TOWN OF TIMNATH, COLORADO

RESOLUTION NO. 13, SERIES 2012

A RESOLUTION APPROVING THE RATIFICATION OF THE WILDWING DOCUMENTS

WHEREAS, the Town Council of the Town of Timnath ("Town") has the power to pass resolutions pursuant to C.R.S. § 31-15-103; and

WHEREAS, Council policy is that material agreements and other documents requiring formal Council approval should be approved by resolution; and

WHEREAS, attached hereto as Exhibit A.

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

Section 1. Repeal

The Town Council hereby approves the Agreement or Document and authorizes its execution by the Mayor, Manager, or other person authorized by Council adopted resolution or the Charter to sign Agreements or Documents.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON APRIL 10, 2012,

TOWN OF TIMNATH, COLORADO

[Signature]
Jill Grossman-Belisle, Mayor

ATTEST:

[Signature]
Milissa Peters, Town Clerk
AMENDED AND RESTATED
SUBDIVISION IMPROVEMENT AGREEMENT
FOR THE WILDWING 1ST FILING SUBDIVISION

THIS AMENDED AND RESTATED SUBDIVISION IMPROVEMENT AGREEMENT FOR WILDWING 1ST FILING SUBDIVISION ("Agreement") is made and entered into to be effective the ___ day of __________, 2012, by and between TOWN OF TIMNATH, a Colorado municipal corporation ("Town"); and WW Development, LLC, a Colorado limited liability company (the "Developer"). Collectively, Town and Developer shall be referred to herein as ("the Parties"). This Agreement relates to the property described on Exhibit A attached hereto and incorporated herein by reference ("the Property"), generally known at the time of annexation to Town as the "Boekel Annexations 1 through 5" and currently known as the "Wildwing Final Plat Filing No. 1 Amendment No. 2." The Property consists of approximately 283.28 acres, located east of the Timnath Reservoir and west of Larimer County Road 1/Weld County Road 13.

RECATALS

WHEREAS, Developer is the owner of those certain parcels of real Property located in Town, platted as the Wildwing Final Plat Filing No. 1 Amendment No. 2; and

WHEREAS, the Property was previously annexed to Town and the Property is subject to the terms and conditions of that certain Amended and Restated Annexation Agreement, entered into by the Parties contemporaneously herewith (the "Amended and Restated Annexation Agreement"); and

WHEREAS, the Town Council of the Town of Timnath, after holding all necessary public hearings and having received a recommendation of approval from the Timnath Planning Commission, approved the "Final Plat" for the Property on June 20, 2007; and

WHEREAS, Town and Wildwing Development Limited Liability Company entered into that certain Subdivision Improvement Agreement for the Wildwing 1st Filing Subdivision effective as of that 3rd day of September, 2008, which was recorded in the real estate records of Larimer County, Colorado on the 7th day of October, 2008, at Reception #20080063633 (the "Initial Agreement") and Town approved a Final Plat for the Property that is on file with Town; and

WHEREAS, Developer is the sole successor to Wildwing Development Limited Liability Company’s interests in the Initial Agreement and the Amended and Restated Annexation Agreement and is the current owner of the Property except for two "lots" previously sold to homeowners and four lots or parcels sold to third parties unrelated to Developer;

WHEREAS, contemporaneously herewith the Parties have executed an "Amended and Restated Annexation Agreement" which contains all the agreements of the Parties affecting the Property which are not contained herein; and
WHEREAS, the Parties desire to substantially reorganize and amend the Initial Agreement and to state in this Agreement all the agreements of the Parties affecting the Property which are not set forth in the Amended and Restated Annexation Agreement; and

WHEREAS, the Parties acknowledge that provisions of the prior agreements concerning annexation of the Property which are not set forth herein have either (i) been fully performed and are no longer executory, (ii) have been eliminated from the agreements between the Parties, or (iii) are set forth in the Amended and Restated Annexation Agreement affecting the Property approved and executed contemporaneously herewith.

AGreement

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the Parties hereby agree that the Initial Agreement shall be amended, restated, and superseded in its entirety by the following:

1. **Purpose.** The purpose of this Agreement is to set forth the terms, conditions and fees to be paid by Developer in connection with the development of the Property including but not limited to the construction of public infrastructure necessary to support the development of the Property. All conditions contained herein are in addition to the provisions of the Amended and Restated Annexation Agreement, all land use approvals previously granted by Town for the Property, any and all requirements of Town’s Code, any and all applicable state statutes, and any other ordinances of Town. All exhibits attached hereto are incorporated herein by this reference and constitute an integral part hereof.

2. **Definitions.** Unless this Agreement otherwise clearly indicates, the following words and phrases shall be defined as follows:

   A. “Abutting Streets” shall mean and refer to County Roads 1 and 42 where such streets abut the Property as shown on the annexation map attached hereto as Exhibit C. Abutting Streets are Public Improvements and are the responsibility of Developer as set forth herein.

   B. “Code” shall refer to the Timnath Municipal Code, including the Land Use Code therein, as it exists on the date of approval of this Agreement and as it may be amended in the future.

   C. "Developer" shall include the current or any future owner of any Phase of the Property and WW Development, LLC and shall include any person acting in accordance with the duly executed power of attorney granting the attorney-in-fact full authority to act in the stead of Developer.

   D. "Final Plat" shall refer to the subdivision plat approved by Town Council dated June 20, 2007, and all amendments, including amendments thereto made subsequent to the Initial Agreement and all conditions included therein, or as the context dictates, any other final
plat approved by Town subsequent to the date of execution of this Agreement for development of the various Phases of the Property.

E. "Landscape Improvements" shall mean the improvements described herein, in the Final Plat, in Exhibit B and those that shall be installed in road rights of way per plans approved by Town, all of which are necessary to serve the development of the Property.

F. “Phases” shall refer to each planned phase of development of the Property as depicted in Exhibit C. Exhibits B and D identify the Public Improvements and Landscape Improvements for the entire development of the Property.

