Lease between City of Aurora and Martin Marietta Materials, Inc.

This Agreement creating a Lease ("Agreement") is made effective as of the 5th day of June, 2018 (the "Effective Date"), by and between the **CITY of AURORA, COLORADO,** a municipal corporation of the Counties of Adams, Arapahoe and Douglas, acting by and through its Utility Enterprise ("Aurora") whose address is 15151 East Alameda Parkway, Suite 3600, Aurora, CO 80012, and **MARTIN MARIETTA MATERIALS, INC.**, a North Carolina corporation ("Martin Marietta") whose address is 1627 Cole Boulevard Suite 200, Lakewood, CO 80401. Aurora and Martin Marietta may hereinafter be individually referred to as a "Party" and together as the "Parties."

Witnesseth

WHEREAS, Aurora is the owner of certain lands located along the east side of the S. Platte River, consisting of approximately 507 acres, to include easements, rights of way, restrictions, matters of record affecting title, existing licenses and other Aurora interests in land, in Weld County, Colorado, as more particularly described and shown on Exhibit A ("Gilcrest Property"); and

WHEREAS, Martin Marietta is performing sand and gravel mining on lands adjacent to the Gilcrest Property and desires to access and use a portion of the Gilcrest Property for its sand and gravel processing plant; and

WHEREAS, because the Gilcrest Property is intended for use as a future reservoir site by Aurora and is not presently in use by Aurora, Aurora desires for Martin Marietta to lease a portion of the Gilcrest Property for its sand and gravel processing operations recognizing there may be a future opportunity for Martin Marietta to also mine Aurora's future reservoir site; and

WHEREAS, this Agreement will be of mutual benefit and convenience to the Parties.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and adequacy of which is mutually acknowledged, the Parties agree as follows:

Agreement

1. Lease

a. **Lease Premises**. Aurora does hereby lease to Martin Marietta, subject to the terms of this Agreement, a portion of the Gilcrest Property consisting of approximately one-hundred and eight (108) acres of land, more or less, subject to easements, rights of way, restrictions, matters of record affecting title, existing licenses and other Aurora interests in the land, located along the east side of the Platte River and west of County Road 23, in Weld County, Colorado, with improvements thereon, if any, as described and shown on attached Exhibit B (the "Premises"). The Premises is leased subject to the exceptions listed in subparagraph 1.b., below. Aurora covenants with Martin Marietta that, so long as Martin Marietta performs the covenants and obligations on its part to be kept and performed under this Agreement, Martin Marietta shall

peaceably and quietly have, hold, and enjoy the Premises during the Term (as defined in Paragraph 2), without disturbance subject only to the exceptions listed in subparagraph 1.b., below.

b. **Use of Premises.**

(1) Sand and Gravel Processing Facility. Martin Marietta shall be entitled to use the Premises for the location and operation of a sand and gravel processing facility operated by Martin Marietta (the "Facility") and for any other lawful purpose ancillary thereto, but for no other purpose. Use for the Facility may include: conveying, crushing, sorting, processing, screening, pumping, silt disposal and sale of materials. Martin Marietta shall not use the Premises in violation of any applicable laws, rules, ordinances, restrictions, or regulations of any governmental authority.

(2) Use Not Exclusive. Martin Marietta acknowledges that it's foregoing right to use the Premises for the Term is exclusive subject to the following exceptions:

(a) All easements, rights-of-way, restrictions, matters of record affecting title, existing licenses, and other interests in land on the Premises existing as of the Effective Date.

(b) At any time during the Term and without Notice to Martin Marietta, Aurora, its contractors and licensees may utilize the existing roads on the Premises for access onto or across the Premises.

(c) Aurora, its contractors and licensees may perform activities on the Premises to the extent those activities do not interfere with Martin Marietta's use of the Premises. Aurora will give notice to Martin Marietta at least forty-eight (48) hours prior to entering the Premises for such activities.

(3) Martin Marietta's operations permitted under this Agreement shall conform to the terms and conditions in the Annexation and Development Agreement dated January 22, 2003 attached hereto as Exhibit D. Said terms and conditions include, but are not limited to, hours of operations for mining activities and transport by loaded trucks, noise limitations, dust control, management of storm water, etc. In addition, Martin Marietta shall conform its operations with any terms, conditions and covenants set forth in any recorded documents attached to the land comprising the Gilcrest Property, as well as any additional restrictions under local law.

c. **Utilities**. Martin Marietta shall pay for the installation of any utilities required for the operation of the Facility on the Premises and the ongoing cost and maintenance of such utilities for the Premises during the Term.

d. **Access Road.**

(1) Access Road Description. Martin Marietta is permitted non-exclusive use of roads for ingress and egress over and across the Gilcrest Property in order to access the Premises. This road access is described and shown on Exhibit C ("Access Road"), attached hereto. Martin Marietta acknowledges that this Access Road is not part of the leased Premises and that Aurora

retains full ownership and/or full rights of use of this Access Road. Notwithstanding as of the Effective Date, Access and Pipeline Easement Agreement dated June 26, 2015 and recorded in the Weld County Clerk and Recorders office on June 26, 2015 at Reception No. 4119528 between the City of Aurora, Colorado and Gilcrest Reservoir LLC remains in effect for access ingress and egress from the Premises.

(2) Use of Access Road. Martin Marietta's use of the Access Road is nonexclusive and only for the purposes of ingress and egress over the Gilcrest Property to access the Premises for its operation of the Facility, as described in this Paragraph 1. Martin Marietta shall take all action required to ensure that its employees and those acting on its behalf use the Access Road only to access the Premises and that they do not enter upon, or use, other parts of the Gilcrest Property or other lands owned or leased by Aurora, without its consent. Parties shall work cooperatively in coordination of access through the main gate at the intersection of Weld County Road (WCR) 38 and WCR 23 and any maintenance of the gate shall be discussed between the Parties.

2. **Term**. Unless earlier terminated pursuant to Paragraph 18 below, the term of this Agreement shall begin on the Effective Date, pursuant to Paragraph 23.f., below, and shall continue for an initial period of five (5) years, with the option of up to three (3) additional five (5) year renewals for a total term of this Agreement not to exceed twenty (20) years. Further, at the end of the initial five (5) year period and any renewal periods, this Agreement will then extend for an additional twenty-four (24) months to allow Martin Marietta to satisfy its obligations under Paragraph 11, below, (Reclamation Time). All five-year periods and the Reclamation Time are collectively, the "Term". Martin Marietta will give Notice to Aurora at least eight (8) months prior to the end of the each five (5) year period as to its intent to renew or terminate this Agreement. Aurora, in its sole discretion, may or may not agree to renew and will give Notice to Martin Marietta of this determination within 30 days after Martin Marietta's Notice of its intent to renew. Further, after the initial five (5) year period, either Party may terminate this Agreement at any time with or without cause upon at least twenty-four (24) months prior written Notice to the other Party, after which, Martin Marietta will additionally have the Reclamation Time to satisfy its obligations under Paragraph 11, below, after which time the Term ends.

3. **Consideration**. Martin Marietta shall pay to Aurora, as consideration hereunder, the sum of Thirty Thousand Dollars ($30,000) per year, payable pursuant to Paragraph 5, below. At Aurora's discretion, this amount is subject to adjustment at each 5-year renewal period.

4. **Taxes and Assessments**. Aurora and Martin Marietta shall annually submit all real and personal property tax returns or other filings regarding the Premises and all improvements thereon. Martin Marietta shall be responsible for and pay all real property or other taxes assessed against the Premises and all improvements thereon, including taxes on possessory interests, metropolitan district charges, or other assessments or charges which are levied against any or all of the Premises. If equitable apportionment of real property taxes assessed for the Gilcrest Property is necessary, Martin Marietta's equitable portion of said taxes shall be 18.93 percent of the taxes for the Gilcrest Property (107.93 acres Premises/570.116 acres Gilcrest Property). Martin Marietta shall promptly reimburse Aurora for Martin Marietta's equitable portion of such taxes, pursuant to Paragraph 5, below. Martin Marietta shall pay or caused to be paid on or before the last day on which such may be paid without penalty, all personal property taxes and other governmental levies which are

levied or assessed upon Martin Marietta's property located on the Premises. All payments required to be made by Martin Marietta for personal property taxes and other governmental levies shall be made by Martin Marietta directly to the entity or entities entitled to such payments; provided, however, that Martin Marietta shall furnish to Aurora proof that such payments have been made. Failure by Martin Marietta to pay all taxes on the Premises required in this Paragraph shall constitute an event of default under Paragraph 18, below.

5. **Payment.** All billing for consideration due under Paragraph 3, above, and from real estate taxes due under Paragraph 4, above, shall be done on forms designated by Aurora for that purpose. Aurora will invoice Martin Marietta within 30 days after the Effective Date for payments due for the next 12 months, and annually in subsequent years. Payment by Martin Marietta shall be due no later than thirty (30) days after the invoice has been issued ("Due Date"). Failure by Aurora to submit invoices in a timely manner or at all shall not be deemed a waiver of the payment Due Date, nor should such failure excuse payment of the consideration and taxes due by Martin Marietta. In the event of failure to make payments by the Due Date, this Agreement shall be in default by Martin Marietta subject to the provisions of Paragraph 18, below.

6. **Maintenance and Repair**. Martin Marietta accepts the Premises and Access Road in an as-is condition and agrees that Aurora has no obligation to make any repairs or improvements thereto. Martin Marietta shall, at its sole cost, maintain the Premises and Road Access used in good condition and repair, reasonable wear and tear excepted. Aurora makes no warranties or representations as to the fitness of the Premises or Road Access for Martin Marietta's intended and permitted uses under this Agreement.

7. **Modifications and Alterations**. Martin Marietta may not make any modification or alteration to any improvements on the Premises or Road Access without first obtaining Aurora's prior consent except as may be required on the Premises and Access Road to begin operations at the Facility. If any such modification or alteration is performed, such modification or alteration shall be completed in accordance with all applicable codes and regulations, and Martin Marietta shall not permit Aurora's interest in the Premises or Road Access to become subject to any mechanics' or material men's lien or charge. In the event Martin Marietta causes the Premises or Road Access to be subject to any such lien or charge, Martin Marietta will have such lien or charge removed within thirty (30) days and give Aurora Notice of said lien or charge and its removal. If said lien or charge is not removed within thirty (30) days, Martin Marietta will be in default under Paragraph 18 of this Agreement. During the Term, Martin Marietta shall not take any actions to modify or alter any permits in relation to Aurora's interest in the Gilcrest Property without Aurora's written consent. This may include, but is not inclusive, County or City resolutions, Division of Mines and Reclamation permits, Substitute Water Supply Plans. Parties understand that certain permits are submitted and modified yearly in order to be in compliance with said regulations. City of Aurora will not unduly withhold or delay said approval that may place Martin Marietta in violation of permits.

