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| <p>DISTRICT COURT, LARIMER COUNTY, COLORADO<br/>Larimer County Justice Center<br/>201 La Porte Avenue, Suite 100<br/>Fort Collins, CO 80521-2761<br/><u>(970) 498-6100</u></p> |  |
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**Plaintiff: THE CITY OF LOVELAND, a Colorado  
Municipal Corporation,**

**v.**

**Defendants: ROGER GOMEZ; JPMORGAN CHASE  
BANK, N.A.; and FIRST NATIONAL BANK OF  
OMAHA.**

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| <p>Attorneys for Defendant City of Loveland, a<br/>Municipal Corporation:<br/>Alicia R. Calderón, #32296<br/>Assistant City Attorney<br/>Vincent Junglas, #43697<br/>Assistant City Attorney<br/>Loveland City Attorney's Office<br/>500 E. Third Street, Suite 330<br/>Loveland, CO 80537<br/>(970) 962-2544<br/><a href="mailto:Alicia.Calderon@cityofloveland.org">Alicia.Calderon@cityofloveland.org</a><br/><a href="mailto:Vincent.Junglas@cityofloveland.org">Vincent.Junglas@cityofloveland.org</a></p> | <p>Case Number:<br/><br/>Courtroom:</p> |
|---|---|

**COMPLAINT TO QUIET TITLE AND FOR  
DECLARATORY JUDGMENT**

COMES NOW the Plaintiff, the City of Loveland [“the City”], by and through undersigned counsel, and pursuant to C.R.C.P. 105 and C.R.C.P. 57(a), brings this action to quiet title and for declaratory judgment for a utility easement as described herein.

In support hereof, the City states, alleges and avers as follows:

**I. PARTIES, VENUE, AND JURISDICTION**

1. The City is a home rule municipal corporation with a legal address of 500 E. Third Street, Loveland, Larimer County, Colorado.

2. On information and belief, Defendant Roger Gomez owns the real property previously under the address of 3508 W. Eisenhower Boulevard, which after a subdivision of the property into two lots with Larimer County, is now under the address of 3510 W. Eisenhower Boulevard.
3. On information and belief, Defendant JPMorgan Chase Bank, N.A., holds a lien on the property and has an interest in this property.
4. On information and belief, Defendant First National Bank of Omaha, holds a lien on the property and has an interest in this property.
5. Venue and jurisdiction in this court are proper pursuant to C.R.C.P. 98(a) and C.R.C.P. 105, as the property at issue is located in Larimer County, Colorado.

## **II. GENERAL ALLEGATIONS**

6. The City hereby incorporates paragraphs 1 through 5 as if fully set forth herein.
7. The easement located within 3510 W. Eisenhower Boulevard (hereafter "Utility Easement") lies along what formerly was known as the Colorado and Southern Railway Company's ("the Railroad") "Arkins branch". In 2016, Plaintiff subdivided his property to create two lots: 3508 W. Eisenhower and 3510 W. Eisenhower. The easement is located on the lot that is now 3510 W. Eisenhower.
8. The City owns a utility easement along the southern portion of the property at 3510 W. Eisenhower Boulevard, which is the subject matter of the action. The legal description for the easement is as follows:

A parcel of land located in the Northwest Quarter (NW 1/4) of Section Sixteen (16), Township Five North (T. 5 N.), Range Sixty-nine West (R. 69 W.) of the Sixth Principal Meridian, Larimer County, Colorado, more particularly described as follows:

Commencing at the northeast corner of the Northwest Quarter (NW 1/4) of said Section Sixteen (16); thence West along the north line of said Section Sixteen (16) a distance of 250 feet; thence South 540.82 feet to a point on the northerly right of way line of The Colorado and Southern Railway Company which is the true point of beginning; thence South 81° 50' West 175.78 feet along said northerly right of way line; thence South 8° 10' East 100 feet to a point on the southerly right of way line of said railroad; thence North 81° 50' East 175.78 feet along said southerly right of way line to a point; thence North 8° 10' West 100 feet to the true point of beginning; containing 17,578 square feet more or less.

