

WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this _____ day of _____ 2022 (“Effective Date”), by and between **PFI PROPERTIES I, LLC**, a Colorado limited liability company (“Developer”), and **THE TOWN OF JOHNSTOWN**, a Colorado municipal corporation, (“Town”), collectively sometimes referred to as the “Parties” and singularly as “Party.”

WITNESSETH:

WHEREAS, Developer owns an interest in land located in in the SE1/4, Section 20, T04N, R67W, 6th P.M., Weld County, Colorado, more particularly described as a replat of Lot 1, Block 8 and Tract F, Stroh Farm Filing No. 6, containing 12.1 acres, described more particularly on Exhibit “A” (“Subject Property”); and

WHEREAS, the Subject Property has been annexed to the Town as a portion of the Stroh Annexation and was the subject of an Annexation Agreement between SSS Holdings, LLP, a Colorado limited liability partnership, as Owner, and the Town dated March 15, 1999; and

WHEREAS, the Subject Property is being developed by Developer as Pautler Farms Estates with eleven (11) single family detached lots with up to 5,900 ft² of irrigated turf per lot for a total of 64,900 ft² (1.49 acres), 27,554 ft² (0.63 acres) of xeric-irrigated area, and 47,873 ft² (1.10 acres) of native vegetation. Said 1.10 acres of native vegetation will be temporarily irrigated as described below (the “Temporary Irrigation Area”); and

WHEREAS, the Developer and the Town desire to set forth their agreement concerning water rights dedication, preliminary projections of water and sewer demand and a current commitment by the Town for water and sewer service for the Subject Property.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Water and Sewer Demand Studies. In compliance with the Town Water Rights Dedication Ordinance (“Ordinance”), Developer has submitted to the Town a revised preliminary water and sewer demand analysis for the Subject Property. Said analysis was received by the Town and is on file with the Town and as modified by the Town’s Water Engineer by memorandum dated May 20, 2022, is hereby accepted by the Town. The analysis sets forth the projected water and sewer demands for the Subject Property as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
Residential In-building	3.63	0.18
Residential Landscape Irrigation	3.73	3.17
Common Area Landscape Irrigation (xeric)	0.63	0.54
Total	7.99	3.89
Temporary Common Area Landscape Irrigation	2.75	2.34

2. Water Rights Dedication and Credits. Within forty-five (45) days of the execution of this Agreement, Developer shall dedicate one (1) share of the Consolidated Home Supply Ditch and Reservoir Company, represented by Certificate No. 7017, to the Town. The water represented by Certificate No. 7017 has been changed to include municipal use. This Agreement is not valid until such dedication is made and accepted by the Town.

3. Surplus dedication credit. The dedication of the one (1) share of the Consolidated Home Supply Ditch and Reservoir Company described in Paragraph 2 above will provide to Developer raw water credits in excess of the water demand projected for the Subject Property. As a result of said dedication, Developer will have a surplus dedication credit with the Town of 0.01 acre-feet. The credit is calculated as follows:

Dedication Credit:	8.0 acre-feet
LESS estimated demand:	7.99 acre-feet
Net current surplus credit:	0.01 acre-feet

Upon notice and written approval of the Town, said credit may be utilized to offset increased demands, if any, which are not currently projected for the Subject Property, subject to approval by the Town in subsequent agreement(s) in accordance with the requirements of the Ordinance.

4. Temporary Irrigation of Native Grasses.

4.1 The Temporary Irrigation Area is shown on Exhibit “B,” attached hereto and incorporated herein by reference. Subject to Developer's performance of all the covenants contained herein and payment of all required fees, the Town commits to provide to the Subject Property up to 2.75 acre-feet per year of water supply to establish native grasses within the Temporary Irrigation Area.

4.2 As a material term of this Agreement, Developer agrees to cease irrigating the Temporary Irrigation Area within two years after the date of Notice of Construction Acceptance, as such term is defined in the Subdivision Development and Improvement

Agreement between the Parties, executed concurrently herewith, unless the Town consents to an extension of time in writing, which consent shall not be unreasonably withheld if the request for an extension is based on good cause, such as (but not limited to) compliance with state issued permits.

