

**TOWN OF TIMNATH, COLORADO**

**RESOLUTION NO. 2, SERIES 2014**

**A RESOLUTION MAKING CERTAIN FINDINGS OF FACT AND DECLARING  
ELIGIBILITY OF THE PROPOSED ANNEXATION OF A PARCEL OF LAND TO THE  
TOWN OF TIMNATH, COLORADO, KNOWN AS THE BRUNNER FARM  
ANNEXATION**

**WHEREAS**, the Town Council of the Town of Timnath, Colorado, has found a petition for the annexation of the hereinafter described parcel of land to be in substantial compliance with the requirements of Section 31-12-107(1), Colorado Revised Statutes; and

**WHEREAS**, the Town has provided notice of public hearing on the proposed annexation by publication once per week for four successive weeks and by registered mail to the Clerk of the Board of County Commissioners, the County Attorney, the school district and to any special district having property in the area to be annexed; and

**WHEREAS**, the Town has prepared an Annexation Impact Report per C.R.S. 31-12-108.5, as the area being annexed is more than 10 acres in size; and

**WHEREAS**, the Town Council has completed a public hearing to determine if the proposed annexation complies with Sections 31-12-104 and 105, Colorado Revised Statutes, to establish eligibility for annexation.

**BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH,  
COLORADO:**

**Section 1. Findings.**

A. The Town Council hereby finds and concludes with regard to the annexation of the property described in **Exhibit A** attached hereto and incorporated herein, that not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the existing boundaries of the Town; and therefore, because of such contiguity, a community of interest exists between the property proposed to be annexed and the Town; the property proposed to be annexed is urban or will be urbanized in the near future, and that the property proposed to be annexed is integrated or is capable of being integrated with the Town.

B. The Town Council hereby finds and concludes that no land held in identical ownership has been divided or included without written consent of the owner thereof; that no annexation proceedings have been commenced by another municipality; that the annexation will not result in the detachment of the area from a school district; that the annexation will not result in the extension of a municipal boundary more than three miles; that the Town has in place a plan for said three mile

area; and that in establishing the boundaries of the area to be annexed the entire width of any street or alley is included within the area annexed.

C. The Town Council hereby finds and concludes that an election is not required, and no additional terms or conditions are to be imposed upon the area to be annexed other than set forth in the Annexation Agreement attached hereto as **Exhibit B**.

**Section 2. Effective Date**

This Resolution shall be effective upon adoption.

PASSED, APPROVED AND ADOPTED THIS 14th DAY OF JANUARY, 2014.  
THE VOTE UPON ROLL CALL BEING AS FOLLOWS:

For: 5

Against: 0

Abstain: 0

FOR THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO

TOWN OF TIMNATH

By: Jill Grossman-Belisle  
Jill Grossman-Belisle, Mayor

ATTEST:

Milissa Peters  
Milissa Peters, Town Clerk



**EXHIBIT A**

**Legal Description of Proposed Annexation**

(See Attached)

**EXHIBIT B**

**Annexation Agreement**

(See Attached)

**ANNEXATION AGREEMENT  
FOR THE [NAME OF ANNEXATION PROPERTY]**

THIS AMENDED AND RESTATED ANNEXATION AGREEMENT (“**Agreement**”), is made and entered into to be effective the \_\_\_\_ day of \_\_\_\_\_, 201\_, by and between Town of Timnath, a Colorado municipal corporation (“**Town**”) and [NAME OF PROPERTY OWNER], a [ ] (“**Property Owner**” and collectively, the “**Parties**”) and is made concerning the real property described on **Exhibit A** attached hereto and incorporated herein by reference (“the **Property**”) generally known as the “[NAME OF ANNEXATION PROPERTY]”.

**WITNESSETH:**

WHEREAS, the Property consists of approximately [NUMBER OF ACRES] acres, more or less, located [GENERAL DESCRIPTION OF LOCATION OF ANNEXED PROPERTY]; and

WHEREAS, Town and [PROPERTY OWNER] will be entering into a subdivision improvement agreement (the (SIA”)), which will be recorded in the real estate records of [NAME OF COUNTY] County, Colorado, and which will govern the construction of public improvements on the property and will serve as a condition precedent to approval of by the Town of any future plat or plats associated with the Property; and

WHEREAS, it is the intent of Parties that this Agreement contains all the obligations of Parties which shall be performed by Parties with respect to annexation of the Property.

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, Parties hereto agree as follows:

**AGREEMENT**

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions for annexation and development of the Property within Town, and the fees to be paid by Property Owner upon annexation of the Property. All conditions contained herein are in addition to any and all requirements of Town and applicable state statutes, and are not intended to supersede such requirements, except as specifically provided in this Agreement. All “exhibits” attached hereto are incorporated herein by this reference and are an integral part hereof.

