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July 31, 2019

Don Burchett, Planning Manager
Planning and Development Services Department
City of Longmont
385 Kimbark Street
Longmont, Colorado 80501

Re: Modern West Properties LLC
Compatibility with Vance Brand Municipal Airport
City of Longmont, Colorado

Dear Mr. Burchett:

We have been retained as special counsel to Modern West Properties LLC with respect to its proposal to develop property in the City of Longmont which is in the MU-E zoning district and the Airport Influence Overlay Zone. The Modern West project is located approximately 2,300 feet southeast of and topographically lower than the end of the Airport's runway. This letter is submitted in response to what we understand to be the City staff's desire to receive input from experienced aviation resources regarding the project's compatibility with Vance Brand Airport (the "Airport"), and specifically, compliance with FAA grant Assurance 21 dealing with the compatibility of land uses near the Airport.

By way of introduction, for over 25 years my practice has included representation of a number of air carrier and general aviation airports, mostly in Colorado and Wyoming, as both general and special counsel. That representation has involved FAA regulatory compliance. I have successfully brought and defended several complaints against airport sponsors under FAR Part 13 and Part 16 regarding compliance with FAA grant assurances. My representation of public airports has also included the defense of cases in the United States District Court and the United States Circuit Court of Appeals.

In preparation for writing this letter I have reviewed the project plans, applicable City of Longmont zoning, the Airport's Master Plan, and applicable FAA guidance documents.

Background

The Federal Aviation Administration (“FAA”) has provided over \$5.45 million in grants to the Airport since 1988. In accepting these grants, the City of Longmont, as the airport sponsor, has agreed to comply with several grant assurances. Grant Assurance 21, which implements 49 USC §47107, requires the City to:

“...take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which federal funds have been expended.”

To the best of our knowledge, the Airport has received no funds for “noise compatibility program implementation” and therefore only the first clause of this grant assurance is applicable.

Incompatible land uses at or near airports may result in hazards to air navigation and reductions in airport utility resulting from obstructions to flight paths. Residential construction too close to the airport may also result in noise-related incompatible land use. According to Chapter 20 of FAA Order 5190.6B, *Compatible Land Use and Airspace Protection*, compatibility of land use is attained when the use of adjacent property neither adversely affects flight operations from the airport, nor is itself adversely affected by such flight operations.

In two respects, Colorado statutes also require the City to adopt and enforce rules and regulations consistent with this grant assurance. The first statute requires the City to protect land areas on and adjacent the Airport, from high structures and other objects as defined in 14 CFR, Part 77. *See*, C.R.S. §43-10-113. The second requires the City to protect and administer areas around the Airport to encourage land use patterns for housing and other local government needs that will separate uncontrollable noise sources from residential and other noise-sensitive areas; and avoid danger to public safety and health or to property due to aircraft crashes. *See*, C.R.S. § 24-65.1-202.

To comply with these obligations and ensure compatibility of land uses, the City has established both base zoning districts and an airport overlay district in areas near the Airport.

The Project is Located in Longmont’s MU-E Zoning District.

The City has established a number of mixed-use zoning districts as part of its Land Development Code. These are established to provide a wide range of services and goods to meet household and business needs and also to accommodate and encourage a mix of residential and nonresidential uses to offer greater opportunities to live, work, and play within close proximity.

The particular purpose of the MU-E district is to provide areas appropriate for diverse employment by encouraging a greater variety of employment spaces in close proximity to attached residential and supporting services. The MU-E district offers flexibility in terms of the types of uses and the adaptive reuse of existing buildings to promote employment and live-work opportunities, as well as multifamily residential uses. This zoning district is intended to accommodate a wide range of business opportunities in a pedestrian-friendly environment with easy access to public amenities including parks, open space, and public transit.

Longmont Airport Influence Overlay Zone

The City has also established an Airport Influence Overlay Zone (“AIZ”) as part of its Land Development Code. The AIZ “overlays” and applies to the MU-E district in which the project is located. The stated purposes of the AIZ are to, (a) protect the ongoing ability of the Airport to serve the city's air transportation needs and protect the public investment in the airport; (b) minimize risks to public safety and minimize hazards to Airport users; (C) protect property values and restrict incompatible land use; and (d) promote appropriate land use planning and zoning in the area influenced by the Airport.

To accomplish these purposes, the AIZ imposes a number of restrictions, such as:

- *Use Restrictions.* No use shall create any electrical interference with navigational signals for radio communications between the Airport and the aircraft, make it difficult for pilots to distinguish airport lights from others, result in glare for pilots using the airport, impair visibility in the vicinity of the airport or otherwise in any way create a hazard or endanger the landing, take-off, or maneuvering of aircraft using the airport; and
- *Height Limitations:* No structure or object of natural growth shall be erected, altered, allowed to grow, or be maintained at a height that intrudes into the Federal Aviation Regulation (FAR) part 77 surfaces for the Airport.

To further ensure the Airport is protected, if the regulations stated in the AIZ conflict with the MU-E district, or with any other applicable land development regulation, the regulations in the AIZ will apply.

