TOWN OF TIMNATH, COLORADO

ORDINANCE NO. 15, SERIES 2013

AN ORDINANCE APPROVING THE ANNEXATION OF CERTAIN REAL PROPERTY TO BE KNOWN AS THE I-25 AND HARMONY SOUTHEAST ANNEXATION AND AN AMENDED AND RESTATED ANNEXATION AND DEVELOPMENT AGREEMENT, TO THE TOWN OF TIMNATH, COLORADO, GENERALLY LOCATED SOUTH OF HARMONY ROAD, WEST OF WEITZEL RD, SOUTHEAST OF AND ADJACENT TO I-25, NORTH OF AND ADJACENT TO SWETSVILLE ZOO RD

WHEREAS, a petition (the "Petition") for Annexation was filed with the Town by Cache La Poudre Investors South, LLC ("Petitioner"), requesting the Town of Timnath annex that property more particularly described in EXHIBIT A (legal description) and EXHIBIT B (annexation map), attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, a properly noticed public hearing was held on November 12, 2013 regarding said Petition in accordance with C.R.S. § 31-12-108, and all persons interested in such Petition were provided an opportunity to be heard: and

WHEREAS, over 50% of the property owners owning more than 50% of the Property, exclusive of streets and alleys have signed the Petition and requested the Property be annexed; and

WHEREAS, the Town Council finds the Property is eligible for annexation and should be annexed to the Town of Timnath; and

WHEREAS, the contiguity required by C.R.S. § 31-12-104(1)(a) exists in that the property annexed hereby has at least one-sixth boundary contiguity with a present municipal boundary of the Town; and

WHEREAS, an amended and restated Annexation and Development Agreement between the property owners and the Town has been prepared and is attached and incorporated herein as EXHIBIT C.

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

Section 1. Findings.

1. The Council hereby finds that a Petition for Annexation, together with four (4) copies of the annexation map as required by law, was filed with the Town Council on September 24, 2013, by the owners of over fifty percent (50%) of the area of the property hereinafter described in EXHIBIT A (legal description) and EXHIBIT B

Please Return to:
Town of Timnath
4800 Goodman Street
Timnath, CO 80547
(annexation map), and comprising more than fifty percent (50%) of the landowners of
the property to be annexed, exclusive of public streets and alleys.

2. A properly noticed public hearing was held on November 12, 2013,
regarding said Petition in accordance with C.R.S.§ 31-12-108, at which all persons
interested in such Petition were provided an opportunity to be heard.

3. The Council by resolution at the public hearing accepted said Petition and
found and determined that the applicable parts of the Municipal Annexation Act of 1965,
as amended, have been met and further determined that an election was not required
under the Act and that no additional terms and conditions were to be imposed upon said
annexation.

4. The contiguity required by CRS Sec. 31-12-104(1)(a) exists in that the
property annexed hereby has at least one-sixth boundary contiguity with a present
municipal boundary of the Town.

5. The Property is eligible for annexation and should be annexed to the Town
of Timnath.

6. An amended and restated Annexation Agreement between the property
owners and the Town has been prepared, is incorporated herein, and approved
(EXHIBIT C).

Section 2. Annexation Approved.

The annexation to the Town of the following described real property is hereby
approved (see attached):

Exhibit A – Property Description
Exhibit B – Annexation Map

Section 3. Severability.
If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held
to be unconstitutional or invalid for any reason, such decision shall not affect the validity
or constitutionality of the remaining portions of this Ordinance. The Town Council
hereby declares that it would have adopted this Ordinance and each part or parts hereof
irrespective of the fact than any one or parts be declared unconstitutional or invalid.

Section 4. Effective Date.

This Ordinance shall take effect upon adoption at second reading, as provided by
Section 3.5.5 of the Charter. The Town Clerk shall certify to the passage of this
Ordinance and make not less than one copy of the adopted Ordinance available for
inspection by the public during regular business hours.
INTRODUCED, MOVED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING, SET FOR PUBLIC HEARING AND SECOND READING AT 6:00 P.M. ON DECEMBER 10, 2013, AT THE TIMNATH ADMINISTRATION BUILDING, 4800 GOODMAN STREET, TIMNATH, COLORADO AND ORDERED PUBLISHED BY TITLE THIS 13TH DAY OF DECEMBER, 2013.

MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON THE 10TH DAY OF DECEMBER, 2013.

TOWN OF TIMNATH

Jill Grossman-Belisle, Mayor

ATTEST:

Milissa Peters, Town Clerk

TOWN OF TIMNATH

SEAL

COLORADO
EXHIBIT A

Legal Description of Property Annexed

[attached]
PROPERTY DESCRIPTION

I-25 AND HARMONY SE ANNEXATION

A parcel of land being a portion of the Northeast Quarter of Section Three (3), Township Six North (T.6N.), Range Sixty-eight West (R.68W.), Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado:

COMMENCING at the North Quarter Corner of said Section 3 and assuming the North line of the Northeast Quarter of said Section 3 as bearing South 89°47’25” East a distance of 2634.70 feet with all other bearings contained herein relative thereto:

THENCE South 89°47’25” East along the North line of the Northeast Quarter of said Section 3 a distance of 198.83 feet to the West line of the Harmony Road Second Annexation to the Town of Timnath;
THENCE South 00°12’35” West along the West line of the Harmony Road Second Annexation to the Town of Timnath a distance of 59.00 feet to the Southwest corner thereof;
THENCE South 89°47’25” East along the South line of the Harmony Road Second Annexation to the Town of Timnath a distance of 147.11 feet to the POINT OF BEGINNING;