9. In May of 1936 the City entered into an agreement with the Railroad to use the subject property for the construction, placement, and utilization of an underground twelve (12) inch standard cast iron pipe for municipal water distribution. The Railroad authorized the City to construct, maintain, use, or operate the twelve inch pipe.
10. The waterline was installed within the aforementioned year. Pursuant to the agreement the City paid a yearly license fee of twelve dollars until, at some unknown date, the Railroad and the City agreed the license fee did not need to be paid any longer. *See 1936 Rail Road Agreement, Exhibit 1.*
11. October 15, 1954, the City of Loveland entered into an agreement and contract with the Railroad, to use the subject property for the placement and utilization of an underground thirty-four (34) inch steel pipe line for municipal water distribution. The waterline was installed within the following year. Pursuant to the agreement the City paid a yearly license fee until the City and the Railroad agreed at some unknown date that the City no longer needed to pay the license fee. *See 1954 Rail Road Agreement, Exhibit 2.*
12. In, on, or about 1970-1971, the City of Loveland installed an overhead single power transmission line upon the subject property which was converted in the mid-1980's, to a double power transmission line. While the City owns the line, the Platte River Power Authority is contractually obligated to maintain the line.
13. The subject parcel of property was sold by the Railroad in 1971 to private owners, John and Peggy Miller. The Railroad executed a Quitclaim deed with the Millers September 15, 1971. *See Quitclaim Deed, Exhibit 3.* Since that time, the property has been transferred several times, and in 2013 Roger Gomez received title.
14. In 1981, the City records indicate the residential property received service off the 12 inch water main. In 1999, the owner had a leak on the owner's side of the meter and worked with the City to determine the location of the leak. It was found to be between the house and the shop and other out buildings.
15. On February 28, 2011 a water service issue was reported to the City at 3508 W. Eisenhower Boulevard. City staff went out to repair the water main and repair the service line to the residence. The customer was not getting any volume or pressure and had a new service line tapped in up to the house from the water line in the easement at issue.
16. The power lines have had maintenance performed periodically, including tree trimming and other maintenance of the power line, which is known as the West Tap Line. In 2008 and 2010 Platte River Power Authority had tree trimming performed on the line, and the line itself had maintenance in 2010 and 2015. These transmission power lines are clearly visible.
17. Any reasonable person would have notice as to the power lines and water lines. The power

lines are obvious to anyone standing on the property, and the water lines have a small marker in the ground for a valve attached to the water mains which can be used to drain or flush the water pipes.

18. Roger Gomez is not an heir, successor, personal representative, or assignee of the Railroad.
19. Upon information and belief, JPMorgan Chase Bank, N.A. and First National Bank of Omaha are the lienholders on the property who may have an interest in the subject matter of this action.

### **III. FIRST CLAIM FOR RELIEF (Declaratory Judgment)**

20. The City hereby incorporates paragraphs 1 through 19 as if fully set forth herein.
21. The City has consistently utilized the 1936 and 1954 water lines that have been in existence continually for 80 years and 62 years respectively. The City has acquired a prescriptive easement pursuant to C.R.S. §38-41-101, et seq. and acquiescence from prior owners of the subject property. *See Enke v. City of Greeley, 504 P.2d 1112 (Colo. App. 1972).*
22. Under the Uniform Declaratory Judgment Act, C.R.S. §13-51-101, et seq., and C.R.C.P. 57, this Court has jurisdiction to resolve uncertainty and debate regarding the conditions applying to the City's use and ownership of the subject property. The Court may determine and declare the relative rights, duties and obligations under the agreement and deed to terminate the uncertainty and any possible controversy giving rise to this proceeding.
23. Upon information and belief, all persons or entities known to the City who might have a claim or any interest which would be affected by the requested declaration of rights have been named as parties to this proceeding. The Railroad Company sold the real property and did not transfer any license for the water and power lines running through the property. The license granted by the Railroad did not and was not transferred to any subsequent real property owner of the parcel.

