

TOWN OF TIMNATH

ORDINANCE 49, SERIES 2008

AN ORDINANCE AMENDING EXHIBIT B OF ORDINANCE 14-2004, AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO, ANNEXING AND ZONING PROPERTY LOCATED EAST OF THE ORIGINAL TIMNATH TOWNSITE BETWEEN COUNTY ROADS 38 AND 40 KNOWN AS THE "NORTH McMORRIS PROPERTY."

WHEREAS, the Town Council has determined that the annexation agreement between the property owner and the Town requires amending; and

WHEREAS, the Town Council believe the amendment is in the best interest of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH:

Section 1. The annexation agreement attached as Exhibit B in Ordinance 14-2004, is hereby amended, and no additional terms or conditions are to be imposed other than as set forth in the Amended Annexation Agreement attached hereto as **Exhibit A**, which Agreement is hereby approved and fully incorporated herein by this reference.

Section 2. As soon as practicable after the effective date of this Ordinance, the Town Clerk is directed to:

- (a) File one copy of the annexation agreement with the original of this Ordinance in the records of the Town of Timnath, Colorado.
- (b) File certified copies of this ordinance with the Larimer County Clerk and Recorder.

Section 3. Repeal. All other ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 4. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact than any one or parts be declared unconstitutional or invalid.

Section 5. Effective Date. This Ordinance shall take effect upon adoption at second reading, as provided by Section 3.5.5 of the Charter.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING, ON NOVEMBER 19, 2008, AND SET FOR PUBLIC

HEARING AND SECOND READING AT 7:00 P.M. ON DECEMBER 3, 2008, AT THE TIMNATH TOWN HALL, 4100 MAIN STREET, TIMNATH, COLORADO, AND ORDERED PUBLISHED THIS 19TH DAY OF NOVEMBER, 2008.

MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON THE 3rd DAY OF DECEMBER, 2008.

TOWN OF TIMNATH



Donna Benson, Mayor

ATTEST:



Milissa McGuire, Town Clerk

[SEAL]



**AMENDED AND RESTATED
ANNEXATION AND DEVELOPMENT AGREEMENT
FOR THE TIMNATH FARMS NORTH PARCEL**

THIS AMENDED AND RESTATED ANNEXATION AND DEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into to be effective the _____ day of _____, 2008, by and between the TOWN OF TIMNATH a Colorado municipal corporation (the "Town"); TIMNATH HOLDINGS, INC., a Colorado corporation ("Timnath Holdings"); and MOUNTAIN WEST INVESTMENTS, INC., a Colorado corporation ("Mountain West"). Timnath Holdings and Mountain West shall be referred to collectively as the Property Owners. This Agreement concerns the development of the annexed property described on **Exhibit A** attached hereto and incorporated herein by reference (the "Property").

WITNESSETH:

WHEREAS, the Timnath Land and Cattle Company I, LLC, Jerry D. McMorris and Mary McMorris (the "Original Owners") petitioned for annexation of the Property into the Town pursuant to an Annexation and Development Agreement for the Timnath Farms North Parcel, dated December 13, 2004 ("Original Agreement"); and

WHEREAS, as permitted by the Original Agreement, the Property Owners have assumed the Original Owners' rights and obligations under the Original Agreement; and

WHEREAS, with annexation completed and development of the Property planned by the Property Owners, the Town and the Property Owners desire to amend and restate the Original Agreement to reflect the current ownership of the Property and the Parties' understanding regarding development obligations for the same; and

WHEREAS, the Parties intend that this Agreement supersede and replace the Original Agreement in its entirety and solely govern the terms and conditions of development of the Property as of the effective date hereof; and

WHEREAS, the Town has developed the Comprehensive Plan of the Town ("Comp Plan") and the Property Owners desire to comply with the goals and objectives of the Comp Plan for development of the Property; and

WHEREAS, the Property Owners desire to develop the Property in the Town to become part of the Timnath community, and to set forth the terms and conditions of such annexation and development of the Property to the Town in this Agreement; and

WHEREAS, the Property Owners and the Town agree that the development of the Property needs to have a balance of residential and commercial uses in order to meet the financial and social needs of the community; and

