

**TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 70, SERIES 2024**

**A RESOLUTION APPROVING PERMANENT WATER EASEMENT AGREEMENT
AND TEMPORARY CONSTRUCTION EASEMENT AGREEMENT
WITH NORTH WELD COUNTY WATER DISTRICT**

WHEREAS, the Town Council of the Town of Timnath (“Town”) pursuant to C.R.S. § 31-15-103, has the power to pass resolutions; and

WHEREAS, the Town is the owner of certain real property in Weld County, Colorado, sometimes referred to as the KM South property (the “Property”); and

WHEREAS, the North Weld County Water District has requested to purchase a permanent easement for a waterline crossing the Property and a temporary construction easement from the Town for \$79,650.00; and

WHEREAS, attached hereto as Exhibit A is a Permanent Water Easement Agreement (North Weld County Water District) and attached hereto as Exhibit B is a Temporary Construction Easement Agreement (North Weld County Water District) (the “Easements”); and

WHEREAS, the Town Council is familiar with the Easements and find them to be in the best interest of the Town, its residents, and the general public.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO AS FOLLOWS:

Section 1. Approval

The Town Council hereby approves the sale of the Easements to North Weld County Water District. The Easements are hereby approved in substantially the form as attached hereto, subject to technical or otherwise non-substantive modifications, as deemed necessary by the Town Manager in consultation with the Public Works Director, Town Engineer, Legal Counsel, and other applicable staff or consultants.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON OCTOBER 22, 2024.



TOWN OF TIMNATH, COLORADO



Robert Axmacher, Mayor

ATTEST:



Milissa Peters-Garcia, CMC

Town Clerk

EXHIBIT A

**PERMANENT WATER EASEMENT AGREEMENT
WITH NORTH WELD COUNTY WATER DISTRICT FOR A 30-INCH WATER LINE
ON THE KM SOUTH PROPERTY IN THE
TOWN OF TIMNATH, COLORADO**

PERMANENT WATER EASEMENT AGREEMENT
(North Weld County Water District)

THIS PERMANENT WATER EASEMENT AGREEMENT ("**Agreement**") is made this 22nd day of October, 2024, by and between THE TOWN OF TIMNATH, A COLORADO HOME RULE MUNICIPALITY whose address is 4750 Signal Tree Drive, Timnath, CO 80547 ("**Grantor**"), and NORTH WELD COUNTY WATER DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado, whose address is 32825 County Road 39, Lucerne, Colorado 80646 (the "**District**").

1. Grantor's Property. Grantor is the owner of that certain parcel of real property located in Weld County, Colorado, which is legally described on Exhibit A attached hereto and made a part hereof (the "**Property**").

2. Grant of Easement. For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by Grantee to Grantor, the receipt and sufficiency of which are hereby acknowledged, Grantor has granted, bargained, sold and conveyed, and by this Agreement does grant, bargain, sell, convey and confirm unto Grantee, its successors and assigns, a perpetual, non-exclusive easement (the "**Easement**") in, on, under, over, across and upon the real property legally described and depicted on Exhibit B attached hereto and incorporated herein by reference (the "**Easement Area**").

3. Purpose and Uses of Easement. The Easement herein granted may be used by the District and its agents, employees and contractors for the purposes of:

- (a) Surveying, locating, installing, constructing, reconstructing, using, operating, maintaining, inspecting, repairing, altering, removing, and replacing one (1) buried water pipeline, in whole or in part, , and all necessary subsurface and surface appurtenances for the transportation of water and the operation and control of water facilities (the "**Improvements**") including; supporting pipelines located within the Easement Area across ravines and water courses with such structures as the District shall reasonably determine to be necessary or advisable;
- (b) Reasonable access for District's personnel, equipment and vehicles to and from the Improvements.
- (c) Marking the location of the Easement Area and Improvements therein by suitable markers set and maintained in the ground at locations which shall not unreasonably interfere with Grantor's use of the Easement Area under the terms of this Agreement; and
- (d) Cutting and clearing trees, brush, debris and other obstructions on the Easement Area that interfere with the operation and maintenance of the District's activities and facilities related to the Improvements on the Easement Area.

4. Additional Rights of the District.

- (a) The District shall have the right of ingress to and egress from the Easement Area over, across and upon the Property for both pedestrian and vehicular traffic, by means of any roads and lanes now or hereafter located thereon;
- (b) The District shall have the right to install, maintain and use gates or other livestock barriers in all fences which now cross or shall hereafter cross the Easement Area; and The District shall have right to grade the Easement Area as determined by the District to be reasonably necessary or advisable for the proper use thereof for the purposes set forth in Section 3 above, provided that the District shall not change the present grade or ground level of the Easement Area by more than one (1) foot without the prior written consent of the Grantor.
- (c) The District shall have and exercise the right of subjacent and lateral support to whatever extent is necessary for the operation and maintenance of the Improvements. It is specifically agreed to between and among the parties that, except as provided in this Agreement, the Grantor, its successors and assigns, shall not take any action which would impair the lateral or subjacent support for the Improvements. The Grantor, its successors and assigns, shall have and exercise the right of subjacent and lateral support to whatever extent is necessary for the operation and maintenance of any improvements on the property adjoining the Property. It is specifically agreed by and between the Grantor and the District that, except as provided in this Agreement, the District shall not take any action which would impair the lateral or subjacent support for such improvements. This paragraph is not intended to prohibit the development of the private property located adjacent to the Property.
- (d) The District shall have the right to use only so much of the Property adjacent to the Easement Area, during surveying, construction, reconstruction, use, maintenance, repair, replacement and/or removal of the Improvements, as is reasonably required; provided, however that such activities shall not interfere unreasonably with Grantor's, its successors' or assigns' use and enjoyment of the Property and provided that the District shall reasonably minimize impacts to the Property and Grantor's use thereof. The District and its permitted assignees and licensees shall repair any damage caused to the Property and any adjoining premises and the improvements thereon, and shall be liable for any injury to any person or damage to property, to the extent arising out of the District's, its permitted assignee's or licensee's use of the Easement.
- (e) No delay or omission in the exercise of any right or remedy accruing to the District or the Grantor upon any breach shall impair such right or remedy or be construed as a waiver of any such breach or of a subsequent breach of the same or any other term, covenant or condition herein contained. No

