

**TOWN OF JOHNSTOWN  
ANNEXATION AGREEMENT  
THE SUNCATCHER ANNEXATION**

**THIS ANNEXATION AGREEMENT** (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between Sauer South, LLC, a Colorado limited liability company (“Owner”), and the TOWN OF JOHNSTOWN, a home-rule municipal corporation of the State of Colorado (“Town”).

**WITNESSETH:**

**WHEREAS**, Owner desires to annex real property into the Town, situated in the Northeast Quarter of Section 18, Township 4, Range 67 West of the 6<sup>th</sup> P.M., County of Weld, State of Colorado, consisting of approximately 125.158 acres, being more particularly described on Exhibit A, attached hereto and incorporated herein by this reference (“Property”); and

**WHEREAS**, Owner executed a Petition for Annexation, dated June 9 , 2022, a copy of which petition is on file with the Town Clerk; and

**WHEREAS**, Owner has prepared a zoning plat identifying and illustrating requested zoning of Planned Unit Development – Mixed Use (“PUD-MU”), with the intent to provide appropriate future development plans that will further identify and define proposed land use and intended development of the property, except that solar and associated equipment are a use by special review (USR) within the PUD-MU zoning district; 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, when development proceeds, the need for conveyances and dedication of certain property to the Town, including, but not limited to, property for rights-of-ways and easements, shall be directly related to and generated by the development within the Property.

**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 herein are in addition to all requirements concerning annexation contained in the Johnstown Municipal Code, the Town's development regulations and Comprehensive Plan, and the Municipal Annexation Act of 1965, as amended, C.R.S. §§31-12-101, *et seq.* (the "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 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 thereto.

4. **Further Acts.** Owner agrees to execute promptly upon request of the Town any and all surveys and other documents necessary to effect 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 and land uses further presented in the Suncatcher Outline Development Plan (ODP) and that the granting of such zoning by the Town of Johnstown is a material consideration of the Owner's agreement to annex the Property to the Town. Owner shall take all action necessary to permit zoning by Johnstown of the annexed Property within the time prescribed by state statute.

7. **Non-Conforming Use.** The Town agrees to allow existing non-conforming agricultural use, if any, to continue until such time as the Property is platted, but not at a greater level than at its current level of activity and use. The current level of activity is generally characterized as follows: agricultural (irrigated crop production).

8. **Water Rights Dedication.** Owner owns the water rights and lateral ditch company rights appurtenant to the Property that are described on **Exhibit B** attached hereto and incorporated herein by reference. Owner shall dedicate all such water rights and lateral ditch company rights to the Town no later than the date of approval of the final plat for the second phase of development of the Property, or as otherwise required by the Johnstown Municipal Code. Owner specifically agrees that it has not sold or transferred any water rights appurtenant to the Property within the past year nor will it do so during the pendency of this annexation petition and, once annexed to the Town, will not sell or transfer any water rights appurtenant to the Property without the prior written approval of the Town.

9. ***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. Except as otherwise agreed by the Town, Owner shall bear the cost of the delivery of such services.

10. ***Public Improvements.*** Owner agrees to design and construct all required public improvements to Town standards at Owner's expense. Owner shall provide financial guarantees for construction of all required improvements as set forth in each phase or filing of the development and dedicate to the Town any or all of the improvements required by Town ordinances or as otherwise agreed. The public improvements and financial guarantees shall be set forth in a development agreement for each filing between the Town and Owner. All overhead utility lines shall be undergrounded.

11. ***Roadway Dedication.*** Within thirty (30) days of the effective date of the annexation, Owner shall dedicate the right of way to the Town to expand Weld County Roads 15 and 46. If required by the Town, in its discretion, Owner shall dedicate additional right of way to support development of the Property at no cost to the Town, which shall be set forth in a subsequent agreement between the Town and Owner.

12. ***Easement Conveyance.*** Owner has conveyed a temporary construction and access easement and a permanent sanitary sewer easement to the Town, as shown respectively on **Exhibits C and D** attached hereto and incorporated herein by reference.

13. ***Land Dedication.*** The dedication of parks and open space, flood plains, public easements for utilities, rights-of-way for streets and other public ways and dedications for other public purposes shall be by general warranty deed (to include, except for public easements, mineral interest owned by Owner at the time of annexation) or another appropriate instrument of conveyance acceptable to the Town. Such dedications shall occur when required by the Town. The Town and Owner agree 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.

14. ***Water and Waste Water Utilities.*** Owner agrees to construct all on-site and required off-site water and waste water mains and appurtenances to Town standards at Owner's expense. The 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 if Owner and Town determine that such installation is necessary in connection with orderly development of the Property.

15. ***Drainage.*** A drainage study of the entire annexation territory shall be provided by Owner to the Town no later than the date of Owner's filing of a preliminary plat with the Town. Improvements shall be made as required by the Town. 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.

16. **Limitation on Fee Impositions by the Town.** The Town agrees that the Property shall be subject to typical development fees similar to those that are imposed on other comparable developments in the Town pursuant to the Town's regulations and ordinances. Owner acknowledges that the Town has adopted impact fees and a special regional sewer fee that will apply to this development.

17. **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.

18. **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.

19. **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, Owner shall be required to pay sums due and owing from the Town to the Little Thompson Water District ("Water District"), if any, pursuant to an Intergovernmental Agreement between the Town of Johnstown and the Little Thompson Water District dated January 21, 2009. Existing uses on the Property may continue to utilize service from the Irrigation Ditches or the Water District until such time as redevelopment of the property occurs or the Town otherwise requires, at which time disconnection from those other sources shall be required.

20. **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.

21. **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 owners 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.

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

23. **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. Because certain of the provisions of this Agreement may involve areas of legal uncertainty or be subject to subsequent revisions to the law, the Town does not intend to provide any warranty.

24. **Breach.** In the event of a default or breach by 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.

**Attorney's Fees.** If Owner breaches this Agreement, 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 the Town for the Town's attorney's fees, court costs, and witness fees. Rather than require the Town to defend an action brought by a third party alleging that the Property is not subject to annexation or that the technical requirements of the Act were not met, Owner may withdraw the Petition for Annexation. 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 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 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.

25. **Assignments.** Within ten days of an assignment, Owner shall provide written notice to the Town of the name, address and telephone number of the assignee.

