

**ANNEXATION AND DEVELOPMENT AGREEMENT
PODTBURG ANNEXATION #1-#5**

THIS ANNEXATION AND DEVELOPMENT AGREEMENT is made and entered into this _____ day of November, 2020, by and between **Podtburg Dairy Limited Partnership, LLLP**, a Colorado limited liability limited partnership ("*Owner*"), and the **Town of Johnstown**, a home-rule municipal corporation of the State of Colorado ("*Town*") (collectively, the "*Parties*").

RECITALS:

WHEREAS, Owner owns 448.32 acres of real property more particularly described on **Exhibit A** attached hereto, incorporated herein, and made a part hereof ("*Property*"); and

WHEREAS, Owner desires to annex the Property to the Town and has executed a Petition for Annexation, dated February 28, 2020 ("*Petition*"),¹ a copy of which is on file with the Town Clerk; and

WHEREAS, contemporaneously with the Petition, Owner submitted a zoning application seeking Planned Use Development ("*PUD*") zoning, and an outline development plan (the "*ODP*"), identifying and illustrating the proposed land uses and intended development of the Property (collectively, the "*Zoning Application*"); and

WHEREAS, Owner intends to develop the Property for certain residential uses, including single family and attached dwelling units, along with certain non-residential uses, including small-scale commercial, a golf course, clubhouse and related amenities, all as further described in the Zoning Application (the "*Project*"); and

WHEREAS, it is to the mutual benefit of the Parties hereto to enter into this Agreement regarding annexation of the Property to the Town and other related matters as set forth herein; and

WHEREAS, Owner acknowledges that, upon annexation, the Property will be subject to all ordinances, resolutions and other regulations of the Town, as amended from time to time; and

WHEREAS, Owner acknowledges that the need for conveyances and dedication of certain property to the Town, including, but not limited to, property for rights-of-ways and easements as contemplated in this Agreement, are directly related to and generated by the development of the Property; and

¹ The Property consists of 408.32 acres and two parcels collectively comprising 40 acres that were previously owned by Mary Knutson (the "*Knutson Property*") as of the date of the Petition. As of the date of this Agreement, Owner purchased the Knutson Property and is the sole owner of all of the property under the Petition.

WHEREAS, the Vested Property Rights Statute (as defined in Section 20) provides for the establishment of vested property rights in order to advance the purposes stated therein and, together with the Johnstown Municipal Code, authorizes the Town to enter into development agreements with landowners providing for vesting of property development rights for periods of greater than three years; and

WHEREAS, development of the Property in accordance with this Agreement will provide for orderly and well planned growth in accordance with the policies and goals set forth in the Johnstown Area Comprehensive Plan, stimulate economic growth within the Town, secure the reasonable investment-backed expectations of Owner, foster cooperation between the public and private sectors in the area of land use planning, and otherwise achieve the goals and purposes of the Vested Property Rights Statute; and

WHEREAS, in exchange for the foregoing benefits and the other benefits to the Town contemplated by this Agreement, together with the public benefits served by the orderly and well-planned development of the Property, Owner desires to proceed with development of the Property pursuant to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES AND THE COVENANTS AS HEREINAFTER SET FORTH, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. ***Incorporation of Recitals.*** The Parties confirm and incorporate the foregoing recitals into this Agreement.

2. ***Purpose.*** The purpose of this Agreement is to set forth the terms and conditions of the annexation of the Property to the Town. Except as expressly provided for herein to the contrary, all terms and conditions in this Agreement are in addition to all requirements concerning annexation contained in the Johnstown Municipal Code, the Town's development regulations, the Johnstown Area Comprehensive Plan, and the Municipal Annexation Act of 1965, C.R.S. §§ 31-12-101, *et seq.*, as amended ("*Annexation Act*").

3. ***Owner.*** As used in this Agreement, the term "*Owner*" shall include any of the heirs, transferees, successors or assigns of Owner. In addition to the foregoing and to the extent excluded therefrom, this Agreement shall include and be binding upon all developers of the Property or any part thereof. All such parties shall be subject to the terms of this Agreement as if they were the original parties hereto. In the event of a lawful transfer of all or any portion of this Property, the transferring Owner shall be relieved of any and all obligations under this Agreement which arise after the date of such transfer with respect to the transferred Property, provided that written notice is given to the Town as set forth in Section 34 of this Agreement.

4. ***Further Acts.*** Owner agrees to execute promptly upon request of the Town any and all surveys and other documents necessary to affect the annexation of the Property and the

other provisions of this Agreement. Owner agrees not to sign any other petition for annexation of the Property or any petition for annexation election relating to the Property, except upon request of the Town.

5. **Annexation Documents.** Owner agrees to provide legal documents, surveys, engineering work, newspaper publications, maps, and reports determined by the Town to be necessary to accomplish the annexation.

6. **Zoning and Land Use.** The Parties recognize that it is the intent and desire of Owner to develop the Property in a manner generally consistent with the Zoning Application and that the granting of such application, as modified and approved by Town Council, is a material consideration of the Owner's agreement to annex the Property to the Town. The Town specifically acknowledges and agrees that the Town's approval of a final, non-appealable ordinance zoning the Property to PUD is a condition precedent to the Owner's agreement to annex the Property. The Town agrees to consider the request for approval of the Zoning Application in accordance with all applicable ordinances and regulations of the Town.

7. **Non-Conforming Use.** The Town agrees to allow existing non-conforming agricultural use as a dairy farm at the current intensity of operation to continue until such time as the Property is platted or otherwise redeveloped. The current operations on the Property include twenty-two (22) existing structures as documented by Weld County Assessor records: three single family residences and agricultural/dairy buildings including shelters, barns, sheds, and silos, in addition to the associated cattle.

8. **Water and Sewer Demand Study.** In connection with the initial platting process for the Project, Owner shall submit to the Town a preliminary water and sewer demand analysis. It is expressly understood that the water demand analysis may include the use of a non-potable water system for the Project as further described in Section 10. The Parties recognize and agree that the estimate is preliminary and may need to be revised by Owner in connection with future final plat submittals. The Parties further recognize and agree that all water improvements and requirements for service for the Project will be set forth in subsequent agreements to be executed no later than at the time of final plat approval. All sewer improvements and requirement for service for the Project will be set forth, as appropriate, in a subsequent agreement between Owner and the Town or in an extra-territorial service agreement between Owner and the Town of Berthoud ("*Berthoud*"), as required by Berthoud and further described in Section 15.

