TOWN OF TIMNATH

RESOLUTION NO. 22, SERIES 2008

A RESOLUTION MAKING CERTAIN FINDINGS OF FACT REGARDING THE PROPOSED ANNEXATION OF A PARCEL OF LAND KNOWN AS RIVERBEND TO THE TOWN OF TIMNATH, COLORADO

WHEREAS, the Town Council of the Town of Timnath, Colorado, has found a petition for the annexation of the hereinafter described parcel of land to be in substantial compliance with the requirements of Section 31-12-107(1), Colorado Revised Statutes; and

WHEREAS, the Town Clerk has provided notice of public hearing on the proposed annexation by publication once per week for four successive weeks and by registered mail to the Clerk of the Board of County Commissioners, the County Attorney, the school district and to any special district having property in the area to be annexed; and

WHEREAS, the Town Council has completed a public hearing to determine if the proposed annexation complies with Sections 31-12-104 and 105, Colorado Revised Statutes, to establish eligibility for annexation.

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

Section 1. That the Town Council hereby finds and concludes with regard to the annexation of the property described in Exhibit A attached hereto and incorporated herein, that not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the existing boundaries of the Town; and therefore, because of such contiguity, a community of interest exists between the property proposed to be annexed and the Town; the property proposed to be annexed is urban or will be urbanized in the near future, and that the property proposed to be annexed is integrated or is capable of being integrated with the Town; and

Section 2. That the Town Council finds and determines that no land held in identical ownership has been divided or included without written consent of the owner thereof; that no annexation proceedings have been commenced by another municipality; that the annexation will not result in the detachment of the area from a school district; that the annexation will not result in the extension of a municipal boundary more than three miles; that the Town has in place a plan for said three mile
area; and that in establishing the boundaries of the area to be annexed the entire width of any street or alley is included within the area annexed.

BE IT FURTHER RESOLVED:

That an election is not required, and no additional terms or conditions are to be imposed upon the area to be annexed other than as set forth in the Annexation Agreement attached hereto as Exhibit B, which Agreement is hereby approved and fully incorporated herein by this reference.

RESOLVED AND PASSED by the Town Council this 5th day of November, 2008.

TOWN OF TIMNATH

Donna Benson, Mayor

ATTEST:

Milissa McGuire, Town Clerk
Legal Description of the Property

Parcel 1:

A tract of land situate in the Northwest quarter of Section 2, Township 6 North, Range 68 West of the 6th P.M., which considering the North line of said Northwest Quarter as bearing East and West and with all bearings contained herein relative thereto, is contained within the boundary lines which BEGIN at a point which bears East 424.04 feet from the Northwest corner of said Section 2, and runs thence East 1410.70 feet; thence South 09 degrees 58 minutes East 1340.56 feet; thence South 88 degrees 18 minutes West 1195.25 feet; thence North 39 degrees 11 minutes 30 seconds West 31.31 feet; thence North 33 degrees 25 minutes West 29.39 feet; thence North 88 degrees 18 minutes East 296.22 feet; thence North 09 degrees 58 minutes West 1070.74 feet; thence West 465.73 feet; thence North 13 degrees 11 minutes West 250.22 feet to the POINT OF BEGINNING, County of Larimer, State of Colorado.

Parcel 2:

A tract of land situate in the Northwest Quarter of Section 2, Township 6 North, Range 68 West of the 6th P.M., which considering the North line of said Northwest Quarter as bearing East and West and with all bearings contained herein relative thereto, is contained within boundary lines which BEGIN in at a point which bears East 424.04 feet and again South 13 degrees 11 minutes East 550.22 feet; and again South 15 degrees 53 minutes East 220.00 feet; and again South 18 degrees 33 minutes East 465.00 feet; and again South 33 degrees 25 minutes East 171.75 feet, and again South 39 degrees 11 minutes 30 seconds East 31.31 feet from the Northwest corner of said Section 2, and run thence North 88 degrees 18 minutes East 1195.25 feet; thence South 10 degrees 13 minutes East 1258.41 feet to the East-West centerline of said Section 2; thence along said centerline South 89 degrees 02 minutes 54 seconds West 445.04 feet; thence North 34 degrees 23 minutes 30 seconds West 128.95 feet; thence North 39
degrees 11 minutes 30 seconds West 1424.43 feet to the POINT OF BEGINNING, County of Larimer, State of Colorado.