26. **Town Police Powers.** Nothing contained in the Agreement shall constitute or be interpreted as a repeal of existing codes, ordinances or as a waiver of the Town's legislative, governmental, or police powers to promote and protect the health, safety, and general welfare of the Town or its inhabitants; nor shall this Agreement prohibit the enactment by the Town of any fee which is of uniform or general application.

27. **Performance Standards (Design Guidelines).** If required by the Town, the Town and Owner shall jointly develop and agree to adopt performance standards addressing design considerations, including architectural, site planning, landscaping, streetscape, and sign elements for land uses within the Property. The performance standards shall be applied to all development projects within the Property. The performance standards shall not supersede any uniform code of the Town such as the Uniform Building Code, Uniform Fire Code, or any other like code which is applicable to all properties located within the Town.

28. **Notice.** All notices required under this Agreement shall be in writing and shall be; 1) hand-delivered or; 2) sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth; or 3) sent by electronic mail return receipt requested and received. All notices by hand-delivery or electronic mail shall be effective upon receipt. All notices by mail shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party, by notice to be given, may change the address to which future notices shall be sent.

Notice to Town:

Town of Johnstown  
ATTN: Town Manager  
450 S. Parish Avenue  
P. O. Box 609  
Johnstown, CO 80534  
Email: [mlecerf@townofjohnstown.com](mailto:mlecerf@townofjohnstown.com)

Notice to Owner:

Sauer South, LLC  
Attn: Cynthia Sauer  
6681 County Road 50  
Johnstown, CO 80534  
Email: [cindys@skybeam.com](mailto:cindys@skybeam.com)

30. **Voluntary Annexation; 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 § 31-12-112, C.R.S., 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.

31. **Cost Reimbursement to Town.** Owner, or a developer, shall reimburse Town for professional consultants such as engineers, testing companies, planners, and attorneys necessitated by processing and completion of this development.

32. **No Third Party Rights.** 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.

33. **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.

34. **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.

35. **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.

36. **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.

37. **No Vested Rights.** No vested rights shall accrue to Owner by virtue of annexation of the Property or this Annexation Agreement.

38. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of 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. This Agreement shall be recorded with the County Clerk and Recorder of Weld County, Colorado, at Owner's expense. Subject to the conditions precedent herein, this Agreement may be enforced in any court of competent jurisdiction.

39. **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 related to the subject matter herein.

40. **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 this Agreement.

41. **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.

[Remainder of page intentionally left blank.]



**OWNER:**  
**Sauer South, LLC**

By: Cynthia Sauer  
Name: Cynthia Sauer  
Title: Managing Partner

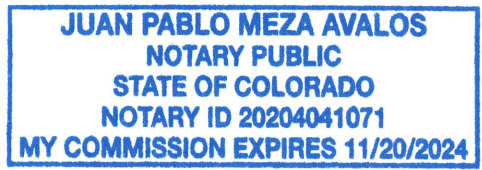
STATE OF COLORADO            )  
  )ss.  
COUNTY OF WELD                )

SUBSCRIBED AND SWORN to before me this 05 day of August, 2022, by  
Cynthia Sauer, as Managing Partner of Sauer South, LLC.

WITNESS my hand and official seal.

Juan Pablo Meza Avalos  
Notary Public

My commission expires: 11/20/2024



**ATTEST:**

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

By: \_\_\_\_\_  
Hannah Hill, Town Clerk

By: \_\_\_\_\_  
Gary Lebsack, Mayor

**EXHIBIT A**

LOT A, RECORDED EXEMPTION NO. 1059-18-1-RE-1008, EXCEPT THE EAST 30 FEET AND THE NORTH 30 FEET THEREOF, THE PERIMETER OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SECTION 18, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH P.M.;

THENCE SOUTH 02°49'41" EAST ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 18 FOR 30.13 FEET TO THE SOUTH RIGHT-OF-WAY OF WELD COUNTY ROAD 46, ALSO BEING THE SOUTH LINE OF THE KETO 161 ANNEXATION, REC. NO. 3453285, SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE SOUTH 87°36'24" EAST ON THE SOUTH RIGHT-OF-WAY OF WELD COUNTY ROAD 46, ALSO BEING THE SOUTH LINE OF THE KETO 161 ANNEXATION, REC. NO. 3453285, FOR 2595.82 FEET TO THE WEST RIGHT OF WAY OF WELD COUNTY ROAD 15, ALSO THE WEST LINE OF THE WIND FARM ANNEXATION, REC. NO. 3003119;

THENCE SOUTH 02°47'22" EAST ON THE WEST LINE OF SAID WEST RIGHT OF WAY, ALSO THE WEST LINE OF SAID WIND FARM ANNEXATION FOR 1034.91 FEET TO THE NORTH LINE OF LOT A OF AMENDED RECORDED EXEMPTION AMRE-3151, REC. NO. 3267510;

THENCE SOUTH 87°55'00" WEST ON THE NORTH LINES OF LOTS A AND B OF AMENDED RECORDED EXEMPTION AMRE-3151, REC. NO. 3267510, FOR 391.77 FEET;

THENCE SOUTH 03°58'40" EAST ON THE WEST LINE OF LOT B OF SAID AMENDED RECORDED EXEMPTION AMRE-3151 FOR 724.84 FEET;

THENCE ALONG THE NORTHERLY BOUNDARY OF PARCELS A AND B OF CORRECTED RECORDED EXEMPTION RE-1212, REC. NO. 2256165 FOR THE FOLLOWING 15 COURSES:

THENCE SOUTH 62°10'11" WEST FOR 279.88 FEET;

THENCE SOUTH 29°32'23" WEST FOR 83.93 FEET;

THENCE SOUTH 11°57'09" EAST FOR 120.96 FEET;

THENCE SOUTH 11°47'14" WEST FOR 190.85 FEET;

THENCE NORTH 82°23'15" WEST FOR 175.68 FEET;

THENCE SOUTH 63°07'32" WEST FOR 94.42 FEET;

THENCE SOUTH 88°56'37" WEST FOR 117.14 FEET;

THENCE NORTH 78°25'44" WEST FOR 67.39 FEET;

THENCE NORTH 87°00'45" WEST FOR 208.55 FEET;

THENCE NORTH 55°59'33" WEST FOR 116.24 FEET;

THENCE SOUTH 81°44'40" WEST FOR 527.88 FEET;

THENCE NORTH 86°59'58" WEST FOR 152.87 FEET;

THENCE SOUTH 65°01'01" WEST FOR 249.52 FEET;

THENCE NORTH 75°43'44" WEST FOR 210.99 FEET;

THENCE SOUTH 61°32'24" WEST FOR 30.36 FEET TO THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 18;

THENCE NORTH 02°49'41" WEST ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 18 FOR 2459.06 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 5,451,867 SQUARE FEET, 125.158 ACRES MORE OR LESS.

