TOWN OF TIMNATH

RESOLUTION NO. 25, SERIES 2008

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF TIMNATH APPROVING THE SUBDIVISION IMPROVEMENT AGREEMENT FOR TIMNATH FARMS NORTH FILING #1 FINAL PLAT

WHEREAS, Timnath Holdings, Inc., a Colorado Corporation has submitted to the Town of Timnath a Subdivision Improvement Agreement for the Timnath Farms North Filing #1 Final Plat located in Larimer County north of Harmony Road and east of Old Town; and

WHEREAS, on November 5, 2008, the Town council of the Town of Timnath, after holding all necessary public hearings and having received a recommendation from the Timnath Planning Commission, approved the Preliminary Plat for the Timnath Farms North Subdivision.

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

Section 1. The Subdivision Improvement Agreement for the Timnath Farms North Filing #1 Final Plat, is approved as attached hereto.

Section 2. The Mayor and the Clerk are authorized to sign the Subdivision Improvement Agreement for the Timnath Farms North Filing #1 Final Plat on behalf of the Town.

APPROVED AND ADOPTED THIS 5TH DAY OF NOVEMBER, 2008.

TOWN OF TIMNATH

[Signature]
Donna Benson, Mayor

ATTEST:

[Signature]
Milissa McGuire, Town Clerk
TOWN OF TIMNATH, COLORADO
SUBDIVISION IMPROVEMENTS AGREEMENT
FOR TIMNATH FARMS NORTH

[FILING NO. 1]

THIS AGREEMENT is made and entered into as of the ___ day of __________, 2008, by and between Timnath Holdings Inc., a Colorado Corporation, whose address is 7108 Alton Way, Centennial, Colorado 80112 sometimes hereinafter referred to as "Owner," and the Town of Timnath, a municipal corporation of the State of Colorado, the address of which is P.O. Box 37, Timnath, Colorado 80547 sometimes hereinafter referred to as "Timnath" or "Town", together referred to as "the Parties."

WITNESSETH:

WHEREAS, Owner is the owner of certain real property located within Timnath and described on Exhibit A attached hereto (the "Property") and Owner has submitted an application for development of said property known as Timnath Farms North Filing No. 1 (hereinafter, the "Project"); and

WHEREAS, as a condition of approval of the Project certain public improvements, which are more particularly described on Exhibits B and C attached hereto (hereinafter referred to as "Improvements") must be completed; and

WHEREAS, Timnath and Owner recognize the need for Improvements and exactions and agree that said Improvements and exactions are roughly proportional to the need created by the Project; and

WHEREAS, Timnath and Owner desire to evidence their agreement regarding the construction of said Improvements.

NOW, THEREFORE, the Parties agree as follows:

1. **Purpose and Scope.** This Agreement pertains to Improvements to be constructed on the Property in connection with and as a condition of development of the Property for residential purposes.

2. **Exhibits and Inclusions.** This Agreement includes the following Exhibits which are attached hereto and incorporated herein by this reference:
   a. Exhibit A: Legal Description of the Property
   b. Exhibit B: Improvements Quantities and Cost Estimates
   c. Exhibit C: Engineering plans prepared by ________________________, Inc. dated ________________ submitted to and approved by the Town, and included as a
part of this Agreement (together with any modifications thereto agreed to by the Parties), referred to herein as the "Engineering Plans".

d. **Exhibit D**: Declaration of Covenants, Conditions and Restrictions

e. **Exhibit E**: Form of Letter of Credit

f. **Exhibit F**: Form of Partial Release of Letter of Credit

3. **Obligation to Provide Improvements.**

a. It is the intent of this Agreement to provide for construction of the Improvements described in **Exhibits B** and **C**. The Parties acknowledge that the costs and quantities set forth on **Exhibit B** are estimates and that the actual costs and quantities may vary from such estimates.

b. Owner shall construct and install the Improvements in accordance with the Engineering Plans. Owner shall not modify the Engineering Plans or any of the Improvements without the prior written approval of Timnath. Timnath will communicate its approval or disapproval of any such modification within fifteen (15) business days after its receipt of Owner's request therefor. If Timnath fails to so communicate within such period, the modification will be deemed approved.

4. **Reserved.**

5. **Rights-of-Way, Easements and Lighting.**

a. It is the intent of the Parties by this Agreement to provide for all necessary rights-of-way and easements in conjunction with the installation of the Improvements required by Timnath. The Owner agrees to dedicate said rights-of-way and easements on or before recording of the final plat for Timnath Farms North Filing No. 1 (the "Plat").

b. As to any of the Improvements which have not previously been dedicated on the Plat of the Subdivision, including without limitation street light poles, fixtures and wiring, such Improvements shall be conveyed to the Town by general warranty deed (if real estate) or by bill of sale with full warranty of title (if personal property), free and clear of all liens, encumbrances and restrictions upon the determination of the Town Engineer that such Improvements have been satisfactorily completed and that acceptance of such Improvements by the Town is proper. Conveyance of such Improvements shall be made by instrument acceptable as to form and substance by the Town Attorney.

6. **Reserved.**
7. **Owner's Costs.** Except as otherwise expressly provided in this Agreement, Owner agrees to provide and pay for all labor, materials, tools, supplies, equipment, water, light, power, transportation, services and all other facilities and things necessary for the execution and satisfactory completion of the Improvements in accordance with the Engineering Plans. The costs for which Owner shall be responsible shall also include the Project utilities study, the Drainage Plan, survey, preliminary design, final design, construction, construction inspection, and the preparation of as-built drawings and administrative and legal expenses attributable to the Improvements to be constructed.

8. **Completion.** Except as otherwise expressly set forth in this Agreement before any building permit may be issued for residential construction within the Project, all Improvements shall be completed, inspected, approved and/or accepted by the Town. Except to the extent of changes permitted by the Town as evidenced by the approved Engineering Plans, all Improvements shall be designed and constructed in compliance with the ordinances, rules and regulations of Timnath and in compliance with applicable state and federal law. All Improvements shall be completed within three (3) years after the date of this Agreement. Extension of time for completion of Improvements may be granted by Timnath in writing for good cause shown. "Good cause" shall be determined by Timnath.

