Timnath Development Authority Agenda
Meeting Agenda
September 22, 2015, at 6:00 p.m.

Meeting will be held at Timnath Administration Building
4800 Goodman Street, Timnath, Colorado

1. CALL TO ORDER AND ROLL CALL
   Chairperson    Jill Grossman-Belisle
   Commissioner    Bill Neal
   Commissioner    Aaron Pearson
   Commissioner    Paul Steinway
   Commissioner    Bryan Voronin

2. CONSENT
   a. Approval of the August 24, 2015, Timnath Development Authority Meeting Minutes

3. BUSINESS
   A. RESOLUTION NO. TDA-6, SERIES 2015, A RESOLUTION AND CERTIFICATION
      APPROVING THE RIVERBEND LOT TRANSFER TRANSACTION AND AUTHORIZING
      ACTIONS NECESSARY TO CONSUMMATE THE TRANSACTION

   B. RESOLUTION NO. TDA-7, SERIES 2015, A RESOLUTION AUTHORIZING THE
      TIMNATH DEVELOPMENT AUTHORITY TO INCUR INDEBTEDNESS IN THE FORM OF A
      LOAN FOR THE PURPOSE OF REFINANCING ITS OUTSTANDING INDEBTEDNESS,
      FINANCING THE COSTS OF PUBLIC INFRASTRUCTURE, AND PAYING THE COSTS OF
      ISSUANCE OF THE LOAN; APPROVING THE FORM OF A SECOND AMENDED AND
      RESTATED LOAN AGREEMENT IN CONNECTION THEREWITH AND AUTHORIZING
      THE EXECUTION, DELIVERY AND PERFORMANCE THEREOF; AUTHORIZING OTHER
      DOCUMENTS AND INSTRUMENTS IN CONNECTION THEREWITH; DELEGATING
      AUTHORITY TO THE AUTHORIZED REPRESENTATIVE PURSUANT TO SECTION 11-
      57-205(1), C.R.S. TO EXECUTE AND DELIVER THE SALE CERTIFICATE AND MAKE
      CERTAIN DETERMINATIONS REGARDING THE LOAN AS SET FORTH THEREIN AND
      HEREIN; AND ESTABLISHING THE EFFECTIVE DATE HEREOF

4. ADJOURNMENT
1. CALL TO ORDER AND ROLL CALL
Chairperson Grossman-Belisle called to order the regular meeting of the Timnath Development Authority on August 25, 2015, at 6:01 p.m.

Present:
 a. Chairperson Jill Grossman-Belisle
 b. Commissioner Paul Steinway
 c. Commissioner Aaron Pearson
 d. Commissioner Bryan Voronin

Absent
 a. Commissioner Bill Neal

Also Present:
 a. April Getchius, Town Manager
 b. Milissa Peters, Town Clerk
 c. Robert Rogers, Contracted Town Attorney
 d. Don Taranto, Contracted Town Engineer
 e. Sherri Wagner, Police Chief
 f. Matt Blakely, Contracted Town Planner
 g. Brian Williamson, Contracted Town Planner
 h. Kevin Koelbel, Contracted Town Planner

2. CONSENT
 a. Approval of the July 14, 2015, Timnath Development Authority Meeting Minutes
Commissioner Voronin moved to approve THE CONSENT AGENDA. Commissioner Pearson seconded the motion. The motion passed unanimously by voice vote.

3. BUSINESS
 A. RESOLUTION NO. TDA-5, SERIES 2015, A RESOLUTION APPROVING BOND COUNSEL ENGAGEMENT AGREEMENT
Staff Comments:
• Mr. Rogers spoke to the Commissioners about the proposed resolution.
Commissioner Steinway moved to approve RESOLUTION NO. TDA-5, SERIES 2015, A RESOLUTION APPROVING BOND COUNSEL ENGAGEMENT AGREEMENT. Commissioner Neal seconded the motion. The motion passed unanimously by voice vote.

4. ADJOURNMENT
Chairperson Grossman-Belisle adjourned the meeting at 6:02 p.m.
The Timnath Development Authority approved the August 25, 2015 TDA Meeting Minutes on September 22, 2015.

TIMNATH DEVELOPMENT AUTHORITY

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Jill Grossman-Belisle, Chairperson

ATTEST:

____________________________
Milissa Peters, Secretary
EXECUTIVE SUMMARY: The Riverbend Properties (Riverbend First Filing, Final Plat recorded on June 23, 2015 at Reception # 20150039320 of the Larimer County real property records) are subject to several agreements regarding their development, including location and construction of a fire station, police station, and town hall. The different agreements reference different legal descriptions, which could lead to fragmented property ownership in the future. The Resolution and Certification would approve the set of transactions necessary to reconcile the Riverbend Properties’ mismatched legal descriptions (“Riverbend Lot Transfer Transaction”), and authorize April Getchius, as Authority Manager, Jill Grossman-Belisle, as Board Chairperson, and Bryan Voronin, as Commissioner, to carry out the execution and delivery of all instruments necessary for the consummation of the Riverbend Lot Transfer Transaction and any incidental transactions thereto.

STAFF RECOMMENDATION:

Staff Recommends Approval of the Resolution and Certification (One Document).

KEY POINTS/SUPPORTING INFORMATION:

- The Resolution and Certification fulfills a title insurance requirement to confirm approval of the transaction and authorization of appropriate actions to be taken by officers of the Timnath Development Authority (“TDA”).
- The Town of Timnath, Colorado (the “Town”), the TDA, the Poudre Valley Fire Protection District (the “Fire District”), and the Poudre Fire Authority (the “Fire Authority”), entered into an Intergovernmental Agreement dated March 1, 2007 (the “2007 IGA”) regarding, among other things, the construction of a new fire station within the corporate boundaries of the Town.
- Riverbend Ventures LLC (“Riverbend Ventures”), the Town, and the TDA entered into a public improvements agreement in 2012, (the “Original Public Improvements Agreement”) which was subsequently amended and restated in its entirety (the “Restated Public Improvements Agreement”), in 2015.
- Pursuant to the Restated Public Improvements Agreement, Riverbend Ventures and the Town have submitted and processed a Final Plat for the area and development (the “Plat”).
- The Plat reconfigures lots 14, 15, 16, and Tract A into lots 7, 8, and 9 (“Riverbend Property Transfers”).
- Reconciliation of the legal descriptions is necessary because the metes and bounds legal descriptions in the 2012 Original Public Improvements Agreement do not match on all four corners with the lots and easements as shown in the proposed Plat in Exhibit B to the 2015 Restated Public Improvements Agreement.
- In order to reconcile the legal descriptions, the ownership interests in Lots 14, 15, 16, Tract A, and the
right-of-way easement (metes and bounds legal descriptions) will be conveyed via deed back to Riverbend Ventures with title insurance pursuant to the 2007 IGA, which will momentarily give Riverbend Ventures unity of title to all of such properties, immediately after which, and as an integral part of the same transaction, Riverbend Ventures will deed Lots 7, 8, and 9 back to the TDA and Fire Authority with title insurance using a reference to the new lot and block legal descriptions from the Plat.

- Pursuant to the Original Public Improvement Agreement, the TDA shall grant Riverbend Ventures an option to purchase Lots 14 and 16 if construction of a town hall and police station are not commenced on these lots by March 1, 2017 (the “Original Option to Purchase”).
- Pursuant to the current transaction, Riverbend Ventures shall either modify the Original Option to Purchase to update the legal description, or release and terminate the Original Option to Purchase Lots 14 and 16 in exchange for the TDA granting to Riverbend Ventures a new option agreement to purchase Lots 7 and 9 if construction of a town hall and police station are not commenced on these lots by March 1, 2017 (the “Current Option to Purchase”).
- Pursuant to the current transaction, the TDA shall relinquish the easement granted by Grant of Easement recorded February 15, 2012 at reception no. 2012010398 of the Larimer County, Colorado real property records.
- The individual transactions recited above, are collectively, the “Riverbend Lot Transfer Transaction”.
- The Resolution and Certification approves the Riverbend Lot Transfer Transaction and authorizes Authority Manager, April Getchius and Board Chairperson, Jill Grossman-Belisle to carry out the execution and delivery of all instruments necessary for the consummation of the Riverbend Lot Transfer Transaction and any incidental transactions thereto.

ADVANTAGES:

Reconciling the legal descriptions will resolve future questions of ownership for the mismatched portions of property between the 2012 metes and bounds legal descriptions and 2015 Plat, and allow for the most efficient development of the Riverbend Properties.

DISADVANTAGES:

None.

FINANCIAL IMPACT:

Correcting the legal descriptions will save significant staff time and resources in not having to deal with ownership issues in the future.

RECOMMENDED MOTION:

I motion that the Board of Commissioners approve the Resolution and Certification.
WHEREAS, the Board of Commissioners of the Timnath Development Authority (the “TDA”), pursuant to the provisions of the Colorado Revised Statutes, has the power to pass resolutions and enter into contracts and agreements; and

WHEREAS, the Town of Timnath, Colorado (the “Town”), the TDA, the Poudre Valley Fire Protection District (the “Fire District”), and the Poudre Fire Authority (the “Fire Authority”), entered into an Intergovernmental Agreement dated March 1, 2007 (the “2007 IGA”) regarding, among other things, the construction of a new fire station within the corporate boundaries of the Town; and

WHEREAS, Riverbend Ventures LLC (“Riverbend Ventures”), the Town, and the TDA entered into a public improvements agreement dated February 10, 2012, and recorded on April 25, 2012 at Reception # 20120027087 of the Larimer County, Colorado real property records (the “Original Public Improvements Agreement”) which was subsequently amended and restated in its entirety in the “Amended and Restated Public Improvements Agreement” dated October 14, 2014, and recorded on June 26, 2015 at Reception # 20150040691 of the Larimer County, Colorado records (the “Restated Public Improvements Agreement”). Pursuant to the Restated Public Improvements Agreement, Riverbend Ventures and the Town have submitted and processed a Final Plat for the area and development which was recorded on June 23, 2015 at Reception # 20150039320 of the Larimer County, Colorado real property records (the “Plat”); and

WHEREAS, the Plat reconfigures lots 14, 15, 16, and Tract A into lots 7, 8, and, 9 as depicted in the attached Exhibit A (“Riverbend Property Transfers”). Reconciliation of the legal descriptions is necessary because the metes and bounds legal descriptions in the Original Public Improvements Agreement recorded April 25, 2012 do not match on all four corners with the lots and easements as shown in the proposed Plat in Exhibit B to the Restated Public Improvements Agreement recorded June 26, 2015; and

WHEREAS, in order to reconcile the legal descriptions, the ownership interests in Lots 14, 15, 16, Tract A, and the right-of-way easement (metes and bounds legal descriptions) will be conveyed via deed back to Riverbend Ventures with title insurance pursuant to the 2007 IGA, which will momentarily give Riverbend Ventures unity of title to all of such properties,
immediately after which, and as an integral part of the same transaction, Riverbend Ventures will deed Lots 7, 8, and 9 back to the TDA and Fire Authority with title insurance using a reference to the new lot and block legal descriptions from the Plat; and

WHEREAS, among the negotiated features of the Original Public Improvement Agreement transaction are that the TDA shall grant Riverbend Ventures an option to purchase Lots 14 and 16 if construction of a town hall and police station are not commenced on these lots by March 1, 2017 (the “Original Option to Purchase”); and

WHEREAS, among the negotiated features of the current transaction are that Riverbend Ventures shall either modify the Original Option to Purchase to update the legal description, or release and terminate the Original Option to Purchase Lots 14 and 16 in exchange for the TDA granting to Riverbend Ventures a new option agreement to purchase Lots 7 and 9 if construction of a town hall and police station are not commenced on these lots by March 1, 2017 (the “Current Option to Purchase”); and

WHEREAS, among the negotiated features of the current transaction are that the TDA shall relinquish the easement granted by Grant of Easement recorded February 15, 2012 at reception no. 20120010398 of the Larimer County, Colorado real property records; and

WHEREAS, the Board of Commissioners is familiar with each of the individual transactions recited above (collectively, the “Riverbend Lot Transfer Transaction”) and finds such transactions to be in the best interest of the TDA, the residents within its boundaries, and the general public.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TIMNATH DEVELOPMENT AUTHORITY, TIMNATH, COLORADO as follows:

Section 1. Approval
The Riverbend Lot Transfer Transaction is hereby approved in substantially the form as described herein, subject to technical or otherwise non-substantive modifications, as deemed necessary and appropriate by the Authority Manager or Board Chairperson in consultation with applicable staff and consultants.

Section 2. Authorization
The Board of Commissioners hereby authorizes Authority Manager, April Getchius, Board Chairperson, Jill Grossman-Belisle and Commissioner Bryan Voronin, to carry out the execution and delivery of all instruments necessary for the consummation of the Riverbend Lot Transfer Transaction and any incidental transactions thereto.
INTRODUCED, MOVED, AND ADOPTED ON SEPTEMBER 22, 2015.

TIMNATH DEVELOPMENT AUTHORITY

____________________________
Bryan Voronin, Commissioner

ATTEST:

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Milissa Peters, Secretary
CERTIFICATION OF RESOLUTION NUMBER TDA-6, SERIES 2015 OF THE BOARD OF COMMISSIONERS OF THE TIMNATH DEVELOPMENT AUTHORITY

IN RE THE RIVERBEND LOT TRANSFER TRANSACTION

IT IS HEREBY CERTIFIED by the undersigned, as follows:

Pursuant to ALTA Title Commitment Number FCC25134448 from Old Republic National Title Insurance Company, Schedule B-1, Requirement 1, I hereby certify this true and correct copy of Resolution Number TDA-6, Series 2015 of the Board of Commissioners of the Timnath Development Authority for the Timnath Development Authority, Town of Timnath, Colorado. Said Resolution has not been modified or revoked.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of September, 2015.

Milissa Peters
Secretary
EXHIBIT A

Riverbend Property Transfers
EXECUTIVE SUMMARY:
The Timnath Development Authority (“TDA”) has identified certain additional costs of the Timnath Urban Renewal Project in the amount of $16,180,000 and the Authority and Lender have agreed to amend and restate the 2014 First Restated Loan Agreement. The resolution would authorize the Timnath Development Authority (TDA) to incur indebtedness in the form of a loan for the purpose of (a) providing additional funds to the Authority for the Urban Renewal Project, to be deposited to the 2015 Project Fund pursuant to the terms of the 2015 Loan Agreement; (b) refinancing its outstanding 2014 loan; (c) re-amortizing the indebtedness evidenced by the 2014 First Restated Note; and (d) amending and restating other terms of the 2014 First Restated Loan Agreement.

STAFF RECOMMENDATION:
Staff Recommends Approval of the Resolution.

KEY POINTS/SUPPORTING INFORMATION:
- Total Loan Amount: $50,000,000
- Proceeds from the Series 2015 Loan shall be used to:
  - Refinance the outstanding 2014 loan in the current outstanding amount of $35,605,000, plus accrued interest thereon to the closing date.
  - Fund the Reserve Fund Requirement in the amount of $2,000,000. The 2015 Reserve Fund shall be funded on the Closing Date from amounts on deposit in the Reserve Fund held under the 2014 Loan Agreement.
  - The proceeds remaining after funding the amounts required above (the “2015 Net Proceeds”), approximately $16,180,000, shall be deposited into the 2015 Project Fund for the purpose of funding eligible Capital Project Expenses within the boundaries of the TDA Urban Renewal Plan area.
- Closing Date: September 30th, 2015.
- Loan Term: Final Maturity of December 1, 2029, to coincide with the expiration of the Timnath Urban Renewal Plan.
- Commitment Fee: 0.25% of the Loan Amount, payable on Closing Date.
- Interest Rate: Fixed Rate not to exceed 4.5%
- As part of approval of the Resolution, the TDA will also be ratifying actions taken by the board of commissioners, including execution of the term sheet and rate lock agreement.
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<th>ADVANTAGES:</th>
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<td>Increased funding for projects in the TDA Urban Renewal Plan Area without requiring Town of Timnath Financing, and a favorable interest rate.</td>
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<th>DISADVANTAGES:</th>
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<td>None.</td>
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<th>FINANCIAL IMPACT:</th>
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<td>The Series 2015 Loan will finance public improvements that will provide a benefit to residents of the Town of Timnath without requiring Town financing.</td>
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<th>RECOMMENDED MOTION:</th>
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<td>Motion to Approve Resolution TDA-7, Series 2015</td>
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<th>ATTACHMENTS:</th>
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<tr>
<td>1. Resolution of Approval</td>
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<td>2. Loan Agreement</td>
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CERTIFIED RECORD

OF

PROCEEDINGS OF

THE BOARD OF COMMISSIONERS

OF

TIMNATH DEVELOPMENT AUTHORITY

As Authority

Relating to a resolution authorizing the issuance of:

$50,000,000
Timnath Development Authority
In the Town of Timnath
Larimer County, Colorado
Refunding and Improvement Loan 2015

Adopted on September 22, 2015

This cover page is not a part of the following resolution and is included solely for the convenience of the reader.
(Attach copy of notice of meeting, as posted)
As the Secretary of the Board of Commissioners of Timnath Development Authority, in the Town of Timnath, Larimer County, Colorado (the “Authority”), I do hereby certify that:

1. Attached is a true and correct copy of Resolution No. TDA-___-2015 (the “Resolution”) adopted by the Authority’s Board of Commissioners (the “Board” or “Board of Commissioners”) at a regular meeting held at 6:00 p.m. on September 22, 2015 at the Timnath Administration Building, 4800 Goodman Street, Timnath, Colorado, 80547.

2. Notice of such meeting, in the form preceding this certification, was posted as required by law.

3. The Resolution was duly moved, seconded and adopted at such meeting by the affirmative vote of a majority of the members of the Board of Commissioners as follows:

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<th>Commissioners</th>
<th>Attendance</th>
<th>Voting</th>
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<td>Present in Person</td>
<td>Present via Telecommunications</td>
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<td>Jill Grossman-Belisle, Chair</td>
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<td>Bryan Voronin, Vice Chair</td>
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<td>Bill Neal</td>
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<td>Paul Steinway</td>
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<td>Aaron Pearson</td>
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4. The Resolution was duly approved by the Board, signed by the Chairperson or Vice Chairperson of the Board, attested by the Secretary and recorded in the minutes of the Authority.

5. The meeting at which the Resolution was adopted was noticed, and all proceedings relating to the adoption of the Resolution were conducted in accordance with all applicable bylaws, rules, regulations and resolutions of the Authority, in accordance with the normal procedures of the Authority relating to such matters, and in accordance with applicable statutes of the State of Colorado and in accordance with all other applicable laws.

