I hereby certify that this is a true and correct copy of Ordinance 4-2005.

Diane Howell, Town Clerk August 10, 2005

TOWN OF TIMNATH

ORDINANCE NO. 4-2005


WHEREAS, the Board of Trustees has determined that the annexation of the land described in Exhibit A hereto is in substantial compliance with the Municipal Annexation Act of 1965, §§ 31-12-101, et seq., (the "Act"); and

WHEREAS, after notice pursuant to Section 31-12-108 of the Act, on June 1, 2005 the Board of Trustees held a public hearing on the proposed annexation to determine if the annexation complies with the applicable provisions of the Act; and

WHEREAS, by Resolution No. AE-2005, the Board of Trustees has determined that the requirements of the Act have been met, and that an election is not required, and that no additional terms or conditions are to be imposed on the annexed area;

WHEREAS, the property owners have presented an agreement between the parties regarding the proposed annexation, which agreement is attached as Exhibit B.

WHEREAS, at the hearing on the annexation, the Town held a hearing on the zoning of the property and approved the zoning for the property as shown on Exhibit C attached hereto.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF TIMNATH:

Section 1. The annexation agreement attached as Exhibit B is hereby approved.

Section 2. The property described in Exhibit A attached hereto and incorporated herein, is hereby annexed to the Town of Timnath, Colorado, and incorporated in and made a part of the Town of Timnath.

Section 3. The zoning of the property into R-2 and C-2 Zone Districts as depicted on Exhibit C is approved.

Section 4. The annexation by and to the Town of Timnath, Colorado, of the property described in Exhibit A hereto meets all the requirements of law. The annexation of the property described in Exhibit A hereto shall be complete and effective on the effective date of this Ordinance, except for the purpose of imposition of general property taxes. The imposition of general property taxes shall be effective on and after the first day of January, 2006.
Section 5. As soon as practicable after the effective date of this Ordinance, the Town Clerk is directed to:

(a) File one copy of the annexation map and the annexation agreement with the original of this Ordinance in the records of the Town of Timnath, Colorado.

(b) File three certified copies of this ordinance and the map of the area annexed containing a legal description of such area with the Larimer County Clerk and Recorder.

Section 6. Repeal. All other ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 7. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one or part or parts be declared unconstitutional or invalid.

Section 8. Safety. This Ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

INTRODUCED, READ, PASSED AND ORDERED PUBLISHED this 1st day of June, 2005.

[Signature]
Donna Benson, Mayor

ATTEST:

[Signature]
Linda Thompson, Town Clerk, Treasurer
Exhibit A

PROPERTY DESCRIPTION

A parcel of land being part of South Half (S1/2), and part of the South Half of the North Half (S1/2 N1/2), all in Section Fourteen (14), Township Seven North (T.7N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado and being more particularly described as follows:

BEGINNING at the Southwest Corner of said Section 14 and assuming the South line of the Southwest Quarter (SW1/4) of said Section 14 as bearing South $89°48'24"$ East, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2619.63 feet with all other bearings contained herein relative thereto. From said Southwest Corner the West Quarter Corner of said Section 14 bears North $00°07'12"$ West a distance of 2652.07 feet:

THENCE South $89°48'24"$ East along said South line a distance of 2619.63 feet to the South Quarter Corner of said Section 14;

THENCE South $89°53'22"$ East along the South line of the Southeast Quarter (SE1/4) of said Section 14 a distance of 2630.56 feet to the Southeast Corner of said Section 14;

THENCE North $00°12'00"$ West along the East line of said SE1/4 a distance of 2625.01 feet to the East Quarter Corner of said Section 14;

THENCE North $89°33'08"$ West along the North line of said SE1/4 a distance of 888.00 feet to the Southeast Corner of Parcel 1 as described within that Quit Claim Deed as recorded July 27, 1977 in Book 765, on Page 0893, as Receipt Number 204869 of the records of the Larimer County Clerk and Recorder (LCCR);

Then along the Easterly, Northerly, and Westerly lines of the aforesaid parcel of land by the following Seven (7) courses and distances:

THENCE North $07°28'08"$ West a distance of 214.00 feet;

THENCE North $43°08'08"$ West a distance of 226.00 feet;

THENCE South $87°41'52"$ West a distance of 258.00 feet;

THENCE North $77°58'08"$ West a distance of 133.00 feet;

THENCE South $28°46'52"$ West a distance of 128.00 feet;

THENCE South $31°26'52"$ West a distance of 150.00 feet;

THENCE South $56°03'08"$ East a distance of 269.51 feet (Rec. 258 feet) to the North line of said SE1/4;

THENCE North $89°33'08"$ West along said North line a distance of 312.76 feet to the Northeast Corner of that parcel of land as described within that Warranty Deed as recorded November 8, 1893 in Book 95 on Page 412 of the records of the LCCR. Said Northeast Corner also being a point on a line being the high water line of "The Kitchell Reservoir", previously known as "The
Kitchell & Moore Reservoir", as said reservoir covers when the water is up to six and one-half (6 1/2) feet above the grade of the outlet ditch of said reservoir. The elevation of said line being 4959.50 based upon the NAVD 1988 datum;

Thence along a line being the high water line of the aforesaid reservoir when the water is up to six and one-half (6 1/2) feet above the grade of the outlet ditch of said reservoir, and being at an elevation of 4959.50 based upon the NAVD 1988 datum by the following Thirty-seven (37) courses and distances. Said line being along the following parcels of land:

1: Along the Southerly line of that parcel of land as described within that Warranty Deed as recorded November 8, 1893 in Book 95 on Page 412 of the records of the LCCR

2: Along the Southwesterly line of that parcel of land as described within that Warranty Deed as recorded December 23, 1891 in Book 82 on Page 165 of the records of the LCCR

3: Along the Westerly and Northerly line of that parcel of land as described within that Warranty Deed as recorded October 27, 1915 in Book 334 on Page 491 of the records of the LCCR and being that 10 Acres, more or less within the Southeast Quarter of the Northeast Quarter (SE1/4 NW1/4) of Section 14

4: Along the Northwesterly line of that parcel of land as described within that Warranty Deed as recorded October 27, 1915 in Book 334 on Page 491 of the records of the LCCR and being that 30 Acres, more or less within the Southwest Quarter of the Northeast Quarter (SW1/4 NE1/4) of said Section 14

Thence South 50°46'22" West a distance of 13.02 feet;

THENCE South 39°45'53" West a distance of 107.77 feet;

THENCE South 19°41'21" East a distance of 101.82 feet;

THENCE South 30°05'42" East a distance of 151.82 feet;

THENCE South 09°55'32" West a distance of 124.35 feet;

THENCE South 58°18'39" West a distance of 130.14 feet;

THENCE North 72°25'24" West a distance of 213.02 feet;

THENCE North 81°12'12" West a distance of 143.97 feet;

THENCE North 75°46'02" West a distance of 124.10 feet;

THENCE North 60°10'19" West a distance of 151.53 feet;

THENCE North 56°10'06" West a distance of 110.02 feet;

THENCE North 71°43'10" West a distance of 120.77 feet;

THENCE North 85°54'02" West a distance of 70.85 feet;
THENCE North 60°09'07" West a distance of 106.17 feet;
THENCE North 38°05'22" West a distance of 152.75 feet;
THENCE North 55°19'24" West a distance of 224.90 feet;
THENCE North 31°43'40" West a distance of 8.18 feet;
THENCE North 62°47'30" East a distance of 44.46 feet;
THENCE North 10°36'55" East a distance of 39.55 feet;
THENCE North 16°33'13" West a distance of 83.66 feet;
THENCE North 23°10'07" West a distance of 138.53 feet;
THENCE North 06°33'11" West a distance of 115.91 feet;
THENCE North 07°02'15" West a distance of 114.12 feet;
THENCE North 05°38'22" West a distance of 116.93 feet;
THENCE North 21°24'45" East a distance of 107.81 feet;
THENCE North 34°09'23" East a distance of 96.02 feet;
THENCE North 82°34'17" East a distance of 99.96 feet;
THENCE North 88°26'29" East a distance of 138.78 feet;
THENCE South 73°28'38" East a distance of 123.16 feet;
THENCE South 70°49'16" East a distance of 116.92 feet;
THENCE South 56°47'52" East a distance of 123.88 feet;
THENCE North 74°10'55" East a distance of 104.70 feet;
THENCE North 23°28'07" East a distance of 114.66 feet;
THENCE North 15°00'53" East a distance of 125.10 feet;
THENCE North 01°09'25" East a distance of 123.51 feet;
THENCE North 11°18'11" West a distance of 118.46 feet;
THENCE North 14°09'13" West a distance of 75.66 feet to the intersection with the North line of the SW1/4 NE1/4 of said Section 14;
THENCE North 89°31'58" West along said North line a distance of 325.77 feet to Northwest Corner of said SW1/4 NW1/4 of said Section 14;
THENCE North 89°31'49" West along the North line of the South Half of the Northwest Quarter (S1/2 NW1/4) of said Section 14 a distance of 861.00 feet to the intersection with the Southerly line of Jackson Heights Subdivision (JHS) as recorded August 16, 1978 as Reception Number 264737 of the records of the LCCR;

Thence along the Southerly line of said JHS by the following Three (3) courses and distances:

THENCE South 72°01'57" West a distance of 21.96 feet;

THENCE South 85°56'04" West a distance of 102.28 feet;

THENCE North 86°01'59" West a distance of 246.44 feet to the intersection with the North line of said S1/2 NW1/4;

THENCE North 89°31'49" West along said North line a distance of 105.21 feet to the intersection with the Southerly line of the aforesaid JHS;

Thence along said Southerly line by the following Two (2) courses and distances:

THENCE South 89°24'22" West a distance of 104.63 feet;

THENCE North 88°07'12" West a distance of 78.92 feet to the intersection with the North line of said S1/2 NW1/4;

THENCE North 89°31'49" West along said North line a distance of 256.82 feet to the intersection with the Easterly line of that parcel of land as described within that Warranty Deed as recorded November 29, 1977 in Book 1817 on Page 0027 as Reception Number 224110 of the records of the LCCR;

Thence along said Easterly and a portion of the Southerly line of the aforesaid parcel of land by the following Two (2) courses and distance:

THENCE South 26°55'26" East a distance of 1.14 feet;

THENCE North 89°13'26" West a distance of 189.02 feet to the intersection with the North line of said S1/2 NW1/4;

THENCE North 89°31'49" West along said North line a distance of 655.19 feet to Northwest Corner of said S1/2 NW1/4;

THENCE South 00°07'26" East along the West line of said S1/2 NW1/4 a distance of 1325.95 feet to the West Quarter Corner of said Section 14;

THENCE South 00°07'12" East along the West line of the SW1/4 of said Section 14 a distance of 2575.97 feet to the Northwest Corner of that parcel of land as described within that Warranty Deed as recorded October 25, 1892 in Book 85 on Page 504 of the records of the LCCR;

Thence along the North, East, and South line of the aforesaid parcel of land by the following Three (3) courses and distances:

THENCE North 89°46'17" East a distance of 827.15 feet;
THENCE South 00°11'36" West a distance of 54.00 feet;

THENCE South 89°46'17" West a distance of 826.85 feet to the West line of said SW1/4;

THENCE South 00°07'12" East along said West line a distance of 22.11 feet to the POINT OF BEGINNING.

Said described parcel of land contains 387.979 Acres, more or less (±) and is subject to any rights-of-way or other easements as granted or reserved by instruments of record or as now existing on said described parcel of land.
RATIFICATION

The undersigned, having a security interest in all or any part of the Real Estate described on Exhibit "A" attached hereto and incorporated herein by reference, hereby approves, ratifies, confirms and consents to the foregoing ANNEXATION AGREEMENT FOR THE SMITH BASSETT ANNEXATION DATED THIS 10TH DAY OF JUNE, 2005 IN TIMNATH, COLORADO.

IN WITNESS WHEREOF, the undersigned has caused its name to be hereunto subscribed on the 6th day of July, 2005.

LENDER: Bank of Choice

By: [Signature]

Title: Sr. VP

STATE OF COLORADO )
COUNTY OF Larimer ) ss.

The foregoing instrument was acknowledged before me this 16th day of July, 2005, by [Signature] as Sr. V.P. of Bank of Choice.

Witness my hand and official seal.

My commission expires: 5/10/07

[Signature]
Notary Public
ANNEXATION AND DEVELOPMENT AGREEMENT
FOR THE SMITH-BASSETT PROPERTY

THIS ANNEXATION AND DEVELOPMENT AGREEMENT (this “Agreement”), is made and entered into to be effective the 1st day of June, 2005, by and between the TOWN OF TIMNATH, a Colorado municipal corporation (the "Town"); MAJESTIC INVESTMENT GROUP, LLC, a Colorado limited liability company (the “Property Owner”). This Agreement is for the annexation of the property described on Exhibit A attached hereto and incorporated herein by reference (the “Property”). The Property consists of approximately 388 acres, plus adjacent rights-of-way and is located at the northeast corner of the intersection of Larimer County Roads 5 and 44.

WITNESSETH:

WHEREAS, the Property Owner has filed an annexation petition signed by one hundred percent (100%) of the owners of the private portion of the Property, pursuant to C.R.S. Section 31-12-107(1); and

WHEREAS, the Town has developed the Comprehensive Plan of the Town (“Comp Plan”) and the Property Owner desires to annex and comply with the goals and objectives of the Comp Plan for development of the Property; and

WHEREAS, the Property Owner desires to develop the Property in the Town, to become part of the Timnath community, and to set forth the terms and conditions of such annexation and development of the Property to the Town in this Agreement; and

WHEREAS, the Property Owner and the Town agree that the development of the Property needs to have a balance of residential and commercial uses in order to meet the financial and social needs of the community; and

WHEREAS, development of the Property will require substantial investment in public facilities by the Property Owner including roads, drainage facilities, waterlines, sewerlines, parks and open spaces, which will serve the needs of the Property and the Town. The Property Owner is willing to make such investment only if the Property Owner is assured that development of the Property, once approved by the Town, will be allowed to proceed to ultimate completion as provided in this Agreement; and

WHEREAS, the Property Owner has submitted and the Town has reviewed a proposed Conceptual Plan for the Property, a copy of which is attached hereto as Exhibit B and incorporated herein by reference (“the Concept Plan”); and
WHEREAS, the Town and the Property Owner anticipate development of the Property will include three hundred eighty-eight (388) single family residential lots and 14.25 acres of commercial development, substantially as shown in the Concept Plan; and

WHEREAS, the Town and the Property Owner agree that the matters set forth in this Agreement constitute reasonable conditions and requirements to be imposed by the Town on the Property Owner in connection with the acceptance and favorable action on the Property Owner’s petition for annexation and approval of the Property Owner’s Concept Plan and that the matters set forth in this Agreement are necessary to protect, promote and enhance the public welfare.

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, the parties hereto agree as follows:

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

2. **Annexation of Property.** The Property Owner has submitted a petition of 100% of the owners of the private portion of the Property for annexation of the Property to the Town by ordinance, not by election, in accordance with the terms of this Agreement. The petition also includes the right-of-way for the portions of County Roads 5 and 44 adjacent to the Property and County Road 5 between County Roads 40 and 44, shown on the annexation maps. The Town agrees to approve the annexation of the Property without terms and conditions other than those contained in this Agreement and the petition.

3. **Contributions to Existing Town.** The Property Owner recognizes that, in addition to providing substantial benefits, annexation of the Property will substantially change the existing character of the Town and create the need for additional facilities to serve the additional residents. In consideration thereof, Three Thousand Five Hundred Dollars ($3,500) per dwelling unit, shall be paid by the building permit applicant as a condition of receiving a building permit to be used for improvements to the existing Town area, operations of the Town, and/or off-site infrastructure. Said contributions are in addition to any impact fees, building permit fees, or any other fees, taxes, or charges imposed by the Town on all properties in the same category as the Property. An additional $430,000 shall be paid by the Property Owners to the Town as follows: (a) One Hundred Thousand Dollars ($100,000) less $1500 per building permit issued between the date of this Agreement and December 1, 2006, as a condition of receiving the 50th building permit or December 15, 2006, whichever is earlier; (b) One Hundred Thousand Dollars ($100,000) less $1500 per
building permit issued between December 2, 2006 and December 1, 2007, as a condition of receiving the 125th building permit or December 15, 2007, whichever is earlier; (c) One Hundred Thousand Dollars ($100,000) less $1500 per building permit issued between December 2, 2007 and December 1, 2008, as a condition of receiving the 200th building permit or December 15, 2008, whichever is earlier; and (d) One Hundred Thousand Thirty Dollars ($130,000) less $1500 per building permit issued between December 2, 2008 and December 15, 2009, as a condition of receiving the 275th building permit or December 15, 2009, whichever is earlier. All of such payments shall be due and payable by the Property Owners. In the event that the total of $1500 for each building permit issued during the period prior to the due date exceeds the payment due, the balance may be applied to the payment due for the following year, but in no event shall the Town owe the Developer any funds by this paragraph. The funds from such payments shall be deposited by the Town into a separate fund to be used for improvements to, or for the benefit of, the existing Town area, including but not limited to street, sanitary sewer and storm drainage improvements within the existing Town area; and streets, storm drainage and other public improvements to benefit any properties within the Town (the “Community Development Fund”). The Community Development Fund may also be used to pay the ongoing costs and expenses of operation and administration of the Town, including, but not limited to, the cost of engineering and planning consultants, attorneys, and administrative staff.

4. **Existing Uses and Structures.** Two residential dwellings and farm buildings are located on the Property. Hunting and all of the agricultural uses of the Property legally existing on the effective date of this Agreement may continue. The Property Owner shall have the right, but not the obligation, to remove, restore and/or remodel any or all of the existing structures on the Property. Agricultural uses, hunting, and uses of each farm and agricultural building shall be discontinued upon issuance of a building permit for improvements within 500 feet of the building. Any structural modification or other change of existing uses or structures, legally permitted under current law applicable to the Property, shall be subject to the provisions of the Town Code as legal, non-conforming uses or structures. Any new structures or new improvements shall be subject to the requirements of the Code for the zoning district of the Property. The Town shall not impose restrictions for historical preservation of the existing residential dwellings, barns or any other structures on the Property without the consent of the Property Owner.

5. **Zoning and Development of the Property.** The Property Owner has, simultaneously with the annexation petition, submitted a zoning petition for R-2 Zone District for 373.75 acres and C-2 Zone District for 14.25 acres, all as shown on the attached Exhibit C, and more specifically described in the zoning petition. The Property Owner will develop the Property in accordance with the Concept Plan. The Property, or any portion thereof, may be rezoned and the Concept Plan amended with the consent of the Property Owner, but without amending or modifying this Agreement.
6. **Cooperation Between the Parties.** The parties recognize that the annexation of the Property will substantially change the character of the Town and the manner in which municipal services are provided. In order for both parties to be successful, it is necessary for the parties to cooperate with each other to accomplish their mutual goals, including obtaining viable users for the commercial properties, having a unified development, sharing development costs among the Property Owner and developers of other properties within the Town, and providing municipal services to the Property in an efficient, cost effective manner. In consideration of such cooperation, the Town shall promptly review land use applications for the Property, promptly respond to inquiries of potential users of the Property, and coordinate with other private and public property owners to facilitate development of the Property in accordance with the Concept Plan. In consideration of such cooperation, the Property Owner shall make a reasonable attempt to obtain users for the commercial areas of the Property that are viable, generate sales taxes to the Town, and provide long-term benefit to the Town; include the Property within district(s) as designated by the Town for the provision of municipal services (in addition to the districts that will provide water and sewer service as described in Sections 8 and 9 hereinafter); and work with overlapping governmental entities and adjacent property owners to facilitate construction and maintenance of public and private improvements for the cost effective, long term benefit of existing and future Timnath residents and business owners. Further, any increase in building permit fees, impact fees, or land use application filing fees over and above such fees as they exist on the date of annexation, shall not apply to the Property for a period of five (5) years from and after the date of annexation, except for the pending changes to the storm drainage and traffic impact fees which include the fees anticipated to be adopted upon completion of the pending storm drainage study and a traffic study anticipated to be completed in the near future.

7. **Timing of Commercial Development.** The Developer recognizes that a balance of commercial uses is required to generate revenues for municipal services for which the Town will become responsible. Therefore, the Developer agrees that as part of the first phase of development of the Property, the Developer shall bring utilities to the immediate vicinity of the commercially-zoned area and construct access from County Road 44 to the commercially-zoned area to facilitate obtaining users for the Commercial area.

8. **Water Utilities.** Historically, the Town has not provided water service facilities, and has relied on special districts. The Town is now attempting to coordinate the provision of water services so that there will be a consistent system for such utilities within the Town. The Property Owner agrees to reasonably cooperate with the Town in facilitating such coordination of services which may include, but is not limited to, reasonably considering participation in economically feasible intergovernmental cooperation for the most beneficial service to all Timnath utility users. The Property Owners intend to serve the property with water service from East Larimer County Water District unless the parties, by mutual agreement, determine otherwise. However, the Parties recognize that the current Intergovernmental Agreement dated December 7, 1976, between the Town and the Fort
Collins-Loveland Water District requires all water users in the Town to obtain water service from said District. The Town is working with said District to amend the Agreement, in part so that properties such as the Property can obtain service from other water providers.

9. **Sanitary Sewer Utilities.** Historically, the Town has not provided sanitary sewer service facilities and has relied on septic systems and special districts to provide such service. The Town is now attempting to coordinate the provision of sanitary sewer services so that there will be a consistent system for such utilities within the Town. The Property Owner agrees to reasonably cooperate with the Town in facilitating such coordination of services which may include, but is not limited to, reasonably considering participation in inter-governmental cooperation for the most beneficial, economically feasible service to all Timnath utility users. The Property will obtain sewer service from Boxelder Sanitation District unless the parties, by mutual agreement, determine otherwise.

10. **Early Grading of the Property.** The Property Owner may desire to perform over-lot grading of the Property and construct drainage facilities prior to submission and/or approval of the final plat for each phase of development of the Property. The Town shall permit such over-lot grading and drainage facilities upon approval by the Town of a Preliminary Plat, an erosion control plan, a grading plan and a drainage plan acceptable to the Town and any additional applicable requirements of the Code. The Property Owner recognizes that the erosion control plan may require temporary and/or permanent drainage improvements.

11. **Utilities and Infrastructure.** The parties recognize that the Town does not provide infrastructure to serve the Property and the Property Owner will be responsible for extending all utilities and streets to serve the Property. Failure of the Town to provide utilities or streets to the Property shall not be grounds for disconnection. The Town is working to coordinate the provision of infrastructure and utilities so that there will be compatible systems for utilities within the Town. The Property Owners shall cooperate with the Town in facilitating such coordination of services, which may include, but is not limited to, encouraging and participating in intergovernmental cooperation for the most beneficial service to all Timnath utility users, and/or signing a petition on behalf of the Property Owners to form a new metropolitan district or include the Property in an existing metropolitan district to receive such services. The parties, themselves or with other entities providing services, shall act in good faith and use reasonable efforts to enter into infrastructure reimbursement agreements in a form satisfactory to all parties for contribution by other property owners who connect to or obtain access from off-site infrastructure paid for, in whole or in part, by the Property Owner. For any such reimbursement agreements approved by the Town, the Town shall assist the Property Owner in collecting from property owners that connect to facilities subject to the reimbursement agreements. Such assistance may include imposition of the requirement for reimbursement on the issuance of building permits or land use approvals, to the extent allowed by law.
12. **Water and Water Rights.** The Property Owner acknowledges that the Property Owner shall be required to meet the Town Code requirements for irrigation of common areas and open space areas. The Town is not requesting as part of this annexation or future platting of the Property any water or water rights, well or well rights, reservoir or storage rights, stock in mutual ditch and irrigation companies, units of the Northern Colorado Water Conservancy District, or any other water or water rights appurtenant to or historically used in connection with the Property.

13. **Cash in Lieu of Dedication of Land for Schools, Parks and Safety Services.** The Concept Plan provides for the addition of residences and commercial areas. As a result, there will be added needs for properties for schools, parks and public safety buildings. The Property Owners shall provide the required pocket parks and neighborhood parks required by the Code. The applicant for a building permit may pay cash in lieu of dedication as provided in the Code for schools, the community park and any other park requirements not provided on the Property, and public safety buildings as provided in the Code.

14. **Dedication of Land; Street Improvements Abutting Property.** Upon request by the Town and without cost to the Town and the Property Owner shall dedicate and convey to the Town any additional portions of the Property owned by the Property Owner for right-of-way as is necessary for the ultimate-planned street section. The Property Owner shall be solely responsible for construction of all access to the Property. Such construction shall include one-half of the ultimate planned street section of County Roads 5 and 44, where such streets abut the Property developed as shown on the Concept Plan (the "Abutting Streets"), and any improvements necessary to serve the planned uses on the Property such as accel/decel lanes, turn lanes and traffic signals. The Property Owner shall maintain County Road 5 between County Roads 40 and 44 for three (3) years after annexation. The Town may require construction of Abutting Streets be completed prior to issuance of building permits for portions of the Property accessing the portion of the street to be improved. The timing for requirements to complete the Abutting Streets shall be based upon traffic engineering studies and reasonably related to increased traffic on the Abutting Street to be improved resulting from development of the Property. Unless necessary for safety, the Town shall not require street improvements for the full length of an Abutting Street but shall require street improvements only for the portion of the Abutting Street adjacent to the approved plat for that phase of the Property being developed, or one-half (1/2) mile, whichever is greater. Street improvements on Abutting Streets shall be coordinated with other developments abutting the same street. The Town shall be responsible for maintaining the Abutting Streets upon annexation except during construction of any improvements to any portion of any Abutting Street. Provided however, upon request of the Town, the Property Owner shall reimburse the Town for the cost of maintaining the Abutting Streets for up to three (3) years after the effective date of the annexation. For all streets constructed on the Property that are not Abutting Streets, the Property Owner shall be responsible for maintenance until three years from the date of initial acceptance of improvements thereto by the Town.
15. **Improvements to Curve on County Road 44.** The parties recognize that the alignment of County Road 44 around Dead Man’s Lake should be redesigned and realigned. However, the Property Owners have control over only the western portion of such road, and compliance with the Town’s standards for improvements to the Road in that vicinity change the intersection in a manner the Property Owners cannot do without improvements on the eastern portion of such road. Therefore, to the extent possible, the Parties agree to cooperate with the property owner(s) in control of the portion of County Road 44 on the eastern side of the Lake to redesign and reconstruct County Road 44 on both sides of the Lake. In the event the Parties are not able to reach agreement on the redesign and reconstruction of the Road around the Lake with the owners of the eastern portion of County Road 44, on or before the average vehicle trips per day on County Road 44 adjacent to the property reach 1500, the Property Owners agree to redesign and reconstruct the Road, to the extent possible maintaining the intersection alignment for a more transitional alignment on the western side of the Lake, in accordance with plans to be approved by the Town.

16. **Dedication of Property for Interior Streets, Trails, Utilities, or Access to Dedicated Properties.** Upon final platting, and upon request by the Town, the Property Owner shall dedicate and convey to the Town that portion of the Property as may be necessary for public trails, utility connections or access to properties dedicated to the Town as depicted on the Concept Plan or any plat approved by the Town.

17. **General Improvement District.** The parties recognize that it may be a benefit to the parties and future property owners, and potentially reduce the cost of infrastructure to serve the Property, if some of the public improvements necessary to serve the Property are provided by a general improvement district to be formed over a portion or all of the Property. The Town agrees to cooperate with the Property Owner to create such a district, including issuing tax exempt financing and imposing mill levies on the Property to pay for such improvements, if the parties each determine it would be in the best interests of the Town, Property Owner and future owners of the property to do so. The general improvement district may maintain any public improvements prior to conveyance to the Town. Further, the parties recognize that residential development may not pay the entire cost of municipal services to maintain the development, and that commercial development in the Town is necessary to prevent existing Town properties from bearing the burden of municipal services to the Property. Therefore, prior to approval of a final plat for any portion of the Property, the Property Owner shall form a general improvement district over the Property with authorization to impose a mill levy sufficient to pay the maintenance costs of the streets and any parks, trails, and/or open spaces developed within the Property and dedicated or conveyed to the Town. In the event that the Town is not receiving sufficient sales tax revenue and/or property tax revenue from taxation of the Property to maintain all or a portion of streets and/or parks at the time of final acceptance of the streets and/or parks within the Property, the Town may impose a mill levy within the general improvement district for the costs of such maintenance.
18. **Dedication and Conveyances of Property.** For all property to be dedicated or conveyed to the Town by the terms of this Agreement, or in any plat of any portion of the Property approved by the Town, the Property Owner shall provide a title commitment for the Property to be dedicated, which commitment shall show that the portion of the Property to be dedicated or conveyed to the Town is free and clear of all liens and encumbrances (other than real estate taxes which are not yet due and payable, easements, rights of way and reservations of record that do not interfere with the intended use of the dedicated property). A title policy evidenced by the title commitment shall be provided, at no cost to the Town, within thirty (30) days after the recording of the plat, deed or other conveyance document. The Property Owner shall stub all necessary utilities to any property, and pave sidewalks and trails along any property to be dedicated or conveyed to the Town and provide such access as is necessary to serve the proposed use of the property to be conveyed. Prior to conveyance to the Town, the Property Owner shall maintain the properties described herein as provided in the Town Code.

19. **Coordination with Adjacent Properties.** The Property Owner shall coordinate with owners of properties within the Town adjacent to the Property to provide pedestrian and vehicular access between the Property and the adjacent properties as may be necessary to implement the Comp Plan.

20. **Obligations Run with the Land.** Within three business days after the effective date of the annexation ordinance, 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 the parties hereto and their respective heirs, personal representatives, successors, and, to the extent permitted, assigns as the case may be.

21. **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, the parties shall cooperate to cure any legal defects cited by the court, and immediately upon such cure, the 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.

22. **Referendum.** If the annexation of the Property becomes the subject of a duly authorized referendum, and if a majority of the voters in such referendum reject such annexation, this Agreement, and all the provisions contained herein shall be null and void and of no effect, the Town shall refund to the Property Owner the annexation fees paid, less the costs of the referendum election, and all parties shall be released from all obligations hereunder.
23. **Vested Property Rights.**

A. **Acknowledgements.** The parties acknowledge the following:

(1) The Property is estimated to have a minimum seven (7) year build-out period.

(2) The 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 the Property Owner’s annexation of the Property and the Property Owner’s willingness to develop the Property within the Town (rather than developing the Property within the County or another municipality) is the Town’s agreement to permit development of the Property in accordance with the terms and conditions of this Agreement and the Concept Plan, particularly the vested property rights granted herein.

(4) The Town has limited staff and funds and therefore may not be able to process and review land use applications, review plans or perform inspections on an expedited basis.

(5) The Town has several major development issues to manage with limited resources, including but not limited to drainage issues, inadequate street and utility infrastructure for the expected growth of the Town, and an insufficient tax base to support government services until commercial development occurs.

(6) 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 land 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, the Town agrees to grant vested property rights in the Concept Plan to the Property Owner through December 31, 2012 (“the Vesting Period”). Upon request of the Property Owner and
compliance with the applicable Code provisions, the approval of a Final Plat for all or a portion of the Property shall be considered a site specific development plan as defined by Colorado law and the Code for a period of seven (7) years from the date of approval of the Final Plat, so long as the completed Final Plat application is submitted prior to December 31, 2012.

C. **Term of Vested Property Rights.** The parties agree that the extended vesting herein granted is warranted in view of the following factors: (1) the large size of the Property; (2) the significant investment in public infrastructure improvements which will be required to be made by Property Owner; (3) the mixed-use nature of the Property; (4) the anticipated seven (7) year build-out of the Property in multiple phases; and (5) expected changes in economic cycles and varying market conditions over the estimated seven (7) year build-out period.

D. **Limitation on Vested Rights.** Notwithstanding anything in this Section to the contrary, in no event shall the vested rights granted herein prevent the Town, by its citizens through initiative or referendum or by the Board of Trustees, from acting as reasonably necessary to protect property, businesses or residents within the 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 the Town.

E. **Infrastructure Standards.** Any changes to the Town Code or standards for construction of infrastructure which are not necessary for public safety shall not apply to any infrastructure improvements constructed or to be constructed within the Property so long as construction of such improvements are commenced on the Property and completed by December 31, 2012.

The vested property rights granted under this Agreement shall be in addition to any common law vested rights to which the Property Owner may become entitled. Nothing in this Section shall be construed to limit the remedies available to the Town to enforce this agreement or the Town Code.

24. **Town Ordinances, Regulations, Codes, Policies, and Procedures.** To the extent consistent with vested property rights granted above, the provisions of this Agreement and the Concept Plan, 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. The parties do not intend that this Agreement, the vested property rights or the Concept Plan to supercede Town ordinances, regulations, codes,
policies and procedures except as provided herein or necessary for implementation of the terms of this Agreement.

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

A. The refusal to issue any building permit or certificate of occupancy;

B. The revocation of any such 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 the 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 therefor;

H. Any other remedy available at law or equity.

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

26. **Breach by Town: the Property Owner's Remedies.** The Property Owner shall have any and all remedies against the Town for breach of this Agreement available at law or in equity. In addition, if as a result of a referendum the annexation of the Property or the
zoning for the Property is rejected by the voters ("Disconnection Events"), the Property Owner, in its sole discretion, shall have the right, pursuant to §31-12-501, C.R.S., to disconnect the Property from the Town. In such event, the Town agrees to act in good faith to accomplish such disconnection as expeditiously as possible. If the Town does not act to disconnect in accordance herewith and court action is required, the Town stipulates that it consents to the disconnection for purposes of such court action and further agrees that upon disconnection pursuant to this Section 24, development of the disconnected property will not require annexation to the Town under any intergovernmental agreement with Larimer County or any other municipality. The Town shall stipulate in any disconnection proceeding that C.R.S. 31-12-703(1)(f) shall not apply to the disconnected property.

The Property Owner’s right to disconnection as set forth in this Agreement shall be specifically enforceable. If the Property is disconnected from the Town as a result of a disconnection event, the Town shall refund to the Property Owner the annexation petition fees paid less the cost of any referendum election and all parties shall be released from all obligations under this Agreement.

27. **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 attorneys fees, by the other party.

28. **Acknowledgement.** It is expressly understood that the Town cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the 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 the Town's legislative, governmental, or police powers to promote and protect the health, safety and general welfare of the Town or its inhabitants; nor shall this Agreement prohibit the enactment by the Town of any fee that is of uniform or general application; subject to the limitation on fee increases set forth in Section 6, above.

29. **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 the 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.
30. **Assignment.** The 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 the Property Owner without the consent of the Town. The 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 the Town. Upon such notice and written assumption of the obligations of the Property Owner or any of their component persons or entities under this Agreement 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 the 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 the
Property Owner or any of their component persons or entities. 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.

31. **Title and Authority.** The Property Owner warrants and represents to the Town that it is the record owner of a portion of the real estate constituting the Property as described herein, 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. The Property Owner and the undersigned individuals understand that the Town is relying on such representations and warranties in entering into this Agreement.

32. **Entire Agreement - Amendments.** This Agreement, the annexation petition and the Concept Plan embody the whole agreement of the parties with respect to the annexation of the Property to the Town and development of the Property within the Town. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written, between the parties hereto. This Agreement may be amended by written agreement among the Property Owner and the 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 the Property Owner and the Town, without consent of such lot owners.

33. **Severability.** It is understood and agreed by the parties hereto that 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 the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid, and the parties shall cooperate to cure any such defect.

34. **Effective Date-Termination.** This Agreement shall be effective and binding upon the parties immediately upon the effective date of the ordinance annexing the Property to the Town. This Agreement shall be terminated and considered null and void on the date of disconnection if the Property is disconnected from the Town as a result of a Disconnection Event pursuant to this Agreement.

35. **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.

36. **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.
37. **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 the parties. Signature pages may be removed from any counterpart and attached to another counterpart to constitute a single document.

38. **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.

39. **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. For the Town that includes setting any necessary public hearings and meetings of the appropriate boards to reasonably accommodate the performance schedules herein and making decisions promptly upon completion of such hearings. For the Property Owner this requirement includes submitting all documents necessary for action by the Town Board in compliance with the applicable Town requirements and in sufficient time before the hearing to allow any necessary review by Town staff and Board Members prior to the public meeting or hearing.

40. **Third Party Beneficiaries.** This Agreement is made by and between the 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.

41. **Wetlands.** The Town accepts the determination of jurisdictional wetlands made by Ecological Resource Consultants, Inc. in its Jurisdictional Wetland Delineation Report for the Smith-Bassett Property dated October 28, 2004, a copy of which is attached hereto as Exhibit D and incorporated herein by reference as a final determination of the boundaries of any and all jurisdictional wetlands within the Property. In addition to the jurisdictional wetlands shown in Exhibit C, non-jurisdictional wetlands exist on the Property as a result of historical agricultural operations on the Property. The Property Owner and Town agree that any and all non-jurisdictional wetlands on the Property, including but not limited to the non-jurisdictional wetland shown in Exhibit C, may at any time be modified, improved, reduced, or removed at the sole and absolute discretion of the Property Owner.

42. **Threatened, Endangered and Species of Concern.** The Town accepts the determination made by Ecological Resource Consultants, Inc. that there are no threatened, endangered or species of concern on the Property as set forth in its Screening Report for the Smith-Bassett Property dated October 19, 2004, a copy of which is attached hereto as Exhibit E and incorporated herein by reference.
IN WITNESS WHEREOF, this Agreement has been executed by the parties, intending to be legally bound hereby, as of the date set forth above.

TOWN: TOWN OF TIMNATH, COLORADO, a municipal corporation

ATTEST: By: Donna Benson, Mayor

Linda Thompson, Town Clerk-Treasurer

THE PROPERTY OWNER: MAJESTIC INVESTMENT GROUP, LLC, a Colorado limited liability company

By: Robert Bisetti, Manager

MAJESTIC INVESTMENT GROUP, LLC, a Colorado limited liability company

STAT OF COLORADO )

ss. COUNTY OF LARIMER )

The foregoing instrument was acknowledged before me this 6th day of July, 2005, by Robert Bisetti, Manager of MAJESTIC INVESTMENT GROUP, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

Notary Public

My Commission Expires 04/15/07
ANNEXATION AGREEMENT

EXHIBIT LIST

A  Legal Description of Property (attached -- legals to be provided by the Property Owner)
B  Concept Plan
C  Zoning Map
D  Jurisdictional Wetland Delineation Report
E  Screening Report of Threatened, Endangered and Species of Concern
PROPERTY DESCRIPTION

SMITH-BASSETT ANNEXATION NO. 1

A parcel of land being part of the Southwest Quarter (SW1/4) of Section Twenty-six (26) and part of the Southeast Quarter (SE1/4) of Section Twenty-seven (27) and part of the Northwest Quarter (NW1/4) of Section Thirty-five (35), Township Seven North (T.7N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6thP.M.), Town of Timnath, County of Larimer, State of Colorado and being more particularly described as follows:

BEGINNING at the West Quarter (W1/4) corner of said Section 35 and assuming the West line of said NW1/4 of Section 35 as bearing North 00°14'48" West, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2640.30 feet with all other bearings contained herein relative thereto;

THENCE North 00°14'48" West along said West line a distance of 759.83 feet to the Northerly line of the Town of Timnath as described in Articles of Incorporation recorded June 30, 1920 as Reception No. 211622 of the records of the Larimer County Clerk and Recorder (LCCR) and shown on a plat of the Town of Timnath dated May 1920 and recorded January 13, 1982 as Reception No. 443318 of the records of the LCCR, said point being the TRUE POINT OF BEGINNING;

THENCE continuing North 00°14'48" West along said West line of Section 35 and along said Northerly line of the Town of Timnath a distance of 1880.47 feet to the Section Corner common to Sections Thirty-four (34) and said Sections 26, 27 and 35;

THENCE North 89°01'47" West along the South line of the Southeast Quarter (SE1/4) of said Section 27 and along said Northerly line of the Town of Timnath a distance of 30.01 feet to the Westerly Right-of-way (ROW) of Larimer County Road No. 5 (LCR5);

THENCE North 00°05'07" West along said Westerly ROW a distance of 1324.78 feet as depicted on a plat of Haley Acres M.R.D. No. S-5-88 as recorded July 1, 1988 as Reception No. 88030206 of the records of the LCCR;

THENCE continuing North 00°05'07" West along said Westerly ROW established by the Board of County Commissioners of Larimer County in Road Book "R" at Page 34 and filed for record May 4, 1874, a distance of 620.31 feet;

THENCE North 89°54'53" East a distance of 30.00 feet to the line common to said SE1/4 of Section 27 and the Southwest Quarter (SW1/4) of said Section 26;

THENCE South 00°05'07" East along said common line a distance of 1915.64 feet to the Northerly ROW of Larimer County Road No. 40 (LCR40);

THENCE North 89°54'02" East along said Northerly ROW a distance of 20.00 feet;

THENCE North 00°05'07" West a distance of 1915.64 feet;

THENCE North 89°54'53" East a distance of 30.00 feet to the Easterly ROW of LCR5 as described in a Deed of Dedication recorded November 6, 1978 in Book 1905 at Page 172 of the records of the LCCR;

THENCE South 00°05'07" East along said Easterly ROW a distance of 1945.63 feet to the line common to said SW1/4 of section 26 and said NW1/4 of section 35;

THENCE South 89°54'02" West along said common line a distance of 20.00 feet to the Easterly ROW of said LCR5 established by the Board of County Commissioners of Larimer County in said Road Book "R" at Page 70 and filed for record May 6, 1878;

THENCE South 00°14'48" East along said Easterly ROW a distance of 1880.40 feet to said Northerly line of the Town of Timnath;

THENCE South 89°45'12" West along said Northerly line of the Town of Timnath a distance of 30.00 feet to the TRUE POINT OF BEGINNING;

Said parcel contains 3.989 acres more or less (±).
PROPERTY DESCRIPTION

SMITH-BASSETT ANNEXATION NO. 2

A parcel of land being part of the Southwest Quarter (SW1/4) of Section Twenty-three (23) and part of the Southeast Quarter (SE1/4) of Section Twenty-two (22) and part of the East Half (E1/2) of Section Twenty-seven (27) and part of the West Half (W1/2) of Section Twenty-six (26), Township Seven North (T.7N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6thP.M.), Town of Timnath, County of Larimer, State of Colorado and being more particularly described as follows:

BEGINNING at the Section corner common to Sections Thirty-four (34), Thirty-five (35), said Section 26 and said Section 27 and assuming the line common to the SE1/4 of said Section 27 and the SW1/4 of said Section 26 as bearing North 00°05’07” West, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2649.95 feet with all other bearings contained herein relative thereto:

THENCE North 00°05’07” West along said common line a distance of 30.00 feet to a point on the Northerly line of Smith-Bassett Annexation No. 1 to the Town of Timnath, said point being the TRUE POINT OF BEGINNING;
THENCE continuing North 00°05’07” West along said common line and along said Northerly line a distance of 1915.64 feet;
THENCE South 89°54’53” West along said Northerly line a distance of 30.00 feet to the Westerly Right-of-way (ROW) of Larimer County Road No. 5 (LCR5) as established by the Board of County Commissioners of Larimer County in Road Book “R” at Page 34 and filed for record May 4, 1874;
THENCE along said Westerly ROW the following Two (2) courses and distances:
THENCE North 00°05’07” West a distance of 704.29 feet;
THENCE North 00°08’48” West a distance of 1414.67 feet to said Westerly ROW as described in a Deed of Dedication recorded February 19, 1974 in Book 1589 at Page 694 of the records of the Larimer County Clerk and Recorder (LCCR);
THENCE along said Westerly ROW the following Three (3) courses and distances:
THENCE South 89°51’12” West a distance of 27.00 feet;
THENCE North 00°08’48” West a distance of 130.00 feet;
THENCE North 89°51’12” East a distance of 27.00 feet to said Westerly ROW as established in said Road Book “R” at said Page 34;
THENCE North 00°08’48” West a distance of 1105.28 feet to the line common to the Northeast Quarter (NE1/4) of said Section 27 and said SE1/4 of Section 22;
THENCE North 89°43’34” East along said common line a distance of 10.00 feet to the Westerly ROW of LCR5 established by the Board of County Commissioners of Larimer County in said Road Book “R” at Page 53 and filed for record September 4, 1877;
THENCE North 00°03’06” West along said Westerly ROW a distance of 1516.36 feet;
THENCE North 89°56′54″ East a distance of 20.00 feet to the line common to said SE1/4 of Section 22 and said SW1/4 of Section 23;
THENCE South 00°03′06″ East along said common line a distance of 1516.28 feet to the Section Corner common to said Sections 22, 23, 26 and 27;
THENCE South 00°08′48″ East along the line common to said NE1/4 of Section 27 and the Northwest Quarter (NW1/4) of said Section 26 a distance of 2650.03 feet to the Quarter Corner common to said Section 26 and said Section 27;
THENCE South 00°05′07″ East along the line common to said SE1/4 of Section 27 and said SW1/4 of Section 26 a distance of 674.30 feet;
THENCE North 89°54′53″ East a distance of 20.00 feet;
THENCE North 00°05′07″ West a distance of 674.31 feet;
THENCE North 00°08′48″ West a distance of 2650.02 feet;
THENCE North 00°03′06″ West a distance of 1516.26 feet;
THENCE North 89°56′54″ East a distance of 30.00 feet to the Easterly ROW of said LCR5 as depicted on a plat of Allison Estates recorded September 12, 2000 as Reception No. 2000062742 of the records of the LCCR;
THENCE South 00°03′06″ East along said Easterly ROW a distance of 1516.24 feet to the Easterly ROW of said LCR5 as depicted on a plat of Jack Hahn M.R.D., S-6-87 recorded July 27, 1987 as Reception No. 87043060 of the records of the LCCR;
THENCE South 00°08′48″ East along said Easterly ROW a distance of 2650.02 feet to the Easterly ROW of said LCR5 as described in a Deed of Dedication recorded November 6, 1978 in Book 1905 at Page 172 of the records of the LCCR;
THENCE South 00°05′07″ East along said Easterly ROW a distance of 704.33 feet to said Northerly line of Smith-Bassett Annexation No.1;
THENCE along said Northerly line the following Three (3) courses and distances:
THENCE South 89°54′53″ West a distance of 30.00 feet;
THENCE South 00°05′07″ East a distance of 1915.64 feet;
THENCE South 89°54′02″ West a distance of 20.00 feet to the TRUE POINT OF BEGINNING;

Said parcel contains 7.335 acres more or less (±).
PROPERTY DESCRIPTION

SMITH-BASSETT ANNEXATION NO. 3

A parcel of land being part of the Southwest Quarter (SW1/4) of Section Thirteen (13) and part of Section Fourteen (14) and part of the East Half (E1/2) of Section Fifteen (15) and part of the East Half (E1/2) of Section Twenty-two (22) and part of the Southwest Quarter (SW1/4), Northwest Quarter (NW1/4) and Northeast Quarter (NE1/4) of Section Twenty-three (23) and part of the Northwest Quarter (NW1/4) of Section Twenty-four (24) and part of the West Half of Section Twenty-six (26), Township Seven North (T.7N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6thP.M.), Town of Timnath, County of Larimer, State of Colorado and being more particularly described as follows:

BEGINNING at the Section Corner common to Sections Thirty-four (34), Thirty-five (35), Twenty-seven (27) said Section 26 and assuming the line common to the SE1/4 of said Section 27 and the SW1/4 of said Section 26 as bearing North 00°05’07” West, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2649.95 feet with all other bearings contained herein relative thereto:

THENCE North 00°05’07” West along said common line a distance of 30.00 feet to the Northerly line of Smith-Bassett Annexation No. 1 to the Town of Timnath also being the Westerly line of Smith-Bassett Annexation No. 2 to the Town of Timnath;

THENCE continuing North 00°05’07” West along said common line and along said Northerly line and along said Westerly line a distance of 1915.64 feet;

THENCE continuing North 00°05’07” West along said common line a distance of 30.00 feet to the Northerly line of said Smith-Bassett Annexation No. 2, said point being the TRUE POINT OF BEGINNING;

THENCE continuing North 00°05’07” West along said common line and along said Northerly line a distance of 674.30 feet to the Quarter Corner common to said Section 26 and said Section 27;

THENCE North 00°08’48” West along the line common to the Northeast Quarter (NE1/4) of said Section 27 and the Northwest Quarter (NW1/4) of said Section 26 and along said Northerly line a distance of 2650.03 feet to the Section Corner common to said Sections 22, 23, 26 and 27;

THENCE North 00°03’06” West along the line common to the Southeast Quarter (SE1/4) of said Section 22 and said SW1/4 of Section 23 and along said Northerly line a distance of 1516.28 feet;

THENCE South 89°56’54” West a distance of 20.00 feet to the Westerly Right-of-way (ROW) of Larimer County Road No. 5 (LCR5) as established by the Board of County Commissioners of Larimer County in Road Book “R” at Page 53 and filed for record September 4, 1877;
THENCE along said Westerly ROW the following Two (2) courses and distances:
THENCE North 00°03’06” West a distance of 1131.47 feet;
THENCE North 00°02’32” East a distance of 900.33 feet to the South line of The
Homestead Estates Subdivision as recorded October 19, 1964 as Reception No. 876678
of the records of the Larimer County Clerk and Recorder (LCCR);
THENCE South 89°42’52” West along said South line a distance of 20.00 feet to the
Westerly ROW of said LCR5 as depicted on the plat of said Subdivision;
THENCE North 00°02’32” East along said Westerly ROW a distance of 1710.01 feet to
the South line of the Galatia Annexation to the City of Fort Collins as recorded February
22, 1991 as Reception No. 91007174 of the records of the LCCR;
THENCE North 89°43’52” East along said South line a distance of 70.09 feet to the
Southeast corner of said Annexation;
THENCE North 00°07’12” West along the Easterly line of said Annexation a distance of
1355.96 feet to the Northerly line of said Annexation;
THENCE South 89°52’16” West along said Northerly line a distance of 80.00 feet to the
Westerly ROW of said LCR5 as depicted on the plat of Kitchell Subdivision as recorded
April 19, 1990 as Reception No. 90016150 of the records of the LCCR;
THENCE North 00°07’12” West along said Westerly ROW a distance of 1326.04 feet to
the Westerly ROW of said LCR5 as established by a Deed of Dedication recorded April
6, 1977 in Book 1760 at Page 520 of the records of the LCCR;
THENCE North 00°07’26” West along said Westerly ROW a distance of 1326.18 feet to
the North line of the South Half of the Northeast Quarter (S1/2 NE1/4) of said Section
15;
THENCE South 89°51’28” East along said North line a distance of 50.00 feet to the
Northeast corner of said S1/2 NE1/4;
THENCE South 89°31’49” East along the North line of the South Half of the Northwest
Quarter (S1/2 NW1/4) of said Section 14 a distance of 655.19 feet to the intersection with
the Southerly line of that parcel of land as described within that Warranty Deed as
recorded November 29, 1977 in Book 1817 at Page 27 as Reception Number 224110 of
the records of the LCCR;
THENCE along said Southerly line and a portion of the Easterly line of said parcel of
land the following Two (2) courses and distances:
THENCE South 89°13’26” East a distance of 189.02 feet to the Southeast corner of said
parcel of land;
THENCE North 26°55’26” West a distance of 1.14 feet to said North line of the S1/2
NW1/4 of Section 14;
THENCE South 89°31’49” East along said North line a distance of 256.82 feet to the
intersection with the Southerly line of Jackson Heights Subdivision (JHS) as recorded
August 16, 1978 as Reception Number 264737 of the records of the LCCR;
THENCE along said Southerly line the following Two (2) courses and distances:
THENCE South 88°07’12” East a distance of 78.92 feet;
THENCE North 89°24’22” East a distance of 104.63 feet to said North line of the S1/2
NW1/4 of Section 14;

(2 of 6)
THENCE South 89°31'49" East along said North line a distance of 105.21 feet to said Southerly line of JHS;
THENCE along said Southerly line the following Three (3) courses and distances:
THENCE South 86°01'59" East a distance of 246.44 feet;
THENCE North 85°56'04" East a distance of 102.28 feet;
THENCE North 72°01'57" East a distance of 21.96 feet to said North line of the S1/2 NW1/4 of Section 14;
THENCE South 89°31'49" East along said North line a distance of 861.00 feet to the Northeast corner of said S1/2 NW1/4;
THENCE South 89°31'58" East along the North line of the South Half of the Northeast Quarter (S1/2 NE1/4) of said Section 14 a distance of 325.77 feet;
THENCE along a line being the high water line of "The Kitchell Reservoir," previously know as "The Kitchell & Moore Reservoir" when the water is up to Six and One-Half (6-1/2) feet above the grade of the outlet ditch of said reservoir, and being at an elevation of 4959.50 based upon the NAVD 1988 datum the following Thirty-seven (37) courses and distances. Said line being along the following parcels of land:
1: Along the Southerly line of that parcel of land as described within that Warranty Deed as recorded November 8, 1893 in Book 95 at Page 412 of the records of the LCCR.
2: Along the Southwesterly line of that parcel of land as described within that Warranty Deed as recorded December 23, 1891 in Book 82 at Page 165 of the records of the LCCR.
3: Along the Westerly and Northerly line of that parcel of land as described within that Warranty Deed as recorded October 27, 1915 in Book 334 at Page 491 of the records of the LCCR and being that Ten (10) Acres, more or less, within the Southeast Quarter of the Northwest Quarter (SE1/4 NW1/4) of said Section 14.
4: Along the Northwesterly line of that parcel of land as described within that Warranty Deed as recorded October 27, 1915 in Book 334 at Page 491 of the records of the LCCR and being that Thirty (30) Acres, more or less, within the Southwest Quarter of the Northeast Quarter (SW1/4 NE1/4) of said Section 14.

THENCE South 14°09'13" East a distance of 75.66 feet;
THENCE South 11°18'11" East a distance of 118.46 feet;
THENCE South 01°09'25" West a distance of 123.51 feet;
THENCE South 15°00'53" West a distance of 125.10 feet;
THENCE South 23°28'07" West a distance of 114.66 feet;
THENCE South 74°10'55" West a distance of 104.70 feet;
THENCE North 56°47'52" West a distance of 123.88 feet;
THENCE North 70°49'16" West a distance of 116.92 feet;
THENCE North 73°28'38" West a distance of 123.16 feet;
THENCE South 88°26'29" West a distance of 138.78 feet;
THENCE South 82°34'17" West a distance of 99.96 feet;
THENCE South 34°09'23" West a distance of 96.02 feet;
THENCE South 21°24'45" West a distance of 107.81 feet;
THENCE South 05°38'22" East a distance of 116.93 feet;

(3 of 6)
THENCE South 07°02’15” East a distance of 114.12 feet;
THENCE South 06°33’11” East a distance of 115.91 feet;
THENCE South 23°10’07” East a distance of 138.58 feet;
THENCE South 16°33’13” East a distance of 83.66 feet;
THENCE South 10°36’55” West a distance of 39.55 feet;
THENCE South 62°47’30” West a distance of 44.46 feet;
THENCE South 31°43’40” East a distance of 8.18 feet;
THENCE South 55°19’24” East a distance of 224.90 feet;
THENCE South 38°05’22” East a distance of 152.75 feet;
THENCE South 60°09’07” East a distance of 106.17 feet;
THENCE South 85°54’02” East a distance of 70.85 feet;
THENCE South 71°43’10” East a distance of 120.77 feet;
THENCE South 56°10’06” East a distance of 110.01 feet;
THENCE South 60°10’19” East a distance of 151.52 feet;
THENCE South 75°46’02” East a distance of 124.10 feet;
THENCE South 81°12’12” East a distance of 143.97 feet;
THENCE South 72°25’24” East a distance of 213.02 feet;
THENCE North 58°18’39” East a distance of 130.14 feet;
THENCE North 09°55’32” East a distance of 124.35 feet;
THENCE North 30°05’42” West a distance of 151.82 feet;
THENCE North 19°41’21” West a distance of 101.82 feet;
THENCE North 39°45’53” East a distance of 107.77 feet;
THENCE North 50°46’22” East a distance of 13.02 feet to a point on the line common to
the Northeast Quarter (NE1/4) and the Southeast Quarter (SE1/4) of said Section 14, said
point also being the Northeast (NE) Corner of that parcel of land as described within that
Warranty Deed as recorded November 8, 1893 in Book 95 at Page 412 of the records of
the LCCR, said NE Corner also being a point on said high water line of Kitchell
Reservoir;
THENCE South 89°33’08” East along said common line a distance of 312.76 feet to the
Southwest corner of Parcel 1 as described within that Quit Claim Deed as recorded July
27, 1977 in Book 785 at Page 893 as Reception No. 204869 of the records of the LCCR;
THENCE along the Westerly, Northerly, and Easterly lines of said parcel of land the
following Seven (7) courses and distances:
THENCE North 56°03’08” West a distance of 269.51 feet (Rec. 258 feet);
THENCE North 31°26’52” East a distance of 150.00 feet;
THENCE North 28°46’52” East a distance of 128.00 feet;
THENCE South 77°58’08” East a distance of 133.00 feet;
THENCE North 87°41’52” East a distance of 258.00 feet;
THENCE South 43°08’08” East a distance of 226.00 feet;
THENCE South 07°28’08” East a distance of 214.00 feet to said common line;
THENCE South 89°33’08” East along said common line a distance of 888.00 feet to the
Quarter Corner common to said Section 14 and said Section 13;
THENCE North 89°50′39″ East along the North line of said SW1/4 of Section 13 a
distance of 30.00 feet to the Easterly ROW of Larimer County Road No. 3 (LCR3) as
established by the Board of County Commissioners of Larimer County in Road Book 5 at
Page 43 and filed for record January 30, 1909;
THENCE along said Easterly ROW the following Two (2) courses and distances:
THENCE South 00°12′00″ East a distance of 2154.98 feet;
THENCE South 89°48′00″ West a distance of 30.00 feet to the line common to said
SW1/4 of Section 14 and said SW1/4 of Section 13;
THENCE South 00°12′00″ East along said common line a distance of 382.00 feet to the
Northerly ROW of Larimer County Road No. 44 (LCR44) as established by the Board of
County Commissioners of Larimer County in said Road Book “R” at Page 119 and filed
for record March 6, 1882;
THENCE along said Northerly ROW the following Two (2) courses and distances:
THENCE South 89°53′22″ East a distance of 28.00 feet;
THENCE South 00°12′00″ East a distance of 87.81 feet to the line common to said
SW1/4 of Section 13 and said NW1/4 of Section 24;
THENCE South 00°20′41″ East a distance of 28.16 feet to the Southerly ROW of LCR44
as established by the Board of County Commissioners of Larimer County in said Road
Book “R” at Page 119 and filed for record March 6, 1882;
THENCE along said Southerly ROW the following Five (5) courses and distances:
THENCE North 89°57′16″ West a distance of 56.07 feet;
THENCE North 00°12′00″ West a distance of 60.03 feet;
THENCE North 89°53′22″ West a distance of 273.83 feet;
THENCE South 00°06′38″ West a distance of 60.00 feet;
THENCE North 89°53′22″ West a distance of 932.49 feet to the East line of Tract 2-A of
the Amended Plat of Tract Two, Kiefer M.R.D. No. 92EX0050 as recorded December
30, 1998 as Reception No. 98149999 of the records of the LCCR;
THENCE South 00°03′38″ West along said East line a distance of 2.00 feet to the
Southerly ROW of LCR44 as depicted on said plat;
THENCE North 89°53′22″ West along said Southerly ROW a distance of 1395.93 feet to
the West line of said Tract 2-A, said West line also being the line common to said NE1/4
of Section 23 and said NW1/4 of Section 23;
THENCE North 00°10′37″ West along said West line a distance of 2.00 feet to said
Southerly ROW of LCR44 as established by the Board of County Commissioners of
Larimer County in said Road Book “R” at Page 119;
THENCE North 89°48′24″ West along said Southerly ROW a distance of 1782.37 feet to
the East line of A Plat of Timnath Meadows Estates as recorded May 25, 1995 as
Reception No. 95029562 of the records of the LCCR;
THENCE South 11°51′04″ East along said East line a distance of 22.50 feet to the
Southerly ROW of LCR44 as depicted on said plat;
THENCE along said Southerly ROW the following Two (2) courses and distances:
THENCE North 89°48′24″ West a distance of 771.95 feet to a Point of Curvature (PC);
THENCE along the arc of a curve which is concave to the Southeast a distance of 31.47 feet, having a radius of 20.00 feet, a central angle of 90°09'04" and a long chord bearing South 45°07'04" West a distance of 28.32 feet to a Point of Tangency (PT), said PT being on the Easterly ROW of said LCR5 as depicted on said plat;
THENCE South 00°02'32" West along said Easterly ROW a distance of 2570.20 feet to the Easterly ROW of said LCR5 as depicted on a plat of Allison Estates as recorded September 12, 2000 as Reception No. 2000062742 of the records of the LCCR;
THENCE South 00°03'06" East along said Easterly ROW a distance of 1131.41 feet to said Northerly line of Smith-Bassett Annexation No. 2;
THENCE along said Northerly line the following Five (5) courses and distances:
THENCE South 89°56'54" West a distance of 30.00 feet;
THENCE South 00°03'06" East a distance of 1516.26 feet;
THENCE South 00°08'48" East a distance of 2650.02 feet;
THENCE South 00°05'07" East a distance of 674.31 feet;
THENCE South 89°54'53" West a distance of 20.00 feet to the TRUE POINT OF BEGINNING;

Said parcel contains 405.158 acres more or less (±).
EXHIBIT D

Ecological Resource Consultants, Inc
5672 Juhls Drive~Boulder, Colorado~80301~720.564.0788

Jurisdictional Wetland Delineation Report

for the

Smith-Basset Property
Larimer County, Colorado

October 28, 2004

Prepared for:
Majestic Investment Group, LLC
4529 South Stover Street
Fort Collins, CO 80525

ERC Project # 400-041
Jurisdictional Wetland Delineation Report
Smith-Basset Property

Introduction ........................................................................................................... 2
General Site Description ...................................................................................... 2
Jurisdictional Delineation .................................................................................... 3
Identified Jurisdictional Wetland Areas ............................................................... 3
  Wetland A Riverine/Palustrine Emergent .......................................................... 3
Identified Non-Jurisdictional, Isolated Wetland Areas ....................................... 3
  Area B Open Water/Palustrine Emergent Persistent ......................................... 4
  Area C Palustrine Emergent Persistent ............................................................. 4
  Area D Palustrine Emergent Persistent ............................................................. 4
  Area E Palustrine Emergent Persistent ............................................................. 4
  Area F Palustrine Emergent Persistent ............................................................. 5
  Area G Palustrine Emergent Persistent ............................................................. 5
  Area H Open Water/Palustrine Emergent Persistent ......................................... 5
Hydrophytic Vegetation ....................................................................................... 6
  Table 1. Identified Hydrophytic Vegetation ....................................................... 6
Upland Habitat .................................................................................................... 6
Summary ............................................................................................................... 7
REFERENCES .................................................................................................... 8
Figure 1. Site Location Map ............................................................................... 9
PHOTOGRAFPIC DOCUMENTATION ................................................................ 10
JURISDICTIONAL WETLAND DELINEATION MAP ........................................... 16
The Report itself is not attached for recording. The entire report can be viewed at Timnath Town Hall, 4100 Main Street, Timnath, CO during normal business hours.
Screening Report Of
Threatened, Endangered and Species of Concern

for the

Smith-Basset Property
Larimer County, Colorado

October 19, 2004

Prepared for:
Majestic Investment Group, LLC
4529 South Stover Street
Fort Collins, CO 80525

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