failure by the District or the Grantor to remove or otherwise raise an objection to any objects or improvements located or installed on the Easement Area, shall be deemed to constitute consent to such improvements or objects, nor a waiver of the rights regarding removal of any such improvements or objects.

5. The District's Obligations. In connection with the District's use of the Easement Area, the District shall:

- (a) For underground facilities, bury the Improvements to a sufficient depth at the time of construction so as not to unreasonably interfere with, and to minimize impact to, the cultivation of the Easement Area for agricultural purposes, which is presumed to be 4 feet below the surface of the ground;
- (b) Restore the surface of the ground to as near a condition as existed prior to installation, construction, maintenance, alteration, or replacement of the Improvements and appurtenances thereto, taking into account, among other things, the existence of the Improvements and other structures, trees, shrubs, and other objects;
- (c) The District agrees that for a period of one year following construction which involves disturbance of the surface of the ground, the District will maintain the surface elevation and quality of the soil by correcting any settling or subsiding that occurs as a result of the work done by the District within the Easement Area
- (d) Restore existing fences, existing drain tile, existing irrigation systems, existing landscaping, existing private roads and other existing improvements, to as near a condition as existed prior to the District's activities related to the Improvements within the Easement Area;
- (e) Promptly pay when due the entire cost of any work on or about the Easement Area undertaken by the District, so that the Easement Area shall remain free of liens for labor and materials supplied at the request of the District;
- (f) Pay Grantor for any growing crops, livestock and other items which are damaged by the District's activities related to initial installation of the Improvements within the Easement Area in accordance with, whichever is greater: (i) applicable law; or (ii) the District's then-current policies and procedures; and
- (g) Restore or replace improvements made by Grantor on the Easement Area consistent with Section 7 below in the event those improvements are disturbed by the District, on the condition that Grantor pays the costs for such restoration or replacement.

6. Livestock Crossing During the District's Operations on Easement Area. In the event Grantor's Property is being used for grazing purposes and so long as the same does not interfere with or endanger the Improvements, the District agrees that, during the period of construction of the Improvements within the Easement Area or any subsequent alteration, removal or replacement of said Improvements, the District shall leave or arrange for reasonable crossing over the Easement Area for cattle and livestock of Grantor and its tenants and lessees, as determined in consultation between the District and Grantor. Further, whenever it becomes necessary for the District, its agents or contractors to cut a fence on Grantor's Property during its operations, the District shall notify give Grantor advance notice and, at its option, either keep the gate closed or guarded in such a manner so as to prevent the entrance and exit of cattle or livestock through such opening, or construct in any one (1) or more places, substantial gates with dual locks and to furnish Grantor with one (1) set of keys thereto. Before any of Grantor's fences are cut by the District, the fence shall be braced in order to prevent slackening of wires along the fence in each direction from the District's temporary opening.

7. Grantor's Rights in Easement Area.

(a) Grantor reserves the right to use and occupy the Easement Area for any purposes consistent with the rights and privileges granted herein which will not unreasonably interfere with the District's use of the Easement Area or the Easement, or endanger any of the Improvements, provided that Grantor, its successors and assigns shall not:

- (1) Construct or allow the construction of any permanent buildings or other structures on, over, or under the Easement Area;
- (2) Impound water or other substances on or over the Easement Area;
- (3) Store or dispose of any dangerous, toxic, or hazardous substance on or under the Easement Area;
- (4) Alter or replace any fence on the Easement Area without providing gate access to Grantee;
- (5) Plant or allow any trees to exceed three (3) feet at mature growth or shrubs or other landscaping with deep root systems to grow on the Easement Area, or alter ground level by more than one (1) foot, without the prior written consent of Grantee, which shall not be unreasonably withheld; however, Grantor may Grantor may install temporary or removable and replaceable objects such as yard lights, mail boxes, signs, fences, and shrubs, flowers, or plants without deep root systems or install roadways or walkways or recreation areas on or in the Easement Area, whether paved, gravel-surfaced, or unsurfaced, on the Easement Property;
- (6) Add or remove soil or alter the grade of the land within the Easement Area by more than one (1) foot without the prior written consent of Grantee, which shall not be unreasonably withheld;

- (7) Construct or place, longitudinally along or otherwise within the Easement Area, any underground pipeline, cable, wire, conduit, valve, stub, or other utility or appurtenance, without the prior written consent of Grantee, which shall not be unreasonably withheld; and
- (8) Grant further easement interests in the Easement Area to other utilities and grantees, without the prior written consent of Grantee, which shall not be unreasonably withheld and which be presumptively granted by the District provided: (a) such further easement interests shall be no closer than ten (10) feet from the District's existing and any planned District Improvements in the Easement Area, or (b) in the case of utilities crossing District lines or other District Facilities, crossings shall be perpendicular where possible and the other utilities shall be installed in accordance with the District's Rules and Regulations and Design Standards and buried at least one and one half (1½) feet below any existing or future planned District Improvements. The utility shall take reasonable measures required by the District to protect in place any existing District Facilities, and the District may require a representative of the District to be on-site for such installation, at the cost of the additional grantee.
- (b) No failure by the District to remove any interference or otherwise object to any use by Grantor in violation of these terms shall be deemed to constitute consent on the part of the District to such interference nor shall it be deemed a waiver of the District's right to remove any such interference without further notice or compensation to Grantor. No waiver by the District of any provision hereof, nor any approval of the District required herein, shall be deemed to have been made unless made in writing and signed by an authorized representative of the District.

