

RESOLUTION NO. 1860

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GOLDEN AUTHORIZING THE A PURCHASE AND SALE AGREEMENT WITH PUBLIC SERVICE COMPANY OF COLORADO FOR SOUTH OF 24TH STREET AND WEST OF SOUTH GOLDEN ROAD

WHEREAS, the City of Golden City Council has identified the need to construct a new roundabout intersection south of 24th Street near the connection of Ford and Jackson Streets; and

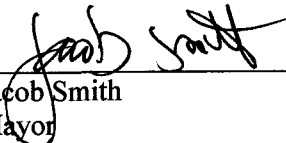
WHEREAS, the construction of this new intersection requires the acquisition of additional municipal street right of way; and

WHEREAS, on August 23, 2007, City Council authorized an Agreement with the owners of 2410 and 2414 Ford Street to exchange certain properties, including certain surplus Public Service Company of Colorado property.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:


City Council hereby approves the Purchase and Sale Agreement with Public Service Company of Colorado, substantially in the form attached hereto as Exhibit A. The Mayor is authorized to execute all documents as may be necessary to consummate the purchase of the property.

Adopted on this 8th day of May, 2008.




Jacob Smith
Mayor

ATTEST:



Susan M. Brooks, MMC
City Clerk

APPROVED AS TO FORM:



David S. Williamson
Acting City Attorney

Resolution No. 1860

Page 2

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a rescheduled regular business meeting thereof held on the 8th day of May, A.D., 2008.



ATTEST:

A handwritten signature in cursive script, reading "Susan M. Brooks", written over a horizontal line.

Susan M. Brooks, City Clerk of the City of Golden, Colorado

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made as of the Effective Date, as defined below, by and between **PUBLIC SERVICE COMPANY OF COLORADO**, a Colorado corporation ("Seller"), and the City of Golden, a Colorado Municipal Corporation ("Purchaser").

Purchaser desires to purchase certain property owned by Seller, and Seller desires to sell such property to Purchaser pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Purchaser agree as follows:

Article 1. Definitions.

The following terms shall have the meanings set forth below:

1.1 Agreement. This Agreement, including the following exhibits attached hereto and hereby made a part hereof:

Exhibit A: Property Access Agreement

Exhibit B: Special Warranty Deed

1.2 Closing. Concurrently, the transfer of title to the Property to Purchaser, the payment to Seller of the Purchase Price, and the performance by each party of the other obligations on its part then to be performed, all in accordance with the Article entitled "Closing".

1.3 Closing Date. The Closing shall occur on the first business day which is thirty (30) days after the Indenture Release (as defined in Article 8) is received at the offices of Title Company or at such other place, date and time as Seller and Purchaser may agree.

1.4 Exclusions. Seller's fixtures and equipment attached to the Property may be excluded from this sale by Seller, as provided in Article 9.

1.5 Commitment. The title insurance commitment with respect to the Property as defined in the Section entitled "Title Evidence" (Section 5.1).

1.6 Earnest Money. The earnest money deposit, together with any interest earned thereon, made by Purchaser and held by Title Company described in the Article entitled "Purchase Price".

1.7 Effective Date. The date on which both parties have executed a counterpart of this Agreement.

1.8 Feasibility Period. The time period commencing on the Effective Date and ending forty-five (45) days after the Effective Date.

1.9 Property. The real property located generally at S1/2 SW1/4 of Section 35, Township 3 South, Range 70 West, 6th P.M. AND SE1/4 of Section 34, Township 3 South, Range 70 West, 6th

P.M., County of Jefferson, State of Colorado, described in Exhibit B attached hereto, together with all improvements thereon and appurtenances thereto, subject to the "Reserved Interests" as defined below.

1.10 Permitted Exceptions. Those matters approved by Purchaser in accordance with the Article entitled "Title Examination".

1.11 Purchase Price. The Purchase Price shall be Fifteen Thousand US Dollars and no/100 (US \$15,000.00).

1.12 Reserved Interests. Shall have the meaning set forth in Article 9.

1.13 Survey. Intentionally deleted.

1.14 Title Company. Stewart Title of Colorado, 50 Steele Street, Suite 600, Denver, Colorado 80209. ATTN: Aggie Goepfert Phone: 303-331-4084

1.15 Title Evidence. The Commitment and copies of documents as provided in Section 5.1.

1.16 Title Policy. The ALTA Owner's Policy of Title Insurance to be issued pursuant to the Commitment.

Article 2. Purchase and Sale.

Seller hereby agrees to sell, and Purchaser hereby agrees to purchase, upon and subject to the terms and conditions hereinafter set forth, the Property.

Article 3. Purchase Price.

3.1 Manner of Payment. The Purchase Price shall be payable as follows:

3.1.1 **One Thousand, Five Hundred Dollars and no/100 (\$1,500.00)** as Earnest Money, to be deposited by Purchaser in escrow with Title Company not later than three (3) business days following the mutual execution and delivery of this Agreement, held and disbursed pursuant to the terms of this Agreement. The Earnest Money shall be non-refundable to Purchaser except as provided in Articles entitled "Correction of Title", "Feasibility Period", "Indenture Release", "Condemnation", and "Default." The Earnest Money shall be paid by the Title Company to Seller at Closing, or upon any termination of this Agreement, except as expressly provided herein. The Earnest Money shall be credited against the Purchase Price at Closing. Purchaser acknowledges that the non-refundable character of the Earnest Money is to compensate Seller for its costs incurred in connection with this Agreement and its lost opportunity costs in taking the Property off the market.

Subject to Purchaser's right to terminate this Agreement as provided in the Articles hereof entitled "Correction of Title", "Feasibility Period", "Indenture Release", "Condemnation", and "Default", IN THE EVENT PURCHASER FAILS TO PERFORM ITS OBLIGATIONS PURSUANT TO THIS AGREEMENT, SELLER SHALL BE ENTITLED TO TERMINATE THIS AGREEMENT AND RECOVER THE EARNEST MONEY AS LIQUIDATED DAMAGES AND NOT AS PENALTY, IN FULL SATISFACTION OF CLAIMS AGAINST PURCHASER HEREUNDER AND AS SELLER'S SOLE AND EXCLUSIVE REMEDY FOR SUCH FAILURE. SELLER AND

PURCHASER AGREE THAT THE SELLER'S DAMAGES RESULTING FROM PURCHASER'S DEFAULT ARE DIFFICULT, IF NOT IMPOSSIBLE, TO DETERMINE AND THE EARNEST MONEY IS A FAIR AND REASONABLE ESTIMATE OF THOSE DAMAGES WHICH HAS BEEN AGREED TO IN AN EFFORT TO CAUSE THE AMOUNT OF SAID DAMAGES TO BE CERTAIN. ACCORDINGLY, PURCHASER AND SELLER AGREE THAT IT WOULD BE REASONABLE IN SUCH EVENT TO AWARD SELLER "LIQUIDATED DAMAGES" EQUAL TO THE AMOUNT OF THE EARNEST MONEY.

3.1.2 The balance of the Purchase Price in cash or by certified or cashier's check or wire transfer of immediately available funds on the Closing Date, in accordance with Colorado law.

Article 4. Closing.

4.1 Seller's Closing Documents. At Closing, subject to delivery by Purchaser of the Purchase Price and performance of its other obligations under this Agreement, Seller shall execute, acknowledge (where appropriate), and deliver to Purchaser, or the Title Company, as applicable, the following, each dated as of the Closing Date:

4.1.1 A Special Warranty Deed conveying to Purchaser the Property, subject only to Permitted Exceptions (the "Deed") substantially in the form attached hereto as Exhibit B.

4.1.2 An affidavit of Seller regarding liens, judgments, tax liens, bankruptcies, parties in possession, mechanics' or materialmen's liens and other matters affecting title to the Property in customary form as may be reasonably required by Title Company to delete the so-called "standard exceptions" from the Title Policy.

4.1.3 All reasonable and customary documents and instruments which (a) Purchaser or Title Company may reasonably determine are necessary to transfer the Property to Purchaser subject only to the Permitted Exceptions, (b) Purchaser or Title Company may reasonably determine are necessary to evidence the authority of Seller to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Seller pursuant to this Agreement, (c) Title Company may reasonably require as a condition to issuing the Title Policy or (d) may be required of Seller under applicable law.