TOGETHER WITH all water, water rights, ditches, ditch rights, laterals, lateral rights, wells, well rights, sumps, return water systems, decrees, lakes, and reservoir rights, belonging to or in any way appertaining to the above-described property, including, but not limited to, all rights, title, and interest of Grantor in and to the Akin Lateral, two and one-half (2½) shares of the capital stock of The Lake Canal Company, eight (8) shares of the capital stock of The Cache La Poudre Irrigation Company, and two (2) domestic water taps in the Fort Collins-Loveland Water District.
ANNEXATION AGREEMENT  
RIVERBEND PROJECT  

THIS ANNEXATION AGREEMENT ("Agreement") is entered into and made effective as of the ___ day of ____________, 2008, between the TOWN OF TIMNATH, a municipal corporation of the State of Colorado, whose address is 4100 Main Street, Colorado 80547 (the "Town"), and ARBOR HOLDINGS, LLC, a Colorado limited liability company, and TIMNATH LANDS, LLC, a Colorado limited liability company (the "Owners"). Sections 2 through 11 inclusive of this Agreement shall be effective only upon the annexation of the real property into the Town, more fully described on the attached Exhibit A.

RECITALS AND REPRESENTATIONS:

WHEREAS, except for public streets and highways, the Owners are the sole owners of the property located in Timnath, Colorado, more fully described on Exhibit A attached hereto and incorporated into this Agreement (the "Property"); and

WHEREAS, pursuant to the Colorado Municipal Annexation Act, C.R.S. §§31-12-101, et seq., the Owners intend to file a petition for annexation of the Property into the Town; and

WHEREAS, the Town wishes to control its growth in a planned and orderly fashion, maintaining and improving its quality of life and its ability to provide and enhance environmental amenities, services, and local opportunity for its citizens; and

WHEREAS, the Owners wish to develop the Property for a use or uses compatible with its objectives and those of the Town (the "Development"); and

WHEREAS, it is in the public interest for the parties to enter into a written agreement regarding the matters addressed in this Agreement.

COVENANTS:

NOW, THEREFORE, in consideration of the foregoing recitals and representations, the mutual covenants contained herein and the annexation of the Property by the Town, the adequacy and sufficiency whereof are acknowledged, the parties agree as follows:

1. **ANNEXATION.** Annexation of the Property shall be in accordance with the Colorado Municipal Annexation Act, C.R.S. § 31-12-101: et seq., and Chapter 16 Article 13 of the Timnath Municipal Code. The Owners agree to cause a properly prepared and executed petition for annexation of the Property to be filed with the Clerk of the Town and to initiate and, to the best of its ability, complete such annexation and cooperate in every way reasonably possible to facilitate the annexation of the Property by the Town.

2. **TOWN JURISDICTION OVER PROPERTY.** Except as expressly set forth in this Agreement, the Property shall, upon annexation, be subject to all of the ordinances, codes, rules, regulations, policies and applicable contracts of the Town, as now or hereafter constituted.
3. **MUNICIPAL SERVICES**

3.1 **General.** The Town shall provide to the Property the usual and customary municipal services currently provided by the Town within its municipal limits generally, in accordance with the ordinances and policies of the Town. Except as otherwise provided in this Agreement, the Property shall be subject to all policies, ordinances, rules, regulations, platting restrictions and permitting procedures currently in effect or enacted in the future to allocate or regulate the use of the Town’s resources generally throughout the Town.

3.2 **Water Service.** The Town will assist in the Property obtaining water service from the Fort Collins/Loveland Water District in the same manner and under the same conditions as water service is provided to other property within the Town by the District, subject to the rules and regulations of the Town as now or hereafter constituted. The Town shall require proof of purchase of a water tap for each building site before a building permit will be issued for that site.

3.3 **Sanitary Sewer Service.** The Town will assist in the Property obtaining sewer service from the South Fort Collins Sanitation District under the same conditions as sewer service is provided to other property within the Town by the District, subject to the rules and regulations of the Town as now or hereafter constituted. The Town does not warrant the availability and capacity of sewer service by the South Fort Collins Sanitation District to the Owners for any phase of development. The Town shall require proof of purchase of a sewer tap for the building site before a building permit will be issued for the site. Owners agree to comply with South Fort Collins Sanitation District’s requirements for service, including any formula devised by the District to apportion the cost of existing facilities.

3.4 **Inclusion in Special Districts.** Owners agree to petition for inclusion of the Property into the Fort Collins/Loveland Water District, the South Fort Collins Sanitation District, the Northern Colorado Water Conservancy District, the Poudre School District R-1, and the Poudre Fire Protection District within thirty (30) days of the effective date of the annexation, if the Property is not already included within said districts. In the event Owners fail to do so, Owners appoint the Town Clerk as its agent for the purpose of petitioning for inclusion into said special districts and Owners agree to pay all costs associated therewith.

3.5 **Fire Protection Services.** The Town does not provide municipal fire protection services but such services are available generally from the Poudre Fire Protection District. The Owners shall be solely responsible for installing all fire hydrants and other fire protection measures on the Property and its perimeter as may be required by the Poudre Fire Protection District.

3.6 **Police Services.** The Town shall provide police services to the Property upon the same basis as such services are provided to other property within the Town.

3.7 **Electric, Natural Gas, Telephone, Cable TV and Other Utility Services.** The Town does not provide electric, natural gas, telephone, or cable TV facilities or services.
Such services are available within the Town from private entities. The extension of such services to the Property is not the obligation or responsibility of the Town.