G. "Property" shall mean the real property described as Wildwing Final Plat Filing No. 1 Amendment No. 2, Larimer County, Colorado.

H. "Public Improvements" shall mean the improvements described herein, in the Final Plat, and in Exhibit D which shall include all required off-site improvements, all of which are necessary to serve the development of the Property, including those which may be required by North Weld County Water District for potable water services to the Property (the “Water District”) and Box Elder Sanitation District for sanitary sewer services to the Property (the “Sewer District”) (the Water District and Sewer District collectively referred to as the “Districts”). For ease of reference, as used in paragraphs 5-11 hereof, “Public Improvements” shall include Landscape Improvements.

I. "Town" shall refer to Town of Timnath, Colorado, a municipal corporation organized pursuant to the laws of the State of Colorado.

3. Agreement and Other Requirements. Developer hereby acknowledges and agrees that Town’s approval of development of the Property is subject to the conditions and requirements of this Agreement and the Amended and Restated Annexation Agreement.

4. Fees and Costs. In addition to the fees set forth in Paragraph 18(A) hereof, Developer acknowledges and agrees to pay to Town any and all such fees as are set forth in the Code in effect at the time of the occurrence of any activity for which the Code requires the payment of a fee to Town. Nothing herein shall relieve Developer of any financial obligation to Town contained in any other agreements to which Developer is a party with Town and/or which are imposed pursuant to the Code.

5. Completion and Acceptance of Improvements: Permits and Certificates; Completion and Warranty Security; Special Provisions for Phase I Improvements. All Public Improvements required by the Final Plat shall be provided by Developer at it's sole expense and shall be completed in the manner described herein. Notwithstanding anything contained herein or in the Amended and Restated Annexation Agreement to the contrary, Developer acknowledges that the storm drainage plan for Phase II of the Property is flawed, and that the already completed storm drainage improvements may not adequately service property for Phase II. Accordingly, the Parties agree that prior to construction of any Public Improvements for Phase II the Parties shall come to terms on a new storm drainage plan and amend Exhibit D to
reflect the requirements of a new storm drainage plan for Phase II and other portions of the project as may be required. Except as otherwise provided in paragraphs 5.C. and D. hereof with respect to completion of the “Remaining Public Improvements for Phase I” no building permits shall be issued in any Phase of the Property until the required “Completion Security” defined in paragraph 5.A. below has been provided to Town. Thereafter, no certificates of occupancy shall be issued in any Phase until Initial Acceptance of Public Improvements required by the Final Plat for such Phase has occurred in accordance with paragraph 9 hereof and the “Warranty Security” defined in paragraph 5.B. below has been provided to Town. Town may elect to issue certificates of occupancy in a Phase prior to Initial Acceptance of Landscape Improvements due to weather constraints, etc. as determined in Town’s sole and absolute discretion. In addition to all remedies provided for herein, if at any time after Initial Acceptance, and until Final Acceptance has occurred within a Phase, Developer fails to be in continuing compliance with this Agreement, Town may, in its sole reasonable discretion, withhold the issuance of building permits and/or certificates of occupancy within any Phase of the Property. “Completion” of or “Completed” Public Improvements shall be evidenced only by “Initial Acceptance” and “Final Acceptance” letters issued in accordance with paragraphs 9 and 10 hereof.

A. Completion Security for Public Improvements. To assure the construction, installation, and completion of the Public Improvements in all Phases of the Property (except for the Remaining Phase I Public Improvements,) Developer shall, prior to commencing any work on the Property, furnish Town an irrevocable letter of credit, completion bond, or other security reasonably acceptable to Town (“Completion Security”) to secure the completion of Public Improvements required by Town for each Phase of the development except Phase I which shall be governed by the special provisions of paragraphs 5.C. and D. below. Town shall be designated as beneficiary of the Completion Security. The Completion Security shall be provided Phase by Phase and shall be in an amount equal to One Hundred Fifteen percent (115%) of the estimated costs of the Public Improvements to be completed within a Phase. The amount of the Completion Security shall not include the portion of the Public Improvements which are to be constructed for the water facilities managed by the Water District or the sanitary sewer facilities managed by the Sewer District. Upon provision of such Completion Security to Town in a manner acceptable to Town for a Phase, building permits may be issued by Town within such Phase. Eighty percent (80%) of the Completion Security related to a component of the Public Improvements may be released upon issuance of a letter of Initial Acceptance by Town engineer issued in accordance herewith. The remaining twenty percent (20%) of the Completion Security shall satisfy Developer’s obligation to provide Warranty Security until Final Acceptance, provided that at the time Developer requests release of the eighty percent (80%) portion of the Completion Security it can demonstrate to the satisfaction of Town that a contractor’s performance and payment bond is a reasonable substitute for the Warranty Security and that Town has lawful access to such contractor’s performance and payment bond to assure Final Acceptance. Upon Final Acceptance of the Public Improvements, Town shall release the remaining twenty percent (20%) of the Completion Security.

B. Warranty Security. Except as noted in paragraph 5.C.1 below, Developer shall warrant any and all Public Improvements for a period of two (2) years from the date Town issues a letter of Initial Acceptance. As a condition to issuance of any letter of Initial Acceptance of any Public Improvements Developer shall provide to Town a warranty bond or other security
in a form satisfactory to Town ("Warranty Security") to ensure that Public Improvements for which Initial Acceptance has occurred will attain Final Acceptance by Town during the warranty period. If prior to the issuance of a letter of Final Acceptance, any significant warranty work is required in connection with Public Improvements for which a letter of Initial Acceptance has been issued by Town, Town may require an additional warranty and Warranty Security for up to two (2) years from the date of completion of such significant warranty work. In such event, Town shall issue a supplemental letter of Initial Acceptance specifying the additional Warranty Security required by Town and the work to be completed by Developer prior to issuance of a letter of Final Acceptance for such Public Improvements.