9. **Description of Water Rights; Water Rights Dedication.** As of the Effective Date, Owner owns the water rights appurtenant to the Property, as described on **Exhibit B** attached hereto, incorporated herein, and made a part hereof. Owner shall dedicate all water rights and lateral ditch company rights appurtenant to the Property to the Town and such additional water rights as needed, at the time of each final plat for the Project, in the amount required by the water demand study submitted in connection with each such plat and as approved by the Town. Notwithstanding the foregoing, if the Project includes a non-potable water system that is

owned and maintained by a District (as such term is defined in Section 19), then, the Town may, pursuant to an intergovernmental agreement, authorize Owner to dedicate the water rights and lateral ditch company rights appurtenant to the Property to such District. In connection with Owner's dedication of water rights to the Town contemplated by this Section 9, Owner and the Town will enter into an agreement regarding the water rights and lateral ditch company rights which will provide, among other things, that such water rights and lateral ditch company rights will be available for use on the Property and will be considered appurtenant to the Property.

10. **Non-potable Irrigation.** Owner may install a non-potable water system to provide irrigation water to the Property. In the Town's discretion, the non-potable water system may become an extension of the Town's water utility enterprise and be owned, operated and maintained by the Town after acceptance by the Town. In consideration of the reduced potable water demand that will be realized by the installation of a non-potable irrigation system, the amount of raw water to be dedicated to the Town for potable uses may be subject to a reduction in accordance with a Town-approved water demand analysis.

11. **Municipal Services.** The Town agrees to make available to the Property all of the usual municipal services provided by the Town, in accordance with the ordinances and policies of the Town, including, but not limited to, police protection. Owner acknowledges that Town services do not include, as of the date of the execution of this Agreement, fire protection or emergency medical services. Owner further acknowledges that Berthoud will provide extra-territorial sewer service and that, until the Town's water infrastructure is installed, the Little Thompson Water District will provide water service in accordance with the LTWD IGA (as defined in Section 25). The Town agrees to assist Owner in obtaining water and sewer service as described herein.

12. **Public Improvements.** All public improvements required to serve the Project shall be designed and constructed to Town standards by Owner and at Owner's, or a developer's, expense. Owner further agrees to provide financial guarantees in the form of a bond, letter or credit or similar for construction of all required improvements in the amount required by the Town and to dedicate to the Town any or all of the improvements as required by Town ordinances or as otherwise agreed. The public improvements and financial guarantees shall be set forth in a subsequent agreement for each filing between the Town and Owner. All overhead utility lines shall be undergrounded.

13. **Streets and Arterial Roads.** On-site and required off-site streets shall be designed and constructed to Town standards by Owner at Owner's expense. Owner shall be entitled to reimbursement for oversizing of streets in accordance with the ordinances and policies of the Town.

14. **Land Dedication and Open Space.** Owner agrees to dedicate by General Warranty Deed or appropriate instrument of conveyance acceptable to the Town, subject to all existing matters of record except for any monetary liens, property for parks, public open space, trails, flood plains in addition to easements and rights-of-way for streets and other public ways and for other

public purposes, as required by Town ordinances and resolutions, in accordance with the ODP or as otherwise subsequently agreed upon by the Parties in writing. Such dedications shall occur as defined herein or at such time as the Town is ready to begin improvements, except that all perimeter street rights-of-way shall be dedicated at the time of subdivision platting, unless the Town specifies another time due to a planned and pending project. The Town and Owner agrees that such dedications are directly related to and generated by the development intended to occur within the Property and that no taking thereby will occur requiring any compensation.

15. ***Water and Waste Water Utilities.***

- a. *County Road 13 Water Improvements.* The Town's water facilities are not presently available to the Property. The Town agrees to design, finance and construct a water line and related improvements for service to the Property along County Road 13 to right of way that is adjacent to the Property (the "*Water Improvements*") within a timely manner. The Town has budgeted and appropriated funds to construct the Water Improvements and, as of the date hereof, without limiting its discretion, intends to include in the Town Budget for 2021 the remaining amount necessary for completion of the planned improvements. In the manner set forth below, Owner shall pay for the portion of the cost to design, finance and construct the Water Improvements, along with six percent (6%) interest or an interest rate equivalent to the prime interest rate plus 2%, whichever is higher, commencing from the date of completion until the date of repayment, that are installed to benefit and provide service to the Property, which portion shall be calculated based on the percentage of linear footage of the Water Improvements that are adjacent to the Property in relation to the total linear footage of the Water Improvements along County Road 13, and shall include, but not necessarily be limited to, the engineering, material and installation costs and the additional valving and waterline extensions installed for the Property. For illustrative purposes, if the Town installs 10,000 linear feet of a water line and related improvements along County Road 13 and 1,000 linear feet of the water line is adjacent to the Property, then Owner shall pay ten percent (10%) of the total cost of the Water Improvements in addition to the valving and extensions installed for the Property. Such reimbursement payment shall be due and owing within ten (10) days of approval of each final plat for the Property, or a portion thereof, in a prorated amount. For illustrative purposes, if the first final plat is for twenty five percent (25%) of the Property, Owner shall reimburse the Town for twenty five percent (25%) of the cost to design, finance and construct the portion of the Water Improvements that benefit and provide service to the Property, as calculated above.
- b. *Owner Water Improvements.* Except as provided above, all water mains, lines and appurtenances shall be constructed to Town standards by Owner at Owner's expense.