The project will comply with all requirements of the MU-E and AIZ zoning districts in which it will be located. Moreover, it will comply with FAA’s criteria for compatibility which the City’s zoning was established to address.

The Project Complies with the Height Requirements of the AIZ

The project contains no structure, and will not allow any feature to be maintained, at a height that intrudes into the Federal Aviation Regulation (FAR) Part 77 surfaces for the Airport. Part 77 establishes “conical surfaces” which radiate from the runway and protect aircraft from objects on the ground. The conical surface extending off the end of the Airport’s runway is established in a 40:1 plane.

An airspace analysis is nonetheless required if any portion of the land use proposal is (a) located within 20,000 feet of a public use runway, and (b) breaks a 100:1 plane coming off the nearest point of the nearest runway, or (c) is more than 200 feet above ground level at any location. This includes temporary cranes used during construction. FAA requires the project’s proponent to file a Form 7460-1 and obtain a height review if the project meets one of these thresholds.

The Modern West project does not break or even approach either the 40:1 or the 100:1 planes coming off the nearest point of the nearest Airport runway, and is not more than 200 feet above ground level at any location. Therefore, unless expressly requested by FAA, no Form 7460-1 need be filed with FAA for its review and approval. A copy of the 100:1 and 40:1 plane analysis for the project is attached hereto as **Exhibit 1**.

The Project is Otherwise Compatible with Air Navigation.

In addition to height requirements, a use may be incompatible with air navigation if it (a) would create an electrical interference with navigational signals for radio communications between the airport and aircraft, (b) make it difficult for pilots to distinguish airport lights from others, result in glare for pilots using the airport, (c) impair visibility in the vicinity of the airport by generation of smoke or steam, or (d) otherwise create a hazard or endanger the landing, take-off, or maneuvering of aircraft using the airport, including through the creation of bird attractants. See, FAA Order 5190.6B, *Compatible Land Use and Airspace Protection*.

*The Modern West project will not be subject to FCC licensing requirements and will not create an electrical interference with navigational signals for radio communications between the airport and aircraft.

*All lighting associated with the project will be focused downward, and when appropriate, shielded. This will not result in glare or make it difficult for pilots to distinguish airport lights from others.

*No facilities which generate smoke or steam are a part of this project, and therefore it will not interfere with pilot visibility.

*The project does not create any lakes, ponds or dumps which would attract birds and thus create a hazard or endanger the landing, take-off, or maneuvering of aircraft using the

airport. The required storm water retention facility will be designed so as to retain water for less than 48-hours and will be constructed in accordance with the other requirements of FAA Advisory Circular 150/5200-33B, *Hazardous Wildlife Attractants on or Near Airports*. In fact, the agricultural uses which the project will replace would probably be more likely than the project to attract birds and other wildlife.

The Project is Compatible with FAA Noise Standards

FAA has established the day-night average sound level (Ldn or DNL) as its community noise exposure metric. *See*, 14 CFR Part 150. LDN is defined as the average measured noise level over a 24-hour period. Recognizing that people are more sensitive to noise at night, noise level measurements taken between the hours of 10:00 pm and 7:00 am are increased by 10 dB before averaging. FAA considers any LDN higher than 65 dB to be incompatible with residential communities. An LDN lower than 65 dB is considered by FAA to be compatible with all land uses, including residential. FAA's land use compatibility chart is attached hereto as **Exhibit 2**.

The Vance Brand Airport has performed noise measurements to determine the extent to which its 65 LDN "noise contour" extends beyond its Airport boundaries. The Airport Layout Plan, dated February 18, 2012, shows that at its south runway end the Airport's 65 LDN contour is contained almost entirely inside the Airport's property boundaries. *See, Airport Layout Plan-Airport/Community Land Use Compatibility Plan*, attached as **Exhibit 3**. The 65 LDN contour does not cover or even come near the site of the Modern West project.

The Airport has also prepared a Master Plan dated March 14, 2012. Among other things the Master Plan analyzes potential improvements to the Airport, including a runway extension. Such a runway extension would be expected to shift the noise contour the direction in which the runway is extended. All of the six Master Plan alternatives relating to the runway would extend it to the west, away from the project. Accordingly, if implemented, none of the alternatives for runway extension would increase noise or reduce aircraft elevations above the project area.

From the FAA perspective, the project is therefore compatible from a noise perspective. It is nonetheless worth noting that the project is a mixed-use development which will contain commercial and light industrial uses (along with associated vehicle parking), with multifamily residential uses being only a secondary use. This creates an "urban" environment in which there is more background noise than would be expected to be present in a neighborhood that is purely residential. The higher the background noise the less that aircraft noise is audible or considered problematic.

Requirements of the Annexation Agreement

On February 12, 2019, the City adopted Ordinance O-2019-09 by which the Modern West project area was annexed into the City and, as noted above, zoning as MU-E. Prior to such annexation, the City and the project developer, Modern West Properties LLC entered into an

Agreement in Furtherance of Annexation (the “Annexation Agreement”). That Annexation Agreement was recorded in the real property records of Boulder County on April 16, 2019 at Reception No. 03707534.