2. Annexation of Property. The Property shall be annexed to Town by ordinance, not by election, in accordance with the terms of this Agreement, including[ANY INCLUDED RIGHTS OF WAY AND ROADS], as shown on the annexation map attached hereto as **Exhibit B**. The annexation of the Property is subject to this Agreement and the Amended and Restated Subdivision Improvement Agreement executed contemporaneously herewith.

3. Zoning and Development of the Property. The Property was zoned [TYPE OF ZONING] effective [DATE OF ZONING]. Property Owner will develop the Property in

accordance with the Final Plat subject to modification thereof to accommodate [INSERT ANY ACCOMMODATIONS OR DELETE] depicted in **Exhibit C** which shall be constructed by Property Owner. The Property, or any portion thereof, may be rezoned and the Final Plat amended with the consent of Town and Property Owner, but without amending or modifying this Agreement.

4. Water Utilities. Property Owner shall obtain water service from the [NAME OF WATER PROVIDER].

5. Sanitary Sewer Utilities. Property Owner shall obtain sewer service from [NAME OF SEWER PROVIDER].

6. Early Grading of the Property. Property Owner may desire to perform over-lot grading of future "Phases" of the Property and construct drainage facilities prior to submission and/or approval of the final plat for any phase of development of the Property. Property Owner may perform such over-lot grading and construct such drainage facilities only upon approval by Town of an acceptable erosion control plan, a grading plan and a drainage plan. Property Owner recognizes that the erosion control plan may require temporary and/or permanent drainage improvements.

7. Utilities and Infrastructure. Parties recognize that Town does not provide infrastructure to serve the Property and Property Owner will be responsible for extending all utilities and streets to serve the Property. Failure of Property Owner to obtain utilities or provide streets to the Property shall not be grounds for disconnection.

8. Water and Water Rights. Property Owner acknowledges that Property Owner shall be required to meet Town Code requirements for irrigation of common areas, open space areas, and parks. Property Owner shall not be required to provide to Town any water or water rights, well or well rights, reservoir or storage rights, stock in mutual ditch and irrigation companies, units of the , or any other water or water rights appurtenant to or historically used in connection with the Property except as otherwise set forth herein.

9. Coordination with Adjacent Properties. Property Owner shall coordinate with owners of properties within Town adjacent to the Property to provide pedestrian and vehicular access between the Property and the adjacent properties as may be necessary to implement Town's current transportation plan.

10. Obligations Run with the Land. This Agreement and the annexation map 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 Parties hereto and their respective heirs, personal representatives, successors, and, to the extent permitted, assigns as the case may be.

11. Cure of Legal Defects. In the event that the annexation or zoning of the Property or any portion of this Agreement, is declared void or unenforceable by final court action, Parties shall cooperate to cure any legal defects cited by the court, and immediately upon such cure,

Town shall reinstitute and complete proceedings to annex and zone the Property according to the terms of this Agreement and to otherwise carry out the terms and provisions hereof.

12. Vested Property Rights.

a. Acknowledgements. Parties acknowledge the following:

- (1) The Property is estimated to have a minimum [NUMBER OF YEARS] ([ ]) year build-out period and is expected to be constructed in [NUMBER OF PHASES] ([ ]) phases.
- (2) Property Owner 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 Property Owner's annexation of the Property and Property Owner's willingness to develop the Property within Town (rather than developing the Property within the County or another municipality) is Town's agreement to permit development of the Property in accordance with the terms and conditions of this Agreement and the Final Plat, particularly the vested property rights granted herein.
- (4) Property Owner waives 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 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, Town agrees to grant extended vested property rights in this Agreement pursuant to Section 16.5.2 of the Timnath Municipal Code in accordance with the following "performance vesting" schedule. The initial vesting period for the Property shall be from annexation of the Property through [INITIAL VESTING DATE] ("Vesting Period.") Thereafter extended vested property rights shall be granted according to the following provisions and expressly on the conditions stated herein and in the Amended and Restated Subdivision Improvement Agreement executed contemporaneously herewith. Such extended vested property rights shall be available to Property Owner for each "Phase" (defined below) of proposed development of the Property as depicted in **Exhibit C** attached hereto and incorporated herein by this reference shall be subject to vesting of property rights, conditionally and serially, as follows:

The initial Vesting Period shall be through [INITIAL VESTING DATE].

(1) If Phase I is “completed through build-out” by [INITIAL VESTING DATE], the Vesting Period shall be extended through [FIRST EXTENDED VESTING DATE], on condition that Property Owner applies to Town by [INITIAL VESTING DATE], and receives from Town, in writing, a letter authorized by Town Council concurring that Phase I has been completed through build-out by [INITIAL VESTING DATE].