- c. *Off Site Sewer.* Sewer service to the Property is anticipated to be provided by Berthoud. The Town may, pursuant to that certain Intergovernmental Agreement with Berthoud dated July 28, 2005, as amended, petition to modify Berthoud's service area to include the Property through a 208 amendment approved by the North Front Range Water Quality Planning Association and agrees to work with Owner to take all steps necessary for such amendment process and file such petition upon Owner's request. When Owner commences the engineering design of the sanitary sewer infrastructure, Owner shall notify the Town in writing. In the Town's discretion and at the Town's expense, Owner's engineer may assist in the design of the Off Site Sewer Improvements which may be done in connection with the engineering process for the first final plat for the Property. When Owner commences construction of any portion of the Property subsequent to approval of a final plat for the Property or any portion thereof, Owner shall provide notice to the Town and the Town shall, within forty five (45) days of receipt of such notice, commence installation of a sewer line and related improvements from the existing Berthoud sewer lines to the Property boundary ("*Off Site Sewer Improvements*"). In order that the Town be in a position to commence construction within the time limit stated herein, the Town shall have previously designed the Off Site Sewer Improvements and shall have properly budgeted funds which schedule shall be communicated to Owner upon the submission of the first final plat application for the Property. The Town will own and maintain the Off Site Sewer Improvements upon completion, unless otherwise required by Berthoud to be owned by Berthoud. The Town shall not be obligated to design, finance and construct a lift station, but agrees, upon final acceptance, to own and maintain such improvement if it is ultimately required for the Project's sewer service and such construction cost shall be borne solely by Owner. Owner shall reimburse the Town for the cost to design, finance and construct the Off Site Sewer Improvements, along with six percent (6%) interest, or an interest rate equivalent to the prime interest rate plus 2%, whichever is higher, commencing from the date of completion until the date of repayment, and along with a reasonable administrative fee. Such reimbursement payment shall be due and owing within ten (10) days of approval of each final plat for the Property, or a portion thereof, in a prorated amount. For illustrative purposes, if the first final plat is for twenty five percent (25%) of the Property, Owner shall reimburse the Town for twenty five percent (25%) of the cost to design, finance and construct the Off Site Sewer Improvements. While the Town may, in its discretion, oversize the Off Site Sewer Improvements, Owner shall only remain obligated to reimburse the Town for the cost to design, finance and construct an eight inch sewer line, the minimum size required by the Johnstown Municipal Code, and related improvements, unless a larger sewer line is required to serve the Project or, at

the time of construction, the Johnstown Municipal Code has been amended to increase the minimum required size.

- d. *On Site Sewer Improvements.* All on-site sewer mains, lines and appurtenances shall be constructed to Town standards by Owner at Owner's expense.
- e. *Oversizing.* Town and Owner hereby agree to cooperate in good faith with respect to 1) determining reasonable oversizing requirements; 2) locating and securing approvals for installation of utility mains and appurtenances within public rights-of-way; and 3) facilitating installation of off-site infrastructure, as and when Owner and Town determine that such installation is necessary in connection with orderly development of the Property.

16. ***Drainage.*** A drainage study of the entire annexation territory shall be provided by the Owner to the Town in connection with the initial platting process for the Project. Improvements recommended by such study shall be completed as required for each phase or filing of development. Historical irrigation and drainage patterns shall be maintained on the Property to the extent feasible including no change in the quality, quantity, or point of discharge, except to the extent approved by the Town.

17. ***Reimbursements.*** To the extent water, sewer, storm drainage facilities or other utilities are oversized or extended onto the property by Owner or to the extent streets or street lighting or other public improvements are built or relocated off-site of the Property by Owner or by the Town, for benefit accruing to other parties, said improvements may be eligible for reimbursement. The Town agrees to use its best efforts to maximize the opportunity for, and amounts of reimbursement payable to Owner, in connection with the development of any other property connecting to or otherwise making use of any such improvements. The Town agrees to coordinate the execution and delivery of reimbursement agreements between the Town and the Owner to attempt to obtain reimbursement for Owner from the off-site benefitted property owners.

18. ***Limitation on Fee Impositions by the Town.*** The Property shall be subject to the Weld 5J School District school impact fee at the time of building permit for each dwelling unit in accordance with the requirements of Weld County 5J School District and the Johnstown Municipal Code. The Property will be subject to all other lawfully imposed impact and development fees at the time of building permit for each dwelling unit, including, but not necessarily limited to the: (i) parks and recreation facilities development fee; (ii) library and cultural facilities development fee; (iii) public facilities development fee; (iv) police facilities development fee; (v) transportation facilities development fee; and (vi) fire and emergency service provider facilities development fee.

19. ***Owners Associations and Special Districts.*** Without any obligation under this Agreement to do so, Owner may, in accordance with the Town's policies and procedures in effect

at the time of submission, apply to the Town for the creation of one or more special districts (individually, a “*District*,” and collectively, the “*Districts*”), pursuant to Article 1, Title 32, C.R.S., and reserves the right to create one or more owner association(s) having as its members property owners within the Project (individually, an “*Association*” and collectively, the “*Associations*”). The Town covenants and agrees to act in good faith to review and process the same. The purposes of the District(s) and/or other Association(s) shall be, *inter alia*, to facilitate financing, maintenance, and/or development of the public infrastructure improvements and other public facilities for which Owner is or may become obligated under the terms in this Agreement. The formation documents of the District(s) and/or Association(s) shall require the District(s) and Association(s) to honor their obligations under this Agreement, and all obligations of Owner under this Agreement are to extend to the District(s) and/or Association(s). Upon notice to the Town and with the Town’s written consent, which shall not be unreasonably withheld, Owner shall be entitled to assign to the District(s) and/or Association(s) all or any part of its obligations and rights under this Agreement with respect to the funding, construction, maintenance, reimbursements and/or other matters related to the infrastructure required to support the Project in accordance with the terms and conditions of this Agreement, on the condition that the obligations assigned to the District comply with the approved service plan.

20. **Vesting of Property Rights.** This Agreement and the ODP each constitute an approved “site-specific development plan” as defined in Colorado Revised Statutes §§ 24-68-101, *et seq.* (the “*Vested Property Rights Statute*”). Each subdivision plat, site plan, and each amendment to any of the foregoing, that Owner submits to the Town subsequent to the Effective Date shall, if Owner so requests, be processed as a “site specific development plan” as defined in the Vested Property Rights Statute. The vested property rights created in connection with such subsequently approved subdivision plats, site plans, and each amendment to any of the foregoing, shall be supplemental and in addition to those property rights initially vested through this Agreement as of the Effective Date (as such term is defined in Section 23), and shall be vested pursuant to the Vested Property Rights Statute.

(a) *Compliance with General Regulations.* Subject to the terms, conditions and limitations of the Vested Property Rights Statute and except as otherwise provided in this Agreement, the establishment of vested property rights pursuant to this Agreement shall not preclude the application on a uniform and non-discriminatory basis of Town regulations of general applicability (including, but not limited to, building, fire, plumbing, electrical and mechanical codes, the Town Code, and other Town rules and regulations) or the application of state or federal regulations, as all of such regulations exist on the Effective Date or may be enacted or amended after the Effective Date. Owner does not waive its right to oppose the enactment or amendment of any such regulations.