WITNESS my hand this 22nd day of September, 2015.

By ________________________________
Secretary, Board of Commissioners
RESOLUTION NO. TDA-7-2015

A RESOLUTION AUTHORIZING THE TIMNATH DEVELOPMENT AUTHORITY TO INCUR INDEBTEDNESS IN THE FORM OF A LOAN FOR THE PURPOSE OF REFINANCING ITS OUTSTANDING INDEBTEDNESS, FINANCING THE COSTS OF PUBLIC INFRASTRUCTURE, AND PAYING THE COSTS OF ISSUANCE OF THE LOAN; APPROVING THE FORM OF A SECOND AMENDED AND RESTATED LOAN AGREEMENT IN CONNECTION THEREWITH AND AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE THEREOF; AUTHORIZING OTHER DOCUMENTS AND INSTRUMENTS IN CONNECTION THEREWITH; DELEGATING AUTHORITY TO THE AUTHORIZED REPRESENTATIVE PURSUANT TO SECTION 11-57-205(1), C.R.S. TO EXECUTE AND DELIVER THE SALE CERTIFICATE AND MAKE CERTAIN DETERMINATIONS REGARDING THE LOAN AS SET FORTH THEREIN AND HEREIN; AND ESTABLISHING THE EFFECTIVE DATE HEREOF

RECITALS

WHEREAS, the Timnath Development Authority (the “Authority”) is a public body corporate and politic duly established by the Town of Timnath, Colorado (the “Town”) on December 15, 2004 under and pursuant to the laws of the State of Colorado (the “State”) and Resolution No. AJ-2004 adopted by the Town Council of the Town on December 15, 2004; and

WHEREAS, an urban renewal plan, known as the “Timnath Urban Renewal Plan,” originally approved in December 2004 and amended in March 2007 and August 2015 (as so amended, the “Plan”) has been duly and regularly approved by the Board of Trustees of the Town for various projects (collectively, the “Urban Renewal Project”) under the Act;

WHEREAS, the Town is a municipal subdivision of the State, a body corporate and politic, and a home rule municipality pursuant to Article XX of the State Constitution and the Charter of the Town (the “Charter”); and

WHEREAS, all applicable requirements of the Act and other provisions of law for and precedent to the adoption and approval by the Town of the Plan have been duly complied with; and

WHEREAS, the Authority is authorized to transact business and exercise its powers as an urban renewal authority, including the power and authority to borrow money and to apply for and accept loans to accomplish the purposes, all under and pursuant to the Colorado Urban Renewal Law, Title 31, Article 25, Part 1, Colorado Revised Statutes (the “Act” or the “Colorado Urban Renewal Law”); and

WHEREAS, the Authority has previously issued, for the purpose of paying a portion of the costs of the Urban Renewal Project, its Variable Rate Tax Increment Revenue Bonds, Series 2007, in the aggregate principal amount of $25,000,000 (the “Series 2007 Bonds”), and

WHEREAS, the Authority and Compass Mortgage Corporation (the “Lender”) have entered into the following loan agreements and notes:
(a) $24,500,000 Loan Agreement dated as of April 1, 2011 (the “Original Loan Agreement”), for the purpose of providing funds to refund the Series 2007 Bonds, the repayment which was evidenced by a promissory note (the “Original Note”); and

(b) $2,400,000 First Amendment to Loan Agreement dated as of February 10, 2012 (the “First Amendment”), for the purpose of providing additional funds to the Authority for the Urban Renewal Project, thereby increasing the amount of the Original Note to $26,035,000 (the “Amended Note”), as amended by that certain Second Amendment to Loan Agreement dated as of July 10, 2013, entered into for the purpose of extending the Advance Period (the “Second Amendment”) (the Original Loan Agreement, the First Amendment and the Second Amendment are referred to, collectively, as the “Amended Loan Agreement”); and

(c) $36,725,000 Amended and Restated Loan Agreement dated as of February 26, 2014 (the “First Restated Loan Agreement”), for the purpose of re-amortizing the amounts due under the Amended Loan Agreement and providing additional funds in the amount of $13,000,000 to the Authority for the Urban Renewal Project, the repayment which was evidenced by a promissory note (the “First Restated Note”) which replaced the Amended Note; and

WHEREAS, the Authority has identified certain additional costs of the Urban Renewal Project in the amount of $16,180,000 and the Authority and Lender have agreed to amend and restate the First Restated Loan Agreement for the purpose of (a) providing additional funds to the Authority for the Urban Renewal Project, the net proceeds of which shall be deposited to the 2015 Project Fund pursuant to the terms of the 2015 Loan Agreement (defined below); (b) re-amortizing the indebtedness evidenced by the First Restated Note and (c) amending and restating other terms of the First Restated Loan Agreement as described herein; and

WHEREAS, accordingly, the Authority and the Lender have agreed to amend and restate the First Restated Loan Agreement by entering into a Second Amended and Restated Loan Agreement dated as of September 29, 2015 (the “2015 Loan Agreement”) and have agreed to replace the First Restated Note with a new promissory note (the “Note”) in the original principal amount of the Loan (defined below); and

WHEREAS, the current amount outstanding on the First Restated Note is $35,605,000; and

WHEREAS, the additional amount loaned to the Authority pursuant to 2015 Loan Agreement is the amount of $14,395,000, resulting in a new loan amount of $50,000,000 (the “Loan”); and

WHEREAS, the Loan shall constitute a special limited revenue obligation of the Authority payable from and secured by the Pledged Revenue (as defined in the 2015 Loan Agreement), subject to the limitations set forth in the 2015 Loan Agreement; and

WHEREAS, the Lender submitted to the Authority a Summary Terms and Conditions dated as of September 8, 2015 (the “Term Sheet”) setting forth in general the proposed terms and conditions upon which the Lender would make the Loan to the Authority; and
WHEREAS, the Chair of the Board, the Town Manager, the Authority’s accountant and General Counsel have participated in multiple discussions with respect to the Loan, the Term Sheet, and the issues and matters relating thereto and, following such discussions, the Chair of the Board of the Authority executed the Term Sheet; and

WHEREAS, the Authority’s authority to incur the indebtedness of the Loan and to execute and deliver the Note and the 2015 Loan Agreement and perform its obligations thereunder is authorized pursuant to this Resolution, the Act, the provisions of Title 11, Article 57, Part 2, C.R.S. (the “Supplemental Public Securities Act”) and all other laws thereunto enabling; and

WHEREAS, the Loan shall constitute a special revenue obligation of the Authority payable from and secured by the Pledged Revenue, subject to the limitations set forth in the 2015 Loan Agreement; and

WHEREAS, the Board specifically elects to apply the provisions of the Supplemental Act to the Loan, the 2015 Loan Agreement and the Note; and

WHEREAS, there is no known conflict of interest of any member of the Board of Commissioners of the Authority in connection with the Loan; and

WHEREAS, the Board has the authority, as provided in Section 11-57-205(1), C.R.S., to delegate to any member of the Board the authority to determine certain provisions of the Loan to be set forth in the Sale Certificate (defined below) in accordance with the provisions of this Resolution; and

WHEREAS, the Board desires to authorize the execution and delivery of the Loan Documents; to delegate the authority to the Delegated Authorized Representative pursuant to Section 11-57-205(1), C.R.S. to execute and deliver the Sale Certificate and to make certain determinations regarding the Loan as more specifically set forth therein and herein; and to authorize the execution, completion, and delivery of such certificates and other documents as may be necessary to effect the intent of this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF TIMNATH DEVELOPMENT AUTHORITY, IN THE TOWN OF TIMNATH, LARIMER COUNTY, COLORADO:

Section 1. Definitions. Unless the context indicates otherwise, as used herein, capitalized terms shall have the meanings ascribed by the preambles hereto and the Loan Agreement, and the following capitalized terms shall have the respective meanings set forth below:

“2015 Loan Agreement” has the meaning set forth in the recitals hereof.

“Act” has the meaning set forth in the recitals hereof.

“Authority” has the meaning set forth in the recitals hereof.
“Authorized Person” has the meaning set forth in the 2015 Loan Agreement and, initially, means the person identified as such in Section 7 hereof.

“Board” has the meaning set forth in the recitals hereof.

“Bond Counsel” means Kutak Rock LLP.

“C.R.S.” means the Colorado Revised Statutes, as amended as of the date hereof.

“Closing Date” means September 29, 2015 or such other date as may be mutually agreed upon by the Authority and the Lender.

“Closing Memorandum” means the closing memorandum, dated as of the Closing Date and approved by the Delegated Authorized Representative, delineating all sources of funds, including moneys presently held by the Lender in connection with the First Restated Note and proceeds of the Loan, and setting forth the uses of such funds, including the transfer and credit to the funds and accounts established and/or affirmed under the 2015 Loan Agreement and the application of such funds to payment of the costs, expenses and fees incurred in connection with the issuance of the Loan and the refunding of the First Restated Note.

“Delegated Authorized Representative” means Jill Grossman-Belisle, Chair of the Board or, alternatively, in her absence means Bryan Voronin, Vice Chair of the Board, each having the authority delegated pursuant to Sections 4 and 5 of this Resolution.

“Fixed Rate” has the meaning set forth in the 2015 Loan Agreement.

“General Counsel” means White Bear Ankele Tanaka & Waldron, Professional Corporation.

“Lender” has the meaning set forth in the recitals hereof.

“Loan Documents” means, collectively, the Note, the 2015 Loan Agreement and the Sale Certificate.

“Note” has the meaning set forth in the recitals hereof.

“First Restated Note” has the meaning set forth in the recitals hereof.

“Pledged Revenue” has the meaning set forth in the 2015 Loan Agreement.

“Resolution” means this Resolution which authorizes the Authority to incur the indebtedness of the Loan; to issue the Note; and to execute, deliver and perform its obligations under the Loan Documents and authorizes the delegation of authority to the Delegated Authorized Representative to execute the Sale Certificate and make the determinations set forth therein.

“Sale Certificate” means the Loan Sale Certificate executed by the Delegated Authorized Representative under the authority delegated pursuant to Section 11-57-205(1), C.R.S., and this
Resolution, which certificate shall set forth, among other things, the Fixed Rate of interest to be borne by the Loan as provided in the 2015 Loan Agreement.

“Supplemental Public Securities Act” has the meaning set forth in the recitals hereof.

“Tax Certificate” means the Tax Compliance Certificate prepared by Bond Counsel and executed by the Authority, dated as of the Closing Date and setting forth certain representations and covenants of the Authority required to establish the tax status of interest on the Loan.

Section 2. Approval, Ratification and Authorization of Loan Documents and Payment of Transaction Costs. The Authority is hereby authorized to incur the indebtedness of the Loan and the Authority is hereby authorized to enter into the Loan Documents in the forms of such documents presented to the Board at or prior to this meeting. The Authority shall enter into and perform its obligations under such Loan Documents, with such changes as are made pursuant to this Section 2 and are not inconsistent herewith. The Chairperson and/or the Vice-Chairperson of the Authority are hereby authorized and directed to execute and deliver the Loan Documents and the Clerk of the Town, acting as Secretary of the Authority, is hereby authorized and directed to attest the Loan Documents, and the Chairperson of the Authority, Vice-Chairperson of the Authority, Secretary of the Authority, and other appropriate officers of the Authority are further authorized to execute and authenticate such other documents, instruments, or certificates as are deemed necessary or desirable in order to secure, sell, deliver, administer and issue the Loan as a tax-exempt obligation including, without limitation, the Tax Certificate. Payment of the transaction costs set forth in the Closing Memorandum shall be made from Loan proceeds or other legally available funds of the Authority and such payment is hereby authorized. The net proceeds of the Loan shall be applied to accomplish the refinancing of the First Restated Note on the Closing Date and to finance certain public improvements; provided, however, that all improvements financed from proceeds of the Loan shall be the type of improvements eligible to be paid with proceeds of tax-exempt obligations. The Loan Documents may be completed, corrected, or revised as deemed necessary or convenient and approved by General Counsel in order to carry out the purposes of this Resolution and such approval by General Counsel shall be deemed approval by the Board; provided, however, that General Counsel shall consult with a representative of the Authority in connection with such approval. To the extent any Loan Document has been executed prior to the date hereof, then said execution is hereby ratified and affirmed. Copies of all of the Loan Documents shall be delivered, filed, and recorded as provided therein.

Upon execution of the Loan Documents, the covenants, agreements, recitals, and representations of the Authority therein shall be effective with the same force and effect as if specifically set forth herein, and such covenants, agreements, recitals, and representations are hereby adopted.

The appropriate officers of the Authority are hereby authorized and directed to prepare and furnish to any interested person certified copies of all proceedings and records of the Authority relating to the Loan and the Loan Documents and such other affidavits and certificates as may be required to show the facts relating to the authorization and issuance thereof.
The execution of any instrument by the Chairperson of the Authority or other appropriate officer of the Authority in connection with the issuance, sale, execution, delivery or administration of the Loan not inconsistent herewith shall be conclusive evidence of the approval by the Authority of such instrument in accordance with the terms thereof and hereof.

Section 3. Purpose of and Security for Loan Agreement and Note. In accordance with the Constitution of the State of Colorado; the Act; the Supplemental Act; and all other laws of the State of Colorado thereunto enabling, the Authority shall incur the indebtedness of the Loan and, in connection therewith, the Note shall be issued and the 2015 Loan Agreement and other Loan Documents shall be executed and delivered for the purposes of (a) refunding the First Restated Note; (b) funding certain public improvements; and paying the costs of issuance of the Loan, all as further provided in the Loan Documents and the Closing Memorandum. The Loan, as evidenced by the Note, shall constitute a special limited revenue obligation of the Authority, payable as provided in the 2015 Loan Agreement and secured by the Pledged Revenue.

Section 4. Delegation of Authority. Pursuant to Section 11-57-205(1), C.R.S., the Board hereby delegates to the Delegated Authorized Representative, for a period of ninety (90) days following adoption of this Resolution, the authority to (a) make the determinations with respect to the Loan set forth in Section 5(a) below, subject to the parameters and restrictions set forth below in Section 5(b) below, and (b) execute and deliver the Sale Certificate (collectively, the “Delegated Authority”).

Section 5. Terms and Parameters of Delegated Authority.

(a) Pursuant to the Delegated Authority, the Delegated Authorized Representative is hereby authorized to make the following determination with respect to the Loan, subject to the parameters set forth in Section 5(b) below:

(i) the Fixed Rate of interest to be borne by the Loan.

(b) The Delegated Authorized Representative’s Delegated Authority to make the determination with respect to the Loan set forth in Section 5(a) above is subject to the following limitation:

(i) the Fixed Rate shall not exceed 4.50% per annum;

Section 6. Permitted Amendments to Resolution. Except as otherwise provided herein, the Authority may amend this Resolution in the same manner, and subject to the same terms and conditions, as apply to an amendment or supplement to the 2015 Loan Agreement.

Section 7. Appointment of Authorized Person. The Chairperson of the Board and Vice Chair of the Board are hereby appointed as the Authorized Person for the Authority, as defined in the 2015 Loan Agreement, for the purposes specified in the 2015 Loan Agreement. A different Authorized Person may be appointed by resolution adopted by the Board with a copy thereof provided to the Lender.

Section 8. Disposition and Investment of Proceeds; Tax Covenants.
(a) The proceeds of the Loan shall be used for the purposes aforesaid. All or any portion of the Loan proceeds may be temporarily invested or reinvested, pending such use, in securities or obligations which are both lawful investments and which are Permitted Investments (as defined in the 2015 Loan Agreement) but only in compliance with the terms of the Tax Certificate. It is hereby covenanted and agreed by the Authority that it will not make, or permit to be made, any use of the proceeds of the Loan, or of any moneys treated as proceeds of the Loan within the meaning of the Code and applicable regulations, rulings, and decisions, or take, permit to be taken, or fail to take any action, which would cause the Loan to be an “arbitrage bond” within the meaning of Section 148 of the Code, or would adversely affect the exclusion from gross income of the interest on the Loan under Section 103 of the Code and applicable regulations, rulings, and decisions.

(b) In addition to the other funds and accounts created pursuant hereto, the Authority shall establish and maintain hereafter a fund separate from any other fund or account established and maintained under the 2015 Loan Agreement designated the “Timnath Development Authority, 2014 Loan, Rebate Fund” (the “Rebate Fund”). There shall be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Tax Certificate. All money at any time deposited in the Rebate Fund shall be held by the Authority in trust, to the extent required to satisfy the rebate requirements of the Code, for payment to the United States of America. All amounts required to be deposited into or on deposit in the Rebate Fund shall be governed exclusively by this Resolution and by the Tax Certificate (which is incorporated herein by reference).

(c) The Authority will at all times do and perform all acts permitted by law that are necessary in order to assure that interest paid on the Loan shall not be includible in gross income for federal income tax purposes under the Code or any other valid provision of law. In particular, but without limitation, the Authority represents, warrants and covenants to comply with the following rules unless it receives an opinion of bond counsel stating that such compliance is not necessary: (i) gross proceeds of the Loan will not be used in a manner that will cause the Loan to be considered a “private activity bond” within the meaning of the Code; (ii) the Loan is not and will not become directly or indirectly “federally guaranteed”; and (iii) the Authority will timely file Internal Revenue Form 8038-G which shall contain the information required to be filed pursuant to Section 149(e) of the Code.

(d) The Authority will comply with the Tax Certificate, including but not limited by the provisions thereof regarding the application and investment of Loan proceeds, the calculations, the deposits, the disbursements, the investments and the retention of records described therein.

Any funds remaining in the Rebate Fund after payment in full of the Loan shall be withdrawn and retained by the Authority to the extent that it does not conflict with the terms of the Tax Certificate.

Section 9. Costs and Expenses; Appropriation of Funds. All costs and expenses incurred in connection with incurring the indebtedness of the Loan, issuing the Note, and preparing, executing and delivering the Loan Documents shall be paid either from the proceeds of the Loan or from legally available moneys of the Authority, or from a combination thereof, and such moneys are hereby appropriated for that purpose.
Section 10.  Pledge of Revenues. The creation, perfection, enforcement, and priority of the revenues pledged to secure or pay the Loan as provided herein and in the 2015 Loan Agreement and the Note shall be governed by Section 11-57-208 of the Supplemental Act, this Resolution, the 2015 Loan Agreement, and the Note. The revenues pledged for the payment of the Authority’s obligations under the 2015 Loan Agreement, as received by or otherwise credited to the Authority or the Lender, shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge on the revenues of the Authority and the obligation to perform the contractual provisions made herein and in the 2015 Loan Agreement shall have priority over any or all other obligations and liabilities of the Authority. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the Authority irrespective of whether such persons have notice of such liens.