C. Remaining Phase I Public Improvements. The special provisions in this paragraph 5.C. and in paragraph 5.D. shall apply only to the obligations of Developer to complete the Remaining Phase I Public Improvements. Failure to perform any of such special provisions shall result in Town withholding all building permits for any Phase until such breach is cured to the satisfaction of Town.

The Parties acknowledge that two (2) certificates of occupancy were issued by Town for two (2) homes in Phase I prior to completion of Phase I Public Improvements by the prior developer of the Property and that certain "Punch List" work needs to be completed by Developer as the successor to the prior developer. Said Punch List is attached hereto as Exhibit E. In addition to the Punch List, certain Phase I Landscape Improvements, certification of the grading and capacity of the various phase I storm water quality ponds and the irrigation supply and delivery system described in paragraph 14 hereof (the "Irrigation System") need to be completed by Developer pursuant to paragraph 5.D.ii., immediately below (collectively the Punch List, Landscape Improvements and Irrigation System are referred to as "Remaining Phase I Public Improvements"). Developer agrees to complete the Remaining Phase I Public Improvements by July 1, 2012. Town shall consider granting up to six (6) building permits for model homes ("Model Home Permits") in Phase I prior to Initial Acceptance of the Punch List items. Builders granted such building permits shall be entitled to apply only for "temporary certificates of occupancy" until Initial Acceptance of all Phase I Public Improvements (except said Landscape Improvements and the Pump) has occurred.

Developer agrees that it shall not sell, nor permit to be sold by any homebuilder, any portion of the Property to any end user homebuyer prior to obtaining Initial Acceptance of the Remaining Phase I Public Improvements from Town unless (i) it elects to provide Completion Security to Town to ensure Initial Acceptance of the Remaining Phase I Public Improvements and (ii) agrees to indemnify and hold Town harmless from consequences of a breach of this covenant by Developer or any person to whom Developer sells property in Phase I.

D. Acceptance of the Remaining Phase I Public Improvements.

i. Previously Installed Public Improvements and Punch List. Upon certification by Developer to Town that the Punch List work has been performed, Developer shall be entitled to request Initial Acceptance of the Punch List items pursuant to paragraph 9 hereof. Upon issuance of the letter of Initial Acceptance by Town, a nine (9) month warranty period shall commence for the Punch List items and Developer shall provide Warranty Security
to Town to ensure performance by Developer of its warranty obligations until Final Acceptance of such Punch List items. Upon delivery of the Warranty Security to Town and on condition of Developer’s continuing compliance with paragraph 5.D.ii, Town shall make available to qualified applicants twenty (20) building permits in addition to the Model Home Permits and parties shall be entitled to apply for certificates of occupancy for Phase I.

ii. **Phase I Landscape and Irrigation System.** Upon certification by Developer to Town that the Phase I Landscape Improvements and Irrigation System have been installed, Developer shall request Initial Acceptance of the Phase I Landscape Improvements and Irrigation System. A two (2) year warranty period shall then apply for which Developer shall provide to Town the required Warranty Security. After Initial Acceptance of the Phase I Landscape Improvements and Irrigation System, and upon delivery of the Warranty Security to Town, Town shall make available to qualified applicants building permits and certificates of occupancy for all remaining lots in Phase I.

E. **Public Improvements Constructed in Phase I that require attention as part of Phase II Construction.** It has come to the attention of the Town that the irrigation ponds along County Road 1 (pond #3), constructed as a part of the Phase I, also were designed for storm water collection and retention for Phase II of the development. These ponds may not have been constructed as required. These ponds need to be surveyed and certified as to capacity for irrigation storage as well as storm water detention and/or retention. The intent of the emergency overflow (flow and direction) has not been made clear. The emergency overflow design to overtop Wildshore Drive does not appear to be functional and may not have been constructed as required. Currently any emergency overtopping would travel east over County Road 1 which is not acceptable. Resolution to these issues will need to be designed and reviewed and approved by the Town prior to any construction of Phase II of this development.

6. **Public Improvement Construction Plan Review.** The plans and construction documents for all Public Improvements shall be drawn according to regulations and construction standards of Town for such improvements. All applicable plans for Public Improvements shall be subject to review and approval by Town to determine if such plans are in conformance with applicable Town standards. No commencement of construction of Public Improvements shall occur without written approval by Town. Prior to commencement of construction of any Public Improvement, Developer shall attend a “pre-construction meeting” with Town engineer to assure compliance of all proposed activities with this Agreement and the Code.

7. **Construction Testing.** Developer, at its sole expense, shall employ a professionally qualified, independent testing company to perform all testing of materials or construction as may be reasonably required by Town to ensure compliance with applicable standards and specifications. All testing companies so employed by Developer shall maintain and have in effect a professional liability insurance policy with policy limits of at least one million dollars ($1,000,000), which will provide coverage for damage sustained by Town which is caused by the professional negligence of such company, its employees or agents. In completing such testing and shall provide proof of insurance to Town upon request. Developer shall furnish Town with certified copies of test results and agrees to release and authorize full access to Town
and its designated representatives all work-up materials, procedures and documents used in preparing the test results.

8. **Construction Inspection.** At all times during construction of the Public Improvements and until final acceptance thereof by Town, Town shall have the right, but not the duty, to inspect materials and workmanship to ascertain conformance with the approved plans and applicable standards and specifications. Developer shall reasonably cooperate and assist Town in gaining appropriate access to the areas designated for the inspection. It shall be the duty of Developer to notify Town upon discovery of any nonconformance with said plans, standards and specifications. Inspection and acceptance of work by Town shall not relieve Developer of any responsibility under this Agreement, including but not limited to the obligation to remedy any defect when discovered by Town regardless of initial or final acceptance thereof if the defect was not easily detectable by Town at the time of initial or final acceptance as defined below.