**EXHIBIT B**

WATER RIGHTS

2 Shares of Consolidated Hillsboro Ditch Company Stock Certificate #891

**EXHIBIT C**

Temporary Construction and Access Easement

## TOWN OF JOHNSTOWN

### TEMPORARY CONSTRUCTION AND ACCESS EASEMENT

THIS TEMPORARY CONSTRUCTION AND ACCESS EASEMENT AGREEMENT (“Agreement”) is made this 10 day of FEBRUARY 2022 (the “Effective Date”), between Sauer South, LLC, a Colorado limited liability company (“Grantor”), and the TOWN OF JOHNSTOWN, a Colorado home-rule municipal corporation of the State of Colorado (“Town”), whose legal address is 450 S. Parish Avenue, Johnstown CO 80534. Grantor and the Town may be collectively referred to herein as the “Parties.”

WHEREAS, the Parties have entered into a Sanitary Sewer Agreement of even date herewith for the construction of a sanitary sewer (the “Sanitary Sewer”) to be located on Grantor’s real property more particularly described on Exhibit A, attached hereto and incorporated herein by this reference (the “Property”); and

WHEREAS, Grantor agrees to grant to Grantee a temporary construction easement in conjunction with the Sanitary Sewer Agreement according to the terms set forth herein.

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

1. *Recitals.*

The foregoing Recitals are incorporated as if fully set forth herein.

2. *Temporary Construction Easement.*

Grantor, subject to the terms and conditions set forth below, hereby grants and conveys to the Town, its successors and assigns, a temporary construction and access easement sixty (60) feet in width on, over, under and across that portion of the Property more particularly described on Exhibit B, attached hereto and incorporated herein by this reference (the “Easement Area”), for the purpose of staging and storing materials and constructing and installing the Sanitary Sewer within the property described in the Sanitary Sewer Agreement (“Easement”). Grantor further grants to the Town (i) the right to mark the location of said Easement for the benefit of construction services and (ii) the right to cut and clear trees, brush, debris, and other obstructions on the Property that might interfere with the use thereof by construction services during the term hereof.

3. *Terms and Conditions*

The Parties that the Easement granted to the Town above shall remain subject to the following terms and conditions for so long as such interests may exist:

A. Improvements Within Easement Area.

i. Grantor shall not construct or place any structure or improvement of any kind on any part of the Easement Area without the Town’s express written approval if the same in any way impairs the use by the Town of the Easement.

ii. Any structure or improvement of any kind constructed by Grantor in the Easement Area during the term hereof without Town approval shall be removed by the Grantor upon written demand by the Town or may be removed by the Town, at the expense of the Grantor, without liability for damages arising therefrom.

B. Rights Reserved by Grantor: Exclusivity of Permanent Easement.

i. Subject to the terms of this Agreement, Grantor hereby retains the right to undisturbed use and occupancy of the Easement Area, insofar as such use and occupancy is consistent with and does not unreasonably impair any rights granted to the Town herein.

C. Title Verification by Town: Grantor's Warranty.

i. Grantor warrants that Grantor has full right and lawful authority to grant the real property interests contained herein and promises and agrees to indemnify and defend the Town in the exercise of any rights granted to Town under this Agreement against any claims arising by, though or under Grantor, subject to all matters of public record.

D. Agreements Binding: Run with Grantor's Property.

i. Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the Parties.

ii. The Easement herein granted touches and concerns the real property of the Grantor and shall be deemed a covenant running with the Property.

E. Miscellaneous.

i. The Town hereby agrees to restore the Easement Area upon completion of the construction of the Sanitary Sewer to its condition as of the Effective Date or as close as is practical to such condition.

ii. The Parties agree that neither has made nor authorized any agreement with respect to the subject matter of this instrument other than expressly set forth herein and no oral representation, promise, or consideration different from the terms herein contained shall be binding on Grantor or the Town or their agents or employees. Any amendments hereto shall be in writing and executed by all Parties.

iii. This Agreement shall terminate at the earlier of: (a) completion of the construction and installation of the Sanitary Sewer and all other activities related thereto; or (b) the second anniversary of the Effective Date.

iv. The Town represents that it is prohibited by the Colorado Constitution, the Johnstown Home Rule Charter, the Johnstown Municipal Code and state law from entering into indemnification obligations without appropriations in its budget which it has not made for this Agreement. Accordingly, only to the extent allowed under law, and without in any manner waiving the protections, procedural requirements, defenses and monetary limitations on damages provided for in the Colorado Governmental Immunity Act, § 24-10-101 *et seq.*, C.R.S., as amended, the Town agrees to indemnify and hold harmless Grantor from any claims, demands, or liability arising out

of the Towns use of the Easement Area, except and to the extent of claims arising out of the negligence or willful misconduct of Grantor.

v. This Agreement may be executed in counterparts, each of which shall be deemed an original signature and which collectively shall form one agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this instrument as of the day and year first above written.

**GRANTOR:**

Sauer South, LLC  
a Colorado limited liability company

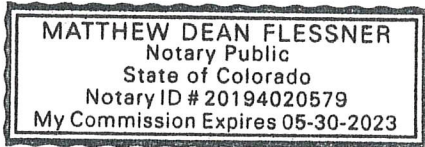
Cynthia I. Sauer  
Cynthia I. Sauer, Operating Manager

STATE OF COLORADO )  
 ) ss.  
COUNTY OF WELD. )

The foregoing instrument was acknowledged before me by \_\_\_\_\_ this 10 day of February, 2022 by Cynthia I. Sauer as Operating Manager of Sauer South, LLC, a Colorado limited liability company, Grantor.

My commission expires: 5/30/2023

Witness my hand and official seal.