THENCE South 89°47’25” East continuing along the South line of the Harmony Road Second Annexation to the Town of Timnath a distance of 51.17 feet to the Westerly line of the Harmony Road Enterprises, LLLP First Annexation to the Town of Timnath;
THENCE South 14°18’05” West a distance of 367.05 feet;
THENCE South 22°35’27” East a distance of 91.93 feet to the most Northeasterly corner of the I-25 Annexation No. 2 to the Town of Timnath;
THENCE South 44°24’41” West a distance of 108.12 feet;
THENCE North 22°35’34” West a distance of 84.24 feet;
THENCE South 11°06’35” East a distance of 213.47 feet;
THENCE North 44°24’41” West a distance of 98.23 feet to the Westerly line of the Harmony Road Enterprises, LLLP Second Annexation to the Town of Timnath;
THENCE South 20°05’29” East along the Westerly line of the Harmony Road Enterprises, LLLP Second Annexation a distance of 724.35 feet to the Northerly line of that parcel of land conveyed to the Town of Timnath for use as a Public Road in a Special Warranty Deed recorded November 13, 2008 as Reception No. 20080070753 of the Records of Larimer County;
THENCE North 89°31’13” East a distance of 504.07 feet to the Northeast corner thereof;
THENCE South 00°28’47” East a distance of 60.00 feet to the Southeast corner thereof;
THENCE South 89°31’13” West a distance of 794.29 feet to a Point of Curvature;
THENCE along the arc of a curve concave to the Southeast a distance of 373.41 feet, said curve has a Radius of 246.00 feet, a Delta of 86°58’11” and is subtended by a Chord bearing South 46°02’08” West a distance of 338.58 feet to the West line of the Northeast Quarter of said Section 3;
THENCE North 02°04’05” West a distance of 163.25 feet to the beginning point of a curve non-tangent to this course;
THENCE along the arc of a curve concave to the Southeast a distance of 292.91 feet, said curve has a Radius of 306.00 feet, a Delta of 54°50’38” and is subtended by a Chord bearing North 62°05’54” East a distance of 281.85 feet to the South line of Lot 2 of the Northeast Quarter of said Section 3;
THENCE South 89°31’13” West along said South line a distance of 253.78 feet to the West line of the Northeast Quarter of said Section 3;
THENCE North 02°04'05" West along the West line of the Northeast Quarter of said Section 3 a distance of 85.27 feet to the Easterly line of Tract No. 19 of the Colorado Department of Highways Project No. 125-3 (31)254; THENCE North 14°18'03" East along the Easterly line of said Tract No. 19 a distance of 1216.81 feet to the South line of the Harmony Road Second Annexation and the POINT OF BEGINNING;

TOTAL ANNEXED AREA for the I-25 and Harmony Road SE Annexation is 7.885 acres, more or less (±).

SURVEYOR'S STATEMENT

I, Steven A. Lund, a Colorado Registered Professional Land Surveyor do hereby state that this Property Description of land proposed to be annexed to the Town of Timnath, County of Larimer, State of Colorado, was prepared under my personal supervision and checking, and that it is true and correct to the best of my knowledge, information, belief, and in my professional opinion.

I further state that not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous to the boundary line of the Town of Timnath, County of Larimer, State of Colorado.

Steven A. Lund - on behalf of King Surveyors
Colorado Registered Professional
Land Surveyor#34995

KING SURVEYORS
650 Garden Drive
Windsor, Colorado 80550
(970) 686-5011
EXHIBIT B
Annexation Map
[attached]
EXHIBIT C

Amended and Restated Annexation Agreement

[attached]
AMENDED AND RESTATED ANNEXATION AND DEVELOPMENT AGREEMENT BETWEEN CACHE LA Poudre INVESTORS SOUTH, LLC, SWETS DAIRY LLC, MAJORIE SWETS, THE TIMNATH DEVELOPMENT AUTHORITY (WITH RESPECT TO SECTION 3.7 ONLY) AND THE TOWN OF TIMNATH
AMENDED AND RESTATED ANNEXATION AND DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED ANNEXATION AND DEVELOPMENT AGREEMENT (this "Agreement") is made as of __________, 2013, by and between CACHE LA POURDRE INVESTORS SOUTH, LLC, a Colorado limited liability company ("Developer"), SWETS DAIRY, LLC, a Colorado limited liability company and MARJORIE SWETS, an individual (collectively, "Annexor"); TIMNATH DEVELOPMENT AUTHORITY, a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado (together with any successors thereto, the "Authority")(with respect to Section 3.7 only) and the TOWN OF TIMNATH, a municipal corporation of the State of Colorado ("Town").

RECITALS

A. Annexor owns certain real property, totaling approximately six acres (the "SD Parcel"), as more particularly described in Exhibit A-1 attached to this Agreement. The Town owns certain real property adjacent to the SD Parcel, totaling approximately two acres, that was conveyed to it by Colorado Department of Transportation ("CDOT") in connection with vacation of the previous I-25 frontage road, as more particularly described in Exhibit A-2 (the "Vacation Parcel"). A portion of the Vacation Parcel, together with adjacent rights of way, and the SD Parcel collectively comprise the subject of an Annexation Petition (as defined in Section 1.1) requesting annexation to the Town, as more particularly described in Exhibit A-3 (the "Annexation Parcel"). In addition to the annexation of the Annexation Parcel, the Town is considering action to complete the final vacation of the Vacation Parcel by conveying the same to the owner of the SD Parcel, as further described herein.