3.8 Transportation. Once constructed and accepted, the Town shall maintain duly dedicated and accepted public streets and roads within its municipal boundaries which serve the Property, both on and off-site, upon the same basis as such services are provided to other property within the Town.

4. ZONING

4.1 Zoning. The Owners hereby request Commercial zoning on the north half of the Property, identified as Parcel 1 and consisting of approximately ____ acres, and Mixed Use zoning on the south half of the Property, identified as Parcel 2 and consisting of approximately ____ acres, in accordance with the site plan map attached hereto as Exhibit B and incorporated herein ("the Site Plan"), and with the zoning categories contained in Chapter 16, Timnath Municipal Code. The parties' mutual desire and decision to annex the Property into the Town is based in part upon their expectation that development thereof will occur in accordance with the provisions of this Agreement, the Site Plan, and the Current Zoning Ordinances. Nothing in this Agreement shall be construed or interpreted to limit, restrict or abrogate in any way the power or authority of the Town to rezone the Property, or any portion thereof, or amend the Site Plan at any time after annexation in response to a zoning application by the then-owner(s) thereof.

4.2 Effect of Failure to Zone: Challenge. In the event that the Town Council fails or refuses to enact an ordinance or ordinances zoning the Property as above described on the same date as the ordinance annexing the Property, the annexation of the Property shall be deemed null, void and of no effect, and the annexation map and plat of the Property shall not be filed for record with the Larimer County Clerk & Recorder pursuant to C.R.S. § 31-12-113(2). Should the ordinance(s) annexing and/or zoning the Property be challenged by citizen initiative, referendum, or otherwise, and should any such challenge result in the invalidity of the annexation or zoning ordinance(s) upon entry of a final order of court which is unappealable or which the parties have elected not to appeal, then, similarly, the annexation of the Property shall be null, void and of no effect, and the annexation map and plat shall not be filed with the Larimer County Clerk & Recorder pursuant to C.R.S. § 31-12-113(2) and if already filed, the Town shall promptly act to disconnect the Property. In that circumstance, the parties agree that the procedure set forth in C.R.S. § 31-12-501, et seq., shall apply. In the event of invalidity of the annexation ordinance(s) pursuant to any of the conditions described in this Section, such invalidity shall not be deemed a breach of the Agreement by either party, and the parties shall be deemed released from further obligations hereunder, provided that Owners shall remain responsible for the cost of legal defense pursuant to Sections 9 and 10 hereof.

5. DEVELOPMENT

5.1 Application of Town Requirements. Except as permitted herein, the Property shall be developed in conformity with Town’s current Comprehensive Plan, subdivision regulations, zoning code, building codes and other applicable statutory and local requirements,
including without limitation, those pertaining to zoning, subdivision, streets, storm drainage, utilities, landscaping, parks and open spaces and flood control. Except as limited by and necessary to preserve Owners’ vested rights as set forth in Section 12, the Town may amend and apply to the Property all of foregoing codes and requirements including the Town’s building codes in effect at the time building permits are requested, so long as the same are generally applicable and uniformly applied or enforced to all similarly situated property within the Town. The Owners shall have the right to plat the Property and construct improvements within the Property in one or more phases.

6. REQUIRED DEDICATIONS AND IMPROVEMENTS

6.1 General Requirement. Owners shall be required at their cost to dedicate and construct, as appropriate, all of the improvements described in this Section 6 (collectively, the “Public Improvements”), all of which shall be constructed and installed by the Owners in accordance with plans and designs approved by the Town, and conveyed to the Town at no cost to the Town as provided below, unless conveyed to an owner’s association with the consent of the Town. The Town and the Owners agree that the Public Improvements required hereby are directly related to and generated by development intended to occur within the Property and that no taking thereby will occur requiring any compensation.

6.2 Subdivision Required. Any subdivision of the Property following annexation shall be in accordance with current Town subdivision and other applicable regulations. In addition to the improvements required by this Agreement, the specific Public Improvements required for and as a condition of development of each individual subdivision plat shall be determined during the subdivision review process, in accordance with the Town subdivision regulations.

6.3 Relocation of Utilities. Owners agree to pay the full cost of relocating existing underground or overhead utilities that may be required by the development of the Property. All existing overhead utilities within the Property or in road rights-of-way adjacent to the Property, including but not limited to electric or telecommunications lines and cables shall be relocated underground.