Matthew Flessner  
Notary Public

[SEAL]

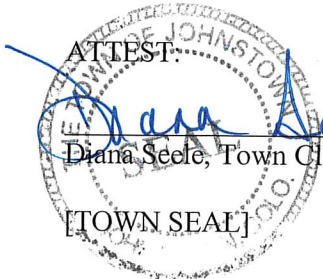
**TOWN OF JOHNSTOWN, COLORADO**

By: Matthew S. LeCerf  
Matthew S. LeCerf, Town Manager

ATTEST:

Diana Seale  
Diana Seale, Town Clerk

[TOWN SEAL]



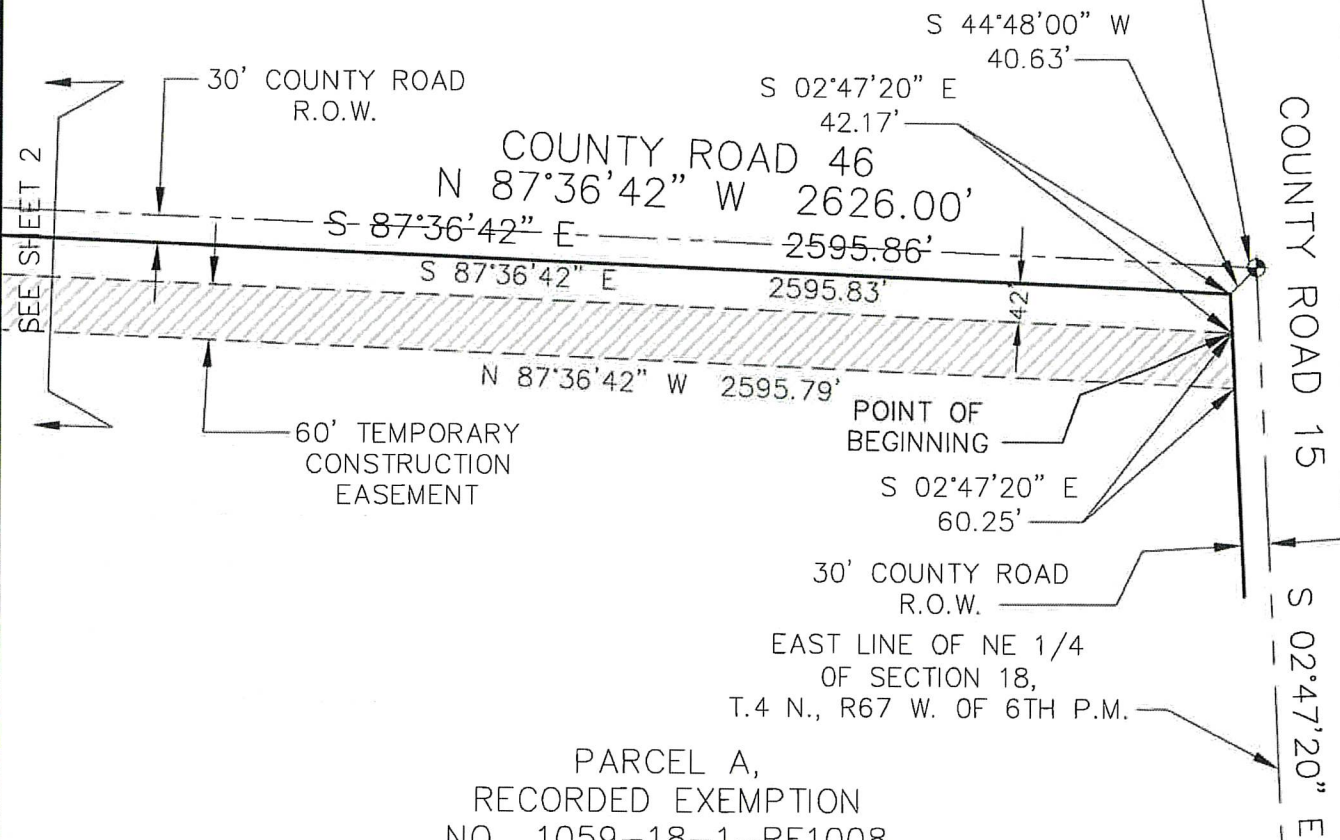
**EXHIBIT A**

Legal Description Exhibit - attached

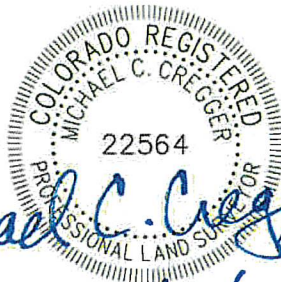


EXHIBIT  
 TEMPORARY CONSTRUCTION EASEMENT  
 LOCATED IN NE 1/4 OF SECTION 18,  
 T.4 N., R.67 W. OF  
 6TH P.M., WELD COUNTY, COLORADO

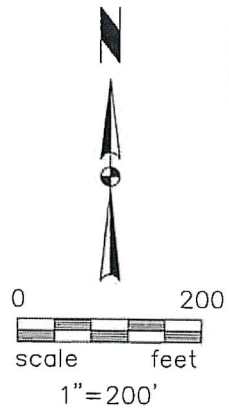
NE COR OF SECTION 18,  
 T.4 N., R.67 W. OF 6TH P.M.



