

01/02/08 RRA

**ANNEXATION AGREEMENT
MOUNTAIN VIEW FARMS ANNEXATION**

THIS AGREEMENT is made and entered into this 17th day of January, 2008, by and between **Mountain View Farms Inc.**, a Colorado Corporation, hereinafter referred to as "Owner," and the **Town of Johnstown**, a municipal corporation of the State of Colorado, hereinafter referred to as "Johnstown" or "Town."

WITNESSETH:

WHEREAS, Owner desires to annex to Johnstown the property more particularly described on Exhibit A, which is attached hereto, incorporated herein, and made a part hereof (such property is hereafter referred to as "the Property"); and

WHEREAS, Owner has executed a petition to annex the Property, dated **November 9, 2007**, a copy of which petition is on file with the Town Clerk; and

WHEREAS, Owner has prepared an **conceptual outline development plan**, identifying and illustrating requested zoning, proposed land use and intended development of the property; and

WHEREAS, it is to the mutual benefit of the parties hereto to enter into the following agreement regarding annexation of the Property to the Town and other 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 of Johnstown, as they may be amended from time to time; and

WHEREAS, Owner acknowledges that the need for conveyances and dedication of certain property, including, but not limited to, property for rights-of-ways and easements to Johnstown as contemplated in this Agreement, are directly related to and generated by development intended to occur 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, Development Regulations and Comprehensive Plan, and the Municipal Annexation Act of 1965, as amended, C.R.S., Section 31-12-101, et seq.

3. **Owner.** As used in this Agreement, the term "Owner" shall include any of the heirs, transferees, successors, or assigns of Owner, and all such parties shall have the right to enforce this Agreement, and shall be subject to the terms of this Agreement as if they were the original parties thereto. In the event of a 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, as provided in paragraph 30 herein, to the Town with a copy to the Town Attorney.

4. **Further Acts.** Owner agrees to execute promptly upon request of Johnstown any and all surveys and other documents necessary to effect the annexation of the Property and the other provisions of this Agreement. Owner agrees to not sign any other petition for annexation of the Property or any petition for annexation election relating to the Property, except upon request of Johnstown.

5. **Annexation Documents.** Owner agrees to provide legal documents, surveys, engineering work, newspaper publications, maps, and reports determined by Johnstown 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 presented in the outline development plan, which proposes to zone the property PUD-Mixed Use (PUD-MU) 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.** Town agrees to allow the existing non-conforming agricultural use 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.

8. **Water and Sewer Demand Study.** Owner and Town recognize that a preliminary estimate of water and sewer demand may be needed and possibly required of the Owner or his successors and therefore, both parties agree to cooperate with each other with respect to any future request for submittal. Prior to the time of any plat submittal, Owner shall submit a Water and Sewer Demand Analysis for the development, to be included with any proposed plats for development. The parties will enter into a separate Water and Sewer Service Agreement no later than the time of final plat approval.

9. **Water Rights Dedication.** Owner shall offer to the Town for dedication all water rights and lateral ditch company rights appurtenant to the Property in order to satisfy all or part of the water rights dedication to the Town as required by Article IV, Water Rights Dedication of the Municipal Code. Further, Owner shall dedicate to the Town all appurtenant water rights no later than the date of approval of the final plat of the first phase of the project. The undersigned specifically agree that they have not sold or transferred any water rights appurtenant to their property within the past year nor will they do so during the pendency of this annexation petition and once annexed to the Town of Johnstown, they will not sell or transfer any water rights appurtenant to the subject property without the prior written approval of the Johnstown Town Council.

10. **Municipal Services.** Johnstown 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. The services provided by the Town include, but are not limited to, police protection, water and waste water services. Owner acknowledges that Town services do not include, as of the date of the execution of this Agreement, fire protection, or emergency medical services. Subject to the provisions of Paragraphs 8 and 9 above and Owner's performance of all the requirements of the Town's ordinances and policies, the Town shall provide water and sewer services to the land through water and sewer mains, and both parties agree to cooperate to the extent necessary to allow such services with the intent that the cost of delivery of such services shall be borne by the development, or through other mutually acceptable means, including a subdivision improvement agreement, impact fees, capital improvements agreement, and/or metropolitan arrangements with existing special improvements districts or through the creation of new metropolitan/special improvements districts.

11. **Public Improvements.** Required public improvements shall be designed and constructed to Town standards by Owner and at Owner's expense, or through other mutually acceptable means, including a subdivision improvement agreement, capital improvements agreement, and/or metropolitan arrangements with existing special improvements districts or through the creation of new metropolitan/special improvements districts. Owner further agrees to provide financial guarantees for construction of all required improvements as set forth in each phase or filing of the development and to dedicate to the Town any or all of the improvements as required by Town ordinances. The public improvements and financial guarantees shall be set forth in the Development Agreement for each filing between the Town and Owner. All overhead utility lines shall be undergrounded.