6.4 Roadways, Easements and Rights of Way. Owners shall dedicate to the Town, at Owners’ sole cost and expense, the following easements and rights of way on and as a condition of relevant approval for the relevant final plat:

a. Dedication of Harmony Road right of way by providing a minimum of 70 feet of right of way from centerline of Harmony to complete the total of 140 feet for the entire frontage of Harmony Road as it borders the Property.

b. The Town shall permit, and Owners shall provide, temporary vehicular access from the parcel shown on Exhibit B as the “Huisjen Parcel” to County Road 3A. The temporary access must be completed permanent, Town approved access to the public roadway system, at the completion of the widening of Harmony Road.

c. Access on Harmony Road shall be limited to one full access at the location as shown on the Site Plan, aligned with access to the Timnath Farms North
development, and one right in/right out access at CR3F, until such time as alternate access via the main collector roadway through the Development is provided to Parcels 1 and 2 as shown on Exhibit B.

d. Dedication of sufficient right of way on CR5 to complete 100 feet of right of way bordering the Property on the west. The right of way dedication shall be shifted and/or enlarged beyond the 100 foot required width to include any strips and gores of land that may remain titled in the Owners’ names lying west of such dedicated right of way; it being the intent of the parties that the eastern boundary of the dedicated right of way shall form the western boundary of the Property.

e. Dedication of right of way for a main collector access into the Development, as shown on the Site Plan.

f. Access for current residential property owners on CR3F, shown as Parcels 1 and 2 on Exhibit B, shall be provided as shown on the Site Plan. The Owners shall have the right to remove the existing CR3F at their sole discretion and sole cost so long as the Owners provide an adequate alternative access for Parcels 1 and 2 through the Property as shown on the Site Plan, and after that time, the Town agrees upon the request of the Owners to vacate CR3F. One-half of the right-of-way for CR3F shall revert to the adjacent property owners on each side.

6.5 Drainage Improvements.

a. General. In conformance with Town standards and specifications, the Owners shall make provisions to control all storm water runoff greater than that historically generated from the Property. The Owners shall not alter historic flows in amounts, rate or time of discharge or in a manner that would adversely affect upstream, downstream or internal properties.

b. Floodplains. If any portion of the Property lies within a floodplain, including unmapped floodplains, as defined by the Federal Emergency Management Agency (FEMA), the Owners are responsible for all the necessary design and materials to be submitted to FEMA for proposed changes to the floodplain designation. Any submittal to FEMA must be reviewed and approved by the Town before submittal to FEMA.

c. Drainage Plan. Owners, at their sole expense shall prepare a master drainage plan for the Property. The master drainage plan shall show the location and extent of all drainage system improvements, including but not limited to collection and detention facilities. If the master drainage plan results in changes to drainage or irrigation facilities affecting other property or facility owners, the Town may require the Owners to obtain written consent from each property or facility owner for the changes before the Town will approve the plan. The Owners shall meet all Town standards and specifications in effect at the time of construction. The Town may require the Owners to update the master drainage plan for the Property for the review of each final plat to determine the configuration, timing, and responsibility for the improvements.

d. Construction. Owners shall construct all improvements in an
appropriate sequence to meet the demands that development of the Property generates. The master drainage plan, as approved by the Town, shall state the Owners’ responsibility for on-site drainage improvements. The master drainage plan may include construction of facilities to convey, collect and detain irrigation and storm water. The master drainage plan shall also state the Owners’ responsibility for the off-site drainage improvements described therein. The SIA will address these responsibilities in detail, including any proportionate reimbursements from adjacent and/or benefiting property owners or as stated in the Timnath Municipal Code then in effect.

6.6 Water Rights. It is agreed by the parties that the Property will receive domestic water service from the Ft. Collins Loveland Water District and not from the Town. Therefore, surface water rights will not be required to be dedicated to the Town. However, the Owners shall comply at the time of development with the domestic water supplier’s water rights requirements for obtaining domestic water. Other than as required by the domestic water service provider, Owners shall not be required to dedicate or convey water rights or pay cash in lieu of water rights dedication to the Town.

6.7 Transportation Facilities.

a. Transportation Study. The Owners shall provide to the Town a traffic impact study in accordance with the criteria as specified by the Town at the time of submittal of the Preliminary Plat, unless the Town waives the requirement.

b. Transportation Improvements.