PARCEL A,  
 RECORDED EXEMPTION  
 NO. 1059-18-1-RE1008  
 SAUER SOUTH LLC



*Michael C. Cregger*  
 12/14/21

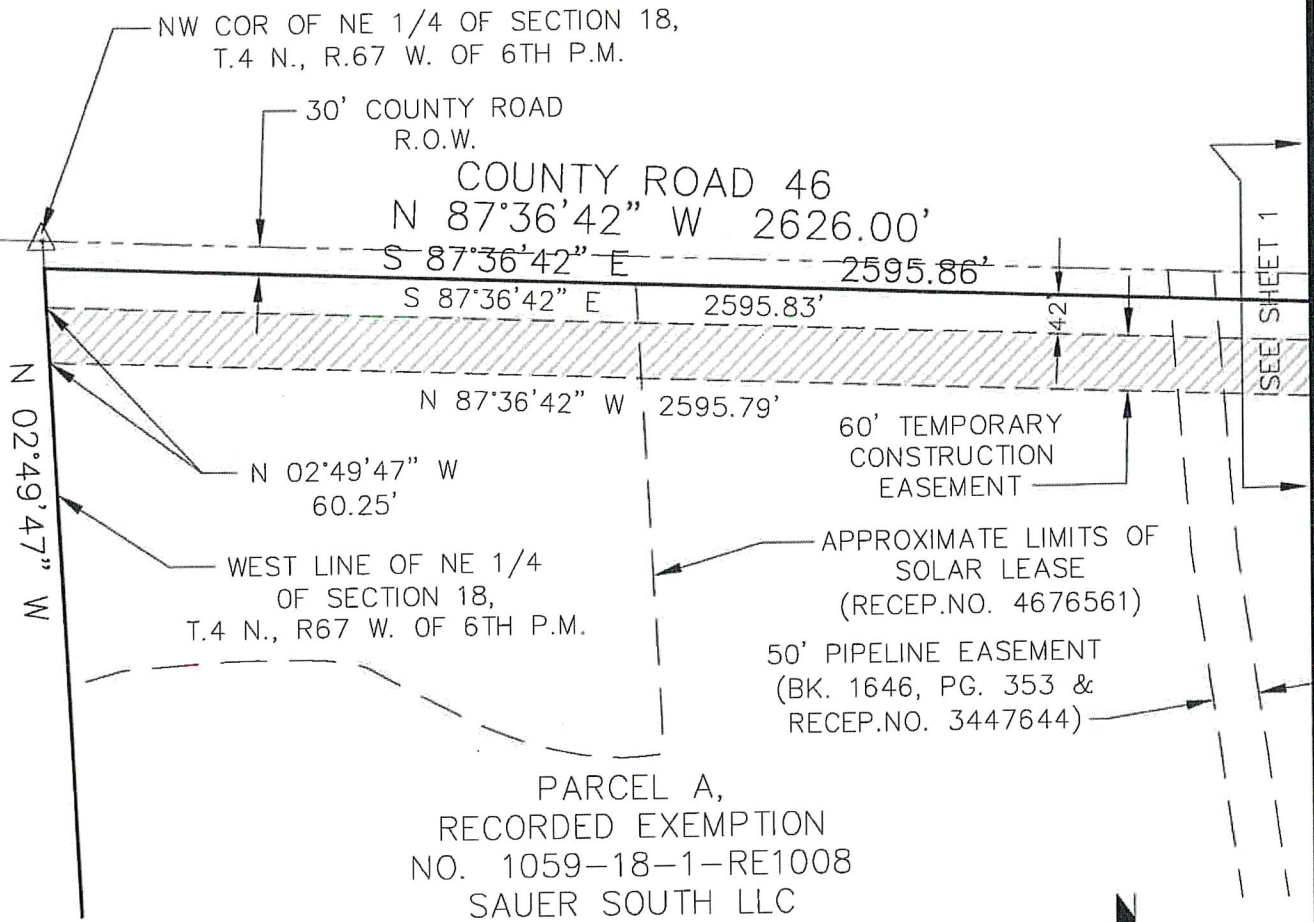


PROJECT PARCEL 185  
**IMEG**  
 IMEG CORPORATION

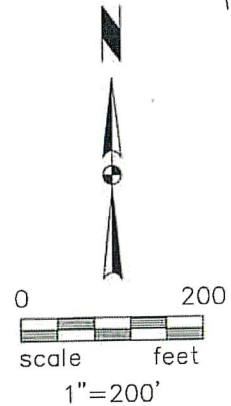
SHEET 1 OF 3

# EXHIBIT

## TEMPORARY CONSTRUCTION EASEMENT LOCATED IN NE 1/4 OF SECTION 18, T.4 N., R.67 W. OF 6TH P.M., WELD COUNTY, COLORADO



*Michael C. Cregger*  
12/14/21



PROJECT PARCEL 185



SHEET 2 OF 3

EXHIBIT  
TEMPORARY CONSTRUCTION EASEMENT  
LOCATED IN NE 1/4 OF SECTION 18, T.4 N., R.67 W. OF  
6TH P.M., WELD COUNTY, COLORADO

LEGAL DESCRIPTION

A 60.00 FOOT WIDE STRIP OF LAND, ACROSS PARCEL A OF RECORDED EXEMPTION NO. 1059-18-1-RE 1008, RECORDED AT RECEPTION NO. 2103740, LOCATED IN THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, WELD COUNTY, COLORADO BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 18, AND CONSIDERING THE NORTH LINE OF SAID NORTHEAST QUARTER TO BEAR NORTH 87°36'42" WEST, WITH ALL BEARINGS CONTAINED HEREIN, RELATIVE THERETO;

THENCE SOUTH 44°48'00" WEST, 40.63 FEET TO THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF COUNTY ROAD 46 WITH THE WEST RIGHT-OF-WAY LINE OF COUNTY ROAD 15; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE OF COUNTY ROAD 15, SOUTH 02°47'20" EAST, 42.17 FEET TO A LINE WHICH IS 42.00 FEET SOUTH OF AND PARALLEL WITH SAID SOUTH RIGHT-OF-WAY LINE OF COUNTY ROAD 46 AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING ALONG SAID WEST RIGHT-OF-WAY LINE OF COUNTY ROAD 15, SOUTH 02°47'20" EAST, 60.25 FEET TO A LINE WHICH IS 102.00 FEET SOUTH OF AND PARALLEL WITH SAID SOUTH RIGHT-OF-WAY LINE OF COUNTY ROAD 46; THENCE ALONG SAID PARALLEL LINE, NORTH 87°36'42" WEST, 2595.79 FEET TO THE WEST LINE OF SAID NORTHEAST QUARTER; THENCE ALONG SAID WEST LINE, NORTH 02°49'47" WEST, 60.25 FEET TO SAID LINE WHICH IS 42.00 FEET SOUTH OF AND PARALLEL WITH SAID SOUTH RIGHT-OF-WAY LINE OF COUNTY ROAD 46; THENCE ALONG SAID PARALLEL LINE, SOUTH 87°36'42" EAST, 2595.83 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION, CONTAINING 155,748 SQUARE FEET (3.58 ACRES), MORE OR LESS.

SURVEYOR'S CERTIFICATE

I, MICHAEL C. CREGGER, DO HEREBY CERTIFY THAT THIS EXHIBIT AND LEGAL DESCRIPTION WERE PREPARED BY ME OR UNDER MY DIRECT SUPERVISION. THIS EXHIBIT DOES NOT CONSTITUTE A LAND SURVEY AS DEFINED BY COLORADO STATUTES.