9. **Plans and Drawings.** Owner will furnish Timnath, free of charge, five (5) copies of the Engineering Plans and all supplemental plans, drawings and specifications relating to the Improvements, and a mylar and three (3) copies showing them in their as-built locations within three (3) months after final completion of the Improvements. Owner shall pay the cost of transferring and posting the "as-built" drawings to Timnath's records. The Engineering Plans and all supplemental plans, drawings, and legal descriptions shall be prepared, stamped and certified by a qualified engineer in accordance with the requirements of Timnath and prior to Timnath's accepting the Improvements. If needed due to revisions, an amended final plat showing all Improvements as existing shall be submitted within three (3) months of completion of the "as built" drawings of the Improvements. The information required by this Paragraph shall be submitted in digital form compatible with the Town's GIS system.

10. **Materials and Workmanship.** Unless otherwise specified, all materials for the Improvements shall be new and both workmanship and materials shall be of good quality. Prior to procurement (unless waived by the Town), Owner shall furnish Timnath for its approval the name of the manufacturer of equipment and materials which it contemplates incorporating in the work for the Improvements. Owner shall also furnish information on capacities, efficiencies, sizes, etc., and other information as may be required by Timnath. Samples shall be submitted for approval when requested. Timnath will respond to any such submittal within fifteen (15) business days after receipt thereof. If Timnath fails to respond within such period, the submittal shall be deemed approved. Equipment, materials and articles installed or used for the Improvements without Timnath's approval shall be at the risk of subsequent rejection.
11. **Permits and Easements.** Permits, licenses and rights-of-way of a temporary nature necessary for the construction of Improvements shall be secured and paid for by Owner. Permits, licenses and easements of a permanent nature shall also be secured and paid for by Owner, with the exception of such permits, licenses and easements located outside the Project legal description and needed for the Town's wholesale water system.

12. **Protection.**

a. Owner shall keep and maintain all of the Improvements in good order and condition until Timnath accepts the Improvements pursuant to Paragraph 24. Owner shall, at its cost, repair or replace any damage or destruction of the Improvements that occurs prior to such acceptance by Timnath, except to the extent that such damage or destruction is caused by agents or employees of Timnath.

b. Owner shall take all reasonable steps necessary to prevent its construction activities from damaging adjacent properties, including Timnath's property. If any adjacent property is damaged or destroyed by and during the construction of the Improvements, Owner shall, at its cost, promptly repair or replace the same to a condition similar or equal to that existing before such damage or injury.

c. Owner shall take all reasonable steps necessary to prevent its construction activities from causing bodily injury to any person, including, without limitation, traffic control and the installation of customary signage, barricade, fencing, lighting and other safety facilities.

d. In addition to complying with the Erosion Control Plan contained in the Engineering Plans, Owner shall take all additional and reasonable steps necessary to prevent its construction activities from harming the water quality and wetland impacts.

13. **Indemnification.**

a. Owner hereby expressly binds itself to indemnify and save harmless Timnath and its officers and employees, against all suits or actions of every kind and nature brought, or which may be brought against them or any of them, or loss, cost or expense incurred by them or any of them for, or on account of, any injury or damage received or sustained by any persons, firms or corporations during the construction of the Improvements or the applicable warranty period as a result of (i) Owner's breach of any of its obligations hereunder, or (ii) the negligent or willful misconduct of Owner or any of its employees, agents or contractors.

b. The indemnity contained in this Paragraph 13 benefits the Town only. This Paragraph confers no benefit or right upon any third party.
c. The Town shall assert, to the fullest extent permitted by law, its immunity from suit under the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., as well as the limitation upon liability provided herein.

14. **Work Specifications.**

a. All work done under this Agreement shall be done to the lines, grades, and elevations shown on the Engineering Plans. Owner shall keep Timnath informed fifteen (15) days in advance of the times and places at which it wishes to undertake construction, in order that lines and grades may be furnished and necessary measurements for record may be made with a minimum of inconvenience to Timnath and of delay to Owner.

b. Any work done without being properly located and established by base lines, offset stakes, benchmarks, or other basic reference points located, established, or checked by Timnath, may be ordered removed and replaced at Owner's cost and expense. All stakes, bench marks, and other survey points shall be preserved by Owner. In case of their destruction by Owner or its employees, they will be replaced at Owner's expense.

15. **Inspections.** An inspector ("Inspector") shall be designated by Timnath to exercise authority on its behalf under this Agreement and to see that this Agreement is performed according to its terms. Work under this Agreement may, without cost or claim against Timnath, be suspended by the Inspector for substantial cause. The Inspector will be responsible for inspecting the construction of the Improvements that will eventually be dedicated to the Town. The Town may require that the Inspector be on-site full time if necessary during the construction of the Improvements. The Town may suspend or shut down work on the Improvements if there is a disagreement about the inspection schedule, construction methods and/or materials or any construction related matter regarding the Improvements that is determined by Timnath to be substantial.

a. The Inspector shall, within a reasonable time after their presentation to him, make decisions in writing on all claims of Owner and on all other matters relating to the execution and progress of the work or the interpretation of this Agreement, or of the plans, drawings and specifications. All such decisions of the Inspector shall be final, subject to the final decision of the Public Works Director or his designee.

b. The Inspector shall make all determinations of amounts and quantities of work performed hereunder. To assist in this work, Owner shall make available for inspection any records kept by Owner.

c. The Inspector and his authorized representatives shall have free access to the work at all times, and Owner shall furnish them with facilities for ascertaining whether the work being performed, or the work which has been completed, is in accordance with the requirements of this Agreement.
d. The Inspector will make observations of construction. The purpose of these observations and construction checking is to determine the progress of the work and to see if the work is being performed in accordance with the Engineering Plans. The Inspector will in no way be responsible for how the work is performed, safety in, on, or about the job site, methods of performance, or timeliness in the performance of the work.

e. Inspections may extend to all or any part of the Improvements and to the preparation or manufacture of the materials to be used. The Inspector will not be authorized to alter the provisions of this Agreement or any specifications or to act as foreman for Owner. The Inspector will have authority to reject defective material and to suspend any work that is being done improperly subject to the final decision of the Public Works Director or his designee.

f. Prior to commencement of construction, Owner shall designate a representative with authority to speak for Owner with whom Town’s inspector shall communicate on matters provided for in this subparagraph.

g. Owner agrees to pay to Timnath a fee for the examination of plans and the interim and final on-site inspections of the work, not to exceed the fees normally charged in Timnath for similar examinations and inspections.