i. For full development of the Property to occur, certain on-site and off-site transportation improvements, as identified in the approved traffic impact study, may be required, which may include by example and not limitation, the relocation and improvement to collector standards of Main Street Extension as shown in the Site Plan. Reference in this Agreement to Main Street Extension shall be to the Main Street Extension as shown on the Site Plan regardless of its name or designation at the time. The Owners agree to construct all on-site and off-site transportation improvements to accommodate the needs that development of each phase of the Property will generate, and as required by the Town’s subdivision regulations. Notwithstanding anything herein to the contrary, Owners shall be solely responsible, subject only to the right of reimbursement as provided at (ii) below, for all transportation improvements needed to fully address the needs and capacity demands generated by the Development, as documented by the traffic impact study and, with respect to the traffic signal at the intersection of Main Street Extension, as warranted by applicable state of Colorado Department of Transportation (“CDOT”) regulations. The Owners shall construct the improvements in a sequence acceptable to the Town to meet the demands that development of each phase of the Property will generate. The Owners shall not be obligated to construct the round-a-bout as shown on the Site Plan to the extent there is no vehicular access to the same, and unless and until phasing of the Development requires the same, as shown by the traffic impact study. The Owners shall have no obligation to improve or pay any of the costs of construction, maintenance, repair or improvement of County Road 5. The Owner shall dedicate a right-of-way for County Road 5 on the final plat.
ii. The Owners and the Town agree that the Owners are entitled to a prorata share of the cost of constructing Main Street Extension to collector standards, the cost of constructing the round-a-bout, and the cost of the traffic signal at Harmony Road (the “Infrastructure”) from property owners who develop their properties using Main Street Extension as access from Harmony Road (the “Benefitted Properties”). With respect to reimbursement of the costs of the Infrastructure, only those properties having direct, substantially perpendicular access to County Road 3F shall be considered Benefitted Properties having an obligation for reimbursement of the Infrastructure costs. The Town agrees to require, as a condition of annexation of any portion of the Benefitted Properties that occurs within fifteen (15) years from the effective date of annexation of the Property that upon issuance of a permit by the Town for development of the Benefited Property, the Owners shall be reimbursed by the developers of said Benefitted Properties of a proportionate share of the cost of the Infrastructure which serves such Property in proportion to the Benefitted Properties’ use of the same. In no such event shall the Town be responsible to Owners for any payment due Owners from the developers or owners of such Benefitted Properties.

iii. Owners shall design and construct a traffic signal at the main entrance to the development (the intersection of Harmony Road and on Main Street when warranted under applicable CDOT regulations. Owners shall be entitled to reimbursement for a portion of their costs for the same in the manner set forth at subsection (ii) above.

6.8 Other Improvements.

a. Owners shall install and dedicate to the Town an 8 foot sidewalk along the entire frontage of the Property with Harmony Road, along with landscaping in accordance with Harmony Road landscaping guidelines. The sidewalk need not be a straight line but may be curved, with the Town’s approval.

b. To the extent economically feasible, Owner shall make reasonable efforts to relocate the existing barn on the Property to another location, either within the Property or off-site.

c. Owners shall dedicate a public park to the Town, in the location and size shown on the Site Plan. The Owners shall have the right but not the obligation to fill the park site on the north side of the Poudre River prior to conveyance of the park site to the Town. The Owners shall not be obligated to make any improvements to the park site, with the exception of interior pedestrian trails. The Owners shall have the right but not the obligations to fence the south boundary of the park site. The Town shall act in good faith and use all reasonable efforts to maintain the existing stand of cottonwood trees on the park site, so long as such trees are alive and free of disease and present no safety hazard.

d. Town will act in good faith and use reasonable efforts to install the existing overhead cable line along County Road 5 underground in connection with the improvement of County Road 5 or the installation of the Fort Collins/Loveland Water District line along or within County Road 5.

e. Owners shall have the right but not the obligation to construct and
install a pedestrian/bicycle bridge across the Poudre River.

f. Owners shall construct a local trail system within the Development which connects with the Town’s existing and planned trail system outside the Development. The Owner shall not be obligated to construct any portion of the “Poudre Trail” with the Development, within the park or along the Poudre River.

6.9 Limitations on Dedications and Fees. Other than as set forth in this Agreement, Owners shall not be required to dedicate additional land for public school sites, nor pay any development impact fees or fees in lieu of dedication, nor reimburse the Town for any other cost unless previously approved by Owners in writing.

6.10 Maintenance.

a. Owners shall maintain all public facilities, including public parks, trails, and drainage within the boundaries of the Property, for two (2) years subsequent to the date of initial acceptance of the same by the Town.

b. Detention ponds, private storm sewers, underdrains, and other drainage facilities shall be owned and maintained in perpetuity by one or more owners’ Associations or a Town-approved Financing District unless otherwise agreed to by the Town and stated in the Subdivision Improvement Agreement for the Development (“SIA”). Upon request of the Owners, the Town agrees to give fair and reasonable consideration to the formation of a metropolitan district to construct, install, maintain, repair and replace improvements within the Property.

7. DEVELOPMENT IMPACT FEES. The Town has established certain uniform development impact fees that directly address the effect of development intended to occur within the Property upon the Town’s infrastructure, administration, and delivery of governmental services. The Owners agree to the payment of these uniform development impact fees as currently established by the Town until the year 2024 with no more than 3% increase per year, and after that time as the same are increased with the Town-wide effect. The development impact fees are to be paid at the current rate upon issuance of building permits. The Town and the Owners agree that the necessity of such development impact fees is directly related to and generated by development intended to occur within the Property and that no taking thereby will occur requiring any compensation. For Phase I of the project, the Owners agree to pay, at time of building permit, commercial impact fees in the amount of $0.09/SF. For Phase II of the development, if residential, the fee shall be $4,913 per single family residence, plus $2,000 additional per single family residence for Old Town Improvements, with a corresponding reduction for multi-family residences. The Town acknowledges $33,000 contribution by the Owners for pre-annexation fees, which shall be credited against the development impact fees due for the first and each subsequent building permit requested by the Owners until the credit is exhausted.