WHEREAS, development of the Property will require substantial investment in public

facilities by the Property Owners including roads, drainage facilities, waterlines, sewerlines, parks and open spaces, which will serve the needs of the Property and the Town. The Property Owners are willing to make such investment only if the Property Owners are assured that development of the Property, once approved by the Town, will be allowed to proceed to ultimate completion as provided in this Agreement; and

WHEREAS, the Property Owners have submitted and the Town has reviewed a sketch plan and preliminary plat for the Property, a copy of which is attached hereto as **Exhibit B** and incorporated herein by reference (the "Preliminary Plat"); and

WHEREAS, the Town and the Property Owners agree that the matters set forth in this Agreement constitute reasonable conditions and requirements imposed by the Town on the owners of the Property in connection with the acceptance and favorable action on the Property Owners' petition for annexation and that the matters set forth in this Agreement are necessary to protect, promote and enhance the public welfare; and

WHEREAS, the Property Owners have agreed to subordinate their interests to the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the terms, covenants, conditions and provisions hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby confessed and acknowledged the parties hereto agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions for development of the Property within the Town. All conditions contained herein are in addition to any and all requirements of the Town and applicable state statutes, and are not intended to supersede such requirements, except as specifically provided in this Agreement. This Agreement is intended to and shall supersede the terms and conditions of the Original Agreement as of the effective date of this Agreement.

2. Annexation of Property. The Property has been annexed by the Town, including portions of County Roads 38 and 40 adjacent to the Property, under the terms and conditions of the Original Agreement.

3. Town Entrance - Downtown Core. The Parties intend to construct the Downtown Core as a quality development with architecture, buildings, landscaping, and street improvements designed to maintain the small- town character of Timnath. Some of the uses being considered for the Downtown Core include facilitating the relocation of the Post Office so that new residents of the Town will be drawn to the Downtown Core, and sales tax generating uses that contribute to local business, and downtown-type shopping for residents.

4. Contributions to Existing Town. The Property Owners recognize that, in addition to providing substantial benefits, annexation and development of the Property will substantially change the existing character of the Town and create the

need for additional facilities to serve the additional residents. In consideration thereof, the following contributions shall be paid to the Town:

- A. The Property Owners shall provide the right-of-way for the Parkway that is anticipated to bypass County Road 5 between County Road 38 and County Road 40 upon platting of the Downtown Core or establishment of the Parkway alignment by the Town, whichever occurs first. The right-of-way shall be 120 feet in width, covering an approximate distance of one mile for a total of approximately 14.5 acres, consistent with the Subdivision Improvements Agreement ("SIA") entered into between the Town and the Property Owners.
- B. Upon approval of a Final Plat for the Downtown Core or January 1, 2010, whichever occurs first, the Property Owners shall convey to the Town approximately four acres for a government center at a site within close proximity, as determined by the Town, to the existing Downtown area. Prior to conveyance, the Property Owners shall obtain Town approval of the location of the site.
- C. Two Thousand Dollars (\$2,000) per dwelling unit, shall be paid by the building permit applicant as a condition of receiving a building permit to be used for improvements to the existing Town area, operations of the Town, and/or off-site infrastructure.
- D. The annexation fees of Five Hundred Dollars (\$500) plus Three Hundred Dollars (\$300) per acre have been paid.

All of the above contributions are in addition to any impact fees, building permit fees, or any other fees, taxes, or charges imposed by the Town on all properties in the same category as the Property; provided, however, that any increase in building permit fees, impact fees, or land use application filing fees over and above such fees as they exist on the date of annexation shall not apply to the Property for a period of five (5) years from and after the date of annexation.