Section 11.  No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Board of Commissioners, or any officer or agent of the Authority acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prepayment penalties on the Loan. Such recourse shall not be available either directly or indirectly through the Board of Commissioners or the Authority, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the 2015 Loan Agreement and the Note, the Lender specifically waives any such recourse.

Section 12.  Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, the Note shall contain a recital that it is issued pursuant to certain provisions of the Supplemental Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Note evidencing the indebtedness of the Loan after its delivery for value.

Section 13.  Limitation of Actions. Pursuant to Section 11-57-212, C.R.S., no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the execution and delivery of the 2015 Loan Agreement and the authorization or issuance of the Loan or the Note evidencing the indebtedness thereof shall be commenced more than thirty days after the authorization of such securities.

Section 14.  Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the Authority and the members of the Board of Commissioners, not inconsistent with the provisions of this Resolution, relating to the authorization, sale, issuance, execution and delivery of the Loan Documents, or the execution of any documents in connection with the Loan Documents, are hereby ratified, approved, and confirmed.

Section 15.  Resolution Irrepealable. After the execution and delivery of the 2015 Loan Agreement, this Resolution shall constitute a contract between the Lender and the Authority and shall be and remain irrepealable until the 2015 Loan Agreement and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided and as provided in the 2015 Loan Agreement.
Section 16. Repealer. All orders, bylaws, and resolutions of the Authority, or parts thereof, inconsistent or in conflict with this Resolution, are hereby repealed to the extent only of such inconsistency or conflict.

Section 17. Severability. If any section, paragraph, clause, or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Resolution, the intent being that the same are severable.

Section 18. Effective Date. This Resolution shall take effect immediately upon its adoption and approval.
ADOPTED AND APPROVED this ____ day of September, 2015.

TIMNATH DEVELOPMENT AUTHORITY

By _________________________________
Chairperson, Board of Commissioners

ATTEST:

By _________________________________
Secretary, Board of Commissioners

[Signature page to Resolution]
AMENDED AND RESTATED LOAN AGREEMENT

by and between

TIMNATH DEVELOPMENT AUTHORITY
as Borrower

and

COMPASS MORTGAGE CORPORATION
as Lender

Dated as of February 26, 2014

September 30, 2015
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AMENDED AND RESTATED LOAN AGREEMENT

THIS AMENDED AND RESTATED LOAN AGREEMENT (this “Agreement”) is made and entered into as of September 30, 2015, by and between TIMNATH DEVELOPMENT AUTHORITY (the “Borrower”), a public body corporate and politic duly existing under the laws of the State of Colorado, and COMPASS MORTGAGE CORPORATION, an Alabama corporation, in its capacity as lender (the “Lender”).

RECITALS

WHEREAS, the Borrower is a public body corporate and politic and has been duly created, organized, established and authorized by the Town of Timnath, Colorado (the “Town”) to transact business and exercise its powers as an urban renewal authority, all under and pursuant to the Colorado Urban Renewal Law, constituting part 1 of article 25 of title 31, Colorado Revised Statutes (the “Act”) (all capitalized terms used and not otherwise defined herein shall have the respective meanings assigned in Article I hereof); and

WHEREAS, pursuant to the Act, the Borrower has the power and authority to borrow money and to apply for and accept loans to accomplish the purposes set forth in the Act, and to give such security as may be required; and

WHEREAS, an urban renewal plan, known as the “Timnath Urban Renewal Plan,” originally approved in December 2004 and amended in March 2007 (together, the “Plan”) has been duly and regularly approved by the Board of Trustees of the Town, and pursuant to the Plan, the Borrower is authorized to construct various urban renewal projects (each, an “Urban Renewal Project”) under the Act; and

WHEREAS, all applicable requirements of the Act and other provisions of law for and precedent to the adoption and approval by the Town of the Plan have been duly complied with; and

WHEREAS, the Borrower has previously issued, for the purpose of paying a portion of the costs of the Urban Renewal Project, its Variable Rate Tax Increment Revenue Bonds, Series 2007, in the aggregate principal amount of $25,000,000 (the “Series 2007 Bonds”), and

WHEREAS, the Borrower and the Lender have entered into the following loan agreements and notes:

(a) $24,500,000 Loan Agreement dated as of April 1, 2011 (the “Original Loan Agreement”), for the purpose of providing funds to refund the Series 2007 Bonds, the repayment which was evidenced by a promissory note (the “Original Note”); and

(b) WHEREAS, the Borrower and the Lender have amended the Original Loan Agreement by entering into that certain $2,400,000 First Amendment to Loan Agreement dated as of February 10, 2012 (the “First Amendment”), for the purpose of providing additional funds to the Borrower for the Urban Renewal Project, and by entering into three (3) agreements

increase the amount of the Original Note to $26,035,000 (the “Amended Note”), as amended by that certain Second Amendment to Loan Agreement dated as of July 10,
2013, entered into for the purpose of extending the Advance Period (the “Second Amendment”) (the Original Loan Agreement, the First Amendment and the Second Amendment are referred to as the “Amended Loan Agreement”); and

WHEREAS, pursuant to the Original Loan Agreement, the Lender made a loan in the original principal amount of $24,500,000 (the “Original Loan”)

(c) $36,725,000 Amended and Restated Loan Agreement dated as of February 26, 2014 (the “First Restated Loan Agreement”), for the purpose of reamortizing the amounts due under the Amended Loan Agreement and providing additional funds in the amount of $13,000,000 to the Borrower for the Urban Renewal Project, the repayment which was evidenced by a promissory note (the “Original Note”) in the amount of $24,500,000; and

WHEREAS, pursuant to the First Amendment, the Lender agreed to increase the amount of the Original Loan by $2,400,000 and to make an amended loan in the original total principal amount of $26,035,000 (the “Amended Loan”), the repayment of which was evidenced by a new promissory note (the “Amended Note”) in the amount of $26,035,000 (First Restated Note”) which replaced the Amended Note; and

WHEREAS, simultaneously with the execution of the Amended First Restated Loan Agreement, the Bond Cooperation Agreement was also amended and restated so that such document was consistent with the terms of the Amended First Restated Loan Agreement; and

WHEREAS, the Borrower has identified certain additional costs of the Urban Renewal Project in the amount of $16,180,000 and the Borrower and Lender have agreed to amend and restate the Amended First Restated Loan Agreement for the purpose of (a) providing additional funds to the Borrower for the Urban Renewal Project in the maximum principal amount of $13,000,000, the net proceeds of which shall be deposited to the 2014 Restricted Project Fund “A” and the 2014 Restricted Project Fund “B” pursuant to the terms hereof; (b) reamortizing the loan evidenced by the First Restated Note and (c) amending and restating other terms of the First Restated Loan Agreement as described herein; and

WHEREAS, the Borrower has paid the regularly scheduled principal payments due on the Amended Loan in the aggregate amount of $2,310,000 through December 1, 2013, resulting in a current amount outstanding on the Amended Loan of $23,725,000 (First Restated Note) is $35,605,000; and

WHEREAS, the additional amount loaned to the Borrower pursuant to this Amendment is the amount of $13,000,000, resulting in a new loan balance of $36,725,000 (the “Loan”); and
WHEREAS, this Agreement and the Note provide that the Loan will mature on December 1, 2029 (the “Maturity Date”) and that principal on the Loan will be payable on the schedule set forth in Exhibit B to this Agreement; and

WHEREAS, the Borrower’s authority to execute and deliver the Note (as defined in Article I hereof) and this Agreement and perform its obligations thereunder and hereunder is authorized pursuant to the Authorizing Resolution (as more particularly defined in Article I hereof); the Act; the provisions of Title 11, Article 57, Part 2, C.R.S. (the “Supplemental Public Securities Act”); and all other laws thereunto enabling; and

WHEREAS, the Loan shall constitute a special revenue obligation of the Borrower payable from and secured by the Pledged Revenue, subject to the limitations set forth herein.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the parties hereto agree as follows.

ARTICLE I
DEFINITIONS

“Act” means the Colorado Urban Renewal Law, Title 31, Article 25, Part 1, Colorado Revised Statutes, as amended from time to time.

“Additional Debt” means any Debt issued after the Closing Date by the Borrower.

“Additional Loan Payments” means: (a) amounts received by the Borrower as reimbursement for a Riverbend Capital Project pursuant to the Public Improvements Agreement; and (b) amounts received by the Borrower from any (i) sale or other transfer of any interest in all or part of the Riverbend Lots by the Borrower to any party other than the Town and (ii) payment of any claim made by the Borrower pursuant to any title insurance policy, property insurance policy or other insurance coverage issued to the Borrower as owner of the Riverbend Lots; provided, however, that the amount of Additional Loan Payments shall not exceed the Loan Amount Outstanding at the time of receipt of the Additional Loan Payments.

“Additional Project Fund “B” Deposits” means Additional Loan Payments or Recovered Amounts deposited to the 2014 Restricted Project Fund “B” after the Closing Date pursuant to Sections 4.02(c) and 4.02(d) hereof.

“Administrative Cooperation Agreement” means that certain Cooperation Agreement for Administrative Services, dated August 1, 2007, as amended or otherwise modified from time to time, between the Town and the Borrower, pursuant to which, among other things, the Town agrees to advance certain Pledged Revenue to the Borrower for its use in hiring staff or consultants in connection with the Urban Renewal Projects. The Administrative Cooperation Agreement provides that the obligations of the Borrower thereunder are subordinate to the Borrower’s obligations to the Loan or any Parity Debt.
“Amended Loan” means the amended loan made by the Lender to the Borrower in the aggregate principal amount of $26,035,000 as evidenced by the Amended Note and made in accordance with the terms and provisions of the Amended Loan Agreement.

“Amended Note” means the replacement Promissory Note evidencing the Amended Loan issued in the aggregate principal amount of $26,035,000 from the Borrower, as maker, to the Lender, as payee, and dated as of February 10, 2012, in the form attached to the Amended Loan Agreement as Exhibit A.

“Amendment Documents” means the Amended Loan Agreement, the Authorizing Amendment Resolution and the Amended Note.

“Amortization” means the amortization of the Loan, as set forth in Exhibit B hereto.

“Annual Compliance Certificate” means the certificate in the form set forth in Exhibit D hereto to be provided by the Borrower to the Lender pursuant to the provisions of Section 5.11(a) hereof.

“Annexation Agreement” means the Amended and Restated Annexation and Development Agreement dated as of December 17, 2013, between the Owner, Swets Dairy LLC, Marjorie Swets, the Borrower and the Town.

“Assumed Rate” means an assumed rate of interest calculated as follows: (A) the Lender shall determine, as of December 31 of the Fiscal Year prior to the Fiscal Year in which such assumed rate is to be calculated, the average rate of interest during the immediately preceding six month period of LIBOR, or if LIBOR is unavailable, of a comparable index approved by the Lender, and multiply such amount by 150% (the “Rate Average”), and (B) the Borrower shall assume that the rate of interest accruing on the unpaid principal of the Loan is equal to the sum of 65% of the Rate Average plus 2.25%; provided, however, that the assumed rate of interest on the Loan for any Fiscal Year cannot be less than 4.50% per annum.

“Authorized Person” means the Chair or Vice Chair of the Board, or any designee thereof, and also means any other individual authorized by the Board to act as an Authorized Person hereunder, provided that the Borrower has provided specimen signatures for such Authorized Person(s) to the Lender.

“Authorizing Amendment Resolution” means the resolution adopted by the Board on January 24, 2012, authorizing the Borrower to execute and deliver the Amended Note, the Amended Loan Agreement and the other Amendment Documents to which the Borrower is a party.

“Balloon Amount” means the outstanding principal of the Loan which is due on the Maturity Date as set forth in Exhibit B.

“BBVA” means Banco Bilbao Vizcaya Argentaria S.A.
“BBVA/Compass Entity” means BBVA, Compass Bank, Compass Mortgage Corporation, and any subsidiary or affiliate of BBVA, Compass Bank and/or Compass Mortgage Corporation.

“Board” means the Board of Commissioners of the Borrower.

“Bond Cooperation Agreement” means the Amended and Restated Cooperation Agreement Regarding Bonds and Other Obligations between the Town and the Borrower dated as of February 25, 2014. [Amend to reflect new loan?]

“Borrower” means Timnath Development Authority, a public body corporate and politic duly organized and existing as an urban renewal authority under the laws of the State of Colorado.

“Business Day” means a day on which the Lender, or banks or trust companies in New York, New York, are not authorized or required to remain closed and on which the New York Stock Exchange is not closed.

“Capital Project” means the acquisition, construction, reconstruction, improvement, betterment or extension of capital improvements and other costs (a) defined in the Public/Private Partnership Agreement, including the Land Payment, Reimbursements and Improvements, and all necessary or appropriate appurtenances, property rights, and equipment, which Capital Project constitutes a part of the Urban Renewal Project, or (b) consistent with the Urban Renewal Plan, if approved in writing by the Lender.

“Capital Project Expenses” means all or any part of the cost of the Capital Project, including, without limitation, costs of constructing and improving the Capital Project, interest or discount on the Note, costs of issuance of the Note, legal expenses, costs of financial, professional, and other estimates and advice, contingencies, any administrative, operating, and other expenses of the Borrower incurred prior to and during such Capital Project, and all such other expenses as may be necessary or incident to the financing completion of the Capital Project or any part thereof, and also reimbursements to the Borrower or to any person of any moneys theretofore expended for the purposes of the Borrower for or in connection with the Capital Project.

“Closing” means the concurrent execution and delivery of the Note, this Agreement and the other Financing Documents by the respective parties thereto.

“Closing Date” means the date on which the Closing occurs, estimated to be on or about February 26, 2014. September 30, 2015.

“Closing Memorandum” means the closing memorandum, dated as of the Closing Date, setting forth the disbursement of the proceeds of the Loan, including the application of such funds to payment of the costs, expenses and fees incurred in connection with the issuance of the Loan.


“Commitment Fee” means 0.25% of the Loan Amount, payable on the Closing Date.

“Compass Bank” means Compass Bank, an Alabama state chartered banking association.
“Cost Overrun Reimbursement” has the meaning set forth in the Public/Private Partnership Agreement.

“Costco” means, collectively, the membership warehouse club to be constructed on the Costco Property in a building located at 4705 Weitzel Street in the Town containing approximately 150,000 square feet, including, without limitation, an integrated tire sales and installation center, together with a free-standing fuel-filling facility, and parking and other improvements associated with all of the foregoing and a liquor store that may be operated by a third party entity, all as contemplated by the Public/Private Partnership Agreement.

“Costco Agreements” means, collectively, the Annexation Agreement, the Property Purchase Agreement, the Site Development Agreement, the Repurchase Rights Agreement, the Restrictive Covenant Agreement, the Set Aside Letter and any other agreements relating to the Costco Property to which the Authority is a party or a third party beneficiary.


“Costco Incremental Sales Tax Revenue” means the portion of Sales Tax derived from Costco retail activity within the TDA Property that is in excess of the Sales Tax Base Amount (as defined in the Public/Private Partnership Agreement).

“Costco Opening Date” means the first day that Costco is open for business for a period of one day on the Costco Property.

“Costco Property” means the real property described in Exhibit J to hereof.

“Costs of Issuance Fund” means the fund by that name established by the provisions of Section 4.08 hereof to be administered by the Lender in the manner and for the purposes set forth herein.

“County” means Larimer County, Colorado.

“County Assessor” means the tax assessor of Larimer County, Colorado.

“C.R.S.” means the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

“Debt” of any Person means on any date, without duplication, (a) all obligations of such Person for borrowed money and reimbursement obligations which are not contingent; (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments; (c) all obligations of such Person to pay the deferred purchase price of property or services; (d) all obligations of such Person as lessee under capital leases; (e) all Debt of others guaranteed by such Person; (f) all obligations of such Person which are payable from year to year, subject to appropriation of the amounts sufficient to do so, and (g) all payment obligations of such Person, in addition to any obligations set forth in clauses (a) through (f) above arising under any swap, cap, collar, interest rate futures contract, interest rate option contract or other similar arrangement and
under any foreign exchange contract, currency swap agreement, foreign exchange futures contract, foreign exchange option contract, synthetic cap or other similar agreement; provided that it is understood that Debt does not include: (i) contingent obligations of such Person to reimburse any other Person in respect of surety bonds or letters of credit to the extent that such surety bonds or letters of credit support Debt of such Person, (ii) operating leases, (iii) payroll obligations, (iv) accounts payable, (v) consultant contracts entered into in the ordinary course of business, (vi) construction contracts entered into for purposes of the Capital Project or the Riverbend Capital Project, (vii) the Administrative Cooperation Agreement, (viii) the Bond Cooperation Agreement or (ix) taxes incurred or payable in the ordinary course of business of such Person. For purposes of this definition, if any of the agreements or contracts set forth in clause (g) above relate to any other obligation of a Person which is otherwise included in this definition of Debt, such agreements and contracts shall constitute Debt only to the extent that the payment obligations of such person thereunder, less any amounts receivable by such Person thereunder, exceed or are expected to exceed the interest payable on the related Debt.

“Debt Requirements” means, with respect to any Payment Date, an amount equal to the sum of the following with respect to any such date: (a) the principal due on the Loan; and (b) the interest due on the Loan.

“Default” means an event, act or occurrence which, with the giving of notice or the lapse of time (or both), would become an Event of Default.

“Default Rate” means (a) with the respect to an Event of Default which occurs or is continuing during the Fixed Rate Period, a rate per annum equal to the Fixed Rate plus 4.50%, and (b) with respect to an Event of Default which occurs or is continuing during the Variable Rate Period, a rate per annum equal to the Variable Rate plus 4.50%.

“Escrow Release Conditions” has the meaning set forth in Section 4.06(b)(i) hereof.

