

**TOWN OF BERTHOUD**  
**Larimer & Weld County, Colorado**

**RESOLUTION NO. 20-13**

**A RESOLUTION MAKING CERTAIN FINDINGS OF FACT AND CONCLUSIONS  
BASED THEREON WITH RESPECT TO THE ANNEXATION OF A PARCEL OF  
LAND TO THE TOWN OF BERTHOUD (PROSWING FIRST ANNEXATION –  
SERIALS 1, 2, AND 3)**

**WHEREAS**, Larry McVay, representing himself (“Annexor”) is the sole owner of the property located in Larimer County, more fully described in **Exhibit A** and depicted on **Exhibit B**, both of which are attached hereto and incorporated herein by this reference (the “PROPERTY”); and

**WHEREAS**, Annexor desires to annex the Property to the Town and to that end has filed a petition for annexation of the Property into the Town, pursuant to the Colorado Municipal Annexation Act, C.R.S. § 31-12-101, *et seq.* (the “Act”) and Chapter 30-8 of the Berthoud Development Code (the “Code”); and

**WHEREAS**, the Town Board found on November 5, 2013 that the Annexor’s Petition for Annexation was in substantial compliance with the Act and the Code and set a date for a public hearing to be held to determine whether the proposed annexation complies with C.R.S. §§ 31-12-104 and 31-12-105 (the “Public Hearing”); and

**WHEREAS**, Town Board has this day held the Public Hearing;

**NOW THEREFORE, BE IT RESOLVED** by the Town Board of the Town of Berthoud, Colorado, as follows:

**FINDINGS**

**Section 1.** C.R.S. § 31-12-104(1) (a) requires that no less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the annexing municipality. *The ProSwing First Annexations: Serials 1-3 meet the contiguity requirements of Colorado law as the 1<sup>st</sup> serial annexation is 16.67% contiguous, the 2<sup>nd</sup> serial annexation is 28.95% contiguous, and the 3<sup>rd</sup> serial annexation is 19.58% contiguous with previous annexations. Annexation of the Property in series meets the one-sixth contiguity requirement.*

**Section 2.** C.R.S. § 31-12-104(1)(b) requires that a community of interest exists between the area proposed to be annexed and the annexing municipality, said area is urban or will be urbanized in the near future, and said area is integrated with or is capable of being integrated with the annexing municipality. *Testimony was presented at the Public Hearing that a community of interest exists between the subject property and that the area is capable of being integrated with the Town of Berthoud.*

**Section 3.** C.R.S. § 31-12-105(1) (a) requires that in establishing the boundaries of any territory to be annexed, no land held in identical ownership, whether consisting of one tract or

parcel of real estate or two or more contiguous tracts or parcels of real estate, shall be divided into separate parts or parcels without the written consent of the landowners thereof unless such tracts or parcels are separated by a dedicated street, road, or other public way. *The Property will not be divided into separate parts or parcels as a result of this annexation without the written consent of the property owner.*

**Section 4.** C.R.S. § 31-12-105(1) (b) requires that no land held in identical ownership and comprising twenty acres or more, which together with the buildings and improvements situated thereon has a valuation for assessment in excess of two hundred thousand dollars for ad valorem tax purposes for the year next preceding the annexation shall be included in the annexation without the written consent of the landowners. *Testimony at the Public Hearing stated that the Annexors are the sole owners of the Property and that no portion of the Property is being included in the annexation without the owner's written consent.*

**Section 5.** C.R.S. § 31-12-105(1)(c) requires that no annexation pursuant to section 31-12-106 and no annexation petition or petition for an annexation election pursuant to section 31-12-107 shall be valid when annexation proceedings have been commenced for the annexation of part or all of such territory to another municipality, except in accordance with the provisions of section 31-12-114. *Testimony at the Public Hearing stated that no annexation petition or petition for annexation election has been commenced for the annexation of all or a part of the Property to another municipality.*

**Section 6.** C.R.S. § 31-12-105(1)(d) requires that if an annexation will result in the detachment of area from any school district and the attachment of the same to another school district, no annexation is valid unless accompanied by a resolution of the board of directors of the school district to which such area will be attached approving such annexation. *Evidence was received during the Public Hearing that annexing the Property to the Town will not result in a detachment of area from any school district or attachment of area to another school district.*