8. Maintenance of Easement Area.

- (a) Grantor will maintain the surface of the Easement Area (except for any of the District's improvements permitted thereon) in a sanitary condition in compliance with any applicable weed, nuisance or other legal requirements.
- (b) Grantor will not deposit, or permit or allow to be deposited, earth, rubbish, debris, or any other substance or material, whether combustible or noncombustible, on the Easement Area, other than as provided for under Section 7 above.

9. Representations of Grantor. Grantor represents and warrants that it is the lawful owner in fee simple of the Easement Area; that it has good and lawful right and authority to grant,

sell and convey the Easement Area or any part. This Agreement is binding on Grantor, is not conditioned upon obtaining the consent of any third party, and is not subject to any leases, mortgages or liens, except for recorded covenants or documents disclosed by Grantor to the District.

10. Hazardous Materials. Grantor shall disclose to the District any pre-existing waste materials that Grantor knows or reasonably suspects to be present in soils, water (surface or groundwater), vapors or air, whether on, in, above, migrating to or from, or under the Easement Area ("**Pre-Existing Wastes**"), and any other information that would help the District assess the risks of working in the Easement Area. The District shall have the right to perform environmental sampling in the Easement Area at its discretion. If the District encounters any Pre-Existing Wastes, the District may stop work. Grantor shall retain its obligations to comply with all applicable laws and regulations related to such wastes. Grantor shall release the District from any claims or responsibilities related to such Pre-Existing Wastes.

11. Indemnification. The District shall indemnify, defend and save Grantor fully harmless against, and will reimburse Grantor for and against, any and all causes of action, claims demands, damages or liability for (i) physical damage to Grantor's property (including any physical damage to Grantor's crops or livestock) and (ii) personal or bodily injuries to Grantor, its agents and employees, or the public, to the extent any such damage is caused by the District's construction, operation, maintenance or removal of the Improvements, except to the extent that any such damage or injury is caused by the negligence or willful misconduct of Grantor.

12. Additional Terms and Conditions.

- (a) Construction. Whenever used herein, the singular includes the plural, the plural the singular; and the use of any gender is applicable to all genders.
- (b) Validity. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect; provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the parties shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations. No amendment, modification or supplement to this Agreement shall be binding on the District unless made in writing and executed by an authorized representative of the District. No waiver by the District of any provision hereof, nor any approval of the District required herein, shall be deemed to have been made unless made in writing and signed by an authorized representative of the District.
- (c) Binding Effect. All of the covenants herein contained are binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, personal representatives, successors and assigns.
- (d) Counterparts. This Agreement may be executed in several counterparts,

each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

- (e) Recordation. This Agreement shall be recorded in the real property records of Weld County.
- (f) Runs with the Land. The rights and responsibilities set forth in this Agreement are intended to be covenants on the Property and are to run with the land.
- (g) Benefits and Burdens. Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, administrators, successors and permitted assigns of the Grantor and the District.
- (h) Abandonment. The District agrees that at such time and in the event that the Improvements or Easement described herein are abandoned by the District and any successor or permitted assignee, the Easement will terminate automatically and the real property interest represented by the Easement will revert to the Grantor, its heirs, successors and/or assigns.
- (i) Assignability. It is expressly acknowledged and agreed that the District shall have the right and authority to assign the Easement to any appropriate local governmental entity or to any public utility provider, including but not limited to all rights to use, and all obligations associated with, the Easement as are granted to and assumed by the District herein, subject to such assignee assuming the obligations set forth herein, and upon written notice to Grantor.
- (j) Governmental Immunity. Neither the District nor Grantor waives nor shall be deemed to have waived their governmental immunity or any of the limitations on damages or any of the privileges, immunities, or defenses provided to, or enjoyed by the parties under common law or pursuant to statute, including, but not limited to, the Colorado Governmental Immunity Act, C.R.S. § 24- 10-101, et seq.
- (k) Entire Agreement. This Agreement incorporates all agreements and stipulations between Grantor and the District as to the subject matter of this Agreement and no prior representations or statements, verbal or written, shall modify, supplement or change the terms of this Agreement. This Agreement consists of the document titled "Permanent Water Easement Agreement", an Exhibit A containing a legal description of the Grantor's Property, an Exhibit B containing a legal description of the Easement Area and, if attached, any Consent and Subordination. No other exhibit, addendum, schedule or other attachment (collectively, "**Addendum**") is authorized, and no Addendum shall be effective and binding upon either party unless executed by an authorized representative of the District and

Grantor. This Agreement has been drafted as a joint effort between the District and Grantor, after negotiations, consultations, and approval as to form. Accordingly, neither the District nor Grantor may hereafter be entitled to a presumption that any portion of this Agreement should be construed either for or against a particular party or contend that this Agreement was drafted by a particular party.