16. Quality of Work. If substandard material, not conforming to the requirements of the Engineering Plans, has been delivered to the Project, or has been incorporated in the work, or if work shall have been performed of inferior quality, then such material or work shall be considered as defective and shall be removed and replaced as directed by the Inspector at the expense of Owner, subject to the final decision of the Timnath Public Works Director.

a. The right is reserved to reject defective materials before they have been incorporated into the work. If Owner fails to replace rejected materials, Timnath may replace them or correct defective work and charge the cost thereof to Owner. Any failure to earlier detect defective material or workmanship shall not impair Timnath’s right to a finally completed project.

b. If the specifications, the Inspector’s instructions or laws of any public authority require any work to be specially tested or approved, Owner shall give the Inspector timely notice of its readiness for inspection, and if the inspection is by another authority than the Inspector, provide the date fixed for such inspection. Inspections by the Inspector shall be promptly made. If any work should be covered up without approval or consent of the Inspector, it must, if required by the Inspector, be uncovered for examination at Owner’s expense.

c. Reexamination of questioned work or materials may be ordered by the Inspector and, if so ordered, the work or materials must be uncovered by Owner. If such work or materials be found in accordance with this Agreement and the plans, drawings and specifications approved by Timnath, Timnath
shall pay the cost of reexamination, replacement and restoration of the site. If such work or materials be found not in accordance with this Agreement and the plans, drawings and specifications approved by Timnath, Owner shall pay such cost.

d. The Inspector may order Owner to suspend work that may be damaged or endangered by climatic conditions. When adverse climatic conditions are unusual and extensive, an extension of time may be granted Owner by the Inspector.

17. **Final Inspection.** When the work specified in this Agreement is completed and the final clean-up has been performed, Owner shall notify Timnath that all work under the Agreement has been completed, and Timnath will, within ten (10) working days after such notice, weather permitting, make the final inspection. If such inspection reveals that the construction of the Improvements has been completed in accordance with the Engineering Plans and the other requirements of this Agreement, Timnath will approve and accept the Improvements by issuing its Certificate of Completion within ten (10) days and as contemplated in Paragraph 24 below. If the inspection reveals that the work has not been completed in accordance with the Engineering Plans and the other requirements of this Agreement, Owner shall promptly correct the deficiency at its cost and, following the completion of such corrective work, reissue its notice of completion to Timnath.

18. **Water and Sewer.** Owner shall pay all costs and expenses for construction of the water distribution and sewer collection systems installed to serve the Project. These costs shall include the utilities study, survey, preliminary design, final design, construction, construction inspection, and the preparation of as-built drawings and administrative and legal expenses attributable to the water and sewer improvements to be constructed.

19. **Lot Sales.**

a. Owner may not enter into any contract for the sale of any of the lots created by the Plat or take any Lot specific reservation until [Owner has provided Timnath the security required by Paragraph 22 below.][The Improvements have been constructed and accepted by the Town.]

b. This Section shall not be construed to restrict Owner's right to sell the Project to another developer as a bulk sale or Owner's use of Preferred Purchaser Certificates to provide its preferred purchasers with credits that may be applied to the purchase of any lot.

20. **Warranty and Guarantee.** Owner hereby warrants and guarantees to Timnath that the Improvements will be free of all defects in design, materials and construction, and will remain serviceable for a period of two (2) years from the date of final acceptance thereof by the Town.
a. Owner warrants that upon acceptance of the Improvements by Timnath title to all work performed and materials and equipment furnished in respect thereof will pass to Town free and clear of all liens, encumbrances, security interests, bailments, conditional sales contracts, claims and other agreements by which an interest or encumbrance is retained by any person or entity.

b. Owner warrants that all work performed and materials and equipment furnished in respect of the Improvements are new; of good quality; free from all faults and defects not inherent to the quality required; in compliance with the Engineering Plans unless otherwise specified; and were undamaged when installed. Any work, materials or equipment in respect of the Improvements not complying with these requirements, including any unapproved substitutions, may be considered defective.

c. If, within the applicable warranty period set forth above, any work, materials or equipment in respect to the Improvements is found to be defective or deficient Owner shall, without cost to Town and in accordance with Town’s written instructions, correct it promptly after receipt of a written notice from Town.

d. The warranty and guarantee periods set forth above shall be extended for work first performed and materials and equipment furnished after acceptance of the affected Improvements by the Town including any remedial effort performed within the stated warranty and guarantee period. The warranty and guarantee period shall be two (2) years after the date of performance of the remedial work or furnishing of the materials and equipment, even though it may extend the duration of any warranty and guarantee beyond the initial two (2) year period.

e. In any situation where defective or deficient work, materials or equipment affects the safety of persons or property and Owner has failed to respond in a timely manner, then without prior written notice to Owner or prejudice to any other rights or remedies, Town may act immediately to prevent threatened damage, injury or loss. In addition, if Owner fails to promptly correct any defect or deficiency where notice has been given to Owner, Town may undertake the necessary remedial effort. In either event Owner shall promptly reimburse Town for all costs. Nothing contained herein shall impose any duty upon Town to act for Owner in an emergency.

f. All warranty and guarantee obligations shall survive termination of this Agreement and acceptance of the Improvements by the Town. The establishment of all warranty and guarantee periods shall not be construed to create a period of limitation for commencement of any legal proceedings brought for a breach of the warranty.
g. Owner provides no warranty or guarantee to the Town other than that described in this Paragraph 20 and Owner hereby disclaims and the Town hereby releases Owner from any and all other warranties express or implied.

21. **Cost Estimate.** In order to secure the construction and installation of the Improvements, Owner and Timnath have estimated the costs of Improvements to be installed as set forth on Exhibit B. The purpose of said cost estimates is only for determining the amount of security and may be revised from time to time to reflect actual costs. Owner agrees to pay the actual costs of the Improvements.

22. **Security.**

a. Owner shall secure all of its obligations under this Agreement in respect of the Improvements by furnishing to Timnath one or more letters of credit in the face amount of $___________, in the form attached hereto as Exhibit E or such other form acceptable to Owner and the Town (collectively, the "Letter of Credit") issued by a US bank or another lender acceptable to Timnath (the "Issuer"). Owner may substitute one qualifying Letter of Credit for another from time to time, to the degree such substitute Letter of Credit is equally acceptable to Timnath.

b. If Owner fails to perform or observe any obligation or condition to be performed or observed by Owner under this Agreement in respect of the Improvements, and such default remains uncured for more than thirty (30) days after Owner's receipt of written notice thereof from Timnath, Timnath may cure the default at Owner's expense and draw on the Letter of Credit from time to time to pay the costs it incurs in connection therewith.

c. The procedures for drawing on the Letter of Credit shall apply whether there be one or more defaults, or a succession of defaults on the part of Owner in performing the terms, covenants and conditions contained in this Agreement in respect of the Improvements.

