

TOWN OF TIMNATH, COLORADO

RESOLUTION NO. 19, SERIES 2012

**A RESOLUTION APPROVING THE TIMNATH SOUTH AMENDED SUBDIVISION
IMPROVEMENTS AGREEMENT**

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

WHEREAS, Council policy is that material agreements and other documents requiring formal Council approval should be approved by resolution; and

WHEREAS, attached hereto as Exhibit A is the Timnath South Amended and Restated Subdivision Improvements Agreement ("Agreement").

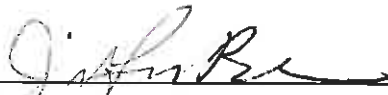
NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO as follows:

Section 1. Repeal

The Town Council hereby approves the Agreement and authorizes its execution by the Mayor, Manager, or other person authorized by Council adopted resolution or the Charter to sign Agreements or Documents.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON AUGUST 28, 2012,

TOWN OF TIMNATH, COLORADO



Jill Grossman-Belisle, Mayor

ATTEST:



Milissa Peters, Town Clerk



AMENDED AND RESTATED
SUBDIVISION IMPROVEMENT AGREEMENT
FOR
TIMNATH SOUTH SUBDIVISION

THIS AGREEMENT made as of this 28th day of August, 2012 by and between TOWN OF TIMNATH, COLORADO, a Colorado municipal corporation ("Town"); and TIMNATH FARM INVESTMENTS, LLC, a Colorado Limited Liability Company ("Owner").

RECITALS

A. Owner and Developer are Owners of those certain parcels of real property located in Town of Timnath, platted as Timnath South Subdivision (the "Property").

B. The Property was annexed to Town by Ordinance No. 13-2004, adopted on November 17, 2004, and is subject to the terms and conditions of the Annexation Agreement among the Parties dated December 13, 2004 (the "Annexation Agreement").

C. On November 2, 2005, the Board of Trustees of Town of Timnath, after holding all necessary public hearings and having received a recommendation of approval from the Timnath Planning Commission, approved by Resolutions No. BF, BG and BH-2005, the final plat, zoning and site development plan for the Property.

D. The approval of the final plat and site development plan were conditioned upon the execution of a "Subdivision Improvement Agreement for Timnath South Subdivision" which was executed on November 30, 2005 (the "SIA") establishing the obligation of Owner to provide certain public improvements and landscaping necessitated by the proposed development as provided in the Resolution.

E. The parties to the SIA desire now to amend and restate the SIA to clarify certain of its terms and to modify certain of the obligations of the parties thereto.

F. This Amended and Restated Subdivision Improvement Agreement for Timnath South Subdivision shall supersede the SIA in its entirety.

G. Owner and Developer acknowledge that the obligations of Owner and Developer set forth herein are reasonably attributable to the special impacts which will be generated by the proposed uses of the Property, and that the terms and conditions set forth in this Agreement are necessary, reasonable and appropriate.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the terms, conditions agreements of Developer to provide Public Improvements for the Property, and the fees to be paid by Developer and Owner for other the public infrastructure necessary to support the development of the Property. All conditions contained herein are in addition to the provisions of the Annexation Agreement, the provisions of the Annexation Agreement all land use approvals previously granted by Town for the Property, any and all requirements of the Town of Timnath Municipal Code, any and all applicable state statutes, and any other ordinances of Town of Timnath and are not intended to supersede any requirements contained therein.

2. Definitions. Unless this Agreement otherwise clearly indicates, the following words and phrases shall be defined as follows:

A. "Town" shall refer to the Town of Timnath, Colorado, a Municipal Corporation organized pursuant to the laws of the State of Colorado, and shall include Town Manager, or the Manager's designee or other official, body or agency designated by statute or ordinance to act on behalf of Town.

B. "Developer" shall include Owner or owners of any Phase of the Property, and Timnath Farm Investments, LLC, and shall include any person acting in accordance with the duly executed power of attorney granting the attorney-in-fact full authority to act in the stead of Developer. Developer shall also include Owner unless the context in which Owner is used clearly indicates to the contrary.

