY SELLER, BUYER IS PURCHASING THE PROPERTY AND WATER RIGHTS IN AN "AS IS" PHYSICAL CONDITION, WITH ALL FAULTS EXCEPT AS OTHERWISE SET FORTH HEREIN.

ARTICLE VI DEFAULT

1. Default or Breach Prior to or at Closing.

1.1. If Seller fails to comply with this Agreement and Seller fails to cure such default, to the reasonable satisfaction of Buyer, within five (5) days after receipt of written notice of such default by Buyer, or, if the default cannot reasonably be cured within said five (5) day period, then Seller shall have up to fifteen (15) days to cure said default so long as Seller initiates a cure within said 5-day period, then Seller will be in default under this Agreement, and Buyer's remedies for Seller's breach or default hereunder, or in the event, that, at the Closing, any condition precedent to Buyer's obligations hereunder is not fully satisfied as herein required, Buyer may elect one of the following remedies to be exercised by or on behalf of the Buyer, as Buyer's sole and exclusive remedy, provided Buyer is not otherwise in breach or default hereunder:

1.1.1.1. Demand Seller's specific performance with the terms and conditions of this Agreement provided Seller is able to so perform; or

1.1.1.2. Terminate this Agreement by giving Seller timely written notice of such election prior to or at Closing, and thereupon this Agreement shall terminate, and all parties hereto or mentioned herein shall be relieved and released of all further obligations, claims and liabilities hereunder except those that expressly survive any such termination of this Agreement, and Buyer shall be entitled to a return of the Earnest Money paid to Seller provided Buyer is not otherwise in default of this Agreement; or

1.1.1.3. Waive, prior to or at the Closing, the applicable objection, default, or condition and proceed to close the transaction contemplated hereby in accordance with the remaining terms hereof, with a mutually agreed upon adjustment in the Total Purchase Price being reasonable and proportionate in regard to Seller's breach, default, or inability to deliver the Property or Water Right at Closing as contemplated by this Agreement, and Buyer shall have the right to specific performance thereof.

1.2. If Buyer breaches its obligations pursuant to this Agreement and fails to close, Seller shall have, as its sole and exclusive remedy, the right to terminate this Agreement by giving Buyer timely written notice of such election prior to or at Closing, and thereupon this Agreement shall terminate, and all parties hereto or mentioned herein shall be relieved and released of all further obligations, claims and liabilities hereunder and Seller shall be entitled to retain the Earnest Money paid by Buyer as liquidated damages.

2. Default or Breach after Closing. The terms of this Agreement may be enforced by either Buyer or Seller by seeking any appropriate equitable or legal remedies, including injunctive relief,

specific performance, and actual, direct damages for any default or breach of the terms and conditions of this Agreement arising after Closing, subject to the limitations, terms and conditions of this Agreements. Further, the Parties hereby acknowledge and agree that certain Articles, provisions, terms, and conditions of this Agreement will survive Closing and both Buyer and Seller shall have the ability to seek relief in accordance with the terms of this Agreement along with any appropriate equitable or legal remedies, including injunctive relief, specific performance, and damages for any default or breach of the terms and conditions of this Agreement subsequent to Closing, except as set forth herein. Notwithstanding the foregoing, the Parties hereby acknowledge and agree to mutually waive any and all indirect, special, consequential, or punitive damages related to any default under this Agreement.

3. No Third-Party Beneficiary Enforcement. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this Agreement shall give or allow any claim or right of action whatsoever by any other person not included in this Agreement. It is the express intention of the undersigned parties that any entity other than the undersigned parties receiving services or benefits under this Agreement shall be an incidental beneficiary only.

ARTICLE VII DELIVERY OF WATER STORAGE RESERVOIR

1. Creation of Reservoir and Storage Capacity. The Parties hereby acknowledge and agree that Buyer's primary purpose for acquiring the Property, including the Firestone Pit, is for the Water Right and water storage space being created as a result of Seller's completion of mining operations in the Firestone Pit in the area depicted on **Exhibit A** and eventual lining of the same with a compacted clay wall liner or other impervious liner which will prevent groundwater from flowing into the reservoir. In this regard, the Parties agree as follows:
 - 1.1. Seller shall complete and notify Buyer of its completion of all sand and gravel mining activities and associated development of the Firestone Pit on or before December 31, 2031, subject only to delays caused and extensions permitted by Force Majeure Events (as defined below) and specifically excluding achieving Final Growth (as defined below) on the Property as required by the reclamation plan. Seller's substantial completion of all sand and gravel mining activities and associated development of the Firestone Pit shall specifically include and require the following:
 - 1.1.1. In addition to the provisions below, Seller's performance of its sand and gravel mining activities is subject to the provisions of the Mining Lease.
 - 1.1.2. Seller shall have until December 31, 2031 to complete and deliver the Firestone Pit to Buyer consistent with the terms and conditions of this Agreement. Seller shall not be entitled to continue or complete any of its sand and gravel mining activities associated therewith on or within the Property and Firestone Pit after December 31,

2031, unless provided by separate agreement, or unless additional time is allowed due to delays caused by Force Majeure Events. Between the Closing Date and December 31, 2031 Seller shall have such rights and obligations to complete its mining, reclamation and development of the Firestone Pit as set forth by the terms of this Agreement and the Mining Lease.

- 1.1.3. Between the Closing Date and December 31, 2031 Seller shall provide Buyer with annual progress reports, including therein an estimated percentage completion Seller's mining activities in the Firestone Pit and the volume thereof, and estimated percentage completion of Sellers reclamation of the Property and Firestone Pit.
- 1.1.4. Seller's completion of the Firestone Pit shall require Seller to obtain final approval by the Colorado State Engineer that the compacted clay wall liner in the Firestone Pit meets or exceeds the State Engineer's standards contained in the "State Engineer Guidelines for Lining Criteria for Gravel Pits August 1999" (or the applicable standard then in effect) on or before December 31, 2031 (hereinafter, the "State Engineer's Standards"). In the event Seller has not obtained said final approval from the Colorado State Engineer, confirming that the compacted clay wall liner meets or exceeds the State Engineer's Standards by December 31, 2031, Seller shall be responsible for promptly taking all necessary actions to obtain said approval and bear all costs associated therewith. In the event Seller fails to promptly take all necessary actions to obtain said approval, Buyer shall have the option, but not the obligation, to undertake all necessary action to obtain such approval and shall be entitled to full reimbursement from Seller for all actual, direct costs and expenses incurred therewith; said costs and expenses incurred will be paid to Buyer out of the Escrow Funds described in Article II herein if sufficient funds exist therein, however, payment of said costs and expenses incurred in Buyer's actions to obtain the Colorado State Engineer's approval shall not be Buyer's exclusive remedy for Seller's failure to deliver the Firestone Pit complete with a compacted clay wall liner meeting or exceeding the State Engineer's Standards.
- 1.1.5. Seller's completion of the Firestone Pit shall require Seller to complete all required reclamation of the Property and Firestone Pit on or before December 31, 2031 in accordance with Seller's reclamation plan as approved by the Colorado Mined Land Reclamation Board and as otherwise may be required by the terms of this Agreement, but specifically excluding achieving Final Growth on the Property as required by such reclamation plan. "Final Growth" shall mean the process of growth of vegetation on the Property, commencing at the time when the DRMS has approved Seller's initial seeding, fertilization and mulching of the Property (including any reseeding, fertilization and mulching of any areas required by the DRMS to confirm that initial vegetation of the Property 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.