[Remainder of page intentionally left blank]

THE DISTRICT:

NORTH WELD COUNTY WATER DISTRICT, a Political Subdivision of the State of Colorado

ATTEST:

Scott Cockroft, Secretary

Tad Stout, President

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me **this**__ day of _____, 2024, by Tad Stout, as President of the NORTH WELD COUNTY WATER DISTRICT, a Political Subdivision of the State of Colorado.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A

Legal Description of Grantor's Property

THE NE 1/4 OF SECTION 18, TOWNSHIP 7 NORTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO. EXCEPT THAT PORTION CONVEYED BY DEEDS RECORDED NOVEMBER 2, 1907, IN BOOK 269 AT PAGE 254 AND SEPTEMBER 24, 1976, AT RECEPTION NO. 1699780 IN BOOK 778 AND OCTOBER 9, 1951, IN BOOK 1313 AT PAGE 346.

Exhibit "B"

EASEMENT AREA DESCRIPTION

A tract of land, being part of that parcel described in Special Warranty Deed recorded January 18, 2018, as Reception No. 4368712 of the records of the Weld County Clerk and Recorder (WCCR), situate in the Northeast Quarter (NE 1/4) of Section Eighteen (18), Township Seven North (T.7N.), Range Sixty-seven West (R.67W.) of the Sixth Principal Meridian (6th P.M.), County of Weld, State of Colorado and being more particularly described as follows:

COMMENCING at the North Quarter Corner of said Section 18 and assuming the north line of the Northeast Quarter as bearing North $86^{\circ}17'33''$ East, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, NAD 83/2011, a distance of 2,433.59 feet, monumented by a #6 rebar with 2.5" aluminum cap (illegible) at the North Quarter Corner, and monumented by a 70.00 foot witness corner, being a #6 rebar with a 3.25" aluminum cap stamped LS 26288 at the Northwest Corner, and with all other bearings contained herein relative thereto;

THENCE South $00^{\circ}20'57''$ East, along the west line of said Northeast Quarter, a distance of 59.60 feet to the south line of that parcel described in Right of Way Deed recorded October 9, 1951, as reception number 1115752 of the WCCR and the POINT OF BEGINNING;

THENCE along said south line the following three courses;

THENCE along the arc of a curve concave to the north a distance of 112.00 feet; having a Radius of 11,500 feet, a Delta of $00^{\circ}33'29''$ and is subtended by a chord that bears North $86^{\circ}22'29''$ East a distance of 112.00 feet to a Point of Tangency (PT);

THENCE North $86^{\circ}11'03''$ East a distance of 2,158.70 feet to a Point of Curvature (PC);

THENCE along the arc of a curve concave to the south a distance of 102.78 feet, having a Radius of 5,690 feet, a Delta of $01^{\circ}02'06''$ and is subtended by a chord that bears North $86^{\circ}41'54''$ East a distance of 102.78 feet;

THENCE South $00^{\circ}09'16''$ East a distance of 942.89 feet;

THENCE North $89^{\circ}50'58''$ East a distance of 30.00 feet to the west Right-of-Way line of Weld County Road 15;

THENCE South $00^{\circ}09'16''$ East, along said west line, a distance of 40.00 feet;

THENCE South $89^{\circ}50'58''$ West a distance of 30.00 feet;

THENCE South $00^{\circ}09'16''$ East a distance of 19.99 feet;

THENCE South $89^{\circ}50'44''$ West a distance of 40.00 feet;

THENCE North $00^{\circ}09'16''$ West a distance of 960.85 feet to the beginning point of a curve, non-tangent to the aforesaid line;

THENCE along the arc of a curve concave to the south a distance of 60.17 feet, having a Radius of 5,650 feet, a Delta of $00^{\circ}36'37''$ and is subtended by a chord that bears South $86^{\circ}29'09''$ West a distance of 60.17 feet to a Point of Tangency (PT);

THENCE South $86^{\circ}11'03''$ West a distance of 2,158.67 feet to a Point of Curvature (PC);

THENCE along the arc of a curve concave to the north a distance of 114.45 feet, having a Radius of 11,540 feet, a Delta of $00^{\circ}34'06''$ and is subtended by a chord that bears South $86^{\circ}22'48''$ West a distance of 114.45 feet to the west line of the Northeast Quarter of Section 18;

THENCE North 00°20'57" West, along said west line, a distance of 40.05 feet to the POINT OF BEGINNING.

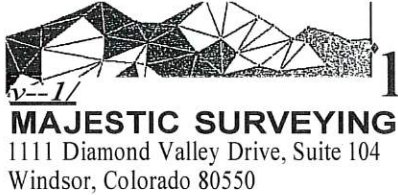
Said described parcel of land contains 134,611 Square Feet or 3.090 Acres, more or less(±).