C. "Code" shall refer to the Timnath Municipal Code, including the Land Use Code therein, as it exists on the date of approval of the Final Plat and as it may be amended in the future.

D. "Landscaping" shall refer to the landscaping for the Property shown on the Landscaping Plan attached hereto as **Exhibit C**, including the cost thereof.

E. "Final Plat" shall refer to the subdivision plat approved by Town Board of Trustees in Resolution No. BH-2005, and shall encompass Resolution No. BH-2005 and all conditions included therein.

F. "Owner" shall mean Timnath Farm Investments, LLC.

G. "Phases" shall refer to development of the Property in up to ten separate phases. **Exhibits A-F** identifying the Public Improvements and Landscaping, are separated into the appropriate phase.

H. "Property" shall mean the real property described as Timnath South Subdivision, Larimer County, Colorado.

I. "Public Improvements" shall mean the improvements described in this Agreement, including those identified on **Exhibits A-F**, all of which are necessary to serve the development of the Property.

J. "Park," "District Park" or "Metro District Park" shall mean the park described in **Exhibit E**. For purposes of all provisions of this Agreement concerning completion of Public Improvements the Park shall be deemed a component of the Public Improvements unless the context specifically indicates otherwise. **Exhibit E** contains a graphic depiction of the Park and an itemization of construction elements which are required to be constructed under this Agreement. The bonding and inspection requirements contained in Paragraphs 8, 11, 12, and 13 are not applicable to the Metro District Park.

3. Agreement and Other Requirements. Developer hereby understands and agrees that the Property is subject to the conditions and requirements of this Agreement, the Annexation Agreement, Final Plat and the zoning for the Property. The Parties agree and acknowledge that the "Timnath South Subdivision Rezoning Map" reception number 20100021537, reflects the current zoning for the Property. Nothing herein shall relieve Developer of any financial obligation to Town contained in this Agreement or any other agreements to which Developer is a party or pursuant to Town Code.

4. Fees. In addition to all fees due pursuant to the Annexation Agreement, and as a condition to any person seeking a building permit for any improvement on the Property, the person seeking such building permit shall be required to pay all fees, charges and costs required by the Code at the time of application for the building permit.

5. Public Improvements to be Managed by Districts. Developer has included within Fort Collins-Loveland Water District for potable water services to the Property (the "Water District") and South Fort Collins Sanitation District for sanitary sewer services to the Property (the "Sewer District") (the Water District and Sewer District collectively referred to as the "Districts"). Developer recognizes that it is in Town's interest that all potable water and sanitary sewer services, even though provided by the District, are of vital concern to Town, and therefore, the Public Improvements, except where specifically provided otherwise, include the facilities required by each District. The Metro District Park shall be constructed, operated and maintained by the metropolitan districts serving the Property and not by the Town; provided, however, that Town shall be entitled to review all standards for maintenance in connection with the Metro District Park by such metropolitan districts, and Town shall have authority to mandate changes to such standards, as applied to the park,

if such changes are deemed necessary by the Town, in its sole discretion, to protect the public health, safety and welfare.

6. Completion of Public Improvements and Landscaping. In addition to Public Improvements required by this Agreement, Developer shall also meet all requirements and install all Public Improvements described on the attached **Exhibit A**. All potable and non-potable water lines, sewer lines, fire hydrants, potable and non-potable water (if required) or sewer distribution facilities, drainage structures, paved streets, including curbs and gutters and necessary appurtenances as shown on the subdivision plat and the associated construction documents (the "Public Improvements") and all Landscaping as approved by Town, shall be installed and completed at the expense of Developer. The Public Improvements required by this Agreement and shown on the Final Plat as well as associated construction documents, and the costs of these improvements are set forth on **Exhibit B**, attached hereto and incorporated herein. Developer acknowledges these costs are estimates and the actual costs of such public improvements, upon determination, shall be substituted as the costs on **Exhibit B**. All Public Improvements and Landscaping covered by this Agreement shall be made in accordance with the Final Plat and associated plans and construction documents drawn according to regulations and construction standards for such improvements and approved by Town. Town certifies that the same conform to the applicable specifications.