8. CONVEYANCE AND ACCEPTANCE REQUIREMENTS

8.1 Land Dedication. Dedication of public easements for utilities, rights-of-
way for streets and other public ways shall be by plat dedication. The Owners shall dedicate rights-of-way for all roads and utility easements to the Town by plat dedication. All utility easements dedicated to the Town, shall be non exclusive, for the use and the benefit of the various entities furnishing utility services, i.e., electrical, telephone, gas, cable TV, water, sewer, and storm sewer. Utility easements for utilities may be within the road or trail rights-of-way and may be identical or overlapping. Dedications for parks and open space and other public purposes shall be by Special Warranty Deed or appropriate instrument of conveyance acceptable to the Town. Owners 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 a reasonable period of time after the recording of the plat, deed or other conveyance document.

8.2 Timing. All dedications and transfer of ownership shall occur upon recording of the Final Plat. The suitability and acceptance of any land proposed to be dedicated to the Town shall be at the sole discretion of the Town.

9. **INDEMNIATION AGAINST LEGAL CHALLENGE.** Owners understand and acknowledge that the annexation and zoning of the Property may be subject to challenge by the filing of litigation in a state or federal court. In the event of such challenge, the Town will incur costs and expenses related to defense of same, including reasonable attorney’s fees, filing fees, and court costs. Owners shall indemnify the Town and shall pay all reasonable costs and expenses incurred by the Town in any defense of the annexation and/or zoning of the Property, or of any other action determined necessary or desirable by the Town in order to effectuate the annexation or zoning of the Property, or which are in any manner connected with Town’s enforcement of this Agreement. Owners further agree to investigate, handle, respond to, and to provide defense for and defend against or at the Town’s option to pay the attorney’s fees for defense counsel of the Town’s choice for any such action. Except as limited by and necessary to preserve the Owners’ vested rights as set forth in Section 12 of this Agreement, the Town shall reserve and retain the right to repeal, modify, or amend any or all ordinances or resolutions annexing or zoning the Property, and shall reserve and retain the right to settle, prosecute, litigate, and defend any such action in any manner and by any method that the Town deems appropriate, desirable, or in its best interests. The Town shall, to the extent practicable and convenient, consult with and advise the Owners of the progress of any defense.

10. **OWNERS’ INDEMNIATION AGAINST REFERENDUM.** Owners understand and acknowledge that the annexation and zoning of the Property may be subject to public referendum. In the event of the filing of a public referendum, the Town may incur costs and expenses related to conducting a municipal election, including but not limited to costs and expenses of publication, printing, and mailing, reasonable attorney fees, and the costs of retaining the services of election judges. Owners shall indemnify the Town and shall pay all reasonable costs and expenses incurred by the Town in conducting such election, regardless of outcome; provided, however, that except as limited by and necessary to preserve the Owners’ vested rights as set forth in Section 12 of this Agreement, the Town shall reserve and retain the right to repeal, modify, or amend any or all ordinances and resolutions annexing or zoning the
Property or to take any other action the Town deems appropriate, desirable, or in its best interests in the handling, consideration of the referendum petition and referendum election.

11. **EXCLUSIVITY OF ANNEXATION PETITION.** Owners agree that for a period of 1 year after an annexation petition is filed with the Town, the Owners will not sign any other petition for annexation of the Property or any petition for an annexation election relating to the Property, except upon request of Town, until the Town has acted on the Owners’ Petition by either annexing the Property or officially terminating annexation proceedings.

12. **VESTED PROPERTY RIGHTS.**

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

a. The Owners will be required to make substantial financial commitments and complete major public infrastructure improvements in the early phases of the development of the Property.

b. A material consideration of the Owners’ annexation of the Property and their 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, the Current Zoning Ordinances, and the Site Plan, particularly the vested property rights granted herein.

12.2 **Vested Rights.**

a. **Vested Rights Created.** Consistent with the purpose of this Agreement, the parties hereby agree that the Site Plan together with this Agreement shall constitute a “site specific development plan” as defined in C.R.S. §24-68-102(4); that certain rights shall be vested property rights as provided in this Agreement; and that the Owners shall have a vested property right to undertake and complete development and use of the Property in accordance with the Site Plan, Current Zoning Ordinances, and this Agreement. The rights and obligations under this Agreement shall vest in the Owner and their designated successors and assigns as benefits and burdens to the land and which shall run with title to the land; provided, however, that nothing herein contained shall be construed to require or obligate the Owners to develop the Property in accordance with the Site Plan.