9. **Initial Acceptance of Public Improvements.** Upon substantial completion of construction by Developer of such Public Improvements, and upon notification thereof to Town by Developer, Town engineer shall inspect such Public Improvements and certify with specificity their conformity or lack thereof to the applicable specifications. Developer shall make all corrections necessary to bring the Public Improvements into conformity with such specifications. Upon satisfactory completion of the initial inspection and completion of corrections by Developer, and after submission of required documents to Town including written and electronic “record plans,” Town shall certify initial acceptance of the Public Improvements and evidence the same by issuance of letter of Initial Acceptance from Town engineer to Developer specifying in detail the Public Improvements being initially accepted. Initial Acceptance shall be deemed to have occurred upon both the issuance of such letter and receipt of the applicable Warranty Security for such Public Improvements. The applicable warranty period (nine (9) months or two (2) years) shall be set forth in the Initial Acceptance letter. The warranty period shall commence upon Town’s timely receipt of the required Warranty Security as provided by paragraph 5 hereof. Except as otherwise indicated in paragraph 5, Initial Acceptance of all Public Improvements by Town for a Phase shall be an express condition to the issuance of any certificates of occupancy for such Phase of the Property for which such Public Improvements are required.

10. **Final Acceptance of Public Improvements.** Upon expiration of the warranty period set forth in the Initial Acceptance Letter for Public Improvements, Developer shall provide notice to Town engineer that the Public Improvements are ready for final inspection. Upon satisfactory completion of the final inspection, and after conveyance of the Public Improvements as provided herein, and after payment of all fees due Town related to the Property, Town shall certify final acceptance of the Public Improvements and evidence the same by issuance of letter of Final Acceptance from Town engineer to Developer specifying in detail the Public Improvements being finally accepted. No letter of Final Acceptance shall be issued without advance approval of Town Council. The letter of Final Acceptance shall set forth the date of Town Council approval. Absent such consent, Developer shall not be entitled to rely on such letter for any reason. If upon final inspection by Town, significant defects are discovered, Town may elect to issue a supplemental letter of Initial Acceptance (instead of Final Acceptance) specifying corrective work to be completed, any additional warranty period and Warranty
Security required and any other condition of Final Acceptance reasonably determined by Town engineer to be necessary to assure the Public Improvements are finally completed. All such corrective work shall be the sole expense of Developer.

No extension of vested rights, as contemplated by the Amended and Restated Annexation Agreement, shall occur unless Initial Acceptance of all Public Improvements for a Phase has occurred, and Warranty Security has been provided to Town, prior to expiration of the vesting period for such Phase; meaning, among other things, that unless a letter of Initial Acceptance has been issued by Town for a Phase, the Public Improvements in such Phase shall be deemed incomplete and vesting shall expire for all remaining Phases at the end of the designated vesting period for such Phase with respect to which a letter of Initial Acceptance has not been issued by Town and/or Warranty Security has not been provided. Prior to the expiration of a vesting period, Developer may request a temporary extension of such period for minor corrective work to Public Improvements which remains to be completed before Initial can occur. Such temporary extension shall be considered only by Town Council in its sole and absolute discretion.

11. **Documents Provided to Town Upon Initial Acceptance.** Developer shall provide all necessary engineering designs, surveys, field surveys, and incidental services related to the construction of the Public Improvements, at its sole cost and expense, including reproducible "record plans" drawings certified accurate by a professional engineer registered in the State of Colorado. Developer shall provide Town and the Districts copies of such "record plans" drawings in written and electronic format as specified by Town upon "Initial Acceptance." Notwithstanding this paragraph, no "as-built drawings" or "record plans" shall be required for Phase I Public Improvements constructed by the prior developer of the Property.

12. **Conveyance or Dedications of Improvements.** As a condition of Final Acceptance, Developer shall convey to Town all Public Improvements required by the Final Plat for each Phase and, upon request by Town, shall execute such bills of sale as Town may request to assure title thereto is vested in Town notwithstanding the date of construction or acceptance of such Public Improvements as contrasted to the date of approval of the Final Plat. Acceptance of Public Improvements by dedication on the Final Plat shall not constitute Initial or Final Acceptance of such improvements.

13. **Proof of Ownership.** Prior to the issuance of any additional building permits, a title commitment for the Property shall be provided to Town. The title commitment shall show that any portion of the Property to be dedicated to Town, and all property reserved or dedicated for public purposes, is or shall be, free and clear of all liens and encumbrances (other than real estate taxes which are not yet due and payable) which would make the dedications unacceptable as Town determines in its reasonable discretion. A title policy evidenced by the title commitment shall be provided by Developer within thirty (30) days of execution hereof as to any property to be dedicated to Town pursuant to such Plat in an amount equal to the fair market value of such property. An update to such title commitment shall be provided upon request of Town and conveyance as a condition of Final Acceptance, with the policy evidenced by such commitment update to be provided thirty (30) days after Final Acceptance.

A. Developer shall construct regional trails at the time of development of each Phase as described in the Final Plat, except as modified by the Trail Phasing Plan depicted in Exhibit C. No building permits shall be issued for any Phase before the trails shown in the Final Plat and Exhibit C for such Phase have been completed and Initial Acceptance has occurred.

B. Developer has dedicated the “farmhouse” located on the Property to Town and, if requested by Town, shall provide prior to commencement of the development of Phase II, evidence of dedication of the existing water and sewer taps and electrical connection to Town. Further, Developer shall provide a natural gas tap and connection for the farmhouse prior to the commencement of development of Phase II and shall pay any fees required by the utility providers for the farmhouse.

C. Developer has dedicated to Town a 21-acre community park site and shall provide evidence to Town of conveyance of water rights to Town sufficient to irrigate fourteen (14) acres of the 21-acre park site (a minimum of 35 acre-feet of water annually) by July 1, 2012. Such water rights are purported to consist of two/fifths (2/5ths) of seventy percent (70%) of the “Clyde Smith Reservoir.” Town shall reimburse Developer for the cost of such water rights, land dedication, and the irrigation system described below in an amount not to exceed $750,000 for the value of such items which are shown in Exhibit F. Said amount shall be repaid by Town as a “pass through transfer” only from the $3,500 per dwelling unit fees paid at the time of the issuance of building permits as described in Paragraph 17 A hereof.