4.1.4 A reasonable and customary assignment by Seller and assumption by Purchaser of assignable warranties, plans, permits, licenses and other approvals held by Seller and relating solely to the Property, if any, that are identified by Purchaser for assignment and approved by Seller in writing prior to the expiration of the Feasibility Period.

4.1.5 A settlement statement consistent with this Agreement.

4.2 Purchaser's Closing Deliveries. At Closing, Purchaser shall cause the following to be delivered to Seller or the Title Company, as applicable:

4.2.1 The Purchase Price less the Earnest Money, as adjusted pursuant to Section entitled "Closing Adjustments", by cashier's check or by federal wire transfer of immediately available funds. The Earnest Money shall be applied to and credited against the Purchase Price and shall be disbursed to Seller by Title Company at Closing.

4.2.2 All normal and customary documents and instruments, each executed and acknowledged (where appropriate) by Purchaser, which (a) Seller or Title Company may reasonably determine are necessary to evidence the authority of Purchaser to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Purchaser pursuant to this Agreement, or (b) may be required of Purchaser under applicable law.

4.2.3 A settlement statement consistent with this Agreement executed by Purchaser.

4.3 Closing Escrow. Purchaser and/or Seller at their option may deposit the respective Closing deliveries described in the Sections entitled "Seller's Closing Deliveries" and "Purchaser's Closing Deliveries" with Title Company with appropriate instructions for recording and disbursement consistent with this Agreement.

4.4 Closing Adjustments. The following adjustments shall be made at Closing:

4.4.1 Seller represents that it is unit assessed and that real property taxes for the Property cannot be prorated. Seller shall pay when due all real property taxes for the Property imposed for the period up to and including the date of Closing, and Purchaser shall be responsible for any real property taxes for the Property imposed after Closing. In the event Purchaser receives a tax bill for the Property for some or all taxes due from Seller pursuant to this Agreement, Seller shall remit the full amount of taxes due to Purchaser within twenty (20) days following its receipt of the tax bill. In the event Seller receives a tax bill for the Property for some or all taxes due from Purchaser pursuant to this Agreement, Purchaser shall remit the full amount of taxes due to Seller within twenty (20) days following its receipt of the tax bill.

4.4.2 Seller shall pay in full all special assessments that are due and payable prior to the Closing. Any other special assessments (and charges in the nature of or in lieu of such assessments) levied, pending or constituting a lien with respect to any of the Property shall be prorated as of the Closing Date, with Seller paying those allocable to the period prior to the Closing Date and Purchaser being responsible for those allocable subsequent thereto.

4.4.3 Purchaser shall pay the documentary fee required in connection with the recording of the Deed.

4.4.4 Seller shall pay the cost of recording any documents necessary to place record title to the Property in Seller in the condition required pursuant to the Section entitled "Correction of Title". Purchaser will pay the cost of recording all other documents, including the Deed.

4.4.5 Seller will pay the premium for the Title Policy. Purchaser will pay the cost of any lender's title insurance, any charge for the deletion of pre-printed exceptions, and any endorsements desired by Purchaser or required by its lender.

4.4.6 Seller and Purchaser shall each pay one half (1/2) of any escrow fee and/or Closing fee payable to Title Company with respect to the transaction contemplated by this Agreement.

4.4.7 The charges for any utilities, which are separately metered, if any, including water, fuel, gas, electricity, shall be prorated between Seller and Purchaser on a daily basis as of the Closing Date, with Seller paying those allocable to the period prior to the Closing Date and Purchaser

being responsible for those allocable subsequent thereto. Seller agrees to have all meters with respect to any such utilities read as of the Closing Date. Purchaser agrees to have all utility accounts changed into its name as of the Date of Closing. If Purchaser fails to do so, Seller may have such service terminated as of the Closing Date.

4.4.8 Except as provided in the Article entitled "Default", Seller and Purchaser shall each pay its own attorneys' fees incurred in connection with this transaction.

4.5. Possession. Seller shall deliver possession of the Property to Purchaser on the Closing Date, subject to the Permitted Exceptions.

Article 5. Title Examination.

5.1 Title Evidence. Within ten (10) business days after the Execution and delivery of this Agreement, Seller (at its sole cost) shall furnish or cause the following Title Evidence to be furnished to Purchaser:

5.1.1 A commitment to insure title to the Property issued by Title Company in an amount equal to the Purchase Price (the "Commitment") and copies of all documents, instruments and matters shown as exceptions which are recorded in the office of the clerk and recorder of the county in which the Property is located.

5.2 Purchaser's Objections and Requirements. Purchaser shall be allowed twenty (20) days after delivery of the last of the Title Evidence for examination thereof and making any objections to the form and/or content of the same. Any objections not made within said twenty (20) day period shall be deemed to be waived by Purchaser and shall be Permitted Exceptions. Purchaser shall have an additional five (5) day period after receipt in which to object to any new revisions or exceptions to the Title Evidence as may be issued from time to time.

5.3 Correction of Title. Seller shall be allowed until the date that is three (3) business days before the expiration of the Feasibility Period to cure Purchaser's title objections and any tax lien which will not be prorated at Closing, but will be under no obligation to do so. If such cure is not completed prior to the end of the Feasibility Period, Purchaser shall have the option to do any of the following:

5.3.1 Terminate this Agreement by giving notice on or before the last day of the Feasibility Period, whereupon both parties shall be released from all liabilities and obligations hereunder, except those which expressly survive termination, and the Earnest Money will be returned to Purchaser.

5.3.2 Waive its objection(s) and proceed to Closing. If Purchaser does not timely give notice to terminate as provided in Section 5.3.1 above, it will be deemed to have waived its objections.

Article 6. Representations and Warranties.

6.1 Seller's Representations and Warranties. Seller represents and warrants to Purchaser as of the date of this Agreement as follows:

6.1.1 Seller has been duly organized under the laws of the State of Colorado, and has the requisite power and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Seller pursuant hereto. This Agreement has been duly executed and delivered by Seller and is a valid and binding obligation of Seller enforceable in accordance with its terms. This Agreement and the documents and instruments required to be executed and delivered by Seller pursuant hereto have each been (or will prior to the Closing date, will be) duly authorized by all necessary corporate action on the part of Seller and that such execution, delivery and performance does and will not conflict with or result in a violation of Seller's articles of incorporation or by-laws or any judgment, order or decree of any court or arbiter to which Seller is a party, or any agreement to which Seller and/or any of the Property is bound or subject.

6.1.1 To Seller's Knowledge, Seller has not (i) made a general assignment for the benefit of creditors, (ii) filed any involuntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Seller's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

6.1.2 Seller has not entered into any contracts for the sale of any of the Property other than this Agreement.

6.1.3 To Seller's current actual knowledge, without investigation, there is no pending or threatened or contemplated, litigation, investigation, arbitration, condemnation or other proceedings of affecting the Property.

6.1.4 To Seller's current actual knowledge, without investigation, there are no leases, non-governmental licenses, occupancy agreements, service contracts or other contracts with third parties relating to the Property, to which Seller is a party or of which Seller has knowledge, that will survive the Closing.

Notwithstanding the foregoing provisions of this Section entitled "Seller's Representations and Warranties", Seller will not be deemed to be in breach of this Agreement with respect to facts or conditions which are the subject of the foregoing representations that are disclosed by Seller to Purchaser or otherwise discovered by Purchaser prior to the expiration of the Feasibility Period. Further, notwithstanding anything to the contrary herein, the liability of Seller hereunder, if any, shall be limited to the Purchase Price of the Property. Subject to the foregoing, Seller's representations and warranties shall survive Closing for twelve (12) months, provided Seller shall have no liability with respect to any breach of a particular representation and warranty if Purchaser shall fail to give written notice to Seller within a reasonable time after discovery and to commence an action against Seller with respect to the breach in question within twelve (12) months after Closing. Wherever herein a representation is made based upon the knowledge of, or notice to, Seller, such knowledge or notice, is limited to the actual knowledge of, or notice received by Jim Hanson, Sr. Agent, Siting and Land Rights. provided nothing in this Agreement will be deemed to be a representation made by Jim Hanson other than in his representative capacity, and Purchaser hereby expressly releases Jim Hanson from any and all personal liability arising out of this Agreement or the representations made herein.