- 1.1.6. Seller shall commission the completion of a topographical survey of the Firestone Pit and a corresponding stage-area-capacity determination, to be provided to Buyer on or before October 31, 2031, establishing the water storage capacity of the Firestone Pit as not less than 5,400 acre feet after accounting for 12 inches of freeboard measured from the upper most continuous contour located fully within the Firestone Pit. Said water storage capacity shall be calculated as open water storage volume and will not include any in-situ storage in pore space. Seller shall bear all costs associated with said topographical survey and water storage capacity determinations.
- 1.1.7. Buyer shall have thirty (30) days from receipt of the above-described topographical survey from Seller to accept or object to the water storage capacity determination reflected therein. Any objection by Buyer on this basis shall be furnished to Seller in writing stating the basis of such objection within said thirty (30) days from receipt of the topographical survey. The Parties shall resolve any objections or discrepancies in the topographical survey amongst themselves or jointly hire an engineer to determine the water storage capacity of the Firestone Pit and equally bear all costs associated therewith. The topographical survey mutually accepted by the Parties after the resolution of any objections from Buyer as described herein, if any, will be considered the final topographical survey for purposes of this Agreement (the "Final Topographical Survey").
- 1.1.8. In the event the Final Topographical Survey described above establishes the water storage capacity of the Firestone Pit to be less than 5,400 acre feet, Buyer shall be entitled to payment from Seller calculated as \$4,000.00 multiplied by the difference between the surveyed acre foot capacity of the Firestone Pit and 5,400 acre feet. If applicable, said payment to Buyer shall be due and paid from Seller within thirty (30) calendar days of Seller's receipt of the Final Topographical Survey of the Firestone Pit establishing the water storage capacity therein. Seller's payment for any failure to deliver sufficient storage capacity in the Firestone Pit in accordance with this Agreement is secured by and initially payable from the Escrow Funds described in Article II, Para. 2 above. Said payment from Seller to Buyer for failure to deliver sufficient storage capacity in the Firestone Pit shall not be limited to the Escrow Funds to the extent the same are insufficient to compensate Buyer for storage capacity less than 5,400 acre feet. Further, in the event Seller fails to deliver the Firestone Pit with a compacted clay wall liner in accordance with Paragraph 3.1.4 above and fails to deliver sufficient storage capacity in the Firestone Pit as required in this Paragraph, the Escrow Funds shall first be applied to the completion of the lining of the Firestone Pit as described above.
- 1.1.9. In the event that the Final Topographical Survey establishes the water storage capacity of the Firestone Pit to be in excess of 5,400 acre feet, Seller shall not be entitled to any additional payment or compensation from Buyer.
2. Mining and Reclamation. The Firestone Pit is to be developed as result of mining operations conducted by Seller on the Property pursuant to Permit No. M-1996-052 issued by the

Colorado Mined Land Reclamation Board, as amended or reissued, including any reclamation plans (the “Mining Permit”). Seller’s mining and reclamation operations will continue after Closing subject to the terms of the Mining Lease. In accordance with the terms and conditions of this Agreement, Seller shall complete the mining and reclamation within the Firestone Pit consistent with the Mining Lease, Mining Permit and any related reclamation plan and deliver all required usable storage space within the same to Buyer along with a compacted clay wall liner or other impervious liner that meets the “State Engineer’s standards contained in the “State Engineer Guidelines for Lining Criteria for Gravel Pits August 1999” by December 31, 2031, specifically excluding achieving Final Growth on the Property as required by the reclamation plan. Seller shall remain responsible for the timely completion of reclamation obligations required by this Agreement and Seller’s Mining Permit, including but not limited to any revegetation or slope modification; Buyer shall bear no responsibility for any costs, effort or undertaking necessary to release of the Mining Permit except as otherwise agreed to by the Parties. All reclamation activities shall be consistent with Buyer’s anticipated use of the Firestone Pit as a water storage reservoir. Subject to the terms of this Agreement, nothing in the Mining Lease shall be interpreted to preclude Seller from excavating in excess of 5,400 acre feet from within the Firestone Pit within the term of this Mining Lease. Seller shall have no rights under the Mining Lease to mine any sand, aggregate or gravel on the Property outside of the Firestone Pit.

ARTICLE VIII MISCELLANEOUS

1. Term of Agreement. Unless otherwise terminated, the term of this Agreement shall commence on the Effective Date and remain valid and subsisting until December 31, 2031 and so long thereafter as is necessary to ensure performance of all terms and conditions of this Agreement not otherwise covered by any separate related agreement by and among the Parties, their successors and assigns. Final termination of this Agreement shall be evidenced by the Parties mutual execution of a termination and release of this Agreement and recording of the same in the records of Weld County, Colorado.
2. Condition of Property upon Delivery. Between the Closing Date and December 31, 2031 Seller shall be required to properly maintain the Property, including all roads, infrastructure, and improvements thereon to ensure that the same are not unnecessarily degraded, unless otherwise directed by Buyer.
3. Notice. In addition to notices as may otherwise be provided herein, any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed given and effective when delivered by electronic mail, Express Mail, Federal Express, or like service, or on the third mail delivery day after it is deposited in the United States mail, postage prepaid by certified or registered mail, return receipt requested, addressed to the Parties as follows:

If to Buyer: Town of Firestone, Colorado
Attn: _____
9950 Park Avenue
Firestone, CO 80520
Phone: _____

With a copy to:
Attn: Wes Knoll
Lawrence Custer Grasmick Jones & Donovan, LLP
5245 Ronald Reagan Blvd., Suite 1
Johnstown, CO 80534
Phone: (970) 622-8181
wes@lcwaterlaw.com

If to Seller: L.G. Everist, Incorporated
Mountain Division Office
Attn: Matthew Noteboom
7321 East 88th Avenue, Suite 200
Henderson, CO 80640
Phone: 303-941-9620
msnoteboom@lgeverist.com

With a copy to:
Mike Fredregill
Welborn Sullivan Meck & Tooley, P.C.
1401 Lawrence St., Suite 1800
Denver, Colorado 80202
Phone: 303-376-4468
mfredregill@wsmtlaw.com

4. No Waiver. Unless otherwise specifically provided herein, no provision of this Agreement may be waived except by written instrument signed by the Party to be charged with such waiver. Failure by any Party to enforce any provision of this Agreement shall not constitute a waiver of such provision, and no waiver by any Party to this Agreement of any provision of this Agreement on one occasion shall constitute a waiver of any other provision or of the same provision on another occasion.
5. Fees and Expenses Apportionment. Except as otherwise expressly set forth in this Agreement, the Buyer and Seller hereto will each bear its own expenses in connection with the transaction contemplated by this Agreement.
6. Possession of Property. Possession of the Property shall be delivered to Buyer at Closing. However, Buyer's right to possession, use and enjoyment of the Property shall expressly be subject to Seller's right to access, use and enjoy the same in accordance with the terms and conditions of this Agreement and any associated agreements.