“Estimated Debt Requirements” means, with respect to any Fiscal Year, an amount equal to the sum of the following with respect to such Fiscal Year:

(a) the principal coming due on the Loan—(provided, however, that with respect to the calculation of Estimated Debt Requirements for the Fiscal Year containing the Maturity Date, and in each Fiscal Year thereafter until the Loan has been repaid in full, principal coming due in such Fiscal Year shall assumed to be zero);

(b) the interest coming due on the Loan in such Fiscal Year computed pursuant to (i) or (ii) below, as applicable: at the Fixed Rate; provided, however, that at any time during any such Fiscal Year that an Event of Default has occurred and is continuing, the Borrower shall compute interest coming due on the Loan at the Default Rate; and

(i) for any Fiscal Year in which any portion of the Fiscal Year is within the Fixed Rate Period, the Borrower shall compute interest coming due on the Loan during such portion of the Fiscal Year at the Fixed Rate; provided, however, that at any time during any such Fiscal Year that an Event of Default has occurred and is continuing, the Borrower shall compute interest coming due on the Loan at the Default Rate applicable to the Fixed Rate Period; and
(ii) for any Fiscal Year in which any portion of the Fiscal Year is within the Variable Rate Period, the Borrower shall compute interest coming due on the Loan during such portion of the Fiscal Year at the Assumed Rate; provided, however, that at any time during any such Fiscal Year that an Event of Default has occurred and is continuing, the Borrower shall compute interest coming due on the Loan at the Assumed Rate plus 4.50%; and

(c) any amounts which are required to be deposited to the Reserve Fund in such Fiscal Year to replenish it to the Reserve Requirement pursuant to Section 4.04(d).

“Estimated Pledged Property Tax Revenue” means, with respect to any Fiscal Year, the amount of Pledged Property Tax Revenue estimated to be received in such Fiscal Year, which amount shall be equal to (a) the amount derived by multiplying the incremental assessed valuation of the Plan Area, as certified by the County Assessor on or before December 31st immediately preceding such Fiscal Year, multiplied by the ad valorem property taxes levied by all jurisdictions on real and personal property in the Plan Area, (b) minus exclusions required by the TDA Agreements, and (c) multiplied by 90%.

“Estimated Pledged Property Tax Revenue Certificate” means a certificate, in the form attached as Exhibit F hereto, executed by the Authorized Person and approved by the Lender (which approval may be withheld only under the circumstances set forth in Section 4.09 hereof), to be provided by the Borrower to the Lender pursuant to the provisions of Section 5.11(b) hereof.

“Event of Default” has the meaning set forth in Section 8.01 hereof.

“Financing Documents” means this Agreement, the Note, the Authorizing Resolution, the Plan, the Administrative Cooperation Agreement, the Bond Cooperation Agreement, the Public Improvements Agreement and the Public/Private Partnership Agreement, all in form and substance satisfactory to the Lender.

“Fire District IGA” means that certain Fire District Intergovernmental Agreement, dated as of March 1, 2007, by and among the Borrower, the Town, the Poudre Valley Fire Protection District and the Poudre Fire Authority, pursuant to which the Borrower, subject to certain conditions contained therein, agrees to pay over to Poudre Valley Fire Protection District the property tax increment revenues received by the Borrower from the Poudre Valley Fire Protection District’s mill levy, to which the Borrower would otherwise be entitled.

“First Restated Authorizing Resolution” means the resolution adopted by the Board on January 28, 2014, authorizing the Borrower to execute and deliver the First Restated Documents and other necessary documents to which the Borrower is a party.

“First Restated Loan” means the amended and restated loan made by the Lender to the Borrower in the aggregate principal amount of $36,725,000 as evidenced by the First Restated Note and made in accordance with the terms and provisions of the First Restated Loan Agreement.

“First Restated Loan Agreement” means the Amended and Restated Loan Agreement dated as of February 26, 2014.
“First Restated Note” means the Promissory Note evidencing the First Restated Loan issued in the aggregate principal amount of $36,725,000 from the Borrower, as maker, to the Lender, as payee, and dated as of February 26, 2014.

“First Restated Documents” means the First Restated Loan Agreement, the First Restated Authorizing Resolution and the First Restated Note.

“Fiscal Year” means the 12 months commencing on the first day of January of any calendar year and ending on the last day of December of the same calendar year.

“Fixed Rate” means a rate per annum equal to 3.85% for the Fixed Rate Period.

“Fixed Rate Period” means the period of time commencing on the Closing Date and ending on December 1, 2018.

“Floor Rate” means 2.925%.

“Initial Project Fund “B” Deposit” means the amount deposited to the 2014 Restricted Project Fund “B” on the Closing Date as provided in Section 2.03(b) hereof.

“Initial Project Fund “B” Deposit Release Conditions” has the meaning set forth in Section 4.06(c)(i) hereof.

“Interest Payment Date” means (a) prior to and including the Maturity Date, June 1 and December 1 of each year, commencing June 1, 2014, and continuing through December 1, 2015, to and including the Maturity Date, and (b) after the Maturity Date, to the extent any amounts remain due on the Note, means the first Business Day of every month.”

“Interest Reset Date” has the meaning set forth in Section 2.05(a)(i) hereof.

“Larimer County IGA” means the Intergovernmental Agreement Regarding Settlement of Litigation and Urban Renewal and Tax Increment Issues dated June 30, 2006, by and among Larimer County, Colorado, the Town, and the Borrower.

“Lender” means Compass Mortgage Corporation, an Alabama corporation, in its capacity as lender of the Loan.

“LIBOR” means the London InterBank Offered Rate for the applicable Reference Period stated on Reuter’s Monitor Money Rates Service two (2) days before the beginning of each Interest Reset Date (or in the event no such rate is stated on that date, the rate stated on the day most immediately preceding the date of determination on which a rate was stated), as adjusted from time to time in Lender’s sole discretion for then applicable reserve requirements, deposit insurance assessment rates and other regulatory costs. If Reuter’s becomes unavailable Lender may use another source to determine LIBOR. If Reuter’s states more than one rate for the applicable Reference Period, the applicable rate shall be the arithmetic mean of all stated rates for the Reference Period. The “Reference Period” shall be one (1) month. This Reference Period is for reference purposes only, and the actual Interest Periods under this Note may be for periods of more than or less than one (1) month, depending on whether or not the last day of the Interest Period falls on a Business Day.
“Loan” means the loan made by the Lender to the Borrower for the purposes described herein in accordance with the terms and provisions of this Agreement.

“Loan Amount” means Thirty-Six-Fifty Million Seven-Hundred-Twenty-Five Thousand and 00/100 U.S. Dollars ($36,725,000).

“Loan Amount Outstanding” means, as of any calculation date, the Loan Amount less the following amounts: (a) principal payments made by the Borrower as of such date and allocable to the Amortization and (b) prepayments of principal made by the Borrower pursuant to Section 2.07 hereof.

“Loan Payment Fund” means the fund by that name established by the provisions of Section 4.01 hereof to be administered by the Lender in the manner and for the purposes set forth in Section 4.03 hereof.

“London Banking Day” means any day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) in the Town of London, England.

“Maturity Date” means December 1, 2020.

“Maximum Annual Debt Service” means, as of any date of calculation, the maximum annual payments of principal of and interest on the Loan and any Additional Debt to become due during any Fiscal Year while the Loan and any Additional Debt is outstanding; provided, that the Balloon Amount or any balloon principal payment due at maturity of any Additional Debt shall be excluded from this computation and in replacement thereof, the principal payment due in the Fiscal Year in which such maturity date occurs and in each Fiscal Year thereafter shall be assumed to be an amount equal to such balloon principal payment divided by the number of years remaining between such maturity date and December 4, 2029; provided further, that with respect to the Loan and any Additional Debt that does not have fixed interest payments, the interest rate to be used in the calculation of Maximum Annual Debt Service shall be the maximum interest rate applicable to the Loan and any such Additional Debt.

“Metropolitan District IGA’s” means those certain metropolitan district agreements to which the Borrower is party, including agreements with Timnath Ranch Metropolitan District, South Timnath Metropolitan District and Timnath Farms North Metropolitan District, and any other intergovernmental agreements entered into by the Borrower and a Title 32 metropolitan district or districts, pursuant to which the Borrower has agreed or will agree to remit any property tax increment revenue received from the mill levies of such metropolitan districts back to the districts, so that such districts could use such funds to finance public improvements.

“Mid-Year Actual Pledged Property Tax Revenue Certificate” means a certificate, in the form attached as Exhibit G hereto, executed by the Authorized Person and approved by the Lender (which approval may be withheld only under the circumstances set forth in Section 4.09 hereof), to be provided by the Borrower to the Lender pursuant to the provisions of Section 4.02(a) hereof.

“Net Pledged Revenue” means the moneys described in clauses (a) and (b) of the definition of Pledged Revenue set forth in this Article I.
“Net Sales Tax Revenue” means (i) prior to the Costco Opening Date, 82% of the Sales Tax Increment; (ii) for the period from Costco Opening Date to and including the anniversary that is five (5) years after such date, plus such additional time as is necessary for the Owner to recover 50% of the Cost Overrun Reimbursement: (a) 82% of the Sales Tax Increment (excluding the Costco Incremental Sales Tax Revenue) and (b) 32% of the Costco Incremental Sales Tax Revenue; and (iii) thereafter, 82% of the Sales Tax Increment; such amount comprises Pledged Sales Tax Revenue under the conditions described in the definition of that term.

“Note” means the replacement Promissory Note evidencing the Loan issued in the original principal amount of $36,725,000 from the Borrower, as maker, to the Lender, as payee, and dated as of February 26, 2014, in the form attached hereto as Exhibit A.

“Original Loan” means the loan made by the Lender to the Borrower in the original principal amount of $24,500,000 as evidenced by the Original Note and made in accordance with the terms and provisions of the Original Loan Agreement.

“Original Note” means the Promissory Note evidencing the Loan issued in the original principal amount of $24,500,000 from the Borrower, as maker, to the Lender, as payee, and dated as of April 21, 2011, in the form attached to the Original Loan Agreement as Exhibit A.

“Owner” means Cache La Poudre Investors South, LLC, a Colorado limited liability company, the owner and developer of the Costco Property prior to its sale to Costco Inc.

“Parity Debt” means any Debt of the Borrower, the payment of which is secured by the Pledged Revenue or any component thereof on a basis equal to and on a parity with the lien thereon of the Loan.

“Payment Date” means a Principal Payment Date and an Interest Payment Date.

“Permitted Investments” means (a) certificates of deposit in Compass Bank or the Lender which have (i) a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal, (ii) a yield which is not less than the yield on reasonably comparable direct obligations of the United States, and (iii) a yield which is not less than the highest yield that is published or posted by the issuer of the certificate to be currently available from such issuer on reasonably comparable certificates of deposit offered to the public to comparable governmental entities and subject to the Public Deposit Protection Act; (b) any money market account offered by Compass Bank or the Lender which bears interest at the published money market rate of Compass Bank or the Lender, as applicable, and has a yield which is at least 100 basis points less than the yield on the Loan (as set forth in the Tax Certificate); and (c) any investment or deposit offered by Compass Bank or the Lender which (i) is a permitted investment for governmental entities under then-applicable Colorado law, and (ii) in the opinion of nationally recognized bond counsel delivered to the Borrower and the Lender will not cause the Borrower to violate the covenant in Section 5.05 hereof. If, after making a good faith effort to do so, the Borrower determines that it is not possible to invest in the investments described in (a), (b) or (c) above, Permitted Investments means any investment or deposit directed by the Borrower which (i) is a permitted investment for governmental entities under then-applicable Colorado law, and (ii) in the opinion of
nationally recognized bond counsel delivered to the Borrower and the Lender will not cause the Borrower to violate the covenant in Section 5.055.08 hereof.

“Person” means an individual, a corporation, a partnership, an association, a joint venture, a trust, an unincorporated organization or any other entity or organization, including the Borrower and any other government or political subdivision or an agency or instrumentality thereof.


“Plan Area” means the urban renewal project area described in Exhibit C hereto.

“Pledged Property Tax Revenue” means the property tax increment received by the Borrower pursuant to the Act, the Plan, the Bond Cooperation Agreement and the Larimer County IGA, but shall not include property taxes allocable to the Poudre Valley Fire Protection District or any metropolitan district within all or any portion of the Plan Area.

“Pledged Revenue” means:

(a) Pledged Property Tax Revenue;

(b) Pledged Sales Tax Revenue;

(c) Additional Loan Payments;

(d) Recovered Amounts;

(d) (e) all amounts held in the funds and accounts established and maintained hereunder together with investment earnings thereon, including, without limitation, the Revenue Fund, the Loan Payment Fund, the Reserve Riverbend Project Fund, the 2015 Project Fund and the Surplus Reserve Fund; and

(e) (f) all other legally available moneys which the Borrower determines, in its sole discretion, to deposit in the Loan Payment Fund.

“Pledged Sales Tax Revenue” means:

(a) beginning on the Closing Date and continuing to, but not including, the Maturity Date, “Pledged Sales Tax Revenue” means an amount equal to the Net Sales Tax Revenue; For the period commencing on the Closing Date to and including the later to occur of (i) October 2, 2019, or (ii) the date on which the Owner has recovered 50% of the Cost Overrun Reimbursement, “Pledged Sales Tax Revenue” means:
(I) 82% of the Sales Tax Increment (excluding the Costco Incremental Sales Tax Revenue) and

(II) 32% of the Costco Incremental Sales Tax Revenue.

(b) beginning on the Maturity Date and on every day thereafter until all obligations due and owing by the Borrower hereunder have been paid in full, if (i) an Event of Default has occurred and is continuing (other than an Event of Default caused by the Borrower’s failure to pay the Balloon Amount on the Maturity Date after the Borrower has taken all reasonable steps to refinance the Loan), or (ii) there is Parity Debt outstanding, then “Pledged Sales Tax Revenue” means an amount equal to the Net Sales Tax Revenue; and

(c) beginning on the Maturity Date and on every day thereafter until all obligations due and owing by the Borrower hereunder have been paid in full, if (i) no Event of Default has occurred and is continuing (other than an Event of Default caused by the Borrower’s failure to pay the Balloon Amount on the Maturity Date after the Borrower has taken all reasonable steps to refinance the Loan), and (ii) there is no Parity Debt outstanding, then “Pledged Sales Tax Revenue” means an amount equal to the lesser of (A) the Net Sales Tax Revenue, or (B) the greater of (1) $4,200,000, less the Pledged Property Tax Revenue, and (2) 50% of the Sales Tax Increment. The foregoing formula shall be calculated each year as described in Section 4.02(b) herein and Exhibit H hereto. Thereafter, “Pledged Sales Tax Revenue” means 82% of the Sales Tax Increment.

“Principal Payment Date” means December 1 of each year, commencing December 1, 2014, and continuing through and including December 1, 2020, and also 2016, to and including the Maturity Date.

“Property Purchase Agreement” means that certain Purchase and Sale Agreement between the Owner and Costco Inc. dated October 19, 2013, to convey the Costco Property to Costco Inc. [Necessary to retain?]

“Public Deposit Protection Act” means Article 10.5 of Title 11, Colorado Revised Statutes, as amended from time to time.

“Public Improvements Agreement” means the Public Improvements Agreement dated as of February 10, 2012, between the Borrower, the Town and Riverbend Ventures, LLC.

“Public/Private Partnership Agreement” means the Public/Private Partnership Agreement Regarding Gateway Timnath South dated as of January 14, 2014, by and between the Borrower, the Owner, Cache La Poudre Development South, LLC and the Town, including the Restrictive Covenant Agreement as Exhibit H thereto.

“Quarterly Compliance Certificate” means the certificate in the form set forth in Exhibit E hereto to be provided by the Borrower to the Lender pursuant to the provisions of Section 5.11(c) hereof.

“Rebate Requirements” means any requirements to pay funds to the United States Treasury pursuant to Section 148 or the Internal Revenue Code.
“Recovered Amounts” means (a) amounts received by the Borrower as a result of Costco’s failure to open for business by the Costco Opening Date, as contemplated by the Public/Private Partnership Agreement and (b) amounts constituting Land Payment Recapture as defined in the Restrictive Covenant.

“Repurchase Rights Agreement” means the Repurchase Rights Agreement expected to be dated as of February 28, 2014, between Costco Inc. and the Owner. [Necessary to retain?]

“Reserve Fund” means the existing fund by that name established pursuant to the Amended Loan Agreement and continued in the First Restated Loan Agreement, which fund shall continue pursuant to the provisions of Section 4.01 hereof to be administered by the Lender in the manner and for the purposes set forth in Section 4.04 hereof.

“Reserve Requirement” means the amount of $2,000,000.

“Restrictive Covenant Agreement” means the Covenant Agreement, in the form attached to the Public/Private Partnership Agreement as Exhibit H, to be executed between the Borrower and the Owner upon failure to occur of the Costco Opening Date. [Necessary to retain?]

“Revenue Fund” means the fund by that name established by the provisions of Section 4.01 hereof to be administered by the Lender in the manner and for the purposes set forth herein.

“Riverbend Capital Project” means the acquisition, construction, reconstruction, improvement, betterment or extension of improvements benefiting the Riverbend development pursuant to the Public Improvements Agreement, and all necessary or appropriate appurtenances, property rights, and equipment, which Riverbend Capital Project constitutes a part of the Urban Renewal Project.

“Riverbend Capital Project Expenses” means all or any part of the cost of the Riverbend Capital Project, including, without limitation, costs of constructing and improving the Riverbend Capital Project, interest or discount on the Note, costs of issuance of the Note, legal expenses, costs of financial, professional, and other estimates and advice, contingencies, any administrative, operating, and other expenses of the Borrower incurred prior to and during such Riverbend Capital Project, and all such other expenses as may be necessary or incident to the financing completion of the Riverbend Capital Project or any part thereof, and also reimbursements to the Borrower or to any person of any moneys theretofore expended for the purposes of the Borrower for or in connection with the Riverbend Capital Project.

“Riverbend Lots” means the real property described in Exhibit I hereeto. [Confirm description in Exhibit H is still accurate.]

“Riverbend Project Fund” means the existing project fund established pursuant to the Amended Loan Agreement and continued in the First Restated Loan Agreement, which project fund shall be renamed the Riverbend Project Fund as established and governed by the provisions of Section 4.01 hereof to be administered by the Lender in the manner and for the purposes set forth in Section 4.07 hereof.
“Riverbend Project Fund Disbursement Request” shall have the meaning set forth in Section 4.07(a) hereof.

“Sales Tax” or “Sales Taxes” means the municipal sales tax at a rate of 3.00% of gross receipts on items not classified as food, and at a rate of 2.25% of gross receipts on items classified as food, established by the Town as the same shall from time to time be in effect, pertaining to, including, without limitation, the sale, lease, rental, purchase or consumption of tangible personal property and taxable services, or any successor tax in the event that such taxes are replaced or superseded, but excluding any additional sales tax which may be approved by the electors of the Town subsequent to the execution and delivery of this Agreement.

“Sales Tax Increment” means 100% of the Sales Tax levied by the Town within the Plan Area which is in excess of the actual collection of Sales Tax revenues during the twelve (12) consecutive month period immediately preceding the month of adoption of the Plan; such period being from December 1, 2003 through November 30, 2004, and certified by the Town as being the amount of $31,602.