8. **Destruction of or Damage to Premises**. If the Premises are partially damaged or totally destroyed by storm, fire, lightning, earthquake, or other casualty, consideration under Paragraph 3, above, shall abate in such proportion as use of the Premises has been destroyed.

9. **Governmental Orders; Safety Rules**. Martin Marietta agrees, at its own expense, to promptly comply with all requirements of any legally constituted public authority made necessary by reason of Martin Marietta's use or occupancy of the Premises or operation of its Facility; provided, however, that Martin Marietta may at its own expense contest by appropriate legal proceedings, in the name of Aurora or Martin Marietta, or both, the validity of any law, ordinance, regulation, or requirement of any such public authority, and Martin Marietta may delay compliance therewith until the final determination of such proceeding but shall be solely responsive for any fines or penalties for such delay. Any legal proceeding in the name of Aurora shall be with Aurora's written consent. In addition, Martin Marietta will comply with any and all written operational, safety, environmental, and other rules and standards relating to its presence, operations, vehicles, equipment, personnel, and activities, which Aurora may, but shall not be obligated to, prescribe from time to time for those operating on the Premises and/or Road Access or other parties with installations on Aurora's lands.

10. **Condemnation**. If the whole of the Premises, or such portion thereof as will make the Premises unusable for the purpose herein leased, shall be condemned by any legally constituted authority for any public use or purpose, or sold under threat of condemnation, then, in any of such events, the term of this Agreement shall cease from the time when possession or ownership thereof is taken by public authorities and consideration shall be accounted for as between Aurora and Martin Marietta as of that date. Such termination, however, shall be without prejudice to the rights of either Aurora or Martin Marietta to recover from the condemner compensation and damage caused by condemnation. It is further understood and agreed that neither Aurora nor Martin Marietta shall have any rights in any award made to the other by any condemnation.

11. **Removal of Fixtures**. Unless otherwise agreed to in writing by the Parties, during the Reclamation Time, Martin Marietta shall remove all fixtures and equipment owned by Martin Marietta or which Martin Marietta has placed on the Premises and Road Access. Martin Marietta shall repair all damages to the Premises and Road Access and restore the Premises and Road Access to the condition as of the Effective Date. During the Reclamation Time, Martin Marietta will cooperate with Aurora to complete the requirements of the DRMS Permit Agreement ("DRMS Agreement") dated June 25, 2015 and recorded in the Weld County Clerk and Recorders office on June 26, 2015 at Reception No. 4119526 as such is related to the Gilcrest Property. Martin Marietta shall be responsible for all reclamation associated with such DRMS Agreement and shall be responsible for all reclamation that Martin Marietta affects with its actions or occupation under this Agreement. The current area affected for future reclamation is the Gilcrest Property detailed in Exhibit A. Without modifying or altering the terms of the DRMS Permit (numbered M2000158), Aurora and Martin Marietta agree that the DRMS Agreement shall be amended such that Martin Marietta assumes the reclamation responsibility under the DRMS Agreement. The term of said amended DRMS Agreement shall be extended to coincide with the Term per Paragraph 2. Said amended DRMS Agreement shall exclude vegetative growth and weed control as part of the timeline for final reclamation of the Gilcrest Property.

12. **Future Mining of Gilcrest Property**. The Gilcrest Property is a proposed future reservoir site for Aurora and will need to be mined at some time in the future. The Parties anticipate that prior to the end of the Term of this Agreement, they will discuss the opportunity for long term mining of the Gilcrest Property by Martin Marietta.

13. **Insurance**. During the Term, Martin Marietta will procure and maintain, at its own expense, the following types of insurance:

a. Commercial General Liability Insurance providing coverage for bodily injury and property damage arising out of Martin Marietta's operations and contractual liabilities on a per occurrence basis, with limits of not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) in general aggregate covering the use of the Premises and Martin Marietta's indemnity agreements set forth in this Agreement (Paragraph 15). Limits may be provided by a combination of primary and umbrella or excess commercial general liability policies.

b. Pollution Liability Insurance providing coverage for bodily injury, liability and property damage liability, arising out of the collection and disposal of pollutants, including clean up, and coverage for items used in agriculture such as pesticides, herbicides, petroleum products and items in transit to a permanent disposal facility, which may arise from activities under or incidental to this Agreement. This policy shall be maintained with minimum limits of Two Million Dollars ($2,000,000) per claim or occurrence.

c. Insurance shall be obtained from an insurer rated A-VII or better in Best's Insurance reports; shall provide primary and not excess coverage; shall name City of Aurora as an additional insured; and shall waive subrogation rights, if any, which the insurer may have against Martin Marietta.

d. Upon execution of this Agreement, Martin Marietta shall provide a certificate of insurance naming the City of Aurora, its elected and appointed officials, officers, employees, agents and representatives as an additional insureds by endorsement and shall contain a waiver of subrogation. Martin Marietta shall deliver to Aurora a copy of such insurance policy or policies to Aurora's Risk Manager. Martin Marietta shall not change or cancel any insurance policy or policies without thirty (30) days written notice to the Aurora. Martin Marietta shall provide Aurora annual updated Certificates of Insurance verifying that the insurance requirements stated herein are being met.

The insurance coverages enumerated in this Paragraph 13 constitute the minimum requirements and said enumerations shall in no way lessen or limit the liability of Martin Marietta under the terms of this Agreement. Martin Marietta may procure and maintain at its own expense any additional kinds and amounts of insurance that, in its own judgment, may be necessary for their proper protection in the performance of the work.

Any of the minimum limits of insurance set out herein may be raised or lowered at the sole discretion of Aurora's Risk Manager in response to the particular circumstances giving rise to the Agreement. Martin Marietta's insurance policies will be primary and non-contributory with respect to any and all insurance policies purchased by Aurora.

14. **Environmental Protection**. Martin Marietta covenants that its assets and the Facility will be located, operated, and maintained on the Premises so as to be and remain in compliance with all applicable federal, state, or local statutes, regulations, rules, ordinances, codes, licenses,

approvals, permits, orders, decrees, judgments, or injunctions relating to pollution or the protection of the environment (the "Environmental Laws"). Without limiting the rights of Aurora, Martin Marietta agrees to correct or satisfy any non-compliance with the Environmental Laws relating to Martin Marietta's assets or its Facility upon written notice of the same from any governmental authority or Aurora. Further, the indemnification provisions of Paragraph 15, below, apply to any fines or liability associated with environmental non-compliance associated with Martin Marietta's use of the Premises and Road Access.

15. Indemnity. Martin Marietta will indemnify and hold Aurora and its officers, directors, employees, and agents, and their respective heirs, devisees, beneficiaries, legatees, legal representatives, successors, and assigns, harmless from and any all actions, claims, costs, demands, judgments, liens, fines, environmental compliance fines and liability, expenses, fees (including, but not limited to, reasonable attorneys' fees), assessments, injuries, or damages (collectively, "Losses") to the extent arising out of or in connection with (i) Martin Marietta's or its invitees', licensees', agents', or contractors' location, operation, use, or maintenance of its assets and Facility, (ii) any negligent acts of Martin Marietta, its invitees, licensees, agents, or contractors, (iii) Martin Marietta's or invitees', licensees', agents', or contractors' violation of any applicable law, and (iv) Martin Marietta's breach of any provision of this Agreement.

16. Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to Aurora, its respective officials, employees, contractors, or agents, or any other person acting on behalf of Aurora and in particular, governmental immunity afforded or available to Aurora pursuant to the Colorado Governmental Immunity Act, C.R.S. §§24-10-10. et. seq.

Without waiving its governmental immunity, and to the extent allowed by law, Aurora will indemnify and hold Martin Marietta and its shareholders, officers, directors, employees, and agents, and their respective heirs, devisees, beneficiaries, legatees, legal representatives, successors, and assigns, harmless from and any all actions, claims, costs, demands, judgments, liens, fines, expenses, fees (including, but not limited to, reasonable attorneys' fees), assessments, injuries, or damages (collectively, "Losses") to the extent arising out of or in connection with any tortious act occurring during access or operations on the Premises by (i) Aurora's or its invitees', licensees', agents', or contractors' location, operation, use, or maintenance of its assets and Facility.

17. Assignment and Subletting. Martin Marietta shall not assign the Lease or Road Access or sublet all or any portion of the Premises, without the prior written consent of Aurora, which may be given or withheld at Aurora's sole discretion.

18. Default. If Martin Marietta (i) abandons or vacates the Premises, or (ii) fails to comply with any other requirement of this Agreement within thirty (30) days following written Notice of such failure from Aurora, then Aurora shall have the option to take one or more of the following actions:

a. Terminate this Agreement by written notice to Martin Marietta;

b. Without terminating this Agreement, enter upon and take possession of the Premises and remove all persons and property therefrom;

c. Recover from Martin Marietta the amount of any damages suffered or incurred by Aurora as a result of Martin Marietta's default; or

d. Pursue any and all remedies available to Aurora at law or in equity.

19. Surrender of Premises and Termination of Use of Road Access. Whenever under the terms of this Agreement, Aurora is entitled to possession of the Premises, Martin Marietta shall at once surrender such possession to Aurora and use of the Road Access will terminate. Martin Marietta shall remove all of its personal property from the Premises and Road Access. The Premises and Road Access shall be free and clear of liens and encumbrances resulting from Martin Marietta's operations. Any personal property left by Martin Marietta shall be deemed abandoned property and may, at the election of Aurora, become the property of Aurora. Upon surrender, the Premises and Road Access shall be in good condition and repair as of the Effective Date.

20. No Right of Control. All activities undertaken by Martin Marietta on the Premises shall be under the exclusive direction and control of Martin Marietta, and Aurora will have no right or duty to control or supervise the activities of any employees of Martin Marietta or any contractees or others who enter upon the Premises for the benefit of Martin Marietta. The only obligation that Aurora shall have with respect to the Premises and the Road Access referred to above shall be to make such areas available to Martin Marietta in their "AS IS" condition subject to and in accordance with the terms hereof.

21. Dispute Resolution.

a. **Mutual Negotiations**. The Parties shall attempt in good faith to resolve through negotiation any dispute, claim, or controversy arising out of, relating to, or in connection with this Agreement, whether regarding the formation or terms of this Agreement, the performance of the Parties hereunder, or otherwise (collectively a "Dispute"). Either Party may initiate negotiations by providing written notice in letter form to the other Party, setting forth the subject of the Dispute and the relief requested. The recipient of such notice shall respond in writing within fifteen (15) days with a statement of its position on and recommended ended solution to the Dispute. If the Dispute is not resolved by this exchange of correspondence, then a representative of each Party, with full settlement authority, shall meet at a mutually agreeable time and place within thirty (30) days of the date of the initial notice in order to exchange relevant information and perspectives, and to attempt to resolve the Dispute.

b. **Mediation**. If the Parties are unable to resolve the Dispute by negotiation, pursuant to Subparagraph 21.a., above, they shall discuss the desirability of submitting the Dispute to mediation before a single mediator who has had at least ten (10) years' relevant industry experience in the field that is the subject matter of the Dispute. This discussion shall take place prior to either Party commencing an action in a court of competent jurisdiction in accordance with subparagraph 21.c., below.

c. **Litigation**. If within fifteen (15) days after the meeting described in Subparagraph 21.b., above, the Parties have not reached agreement on resolution of the Dispute, or on the submission of the Dispute to mediation, then the Dispute may be settled by the applicable laws of Colorado. Should it be necessary to initiate court proceedings concerning this Agreement, the Parties agree that venue shall be in the District Court for Arapahoe County. Except as provided in Paragraphs 15 and 16, above, each Party shall be responsible for its own attorney's fees and costs.

