

**TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 9, SERIES 2014**

**A RESOLUTION APPROVING THE SECOND AMENDMENT TO COOPERATION
AGREEMENT**

WHEREAS, the Town Council of the Town of Timnath ("Town") pursuant to C.R.S. § 31-15-103, has the power to pass resolutions; and

WHEREAS, attached hereto as Exhibit A is the Second Amendment to Cooperation Agreement between the Town of Timnath, Colorado and the Timnath Development Authority (the "Agreement"); and

WHEREAS, the Town Council is familiar with the Agreement and finds it to be in the best interest of the Town, its residents, and the general public.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO as follows:

Section 1. Approval

The Agreement is hereby approved in substantially the form as attached hereto, subject to technical or otherwise non-substantive modifications, as deemed necessary by the Town Manager in consultation with the Town Planner, Engineer, Legal Counsel, and other applicable staff or consultants.

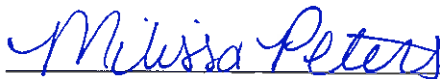
INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON JANUARY 28, 2014,

TOWN OF TIMNATH, COLORADO



Jill Grossman-Belisle, Mayor

ATTEST:



Milissa Peters, Town Clerk



EXHIBIT A
AGREEMENT

**SECOND AMENDMENT TO
COOPERATION AGREEMENT
BETWEEN
TOWN OF TIMNATH, COLORADO
AND
TIMNATH DEVELOPMENT AUTHORITY
REGARDING BONDS AND OTHER OBLIGATIONS**

THIS SECOND AMENDMENT TO COOPERATION AGREEMENT (this “Second Amendment”) is made and entered into as of the ____ day of February, 2014, by and between the Town of Timnath, Colorado (the “Town”), a municipal corporation of the State of Colorado, and the Timnath Development Authority (the “Authority”), a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado and the home rule charter of the Town (the “Timnath Town Charter”).

RECITALS

WHEREAS, the Town is a home rule municipal corporation duly organized and existing under and pursuant to the Timnath Town Charter; and

WHEREAS, the Authority is a body corporate and has been duly organized, established and authorized by the Town to transact business and exercise its powers as an urban renewal authority, all under and pursuant to the Colorado Urban Renewal Law, Section 31-25-101, et seq., Colorado Revised Statutes, as amended (the “Act”); and

WHEREAS, pursuant to Sections 31-25-105 and 31-25-109 of the Act, the Authority has the power and authority to borrow money and to apply for and accept loans, and to issue or incur notes, interim certificates or receipts, temporary bonds, certificates of indebtedness, debentures, advances or other obligations, including refunding obligations, all for the purpose of financing the activities and operations authorized to be undertaken by the Authority with respect to projects in accordance with the Act and an urban renewal plan; and

WHEREAS, the Town approved the “Timnath Urban Renewal Plan,” in December 2004 and amended such plan in March 2007 (as so amended, the “Plan”); and

WHEREAS, for the purpose of financing the costs of projects authorized by the Act and the Plan, the Authority has previously issued its Variable Rate Tax Increment Revenue Bonds, Series 2007 (the “Series 2007 Bonds”) and, in connection therewith, the Authority and the Town entered into a Cooperation Agreement Regarding Bonds and Other Obligations dated as of August 1, 2007 (the “2007 Cooperation Agreement”), relating to the payment by the Town of Pledged Sales Tax Revenues (as defined therein) to the Authority or its designee; and

WHEREAS, for the purpose of refunding the Series 2007 Bonds, the Authority and Compass Mortgage Corporation, an Alabama corporation (“Compass”) entered into a Loan

Agreement dated as of April 1, 2011 (the "2011 Loan Agreement"), the proceeds of which were applied to the repayment in full of the Series 2007 Bonds; and

WHEREAS, the Authority and Compass subsequently made certain modifications to the 2011 Loan Agreement to provide for the increase of the loan amount thereunder to facilitate the funding of additional costs of projects authorized by the Act and the Plan and, in connection therewith, the promissory note issued in 2011 was cancelled in lieu of a new promissory note reflecting the new loan amount (the "2012 Note"); and

WHEREAS, the Authority and the Town previously amended the 2007 Cooperation Agreement pursuant to a First Amendment to Cooperation Agreement dated as of January 27, 2012 (the "First Amendment") for the purposes of: (i) clarifying the nature of the then outstanding Authority obligation as a loan, rather than a bond, and making certain conforming changes to accommodate such existing loan structure, as well as the structures of future refunding or additional obligations of the Authority, and (ii) broadening the projects anticipated to be funded by such obligations to accommodate the use of additional moneys funded as evidenced by the 2012 Note and any other Obligations (as defined in the First Amendment); and