Prior to the date hereof, Developer has provided to Town a partially complete system to deliver the irrigation water to the park site from Smith Reservoir and has seeded a total of five (5) acres of the park. Said system currently consists of the existing irrigation lateral from Smith Reservoir to the existing concrete box located on the north east corner of County Road 1 and County Road 42 from whence Developer has installed a pipe to the ponds along County Road 1. Developer, in coordination with the NWCWD, is responsible for a complete raw water irrigation supply and delivery system for both the development (individual lots and open space) as well as the 14 acres of the Town owned 21-acre community park (Irrigation System). Certain portions of both systems (whether ultimately combined or kept independent) are installed while certain other portions still need to be designed and constructed per Town and NWCWD specifications.

After completion of the irrigation supply and delivery system (Irrigation System), and delivery of evidence of conveyance of the water rights sufficient to irrigate said 14 acres, Developer shall request Initial Acceptance as provided herein, but not later than July 1, 2012. Except as otherwise provide in paragraph 5, until Initial Acceptance has occurred, no certificates of occupancy shall be issued unless adequate security is provided to Town to assure performance of such obligations.

D. Prior to the issuance of building permits for Phase IV, Developer shall construct, and a Homeowners Association or Metropolitan District shall own and provide for the
operation and maintenance of a swimming pool to be located within the development. Until Town constructs a public pool, residents of Town may use the pool by paying an amount equal to one-half of the annual operating cost of the pool divided by the number of homeowners within the Property.

E. Developer shall use best efforts to cooperate with Town to obtain from the "Reservoir Company" defined below a non-exclusive public access easement adjacent to the Timnath Reservoir ("the Reservoir") sufficient in width (up to 50 feet in width) as reasonably necessary to accommodate a pedestrian/equestrian trail to be constructed to Town standards. Upon receipt of such easement, Developer will build a trail pad up to 30 feet in width to accommodate a future Town trail on the Reservoir property as approved by Cache La Poudre Reservoir Company (the "Reservoir Company") and dedicate the same to Town. Such efforts shall be completed by January 1, 2013.

F. Developer shall, as approved by the Reservoir Company and Town, remove concrete rip rap around the Reservoir adjacent to the project as depicted in Exhibit C and stabilize the Reservoir bank as reasonably required by Town and/or Reservoir Company on the west-facing shoreline of the Reservoir. Developer shall not be obligated to remove existing railroad ties and replace with rip rap. All work described in this paragraph shall be complete in conjunction with the development of Phase III and shall be considered part of the Phase III Public Improvements.

G. Developer shall dedicate and maintain all trails within the subdivision to the public as generally depicted in Exhibit C. All such trails shall be constructed as part of the Phase with which they are associated. Prior to entering on property dedicated to Town to construct or maintain such trails, Developer shall seek a "license agreement" from Town.

H. Prior to constructing any boat dock, plans for such dock shall be submitted to Town for review and approval to assure proper access, construction, maintenance and other health and safety concerns.

15. Land Dedication; Cash in Lieu; School Impact Fees. Developer agrees to dedicate to Town, or to the public at Town's discretion, all real property necessary for Public Improvements and that portion of the Property as may be necessary for public trails, utility connections or access to properties dedicated to Town as depicted on the Final Plat without payment from Town or the Metropolitan Districts. Such dedication shall be completed for Phase I prior to the commencement of Phase II, and for all other Phases shall be completed at the commencement of each such Phase. Upon request by Town and without cost to Town or the Metropolitan District, Developer shall dedicate and convey to Town any additional portions of the Property owned by such Owner for right-of-way as is necessary for the ultimate planned street section as required by the Final Plat.

In addition to all other fees required herein or in the Code, $1,800 per dwelling unit shall be paid by any building permit applicant as a condition of receiving a building permit. Such fee shall be assessed in lieu of dedication of land for public school sites.
For all property heretofore dedicated or to be dedicated or conveyed to Town by the terms of this Agreement or the Amended and Restated Annexation Agreement, or to be dedicated in any replat of any portion of the Property which may be approved by Town, Developer shall provide a title commitment for the property to be dedicated, which commitment shall show that the portion of the Property to be dedicated or conveyed to Town is free and clear of all liens and encumbrances (other than real estate taxes which are not yet due and payable, easements, rights of way and reservations of record that do not interfere with the intended use of the dedicated property). A title policy evidenced by the title commitment shall be provided by Developer, at no cost to Town, within thirty (30) days of request by Town Prior to conveyance to Town, Developer shall maintain the properties described herein as provided in Town Code.

16. Public/Private Partnership. Developer shall negotiate in good faith the formation of a partnership with Town for the purpose of jointly developing funding for the improvement and maintenance of Timnath Reservoir and recreation amenities related thereto by year end 2013. It is anticipated that these improvements will be “regional” in nature and that other participants will be part of such partnership.

17. Fees, Improvements to Abutting Streets, and Dedication.

A. Special Impact Fees. Developer recognizes that, in addition to providing substantial benefits, annexation of the Property substantially changed the existing character of Town and create the need for additional facilities to serve the additional residents. In consideration thereof, three thousand five hundred dollars ($3,500) per dwelling unit, shall be paid by the building permit applicant as a condition of receiving a building permit to be used to reimburse Developer for the cost of improvements to be made to the community park as provided in paragraph 14 hereof. The Three Thousand Five Hundred Dollar ($3,500) fee is fixed and may not be increased or decreased by Town during the period of vesting or extended vesting except for retention by Town of an administrative processing charge for each fee collected by the Town as such processing charge may be set forth in the Code, as amended from time to time. An additional Four Thousand Nine Hundred Eighteen Dollars ($4,918) per dwelling unit shall be paid by the building permit applicant as a condition of receiving a building permit as additional impact fees to offset Town’s cost of providing municipal services. The Four Thousand Nine Hundred Eighteen Dollar ($4,918) fee shall not be increased for a period of five (5) years after execution hereof for all or any portion of the Property located in Phase 1. Thereafter, or outside of Phase 1, the Four Thousand Nine Hundred Eighteen Dollar ($4,918) fee shall be increased or decreased to equal the fees then in effect for similar dwelling units in Town. Use of the Four Thousand Nine Hundred Eighteen Dollar ($4,918) fee collected shall be at Town’s sole discretion.