6.2 Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller as of the date of this Agreement as follows:

6.2.1 Purchaser has been duly organized under the laws of the State of Colorado, and has the requisite power and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Purchaser pursuant hereto. This Agreement has been duly executed and delivered by Purchaser and is a valid and binding obligation of Purchaser enforceable in accordance with its terms. This Agreement and the documents and instruments required to be executed and delivered by Purchaser pursuant hereto have each been duly authorized by all necessary corporate or other applicable action on the part of Purchaser and that such execution, delivery and performance does and will not conflict with or result in a violation of Purchaser's articles of incorporation or by-laws or any applicable founding or formation documentation or any judgment, order or decree of any court or arbiter to which Purchaser is a party, or any agreement to which Purchaser and/or any of the Property is bound or subject.

6.2.2 Purchaser has not (i) made a general assignment for the benefit of creditors, (ii) filed any involuntary petition in bankruptcy or suffered the filing of any involuntary petition by Purchaser's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Purchaser's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Purchaser's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

The foregoing representations and warranties are express representations and warranties that Seller shall be entitled to rely on regardless of any investigation or inquiry made by, or any knowledge of, Seller. Consummation of this Agreement by Seller with knowledge of any such breach shall not constitute a waiver or release by Seller of any claims arising out of or in connection with such breach. Subject to the foregoing, Purchaser's representations and warranties shall survive Closing.

Article 7. Feasibility Period.

7.1 During the Feasibility Period, Purchaser may investigate the Property and all matters relevant to its acquisition, development, usage, operation and marketability, and any and all permits and approvals necessary for Purchaser's usage. Such investigations shall be conducted at Purchaser's sole expense and may include, without limitation, studies or inspections (including environmental inspections) of the Property. Any environmental or other physical inspection of the Property shall occur pursuant to the terms and conditions of the Property Access Agreement, attached hereto as Exhibit A. Subject to the terms of this Agreement and the Property Access Agreement, Seller shall reasonably cooperate with Purchaser's inspections during the Feasibility Period. Purchaser shall deliver copies of any reports or results of any tests regarding the Property within five (5) days of receipt by Purchaser.

7.2 Seller, without additional cost to Purchaser, shall provide Purchaser access to copies of all surveys, engineering studies, feasibility studies, soil and water test results, maps, plats, contracts, documents, agreements, permits, licenses, reports and data pertaining to or affecting the Property which are in the reasonable control of Seller. These documents shall be made available to Purchaser on or before ten business (10) days after the Effective Date. In the event of termination of this Agreement for any reason after the Effective Date, Purchaser, without additional cost to Seller, shall promptly return to Seller all copies of the above listed materials pertaining to the Property that are in the Purchaser's possession or under Purchaser's control. To the extent permitted by law, Purchaser shall keep all such materials confidential and shall not disclose such information or documents to any third party without the prior written consent of Seller, except to lenders, attorneys and consultants to the extent necessary to complete Purchaser's investigation and perform its obligations hereunder, and

subject to such third party's agreement to maintain the information as confidential. Confidential information shall be disseminated within the Purchaser's organization and within third party organizations on a "need to know" basis only. If any part of the confidential information is subpoenaed, or otherwise required or requested to be disclosed as provided by law or by court or regulatory order, Purchaser shall (a) resist or limit disclosure to the full extent allowed under applicable law; and (b) promptly notify Seller in writing, and cooperate in any efforts Seller makes to resist or limit disclosure or to obtain any appropriate protective orders or other relief. In the event litigation is commenced under Section 24-72-204(5), C.R.S., or otherwise demanding discharge of the confidential information, Purchaser and the Seller shall cooperate in the defense of the same.

7.3 Seller does not warrant the accuracy of any record, document or information made available to Purchaser or any of the records or documents. Statements of fact or opinion contained in any record, documents or information made available to Purchaser shall not be deemed to be a representation or warranty hereunder. The records, documents or information made available to Purchaser are being provided to Purchaser for informational purposes only and shall be read in the context that they were prepared by Seller or Seller's consultants for intercompany use without expectation that such documents would be disseminated to third parties in connection with this transaction. Further, it is agreed that Purchaser is responsible for its own due diligence despite receiving information and documentation relating to the Property from Seller. Purchaser agrees that Purchaser may independently verify such information provided by Seller and Purchaser releases Seller from any and all liability, damages and claims associated with Purchaser's reliance thereon.

7.4 Purchaser may terminate this Agreement by delivering written notice thereof to Seller on or before the expiration of the Feasibility Period, whereupon the Earnest Money will be returned to the Purchaser and both parties shall be relieved of all liability, except for those matters that are expressly provided to survive termination of this Agreement. If said written notice is not received on or before the date specified above, then this Agreement shall remain in full force and effect and the contingency as set forth in this paragraph shall be deemed to be waived. Purchaser may waive its rights under this Article 7 at any time prior to the expiration of the Feasibility Period by notice to Seller, in which event, the Feasibility Period shall terminate with the same force and effect as if it had expired by passage of time.

7.5 To the extent allowed by law and without waiving the provisions of the Colorado Governmental Immunity Act, Purchaser shall indemnify, hold harmless, and defend Seller from any claim, liability, or cost, including attorney fees, which Seller may incur or which may be asserted against Seller or the Property by reason of Purchaser's inspections, tests, and investigations of the Property, or as a result of Purchaser's entrance onto the Property, including without limitation injury to persons or property and the assertion of any mechanic's liens or claims for payment; provided, however, that Purchaser shall have no liability relating to the mere discovery of adverse conditions on the Property not created by Purchaser. The provisions of this Section shall not be construed to merge with the passage of title to the Property and shall survive Closing or termination of this Agreement.

7.6 The Property is sold by Seller and acquired by Purchaser "As-Is, Where-Is, With All Faults" with no right of set-off or reduction in the Purchase Price, and that except as explicitly set forth in this Agreement or in the Deed (with respect to warranties of title) such sale shall be without representation or warranty, express or implied, either oral or written, made by Seller or any agent or representative of Seller with respect to the physical or structural condition of the Property, or with

respect to the existence or absence of petroleum, hazardous substances, pollutants or contaminants in, on, under, or affecting the Property or with respect to the compliance of the Property or its operation with any laws, ordinances or regulations of any government or other body. Purchaser acknowledges and agrees that Seller has not made and does not make any representations, warranties or covenants of any kind or character whatsoever, whether express or implied, with respect to warranty of income potential, operating expenses, uses, habitability, tenant ability, or suitability for any purpose, merchantability, or fitness of the Property for a particular purpose, all of which warranties Seller hereby expressly disclaims. Purchaser is relying entirely upon information and knowledge obtained from its own investigation, experience, or personal inspection of the Property. Purchaser expressly assumes, at Closing, all environmental and other liabilities with respect to the Property and releases and indemnifies Seller from same, whether such liability is imposed by statute or derived from common law including, but not limited to, liabilities arising under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Hazardous and Solid Waste Amendments Act, the Resource Conservation and Recovery Act ("RCRA"), the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Superfund Amendments and Reauthorization Act and the Hazardous Materials Transportation Act, all as amended, and all other comparable federal, state or local environmental, conservation or protection laws, rules or regulations. Statements of fact or disclosures, if any, made by Seller in this Agreement, or in connection with this Agreement, do not constitute warranties or representations of any nature. The foregoing provision shall survive Closing and shall not be deemed merged into any instrument of conveyance delivered at Closing.

Article 8. Indenture Release.

Seller's obligation to close the transaction described in this Agreement shall be subject to Seller obtaining a release of the Property from Seller's Corporate Indenture ("Indenture Release"). Seller shall begin the process for obtaining the Indenture Release within ten (10) business days after the Effective Date of this Agreement. In the event Seller does not obtain the Indenture Release, for any reason (other than the failure of Seller to pay the net proceeds of the Purchase Price to the indenture trustee), on or before the date which is one hundred (100) days after such date, then this Agreement shall be null and void and of no further force or effect, all parties shall be relieved of all obligations hereunder (except as to obligations which expressly survive termination), and the Earnest Money shall be returned to Purchaser. In the event Seller obtains the Indenture Release, the closing will occur on the Closing Date. In no event shall Seller's inability to obtain the Indenture Release constitute a default under this Agreement

Article 9. Reserved Interest.