5. Existing Uses and Structures. The McMorris home and related accessory buildings are located on the northeast corner of the Property. Two additional residence and farm buildings are located on the Property. All of the existing agricultural uses of the Property legally existing on the effective date of this Agreement may continue. The Property Owners shall have the right, but not the obligation, to remove, restore and/or remodel any or all of the existing structures on the Property. Uses of each farm and agricultural building shall be discontinued upon issuance of a building permit for improvements within 500 feet of the building; this provision applies only to the use of farm and agricultural buildings on the Property and not to the use of public infrastructure on the Property, such as roads and utilities, which may continue without regard to the limitations of the preceding phrase. Any structural modification or other change of existing uses or structures, legally permitted under current law applicable to the Property, shall be subject to the

provisions of the Town Code as legal, non-conforming uses or structures. The Town shall not impose restrictions for historical preservation of the existing residential dwellings, barns or any other structures on the Property without the consent of the Property Owners.

6. Preliminary Plat. The Property Owners have submitted a sketch plan and preliminary plat to develop the Property pursuant to the Planned Development procedures of the Timnath Municipal Code (the "Sketch Plan and Preliminary Plat"). The uses permitted within each applicable zoning district are set forth on **Exhibit C** attached hereto and incorporated herein by reference (the "Permitted Uses"). The Property or any portion thereof may be rezoned with the consent of the Property Owners but without amending or modifying this Agreement. Prior to any development on the Property other than development related to the existing uses described above or the early grading and drainage facility construction permitted pursuant to Section 11 of this Agreement, the Property Owners must submit and have approved one or more final plat(s) as provided in the Code.

7. Cooperation Between the Parties. The parties recognize that the annexation and development of the Property will substantially change the character of the Town and the manner in which municipal services are provided. In order for both parties to be successful, it is necessary for the parties to cooperate with each other to accomplish their mutual goals, including obtaining viable users for the commercial properties, having a unified development, sharing development costs among the Property Owners and developers of other properties within the Town, and providing municipal services to the Property in an efficient, cost effective manner. In consideration of such cooperation, the Town shall promptly review land use applications for the Property, promptly respond to inquiries of potential users of the Property, and coordinate with other private and public property owners to facilitate development of the Property in accordance with the Sketch Plan and Preliminary Plat as ultimately approved by the Town. In consideration of such cooperation, the Property Owners shall make a reasonable attempt to obtain users for the commercial areas of the Property that are viable, generate sales taxes to the Town, and provide long-term benefit to the Town; include the Property within metropolitan districts, or other special district(s) formed with approval of the Town for the provision of municipal services (in addition to the districts that will provide water and sewer service as described in Sections 9 and 10 hereinafter); and work with overlapping governmental entities and adjacent property owners to facilitate construction and maintenance of public and private improvements for the cost effective, long term benefit of existing and future Timnath residents and business owners.

8. Timing of Parkway and Commercial Development. Property Owners recognize that a balance of commercial uses is required to generate revenues for municipal services for which the Town will become responsible. Property Owners have planned the commercial development around a proposed Parkway to divert County Road 5 from the center of the existing Town just north of Harmony Road to County Road 40. The parties recognize that construction of the Parkway is a vital

part of the growth of the core of the Town. Therefore, the parties shall cooperate, act in good faith and use reasonable efforts to form a single purpose street metropolitan district, general improvement district, or other special district to construct and pay the costs of the Parkway. Property Owners shall purchase the bonds issued by such district or otherwise pay the cost of constructing two lanes of the Parkway between County Road 5 and County Road 40 to arterial structural standards to the extent such costs and expenses are not paid by a street metropolitan district, general improvement district, or other special district formed pursuant to Section 7 above or Section 17 below. Construction of the Parkway shall be commenced as provided in the SIA and completed within one (1) year of commencement. In the event the Town has other funding available to construct the other two lanes, sidewalks, landscaping, and median, the parties shall coordinate construction of the full width of the Parkway. At the time of execution of this Agreement, Property Owners have filed a Sketch Plan and Preliminary Plat and one final plat for one phase of the Property; they agree to file one or more additional applications for final plat(s) for the Property as market conditions dictate; provided, however, in the event a final plat application including the government site required by Section 4.B. is not filed on or before December 1, 2009 the Property Owners shall convey such site to the Town, free and clear of liens and encumbrances that would affect its use for the public purpose intended, within 30 days. Within three (3) years after approval of the Final Plat, Developer shall stub utilities to the Downtown Core, and construct access to the Downtown Core to facilitate obtaining uses for the Commercial area.