B. Chip Seal Reimbursement. Upon execution of this Agreement, Developer shall reimburse Town the amount of $189,533.30 for costs incurred by Town to design and construct chip seal improvements to CR 1. Town shall be responsible for the maintenance of the chip and seal improvements to CR 1.

C. Out of Pocket Costs. Upon execution of this Agreement, Developer shall reimburse Town the amount of $45,477.43 as of Nov 25, subject to increased engineering and
legal costs through execution of Agreement] for costs incurred by Town in connection with the development of this Agreement and the Amended and Restated Annexation Agreement, including but not limited to legal fees, engineering fees, and other out of pocket costs which would not have been incurred by Town but for the desire of Developer to negotiate amendments to the agreements amended hereby.

D. Cancellation of Debt. The Parties hereto agree that all debt or other monetary obligations due one Party to the other, except as specifically set forth herein or in the Amended and Restated Annexation Agreement, is hereby and forever discharged and forgiven without requirement of payment or additional consideration, the Parties specifically agreeing that the consideration set forth in this Agreement is sufficient for all agreements of the Parties contained herein.

18. Improvements to Abutting Streets.

A. County Road 1 Improvements. In addition to the requirement for dedication by Developer of internal easements and rights-of-way pursuant to the provisions of paragraph 16, Developer shall dedicate sufficient right-of-way along County Road 1 adjacent to the Property to accommodate one half of a 140 foot arterial roadway (40' additional right-of-way) and shall complete the following sections of County Road 1:

i. County Road 1 Adjacent to Property. Developer shall pave two lanes of County Road 1 (each lane 12 feet wide, together with 4 foot gravel shoulders and drainage ditch along the sides) from the north boundary to the south boundary of the Property as depicted in Exhibit G, including all curb, gutter, sidewalks and Landscape Improvements required by the Final Plat, as an “arterial street” not later than October 31, 2015 unless, in the sole reasonable discretion of Town, the “chip seal” completed in 2011 is adequate for traffic existing in 2015 in which case construction shall be completed by (a) October 31, 2016, or (b) prior to the issuance of the 109th building permit on the Property, whichever clause (a) or (b) occurs first.

ii. County Road 1 from South Boundary to County Road 40. Developer shall pave two lanes of County Road 1 (each lane 12 feet wide, together with 4 foot gravel shoulders and drainage ditch along the sides) from the south boundary of the Property to County Road 40 by October 31, 2015 unless, in the sole reasonable discretion of Town, the “chip seal” completed in 2011 is adequate for traffic existing in 2015 in which case construction shall be completed by (a) October 31, 2016, or (b) prior to the issuance of the 109th building permit on the Property, whichever clause (a) or (b) occurs first. Developer shall cooperate with Town and the owner of property to the south of the Property to provide sidewalk connectivity between said properties without cost to Town, in the event the property to the south is annexed to Town and developed or is under development prior to the completion of County Road improvements. Town will make reasonable efforts to provide for the reimbursement of one-half of the cost of the road so constructed, from developers of property adjacent to County Road 1, as development under the control of Town occurs.
B. **County Road 42 Improvements.** Developer shall construct the County Road 42 connection that will continue west of the Property in phases concurrent with the commencement of each Phase of the Property that lies adjacent to County Road 42. Such construction shall be in accordance with Town approved plans and shall be completed prior to the issuance of any building permit in each Phase adjacent to such road. Developer is only responsible for the dedication of right-of-way for this major collector and the construction of the public improvements within the Property. Developer shall dedicate all roads within the Property to Town. Developer shall provide landscaping and trails along County Road 42 adjacent to the Property at the time of commencement of any development within a Phase which is adjacent to County Road 42.

C. **All Weather Road.** Developer shall provide two all-weather means of vehicular access to the Property during development. The access roads to the Property are to be directly opposite existing or planned roadway intersections, or offset in compliance with Town standards.

D. **Right of Way Landscaping.** Developer provided a landscaping plan for the right-of-ways of arterial and collector roads at the time of Final Plat approval. Landscaping shown therein shall be completed at the time of construction of the associated roadway improvements adjacent to each Phase of development.

19. **Breach by Developer; Town's Remedies.** Should Developer become aware of any actual or anticipated breach of any of the terms and conditions of this Agreement by such Developer, it shall notify Town of such actual or anticipated breach immediately. Should Town become aware of any breach by notice from Developer or otherwise, Town may take such action as permitted or authorized by law, this Agreement, the Code, or any applicable rule or regulation, as Town deems necessary to protect the public health, safety and welfare; to protect lot buyers and builders; and to protect the citizens of Town from hardship and undue risk. These remedies include, but are not limited to:

A. The refusal to issue any building permit or certificate of occupancy to Developer for any lot(s) platted on the Property;

B. The revocation of any such building permit previously issued to Developer under which construction directly related to such building permit has not commenced;

C. The issuance of a stop work order for any construction related to or impacted by the breach;

D. Any other remedy available at law. Unless necessary to protect the immediate health, safety and welfare or to protect the interest of Town with regard to security given for the completion of the public improvements, Town shall provide Developer thirty (30) days written notice of its intent to take any action under this paragraph, during which thirty-day period Developer may cure the breach described in the notice and prevent further action by Town; provided, however, if such breach cannot be reasonably cured within such thirty-day period, then Town agrees to reasonably extend such thirty-day period so long as Developer has
commenced such cure within such thirty-day period and is diligently pursuing the same to completion. In no event shall the extension of time to cure the breach exceed ninety days.

