

PURCHASE AND SALE AGREEMENT

740 Boston Avenue, Longmont, Colorado, County of
Boulder, Parcel No. 131510200014

This **PURCHASE AND SALE AGREEMENT** (this "Agreement") is made and entered into as of this _____ day of _____, 2023 (the "Effective Date"), by and between WWW PROPERTIES, LLC, a Colorado limited liability company, whose address is 3815 W. County Road 4, Berthoud, CO 80513 ("Seller") and the City of Longmont, a Colorado municipal corporation with an address of 350 Kimbark St., Longmont, CO 80501 (the "City"), and (each a "Party" and collectively, the "Parties").

WHEREAS, Seller is the owner of Parcel No. 131510200014 (the "Parcel"), more commonly known as 740 Boston Avenue in Longmont, Colorado, and desires to sell to the City that portion of the Parcel described in **Exhibit "A,"** attached hereto and incorporated by this reference (the "Property") (the Parcel, less the Property, shall be referred to herein as the "Remaining Parcel"); and

WHEREAS, the City wishes to purchase the Property from Seller, pursuant to the terms set forth in this Agreement.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Conveyance. Seller agrees to convey, sell, and transfer to the City, and the City agrees to purchase from Seller, on the terms and conditions of this Agreement, the Property as described in Exhibit "A."

2. [INTENTIONALLY OMITTED.]

3. Purchase Price. The Purchase Price to be paid by the City to Seller for the sale and conveyance of the Property is **EIGHT HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$850,000.00)** to be paid by the City at Closing in funds which comply with all applicable Colorado laws, including electronic transfer funds, certified check and cashier's check, as directed by Seller. The Purchase Price shall be payable by the City in good funds at Closing.

4. Evaluation Period. The City shall have the period commencing on the Effective Date and continuing until 5:00 p.m., Mountain Time, on the date that is sixty (60) days thereafter (the "Evaluation Period") in which to determine whether the Property is satisfactory for the City's proposed use, in the City's sole and absolute discretion.

a. The City has obtained a title insurance commitment (the "Title Commitment") proposing to insure the City's ownership of the Property, on a form acceptable to the City, and issued by a Title Company in Longmont, Colorado (the "Title Company"), which maintains an office in Boulder County and is authorized to do business in the State of Colorado. The Title Commitment includes copies of all exception documents identified in the commitment. The City shall be responsible for the cost of the

Title Commitment and an owner's policy of title insurance issued pursuant to the commitment. The City may, at its sole option and its sole expense, either purchase or decline the title insurance under this Section.

b. Within ten (10) days after the Effective Date, Seller shall make available to the City for inspection and copying all reports and other documents in Seller's possession or under its control, if any, that affect or concern the Property, including, without limitation, surveys, environmental reports, soil reports, engineering drawings, utility plans, road plans, rights-of-way, signage licenses and easements (collectively, the "Property Documents"). As of the Effective Date, Seller is unaware of any such reports or other documents. The City understands and agrees that the Property Documents will be furnished by Seller "AS IS" without any representation or warranty by Seller of any kind or nature whatsoever. Any reliance placed by the City upon any information contained in any of the Property Documents shall be at City's sole risk.

c. Upon not less than twenty-four (24) hours' written notice to Seller, the City or any person the City designates may make inspections of the physical condition of the Property and the improvements thereon, at the City's expense. Such inspections may include, but are not limited to, inspections for appraisal and compliance with environmental protection, pollution or land use laws, ordinances, rules, and regulations and for the disposal or existence, in or on the Property, of any pollution or hazardous substance, and may include a Phase I environmental survey. Notwithstanding the foregoing, the City shall not conduct any invasive inspections or testing of the Property, including, but not limited to, any Phase II environmental survey, subsurface borings or excavations, without first obtaining Seller's written consent, which consent may be granted or withheld in Seller's reasonable discretion, but such consent shall not to be unreasonably withheld or delayed. Before any entry onto the Property, the City shall deliver to Seller evidence that Seller is named as an additional insured on a primary and noncontributory basis on the City's liability insurance policy. The City shall pay for and keep the policy in full force and effect for a period of ninety (90) days after approval by City Council for comprehensive or general liability insurance with coverage limits of not less than One Million Dollars (\$1,000,000.00), per occurrence, for bodily injury, personal injury, death, and property damage. The City's entry onto the Property shall occur within this ninety (90) day period. If any inspection or test disturbs or damages the Property, the City will immediately restore the Property to the same condition as it existed before the inspection or test. The City shall ensure that any such inspections or tests shall not disturb or disrupt any tenants of the Property. The City agrees that it will not allege, assert or prosecute any claims against Seller (whether such claims are for damages, lost profits or otherwise): (i) that may directly arise from entry upon the Property by the City or the City's representatives during the Evaluation Period; and (ii) which lie in tort or could lie in tort, except for torts that result from or could result from Seller's gross negligence or willful and wanton conduct. This Section 4(c) shall survive Closing (and shall not merge with title), termination or expiration of this Agreement.