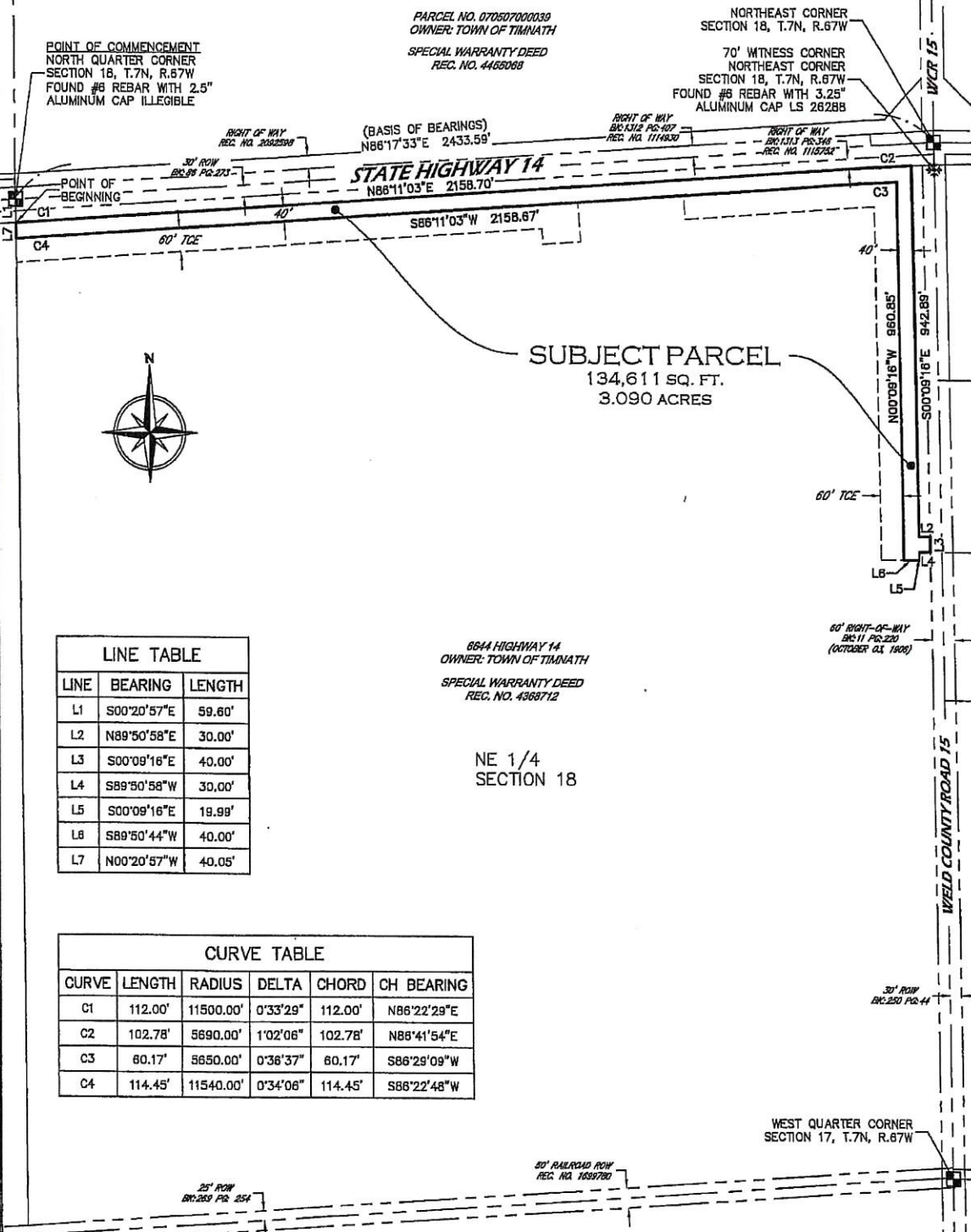
SURVEYORS STATEMENT

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



Matthew A. Kramer - on behalf of Majestic Surveying, LLC
Colorado Licensed Professional Land Surveyor #38844





SUBJECT PARCEL
134,611 SQ. FT.
3.090 ACRES

6644 HIGHWAY 14
OWNER: TOWN OF TIMNATH
SPECIAL WARRANTY DEED
REC. NO. 4368712

NE 1/4
SECTION 18

LINE TABLE		
LINE	BEARING	LENGTH
L1	S00°20'57"E	59.60'
L2	N89°50'58"E	30.00'
L3	S00°09'16"E	40.00'
L4	S89°50'58"W	30.00'
L5	S00°09'16"E	19.99'
L6	S89°50'44"W	40.00'
L7	N00°20'57"W	40.05'

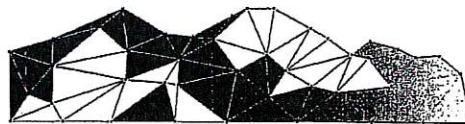
CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CH BEARING
C1	112.00'	11500.00'	0°33'29"	112.00'	N86°22'29"E
C2	102.78'	5690.00'	1°02'06"	102.78'	N88°41'54"E
C3	60.17'	5650.00'	0°36'37"	60.17'	S86°29'09"W
C4	114.45'	11540.00'	0°34'06"	114.45'	S86°22'48"W

Note: This drawing does not represent a monumented land survey. Its sole purpose is a graphic representation of the accompanying written description.

Notice: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon. (CRS 13-80-105)



Matthew A. Kramer, PLS 38844
On behalf of Majestic Surveying, LLC



MAJESTIC SURVEYING

PROJECT NO: 2023030 CLIENT: DITESCO
DATE: 6-3-2024 SCALE: 1"=250'

EXHIBIT B

**TEMPORARY CONSTRUCTION EASEMENT AGREEMENT
FOR CONSTRUCTION AND
RELATED ACTIVITIES FOR INSTALLING A NORTH WELD COUNTY WATER
DISTRICT 30-INCH WATER LINE ON THE KM SOUTH PROPERTY IN THE
TOWN OF TIMNATH, COLORADO**

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

(North Weld County Water District)

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT ("**Agreement**") is made this 22nd day of October 2024, ("**Effective Date**"), by and between THE TOWN OF TIMNATH, A COLORADO HOME RULE MUNICIPALITY whose address is 4750 Signal Tree Drive, CO 80547 ("**Grantor**"), and THE NORTH WELD COUNTY WATER DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado, whose address is 32825 Weld CR 39, Lucerne, Colorado 80646 (the "**District**").

1. Grantor's Property. Grantor is the owner of that certain parcel of real property located in Weld County, Colorado, which is legally described in Exhibit A attached hereto and made a part hereof (the "**Property**").