### **IV. SECOND CLAIM FOR RELIEF (Quiet Title)**

24. The City incorporates paragraphs 1 through 23 as if set forth fully herein.
25. The City holds a prescriptive easement for water and power lines running at the property at the current address of 3510 W. Eisenhower Boulevard in Loveland, Colorado.
26. An easement by prescription is acquired when the use is open or notorious, continuous

without effective interruption for an eighteen-year period, and either adverse or pursuant to an attempted but ineffective grant. C.R. S. § 38-41-101 *et. seq.*; *Weisiger v. Harbour*, 62 P.3d 1069, 1071 (Colo.App.2002), cited in *Clinger v Hartshorn*, 89 P.3d 462 (Colo. App. 2003).

27. The City has maintained water pipes within an easement located at the southern portion of the property of 3510 W. Eisenhower since 1936 for a twelve inch pipe and since 1954 for a thirty-four inch pipe. The City has maintained a transmission electrical power line above the water lines since 1971. These water and power lines have been in place continuously without effective interruption for 80 years, 62 years, and 45 years respectively.
28. Since 1971, private owners have held the parcel of land without any recorded easement, making this easement adverse. The Railroad license terminated upon sale of the land to private ownership, and the City has not paid any license fees to any landowner since the property transferred to private ownership.
29. In the alternative, the City holds an implied easement by estoppel for water and power lines on the property holding an address of 3510 W. Eisenhower Boulevard in Loveland, Colorado.
30. An easement is implied by estoppel when 1) the owner of the servient estate “permitted another to use that land under circumstances in which it was reasonable to foresee that the user would substantially change position believing that the permission would not be revoked,” 2) the user substantially changed position in reasonable reliance on that belief, and 3) injustice can be avoided only by establishment of a servitude. *Lobato v Taylor*, 71 P.3d 938, 950-951 (Colo. 2002).
31. The owner of the servient estate permitted use of the land under circumstances where it was reasonable to foresee that the user would substantially change position believing that the permission would not be revoked. The Railroad permitted the City to install water pipelines and electric transmission lines on the property. All subsequent owners of the property have acquiesced to the existence of the water and power lines or been aware of their existence.
32. Since the 1980s, private owners of the real property at 3508 W. Eisenhower (previously all one lot) have benefitted from the water lines. Building(s) have been connected to the City water pipes in the easement for their water service.
33. The City substantially changed its position in reasonable reliance on the belief that the water and power lines would remain and that an easement exists for these utilities. They are part of the municipal utility infrastructure. Injustice can only be avoided by establishment of a servitude.
34. The City should be declared to have a utility easement for water and power lines that may

be recorded.

**V. PRAYER FOR RELIEF**

WHEREFORE, the City prays for an order making findings that the City has acquired a prescriptive easement or implied easement by estoppel in the subject property.

The City further prays for declaratory and equitable relief under C.R.C.P. 57 and C.R.C.P. 105 as follows:

- a) That the City is owner of an exclusive utility easement in, over, across, and within the subject property located at 3510 W. Eisenhower Boulevard for above and below ground wires, lines, pipes, poles or other equipment, appurtenances, and structures associated with electric and water systems owned and operated by the City.
- b) That Defendant be barred from interfering with, tampering, or encroaching upon any portion of the easement, and that Defendants have no interest or claim that will impinge, encroach or otherwise harm or injure the utility easement.
- c) That the City is entitled to all costs incurred in obtaining the relief sought herein, to the extent that any defendants do not file a disclaimer and contest the City's claims made in this action;
- d) And for such other relief as the Court may deem proper.

Plaintiff does not demand a jury trial

Dated this 27<sup>th</sup> day of July, 2016

The original pleading signed by Alicia Calderón and Vincent Junglas is on file at the Loveland City Attorney's Office.