d. If, after review of the matters submitted pursuant to this Section 4 and the inspection of the Property throughout the Evaluation Period, the City determines in its sole discretion

that the Property is unsatisfactory for the City's desired purposes in any respect, the City may terminate this Agreement by written notice delivered to Seller and the Title Company prior to the expiration of the Evaluation Period. Upon delivery of such notice, this Agreement shall terminate, and the Parties shall be released from all further obligations hereunder other than those obligations expressly surviving the termination of this Agreement.

e. During the Evaluation Period, the City shall have the right to obtain, at its sole cost and expense, a new or updated ALTA/NSPS survey of the Property (the "Survey") made by a duly licensed surveyor in the State of Colorado, which Survey shall be certified to the City, Seller and Title Company, and copies of which shall be delivered to the Title Company and Seller upon the City's receipt of same.

5. Title Matters. The City shall be entitled to object to any matters shown in the Title Commitment or the Survey by a written notice of objections delivered to Seller on or before the earlier to occur of: (A) the date that is ten (10) days prior to the expiration of the Evaluation Period or (B) the date that is fourteen (14) days following the City's receipt of the last of: (i) the Title Commitment and (ii) the Survey. Seller may, but is not required to, respond to the City's objections in writing within seven (7) days, proposing to take actions to satisfy any or all of such objections or declining to take action to satisfy any of such objections. The City may waive or approve a title objection by providing written notice of the waiver or approval prior to the end of the Evaluation Period. If the City fails to deliver a notice of objections to Seller prior to the end of the Evaluation Period, then the City shall be deemed to have waived objection to all matters shown or noted on the Survey or appearing as exceptions to title on the Title Commitment, and all such matters shall be deemed to be "Permitted Exceptions". If Seller declines to satisfy any of the City's stated objections and the City does not terminate this Agreement prior to the expiration of the Evaluation Period as set forth in Section 4, any matters previously listed in a notice of objections to title hereunder and not removed or otherwise eliminated shall also be deemed to be Permitted Exceptions.

6. Closing. The closing of the purchase and sale of the Property as contemplated in this Agreement (the "Closing") will occur at the office of the Title Company or at such other mutually agreeable location. The date of Closing shall occur on the date that is ten (10) days after the expiration of the Evaluation Period or by written mutual agreement at a later or earlier date (the date upon which the Closing occurs being referred to herein as the "Closing Date"). The City shall pay all Closing costs and all other items required to be paid at Closing by the City, except as otherwise provided herein. The City and Seller shall sign and complete all customary or required documents at or before Closing.

7. Possession. Possession of the Property shall be delivered to the City at Closing.

8. Seller's Deliverables. On or prior to Closing, Seller shall deliver to the City a Special Warranty Deed, subject to statutory exceptions as defined in CRS 38-30-113, duly executed and acknowledged by Seller, conveying title to the Property to the City. Seller shall deliver title affidavits required to satisfy the requirements set forth on Schedule B-1 of the Title Commitment from Seller to the Title Company, to the extent reasonably required by the Title Company and in

a form reasonably required by the Title Company; provided, however that Seller shall have no obligation to provide any indemnity or agreement to the Title Company or Buyer to support the issuance of the title policy or any such endorsements other than an affidavit as to the existing tenants and parties in possession of the Property, unrecorded easements, and mechanics' liens for work contracted for by Seller and any other additional documents required pursuant to this Agreement or reasonable required by the Title Company.

9. The City's Deliverables. On or prior to Closing, the City shall deliver to Seller the Purchase Price and other funds required to be paid or provided by the City under this Agreement, and such other documents as may be required hereunder or reasonably required by Seller or the Title Company.