22. Sole Obligation of Aurora.

a. This Agreement shall never constitute a general obligation or other indebtedness of the City of Aurora, or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City of Aurora within the meaning of the Constitution and laws of the State of Colorado or of the Charter and ordinances of the City of Aurora.

b. In the event of a default by Aurora of any of its obligations under this Agreement, Martin Marietta shall have no recourse for any amounts owed to it against any funds or revenues of the City of Aurora except for those revenues derived from rates, fees or charges for the services furnished by, or the direct or indirect use of, the Water System and deposited in the Water Enterprise Fund, as the terms "Water System" and "Water Enterprise Fund" are defined in City Ordinance No. 2003-18, and then only after the payment of all operation and maintenance expenses of the Water System and all debt service and reserve requirements of any bonds, notes, or other financial obligations of the Utility Enterprise secured by a pledge of the net revenues of the Water Enterprise Fund. Notwithstanding any language herein to the contrary, nothing in this Agreement shall be construed as creating a lien upon any revenues of the Utility Enterprise or the City of Aurora.

23. Miscellaneous.

a. **Notices**. Any and all notices, demands or the communications desired or required to begin under any provision of this Agreement shall be given in writing and delivered personally or sent by registered or certified mail, postage pre-paid, return receipt requested to the Parties at the following addresses, or such other address as the Parties may designate by notice in the above manner.

To Aurora:	City of Aurora 15151 East Alameda Parkway, Suite 3600 Aurora, CO 80012-1555 Attn: Director, Aurora Water
With copy to:	City of Aurora 15151 East Alameda Parkway, Suite 5300 Aurora, CO 80012-1555 Attn: City Attorney
To Martin Marietta:	Martin Marietta Materials, Inc. 1627 Cole Boulevard, Suite 200 Lakewood, CO 80401

Attn: Division President

Notices shall be effective (i) the next day following the date sent by an established express delivery service which maintains delivery records requiring a signed receipt, (ii) upon receipt by the addressee of a hand delivery, (iii) three (3) days following the date of mailing via certified or registered mail, postage prepaid, return receipt requested. Notwithstanding the foregoing, the Parties may communicate with respect to miscellaneous matters by e-mail as follows: to Aurora to Dan Gallen at dgallen@auroragov.org; and to Martin Marietta to James Sharn at james.sharn@martinmarietta.com, or such other address as the Parties may designate by notice in the manner provided for in this Paragraph.

b. **Remedies**. The remedies of a Party provided in this Agreement are cumulative and do not exclude any other remedies to which any Party may be lawfully entitled, under this Agreement or applicable law, and the exercise of a remedy is not an election excluding any other remedy (any such claim by the other Party being hereby waived).

c. **Integration; Amendment; Waiver**. This Agreement constitutes the entire agreement of the Parties to it with respect to its subject matter, supersedes all prior agreements, if any, of the Parties with respect to its subject matter, and may not be amended except in writing signed by the Party against whom the change is being asserted. The failure of any Party at any time or times to require the performance of any provisions of this Agreement shall in no manner affect the right to enforce the same; and no waiver by any Party of any provision (or of a breach of any provision) of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed either as a further or continuing waiver of any such provision or breach or as a waiver of any other provision (or of a breach of any other provision) of this Agreement.

d. **Controlling Law**. This Agreement is governed by, and shall be construed and enforced in accordance with, the laws of the State of Colorado.

e. **Recording of Agreement**. Aurora may record this Agreement and any amendment or memorandum hereof in the appropriate County.

f. **Effective Date**. The date this Agreement is effective is the date that all Parties have signed it ("Effective Date").

CITY OF AURORA, COLORADO,
ACTING BY AND THROUGH ITS
UTILITY ENTERPRISE

Marsha L. Berzins, Mayor Pro Tem 6/5/18
Stephen D. Hogan, Mayor Date

ATTEST:

Linda S Blackston 6/5/18
Linda Blackston, City Clerk Date

APPROVED AS TO FORM FOR AURORA:

Stephanie Neitzel 3/28/18 18031839
Stephanie Neitzel, Assistant City Attorney Date ACS #

STATE OF COLORADO)
) ss
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 5 day of June, 2018, by ~~Stephen D. Hogan, Mayor~~, acting on behalf of the Utility Enterprise of the City of Aurora, Colorado. Marsha Berzins, Mayor Pro Tem

Witness my hand and official seal. Leiana Baker
Notary Public

My commission expires: 7-28-21

(SEAL)

LEIANA BAKER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20014021606
MY COMMISSION EXPIRES 07/28/2021

MARTIN MARIETTA MATERIALS, INC.

Name: Abbott Lawrence
Title: Regional V.P.

3/27/18
Date

ATTEST:

JAMES SHARN

3/27/18
Date

STATE OF COLORADO)
) ss.
COUNTY OF Jefferson)

The foregoing Agreement was acknowledged before me this 27 day of March, 2018, by Abbott Lawrence, Regional V.P. of Martin Marietta Materials, Inc.

Witness my hand and official seal. Misty Hawkins
Notary Public

My commission expires: 08/30/2020

(SEAL)

MISTY HAWKINS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20164033431
MY COMMISSION EXPIRES AUGUST 30, 2020

Lease between Aurora and Martin Marietta

EXHIBIT A

A parcel of land situated in Section 35, Township 4 North, and in Section 2, Township 3 North, Range 67 West of the 6th Principal Meridian, County of Weld, State of Colorado, being a portion of that Special Warranty Deed at Rec. No. 3640583, all of that Special Warranty Deed at Rec. No. 3640584, and a portion of that Special Warranty Deed at Rec. No. 3640585, said documents being recorded at the Weld County Office of the Clerk and Recorder, more particularly described as follows:

Beginning at the NE corner of said Section 2, said corner being on the easterly line of said Deed at Rec. No. 3640583;

Thence S0°27'21"W, coincident with the east line of the NE 1/4 of said Section 2 and said easterly line, a distance of 2710.43 feet to the E 1/4 corner of said Section 2, said corner being the NE corner of said Deed at Rec. No. 3640585;

Thence S0°30'27"W, coincident with the east line of the SE 1/4 of said Section 2 and the easterly line of said Deed at Rec. No. 3640585, a distance of 2044.02 feet;

Thence N88°55'51"W, a distance of 757.15 feet;

Thence S0°30'06"W, a distance of 575.36 feet to a point on the south line of the SE 1/4 of said Section 2 and on the southerly line of said Deed at Rec. No. 3640585;

Thence N88°55'51"W, coincident with said south line of the SE 1/4 and the southerly lines of those Deeds at Rec. No. 3640585 and Rec. No. 3640583, a distance of 1850.50 feet to the S 1/4 corner of said Section 2;

Thence coincident with said Deed at Rec. No. 3640583 the following thirteen (13) courses:

1. Thence N88°55'43"W, coincident with the south line of the SW 1/4 of said Section 2, a distance of 1074.53 feet to a point on the easterly bank of the South Platte River;
2. Thence N7°35'29"E, coincident with said easterly bank, a distance of 317.43 feet;
3. Thence N25°46'21"W, coincident with said easterly bank, a distance of 289.30 feet;
4. Thence N11°56'15"W, coincident with said easterly bank, a distance of 184.30 feet;
5. Thence N7°50'18"W, coincident with said easterly bank, a distance of 213.27 feet;
6. Thence N20°23'39"W, coincident with said easterly bank, a distance of 193.15 feet to a point on the west line of the E 1/2 of the SW 1/4 of said Section 2;
7. Thence N0°31'29"E, coincident with said west line, a distance of 1059.33 feet to a point on the southeasterly bank of said South Platte River;
8. Thence N69°56'56"E, coincident with said southeasterly bank, a distance of 536.23 feet;
9. Thence N53°10'09"E, coincident with said southeasterly bank, a distance of 214.03 feet;
10. Thence N20°39'19"E, coincident with said southeasterly bank, a distance of 118.15 feet to a point on the north line of the SW 1/4 of said Section 2;
11. Thence N88°34'46"W, coincident with said north line, a distance of 712.90 feet to the SW corner of the E 1/2 of the NW ¼ of said Section 2;

12. Thence N0°31'45"E, coincident with the west line of the E 1/2 of the NW 1/4 of said Section 2, a distance of 2665.92 feet to the NW corner of the E 1/2 of the NW 1/4 of said Section 2;
13. Thence N0°50'03"W, coincident with the west line of the E 1/2 of the SW 1/4 of said Section 35, a distance of 1172.33 feet;

Thence N89°11'44"E, a distance of 616.08 feet;

Thence N82°17'00"E, a distance of 558.27 feet;

Thence S85°18'43"E, a distance of 590.70 feet;

Thence N89°13'07"E, a distance of 2152.95 feet to a point on the east line of the SE 1/4 of said Section 35 and on the easterly line of said Deed at Rec. No. 3640583;

Thence S0°33'39"E, coincident with said east line of the SE 1/4 and said easterly line of that Deed at Rec. No. 3640583, a distance of 1289.36 feet to the **Point of Beginning.**