d. Owner may obtain partial releases of the Letter of Credit as construction of the Improvements progresses as follows. No more frequently than once per calendar month, Owner may request Timnath to inspect the progress of the construction of the Improvements. With such request, Owner shall deliver to Timnath copies of bills, invoices and schedules of values for work performed. Within ten (10) business days following its receipt of the request, Timnath may inspect such work as Owner requests be inspected and review the bills, invoices and schedules of values therefor submitted by Owner. If Timnath determines that the construction of the Improvements has progressed in accordance with the Engineering Plans and the other applicable requirements of this Agreement (whether or not any particular Improvement has been fully or finally completed, hereinafter referred to as the "Qualifying Work"), Timnath shall release a portion of the Letter of Credit equal to one hundred twenty-five percent (125%) of the costs of the Qualifying Work performed (which costs
will be determined by the bills, invoices and schedules of values submitted by the Owner and reviewed by Timnath). Timnath shall effect such partial release by executing and delivering to the Issuer a Partial Release of Letter of Credit in the form attached hereto as Exhibit F, within eight (8) business days after it completes such inspection and review of any Qualifying Work.

e. As a part of the Letter of Credit, Owner shall provide one hundred twenty-five percent (125%) of the estimated cost of the wetland mitigation prior to recording the Plat. Notwithstanding subparagraph (d) above, twenty-five percent (5%) of actual costs of wetland mitigation shall be retained by the Town until the wetland mitigation has been maintained in a satisfactory condition for two years following acceptance of the Public Improvements.

f. Notwithstanding the foregoing, Timnath shall not be required to make any partial release of the Letter of Credit if doing so would reduce the outstanding amount of the Letter of Credit below an amount equal to the Parties' then current estimate of the remaining costs to be incurred to complete the construction of the Improvements. No determination by Timnath of Qualifying Work nor any partial release of any portion of the Letter of Credit shall be deemed an acceptance of an Improvement by Timnath. Acceptance of Improvements shall be concluded in accordance with Paragraph 24 below.

g. Timnath shall retain twenty-five percent (25%) of the full original amount of the Letter of Credit until the expiration of the two year warranty period established by paragraph 20. Timnath may draw upon this portion of the Letter of Credit to repair or replace defective Improvements. Any amount remaining at the end of the two year warranty period shall be released to Owner.

23. Notice. When any faulty condition in the Improvements is found, Timnath shall serve notice to Owner and/or its surety or Issuer of this condition. For the purposes of this Paragraph, the Issuer's address is ____________, PO Box ________, Colorado ____________, until Owner gives Town a new address for Issuer. Upon receipt of said notice Owner or its surety shall proceed immediately and with due diligence to perform all repairs and/or replacements in a satisfactory manner at no cost to Timnath. The expiration date for the repaired or replaced work shall be the same as that for the warranty on the original work. In the event Owner fails to make such repairs or replacements, Timnath shall have the right to do so in the manner described herein. If, in repairing its own work, Owner damages the work or property of others, the repair and payment for such shall be Owner's responsibility.

24. Acceptance of Improvements. Except as provided herein, Timnath shall not accept responsibility for maintenance of any Public Improvement until completion of such Public Improvement and final acceptance thereof by Timnath. Upon application by Owner for a Certificate of Completion, and provided all of the payments and other performances herein agreed to be made and performed by Owner in respect thereof have been made and completed, Timnath will issue said Certificate of Completion, and
except for defects appearing within the applicable warranty period, will thereby release Owner from all further liability hereunder as to such completec Public Improvements. Upon issuance of said Certificate of Completion, all Public Improvements specified in such Certificate shall be deemed approved and accepted by Timnath, whereupon such specificc Public Improvements shall be owned and maintained by Timnath.

25. **Remedies.** In addition to any other remedy allowed by law, in the event of default by the Owner with respect to any provision of this Agreement, including insufficiency of security to complete the Improvements, the Town may refuse to further process any site development application for property owned, in whole or in part, by Owner.

26. **Additional Conditions**

a. **Applicable law.** This Agreement, and the terms, conditions and covenants herein contained, shall be deemed to complement and shall be in addition to the conditions and requirements of Timnath’s Project Regulations and other applicable laws, rules and regulations.

b. **Severability.** It is understood and agreed by the Parties that if any part, term, or provision of this Agreement is held by any court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado, the validity if 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.

c. **Complete Agreement.** This instrument embodies the whole agreement of the Parties. 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. There shall be no modification of this Agreement except in writing, executed with the same formalities as this instrument. Subject to the conditions precedent herein, this Agreement may be enforced in any court of competent jurisdiction.

d. **Recording; Benefit.** This Agreement shall be recorded with the Clerk and Recorder for Larimer County, Colorado; shall run with the land; and shall be binding upon and shall inure to the benefit of the Parties hereto and upon and to their respective successors, grantees and assigns. Owner shall be released from further obligation hereunder in the event of sale of the Property or portions thereof; provided however, that any successor, grantee or assignee of Owner shall be bound hereby, and this document shall have been recorded and serve as a covenant running with and burdening the land described in Exhibit A, as the burdened property, as an easement in gross for the benefit of the Town of Timnath. Any reference herein to Owner shall be deemed to include any purchaser, successor-in-interest or assign of Owner as to all or any part of the Property. Owner shall notify Timnath in
writing within fifteen (15) days of any sale, transfer, or assignment, giving name and address of transferee, assignee or buyer. Except as set forth in this Paragraph 26.d, this Agreement does not confer any right or benefit to any third party.

e. **Force Majeure.** If Owner's performance of the Improvements is unreasonably delayed, disrupted or interfered with by the presence of any reasonably perceived hazardous material, labor dispute, fire, unusual delay in delivery, adverse weather conditions not reasonably anticipated, any written or oral order, directive, interpretation or determination made by Timnath, unavoidable casualties or any other causes reasonably beyond Owner's control, then the Owner's time shall be extended for such duration as provided elsewhere in this section upon Owner's timely submission of its request for an extension of time.

f. **Effective Date.** The terms of this Agreement shall become binding on all Parties hereto on the recordation of this Agreement in the records of the Clerk and Recorder of Larimer County, Colorado.

g. **No Waiver.** No waiver of any of the provisions of this Agreement shall be deemed or constitute a waiver of any other provisions herein, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

h. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original.

i. **Authority.** The undersigned hereby acknowledge and warrant their power and authority to bind the Parties to this Agreement.

j. **Vested Rights.** Timnath acknowledges and agrees that (i) Timnath has approved the Project, (ii) such approval is considered a site specific development plan, and (iii) pursuant to Section _________ of the Town Code and Article 68 of Title 24, C.R.S., Owner has obtained vested property rights to develop the Project for a period of three (3) years commencing on the date of this Agreement, subject to Town Code Section ______. Notwithstanding anything to the contrary set forth in Paragraph 26.e above, the three (3)-year period for Owner's vested property rights to develop the Project will not be extended for force majeure or any other reason, unless Timnath consents to such extension.

k. **Specific Conditions.** Developer hereby agrees to the following specific conditions: A License Agreement shall be entered into prior to acceptance of the Public Improvements. This License Agreement shall commit ______________ for maintenance of non-standard lighting, signage in the Town right-of-way as well as aesthetic bridge features.
IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized officials to place their hands and seals upon this Agreement as of the respective dates set forth opposite the acknowledgment below of their execution of the Agreement, to be effective as of the day and year first above written.