WHEREAS, the Board of Commissioners of the Authority (the "Board") has determined that it is in the best interests of the Authority to refinance the 2012 Note and finance public infrastructure improvements relating to the new Costco site located within the Plan Area and, for such purposes, the Board has requested a loan from Compass Mortgage Corporation ("Compass") in an amount of up to \$36,725,000 (the "2014 Loan"); and

WHEREAS, Compass has agreed to make the 2014 Loan to the Authority in accordance with the terms and conditions set forth in an Amended and Restated Loan Agreement between Compass and the Authority to be dated as of the date of issuance of the 2014 Loan (the "Amended and Restated 2014 Loan Agreement"), which agreement shall amend and restate in its entirety the 2011 Loan Agreement, as amended; and

WHEREAS, the Act and Section 18, Article XIV of the Colorado Constitution authorize the Town and the Authority to enter into cooperative agreements, such as the 2007 Cooperation Agreement, the First Amendment, and this Second Amendment.

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the 2007 Cooperation Agreement, as previously amended by the First Amendment, is hereby further amended as follows:

1.0 Amendments to 2007 Cooperation Agreement. The 2007 Cooperation Agreement, as amended by the First Amendment, is hereby amended as set forth below.

1.1 All capitalized terms used and not otherwise defined or redefined in this Second Amendment shall have the respective meanings assigned in the First Amendment and, if not defined or redefined in the First Amendment, shall have the respective meanings set forth in the 2007 Cooperation Agreement.

1.2 The meanings of the following defined term set forth in the First Amendment is hereby amended and restated in its entirety to read as follows.

“Projects” means _____.

1.3 Amendment and Restatement of Section 3.1(a) of 2007 Cooperation Agreement. In order to clarify the intent of the Town and the Authority with respect to Section 3.1(a) of the 2007 Cooperation Agreement, said Section 3.1(a) is hereby amended and restated in its entirety as follows, for the purpose of adding the italicized text:

(a) Until the termination of this Agreement and to the extent permitted by law, the Town agrees that it will not reduce the percentage of the Sales Tax and will not exempt from the Sales Tax any item or transaction unless the net effect of such change will not materially reduce or delay the receipt by the Authority of the Pledged Sales Tax Revenues; provided, however, that the foregoing shall not apply to a reduction in percentage of the Sales Tax or modification or exemption from Sales Tax imposed as a result of successful initiative or referendum *resulting in an amendment to the applicable Town ordinance or pertinent provisions of the Timnath Town Charter or as a result of a Constitutional amendment.*

2.0 Affirmations Relating to 2014 Loan. The Authority and the Town hereby affirm that (a) the 2014 Loan (as defined in the recitals hereof) is an “Obligation” within the meaning of the First Amendment; (b) Compass (as defined in the recitals hereof) is a “Lender” within the meaning of the First Amendment; and (c) the Amended and Restated 2014 Loan Agreement (as defined in the recitals hereof) is an “Obligation Document” within the meaning of the First Amendment. Accordingly, Compass is an intended third party beneficiary of the 2007 Cooperation Agreement, as amended by the First Amendment and as further amended by this Second Amendment.

3.0 Affirmation of Authority Revenues. The Town and the Authority hereby affirm that the Incremental Taxes constitute revenues of the Authority, as contemplated by the Plan.

4.0 Governing Law. This Second Amendment shall be governed by and construed in accordance with the laws of the State of Colorado.

5.0 Entire Agreement; Ratification. This Second Amendment and the 2007 Cooperation Agreement, as amended by the First Amendment, shall be read, taken and construed as one and the same instrument so that, except as expressly supplemented or amended by the First Amendment and by this Second Amendment, all of the rights, remedies, terms, conditions, covenants and agreements of the 2007 Cooperation Agreement shall remain in full force and effect. The 2007 Cooperation Agreement as amended by the First Amendment and as further

amended by this Second Amendment is hereby ratified and confirmed and sets forth the entire agreement and understanding of the parties related to the matters set forth therein and herein.

6.0 Headings. Section headings of this Second Amendment have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions of this Second Amendment.

7.0 Counterparts. This Second Amendment may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, the Town and the Authority have caused this Second Amendment to Cooperation Agreement Regarding Bonds and Other Obligations to be duly executed and delivered by their duly authorized officers as of the date first above written.

TOWN OF TIMNATH, COLORADO

ATTEST:

By: Melissa Peters
Town Clerk

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

TIMNATH DEVELOPMENT AUTHORITY

ATTEST:

By: Melissa Peters
Name: Melissa Peters
Title: Secretary

By: Jill Grossman-Belisle
Jill Grossman-Belisle, Chair