

**TOWN OF TIMNATH, COLORADO  
RESOLUTION NO. 15, SERIES 2016**

**A RESOLUTION OF NECESSITY FOR A CONDEMNATION ACTION OF  
CERTAIN FEE PROPERTY AND PERMANENT EASEMENTS PURPORTEDLY  
OWNED BY J.R. SIMPLOT COMPANY**

**WHEREAS**, the Town of Timnath is a Home Rule Town of the State of Colorado (the “Town”); and

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

**WHEREAS**, the Town has the authority to exercise the power of eminent domain pursuant to section 2.4 of its Charter, as well as Section 1 of article XX of the Colorado Constitution; and

**WHEREAS**, the Town is responsible for providing roadways and transportation systems within its boundaries and to acquire property interests necessary therefore; and

**WHEREAS**, the Town has determined that it is necessary and in the public interest to construct various road improvements to Harmony Road including the widening of the road and the construction of a median (the “Project”); and

**WHEREAS**, the Town has determined that the acquisition of certain fee property and permanent easements purportedly owned by J.R. Simplot Company (the “Owner”), are necessary for completion of the Project; and

**WHEREAS**, the General Warranty Deed for the Right of Way, and corresponding legal description are described and depicted in **Exhibit A**, attached hereto and incorporated herein by reference (the “Property”), and the Deed of Dedication of Utility Easement and corresponding legal description are described and depicted in **Exhibit B**, attached hereto and incorporated herein by reference (the “Utility Easement”); and

**WHEREAS**, the Town has been negotiating with representatives of the Owner to acquire the Property and Utility Easement but the Owner has failed or refused to voluntarily convey the Property and Utility Easement; and

**WHEREAS**, the Town has been advised by its attorney, that in order to construct the Project, it will be necessary to acquire the Property and Utility Easement either through negotiations, or if negotiations prove unproductive, through the institution of a condemnation action.

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

**Section 1.** The Council finds and determines that it is necessary to the public health, safety, and welfare of the property owners and residents of the Town for the Town to construct the Project, and it is necessary for the public health, safety and welfare of the property owners and

residents of the Town for the Town to exercise its power of eminent domain to acquire the Property and Utility Easement, if the Town cannot acquire the Property and Utility Easement by negotiation and purchase.

**Section 2.** The acquisition of the Property and Utility Easement serves a public purpose and is necessary and essential to the Town’s program for providing roadway and transportation services and in keeping with the promotion of the public health, safety and welfare. The Council finds and determines that immediate possession of the Property and Utility Easement is necessary and required for the reasons and purposes set forth above.

**Section 3.** The Town Manager and Town legal counsel are authorized by the Council, on behalf of the Town, to continue to negotiate with the Owner if they believe such negotiations may be fruitful. If the Town Manager, in consultation with the Town’s legal counsel, determines that continued negotiations for the acquisition of the Property and Utility Easement will be unproductive, the Town’s special legal counsel for condemnation, Spencer Fane LLP, is authorized to file a condemnation action for the acquisition of all or any portion of the Property and Utility Easement and to engage in all other necessary actions to acquire the same through said proceedings, including, but not limited to, obtaining immediate possession of all or a portion of the Property and Utility Easement to be condemned.

**Section 4.** The Town Manager and the Town legal counsel are authorized to make any deposits and payments as may be necessary, proper or required in order to obtain immediate possession of the Property and Utility Easement, or any portion thereof, and to pay the costs and any portion of the condemnation award as may be finally determined. An appraisal of the Property and Utility Easement shall be obtained, if necessary. A title commitment shall be obtained and a Notice of Intent to Acquire shall be sent to the record holder(s) of the Property and Utility Easement pursuant to section 38-1-121(1), C.R.S.

**Section 5.** The Town Manager and Town legal counsel are further authorized on behalf of the Council to correct and/or amend the legal descriptions of the Property and Utility Easement, should it be necessary to do so, and to determine the nature, scope and duration of any interest to be acquired and to modify or amend such interests as may be necessary.

**Section 6.** All prior findings, determinations, and actions of the Town’s officers, agents, contractors and attorneys with respect to the acquisition of the Property and Utility Easement are hereby ratified, approved and adopted.

**Section 7.** If any clause, sentence, paragraph or part of this Resolution or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect its application to other persons or circumstances.

**Section 8.** This Resolution shall become effective upon the date of adoption provided below.

**INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON MARCH 8, 2016.**

**TOWN OF TIMNATH, COLORADO**

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

**ATTEST:**

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



## EXHIBIT A

(General Warranty Deed for the Right of Way Property and  
Corresponding Legal Description)

### GENERAL WARRANTY DEED

**THIS GENERAL WARRANTY DEED** is executed and delivered this \_\_\_ day of \_\_\_\_\_, 2016, by **JR SIMPLOT COMPANY** ("Grantor"), in favor of the **TOWN OF TIMNATH**, a Colorado municipal corporation, whose address is 4800 Goodman Street, Timnath, CO 80547 ("Grantee").

**WITNESSETH**, that Grantor, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm, unto Grantee, its heirs, successors and assigns forever, all the real property, together with all improvements, if any, situate, lying, and being located in the County of Larimer, State of Colorado, more particularly described as follows:

**THAT PART OF THE NORTHEAST QUARTER OF SECTION 2, TOWNSHIP 6 NORTH, RANGE 68 WEST OF THE 6<sup>TH</sup> P.M., COUNTY OF LARIMER, STATE OF COLORADO, AS DESCRIBED MORE FULLY AS PARCEL 1 ON ATTACHED EXHIBIT A.**

**TOGETHER** with all and singular the rights, tenements, easements, appendages, ways, hereditaments, privileges, and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of Grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments, easements, rights of way and appurtenances (collectively, the "Property").

**TO HAVE AND TO HOLD** the Property above bargained and described with the appurtenances, unto Grantee, its heirs, successors and assigns forever. Grantor, for itself, and its successors and assigns, does covenant, grant, bargain and agree to and with the Grantee, its successors and assigns, that Grantor shall and will **WARRANT AND FOREVER DEFEND** the Property in the quiet and peaceable possession of Grantee, its heirs, successors and assigns, against all and every person or persons lawfully claiming the whole or any part thereof **BY, THROUGH OR UNDER** Grantor, subject, however, to taxes and assessments for the current year, and liens, easements, encumbrances and restrictions of record. As partial consideration for the conveyance above, Grantee covenants to use its best reasonable efforts to allow a 2<sup>nd</sup> access off of Harmony Rd. in line with Grantors unloading facilities along the railroad. This access is contingent on the railroad company (Omnitrax) allowing this driveway in their right-of-way and in close proximity to the tracks. In addition, said additional access is only for the current use of the property and will not be allowed for any future redevelopment or change of use.

IN WITNESS WHEREOF, Grantor has caused its name to be hereunto subscribed on the day and year first above written.

GRANTOR:

\_\_\_\_\_ )  
 )

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2016,

by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_

\_\_\_\_\_ )

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

(NOTARIAL SEAL)

**EXHIBIT A**  
**(1 of 2)**  
**PROPERTY DESCRIPTION**

**Parcel 1**

A strip of land, Forty (40) feet in width, being part of that parcel of land described in that Warranty Deed recorded November 30, 1992 as Reception No. 92075604 of the records of the Larimer County Clerk and Recorder, located in the Northeast Quarter (NE1/4) of Section Two (2), Township Six North (T.6N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6<sup>th</sup> P.M.), County of Larimer, State of Colorado, and being more particularly described as follows:

The North Forty (40) feet of that parcel of land described in said Warranty Deed recorded November 30, 1992 as Reception No. 92075604 of the records of the Larimer County Clerk and Recorder.

Said described strip of land contains 16,860 sq. ft. or 0.387 acre, more or less ( $\pm$ ), and may be subject to any rights-of-way or other easements of record or as now existing on said described strip of land.

**Parcel 2**

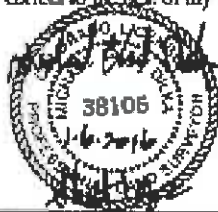
A strip of land, Fourteen (14) feet in width, being part of that parcel of land described in that Warranty Deed recorded November 30, 1992 as Reception No. 92075604 of the records of the Larimer County Clerk and Recorder, located in the Northeast Quarter (NE1/4) of Section Two (2), Township Six North (T.6N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6<sup>th</sup> P.M.), County of Larimer, State of Colorado, and being more particularly described as follows:

The South Fourteen (14) feet of the North Fifty-four (54) feet of that parcel of land described in said Warranty Deed recorded November 30, 1992 as Reception No. 92075604 of the records of the Larimer County Clerk and Recorder.

Said described strip of land contains 5,364 sq. ft. or 0.123 acre, more or less ( $\pm$ ), and may be subject to any rights-of-way or other easements of record or as now existing on said described strip of land.

**SURVEYOR'S STATEMENT**

I, Michael Chad Dilka, a Colorado Licensed Professional Land Surveyor do hereby state that this Property Description was prepared under my personal supervision and checking and that it is true and correct to the best of my knowledge and belief.



Michael Chad Dilka - on behalf of King Surveyors  
Colorado Licensed Professional Land Surveyor #38106

**KING SURVEYORS**  
650 East Garden Drive  
Windsor, Colorado 80550  
(970) 686-5011

JN: 2007413



## EXHIBIT B

### (Deed of Dedication of Utility Easement and Corresponding Legal Description)

#### DEED OF DEDICATION OF EASEMENT

**KNOW ALL MEN BY THESE PRESENTS:** That the undersigned **JR SIMPLOT COMPANY** ("Grantor"), being the owner of certain real property in Larimer County, Colorado described in that Warranty Deed recorded November 30, 1992 as Reception No. 92075604 of the records of the Larimer County Clerk and Recorder, in consideration of Ten Dollars (\$10.00) in hand paid, receipt of which is hereby acknowledged, and other good and valuable consideration, does hereby dedicate, transfer, and convey to the Town of Timnath, Colorado, a Municipal Corporation ("Town"), whose mailing address for purposes of this deed is 4800 Goodman Drive, Timnath CO, 80547, for public use forever a permanent easement for utilities in the Town of Timnath, County of Larimer, State of Colorado, more particularly described as Parcel 2 on Exhibit "A" attached hereto and by this reference made a part hereof (the "Easement").

The Town's rights under the Easement include the right to grade, install, operate, access, maintain, repair, reconstruct, remove and replace within the Easement public improvements consistent with the intended purpose of the Easement, the right to install, maintain and use gates in any fences that cross the Easement, the right to mark the location of the Easement with suitable markers, and the right to permit other public utilities to exercise these same rights. Grantor reserves the right to use the Easement for purposes that do not interfere with the full enjoyment of the rights hereby granted.

The Town is responsible for maintenance of its own improvements and for repairing any damage caused by its activities in the Easement, but by acceptance of this dedication, the Town does not accept the duty of maintenance of the Easement, or of improvements in the Easement that are not owned by the Town. Grantor will maintain the surface of the Easement in a sanitary condition in compliance with any applicable weed, nuisance or other legal requirements.

Except as expressly permitted in an approved plan of development or other written agreement with the Town, or in existence as of the date this easement is granted, Grantor will not install on the Easement, or permit the installation on the Easement, of any building, structure, improvement, fence, retaining wall, sidewalk, tree or other landscaping (other than usual and customary grasses and other ground cover). In the event such obstacles are installed in the Easement, the Town has the right to require the Grantor to remove such obstacles from the Easement. If Grantor does not remove such obstacles, the Town may remove such obstacles without any liability or obligation for repair and replacement thereof, and charge the Grantor the Town's costs for such removal. If the Town chooses not to remove the obstacles, the Town will not be liable for any damage to the obstacles or any other property to which they are attached.

The rights granted to the Town by this Deed inure to the benefit of the Town's agents, licensees, permittees and assigns.

[SIGNATURES ON FOLLOWING PAGE]



Witness our hands and seals this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GRANTOR:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Name and Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Title: \_\_\_\_\_

State of \_\_\_\_\_ )

) ss

County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_ as \_\_\_\_\_, and \_\_\_\_\_ as \_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

This Deed of Dedication is accepted by the Town Manager of the Town of Timnath this \_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
April Getchins

Town Manager

ATTEST:

\_\_\_\_\_  
Town Clerk

**EXHIBIT A**  
(1 of 2)  
**PROPERTY DESCRIPTION**

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**Parcel 2**

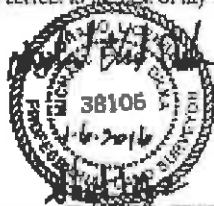
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**SURVEYOR'S STATEMENT**

I, Michael Chad Dilka, a Colorado Licensed Professional Land Surveyor do hereby state that this Property Description was prepared under my personal supervision and checking and that it is true and correct to the best of my knowledge and belief.



Michael Chad Dilka - on behalf of King Surveyors  
Colorado Licensed Professional Land Surveyor #38106

**KING SURVEYORS**  
650 East Garden Drive  
Windsor, Colorado 80550  
(970) 686-5011

JN: 2007413

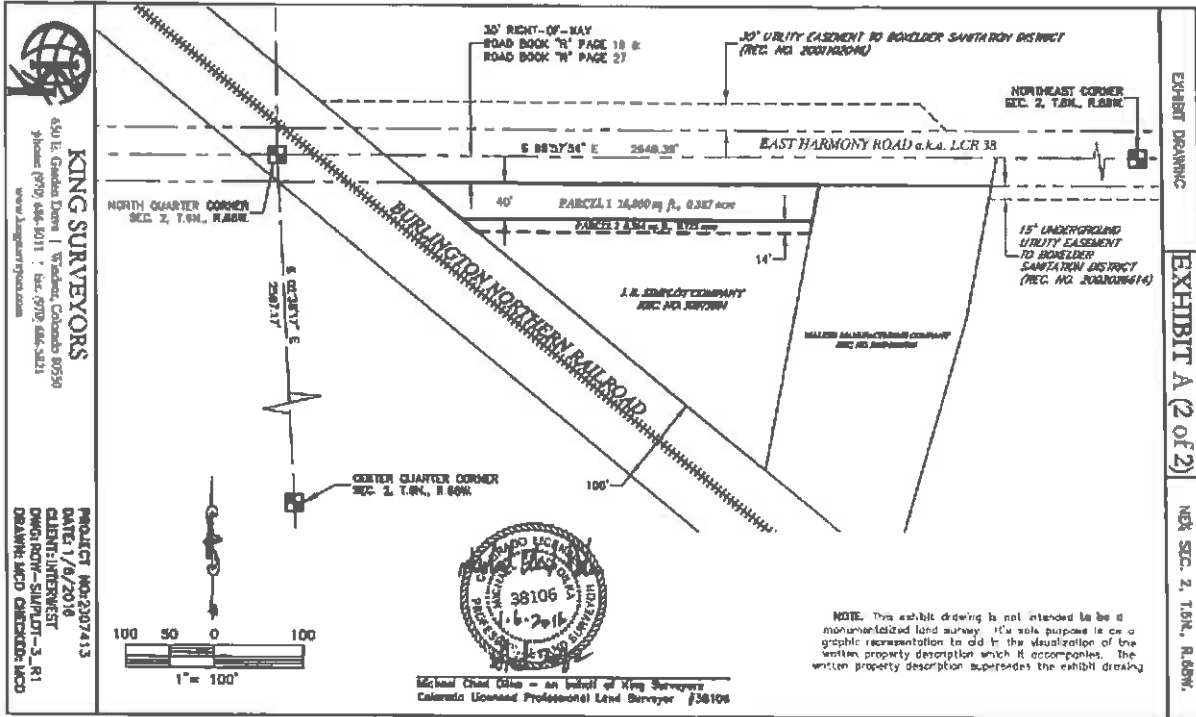


EXHIBIT DRAWING

EXHIBIT A (2 of 2)

NR SEC. 2, T.6N., R.6W.