TOWN OF TIMNATH, a Colorado municipal corporation

ATTEST:

By: ____________________________
    Donna Benson, Mayor

Linda Greiss, Town Clerk

TIMNATH HOLDINGS, INC.,
a Colorado Corporation

By:

Title: __________________________

STATE OF COLORADO

COUNTY OF LARIMER

) ) ss.

ACKNOWLEDGED before me this ____ day of ________________, 2008, by Donna Benson as Mayor and by Linda Griess as Town Clerk of the Town of Timnath, Colorado.

WITNESS my hand and official seal.

MY COMMISSION EXPIRES: __________________________

______________________________
Notary Public
STATE OF COLORADO )
COUNTY OF LARIMER ) ss.

ACKNOWLEDGED before me this ___ day of ____________, 2008, by
__________________, as ____________, of Timnath Holdings, Inc.

WITNESS my hand and official seal.

MY COMMISSION EXPIRES: ________________________________

___________________________________________
Notary Public

[SEAL]
Exhibit A

SITE IMPROVEMENTS AGREEMENT

Legal Description of the Project

Tract, Lot or Parcel Legal Description:
EXHIBIT B

SITE IMPROVEMENTS AGREEMENT

 Improvements, Quantities and Cost Estimates

A. Timnath Parkway

1. Owner shall be responsible for the design, construction and warranty of Timnath Parkway from and including the intersection with Harmony Road County/Road 5 on the south to County Road 40 on the north, including the following:

a. Required grading and drainage, including Boxelder overflow accommodation.

b. All required engineering and design for the at grade crossing of the ultimate planned four lane roadway with Great Western Railway.

c. Construction of the required timers, lights and gates for the crossing of the initial two lanes as required by PUC and Railroad.

d. Utility relocation and design, taking into consideration the ultimate future grade separated crossing.

e. Pavement for two lanes

f. A two lane at grade crossing with Great Western Railway.

g. Owner shall allow their existing private RR crossing to be relocated for the Parkway.

h. Sidewalk, curb and gutter on east side of Parkway only.

i. Temporary median curb [concrete catch curb] on the west side of the two lanes constructed by Owner.

j. Landscaping on east side of Parkway.

k. Erosion control revegetation west side of Parkway.

l. Utilities, including streetlights, on east side of Parkway.

m. In consideration for Owner bearing the cost of design of the planned ultimate four lane section, Owner will not be responsible for the cost of design work by the Town on Harmony Road.

2. Right-of-way acquisition within the 140 foot total right-of-way for Timnath Parkway shall be the sole obligation of the Owner; right-of-way acquisition outside of this area shall be the obligation of the Town.

3. Developer shall commence construction of two lanes of Parkway and crossing in last quarter of 2009.

4. The Town agrees to assist in the permitting and application process, but shall not be responsible for any costs of relocation or construction. While the Town will assume the lead for the PUC review and approval process for the grade separation, the Owner shall provide technical assistance to the Town in support of the application.
5. The Town, through the Timnath Development Authority or otherwise, will construct the remaining two lanes, including paving, the median and, only to the extent not required for development of the Property by Owner, associated turn lanes, landscaping, curb and gutter, streetlights and sidewalks.

6. The Town will assist the Owner in acquiring easements and/or rights-of-way from the Poudre School District for the purpose of development of Timnath Parkway, provided, however, such assistance shall not include any property acquisition costs. The Town shall encourage and consider the annexation of the School district property upon a petition for the same and when said property is otherwise eligible for annexation under Colorado law and the Town Code. Owner shall construct the Boxelder overflow channel on the school site at the southeast corner County Road 5 and County Road 40.

7. The Owner shall bear the relocation costs of the Greeley waterline [outside of those shown on the approved final Plat Number 1 construction set].

8. Grade separated crossing of Timnath Parkway and Great Western Railway

a. The Town shall have the option, but not the obligation, to design or construct a grade separated crossing at this location, and, in that event, the Owner shall be responsible for a pro-rata share [means of calculation] of the same, and Owner shall bear the cost of acquisition of right-of-way beyond the 120 foot right-of-way necessary for the project, as well as any utility relocation necessary to accommodate construction of a grade separated crossing.

b. The Town shall bear the cost of engineering for a grade separated crossing of the Parkway and Great Western Railway. The parties anticipate that the grade separated crossing shall locate the railroad over the Parkway, and agree that the construction method shall utilize walls rather than earthen slopes, to minimize the degree to which developable land is needed for the crossing. The cost of construction of the crossing will be approximately $6 – 7 million.

9. Traffic Signals: Owner shall be responsible for design and construction of following traffic signals:

a. Timnath Parkway and Harmony Road: Owner shall be responsible for moving existing traffic signals in connection with the widening of the north side of Harmony Road

b. Main Street and Timnath Parkway: Owner shall be responsible for the installation of the signal when warranted

c. Timnath Parkway and 4th Ave: Owner shall be responsible for the installation of the signal when warranted
d. Timnath Parkway, and 7th Ave: Owner shall be responsible for the installation of the signal when warranted

e. Timnath Parkway, and County Road 40: Owner shall be responsible for the installation of the signal when warranted

f. The signal will be installed when signal warrants determine that they required

10. Sugar Trail: The Owner shall be fully responsible for the construction of Sugar Trail, including an at-grade crossing of the same with the Great Western Railway. To the extent that Sugar Trail has not been constructed prior to the time a grade-separated crossing of the same is required, the Town and the Owner shall share the costs of that crossing as follows: At grade crossing.