9. Water Utilities. Historically, the Town has not provided water service facilities, and has relied on the Fort Collins-Loveland Water District to provide such services. It is anticipated that the Property shall be included in the Fort Collins-Loveland Water District for potable water.

10. Sanitary Sewer Utilities. The Property is included within the South Fort Collins Sanitation District for sanitary sewer services.

11. Early Grading of the Property. The Property Owners may desire to perform over lot grading of the Property and construct drainage facilities prior to submission and/or approval of the final plat for each phase of development of the Property. The Town shall permit such over-lot grading and drainage facilities upon approval by the Town of a preliminary plat, an erosion control plan, a grading plan, and a drainage plan acceptable to the Town. The Property Owner recognizes that the erosion control plan may require temporary and/or permanent drainage improvements.

12. Utilities and Infrastructure. The parties recognize that the Town does not provide infrastructure to serve the Property and the Property Owners will be responsible for extending all utilities and streets to serve the Property. Failure of the Town to provide utilities or streets to the Property shall not be grounds for disconnection by the Property Owners. The Town is working to coordinate the provision of infrastructure and utilities so that there will be compatible systems for

utilities within the Town. The Property Owner shall cooperate with the Town in facilitating such coordination of services, which may include, but is not limited to, encouraging and participating in intergovernmental cooperation for the most beneficial service to all Timnath utility users, and/or signing a petition on behalf of the Property Owners to form a new metropolitan district or include the Property in an existing metropolitan district to receive such services. The parties, themselves or with other entities providing services, shall act in good faith and use reasonable efforts to enter into infrastructure reimbursement agreements in a form satisfactory to all parties for contribution by other property owners who connect to or obtain access from off-site infrastructure paid for, in whole or in part, by the Property Owners. For any such reimbursement agreements approved by the Town, the Town shall assist the Property Owners in collecting from property owners that connect to facilities subject to the reimbursement agreements. Such assistance may include imposition of the requirement for reimbursement on the issuance of building permits or land use approvals, to the extent allowed by law.

13. Water and Water Rights. The Developer acknowledges that the Developer shall be required to meet the Town Code requirements for irrigation of common areas and open space areas. The Town is not requesting as part of this annexation any water and water rights, well and well rights, reservoir and storage rights, stock in mutual ditch and irrigation companies, units of the Northern Colorado Water Conservancy District, or any other water and water rights appurtenant to or historically used in connection with the Property.

14. Cash in Lieu of Dedication of Land for Schools Parks and Safety Services. The Sketch Plan and Preliminary Plat provide for the addition of residences and commercial areas. As a result, there will be added needs for properties for schools, parks, and public safety buildings. In consideration thereof, Property Owners and each of the individual persons and entities comprising the Property Owners, agree to dedicate land and/or pay cash in lieu of dedication as provided in the Code.

15. Dedication of Land Street Improvements Abutting Property. Upon request by the Town and without cost to the Town, each of the individual persons and entities comprising the Property Owners and owning such portions of the Property, shall dedicate and convey to the Town any additional portions of the Property owned by such Property Owner for right-of-way as is necessary for the ultimate-planned street section. The Property Owners shall be solely responsible for construction of all access to the Property, including improvements to County Roads 38 and 40 where such streets abut the Property developed as shown on the Preliminary Plat (the "Abutting Streets"), and any improvements necessary to serve the planned uses on the Property such as accel/decal lanes, turn lanes, and traffic signals, as further described and required by the SIA. The Town may require construction of Abutting Streets to be completed prior to issuance of building permits for portions of the Property accessing the portion of the street to be improved. The timing for requirements to complete the Abutting Streets shall be based upon traffic engineering studies and reasonably related to increased traffic on the Abutting Street to be improved resulting from development of the Property. Street

improvements on Abutting Streets shall be coordinated with other developments abutting the same street. The Town shall be responsible for maintaining the Abutting Streets upon annexation except during construction of any improvements to any portion of any Abutting Street. Provided however, upon request of the Town, the person or entity constructing the same shall reimburse the Town for the cost of maintaining the Abutting Streets for three years after the date of initial acceptance of improvements on the Abutting Streets. For all streets constructed on the Property that are not Abutting Streets, the person or entity constructing the same shall be responsible for maintenance until three years from the date of initial acceptance of improvements thereto by the Town. This Section 15 shall not apply to the Parkway which shall be constructed pursuant to Section 8 above. Nothing in this Section shall be construed to eliminate or otherwise affect any person or entity's obligations to warranty work for two (2) years from the date of final acceptance pursuant to Code Section 16.4.12 and Part I of the Town's Design Criteria Manual and Construction Specifications.

16. Dedication of Property for Interior Streets Trails Utilities or Access to Dedicated Properties. Upon final platting, and upon request by the Town, each Property Owner or any person or entity comprising Property Owner who owns such property shall dedicate and convey to the Town that portion of the Property owned by such Property Owner as may be necessary for public trails, utility connections or access to properties dedicated to the Town as depicted on the Preliminary Plat or any plat approved by the Town.

17. Dedication and Conveyances of Property. For all property to be dedicated or conveyed to the Town by the terms of this Agreement, or in any plat of any portion of the Property approved by the Town, the owner of the property to be conveyed to the Town shall provide a title commitment for the Property to be dedicated, which commitment shall show that the portion of the Property to be dedicated or conveyed to the Town is free and clear of all liens and encumbrances (other than real estate taxes which are not yet due and payable, easements, rights-of-way, and reservations of record that do not interfere with the intended use of the dedicated property). The Property Owners shall stub all necessary utilities to any property, and pave sidewalks and trails along any property to be dedicated or conveyed to the Town and provide such access as is necessary to serve the proposed use of the property to be conveyed. Prior to conveyance to the Town, the owner of the property to be conveyed to the Town shall maintain the properties described herein as provided in the Town Code.

18. Coordination with Adjacent Properties. The Town has adopted a Comprehensive Plan which shall include the Master Trails Plan currently being considered by the Town (the "Comp Plan") for the cohesive development of the Town. The Property Owners shall use its best efforts to reasonably coordinate with owners of properties within the Town adjacent to the Property to provide pedestrian and vehicular access between the Property and the adjacent properties as may be necessary to implement the Comp Plan. In the event the Property Owners are

unable to agree with such adjacent property owners, the Town shall designate appropriate access routes within the Property prior to approval of Final Plat.

19. Obligations Run with the Land. Within three business days after complete execution of this Agreement, it shall be recorded in the real estate records of Larimer County and all obligations herein shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and, to the extent permitted, assigns as the case may be.

20. Cure of Legal Defects. In the event that any portion of this Agreement, is declared void or unenforceable by final court action, the parties shall cooperate to cure any legal defects cited by the court, and immediately upon such cure, the Town shall reinstitute and complete proceedings to otherwise carry out the terms and provisions hereof.

21. Vested Property Rights.

A. Acknowledgements. The parties acknowledge the following:

- (1) The Property is estimated to have a minimum twenty-five (25) year build out period.
- (2) The Property Owners and the separate entities comprising the Property Owners will be required to make substantial financial commitments and complete major public infrastructure improvements in the early phases of the development of the Property.
- (3) A material consideration of the annexation of the Property and the Property Owners' willingness to develop the Property within the Town (rather than developing the Property within the County or another municipality) is the Town's agreement to permit development of the Property in accordance with the terms and conditions of this Agreement and the Preliminary Plat and Permitted Uses, particularly the vested property rights granted herein.
- (4) The Town has limited staff and funds and therefore may not be able to process and review land use applications, review plans or perform inspections on an expedited basis.
- (5) The Town has several major development issues to manage with limited resources, including but not limited to drainage issues affecting the majority of the area proposed to be annexed to the Town, inadequate street and utility infrastructure for the expected growth of the Town, and an insufficient tax base to support government services until commercial development occurs.

(6) Property Owners waive any vested property rights which may have been granted by any governmental entity prior to the date of this Agreement.

B. Vesting of Property Rights. In recognition of the land size of the development contemplated under this Agreement, the substantial financial investment and time required to complete the development of the Property, the phased development of the Property and the possible impact of economic cycles and varying market conditions during the course of development, the Town agrees to grant vested property rights in this Agreement, the Preliminary Plat, and the Permitted Uses to the Property Owners through December 31 2029.