12. **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, or through other mutually acceptable means, including a subdivision improvement agreement, capital improvements agreement, and/or metropolitan arrangements with existing special improvements districts or through the creation of new metropolitan/special improvements districts. Owner shall be entitled to reimbursement for oversizing of streets in accordance with the ordinances and policies of the Town.

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 or appropriate instrument of conveyance acceptable to the Town. 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. 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.** On-site and required off-site water and waste water mains and appurtenances shall be constructed to Town standards by Owner at Owner's expense, or through other mutually acceptable means, including a subdivision improvement agreement, capital improvements agreement, and/or metropolitan arrangements with existing special improvements districts or through the creation of new metropolitan/special improvements districts. 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.

15. **Drainage.**

(a) A drainage study of the entire annexation territory will be provided by the Owner at the time of subdivision platting. Improvements recommended by such study shall be completed as required for each phase or filing of development.

(b) 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. **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, by any District or by the Town, for benefit accruing to other parties, said improvements may be eligible for reimbursement. 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 necessary reimbursement agreements among the Town, the Owner, and the Owner/Developer of any other such property in order to obtain such reimbursement for Owner.

17. **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" that will apply to this development.

18. **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.

19. **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, Johnstown 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.

20. **Owners' Association/Covenants.** Owner may organize a unit owners' association or associations if appropriate for given parcels and/or unit types with the development of the Property. If so, Owner shall form the association(s) pursuant to the Colorado Common Interest Ownership Act ("Act"). C.R.S., Section 38-33.3-101, et seq. The Owner shall also execute and record covenants and instruments of conveyance which comply with the Act and which adequately provide for continuous ownership, operation, maintenance, repair and replacement of common elements of the development including, but not limited to, any private roads, private common areas, and private facilities. At least thirty (30) days prior to recording any covenants or instruments of conveyance to the association(s), Owner shall provide such documents to the Town Attorney for review and comment.

21. **Special District Inclusion/Exclusion.** 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. If Owner is in a fire protection district other than the Johnstown Fire Protection District, Owner shall petition out of the other fire district and into the Johnstown Fire Protection District. Owner/Developer, at some point in time, will be required by the Town to petition out of the Little Thompson Water District at the request of the Town of Johnstown and may be required to comply with any requirements of an Agreement between the Town of Johnstown and Little Thompson Water District including any expenses to meet those requirements. All costs, expenses, attorney fees, and judgments for exclusion of the property from any special district shall be borne by Owner/Developer.

22. ***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.

23. ***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, nor does it constitute any party hereto as any agent of another party hereto for any purpose whatsoever. 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.

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

25. ***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, that this Agreement will be complied with. However, because some 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.

26. (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 to the Owner 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 health, safety, and welfare of the Town or Town residents, 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.

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

27. **Attorney's Fees.** If any party breaches this Agreement, the breaching party shall pay the non-breaching party'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, Owners shall reimburse Town for Town's attorney's fees, court costs, and witness fees. Specifically, in the event that any person, corporation, special district, municipal or county government, or any other entity asserts any claim against the Town, its officials, or employees pursuant to the provisions of the Colorado Municipal Annexation Act, C.R.S., Section 31-12-101, et seq., 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, at 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.

28. **General Provisions.** Town shall

(a) Cause its staff to timely and promptly 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 dedication 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 is 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 is necessary to allow Owner to fulfill its obligations under this Agreement and to develop the Property in a timely manner.

(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 and telephone number of the assignee and give Notice as provided in paragraph 30 herein. Upon the sale or other transfer of any portion of the Property, the transferor of such portion shall be released from all liability and obligation under this Agreement relating to such portion and all such liabilities and obligations shall be assumed by the transferee (unless transferee is a member of the home or commercial end user buying public or governmental entity).

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.

29. ***Special Provisions.***

(a) Owner/Developer will be required to comply with the requirements of appropriate design guidelines.

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

(c) ***Sales and Use Tax Rebates.*** Owner has represented to the Town that the commercial and employment development of the Property in the area depicted on Exhibit B shall be of a quality and design commensurate with commercial development along the I-25 corridor. Based upon this representation, the Town shall reimburse Owner as more fully provided herein, the following Sales and Use Tax Rebates for the commercial development on the Property:

(I) ***Taxes Collected and Applied to Improvements.*** A portion of the sales and use tax revenue received by the Town of Johnstown from taxable activities from the commercial development on the Property, equivalent to one percent (1%) of such taxable activities, shall be separately accrued and identified in the Town records so that the location of origin, date of receipt, and source of taxation may be determined for application of payments which are described in this Agreement. However, for any new Johnstown tax not currently in effect (such as a lodging tax), such tax shall accrue one-half (1/2) for the benefit of these improvements. This provision for tax credits shall expire twenty (20) years after the issuance of the first certificate of occupancy for commercial development on the Property.