B. Harmony Road

Owner shall be responsible for the following improvements in connection with Harmony Road:

1. Design and construction of sewer line within the Harmony Road right-of-way from County Road 3 to County Road 5 and the round-a-bout in Main Street on or before September 15, 2009.

2. Design and construction of a sidewalk 10 feet in width with grading [describe] along the north side of Harmony Road adjacent to the North Harmony road right-of-way line and within the project for the entire length of the property from County Road 5 to County Road 3, to be completed with Phase II of Filing No. 1.

3. Design and installation of landscaping along the north side of Harmony Road between the sidewalk and the ultimate curb and gutter location, to be installed pursuant to approved final plat landscaping plans.

4. Installation of turn lanes in acceleration/deceleration lane at the intersection of Harmony Road and Timnath Parkway, Harmony Road and relocated Main Street, and Harmony Road and Hargrove Blvd., in accordance with [insert] standards.

5. Owner shall not be responsible for any ingress/egress on the south side of Harmony Road including access for Riverbend.

6. Traffic signal improvements, including the following:

   a. Traffic signal at the intersection of Harmony Road and relocated Main Street, including design and construction costs: to be shared as follows: Owner: 50%; Riverbend Project developer: 50%. The Town will require, as a condition of development of the property located east of the Riverbend Project and west of County Road 3 that the developer thereof shall participate, on a pro-rata basis calculated by expected
traffic loads, in the cost of this traffic signal. The signal shall be
installed when signal warrants determine that it is required [Is the 50% 
Timnath Farms North design and construction cost to be 
escrowed?] 
b. Harmony Road and Hargrove Blvd. access: Owner shall bear 100% of
the cost of design and construction of this signal, which cost shall be
secured as for all other public improvements. The signal will be
installed when signal warrants determine that it is required. [Insert
reimbursement language for property east of Riverbend]
c. Harmony Road and County Road 3: Owner shall contribute 25% of the
design and construction cost of this signal [to be secured in the same
manner of all other public improvements][what if not required?] 

7. Owner shall not be responsible for the following portions of the
pedestrian/equestrian underpass at Harmony Road and County Road 3:

8. In consideration for Owner bearing all cost for design and engineering of
Timnath Parkway, the following cost associated with design and engineering of
Harmony Road will be borne by others: [Becky, what costs?]

9. Grade separated railroad crossing: Any design or construction of a grade
separated crossing of Timnath Parkway under the Great Western Railway shall
be initially borne by the Owner, subject to a reimbursement of pro-rata costs as
follows: [insert] Right-of-way acquisition within the 140 foot total right-of-way for
Timnath Parkway shall be the sole obligation of the Owner; right-of-way
acquisition outside of this area shall be the obligation of the Town. The Owner
shall provide advance notification to purchasers of lots, through a note on the
final plats of the development, and written notice at closing, of the proposed
separated grade crossing of Harmony Road over the Great Western Railway.

C. County Road 40

1. Two (2) lane rural section of roadway including grading, drainage,
guardrails, utilities and streetlights for the entire section from Timnath Parkway
(two-lane section of Pkwy.) to east of the Project boundary. This road shall be
completed from concurrent with the completion of the first intersection of County
Road 40 and a project entrance, specifically excluding the intersection of County
Road 40 and Timnath Parkway. Until completion of the two lane permanent
County Road 40 roadway, Owner is required to grade the roadway on a regular
basis and as requested. The Town may require magnesium chloride treatment
two times per year during the maintenance period.

2. Owner shall, if required by the Town, eliminate the "JOG" in County Road
40 adjacent to the Alger farm property. In that event, the cost of right-of-way
acquisition to accomplish this realignment shall be borne by the Town.
3. The Town shall assist with acquisition of right-of-way generally, but will not be responsible for any acquisition costs, other than as set forth in paragraph 2 above.

4. The Owner shall design and construct the realignment of the Lake Canal, including two lane crossing of County Road 40 [explain?]

D. Grandtree Boulevard and Other Major Collectors

1. Owner shall construct roadways as adjacent phases are constructed, including bridges, drainage, utilities, curb and gutter, sidewalks, trails, streetlights, landscaping and other improvements. These required improvements and the associated phases for Timnath Farms North Filing No. 1 are further described on Exhibit C. (Engineering Plans)

2. Two points of access for (Grandtree Blvd. and all other major collectors) shall be provided.

E. Parks

1. Owner shall design and construct to regional parks of approximately 8.9 and 5.6 acres and shall dedicate the same to the Town. Construction of the first (8.9 acre) regional park must be complete by the date of, and as a condition of issuance of the 300th certificate of occupancy, and any subsequent certificate of occupancy for the project

2. The second (5.6 acre) regional park shall be constructed as required by approval of the final plat within which the park is to be built.

3. Neighborhood pocket parks shall be designed and constructed in association with the development of each neighborhood within the project.

F. Drainageway Features

1. Owner shall submit for the Town's approval a drainage plan for all drainage improvements within the Project.

2. Owner shall design and construct all drainage improvements as described in the drainage plan, including detention pond, pump systems and all elements required to ensure a functional system.

3. Owner shall design and construct all landscaping and street scaping (for example, pedestrian lights, benches, trash cans and other such features) [relocate this]

4. Owner shall design and construct all bridges and drainageway crossings in connection with future filings within the Project north of the drainage way channel.
5. As a part of Phase III of filing 1 of the Project, and to the extent the Owner chooses and the Town elects to allow drainage through the Project, Owner shall construct the drainage channel to accommodate 2600 cfs. In that event, the Town shall bear the following costs of these improvements including oversizing of the three crossings. In the event regional drainage improvements upstream from the Project decrease or eliminate the need for the wider channel, no oversizing will be paid.

G. Design and Construction of Greeley Waterline relocation

1. Owner shall design and carry out construction of any relocation of City of Greeley water lines lying [on the school site] or [outside of those shown on the approved Final Plat No. 1 construction set]

H. Trails

1. Owner shall design and construct trails along the drainageway. Construction will occur in connection with the appropriate phase and grading activity.

2. Owner shall design and construct the equestrian trails shown on the Preliminary Plat. The construction timeline shall be set forth in connection with the final plat for Filing No. 2.

3. Owner shall design and construct all other internal trails shown on the Preliminary Plat. Construction will occur in connection with the appropriate phase and grading activity.

4. The Town may, but is not required to, consider linking the regional and equestrian trails across Grandtree Blvd. down the east side of Timnath Reservoir Outlet Canal.

I. Irrigation Ditches. Owner shall realign and reconstruct all irrigation ditches on and as they are contiguous to the Property to meet the needs of both the Project and the ditch companies.