(2) If Phase II is completed through build-out by [FIRST EXTENDED VESTING DATE], the Vesting Period shall be extended through [SECOND EXTENDED VESTING DATE], on condition that Property Owner applies to Town by [FIRST EXTENDED VESTING DATE], and receives from Town, in writing, a letter authorized by Town Council concurring that Phase II has been completed through build-out by [FIRST EXTENDED VESTING DATE].

(3) If Phase III is completed through build-out by [SECOND EXTENDED VESTING DATE], the Vesting Period shall be extended through [THIRD EXTENDED VESTING DATE], on condition that Property Owner applies to Town by [SECOND EXTENDED VESTING DATE], and receives from Town, in writing, a letter authorized by Town Council concurring that Phase III has been completed through build-out by [SECOND EXTENDED VESTING DATE].

For purposes of extended vested rights, the term “completed through build-out” shall mean, as respects a Phase of the Property, that (i) all public improvements required by Town for such Phase (per Town Code or agreement between Parties) have been constructed by Property Owner and that Initial Acceptance and provision to Town of Warranty Security has occurred pursuant to the Amended and Restated Subdivision Improvement Agreement, (ii) that the Water District and the Sewer District have finally accepted the water and wastewater improvements and evidence thereof has been provided to Town, and (iii) that all obligations of Property Owner in the Amended and Restated Subdivision Improvement Agreement and this Agreement as the same may affect Property within such Phase have been performed to the satisfaction of Town in its sole reasonable discretion.

- c. Compliance with Agreement and Final Plat. Pursuant to the contractual commitments made herein, Property Owner shall have vested property rights to undertake and complete the development and use of the Property under the terms and conditions of this Agreement, the Amended and Restated Subdivision Improvement Agreement, and the Final Plat.



- d. Final Plat. The Final Plat shall be considered a site specific development plan as defined by Colorado law and the Timnath Municipal Code for the conditional Vesting Period identified above for the Property and conditional extended vesting periods for Phases II through [X] of the Property.
- e. Limitation on Vested Rights. Notwithstanding anything in this Section to the contrary, in no event shall the vested rights granted herein prevent Town, by its citizens through initiative or referendum or by Town Council, from acting as reasonably necessary to protect property, businesses or residents within 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 Town.
- f. Infrastructure Standards. Parties acknowledge and agree that Town Code and Town's then-existing design and construction standards shall be applicable to all future construction of items historically considered to be public in nature, including generally, water lines, sewer lines, streets, drainage improvements, park improvements, traffic safety and control devices, etc. common to similar developments in Town. Accordingly, the vested rights previously granted and extended herein shall not include design and construction standards for public improvements.

13. Town Ordinances, Regulations, Codes, Policies, and Procedures. To the extent consistent with vested property rights granted above, the provisions of this Agreement, and the Final Plat, Parties agree that 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. If such are inconsistent with the vested property rights granted herein, such inconsistent ordinance, regulation, code, policy or procedure shall apply to development of the Property only if, in Town's sole reasonable discretion, such is necessary to preserve the public's health, safety and welfare. If the Property is replatted in any manner, all ordinances, regulations, codes, policies and procedures in effect at the time of replat shall be applicable to the use and development of the Property that is subject to the replat.

14. Breach by Property Owner - Town's Remedies. In the event of a breach of any of the terms and conditions of this Agreement by Property Owner, and until such breach is corrected, Town may take such action as permitted and/or authorized by law, this Agreement, and/or the ordinances of Town as Town reasonably deems necessary, to protect the public health, safety and welfare; to protect lot buyers and builders; and to protect the citizens of Town from undue hardship and undue risk. These remedies include, but are not limited to:

- a. The refusal to issue any building permit;

- b. The revocation of any 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 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;
- h. Any other remedy available at law or equity.

Unless necessary to protect the immediate health, safety and welfare of Town or to protect Town's interest with regard to security given for the completion of the public improvements, Town shall provide Property Owner 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 (30) day period Property Owner commences to cure the breach described in the notice and proceeds reasonably thereafter to cure the breach, any action taken by Town to enforce this Agreement shall be discontinued and no further action shall be taken by Town upon and to the extent that a breach of this Agreement is cured.

15. Breach by Town: Property Owner's Remedies. Property Owner shall have any and all remedies against Town for breach of this Agreement available at law or in equity for a material breach of this Agreement by Town, including the right to seek statutory disconnection for a material breach which substantially impairs Property Owner's ability to develop the Property. Property Owner acknowledges that Town is currently providing municipal services for the benefit of the Property, including but not limited to administrative services and operations and maintenance of [PROPERTY RECEIVING SERVICES] for the benefit of the Property.