DATE

12/14/2021

PROFESSIONAL LAND SURVEYOR  
COLORADO REGISTRATION NO. 22564  
FOR AND ON BEHALF OF IMEG CORP

*Michael C. Cregger*



PROJECT PARCEL 185



IMEG CORPORATION

SHEET 3 OF 3

**EXHIBIT D**

Sanitary Sewer Easement Agreement

## TOWN OF JOHNSTOWN

### SANITARY SEWER EASEMENT AGREEMENT

THIS SANITARY SEWER EASEMENT AGREEMENT (“Agreement”) is made this 10 day of FEBRUARY 2021, between Sauer South, LLC (“Grantor”), and the TOWN OF JOHNSTOWN, a Colorado home-rule municipal corporation of the State of Colorado (“Town”), whose legal address is 450 S. Parish Avenue, Johnstown CO 80534. Grantor and the Town may be collectively referred to herein as the “Parties.”

#### WITNESSETH:

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby grants, sells, and conveys to the Town, its successors and assigns, a permanent right to enter, reenter, occupy and use property situate in the County of Weld, State of Colorado, more fully described on Exhibit A attached hereto and incorporated herein by this reference (the “Property”) which is part of Grantor’s larger parcel described on Exhibit B, attached hereto (“Grantor’s Parcel”), to construct, lay, install, inspect, monitor, maintain, repair, renew, substitute, change the size of, replace, remove, relocate and operate one or more underground sanitary sewer pipelines and all underground and surface appurtenances thereto (collectively, the “Improvements”) in, on, under, through, over and across the Property.

IT IS HEREBY MUTUALLY COVENANTED AND AGREED by and between the Parties as follows:

1. Upon reasonable advance notice, the Town, by and through its officers, employees or agents, shall have and may exercise the right of ingress and egress in, on, under, through, over and across the Property for any purpose needful for the full enjoyment of the right of occupancy and/or use provided for herein.

2. Grantor shall neither cause nor permit the construction or placement of any structure or building, temporary or permanent, the planting of any tree, woody plant or nursery stock, or the drilling or operation of any well on the Property without the prior written approval of the Town. Grantor shall not construct or install new fencing across or within the Property without the prior written approval of the Town. Grantor shall not impound water or other substances on or above the Property nor store or dispose of any dangerous, toxic, or hazardous substance on or under the Property. Any of the foregoing obstructions situated on or below the Property without Town approval shall be removed by the Grantor or Grantor’s successors upon written demand by the Town or may be removed by the Town without liability for damages arising therefrom. In the event Grantor is prohibited by construction of the Improvements and this Agreement from utilizing the Property to satisfy the Town’s landscape buffer requirements, the Town will not require any additional landscape buffer on Grantor’s Parcel for landscaping requirements which could have been addressed on the Property but for the Improvements and this Agreement.

3. The Town shall restore the Property to its original condition or as close thereto as possible, except as necessarily modified to accommodate the Improvements, following the Town's construction of the Improvements and shall repair any damages to the Property arising out of the construction or reconstruction, maintenance or repair of said Improvements in the exercise of the rights hereby granted to the Town. During construction of the Improvements, the Town shall segregate any disturbed topsoil and upon completion of construction of the Improvements, the topsoil shall remain on top of the other soil and shall not be commingled with the other soil, soil shall be mounded and ripped over the Improvements trench, and ripped in all other areas of the Easement and Temporary Construction Easement, and the Town shall return the elevation of the land to the same elevation that existed prior to the construction and installation of the Improvements. Any excess earth resulting from installations by the Town shall be removed from the Property at the sole expense of the Town. The Town shall maintain the surface elevation and quality of the soil by correcting any settling or subsiding that may occur as a result of the work done by the Town. The Town shall have a reasonable amount of time to make any such restorations.

4. The Town shall pay Grantor for any actual damages to growing crops, caused by Grantee's, its agents', invitees', contractors', subcontractors' and/or employees' activities on the Easement and Temporary Construction Easement for a period of three (3) years. If crop loss and damages are so caused, Grantor and the Town shall agree upon reasonable fair market value compensation for losses and damage to crops. The losses or damage shall be based upon Grantor's crop yield records for that particular crop from the current year compared to historical yields prior to the construction of the Improvements, and upon prices of a mature crop according to prices in Weld County for that crop in the year that the crop losses and damage occur.

5. All manholes within the Property shall be buried three (3') feet below grade when construction is completed. If the property is developed in the future, the developer shall be responsible and financially obligated for raising the elevation of the manholes if necessary.

6. The Town shall have and may exercise the right of subjacent and lateral support to whatever extent is necessary for the full, complete and unmolested enjoyment of the rights herein granted. It is specifically agreed that Grantor shall neither take nor permit any action which would impair or in any way decrease or increase the ground level or the lateral or subjacent support for the Improvements within the Property.

7. Grantor retains the right to the undisturbed use and occupancy of the Property insofar as such use and occupancy is consistent with and does not impair any grant or covenant herein contained.

8. If the Town by recorded written instrument terminates or releases its rights herein granted and ceases to use the same, all right, title and interest of the Town hereunder shall cease and terminate and Grantor shall hold the Property, as the same may then be, free from the rights so abandoned and shall own all material and structures of the Town so abandoned, but nothing herein shall be construed as working a forfeiture or abandonment of any interest derived hereunder and not owned by the Town at the time of the abandonment of the Town's rights. In the event of such release, the Town, shall, either remove or properly abandon in place the Improvements and

restore surface of the Property to the approximate condition it was in prior to such removal or abandonment in place. In the event the Town elects to abandon the Improvements in place, the Town shall completely fill the sewer line with adequate flowable fill, together with ballast as applicable.

9. Grantor warrants that it has full right and lawful authority to convey the real property interests and make the grant contained herein subject to all matters of public record, against any claims arising by, through, or under Grantor.

10. Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the Parties hereto. The rights herein granted touch and concern the real property of the Grantor and shall be deemed covenants running with the Property.

11. This writing constitutes the whole agreement between the Parties and no additional or different oral representation, promise or agreement shall be binding on any of the Parties hereto with respect to the subject matter of this instrument.

12. The signatories hereto warrant that they have full and lawful authority to make the grant, covenants and promises herein above contained as Grantor and the covenants and promises herein above made as the Town.

13. The Town shall have the right to assess the Grantor the cost of correcting any conditions created by the Grantor in violation of this Agreement.

14. The Parties agree that this Agreement shall be recorded in the office of the Weld County Clerk and Recorder's Office.

15. This Agreement may be executed in counterparts, each of which shall be deemed an original signature and which collectively shall form one agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this instrument as of the day and year first above written.