At paragraph 2.4, the Annexation Agreement provides that because the property is located within the Airport Influence Zone, Modern West “agrees to provide a plat note on all preliminary and final subdivision plats and site development plans, and agrees to have each initial lot purchaser sign the Airport Disclosure Statement” which was attached as Exhibit C to the Annexation Agreement. The complete text of the Plat Note and Disclosure Statement are attached hereto as **Exhibit 4**.

Among other things, the required Plat Note states that the owners and their successors:

Acknowledge the rights of passage over the property for aircraft and agree to hold harmless the City of Longmont for aircraft operations conducted in the accordance with FAA regulations.

Among other things, the required Disclosure Statement, which Modern West will have all first purchasers of property in the development sign, states that there will be aircraft passing above the property, and:

Aircraft passage may result in noise and other impacts on the property. Aircraft may cross above the property at low altitudes in accordance with FAA regulations. The frequency of aircraft passing over the property may increase in the future. The purchaser (and their successors) acknowledge, pursuant to the plat note, the right of passage over the property for aircraft and agree to hold harmless the City of Longmont for aircraft operations conducted in accordance with FAA regulations.

When recorded, the Plat Note will create rights in the City which are in the nature of an avigation easement.

Avigation Easement

Though the Annexation Agreement already creates rights in the nature of an avigation easement, to further protect the Airport, Modern West is agreeable to executing and recording a Surface and Overhead Avigation Easement in a form attached hereto as **Exhibit 5**. This is similar to other such easements which the City has negotiated with developers of property near the Airport. The recording of this document will ensure that the proposed development will remain compatible with the Airport into the future, and that the investment of the City and FAA in the Airport will remain secure.

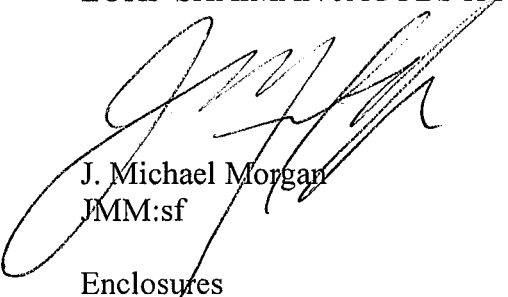
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Conclusion

Based on my understanding of the applicable legal authority and my experience representing airports operators, I can see no reason why FAA would conclude that the City has violated its Grant Assurances by approving the Modern West project as now proposed. Your consideration of this letter is appreciated.

Very truly yours,

LOHF SHAIMAN JACOBS HYMAN & FEIGER PC



J. Michael Morgan
JMM:sf

Enclosures

cc: Modern West Properties LLC
Joni Marsh, Planning Director
Linda Bruce, Colorado State Planner, FAA