16. Attorney's 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.

17. Acknowledgement. It is expressly understood that Town cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with 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 as a waiver or abrogation of Town's legislative, governmental, or police powers to promote and protect the health, safety and general welfare of Town or its inhabitants; nor shall this Agreement prohibit the enactment by Town of any fee that is of uniform or general application; subject to the limitation on fee increases set forth in the Amended and Restated Subdivision Improvement Agreement.

18. Notice. All notices 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 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 of Timnath  
4800 Goodman Street  
Timnath, Colorado 80547  
Telephone: (970) 224-3211  
Facsimile: (970) 224-3217

with copy to:

Gary R. White, Esq.  
White, Bear & Ankele Professional Corporation  
2154 E. Commons Ave., Suite 2000  
Centennial, CO 80122  
Telephone: (303) 858-1800  
Facsimile: (303) 858-1802

Notice to Property Owner:

[NAME]  
[ADDRESS]  
[ADDRESS]  
[ADDRESS]  
Telephone: [PHONE]  
Facsimile: [FAX]

with a copy to:

[NAME]  
[ADDRESS]  
[ADDRESS]  
Telephone: [PHONE]  
Facsimile: [FAX]

19. Assignment. Property Owner shall have the right to assign or transfer all or any of its interests, rights, or obligations under this Agreement to any person or entity that is an "affiliate" of Property Owner without the consent of Town. Property Owner shall also have the right to assign or transfer all or any of its 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 after at least thirty (30) days prior written notice to Town. Upon such notice and written assumption of the obligations of Property Owner by an 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 Property Owner arising after the date such duties and obligations are assumed by the Assignee. 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 Property Owner. 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.

20. Title and Authority. Property Owner warrants and represents to Town that it is the record owner of the Property, 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. Property Owner and the undersigned individuals understand that Town is relying on such representations and warranties in entering into this Agreement.

21. Entire Agreement - Amendments. This Agreement embodies the whole agreement of Parties with respect to the annexation of the Property to Town and development of the Property within Town. There are no promises, terms, conditions, or obligations other than those contained herein, which shall supersede all previous communications, representations or agreements, either verbal or written, between Parties hereto. This Agreement may be amended by written agreement between Property Owner and 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 Property Owner and Town, without consent of such lot owners to the extent such amendment does not adversely affect such other lot owners in a material manner.

22. Severability. 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 Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid, and Parties shall cooperate to cure any such defect.

23. Effective Date-Termination. This Agreement shall be effective and binding upon Parties but shall not affect the effective date of the ordinance annexing the Property to Town. This Agreement shall be terminated and considered null and void on the date of disconnection if the Property is disconnected from Town as a result of a Disconnection Event as contained herein.

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

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

26. 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 Parties. Signature pages may be removed from any counterpart and attached to another counterpart to constitute a single document.

27. 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.

28. Time is of the Essence. Time is of the essence for both parties with respect to the obligations herein. Parties agree that they will each act in as expeditious a manner as reasonably possible in performing the obligations herein.

29. Third Party Beneficiaries. This Agreement is made by and between Parties and their 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.

30. Modifications. This Agreement shall not be amended except by subsequent written agreement of Parties.

31. Integration. It is expressly understood that Town cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with documents approved by the Board of Trustees at a public meeting, Town Code and the laws of the State of Colorado.

32. Captions. The captions to this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

33. Force Majeure. Whenever Property Owner is required to complete construction, repair or replacement of Public Improvements by an agreed deadline, such Property Owner shall be entitled to an extensions of time equal to a delay in completing the foregoing, due to unforeseeable causes beyond the control and without the fault or negligence of such Property Owner, including but not restricted to, acts of God, weather, fires and strikes.

34. Approvals. Whenever approval or acceptance of Town is necessary pursuant to any provisions of this Agreement, Town shall act reasonably and in a timely manner in responding to such request for approval or acceptance.

IN WITNESS WHEREOF, this Agreement has been executed by Parties, intending to be legally bound hereby, as of the date set forth above.

TOWN:

TOWN OF TIMNATH, COLORADO,  
A Municipal Corporation

ATTEST:

By: \_\_\_\_\_  
Jill Grossman-Belisle, Mayor

\_\_\_\_\_  
Milissa Peters, Town Clerk

PROPERTY OWNER:

[PROPERTY OWNER]

By: \_\_\_\_\_  
[NAME AND TITLE]

STATE OF COLORADO    )  
                                      ) ss.  
COUNTY OF LARIMER    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of [MONTH], 201-  
, by [NAME AND TITLE].

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

**EXHIBIT A  
(Property)**

DRAFT

**EXHIBIT B**  
**(Annexed Property)**

DRAFT



**EXHIBIT C  
(Phasing Plan)**

DRAFT