4.3 To irrigate the native grasses within the Temporary Irrigation Area, Developer shall install an above ground, temporary irrigation system, of such materials, design, and components as determined in Developer's discretion, that has a separate tap and meter from the permanent irrigation system for the remaining portion of the Subject Property ("Temporary Irrigation System").

4.4 Developer shall install a totalizing flow meter on the Temporary Irrigation System capable of determining water use through the Temporary Irrigation System separately from all other water use.

4.5 Developer shall pay to the Town the then effective standard base and monthly use fees for water use through the Temporary Irrigation System. In addition, Developer shall pay a temporary use fee of One-Thousand Dollars (\$1,000.00) per acre foot per year of water used through the Temporary Irrigation System, in the total amount of Five Thousand Five Hundred (\$5,500.00) for the two-year period ("Temporary Irrigation Fee"). Within ten (10) days of the execution of this Agreement, Developer shall pay the Temporary Irrigation Fee to the Town. If the Town agrees to allow Developer to irrigate the Temporary Irrigation Area beyond two years, Developer shall pay an additional temporary use fee in the amount reasonably determined by the Town and not to exceed \$1,500.00 per acre foot per additional year of water used through the Temporary Irrigation System.

4.6 If Developer does not cease irrigating the Temporary Irrigation Area within the time period outlined in section 4.2 and subject to extensions provided for herein, the Town, after providing written notice and a ten (10) day opportunity to cure, may disconnect the Temporary Irrigation System and submit an invoice to Developer, along with a ten percent (10%) administrative fee, for the Town's reasonable costs and expenses incurred as a result of such disconnection. Developer agrees to pay such invoice within thirty (30) days of receipt.

4.7 In the alternative, Developer may purchase raw water for the Temporary Irrigation Area and dedicate such raw water to the Town.

5. Commitment to serve. Subject to Developer's performance of all the covenants contained herein and payment of all required fees, the Town commits to provide to the Subject Property, in addition to the raw water for the Temporary Irrigation Area, up to 3.63 acre-feet per year of water supply for residential in-building use together with the corresponding sewer service and up to 4.36 acre-feet per year of water supply for residential and common area irrigation.

6. Future review of water usage and dedication requirements. In accordance with the Ordinance, the Town reserves the right to review actual water usage within the Subject

Property at a point in time after water usage has been established to confirm the adequacy of the water demand projections made by the Developer, and to require additional water rights dedication and/or cash-in-lieu payments, if necessary, based on actual water usage.

7. Future Lot/Homeowners Right and Ability to Dedicate Additional Water.

Development of the Subject Property was approved by the Town with limited irrigation for use on each lot, to encourage good stewardship of water and land. In the event that any or all future lot owners, jointly or independently, wish to irrigate beyond that permitted within this Agreement, this Agreement may be amended to permit updated demand analysis and dedication of additional raw water to serve such lots, per the Johnstown Municipal Code, as may be amended, subject to all fees in place at that time.

8. Payment of Water Court Transfer fees.

Upon execution of this Agreement, Developer shall pay to the Town the sum of **Two Thousand Four Hundred dollars (\$2,400.00)** as payment of the water court transfer fees required by the Ordinance. This payment is for the dedication of 8.0 acre-feet per year of estimated water demand and estimated consumptive use of 3.89 acre-feet per year (16 SFE) for the Subject Property. Pursuant to Paragraph 6, above, if future review requires additional dedication of water, additional water court transfer fees will be required at the time of dedication. Further, in accordance with the Ordinance, additional fees will be required in connection with future development of any property to which all or any portion of the surplus dedication credit is subsequently assigned pursuant to a future mutual agreement of the Parties in accordance with the Ordinance and this Agreement.

9. Notices.

All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed effective upon receipt and shall be personally delivered or mailed postage prepaid, certified mail, return receipt requested, as follows:

TO DEVELOPER:

Paul Pautler
PFI Properties I, LLC
2402 Sunset Lane
Greeley, CO 80634

With a Copy to:

Coan, Payton & Payne, LLC
Attn: Amanda T. Huston, Esq.
103 W. Mountain Ave, Suite 200
Fort Collins, CO 80524

TO THE TOWN:

Town of Johnstown
c/o Town Clerk
P.O. Box 609
450 S Parish Ave.
Johnstown, CO 80534

**WITH A COPY TO
THE TOWN ATTORNEYS:**

Avi Rocklin, Esq.
Johnstown Town Attorney
1437 N. Denver Avenue, #330
Loveland, CO 80538

Peter J. Ampe
Hill & Robbins, P.C.