(b) *Property Rights Vested.* Subject to the terms, conditions and limitations of the Vested Property Rights Statute and except as otherwise provided in this Agreement, the rights identified below shall constitute the vested property rights under this Agreement commencing on the Effective Date and continuing until the fifteenth anniversary of the Effective Date, but shall not constitute the vested property rights with

respect to subsequent site-specific development plans which, unless otherwise subsequently agreed in writing, shall vest as provided in, and for the time period contained in, the Vested Property Rights Statute:

(i) The right to develop, plan and engage in land uses within the Property in the order, at the rate and at the time as market conditions dictate, in a manner that is substantially consistent with the Project as described in this Agreement and in the ODP.

(ii) The right to commence and complete development of the Project (including, without limitation, the right to receive all Town approvals, permits and taps necessary for the development of the Project) with conditions, standards and dedications which are no more onerous than those imposed by the Town upon other developers in the Town on a uniform, non-discriminatory and consistent basis.

(iii) The right to apply for and, upon compliance with the terms and conditions of this Agreement and the Town Code, to receive grading permits, building permits, water taps, sewer taps, certificates of occupancy, and other permits necessary for development, construction and occupancy of improvements within the Project.

(iv) The right to have the Town accept and process in good faith and with reasonable diligence, all applications for subsequently required development approvals including, without limitation, each subdivision plat, site plan, and each amendment to any of the foregoing, as site specific development plans which, if approved, shall establish vested property rights pursuant to the Vested Property Rights Statute in the manner described therein.

21. **No Obligation to Develop.** Owner shall have no obligation to develop all or any portion of the Project and, except as provided herein, shall have no liability under this Agreement to the Town or to any other party for its failure to develop all or any part of the Project. If Owner commences development of all or any portion or phase of the Project, Owner shall be required to construct the public improvements required to support such development in accordance with the terms and conditions of this Agreement and any subdivision development and improvement agreement(s), or similar such agreement, which Owner and the Town may execute in connection with any subsequently obtained land use approval. Nothing in this Agreement shall be construed as relieving Owner of any obligation or liability for the failure to satisfy obligations set forth in a subdivision development and improvement agreement(s) or any other agreements executed between the Town and Owner after the Effective Date. Notwithstanding the foregoing or anything else to the contrary set forth in this Agreement, if (i) Owner has not obtained a final plat for the Property or any portion thereof within five (5) years of the execution of this Agreement and (ii) the Town has installed the Water Improvements as provided in Section 15(a) above, then the interest amount calculated for purposes of repayment to the Town shall be at a rate of nine percent (9%) or an interest rate equivalent to the prime interest rate plus 2%, whichever is higher,

rather than the interest rate described in Section 15(a) above, commencing on the date of completion of the Water Improvements. In addition, if the Town installs the Off Site Sewer Improvements as provided in Section 15(c) above, and, within five (5) years of the completion of the construction, Owner has not obtained final plats for all the Property, then the interest amount calculated for purposes of repayment to the Town shall be at a rate of nine percent (9%) or an interest rate equivalent to the prime interest rate plus 2%, whichever is higher, rather than the interest rate described in Section 15(c) above, commencing on the date of completion of the Off Site Sewer Improvements.

22. **Conformity with Laws.** Owner agrees that the design, improvement, construction, development, and use of the Property shall be in conformance with all applicable laws and ordinances and that Owner shall comply with all Town ordinances, resolutions and regulations including, without limitation, ordinances, resolutions, and regulations pertaining to annexation, subdivision, zoning, storm drainage, utilities, access to Town streets, and flood control.

23. **Conditions Precedent to Legal Effectiveness of Annexation.**

(a) The Parties acknowledge and agree that the legal effectiveness of the annexation of the Property pursuant to Section 113(2)(b) of the Annexation Act is conditioned upon satisfaction of the following conditions, any one or more of which may be waived by Owner in its sole discretion. Concurrently with its approval of the annexation of the Property, the Town shall have approved the Zoning Application, as modified.

(b) Owner has the sole, exclusive and unilateral right to withdraw the Petition for the Property if there is a Legal Challenge (as defined below) to the ordinance annexing the Property, this Agreement or the ordinance zoning the Property by so notifying the Town Clerk in writing at any point prior to the latest to occur of: (i) the latest final, non-appealable approval of the final ordinance(s) or other final approval(s) approving (A) the annexation of the Property; (B) the Zoning Application; and (C) this Agreement; or (ii) final, non-appealable resolution of any Legal Challenge. For purposes of this Agreement, "Legal Challenge" means either: (i) any third party commences any legal proceeding or other action that directly or indirectly challenges the approval of the annexation of the Property, the Zoning Application, this Agreement or any of the Town's ordinances, resolutions or other approvals approving any of the foregoing; or (ii) any third party submits a petition for a referendum seeking to reverse or nullify any of such ordinances.

(c) Prior to expiration of the period described in Section 23(b) without Owner having withdrawn the Petition for the Property, neither Owner nor the Town will record the ordinance annexing the Property, the ordinance zoning the Property or this Agreement in the real property of the Clerk and Recorder of Weld County, Colorado ("Records").

(d) It shall be a condition precedent to the effectiveness of this Agreement that the ordinance approving the annexation of the Property and the annexation map for the Property (collectively, the "*Annexation Instruments*") be recorded as set forth in Section 113(2)(b) of the Annexation Act. The "*Effective Date*" of this Agreement shall be the date of the recordation of the Annexation Instruments as set forth therein.

24. **Disconnection.** No right or remedy of disconnection of the Property from the Town shall accrue from this Agreement other than that provided by applicable state laws. In the event the Property or any portion thereof is disconnected at Owner's request, the Town shall have no obligation to serve the disconnected Property or portion thereof and this Agreement shall be void and of no further force and effect as to such Property or portion thereof unless otherwise agreed by the Parties or required by the Town as a condition of disconnection.

25. **Special Districts.** Within thirty (30) days after written request by the Town, Owner shall apply for inclusion of the Property within one or more special districts serving the Town and the Town may request Owner to petition to exclude the Property from another special district. All costs, expenses, attorney fees and judgments for exclusion of the property from any special district shall be borne by Owner. Within thirty (30) days after written request by the Town, but in event earlier than upon approval of the first final plat for the Project, Owner shall be required to pay sums due owing to the Little Thompson Water District from the Town pursuant to that certain Intergovernmental Agreement between the Town of Johnstown and the Little Thompson Water District dated January 21, 2009 (the "*LTWD IGA*").