**Section 7.** C.R.S. § 31-12-105(1)(e)(I) requires that no annexation may take place that would have the effect of extending a municipal boundary more than three miles in any direction from any point of such municipal boundary in any one year and that prior to completion of any annexation within the three-mile area, the municipality shall have in place a plan for that area that generally describes the proposed location, character, and extent of streets, subways, bridges, waterways, waterfronts, parkways, playgrounds, squares, parks, aviation fields, other public ways, grounds, open spaces, public utilities, and terminals for water, light, sanitation, transportation, and power to be provided by the municipality and the proposed land uses for the area. *Evidence was produced at the Public Hearing that shows the Property is within three miles of the boundary of the Town and that the Town's Three-Mile Plan, which includes the plan elements listed above, includes the Property within its scope.*

**Section 8.** C.R.S. § 31-12-105(1)(e)(II) requires that prior to completion of an annexation in which the contiguity required by section 31-12-104 (1) (a) is achieved pursuant to subparagraph (I) of this paragraph (e), the municipality shall annex any of the following parcels that abut a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway, where the parcel satisfies all of the eligibility requirements pursuant to section 31-12-

104 and for which an annexation petition has been received by the municipality no later than forty-five days prior to the date of the hearing set pursuant to section 31-12-108 (1):

- (A) Any parcel of property that has an individual schedule number for county tax filing purposes upon the petition of the owner of such parcel;
- (B) Any subdivision that consists of only one subdivision filing upon the petition of the requisite number of property owners within the subdivision as determined pursuant to section 31-12-107; and
- (C) Any subdivision filing within a subdivision that consists of more than one subdivision filing upon the petition of the requisite number of property owners within the subdivision filing as determined pursuant to section 31-12-107.

*At the Public Hearing, evidence was presented that this requirement has been met.*

**Section 9.** C.R.S. § 31-12-105(1)(e.1) requires that when the contiguity required by Section 31-12-104 is achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway, the parcels described in subparagraphs A, B, and C of Section 31-12-105(e)(II) shall be annexed under the same or substantially similar terms and conditions and considered at the same hearing and in the same impact report as the initial annexation and that as part of the same hearing, the municipality shall consider and decide upon any petition for annexation of any parcel of property having an individual schedule number for county tax filing purposes, which petition was received not later than forty-five days prior to the hearing date, where the parcel abuts any parcel described in subparagraphs A, B, and C of C.R.S. § 31-12-105(e)(II) and where the parcel otherwise satisfies all of the eligibility requirements of C.R.S. § 31-12-104. *At the Public Hearing, evidence was presented that no parcel would be eligible for annexation pursuant to C.R.S. § 31-12-105(e) (II).*

**Section 10.** C.R.S. § 31-12-105(1)(e.3) requires that in connection with any annexation in which the contiguity required by section 31-12-104 (1) (a) is achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway, upon the latter of ninety days prior to the date of the hearing set pursuant to section 31-12-108 or upon the filing of the annexation petition, the municipality shall provide, by regular mail to the owner of any abutting parcel as reflected in the records of the county assessor, written notice of the annexation and of the landowner's right to petition for annexation pursuant to section 31-12-107. *At the Public Hearing, evidence was presented that no parcel would be eligible for annexation pursuant to the above provisions.*

**Section 11.** C.R.S. § 31-12-105(1)(f) requires that in establishing the boundaries of any area proposed to be annexed, if a portion of a platted street or alley is annexed, the entire width of said street or alley shall be included within the area annexed. *Evidence presented at the Public Hearing indicated that the applicable portion of a platted street or alley was included within the area annexed.*

**Section 12.** C.R.S. § 31-12-105(1)(g) requires that a municipality shall not deny reasonable access to landowners, owner of an easement, or the owner of a franchise adjoining a platted street or alley which has been annexed by the municipality but is not bounded on both sides by the municipality. *Evidence presented at the Public Hearing indicates that no portions of platted streets or alleys are included within the Property and that, therefore, this requirement is not applicable.*