B. Developer owns certain real property located adjacent to the Annexation Parcel totaling approximately 15 acres, as more particularly described on Exhibit A-4 attached to this Agreement (the "Existing Parcel"). The Town has previously annexed the Existing Parcel and granted and/or approved entitlements and development standards for the Existing Parcel as set forth in that certain Development Agreement dated September 16, 2009 (the "Existing Parcel Agreement").

C. Developer is the contract purchaser of the SD Parcel, will be obtaining the Vacation Parcel from the Town via the vacation process described below, and desires to facilitate the development of the Annexation Parcel and the Existing Parcel (collectively, the "Property") for commercial uses consistent with the Approved Uses (as defined in Section 1.1), zoned and entitled to permit commercial buildings with an floor area ratio ("FAR") of up to one square foot for each square feet of area of the Property, together with open space, recreational amenities and other related uses, all as defined in the amended plan development overlay ("Amended PD Overlay") (as defined in Section 1.1)(the "Project").

D. The Town and Owner (as defined in Section 1.1) wish to amend and restate the Existing Parcel Agreement in order to account for subsequent events, to address the specific needs of the Project and to incorporate the Annexation Parcel into the development of the Property.
E. Development of the Project in accordance with the terms and conditions of this Agreement will require substantial investments in infrastructure improvements and public facilities, both on and off-site, that will serve the needs of the Project and the Town, including, but not limited to roads, drainage facilities, grading, landscaping, parking facilities and utility facilities. Completion of these improvements will require substantial investments that can be supported only if there are assurances that the development of the Project, once approved by the Town, will be allowed to proceed to ultimate completion as provided in this Agreement.

F. The Vested Property Rights Statute (as defined in Section 1.1) provides for the establishment of vested property rights in order to advance the purposes stated therein and, together with the Town's Municipal Code, authorizes the Town to enter into development agreements with landowners providing for vesting of property development rights for periods of greater than three years.

G. Development of the Project in accordance with this Agreement will provide for orderly and well-planned growth in accordance with the policies and goals set forth in the Town's Comprehensive Plan, will provide a significant benefit to the surrounding properties, will increase the Town's sales and property tax base, will create new employment opportunities, will stimulate economic growth within the Town, will secure the reasonable investment-backed expectations of Owner, will foster cooperation between the public and private sectors in the area of land use planning, will ensure reasonable certainty, stability and fairness in the land use planning process, and otherwise will achieve the goals and purposes of the Vested Property Rights Statute. In exchange for these benefits and the other benefits to the Town contemplated by this Agreement, together with the public benefits served by the orderly and well planned development of the Property, Owner desires to receive the assurances that Owner may proceed with development of the Property pursuant to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner, the Town and the Authority (with respect to Section 3.6 only) agree as follows:

ARTICLE 1
Definitions and General Provisions

1.1. Definitions. The following terms and references shall have the meanings indicated:

1.1.1. Agreement. This Amended and Restated Annexation and Development Agreement.
1.1.2. **Amended PD Overlay.** The Amended PD Overlay for Gateway Timnath South that sets forth the Approved Uses, design guidelines and development standards for the Property, approved December 17, 2013.

1.1.3. **Annexation Parcel.** Collectively, a portion of the Vacation Parcel, the SD Parcel and certain rights-of-way, as legally described *Exhibit A-3.*

1.1.4. **Annexation Petition.** The petition for annexation for the Annexation Parcel filed with the Town on September 19, 2013.

1.1.5. **Annexor.** Swets Dairy, LLC, a Colorado limited liability company and Marjorie Swets, as their interests may exist in the Annexation Parcel, and their successors and assigns.

1.1.6. **Approved Uses.** The primary uses and accessory uses for the Property, the density and the intensity of use, and the development standards for the Property, all as set forth in the Amended PD Overlay.

1.1.7. **Authority.** The Timnath Development Authority, a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado, together with successors or assigns.

1.1.8. **Concept Plan.** The Concept Plan for the Project set forth on *Exhibit B* that is consistent with the Amended PD Overlay.

1.1.9. **Council.** The Town Council for the Town of Timnath.

1.1.10. **Effective Date.** The effective date of this Agreement after Final Approval has occurred.

1.1.11. **Exhibits.** The following Exhibits to this Agreement, all of which are incorporated by reference into and made a part of this Agreement:

   - **Exhibit A-1** - Legal Description of SD Parcel
   - **Exhibit A-2** – Legal Description of the Vacation Parcel
   - **Exhibit A-3** – Legal Description of the Annexation Parcel
   - **Exhibit A-4** – Legal Description of the Existing Parcel
   - **Exhibit B** – Concept Plan

1.1.12. **Existing Parcel.** The real property legally described on *Exhibit A-4.*
1.1.13. **Existing Parcel Development Agreement.** As defined in Recital B.

1.1.14. **FAR.** Floor area ratio.

1.1.15. **Final Approval.** The forty-first (41st) day after publication following final action by Council to approve the latest of the ordinances by which Council approves (a) this Agreement, (b) the annexation of the Annexation Parcel to the Town, (c) the Zoning Application; and (d) the Vacation. Final Approval shall be deemed not to have occurred if a Legal Challenge occurs prior to the time periods specified above, unless Owner elects to waive this requirement and such Legal Challenge is concluded or resolved affirming such approvals within a period of time acceptable to Owner in its sole discretion.

1.1.16. **Legal Challenge.** For purposes of this Agreement, either of the following shall constitute a “Legal Challenge”: (1) any third party commences any legal proceeding, request for reconsideration pursuant to § 31-12-116, C.R.S. (2012), or other action that directly or indirectly challenges this Agreement, annexation and/or zoning/rezoning of the Property, or any of the Town’s resolutions or ordinances approving the annexation, the Zoning Application, or this Agreement; or (2) any third party submits a petition for a referendum seeking to reverse or nullify any of such ordinances.