“Series 2007 Bonds” means the Borrower’s Variable Rate Tax Increment Revenue Bonds, Series 2007, initially issued in the aggregate principal amount of $25,000,000, which were refunded with the proceeds of the Original Loan.

“Set Aside Letter” means the letter from the Borrower to Costco Inc. expected to be dated as of February 26, 2014, provided pursuant to Section 3.2 of the Public/Private Partnership Agreement. [Necessary to retain?]

“Site Development Agreement” means the Site Development Agreement expected to be dated as of February 28, 2014, by and between Costco Inc. and the Owner. [Necessary to retain?]

“Special Counsel” means (a) as of the Closing Date, Kutak Rock LLP, Denver, Colorado, and (b) as of any other date, Kutak Rock LLP, Denver, Colorado, or such other attorneys selected by the Borrower with nationally recognized expertise in the issuance of tax-exempt debt.

“Subordinate Debt” means any Debt of the Borrower, the payment of which is secured by the Net Pledged Revenue or any component thereof on a basis subordinate to the lien thereon of the Loan and Parity Debt, if any. Such term includes any amounts representing the overpayment of incremental property taxes as the result of refunds made to taxpayers and with respect to which the Borrower has undertaken an obligation to repay the Larimer County Treasurer as contemplated by Section 31-25-107(9)(a)(III), Colorado Revised Statutes.

“Supplemental Public Securities Act” means Title 11, Article 57, C.R.S.

“Surplus Fund” means the fund by that name established by the provisions of Section 4.01 hereof to be administered by the Lender in the manner and for the purposes set forth in Section 4.05 hereof.

“Tax Certificate” means the tax compliance certificate to be signed by the Borrower, in a form acceptable to Special Counsel, relating to the requirements of Sections 103 and 141-150 of the Code.
“Tax Increment Agreement” means that certain Intergovernmental Agreement Regarding Settlement of Litigation and Urban Renewal and Tax Increment Issues, dated June 30, 2006, by and among the Town, the Borrower and the County, pursuant to which the Borrower agrees to remit annually to the County a portion of the property tax increment collected as a result of the County’s mill levy.

“TDA Agreements” means, collectively, the Tax Increment Agreement, the Administrative Cooperation Agreement, the Bond Cooperation Agreement, the Fire District IGA and the Metropolitan District IGA’s.

“TDA Property” means the portion of the Costco Property located within the Plan Area, as depicted on Exhibit B to the Public/Private Partnership Agreement.

“Town” means the Town of Timnath, Colorado.

“Variable Rate” means a rate per annum equal to the sum of 2.25% plus 65% of LIBOR. The Variable Rate shall be reset on each Interest Reset Date with interest payable semi-annually, as provided herein.

“Variable Rate Period” means the period of time commencing on the first day immediately following the Fixed Rate Period and continuing through and including the date upon which the Loan is paid in full.

“Year-End Actual Pledged Sales Tax Revenue Certificate” means a certificate, in the form attached as Exhibit II hereto, executed by the Authorized Person and approved by the Lender (which approval may be withheld only under the circumstances set forth in Section 4.09 hereof), to be provided by the Borrower to the Lender pursuant to the provisions of Section 4.02(b) hereof. “2014{2015} Project Fund Disbursement Request” shall have the meaning set forth in Section 4.06(b) hereof.

“2014{2015} Project Funds” means the 2014 Restricted Project Fund “A”, the 2014 Restricted Project Fund “B” and the 2014 Unrestricted Project Fund. “2014 Restricted Project Fund “A” Fund” means the fund by that name established by the provisions of Section 4.01 hereof to be administered by the Lender in the manner and for the purposes set forth in Section 4.06 hereof.

“2014 Restricted Project Fund “B”” means the fund by that name established by the provisions of Section 4.01 hereof to be administered by the Lender in the manner and for the purposes set forth in Section 4.06 hereof.

“2014 Unrestricted Project Fund” means the fund by that name established by the provisions of Section 4.01 hereof to be administered by the Lender in the manner and for the purposes set forth in Section 4.06 hereof.
ARTICLE II

LOAN TERMS, FEES, APPLICATION OF PROCEEDS

Section 2.01. Agreement to Make Loan. The Lender hereby agrees to make a loan to the Borrower in the original aggregate principal amount of $36,725,000 (as previously defined, the “Loan Amount”). The Note shall constitute a special limited revenue obligation of the Borrower payable from and secured by the Pledged Revenue.

Section 2.02. [Reserved].

Section 2.03. Application of Loan Proceeds and Other Available Funds. On the Closing Date, the Lender shall disburse the proceeds of the Loan, net of the Commitment Fee, plus the following existing funds held under the First Restated Loan Agreement: (i) reserve fund in the amount of $2,500,913.72, (ii) revenue fund in the amount of $2,358,813.39 and (iii) Riverbend Project Fund in the amount of $149,120.63, for a total of $55,008,847.74, as follows:

(a) $10,393,038.73 net of costs of issuance and reserve fund deposit shall be deposited to 2014 Restricted Project Fund “A” and applied pursuant to Section 4.06 hereof;

(b) $2,000,000.00 shall be deposited to the 2014 Restricted Project Fund “B” and applied pursuant to Section 4.06 hereof; (c) $23,725,000.00, together with $255,043.75 transferred from the existing Revenue Fund, shall be applied by the Lender to the repayment in full of the outstanding principal amount of the Amended First Restated Loan ($23,725,000.00) plus accrued interest thereon to the Closing Date ($255,043.75);

(b) (d) $215,000.00 shall be deposited to the Reserve Fund;

(c) $16,180,099.63 shall be deposited to the 2015 Project Fund and applied pursuant to Section 4.06 hereof;

(d) $149,120.63 shall be deposited to the Riverbend Project Fund and applied pursuant to Section 4.07 hereof;

(e) $378,888.89 shall be deposited to the Revenue Fund as Pledged Revenue and applied pursuant to Section 4.02(a) hereof; and

(f) $235,000.00 shall be deposited to the Costs of Issuance Fund and applied pursuant to Section 5.08 hereof; and

(e) $300,148.77 shall be deposited to the Reserve Fund, and together with the existing balance therein of $2,199,851.23, shall fully fund the Reserve Requirement of $2,500,000.00.

Section 2.04. Costs of Issuance. On the Closing Date, the Borrower hereby authorizes the Lender to apply the amounts set forth in Section 2.03(d) and pursuant to the provisions of Section.
Section 2.05. Interest Rate; Interest and Payments; Principal Payments; Setoff.

(a) Interest Rate. The Loan shall bear interest at the Fixed Rate; provided, however, that at any time that an Event of Default has occurred and is continuing, the Loan shall bear interest at the Default Rate.

(i) Interest Rate Computations; Rate Resets.

For purposes of this Section 2.05(a)(i) (and to the extent applicable elsewhere in this Agreement), the following capitalized terms shall have the respective meanings assigned below:

“Interest Period” means (a) with respect to the Fixed Rate Period, initially, the Closing Date, to but not including June 1, 2014, and thereafter, semi-annually, to but not including each June 1 and December 1, and (b) with respect to the Variable Rate Period, initially, the first day of the Variable Rate Period, to but not including the first Business Day of the calendar month immediately succeeding the commencement of the Variable Rate Period, and thereafter shall be the period from and including the first Business Day of each calendar month to but not including the first Business Day of the following calendar month. Each Interest Period shall commence on the day immediately following the expiration of the preceding Interest Period.

“Interest Reset Date” means, with respect to the Variable Rate Period, the first day of each Interest Period.

Subject to Section 2.05(c) below, the outstanding principal of the Loan shall bear interest at the following rates:

(A) During the Fixed Rate Period, and provided no Event of Default has occurred or is continuing, the outstanding principal of the Loan shall bear interest at the Fixed Rate.

(B) During the Variable Rate Period, and provided no Event of Default has occurred or is continuing, the outstanding principal of the Loan shall bear interest at the Variable Rate. Such Variable Rate shall be effective as of the Interest Reset Date for the applicable Interest Period.

(C) Immediately upon the occurrence of an Event of Default (including, but not limited to, an Event of Default caused by the Borrower’s failure to pay the unpaid principal of the Loan on the Maturity Date), the outstanding principal of the Loan shall bear interest at the applicable Default Rate. The Default Rate shall be the applicable interest rate on the outstanding principal of the Loan until such time as the applicable Event of Default is cured to the satisfaction of the Lender.
All interest due and payable on the Loan shall be calculated on the basis of a 360-day year and actual number of days elapsed during each Interest Period.

(ii) — Notice of New Interest Rate. The Lender shall provide the Borrower with written notice of the rate of interest then in effect not later than five (5) Business Days following the applicable Interest Reset Date; provided, however, that the failure by the Lender to provide such notice shall not relieve the Borrower of any obligation to pay principal of and interest on the Loan when due.

(iii) — Maximum Rate. Notwithstanding the foregoing provisions, the maximum Net Effective Interest Rate that the Borrower is authorized to pay with respect to the Loan is 12.00% per annum and, the Loan shall not bear interest at a rate in any particular Interest Period that would cause the Net Effective Interest Rate on the Loan, calculated as of the end of such Interest Period, to exceed 12.00% per annum. For purposes of the foregoing, the “Net Effective Interest Rate” shall mean, as of the end of any Interest Period, the total amount of interest accrued hereunder on the Loan from the date of execution of this Agreement through the last day of such Interest Period, divided by the sum of the products derived by multiplying the principal amount of the Loan outstanding in each year by the number of years from the date of this Agreement to the last day of such Interest Period (or the date on which such principal amount was actually paid, if earlier). In addition to the foregoing, to the extent amounts due to the Lender have not been fully repaid, the provisions of Section 2.06 hereof shall apply.

(iv) — Notwithstanding the foregoing provisions, the Loan shall not bear interest at a rate in excess of any limitation specifically required by law. However, in computing amounts due from the Borrower hereunder, the provisions of Section 2.06 hereof shall apply.

(b) — Minimum Interest Rate. Notwithstanding the foregoing, the interest rate payable on the outstanding principal of the Loan during the Variable Rate Period shall be not less than the Floor Rate.

(b) (e) — Interest Payments. Interest payments on the Loan shall be due on the Interest Payment Dates.

(c) (d) — Principal Payments. Repayment of Loan principal shall be due and payable on the Principal Payment Dates. The Loan amortization schedule setting the Principal Payment Dates and corresponding principal amounts due is set forth in Exhibit B attached hereto.

(e) — Notwithstanding any other provision contained herein, for purposes of calculating the principal upon which interest accrues under the Loan, “outstanding principal of the Loan” shall be deemed to refer to the then applicable Loan Amount Outstanding.

Section 2.06. Application of Maximum Rate to Interest Differential. [Reserved] — If the interest due and payable on any obligation hereunder computed at the applicable rate as provided in Sections 2.05(a) hereof is in excess of the amount actually paid by the Borrower as a result of the
provisions of Section 2.05(a)(iii) hereof, the difference between what would have been the interest payable on such obligation had it accrued interest at the applicable rate as provided in Sections 2.05(a) hereof and the actual interest paid by the Borrower on such obligation (the “Interest Differential”) shall remain an obligation of the Borrower. If at any time there is an Interest Differential owed to the Lender, any reduction in interest rate that would result from the application of Section 2.05(a) shall not reduce the rate of interest below the maximum Net Effective Interest Rate as computed in Section 2.05(a)(iii) until the first to occur of (i) the date on which all principal payments on the Debt have been made or (ii) the Interest Differential has been repaid to the Lender.

Section 2.07. Optional Prepayment; Order of Principal Payment; Prepayment Penalty.

(a) **General Prepayment Rights and Obligations.**

(i) **Prior to September 30, 2022.** The Loan may not be prepaid prior to September 30, 2022.

(ii) **September 30, 2022, through September 29, 2025.** For the period commencing September 30, 2022, through and including September 29, 2025, the Loan may be prepaid in whole or in part, on any date, upon payment of the principal amount of the Loan so prepaid plus accrued interest thereon to the date of prepayment, with no Prepayment Penalty.

(iii) **September 30, 2025, through November 30, 2029.** For the period commencing September 30, 2025, through and including November 30, 2029, the Loan may be prepaid, in whole or in part, on any date, upon payment of the principal amount of the Loan so prepaid plus accrued interest thereon to the date of prepayment, with no Prepayment Penalty.

(b) **Special Prepayment Rights and Obligations.** Notwithstanding anything contained in Section 2.07(a) to the contrary, in the event the Borrower determines to prepay the Loan from (A) funds on deposit in the Riverbend Project Fund or (B) funds on deposit in the 2015 Project Fund representing Additional Loan Payments for which the Borrower has determined to prepay the Loan, then the Loan may be prepaid from such amounts on any Interest Payment Date upon payment of the principal amount of the Loan so prepaid from such funds, plus accrued interest thereon to the date of prepayment, together with the Prepayment Penalty calculated pursuant to Section 2.07(d).

(c) **Partial Prepayments.** Principal prepayments on the Loan shall be applied by the Lender to the Amortization in inverse order of maturity, commencing with the principal payment due and owing on the Maturity Date.
(d) (b) — Prepayment Penalty. If the Loan, or any portion thereof, is prepaid during the Variable Rate Period, no prepayment penalty shall be due. If the Loan, or any portion thereof, is prepaid during the Fixed Rate Period pursuant to Sections 2.07(a)(ii) or 2.07(b), the Borrower shall pay a prepayment penalty to the Lender (the “Prepayment Penalty”) in an amount equal to the greater of (i) or (ii), as follows: Yield Maintenance Fee (as defined below). The Borrower must pay this prepayment penalty regardless of whether the prepayment is voluntary or mandatory, as when an Event of Default occurs and the entire unpaid balance of the Note becomes due and payable.

(i) — First Alternative Prepayment Penalty. The “Yield Maintenance Fee” means the Annual Yield Differential (as defined below) multiplied by the Percent Being Prepaid (as defined below), multiplied by the Average Remaining Outstanding Principal Amount prepaid (as defined below), multiplied by the number of days from the date Lender received the prepayment (the “Prepayment Date”) through the expiration of the Fixed Rate Period Maturity Date, divided by 360.

The “Annual Yield Differential” is defined as the difference (but not less than zero) between the U.S. Treasury yield (from the Federal Reserve daily H.15 report) for a U.S. Treasury security having a maturity closest to the last day of the Fixed Rate Period, on February 26, 2014, and the U.S. Treasury yield (from the Federal Reserve daily H.15 report) for a U.S. Treasury security having a maturity closest to the last day of the Fixed Rate Period, at the date of prepayment. “Annual Yield Differential” means the difference (but not less than zero) between: (i) the U.S. Treasury constant maturity yield, as reported in the H.15 Report, for the Closing Date of the Loan, for a maturity that is the same as the Maturity Date as of the Closing Date (rounded to the nearest whole number of months) or, if no such maturity is reported, an interpolated yield based on the reported maturity that is next shorter than, and the maturity reported that is next longer than, the Maturity Date as of the Closing Date, and (ii) the U.S. Treasury constant maturity yield, as reported in the H.15 Report, daily updates, for the Prepayment Date for a maturity that is the same as the remaining term of the Loan at the Prepayment Date (rounded to the nearest whole number of months) or, if no such maturity is reported, then the interpolated yield based on the reported maturity that is next shorter than, and the maturity reported that is next longer than, the remaining term of the Loan on the Prepayment Date. If the H.15 Report is not available for any day, then the H.15 Report for the immediately preceding day on which yields were last reported will be used.

The “Average Remaining Outstanding Principal Amount” is defined as means the simple average of (i) the existing outstanding principal Loan balance of the Loan plus any accrued and unpaid fees or other sums owed under this Agreement as of the Prepayment Date and the Loan balance as of the last day of the Fixed Rate Period. The (prior to any prepayment being applied), and (ii) the scheduled principal amount of the Loan as of the Maturity Date (taking into account any prior prepayments, but not the prepayment being then made).
“Percent Being Prepaid” is defined as the amount determined by dividing the principal amount of the Loan being prepaid by the Loan balance as of the Prepayment Date.

(ii) **Second Alternative Prepayment Penalty.** A penalty in the amount shown below, varying depending upon the Prepayment Date:

<table>
<thead>
<tr>
<th>Prepayment Date</th>
<th>Prepayment Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Months 1-24</td>
<td>3%</td>
</tr>
<tr>
<td>Months 25-36</td>
<td>2%</td>
</tr>
<tr>
<td>Months 37-48</td>
<td>1%</td>
</tr>
<tr>
<td>After Month 48</td>
<td>0%</td>
</tr>
</tbody>
</table>

(c) **Modifications of Prepayment Penalty Obligation.** Notwithstanding anything contained in Section 2.07(a) and (b) to the contrary, in the event that prepayments are required to be made on the Loan from (A) funds on deposit in 2014 Restricted Project Fund “B”, including prepayments from Additional Loan Payments and Recovered Amounts, pursuant to Section 4.06(c) hereof, and (B) funds on deposit in 2014 Restricted Project Fund “A” pursuant to Section 4.06(b) hereof, then a prepayment penalty will be due on any amounts prepaid pursuant to (A) or (B) above that are in excess of $2,000,000, but the prepayment penalty applicable to such prepaid amounts in excess of $2,000,000 shall be exclusively the prepayment penalty amount described in Section 2.07(b)(i), and the prepayment penalty amount described in Section 2.07(b)(ii) shall be inapplicable.

**Section 2.08. Written Statements.** Upon request by the Borrower, the Lender agrees to send written statements itemizing all transactions in the funds and accounts made by the Lender to the Borrower at the address set forth in Section 9.05 hereof or at such other address as the Borrower shall specify to the Lender in writing.

**Section 2.09. Expenses and Attorneys’ Fees.** In the event that a claim by the Lender is brought against the Borrower relating to this Agreement or any of the other Financing Documents and the Lender prevails in such claim, the Borrower will reimburse the Lender for all reasonable attorneys’ and all other consultants’ fees and all other costs, fees and out-of-pocket disbursements incurred by the Lender in connection with the preparation, execution, delivery, administration, defense and enforcement of this Agreement or any of the other Financing Documents, including reasonable attorneys’ and all other consultants’ fees and all other costs and fees (a) incurred before or after commencement of litigation or at trial, on appeal or in any other proceeding; (b) incurred in any bankruptcy proceeding and (c) related to any waivers or amendments with respect thereto (examples of costs and fees include but are not limited to fees and costs for confirming the priority of the Lender’s claim on the Pledged Revenue or the funds and accounts established hereunder). The Borrower will also reimburse the Lender for all costs of collection of the Pledged Revenue, and expenses (including all reasonable attorneys’ and all other consultants’ fees) incurred in connection with (i) the collection of the Pledged Revenue, before and after judgment, (ii) any future amendments or modifications of this Agreement and (iii) any future consents or waivers of the Lender requested by the Borrower.
ARTICLE III

CONDITIONS TO CLOSING

Section 3.01. Lender’s Conditions to Loan Closing. The funding by the Lender of the Loan pursuant to Section 2.03 is conditioned upon the satisfaction of each of the following:

(a) The Financing Documents. The Financing Documents shall have been duly executed and delivered by each of the respective parties thereto and shall not have been modified, amended or rescinded, shall be in full force and effect on and as of the Closing Date and executed original or certified copies of each thereof have been delivered to the Lender; provided, however, that with respect to the Note, the Lender shall be in receipt of the executed original.