(II) ***Application of Tax Credits.*** The taxes accrued and credited from subparagraph (a)(I) shall be applied to reimburse Owner for costs incurred by the Owner for all on- or off-site public improvements including, but not limited to, public water and sewer, collector and arterial streets (said costs shall include streetscape and landscaping improvements), public drainage facilities, electric and gas facilities, other public improvements, below cost sale of land to key retail/commercial users, enhanced

architectural design, public art, and any other items specifically agreed upon between the Town and Owner. The costs shall be reimbursed whether the initiating requirement is due to Owner's development schedule, the Town, or that of another developer that indirectly causes the need for construction. These monies shall also be used for related expenses such as legal, design and engineering, and appraisal expenses for activities such as condemnation, easement acquisitions, etc. The Town's normal reimbursement policies and the reimbursement program cannot, in combination with the tax credit accrual herein, result in Owner receiving more funds than it has actually spent on public infrastructure improvements. If the tax credits are used for below cost sale of land to key retail/commercial users, enhanced architectural design, or public art, the Owners will provide for confirmation of the value of these considerations to Johnstown for review and approval prior to the ability to use the tax credit for these purposes.

(III) **Order of Payment.** The Owner shall identify to the Town in writing and for the Town's approval the order of payments to be made from the sales and use tax reimbursement fund. The Owner shall identify in writing to whom such payments shall be made.

(IV) **Interest.** All costs incurred by the Owners that are eligible for reimbursement pursuant to this paragraph shall also include interest accruing from the date of completion and acceptance of the eligible improvement, but interest shall accrue only for a period of seven (7) years from the date of completion. The rate of the interest shall be equal to the interest rate received by the Town on its investments over the twelve-month period preceding the date such interest commences to accrue. The interest shall be compounded annually.

(V) **Administrative Fee.** The Town shall be entitled to charge Owner a reasonable administrative fee for the administration of the separate sales and use tax reimbursement fund.

(d) **Performance Standards (Design Guidelines).** The Owner and the Town shall jointly develop and agree to Design Guidelines addressing design considerations, including architectural, site planning, landscaping, streetscape, and sign elements for land uses within the Property. The Design Guidelines may be amended from time to time upon written consent of both Parties. The Design Guidelines shall be applied to all development projects within the Property. All individual projects proposed within the Property will be subject to review by the Johnstown Design Review Committee. It shall be the responsibility of the design review committee to decide if an individual project within the Property complies with the standards, as well as to interpret and enforce other provisions and conditions of the Design Guidelines. The Owner shall not have any further formal (other than administrative) review by the Town, including, but not limited to, Planning Commission and/or Town Council approval for the individual projects. 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.

(e) The property shall be developed under design guidelines which are approved by the Town, retail/commercial, office/employment, multi-family uses as specifically described in the guidelines, and single-family (only along the west edge of the property to serve as a transition to the adjoining estate residential neighborhood).

(f) **Vested Rights.** The Town shall agree to extend the statutory vested rights from three (3) years to twenty (20) years for all future site specific development plans approved by the Town.

30. **Notice.** All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by facsimile transmission or registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices by hand-delivery shall be effective upon receipt. All facsimile transmissions shall be effective upon transmission/receipt, provided a hard copy is mailed the same date. 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: Roy Lauricello, Town Manager
101 Charlotte Street
P. O. Box 609
Johnstown, CO 80534
Facsimile Number: 970-587-0141

With copy to:

R. Russell Anson
Town Attorney
P. O. Box 336155
Greeley, CO 80633
Facsimile Number: 970-356-3835

Notice to Owner:

Mountain View Farms Inc.
707 North County Road 29
Loveland, Colorado 80537

31. **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., Section 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.

32. **Cost Reimbursement to Town:** Developer shall reimburse Town for professional consultants such as engineers, testing companies, planners, and attorneys necessitated by processing and completion of this development.

33. **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.

34. **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 Larimer County, Colorado.

35. **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.

36. **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.

37. **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.

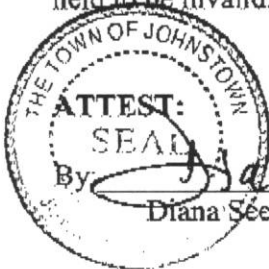
38. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of all the heirs, transferees, successors, and assigns hereof, and shall constitute covenants running with the land. This Agreement shall be recorded with the County Clerk and Recorder of Larimer County, Colorado, at 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, except as that provided in the Cost Agreement and Funds Deposit Agreement filed with the Town Clerk.

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 Larimer 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 Water Rights subject to the amendment unless otherwise specified in the amendment.

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.



By: Diana Seele
Diana Seele, Town Clerk

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

By: [Signature]
Mayor

LANDOWNER:

MOUNTAIN VIEW FARMS INC.

By: Barbara A. Johnston, Sec