1.1.17. **Municipal Code.** The Town Code of the Town of Timnath, as in effect from time to time (or, where this Agreement expressly states, at the particular time stated).

1.1.18. **Owner.** Collectively, the fee simple owners of all or any portion of the Property.

1.1.19. **Parties.** Collectively, Owner, Town and Authority (with respect to Section 6.3 only).

1.1.20. **Plat.** The Gateway Timnath South Final Plat for the Property, as approved by the Town.

1.1.21. **Project.** As defined in Recital C.

1.1.22. **Property.** As defined in Recital C.

1.1.23. **Public/Private Partnership Agreement.** That certain Public/Private Partnership Agreement, with the Developer and the Authority, governing the Project that will be entered into subsequent to the date hereof.

1.1.24. **Recordation.** The recording of any document, agreement, plan, deed, plat or similar recordable instrument in the real property records of Larimer County, Colorado.
1.1.25. **ROW Agreement.** That certain Right-of-Way Agreement, dated June 21, 2007, by and between the Town and Harmony Road Enterprises, LLLP, a Colorado limited liability limited partnership (Developer’s predecessor in interest to the Existing Parcel), recorded at Reception No. 20070061480 on August 9, 2007.

1.1.26. **Sewer District.** South Fort Collins Sanitation District.

1.1.27. **Sewer IGA.** That certain Intergovernmental Agreement between the Authority and the Sewer District, dated May 16, 2007.

1.1.28. **Site Plan.** One or more site plan(s) (individually or collectively) for the Project to be approved by the Town, as amended in accordance with the Municipal Code and the terms and conditions of this Agreement, which plans shall be consistent with the Amended PD Overlay.

1.1.29. **Term.** As defined in Section 1.3.

1.1.30. **Town.** The Town of Timnath, a municipal corporation of the State of Colorado.


1.1.32. **Vacation.** The vacation ordinance approving the disposition of the Vacation Parcel, which previously served as the I-25 frontage road and is located adjacent to SD Parcel, as described in Section 6.5.

1.1.33. **Vested Property Rights Statute.** Sections 24-68-101, et seq. of the Colorado Revised Statutes in effect as of the Effective Date.

1.1.34. **Zoning/Rezoning Application.** Owner’s application for zoning/rezoning of the Property to the C-2 Community Commercial zone district, submitted to the Town in connection with submission of the Annexation Petition, together with the Amended PD Overlay.

1.2. **Covenants.** The provisions of this Agreement shall constitute covenants or servitudes which shall touch, attach to and run with the land comprising the Property, and the burdens and benefits of this Agreement shall bind and inure to the benefit of all estates and interests in the Property and all successors in interest to the parties to this Agreement, except as otherwise provided in Section 1.3 below.

1.3. **Term of Vested Rights.** In recognition of the benefits the Town will derive from development of the Project, the size of the development contemplated under this Agreement, the substantial investment and time required to complete the development of the Project and related infrastructure and public facilities, and the possible impact of economic cycles and varying
market conditions during the course of development, and in an effort to conform the duration of the vested property rights period as closely as possible with the vesting property rights period agreed to in the Existing Parcel Agreement, the term of the vested property rights established under this Agreement shall commence on the Effective Date and shall continue until the sixteenth (16th) anniversary of the Effective Date (the “Term”). After expiration of the Term, the Property shall continue to be subject to the charter, ordinances, rules and regulations of the Town for so long as it is located within the municipal boundaries of Town, and the vested property rights established by this Agreement shall be deemed terminated and of no further force or effect; provided, however, that such termination shall not affect (a) the annexation of the Property to the Town; (b) any common-law vested rights obtained prior to such termination; or (c) any right, whether characterized as vested or otherwise, arising from Town permits, approvals, zoning/rezoning, Amended PD Overlay, plat(s), and site plan(s) which were granted or approved prior to, subsequent to, concurrently, or in conjunction with the approval of this Agreement.

1.4. Amendment of Agreement. Except as otherwise set forth in this Agreement, this Agreement may be amended or terminated only by mutual consent in writing of the Town, Developer and Annexor following the public notice and public hearing procedures required for approval of this Agreement. For the purposes of any amendment to this Agreement, “Developer” and “Annexor” shall mean only the signatories to this Agreement as of the Effective Date and those parties, if any, to whom such signatories have specifically granted, in writing, the power to enter into such amendment.

1.5. Existing Parcel Agreement. The Parties hereby amend and restate in its entirety the Existing Parcel Agreement and agree that this Agreement shall govern and control with respect to the development of the Property in all respects. The Existing Parcel Agreement is superseded in its entirety by this Agreement.

ARTICLE 2

Streets

2.1. Access: Streets. Unless otherwise agreed to by Owner, all streets within the Project, including the ring road, shall be privately own and maintained by Owner or its successors or assigns in the manner provided in the declaration of covenants that will govern the Property. All street design within and adjacent to the Project shall conform to the recommendations of the Traffic Study, and shall be constructed in accordance with requirements set forth in the Town of Timnath Design Criteria Manual, or as otherwise approved by the Town. The access points for the Project are set forth on the Concept Plan.

2.1.1. Weitzel Street. Due to previous dedications, the Project will not be required to dedicate any additional right-of-way along Weitzel Street. The Traffic Study will determine the applicable road improvements along Weitzel Street. Such
improvements will be designed, financed and constructed by the Authority as provided in the Public/Private Partnership Agreement.