(b) The Costco Agreements.

(i) The Property Purchase Agreement, the Set Aside Letter and the Annexation Agreement shall have been duly executed and delivered by each of the respective parties thereto and shall not have been modified, amended or rescinded, shall be in full force and effect on and as of the Closing Date and executed original or certified copies of each thereof have been delivered to the Lender.

(ii) The Site Development Agreement and the Repurchase Rights Agreement shall have been provided to the Lender in their final form or substantially their final form (the Lender’s receipt thereof and review of the final executed Site Development Agreement and Repurchase Rights Agreement shall be a condition to the release of 2014 Restricted Project Fund “A” pursuant to Section 4.06(b)(i)(C)).

(b) Borrower Proceedings. The Lender shall have received a certified copy of all resolutions and proceedings taken by the Borrower authorizing the execution, delivery and performance of this Agreement, the Note, and the other Financing Documents to which the Borrower is a party, and the transactions contemplated hereunder and thereunder, together with such other certifications as to the specimen signatures of the officers of the Borrower authorized to sign this Agreement, the Note, and the other Financing Documents to be delivered by the Borrower hereunder and as to other matters of fact as shall reasonably be requested by the Lender.

(c) Governmental Approvals. The Lender shall have received certified copies of all governmental approvals, if any, necessary for the Borrower to execute, deliver and perform its obligations under this Agreement and the other Financing Documents to which the Borrower is a party.

(d) Representations and Warranties True; No Default. The Lender shall be satisfied that on the Closing Date each representation and warranty on the part of the Borrower contained in this Agreement and any other Financing Document to which the Borrower is a party are true and correct in all material respects and no Default or Event of
Default has occurred and is continuing under such documents, and the Lender shall be entitled to receive certificates, signed by authorized officers of the Borrower, to such effect.

(e) Borrower’s Certificate. The Lender shall have received a certificate signed by an authorized officer of the Borrower, dated the Closing Date, to the same effect as provided in the foregoing Subsections 3.01(a), (b), (c), (d) and (ed). Such certificate shall cover such other matters incidental to the transactions contemplated by this Agreement or any other Financing Document as the Lender may reasonably request.

(f) Special Counsel’s Legal Opinions. The Lender shall have received an opinion of Kutak Rock LLP, Special Counsel, dated the Closing Date and addressed to the Lender and the Borrower, with respect to such matters as the Lender may require, including opinions to the effect that the obligations of the Borrower under this Agreement and the Note constitute legal, valid and binding special revenue obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms; that this Agreement creates a valid first priority lien on the Pledged Revenue subject to no other liens; that the interest on the Loan is exempt from income taxation pursuant to Colorado and federal law; and otherwise in form and substance satisfactory to the Lender and its counsel.

(g) Opinion of Counsel to the Borrower. The Lender shall have received an opinion of White Bear & Ankele Tanaka & Waldron Professional Corporation, counsel to the Borrower, dated the Closing Date and addressed to the Lender, with respect to such matters as the Lender may require, including opinions as to the validity of the Borrower’s organization and existence; to the effect that all other governmental approvals, if any, necessary for the Borrower to execute, deliver and perform its obligations under this Agreement and the other Financing Documents to which the Borrower is a party have been duly obtained; that the Authorizing Resolution has been duly and properly adopted; and that this Agreement and the other Financing Documents to which the Borrower is a party have been duly authorized and delivered by the Borrower.

(h) Opinion of Counsel to Town. The Lender shall have received an opinion of White Bear & Ankele Tanaka & Waldron Professional Corporation, counsel to the Town, dated the Closing Date and addressed to the Lender, with respect to such matters as the Lender may require, including, without limitation, opinions to the effect that the Plan was duly and properly adopted by the Board of Trustees of the Town, has not been rescinded, revoked, or amended since such adoption and remains in full force and effect, and otherwise in form and substance satisfactory to the Lender and its counsel.

(i) Other Certificates and Opinions. The Lender shall have received certificates of authorized representatives of all parties to the Financing Documents with respect to such matters as the Lender may require, or opinions of counsel as the Lender may require, all in form and substance satisfactory to the Lender and its counsel.

(j) No Change in Law. No law, regulation, ruling or other action of the United States, the State of Colorado or any political subdivision or authority therein or thereof shall be in effect or shall have occurred, the effect of which would be to prevent the
Borrower from fulfilling its obligations under this Agreement or under any Financing Documents.

(k) Fees and Expenses. Simultaneously with the Closing, all Lender’s counsel fees and any other fees and expenses due and payable in connection with the extension of the Loan, including but not limited to the Commitment Fee, the execution and delivery of this Agreement and the other Financing Documents, and any other amounts due and payable hereunder shall have been paid by the Borrower.

(l) Borower Financial Information. The Borrower shall have provided the Lender with all pertinent financial information regarding the Borrower, including, but not limited to a detailed budget, draw schedule and sources and uses of funds for the Capital Projects.

(m) Borrower Due Diligence; No Adverse Information. The Lender and its counsel shall have been provided with the opportunity to review all agreements, documents, and other material information relating to the Borrower, the Pledged Revenue, and the Borrower’s ability to perform its obligations under this Agreement and the other Financing Documents to which the Borrower is a party; and no adverse information regarding the Pledged Revenue or the Borrower shall be received by Lender prior to the Closing Date.

(n) Approval of Financing Documents. The Lender and its counsel shall have had sufficient time to review the Financing Documents and the final versions of such documents shall be in form and content satisfactory to the Lender and its counsel.

(o) Reserve Fund. Simultaneously with the Closing, the Reserve Fund shall be fully funded as required by this Agreement as of the date hereof.

(p) Other Requirements. The Lender shall be in receipt of such other certificates, approvals, filings, opinions and documents as shall be reasonably requested by the Lender.

(q) Other Matters. All other legal matters pertaining to the execution and delivery of this Agreement, the Note, and the other Financing Documents, and the issuance of the Loan shall be reasonably satisfactory to the Lender and its counsel.

(r) Debt Outstanding. The Lender shall be in receipt of evidence satisfactory to the Lender, including without limitation, certifications from the Borrower, to the effect that, except for the obligations evidenced by the Note and this Agreement, as of the Closing Date the Borrower has no Debt outstanding.

Section 3.02. Borrower’s Condition to Loan Closing. The execution of this Agreement and the Note by the Borrower is conditioned upon the Borrower’s receipt of the Amended First Restated Note from the Lender for cancellation.
ARTICLE IV

FUNDS AND ACCOUNTS

Section 4.01. Creation of Funds. The following funds have been created and established, each of which shall be held and administered by the Lender in accordance with the provisions hereof:

(a) the Revenue Fund;
(b) the Loan Payment Fund;
(c) the Reserve Fund (which fund constitutes a continuance of the reserve fund set forth in the Amended First Restated Loan Agreement);
(d) the Surplus Fund;
(e) the 2014 Restricted Project Fund “A”;
(f) the 2014 Restricted Project Fund “B”; (g) the 2014 Unrestricted Project Fund;
(h) the Riverbend Project Fund (which fund constitutes a continuance and renaming of the project fund set forth in the Amended First Restated Loan Agreement); and
(i) the Costs of Issuance Fund.

Section 4.02. Flow of Funds.

(a) General Flow of Funds Prior to and Including the Maturity Date. Prior to, and including, the Maturity Date, the Borrower shall transfer all amounts comprising Pledged Property Tax Revenue to the Lender as soon as may be practicable after the receipt thereof. The Lender shall deposit all such Pledged Property Tax Revenue into the Revenue Fund and apply the same as received in the order of priority set forth below.

FIRST: To the credit of the Loan Payment Fund, the amount required by Section 4.03(b) hereof for the then current Fiscal Year;
SECOND: To the credit of the Reserve Fund, the amount required to replenish the Reserve Fund to the Reserve Requirement, if any;
THIRD: To the Lender, for application to any amounts due and owing hereunder other than principal and interest payments on the Loan;
FOURTH: To the Borrower, to be used for any legal purpose, any amounts remaining after the payments and accumulations set forth in FIRST through THIRD above with respect to such Fiscal Year.
Notwithstanding the foregoing, if the amount of Estimated Pledged Property Tax Revenue available in each Fiscal Year, as certified to the Lender by the Borrower pursuant to Section 5.11(b) hereof, is insufficient to pay the amounts required in clauses FIRST through THIRD above with respect to such Fiscal Year, then the Borrower shall be required to transfer all amounts comprising Net Pledged Sales Tax Revenue, in addition to amounts comprising Pledged Property Tax Revenue, to the Lender as soon as practicable after the receipt thereof in each Fiscal Year until the amount of Pledged Sales Tax Revenue, when combined with Estimated Pledged Property Tax Revenue available for such Fiscal Year, is sufficient to satisfy the payments and accumulations required by clauses FIRST through THIRD above (except that for Fiscal Year 2013, the foregoing shall be calculated from the Closing Date through December 31, 2013). Upon receipt thereof, the Lender shall deposit all such Pledged Sales Tax Revenue into the Revenue Fund and apply the same as received in the order of priority to the payments and accumulations required by clauses FIRST through THIRD above; provided, that upon the occurrence of an Event of Default and during any continuation thereof (other than an Event of Default caused by the Borrower’s failure to pay the Balloon Payment on the Maturity Date after the Borrower has taken all reasonable steps to refinance the Loan), the Borrower shall be required to transfer all amounts comprising Net Pledged Sales Tax Revenue to the Lender immediately upon the receipt thereof for deposit by the Lender into the Revenue Fund, until such Event of Default has been cured to the satisfaction of the Lender.

[Note: bracketed dates subject to discussion] No later than July 31 [August 15] of each year, the Borrower shall prepare the Mid-Year Actual Pledged Property Tax Revenue Certificate attached hereto as Exhibit G. The purpose of this certificate is to certify to the Lender the amount of actual Pledged Property Tax Revenue received for the period January 1 through [July 15] of such Fiscal Year, and to compare such amount to the amounts required to fund FIRST through THIRD above for such Fiscal Year. If the actual Pledged Property Tax Revenue received to date for such Fiscal Year is equal to or exceeds the amounts required to fund FIRST through THIRD above for such Fiscal Year, the Borrower will be entitled to retain all Pledged Sales Tax Revenue for the remainder of such Fiscal Year. If the actual Pledged Property Tax Revenue received to date for such Fiscal Year is less than the amounts required to fund FIRST through THIRD above for such Fiscal Year, the Borrower shall be required to transfer all amounts comprising Net Pledged Sales Tax Revenue to the Lender as soon as practicable after the receipt thereof, until the amount of Pledged Sales Tax Revenue, when combined with the actual Pledged Property Tax Revenue received by the Lender is sufficient to satisfy the payments and accumulations required by clauses FIRST through THIRD above.

(b) Flow of Funds After the Maturity Date. After the Maturity Date, to the extent amounts remain due and owing to the Lender hereunder, the Borrower shall transfer all amounts comprising Pledged Property Tax Revenue to the Lender as soon as may be practicable after the receipt thereof. In addition, the Borrower shall transfer all amounts comprising Pledged Sales Tax Revenue (in an amount calculated as required below in this Section 4.02(b)) to the Lender as soon as may be practicable after the receipt thereof. The Lender shall deposit all such funds into the Revenue Fund and apply the same as received in the order of priority set forth below.

FIRST: To the credit of the Loan Payment Fund, the amount required by Section 4.03(e) hereof for the then current Fiscal Year;
SECOND: To the credit of the Reserve Fund, the amount required to replenish the Reserve Fund to the Reserve Requirement, if any;

THIRD: To the Lender, for application to any amounts due and owing hereunder other than principal and interest payments on the Loan;

FOURTH: Any amounts remaining after the payments and accumulations set forth in FIRST through THIRD above for the Fiscal Year shall be credited to the Surplus Fund, to be applied pursuant to Section 4.05 hereof.

Subject to the final determination of Pledged Sales Tax Revenue as described in the last paragraph of this Section 4.02(b), the amount of Pledged Sales Tax Revenue which must be deposited by the Borrower into the Revenue Fund pursuant to this Section 4.02(b) shall be determined pursuant to (a) or (b) below, as applicable:

(a) if amounts on deposit in the 2014 Restricted Project Fund “A” have been transferred to the 2014 Unrestricted Project Fund pursuant to Section 4.06(b)(iii) or Section 4.06(b)(iv)(B) hereof, then Pledged Sales Tax Revenue (for purposes of this calculation, and subject to the final determination of Pledged Sales Tax Revenue as described in the last paragraph of this Section 4.02(b)) shall be an amount equal to Net Sales Tax Revenue until the amount of Pledged Sales Tax Revenue, when combined with Estimated Pledged Property Tax Revenue available for each Fiscal Year equals $4,200,000; and

(b) if amounts on deposit in the 2014 Restricted Project Fund “A” have been applied to the prepayment of the Note pursuant to Section 4.06(b)(iv)(A) hereof, then Pledged Sales Tax Revenue (for purposes of this calculation, and subject to the final determination of Pledged Sales Tax Revenue as described in the last paragraph of this Section 4.02(b)) shall be an amount equal to Net Sales Tax Revenue until the amount of Pledged Sales Tax Revenue, when combined with Estimated Pledged Property Tax Revenue available for each Fiscal Year equals $2,800,000.

No later than January 15 of each year (after the Maturity Date if the Loan is not repaid in full by the Maturity Date), the Borrower shall prepare the Year-End Actual Pledged Sales Tax Revenue Certificate attached hereto as Exhibit H for the prior Fiscal Year. The purpose of this certificate is to calculate the final definition of “Pledged Sales Tax Revenue” (based upon the alternative calculation methods contained within the definition of that term herein), based upon the actual Sales Tax revenues for such Fiscal Year. To the extent that the amount of Pledged Sales Tax Revenue which is calculated by the formula contained in paragraph (c) of the definition of “Pledged Sales Tax Revenue” is greater than the actual Pledged Sales Tax Revenue deposited into the Revenue Fund by the Borrower during such Fiscal Year pursuant to the payments described in the preceding paragraphs (i) or (ii), as applicable, the Borrower shall pay, no later than January 31, additional Sales Tax revenue to the Lender in an amount equal to the difference between those two amounts. The Lender shall apply any such payments promptly upon receipt to the Surplus Fund. To the extent that the amount of Pledged Sales Tax Revenue which is calculated by the formula
contained in paragraph (c) of the definition of “Pledged Sales Tax Revenue” is less than the actual Pledged Sales Tax Revenue deposited into the Revenue Fund by the Borrower during such Fiscal Year pursuant to the payments described in the preceding paragraphs, the Lender shall remit, no later than January 31, amounts in the Surplus Fund to the Borrower equal to the difference between those two amounts.

(b) Application of the Additional Loan Payments. Any Additional Loan Payments received by the Borrower shall be paid to the Lender as soon as may be practicable after the receipt thereof. The Lender shall deposit such Additional Loan Payments to the 2014 Project Fund “B” pursuant to Section 4.06(a) and such funds shall be applied as set forth in Section 4.06(c).

(d) Application of Recovered Amounts. Any Recovered Amounts received by the Borrower shall be paid to the Lender as soon as may be practicable after the receipt thereof. The Lender shall deposit such Recovered Amounts to the 2014 Project Fund “B” pursuant to Section 4.06(a) and such funds shall be applied as set forth in Section 4.06(c), at the option of the Borrower, be (i) applied to the prepayment of the Note (subject to the prepayment provisions of Section 2.07(b)(B)(ii)), or (ii) expended on Capital Project Expenses.

Section 4.03. Loan Payment Fund.

(a) General. The Loan Payment Fund shall be administered by the Lender in accordance with the terms of this Agreement.

(b) Credits to Fund. There shall be credited to the Loan Payment Fund in each Fiscal Year an amount of Net Pledged Revenue which, when combined with other legally available moneys in the Loan Payment Fund, equals the Estimated Debt Requirements for such Fiscal Year. For purposes of clarification, the foregoing shall not be interpreted to require that there be maintained in the Loan Payment Fund at all times an amount equal to the Estimated Debt Requirements but, rather, that there is to be transferred to the Loan Payment Fund in each Fiscal Year (and prior to transfers for any other purpose provided in Section 4.02 hereof) moneys which in the aggregate, when combined with other legally available moneys in the Loan Payment Fund from time to time, equals the Estimated Debt Requirements for such Fiscal Year. At any given time, amounts on deposit in the Loan Payment Fund are not intended to be in excess of the portion of the Estimated Debt Requirements remaining to be paid for the then current Fiscal Year.

(c) Notice of Deficiency. If, on the day which is ten (10) Business Days prior to any Payment Date, the amount then on deposit in the Loan Payment Fund is insufficient to pay the Debt Requirements coming due on such Payment Date based on invoices provided from the Lender, the Lender shall notify the Borrower in writing of such shortfall indicating the amount of such deficiency. If, on or before such Payment Date, the Borrower provides funds to the Lender to make up any or all of such deficiency, then the Lender shall accept and deposit such funds into the Loan Payment Fund for the payment of the Debt Requirements then due.

(d) Application of Moneys in Loan Payment Fund Prior to and on the Maturity Date. Prior to and on the Maturity Date, moneys in the Loan Payment Fund (including amounts transferred thereto pursuant to provisions hereof) shall be used by
the Lender solely to pay the Debt Requirements in the following order of priority. For purposes of the following, when payment of more than one purpose is required at any single priority level, such credits shall rank pari passu with each other.

(i) First, to the payment of interest due in connection with the Loan pursuant to the relevant invoice provided by the Lender; and

(ii) Second, to the payment of regularly scheduled principal on the Loan when due.

After the conclusion of each Fiscal Year, the Lender shall remit remaining funds on hand in the Loan Payment Fund as of December 31, if any, to the Borrower, and such remittance shall occur no later than January 15 of the following Fiscal Year.