7. Metro District Park/Restriction on Issuance of Building Permits. There shall be no issuance of any building permits by Town for lots within any defined phase unless the Metro District Park described in **Exhibit A**, paragraph 9, is completed to the satisfaction of Town by October 31, 2012 and Developer can demonstrate that it has contributed one hundred fifty thousand dollars (\$150,000) to the Metro District's construction fund. The Park shall be deemed "complete" when the itemized elements set forth in **Exhibit E** have been completed to the reasonable satisfaction of Town subject to delays beyond the reasonable control of the Metro District. Developer agrees to order the Park equipment by August 31, 2012. The parties acknowledge that the grass for the park may not be completed prior to Spring, 2013 due to weather constraints.

As to all other Public Improvements, there shall be no issuance of any building permits by the Town for lots within any defined phase until all Public Improvements within that phase including but not limited to streets, curbs, gutters, sidewalks, crosspans, drainage facilities, erosion control, water and wastewater improvements, and street fixtures have been granted preliminary acceptance by the Town as provided for in the Code. The Town shall support the splitting of Tract M such that the Park and pond may be dedicated to the Metro District while the remainder of the land shall be retained by Developer.

8. Performance Guarantee - Public Improvements.

A. Completion Security for Public Improvements. To assure the construction, installation, and completion of the Public Improvements in all Phases of the Property, Developer shall, prior to commencing any work on the Property, furnish Town an irrevocable letter of credit, completion bond, or other security reasonably acceptable to Town ("Completion Security") to secure the completion of Public Improvements required by Town for each Phase of the development. Town shall be designated as beneficiary of the Completion Security. The Completion Security shall be

provided Phase by Phase and shall be in an amount equal to One Hundred Fifteen percent (115%) of the estimated costs of the Public Improvements to be completed within a Phase. The amount of the Completion Security shall not include the portion of the Public Improvements which are to be constructed for the water facilities managed by the Water District or the sanitary sewer facilities managed by the Sewer District. Upon provision of such Completion Security to Town in a manner acceptable to Town for a Phase, building permits may be issued by Town within such Phase. Eighty percent (80%) of the Completion Security related to a component of the Public Improvements shall be released upon issuance of a letter of Initial Acceptance by Town engineer issued in accordance herewith. Upon Initial Acceptance of all of the Public Improvements, the Town may release an additional ten percent (10%) of the entire Completion Security, resulting in ten percent (10%) of the initial amount of the Completion Security remaining as assurance of performance during the warranty period until Final Acceptance by the Town. The remaining Completion Security shall satisfy Developer's obligation to provide Warranty Security until Final Acceptance.

B. Warranty Security. Developer shall warrant any and all Public Improvements for a period of two (2) years from the date Town issues a letter of Initial Acceptance. As a condition to issuance of any letter of Initial Acceptance of any Public Improvements Developer shall provide to Town a warranty bond or other security in a form satisfactory to Town ("Warranty Security") to ensure that Public Improvements for which Initial Acceptance has occurred will attain Final Acceptance by Town during the warranty period. If prior to the issuance of a letter of Final Acceptance, any significant warranty work is required in connection with Public Improvements for which a letter of Initial Acceptance has been issued by Town, Town may require Warranty Security for up to two (2) years from the date of completion of such significant warranty work. In such event, Town shall issue a supplemental letter of Initial Acceptance specifying the Warranty Security required by Town and the work to be completed by Developer prior to issuance of a letter of Final Acceptance for such Public Improvements.

9. Public Improvement Construction Plan Review. The plans and construction documents for all Public Improvements shall be drawn according to regulations and construction standards of Town for such improvements. All applicable plans for Public Improvements shall be subject to review and approval by Town to determine if such plans are in general conformance with applicable Town standards. No commencement of construction of Public Improvements shall occur without plan approval by Town. Prior to commencement of construction of any Public Improvement, Developer shall attend a "pre-construction meeting" with Town engineer to assure compliance of all proposed activities with this Agreement and the Code.