2. Grant of Temporary Easement. For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by Grantee to Grantor, the receipt and sufficiency of which are hereby acknowledged, Grantor has granted, bargained, sold and conveyed, and by this Agreement does grant, bargain, sell, convey and confirm unto Grantee, its successors and assigns, a temporary non-exclusive construction easement (the "**Temporary Easement**") in, on, under, over, across and upon the real property legally described on Exhibit B attached hereto and incorporated herein by reference (the "**Temporary Easement Area**").

3. Purpose and Uses of Temporary Easement. The Temporary Easement herein granted may be used by the District for the purposes of:

- (a) Surveying, locating, installing, constructing, reconstructing, using, operating, maintaining, inspecting, repairing, altering, removing, and replacing one (1) buried water pipeline, in whole or in part, and all necessary subsurface and surface appurtenances for the transportation of water and the operation of water control facilities located within that certain easement described in a separate Permanent Water Easement Agreement between the Parties dated as of the Effective Date; (the "**Improvements**"), including supporting pipelines across ravines and water courses with such structures as the District shall reasonably determine to be necessary or advisable;
- (b) Cutting and clearing trees, brush, debris and other obstructions on the Temporary Easement Area that interfere with the District's activities on the Temporary Easement Area;
- (c) Allowing the District's contractors, agents and employees and invitees to enter over, through and upon the Temporary Easement Area with personnel, machinery, trucks, materials, tools and other equipment which are used or required in the construction of a water pipeline; and
- (e) Marking the location of the Temporary Easement Area by suitable markers set in the ground.

4. Term. The Temporary Easement shall begin Ten (10) days after Grantor receives written notice from Grantee of the start of construction and shall terminate thirty (30) days following completion of construction of the Improvements and related facilities within the Temporary Easement Area or one (1) year following the Effective Date, whichever shall first occur ("**Term**"). The expiration of the Term shall have no effect on the District's permanent easement or other right, if any, within or over which said utility improvements are to be constructed or installed.

5. Additional Rights of the District.

- (a) The District shall have the right of ingress to and egress from the Temporary Easement Area over, across and upon the Property for both pedestrian and vehicular traffic, by means of any roads and lanes now or hereafter located thereon; and
- (b) The District shall have the right to install, maintain and use gates or other livestock barriers in all fences which now cross or shall hereafter cross the Temporary Easement Area.
- (c) The District shall have the right to grade the Temporary Easement Area as determined by the District to be reasonably necessary or advisable for the proper use thereof for the purposes set forth in Section 3 above, provided that the District shall not change the present grade or ground level of the Easement Area by more than one (1) foot without the prior written consent of the Grantor.
- (d) The District shall have and exercise the right of subjacent and lateral support to whatever extent is necessary for the operation and maintenance of the Improvements. It is specifically agreed to between and among the parties that, except as provided in this Agreement, the Grantor, its successors and assigns, shall not take any action which would impair the lateral or subjacent support for the Improvements. The Grantor, its successors and assigns, shall have and exercise the right of subjacent and lateral support to whatever extent is necessary for the operation and maintenance of any improvements on the property adjoining the Property. It is specifically agreed by and between the Grantor and the District that, except as provided in this Agreement, the District shall not take any action which would impair the lateral or subjacent support for such improvements. This paragraph is not intended to prohibit the development of the private property located adjacent to the Property.
- (e) The District shall have the right to use only so much of the Property adjacent to the Easement Area, during surveying, construction, reconstruction, use, maintenance, repair, replacement and/or removal of the Improvements, as is reasonably required; provided, however that such activities shall not interfere unreasonably with Grantor's, its successors' or assigns' use and enjoyment of the Property and provided that the District shall reasonably minimize impacts to the Property and Grantor's use thereof. The District and its permitted assignees and licensees shall repair any damage caused to

the Property and any adjoining premises and the improvements thereon, and shall be liable for any injury to any person or damage to property, to the extent arising out of the District's, its permitted assignee's or licensee's use of the Easement.

- (f) No delay or omission in the exercise of any right or remedy accruing to the District or the Grantor upon any breach shall impair such right or remedy or be construed as a waiver of any such breach or of a subsequent breach of the same or any other term, covenant or condition herein contained. No failure by the District or the Grantor to remove or otherwise raise an objection to any objects or improvements located or installed on the Temporary Easement Area, shall be deemed to constitute consent to such improvements or objects, nor a waiver of rights regarding removal of any such improvements or objects.

6. The District's Obligations. In connection with the District's use of the Temporary Easement Area, the District shall:

- (a) Restore the surface of the ground to as near a condition as existed prior to the District's activities related to the Improvements on the Temporary Easement Area;
- (b) Restore existing fences, existing drain tile, existing irrigation systems, existing landscaping, existing private roads and other existing improvements, to substantially the same condition as existed prior to the District's activities related to the Improvements within the Temporary Easement Area; and
- (c) Pay Grantor for any growing crops, livestock and other items which are damaged by the District's activities related to the initial installation of the Improvements within the Temporary Easement Area in accordance with, whichever is greater: (i) applicable law; or (ii) the District's then-current policies and procedures.
- (d) Promptly pay when due the entire cost of any work on or about the Easement Area undertaken by the District, so that the Easement Area shall remain free of liens for labor and materials supplied at the request of the District;
- (e) Restore or replace improvements made by Grantor on the Easement Area consistent with Section 8 below in the event those improvements are disturbed by the District, on the condition that Grantor pays the costs for such restoration or replacement.