**GRANTOR:**  
 Sauer South, LLC  
 a Colorado limited liability company

*Cynthia I. Sauer*  
 \_\_\_\_\_  
 Cynthia I. Sauer, Operating Manager

STATE OF COLORADO )  
 ) ss.

COUNTY OF WELD )

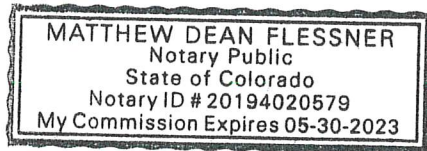
The foregoing instrument was acknowledged before me this \_\_\_\_ day of January, 2022, by Cynthia I. Sauer as Operating Manager of Sauer South, LLC, a Colorado limited liability company, Grantor.

My commission expires: 5/30/2023

Witness my hand and official seal.

  
\_\_\_\_\_  
Notary Public

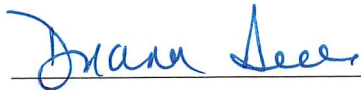
[ S E A L ]



**TOWN OF JOHNSTOWN, COLORADO**

By:   
\_\_\_\_\_  
Matthew S. LeCerf, Town Manager

ATTEST:

  
\_\_\_\_\_

Diana Seele, Town Clerk

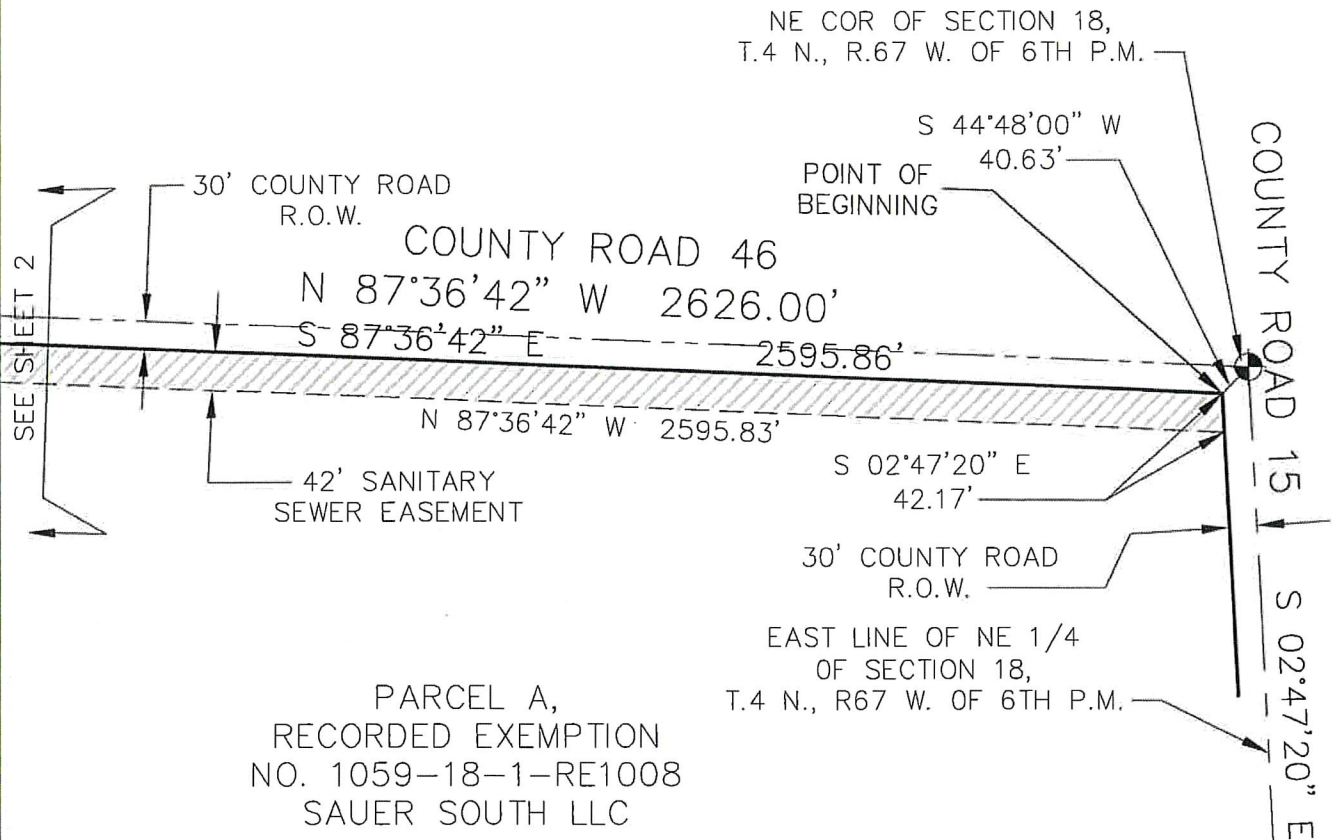




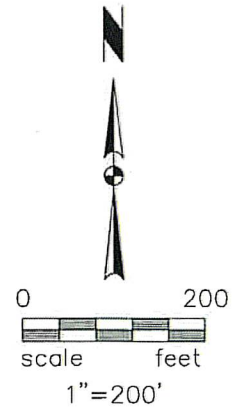
**EXHIBIT A**

Property Description – attached

EXHIBIT  
 SANITARY SEWER EASEMENT  
 LOCATED IN NE 1/4 OF SECTION 18, T.4 N., R.67 W. OF  
 6TH P.M., WELD COUNTY, COLORADO