10. Construction Testing. Developer, at its sole expense, shall employ a professionally qualified, independent testing company to perform all testing of materials or construction as may be reasonably required by Town to ensure compliance with applicable standards and specifications. All testing companies so employed by Developer shall maintain and have in effect a professional liability insurance policy with policy limits of at least one million dollars (\$1,000,000), which will provide coverage for damage sustained by Town which is caused by the professional negligence of such company, its employees or agents in completing such testing and shall provide proof of insurance to Town upon request. Developer shall furnish Town with certified copies of test results and agrees to

release and authorize full access to Town and its designated representatives all work-up materials, procedures and documents used in preparing the test results.

11. Construction Inspection. At all times during construction of the Public Improvements and until final acceptance thereof by Town, Town shall have the right, but not the duty, to inspect materials and workmanship to ascertain conformance with the approved plans and applicable standards and specifications. Developer shall reasonably cooperate and assist Town in gaining appropriate access to the areas designated for the inspection. For a period of two (2) years after Final Acceptance of any Public Improvement, the Developer shall notify Town upon actual discovery of any nonconformance of such Public Improvement with said plans, standards and specifications.

12. Initial Acceptance of Public Improvements. Upon substantial completion of construction by Developer of such Public Improvements, and upon notification thereof to Town by Developer, Town engineer shall inspect such Public Improvements and certify with specificity their conformity or lack thereof to the applicable specifications. Developer shall make all corrections necessary to bring the Public Improvements into conformity with such specifications. Upon satisfactory completion of the initial inspection and completion of corrections by Developer, and after submission of required documents to Town including written and electronic "record plans," Town shall certify initial acceptance of the Public Improvements and evidence the same by issuance of letter of Initial Acceptance from Town engineer to Developer specifying in detail the Public Improvements being initially accepted. Initial Acceptance shall be deemed to have occurred upon both the issuance of such letter and receipt of the applicable Warranty Security for such Public Improvements. The two (2) year warranty period shall be set forth in the Initial Acceptance letter. The warranty period shall commence upon Town's timely receipt of the required Warranty Security as provided by paragraph 8 hereof. Except as otherwise indicated in paragraph 8, Initial Acceptance of all Public Improvements by Town for a Phase shall be an express condition to the issuance of any certificates of occupancy for such Phase of the Property for which such Public Improvements are required.

13. Final Acceptance of Public Improvements. Upon expiration of the warranty period set forth in the Initial Acceptance Letter for Public Improvements, Developer shall provide notice to Town engineer that the Public Improvements are ready for final inspection. Upon satisfactory completion of the final inspection, and after conveyance of the Public Improvements as provided herein, and after payment of all fees due Town related to the Property, Town shall certify final acceptance of the Public Improvements and evidence the same by issuance of letter of Final Acceptance from Town engineer to Developer specifying in detail the Public Improvements being finally accepted. No letter of Final Acceptance shall be issued without advance approval of Town Council. The letter of Final Acceptance shall set forth the date of Town Council approval. Absent such consent, Developer shall not be entitled to rely on such letter for any reason. If upon final inspection by Town, significant defects are discovered, Town may elect to issue a supplemental letter of Initial Acceptance (instead of Final Acceptance) specifying corrective work to be completed and additional warranty period in accordance with paragraph 8B above. All such corrective work shall be the sole expense of Developer.

14. Documents Provided to Town Upon Initial Acceptance. Developer shall provide all necessary engineering designs, surveys, field surveys, and incidental services related to the construction of the Public Improvements, at its sole cost and expense, including reproducible "record plans" drawings certified accurate by a professional engineer registered in the State of Colorado. Developer shall provide Town and the Districts copies of such "record plans" drawings in written and electronic format as specified by Town upon "Initial Acceptance." Notwithstanding this paragraph, no "as-built drawings" or "record plans" shall be required for Public Improvements constructed by the Developer.

15. Conveyance or Dedication of Improvements. Except for Public Improvements dedicated to the metropolitan districts organized to serve the Property, as a condition of Final Acceptance, Developer shall convey to Town all Public Improvements required by the Final Plat for each Phase and, upon request by Town, shall execute such bills of sale as Town may request to assure title thereto is vested in Town notwithstanding the date of construction or acceptance of such Public Improvements as contrasted to the date of approval of the Final Plat. Acceptance of Public Improvements by dedication on the Final Plat shall not constitute Initial or Final Acceptance of such improvements. Any park dedication policy in place or as might be adopted in the future shall credit the Timnath South Subdivision with the 11 acres of park that have been previously dedicated.

16. Proof of Ownership. Prior to the recordation of any plat, a title commitment for the Property shall be provided to Town. The title commitment shall show that any portion of the Property to be dedicated to Town, and all property reserved or dedicated for public purposes, is or shall be, free and clear of all liens and encumbrances (other than real estate taxes which are not yet due and payable) which would make the dedications unacceptable as Town determines in its reasonable discretion. A title policy evidenced by the title commitment shall be provided by Developer within thirty (30) days of execution hereof as to any property to be dedicated to Town pursuant to such Plat in an amount equal to the fair market value of such property. An update to such title commitment shall be provided upon request of Town and conveyance as a condition of Final Acceptance, with the policy evidenced by such commitment update to be provided thirty (30) days after Final Acceptance.

17. Trails. The plans for the Property include trails to be open to the public. Such trails shall be constructed with the Public Improvements of the Property as identified on **Exhibits A-C**.

18. Improvements to Abutting Streets and Other Offsite Improvements. **Exhibit A** sets for the obligations of Owner for improvement to abutting streets and other offsite improvements necessitated by the development of the Project.

19. Breach by Developer; Town's Remedies. Should Developer become aware of any actual or anticipated breach of any of the terms and conditions of this Agreement by such Developer, it shall notify Town of such actual or anticipated breach immediately. Should Town become aware of any breach by notice from Developer or otherwise, Town may take such action as permitted or authorized by law, this Agreement, the Code, or any applicable rule or regulation, as Town deems necessary to protect the public health, safety and welfare; to protect lot buyers and builders; and to

protect the citizens of Town from hardship and undue risk. These remedies include, but are not limited to:

- A. The refusal to issue any building permit or certificate of occupancy to Developer for any lot(s) platted on the Property;
- B. The revocation of any such building permit previously issued to Developer under which construction directly related to such building permit has not commenced;
- C. The issuance of a stop work order for any construction related to or impacted by the breach;
- D. Any other remedy available at law.

Unless necessary to protect the immediate health, safety and welfare or to protect the interest of Town with regard to security given for the completion of the public improvements, Town shall provide Developer thirty (30) days written notice of its intent to take any action under this paragraph, during which thirty-day period Developer may cure the breach described in the notice and prevent further action by Town; provided, however, if such breach cannot be reasonably cured within such thirty-day period, then Town agrees to reasonably extend such thirty-day period so long as Developer has commenced such cure within such thirty-day period and is diligently pursuing the same to completion. In no event shall the extension of time to cure the breach exceed ninety days.

20. Indemnification. Developer shall indemnify and hold harmless Town, its officers, employees, agents or servants from any and all suits, actions, and claims of every nature and description caused by, arising from or on account of any act or omission of Developer, or of any other person or entity for whose act or omission Developer is liable with respect to construction of the Public Improvements; and Developer shall pay any and all judgments rendered against Town as the result of any suit, action or claim, together with all reasonable expenses and attorneys fees incurred by Town in defending any such suit, action or claim, excluding only suits, actions and claims arising from Town's independent negligence. Developer shall pay all property taxes on the Property dedicated to Town to the date of conveyance after final acceptance, and shall indemnify and hold harmless Town for any property tax liability.

21. Insurance. Developer shall at all times hereunder have and maintain in full force and effect comprehensive liability insurance providing coverage to such Developer and its employees, providing general liability, and comprehensive automobile liability insurance. Developer shall also require that all its contractors, subcontractors, representatives and agents have and maintain similar coverage, including professional liability, if applicable. Coverage on all policies shall not be less than the minimum amounts per occurrence as set forth in the Colorado Governmental Immunity Act as that Act may from time to time be amended. Additionally, the policies of Developer and each of Developer's contractors, subcontractors, representatives and agents shall name Town and its agents, officials and employees as additional insureds. Developer shall at all times fully comply with the Colorado Worker's Compensation Act, and shall use its reasonable efforts to ensure that each of its

contractors and subcontractors are in full compliance with the Act. Prior to, and as a condition of the issuance of any building permits by Town, Developer shall submit certificates of insurance in compliance with the standards set forth above. Nothing herein shall be construed to relieve or discharge Developer of its liability to Town or the Districts under the terms of this Agreement should Developer for any reason fail to procure and maintain any required insurance in sufficient amounts.

22. Waiver of Defects. In executing this Agreement, Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of Town to impose conditions on Developer as set forth herein, and concerning the procedure, substance and form of the ordinances or resolutions adopting this Agreement.

23. Modifications. This Agreement shall not be amended except by subsequent written agreement of the parties.

24. 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.

25. 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.

26. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns as the case may be.

27. Invalid Provision. If any provisions of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of the other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other of which render the provision valid, then the provision shall have the meaning which renders it valid.

28. 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 venue of such suit or action shall be in Larimer County, Colorado.

29. Attorney Fees. Should this Agreement become the subject of litigation to resolve a claim of default of performance, the prevailing party shall be entitled to recover its reasonable attorney fees, expenses and court costs.

30. Notice. All notice required under this Agreement shall be in writing and shall be hand-delivered 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 seventy-two (72) hours after deposit in the United States mail with the proper address set forth below. Notice may also be given by telefax transmission, and shall be deemed received on the date of such transmission. Either party by notice so given may change the address to which future notices shall be sent.

Notice to Town:

Town of Timnath
4800 Goodman Street
Timnath, Colorado 80547
Fax No. (970) 224-3217

With copy to:

Town Attorney
Gary R. White, Esq.
White, Bear and Ankele Professional Corporation
2154 E. Commons Ave, Suite 2000
Centennial, CO 80122
Telephone 303-858-1800
Fax No. 303-858-1802

Notice to Developer:

Timnath Farm Investments, LLC
Attn.: Mr. Dino DiTullio
1927 Wilmington Drive #101
Fort Collins, Colorado 80528
Fax No. (970) 207-0104

31. Force Majeure. Whenever a Developer is required to complete construction, repair or replacement of Public Improvements by an agreed deadline, such Developer shall be entitled to an extension 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 Developer, including but not restricted to, acts of God, weather, fires and strikes.

32. 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.

33. Entire Agreement. This Agreement, the "Timnath South Subdivision Rezoning Map" reception number 20100021537, and the Annexation and Development Agreement for the Timnath Farms South Parcel dated December 13, 2004 reception number 20040122897t and the Final Plat embody the whole agreement of the Parties with respect to the Property. There are no promises, terms, conditions or obligations other than those contained herein, which together supersede all previous communications, representations or agreements, either verbal or written between the Parties hereto. 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 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 as determined in the sole and absolute discretion of Town.

34. Assignment or Assignments. There shall be no transfer or assignment of any of the rights or obligations of a Developer under this Agreement without the prior written approval of Town, which approval shall not be unreasonably withheld if the transferee has qualifications and net worth acceptable to Town in its sole discretion and which transferee has assumed the obligations of Developer under this Agreement in writing to the satisfaction of Town. Any attempted assignment or delegation in violation hereof shall be null and void.

35. Recording of Agreement. This Agreement shall be recorded in the real estate records of Larimer County and shall be a covenant running with the Property in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

36. 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.

37. No Duress. The 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.

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

39. Title and Authority. Owner expressly warrants and represents to Town that as of the date hereof it is the record owner of all of the property constituting the Property. All the parties represent and warrant, together with the undersigned individual(s), that the undersigned individual(s) have full power and authority to enter into this Subdivision Improvement Agreement. Each party understands that the other parties are relying on such representations and warranties in entering into this Agreement.

40. Cancellation of Debt. The Parties hereto agree that all debt or other obligations due one Party to the other, except as specifically set forth herein or in the Annexation Agreement, are hereby and forever discharged and forgiven without requirement of payment or additional consideration, the Parties specifically agreeing that the consideration set forth in this Agreement is sufficient for all agreements of the Parties contained herein.

(Signature page to follow)

WHEREFORE, the parties hereto have executed this Agreement on the day and year first above written.

TOWN OF TIMNATH, COLORADO

Attest:

By: Milissa Peters
Milissa Peters, Town Clerk

By: Jill Grossman Belisle
Jill Grossman Belisle, Mayor

DEVELOPER:

Timnath Farm Investments, LLC, a Colorado Limited Liability Company, Managed by:

By: _____
Dino DiTullio, _____
Title



EXHIBIT LIST

The following Exhibits are a part of and incorporated within the AMENDED AND RESTATED SUBDIVISION IMPROVEMENT AGREEMENT FOR TIMNATH SOUTH SUBDIVISION.

EXHIBIT A	Public Improvement schedule
EXHIBIT B	Public Improvement Costs by Phase
EXHIBIT C	Landscape Plan and Costs
EXHIBIT D	Phasing Plan
EXHIBIT E	Metro District Park Plan
EXHIBIT F	Trail Plan

EXHIBIT A
Public Improvements

1. Traffic Signal - Developer will pay thirty thousand dollars (\$30,000.00) toward the cost of the traffic signal to be located at the intersection of Larimer County Road (LCR) 3 and East Harmony Road. Funds will be due and payable at such time as Town determines that the intersection meets warrants and when construction of the signal commences.
2. Regional Trails– All required regional trails have been completed. Developer will construct trails and sidewalks on a phase by phase basis as shown on their approved construction plans.
3. Larimer County Roads #3 and #36 - Larimer County Roads #3 and #36 have been constructed by Developer with curb and gutter on the Property's side of the roadways and drainage swales on the opposite side of the roadways per the approved phasing plan. The Parties agree that item "B" under this heading as originally defined in the SIA is no longer necessary and Developer is excused from any obligation under the SIA with respect to this item.
4. County Road#3/Folsom Parkway cash in lieu payments - Developer shall pay twenty five thousand dollars (\$25,000) for County Road #3 and twenty five thousand dollars (\$25,000) for Folsom Parkway improvements if, and when Town determines to improve extensions to such roads but no earlier than request by Developer for the five hundredth (500th) building permit for the Property.
5. Local drainage improvements - All drainage improvements required for the Property were completed by Developer prior to the completion of work in Phases 1 and 2 of the development.
6. Grade separated pedestrian crossing – As part of the consideration for this Amended and Restated Subdivision Improvement Agreement as well as the mutual release of the parties from potentially litigious obligations, this item from the SIA has been deleted .
7. Larimer County Road #36 bridge at Great Western Rail line – As part of the consideration for this Amended and Restated Subdivision Improvement Agreement as well as the mutual release of the parties from potentially litigious obligations this item from the SIA has been deleted.
8. Railroad crossing gates and lights on Larimer County Road # 36 – As part of the consideration for this Amended and Restated Subdivision Improvement Agreement as well as the mutual release of the parties from potentially litigious obligations this item from the SIA has been deleted.
9. Metro District Park - Developer agrees that it will construct, or cause the metropolitan districts to construct, phase one of a Metro District Park as depicted and described in Exhibit E at a cost not to exceed two hundred fifty thousand dollars (\$250,000) which shall be funded within 45 days of mutual execution of this agreement. Developer or the metropolitan districts shall fund one hundred fifty thousand dollars (\$150,000) and Town will fund one hundred thousand dollars

(\$100,000). Developer shall commence construction of the Metro District park within 45 days of mutual execution of this agreement and complete construction within 180 days thereafter.

EXHIBIT B
Public Improvement costs by Phase

EXHIBIT C
Landscape Plan Costs by Phase

EXHIBIT D
Phasing Plan

EXHIBIT E
Metro District Park Plan

EXHIBIT F
Trail Plan