By: /s/ Alicia Calderón  
Alicia Calderón, #32296  
Assistant City Attorney

By: /s/ Vincent Junglas  
Vincent Junglas, #43697  
Assistant City Attorney

Attorneys for Plaintiff

Loveland City Attorney's Office  
500 East Third Street, Suite 330  
Loveland, CO 80537  
(970) 962-2540  
[Alicia.Calderon@cityofloveland.org](mailto:Alicia.Calderon@cityofloveland.org)  
[Vincent.Junglas@cityofloveland.org](mailto:Vincent.Junglas@cityofloveland.org)

**Plaintiff's Address:**

City of Loveland  
500 East Third Street  
Loveland, CO 80537

This Agreement, Made and entered into this

First

day of

May

, 1936, by and between THE COLORADO AND SOUTHERN RAILWAY COMPANY, a corporation, hereinafter called the "Railway Company," party of the first part, and The City of Loveland a municipal corporation of the State of Colorado

hereinafter called the "Licensee," party of the second part,

WITNESSETH:

WHEREAS, It is the desire of the parties hereto to enter into an agreement providing for the construction, maintenance, use and operation of a pipe hereinafter referred to as the conduit, to be used for water purposes, extending under the tracks and across the right-of-way of the Railway Company, Beginning on the northerly right-of-way line of the Railway Company's Arkins branch at a point opposite M.P.63.78, at which point the said 12" cast iron water main enters onto the said Railway Company's right-of-way, thence in an easterly direction on said right-of-way and north of the track to a point on the said northerly right-of-way line opposite M.P.63.44. Also, beginning at a point on the said northerly right-of-way line opposite M.P.63.27, thence in a southeasterly direction on said right-of-way and northeasterly of the track to M.P.62.34 at which point said water main crosses under the said Arkins branch thence continuing southeast to a point on the southerly right-of-way line opposite M.P. 62.32. said location thereof being shown by the red line or lines on the blueprint map attached hereto and made a part hereof.

IT IS THEREFORE AGREED BY AND BETWEEN THE PARTIES hereto, as follows:

1. The Railway Company does hereby authorize the Licensee to forthwith construct, and during the term hereof to maintain and use or operate, the said conduit, in the location hereinbefore described, which license is made expressly subject to the observance and performance by the Licensee of all and singular the conditions, covenants and agreements hereinafter set forth, to be by the Licensee kept, observed and performed, it being hereby stipulated that a waiver at any time by the Railway Company of any breach of any of such conditions, covenants or agreements shall in no way impair its right to avail itself of any subsequent breach thereof.
2. The Licensee shall pay to the Railway Company, as rental or compensation for the license and privileges herein specified, the sum of twelve (\$12.00) dollars per annum payable on the first day of May each year in advance
3. The said conduit, where it crosses, as above described, the right-of-way of the Railway Company, shall consist of twelve (12) inch standard cast iron pipe so located as to be without interference with existing drains or openings nor in slopes of embankment and where crossing under track to be laid not less than four (4) feet below bottom of ties, and to be laid on road bed thru rock cut only.

EXHIBIT

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4. The Licensee shall bear the entire cost and expense of the construction, maintenance, repair or renewal of said conduit, including any and all expense which may be incurred by the Railway Company in connection therewith for supervision, inspection or otherwise. All the work connected with the construction, maintenance, repair or renewal of said conduit within the above described limits shall be done under the direction and to the satisfaction of the Chief Engineer of the Railway Company.

