TOWN OF TIMNATH, COLORADO
ORDINANCE NO. 5

AN ORDINANCE APPROVING THE ANNEXATION
AND ZONING OF PROPERTY KNOWN AS NORTH
TIMNATH FARMS # 2 (ALSO KNOWN AS THE
"O’NEILL PROPERTY") TO THE TOWN OF
TIMNATH, COLORADO

WHEREAS, a Petition for Annexation and simultaneous zoning was filed with the Town by the Kerns Properties, LLC, (Petitioners), requesting the Town of Timnath to annex that property more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, to be known as "North Timnath Farms # 2" also known as the "O’Neill Property" (the “Property”); and

WHEREAS, a properly noticed public hearing was held on April 4, 2007 said Petition in accordance with C.R.S. § 31-12-108, and all persons interested in such Petition were be provided an opportunity to be heard; and

WHEREAS, Petitioners are owners of 100% of the Property to be annexed; and

WHEREAS, the Town and Petitioners wish to enter into an annexation agreement (the "Annexation Agreement"), a copy of which is attached hereto as Exhibit B and fully incorporated by this reference; and

WHEREAS, the Town Council wishes to zone the Property simultaneously with the annexation of the Property; and

WHEREAS, the Town Council finds that the Property is eligible for annexation and should be annexed to the Town of Timnath and thereafter zoned.

NOW, THEREFORE, THE COUNCIL OF THE TOWN OF TIMNATH, COLORADO, ORDAINS:

Section 1. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

Section 2. The Town Council of the Town of Timnath finds and declares that the property described in Exhibit A to this Ordinance (the "Property") is eligible for annexation in that all relevant conditions and requirements set forth in Sections 31-12-104 and 31-12-105, C.R.S., exist or have been met; that no election is required under Section 31-12-107(2), C.R.S.; and that no additional terms and conditions are to be imposed other than the mutual agreement memorialized in the agreement for annexation attached hereto as Exhibit B, and which Agreement is hereby approved.

Section 3. The Town Council further finds and determines that the existing FA-1 zoning designation should be changed to allow for R-2, R-3 and MU zoning; and

Town of Timnath
PO Box 37
Timnath, CO 80547
Section 4. The Property is hereby annexed to and shall be included in the corporate boundaries of the Town of Timnath under the terms of this Ordinance and said annexation shall be complete and effective from the effective date set forth in the Annexation Agreement, except that for purposes of general taxation this annexation shall be effective on and after January 1, 2008.

Section 5. The Property is hereby zoned to R-2, R-3, MU.

Section 6. Upon completion of annexation and zoning of the Property, the Mayor and Town Clerk are authorized and directed to complete all the necessary procedures required for annexation and zoning of said Property to the Town including: (1) executing the Annexation Agreement; (2) filing certified copies of the annexation and zoning ordinance and a map of the area annexed containing a legal description of such area with the Larimer County Clerk and Recorder; (3) filing of the original of this annexation and zoning ordinance together with a copy of the annexation map with the Town Clerk; and (4) amending the Zoning Map of the Town to conform to the zoning of the Property as provided herein.

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 Town Council hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one or parts be declared unconstitutional or invalid.

Section 8. Repealer. All ordinances or resolutions, or parts thereof, in conflict with this Ordinance are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance nor revive any ordinance thereby.

Section 9. Effective Date. This Ordinance shall take effect upon adoption at second reading, as provided by Section 3.5.5 of the Charter.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING, SET FOR PUBLIC HEARING AND SECOND READING AT 7:00 P.M. ON APRIL 4, 2007, AT THE TIMNATH TOWN HALL, 4100 MAIN STREET, TIMNATH COLORADO AND ORDERED PUBLISHED BY TITLE THIS 21ST DAY OF MARCH, 2007.


TOWN OF TIMNATH, COLORADO

Donna Benson, Mayor

ATTEST:

Linda Griess, Acting Town Clerk
EXHIBIT A

Legal description, North Timnath Farms # 2

A portion of the West 1/2 of the Southeast 1/4 of Section 35, Township 7 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado being more particularly described as follows:

Considering the West line of the West 1/2 of the Southeast 1/4 of Section 35, Township 7 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado as bearing N 00°06'24" W with all bearings contained herein relative thereto.

COMMENCE at the Southwest corner of the West 1/2 of the Southeast 1/4 of Section 35, Township 7 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado;
thence run N 00°06'24" W along the West line of said West 1/2 for a distance of 99.36 feet to the POINT OF BEGINNING, said point also being on the Northerly right-of-way line of the Colorado and Southern Railroad;
thence continue N 00°06'24" W along said West line for a distance of 2511.38 feet to a point that lies 33.00 feet South of, when measured at right angles to the North line of said West 1/2;
thence leaving said West line run N 89°56'27" E parallel with said North line for a distance of 1323.17 feet to the East line of said West 1/2;
thence leaving said parallel line run S 00°08'26" E along said East line for a distance of 2582.94 feet to the North right-of-way line of Larimer County Road 38;
thence leaving said East line run N 89°57'51" W along said right-of-way line for a distance of 1240.04 feet to a point on the aforesaid Northerly right-of-way line of the Colorado and Southern Railroad;
thence leaving said North right-of-way line run N 50°41'43" W along said Northerly right-of-way line for a distance of 109.58 feet to the Point of Beginning.

Containing 78.40 acres, more or less, and being subject to all easements and rights of way of record.
EXHIBIT B

[Annexation Agreement]
ANNEXATION AND DEVELOPMENT AGREEMENT
FOR THE NORTH TIMNATH FARMS #2 PROPERTY (ALSO KNOWN AS THE
"O'NEILL PROPERTY")

THIS ANNEXATION AND DEVELOPMENT AGREEMENT (this "Agreement"), is
made and entered into to be effective the 4th day of April, 2007, by and between the TOWN OF
TIMNATH, a Colorado municipal corporation (the "Town"); and KERNS PROPERTIES, 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").

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 Owners 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 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; and
WHEREAS, the Property Owner has agreed to subordinate its interests to the terms of this Agreement.

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 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, the following contributions shall be paid to the Town:

   A. Two Thousand Dollars ($2,000) 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.

   B. The annexation fees of Five Hundred Dollars ($500) plus Three Hundred Dollars ($300) per acre may be paid in two equal installments with the first payment due upon annexation and the second payment due one year after the effective date of annexation.

All of the above 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; provided, however, that 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. Notwithstanding foregoing provisions to the contrary, impact fees collected and held by the Town in connection with the Property annexed pursuant to this Agreement may be held by the Town and used for any of the following purposes: roads, drainage, safety, buildings, WiFi and open space.
4. **Existing Uses and Structures.** All of the existing 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. 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. 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. **Permitted Uses.** The Permitted Principal Uses within each zoning district are marked with a capital “P” in the Table of Permitted and Conditional Uses by Zoning District from the Town’s current Land Use Code, a copy of which is attached hereto as Exhibit C and incorporated herein by reference (“the Permitted Uses”). The term “Permitted Uses” as used in this Agreement shall mean and refer to only the Permitted Principal Uses marked with a capital “P” on Exhibit C and shall not include the Permitted Conditional Uses marked with a capital “C” on Exhibit C nor the Prohibited Uses marked with an “*” on Exhibit C. 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. Prior to any development on the Property, other than development related to the existing uses described above, the Property Owner must submit and have approved a Plat(s) as provided in the Code.

6. **Water Utilities.** Historically, the Town has not provided water service facilities, and has relied on the Fort Collins-Loveland Water District to provide such services. It is anticipated that the Property shall be included in the Fort Collins-Loveland Water District for potable water.

7. **Sanitary Sewer Utilities.** The Property is included within the South Fort Collins Sanitation District for sanitary sewer services.

8. **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. The Property Owner recognizes that the erosion control plan may require temporary and/or permanent drainage improvements.

9. **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 by the Property Owner. 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 Owner 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 Owner 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.

10. 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 any water and water rights, well and well rights, reservoir and storage rights, stock in mutual ditch and irrigation companies, units of the Northern ColoraDNA Water Conservancy District, or any other water or water rights appurtenant to or historically used in connection with the Property.

11. 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. In consideration thereof, Property Owner agrees to dedicate land and/or pay cash in lieu of dedication as provided in the Code.

12. Dedication of Land; Street Improvements Abutting Property. Upon request by the Town and without cost to the Town, the Property Owner shall dedicate and convey to the Town any additional portions of the Property 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 Road 38, where such street abuts the Property developed as shown on the Concept Plan (the "Abutting Street"), and any improvements necessary to serve the planned uses on the Property such as accel/decel lanes, turn lanes and traffic signals. The Town may require construction of the Abutting Street to be completed prior to issuance of building permits for portions of the Property accessing the Abutting Street. The timing of the requirement to complete the Abutting Street shall be based upon traffic engineering studies and reasonably related to increased traffic on the Abutting Street resulting from development of the Property. Street improvements on the Abutting Street shall be coordinated with other developments abutting the same street. The Town shall be responsible for maintaining the Abutting Street upon annexation except during construction of any improvements to any portion of the Abutting Street. Provided however, upon request of the Town, the person or entity constructing the same shall reimburse the Town for the cost of maintaining the Abutting Street for three years after the date of initial acceptance of improvements on the Abutting Street. For all streets constructed on the Property that are not the Abutting Street, the person or entity constructing the same shall be
responsible for maintenance until three years from the date of initial acceptance of improvements thereto by the Town.

13. **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.

14. **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 determine it would be in the best interests of the Town, Property Owner and future owners of the Property to do so. The Recreational District, Homeowners Association, and/or the general improvement district shall 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 conveying any portion of the Property to any party other than to an affiliate of the Property Owner as defined in Section 27 hereinafter, 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, if a Recreational District is not formed, 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.

15. **Dedication and Conveyances of Property.** For that portion of the 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 that portion of 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 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.
16. **Coordination with Adjacent Properties.** The Town has adopted a Comprehensive Plan which shall include the Master Trails Plan currently being considered by the Town (the "Comp Plan") for the cohesive development of the Town. 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.

17. **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 successors, and, to the extent permitted, assigns as the case may be.

18. **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.

19. **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.

20. **Vested Property Rights.**

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

   (1) The Property is estimated to have a minimum twenty-five (25) 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 its 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 and Permitted Uses, 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 affecting the majority of the area proposed to be annexed to the Town, 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 this Agreement, the Concept Plan and the Permitted Uses to the Property Owner through December 31, 2021.

(1) Pursuant to the contractual commitments made herein, the Property Owner shall have vested property rights to undertake and complete the development and use of the Property under the terms and conditions of this Agreement and the Concept Plan and Permitted Uses. Such development requires approval by the Town of Preliminary and Final Plats with a Planned Development Overlay consistent with this Agreement, the Concept Plan and the Permitted Uses.

(2) Upon request of the Property Owner with approval of a Final Plat for any portion of the Property, the Town agrees to grant vested rights in such Final Plat for a period of eight years from the date of approval as a site specific development plan as defined by Colorado law and the Timnath Municipal Code.

(3) In consideration of the acknowledgements described in subsection A above, the public benefit to be derived from development of the Property within the Town, and the obligations and commitments of Property Owner pursuant to this Agreement, the vested property rights granted herein shall specifically include the Town’s express agreement, as a material term hereof, that the Town Council will take no action which would unilaterally: (a) materially change any
term or condition of this Agreement; (b) impose a moratorium on development within the Property which would materially delay development of the Property; or (c) materially limit the number of building or utility permits to which the Property would otherwise be entitled under an approved Final Plat consistent with this Agreement, the Concept Plan and Permitted Uses without the consent of the Property Owner.

(4) Based upon the contractual commitments made in this Agreement by the Property Owner which provide substantial benefits to the Town, including but not limited to the payments and dedications to be made to the Town pursuant to Section 3, and the acknowledgements described in subsection A above, if the Property, or any portion thereof, becomes subject to any action by the Town, either by its Town Council or by its citizens through the use of initiative or referendum, which would unilaterally: (a) materially change any term or condition of this Agreement; (b) impose a moratorium on development within the Property which would materially delay development of the Property; (c) materially limit the number of building or utility permits to which the Property would otherwise be entitled under this Agreement or an approved Final Plat consistent with the Concept Plan, and/or the Permitted Uses; or (d) materially alter, impair, prevent, or diminish the vested property rights herein granted to develop the Property pursuant to this Agreement, an approved Final Plat, and the Concept Plan and Permitted Uses, the Town shall be in breach of this Agreement and the Property Owner shall have the remedies set forth in Section 23 hereinafter. Usual, customary or reasonable delays in processing requests and/or applications for approvals shall not be considered a breach of this Agreement.

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 twenty-five (25) year build-out of the Property in multiple phases; and (5) expected changes in economic cycles and varying market conditions over the estimated twenty-five (25) year build-out period.

D. **Limitation on Vested Rights.** Notwithstanding anything in this Section 20 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 Town Council, 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, 2014.

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.

21. **Town Ordinances, Regulations, Codes, Policies, and Procedures and Town Charter.** To the extent consistent with vested property rights granted in Section 20 above, the provisions of this Agreement and the Concept Plan and Permitted Uses, all Town ordinances, regulations, codes, policies and procedures and the Town Charter 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, the Concept Plan or the Permitted Uses to supercede Town ordinances, regulations, codes, policies and procedures except as provided herein or necessary for implementation of the terms of this Agreement.

22. **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 therefore;

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-day period such person or entity commences to cure the breach described in the notice and proceed 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.

23. 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 zoning pursuant to the Concept Plan 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 herein stipulates that it consents to the disconnection for purposes of such court action and further agrees that upon disconnection pursuant to this Section 23, 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 fees paid less the cost of any referendum election and all parties shall be released from all obligations under this Agreement.

24. Attorney's Fees. In the event of any litigation to enforce or construe the terms of this Agreement, the substantially prevailing party shall be entitled to payment of its costs of litigation, including attorney's fees, by the other party.

25. 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 3, above.

26. Notice. All notice 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.

Notice to Town:

Town Manager
Town of Timnath
Post Office Box 37
Timnath, Colorado 80547
Telephone: (970) 224-3211
Facsimile: (970) 224-3217

with a copy to:

Gerald Dahl
Murray Dahl Keuchenmeister and Renaud LLP
2401 15th Street, Ste. 200
Denver, Colorado 80202
Telephone: (303) 493-6671
Facsimile: (303) 477-0965

Notice to Property Owner:

Kerns Properties, LLC
a Colorado limited liability company
Attention: Newell M. Grant, Sr., Manager
1325 Cherryville Road
Greenwood Village, Colorado 80121
Telephone:
Facsimile:

with a copy to:

James A. Martell
Liley, Rogers & Martell, LLC
300 South Howes Street
Fort Collins, Colorado 80521
Telephone: (970) 221-4455
Facsimile: (970) 221-4242.

27. Assignment.

(a) Nothing contained in this Agreement shall be construed to prohibit or restrict in any way the Property Owner's right to sell, transfer, convey,
assign, lease, sublease, and encumber the Property, subject to the terms and provisions of this Agreement, without the consent of the Town or any other party to this Agreement.

(b) 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 any other party.

(c) The Property Owner shall have the right to assign or transfer all or any of its interest, rights, or obligations under this Agreement to any person or entity without the consent of the Town or any other party to this Agreement so long as the Property Owner remains obligated for the performance of terms and conditions of this Agreement.

(d) 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 (a "Financially Responsible Assignee") with the prior written consent of the Town, which consent shall not be unreasonably delayed, conditioned, withheld, or denied. Upon such consent and written assumption of the obligations of the Property Owner under this Agreement by a Financially Responsible 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 Financially Responsible Assignee. For the purposes of this Agreement, a "Financially Responsible Assignee" shall be an assignee with the same or better demonstrated financial capability and development experience as the Property Owner, this demonstration to be verified by a financial and/or development consultant of the Town's choice, whose fees shall be paid by the Property Owner.

(e) 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. 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.

28. Title and Authority. The Property Owner warrants and represents to the Town that the Property Owner is the record owner of the Property, except for county roads shown on the annexation map. Each person signing this Agreement on behalf of an entity represents and warrants that he or she has full power and authority to enter into this Agreement on behalf of the
entity. The Property Owner understands that the Town is relying on such representations and warranties in entering into this Agreement.

29. **Entire Agreement - Amendments.** This Agreement, the annexation petition, the Concept Plan, and Permitted Uses 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 between 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.

30. **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.

31. **Effective Date-Termination.** This Agreement shall be effective and binding upon the parties immediately upon the effective date of the ordinance annexing the Property. 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 Section 23 hereinafore.

32. **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.

33. **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.

34. **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.

35. **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.

36. **Time is of the Essence.** Time is of the essence 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 Council in compliance with the applicable Town requirements and in sufficient time before the hearing to allow any necessary review by Town staff and the Town Council prior to the public meeting or hearing.

37. 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.

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:

ATTEST:

Linda Griess, Acting Town Clerk

TOWN OF TIMNATH, COLORADO, a municipal corporation

By: Donna Benson, Mayor

PROPERTY OWNER:

Kerns Properties, LLC a Colorado limited liability company

By: Newell M. Grant, Manager
STATE OF COLORADO

COUNTY OF ARAPAHOE

The foregoing instrument was acknowledged before me this 4th day of April, 2007, by NEWELL M. GRANT as Manager of KERNS PROPERTIES, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

[Signature]

Notary Public

My Commission Expires
11/28/2009
ANNEXATION AGREEMENT

EXHIBIT LIST

A. Legal Description of Property
B. Concept Plan
C. List of Permitted Uses
EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

A portion of the West 1/2 of the Southeast 1/4 of Section 35, Township 7 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado being more particularly described as follows:

Considering the West line of the West 1/2 of the Southeast 1/4 of Section 35, Township 7 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado as bearing N 00°06'24" W with all bearings contained herein relative thereto.

COMMENCE at the Southwest corner of the West 1/2 of the Southeast 1/4 of Section 35, Township 7 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado;
thence run N 00°06'24" W along the West line of said West 1/2 for a distance of 99.36 feet to the POINT OF BEGINNING, said point also being on the Northerly right-of-way line of the Colorado and Southern Railroad;
thence continue N 00°06'24" W along said West line for a distance of 2511.38 feet to a point that lies 33.00 feet South of, when measured at right angles to the North line of said West 1/2;
thence leaving said West line run N 89°56'27" E parallel with said North line for a distance of 1323.17 feet to the East line of said West 1/2;
thence leaving said parallel line run S 00°08'26" E along said East line for a distance of 2582.94 feet to the North right-of-way line of Larimer County Road 38;
thence leaving said East line run N 89°57'51" W along said right-of-way line for a distance of 1240.04 feet to a point on the aforesaid Northerly right-of-way line of the Colorado and Southern Railroad;
thence leaving said North right-of-way line run N 50°41'43" W along said Northerly right-of-way line for a distance of 109.58 feet to the Point of Beginning.

Containing 78.40 acres, more or less, and being subject to all easements and rights of way of record.
EXHIBIT B
[CONCEPT PLAN]
EXHIBIT C
[List of Permitted Uses]

The following codes are used in the tables below:

- **P** = Permitted Principal Use
- **C** = Permitted Conditional Use
- ***** = Prohibited

1. Accessory dwelling shall be limited to eight hundred fifty (850) square feet in total floor area, with no more than one (1) per lot in addition to the single-family dwelling.
2. No more than eight (8) units per building.
3. No more than twenty-four (24) units per building.
4. Provided that the use is part of a neighborhood center.
5. High school not allowed in R-1 zone.
6. No repair or storage facilities.
7. Permitted principal use provided that it is part of a neighborhood center.
8. Permitted conditional use provided that it is part of a neighborhood center.
9. Permitted principal use of 5,000 sq. ft. or less. Conditional use required for more than 5,000 sq. ft.
10. Permitted principal use with size restrictions.

<table>
<thead>
<tr>
<th>LIST OF PERMITTED, COND. &amp; PROHIBITED USES</th>
<th>MU ZONE</th>
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</thead>
<tbody>
<tr>
<td>Residential Uses</td>
<td></td>
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<tr>
<td>Accessory buildings and accessory uses</td>
<td>P</td>
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<tr>
<td>Accessory dwelling¹</td>
<td>P</td>
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<tr>
<td>Group homes</td>
<td>C</td>
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<tr>
<td>Multiple-family dwellings</td>
<td>P</td>
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<tr>
<td>Senior housing</td>
<td>P</td>
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<tr>
<td>Single-family detached dwellings</td>
<td>P</td>
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<tr>
<td>Single-family detached dwellings located on small lots</td>
<td>P</td>
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<tr>
<td>Two-family dwellings</td>
<td>P</td>
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<tr>
<td>Mobile Homes</td>
<td>*</td>
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<td>Cemeteries</td>
<td>*</td>
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<tr>
<td>Churches or place of worship and assembly</td>
<td>C¹</td>
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<tr>
<td>Community facilities</td>
<td>P</td>
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<tr>
<td>Golf courses</td>
<td>C</td>
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<tr>
<td>Parks and open space</td>
<td>P</td>
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<tr>
<td>Public and private schools for elementary, intermediate and high school education</td>
<td>C</td>
</tr>
<tr>
<td>Public and private schools, including colleges, vocational training and technical training</td>
<td>C¹</td>
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</tbody>
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<tr>
<th>LIST OF PERMITTED, COND. &amp; PROHIBITED USES</th>
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<tr>
<td>Public facilities provided that business offices and repair and storage facilities are not included</td>
<td>P</td>
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<tr>
<td>Public facilities with business offices and repair and storage facilities</td>
<td>C</td>
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<tr>
<td>Transit facilities without repair or storage</td>
<td>*</td>
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<tr>
<td>Adult uses including product sales and entertainment</td>
<td>*</td>
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<tr>
<td>Artisan and photography studios and galleries</td>
<td>P</td>
</tr>
<tr>
<td>Auto, recreational vehicle, boat and truck sales</td>
<td>*</td>
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<tr>
<td>Auto, RV, boat and truck storage</td>
<td>P</td>
</tr>
<tr>
<td>Bars and taverns</td>
<td>*</td>
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<tr>
<td>Bed and breakfasts</td>
<td>P</td>
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<tr>
<td>Boarding and rooming houses</td>
<td>C</td>
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<tr>
<td>Car wash</td>
<td>*</td>
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<tr>
<td>Family child care homes</td>
<td>C</td>
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<tr>
<td>Child care center</td>
<td>C</td>
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<tr>
<td>Clubs and lodges</td>
<td>*</td>
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<tr>
<td>Convenience shopping and retail establishments</td>
<td>P</td>
</tr>
<tr>
<td>Entertainment facilities and theaters</td>
<td>C</td>
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<tr>
<td>Equipment, rental establishments without outdoor storage</td>
<td>P</td>
</tr>
<tr>
<td>Equipment, truck and trailer rental establishments with outdoor storage</td>
<td>*</td>
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<tr>
<td>Food catering</td>
<td>*</td>
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<tr>
<td>Funeral homes</td>
<td>*</td>
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<tr>
<td>Gasoline stations</td>
<td>C</td>
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<tr>
<td>Health and membership clubs</td>
<td>P</td>
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<tr>
<td>Home occupations - with restrictions</td>
<td>P</td>
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<tr>
<td>Hospitals</td>
<td>*</td>
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<tr>
<td>Large retail establishments</td>
<td>*</td>
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<tr>
<td>Large animal boarding (riding stables)</td>
<td>*</td>
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<tr>
<td>Limited indoor recreation facility</td>
<td>C</td>
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<tr>
<td>Limited outdoor recreation facility</td>
<td>C</td>
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<tr>
<td>Lodging establishments</td>
<td>C</td>
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<td>LIST OF PERMITTED, COND. &amp; PROHIBITED USES</td>
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<td>Long term care facilities</td>
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<tr>
<td>Medical and dental offices and clinics</td>
<td>P</td>
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<tr>
<td>Mixed-use dwelling units</td>
<td>P</td>
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<tr>
<td>Motor vehicle service and repair (minor repairs)</td>
<td>C</td>
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<tr>
<td>Motor vehicle service and repair establishments (major repairs)</td>
<td>*</td>
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<tr>
<td>Night clubs</td>
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<tr>
<td>Open-air farmers' markets</td>
<td>P</td>
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<tr>
<td>Parking lots and parking garages (as a principal use)</td>
<td>C</td>
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<tr>
<td>Personal and business service shops</td>
<td>P</td>
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<tr>
<td>Plant nurseries &amp; greenhouses</td>
<td>*</td>
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<tr>
<td>Print shops</td>
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<td>Professional offices, financial services</td>
<td>P</td>
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<tr>
<td>Restaurants/standard &amp; fast food without drive-throughs</td>
<td>P</td>
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<tr>
<td>Restaurants with drive-throughs</td>
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<td>Retail and supply yard establishments with outdoor storage</td>
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<tr>
<td>Safe house for battered or abused adults or children of up to eight (8) families</td>
<td>P</td>
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<tr>
<td>Sales and leasing of farm implements, heavy equipment sales, and heavy excavation equipment</td>
<td>*</td>
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<tr>
<td>Small animal boarding (kennels)</td>
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<tr>
<td>Small grocery stores</td>
<td>P</td>
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<tr>
<td>Supermarkets</td>
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<tr>
<td>Tourist facilities</td>
<td>P</td>
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<tr>
<td>Veterinary facilities, small animal clinics</td>
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<tr>
<td>Veterinary facilities, large animal clinics</td>
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<tr>
<td>Veterinary hospitals</td>
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<td>Dry cleaning plants</td>
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<td>Enclosed mini-storage facilities</td>
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<tr>
<td>Gas, oil and other hydrocarbon well drilling and production (as permitted by state and local regulations)</td>
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<tr>
<td>Manufacturing and preparation of food products</td>
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<tr>
<td>Manufacturing, assembly or packaging of products from previously prepared materials</td>
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<tr>
<td>LIST OF PERMITTED, COND. &amp; PROHIBITED USES</td>
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<tr>
<td>Manufacturing of electric or electronic instruments and devices</td>
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<td>Plumbing, electrical and carpenter shops</td>
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<td>Recycling facilities</td>
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<td>Research, experimental or testing laboratories</td>
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<td>Resource extraction, processes and sales establishment</td>
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<tr>
<td>Sales and leasing of farm implements, heavy equipment sales, mobile/manufactured homes, and heavy excavation equipment</td>
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<tr>
<td>Warehouse, distribution and wholesale uses</td>
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<td>Wireless telecommunications facilities</td>
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<td>Workshops and custom small industry uses</td>
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<tr>
<td>Common equestrian stabling and grazing with restrictions</td>
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<td>Cultivation, storage and sale of crops, vegetables, plants, flowers and nursery stock produced on the premises</td>
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<td>Farming, including but not limited to, gardening, horticulture, fruit growing, growing of vegetables, trees, shrubs, plans, turf and sod</td>
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<tr>
<td>Livestock (with limitations)</td>
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<td>Plant nurseries and greenhouses</td>
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<tr>
<td>Structures for storage of agricultural products produced on the premises</td>
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