1660 Lincoln St., Suite 2720
Denver, CO 80264

The addresses for notices may be changed by written notice given to the other Party in the manner provided above.

10. Default. In the event of default by either Party hereunder, the non-defaulting Party shall notify the defaulting Party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days, the non-defaulting Party shall be entitled to such remedies as are provided by law, including the Town's ordinances.

11. Successors and assigns. The benefits and burdens of this Agreement shall respectively inure to and be binding upon the successors and assigns of the Parties hereto. This Agreement shall not be assigned without the prior written consent of the other Party, which shall not be unreasonably withheld; provided, however, that this Agreement may be assigned by Developer to any homeowners association for the Subject Property without the prior written consent of, but with written notice to, the Town.

12. Amendment or modification. No amendment or modification of this Agreement shall be of any force or effect unless in writing and executed by the Parties hereto with the same formality as this Agreement.

13. Attorney's fees and costs. If any judicial proceedings may hereafter be brought by the Town to enforce any of the provisions hereof against Developer, including an action for specific performance and/or damages, the Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

14. Waiver. The waiver of any breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party, concerning either the same or any other provision of this Agreement.

15. Headings for convenience only. Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

16. Non severability. Each paragraph of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties hereto.

17. Choice of laws and venue. This agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the State of Colorado. Venue for any legal action shall be in the County of Weld, State of Colorado.

18. Entire agreement. This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and any prior agreements pertaining thereto whether oral or written have been merged or integrated into this Agreement.

19. No Presumption. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

20. Recordation. This Agreement will be recorded by the Town at Developer's expense in the office of the Clerk and Recorder of Weld County, Colorado, shall run with the Subject property, will be binding upon the Parties hereto and the permitted successors and assigns of the Developer and will constitute notice of this Agreement to all persons or entities not parties hereto.

*IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

Signatures follow.

PFI PROPERTIES I, LLC

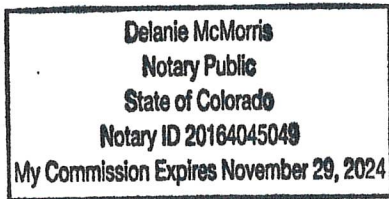
By: *Paul Pautler*
(name)

Title: Registered Agent

STATE OF COLORADO)
) ss
COUNTY OF Weld)

SUBSCRIBED AND SWORN to before me this 20th day of May, 2022 by Paul Pautler as the Registered Agent of PFI Properties I, LLC.

Witness my hand and official seal.



Delanie McMorris
Notary Public
4635 Centerplace Drive
Greeley, Co 80634
Address
970.515.0106
Telephone

My Commission Expires: 11/29/2024

TOWN OF JOHNSTOWN, COLORADO,
a municipal corporation

By: _____
Gary Lebsack, Mayor

ATTEST:

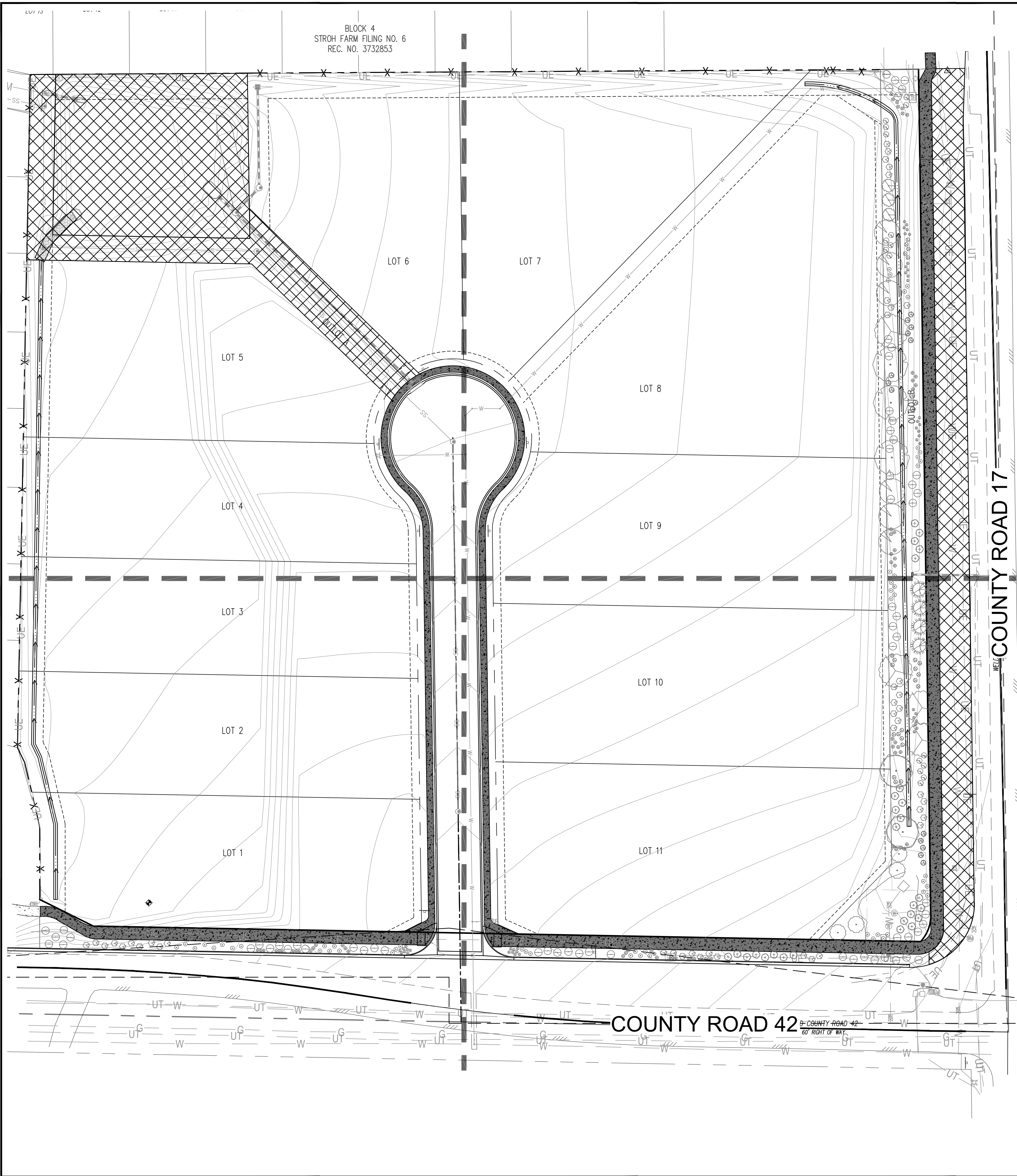
By: _____
Diana Seele, Town Clerk

EXHIBIT A

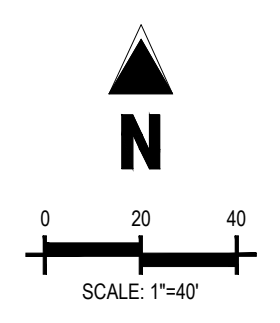
SUBJECT PROPERTY

LOT 1, BLOCK 8 AND TRACT F, STROH FARM, FILING NO. 6, LOCATED IN THE
SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 4 NORTH, RANGE 67 WEST OF
THE 6TH P.M., TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO.

EXHIBIT B
TEMPORARY IRRIGATION AREAS



TEMPORARY IRRIGATION AREA: [Cross-hatched symbol]



NOT FOR CONSTRUCTION

COPYRIGHT
THESE PLANS ARE AN INSTRUMENT OF SERVICE AND ARE THE PROPERTY OF GALLOWAY, AND MAY NOT BE DUPLICATED, DISCLOSED, OR REPRODUCED WITHOUT THE WRITTEN CONSENT OF GALLOWAY. COPYRIGHTS AND INFRINGEMENTS WILL BE ENFORCED AND PROSECUTED.



PFI PROPERTIES I, LLC
PAUTLER FARMS ESTATES

JOHNSTOWN, CO

#	Date	Issue / Description	Init.

Project No: PFI000001.10
Drawn By: APC
Checked By: JMS
Date: 06/07/2021

EXHIBIT "B"