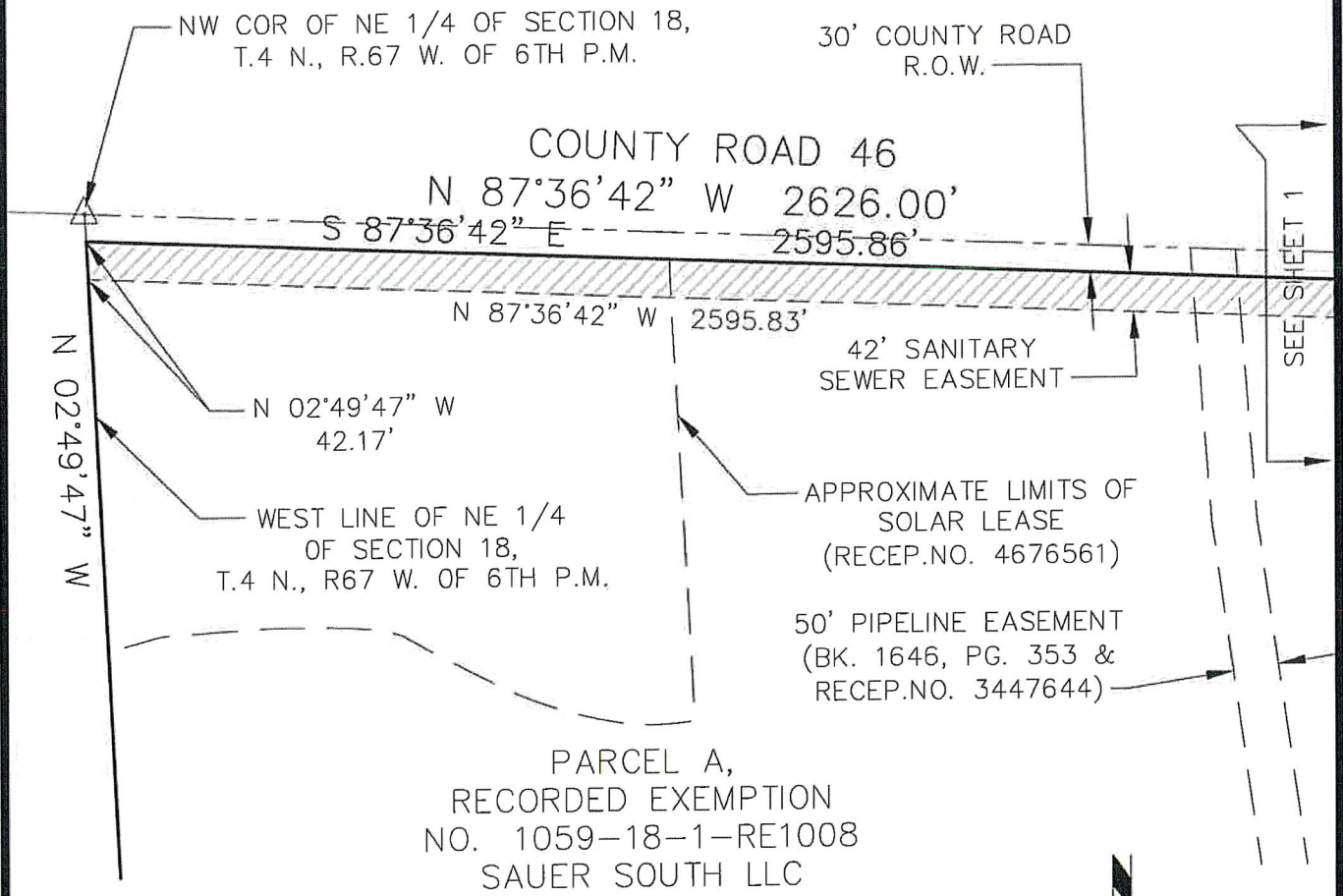
Michael C. Cregger  
 12/14/21



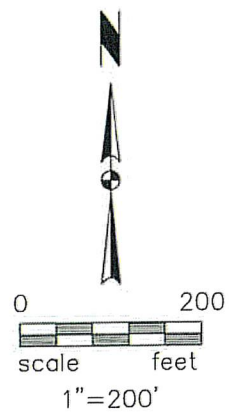
PROJECT PARCEL 185  
  
 IMEG CORPORATION

SHEET 1 OF 3

EXHIBIT  
 SANITARY SEWER EASEMENT  
 LOCATED IN NE 1/4 OF SECTION 18, T.4 N., R.67 W. OF  
 6TH P.M., WELD COUNTY, COLORADO



*Michael C. Cregger*  
 12/14/21



PROJECT PARCEL 185  
**IMEG**  
 IMEG CORPORATION

EXHIBIT  
SANITARY SEWER EASEMENT  
LOCATED IN NE 1/4 OF SECTION 18, T.4 N., R.67 W. OF  
6TH P.M., WELD COUNTY, COLORADO

LEGAL DESCRIPTION

A 42.00 FOOT WIDE STRIP OF LAND, ACROSS PARCEL A OF RECORDED EXEMPTION NO. 1059-18-1-RE 1008, RECORDED AT RECEPTION NO. 2103740, LOCATED IN THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, WELD COUNTY, COLORADO BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 18, AND CONSIDERING THE NORTH LINE OF SAID NORTHEAST QUARTER TO BEAR NORTH 87°36'42" WEST, WITH ALL BEARINGS CONTAINED HEREIN, RELATIVE THERETO;

THENCE SOUTH 44°48'00" WEST, 40.63 FEET TO THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF COUNTY ROAD 46 WITH THE WEST RIGHT-OF-WAY LINE OF COUNTY ROAD 15 AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE OF COUNTY ROAD 15, SOUTH 02°47'20" EAST, 42.17 FEET TO A LINE WHICH IS 42.00 FEET SOUTH OF AND PARALLEL WITH SAID SOUTH RIGHT-OF-WAY LINE OF COUNTY ROAD 46; THENCE ALONG SAID PARALLEL LINE, NORTH 87°36'42" WEST, 2595.83 FEET TO THE WEST LINE OF SAID NORTHEAST QUARTER; THENCE ALONG SAID WEST LINE, NORTH 02°49'47" WEST, 42.17 FEET TO SAID SOUTH RIGHT-OF-WAY LINE OF COUNTY ROAD 46; THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE, SOUTH 87°36'42" EAST, 2595.86 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION, CONTAINING 109,025 SQUARE FEET (2.50 ACRES), MORE OR LESS.

SURVEYOR'S CERTIFICATE

I, MICHAEL C. CREGGER, DO HEREBY CERTIFY THAT THIS EXHIBIT AND LEGAL DESCRIPTION WERE PREPARED BY ME OR UNDER MY DIRECT SUPERVISION. THIS EXHIBIT DOES NOT CONSTITUTE A LAND SURVEY AS DEFINED BY COLORADO STATUTES.

12/14/2021  
DATE

Michael C. Cregger  
PROFESSIONAL LAND SURVEYOR  
COLORADO REGISTRATION NO. 22564  
FOR AND ON BEHALF OF IMEG CORP



PROJECT PARCEL 185



SHEET 3 OF 3

**EXHIBIT B**  
Grantor's Parcel

The portion of the Northeast Quarter of Section 18, Township 4 North, Range 67 West of the 6<sup>th</sup> Principal Meridian, Weld County, Colorado being more particularly described as follows: