

TOWN OF TIMNATH

ORDINANCE 75, SERIES 2009

AN ORDINANCE AMENDING THE ANNEXATION AGREEMENT FOR THE WILDWING ANNEXATIONS 1 THROUGH 5, KNOWN AS THE "BOEKEL ANNEXATIONS 1-5", DATED NOVEMBER 1, 2006 AND RECORDED AT RECEPTION NO. 20070020756 IN LARIMER COUNTY

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 is hereby amended, and no additional terms or conditions are to be imposed other than as set forth in the First Amendment to Annexation Agreement Boekel Annexations 1-5 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.

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 4.

Effective Date. This Ordinance shall take effect upon receipt by the Town of a letter from the Bank of Colorado attesting that the funds for the chip seal work required by the Amended Annexation Agreement have been received. The Town Clerk shall certify to the passage of this Ordinance and make not less than one copy of the adopted Ordinance available for inspection by the public during regular business hours.

INTRODUCED, MOVED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING, SET FOR PUBLIC HEARING AND SECOND READING AT 7:00 P.M. ON AUGUST 19, 2009, AT THE TIMNATH TOWN HALL, 4100 MAIN STREET, TIMNATH, COLORADO AND ORDERED PUBLISHED BY TITLE THIS 13th DAY OF AUGUST, 2009.

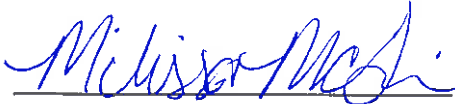
MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON THE 19th DAY OF AUGUST, 2009.

TOWN OF TIMNATH



Donna Benson, Mayor

ATTEST:



Milissa McGuire, Town Clerk



**FIRST AMENDMENT TO
ANNEXATION AGREEMENT
BOEKEL ANNEXATIONS 1-5**

THIS FIRST AMENDMENT TO ANNEXATION AGREEMENT ("FIRST AMENDMENT") is made and entered into this _____ day of _____, 2009 by and between Wildwing Development, LLC, a Colorado limited liability company, whose principal address is 4949 S. Syracuse Street, Suite #440, Denver, CO 80237, hereinafter referred to as the "ANNEXOR," and the Town of Timnath, a municipal corporation of the State of Colorado, hereinafter referred to as "Timnath" or "TOWN".

WITNESSETH:

WHEREAS, ANNEXOR and the TOWN entered into that certain Annexation Agreement for the Boekel Annexations 1-5 on October 18, 2006, (the "Annexation Agreement"), which Agreement contains two Exhibits: Exhibit A and Exhibit B; and

WHEREAS the Annexation Agreement provides, at Section 20 thereof, that it may be amended by the parties in writing by the same formalities as the original Agreement; and

WHEREAS, Exhibit B of the Annexation Agreement is entitled "Special Provisions Applying to the Boekel Annexations 1-5 (Wildwing);" and

WHEREAS, the TOWN and the ANNEXOR desire to exercise their authority to amend Exhibit B of the Annexation Agreement.

NOW, THEREFORE, in consideration of the foregoing and the covenants, promises and agreements of each of the parties hereto, to be kept and performed by each of them, it is agreed by and between the parties as follows:

1. **ANNEXATION AGREEMENT AMENDED.**

Paragraph k of Exhibit B of the Annexation Agreement is hereby amended to read as follows (**NEW MATERIAL IN BOLD**):

- k. Notwithstanding the provisions of Section 6, Paragraph b, to the contrary, the DEVELOPER shall dedicate sufficient right-of-way along CR 1 to accommodate one half of a 140 foot arterial roadway (40' additional right-of-way). **ON OR BEFORE _____, 2009, DEVELOPER SHALL GRADE CR 1 FROM THE SITE, SOUTH TO CR 40 AND APPLY "CHIP SEAL" TO THE ENTIRETY OF THAT ROADWAY SEGMENT, AT A WIDTH SUFFICIENT FOR AN ARTERIAL STREET. ON OR BEFORE THREE (3) YEARS FROM THE DATE OF EXECUTION OF THIS FIRST AMENDMENT, DEVELOPER shall pave CR 1 from the site, south to CR 40, as an arterial street. The Town will provide for the reimbursement of one-half of the cost of the street so constructed, from developers of property adjacent to CR 1, as development under the control of the TOWN occurs. Any reimbursement shall be subject to the provisions of the Subdivision Improvement Agreement.**

2. **BINDING EFFECT.** This instrument amends only paragraph k of Exhibit B to the Annexation Agreement. Except as so amended, all other portions of said Agreement shall remain in full force and effect.

3. **ORIGINAL COUNTERPARTS.** This FIRST AMENDMENT may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

By this acknowledgment, the undersigned hereby certify that the above First Amendment is complete and true and entered into of their own free will and volition.

TOWN OF TIMNATH

ANNEXOR

By Donna Benson
Donna Benson, Mayor

By _____

ATTEST:

By Milissa McGuire
Milissa McGuire, Town Clerk

STATE OF COLORADO)
)ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 2009 by _____, as _____ of Wildwing Development LLC, Annexor.

My commission expires:

Witness my hand and official seal.

Notary Public

STATE OF COLORADO)
)ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 2009 by _____ as Mayor and _____ as Town Clerk of the Town of Timnath.

My commission expires:

Witness my hand and official seal.

Notary Public