26. **Future Cooperation.** The Parties agree that they will cooperate with one another in accomplishing the terms, conditions, and provisions of the Agreement and will execute such additional documents as necessary to effectuate the same.

27. **No Joint Venture or Partnership/No Assumption of Liability.** Nothing contained in this Agreement is intended to create a partnership or joint venture between the Town and Owner or between the Town and any one or more of the individual Owner that may exist and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not provide for the joint exercise by the Parties of any activity, function or service, nor does it create a joint enterprise or an agency relationship. Except as specifically otherwise provided in this Agreement, no party shall in any way assume any of the liability of any other party for any act or obligations of the other party.

28. **Failure to Annex.** This Agreement shall be null and void if the Town fails to approve the annexation of the Property.

29. **No Warranties by the Town.** The Town is entering into this Agreement in good faith and with the present intention, on the part of the present Town Council, to comply with this Agreement. However, because certain of the provisions of this Agreement may involve areas of legal uncertainty, the Town makes no representation as to the validity or enforceability of this Agreement and no such warranty is made on the part of the Town.

30. (a) **Breach by Owner; Town's Remedies.** In the event of a default or breach by the Owner of any term, condition, covenant, or obligation under this Agreement, the Town may take such action as it deems necessary to protect the public health, safety and welfare; to protect lot buyers and builders; and to protect the citizens of the Town from hardship. The Town's remedies include:

(I) The refusal to issue any development permit, building permit or certificate of occupancy. This remedy shall not affect sales to bona fide purchasers nor be applied to bona fide purchasers;

(II) A demand that the security given for the completion of the public improvements be paid or honored;

(III) The refusal to consider further development plans within the Property; and/or

(IV) Any other remedy available at law.

Unless necessary to protect the immediate public health, safety and welfare, the Town shall provide the Owner ten (10) days' written notice of its intent to take any action under this Paragraph during which ten-day period the Owner may cure the breach described in said notice and prevent further action by the Town. Nothing contained herein shall limit the Town's rights under a subsequently executed subdivision development and improvement agreement and/or any other subsequently executed agreement related to the Property.

(b) **Breach by Town.** The Parties agree that in the event of a breach by Town, Owner will have the right to seek all remedies provided by law.

31. **Attorney's Fees.** If Owner breaches this Agreement, as determined by a court, then Owner shall pay the Town's reasonable costs and attorney's fees incurred in the enforcement of the terms and conditions of this Agreement. Should litigation occur by suit of a third party, Owner shall reimburse Town for Town's attorney's fees, court costs, and witness fees. In addition thereto, in the event that any person, corporation, special district, municipal or county government or any other entity asserts a claim against the Town, its officials, or employees pursuant to the provisions of the Annexation Act, Owner agrees to reimburse the Town all reasonable costs and attorney's fees incurred by the Town in defense of such claims whether or not such defense is successful; provided, however, that nothing herein shall be interpreted as permitting the Owner to act or participate in any manner whatsoever in the defense of such claims, including, but not limited to, selection of legal counsel or settlement of claims. Owner acknowledges and understands that the Town may, in its sole discretion, voluntarily elect not to defend against such an action and may consent to and permit the entry by the court of an order voiding the annexation or reach another means of settlement of claims. In such an event, Owner shall also reimburse to the Town any costs or attorney's fees assessed against the Town by the court, if any.

32. **General Provisions.** The Town shall

(a) Cause its staff to review and timely approve or disapprove written submittal by Owner of any plans, specifications, drawings, details or other pertinent data required in connection with any water line, sanitary sewer line, storm drainage, or other utility serving the Property or any improvements within any dedicated right-of-way on the Property. Any disapproval shall set forth the items disapproved together with the reasons for such disapproval;

(b) Use its best efforts in securing, at Owner's expense, construction and maintenance agreements from governmental or private entities other than the Town which are necessary to allow Owner to fulfill its obligations under this Agreement and to develop the Property in a timely manner;

(c) Cooperate with Owner with any filing, applications, approvals, or other administrative procedures with governmental entities other than the Town which are necessary to allow Owner to fulfill its obligations under this Agreement and to develop the Property in a timely manner; and

(d) Not unreasonably withhold its consent or approval when any consent or approval is required.

Owner shall notify the Town of assignments and the name, address, telephone number, and electronic mail ("*e-mail*") address of the assignee and give notice as provided in Section 34 of this Agreement. Upon the sale or other transfer of any portion of the Property and due notice to the Town, the transferor of such portion shall be released from all liability and obligation under this Agreement which arise subsequent to the transfer relating to such portion and all such subsequent liabilities and obligations shall be assumed by the transferee (unless transferee is a purchaser of a residential dwelling unit or a governmental entity).

33. **Special Provisions.**

(a) Once adopted, Owner shall be required to comply with the requirements of the appropriate design guidelines for this area.

(b) Owner shall adequately address all referral comments to the satisfaction of the Town.

(c) **Design Guidelines.** In connection with the initial platting for the Project, Owner and the Town agree to jointly develop design guidelines for the Property addressing design considerations, including architectural, site planning, landscaping, streetscape, and sign elements for land uses within the Property ("*Design Guidelines*"). The Design Guidelines shall be enforceable upon approval of Town Council and may be amended from time to time upon consent of Owner and approval of Town Council. The Design Guidelines shall be applied to development within the Property. All individual development projects proposed within the

35. **Election.** Owner agrees that it is voluntarily entering into this Agreement. Owner represents and submits that, to the extent an election would be required pursuant to C.R.S. § 31-12-112, as amended, to approve the annexation or to impose terms and conditions upon the Property to be annexed, Owner owns one hundred percent (100%) of the Property, excluding public streets and alleys, and would vote to approve the annexation and all terms and conditions as set forth herein. Thus, any election would necessarily result in a majority of the electors' approval to the annexation and the terms and conditions.

36. **Cost Reimbursement to Town:** To the extent required by Town, Owner shall reimburse Town for professional consultants such as engineers, testing companies, planners, and attorneys necessitated by processing and completion of the annexation.

37. **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 and the non-defaulting party desires to seek recourse, the Parties shall participate in mediation at a location that is not more than sixty miles from the Property, the costs of which shall be shared equally by the Parties. If mediation is not successful after ninety (90) days, either party may then commence an action in a court of competent jurisdiction in Weld County, Colorado, and shall be entitled to such remedies as are provided by law.