7. Exchange. Seller 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.
8. Indemnification. To the extent permitted by law, Seller hereby agrees to indemnify and to hold Buyer harmless of and from any claims or causes of action from third parties against Buyer arising from Seller's negligent actions in performance of this Agreement. To the extent permitted by law, Buyer hereby agrees to indemnify and to hold Seller harmless of and from any claims or causes of action from third parties against Seller arising from Buyer's negligent actions in performance of this Agreement, specifically including Buyer's negligent performance of its physical inspection of the condition of the property pursuant to Article IV, Paragraph 1.2 herein.
9. No Waiver of Immunity. No portion of this Agreement shall be deemed to constitute a waiver of any immunities afforded to Firestone, its officers, agents or employees, nor shall any portion of this Agreement be deemed to have created a duty of care which did not previously exist with respect to any person not a party to this Agreement.
10. Risk of Loss. Seller shall be responsible for all risks of damage, loss, or injury to the Property and all Property-owner liability prior to Closing. In the event any material damage occurs to the Property between the Effective Date and the Closing Date, Buyer may declare this Agreement null and void after providing notice to Seller of the same.
11. Governing Law. This Agreement shall be governed by Colorado law and venue for any suit, claim, or cause of action arising hereunder shall be proper in Weld County. Any warranties, agreements or covenants by and between the Parties agreed to herein shall survive the Closing and transfer of title to Buyer and shall not be merged with the deeds, subject to any limitations described in this Agreement.
12. Entire Agreement. This Agreement, including any figures and exhibits attached hereto and incorporated herein, constitutes the entire agreement between the Parties concerning the sale of the Property, Water Right, and delivery of the Firestone Pit as a water storage reservoir, and supersedes any other written or oral agreements between Buyer and Seller regarding the same. This Agreement may be modified only by the written agreement of both Parties.
13. Time Periods. Unless otherwise provided herein, all time periods set forth in this Agreement shall be measured from the Effective Date of this Agreement. If the date of any performance

under the terms of this Agreement falls on a weekend or holiday on which banks are closed, the time for performance shall be extended to the next business day.

14. Time of the Essence. Time is of the essence and shall apply to all terms and conditions of this Agreement.
15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and together shall constitute one and the same Agreement.
16. Further Performance. Each Party shall, at the request of the other, execute, acknowledge and deliver whatever additional documents, and do such other acts as may be reasonably required in order to accomplish the intent and purposes of this Agreement.
17. Non-Merger. The rights, obligations, representations and warranties under this Agreement or under any other document entered into under this Agreement will not merge on closing.
18. Assignability. This Agreement shall be binding upon, and shall inure to the benefit of, Buyer and Seller, their respective successors and assigns. Neither Party may assign any interest under this Agreement without the prior written consent of the other Party which shall not be unreasonably withheld.
19. Severability. If any clause or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.
20. Headings for Convenience Only. Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define or limit the scope or intent of any provision or Article of this Agreement.
21. Force Majeure. Each Party to this Agreement is excused from performing under this Agreement to the extent it is rendered unable to perform during any period of time during which a "Force Majeure" event occurs. The term "Force Majeure" or "Force Majeure Event" means acts not within the reasonable control of the non-performing party and includes, but is not limited to, acts of God; strikes; lockouts or epidemics; pandemics; landslides; lightning; tornados; earthquakes; floods; fires; storms; explosions; wildlife/endangered species protections; the necessity for making unscheduled repairs or alterations to machinery, inability of any party to obtain necessary materials, supplies, or permits due to existing, or future rules, regulations, orders, laws or proclamations of any governmental authorities, including both civil and military; and any failure by third-party transporters. In the Force Majeure Event, both Parties shall work together to resume operations as contemplated in this Agreement as soon as reasonably practical. Neither Party hereto shall be liable for any failure of performance due to causes beyond its reasonable control and the occurrence of which it could not have been prevented by the exercise of due diligence. In the case of a Force Majeure Event, the Party claiming such an Event shall provide written notice of the Force Majeure Event, and if the critical path of the creation of the reservoir and storage capacity described in this Agreement

is affected, the substantial completion date (currently stated as December 31, 2031) shall be extended on a day-for-day basis for each day the Force Majeure Event continues.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date set forth above:

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

SELLER:

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

By: 

Name: Matthew Noteboom
Its: Vice President-Mountain Division


STATE OF COLORADO)
)
COUNTY OF WELD)

Acknowledged before me this 29 day of July, 2022, by
Matthew Noteboom.

WITNESS my hand and official seal.

My Commission Expires: 12/29/2024




Notary Public

BUYER:
Town of Firestone, Colorado

By: _____
Its: _____

STATE OF COLORADO)
)
COUNTY OF WELD)

Acknowledged before me this ___ day of _____, 2022, by
_____.

WITNESS my hand and official seal.

My Commission Expires: _____

Notary Public

EXHIBIT A
TO PURCHASE AND SALE AGREEMENT

Depiction of Firestone Pit (Property) and Northwest Cell

[see attached]



CENTER NORTH NORTH
SIXTY-FOUR CORNER
FOUND #5 REBAR NO CAP
AFFIXED 3 1/4" ALUMINUM CAP
STAMPED PER BLM INSTRUCTIONS
LS 34995 AND 2006

Northwest
Cell

Firestone Pit

SOUTHWEST CORNER
SECTION 32, T.3N., R.67W.
FOUND #6 REBAR WITH 2"
ALUMINUM CAP STAMPED
LS 20676 AND 2006

SOUTH QUARTER CORNER
SECTION 32, T.3N., R.67W.
FOUND #6 REBAR WITH 2 1/2"
ALUMINUM CAP STAMPED
LS 23500 AND 1994

EXHIBIT - TOWN OF FIRESTONE PSA
PARCEL BOUNDARY

DRAWN BY:	AMK
SCALE:	NTS
DATE:	07/29/2022



L.G. EVERIST, INC.
We Deliver Solutions!
FT. LUPTON, CO

DRAWING NO.
L01



EXHIBIT B
TO PURCHASE AND SALE AGREEMENT

Mining Lease for Sand, Gravel and Aggregate

[see attached]

MINING LEASE AGREEMENT

THIS MINING LEASE AGREEMENT (hereinafter “Mining Lease”) is entered into this ___ day of _____, 2022 (“Effective Date”), by and between 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, Firestone, Colorado 80520 (“Firestone” or “Lessor”) and L.G. Everist, Inc., a South Dakota corporation whose address is 7321 East 88th Avenue, Suite 200, Henderson, Colorado 80640 (“LGE” or “Lessee”). Firestone and LGE may be referred to herein collectively as “Parties” or individually as “Party.”

RECITALS

WHEREAS, Firestone and LGE have entered into a PURCHASE AND SALE AGREEMENT dated August __, 2022 (“Purchase and Sale Agreement”) pertaining to Firestone’s purchase of a certain parcel of land located in Section 32, Township 3 North, Range 67 West, 6th P.M. Weld County, Colorado as more particularly depicted on **Exhibit A**, attached hereto and incorporated herein (the “Property”); and

WHEREAS, LGE is in the process of mining sand, gravel, aggregate, and Precious Metals (as defined below) (collectively referred to herein as “Materials”) from a site located on the Property known as the “Firestone Pit” and the Parties desire that LGE retain the ability complete said mining operations on the Property subsequent to the sale of the Property to Firestone; and

WHEREAS, in connection with its mining activities, LGE desires to develop the Firestone Pit for future water storage purposes and use by Firestone; and

WHEREAS, pursuant to the terms of the Purchase and Sale Agreement and in accordance with the terms and conditions herein, Firestone hereby leases to LGE the Property for the purposes of mining, removing, processing, storing, and marketing therefrom all Materials, reclamation of the mined areas, and development of a water storage reservoir.

NOW, THEREFORE, in consideration of the mutual promises of the Parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

MINING LEASE AGREEMENT

1. **INCORPORATION:** The above Recitals are incorporated into this Mining Lease as if fully set forth herein.
2. **LEASED INTEREST:** Lessor hereby leases to LGE (or “Lessee”) the surface and subsurface of the Property and Firestone Pit, for the purposes of mining, extracting, removing, processing, stockpiling, storing and marketing therefrom all Materials, the reclamation of the mined areas, and the development of a water storage reservoir as described in the Purchase and Sale Agreement. “Precious Metals” shall mean any of the

less common and highly valuable metals, including but not limited to gold and silver, which may be found mixed with the Materials mined from the Property.