**Section 13.** C.R.S. § 31-12-105(1)(h) requires that the execution by any municipality of a power of attorney for real estate located within an unincorporated area shall not be construed to comply with the election provisions of this article for purposes of annexing such unincorporated area. Such annexation shall be valid only upon compliance with the procedures set forth in this article. *Evidence presented at the Public Hearing that no power of attorney for real estate located within an unincorporated area was executed by the Town.*

## CONCLUSION

Based on the foregoing Findings of Fact, the Town Board for the Town of Berthoud finds that the proposed Pro Swing First Annexation – Serials 1, 2, and 3 complies with C.R.S. §§ 31-12-104 and 31-12-105.

**PASSED, ADOPTED AND APPROVED** this 10<sup>th</sup> day of December, 2013.

TOWN OF BERTHOUD



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David Gregg, Mayor

ATTEST:

By: Mary K Cowdin  
Mary Cowdin, Town Clerk

APPROVED AS TO FORM:

By: Gregory J Bell  
Greg Bell, Attorney

**EXHIBIT A**  
**PRO SWING FIRST ANNEXATION – SERIALS 1, 2, AND 3**  
**LEGAL DESCRIPTION**

**PRO SWING FIRST ANNEXATION SERIAL 1:**

Those portions of the Southwest Quarter of Section 1 and the Southeast Quarter of Section 2, All in Township 4 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the East line of the Southeast Quarter of said Section 2 as bearing North 00°18'00" West and with all bearings contained herein relative thereto:

BEGINNING at the Southeast corner of said Section 2; thence along the South line of the Southeast Quarter of said Section 2 South 89°36'00" West 30.00 feet, more or less, to a point on the Westerly right-of-way line for First Street (U.S. Highway No. 287); thence departing said Westerly right-of-way line for First Street (U.S. Highway No. 287) North 11°14'13" East 150.00 feet, more or less, to a point on the East line of the Southeast Quarter of said Section 2; thence departing said East line of the Southeast Quarter of said Section 2 South 11°50'36" East 149.92 feet, more or less, to a point on the Easterly right-of-way line for First Street (U.S. Highway No. 287); said point also being on the South line of the Southwest Quarter of said Section 1; thence departing said Easterly right-of-way line for First Street (U.S. Highway No. 287) and along said South line of the Southwest Quarter of said Section 1 South 89°38'50" West 30.00 feet, more or less, to the Southeast corner of said Section 2 and the POINT OF BEGINNING.

Containing 4,407.51 Square Feet (0.10 Acres), more or less.

**PRO SWING FIRST ANNEXATION SERIAL 2:**

Those portions of the Southwest Quarter of Section 1 and the Southeast Quarter of Section 2, All in Township 4 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the East line of the Southeast Quarter of said Section 2 as bearing North 00°18'00" West and with all bearings contained herein relative thereto:

Beginning at the Southeast corner of said Section 2; thence along the South line of the Southeast Quarter of said Section 2 South 89°36'00" West 30.00 feet, more or less, to a point on the Westerly right-of-way line for First Street (U.S. Highway No. 287) and the TRUE POINT OF BEGINNING; thence departing said Westerly right-of-way line for First Street (U.S. Highway No. 287) North 11°14'13" East 150.00 feet, more or less, to a point on the East line of the Southeast Quarter of said Section 2; thence departing said East line of the Southeast Quarter of said Section 2 South 11°50'36" East 149.92 feet, more or less, to a point on the Easterly right-of-way line for First Street (U.S. Highway No. 287); said point also being on the South line of the Southwest Quarter of said Section 1; thence departing said Easterly right-of-way line for First Street (U.S. Highway No. 287) and departing said South line of the Southwest Quarter of said Section 1 North 04°58'43" West 367.82 feet, more or less, to a point on the East line of the Southeast Quarter of said Section 2; thence departing said East line of the Southeast Quarter of said Section 2 South 04°22'38" West 367.90 feet, more or less, to a point on the Westerly right-of-way line for First Street (U.S. Highway No. 287); said point also being on the South line of the Southeast Quarter of said Section 2 and the TRUE POINT OF BEGINNING.

Containing 6,591.14 Square Feet (0.15 Acres), more or less.