38. **No Third Party Rights.** Except as otherwise provided herein, this Agreement is made solely for the benefit of the Parties hereto and is not intended to nor shall it be deemed to confer rights to any persons or entities not named as parties hereto.

39. **Governing Law.** The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Weld County, Colorado.

40. **Headings.** The paragraph headings in this Agreement shall not be used in the construction or interpretation hereof as they have no substantive effect and are for convenience only.

41. **No Repeal of Laws.** Nothing contained in this Agreement shall constitute or be interpreted as a repeal of the Town's ordinances or resolutions, or as a waiver of the Town's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of the Town and its inhabitants, nor shall this Agreement prohibit the enactment or increase by the Town of any tax or fee.

42. **Amendments to Law.** As used in this Agreement, unless otherwise specifically provided herein, any reference to any provision of any Town ordinances, resolution, regulations, or policy is intended to refer to any subsequent amendments or revisions to such ordinance,

resolution, regulations, or policy, and the Parties agree such amendments or revision shall be binding upon Owner.

43. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and all heirs, transferees, successors and assigns hereof, and shall constitute covenants running with the land. In addition to the foregoing and to the extent excluded therefrom, this Agreement shall be binding upon all developers of the Property or any part thereof. References to Owner's obligations herein are meant, unless the context otherwise indicates, to include subsequent property owners and developers. This Agreement shall be recorded in the Records as set forth herein, at Owner's expense. Subject to the conditions precedent herein, this Agreement may be enforced in any court of competent jurisdiction.

44. **Entire Agreement.** This Agreement embodies the entire agreement of the Parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement supersedes all previous communications, representations or agreements, either verbal or written, between the Parties, except as that provided in the Cost Agreement and Funds Deposit Agreement executed by Owner and filed with the Town Clerk.

45. **Amendment.** This Agreement may be amended only by mutual agreement of the Town and Owner. Such amendments shall be in writing, shall be recorded with the County Clerk and Recorder of Weld County, Colorado, shall be covenants running with the land and shall be binding upon all persons or entities having an interest in the Property and/or an interest in water rights referenced in Section 9 of the Agreement.

46. **Severability.** The Parties agree that if any part, term, portion, or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado or any federal law, the validity of the remaining parts, terms, portions, or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, portion, or provision held to be invalid.

[Signature pages attached]

ATTEST:

**TOWN OF JOHNSTOWN, COLORADO,
A MUNICIPAL CORPORATION**

By: _____
Diana Seele, Town Clerk

By: _____
Gary Lebsack, Mayor

**EXHIBIT A
LEGAL DESCRIPTION**

PROPERTY

PODTBURG ANNEXATION #1

A parcel of land being a portion of the Northwest Quarter of Section Eighteen (18), Township Four North (T.4N.), Range Sixty-seven West (R.67W.) and a portion of the Northeast Quarter of Section Thirteen (13), Township Four North (T.4N.), Range Sixty-eight West (R.68W.), Sixth Principal Meridian (6th P.M.), County of Weld, State of Colorado:

COMMENCING at the Northeast Corner of said Section 13 and assuming the East line of the Northeast Quarter of Section 13 as bearing South 00°02'15" East a distance of 2647.90 feet with all other bearings contained herein relative thereto:

THENCE South 00°02'15" East along the East line of the Northeast Quarter of said Section 13 a distance of 30.04 feet to a Southerly line of Maplewood Acres Annexation to the Town of Johnstown recorded March 25, 2009 as Reception No. 3612645 in the Records of Weld County and to the **POINT OF BEGINNING**.

THENCE South 87° 11' 22" East a distance of 30.04 feet to the intersection of the Easterly Right of Way line of Weld County Road 13 and the Southerly Right of Way line of Weld County Road 46;

THENCE South 11° 32' 58" West a distance of 149.36 feet to the East line of the Northeast Quarter of said Section 13;

THENCE North 11° 30' 44" West a distance of 150.80 feet to the intersection of the Westerly Right of Way line of Weld County Road 13 and the Southerly Right of Way line of Weld County Road 46, said point also being the Southwesterly corner of said Maplewood Acres Annexation to the Town of Johnstown;

THENCE North 89° 54' 46" East along a Southerly line of said Maplewood Acres Annexation a distance of 30.00 feet to the East line of the Northeast Quarter of said Section 13 and to the **POINT OF BEGINNING**.

TOTAL ANNEXED AREA for the Podtburg Annexation #1 is 0.10 acres, more or less (±).

PODTBURG ANNEXATION #2

A parcel of land being a portion of the Northwest Quarter of Section Eighteen (18), Township Four North (T.4N.), Range Sixty-seven West (R.67W.) and a portion of the Northeast Quarter of Section Thirteen (13), Township Four North (T.4N.), Range Sixty-eight West (R.68W.), Sixth Principal Meridian (6th P.M.), County of Weld, State of Colorado:

COMMENCING at the Northeast Corner of said Section 13 and assuming the East line of the Northeast Quarter of Section 13 as bearing South 00°02'15" East a distance of 2647.90 feet with all other bearings contained herein relative thereto:

THENCE South 00°02'15" East along the East line of the Northeast Quarter of said Section 13 a distance of 177.85 feet to the **POINT OF BEGINNING**.

THENCE North 11° 32' 58" East a distance of 149.36 feet to the intersection of the Easterly Right of Way line of Weld County Road 13 and the Southerly Right of Way line of Weld County Road 46;

THENCE South 02° 15' 22" West a distance of 749.63 feet to the East line of the Northeast Quarter of said Section 13;

THENCE North 02° 19' 35" West a distance of 751.10 feet to the intersection of the Westerly Right of Way line of Weld County Road 13 and the Southerly Right of Way line of Weld County Road 46, said point also being the Southwesterly corner of Maplewood Acres Annexation to the Town of Johnstown recorded March 25, 2009 as Reception No. 3612645 in the Records of Weld County;

THENCE South 11° 30' 44" East a distance of 150.80 feet to the East line of the Northeast Quarter of said Section 13 and to the **POINT OF BEGINNING**.

TOTAL ANNEXED AREA for the Podtburg Annexation #2 is 0.42 acres, more or less (±).

PODTBURG ANNEXATION #3

A parcel of land being a portion of the West Half of Section Eighteen (18), Township Four North (T.4N.), Range Sixty-seven West (R.67W.) and a portion of the East Half of Section Thirteen (13), Township Four North (T.4N.), Range Sixty-eight West (R.68W.), Sixth Principal Meridian (6th P.M.), County of Weld, State of Colorado:

COMMENCING at the Northeast Corner of said Section 13 and assuming the East line of the Northeast Quarter of Section 13 as bearing South 00°02'15" East a distance of 2647.90 feet with all other bearings contained herein relative thereto:

THENCE South 00°02'15" East along the East line of the Northeast Quarter of said Section 13 a distance of 780.56 feet to the **POINT OF BEGINNING**.

THENCE North 02° 15' 22" East a distance of 749.63 feet to the intersection of the Easterly Right of Way line of Weld County Road 13 and the Southerly Right of Way line of Weld County Road 46;

THENCE South 00° 02' 15" East along the Westerly Right of Way line of said Weld County Road 13 a distance of 750.00 feet;

THENCE South 00° 32' 02" West a distance of 3001.06 feet to the East line of the Southeast Quarter of said Section 13;

THENCE North 00° 36' 41" West a distance of 3002.53 feet to the Westerly Right of Way line of said Weld County Road 13;

THENCE North 00° 02' 15" West a distance of 750.00 feet to the intersection of the Westerly Right of Way line of Weld County Road 13 and the Southerly Right of Way line of Weld County Road 46, said point also being the Southwesterly corner of Maplewood Acres Annexation to the Town of Johnstown recorded March 25, 2009 as Reception No. 3612645 in the Records of Weld County;

THENCE South 02° 19' 35" East a distance of 751.10 feet to the East line of the Northeast Quarter of said Section 13 and to the **POINT OF BEGINNING**.

TOTAL ANNEXED AREA for the Podtburg Annexation #3 is 2.58 acres, more or less (±).

PODTBURG ANNEXATION #4

A parcel of land being a portion of the West Half of Section Eighteen (18) and the Northwest Quarter of Section Nineteen (19), Township Four North (T.4N.), Range Sixty-seven West (R.67W.) and a portion of

the East Half of Section Thirteen (13) and the North Half of Section Twenty-four (24), Township Four North (T.4N.), Range Sixty-eight West (R.68W.), Sixth Principal Meridian (6th P.M.), County of Weld, State of Colorado:

COMMENCING at the Northeast Corner of said Section 13 and assuming the East line of the Northeast Quarter of Section 13 as bearing South 00°02'15" East a distance of 2647.90 feet with all other bearings contained herein relative thereto:

THENCE South 00°02'15" East along the East line of the Northeast Quarter of said Section 13 a distance of 2647.90 feet to the East Quarter Corner of Section 13;

THENCE South 00°02'29" East along the East line of the Southeast Quarter of said Section 13 a distance of 1134.55 feet to the **POINT OF BEGINNING**.

THENCE North 00° 32' 02" East a distance of 3001.06 feet to the Easterly Right of Way line of Weld County Road 13;

The following Three (3) courses are along the Easterly Right of Way lines of Weld County Road 13.

THENCE South 00° 02' 15" East a distance of 1866.36 feet;

THENCE South 00° 02' 29" East a distance of 2648.03 feet;

THENCE South 00° 06' 39" West a distance of 1324.43 feet;

THENCE South 89° 43' 17" West a distance of 2680.42 feet to the Northeast Corner of Northmoor Acres Second Filing recorded March 20, 1972 as Reception No. 1585866;

The following Ten (10) courses are along the Easterly, Southerly, and Westerly lines of Tract D-1 of said Northmoor Acres Second Filing:

THENCE South 00° 06' 15" West a distance of 13.89 feet to the Southeast Corner of said Tract D-1

THENCE North 89° 44' 34" West a distance of 152.81 feet;

THENCE South 88° 54' 36" West a distance of 68.31 feet;

THENCE South 88° 58' 33" West a distance of 351.36 feet;

THENCE South 88° 41' 39" West a distance of 225.35 feet;

THENCE South 89° 11' 58" West a distance of 121.90 feet;

THENCE South 89° 47' 15" West a distance of 155.18 feet;

THENCE South 89° 38' 59" West a distance of 451.60 feet;

THENCE South 89° 26' 24" West a distance of 423.45 feet;

THENCE South 89° 05' 24" West a distance of 649.81 feet to an Easterly line of Wilson Ranch

Annexation to the Town of Berthoud recorded April 23, 2004 as Reception No. 3173568;

The following Four (4) courses are along the Easterly lines of said Wilson Ranch Annexation:

THENCE North 00° 03' 04" East a distance of 43.07 feet;

THENCE South 89° 56' 54" West a distance of 20.00 feet;

THENCE North 00° 03' 04" East a distance of 1331.68 feet to the North line of the Northwest Quarter of Section 24;

THENCE North 00° 03' 04" East a distance of 30.00 feet to the Northerly Right of Way of Weld County Road 44;

THENCE North 89° 55' 24" East along said Northerly Right of Way line of Weld County Road 44 a distance of 2620.33 feet to the West line of the Southeast Quarter of said Section 13;

THENCE North 00° 02' 05" West along said West line a distance of 857.85 feet to the Southwest corner of Lot B of Recorded Exemption No. 1061-13-4 RE-3863;

The following Seventeen (17) courses are along the Southerly lines of Lot B of Recorded

Exemption No. 1061-13-4 RE-3863 recorded October 18, 2004 as Reception No. 3228383 of the Records of Weld County:

THENCE South 79° 11' 49" East a distance of 251.09 feet to a Point of Curvature;

THENCE along the arc of a curve concave to the Northwest a distance of 92.52 feet, said curve has a Radius of 115.39 feet, a Delta of $45^{\circ} 56' 32''$, and is subtended by a Chord bearing North $77^{\circ} 50' 10''$ East a distance of 90.07 feet to a Point of Tangency;

THENCE North $54^{\circ} 51' 44''$ East a distance of 181.87 feet to a Point of Curvature;

THENCE along the arc of a curve concave to the Southeast a distance of 144.05 feet, said curve has a Radius of 124.38 feet, a Delta of $66^{\circ} 21' 24''$, and is subtended by a Chord bearing North $88^{\circ} 02' 19''$ East a distance of 136.13 feet to a Point of Tangency;

THENCE South $58^{\circ} 46' 59''$ East a distance of 133.41 feet to a Point of Curvature;