(e) Application of Moneys in the Loan Payment Fund After the Maturity Date. After the Maturity Date, moneys in the Loan Payment Fund (including amounts transferred thereto pursuant to provisions hereof) shall be used by the Lender to pay interest due in connection with the Loan pursuant to the relevant invoice provided by the Lender. Such moneys shall also be applied to pay principal on the Loan to the extent such funds are transferred to the Loan Payment Fund from the Surplus Fund pursuant to Section 4.05(b) hereof.

After the conclusion of each Fiscal Year, the Lender shall transfer remaining funds on hand in the Loan Payment Fund as of December 31, if any, to the Surplus Fund, and such transfer shall occur no later than January 15 of the following Fiscal Year.

(f) Investments. Moneys credited to the Loan Payment Fund shall be invested or deposited, at the direction of the Borrower, in Permitted Investments at Compass Bank only and in accordance with the laws of the State of Colorado and shall be valued on the basis of their current market value, as reasonably determined by the Borrower, which value shall be determined at least annually. All interest income from moneys credited to the Loan Payment Fund shall remain therein. The Borrower is solely responsible for determining if the investments made hereunder are Permitted Investments.

Section 4.04. Reserve Fund.

(a) General. The Reserve Fund shall be administered by the Lender in accordance with the terms of this Agreement. Moneys in the Reserve Fund shall be used by the Lender, if necessary, only for the purposes set forth in this Section 4.04 and the Reserve Fund is hereby pledged for such purposes.

(b) Transfers to Loan Payment Fund. If, on any Payment Date, the amount then on deposit in the Loan Payment Fund is an amount which is less than the Debt Requirements owing on such Payment Date, after taking into account amounts (if any) transferred from the Surplus Fund to the Loan Payment Fund in accordance with Section 4.05 hereof, the Lender shall transfer from the Reserve Fund to the Loan Payment Fund an amount which, when combined with moneys then on deposit in the Loan Payment Fund, will be sufficient to pay such Debt Requirements when due on the applicable Payment Date. In
the event that moneys in the Reserve Fund, together with moneys then on deposit in the Loan Payment Fund (including amounts transferred from the Surplus Fund), are insufficient for such purpose, the Lender is to nonetheless transfer all moneys in the Reserve Fund to the Loan Payment Fund for the purpose of making partial payments in the order of priority provided in Section 4.02(a) (prior to or on the Maturity Date) and Section 4.02(b) (after the Maturity Date) hereof. Notwithstanding the previous two sentences, however, any transfer from the Reserve Fund to the Loan Payment Fund on or after the Maturity Date to pay unpaid principal shall be made only at the option of, and in the sole discretion of, the Lender.

(c) Transfers to Revenue Fund. To the extent that the Borrower owes, but has not paid, Sales Tax to the Lender pursuant to the last paragraph of Section 4.02(b) hereof, which payments are due on January 31 in any Fiscal Year in which they are due, the Lender shall transfer first, from the 2014 Restricted Project Fund “B”, the 2014 Unrestricted Project Fund and the Riverbend Project Fund, in that order, and second, from the Reserve Fund to the Revenue Fund an amount which is equal to the amount so due pursuant to the last paragraph of Section 4.02(b), such funds to be applied to the flow of funds contained in Section 4.02(b).

(d) Replenishment of Reserve. Prior to and on the Maturity Date, the Reserve Fund shall be replenished from Pledged Revenue available therefor in accordance with Section 4.02(a) hereof. After the Maturity Date, the Reserve Fund shall be replenished from Pledged Revenue available therefor in accordance with Section 4.02(b) hereof.

(e) Investments. Subject to the provisions of Section 5.08 hereof, amounts credited to the Reserve Fund shall be invested or deposited, at the direction of the Borrower, in Permitted Investments at Compass Bank only and in accordance with the laws of the State of Colorado and shall be valued on the basis of their current market value, as reasonably determined by the Borrower, which value shall be determined at least annually. All interest income on moneys on deposit in the Reserve Fund in excess of the Reserve Requirement shall be transferred by the Lender, at the direction of the Borrower, to the Loan Payment Fund. The Borrower is solely responsible for determining if the investments made hereunder are Permitted Investments.

(f) Application to Prepayment of Loan. In the event that the Borrower elects to prepay the Loan in full prior to the Maturity Date and utilize amounts on deposit in the Reserve Fund for such purpose, and provided that amounts on deposit in the Reserve Fund, together with amounts on deposit in the Loan Payment Fund and, if irrevocably pledged for such purpose, the Surplus Fund, and other amounts, if any, deposited by the Borrower are sufficient to pay all principal and accrued interest on the Loan, and any prepayment penalty due in accordance with Section 2.07 hereof, all amounts on deposit in the Reserve Fund shall be applied by the Lender at the direction of the Borrower to the payment of the Loan.

Section 4.05. Surplus Fund. [Reserved].
(a) **General.** The Surplus Fund shall be funded beginning on the day after the Maturity Date pursuant to Sections 4.02(b) and 4.03(e), and shall be administered by the Lender in accordance with the terms of this Agreement. Moneys in the Surplus Fund shall be used by the Lender, if necessary, only for the purposes set forth in this Section and the Surplus Fund is hereby pledged for such purposes.

(b) **Transfers to Loan Payment Fund; Refund to Borrower.** After the Maturity Date, the Lender shall disburse all amounts in the Surplus Fund on January 31 of each year for one or both of the following purposes: (i) to the extent that the Lender is required by Section 4.02(b) to remit funds to the Borrower no later than January 31 of any Fiscal Year, the Lender shall make such payments from the Surplus Fund up to the amount owed to the Borrower; and (ii) any funds remaining in the Surplus Fund after the payment required by 4.05(b)(i) is made shall be transferred from the Surplus Fund to the Loan Payment Fund and immediately applied to the payment of principal on the Loan.

(c) **Investments.** Subject to the provisions of Section 5.08 hereof, amounts credited to the Surplus Fund shall be invested or deposited, at the direction of the Borrower, in Permitted Investments at Compass Bank only and in accordance with the laws of the State of Colorado and shall be valued on the basis of their current market value, as reasonably determined by the Borrower, which value shall be determined at least annually. All interest income on moneys on deposit in the Surplus Fund shall remain in the Surplus Fund. The Borrower is solely responsible for determining if the investments made hereunder are Permitted Investments.

(d) **Application to Rebate Payments.** Upon written direction from the Borrower, the Lender shall transfer to the Borrower from the Surplus Fund the amount, if any, necessary to pay the Rebate Requirements to the United States of America when the same become due and payable, as more particularly defined and provided in the Tax Certificate.
Section 4.06. **20142015 Project Funds Fund**

(a) **Deposits to 20142015 Project Funds Fund.** On the Closing Date, a portion of the Loan proceeds shall be credited to the 2014 Restricted2015 Project Fund “A” and the 2014 Restricted Project Fund “B” in the amount provided in Section 2.03 hereof. After the Closing Date, any funds comprising Recovered Amounts and Additional Loan Payments and (ii) remaining in the Riverbend Project Fund after payment in full of the Riverbend Capital Project Expenses for which the Borrower has determined not to apply to the prepayment of the Loan, shall be credited to the 2014 Restricted2015 Project Fund “B”. The 2014 Restricted2015 Project Fund “A” and the 2014 Restricted Project Fund “B” shall be held and disbursed by the Lender as provided herein. All amounts deposited to the 20142015 Project Funds Fund shall be used by the Borrower solely for the payment of the Capital Project Expenses. Notwithstanding the foregoing, in the event that any amount of principal or interest due hereunder is not paid when due, the Lender shall apply amounts on deposit in the 2014 Project Funds (first from the 2014 Restricted Project Fund “B” and second, from the 2014 Unrestricted Project Fund) to the payment of such amounts, prior to any application of moneys on deposit in the Riverbend Project Fund and, but prior to any application of moneys on deposit in the Reserve Fund. The 20142015 Project Funds are Fund is hereby pledged for such purposes.

(b) **2014 Restricted Project Fund “A”**

(i) **Release to Title Company.** An amount not to exceed $2,948,131 shall be transferred from the 2014 Restricted Project Fund “A” to an escrow account (the “Escrow”) at Land Title Guarantee Company (“Land Title”) upon receipt of an executed closing instruction letter (the “Closing Letter”) between the Borrower and Land Title which provides that such funds will be held pursuant to Land Title’s standard escrow instructions and disbursed to or for the account of Borrower only upon the satisfaction of the following terms and conditions (collectively, the “Escrow Release Conditions”):

(A) Land Title has received one or more executed deeds conveying the Costco Property to Costco Inc., and such deed(s) are in form and substance adequate to convey title to the Costco Property to Costco Inc.

(B) Land Title or First American Title Insurance Company is irrevocably committed to issue to Costco Inc. its Owner’s Policy of Title Insurance consistent with the most recent Title Commitment approved by Borrower insuring Costco Inc. as the fee simple owner of the Costco Property.

(C) Land Title has received oral advice by telephone from the Lender authorizing such disbursement (such authorization from Lender to be limited Matt Chorske or Shane Miner), including but not limited to, their approval of the final forms of the Site Development Agreement and the Repurchase Rights Agreement.
(D)—Satisfaction of all items listed as Requirements on Schedule B-1 of the Title Commitment and payment of all disbursements on all settlement statements approved by the Borrower have been made.

(E)—In the event the Escrow Release Conditions have not been satisfied by 5:00 p.m. Mountain Standard Time on March 6, 2014, the funds deposited by Lender into the Escrow are to be wire transferred by Land Title to the Lender, and the Lender shall apply such amounts as specified in paragraph (b)(iv) below.

(b) (ii) Release of Land Title Escrow. Upon satisfaction of the Escrow Release Conditions, Land Title shall disburse the funds held in the Escrow, to or as directed by the Borrower.

(iii) Release to 2014 Unrestricted Project Fund. Upon satisfaction of the Escrow Release Conditions, as evidenced by receipt of a notice from Land Title to the Lender of the disbursement described in Section 4.06(b)(ii) above, the remaining balance of the 2014 Restricted Project Fund “A” shall be transferred to the 2014 Unrestricted Project Fund by the Lender.

(iv) Failure to Satisfy Escrow Release Conditions. To the extent the Escrow Release Conditions have not been satisfied on or prior to 5:00 p.m. Mountain Standard Time on March 6, 2014, amounts on deposit in 2014 Restricted Project Fund “A” shall be (A) applied to the prepayment of the Note (subject to any prepayment penalty due under Section 2.07(c)(ii)) by applying such amounts to the Amortization in reverse order beginning with the principal payment due on December 1, 2020, or (B) with the written consent of the Lender, transferred by the Lender to the 2014 Unrestricted Project Fund notwithstanding that the Escrow Release Conditions have not been satisfied.

(c) 2014 Restricted Project Fund “B”. Amounts in the 2014 Restricted Project Fund “B” shall be disbursed or applied by the Lender as provided below: (i) Initial Project Fund “B” Deposit. Upon receipt of a written request (a “2014 Restricted Project Fund “B” Transfer Request”), the form of which is attached hereto as Exhibit L, and upon satisfaction of all of the following conditions (collectively defined as the “Initial Project Fund “B” Release Conditions”), the Initial Project Fund “B” Deposit shall be transferred to the 2014 Unrestricted Project Fund:

(A)—The Costco Opening Date has occurred;

(B)—No default or event of default shall have occurred or is continuing under this Agreement;

(C)—The Reserve Fund is funded at the Reserve Requirement; and
The Borrower is in compliance with all covenants and agreements contained in any Costco Agreements to which the Borrower is a party.

To the extent the Initial Project Fund “B” Release Deposit Conditions have not been satisfied on or prior to June 1, 2015, amounts on deposit in the 2014 Restricted Project Fund “B” representing the Initial Project Fund “B” Deposit, and any investment earnings thereon, shall be (i) applied to the prepayment of the Note (subject to any prepayment penalty due under Section 2.07(c)(ii)) by applying such amount to the Amortization in reverse order beginning with the principal payment due on December 1, 2020, or (ii) with the written consent of the Lender accompanied by a 2014 Restricted Project Fund “B” Transfer Request (which at a minimum will be conditioned upon the execution and recording of the Restrictive Covenant Agreement), transferred to the 2014 Unrestricted Project Fund notwithstanding that the Initial Project Fund “B” Deposit Release Conditions have not been satisfied:

(ii) Additional Project Fund “B” Deposits. Any Recovered Amounts or Additional Loan Payments deposited to the 2014 Restricted Project Fund “B” pursuant to Section 4.02(c) and Section 4.02(d) hereof (as previously defined, the “Additional Project Fund “B” Deposits”) shall be (i) applied to the prepayment of the Note (subject to any prepayment penalty due under Section 2.07(c)(ii)) by applying such amounts to the Amortization in reverse order beginning with the principal payment due on December 1, 2020, or (ii) with the written consent of the Lender accompanied by a 2014 Restricted Project Fund “B” Transfer Request, transferred to the 2014 Unrestricted Project Fund.

(d) 2014 Unrestricted Project Fund. The Lender shall disburse funds from the 2014 Unrestricted Project Fund to the Borrower upon receipt of a written request (a “2014 Unrestricted Disbursements from 2015 Project Fund” request), the form of which is attached hereto as Exhibit K. Any balance remaining in the 2014 Unrestricted Project Fund after payment in full of the Capital Project Expenses shall be (i) applied to the prepayment of the Note (subject to the prepayment provisions of Section 2.07), or (ii) with the written consent of the Lender, transferred to the Loan Payment Fund.

Any balance remaining in the 2015 Project Fund after payment in full of the Capital Project Expenses shall be (i) applied to the prepayment of the Note (subject to the prepayment provisions of Section 2.07), or (ii) with the written consent of the Lender, transferred to the Loan Payment Fund. [To be confirmed]

(c) (e) Investment Earnings. Subject to the covenants and provisions of Section 5.08 hereof, amounts on deposit in the 20142015 Project Fund shall be invested or deposited by the Lender, at the direction of the Borrower, in Permitted Investments at Compass Bank only and in accordance with the laws of the State of Colorado, and shall be valued on the basis of their current market value, as reasonably determined by the Borrower, which value shall be determined at least annually. Interest income from the
investment or reinvestment of moneys credited to the 20142015 Project Funds Fund shall remain in and become part of such 20142015 Project Funds Fund, unless otherwise required to be transferred or applied as provided herein, and such interest income shall be transferred to the 2014 Unrestricted Fund in the same manner and at the same time as the transfer of the remainder of the 2014 Project Funds. The Borrower is solely responsible for determining if the investments made hereunder are Permitted Investments.

Section 4.07. Riverbend Project Fund.

(a) General. The Riverbend Project Fund shall be held by and administered by the Lender in accordance with the terms of this Agreement and shall be used by the Borrower solely for the payment of the Riverbend Capital Project Expenses. The Lender shall disburse funds from the Riverbend Project Fund to the Borrower upon receipt of a written request (a “Riverbend Project Fund Disbursement Request”), the form of which is attached hereto as Exhibit MK. Any balance remaining in the Riverbend Project Fund after payment in full of the Riverbend Capital Project Expenses shall, at the option of the Borrower, be (i) applied to the prepayment of the Note (subject to any prepayment penalty due under provisions of Section 2.07(c)(ii)) by applying such amounts to the Amortization in reverse order beginning with the principal payment due on December 1, 2020, or (ii) with the written consent of the Lender, transferred to the 2014 Unrestricted2015 Project Fund pursuant to Section 4.06(a). Notwithstanding the foregoing, in the event that any amount of principal or interest due hereunder is not paid when due, the Lender shall apply amounts on deposit in the Riverbend Project Fund, if any, to the payment of such amounts, but only after prior to the application of moneys on deposit in the 2014 Restricted2015 Project Fund “B” and the 2014 Unrestricted Project Fund, in that order, and prior to application of moneys on deposit in the Reserve Fund. The Riverbend Project Fund is hereby pledged for such purposes.

(b) Investment Earnings. Subject to the covenants and provisions of Section 5.08 hereof, amounts on deposit in the 2015 Project Funds Fund shall be invested or deposited by the Lender, at the direction of the Borrower, in Permitted Investments at Compass Bank only and in accordance with the laws of the State of Colorado, and shall be valued on the basis of their current market value, as reasonably determined by the Borrower, which value shall be determined at least annually. Interest income from the investment or reinvestment of moneys credited to the Riverbend Project Fund shall remain in and become part of such Riverbend Project Fund, unless otherwise required to be transferred or applied as provided herein, and such interest income shall be transferred to the 2014 Unrestricted2015 Project Fund in the same manner and at the same time as the transfer of the remainder of the Riverbend Project Fund. The Borrower is solely responsible for determining if the investments made hereunder are Permitted Investments.

Section 4.08. Costs of Issuance Fund. Amounts advanced to the Costs of Issuance Fund pursuant to Section 2.03(b) hereof shall be used by the Borrower solely for the payment of the fees, costs and expenses incurred in connection with the issuance of the Loan pursuant to invoices provided to the Lender and in accordance with the Closing Memorandum. The Borrower’s execution of this Agreement shall constitute authorization to the Lender to disburse moneys in accordance with the Closing Memorandum, and no further authorization or direction from the
Borrower is necessary or required. Amounts to be disbursed from the Costs of Issuance Fund other than as provided in the Closing Memorandum must be approved in writing by the Borrower prior to disbursement. On the date which is 90 days after the Closing Date, the Lender shall transfer all amounts then remaining, if any, in the Costs of Issuance Fund to the Revenue Fund for application as provided in Section 44.02(a) hereof. At such time as no amounts remain therein, the Costs of Issuance Fund shall terminate. Amounts on deposit in the Costs of Issuance Fund may be invested or deposited, at the written direction of the Borrower, in Permitted Investments and shall be valued on the basis of their current market value, as reasonably determined by the Borrower, which value shall be determined at least annually. All interest income from the investment or reinvestment of moneys credited to the respective accounts of the Costs of Issuance Fund shall remain therein.

Section 4.09. Lender To Direct Funds and Accounts: Accounting. Subject to Article VII hereof, the Borrower hereby grants to the Lender the right and the authority to direct all activity with respect to all funds and accounts created pursuant to this Agreement, including those funds and accounts created pursuant to this Article, provided that any such Lender direction shall be in accordance with the terms of this Agreement. Subject to Article VII hereof, the Borrower shall not have any right, power, or authority to direct any activity within any funds created pursuant to this Agreement, including those funds and accounts created pursuant to this Article, except that the Borrower may make any deposits into such funds as may be required by this Agreement. Lender shall keep and maintain accounting records in such manner that the Pledged Revenue received and amounts deposited to each fund and account held hereunder may at all times be readily and accurately determined.