5. The Railway Company, notwithstanding the aforesaid license, shall have the right to retain its track or tracks at or in the vicinity of said conduit in its or their present location, and nothing shall be done or suffered to be done by the Licensee, at any time, that shall in any manner impair the usefulness or safety of such track or tracks or any other tracks that the Railway Company may hereinafter construct in that vicinity. The Railway Company expressly reserves and shall have the right at any and all times to make such changes in its existing track or tracks, or in the present standard thereof, and to construct, maintain and operate such additional track or tracks or structures where said conduit is constructed, and across the same, as from time to time it may elect. The Licensee, in such event, shall bear the expense of moving, removing or making such modifications in said conduit as may be required by the Railway Company in connection with such changes in said track or tracks, or in the present standard thereof, or in the construction of any such additional tracks or structures. The obligations of the Licensee, in this agreement prescribed, with reference to the maintenance, repair or renewal of said conduit, when constructed, shall apply to said conduit as relocated, changed or modified within the contemplation of this section.

6. The said conduit shall be constructed, and shall thereafter at all times be maintained, repaired, renewed, used and operated by the Licensee in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and premises of the Railway Company as regards operation, maintenance, repairs, renewals or possible new construction.

7. The Licensee shall indemnify and hold harmless the Railway Company from and against any and all damages, claims, demands, actions, causes of action, costs and expenses of whatsoever nature which may result from injury to or the death of any person whomsoever, or from the loss of or damage to property of any kind or nature, including damage to the roadbed, tracks, equipment or other property of the Railway Company, if such injury, death, loss or damage result from the existence of said conduit or the maintenance, operation, use, repair or renewal thereof or the contents therein or therefrom.

8. Disuse of said conduit for the purpose for which it is to be utilized, continuing at any time for a period of one (1) year, shall constitute an abandonment thereof and of the privileges herein specified; and in case of such abandonment or of the breach by the Licensee of any of the conditions, agreements or covenants herein contained, the Railway Company shall have the right to terminate this agreement at any time by giving thirty (30) day's notice in writing to the Licensee of its intention to so terminate the same, and at the expiration of said thirty (30) days' notice the privileges and licenses herein specified shall terminate and be at an end, and the Licensee shall be without recourse or redress of any character against the Railway Company by reason thereof.

9. Whenever this agreement shall be terminated, as herein provided, the Railway Company shall be privileged to immediately remove said conduit from its right-of-way and to restore the same to its original condition, all at the cost and expense of the Licensee; or the Railway Company may, at its option, upon such termination, permit the Licensee to do such work of removal and restoration at the Licensee's own cost and expense, under the supervision of an authorized representative of the Railway Company. In the event of the removal of said conduit by the Railway Company, the Railway Company shall not be liable in any manner to the Licensee for any damage sustained by the Licensee on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages or otherwise that the Railway Company may have against the Licensee.

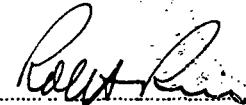
10. The Licensee shall not assign this agreement, or any of the rights hereunder, without the consent in writing of the Railway Company endorsed hereon.

11. This agreement shall be effective from and after the date above written, and shall continue in full force and effect, subject to the conditions, limitations and provisions hereof, for and during the period of one year, and thereafter until terminated as hereinbefore provided, or until terminated by either party giving to the other thirty (30) days' notice in writing of intention to terminate the same, and thereupon at the end of said 30 day period this agreement and the license herein specified shall be at an end.

12. This agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns, provided that this agreement shall not be subject to assignment by the Licensee except as herein provided.

IN WITNESS WHEREOF, The parties hereto have caused this agreement to be executed on the day and year above written.

THE COLORADO AND SOUTHERN RAILWAY COMPANY,



By.....

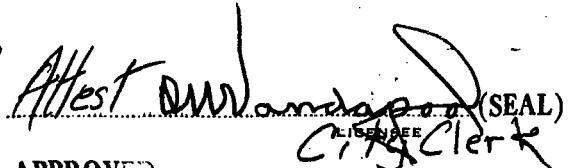
ITS VICE PRESIDENT AND GENERAL MANAGER

ATTEST:

  
W. W. Anderson  
SECRETARY

WITNESS

City of Loveland, Colorado  
By By B. Hamilton Mayor

  
Attest D. W. Anderson (SEAL)  
LICENSEE  
CITY CLERK

APPROVED AS TO FORM:

APPROVED:

RENTAL APPROVED:

  
J. E. Turner  
REAL ESTATE AND TAX AGENT  
T. M. Gandy  
CHIEF ENGINEER

## EVALUATION EQUALITY

5

3 N. R. 69 W.

Sketch Showing  
Pipe Line Location on  
Perkins Branch M.P. 63.78-62.32  
To Accompany Contract With  
City of Loveland

## CONSTRUCT CONTRACT CONSOLIDATE

16

T. 5 N. R. 69 W.

3354519  
3354229

1848+  
322+30  
35P. Pile Br.  
M.R.63.78

# RIST COLORADO

340 + 342 = 682, 12. Vit pipe. 46  
M. P. G. 3. 44

$$J = 4^{\circ}00' \\ 3.38 + 076 \text{ PC. } 1^{\circ}50' \\ \overline{70.1}$$

100

10

102

111

110

100

53.78

102

Original to Colorado and Southern Railway  
and copy to City of Loveland

# CONTRACT FOR PIPE LINE ACROSS OR ALONG RIGHT OF WAY

THIS AGREEMENT, Made and entered into as of May 15, 1954,  
between THE COLORADO AND SOUTHERN RAILWAY COMPANY, hereinafter called the "Railway,"  
its agents and employees, and  
and THE CITY OF LOVELAND, a municipal corporation of the state of Colorado,  
hereinafter called the "Licensee."

of Loveland, State of Colorado,  
hereinafter called the "Licensee."

## WITNESSETH:

In consideration of the sum of Ten Dollars (\$10.00), to be paid by Licensee  
to Railway, immediately upon the execution of this agreement, and an annual rental of \$20.00,  
payable in advance, and upon the terms and conditions hereinafter set forth, Railway hereby grants and  
Licensee license to enter upon the premises of Railway ~~at or near~~ between 61.43 and 63.70,

Wilds Branch, near Loveland, Colorado, and construct and thereafter maintain across or  
along said premises at the sole expense of Licensee, a thirty-four inch (34") pipe line  
to be used for conveying water only, the location of said  
pipe line being shown in red on the Railway's print No. 10654.11 hereto attached, identified by  
the signature of H. S. Read, and made a part hereof.

The top of said pipe line shall be placed at a depth of not less than four (4) feet six (6) inches  
below the base of the rails of the track or tracks of Railway where it passes under the same and not  
less than three (3) feet below the surface of the ground at any point on Railway's property. If the  
said pipe line shall be of a diameter four inches or larger the portion of same directly under the said  
track or tracks, and under the roadbed thereof, shall be of cast iron or other material of approved  
strength.

The said pipe line shall be constructed and maintained in such manner and at such time or time  
and of such materials as shall meet with the approval of the Superintendent of Railway, and as shall  
not hinder, delay or endanger the operation of engines, trains, cars or business of Railway over its  
track or tracks now laid or hereafter laid on said premises, or in any manner interfere with the pres-  
ent or future use of the said premises. The Licensee shall not enter upon said premises for the pur-  
pose of constructing, maintaining or removing said pipe line except upon forty-eight hours' notice to  
Superintendent of Railway, and then a designated representative of Railway may oversee or inspect all  
of said work as it progresses, at the expense of Licensee, and performance of such work shall be sub-  
ject to his approval. If deemed necessary by Railway so to do, Licensee shall, at the expense of Licensee,  
support the said track or tracks, as directed by Railway, while the work of constructing, maintaining  
or removing said pipe line is being done.

In the event the pipe line shall be used to carry any liquid or other substance under pressure, and  
shall be located under any track or within twenty-five (25) feet of any track, bridge or structure of the  
Railway, the pipe line shall be constructed and maintained strictly in accordance with Railway's Plan  
No. 69253, copy of which shall be attached to, and thereby become a part of, this agreement.