2.1.2. Swetsville Zoo Road. As of the date of this Agreement, the current alignment for Swetsville Zoo Road is considered temporary. The Project will not be subject to any additional dedication requirements for right-of-way to realign Swetsville Zoo Road in the future. Any road improvements along Swetsville Zoo Road will be established based upon the direct impact the Project will have to Swetsville Zoo Road as determined by an applicable update to the Traffic Study. Such improvements will be designed, financed and constructed as provided for in the Public/Private Partnership Agreement.

2.1.3. Structural Pavement Design. Notwithstanding anything to the contrary in this Agreement, it is expressly understood that Owner is not responsible for any improvements along Harmony Road, Weitzel Street and Swetsville Zoo Road that are attributable to structural pavement design and the Project will not be construed to provide any direct impact to the structural design of either aforementioned streets.

ARTICLE 3  
Water, Sewer, Utilities and Municipal Services

3.1. Water. The Town does not currently provide water service to the Property. Annexor is in the process of including the Annexation Parcel into the Loveland/Fort Collins Water District, the Existing Parcel is already included in the same. The Project will meet the Loveland/Fort Collins Water District’s requirements for water service. The Town will require proof of purchase of a water tap for any building site before any building permit will be issued for the site. In the event that the Town in the future undertakes to include water utility service within the scope of its municipal services, the Town will provide water utility service to the Property on the same terms and conditions that it provides water utility service to other property within the Town without any additional tap or system fees due for the Project.

3.2. Sewer. The Town does not currently provide sewer service to the Property. Annexor is in the process of including the Annexation Parcel in the Sewer District, the Existing Parcel is already included in the same. Subject to Section 3.7, the Project will meet Sewer District’s requirements for sewer service. The Town will require proof of purchase of a sewer tap for any building site before any building permit will be issued for the site. In the event that the Town in the future undertakes to include sewer utility service within the scope of its municipal services, the Town will provide sewer utility service to the Property on the same terms and conditions that it provides sewer utility service to other property within the Town without any additional tap or system fees due for the Project.

3.3. Utilities. Owner will meet Poudre Valley REA, Xcel Energy, Qwest and Comcast’s requirements for gas, electrical, telecommunications and cable service to the Property.
3.4. **Fire Protection.** Owner will meet Poudre Fire Authority’s requirements for fire protection service to the Property. Owner 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 Authority. Fire protection for the property will be provided by the Poudre Fire Authority.

3.5. **Storm Detention/Drainage.** Owner shall have responsibility for acquisition of permanent easements and construction of all required improvements for all required offsite conveyance and detention facilities that are required for the Property, as approved on the final storm drainage report.

3.6. **Municipal Services.** Except as this Agreement expressly states otherwise, the Town shall have the responsibility and obligation to provide all municipal services to the Project on an equivalent basis to those provided to any other area of the Town on a uniform and non-discriminatory basis, including, without limitation: police protection public street snow removal and public street road construction, building code enforcement, maintenance of such public facilities as defined in the Municipal Code, and other administrative and utility services.

3.7. **Participation Fee.** Pursuant to the Sewer IGA, the Sewer District is required to collect a “Participation Fee” (as such term is defined by the Sewer IGA) from benefitted property owners on either side of the Ptarmigan Sewer Line and remit the same to the Authority. Lots 1 & 2 are subject to the Participation Fee. Given the significant sales and property tax revenues expected to be generated from Lots 1-2, the Authority hereby waives the Participation Fee for Lots 1 & 2, as applicable. This Agreement can be provided to Sewer District as evidence of the Authority’s agreement that the Participation Fee is inapplicable to the Property.

3.8. **Special Improvement District.** If the Town establishes a special improvement district or similar taxation district for the purpose of recovering or financing costs attributable to street, bridge, water, sewer, storm sewer or similar infrastructure within any area of the Town, the Town will not include the Property as part of such taxation district under any circumstances, unless Owner provides the Town with its prior written consent, in its sole discretion. Any attempt by the Town to include the Property within such taxation district without Owner’s prior written consent will be null and void. Notwithstanding the foregoing, nothing in this Section shall be construed to (i) prohibit the Town from establishing a new tax with general applicability for the entire Town and such taxation will be applicable to the Project or (ii) affect any modification, extension, or similar action for the Authority.

**ARTICLE 4**

**Plat and Lots**

4.1. **Plat and Lots.** Due to certain portions of the Property being located within the Authority’s boundaries and certain portions being located outside the Authority’s boundary, the Plat includes irregular “Sub-Lots”. The Sub-Lots are for the sole purpose of creating County tax.
assessor parcels that are consistent with the Authority’s boundary for property tax assessment purposes. The Sub-Lots are not intended to create what the Municipal Code defines as a “Lot”. Rather, the combined Sub-Lots that together make up a Lot and are otherwise considered a Lot in every respect but as specified herein.

ARTICLE 5
Open Space, Landscaping and Public Land Dedication

5.1. Open Space/Landscaping. Owner shall meet all open space and landscaping requirements contained in the Amended PD Overlay (the “Landscaping Requirement”).

5.2. Harmony Road Landscaping. Owner will design, finance, complete, and maintain certain landscaping improvements within the Harmony Road right-of-way located adjacent to the northern boundary of the Property (the “Harmony Road Landscaping Improvements”). The Harmony Road Landscaping Improvements will be completed by the Owner in accordance with the Amended PD Overlay. It is expressly understood that the Harmony Road Landscaping Improvements will be installed by Owner prior to any request by the Owner for certificates of occupancy for Lots 3 & 4, and that the Harmony Road Landscaping Improvements shall be credited toward the Landscaping Requirement.