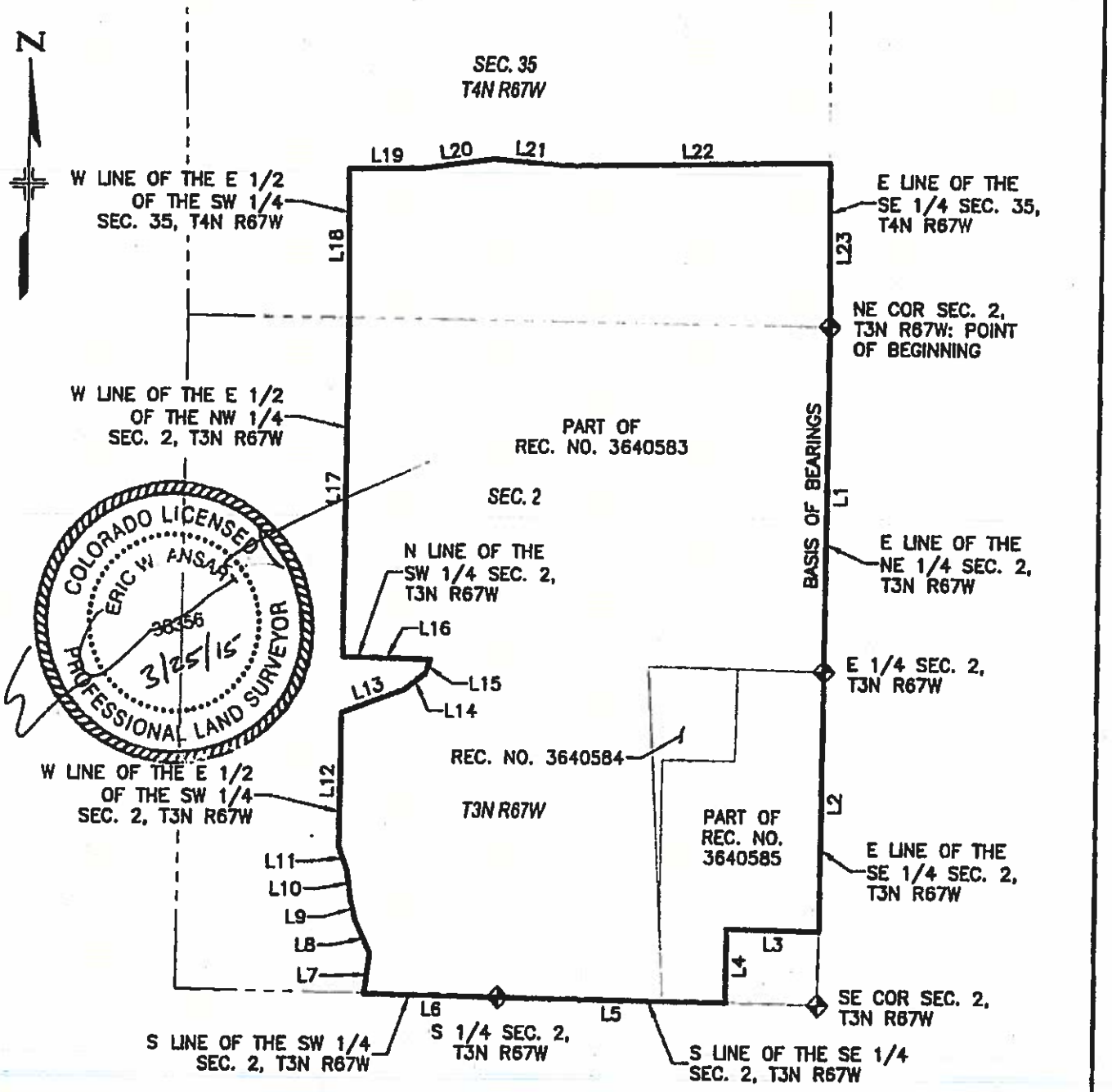
Said parcel containing 24,834,273 square feet (570.116 acres) more or less.

Bearings based on the east line of the NE 1/4 of Section 2, T3N R67W, 6th P.M., being S0°27'21"W

Eric W. Ansart
Colorado PLS# 38356
For and on behalf of the
City of Aurora, Colorado
13636 E. Ellsworth Ave.
Aurora, Colorado 80012

ILLUSTRATION FOR

EXHIBIT A



BEARINGS ARE BASED ON THE EAST LINE OF THE NE 1/4 OF SECTION 2, T3N R67W, 6TH P.M., BEING S0°27'21"W

THE ABOVE DESCRIBED PARCEL CONTAINS 24,834,273 SQUARE FEET (570.116 ACRES) MORE OR LESS.

This drawing does not represent a monumented survey. It is intended only to depict the attached legal description.

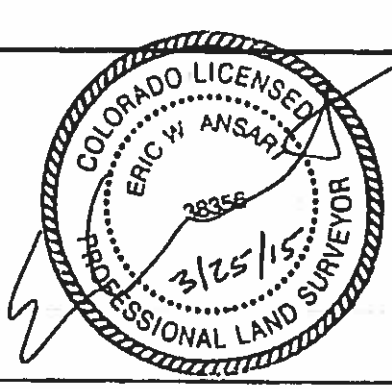
CITY OF AURORA, COLORADO

DRAWN BY:	SCALE:	R.O.W. FILE NUMBER
EWA	NONE	N/A
CHECKED BY:	DATE:	JOB NUMBER:
AJN	3-13-15	N/A

A PARCEL OF LAND SITUATED IN SEC. 35, T4N R67W AND SEC. 2, T3N R67W, 6TH P.M., COUNTY OF WELD, STATE OF COLORADO, BEING PART OF REC. NO. 3640583, ALL OF REC. NO. 3640584, AND PART OF REC. NO. 3640585

ILLUSTRATION FOR

EXHIBIT A



Line Table		
Line #	Length	Direction
L1	2710.43	S0° 27' 21"W
L2	2044.02	S0° 30' 27"W
L3	757.15	N88° 55' 51"W
L4	575.36	S0° 30' 06"W
L5	1850.50	N88° 55' 51"W
L6	1074.53	N88° 55' 43"W
L7	317.43	N7° 35' 29"E
L8	289.30	N25° 46' 21"W
L9	184.30	N11° 56' 15"W
L10	213.27	N7° 50' 18"W
L11	193.15	N20° 23' 39"W
L12	1059.33	N0° 31' 29"E

Line Table		
Line #	Length	Direction
L13	536.23	N69° 56' 56"E
L14	214.03	N53° 10' 09"E
L15	118.15	N20° 39' 19"E
L16	712.90	N88° 34' 46"W
L17	2665.92	N0° 31' 45"E
L18	1172.33	N0° 50' 03"W
L19	616.08	N89° 11' 44"E
L20	558.27	N82° 17' 00"E
L21	590.70	S85° 18' 43"E
L22	2152.95	N89° 13' 07"E
L23	1289.36	S0° 33' 39"E

BEARINGS ARE BASED ON THE EAST LINE OF THE NE 1/4 OF SECTION 2, T3N R67W, 6TH P.M., BEING S0°27'21"W

THE ABOVE DESCRIBED PARCEL CONTAINS 24,834,273 SQUARE FEET (570.116 ACRES) MORE OR LESS.

This drawing does not represent a monumented survey. It is intended only to depict the attached legal description.

CITY OF AURORA, COLORADO

DRAWN BY:	SCALE:	R.O.W. FILE NUMBER
EWA	NONE	N/A
CHECKED BY:	DATE:	JOB NUMBER:
AJN	3-13-15	N/A

A PARCEL OF LAND SITUATED IN SEC. 35, T4N R67W AND SEC. 2, T3N R67W, 6TH P.M., COUNTY OF WELD, STATE OF COLORADO, BEING PART OF REC. NO. 3640583, ALL OF REC. NO. 3640584, AND PART OF REC. NO. 3640585

Lease between Aurora and Martin Marietta

Exhibit B

PREMISES LEGAL DESCRIPTION

A PART OF SECTION 2, TOWNSHIP 3 NORTH, RANGE 67 WEST AND SECTION 35, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO

LEGAL DESCRIPTION

COMMENCING AT THE NORTHEAST CORNER OF SECTION 2, TOWNSHIP 3 NORTH, RANGE 67 WEST, AS MONUMENTED BY A 3 1/4" ALUMINUM CAP "LS 7242"; THENCE SOUTH 61°58'04" WEST, A DISTANCE OF 1,858.84 FEET TO THE POINT OF BEGINNING,
THENCE NORTH 89°28'15" WEST, A DISTANCE OF 2,273.98 FEET TO A POINT ON THE WEST LINE OF THE EAST ONE HALF OF THE NORTHWEST QUARTER OF SAID SECTION 2;
THENCE, ALONG SAID WEST LINE, NORTH 00°31'45" EAST, A DISTANCE OF 905.04 FEET TO THE NORTHWEST CORNER OF THE EAST ONE HALF OF THE NORTHWEST QUARTER OF SAID SECTION 2, AS MONUMENTED BY A 1 1/2" ALUMINUM CAP STAMPED "GBS SURVEYING LS# 17858";
THENCE, ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 35, NORTH 00°50'03" WEST A DISTANCE OF 1,172.33 FEET;
THENCE, DEPARTING SAID EAST LINE, NORTH 89°11'44" EAST A DISTANCE OF 616.08 FEET;
THENCE NORTH 82°17'00" EAST A DISTANCE OF 558.27 FEET;
THENCE SOUTH 85°18'43" EAST A DISTANCE OF 690.70 FEET;
THENCE NORTH 89°13'07" EAST A DISTANCE OF 407.28 FEET;
THENCE SOUTH 3°08'26" EAST A DISTANCE OF 2,142.31 FEET TO THE POINT OF BEGINNING.

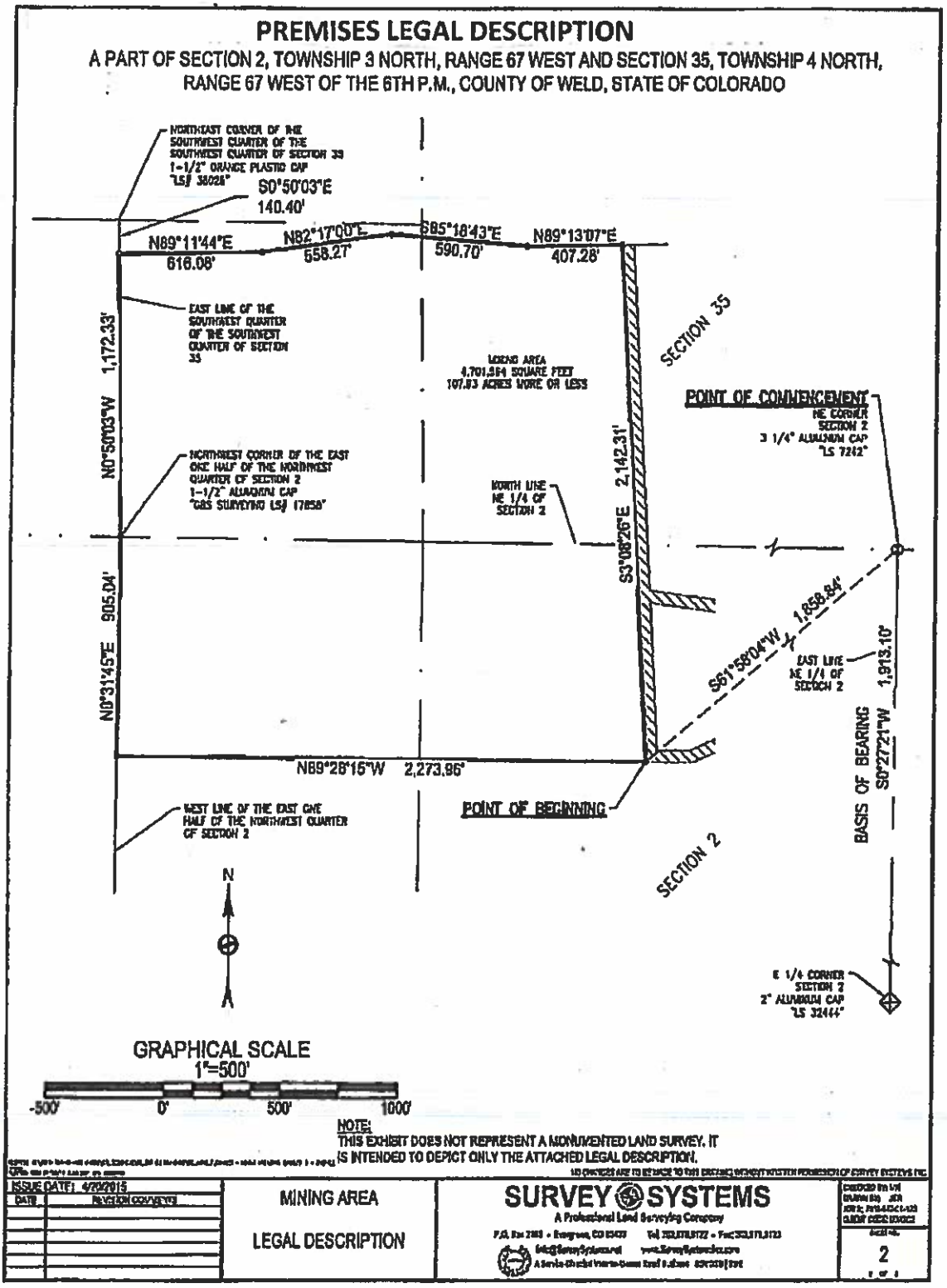
CONTAINING 4,701,564 SQUARE FEET OR 107.93 ACRES, MORE OR LESS.