The Deed shall reserve to Seller the easements as set forth in the Deed and Seller's utility facilities and fixtures on the Property as of the Closing Date (the "Reserved Interest").

Article 10. Condemnation.

If prior to Closing eminent domain proceedings are commenced against any material portion of the Property by an entity other than Purchaser, Seller shall immediately give notice thereof to Purchaser, and Purchaser at its option (to be exercised within fifteen (15) days after Seller's notice) may either (a) terminate this Agreement, in which event both parties shall be released from all liabilities

and obligations hereunder, except those which expressly survive termination, and the Earnest Money shall be returned to Purchaser, or (b) proceed to Closing and receive at Closing either a credit against the Purchase Price in the amount of the award, in the case of a completed eminent domain proceeding, or an assignment of all rights in eminent domain, in the case of a pending eminent domain proceeding. Prior to Closing, Seller shall not designate counsel, appear in, or otherwise act with respect to any eminent domain proceedings, commenced by an entity other than Purchaser without the consent of Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed. In the event that Purchaser elects to condemn the Property, or any portion thereof, no evidence of the Purchase Price or any other term of this Purchase Agreement shall be admissible in evidence or considered in determining just compensation payable to Seller.

Article 11. Brokers.

Each of the parties represents to the other that such party has not incurred any brokerage commission or finder's fee as a result of this transaction. Purchaser and Seller each agree to hold the other harmless from all liabilities suffered relating to any other brokerage commission or finder's fee incurred as a result of their respective actions. The provisions of this Article 11 shall survive Closing or termination of this Agreement.

Article 12. Default.

In the case of any default by Purchaser, and such default continues for a period of ten (10) days after Seller notifies Purchaser in writing of such event (except for a default consisting of Purchaser's failure or refusal to close, for which no notice will be required and no cure period shall be granted), Seller's sole and exclusive remedy shall be termination of this Agreement and, upon any such termination, the Earnest Money shall be forfeited to Seller, not as a penalty, but as liquidated damages. In the case of any default by Seller, and such default continues for a period of ten (10) days after Purchaser notifies Seller in writing of such event (except for a default consisting of Seller's failure or refusal to close, for which no notice will be required), upon Purchaser's option, Purchaser may terminate this Agreement whereupon the Earnest Money shall be returned to Purchaser. Purchaser also shall have the right to specifically enforce this Agreement, provided that any action therefor is commenced within six (6) months after such right arises. Notwithstanding anything in this Agreement, Purchaser waives any right it may have to recover damages from Seller. In any action or proceeding to enforce this Agreement or any term hereof, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees. This provision shall survive termination of this Agreement.

Article 13. Assignability.

Purchaser may not assign its rights under this Agreement other than to a Permitted Assignee, and provided that Seller is given notice of such assignment not less than ten (10) days prior to Closing. As used herein, "Permitted Assignee" means any entity which controls, is controlled by or is under common control with Purchaser. Any Assignee must assume all of Purchaser's agreements and obligations under this Agreement and no assignment shall constitute a release of Purchaser from its liability and agreements.

Article 14. Confidentiality.

Seller and Purchaser agree to retain the confidentiality of the terms of this Agreement prior to Closing, and not to disclose the same to any third party other than to the extent required by applicable law, or to the extent necessary for Purchaser to complete its investigation during the Feasibility Period, to obtain financing to complete this transaction, or to determine the tax treatment or tax structure of the transaction contemplated by this Agreement.

Article 15. Notices.

Any notice, consent, waiver, request or other communication required or provided to be given under this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when delivered personally or when mailed by certified or registered mail, return receipt requested, postage prepaid, or when dispatched by nationally recognized overnight delivery service, in any event, addressed to the party's address as follows:

If to Seller: Xcel Energy
550-15th Street, Suite 700
Denver, Colorado 80202
Attn: Manager, Siting and Land Rights
Phone: 303-571-7281

If to Purchaser: City of Golden
911 10th St.
Golden, CO 80401
Attn: City Manager
Phone: 303-384-8000

or to such party at such other address as such party, by ten (10) days prior written notice given as herein provided, shall designate, provided that no party may require notice to be sent to more than two (2) addresses. Any notice given in any other manner shall be effective only upon receipt by the addressee.

Article 16. Miscellaneous.

16.1 Entire Agreement; Modification. This Agreement embodies the entire agreement and understanding between Seller and Purchaser, and supersedes any prior oral or written agreements, relating to this transaction. This Agreement may not be amended, modified or supplemented except in writing executed by both Seller and Purchaser. No term of this Agreement shall be waived unless done so in writing by the party benefited by such term.

16.2 Survival; No Merger. The terms of this Agreement shall survive and be enforceable after the Closing and shall not be merged therein.

16.3 Governing Law. This Agreement shall be construed under and governed by the laws of the State of Colorado.

16.4 Severability. If any term of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term shall not be affected thereby.

16.5 Time of the Essence. Time is of the essence under this Agreement.

16.6 Construction. The rule of strict construction shall not apply to this Agreement. This Agreement shall not be interpreted in favor of or against either Seller or Purchaser merely because of their respective efforts in preparing it.

16.7 Captions, Gender, Number and Language of Inclusion. The Article and Section headings in this Agreement are for convenience of reference only and shall not define, limit or prescribe the scope or intent of any term of this Agreement. As used in this Agreement, the singular shall include the plural and vice versa, the masculine, feminine and neuter adjectives shall include one another, and the following words and phrases shall have the following meanings: (i) "including" shall mean "including but not limited to", (ii) "terms" shall mean "terms, provisions, duties, covenants, conditions, representations, warranties and indemnities", (iii) "any of the Property" shall mean "the Property or any part thereof or interest therein", as the case may be, (iv) "rights" shall mean "rights, duties and obligations", (v) "liabilities" shall mean "liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments and expenses, including reasonable attorneys' fees", (vi) "incurred by" shall mean "imposed upon or suffered or incurred or paid by or asserted against", (vii) "applicable law" shall mean "all applicable Federal, state, county, municipal, local or other laws, statutes, codes, ordinances, rules and regulations", (viii) "about the Property" shall mean "in, on, under or about the Property", (ix) "operation" shall mean "use, non-use, possession, occupancy, condition, operation, maintenance or management", and (x) "this transaction" shall mean "the purchase, sale and related transactions contemplated by this Agreement".

16.8 Binding Effect. This Agreement shall inure to the benefit of and shall bind the respective heirs, executors, administrators, successors and assigns of Seller and Purchaser.

16.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

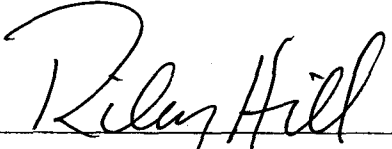
16.10 Recording. Neither party shall record this Agreement. In the event Purchaser records this Agreement, this Agreement shall automatically terminate and Seller shall have the remedies set forth in the Article entitled "Default".

END OF ARTICLES

SIGNATURE PAGE
FOR
PURCHASE AND SALE AGREEMENT
BETWEEN
City of Golden
AND
Public Service Company of Colorado

Seller and Purchaser have caused this Agreement to be executed and delivered as of the date first above written.

SELLER:
PUBLIC SERVICE COMPANY OF COLORADO,
A COLORADO CORPORATION

By: 
Its: Regional V.P. Customer and Community Services
Date: Sept. 10, 2008

PURCHASER:
City of Golden, Colorado

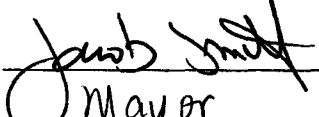
By: 
Its: Mayor
Date: Sept. 5, 2008

EXHIBIT A

PROPERTY ACCESS AGREEMENT

This Agreement is effective this ____ day of _____, 2008 by and between the City of Golden, Colorado ("Purchaser") and Public Service Company of Colorado ("PSCo").

Recitals

- A. Purchaser is conducting an investigation of a parcel of land located in the S1/2 SW1/4 of Section 35, Township 3 South, Range 70 West, 6th P.M. AND SE1/4 of Section 34, Township 3 South, Range 70 West, 6th P.M., Jefferson County, Colorado (the "Property") pursuant to (and as such Property is more particularly described in) a Purchase and Sale Agreement of even date hereof (the "PSA").
- B. In connection with such activities, Purchaser has requested PSCo's permission for its authorized employees and representatives to enter the Property.
- C. PSCo is willing to provide Purchaser with such access under the terms and conditions set forth in this Agreement.