(1) Pursuant to the contractual commitments made herein, the Property Owners shall have vested property rights to undertake and complete the development and use of the Property under the terms and conditions of this Agreement and the Preliminary Plat and Permitted Uses. Such development requires approval by the Town of Preliminary and Final Plats with a Planned Development Overlay consistent with this Agreement and the Permitted Uses.

(2) Upon request of the Property Owners with approval of a Final Plat for any portion of the Property, the Town agrees to grant vested rights in such Final Plat for a period of eight years from the date of approval as a site specific development plan as defined by Colorado law and the Timnath Municipal Code.

(3) In consideration of the acknowledgements described in subsection A above, the public benefit to be derived from development of the Property within the Town, and the obligations and commitments of Property Owners pursuant to this Agreement, the vested property rights granted herein shall specifically include the Town's express agreement, as a material term hereof, that the Town Board will take no action which would unilaterally: (a) materially change any term or condition of this Agreement; (b) impose a moratorium on development within the Property which would materially delay development of the Property; or (c) materially limit the number of building or utility permits to which the Property would otherwise be entitled under an approved Final Plat consistent with this Agreement and Permitted Uses without the consent of the affected property owner.

(4) Based upon the contractual commitments made in this Agreement by the Property Owners which provide substantial benefits to the Town, including but not limited to the payments and dedications to be made to the Town pursuant to Section 3, and the acknowledgements described in subsection A above, if the Property, or any portion thereof, becomes subject to any action by the Town, either by its Town

Board or by its citizens through the use of initiative or referendum, which would unilaterally: (a) materially change any term or condition of this Agreement; (b) impose a moratorium on development within the Property which would materially delay development of the Property; (c) materially limit the number of building or utility permits to which the Property would otherwise be entitled under this Agreement, an approved Final Plat consistent with the Preliminary Plat and/or the Permitted Uses; or (d) materially alter impair prevent or diminish the vested property rights herein granted to develop the Property pursuant to this Agreement, an approved Final Plat, and Permitted Uses, the Town shall be in breach of this Agreement and the Property Owners shall have the remedies set forth in Section 25 hereinafter. Usual, customary or reasonable delays in processing requests and/or applications for approvals shall not be considered a breach of this Agreement.

- C. Term of Vested Property Rights. The parties agree that the extended vesting herein granted is warranted in view of the following factors: (1) the large size of the Property; (2) the significant investment in public infrastructure improvements which will be required to be made by Property Owners; (3) the mixed use nature of the Property; (4) the anticipated twenty-five (25) year build-out of the Property in multiple phases; and (5) expected changes in economic cycles and varying market conditions over the estimated twenty-five (25) year build-out period.
- D. Limitation on Vested Rights. Notwithstanding anything in this Section 22 to the contrary, in no event shall the vested rights granted herein prevent the Town, by its citizens through initiative or referendum or by the Board of Trustees, from acting as reasonably necessary to protect property, businesses or residents within the Town from natural or man-made hazards, which hazards if uncorrected would pose a serious threat to the public health, safety and welfare of residents, businesses or properties within the Town.
- E. Infrastructure Standards. Any changes to the Town Code or standards for construction of infrastructure which are not necessary for public safety shall not apply to any infrastructure improvements constructed or to be constructed within the Property so long as such construction improvements are commenced on the Property and completed by December 31, 2012.

The vested property rights granted under this Agreement shall be in addition to any common law vested rights to which the Property Owners may become entitled. Nothing in this Section shall be construed to limit the remedies available to the Town to enforce this Agreement or the Town Code.

22. Town Ordinances, Regulations, Codes, Policies, and Procedures. To the extent consistent with vested property rights granted in Section 22 above, the provisions of this Agreement, the Sketch Plan and Preliminary Plat, and Permitted Uses, all Town ordinances, regulations, codes, policies, and procedures in effect at the time of the application or act being interpreted shall be applicable to the use and development of the Property. The parties do not intend that this Agreement, the vested property rights, the Sketch Plan and Preliminary Plat, or the Permitted Uses shall supersede Town ordinances, regulations, codes, policies, and procedures except as provided herein or necessary for implementation of the terms of this Agreement.