5.3. Public Land Dedication. The Property is subject to the ROW Agreement that provided for, among other things, the dedication of certain right-of-way along Harmony Road and the current location of Weitzel Street. The Town agrees the applicable dedications pursuant to the ROW Agreement exceed the requirements of the Municipal Code for public land dedication. The Project is not required to dedicate any additional property to the Town. Notwithstanding the foregoing, Owner will dedicate all required easements to applicable to drainage or utility providers that service the Property.

5.4. LOMR. An approved CLOMR currently affects a small portion of the Property. The Town’s Flood Plain Administrator will permit the issuance of a temporary certificate of occupancy for all affected lots on the Property prior to the receipt of an approved LOMR, provided all other applicable requirements for such temporary certificate of occupancy have been met. Such temporary certificate of occupancy shall be valid for a period not to exceed twelve months, with Owner’s option to extend for an additional six months if necessary by providing written notice to the Town.

ARTICLE 6
Annexation, Zoning and Development

6.1. Annexation. Annexation of the Annexation Parcel shall be in accordance with the terms and conditions of the Annexation Petition, this Agreement, and the Municipal Annexation Act of 1965, as amended (§§ 31-12-101, et seq., C.R.S. (2013)).
6.1.1. **Conditions Precedent.** Annexation of the Property to the Town shall not become effective until the following conditions have been satisfied: (a) Owner and the Town have mutually executed and delivered this Agreement; and (b) Final Approval has occurred.

6.1.2. **Failure of Conditions.** Unless and until all of the conditions set forth in Section 6.1.1 have been satisfied, neither Owner nor the Town shall cause the Recordation of the items described in § 31-12-113(2)(a)(II)(A), C.R.S. (2012) or this Agreement unless such requirement is waived by Owner.

6.2. **Rezoning.** Concurrently with taking final action on the ordinance approving this Agreement, the Council shall take final action on an ordinance approving the Zoning/Rezoning Application the Property. Owner’s consent to rezoning of the Property is contingent on obtaining the Town’s approval of Zoning/Rezoning Application the Property that is substantially consistent with the Project as described in this Agreement. As used herein, the phrase “substantially consistent with the Project” means the Town’s approval of a final, non-appealable ordinance rezoning the Property to the “C2 – Community Commercial” zone district with the Amended PD Overlay consistent with the Zoning/Rezoning Application. The development parcel sizes and locations, roadway locations and other aspects of the Project shall be as generally depicted on the Concept Plan. The Approved Uses shall be permitted uses on the Property.

6.3. **Subdivision Plat, Site Plan and Other Plans Review Process.** Concurrently with taking final action on the ordinance approving this Agreement and the rezoning of the Property, the Council shall consider a resolution regarding the approval of the Final Plat. With respect to future site plan applications, in the event of any conflict between the Municipal Code and the Rezoning Application (as approved), the approved Rezoning Application shall control. The Town will process and review in an expeditious manner all subdivision plats, replats, site plans, grading permits, building plans and specifications and other plans relating to the development of the Property, filed by Owner.

6.4. **Impact Fees.** The Property shall not be subject to any impact fees adopted by the Town after the Effective Date.

6.5. **Vacation.** Concurrently with taking final action on the ordinance approving this Agreement, the Council shall take final action on an ordinance approving the Vacation of the Vacation Parcel. Such ordinance shall include reference to the completion of such Vacation occurring upon Recordation of the bargain and sale deed conveying the Vacation Parcel to the owner of the SD Parcel (the "**Vacation Deed**"). Recordation of the Vacation Deed will occur as part of the Recordation of the annexation materials and Amended PD Overlay.
ARTICLE 7
Vested Property Rights

7.1. Vesting of Property Rights. This Agreement and the Amended PD Overlay each constitute an approved "site-specific development plan" as defined in the Vested Property Rights Statute. Each subdivision plat, site plan and each amendment to any of the foregoing, that Owner submits to the Town subsequent to the Effective Date shall, if Owner so requests, be processed as a "site specific development plan" as defined in the Vested Property Rights Statute. The vested property rights created in connection with such approved subdivision plats, site plans, and each amendment to any of the foregoing, shall be supplemental and in addition to those property rights initially vested through this Agreement as of the Effective Date, and shall be vested pursuant to the Vested Property Rights Statute until the sixteenth (16th) anniversary of the Effective Date.

7.2. Compliance with General Regulations. Subject to the terms, conditions and limitations of the Vested Property Rights Statute, the establishment of vested property rights pursuant to this Agreement shall not preclude the application on a uniform and nondiscriminatory basis of Town regulations of general applicability (including, but not limited to, building, fire, plumbing, electrical and mechanical codes, the Municipal Code, and other Town rules and regulations) or the application of state or federal regulations, as all of such regulations exist on the Effective Date or may be enacted or amended after the Effective Date. Owner does not waive its right to oppose the enactment or amendment of any such regulations.

7.3. Property Rights Vested. Subject to the terms, conditions and limitations of the Vested Property Rights Statute and except as otherwise provided in this Agreement, the rights identified below shall constitute the vested property rights under this Agreement or in the Restrictive Covenant during the Term:

7.3.1. The right to develop, plan and engage in land uses within the Property in the order, at the rate and at the time as market conditions dictate, in a manner that is substantially consistent with the Project as described in this Agreement and in the Zoning/Rezoning Application, including the Approved Uses, development consistent with the Amended PD Overlay standards, and the entitlement to develop at an FAR of one square feet for each square feet of area of the Property.

7.3.2. The right to commence and complete development of the Project (including, without limitation, the right to receive all Town approvals and permits necessary for the development of the Project) with conditions, standards and dedications which are no more onerous than those imposed by the Town upon other developers in the Town on a uniform, non discriminatory and consistent basis.