BASIS OF BEARING STATEMENT:
THE BASIS OF BEARINGS FOR THIS LEGAL DESCRIPTION IS BETWEEN THE FOUND MONUMENTS, AS SHOWN, ON THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 2, THE BEARING OF SAID LINE IS SOUTH 0°27'31" WEST.

PREPARED BY: GERALD MATT NICHOLS, P.L.S. # 38026
ON BEHALF OF: SURVEY SYSTEMS INC.
P.O BOX 2168
EVERGREEN, COLORADO 80437
(303) 679-8122

ISSUE DATE: 4/20/2015				
DATE	REVISION COMMENTS	MINING AREA LEGAL DESCRIPTION	SURVEY SYSTEMS A Professional Land Surveying Company	1

Lease between Aurora and Martin Marietta
Illustration for Exhibit B



Lease between Aurora and Martin Marietta

Exhibit C

ROAD ACCESS LEGAL DESCRIPTION

A PART OF SECTION 2, TOWNSHIP 3 NORTH, RANGE 67 WEST AND SECTION 35, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO

LEGAL DESCRIPTION

COMMENCING AT THE NORTHEAST CORNER OF SECTION 2, TOWNSHIP 3 NORTH, RANGE 67 WEST, AS MONUMENTED BY A 3 1/4" ALUMINUM CAP "LS 7242", THENCE SOUTH 0°27'21" EAST, A DISTANCE OF 6.04 FEET TO THE POINT OF BEGINNING, SAID PT. BEING ON THE EAST LINE OF THE NORTH EAST QUARTER OF SECTION 2;
THENCE, CONTINUING ON SAID EAST LINE, SOUTH 0°27'21" WEST, A DISTANCE OF 50.00 FEET;
THENCE, DEPARTING SAID EAST LINE, NORTH 89°32'39" WEST, A DISTANCE OF 114.85 FEET;
THENCE SOUTH 68°53'17" WEST A DISTANCE OF 323.24 FEET;
THENCE SOUTH 61°32'10" WEST A DISTANCE OF 88.82 FEET;
THENCE SOUTH 53°12'59" WEST A DISTANCE OF 122.78 FEET;
THENCE SOUTH 49°06'15" WEST A DISTANCE OF 195.74 FEET;
THENCE SOUTH 54°24'21" WEST A DISTANCE OF 149.48 FEET;
THENCE SOUTH 57°27'42" WEST A DISTANCE OF 267.89 FEET;
THENCE SOUTH 53°05'50" WEST A DISTANCE OF 50.76 FEET;
THENCE SOUTH 39°15'53" WEST A DISTANCE OF 12.85 FEET;
THENCE SOUTH 27°31'37" WEST A DISTANCE OF 55.18 FEET;
THENCE SOUTH 35°48'50" WEST A DISTANCE OF 33.57 FEET;
THENCE SOUTH 48°26'36" WEST A DISTANCE OF 35.89 FEET;
THENCE SOUTH 59°26'54" WEST A DISTANCE OF 34.48 FEET;
THENCE SOUTH 70°07'44" WEST A DISTANCE OF 29.93 FEET;
THENCE SOUTH 79°32'22" WEST A DISTANCE OF 54.35 FEET;
THENCE SOUTH 65°54'54" WEST A DISTANCE OF 157.93 FEET;
THENCE NORTH 88°16'38" WEST A DISTANCE OF 193.81 FEET;
THENCE NORTH 03°08'26" WEST A DISTANCE OF 2,142.31 FEET;
THENCE NORTH 89°13'07" EAST A DISTANCE OF 50.04 FEET;
THENCE SOUTH 03°08'26" EAST A DISTANCE OF 1,435.58 FEET;
THENCE SOUTH 82°37'52" EAST A DISTANCE OF 959.62 FEET;
THENCE NORTH 49°06'15" EAST A DISTANCE OF 80.32 FEET;
THENCE NORTH 53°14'01" EAST A DISTANCE OF 126.97 FEET;
THENCE NORTH 61°32'10" EAST A DISTANCE OF 74.37 FEET;
THENCE NORTH 68°54'20" EAST A DISTANCE OF 337.11 FEET;
THENCE SOUTH 89°32'39" EAST A DISTANCE OF 123.86 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 2, TOWNSHIP 3 NORTH, RANGE 67 WEST, AS MONUMENTED BY A 3 1/4" ALUMINUM CAP "LS 7242"; THENCE SOUTH 0°27'21" WEST, A DISTANCE OF 6.04 FEET;
THENCE DEPARTING SAID LINE NORTH 89°32'39" WEST A DISTANCE OF 123.86 FEET;
THENCE SOUTH 68°54'20" WEST A DISTANCE OF 337.11 FEET;
THENCE SOUTH 61°32'10" WEST A DISTANCE OF 74.37 FEET;
THENCE SOUTH 53°14'01" WEST A DISTANCE OF 126.97 FEET;
THENCE SOUTH 49°06'15" WEST A DISTANCE OF 80.32 FEET;
THENCE SOUTH 50°17'05" WEST A DISTANCE OF 147.31 FEET TO THE POINT OF BEGINNING;

(CONTINUED ON SHEET 2)

ISSUE DATE: 4/20/2015	
DATE	REVISION COMMENTS

ACCESS EASEMENT LEGAL DESCRIPTION

SURVEY SYSTEMS
A Professional Land Surveying Company

1

ROAD ACCESS LEGAL DESCRIPTION

A PART OF SECTION 2, TOWNSHIP 3 NORTH, RANGE 67 WEST AND SECTION 35, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO

(CONTINUED FROM SHEET 1)

THENCE SOUTH 54°24'21" WEST A DISTANCE OF 113.03 FEET;
THENCE SOUTH 57°27'45" WEST A DISTANCE OF 266.38 FEET;
THENCE SOUTH 53°06'50" WEST A DISTANCE OF 58.77 FEET;
THENCE SOUTH 39°15'53" WEST A DISTANCE OF 24.60 FEET;
THENCE SOUTH 27°22'55" WEST A DISTANCE OF 55.91 FEET;
THENCE SOUTH 35°46'50" WEST A DISTANCE OF 24.78 FEET;
THENCE SOUTH 48°26'36" WEST A DISTANCE OF 25.54 FEET;
THENCE SOUTH 59°26'54" WEST A DISTANCE OF 24.99 FEET;
THENCE SOUTH 70°07'44" WEST A DISTANCE OF 20.34 FEET;
THENCE SOUTH 80°58'59" WEST A DISTANCE OF 51.15 FEET;
THENCE SOUTH 65°54'54" WEST A DISTANCE OF 168.47 FEET;
THENCE NORTH 88°16'38" WEST A DISTANCE OF 136.42 FEET;
THENCE NORTH 03°06'26" WEST A DISTANCE OF 607.88 FEET;
THENCE SOUTH 82°37'52" EAST A DISTANCE OF 830.58 FEET;
THENCE SOUTH 19°36'27" EAST A DISTANCE OF 64.95 FEET TO THE POINT OF BEGINNING.

CONTAINING 249,469 SQUARE FEET OR 5.73 ACRES, MORE OR LESS.

BASIS OF BEARING STATEMENT:
THE BASIS OF BEARINGS FOR THIS LEGAL DESCRIPTION IS BETWEEN THE FOUND MONUMENTS, AS SHOWN, ON THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 2, THE BEARING OF SAID LINE IS SOUTH 0°27'31" WEST.

PREPARED BY: GERALD MATT NICHOLS, P.L.S. # 38026
ON BEHALF OF: SURVEY SYSTEMS INC.
P.O BOX 2168
EVERGREEN, COLORADO 80437
(303) 679-8122