EXHIBIT 1

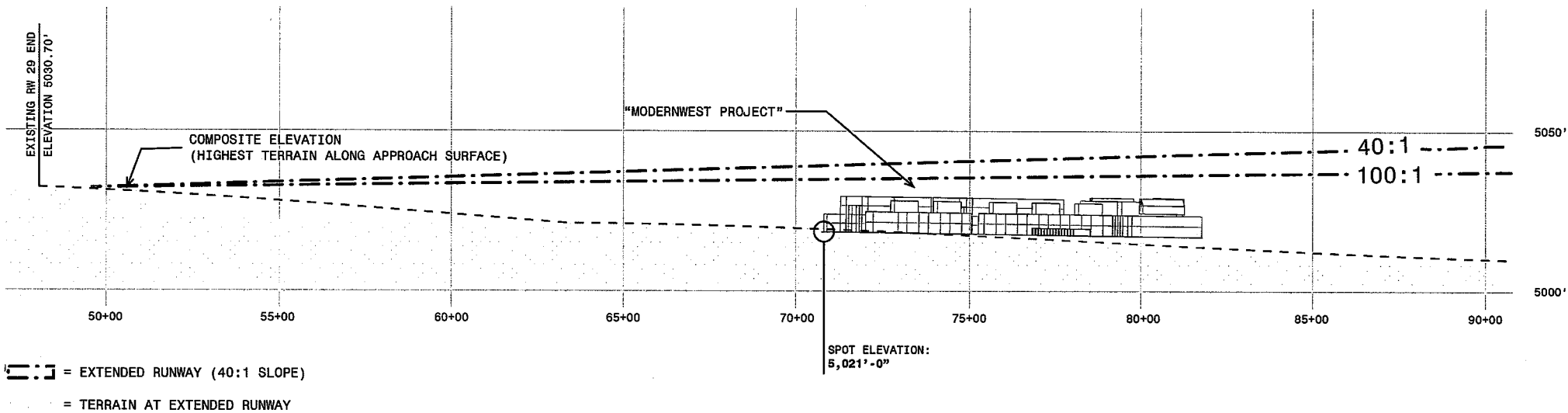


Exhibit 11-3. Land-Use Compatibility* with Yearly Day-Night Average Sound Levels

Land Use	Yearly DNL Sound Level (decibels)					
	<65	65-70	70-75	75-80	80-85	>80
Residential	N/A	N/A	N/A	N/A	N/A	N/A
Residential, other than mobile homes and transient lodgings	Y	N (1)	N (1)	N	N	N
Mobile home parks	Y	N	N	N	N	N
Transient lodgings	Y	N (1)	N (1)	N (1)	N	N
Public Use	N/A	N/A	N/A	N/A	N/A	N/A
Schools	Y	N (1)	N (1)	N	N	N
Hospitals and nursing homes	Y	25	30	N	N	N
Churches, auditoriums, and concert halls	Y	25	30	N	N	N
Governmental services	Y	Y	25	30	N	N
Transportation	Y	Y	Y (2)	Y (3)	Y (4)	Y (4)
Parking	Y	Y	Y (2)	Y (3)	Y (4)	N
Commercial Use	N/A	N/A	N/A	N/A	N/A	N/A
Offices, business and professional	Y	Y	25	30	N	N
Wholesale and retail – building materials, hardware, and farm equipment	Y	Y	Y (2)	Y (3)	Y (4)	N
Retail trade, general	Y	Y	25	30	N	N
Utilities	Y	Y	Y (2)	Y (3)	Y (4)	N
Communication	Y	Y	25	30	N	N

EXHIBIT 2

Land Use	Yearly DNL Sound Level (decibels)					
	<65	65-70	70-75	75-80	80-85	>80
Manufacturing and Production	N/A	N/A	N/A	N/A	N/A	N/A
Manufacturing, general	Y	Y	Y (2)	Y (3)	Y (4)	N
Photographic and optical	Y	Y	25	30	N	N
Agriculture (except livestock) and forestry	Y	Y (6)	Y (7)	Y (8)	Y (8)	Y (8)
Livestock farming and breeding	Y	Y (6)	Y (7)	N	N	N
Mining and fishing, resource production and extraction	Y	Y	Y	Y	Y	Y
Recreational	N/A	N/A	N/A	N/A	N/A	N/A
Outdoor sports arenas and spectator sports	Y	Y (5)	Y (5)	N	N	N
Outdoor music shells, amphitheaters	Y	N	N	N	N	N
Nature exhibits and zoos	Y	Y	N	N	N	N
Amusements, parks, resorts, and camps	Y	Y	Y	N	N	N
Golf courses, riding stables, and water recreation	Y	Y	25	30	N	N

Source: 14 CFR part 150, Appendix A, Table 1

Note: Numbers in parentheses refer to the notes at end of the exhibit.

- * The designations contained in this exhibit do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, state, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. The FAA determinations under 14 CFR part 150 are not intended to substitute Federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.

Y = Land use and related structures compatible without restrictions

















N = Land use and related structures are not compatible and should be prohibited



25 or 30 = Land use and related structures generally compatible; measures to achieve Noise Level Reduction of 25 or 30 dBA (i.e. a weighted sound level) must be incorporated into design and construction of structure. Noise Level Reduction is the amount of noise reduction in decibels achieved through incorporation of building sound insulation treatments (between outdoor and indoor levels) in the design and construction of a structure (14 CFR § 150.7). Building sound insulation treatments typically consist of acoustical replacement windows and doors.

- (1) Where the community determines that residential or school uses must be allowed, measures to achieve outdoor to indoor noise level reduction of at least 25 dBA and 30 dBA should be incorporated into building codes and be considered in individual approvals. Normal residential construction can be expected to provide a noise level reduction of 20 dBA, thus, the reduction requirements are often stated as 5, 10 or 15 dBA over standard construction and normally assume mechanical ventilation and closed windows year round. However, the use of noise level reduction criteria will not eliminate outdoor noise problems.
- (2) Measures to achieve noise level reduction of 25 dBA must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.
- (3) Measures to achieve noise level reduction of 30 dBA must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.
- (4) Measures to achieve noise level reduction of 35 dBA must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.
- (5) Land use compatible provided special sound reinforcement systems are installed.
- (6) Residential buildings require noise level reduction of 25 dBA.
- (7) Residential buildings require noise level reduction of 30 dBA.
- (8) Residential buildings not permitted.

- ULTRA LOW DENSITY RESIDENTIAL
- VERY LOW DENSITY RESIDENTIAL
- LOW DENSITY RESIDENTIAL
- MEDIUM DENSITY RESIDENTIAL
- HIGH DENSITY RESIDENTIAL
- NEIGHBORHOOD COMMERCIAL
- MULTI-NEIGHBORHOOD COMMERCIAL
- CENTRAL BUSINESS DISTRICT
- REGIONAL COMMERCIAL
- STRIP COMMERCIAL
- MIXED USE CORRIDOR
- INDUSTRIAL/ECONOMIC DEVELOPMENT
- PUBLIC AND QUASI-PUBLIC
- OPEN SPACE OUTSIDE LPA

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		NEIGHBORHOOD PARK
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		DISTRICT PARK
		ELEMENTARY SCHOOL
		MIDDLE SCHOOL
		HIGH SCHOOL
		SPECIAL SCHOOL
		OTHER FACILITY

 EXISTING AIRPORT INFLUENCE ZONE (AIZ)
 PART 77 SURFACE
 65 DNL CONTOUR
 70 DNL CONTOUR
 75 DNL CONTOUR

BASE MAPPING AND DATA FOR THIS PLAN WERE COMPILED USING HISTORICAL MAPPING, USGS TOPOGRAPHIC MAPS, AND OTHER RELEVANT INFORMATION. THIS DRAWING IS FOR PLANNING PURPOSES ONLY. EXACT LOCATIONS SHALL NOT BE ASSUMED. THIS DRAWING SHALL NOT BE USED FOR CONSTRUCTION.