23. Breach by the Property Owners: Town's Remedies. In the event of a breach of any of the terms and conditions of this Agreement by the Property Owners and until such breach is corrected, the Town may take such action as permitted and/or authorized by law, this Agreement and/or the ordinances of the Town as the Town reasonably 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 undue hardship and undue risk. These remedies include, but are not limited to:

- A. The refusal to issue any building permit or certificate of occupancy;
- B. The revocation of any such building permit previously issued under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party;
- C. Refusal to accept further land use applications for the Property;
- D. Disconnection of the Property from the Town;
- E. Specific performance of this Agreement;
- F. Denial or revocation of any utility tap connection;
- G. Placement of a lien on the Property to be collected with the property taxes therefor;
- H. Any other remedy available at law or equity.

Unless necessary to protect the immediate health, safety and welfare of the Town or to protect the Town's interest with regard to security given for the completion of the public improvements, the Town shall provide the Property Owners or separate individual or entity causing the breach thirty (30) days prior written notice of its intent to take any action under this paragraph, specifying the claimed breach or default of such person or entity. If during such thirty-day period such person or entity commences to cure the breach described in the notice and proceed reasonably thereafter to cure the breach, any action taken by the Town to enforce this Agreement shall be discontinued and no further action shall be taken by the Town upon and to the extent that a breach of this Agreement is cured. In the event of a

breach by less than all of the individuals and entities comprising Property Owners, to the extent reasonably possible the remedies of the Town shall be applicable only to the breaching party.

Notwithstanding any other term, covenant, condition or provision of this Agreement, the Town may not look to the following property, which is a portion of the entire Property, or to the owners thereof for payment of any monetary amount due under this Agreement, or to which the Town may be entitled as a result of a breach or default under this Agreement by any property owner: the tract of approximately 7.51 acres titled "McMorris Property, NE Comer of Section 35, 17N, R68W" within **Exhibit A**.

24. Breach by Town: the Property Owners' Remedies. The Property Owners shall have any and all remedies against the Town for breach of this Agreement available at law or in equity.

25. Attorney Fees. In the event of any litigation to enforce or construe the terms of this Agreement, the substantially prevailing party shall be entitled to payment of its costs of litigation, including attorney fees, by the other party.

26. Acknowledgement. It is expressly understood that the Town cannot be legally be bound by the representations of any of its officers or agents or their designees except in accordance with the Town Code and the laws of the State of Colorado. Nothing contained in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances, or a waiver or abrogation 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 that is of uniform or general application subject to the limitation on fee increases set forth in Section 3 above.

27. Notice. All notice required under this Agreement shall be in writing and shall be hand-delivered or sent by facsimile or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective on the date of delivery, or facsimile if sent during normal business hours, or seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which further notices shall be sent.

Notice to Town:

Town Manager
Town of Timnath
4800 Goodman Street
Timnath, Colorado 80547
Telephone: 970-224-3211
Facsimile: 970-224-3217

With a copy to:

Gerald E. Dahl, Town Attorney

Murray Dahl Kuechenmeister & Renaud LLP
2401 15th Street, Suite 200
Denver, CO 80202
Telephone: 303-493-6670
Facsimile: 303-477-0965