7.3.3. The right to apply for and, upon compliance with the terms and conditions of this Agreement and the Municipal Code, to receive grading permits, building permits,
certificates of occupancy, and other permits necessary for development, construction and occupancy of improvements within the Project.

7.3.4. The right to have the Town accept and process applications for subsequently required development approvals including, without limitation, each subdivision plat, site plan, and each amendment to any of the foregoing, as site specific development plans which, if approved in the manner set forth in the Vested Property Rights Statute, shall establish vested property rights as described in Section 7.1 above.

7.3.5. Except as the Vested Property Rights Statute expressly provides otherwise, no initiated or referred zoning/rezoning, subdivision, land use or other legal or administrative action which would directly or indirectly have the effect of materially and adversely altering, impairing, preventing, diminishing, imposing a moratorium on development, delaying or otherwise adversely affecting any of the Owner's rights set forth in this Agreement shall apply to or be effective against the Property or the Project.

7.4. No Obligation to Develop. Except as provided in the Public Private Partnership Agreement, Owner shall have no obligation to develop all or any portion of the Project and shall have no liability under this Agreement to the Town or to any other party for its failure to develop all or any part of the Project. The Parties contemplate that the Project will be developed in phases. There shall be no obligation to develop all or any portion of any phase, notwithstanding the development or non-development of any other phase, and Owner shall have no liability under this Agreement to the Town or any other party for its failure to develop all or any portion of any phase of the Project.

ARTICLE 8
Legal Challenges

8.1. Expiration or Termination During Pendency of Legal Challenge. Notwithstanding any contrary provision of this Agreement, if a Legal Challenge occurs, this Agreement shall not expire or terminate during the pendency of any Legal Challenge and shall, unless earlier terminated or modified by a written amendment signed by all parties hereto, remain in full force and effect through and until the thirty-first (31st) day following entry of a final, non-appealable order resolving such Legal Challenge.

8.2. Successful Legal Challenge Contingency. If any Legal Challenge successfully voids, enjoins, or otherwise invalidates the initial/rezoning of the Property, this Agreement or any portion thereof, the Town and Owner shall cooperate to cure the legal defect and to pursue the rezoning of the Property or portion thereof in a manner that most fully implements the intent and purpose of this Agreement.
ARTICLE 9
Default; Remedies; Termination

9.1. Default by Town. A “breach” or “default” by the Town under this Agreement shall be defined as, subsequent to the approval of the rezoning of the Property in accordance with the Zoning/Rezoning Application and except as otherwise provided within this Agreement, any zoning/rezoning, land use or other action or inaction, direct, indirect or pursuant to an initiated measure, taken without Owner's consent, that alters, impairs, prevents, diminishes, imposes a moratorium on development, delays or otherwise materially and adversely affects any development, use or other rights of Owner under this Agreement.

9.2. Default by Owner/Developer/Annexor. A “breach” or “default” by Owner, Developer and/or Annexor shall be defined as a failure to fulfill or perform any material obligation of Owner, Developer and/or Annexor, as applicable, contained in this Agreement.

9.3. Notices of Default. In the event of a default by either party under this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of such default, at the address specified in Section 10.12, and the defaulting party shall have twenty (20) days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such 20-day period and the defaulting party gives written notice to the non-defaulting party within such 20-day period that it is actively and diligently pursuing such cure, the defaulting party shall have a reasonable period of time given the nature of the default following the end of such 20-day period to cure such default, provided that such defaulting party is at all times within such additional time period actively and diligently pursuing such cure.

9.4. Remedies.

9.4.1. Default by the Town. If Default by the Town occurs and is continuing hereunder, Owner may (i) seek damages at law for actual out-of-pocket expenses, but not consequential damages, lost profits or punitive damages; (ii) seek enforcement of the Town’s obligations hereunder by any equitable remedies, such as specific performance or injunction, to the extent allowed by law; or (iii) elect to terminate this Agreement; provided that except pursuant to § 24-68-105(1)(c), C.R.S., Owner’s remedies for a default by the Town resulting from an initiated measure shall be limited to specific performance.

9.4.2. Default by Owner/Developer/Annexor. If Default by Owner, Developer and/or Annexor occurs and is continuing hereunder, the Town, may (i) seek any available remedy at law for actual out-of-pocket expenses, but not consequential damages, lost profits or punitive damages; or (ii) seek enforcement of Owner, Developer and or Annexor’s, as applicable, obligations hereunder by any equitable remedies, such as specific performance or injunction. In addition, Town is under no obligation to grant
any permits or proceed with any application or formal action relating to the Property, while such default remains unresolved.

9.5. **Action to Terminate.** Notice of termination must be accomplished by written notification delivered to the other parties hereto in accordance with Section 10.12. Termination will be effective on the date specified in such notice.

9.6. **Venue.** Venue for any action to enforce or interpret the terms of this Agreement shall be in District Court, Larimer County, Colorado.

**ARTICLE 10**

**Miscellaneous**

10.1. **Expiration.** This Agreement shall expire on the sixteenth (16th) anniversary of the Effective Date.

10.2. **No Waiver of Town Power.** Nothing contained in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or abnegation of Town’s legislative, governmental, or police powers to promote and protect the health, safety, or general welfare of the municipality or its inhabitants; nor, subject to the terms and conditions of 10.6 of this Agreement, shall this Agreement prohibit the enactment by the Town of any fee which is of uniform or general application.

10.3. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

10.4. **No Joint Venture or Partnership.** No form of joint venture or partnership exists between the Town and Owner, and nothing contained in this Agreement shall be construed as making Town and Owner joint venturers or partners.