In case Railway shall, after said pipe line has been constructed, build upon its premises any addi-  
tional track or tracks, or structures, or make any changes in existing tracks or structures over said  
pipe line, the Licensee shall, at once, at its own expense, make such changes in its said pipe line as

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may be necessary to make the same conform in its relation to said new tracks or structures, or change in existing tracks or structures, in all respects to the conditions herein required for said present tracks or structures, or as may be required by the Railway.

#### IV.

In the event any cathodic electrolysis or other electrical grounding system is installed in connection with said pipe line which in the opinion of Railway in any way interferes with any train signals, telephone or telegraph lines, or other facilities of Railway, the Licensee immediately shall discontinue operation of and remove said grounding system, or take such steps as may be necessary to avoid all such interference. Licensee further agrees to indemnify and save harmless Railway from and against any damages, claims, losses, suits or expenses in any manner arising from or growing out of interference with the signals, telephone or telegraph lines of Railway by the operation, use or existence of any such grounding system.

#### V.

The Licensee further covenants and agrees at all times during the existence of said pipe line upon the premises of Railway to keep and maintain the soil over the same thoroughly compacted, and the grade even with the adjacent surface of the ground, and that Licensee will at all times release, protect, indemnify and save harmless Railway from all claims, demands, judgments, loss, costs and expenses, for injury to or death of any person, or loss or damage to the property of any person or persons whomsoever (including both parties hereto and their employes), in any manner arising from or growing out of in whole or in part, the construction, reconstruction, maintenance, operation, repair, change, existence, use or removal of said pipe line or the subsidence of soil over the same whether caused by the negligence of the Railway, its servants or employes, or otherwise.

#### VI.

If Licensee shall well and faithfully comply with all the terms, covenants, and conditions herein set forth on the part of Licensee to be observed and complied with, the license herein granted by Railway shall continue in force to the full expiration of the period of one (1) year from the date hereof, and thereafter until terminated, upon not less than sixty (60) days' written notice by either party hereto to the other; but if Licensee shall fail to perform any of the covenants herein contained, Railway shall have the right to terminate this license forthwith and without notice. Any notice herein provided for shall be sufficiently given and delivered if mailed in an envelope properly stamped and addressed to Licensee. Upon the termination of this license in any of the modes herein provided for, Licensee shall, at its own expense, upon being notified so to do by Railway, remove said pipe line from said premises, and restore the ground to a safe and level condition, and in case of its failure so to do, the Railway may at its option, either remove the said pipe line from said premises at the sole expense of Licensee, or disconnect the same at points where it enters and leaves the said premises.

#### VII.

The Licensee shall not transfer or assign this license without the written consent of Railway. The said license shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this instrument in duplicate, the day and year first above written.

**ATTEST:** THE COLORADO AND SOUTHERN RAILWAY COMPANY

Attest and signed this day of January, 1890, by the President and Vice President of the Company.

**WITNESS:** Attest and signed this day of January, 1890, by the Secretary and Clerk of the Company.

**WITNESS:** Attest and signed this day of January, 1890, by the General Attorney of the Company.

**WITNESS:** Attest and signed this day of January, 1890, by the City Clerk of the City of Loveland.

**WITNESS:** Attest and signed this day of January, 1890, by the General Attorney of the Company.

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COUNTY OF LARIMER

STATE OF COLORADO

STATE DOCUMENTARY FEE

MAY 14 1980

QUITCLAIM DEED

EXEMPT

THIS INDENTURE, made this 15th day of September in the year of our Lord, One Thousand Nine Hundred and Seventy-one, between THE COLORADO AND SOUTHERN RAILWAY COMPANY, a corporation incorporated under the laws of the State of Colorado, party of the first part, and JOHN E. MILLER and PEGGY MILLER of Larimer County, Colorado, parties of the second part, WITNESSETH:

That the said party of the first part, for and in consideration of the sum of Three Hundred and No/100 Dollars (\$300.00) to the said party of the first part in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, has remised, released, sold, conveyed, and quitclaimed, and by these presents does remise, release, sell, convey, and quitclaim unto the said parties of the second part, not as tenants in common but as joint tenants with the right of survivorship, all right, title, interest, claim, and demand which the said party of the first part has in and to the following described parcel of land situate, lying, and being in the County of Larimer, State of Colorado, to-wit:

A parcel of land located in the Northwest Quarter (NW 1/4) of Section Sixteen (16), Township Five North (T. 5 N.), Range Sixty-nine West (R. 69 W.) of the Sixth Principal Meridian, Larimer County, Colorado, more particularly described as follows:

Commencing at the northeast corner of the Northwest Quarter (NW 1/4) of said Section Sixteen (16); thence West along the north line of said Section Sixteen (16) a distance of 250 feet; thence South 540.82 feet to a point on the northerly right of way line of The Colorado and Southern Railway Company which is the true point of beginning; thence South 81° 50' West 175.78 feet along said northerly right of way line; thence South 8° 10' East 100 feet to a point on the southerly right of way line of said railroad; thence North 81° 50' East 175.78 feet along said southerly right of way line to a point; thence North 8° 10' West 100 feet to the true point of beginning; containing 17,578 square feet more or less.

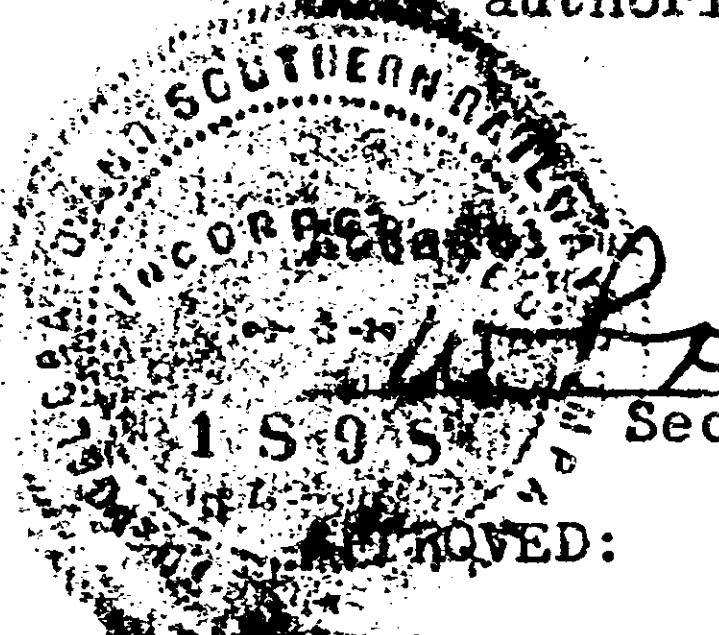
TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anyway thereunto appertaining, and all of the estate, right, title, interest, and claim whatsoever of the said party of the first part, either in law or in equity, to the only proper use, benefit, and behoof of the said parties of the second part, their heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has caused this indenture to be signed and its corporate seal

EXHIBIT

3

to be hereunto affixed and attested by its officers thereunto  
authorized the day and year first above written.



1895 Secretary

THE COLORADO AND SOUTHERN RAILWAY  
COMPANY

By

*J. W. Terrill*  
President

APPROVED:

As to Description:

*E. A. Bradam*  
Engineering Department

As to Form:

*A. L. Pack*  
Law Department

As to Property Interests:

*W. P. Healy*  
Real Estate and Tax  
Department

As to Audit:

*D. L. Kamm*  
Auditing Department

STATE OF COLORADO )  
City and County ) ss.  
of Denver )

The foregoing instrument was acknowledged before me  
this 15th day of September, 1971, by J. W. Terrill and  
W. P. Healy, as President and Secretary, respectively, of The  
Colorado and Southern Railway Company, a corporation.

My commission expires September 21, 1974.

Witness my hand and official seal.

*Lillian B. Kamm*  
Notary Public