10. Seller Representations and Warranties. Seller hereby represents and warrants that the following statements are now, and will be as of the Closing Date, true and correct, to Seller's knowledge.

a. To Seller's knowledge, there is no action, suit or proceeding pending, threatened, against or otherwise affecting Seller or the Property in any court of law or equity, or before any governmental authority, in which an adverse decision might materially impair Seller's ability to perform its obligations under this Agreement.

b. There is no pending or, to Seller's knowledge, threatened condemnation or similar proceeding affecting the Property.

c. Except as set forth in the Title Commitment and/or the Property Documents, the Property is being sold free and clear of all agreements, leases and other occupancy rights.

d. Seller has not received any notice of any violations of any applicable law related to the Property.

e. To Seller's knowledge, there are no special assessments to be levied against the Property after its acquisition by the City.

f. Since Seller purchased the property, no part of the Property has been used as a landfill, and, to Seller's knowledge, no materials have been stored or deposited upon the Property that would, under any applicable governmental law or regulation, require treatment of the Property or removal of materials from the Property before use of the Property for any otherwise lawful purpose.

g. This Property is conveyed "AS-IS," "WHERE-IS" and "WITH ALL FAULTS," and Seller makes no representations as to whether the Property has ever been contaminated with any hazardous substance.

h. Through the date of Closing, Seller shall give the City prompt written notice if any of the representations or warranties made herein are no longer true or correct in any material manner.

As used in this Agreement, the phrase “Seller’s knowledge”, or words of similar import, shall mean the current, actual knowledge of Jay Weibel, an individual. Notwithstanding the foregoing sentence, the representations and warranties contained in this Section 10 are the representations and warranties of Seller only and not of Jay Weibel and shall not create any individual liability for Jay Weibel. All of the foregoing representations and warranties of Seller shall not be deemed merged into any instrument of conveyance delivered at Closing and will survive Closing for a period of twelve (12) months after the Closing Date (the “Survival Period”). Seller shall have no liability after the Survival Period with respect to Seller’s representations and warranties. Any litigation for breach of Seller’s representations and warranties shall be initiated prior to expiration of the Survival Period or shall be deemed waived and released. In the event any of Seller’s representations and warranties shall become inaccurate after the Effective Date and prior to the Closing Date, Seller shall, upon obtaining knowledge thereof, promptly notify the City, in writing, and the City, as its sole remedy, shall have the option to terminate this Agreement by written notice delivered to Seller within ten (10) days after receipt of Seller’s notice or the Closing Date, whichever first occurs, and neither Party shall have any further obligations hereunder except as otherwise expressly specified herein. If the City does not timely terminate this Agreement, then the City shall be deemed to have waived such breach of Seller’s Representations. In the event that any of Seller’s representations and warranties become inaccurate prior to the Closing Date and if the City had knowledge that a Seller representation or warranty had become inaccurate and nevertheless proceeded to Closing, the City shall be deemed to have waived any right of recovery, and Seller shall not have any liability in connection therewith.

11. Remedies.

a. Seller’s Remedies. If the Closing does not occur by reason of a breach of the City, neither Party shall have any further obligations hereunder except those obligations expressly surviving the termination of this Agreement.

b. The City’s Remedies. If the Closing does not occur by reason of a breach of Seller, and the City has complied with the terms of this Agreement, the City may, in its sole discretion: (a) treat this Agreement as terminated, and the City may pursue and recover the out-of-pocket costs incurred by the City in obtaining the Survey and conducting its inspections and evaluation of the Property, not to exceed Twenty-Five Thousand and 00/100 Dollars (\$25,000.00); or (b) treat this Agreement as in full force and effect, in which case the City shall have the right to compel the sale of the Property to the City through the remedy of specific performance. Nothing herein shall be construed to limit the City’s authority to take title to the Property by eminent domain.

12. Zoning. The City agrees that, at all times from and after the Closing Date, for all zoning and use regulation purposes, including, but not limited to, setbacks, lot area and building standards, the Remaining Parcel shall be considered in conjunction with the Property as if the transaction contemplated in this Agreement did not occur and the Parcel remained intact. The benefits conferred to Seller in this Section 12 shall run with the land. Seller and the City shall execute and

acknowledge at Closing a Memorandum of Agreement regarding uses and improvements to the Remaining Parcel in accordance with this Section 12.