Notice to Property Owners: _____

With a copy to: _____

28. Assignment.

- A. Nothing contained in this Agreement shall be construed to prohibit or restrict in any way the Property Owners', individually or collectively, right to sell, transfer, convey, assign, lease, sublease, and encumber the Property, subject to the terms and provisions of this Agreement, without the consent of the Town or any other party to this Agreement.
- B. The Property Owners, individually or collectively, shall have the right to assign or transfer all or any of their interests, rights, or obligations under this Agreement to any person or entity that is an "affiliate" of the Property Owners or any of their component persons or entities without the consent of any other party.
- C. The Property Owners, individually or collectively, shall have the right to assign or transfer all or any of their interest, rights, or obligations under this Agreement to any person or entity without the consent of the Town or any other party to this Agreement so long as the Property Owners remain obligated for the performance of terms and conditions of this Agreement.
- D. The Property Owners or any of their component persons or entities shall also have the right to assign or transfer all or any of their interests, rights, or obligations under this Agreement to any other person or entity having the legal authority and financial ability to perform the obligations being assigned to such person or entity (a "Financially Responsible Assignee") with the prior written consent of the Town and the other persons or entities comprising the Property Owners, which consent shall not be unreasonably delayed, conditioned, withheld, or denied. Upon such consent and written assumption of the obligations of the Property Owners or any of their component persons or entities under this Agreement by a Financially

Responsible Assignee, the assignor shall be relieved of any further obligations or liability with respect to the performance of any of the duties or obligations of the Property Owners arising after the date such duties and obligations are assumed by the Financially Responsible Assignee.

- E. The term "affiliate" as used hereinabove, shall mean and refer to any person or entity, directly or indirectly, controlling, controlled by, or under common control with the Property Owners or any of their component persons or entities. The terms "controlling," "controlled by," or "under common control with," shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity whether through the ownership of voting securities or otherwise.

29. Title and Authority. The parties comprising the Property Owner warrant and represent to the Town that each such Property Owner is the record owner of a portion of the real estate constituting the Property as described herein, except for county roads shown on the annexation map. Each person signing this Agreement on behalf of an entity represents and warrants that he or she has full power and authority to enter into this Agreement on behalf of the entity. The Property Owners and the undersigned individuals understand that the Town is relying on such representations and warranties in entering into this Agreement.

30. Entire Agreement; Amendments This Agreement, the Sketch Plan and Preliminary Plat, and Permitted Uses embody the whole agreement of the parties with respect to the development of the Property within the Town. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written, between the parties hereto. This Agreement may be amended by written agreement among the Property Owners and the Town. In the event that the Property is subdivided and lots are sold to different individuals in the future, this Agreement may be amended by agreement between the Property Owners and the Town, without consent of such lot owners.

31. Severability. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining 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, or provision held to be invalid, and the parties shall cooperate to cure any such defect.

32. Effective Date;. This Agreement shall be effective and binding upon the parties immediately upon the effective date first stated above.

33. Further Assurances. The parties shall execute such additional documents and take such additional action as may be necessary to effectuate the intent of this Agreement.

34. No Duress. The Parties agree that this Agreement is freely and voluntarily executed by them after extensive negotiations among them and an opportunity for each party to obtain legal advice.

35. Execution and Counterparts. This Agreement may be executed and filed in any number of counterparts all of which when taken together shall constitute the entire agreement of the parties. Signature pages may be removed from any counterpart and attached to another counterpart to constitute a single document.

36. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Should any party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in Larimer County, Colorado.

37. Time is of the Essence. Time is of the essence for all parties with respect to the obligations herein. The parties agree that they will each act in an expeditious manner as reasonably possible in performing the obligations herein. For the Town, that includes setting any necessary public hearings and meetings of the appropriate boards to reasonably accommodate the performance schedules herein, and making decisions promptly upon completion of such hearings. For the Property Owners, this requirement includes submitting all documents necessary for action by the Town Board in compliance with the applicable Town requirements and in sufficient time before the hearing to allow any necessary review by Town staff and Board Members prior to the public meeting or hearing.

38. Third Party Beneficiaries. This Agreement is made by and between the parties and their heirs, personal representatives, successors and, to the extent permitted, assigns and solely for their benefit. No third parties, including but not limited to adjacent property owners and/or individual lot owners or buyers, shall be entitled to enforce the duties or enjoy the rights created herein.

[The remainder of this page is intentionally left blank.]

The foregoing instrument was acknowledged before me this ____ day of _____,
200____, by _____, as
_____.

WITNESS my hand and official seal.

Notary Public

My commission expires: _____

AMENDED AND RESTATED
ANNEXATION AND DEVELOPMENT AGREEMENT
EXHIBIT LIST

- A. Legal Description of Property
- B. Preliminary Plat
- C. List of Permitted Uses