3. TERM OF MINING LEASE: Subject to force majeure delays, the Term of this Mining Lease shall run from the Effective Date until December 31, 2031 (“Termination Date”) or until such earlier date upon Lessee’s completion of mining, reclamation, and release of the mining permit M-____-___ by the Division of Reclamation, Mining and Safety (“DRMS Permit” attached hereto as **Exhibit** __ and incorporated herein), in accordance with the following schedule:

- 3.1 All mining and reclamation of the slopes within the compacted clay lined wall boundary of the Firestone Pit (as depicted on **Exhibit A**, attached hereto and incorporated herein); all processing, storing, and marketing and removal of Materials stockpiled on the Property outside of the Firestone Pit, if any; all reclamation, and release of the DRMS Permit shall be complete by the Termination Date. Lessee agrees that it will complete all mining and reclamation of the Firestone Pit, such that all required water storage capacity within the resulting reservoir, presently estimated at 5,400 acre-feet based on the mining and reclamation plan, is available for storage of water by Lessor, no later than the Termination Date. The Parties hereby agree that any payment required to be made to Lessor in satisfaction, or partial satisfaction, for Lessee’s failure to deliver the required water storage capacity of the Firestone Pit shall be made in accordance with the Purchase and Sale Agreement. Subject to Lessee’s rights under this Mining Lease in and to the Materials which have been mined prior to the Termination Date and stockpiled on the Property, if any, Lessor shall have all right, title and interest in and to the sand, gravel, aggregate and all Materials on or in the Property as of the Termination Date.

4. EXTENSION FOR REMOVAL OF MATERIALS AND EQUIPMENT: Upon written notice to Lessor on or before July 1, 2031, the payment of twenty thousand dollars (\$20,000.00) prior to the Termination Date, and the execution of an agreement prior to the Termination Date for the extension of this Mining Lease for the limited purpose of allowing Lessee access to the Property for Lessee’s removal of any equipment, personal property, and/or any stockpiled Materials remaining on the Property, Lessee shall be permitted a period of ninety (90) days after the Termination Date to remove any equipment, personal property, and/or any Materials stockpiled on the Property prior to the Termination Date in accordance with the terms of said agreement for the extension of this Mining Lease.

- 4.1 The Parties hereby acknowledge and agree that any extension of this Mining Lease pursuant to this paragraph shall in no way modify or extend any timeframe or deadline applicable to Lessee’s obligations to deliver the Property on or before the Termination Date, having completed all mining, reclamation, construction of the Firestone Pit and

having obtained the release of the DRMS Reclamation Bond in accordance with the terms of this Mining Lease and the Purchase and Sale Agreement.

5. SCOPE OF MINING INTEREST: Subject to the terms of this Agreement, nothing in this Mining Lease shall be interpreted to preclude Lessee from excavating in excess of 5,400 acre-feet from within the Firestone Pit within the term of this Mining Lease. Lessee shall have no rights under this Mining Lease to mine any sand, aggregate or gravel on the Property outside of the Firestone Pit.
6. CONSIDERATION: Consideration for this Mining Lease is hereby acknowledged in the form of the mutual obligations and promises contained in the Purchase and Sale Agreement and other good and valuable consideration, including but not limited to the construction of the water reservoir described in the Purchase and Sale Agreement. The Parties hereby acknowledge and agree that the “no-cost” nature of this Mining Lease is contingent upon Lessee’s delivery of a water storage reservoir in accordance with the terms of the Purchase and Sale Agreement on or before the Termination Date of this Mining Lease, subject to force majeure extensions.

COOPERATION: Lessor hereby agrees to diligently review and execute any reasonable easements or agreements and to take such other actions as may be necessary for Lessee’s continued use of the Property for the purposes of mining, removing, processing, storing and marketing therefrom all Materials and reclamation of the mined areas in accordance with this Mining Lease. Lessor agrees to cooperate with any and all negotiations related to the removal and/or relocation of oil and gas, utilities, and ditch facilities.

7. SURFACE RIGHTS OF LESSEE: Lessee shall be entitled to make such use of the surface of the Property and Firestone Pit and have such rights of access and use as are reasonably necessary and attendant to fulfill the purposes of this Mining Lease. Lessee may clear brush, trees, undergrowth, and related physical obstacles on the Property at its sole discretion to explore for the Materials or to stockpile the same in processing areas and in order to obtain access to the Property, and to carry on its operations hereunder. Lessee shall have the unrestricted right to access the Property and the Firestone Pit for purposes of mining and all mining related activities including reclamation activities consistent with the deadlines set out in herein during the term of this Mining Lease. Lessee may maintain and operate rock crushing, washing, and screening equipment on the Property, if it should so desire, to process the Materials thereon. Any of Lessee’s activities under this Mining Lease after December 31, 2031, if any, shall not interfere with Lessor’s ability to store water within and release water from the Firestone Pit. During the term of this Mining Lease, Firestone shall have the right to begin construction on water related infrastructure for the Firestone Pit to the extent it does not interfere with Lessee’s mining and reclamation of the Firestone Pit under this Mining Lease.

8. CLAY WALL LINERS: Lessee agrees to construct and maintain compacted clay wall liners which meet the State Engineer's Performance Standard contained in the "State Engineer Guidelines for Lining Criteria for Gravel Pits August 1999" in the areas as identified on **Exhibit __** and excavate sufficient Materials within said walls to create the maximum amount of storage space within the clay wall based on mining to bedrock and a 3:1 slope ratio.
9. RESERVOIR USE: Lessor shall have to right to use the Firestone Pit for water storage purposes upon completion of mining and slope reclamation. The installation or construction of any infrastructure necessary for final water storage use, beyond the construction of such infrastructure as is necessary to fulfill Lessee's obligation to deliver a water storage reservoir in accordance with the terms of the Purchase and Sale Agreement, shall be the sole obligation and at the expense and cost of Lessor.
10. PERMITS: Lessee shall be responsible for properly maintaining all necessary State, County, and Federal permits for its mining operations on the subject Property at its own expense. Lessee's operations on the Property shall be conducted in compliance with all permits as may be determined by any agency legally responsible for enforcing the permits. Lessee agrees to obtain amendments to permits in the event amendment is needed in order for Lessor to construct water conveyance facilities on the Property. Lessor agrees to cooperate with Lessee as reasonably necessary for Lessee to maintain its permits.
11. PROTECTION AND RESTORATION OF SURFACE: Lessee shall be responsible for restoring the Firestone Pit in accordance with a reclamation plan approved by the Colorado Mined Land Reclamation Board. Lessee's reclamation shall not damage the clay wall liners and any of Lessor's infrastructure installed therewith. Lessee shall be responsible for obtaining final approval by the Colorado State Engineer that the clay wall liner meets or exceeds the State Engineer's Performance Standard contained in the "State Engineer Guidelines for Lining Criteria for Gravel Pits August 1999." Subject to extensions due to force majeure delays, in the event Lessee has not obtained final approval from the Colorado State Engineer, confirming that the clay wall liner meets or exceeds the State Engineer's Performance Standard contained in the "State Engineer Guidelines for Lining Criteria for Gravel Pits August 1999" by December 31, 2031, Lessee shall reimburse and/or compensate Lessor for any actual, direct costs and expenses incurred by Lessor to obtain such approval in accordance with the terms and conditions of the Purchase and Sale Agreement. Notwithstanding the foregoing, Lessee shall not be required to achieve Final Growth on the Property as required by the reclamation plan by December 31, 2031. "Final Growth" shall mean the process of growth of vegetation on the Property, commencing at the time when the Colorado Mined Land Reclamation Board/DRMS has approved Lessee's initial seeding, fertilization and mulching of the Property (including any reseeded, fertilization and mulching of any areas required by the Colorado Mined Land Reclamation Board/DRMS to confirm that initial vegetation of the Property 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 Colorado Mined Land Reclamation Board/DRMS in accordance with its rules and regulations.