ISSUE DATE: 4/20/2015	
DATE	REVISION COMMENTS

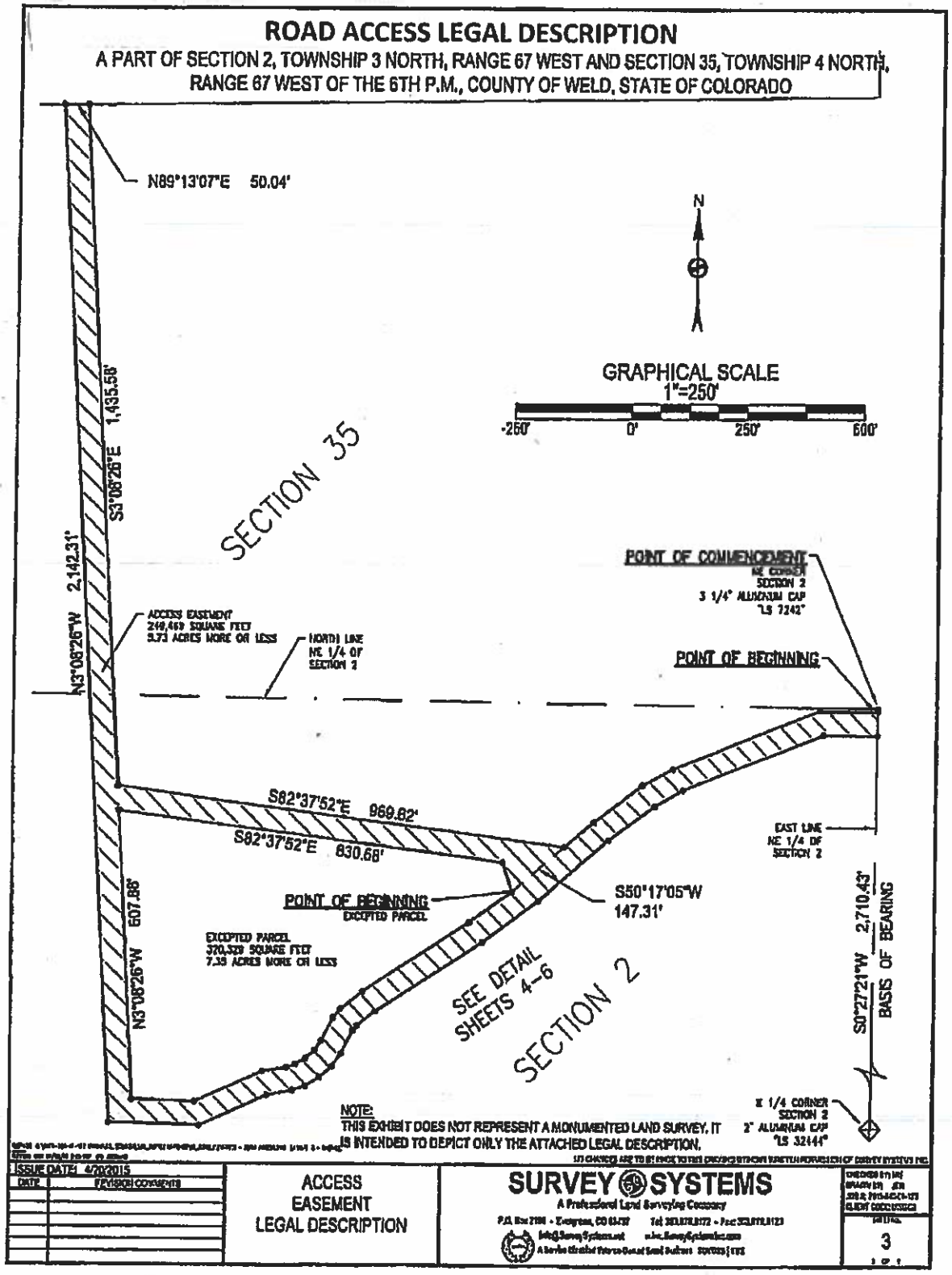
ACCESS EASEMENT LEGAL DESCRIPTION

SURVEY SYSTEMS
A Professional Land Surveying Company
P.O. Box 2168 - Evergreen, CO 80437 Tel 303.679.8122 - Fax 303.674.8123
Info@SurveySystems.net www.SurveySystems.com
A Service Disabled Veteran Owned Small Business 8(M)8(A)