LAND USE AND FACILITIES MAPPING FROM LONGMONT COMPREHENSIVE PLAN MAP, DATED 8/26/2003 (INCLUDES AMENDMENTS THROUGH 7/12/2010)

SPONSOR'S COMPATIBLE LAND USE ORDINANCE NUMBER IS 94-16, AND WAS ENACTED MAY 10, 1999.

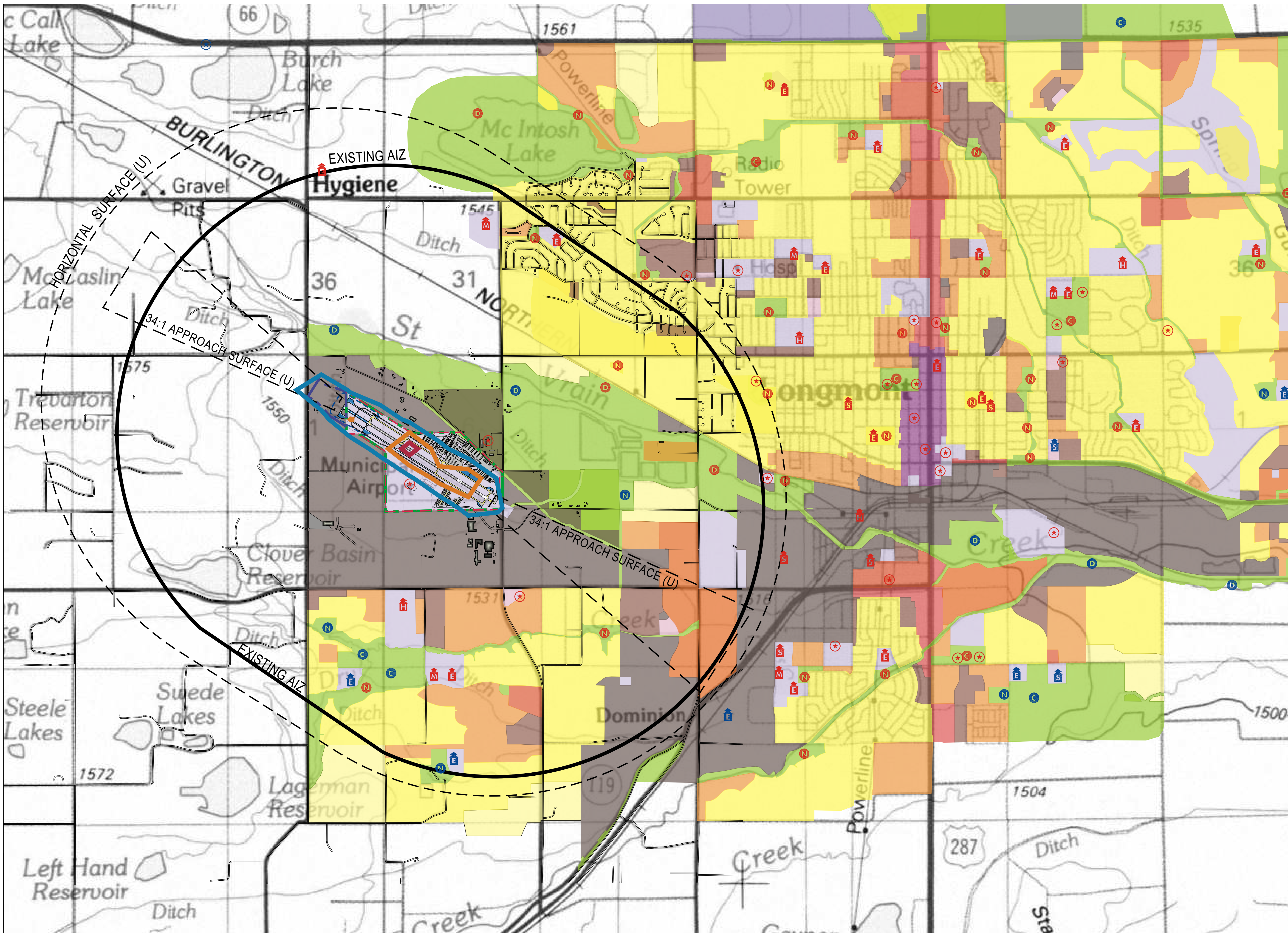
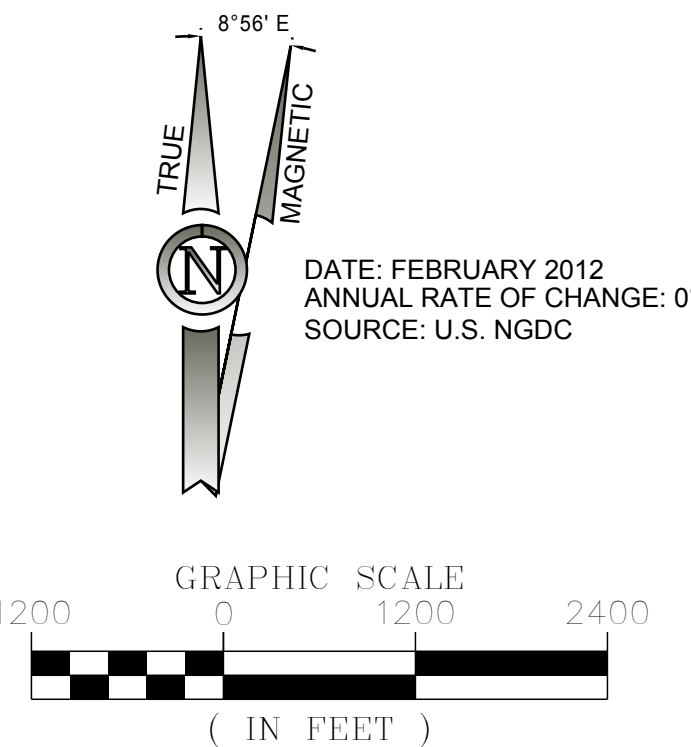