THENCE along the arc of a curve concave to the Northeast a distance of 115.53 feet, said curve has a Radius of 193.24 feet, a Delta of $34^{\circ} 15' 17''$, and is subtended by a Chord bearing South $75^{\circ} 54' 49''$ East a distance of 113.82 feet to a Point of Return Curvature;

THENCE along the arc of a curve concave to the Southwest a distance of 285.43 feet, said curve has a Radius of 753.31 feet, a Delta of $21^{\circ} 42' 34''$, and is subtended by a Chord bearing South $82^{\circ} 11' 10''$ East a distance of 283.73 feet to a Point of Return Curvature;

THENCE along the arc of a curve concave to the Northeast a distance of 378.03 feet, said curve has a Radius of 800.39 feet, A Delta of $27^{\circ} 03' 40''$, and is subtended by a Chord bearing South $84^{\circ} 51' 55''$ East a distance of 374.53 feet to a Point of Return Curvature;

THENCE along the arc of a curve concave to the Southwest a distance of 179.58 feet, said curve has a Radius of 171.12 feet, a Delta of $60^{\circ} 07' 42''$, and is subtended by a Chord bearing South $68^{\circ} 19' 54''$ East a distance of 171.45 feet to a Point of Tangency;

THENCE South $38^{\circ} 16' 02''$ East a distance of 117.93 feet to a Point of Curvature;

THENCE along the arc of a curve concave to the Northeast a distance of 58.61 feet, said curve has a Radius of 231.16 feet, a Delta of $14^{\circ} 31' 38''$, and is subtended by a Chord bearing South $45^{\circ} 31' 53''$ East a distance of 58.45 feet to a Point of Tangency;

THENCE South $52^{\circ} 47' 41''$ East a distance of 176.69 feet to a Point of Curvature;

THENCE along the arc of a curve concave to the Northeast a distance of 107.69 feet, said curve has a Radius of 183.32 feet, a Delta of $33^{\circ} 39' 29''$, and is subtended by a Chord bearing South $69^{\circ} 37' 20''$ East a distance of 106.15 feet to a Point of Tangency;

THENCE South $86^{\circ} 27' 04''$ East a distance of 88.57 feet to a Point of Curvature;

THENCE along the arc of a curve concave to the Northwest a distance of 131.99 feet, said curve has a Radius of 937.08 feet, a Delta of $08^{\circ} 04' 13''$, and is subtended by a Chord bearing North $89^{\circ} 30' 49''$ East a distance of 131.88 feet to a Point of Return Curvature;

THENCE along the arc of a curve concave to the Southwest a distance of 359.49 feet, said curve has a Radius of 498.28 feet, a Delta of $41^{\circ} 20' 12''$, and is subtended by a Chord bearing South $73^{\circ} 51' 12''$ East a distance of 351.74 feet to a Point of Tangency;

THENCE South $53^{\circ} 11' 05''$ East a distance of 63.29 feet to the Westerly Right of Way line of Weld County Road 13;

THENCE North $00^{\circ} 02' 29''$ West along said Westerly Right of Way line a distance of 2333.22 feet;

THENCE North $00^{\circ} 02' 15''$ West continuing along said Westerly Right of Way line a distance of 1867.83 feet;

THENCE South $00^{\circ} 36' 41''$ East a distance of 3002.53 feet to the East line of the Southeast Quarter of said Section 13 and to the **POINT OF BEGINNING**.

TOTAL ANNEXED AREA for the Podtburg Annexation #4 is 212.76 acres, more or less (\pm).

PODTBURG ANNEXATION #5

A parcel of land being a portion of the West Half of Section Nineteen (19) and the Northwest Quarter of Section Thirty (30), Township Four North (T.4N.), Range Sixty-seven West (R.67W.) and a portion of

Section Twenty-four (24) and the Northeast Quarter of Section Twenty-five (25), Township Four North (T.4N.), Range Sixty-eight West (R.68W.), Sixth Principal Meridian (6th P.M.), County of Weld, State of Colorado:

COMMENCING at the Northeast Corner of said Section 13 and assuming the East line of the Northeast Quarter of Section 13 as bearing South 00°02'15" East a distance of 2647.90 feet with all other bearings contained herein relative thereto:

THENCE South 00°02'15" East along the East line of the Northeast Quarter of said Section 13 a distance of 2647.90 feet to the East Quarter Corner of Section 13;

THENCE South 00°02'29" East along the East line of the Southeast Quarter of said Section 13 a distance of 2647.99 feet to the Southeast Corner of said Section 13:

THENCE South 00°06'39" West along the East line of the Northeast Quarter of the Northeast Quarter of Section 24 a distance of 1324.59 feet to the Southeast Corner of the Northeast Quarter of the Northeast Quarter of said Section 24 and to the **POINT OF BEGINNING**.

THENCE North 89° 43' 17" East a distance of 30.00 feet to the Easterly Right of Way line of Weld County Road 13;

The following Three (3) courses are along the Easterly Right of Way line of said Weld County Road 13.

THENCE South 00° 06' 39" West a distance of 1324.80 feet;

THENCE South 00° 06' 37" West a distance of 2649.04 feet;

THENCE South 00° 06' 37" West a distance of 29.74 feet to the Easterly prolongation of the Southerly Right of Way line of Weld County Road 42;

THENCE South 89° 36' 32" West along said Easterly prolongation of the Southerly Right of Way line of Weld County Road 42 a distance of 29.74 feet;

THENCE South 89° 36' 32" West continuing along the Southerly Right of Way line of said Weld County Road 42 a distance of 2650.03 feet;

THENCE North 00° 23' 48" West a distance of 30.00 feet to the South Quarter Corner of said Section 24;

THENCE North 00° 06' 15" East along the Easterly line of Northmoor Acres Second Filing recorded March 20, 1972 as Reception No. 1585866 of the Records of Weld County a distance of 3964.93 feet to the Southeast Corner of Tract D-1 of said Northmoor Acres Second Filing;

THENCE North 00° 06' 15" East continuing along the Easterly line of said Northmoor Acres Second Filing a distance of 13.89 feet to the Center-North Sixteenth Corner of said Section 24;

THENCE North 89° 43' 17" East along the South Line of the North Half of the Northeast Quarter of said Section 24 a distance of 2650.42 feet to the **POINT OF BEGINNING**.

TOTAL ANNEXED AREA for the Podtburg Annexation #5 is 246.49 acres, more or less (±).

**EXHIBIT B
WATER RIGHTS**

21 Shares of New Ish Ditch

10 Shares of Highland Ditch