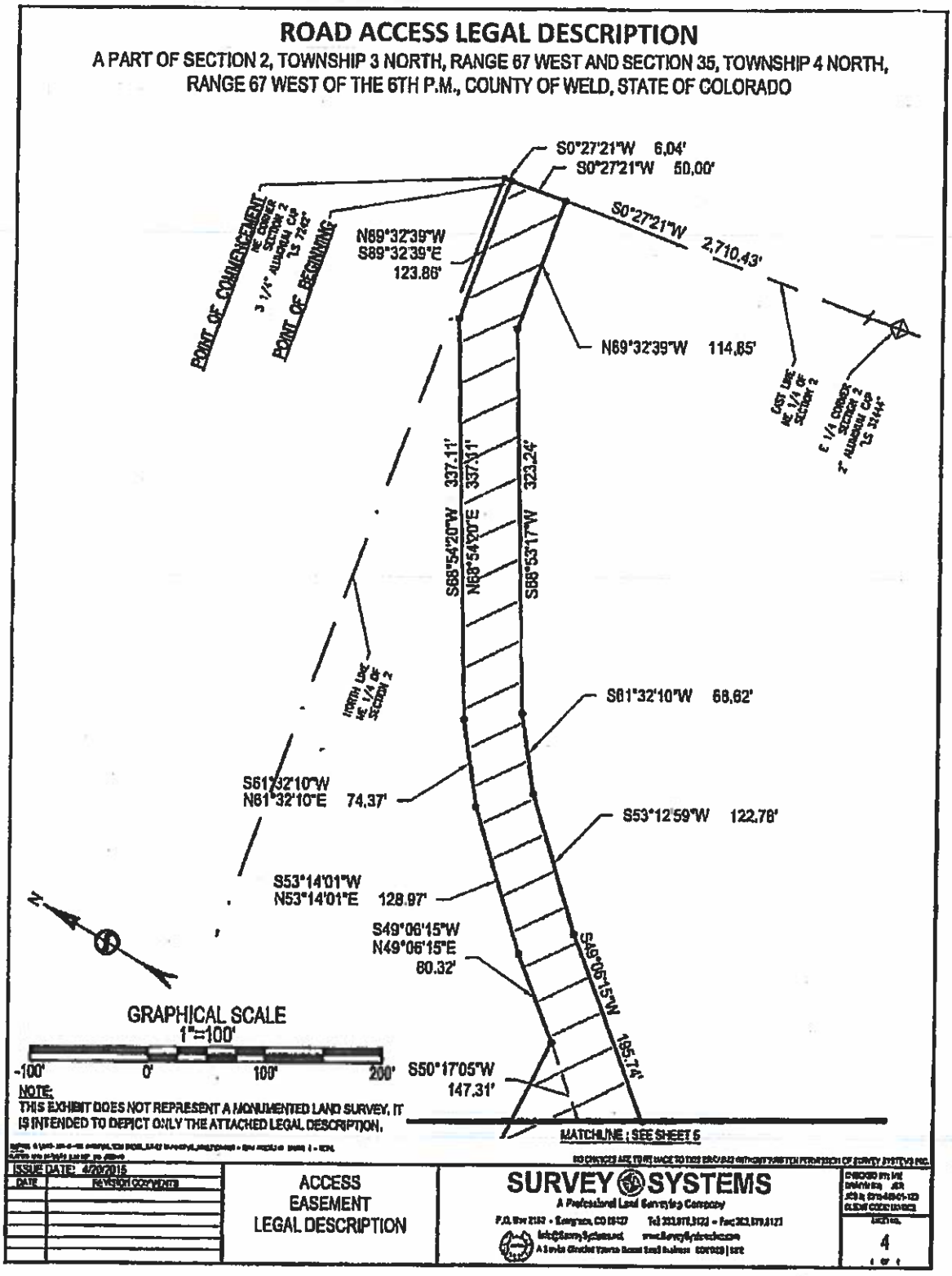
2
1 OF 4

Lease between Aurora and Martin Marietta

Illustration for Exhibit C

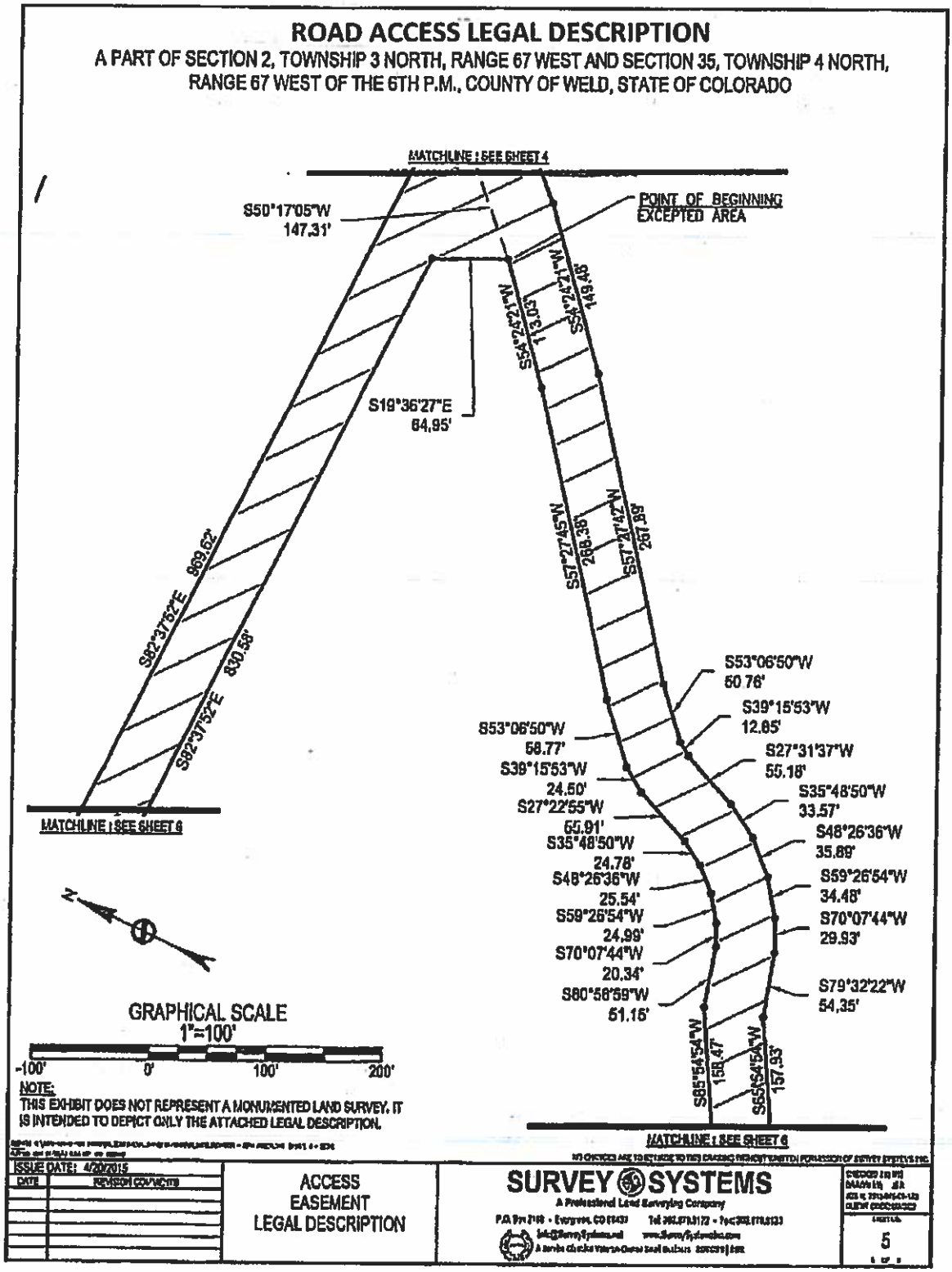


Lease between Aurora and Martin Marietta
Illustration for Exhibit C



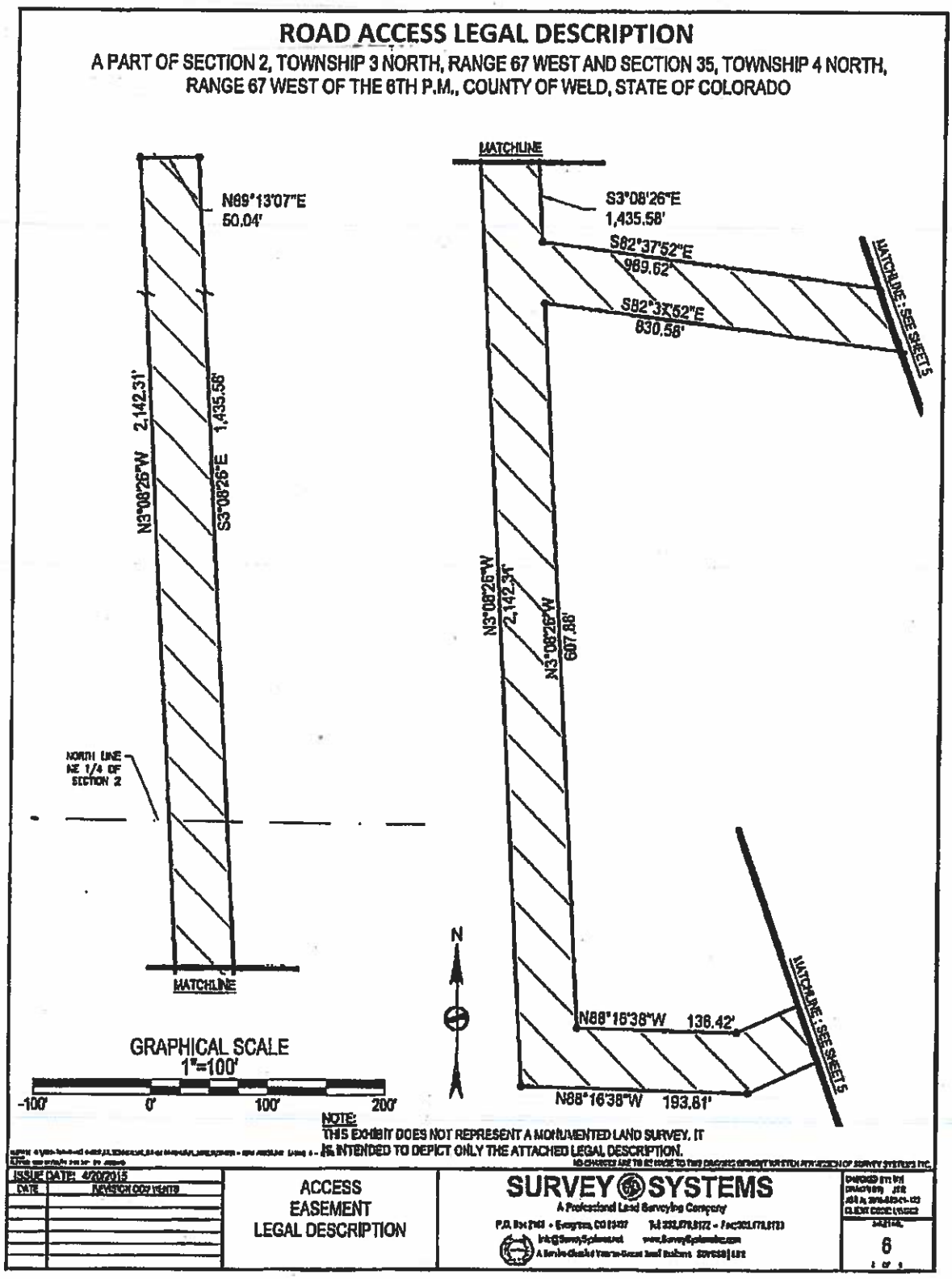
Lease between Aurora and Martin Marietta

Illustration for Exhibit C



Lease between Aurora and Martin Marietta

Illustration for Exhibit C



3145136 01/16/2004 12:10P Weld County, CO
1 of 19 R 95.00 D 0.00 Steve Moreno Clerk & Recorder

136

Annexation and Development Agreement
Town of Milliken, Colorado

THIS ANNEXATION AND DEVELOPMENT AGREEMENT dated this 2nd day of January, 2003 (the "Agreement") is made and entered into by and between the TOWN OF MILLIKEN a Colorado Municipal Corporation (the "Town"), and the undersigned owners in fee of the Property (collectively, the "Owner"). This Agreement relates to the annexation and development of the real property (the "Property") more particularly described in Exhibit A attached hereto and by this reference made a part hereof.

RECITALS

A. The Owner has filed a Petition for Annexation of Parcels of Land requesting that the Town annex the Property; and

B. The Owner desires to extract surface mineral deposits from the Property in a reasonably economic manner; and

C. The Town and the Owner wish to provide the Town with benefits for its inhabitants that the Town might otherwise be unable to provide; and

D. The Owner has requested that the Town change the zoning designation of the Property to accommodate a mining and reclamation operation, and has submitted a conceptual Land Use Plan Exhibit ("Conceptual LUP") showing certain improvements, including but not limited to open space, and public recreation and water storage facilities.

AGREEMENT

Annexation

1.1 Annexation of the Property shall be in accordance with this Agreement and the Colorado Municipal Annexation Act of 1965, as amended. This Agreement shall only become effective and operational upon approval of i) the Conceptual LUP, ii) the zoning designation specified herein, iii) a road improvement agreement with Weld County, Colorado acceptable to the Owner, and upon the Completion of Annexation. In the event that any of the foregoing conditions to the effectiveness of the annexation are not met, the Owner may, at its option, withdraw the Petition. Upon such withdrawal, the parties agree there shall be no lingering or subsequent jurisdiction by the Town over the whole or any part of the Property, and the entire Property shall be and remain within the jurisdiction of Weld County in accordance with law. "Completion of Annexation" means there are no challenges to or appeals of the annexation pending in any court of competent jurisdiction, and that no referendum or associated type of procedure is pending which could derogate the Annexation, and that all periods for the initiation of any challenge, appeal, or referendum have tolled entirely.

1.2 On Completion of Annexation, the Property will be zoned CD (Conservation District) allowing commercial mineral extraction activities as a use by right. If for any reason the Town is unable to approve and ratify the above referenced zone designation, the Owner shall have the unequivocal right to request that the Town de-annex the Property and the Town agrees not to oppose that request. In accordance with the CD zone designation, the Town agrees that the Owner may install temporary equipment and structures necessary to the operation of its sand and gravel extraction operations, including but not limited to, a processing facility, a scale house, conveyance and delivery systems, and shop and office facilities, without requiring a Use by Special Review permit. The Owner shall obtain any other required permits, which the Town shall issue without unreasonable condition or delay upon compliance with all applicable fees and codes, for the installation of such temporary equipment and structures, except to the extent that local regulation of such installations is preempted as a matter of law.

1.3 Facilities such as an asphalt plant, a concrete recycling facility, a concrete batch plant, a precast facility and other facilities or activities not permitted by the CD zoning shall require a Use by Special Review permit and/or zoning amendment, or any other Town approval then required.

1.4 On Completion of Annexation, the Owner will pay to the Town 1% of the proceeds from the gross sales of each ton of sand and gravel extracted and removed from the Property by Owner (the "Payment"), except that the Payment shall not be assessed on sand and gravel which the Owner may use in improving existing county roads pursuant to a road improvement agreement with Weld County.

Utilities and Reclamation

1.5 The Town will not be required to furnish water, gas, electric, or sanitary sewer services to the Property because to do so would be impractical and unnecessary. Septic systems and leach fields currently serve certain existing improvements on the Property and are suitable to serve the employees who will work on the Property. To address future needs, the existing systems and fields will be expanded or replaced with similar devices in compliance with Weld County ISDS standards. Existing domestic wells have adequate capacity to provide potable water to the Property. The Owner will maintain all existing roads on the Property and agrees to mitigate dust in compliance with the requirements of the MLRB Permit (defined below). All storm drainage facilities installed by the Owner shall be designed and constructed to adequately serve the Property and to protect downstream and adjacent properties. All construction shall conform to the Town's standards applicable to the particular use and, if such standards do not exist, construction shall conform to the reasonable requirements of the Town Engineer. The Conceptual LUP is designed to meet the requirements the letter dated August 10, 2001 from the State of Colorado Division of Minerals and Geology (the "MLRB Permit"), as well as other agreements entered into by the Owner affecting the surface use of the Property. All improvements shall be completed by the Owner and the Town as mutually agreed to and in accordance with the MLRB Permit, other surface use agreements, this Agreement and the Conceptual LUP, recognizing that reclamation of

the Property in accordance with the MLRB Permit will provide future public recreational facilities and enhancement of wildlife habitat and diversity.

Operations on the Property

1.7 For mineral extraction, the Town shall allow the Owner to undertake mining operations on the Property twenty-four (24) hours per day, seven (7) days per week. If these operations should exceed 65 decibels between the hours of 6:00 AM and 7:00 PM, or 55 decibels at any other time, as measured at the property line of any existing residence not owned by the Owner, the Owner shall immediately undertake mitigation efforts in accordance with generally accepted industry standards. If, within a reasonable period of time, the noise is not mitigated to the levels mandated by statute, the Town may curtail the approved operating hours to 6:00 AM to 7:00 PM on weekdays, 8:00 AM to 5:00 PM on Saturdays, no hours on Sunday, until the noise is satisfactorily mitigated. The Owner may expand its hours upon notice to the Town at any time that it is required by any federal, state or local authority or agency to furnish material during an emergency situation.

1.8 Regarding transport, loaded trucks may leave the Property only between the hours of 6:00 AM to 7:00 PM on weekdays, 8:00 AM to 5:00 PM on Saturdays, and none on Sunday. Maintenance operations for haul trucks, equipment and other facilities associated with mineral extraction shall be allowed twenty-four (24) hours per day, seven (7) days per week, with the same noise restrictions as specified in Section 1.7.

Donations

1.9 At such time as either the existing regional or local trail systems expand to reach the east and west boundaries of the Property, and subject to the terms of Section 1.24, the Owner will donate to the Town a corridor two hundred (200) feet wide, measured perpendicular to the north bank of the South Platte River along the portion of the river located on the Property, to connect the existing hiking and biking trail. Upon mutual agreement, the parties may adjust the boundaries of the donated property to accommodate specific natural features, if necessary. In conjunction with this donation, the Owner will reserve an easement for its continued use of the donated property for agricultural purposes and for access to and maintenance of its remaining Property, water storage, mineral extraction, and any existing oil and gas wells. The Town agrees that it will locate, improve and use the proposed trail on the donated property so as not to conflict with the Owner's continued use for agricultural and mining purposes. In addition, the Town agrees to comply with all the terms of the MLRB Permit or other surface use agreements applicable to the donated property. The public shall have no access to the donated property until the hiking and biking trail is complete, and the Owner shall bear no responsibility for the construction, maintenance, use or repair of the proposed trail or its use by the public.