12. **REMOVAL OF IMPROVEMENTS AND EQUIPMENT:** Unless otherwise provided by this Mining Lease, all improvements, personal property, and equipment placed on the Property by Lessee, EXCEPT access roads, haul road, buildings, fences, gates, and related permanent infrastructure which have been approved by Lessor, shall remain the property of Lessee and, except as otherwise set forth herein, Lessee shall remove such property from the Property prior to the Termination Date and expiration of this Mining Lease. Any improvements or equipment left on the Property by Lessee upon expiration of the term of this Mining Lease shall be deemed abandoned. Lessee shall not abandon any equipment on the Property and shall be responsible for any actual, direct costs incurred by Lessor in removing any such abandoned equipment, other than fixtures constructed on the Property, upon the expiration of this Mining Lease, provided Lessor first provides written notice of such equipment or property it deems abandoned and thereafter Lessee fails to remove such equipment or property within seven (7) days after receipt of such notice.
13. **INDEMNIFICATION:** Lessee shall indemnify and hold harmless Lessor and its agents from any and all claims, suits, expenses, direct damages or other liabilities, including reasonable attorney fees and court costs arising out of damage or injury to persons, entities or property caused or sustained by any person or persons as a result of any intentional or negligent act by Lessee on the Property during the term of this Mining Lease. Lessee shall procure and maintain comprehensive liability insurance providing coverage from any and all loss occasioned by an accident or casualty on the Property. Said liability policy shall be written on an "occurrence basis" with limits of not less than \$2,000,000 bodily injury liability coverage and \$1,000,000 property damage liability coverage naming Lessor as the insured.
14. **FENCING:** Lessee shall maintain a perimeter fence around the Property in good repair during the term of this Mining Lease.
15. **USE OF SURFACE BY LESSOR:** Lessor may use the surface and subsurface of the Property during the Term of the Mining Lease for the purpose of installation, operation, security and maintenance of the water storage reservoir and related infrastructure. No recreational use shall be allowed on the Property during the term of this Mining Lease. Lessor agrees that its use of the Property shall not interfere with the mining operations or create a safety hazard for Lessee, its agents or employees. This shall not preclude Lessor from inspecting the Property to determine compliance with this Mining Lease provided such inspections do not interfere with the operations or create a safety hazard for Lessee, its agents or employees.

16. AUGMENTATION WATER PROVIDED BY LESSOR: As part of this Mining Lease, Lessor and Lessee have entered into that certain AUGMENTATION WATER LEASE AGREEMENT dated _____ (“Water Lease”), pertaining to Lessor’s provision of up to 125.0 acre feet of augmentation water per year or such lesser amount as may be required by the Substitute Water Supply Plan associated with DRMS Permit M-____-____ at a cost of \$300 per acre foot to be paid by Lessee, as more particularly described in the Water Lease. During the Term of this Mining Lease, Lessor will provide Lessee with augmentation water in accordance with the terms of the Water Lease.
17. SURRENDER: Lessee shall have the right to terminate and surrender this Mining Lease at any point to Lessor upon written notice, provided that the compacted clay wall liner performs pursuant to the standards stated in this Mining Lease and the Purchase and Sale Agreement and all restoration has been completed in accordance with DRMS Permit M-____-____. Provided, further, that should Lessee fail to complete its obligations to Lessor, Lessor shall have the right to recover any additional actual, direct costs and expenses due to damage to or failure of the compacted clay wall liner to meet or exceed the State Engineer’s Performance Standard contained in the “State Engineer Guidelines for Lining Criteria for Gravel Pits August 1999”, and the rights to all stockpiled materials which have been mined by Lessee and which may remain on the Property. Notwithstanding the foregoing, in no case shall Lessee be liable for consequential, punitive, lost profits, or special damages
18. NO THIRD PARTY BENEFICIARY ENFORCEMENT: It is expressly understood and agreed that the enforcement of the terms and conditions of this Mining Lease, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this Mining Lease shall give or allow any claim or right of action whatsoever by any other person not included in this Mining Lease. It is the express intention of the undersigned Parties that any entity other than the undersigned Parties receiving services or benefits under this Mining Lease shall be an incidental beneficiary only.
19. NOTICE: Any notice required or permitted to be given under this Mining Lease shall be in writing and shall be deemed given and effective when delivered by electronic mail, Express Mail, Federal Express, or like service, or on the third mail delivery day after it is deposited in the United States mail, postage prepaid by certified or registered mail, return receipt requested, addressed to the Parties as follows:

If to Lessor: Town of Firestone, Colorado
Attn: Julie Pasillas, Director of Public Works
9950 Park Avenue
Firestone, CO 80520
Phone: 303-531-6258

With a copy to:
Attn: Wes Knoll
Lawrence Custer Grasmick Jones & Donovan, LLP
5245 Ronald Reagan Blvd., Suite 1
Johnstown, CO 80534
Phone: (970) 622-8181
wes@lcwaterlaw.com

If to Lessee: L.G. Everist Inc.
Attn: Matthew Noteboom
L.G. Everist, Incorporated,
7321 East 88th Avenue, Suite 200
Henderson, CO 80640
Phone: (303) 941-9620
msnoteboom@lgeverist.com

With a copy to:
Attn: Mike Fredregill, Esq.
Wellborn, Sullivan, Meck & Tooley, P.C.
1401 Lawrence Street, Suite 1800
Denver, CO 80202
(303) 376-4468
mfredregill@wsmtlaw.com

20. AMENDMENT: This Mining Lease may be modified, amended, changed or terminated in whole or in part only by mutual agreement in writing, duly authorized and executed by the Parties hereto, their successors and assigns.
21. WAIVER: Unless otherwise specifically provided herein, no provision of this Mining Lease may be waived except by written instrument signed by the Party to be charged with such waiver. Failure by any Party to enforce any provision of this Mining Lease shall not constitute a waiver of such provision, and no waiver by any Party to this Mining Lease of any provision of this Mining Lease on one occasion shall constitute a waiver of any other provision or of the same provision on another occasion.
22. RESERVATION OF OTHER MINERALS: This Mining Lease pertains only to the removal of the Materials to bedrock at the Firestone Pit. All other minerals located in or on the Property are reserved unto Lessor.
23. ASSIGNMENT: This Mining Lease shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto. Neither Party may assign any interest under this Mining Lease without the prior written consent of the other Party which shall not be unreasonably withheld.