10.5. **Merger and Ratification.** This Agreement constitutes the entire understanding and agreement of the parties, integrates all of the terms and conditions mentioned therein and incidental thereto, and supersedes all negotiation or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of this Agreement must be made in writing and signed by the appropriate authorities of the Town or of the Owner. All amendments hereto must be in writing signed by the appropriate authorities of the Town and Owner in a form suitable for recording.

10.6. **Expenses.** Except as otherwise provided in this Agreement, Owner and the Town shall each bear their respective costs and expenses associated with enforcing the terms of this Agreement.
10.7. **Attorney’s Fees.** If any action is filed or maintained by either party in relation to this Agreement, the substantially prevailing party shall be awarded its reasonable costs and attorney’s fees, which rights shall survive termination of this Agreement.

10.8. **Waiver.** No waiver of one or more of the terms of this Agreement shall constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance shall constitute a waiver of such provision in other instances.

10.9. **Town Findings.** Town hereby finds and determines that execution of this Agreement is in the best interests of the public health, safety, and general welfare and the provisions of this Agreement are consistent with the Town’s Comprehensive Plan, development laws, regulations and policies.

10.10. **Severability.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall, unless amended or modified by mutual consent of the parties, continue in full force and effect so long as enforcement of the remaining provisions would not be inequitable to the party against whom they are being enforced under the facts and circumstances then pertaining.

10.11. **Further Assurances.** Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges under this Agreement.

10.12. **Notices.** Any notice or communication required under this Agreement between the Town and Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided in this Section, designate additional persons to whom notices or communications shall be given, and designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to Town:

Town of T'immnath
4800 Goodman Street
10.13. Assignment. This Agreement shall be binding upon and, except as otherwise provided in this Agreement, shall inure to the benefit of the successors in interest or the legal representatives of the parties hereto. Owner shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement to third parties acquiring an interest or estate in the Property, including, but not limited to, purchasers or long term ground lessees of individual lots, parcels, or of any improvements now or hereafter located within the Property, provided that to the extent Owner assigns any of its obligations under this Agreement, the assignee of such obligations shall expressly assume such obligations. The express assumption of any of Owner's obligations under this Agreement by its assignee or transferee shall, upon written notice to Town, thereby relieve Owner of any further obligations under this Agreement with respect to the matter so assumed.

10.14. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

10.15. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the parties hereto, their successors and assigns,
and nothing contained in this Agreement shall give or allow any claim or right of action by any other or third person under this Agreement. It is the express intention of the parties that any person other than the parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

10.16. I-25 Corridor Plan. In the event of any conflict between the Amended PD Overlay, the Town of Timnath Municipal Code, and/or the Development Standards for the I-25 Corridor Plan, the terms of the Amended PD Overlay shall apply.

10.17. No Additional Conditions Imposed. Annexor and the Town acknowledge and affirm that this Agreement does not impose additional terms and conditions within the meaning of Section 31 12 107(I)(g), C.R.S. Upon recordation of the deed conveying the Vacation Parcel, Owner will be owner of 100% of the Property. As such, Annexor acknowledges and affirms that it would approve the terms and conditions of this Agreement if an election were held and waives any right or claim of right to an election.

[Signature Page Follows]
IN WITNESS WHEREOF, Annexor, Developer and the Town have executed this Agreement as of the date first written above.

ANNEXOR:

SWETS DAIRY, LLC, a Colorado limited liability company and MARJORIE SWETS, an individual, as their interests may appear

By: ________________________________
Name: ______________________________
Title: ______________________________

DEVELOPER:

CACHE LA Poudre INVESTORS SOUTH, LLC, a Colorado limited liability company

By: ________________________________
Name: ______________________________
Title: ______________________________

TOWN:

TOWN OF TIMNATH, a municipal corporation of the County of Larimer, State of Colorado

By: ________________________________
Name: ______________________________
Title: Mayor

ATTEST:

___________________________________
Town Clerk

Approved as to legal form by:
Town Attorney
STATE OF COLORADO  )
)  ss.
COUNTY OF ________________  )

The foregoing instrument was acknowledged before me this ___ day of
_______________, 2013, by ____________________, as ____________________ of
SWETS DAIRY, LLC, a Colorado limited liability company.

Witness my hand and official seal.

__________________________
Notary Public
My commission expires:

__________________________

STATE OF COLORADO  )
)  ss.
COUNTY OF ________________  )

The foregoing instrument was acknowledged before me this ___ day of
_______________, 2013, by Marjorie Swets, an individual.

Witness my hand and official seal.

__________________________
Notary Public
My commission expires:
STATE OF COLORADO
 )
 ) ss.
COUNTY OF ________________
 )

The foregoing instrument was acknowledged before me this ___ day of
___ , 2013, by __________________, as __________________ of
CACHE LA Poudre Investors South, LLC, a Colorado limited liability company.

Witness my hand and official seal.

______________________________
Notary Public
My commission expires:

______________________________

STATE OF COLORADO
 )
 ) ss.
COUNTY OF ________________
 )

The foregoing instrument was acknowledged before me this ___ day of
___ , 2013, by __________________, as __________________ of
CACHE LA Poudre Investors South, LLC, a Colorado limited liability company.

Witness my hand and official seal.

______________________________
Notary Public
My commission expires:

______________________________
EXHIBIT A-1
Legal Description of the SD Parcel
EXHIBIT A-2
Legal Description of the Vacation Parcel
EXHIBIT A-3
Legal Description of the Annexation Parcel
EXHIBIT A-4
Legal Description of the Existing Parcel
EXHIBIT B
Concept Plan