Agreement

1. Purchaser and its designated employees, contractors or agents shall be granted access to the Property under this Agreement only for the purpose of conducting the investigation described in the PSA (the "Work"). The persons or firms performing the Work will be subject to PSCo's reasonable approval, prior to any entry onto the Property. Further, Purchaser shall provide PSCo with written notice of its intention to enter the Property at least three (3) business days prior to entering.
2. Purchaser shall repair any damage done to the Property as a result of the Work and upon completion of the Work shall restore the Property to its condition as existed immediately prior to the entry by Purchaser.
3. This Agreement shall terminate upon the sooner of completion of the Work or termination of the PSA. Any provision of this Agreement shall survive termination if context so requires including without limitation the indemnities provided for in paragraph 4 hereof.
4. To the extent permitted by law and without waiving any rights under the Colorado Governmental Immunity Act, Purchaser shall defend, indemnify and hold PSCo harmless from and against any and all costs (including reasonable attorney fees, consultant and expert witness fees), damages, claims, actions, suits, judgments, fines, penalties or liabilities for personal injury, death, property damage, environmental contamination or natural resource damages arising or allegedly arising in any way as a result of the Work or presence on the Property of Purchaser or any of its agents, contractors, consultants or employees, provided, however, that such indemnity shall not extend to any such costs, damages, claims, actions, suits, fines, judgments, penalties or liabilities arising solely out of the discovery of any existing condition on the Property, except to the extent such condition is exacerbated by Purchaser, and provided further that Purchaser shall be responsible for the proper treatment and disposal of all samples taken with respect to the Property.

EXHIBIT A

PROPERTY ACCESS AGREEMENT

This Agreement is effective this 10th day of Sept., 2008 by and between the City of Golden, Colorado ("Purchaser") and Public Service Company of Colorado ("PSCo").

Recitals

A. Purchaser is conducting an investigation of a parcel of land located in the S1/2 SW1/4 of Section 35, Township 3 South, Range 70 West, 6th P.M. AND SE1/4 of Section 34, Township 3 South, Range 70 West, 6th P.M., Jefferson County, Colorado (the "Property") pursuant to (and as such Property is more particularly described in) a Purchase and Sale Agreement of even date hereof (the "PSA").

B. In connection with such activities, Purchaser has requested PSCo's permission for its authorized employees and representatives to enter the Property.

C. PSCo is willing to provide Purchaser with such access under the terms and conditions set forth in this Agreement.

Agreement

1. Purchaser and its designated employees, contractors or agents shall be granted access to the Property under this Agreement only for the purpose of conducting the investigation described in the PSA (the "Work"). The persons or firms performing the Work will be subject to PSCo's reasonable approval, prior to any entry onto the Property. Further, Purchaser shall provide PSCo with written notice of its intention to enter the Property at least three (3) business days prior to entering.

2. Purchaser shall repair any damage done to the Property as a result of the Work and upon completion of the Work shall restore the Property to its condition as existed immediately prior to the entry by Purchaser.

3. This Agreement shall terminate upon the sooner of completion of the Work or termination of the PSA. Any provision of this Agreement shall survive termination if context so requires including without limitation the indemnities provided for in paragraph 4 hereof.

4. To the extent permitted by law and without waiving any rights under the Colorado Governmental Immunity Act, Purchaser shall defend, indemnify and hold PSCo harmless from and against any and all costs (including reasonable attorney fees, consultant and expert witness fees), damages, claims, actions, suits, judgments, fines, penalties or liabilities for personal injury, death, property damage, environmental contamination or natural resource damages arising or allegedly arising in any way as a result of the Work or presence on the Property of Purchaser or any of its agents, contractors, consultants or employees, provided, however, that such indemnity shall not extend to any such costs, damages, claims, actions, suits, fines, judgments, penalties or liabilities arising solely out of the discovery of any existing condition on the Property, except to the extent such condition is exacerbated by Purchaser, and provided further that Purchaser shall be responsible for the proper treatment and disposal of all samples taken with respect to the Property.

5. Purchaser shall obey all PSCo written rules and regulations made known to it prior to its entry as well as reasonable oral instructions related to safety as such are made known to Purchaser during its presence on the Property.

6. At all times while on the Property, Purchaser shall be accompanied by a PSCo representative, unless otherwise authorized by PSCo in advance. Purchaser shall provide PSCo with a copy of any completed report or document describing the results or conclusions arising from the Work as soon as such report is completed. Upon issuance of any final reports, Purchaser shall deliver to PSCo all prior drafts and other documents generated pursuant to the Work within its possession or control. To the extent permitted by law, Purchaser agrees to maintain all information and documents (including final reports) generated as a result of the Work as strictly secret and confidential and will not disclose such information or documents to any third party without the express written consent of PSCo or as required by law, except to lenders, attorneys and consultants to the extent necessary to complete Purchaser's investigation and perform its obligations hereunder, and subject to such third party's agreement to maintain the information as confidential. Confidential information shall be disseminated within Purchaser's organization and within third party organizations on a "need to know" basis only. In the event that Purchaser does not acquire the Property for any reason, Purchaser will deliver to PSCo all copies of any reports, documents describing the results or conclusions arising from or related to the Work, and any and all other documents, writings or records discussing the Work and the results or conclusions. If any part of the confidential information is subpoenaed, or otherwise required or requested to be disclosed as provided by law or by court or regulatory order, Purchaser shall (a) resist or limit disclosure to the full extent allowed under applicable law; and (b) promptly notify Seller in writing, and cooperate in any efforts Seller makes to resist or limit disclosure or to obtain any appropriate protective orders or other relief. In the event litigation is commenced under Section 24-72-204(5), C.R.S., or otherwise demanding discharge of the confidential information, Purchaser and the Seller shall cooperate in the defense of the same.

7. Purchaser and any of its agents, contractors or consultants performing the Work shall take out and maintain, at their own expense, at least the following insurance:

<u>Insurance</u>	<u>Amounts</u>
a. Workers Compensation	Statutory.
b. Comprehensive General Liability	\$1,000,000 each occurrence. \$2,000,000 aggregate.
c. Automotive liability	\$1,000,000 each occurrence. \$2,000,000 aggregate.

8. Purchaser shall be solely responsible for ensuring that all of its agents, contractor, consultants, and employees comply with the requirements of this Agreement.

9. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Colorado.

10. This Agreement and the PSA set forth the entire agreement and understanding of the parties with respect to the transactions contemplated hereby and supersedes all prior agreements, arrangements and understandings relating to the subject matter hereof.

11. This Agreement shall bind upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

12. This Agreement may be amended, modified, superseded or canceled, and any of the terms or covenants hereof may be waived, only by written instrument executed by the parties hereto or, in the case of waiver, by the party waiving compliance.

13. The failure of PSCo at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by PSCo of the breach of any terms or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be construed as further or continuing waiver of any such breach or a breach of any other term or covenant of this Agreement.

IN WITNESS WHEREOF, the parties hereto, intending to be bound hereby, have caused this Agreement to be executed by their officers, duly authorized, as of the day and year first above written.

**PUBLIC SERVICE COMPANY OF COLORADO,
A COLORADO CORPORATION**

By: *Riley Hill*
Its: Regional V.P. Customer and Community Services

THE CITY OF GOLDEN, COLORADO

By: *Janis Smith*
Its: Mayor

5. Purchaser shall obey all PSCo written rules and regulations made known to it prior to its entry as well as reasonable oral instructions related to safety as such are made known to Purchaser during its presence on the Property.