J. Earthwork

1. The Town agrees to cooperate with the _____Reservoir Company to permit approximately 2 million cubic yards of material to be dredged from the Reservoir for use in the development.

2. The haul patterns utilizing roadways to convey the material to the Property must be approved by the Town in advance.

3. The Town may require improvements to County Road 40 or other affected infrastructure associated with haul roads, including but not limited to concrete pads in the roadway.
4. The location of and schedule for dredging must be approved in advance by both the Town and Reservoir Company.

5. If a qualified soil engineer determines that the R values of the dredging are below average, the Town at its discretion may reject placement of all or a portion of this material in the public right-of-way.

K. Underdrains and Wells

1. The Owner shall install underdrains throughout the Project, by segment as needed for each phase.

2. Underdrains are permitted in public rights-of-way, conditioned upon execution by Owner of an agreement acceptable to the Town providing for perpetual maintenance.

3. Owner shall comply with the conditions of the agreement regarding existing water wells within Old Town Timnath, as well as any mitigation measures required by the Town related to the underdrain system.

L. Collector Roadways

1. Owner shall design and construct the south one-half of Fourth Avenue from and including the intersections from Timnath Parkway to Kern. The Town shall be responsible for right-of-way acquisition for the north half of Fourth Avenue.

2. The cost of design, roadway construction and right-of-way dedication for Seventh Avenue shall be prorated as follows:

3. Owner shall design and construct the relocated main street from Harmony Road through the commercial area, across Timnath Parkway and its reconnection to existing Main Street approximately 1100 forth north of Harmony Road.

4. In connection with the relocation of Main Street, the Town shall be responsible for maintaining access to approximately six existing residences on the west side of Main Street within the relocation area.

5. Owner shall design and construct main street intersection and connection to Harmony Road.

6. Owner shall install landscape and streetscape improvements in association with the relocation of main Street. The quantities and locations shall be determined at the time the Town completes construction plans for Main Street.
7. Owner shall design and construct Sugar Trail in conjunction with platting and development of the adjacent commercial areas within the Project.

M. Street Lights and Sign Posts

1. All public street name signs, traffic signs and street lights shall be supplied at the Owner's expense. All signs shall conform to Timnath's requirements. The Owner shall install the signs and street lights in accordance with the approved Engineering Plans at no cost to Timnath. All such name signs, traffic signs and street lights shall be considered Improvements.

2. The Town acknowledges that Owner has submitted for approval upgraded internal lighting and signage. Upon completion of the final phase of the entire Project, Owner shall deliver to the Town 10 extra light posts and 30 extra sign posts, to be used as replacements within the Project [amounts not yet discussed with Town].

N. Security for Future Traffic Improvements. The Town may, but is not required to defer payment of security for traffic improvements which have not yet been triggered by "warrants" having been established prior to completion of the final phase of the Project.

O. Stone Outbuilding. The Town and the Owner recognize that there is a cultural value to the stone outbuilding located on the Property at the intersection of Harmony road and county road 5. Owner agrees to donate the building to the Town or utilize it on site as a part of the development.

P. Conditional Letter of Map Revision. Owner shall be responsible for obtaining a CLOMAR for all development aspects of the Property, including adding development of the School District Property and the potential construction of a wider channel to 2600 cfs for drainage through the Property.
Exhibit C

SITE IMPROVEMENTS AGREEMENT

Engineering Plans

The Engineering Plans are incorporated herein by this reference, but not attached and not required to be recorded with this Agreement, but must be placed on file with the Town's Community Development Department.
Exhibit D

SITE IMPROVEMENTS AGREEMENT

Declaration of Covenants, Conditions and Restrictions

Recorded on ______________________, 2008, at Reception No. ________________________, Larimer County, Colorado.

Not attached and not required to be recorded with this Agreement.
Exhibit E

SITE IMPROVEMENTS AGREEMENT

Form of Letter of Credit

IRREVOCABLE LETTER OF CREDIT

Date: _________________ BASIC FORM

Letter of Credit No. ____________________

Beneficiary: Town of Timnath, Colorado
P.O. Box 37
Timnath, Colorado 80547

Applicant: ________________________, a Colorado __________________ Company

PO Box _______________
Timnath, Colorado _____________

Amount: USD $____________________

Expiry Date: ____________________ at our Counters

We hereby authorize you to draw on ________________ for the account of __________________, up to an aggregate amount of USD $________ available by your drafts at sight to guarantee the installation and completion of improvements as set forth in the Subdivision Improvements Agreement for ________________________ add name of project and accompanied by the following:

Original Letter of Credit: provided, however, that such Original Letter of Credit shall be returned to the Beneficiary after any partial draw, so long as any amounts remain available for draw under the Letter of Credit.

Beneficiary's signed statement as follows: "We hereby certify the developer has failed to complete required improvements per the Subdivision Improvements Agreement for the ________________________ Project."

All drafts drawn under this Letter of Credit are to be endorsed hereon and shall bear the clause "Drawn under Colorado Business Bank Letter of Credit number ________________ dated _____________."

We hereby agree with the drawers, endorsers and bona fide holders of drafts drawn under and in accordance with the terms of this credit that the same shall be duly honored and paid upon presentation at our office at ___________________________, on or before expiry date of ____________.

This letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, Published by the International Chamber of Commerce, or any subsequent revision thereto.
Authorized Signer

Title:________________________
Exhibit F

SITE IMPROVEMENTS AGREEMENT

Form of Partial Release of Letter of Credit

Certificate for the Reduction of
Amounts Available Under
Irrevocable Letter of Credit No. _________
Dated ___________ (the "Letter of Credit")

The undersigned, a duly authorized agent of the Town of Timnath, Colorado
("Beneficiary"), hereby certifies to _____________ (the "Issuer")
with reference to Irrevocable Letter of Credit No. _________ dated
___________, _________, ("Letter of Credit") issued by the Issuer in favor of the
Beneficiary, that:

a) Beneficiary hereby notifies you that, pursuant to that certain Subdivision
Improvements Agreement for the ________________ Project dated
________, _________, ("Site Improvements Agreement") by and between the
Beneficiary and ________________, the Beneficiary has agreed that the amount available under the Letter of Credit shall be
reduced by the amount of $_____________, as of the date of this
Certificate.

b) Following the reduction referred to in Paragraph (1) above, together with
all prior reductions, the amount available under the Letter of Credit to the
Beneficiary is $_______________.

IN WITNESS WHEREOF, the undersigned has executed and delivered this
Certificate this ___ day of _________________.