13. Miscellaneous.

- a. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado. In any such action, the prevailing Party shall be awarded its costs and reasonable attorneys' fees associated with the action.
- b. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement shall not constitute a waiver of any of the other terms or obligation of this Agreement.
- c. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.
- d. Third Parties. There are no intended third-party beneficiaries to this Agreement.
- e. Notice. All notices required to be given hereunder shall be in writing and shall be addressed as follows. All notices shall be delivered by electronic mail, certified or registered mail; recognized overnight delivery service, or hand-delivery and shall be deemed effective upon: (i) transmission by electronic mail; (ii) on the second business day after being sent by certified or registered mail; (iii) on the first business day after deposit with a recognized overnight delivery service; or (iv) upon receipt by hand-delivery:

If to the City: CITY OF LONGMONT
Development Services Center
385 Kimbark Street, Longmont Colorado 80501
Attn: Tony Chacon
Tel: (303) 651-8318
Email: tony.chacon@longmontcolorado.gov

With copy to: City Attorney's Office
350 Kimbark Street
Longmont, Colorado 80501

If to Seller: WWW PROPERTIES, LLC
Attn: Jay Weibel
Tel:
Email:

With a copy to: Pless Law Firm, LLC
55 Madison Street, Suite 770
Denver, Colorado 80206
Attn: Justin D. Pless
Tel: (303) 454-3712
Email: jpless@plesslaw.com

A Party's address may be changed by written notice to the other Party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

f. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

g. Modification. This Agreement may only be modified upon written agreement of the Parties.

h. Governmental Immunity. The City and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. section 24-10-101, *et seq.*, as amended, or otherwise available to the City and its officers, attorneys or employees.

i. Subject to Annual Appropriation. Consistent with Article X, section 20 of the Colorado Constitution, any financial obligation of the City not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

j. Computation of Time. Unless otherwise expressly indicated in this Agreement, in computing any period of time herein, the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday in the State of Colorado, in which case the period of time shall run until the end of the next day which is not a Saturday, Sunday or legal holiday in the State of Colorado. As used herein, the term "business day" shall mean Monday through Friday except for any legal holiday in the State of Colorado.

k. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.

l. Attorneys' Fees. In the event of any litigation arising out of or in connection with this Agreement, the prevailing party shall be awarded its reasonable attorneys' fees, costs, and expenses.

m. Further Assurances. In addition to the actions recited in this Agreement and contemplated to be performed, executed, and/or delivered by Seller and the City, Seller and the City agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered at or after the Closing any and all such further acts, instruments, deeds, and assurances as may be reasonably required to consummate the transactions contemplated hereby.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Dated this _____ day of _____ 2023.

THE CITY:

CITY OF LONGMONT

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY

DATE

PROOFREAD

DATE

APPROVED AS TO FORM AND SUBSTANCE:

ORIGINATING DEPARTMENT

DATE

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

SELLER:

WWW PROPERTIES, LLC,
a Colorado limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT "A"

LOCATED IN THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 2 NORTH,
RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN,
CITY OF LONGMONT, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 2

A PORTION OF A PARCEL OF LAND AS RECORDED IN THE RECORDS OF BOULDER COUNTY CLERK AND RECORDER AT RECEPTION NO. 03701160, DATED MARCH 8, 2019, LOCATED IN THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 2 NORTH, RANGE 69 WEST OF THE 6TH P.M., CITY OF LONGMONT, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE EAST LINE OF SAID PARCEL OF LAND TO BEAR SOUTH 00°02'18" EAST, A DISTANCE OF 259.47 FEET BETWEEN THE NORTHEAST AND SOUTHEAST CORNERS OF SAID PARCEL OF LAND, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARCEL OF LAND; THENCE SOUTH 89°45'36" WEST, ALONG THE SOUTH LINE OF SAID PARCEL OF LAND, SAID LINE ALSO BEING THE NORTH RIGHT OF WAY LINE OF BOSTON AVE., A DISTANCE OF 100.00 FEET; THENCE ALONG A LINE THAT IS 100.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID PARCEL OF LAND, NORTH 00°02'18" WEST, A DISTANCE OF 259.47 FEET TO A POINT ON THE NORTH LINE OF SAID PARCEL OF LAND; THENCE NORTH 89°45'36" EAST, ALONG SAID NORTH LINE, A DISTANCE OF 100.00 FEET TO THE NORTHEAST CORNER OF SAID PARCEL OF LAND; THENCE SOUTH 00°02'18" EAST, ALONG THE EAST LINE OF SAID PARCEL OF LAND, A DISTANCE OF 259.47 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 25,947 SQUARE FEET OR 0.60 ACRES, MORE OR LESS.

Digitally signed by Jess Kuntz
DN: cn=Jess Kuntz, o=Flatirons,
Inc., ou,
email=jkuntz@flatironsinc.com,
c=US

Date: 2022.07.06 07:46:17 -06'00'

I, JESS J. KUNTZ, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE, ARE ACCURATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, ARE IN ACCORDANCE WITH APPLICABLE STANDARDS OF PRACTICE AND ARE NOT A GUARANTY OR WARRANTY, EITHER EXPRESSED OR IMPLIED. SAID PARCEL DESCRIPTION AND EXHIBIT WERE PREPARED AT THE REQUEST OF THE CLIENT AND ARE NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.