6. At all times while on the Property, Purchaser shall be accompanied by a PSCo representative, unless otherwise authorized by PSCo in advance. Purchaser shall provide PSCo with a copy of any completed report or document describing the results or conclusions arising from the Work as soon as such report is completed. Upon issuance of any final reports, Purchaser shall deliver to PSCo all prior drafts and other documents generated pursuant to the Work within its possession or control. To the extent permitted by law, Purchaser agrees to maintain all information and documents (including final reports) generated as a result of the Work as strictly secret and confidential and will not disclose such information or documents to any third party without the express written consent of PSCo or as required by law, except to lenders, attorneys and consultants to the extent necessary to complete Purchaser's investigation and perform its obligations hereunder, and subject to such third party's agreement to maintain the information as confidential. Confidential information shall be disseminated within Purchaser's organization and within third party organizations on a "need to know" basis only. In the event that Purchaser does not acquire the Property for any reason, Purchaser will deliver to PSCo all copies of any reports, documents describing the results or conclusions arising from or related to the Work, and any and all other documents, writings or records discussing the Work and the results or conclusions. If any part of the confidential information is subpoenaed, or otherwise required or requested to be disclosed as provided by law or by court or regulatory order, Purchaser shall (a) resist or limit disclosure to the full extent allowed under applicable law; and (b) promptly notify Seller in writing, and cooperate in any efforts Seller makes to resist or limit disclosure or to obtain any appropriate protective orders or other relief. In the event litigation is commenced under Section 24-72-204(5), C.R.S., or otherwise demanding discharge of the confidential information, Purchaser and the Seller shall cooperate in the defense of the same.

7. Purchaser and any of its agents, contractors or consultants performing the Work shall take out and maintain, at their own expense, at least the following insurance:

<u>Insurance</u>	<u>Amounts</u>
a. Workers Compensation	Statutory.
b. Comprehensive General Liability	\$1,000,000 each occurrence. \$2,000,000 aggregate.
c. Automotive liability	\$1,000,000 each occurrence. \$2,000,000 aggregate.

8. Purchaser shall be solely responsible for ensuring that all of its agents, contractor, consultants, and employees comply with the requirements of this Agreement.

9. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Colorado.

EXHIBIT B

When recorded, mail to:

The City of Golden
1445 – 10th Street
Golden, Colorado 80401

Attention: Steve Glueck

This Space Reserved For Recording Information

SPECIAL WARRANTY DEED

Public Service Company of Colorado, a Colorado corporation (“Grantor”), of the City and County of Denver, State of Colorado, for the consideration of ten dollars and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, hereby sells and conveys to the City of Golden, a Colorado Municipal Corporation, with an address of 1445 – 10th Street, Golden, Colorado, 80401, the property located in the City of Golden, County of Jefferson, Colorado, and described on Exhibit 1, with all appurtenances thereto (the “Property”), but excepting and reserving unto Grantor, the easements, rights and interests described on Exhibit 2 in the Property, except that portion of the Property described on Exhibit 3.

Grantor warrants title against all persons claiming under Grantor, excepting taxes and assessments for the year 2008 and thereafter, a lien not yet due and payable, and easements, reservations, restrictions, covenants encumbrances, and other matters shown on Exhibit 4.

Exhibits 1, 2, 3, and 4 are attached hereto and are hereby incorporated into this Special Warranty Deed.

Dated this _____ day of _____, 2008.

**PUBLIC SERVICE COMPANY OF
COLORADO,**
A Colorado corporation

By: _____
Its: _____

STATE OF _____ §
§ ss:
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this _____ day of _____ 2008,
by _____ as _____ Public Service Company of
Colorado, a Colorado corporation.

Witness my hand and official seal.

Notary Public _____

My Commission expires _____

EXHIBIT 1
(Deed)
(LEGAL DESCRIPTION OF THE PROPERTY)

PARCEL 8:

A right of way fifty feet in width, being twenty-five feet in width on each side of the center line of the survey of the Denver and Intermountain Railroad on and across a portion of the South ½ of the Southwest ¼ of Section 35, Township 3 South, Range 70 West of the Sixth Principal Meridian; more particularly described as follows, to-wit:

Commencing at a point on the West line of said Section 35, 1210.21 feet North of the Southwest corner of said Section;
Thence North along the West line of said Section 35, 59.58 feet to a point, said point being 25 feet (when measured at right angles) from the center of the survey of the Denver and Intermountain Railroad;
Thence South 57°03' East being parallel to and 25 feet distant from said center line a distance of 320 feet more or less, to a point;
Thence South 49°54' East a distance of 402 feet, more or less, to a point, said point being 25 feet (when measured at right angles) from the center line of said survey above mentioned;
Thence North 57°03' West, being parallel to and 25 feet distant from the center line of said survey, to the place of beginning,
County of Jefferson,
State of Colorado.

PARCEL 9:

A right of way 50 feet in width being 25 feet in width on each side of the center line of the survey of the Denver and Intermountain Railroad over and across the Southeast ¼ of Section 34, Township 3 South, Range 70 West, said center line is more particularly described as follows, to-wit:

Commencing at a point on the East line of said Section 34, 1240 feet North of the Southeast corner thereof;
Thence North 57°03' West a distance of 1400 feet, more or less, to a point of curve to the left, said curve having a radius of 955.35 feet;
Thence following said curve to the left a distance of 385 feet to a point of tangent;
Thence North 80°09' West a distance of 318.2 feet to a point of curve to the right, said curve having a radius of 955.36 feet;
Thence following said last mentioned curve to the right a distance of 755 feet to a point of tangent;
Thence North 34°55' West a distance of 100 feet, more or less, to the North line of the Southeast ¼ of said Section 34 and at a point in the center of Jackson Street, City of Golden,
County of Jefferson,
State of Colorado.

EXHIBIT 2
RESERVED EASEMENTS

Reserving unto the Grantor ("PSCo") the following rights, interests and easements:

A perpetual non-exclusive easement for the transmission and distribution of electricity and communication signals, and for the installation and maintenance of utility facilities, both overhead and underground, including poles and other supports of whatever materials; together with braces, guys, anchors, cross-arms, cables, conduits, wires, conductors, manholes, transformers, and other fixtures, devices, and appurtenances used or useful in connection therewith (collectively the "Facilities") on, over, under, and across the Property, except that portion described on Exhibit 3 (the "Easement Premises").

Together with the right and authority in PSCo, its successors, licensees, lessees, contractors, or assigns, and its and their agents and employees to (1) enter at all times upon said Easement Premises to survey, mark and sign the Easement Premises or the Facilities, construct, install, operate, repair, remove, replace, reconstruct, alter, relocate, patrol, inspect, improve, enlarge, remove, and maintain the Facilities; (2) have full right and authority to cut, remove, trim, or otherwise control (including without limitation by applying herbicides in accordance with applicable laws, rules and regulations), all trees, brush, and other growth which might interfere with or endanger the Facilities; (3) permit the joint use by others of rights of way and conduit for similar purposes and for such other uses as may be required by law; and (4) have reasonable access to, and ingress and egress for personnel, equipment and vehicles over and across said Easement Premises.

No buildings, structures, signs, wells or other objects may be erected, placed, or permitted to remain on, under, or over the Easement Premises by Grantee (the "City") including trees, shrubs and fences, that will or may be an interference with the exercise of any of the rights herein granted. The City agrees it will not perform any act on or adjacent to the Easement Premises which will interfere with or endanger the Facilities. Non-use or a limited use of this easement shall not prevent PSCo from thereafter making use of this easement to the full extent herein authorized. It is understood and agreed that if Grantee requests the relocation of the Easement Premises or any of the Facilities, such relocation shall be at the expense of Grantee.

PSCo also reserves all right, title and interest to the Facilities and any fixtures, equipment, or other property used or useful in connection with the Facilities, which may now or hereafter be located on the Property.

The provisions of the foregoing reservations, interests, rights and easement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, personal representatives, successors, and assigns of PSCo and the City, and shall be a burden and binding on and run with the Property.