20. **Indemnification.** Developer shall indemnify and hold harmless Town, its officers, employees, agents or servants from any and all suits, actions, and claims of every nature and description caused by, arising from or on account of any act or omission of Developer, or of any other person or entity for whose act or omission Developer is liable with respect to construction of the Public Improvements; and Developer shall pay any and all judgments rendered against Town as the result of any suit, action or claim, together with all reasonable expenses and attorneys fees incurred by Town in defending any such suit, action or claim, excluding only suits, actions and claims arising from Town's independent negligence. Furthermore, Town agrees to provide notice to Developer of any claim made against Town to which any such indemnity by Developer could apply, and Developer shall have the right to assist in the defence of any lawsuit based on such claim and to offer to settle such any such claim (provided that Developer must obtain a complete discharge of all Town liability through such settlement). Developer shall pay all property taxes on the Property dedicated to Town to the date of conveyance and shall indemnify and hold harmless Town for any such property tax liability.

21. **Insurance.**

   A. Developer shall at all times hereunder have and maintain in full force and effect comprehensive liability insurance providing coverage to such Developer and its employees, providing general liability, and comprehensive automobile liability insurance. Developer shall also require that all its contractors, subcontractors, representatives and agents have and maintain similar coverage, including professional liability, if applicable. Coverage on all policies shall not be less than the minimum amounts per occurrence as set forth in the Colorado Governmental Immunity Act as that Act may from time to time be amended. Additionally, the policies of Developer and each of such Developer's contractors, subcontractors, representatives and agents shall name Town and its agents, officials and employees as additional insureds. Developer shall at all times fully comply with the Colorado Worker's Compensation Act, and shall use its reasonable efforts to ensure that each of its contractors and subcontractors are in full compliance with the Act.

   B. Prior to, and as a condition of the issuance of any building permits by Town, Developer shall submit certificates of insurance in compliance with the standards set forth above. Nothing herein shall be construed to relieve or discharge Developer of its liability to Town or the Districts under the terms of this Agreement should Developer for any reason fail to procure and maintain any required insurance in sufficient amounts.

22. **Waiver of Defects.** In executing this Agreement, Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of Town to impose conditions on Developer as set forth herein, and concerning the procedure, substance and form of the ordinances or resolutions adopting this Agreement.

23. **Modifications.** This Agreement shall not be amended except by subsequent written agreement of the Parties.
24. Integration. It is expressly understood that Town cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with documents approved by the Board of Trustees at a public meeting, Town Code and the laws of the State of Colorado.

25. Captions. The captions to this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

26. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors and assigns as the case may be.

27. Invalid Provision. If any provisions of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of the other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other of which render the provision valid, then the provision shall have the meaning which renders it valid. If any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid, and the parties shall cooperate to cure any such defect.

28. Governing Law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that exclusive venue of such suit or action shall be in Larimer County, Colorado.

29. Attorney Fees. Should this Agreement become the subject of litigation to resolve a claim of default of performance, the substantially prevailing party shall be entitled to recover its reasonable attorney fees, expenses and court costs.

30. Notice. All notice required under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Notice to Town:

Town of Timnath
4800 Goodman Street
Timnath, Colorado 80547
Telephone: (970) 224-3211
Facsimile: (970) 224-3217

with a copy to:
Gary R. White, Esq.
White, Bear & Ankele,
Professional Corporation
2154 E. Commons Ave., Suite 2000
Centennial, CO 80122
Telephone: (303) 858-1800
Facsimile: (303) 858-1801

Notice to Developer:
WW Development, LLC
c/o Gary Hoover
1218 W. Ash Suite A
Windsor, CO 80550
Telephone: (970) 674-1109 x14
Facsimile: (970) 674-0203

with a copy to:
Mike Maxwell, Esq.
8010 South County Road 5, Suite 207
Windsor, CO 80528
Telephone: (970) 377-8010
Facsimile: (970) 377-8001

31. **Force Majeure.** Whenever Developer is required to complete construction, repair or replacement of Public Improvements by an agreed deadline, such Developer shall be entitled to an extension of time equal to a delay in completing the foregoing, due to unforeseeable causes beyond the control and without the fault or negligence of such Developer, including but not restricted to, acts of God, weather, fires and strikes.

32. **Approvals.** Whenever approval or acceptance of Town is necessary pursuant to any provisions of this Agreement, Town shall act reasonably and in a timely manner in responding to such request for approval or acceptance.

33. **Entire Agreement.** This Agreement, the Amended and Restated Annexation Agreement and the Final Plat embody the whole agreement of the Parties with respect to the Property. There are no promises, terms, conditions or obligations other than those contained herein and in the Amended and Restated Annexation Agreement and the Final Plat, which together supersede all previous communications, representations or agreements, either verbal or written between the Parties hereto. In the event that the Property is subdivided and lots are sold to different individuals in the future, this Agreement may be amended by agreement between the Property Owner and Town, without consent of such lot owners to the extent such amendment does not adversely affect such other lot owners in a material manner as determined in the sole and absolute discretion of Town.
34. Assignment or Assignments. There shall be no transfer or assignment of any of the rights or obligations of a Developer under this Agreement without the prior written approval of Town, which approval shall not be unreasonably withheld if the transferee has qualifications and net worth acceptable to Town in its sole discretion and which transferee has assumed the obligations of Developer under this Agreement in writing to the satisfaction of Town. Any attempted assignment or delegation in violation hereof shall be null and void.

35. Recording of Agreement. This Agreement shall be recorded in the real estate records of Larimer County and shall be a covenant running with the Property in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

36. Further Assurances. The parties shall execute such additional documents and take such additional action as may be necessary to effectuate the intent of this Agreement.

37. No Duress. The Parties agree that this Agreement is freely and voluntarily executed by them after extensive negotiations between them and an opportunity for each party to obtain legal advice.