1.10 Within three (3) years of Completion of Annexation, the Owner will donate to the Town, in a location to be mutually agreed upon by the Owner and the Town, a

site consisting of approximately five (5) acres, contiguous to the Town's existing open space located on Wildcat Mound, for use as open space.

1.11 At any time within ten (10) years of Completion of Annexation, the Town may request in writing an additional donation from the Owner of approximately one (1) acre, in a location to be mutually agreed upon by the parties, for municipal purposes, including but not limited to the construction and installation of a water tank. If the Town chooses to exercise the option granted herein, it agrees to construct and install the water tank or other public facility so as to buffer its visual impact on the surrounding area.

1.12 The Owner's extraction operations will result in the creation of a number of reservoirs on the Property. After reclamation has been completed in accordance with the MLRB Permit, and the resulting reservoirs are filled with water, the Owner shall donate the reservoirs to the Town for use as public recreation areas, along with a reasonable amount of land surrounding each lake for access and maintenance. The Town and the Owner shall enter into a joint use and operation agreement which shall expressly reserve to the Owner i) ownership of all water storage space and facilities and all rights to store water in the reservoirs, ii) the right to re-locate the Town's access and maintenance routes to alternate locations as mining and reclamation operations proceed on the adjacent Property, iii) easements for access to its mining operations, iv) easements for access to and maintenance of any then existing oil and gas wells, and v) easements for access to and maintenance of its proposed water storage facilities, as described below. In addition, the joint use and operation agreement will contain terms acceptable to the Owner limiting any liability that may arise from the use of the reservoirs and adjacent areas by the general public.

1.13 Except on the property to be donated for the recreational trail specified in Section 1.9, the open space specified in Section 1.10, and the municipal purposes specified in Section 1.11, if any location selected by the Town for access, open space, and recreation lessen or preclude material from being extracted by the Owner in those locations, the Town shall reimburse the Owner at the then market value in situ for the amount of material such facilities impact (as determined by an independent licensed engineer mutually acceptable to the parties) by allowing the Owner credit against the Payment. If the Payments are insufficient to fully reimburse the Owner over a period of two (2) years after any such donation, the Town will pay the Owner the remaining sum in cash at the end of the second year.

1.14 After acceptance by the Town, administration and maintenance of all public improvements, including trails, recreational facilities, reservoirs, access easements, and open space, will rest with the Town in accordance with the Town's applicable ordinances, rules and regulations then in effect. All costs for ongoing operation, maintenance and repair of such improvements, which exceed the Owner's responsibilities as required by the MLRB Permit, shall be the Town's responsibility.

1.15 The Owner shall make only those donations and pay only those exactions expressly prescribed in this Agreement. The Town shall not impose or enact any

additional conditions, exactions, dedications, taxes, assessments, fees or regulations through the exercise of either the police power or the taxing power related solely to the development of the Property as contemplated herein and approved hereby; provided, however, that the Owner shall pay any taxes, assessments, or fees which are uniformly applied to the Property and other similar property within the Town. Nothing in this Agreement shall prohibit the Town from exercising its taxing power, provided there is no new fee or tax imposed as a condition of development of the Property, which is not uniformly applied against all other similar property within the Town.

Water Storage

1.16 When the first area of the Property has been fully reclaimed in accordance with the MLRB Permit, and in conjunction of the donation of the first reservoir to the Town, the Owner shall deliver to the Town a written offer to donate water storage space for the Town to store 1,250 acre feet of water. The Town shall then deliver written notice to the Owner of its acceptance of such water storage space in the manner specified in the offer within thirty (30) days. If the Town chooses not to accept the offer, the Town shall thereby waive any claim to any water storage space subsequently created or owned by the Owner on the Property.

1.17 The Town acknowledges that, as the Property is reclaimed and the reservoirs are filled, the Owner intends to undertake and operate a water storage business in the reservoirs to be donated to the Town as public recreation areas, including the reservoir in which the Town may have the right to store water. If the Town chooses to accept the donation of water storage space as provided herein, it may also choose to have the Owner manage the Town's water storage as part of its on-going business, and deliver to the Town the proceeds attributable to the Town's share. Such agreements may be included in the joint use and operation agreement specified above.

1.18 All expenditures and costs associated with the design, engineering, construction, maintenance and operation of the proposed water storage shall be prorated between the Owner and the Town in proportion to the use each makes of the water storage in the reservoir designated for the Town's water storage. Payments for each party's share of said expenditures and costs shall be made as and when the work is completed and billed by third party professionals or contractors.

Cooperation

1.19 It is the express intent of the Owner and the Town to cooperate and act in good faith to i) implement the terms of this Agreement, ii) promote the timely and economic extraction and sale of sand and gravel from the Property, and iii) reclaim the Property in accordance with the MLRB Permit.

1.20 If the Owner constructs, installs or makes available any improvement, including but not limited to a railway load-out facility, the use of which will benefit either the Town, an adjacent or nearby development, or the general public, the Town and Owner shall enter into an agreement specifying the costs arising from that

improvement and providing for proportionate reimbursement to the Owner. The Town shall collect such reimbursement from those benefiting from the improvement so as to repay the Owner no later than five (5) years from the date the benefit accrues.

Remedies

1.21 Except as provided in Section 1.1, if either party believes the other party to this Agreement has breached the terms or provisions hereof, such party shall furnish to the other party a notice specifying such breach, and the other party shall then have a period of thirty (30) days in which to cure the same; provided, however, that if such breach cannot be reasonably cured within such 30-day period, the other party shall have such longer period as may be reasonably necessary to cure such breach, so long as the other party has commenced to cure within such 30-day period and is diligently prosecuting the cure to completion. Except as specifically set forth elsewhere in this Agreement, the remedies provided in this Section shall not be deemed to limit the remedies that may be otherwise available to the non-breaching party at law or in equity.

1.22 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. The parties shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the mediation rules of the American Arbitration Association then in effect. Requests for mediation shall be filed in writing with the other party and with the American Arbitration Association. The mediation shall be held in a mutually agreed upon location, and the parties shall share the mediator's fee and any filing fees equally.

Notices

1.23 All notices required or permitted under this Agreement shall be given by registered or certified mail, postage prepaid, return receipt requested, or by hand delivery or recognized overnight delivery service, or by telecopy (so long as the original follows by regular mail or other form of delivery permitted hereunder within five (5) business days) directed as follows:

If to the Town: Town Manager
1101 Broad Street
Drawer 290
Milliken, CO 80543
Attention: J.R. Schnelzer

with a copy to: Town Attorney
P.O. Box S
Berthoud, CO 80513
Attention: Bruce Fickel, Esq.

If to the Owner: Tom Sharkey

3145136 01/16/2004 12:10P Weld County, CO
7 of 19 R 96.00 D 0.00 Steve Moreno Clerk & Recorder

15430 Copperfield Drive
Colorado Springs, CO 80921

The Platte Trust
1547 Turner Road
Colorado Springs, CO 80920

with a copy to: Holland & Hart LLP
555 Seventeenth Street, Suite 3200
Denver, Colorado 80202
Phone: (303) 290-1600
Fax: (303) 290-1606
Attention: Robert M. Pomeroy, Jr., Esq.

Any notice delivered by mail in accordance with this Section shall be deemed to have been duly given on the date upon which a representative of the party to whom such notice is to be given at the address executes the return receipt specified herein. Any notice which is hand delivered shall be effective upon receipt by the party to whom it is addressed. If sent by overnight courier, all notices shall be deemed delivered one (1) business day after deposit with a recognized overnight courier service. Any notice, which is delivered by telecopy, shall be effective upon receipt by the sending party of written confirmation of receipt by the receiving telecopy machine at the numbers shown above. Either party, by notice given as above, may change the address or telecopy numbers to which future notices should be sent.

Miscellaneous

1.24 Designee. Regarding the conveyance, donation or dedication of any property or improvement to the Town pursuant to this Agreement, the Town expressly agrees that it will cooperate with the Owner in maximizing the benefits which may then be available under any local, state or federal law, including but not limited to naming or forming a qualified designee to accept donation or dedication of, or to operate and maintain, the donated property or improvements. The Owner may adjust the timing of the donations provided for herein to maximize any tax benefits that may accrue to it as a result of making such donations.

1.25 Costs. The Owner shall be responsible for all actual and reasonable costs incurred by the Town in reviewing, testing, inspecting and approving the Conceptual LUP.

1.26 Recordation; Covenants. This Agreement shall be recorded in the real property records of the Clerk and Recorder of Weld County, Colorado. The provisions of this Agreement shall constitute covenants or servitudes which shall touch, attach to and run with the land comprising the Property, and the burdens and benefits hereof shall bind and inure to the benefit of all estates and interests in the Property and all successors in interest to the parties hereto.

1.27 Amendment of Agreement. The donations provided for in this Agreement may be reassessed and amended in order to insure that the purposes of such donations remain valid. To the extent the donations no longer serve the original purposes as set forth herein due to changed conditions, this Agreement may be amended, changed, or eliminated by mutual agreement of the parties to accommodate the changed conditions. Except as otherwise provided herein, this Agreement may be amended in writing from time to time by mutual consent of the original parties or their successors in interest.

1.28 No Joint Venture or Partnership. The Town and the Owner hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the Town and the Owner joint venturers or partners.

1.29 Prior Agreements. This Agreement supersedes and controls all prior written and oral agreements and representations of the parties hereto with respect to the Property and is the total, integrated agreement among the parties with respect to the Property.

1.30 Enforceability. This Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted in any applicable zoning ordinance, any land use ordinances or building ordinances, resolutions or other rules, regulations or policies adopted by the Town which changes, alters or amends the rules, regulations and policies applicable to the development of the Property at the time of the approval of this Agreement. This Agreement shall not prevent the Town in subsequent actions applicable to the Property from applying new rules, regulations and policies which do not directly or indirectly conflict with those rules, regulations, and policies applicable to the Property as set forth herein.

1.31 No Waiver. Except as expressly set forth herein, failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder.

1.32 Force Majeure. No party shall be held liable for a failure to perform hereunder due to wars, strikes, acts of God, natural disasters, or other similar occurrences outside the reasonable control of that party.

1.33 Authority. By signing this Agreement, the parties acknowledge and represent to one another that all procedures necessary to validly contract and execute this Agreement have been performed and that the persons signing for each of the parties have been duly authorized so to do.

1.34 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

1.35 No Third Party Rights. Except as expressly set forth herein, nothing contained herein shall be construed as creating any rights in any third persons or parties.

1.36 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

1.37 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SIGNATURES CONTINUE ON NEXT PAGE

3145136 01/16/2004 12:10P Weld County, CO
10 of 19 R 96.00 D 0.00 Steve Moreno Clerk & Recorder

TOWN OF MILLIKEN:

Linda L. Measner, Mayor

ATTEST

Nanette S. Fornof, CMC
Town Clerk

OWNERS:

The Platte Trust

By: _____

_____
Tom Sharkey