b. **Rights Which are Vested.** In consideration of the acknowledgements described in subsection 12.1 above, the public benefit to be derived from development of the Property within the Town, and the obligations and commitments of the Owners 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 Board 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; (e) 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 and the Site Plan; or (d) materially restrict the use of the Property as permitted under the Current Zoning Ordinances; without the consent of the Owners.

c. **Term of Vested Rights.** Parcel 1 of the Site Plan shall be vested for a period of fifteen (15) years and Parcel 2 for a period of twenty (20) after the date hereof. Extension of this period of vesting may be granted by the Town in its sole discretion, upon request of the Property Owners or their designated successors and assigns.

d. **Compliance with General Regulations.** The establishment of the rights vested under this Agreement shall not preclude the application of Town regulations of Town-wide general applicability including, but not limited to, the application of the requirements set forth at Section 5.1, building, fire, plumbing, engineering, electrical and mechanical codes, or the application of regional, state or federal regulations, as all of the foregoing exist on the date of this Agreement or may be enacted or amended after the date hereof, except as otherwise provided herein.

e. **Enforcement.** 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, 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 Site Plan; (d) materially restrict the use of the Property as permitted under the Current Zoning Ordinances; or (e) materially alter, impair, prevent, or diminish the vested property rights herein granted to develop the Property pursuant to this Agreement, the Current Zoning Ordinances, an approved Final Plat, and the Site Plan, the Town shall be in breach of this Agreement and the Owners shall have the remedies available at law or equity, provided however that in no event shall the Town be liable for any damages or economic losses of any kind, including punitive, consequential, exemplary or economic damages or lost profits. Usual, customary or reasonable delays in processing requests and/or applications for approvals shall not be considered a breach of this Agreement.

f. **Limitation on Vested Rights.** Notwithstanding anything in this Section 13 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. The vested property rights granted under this Agreement shall be in addition to any common law vested rights to which the Owners 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.
13. **TOWN ORDINANCES, REGULATIONS, CODES, POLICIES, AND PROCEDURES.** To the extent consistent with vested property rights granted in Section 12 above, the provisions of this Agreement, the Current Zoning Ordinances, and the Site 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 Site Plan to supersede Town ordinances, regulations, codes, policies and procedures except as provided herein or necessary for implementation of the terms of this Agreement.

14. **REFERENDUM.** In the event that any of the ordinances to be considered by the Town relative to the annexation and zoning of the Property become the subject of a citizen petitioned referendum, the ordinances subject to such referendum and this Agreement shall be suspended pending the outcome of the referendum. If the result of the referendum election is to reject such annexation or zoning, all of the provisions contained herein shall be null and void and of no effect, and such rejection shall be deemed a "failure to serve" pursuant to C.R.S. Section 31-12-119, but shall not be deemed to be a default by the Town. In that event, the Owners may petition for disconnection of the Property and the Town shall cooperate fully in approving the same. Conversely, if the result of such referendum election is to affirm such annexation and zoning, the Property shall be deemed finally annexed and zoned, whereupon this Agreement shall become effective and the parties shall be bound by all of the terms and conditions contained herein as of the effective date of this Agreement. In the event of such referendum, the expenses thereof shall be paid by Owners as set forth in Section 10. However, the Town shall be responsible for the payment of the costs of any required election required as a result of a referendum. The Owners' 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 Owners the annexation fees paid less the cost of any referendum election and all parties shall be released from all obligations under this Agreement. The Town agrees that in the event of the disconnection of the Property C.R.S. 31-12-703(1)(f) shall not apply to the disconnected Property.

15. **ASSIGNMENT**

15.1 Nothing contained in this Agreement shall be construed to prohibit or restrict in any way the Owners' 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.

15.2 Either Owner shall have the right to assign or transfer all or any of its interests, rights, or obligations under this Agreement to the other Owner or to any person or entity that is an "affiliate" of either Owner without the consent of any other party.

15.3 Either 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 Owner remains obligated for the performance of terms and conditions of this Agreement.
15.4 Either 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 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 Owner arising after the date such duties and obligations are assumed by the Financially Responsible Assignee.

15.5 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 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.

16. **EARLY GRADING OF THE PROPERTY.** The Owners may desire to perform over-lot grading of the Property prior to submission and/or approval of the Final Plat for any phase of development of the Property. The Town shall permit 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 Owners recognize that the erosion control plan may require temporary and/or permanent drainage improvements.

17. **GREEN BUILDING.** To the extent economically feasible, practical, and reasonably possible, the Owners shall act in good faith and use reasonable efforts to attempt to construct “green buildings” within the Development so long as constructing “green buildings” does not result in a significant, substantial or material increase in the costs of construction.