EXHIBIT C**PLAT NOTE**

Due to the proximity of the property to the Vance Brand Airport, there will be aircraft passing above the property. Aircraft passage may result in noise and other impacts on the property. Aircraft may cross above the property at low altitude in accordance with FAA regulations. The frequency of aircraft passing over the property may increase in the future. The owners, their heirs, successors and assigns, specifically acknowledge the right of passage over the property for aircraft and agree to hold harmless the City of Longmont for aircraft operations conducted in accordance with FAA regulations.

DISCLOSURE STATEMENT**REGARDING VANCE BRAND AIRPORT**

(To be signed by purchaser at time of contract and recorded with the closing documents)

The purchasers of the property described in Exhibit A (legal description of each dwelling) attached hereto acknowledge that due to the proximity of the property to the Vance Brand Airport, there will be aircraft passing above the property. Aircraft passage may result in noise and other impacts on the property. Aircraft may cross above the property at low altitude in accordance with FAA regulations. The frequency of aircraft passing over the property may increase in the future. The purchasers, their heirs, successors and assigns specifically acknowledge, pursuant to the plat note, the right of passage over the property for aircraft and agree to hold harmless the City of Longmont for aircraft operations conducted in accordance with FAA regulations.

Vance Brand Airport is located one-half mile north of Nelson Road and south of the St. Vrain River, between Airport Road and N. 75th Street. Federal aviation regulations govern aircraft operations. Airport rules and regulations, as now exist or later enacted or amended, are on file with the City of Longmont and specify the standards for operation of the facility.

EXHIBIT 4

1 The property is subject to State (C.R.S. §41-1-107) and City (L.M.C. 15.03.130) and
2 federal laws regulating the use of the airspace above the property.

3

4 This Disclosure shall run with the land and applies to all heirs, successors and assigns of
5 the purchasers so long as the Vance Brand Airport continues in operation.

SURFACE AND OVERHEAD AVIGATION EASEMENT

WHEREAS, Modern West Properties LLC (the "Grantor") is the fee owner of the property described on the annexed **Exhibit A** (the "Property"), which is situated in the City of Longmont, Boulder County, Colorado;

WHEREAS, the City of Longmont (the "Grantee") is owner and operator of the Vance Brand Municipal Airport (the "Airport"), and the Airport is owned and operated for the use and benefit of the public;

WHEREAS, aircraft landing at and taking off from the Airport pass over and will continue to pass over the Property and may result in noise and other impacts on the Property, aircraft may cross above the Property at low altitudes in accordance with FAA regulations, and the frequency of aircraft passing over the Property may increase in the future; and

WHEREAS, Grantor therefore desires to grant this Easement, to address such conditions and protect Grantee with respect thereto.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor, for itself, its heirs, administrators, executors, successors and assigns does hereby grant the following appurtenant rights and benefits to the Grantee:

1. The unobstructed use and passage of all types of aircraft in and through the airspace at any legal height or altitude above the surface of the Property.
2. The right of said aircraft to cause noise, vibrations, fumes, deposits of dust, fuel particles, fear, interference with sleep or communication, and any other effects so long as they are associated with the normal, legal and reasonable operation of aircraft taking off, landing or operating in the vicinity of the Airport. It is Grantors' intent to permit lawful aircraft noise and similar effects to occur over the Property from aircraft using the Airport, regardless of operational levels, air traffic control procedures, types of aircraft, or airport runway configurations which might come to be in effect in the future.
3. At any time there is evidence of the congregation or nesting of birds on the Property due to an object or improvement that was placed subsequent to this Easement that is deemed unsafe to aircraft operations by the Federal Aviation Administration (FAA), the Grantor, with respect to any part of the Property then owned by that Grantor, and that Grantor's successors, or assigns shall be responsible for its removal, relocation, and/or mitigation as necessary to eliminate the unsafe condition, with the associated costs for such removal, relocation and/or mitigation, being born by said Grantor.
4. As used herein, the term "aircraft" shall mean any and all types of aircraft, whether now in existence or hereafter manufactured and developed, to include jet,

propeller-driven, civil, military or commercial aircraft, and helicopters, regardless of existing or future noise levels, for the purpose of transporting persons or property through the air, by whoever owned or operated.

5. The Grantors warrant for themselves, and all persons claiming under the Grantors, that they have the exclusive and full right, title, ownership, and lawful authority to grant this Easement and to make and enforce the covenants and promises herein, and that they will forever defend title to the Easement from persons claiming the whole or any part thereof, by, through or under the Grantors.

6. Grantors hereby agree that they have an affirmative duty at the time of offering for sale all or any portion of the Property to disclose the existence of this Easement on the Property to prospective purchasers. Grantors shall be deemed to have satisfied this obligation to disclose when this Easement is placed of record in the real estate records of Boulder County, Colorado.

7. None of the terms, conditions, or covenants set forth in this Agreement shall give or allow any claim, benefit, or right of action by any third person not a party to this Agreement. Any person other than the parties to this Agreement who or which receive services or benefits under this Agreement shall be only an incidental beneficiary. Nothing herein shall be construed to waive or release any claim by Grantor, its successors or assigns, against any person not a party to this Easement with respect to any unlawful, unauthorized, negligent or willfully wrongful act or omission of such person.

8. In the event of any dispute or claim arising under or related to this Easement, the parties shall use their best efforts to settle such dispute or claim through good faith negotiations with each other. If such dispute or claim is not settled through negotiations within 30 days after the earliest date on which one party notifies the other party in writing of its desire to attempt to resolve such dispute or claim through negotiations, then the parties agree to attempt in good faith to settle such dispute or claim by mediation conducted under the auspices of the Judicial Arbiter Group (JAG) of Denver, Colorado or, if JAG is no longer in existence, or if the parties agree otherwise, then under the auspices of a recognized established mediation service within 30 miles of the Longmont, Colorado. Such mediation shall be conducted within 60 days following either party's written request therefor. If such dispute or claim is not settled through mediation, then either party may initiate a civil action in the District Court for Boulder County.

TO HAVE AND TO HOLD said Easement all rights appertaining thereto unto the Grantee, its successors, and assigns, until said the Vance Brand Municipal Airport shall be abandoned and shall cease to be used for public airport purposes. It is understood and agreed that all provisions herein shall run with the land and shall be binding upon the owners of the Property, their heirs, personal representatives, successors and assigns until such time that the Easement is extinguished.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal this _____ day of _____, 2019

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019 by _____ as _____ of Modern West Properties LLC, a Colorado limited liability company. _

Witness my hand and official seal.

My commission expires: _____ 2019

Notary Public

[Seal]

EXHIBIT A

1 PARCEL I:

2 THAT PARCEL OF LAND DESCRIBED AS PARCEL I IN THAT WARRANTY DEED
3 RECORDED ON FILM 972, AT RECEPTION NO. 1720957 OF THE BOULDER COUNTY
4 RECORDS, LOCATED IN THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 2
5 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF
6 BOULDER, STATE OF COLORADO, BASED ON A MONUMENTED LAND SURVEY
7 SAID PARCEL I IS MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

8 CONSIDERING THE SOUTH LINE OF THE WEST ONE-HALF OF THE NORTHWEST
9 QUARTER OF SAID SECTION 8 TO BEAR SOUTH 89°29'46" EAST, 1326.83 FEET
10 BETWEEN THE WEST QUARTER CORNER, A FOUND 3.25" ALLOY CAP LS 37946 IN
11 MONUMENT BOX, AND THE CENTER WEST 16TH CORNER, A FOUND 3.25" ALLOY
12 CAP PLS 25636 IN MONUMENT BOX, WITH ALL BEARINGS CONTAINED HEREIN
13 RELATIVE THERETO.

14 COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 8;
15 THENCE SOUTH 89°29'46" EAST ALONG SAID SOUTH LINE, 269.99 FEET; THENCE
16 DEPARTING SAID SOUTH LINE NORTH 00°09'59" EAST ALONG THE EAST LINE OF
17 THAT PARCEL OF LAND AS DESCRIBED IN RECEPTION NO. 3235662 OF THE
18 BOULDER COUNTY RECORDS, 659.99 FEET TO THE NORTHEAST CORNER THEREOF
19 AND THE POINT OF BEGINNING;
20 THENCE NORTH 89°28'16" WEST ALONG THE NORTH LINE OF SAID PARCEL, 269.69
21 FEET TO THE NORTHWEST CORNER THEREOF, SAID CORNER LYING ON THE WEST
22 LINE OF THE NORTHWEST QUARTER OF SAID SECTION 8;

23 THENCE NORTH 00°04'46" EAST ALONG SAID WEST LINE AND ALONG THE EAST
30 LINE OF THAT PARCEL OF LAND AS DESCRIBED IN RECEPTION NO. 3124634 OF THE
31 BOULDER COUNTY RECORDS, 389.20 FEET TO THE NORTHEAST CORNER THEREOF

1 THENCE NORTH 00°09' 10" EAST CONTINUING ALONG THE WEST LINE OF SAID
2 NORTHWEST QUARTER AND ALONG THE EAST LINE OF THAT PARCEL OF LAND
3 AS DESCRIBED IN RECEPTION NO. 1758539 OF THE BOULDER COUNTY RECORDS,
4 600.81 FEET TO THE SOUTHWEST CORNER OF THAT PARCEL OF LAND AS
5 DESCRIBED IN RECEPTION NO. 1980729 OF THE BOULDER COUNTY RECORDS;
6 THENCE SOUTH 89°32'22" EAST ALONG THE SOUTH LINE OF SAID PARCEL, 665.96
7 FEET TO THE NORTHWEST CORNER OF THAT PARCEL OF LAND AS DESCRIBED IN
8 RECEPTION NO. 3516367 OF THE BOULDER COUNTY RECORDS;
9 THENCE SOUTH 00°17'21" WEST ALONG THE WEST LINE OF SAID PARCEL, 989.88
10 FEET TO THE SOUTHWEST CORNER THEREOF;
11 THENCE NORTH 89°36'08" WEST ALONG THE NORTH LINE OF THAT PARCEL OF
12 LAND AS DESCRIBED IN RECEPTION NO. 2901046 OF THE BOULDER COUNTY
13 RECORDS, 333.42 FEET TO THE NORTHWEST CORNER THEREOF;
14 THENCE CONTINUING NORTH 89°36'08" WEST, 60.00 FEET TO THE POINT OF
15 BEGINNING.

16 TOGETHER WITH

17 PARCEL II:

18 THAT PARCEL OF LAND DESCRIBED AS PARCEL II IN THAT WARRANTY DEED
19 RECORDED ON FILM 972, AT RECEPTION NO. 1720957 OF THE BOULDER COUNTY
20 RECORDS, LOCATED IN THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 2
21 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF
22 BOULDER, STATE OF COLORADO. BASED ON A MONUMENTED LAND SURVEY
23 SAID PARCEL II IS MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

24 CONSIDERING THE SOUTH LINE OF THE WEST ONE-HALF OF THE NORTHWEST
25 QUARTER OF SAID SECTION 8 TO BEAR SOUTH 89°29'46" EAST, 1326.83 FEET
26 BETWEEN THE WEST QUARTER CORNER, A FOUND 3.25" ALLOY CAP (ILLEGIBLE)

1 IN MONUMENT BOX, AND THE CENTER WEST 16TH CORNER, A FOUND 3.25"
2 ALLOY CAP (ILLEGIBLE) IN MONUMENT BOX, WITH ALL BEARINGS CONTAINED
3 HEREIN RELATIVE THERETO.
4
4 COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 8;
5 THENCE SOUTH 89°29'46" EAST ALONG SAID SOUTH LINE, 269.99 FEET TO THE
6 POINT OF BEGINNING;
7 THENCE DEPARTING SAID SOUTH LINE NORTH 00°09'59" EAST ALONG THE EAST
8 LINE OF THAT PARCEL OF LAND AS DESCRIBED IN RECEPTION NO. 3235662 OF THE
9 BOULDER COUNTY RECORDS, 659.99 FEET TO THE NORTHEAST CORNER
10 THEREOF;
11 THENCE SOUTH 89°36'08" EAST, 60.00 FEET TO THE NORTHWEST CORNER OF THAT
12 PARCEL OF LAND AS DESCRIBED IN RECEPTION 2901046 OF THE BOULDER
13 COUNTY RECORDS;
14 THENCE SOUTH 00° 10'00" WEST ALONG THE WEST LINE OF SAID PARCEL, 660.10
15 FEET TO THE SOUTHWEST CORNER THEREOF, SAID CORNER ALSO BEING A POINT
16 ON THE SOUTH LINE OF THE WEST ONE-HALF OF SAID
17 NORTHWEST QUARTER OF SECTION 8;
18 THENCE NORTH 89°29'46" WEST ALONG SAID SOUTH LINE, 60.00 FEET
19 TO THE POINT OF BEGINNING.
21
20 THE ABOVE DESCRIBED PARCELS OF LAND CONTAINS A TOTAL OF 697,716 SQ.FT.
21 (16.017 ACRES), AS SURVEYED, AND ARE SUBJECT TO A RIGHT-OF-WAY FOR
22 NELSON ROAD (COUNTY ROAD 20).
25
23 FOR ANNEXATION PURPOSES: ALL OF THE ABOVE DESCRIBED LESS THAT
24 PORTION THEREOF LYING WITHIN NELSON ROAD (COUNTY ROAD 20).