JESS J. KUNTZ
COLORADO P.L.S. #38409
VICE PRESIDENT, FLATIRONS, INC.

JOB NUMBER: 22-78,635
DRAWN BY: E. DAVIS
DATE: JULY 6, 2022

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Flatirons, Inc.
Land Surveying Services



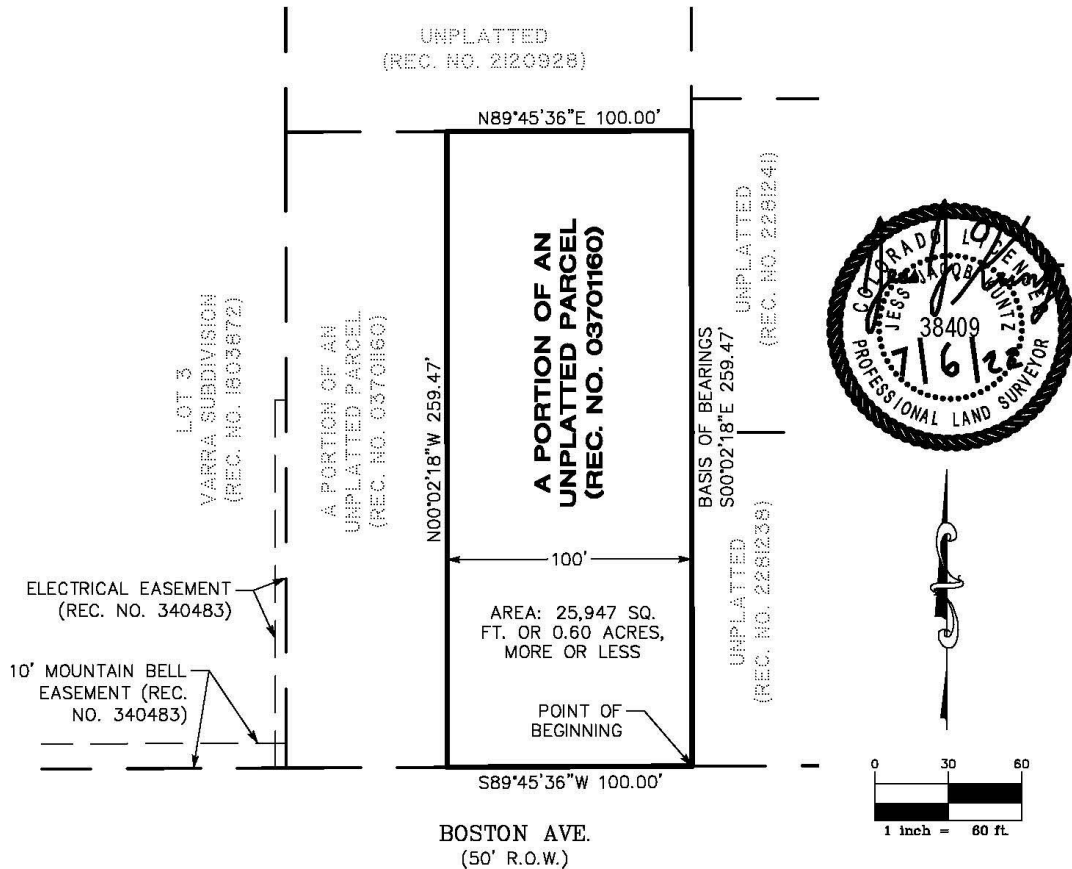
655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776-1733
FAX: (303) 776-4355
www.FlatironsInc.com

BY:JKUNTZ FILE:78635--DESCPT (C21).DWG DATE:7/6/2022 7:42 AM

EXHIBIT "A"

LOCATED IN THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 2 NORTH,
RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN,
CITY OF LONGMONT, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 2 OF 2



BY:JKUNTZ FILE:78635--DESCPT (C21),DWG DATE:7/6/2022 7:42 AM

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Flatirons, Inc.
Land Surveying Services



655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776-1733
FAX: (303) 776-4355
www.FlatironsInc.com

EXHIBIT “B”
FORM OF MEMORANDUM OF AGREEMENT
[TO BE INSERTED PRIOR TO EXECUTION]