EXHIBIT 3
EXCEPTION TO EASEMENT PREMISES

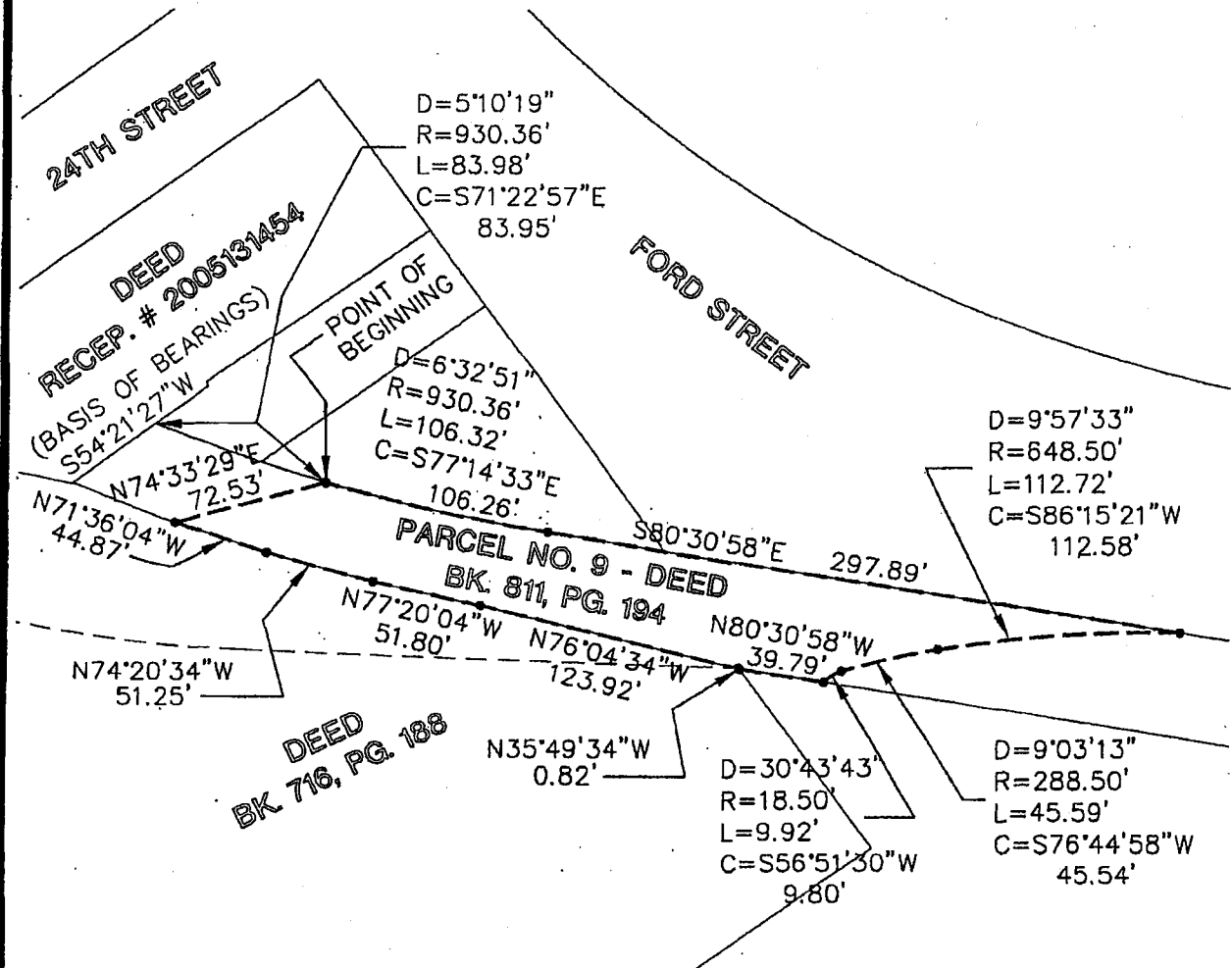
The following described portions of the Property conveyed to Grantee by this Special Warranty Deed are public street rights-of-way and are excepted from the easements reserved by Grantor in Exhibit 2:

1. That portion of the conveyed Property depicted and described by metes and bounds in the attached Exhibit 3A; and
2. The portion of the conveyed Property that is Northwest of the Southeast right-of-way line of 24th Street, and which is also located within Jackson Street or 24th Street, as currently located.

EXHIBIT

STREET RIGHT-OF-WAY

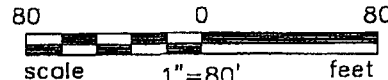
SE 1/4, SECTION 34, T. 3 S., R. 70 W. OF THE 6TH P.M., CITY OF GOLDEN, JEFFERSON COUNTY, COLORADO,



TST INC. OF DENVER
Consulting Engineers



Michael C. Cregger
8/21/08



SHEET 1 OF 2

EXHIBIT

STREET RIGHT-OF-WAY

SE 1/4, SECTION 34, T. 3 S., R. 70 W. OF THE 6TH P.M., CITY OF GOLDEN, JEFFERSON COUNTY, COLORADO,

LEGAL DESCRIPTION

A PORTION OF PARCEL NO. 9, DESCRIBED IN THAT DEED RECORDED IN BOOK 811 AT PAGE 194, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF GOLDEN, JEFFERSON COUNTY, COLORADO, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EAST LINE OF SAID PARCEL NO. 9, AND THE SOUTH LINE OF PARCEL B, DESCRIBED IN THAT DEED RECORDED AT RECEPTION NO. 2005131454, AND CONSIDERING SAID SOUTH LINE TO BEAR SOUTH 54°21'27"WEST, WITH ALL BEARINGS CONTAINED HEREIN, RELATIVE THERETO; THENCE ALONG SAID EAST LINE OF PARCEL NO. 9, ALONG A NON-TANGENT CURVE TO THE LEFT, HAVING A DELTA OF 5°10'19", A RADIUS OF 930.36 FEET, AN ARC OF 83.98 FEET, AND A CHORD WHICH BEARS SOUTH 71°22'57"EAST, 83.95 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING ALONG SAID EAST LINE OF PARCEL NO. 9 THE FOLLOWING TWO COURSES: (1) ALONG A CURVE TO THE LEFT, HAVING A DELTA OF 6°32'51", A RADIUS OF 930.36 FEET, AN ARC OF 106.32 FEET, AND A CHORD WHICH BEARS SOUTH 77°14'33"EAST, 106.26 FEET; (2) THENCE SOUTH 80°30'58"EAST, 297.89 FEET; THENCE DEPARTING SAID EAST LINE, ALONG A NON-TANGENT CURVE TO THE LEFT, HAVING A DELTA OF 9°57'33", A RADIUS OF 648.50 FEET, AN ARC OF 112.72 FEET, AND A CHORD WHICH BEARS SOUTH 86°15'21"WEST, 112.58 FEET; THENCE ALONG A CURVE TO THE LEFT, HAVING A DELTA OF 9°03'13", A RADIUS OF 288.50 FEET, AN ARC OF 45.59 FEET, AND A CHORD WHICH BEARS SOUTH 76°44'58"WEST, 45.54 FEET; THENCE ALONG A CURVE TO THE LEFT, HAVING A DELTA OF 30°43'43", A RADIUS OF 18.50 FEET, AN ARC OF 9.92 FEET, AND A CHORD WHICH BEARS SOUTH 56°51'30"WEST, 9.80 FEET TO THE WEST LINE OF SAID PARCEL NO. 9; THENCE ALONG SAID WEST LINE OF PARCEL NO. 9, NORTH 80°30'58"WEST, 39.79 FEET TO THE EAST LINE OF THAT PARCEL DESCRIBED IN THAT DEED RECORDED IN BOOK 716 AT PAGE 188; THENCE ALONG SAID EAST LINE THE FOLLOWING FIVE COURSES: (1) NORTH 35°49'34"WEST, 0.82 FEET; (2) THENCE NORTH 76°04'34"WEST, 123.92 FEET; (3) THENCE NORTH 77°20'04"WEST, 51.80 FEET; (4) THENCE NORTH 74°20'34"WEST, 51.25 FEET; (5) THENCE NORTH 71°36'04"WEST, 44.87 FEET; THENCE DEPARTING SAID EAST LINE, NORTH 74°33'29"EAST, 72.53 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION, CONTAINING 15,093 SQUARE FEET (0.35 ACRES), MORE OR LESS.

SURVEYOR'S CERTIFICATE

I, MICHAEL C. CREGGER, DO HEREBY CERTIFY THAT THIS EXHIBIT AND LEGAL DESCRIPTION WERE PREPARED BY ME OR UNDER MY DIRECT SUPERVISION.