7. Livestock Crossing During the District's Operations on Temporary Easement Area.

In the event Grantor's Property is being used for grazing purposes, the District agrees that so long as the same does not interfere with or endanger the Improvements, during the period of construction activities related to the Improvements within the Temporary Easement Area, the District shall leave

or arrange for reasonable crossing over the Temporary Easement Area for cattle and livestock of Grantor and its tenants and lessees, as determined in consultation between the District and Grantor. Further, whenever it becomes necessary for the District, its agents or contractors to cut a fence on Grantor's Property during its operations, the District shall give Grantor advance notice and, at its option, either keep the gate closed or guarded in such a manner so as to prevent the entrance and exit of cattle or livestock through such opening, or construct in any one (I) or more places, substantial gates with dual locks and to furnish Grantor with one (1) set of keys thereto. Before any of Grantor's fences are cut by the District, the fence shall be braced in order to prevent slackening of wires along the fence in each direction from the District's temporary opening.

8. Grantor's Rights in Temporary Easement Area.

(a) Grantor reserves the right to use and occupy the Temporary Easement Area for any purposes consistent with the rights and privileges granted herein which will not unreasonably interfere with the District's use of the Temporary Easement Area or the Temporary Easement, or endanger any of the Improvements, provided that Grantor, its successors and assigns shall not:

- (1) Construct or allow the construction of any permanent buildings or other structures on, over, or under the Temporary Easement Area;
- (2) Impound water or other substances on or over the Temporary Easement Area;
- (3) Store or dispose of any dangerous, toxic, or hazardous substance on or under the Temporary Easement Area;
- (4) Alter or replace any fence on the Temporary Easement Area without providing gate access to Grantee;

9. Maintenance of Temporary Easement Area.

- (a) Grantor will maintain the surface of the Temporary Easement Area (except for any of the District's Improvements permitted thereon) in a sanitary condition in compliance with any applicable weed, nuisance or other legal requirements; however, except to the extent caused by Grantor's negligence or intentional misconduct, Grantor is not responsible for any conditions directly caused by the District's use and occupancy of the Temporary Easement Area.
- (b) Grantor will not deposit, or permit or allow to be deposited, rubbish, debris, or other hazardous substance or material, whether combustible or noncombustible, within the Temporary Easement Area.

10. Representations of Grantor. Grantor represents and warrants that it is the lawful

owner in fee simple of the Temporary Easement Area; that it has good and lawful right and authority to grant, sell and convey the Temporary Easement Area or any part. This Agreement is binding on Grantor, is not conditioned upon obtaining the consent of any third party, and is not subject to any leases, mortgages or liens, except for recorded covenants and documents disclosed by Grantor to the District.

11. Hazardous Materials. Grantor shall disclose to the District any pre-existing waste materials that Grantor knows or reasonably suspects to be present in soils, water (surface or groundwater), vapors or air, whether on, in, above, migrating to or from, or under the Temporary Easement Area ("**Pre-Existing Wastes**"), and any other information that would help the District assess the risks of working in the Temporary Easement Area. The District shall have the right to perform environmental sampling in the Temporary Easement Area at its discretion. If the District encounters any Pre-Existing Wastes, the District may stop work. Grantor shall retain its obligations to comply with all applicable laws and regulations related to such wastes. Grantor shall release the District from any claims or responsibilities related to such Pre-Existing Wastes.

12. Indemnification. The District shall indemnify, defend and save Grantor fully harmless against, and will reimburse Grantor for and against, any and all causes of action, claims demands, damages or liability for (i) physical damage to Grantor's property (including any physical damage to Grantor's crops or livestock) and (ii) personal or bodily injuries to Grantor, its agents and employees, or the public, to the extent any such damage is caused by the District's construction, operation, maintenance or removal of the Improvements, except to the extent that any such damage or injury is caused by the negligence or willful misconduct of Grantor.

13. Additional Terms and Conditions.
 - (a) Construction. Whenever used herein, the singular includes the plural, the plural the singular; and the use of any gender is applicable to all genders.

 - (b) Validity. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect; provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the parties shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations. No amendment, modification or supplement to this Agreement shall be binding on the District unless made in writing and executed by an authorized representative of the District. No waiver by the District of any provision hereof, nor any approval of the District required herein, shall be deemed to have been made unless made in writing and signed by an authorized representative of the District.

 - (c) Binding Effect. All of the covenants herein contained shall run with, be

binding on and burden the Temporary Easement Area, and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, personal representatives, successors and assigns.

- (d) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.
- (e) Recordation. This Agreement shall be recorded in the real property records of Weld County.
- (f) Assignability. It is expressly acknowledged and agreed that the District shall have the right and authority to assign the Easement to any appropriate local governmental entity or to any public utility provider, including but not limited to all rights to use, and all obligations associated with, the Easement as are granted to and assumed by the District herein, subject to such assignee assuming the obligations set forth herein, and upon written notice to Grantor.
- (g) Benefits and Burdens. Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, administrators, successors and permitted assigns of the Grantor and the District
- (h) Governmental Immunity. Neither the District nor Grantor waives nor shall be deemed to have waived their governmental immunity or any of the limitations on damages or any of the privileges, immunities, or defenses provided to, or enjoyed by the Parties under common law or pursuant to statute, including, but not limited to, the Colorado Governmental Immunity Act, C.R.S. § 24- 10-101, et seq.
- (i) Entire Agreement. This Agreement incorporates all agreements and stipulations between Grantor and the District as to the subject matter of this Agreement and no prior representations or statements, verbal or written, shall modify, supplement or change the terms of this Agreement. This Agreement consists of the document titled "Temporary Construction Easement Agreement", an Exhibit A containing a legal description of the Grantor's Property, an Exhibit B-1 containing a legal description of the Temporary Easement Area, an Exhibit B-2 containing a depiction of the Temporary Easement Area and, if attached, any Consent and Subordination. No other exhibit, addendum, schedule or other attachment (collectively, "**Addendum**") is authorized, and no Addendum shall be effective and binding upon either party unless executed by an authorized representative of the District and Grantor. This Agreement has been drafted as a joint effort between the District and Grantor, after negotiations, consultations, and approval as to form. Accordingly, neither the District nor Grantor may hereafter be entitled to a presumption that any portion of this Agreement should be construed either for or against a particular party or contend that

this Agreement was drafted by a particular party.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first written above.

GRANTOR:
The Town of Timnath, a
Colorado Home Rule Municipality

By: [Signature]

Title: Mayor

STATE OF COLORADO)
) ss.
COUNTY OF Larimer)

The foregoing instrument was acknowledged before me this 22nd day of October 2024, by Robert Axmacher as, Mayor for the Town of Timnath, a Colorado Municipal Corporation.

WITNESS my hand and official seal.

My commission expires: 8/8/2024

MILISSA PETERS-GARCIA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20044026568
MY COMMISSION EXPIRES AUGUST 08, 2028

Milissa Peters-Garcia
Notary Public

DISTRICT:

NORTH WELD COUNTY WATER DISTRICT, a Political Subdivision of the State of Colorado

ATTEST:

Scott Cockroft, Secretary

Tad Stout, President

STATE OF COLORADO

COUNTY OF _____



The foregoing instrument was acknowledged before me **this**__ day of _____,2024, by Tad Stout, as President of the NORTH WELD COUNTY WATER DISTRICT, a Political Subdivision of the State of Colorado.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A

Legal Description of Grantor's Property

THE NE 1/4 OF SECTION 18, TOWNSHIP 7 NORTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO. EXCEPT THAT PORTION CONVEYED BY DEEDS RECORDED NOVEMBER 2, 1907, IN BOOK 269 AT PAGE 254 AND SEPTEMBER 24, 1976, AT RECEPTION NO. 1699780 IN BOOK 778 AND OCTOBER 9, 1951, IN BOOK 1313 AT PAGE 346.

Exhibit "B"

PARCEL DESCRIPTION

A tract of land being part of that parcel described in Special Warranty Deed, recorded January 18, 2018, as Reception No. 4368712 of the records of the Weld County Clerk and Recorder (WCCR), situate in the Northeast Quarter (NE 1/4) of Section Eighteen (18), Township Seven North (T.7N.), Range Sixty-seven West (R.67W.) of the Sixth Principal Meridian (6th P.M.), County of Weld, State of Colorado and being more particularly described as follows:

Commencing at the North Quarter Comer of said Section 18 and assuming the north line of the Northeast Quarter as bearing North $86^{\circ}17'33''$ East, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/2011, a distance of 2,433.59 feet, monumented by a #6 rebar with 2.5" aluminum cap (illegible) at the North Quarter Comer, and monumented by a 70.00 foot witness comer, being a #6 rebar with a 3.25" aluminum cap stamped LS 26288 at the Northwest Comer, and with all other bearings contained herein relative thereto;

PARCEL "A"

THENCE South $00^{\circ}20'57''$ East, along the west line of said Northeast Quarter, a distance of 99.66 feet to the POINT OF BEGINNING;

THENCE along the arc of a curve concave to the north a distance of 114.45 feet, having a Radius of 11,540 feet, a Delta of $00^{\circ}34'06''$ and is subtended by a chord that bears North $86^{\circ}22'48''$ East a distance of 114.45 feet to a Point of Tangency (PT);

THENCE North $86^{\circ}11'03''$ East a distance of 1,372.83 feet to a point herein referred to as *POINT* ' ';

THENCE South $03^{\circ}44'08''$ East a distance of 100.00 feet;

THENCE South $86^{\circ}11'03''$ West a distance of 100.00 feet;

THENCE North $03^{\circ}44'08''$ West a distance of 40.00 feet;

THENCE South $86^{\circ}11'03''$ West a distance of 1,272.70 feet to a Point of Curvature (PC);

THENCE along the arc of a curve concave to the north a distance of 118.13 feet, having a Radius of 11,600 feet, a Delta of $00^{\circ}35'01''$ and is subtended by a chord that bears South $86^{\circ}23'17''$ West a distance of 118.13 feet to the west line of the Northeast Quarter of Section 18;

THENCE North $00^{\circ}20'57''$ West, along said west line, a distance of 60.08 feet to the POINT OF BEGINNING.

TOGETHER WITH:

PARCEL "B"

COMMENCING at aforementioned *POINT* ' ';

THENCE North $86^{\circ}11'03''$ East a distance of 282.00 feet to the POINT OF BEGINNING;

THENCE North $86^{\circ}11'03''$ East a distance of 503.84 feet to a Point of Curvature (PC);

THENCE along the arc of a curve concave to the south a distance of 60.17 feet, having a Radius of 5,650 feet, a Delta of $00^{\circ}36'37''$ and is subtended by a chord that bears North $86^{\circ}29'09''$ East a distance of 60.17 feet;

THENCE South $00^{\circ}09'16''$ East a distance of 960.85 feet;

THENCE South 89°50'44" West a distance of 60.00 feet;
THENCE North 00°09'16" West a distance of 897.20 feet;
THENCE South 86°11'03" West a distance of 500.15 feet;
THENCE North 03°44'08" West a distance of 60.00 feet to the POINT OF BEGINNING.

Said described parcels of land contain 181,013 Square Feet or 4.155 Acres, more or less(±).

SURVEYORS STATEMENT

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



Matthew A. Kramer - on behalf of Majestic Surveying, LLC
Colorado Licensed Professional Land Surveyor #38844



MAJESTIC SURVEYING
1111 Diamond Valley Drive, Suite 104
Windsor, Colorado 80550