24. ENTIRE AGREEMENT: This Mining Lease, including any figures and exhibits, which are attached hereto and incorporated herein, along with those certain separate agreements by and among the Parties hereto and specifically referenced herein, shall constitute the entire agreement between the Parties and supersedes any other written or oral agreements between Lessor and Lessee. This Mining Lease may be modified only by the written agreement of both Parties.
25. NO WAIVER OF IMMUNITY: No portion of this Mining Lease shall be deemed to constitute a waiver of any immunities afforded to Lessor, its officers, agents or employees, nor shall any portion of this Mining Lease be deemed to have created a duty of care which did not previously exist with respect to any person or entity not a party to this Mining Lease.
26. SEVERABILITY: If any clause or provision of this Mining Lease shall be held invalid or unenforceable, the remainder of this Mining Lease shall not be affected thereby.
27. HEADINGS FOR CONVENIENCE ONLY: Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define or limit the scope or intent of any provision of this Mining Lease.
28. GOVERNING LAW: This Mining Lease and its application shall be construed in accordance with the laws of the State of Colorado. Venue for any dispute arising under this Mining Lease shall be proper in and for the District Court in and for the County of Weld, State of Colorado, 19th Judicial District.
29. FORCE MAJEURE: Each Party to this Mining Lease is excused from performing under this Mining Lease to the extent it is rendered unable to perform during any period of time during which a force majeure event occurs. The term “force majeure” means acts not within the reasonable control of the non-performing party and includes acts of God; strikes; lockouts; epidemics or pandemics; landslides; lightening; tornadoes; earthquakes; fires; storms; explosions; wildlife/endangered species protections; the necessity for making unscheduled repairs or alterations to machinery, lines of pipe, or plants; freezing of wells, plants, facilities or lines of pipe; partial or entire failure of wells; inability of any party to obtain necessary materials, supplies, or permits due to existing, or future rules, regulations, orders, laws or proclamations of any governmental authorities, including both civil and military; and any failure by third-party transporters. In the event of force majeure, the party claiming such an event shall provide written notice of the force majeure event, and both Parties shall work together to resume operations as contemplated in this Mining Lease as soon as reasonably practical. Neither Party hereto shall be liable for any failure of performance due to causes beyond its reasonable control and the occurrence of which it could not have been prevented by the exercise of due diligence. If the critical path of the creation of the reservoir and storage capacity described in the Purchase and Sale

Agreement is affected by a force majeure event, the Term of this Mining Lease shall be extended on a day-for-day basis for each day the force majeure event continues.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Mining Lease as of the Effective Date set forth above:

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

LESSOR:
Town of Firestone, Colorado

By: _____
Its: _____

STATE OF COLORADO)
)
COUNTY OF WELD)

Acknowledged before me this ___ day of _____, 2022, by
_____.

WITNESS my hand and official seal.

My Commission Expires: _____

Notary Public

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

By: _____
Its: _____

STATE OF COLORADO)
)
COUNTY OF WELD)

Acknowledged before me this ___ day of _____, 2022, by
_____.

WITNESS my hand and official seal.

My Commission Expires: _____

Notary Public

EXHIBIT C
TO PURCHASE AND SALE AGREEMENT

Augmentation Water Lease

[see attached]

AUGMENTATION WATER LEASE

THIS AUGMENTATION WATER LEASE AGREEMENT (hereinafter “Water Lease”) is entered into this ___ day of _____, 2022 (“Effective Date”), by and between 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, Firestone, Colorado 80520 (“Firestone” or “Lessor”) and L.G. Everist, Inc., a [STATE] corporation whose address is [ADDRESS] (“LGE” or “Lessee”). Firestone and LGE may be referred to herein collectively as “Parties” or individually as “Party.”

RECITALS

WHEREAS, Firestone and LGE have entered into a PURCHASE AND SALE AGREEMENT dated August __, 2022 (“Purchase and Sale Agreement”) pertaining to Firestone’s purchase of a certain parcel of land located in Section 32, Township 3 North, Range 67 West, 6th P.M. Weld County, Colorado as more particularly depicted on **Exhibit A**, attached hereto and incorporated herein (the “Property”); and

WHEREAS, LGE also owns a certain parcel of land located in Section 32, Township 3 North, Range 67 West, 6th P.M. Weld County, Colorado known as the “Northwest Cell,” being adjacent to the Property and Firestone Pit and more particularly depicted on **Exhibit A**; and

WHEREAS, Firestone’s purchase of the Property includes three and one-sixth (3 & 1/6) shares of stock in the Last Chance Ditch Company, represented by Stock Certificates 80, 81, and 83, historically used on the Property (“Water Right”); and

WHEREAS, the LGE desires to lease a certain amount of water from Firestone to meet augmentation requirements associated with LGE’s mining and use of the Property and the Northwest Cell.

NOW, THEREFORE, in consideration of the mutual promises of the Parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

WATER LEASE AGREEMENT

1. **INCORPORATION:** The above Recitals are incorporated into this Water Lease as if fully set forth herein.
2. **LEASED INTEREST:** Lessor hereby agrees, during the Term of this Water Lease, to provide Lessee with up to 125 acre feet of augmentation water per year, or a lesser amount as required by an approved Substitute Water Supply Plan associated with Lessee’s mining permit for the Property, and pursuant to the Monthly Delivery Schedule attached hereto as **Exhibit __** and incorporated herein (“Augmentation Water”).

3. TERM OF WATER LEASE: The Term of this Water Lease shall be from the Effective Date until December 31, 2031, or until LGE delivers the completed Firestone Pit pursuant to the Purchase and Sale Agreement, whichever is sooner.
4. CONSIDERATION: Lessee agrees to pay Lessor Three Hundred Dollars (\$300.00) per acre-foot of Augmentation Water delivered pursuant to the Monthly Delivery Schedule. Payment for Lessee's first monthly delivery of Augmentation Water in accordance with the Monthly Delivery Schedule shall be due and payable to Lessor on the Effective Date. All subsequent payments are to be provided to Lessor at the address provided below. All payments due to Lessor from Lessee shall be payable upon receipt of an invoice therefor and shall be paid within thirty (30) days of receipt thereof.
5. DELIVERY OF WATER: Lessee's Augmentation Water will be delivered at the St. Vrain Sanitation District discharge point to the St. Vrain River, or at another location as may be mutually agreed upon by the Parties.
6. FURTHER APPROVAL: Lessee shall be responsible for obtaining any and all approvals as are necessary for Lessee's use of the Augmentation Water in its Substitute Water Supply Plans or otherwise and shall be responsible for accounting for its use of the Augmentation Water to the appropriate State water administration officials, water court and/or other parties who may be entitled to such information. Lessee shall provide Lessor with copies of its accounting illustrating Lessee's use of the Augmentation Water as reasonably requested by Lessor.
7. NO CONTINUING RIGHTS TO AUGMENTATION WATER: Lessee shall have no continuing rights in and to the water owned and/or controlled by Lessor after the termination of this Water Lease. Lessee does not own the water delivered under this Water Lease and Lessee's rights to use the Augmentation Water are limited as described in this Water Lease.
8. NOTICE: Any notice required or permitted to be given under this Water Lease shall be in writing and shall be deemed given and effective when delivered by electronic mail, Express Mail, Federal Express, or like service, or on the third mail delivery day after it is deposited in the United States mail, postage prepaid by certified or registered mail, return receipt requested, addressed to the Parties as follows:

If to Lessor: Town of Firestone, Colorado
Attn: Julie Pasillas, Director of Public Works
9950 Park Avenue
Firestone, CO 80520
Phone: 303-531-6258

With a copy to:
Attn: Wes Knoll
Lawrence Custer Grasmick Jones & Donovan, LLP
5245 Ronald Reagan Blvd., Suite 1

Johnstown, CO 80534
Phone: (970) 622-8181
wes@lcwaterlaw.com

If to Lessee: L.G. Everist Inc.
Attn: Matthew Noteboom
L.G. Everist, Incorporated,
7321 East 88th Avenue, Suite 200
Henderson, CO 80640
Phone: (303) 941-9620
msnoteboom@lgeverist.com