8/21/2008
DATE

Michael C. Cregger
PROFESSIONAL LAND SURVEYOR
COLORADO REGISTRATION NO. 22564



TST INC. OF DENVER
Consulting Engineers

EXHIBIT 4
EXCEPTIONS TO SPECIAL WARRANTY OF TITLE

(To be inserted prior to Closing in accordance with Article 5)

Stewart Title of Colorado - Denver Division

50 S. Steele Street, Suite 600

Denver, CO 80209

Phone: (303) 331-0333 Fax: (303) 331-9867

Date: February 24, 2009
Order Number: 90187124 LR
Buyer/Borrower: City of Golden, a municipal corporation organized and existing under and by virtue of the laws of the State of Colorado
Seller: Public Service Company of Colorado, a Colorado corporation
Property: Parcels 8 & 9, Sections 34 and 35, Township 3 South, Range 70 West

City of Golden
1445 10th Street
Golden, CO
Attn: Steve Glueck

BUYER/OWNER:

Attn: Steve Glueck
1445 10th Street
Golden, Colorado 80401

ATTACHED PLEASE FIND THE FOLLOWING:

Title Policy

WHEN MAKING INQUIRIES, PLEASE CONTACT:

POST CLOSINGS DEPARTMENT

PHONE: (303) 331-0333

FAX: (303) 331-0220

REFERENCE OUR ORDER NO.: 90187124 LR

We Appreciate Your Business And Look Forward to Serving You in the Future.

POLICY OF TITLE INSURANCE ISSUED BY



Any notice of claim and any other notice or statement in writing required to be given the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, STEWART TITLE GUARANTY COMPANY, a Texas corporation, (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the insured be reason of:

- 1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
(a) A defect in the Title caused by
(i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
(ii) failure of any person or Entity to have authorized a transfer or conveyance;
(iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
(iv) failure to perform those acts necessary to create a document by electronic means authorized by law
(v) a document executed under a falsified, expired, or otherwise invalid power of attorney
(vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
(vii) a defective judicial or administrative proceeding.
(b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
(c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
(a) the occupancy, use, or enjoyment of the Land;
(b) the character, dimensions, or location of any improvement erected on the Land;
(c) the subdivision of land; or
(d) environmental protection
if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.

Countersigned:

Authorized Countersignature (handwritten signature)

Stewart Title of Colorado - Denver Division
50 S. Steele Street, Suite 600
Denver, Colorado 80209
Agent ID: 060056
Phone No.: (303) 331-0333



Senior Chairman of the Board (handwritten signature)

Chairman of the Board (handwritten signature)

President (handwritten signature)

Page 1 of Policy Serial No. O-9301-1140140 ALTA OWNER'S POLICY 6-17-06

If you want information about coverage or need assistance to resolve complaints, please call our toll free number: 1-800-729-1902. If you make a claim under your policy, you must furnish written notice in accordance with Section 3 of the Conditions. Visit our Word-Wide Web site at http://www.stewart.com

Name and Address of Title Insurance Company:

Stewart Title Guaranty Company
P.O. Box 2029
Houston, Texas 77252-2029

ALTA OWNER'S POLICY (6/17/06)

SCHEDULE A

Order Number: 90187124 LR

Policy Number: O-9301-1140140

Date of Policy: January 20, 2009, at 4:30 p.m.

Amount of Insurance: \$15,000.00

Premium: \$635.00

1. Name of Insured:

City of Golden,
a municipal corporation organized and existing under and by virtue
of the laws of the State of Colorado

2. The estate or interest in the land which is covered by this Policy is:

Fee Simple

3. Title to the estate or interest in the land is vested in:

City of Golden, a municipal corporation organized
and existing under and by virtue of the laws of the State of Colorado

4. The land referred to in this policy is described as follows:

See Attached Legal Description

EXHIBIT "A"

PARCEL 8:

A right of way fifty feet in width, being twenty-five feet in width on each side of the center line of the survey of the Denver and Intermountain Railroad on and across a portion of the South $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of Section 35, Township 3 South, Range 70 West of the Sixth Principal Meridian; more particularly described as follows, to-wit:

Commencing at a point on the West line of said Section 35, 1210.21 feet North of the Southwest corner of said Section;

Thence North along the West line of said Section 35, 59.58 feet to a point, said point being 25 feet (when measured at right angles) from the center of the survey of the Denver and Intermountain Railroad;

Thence South $57^{\circ}03'$ East being parallel to and 25 feet distant from said center line a distance of 320 feet more or less, to a point;

Thence South $49^{\circ}54'$ East a distance of 402 feet, more or less, to a point, said point being 25 feet (when measured at right angles) from the center line of said survey above mentioned;

Thence North $57^{\circ}03'$ West, being parallel to and 25 feet distant from the center line of said survey, to the place of beginning,

County of Jefferson,
State of Colorado.

PARCEL 9:

A right of way 50 feet in width being 25 feet in width on each side of the center line of the survey of the Denver and Intermountain Railroad over and across the Southeast $\frac{1}{4}$ of Section 34, Township 3 South, Range 70 West, said center line is more particularly described as follows, to-wit:

Commencing at a point on the East line of said Section 34, 1240 feet North of the Southeast corner thereof;

Thence North $57^{\circ}03'$ West a distance of 1400 feet, more or less, to a point of curve to the left, said curve having a radius of 955.36 feet;

Thence following said curve to the left a distance of 385 feet to a point of tangent;

Thence North $80^{\circ}09'$ West a distance of 318.2 feet to a point of curve to the right, said curve having a radius of 955.36 feet;

Thence following said last mentioned curve to the right a distance of 755 feet to a point of tangent;

Thence North $34^{\circ}55'$ West a distance of 100 feet, more or less, to the North line of the Southeast $\frac{1}{4}$ of said Section 34 and at a point in the center of Jackson Street, City of Golden,

County of Jefferson,
State of Colorado.

*Address Reference:

Parcel 8 & 9 Sections 34 & 35
Golden, Colorado

SCHEDULE B
PART I
Exceptions From Coverage

Order Number: 90187124 LR

Policy Number: O-9301-1140140

This policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees or expenses) which arise by reason of:

1. Rights or claims of parties in possession, not shown by the public records.
2. Easements, or claims of easements, not shown by the public records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the Land and not shown by the public records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Unpatented mining claims, reservations or exceptions in patents, or in acts authorizing the issuance thereof.
6. Water rights, claims or title to water.
7. Taxes for the year 2009, and subsequent years; special assessments or charges not certified to the County Treasurer.
8. Existing leases and tenancies.
9. Terms, conditions, provisions, obligations and easements, as contained in Deed, recorded February 15, 1957, in Book 1043, at Page 535.
10. An easement granted to City of Golden by an instrument recorded June 29, 1988 at Reception Number 88063298.

ENDORSEMENT
ATTACHED TO AND MADE A PART OF POLICY OF TITLE INSURANCE
SERIAL NUMBER O-9301-1140140
STEWART TITLE
GUARANTY COMPANY
HEREIN CALLED THE COMPANY

Order Number: 90187124 LR


Charge: \$50.00

The Policy is hereby amended by deleting Exceptions 1 and 4, inclusive, of Schedule B.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Signed under seal for the Company, but this endorsement is to be valid only when it bears an authorized countersignature.

S T E W A R T T I T L E
GUARANTY COMPANY


Chairman of the Board




President

Countersigned:


Authorized Countersignature

Stewart Title of Colorado - Denver Division (303) 331-0333
50 S. Steele Street, Suite 600
Denver, CO 80209
Agent ID: 060056

Serial No. E-9851-5345911

COVERED RISKS (Continued)

9. Title being vested other than as stated in Schedule A or being defective
- (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
- (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.
- The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured": The Insured named in Schedule A.
 - (i) The term "Insured" also includes
 - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
 - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (C) successors to an Insured by its conversion to another kind of Entity;
 - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured,
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
 - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
 - (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (e) "Insured Claimant": An Insured claiming loss or damage.
- (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- (h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
- (j) "Title": The estate or interest described in Schedule A.
- (k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

CONDITIONS (Continued)

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

- (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's

expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

- (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Insurance. To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay. Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.
- (b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.
 - (i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or
 - (ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

CONDITIONS (Continued)

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of
 - (i) the Amount of Insurance; or
 - (ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,
 - (i) the Amount of Insurance shall be increased by 10%, and
 - (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
- (c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

- (a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.
- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

- (a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

- (b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.
- (c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.
- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

- (a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefore in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located. Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.
- (c) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at Claims Department at P.O. Box 2029, Houston, TX 77252-2029.