18. **GENERAL PROVISIONS**

18.1 **No Waiver.** A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

18.2 **Addresses for Notice.** Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

**TOWN:**

**OWNERS:**
Town of Timnath

c/o Town Manager

4800 Goodman Street

Timnath, CO 80547

Craig Harrison

2725 Rocky Mountain Way, #400

Loveland, CO 80538

With copy to:

Murray Dahl Kuechenmeister & Renaud LLP

2401 15th Street, Suite 200

Denver, CO 80202

James A. Martell

Liley, Rogers & Martell, LLC

300 S. Howes Street

Fort Collins, CO 80521

Or to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

18.3 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties, their successors in interest, or their legal representatives, including all developers, purchasers and subsequent owners of any lots or parcels within the Property, and shall constitute covenants running with the land.

18.4 Termination. If the annexation of the Property is, for any reason, not completed then this Agreement, with the exception of Sections 9 and 10, shall be null and void and of no force and effect whatsoever.

18.5 Disconnection. No right or remedy of disconnection is granted other than as provided herein. In the event the Property or any portion thereof is disconnected at Owners’ request, the Town shall have no obligation to serve the disconnected Property or portion thereof and this Agreement shall be void and of no further force and effect as to such Property or portion thereof.

18.6 Annexation and Zoning Subject to Legislative Discretion. The Owners acknowledge that the annexation and subsequent zoning of the Property are subject to the legislative discretion of the Town Council of the Town of Timnath. No assurances of annexation or zoning have been made or relied upon by the Owners. In the event that the Town Council, in the exercise of its legislative discretion, does not take any action with respect to the Property herein contemplated, then the sole and exclusive remedy for the breach hereof accompanied by the exercise of such discretion shall be the disconnection from the Town in accordance with state law, as may be appropriate.

18.7 Legal Discretion in the Case of Challenge. The Town of Timnath reserves the right to not defend any legal challenge to this annexation. In the event such a challenge occurs prior to any expiration of any statute of limitation, Town may, at its discretion, choose to legally fight the challenge or allow the challenge to proceed without defense. This Section does
not restrict the Owners from engaging the Town’s legal representatives in such a defense, at no cost to the Town.

18.8 Amendments to Governing Ordinances, Resolutions and Policies. As used in this Agreement, except with respect to the Current Zoning Ordinances and as otherwise specifically provided herein, any reference to any provision of any Town ordinance, resolution or policy is intended to refer to any subsequent amendments or revisions to such ordinance, resolution or policy, and the parties agree that such amendments or revisions are binding upon Owners.

18.9 No Third Party Beneficiaries. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Town and Owners, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person on such Agreement. It is the express intent of the Town and Owners that any person other than the Town or the Owners receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

18.10 Governing Law and Enforcement. This Agreement shall be governed by the laws of the State of Colorado. This Agreement may be enforced at law or in equity. Jurisdiction and venue for such suits shall be proper and exclusive in the district court for Larimer County, Colorado. In addition to any other available remedies, the Town may withhold or revoke any permits or certificates, including but not limited to building permits and certificates of occupancy, for any lot or structure within the Property owned at the time by Owners or a developer successor of Owners in the event of a breach of this Agreement by the Owners or such developer successor.

18.11 Attorney’s Fees. If the Owners or the Town breaches this Agreement, the breaching party shall pay the other party’s reasonable costs and attorney’s fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement. In no event shall either party be responsible for or entitled to any damages, whether regular, special, punitive or consequential, nor for any economic losses, damages or lost profits.

18.12 Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

18.13 Integration and Amendment. This Agreement represents the entire agreement between the parties and no additional or different representation, promise or agreement, written or oral, shall be binding upon either party with respect to the subject matter hereof. This Agreement may be amended only by an instrument in writing signed by the parties.

18.14 Severability. Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

18.15 Recordation. This Agreement shall be recorded by the Town with the
Clerk and Recorder's Office of Larimer County, Colorado. The Owners shall pay the reasonable cost of recordation of this Agreement, the Annexation and Zoning Ordinances, the Annexation Map, and any and all other documents necessary to perfect the Annexation, promptly upon request by the Town.

18.16 Original Counterparts. This Agreement may be executed in counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument.

DATED the ___ day of __________, 2008.

TOWN OF TIMNATH,
a municipal corporation

______________________________
Donna Benson, Mayor

ATTEST:

______________________________
Linda Salas, Town Clerk

ARBOR HOLDINGS, LLC, a Colorado limited liability company

By:______________________________
Craig D. Harrison, Manager

TIMNATH LANDS, LLC, a Colorado limited liability company

By:______________________________
Craig D. Harrison, Manager
STATE OF COLORADO  )
               ) ss.
COUNTY OF LARIMER   )

The above and foregoing instrument was acknowledged before me this ___ day of __________________, 2008, by Craig D. Harrison as Manager of ARBOR HOLDINGS, LLC, a Colorado limited liability company; and as Manager of TIMNATH HOLDINGS, LLC, a Colorado limited liability company.

My Commission expires:__________________.

______________________________
Notary Public
Exhibit A to Annexation Agreement

Legal Description of the Property
Exhibit B to Annexation Agreement
Site Plan

[attached]
Exhibit C to Annexation Agreement

[Current Zoning Ordinances]