With a copy to:
Attn: Mike Fredregill, Esq.
Wellborn, Sullivan, Meck & Tooley, P.C.
1401 Lawrence Street, Suite 1800
Denver, CO 80202
(303) 376-4468
mfredregill@wsmtlaw.com

9. WAIVER: Unless otherwise specifically provided herein, no provision of this Water Lease may be waived except by written instrument signed by the Party to be charged with such waiver. Failure by any Party to enforce any provision of this Water Lease shall not constitute a waiver of such provision, and no waiver by any Party to this Water Lease of any provision of this Water Lease on one occasion shall constitute a waiver of any other provision or of the same provision on another occasion.
10. AMENDMENT: This Water Lease may be modified, amended, changed or terminated in whole or in part only by mutual agreement in writing, duly authorized and executed by the Parties hereto, their successors and assigns.
11. ASSIGNMENT: This Water Lease shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto. Neither Party may assign any interest under this Water Lease without the prior written consent of the other Party which shall not be unreasonably withheld.
12. ENTIRE AGREEMENT: This Water Lease, including the exhibits, which are attached hereto and incorporated herein, along with those certain separate agreement(s) by and among the Parties hereto and specifically referenced herein, shall constitute the entire agreement between the Parties and supersedes any other written or oral agreements between Lessor and Lessee regarding the subject matter of this Water Lease. This Water Lease may be modified only by the written agreement of both Parties.

13. IDEMNIFICATION: Lessee hereby agrees to indemnify and to hold Lessor harmless of and from any claims or causes of action from third parties against Lessor arising from Lessee's negligent actions in performance of this Water Lease.
14. NO WAIVER OF IMMUNITY: No portion of this Water Lease shall be deemed to constitute a waiver of any immunities afforded to Lessor, its officers, agents or employees, nor shall any portion of this Water Lease be deemed to have created a duty of care which did not previously exist with respect to any person or entity not a party to this Water Lease.
15. SEVERABILITY: If any clause or provision of this Water Lease shall be held invalid or unenforceable, the remainder of this Water Lease shall not be affected thereby.
16. HEADINGS FOR CONVENIENCE ONLY: Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define or limit the scope or intent of any provision of this Water Lease.
17. GOVERNING LAW: This Water Lease and its application shall be construed in accordance with the laws of the State of Colorado. Venue for any dispute arising under this Water Lease shall be proper in and for the District Court in and for the County of Weld, State of Colorado, 19th Judicial District.
18. FORCE MAJEURE: Each Party to this Water Lease is excused from performing under this Water Lease to the extent it is rendered unable to perform during any period of time during which a force majeure situation occurs. The term "force majeure" means acts not within the reasonable control of the non-performing party and includes acts of God; strikes; lockouts or epidemics; landslides; lightening; tornados; earthquakes; fires; storms; explosions; the necessity for making unscheduled repairs or alterations to machinery, lines of pipe, or plants; freezing of wells, plants, facilities or lines of pipe; partial or entire failure of wells; inability of any party to obtain necessary materials, supplies, or permits due to existing, or future rules, regulations, orders, laws or proclamations of any governmental authorities, including both civil and military; and any failure by third-party transporters. In the event of force majeure, both Parties shall work together to resume operations as contemplated in this Water Lease as soon as reasonably practical. Neither Party hereto shall be liable for any failure of performance due to causes beyond its reasonable control and the occurrence of which it could not have been prevented by the exercise of due diligence.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Water Lease as of the Effective Date set forth above:

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

LESSOR:
Town of Firestone, Colorado

By: _____
Its: _____

STATE OF COLORADO)
)
COUNTY OF WELD)

Acknowledged before me this ___ day of _____, 2022, by
_____.

WITNESS my hand and official seal.

My Commission Expires: _____

Notary Public

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

By: _____
Its: _____

STATE OF COLORADO)
)
COUNTY OF WELD)

Acknowledged before me this ___ day of _____, 2022, by
_____.

WITNESS my hand and official seal.

My Commission Expires: _____

Notary Public

EXHIBIT D
TO PURCHASE AND SALE AGREEMENT

Water Carriage Agreement

[see attached]

WATER CARRIAGE AGREEMENT

THIS WATER CARRIAGE AGREEMENT (hereinafter “ Carriage Agreement”) is entered into this ___ day of _____, 2022 (“Effective Date”), by and between 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, Firestone, Colorado 80520 (“Firestone”) and L.G. Everist, Inc., a South Dakota corporation whose address is 7321 East 88th Avenue, Suite 200, Henderson, Colorado 80640 (“LGE”). Firestone and LGE may be referred to herein collectively as “Parties” or individually as “Party.”

RECITALS

WHEREAS, Firestone and LGE have entered into a PURCHASE AND SALE AGREEMENT dated August __, 2022 (“Purchase and Sale Agreement”) pertaining to Firestone’s purchase of a certain parcel of land located in Section 32, Township 3 North, Range 67 West, 6th P.M. Weld County, Colorado as more particularly depicted on **Exhibit A**_, attached hereto and incorporated herein (the “Property”); and

WHEREAS, LGE also owns a certain parcel of land located in Section 32, Township 3 North, Range 67 West, 6th P.M. Weld County, Colorado known as the “Northwest Cell,” being adjacent to the Property and Firestone Pit and more particularly depicted on **Exhibit A**, hereto; and

WHEREAS, Firestone’s purchase of the Property includes three and one-sixth (3 & 1/6) shares of stock in the Last Chance Ditch Company, represented by Stock Certificates 80, 81, and 83, historically used on the Property (“Water Right”); and

WHEREAS, incidental to share ownership and under appropriate circumstances, shareholders in the Last Chance Ditch Company possess the right to use the Company’s excess carriage capacity for the delivery of foreign water by and through the Ditch, along with the ability to assign such interest to non-shareholders.

WHEREAS, the Parties desire to enter into a water carriage agreement providing LGE with certain excess capacity in the Last Chance Ditch system for the conveyance of water supplies to the Northwest Cell parcel.

NOW, THEREFORE, in consideration of the mutual promises of the Parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

WATER CARRIAGE AGREEMENT

1. **INCORPORATION:** The above Recitals are incorporated into this Carriage Agreement as if fully set forth herein.