TOWN OF TIMNATH, a Colorado municipal
corporation

By: ________________________________
its: ________________________________
Timnath Farms North
Proposed-Well Mitigation Plan
Preliminary Drafting by Timnath Holdings, Inc

To the extent that (i) Timnath Farms North ("TFN") installs its primary underdrain system prior to the Town of Timnath's Main Street sanitary sewer installation, and (ii) no gray water (non-potable) irrigation system has yet been installed by the Town to service existing homes east of Main Street, then TFN agrees to mitigate any adverse effects from the reduction in water levels within the irrigation wells caused by TFN's underdrain system, as follows (the "Reimbursement"):

TFN shall provide Reimbursement to eligible well owners who are forced to use water from the Ft. Collins-Loveland Water District (the "District") potable water system to supplement their normal irrigation well watering because of increased drawdown in their wells caused by the TFN underdrain system.

The Reimbursement shall be subject to the following terms and conditions:

1. Those well owners who are eligible ("Eligible Well Owners") for the Reimbursement are limited to those who own irrigation wells located East of Main Street that are lawfully permitted or registered with the State Engineer's Office on or before end of business on December 31, 2008.

2. The Reimbursement shall be for a period not to exceed three (3) years from the completion of the installation of the TFN underdrain system (the "Reimbursement Period").

3. The Reimbursement shall be for the following monthly amounts of potable water from the District's water system:

   a) One point two (1.2) gallons per square foot of historically irrigated area adjacent to the well for April;

   b) Two point four (2.4) gallons per square foot of historically irrigated area adjacent to the well for May;

   c) Three point two (3.2) gallons per square foot of historically irrigated area adjacent to the well for June;

   d) Three point seven (3.7) gallons per square foot of historically irrigated area adjacent to the well for July;

   e) Three point zero (3.0) gallons per square foot of historically irrigated area adjacent to the well for August;
f) Two point one (2.1) gallons per square foot of historically irrigated area adjacent to the well for September; and

g) One point four (1.4) gallons per square foot of historically irrigated area adjacent to the well for October,

up to a maximum of 43,560 square feet of irrigated area (1 acre).

The above amounts are based on historical evapotranspiration rates for Northern Colorado as referenced by the Northern Colorado Water Conservancy District.

4. The months of the Reimbursement shall be solely for irrigation occurring from April through October, inclusive.

5. TFN's obligation to provide Reimbursement shall not apply:

a) During any periods in which declines in the area water table caused by drought have caused at least fifty percent (50%) of the wells in Old Town Timnath to run dry, as determined solely by the Town Administrator or his/her appointed professional water engineer;

b) Once the Town has installed its Main Street sanitary sewer line;

c) Upon the Town's making available to an Eligible Well Owner the opportunity to connect his/her lot to a gray water supply for irrigation use.

6. a) Eligible Well Owners seeking Reimbursement must submit written claim(s) to TFN during the Reimbursement Period c/o Tom Brinkman, 7108-M South Alton Way, Englewood, Colorado 80112. The claim must: (1) state facts that justify Reimbursement, including that the water level in the owner's well has dropped and owner cannot irrigate the area of his/her lot that he/she has historically irrigated, and that the owner has had to supplement his/her irrigation with potable water to maintain his/her historical irrigation; (2) provide the well registration or permit number for the well in which the owner claims that the water level has dropped; and (3) provide copies of water bills for the past three years, in addition to the monthly water bills for which the owner seeks Reimbursement.

b) An Eligible Well Owner must submit written claims to TFN during the Reimbursement Period for any months for which owner seeks Reimbursement, with copies of all of the monthly water bills for which it seeks Reimbursement. If the owner submits more than one claim during the Reimbursement Period, it only need attach copies of the prior three years of monthly water bills to the first claim.

c) TFN may analyze the owner's monthly water bills to assess whether and the extent to which owner's use of potable water during April through October of the Reimbursement Period has actually exceeded owner's use of potable water for those months during the preceding three years. TFN's obligation to provide Reimbursement shall be the lesser of: (1) the difference between the owner's potable water use during April through October of the Reimbursement Period and
owner's average monthly use of potable water over the prior three years; or (2) the monthly amounts specified in the preceding paragraph 3.

d) By submitting a claim for Reimbursement to TFN, the Eligible Well Owner grants consent to TFN or its consultants to inspect and pump test owner's well and inspect owner's claimed historically irrigated area, for the purpose of confirming that the water table has dropped in owner's well so as to preclude owner from using the well to provide full water supply to owner's actual historically irrigated area.

e) On or before December 31 of each year during the Reimbursement Period, TFN shall respond to all of the claims received from the well owners during that calendar year. TFN shall respond by either: (1) issuing the owner a check for the Reimbursement due; or (2) issuing a written denial of the claim and a statement of reasons supporting the denial.

f) By accepting delivery of and cashing a check for Reimbursement, a well owner waives any right he/she may have to any additional compensation from TFN, and the Reimbursement shall be deemed a full and complete accord and satisfaction of any and all claims by well owner arising from or related to TFN's construction of its underdrain system during the Reimbursement Period. TFN may, as a condition of making the Reimbursement, require a well owner to sign a written waiver and acknowledgement agreeing to the terms of this subsection and of the following Section 7.

g) If TFN denies a claim for Reimbursement, in whole or in part, the Eligible Well Owner may file a notice of appeal within ten (10) days from receipt of TFN's denial with the Town Administrator. The Town Administrator shall promptly hold a hearing on the matter to determine whether the owner's claim was valid or whether TFN's denial was justified, under the terms and conditions of this Well Mitigation Plan. The Town Administrator may consult with the Town's water engineer in making such decision.

7. By proposing and agreeing to this Well Mitigation Plan, and by offering to provide and by providing the Reimbursement, TFN is not admitting in any way that its construction of its underdrain system caused any decline in water levels within any owner's well, or that any such water level decline is injurious to the exercise of valid water rights. Rather, TFN's acceptance and implementation of this Plan is solely an accommodation which the Town requested as a condition of approving TFN's land use application. TFN's acceptance and implementation of this Plan shall not be relied upon as an admission by TFN of any liability whatsoever.

8. TFN and the Town are unaware of any well owners using their wells for potable purposes. If such a situation exists, TFN and the Town will address the situation, if at all, outside of the context of this Well Mitigation Plan.
Town of Timnath

By: ____________________________
Mayor
Attest: __________________________
Town Clerk

Timnath Farms North

By: ____________________________
(Name) (Title)