38. Time is of the Essence. Time is of the essence for both parties with respect to the obligations herein. The parties agree that they will each act in as expeditious a manner as reasonably possible in performing the obligations herein.

39. Title and Authority. Developer expressly warrants and represents to Town that as of the date hereof it is the record owner of all of the property constituting the Property, except for county roads shown on the annexation map. The Parties represent and warrant, together with the undersigned individual(s), that the undersigned individual(s) have full power and authority to enter into this Agreement. Each party understands that the other parties are relying on such representations and warranties in entering into this Agreement.

TOWN: TOWN OF TIMNATH, COLORADO, a municipal corporation:

ATTEST: BY:

Milissa Peters, Town Clerk Jill Grossman Belisle, Mayor

DEVELOPER: WW Development, LLC, a Colorado limited liability company:

BY: Gary Hoover, Manager

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STATE OF COLORADO  )
 )ss.
COUNTY OF LARIMER  )

Subscribed and sworn to before me this _____ day of _______________, 2011 by
______________, as Manager of WW Development, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires:

______________________________________________

Notary Public
EXHIBIT A

Property
EXHIBIT B
Landscape Improvements

- Phase I Landscape Improvements shall consist of the areas designated on Exhibit C, Phase I. The parks marked “deleted” shall be open space natural areas with irrigated native grasses. All will be complete by July 1, 2012.

- Phases II-IV landscape plans, exclusive of the Trail Plan in Exhibit C, have been approved and will be constructed as part of each Phase prior to the issuance of any building permit in such Phases

- Tree lawns shall consist of an average of at least one deciduous or ornamental tree for every forty linear feet of block frontage or portion thereof. Trees shall be planted within the tree lawn with adequate spacing to allow for the mature spread of the trees

- Arterial Streetscape shall consist of live groundcover as appropriate to the use and function of the area, including a combination of grass, trees, flowers, paving and one shrub for every 150 square feet of landscape area clustered into planting beds. Developer shall also install an automatic irrigation system for all landscaping within arterial rights of way. A mechanism for long term maintenance of such landscaping shall be developed by the Metropolitan Districts which shall include the requirement of a “license” from Town to the Metropolitan Districts to maintain all landscaping adjacent to the Property which may lie within Town right of way.

- Developer shall maintain the existence of wetlands and/or the lawful moving of wetlands to develop the second phase of “Wildwing Drive” which shall in all respects comply with state and federal law.
EXHIBIT C
Phase Map
EXHIBIT D
Public Improvements

Offsite Water and Sewer — Developer will construct and have operational all offsite sanitary sewer and water improvements, including force main, lift stations or other requirements of the water and wastewater districts prior to the issuance of any building permit in each Phase.

Shoreline and Trail Pad on Reservoir — Developer shall construct a 30’ trail pad along its frontage along the Timnath Reservoir property in conjunction with development of Phase III. The trail pad shall be constructed of material approved by Town that is appropriate for future construction of a concrete pedestrian trail and permanent equestrian trail. The removal and replacement of broken concrete along Block 15 shall be completed in conjunction with the completion of Phase III. The riprap material used for replacement must be accepted in both design and construction by Town and Cache La Poudre Reservoir Company. The remaining shoreline in Block 17 must be completed in conjunction with the completion of Phase III.

Signal at County Rd. 1 and Mulberry or Prospect — Developer shall participate in the cost of installation of the signal at one of the above described locations, whichever is first needed in the discretion of Town. Town will seek participation in such costs from other developments along CR1. Developer’s share of such costs shall not exceed the Property’s contribution to total traffic at such intersections based on traffic study commissioned by Town.

Drainage/Ditch Requirements — Developer shall make drainage improvements on the Property as required by Town for each Phase. Historic ditches and laterals shall be required to maintain historic flows through the Property unless vacated on the Final Plat.

Street Lights — Developer shall provide all required street lighting for streets within the property and shall dedicate such to Town upon request.
EXHIBIT E
Punch List

1. All the inlets along the roadways still have the inlet filters installed. These need to be removed and the inlet grates/gutter cleared of debris.

2. There is substantial weed growth in the joint between the concrete curb and the asphalt throughout the development. These weeds need to be eradicated.

3. The white strip on the roadway for the delineation of the bike lane needs to be re-painted throughout most of Phase 1.

4. There are two missing crosswalk signs on Wildshore, one for east bound and one for westbound.

5. The stop sign and one of the street name signs is missing at one of the loop roads for Wildshore.

6. The road has settled adjacent to a manhole in front of 3271 Boundless Lane and is a traffic hazard that requires repair.

7. The road has settled near a manhole at a crosswalk location at the intersection of a loop road for Majestic just north of Boundless Lane.

8. There is a speed limit sign leaning in the general area of #7 above and needs to be reinstalled.

9. There is a stop sign leaning at Majestic and Thunderview that needs to be reinstalled.

10. There is a crosswalk sign on Chandra that is leaning and needs to be reinstalled.

11. There is a missing crosswalk sign on Chandra.

12. White Snow Ct. has debris piled in the street that needs to be removed and disposed of.

13. Both crosswalk signs on Chandra between White Snow and Summer Wind are missing and need to be installed.
EXHIBIT F
Regional Park

21 Acres @ $12,000.00 Per Acre
Existing Farm House
Clyde Smith Reservoir Water (Minimum of 35 Ac-ft, delivered annually)
(2/5th of seventy percent (70%) of the Clyde Smith Reservoir)
Grading
Irrigation System for 5 Acres
Hydro Seeding

$252,000.00
$150,000.00
$140,000.00
$39,000.00
$150,000.00
$25,000.00
$756,000.00

ASSUMPTIONS:
• 14 Acres of irrigated Turf @ 2.5 Ac Ft/Ac.
  Annually= 35 Ac. Ft.
• Irrigation System at approx. $0.70/SF
• Hydro Seeding at approx. $0.12/SF
EXHIBIT G
CRI Improvements