2. **ASSIGNMENT OF CARRIAGE CAPACITY:** Firestone hereby assigns to LGE the right to excess carriage capacity in the Last Chance Ditch, up to a flow rate of 10 cubic feet per second (cfs), for the conveyance of water supplies to LGE's Northwest Cell parcel, when such excess carriage capacity is available to Firestone and when Firestone's need of such excess capacity has otherwise been met.
3. **TERM:** The Term of this Carriage Agreement shall commence as of the Effective Date and shall terminate on December 31, 2031. This Carriage Agreement shall be deemed to automatically extend for successive one-year periods thereafter in the absence of a written notice of termination given by either Party hereto at least ninety (90) days prior to the end of the respective Term then in effect.
4. **WATER CARRIAGE:** The Parties hereby acknowledge and agree to the following:
 - 4.1. Firestone, as owner of the above-referenced Water Right, is entitled to its pro rata share of excess carriage capacity in the Last Chance Ditch. Further, Firestone has the ability to assign such interest in excess carriage capacity to a non-shareholder in the Last Chance Ditch Company, provided that written documentation of any such assignment be provided to Last Chance Ditch Company prior to the Company delivering any water under such assignment.
 - 4.2. There is limited capacity in the Last Chance Ditch, and the Last Chance Ditch Company is obligated to carry excess foreign water only at such times as there is available carrying capacity in its conveyance infrastructure and when its conveyance infrastructure can safely carry additional water as determined by the Company. A shareholder's ability to use or assign an interest in excess capacity is subordinate to the primary right of Last Chance Ditch Company to use its conveyance infrastructure for diversion and delivery of the water rights now decreed to the Last Chance Ditch and any such previous agreements concerning the use of excess carriage capacity in the Company's conveyance infrastructure. Accordingly, Firestone's ability to perform under the terms and conditions of this Carriage Agreement is specifically limited by the day-to-day operations of the Last Chance Ditch by Last Chance Ditch Company.
5. **CONSIDERATION AND COST OF CARRIAGE:** In consideration for this Carriage Agreement, LGE shall pay to Firestone an annual amount equal to the annual rate charged by Last Chance Ditch Company for the conveyance of foreign water supplies through the Last Chance Ditch.
6. **PAYMENTS:** All payments due to Firestone from LGE under the terms of this Carriage Agreement shall be payable upon receipt of an invoice therefor and shall be paid within thirty (30) days of receipt thereof.
7. **MEASUREMENT:** Subject to review and approval by Firestone and Last Chance Ditch Company, LGE shall design and install all such necessary structures to divert water from the Last Chance Ditch for delivery and measurement at the Northwest Cell parcel. Any new

diversion points not historically used in association with the Water Right shall require the prior approval of Last Chance Ditch Company, and no new headgates may be installed without the permission of the Last Chance Ditch Company in accordance with its Bylaws. Except as otherwise agreed by the Parties, any device or structure installed in the Last Chance Ditch by LGE shall be the property of Last Chance Ditch Company, with the exception being any telemetric infrastructure installed in conjunction with such structure. LGE shall be entitled to remove any such telemetric infrastructure upon termination of this Carriage Agreement. Unless otherwise agreed upon, LGE shall be responsible for the maintenance and repair of any device or structure installed by LGE.

8. **PRIORITY.** LGE's entitlement to the use of Firestone's excess carriage capacity in the Last Chance Ditch as provided by this Carriage Agreement shall be considered prior to any carriage agreement for the use of Firestone's excess carriage capacity in the Last Chance Ditch executed subsequent to the date hereof.
9. **ACCESS.** To the extent Firestone has the right and authority to grant the same, LGE shall have access necessary along the Last Chance Ditch for purposes of ingress and egress to accomplish the terms of this Carriage Agreement.
10. **TRANSIT LOSS:** The Parties acknowledge and agree that transit loss has historically occurred in the Last Chance Ditch as water is delivered and recognize that the amount of carriage water delivered to LGE will be reduced to account for transit loss, determined by applying the same percentage to all water then being delivered by Last Chance Ditch Company through the Ditch.
11. **FAILURE TO CONVEY:** Firestone shall have no liability for any failure to convey water to LGE due to causes or events beyond Firestone's control and without fault or negligence of Firestone, including without limitation, acts of God, sudden acts of the elements such as floods, earthquakes, tornados, sabotage, acts of vandalism beyond that which could have reasonably been prevented, terrorism, war, fire, explosion, severe cold or hot weather, or snow.
12. **NOTICE:** Any notice required or permitted to be given under this Carriage Agreement shall be in writing and shall be deemed given and effective when delivered by electronic mail, Express Mail, Federal Express, or like service, or on the third mail delivery day after it is deposited in the United States mail, postage prepaid by certified or registered mail, return receipt requested, addressed to the Parties as follows:

If to Lessor: Town of Firestone, Colorado
Attn: Julie Pasillas, Director of Public Works
9950 Park Avenue
Firestone, CO 80520
Phone: 303-531-6258

With a copy to:
Attn: Wes Knoll

Lawrence Custer Grasmick Jones & Donovan, LLP
5245 Ronald Reagan Blvd., Suite 1
Johnstown, CO 80534
Phone: (970) 622-8181
wes@lcwaterlaw.com

If to Lessee: L.G. Everist Inc.
Attn: Matthew Noteboom
L.G. Everist, Incorporated,
7321 East 88th Avenue, Suite 200
Henderson, CO 80640
Phone: (303) 941-9620
msnoteboom@lgeverist.com

With a copy to:
Attn: Mike Fredregill, Esq.
Wellborn, Sullivan, Meck & Tooley, P.C.
1401 Lawrence Street, Suite 1800
Denver, CO 80202
(303) 376-4468
mfredregill@wsmtlaw.com

13. NOTICE TO LAST CHANCE DITCH COMPANY: Firestone shall promptly provide written notice of this Carriage Agreement to Last Chance Ditch Company after mutual execution of the same.
14. WAIVER: Unless otherwise specifically provided herein, no provision of this Carriage Agreement may be waived except by written instrument signed by the Party to be charged with such waiver. Failure by any Party to enforce any provision of this Carriage Agreement shall not constitute a waiver of such provision, and no waiver by any Party to this Carriage Agreement of any provision of this Carriage Agreement on one occasion shall constitute a waiver of any other provision or of the same provision on another occasion.
15. ASSIGNMENT: This Carriage Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto. Neither Party may assign any interest under this Carriage Agreement without the prior written consent of the other Party which shall not be unreasonably withheld.
16. AMENDMENT: Unless otherwise provided herein, this Carriage Agreement may be modified, amended, changed or terminated in whole or in part only by mutual agreement in writing, duly authorized and executed by the Parties hereto, their successors and assigns.
17. ENTIRE AGREEMENT: This Carriage Agreement, along with those certain separate agreement(s) by and among the Parties hereto and specifically referenced herein, shall constitute the entire agreement between the Parties and supersedes any other written or oral

agreements between Firestone and LGE regarding the subject matter of this Carriage Agreement.

18. INDEMNIFICATION: LGE hereby agrees to indemnify and to hold Firestone harmless of and from any claims or causes of action from third parties against Firestone arising from LGE's negligent actions in performance of or arising under this Carriage Agreement.
19. NO WAIVER OF IMMUNITUY: No portion of this Carriage Agreement shall be deemed to constitute a waiver of any immunities afforded to Firestone, its officers, agents or employees, nor shall any portion of this Carriage Agreement be deemed to have created a duty of care which did not previously exist with respect to any person or entity not a party to this Carriage Agreement.
20. SEVERABILITY: If any clause or provision of this Carriage Agreement shall be held invalid or unenforceable, the remainder of this Carriage Agreement shall not be affected thereby.
21. HEADINGS FOR CONVENIENCE ONLY: Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define or limit the scope or intent of any provision of this Carriage Agreement.
22. GOVERNING LAW: This Carriage Agreement and its application shall be construed in accordance with the laws of the State of Colorado. Venue for any dispute arising under this Carriage Agreement shall be proper in and for the District Court in and for the County of Weld, State of Colorado, 19th Judicial District.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Carriage Agreement as of the Effective Date set forth above:

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

GRANTOR:
Town of Firestone, Colorado

By: _____
Its: _____

STATE OF COLORADO)
)
COUNTY OF WELD)

Acknowledged before me this ___ day of _____, 2022, by
_____.

WITNESS my hand and official seal.

My Commission Expires: _____

Notary Public

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

By: _____
Its: _____

STATE OF COLORADO)
)
COUNTY OF WELD)

Acknowledged before me this ___ day of _____, 2022, by
_____.

WITNESS my hand and official seal.

My Commission Expires: _____