Section 4.10. Provisions Regarding Certificates. Pursuant to the requirements herein, the Borrower is obligated at the times provided herein to provide to the Lender the Annual Estimated Pledged Property Tax Revenue Certificate, the Mid-Year Actual Property Tax Revenue Certificate, and the Year-End Actual Pledged Sales Tax Revenue Certificate. Such certificates are subject to the review and approval of the Lender. If the Lender has not approved or provided to the Borrower a written objection thereto in compliance with the following sentence, no later than 15 days after the due date of the applicable certificate, the Lender will be deemed to have approved such certificate. The Lender shall be entitled to object to such certificates only on the basis that the Lender reasonably believes that: (a) a mathematical calculation therein is incorrect or not in compliance with the provisions of this Agreement, or (b) one or more values used in the calculation are incorrect.

ARTICLE V

REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

While any part of the Loan is available for disbursement or any obligations hereunder or under any of the other Financing Documents are unpaid or outstanding, the Borrower continuously warrants, covenants and agrees as follows:

Section 5.01. Accuracy of Information. All information, certificates or statements given to the Lender by the Borrower pursuant to this Agreement and the other Financing Documents will be true and complete when given.
Section 5.02. Organization; Litigation. The Borrower is validly existing and in good standing under the laws of its state of organization, has all requisite power and authority and possesses all licenses, permits and approvals necessary to conduct its business. There is no litigation or administrative proceeding threatened or pending against the Borrower of which Borrower is aware and which Borrower has not already advised Lender of, which (i) would adversely affect the validity or enforceability of, or the authority or ability of the Borrower to perform its obligations under, the Financing Documents to which the Borrower is a party; (ii) would, in the reasonable opinion of the Borrower, have a materially adverse effect on the ability of the Borrower to conduct its business as presently conducted or as proposed or contemplated to be conducted or would have a material adverse effect on the Borrower’s financial condition; or (iii) would adversely affect the exclusion of interest on the Note from gross income for federal income tax purposes or the exemption of such interest from State of Colorado personal income taxes.

Section 5.03. Performance of Covenants, Authority. The Borrower covenants that it will faithfully perform and observe at all times any and all covenants, undertakings, stipulations, and provisions contained in the Authorizing Resolution, this Agreement, the Note and all proceedings pertaining thereto. The Borrower covenants that it is duly authorized under the constitution and laws of the State of Colorado, including, particularly and without limitation, the Act, to execute and deliver the Note, this Agreement and the other Financing Documents to which it is a party, and that all action on its part for the execution and delivery of the Note, this Agreement and the other Financing Documents to which it is a party have been duly and effectively taken and will be duly taken as provided therein and herein, and that the Loan, the Note, this Agreement and the other Financing Documents to which the Borrower is a party are and will be valid and enforceable obligations of the Borrower according to the terms thereof and hereof.

Section 5.04. Default, Etc. The Borrower is not in default in the performance, observance, or fulfillment of any of the obligations, covenants or conditions contained in any Financing Document or other resolution, agreement or instrument to which it is a party which would have a material adverse effect on the ability of the Borrower to perform its obligations hereunder or under the other Financing Documents to which the Borrower is a party, or which would affect the enforceability hereof or thereof.

Section 5.05. Pledged Revenue Accounting. The Borrower shall establish and maintain separate accounts for the purpose of tracking the receipts and allocable expenses relating to each component of the Pledged Revenue in such a manner that the amounts and other particulars relating to the Pledged Revenue may at all times be readily and accurately determined.

Section 5.06. Enforcement and Collection; Plan Amendment. Unless otherwise agreed to by the Lender in writing, the Borrower shall diligently collect all Pledged Revenue, and any amounts due it under the Financing Documents or any Costco Agreements which impact the Pledged Revenue, and shall take all necessary action to enforce such collection pursuant to the provisions of the applicable instrument governing the right of the Borrower to the receipt of the Pledged Revenue or such amounts due to Borrower. The Borrower will not amend or supplement (or consent to the amendment or supplement of) the Plan or the Larimer County IGA in any way which would materially adversely affect the amount of Pledged Revenue to be collected, without the prior written consent of the Lender. The Borrower further covenants and agrees that it will not do any of the following without the prior written consent of the Lender: (i)
propose to amend or modify the Plan, (ii) consent to any amendment or modification of the Plan or (iii) initiate any discussion with the Town regarding (a) amending or modifying the Plan or (b) extending the Plan or the duration of the Urban Renewal Project.

Section 5.07. Use of Proceeds. Disbursements by the Lender to the Borrower hereunder will be used exclusively by the Borrower for the purposes represented to the Lender and in accordance with the provisions of Section 2.03 hereof.

Section 5.08. Tax Covenants. The Borrower covenants for the benefit of the Lender that it will not take any action or omit to take any action with respect to the Loan, the proceeds thereof, or any other funds of the Borrower or any facilities financed or refinanced with the proceeds of the Loan if such action or omission (a) would cause the interest on the Loan to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Tax Code, (b) would cause interest on the Loan to lose its exclusion from alternative minimum taxable income defined in Section 55(b)(2) of the Tax Code, or (c) would cause interest on the Loan to lose its exclusion from Colorado taxable income under present Colorado law. The foregoing covenants shall remain in full force and effect notwithstanding the payment in full or defeasance of the Loan until the date on which all obligations of the Borrower in fulfilling the above covenants under the Tax Code and Colorado law have been met.

Section 5.09. Other Liabilities. The Borrower will pay and discharge, when due, all of its liabilities, except when the payment thereof is being contested in good faith by appropriate procedures which will avoid financial liability and with adequate reserves provided therefor.

Section 5.10. Financial Statements. The financial statements and other information previously provided to the Lender by the Borrower or provided to the Lender by the Borrower in the future are or will be complete and accurate and prepared in accordance with generally accepted accounting principles generally applicable to urban renewal authorities. There has been no material adverse change in the Borrower’s financial condition since such information was provided by the Borrower to the Lender. The Borrower will (a) maintain accounting records in accordance with generally recognized and accepted principles of accounting generally applicable to urban renewal authorities consistently applied throughout the accounting periods involved; (b) provide the Lender with such information concerning the business affairs and financial condition (including insurance coverage) of the Borrower as the Lender may request; and (c) without request, provide the Lender with the information set forth in Section 5.11 below. The Borrower shall notify the Lender promptly of all interim litigation or administrative proceedings, threatened or pending, against the Borrower which would, if adversely determined, in Borrower’s reasonable opinion, have a material adverse effect on the Borrower’s financial condition arising after the date hereof.

Section 5.11. Reporting Requirements. The Borrower will at all times provide the following to the Lender at the times and in the manner provided below:

(a) As soon as available, but not later than 210 days following the end of each Fiscal Year, the Borrower shall furnish to the Lender financial information concerning the Borrower as a component unit of the Town including, without limitation, a balance sheet of the Borrower as of the end of the immediately preceding Fiscal Year and the related statements of income, retained
earnings and cash flows for such Fiscal Year, prepared in accordance with generally accepted accounting principles consistently applied, in reasonable detail and certified by a firm of independent certified public accounts selected by the Borrower and satisfactory to the Lender, together with a certificate of an authorized officer of the Borrower substantially in the form of Exhibit D attached hereto (the “Annual Compliance Certificate”) (i) evidencing the Borrower’s continuing compliance with the covenants referenced therein; and (ii) stating whether there exists on the date of such certificate any Default or Event of Default and, if any Default or Event of Default then exists, setting forth the details thereof and the actions which the Borrower is taking or proposes to take with respect thereto;

(b) as soon as available, but in no event later than December 31 of each year, the Borrower shall furnish to the Lender (i) the Town’s annual budget for the immediately succeeding Fiscal Year and, as soon as available, a copy of any proposed amendments thereto, which such budget shall include as separate line items all projected Pledged Revenue expected to be received in such Fiscal Year; and (ii) an Estimated Pledged Property Tax Revenue Certificate of an authorized representative of the Borrower in substantially the form of Exhibit F attached hereto, which certificate shall include a calculation of the Estimated Pledged Property Tax Revenue for the immediately succeeding Fiscal Year;

(c) on each April 30, July 31, October 31, and January 31, commencing April 30, 2014, October 31, 2015, the Borrower shall provide to the Lender a certificate of an authorized representative of the Borrower in substantially the form of Exhibit E attached hereto (each, a “Quarterly Compliance Certificate”) which certificate shall concern information with respect to the period ending on the last day of the preceding calendar month;

(d) as soon as available, but in no event later than 45 days following the end of each Fiscal Year, a report detailing, for such Fiscal Year: (i) the assessed valuation and incremental assessed valuation of property in the Plan Area as described in the Plan, (ii) the ad valorem property tax levies of the taxing jurisdictions overlapping the Plan Area, and (iii) the amount of the Pledged Property Tax Revenue and the collection and delinquency rates applicable to such revenue source;

(e) as soon as available, the Borrower shall furnish the Lender with a copy of any report to the Town of any auditors of the Town;

(f) to the extent permitted by law, and as soon as available, the Borrower shall furnish the Lender with any other periodic report of the activities of the Borrower, the Town, or their respective financial conditions submitted to any governmental agency and any other audit report prepared with respect to such activities or conditions for delivery to a third party;

(g) at the time the Borrower provides the Owner with the quarterly Business Incentive Report described in Section 2.2(a) and Exhibit G of the Public/Private Partnership Agreement, the Borrower shall provide a copy of such report to the Lender;

(h) to the extent not described in the Business Incentive Report described in paragraph (g) above, within 60 days of such events occurring, the Borrower shall notify the Lender that (i) a Cost Overrun Reimbursement is due to the Owner; and (ii) the Owner has received 50% of the
any Cost Overrun Reimbursements have been fully paid; and

(i) promptly upon request of the Lender, the Borrower shall furnish to the Lender such other reports or information regarding the Pledged Revenue, the Loan, or the assets, financial condition, business or operations of the Borrower or the Town, as the Lender may reasonably request.

Section 5.12. Inspection of Books and Records. The Lender shall have the right to examine any of the books and records of the Borrower at any reasonable time and as often as the Lender may reasonably desire. Without limiting the generality of the foregoing, the Lender agrees that it shall use commercially reasonable efforts to maintain as confidential any non-public or proprietary information obtained by the Lender in exercising its rights under this Section.

Section 5.13. Instruments of Further Assurance. The Borrower covenants that it will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such agreements supplemental hereto and such further acts, instruments, and transfers as the Lender may reasonably require for the better assuring, transferring, and pledging unto the Lender the Pledged Revenue; provided, however, that the Borrower shall not be obligated to incur in excess of nominal expenses in complying with this covenant.


(a) Superior Lien Debt. The Borrower shall not issue any Additional Debt having a lien upon the Pledged Revenue or any component thereof which is superior to the lien of the Loan.

(b) Parity Debt. The Borrower shall not issue any Parity Debt without the prior written consent of the Lender.

(c) Permitted Subordinate Debt. The Borrower may issue Subordinate Debt without the consent of the Lender, provided that:

(i) the Pledged Property Tax Revenue and Pledged Sales Tax Revenue collected in the twelve month period immediately preceding issuance of the Subordinate Debt, which Pledged Property Tax Revenue shall be adjusted for future reductions in the Pledged Property Tax Revenue as required by the Tax Increment Agreement and any planned reductions in the mill levy of the taxing entities whose revenues are part of the Pledged Property Tax Revenue (which reductions are known to the Borrower after reasonable investigation), shall be equal to one hundred percent (100%) of the Maximum Annual Debt Service on the Loan, any Parity Debt and any Subordinate Debt (including the Subordinate Debt to be issued);

(ii) no Event of Default has occurred and is continuing with respect to the Loan and any outstanding Parity Debt;

(ii) the Reserve Fund for the Loan and the reserve fund required for any outstanding Parity Debt shall be fully funded and shall not be pledged to the Subordinate Debt;
(iii) as long as the Loan or any Parity Debt is outstanding, the Subordinate Debt contains the following terms: (A) the Subordinate Debt shall be payable no more frequently than once each year, on a date subsequent to the annual payments on the Loan and any Parity Debt; and (B) the final maturity date of the Subordinate Debt shall be the same as or later than the Maturity Date of the Loan and the maturity date of any Parity Debt; and

(iv) the Lender and the Borrower shall have agreed on a revision to the flow of funds set forth in Section 4.02(a), which flow of funds is expected to be revised to provide that any Subordinate Debt will be paid on an annual basis only after the payment of FIRST through THIRD in Section 4.02(a) or Section 4.02(b), as applicable.

Section 5.15. Continued Existence. The Borrower will maintain its existence and shall not merge or otherwise alter its corporate structure in any manner or to any extent as might reduce the security provided for the payment of the Loan.

Section 5.16. Restructuring. In the event the Pledged Revenue is insufficient or is anticipated to be insufficient to pay the principal of, prepayment penalty, if any, and interest on the Loan when due, the Borrower shall use its best efforts to refinance, refund, or otherwise restructure the Loan so as to avoid such a default.

Section 5.17. Operation and Management. The Borrower will continue to operate in accordance with all applicable laws, rules, regulations, and intergovernmental agreements, and keep and maintain separate accounts of the receipts and expenses thereof in such manner that the Pledged Revenue may at all times be readily and accurately determined.

Section 5.18. Annual Audit and Budget. At least once a year in the time and manner provided by law, the Borrower will cause audits to be performed of the records relating to the Borrower’s revenues and expenditures. In addition, at least once a year in the time and manner provided by law, the Borrower will cause budgets to be prepared and adopted. The audits and budgets of the Borrower may be presented as a component of the Town. Copies of the budgets and the audits will be filed and recorded in the places, time, and manner provided by law.

Section 5.19. No Exclusion of Property. The Borrower shall take no action that could have the effect of excluding property from the Plan Area unless consented to by the Lender.

Section 5.20. Investment Practices. The Borrower shall not engage in any of the following investment practices with respect to any amounts in its administrative funds, and any other fund or account established under any of the Financing Documents: (i) increase or compound the dollar amount of funds available for investment by any means whatsoever, including obtaining loans, issuing debt, or purchasing securities on margin, including entering into reverse repurchase agreements, when the reinvestment funds are not matched to maturity, or similar instruments; (ii) invest (except to the extent appropriate as advised by an independent financial advisor to hedge existing interest rate risk or otherwise approved by the Bank in writing) in any instrument commonly known as a derivative (such as, by way of example, an inverse floater, interest rate agreement, cap or collar) or invest in any other security with a derivative embedded in it (such as, by way of example, structured notes); (iii) invest in any variable rate or floating rate security unless the interest rate therefor is determined on a basis designed to result in
a value of the security approximately equal to par; or (iv) knowingly (after using reasonable efforts to determine the composition of the investment portfolio of the entity in question) invest in any entity or pooled investment program employing any investment strategy prohibited by clauses (i) through (iii) above.

Section 5.21. Maintenance of Insurance. The Borrower shall not, without prior written consent of the Bank, take any action or omit to take any action which, if taken or omitted, would cause the Borrower to decrease its current level of general liability insurance coverage, its automobile insurance coverage or its public officials’ liability insurance coverage.

Section 5.22. Amendments to Financing Documents and Costco Agreements Require Prior Lender Consent. The Borrower shall not amend or consent to any amendment to any Financing Document, or waive any provision thereof, without the prior written consent of the Lender. The Borrower shall not amend or consent to any amendment to any Costco Agreement to which it is a party or a third party beneficiary, or waive any provision thereof, without the prior written consent of the Lender.

Section 5.23. Interest Rate Exchange Agreements. [Reserved].

The Borrower may, with the prior written consent of the Lender, enter into an interest rate protection agreement or interest rate exchange agreement with the Lender or a related entity of the Lender for the purpose of achieving the equivalent of a fixed interest rate on all or any portion of the outstanding principal of the Loan during the Variable Rate Period or any portion thereof. Such an interest rate protection agreement or interest rate exchange agreement constitutes “Debt” as defined herein.

Section 5.24. Riverbend Lot Ownership. The Borrower shall retain ownership of the Riverbend Lots until ownership is transferred to the Town for the purpose of constructing municipal-related facilities for the Town. The Borrower shall not transfer any interest in the Riverbend Lots to a party other than the Town without the consent of the Lender, and further shall not transfer any interest in the Riverbend Lots to the Town until one or more building permits have been issued for buildings to be used for Town municipal purposes. The proceeds of any (i) sale or other transfer of any interest in all or part of the Riverbend Lots by the Borrower to a party other than the Town and (ii) payment of any claim made by the Borrower pursuant to any title insurance policy, property insurance policy or other insurance coverage issued to the Borrower as owner of the Riverbend Lots, shall constitute Additional Loan Payments and shall be applied pursuant to Section 4.02(e)(b) hereof.
ARTICLE VII

DEPOSITS; INVESTMENTS

Section 7.01. Deposits Held Under This Agreement. Subject to Section 7.02 hereof, all moneys held in any of the funds or accounts to be held and administered by the Lender under this Agreement shall be held in depository accounts in the possession of Compass Bank or the Lender and satisfying the requirements of the Public Deposit Protection Act and shall not be invested, but shall earn interest at the rate provided by Compass Bank or the Lender, as applicable, with respect to depository accounts.

Section 7.02. Investment of Reserve Fund and Surplus Fund. Notwithstanding any provision contained herein, the Lender shall invest moneys on deposit in the Reserve Fund and the Surplus Fund as directed in writing by the Borrower in Permitted Investments and may rely upon such direction as a determination that the investment described in such direction is a Permitted Investment.

Section 7.03. Compliance with Tax Covenants. Any and all interest income on moneys held and administered by the Lender under this Agreement shall be subject to full and complete compliance at all times with the covenants and provisions of Section 5.08 hereof.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default. The occurrence of any one or more of the following events or the existence of any one or more of the following conditions shall constitute an Event of Default under this Agreement (whatever the reason for such event or condition and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree, rule, regulation, or order of any court or any administrative or governmental body), and there shall be no default or Event of Default hereunder except as provided in this Section.

(a) The Borrower fails to pay the interest on the Loan when due pursuant to this Agreement;

(b) The Borrower fails to pay the principal or prepayment penalty on the Loan when due pursuant to this Agreement;

(c) The Borrower fails to deposit any amounts constituting Pledged Revenue as required herein or fails to transfer the Pledged Revenue to the Lender as required herein;

(d) The Borrower defaults in the performance or observance of any other of the covenants, agreements, or conditions on the part of the Borrower in this Agreement or the Note, and fails to remedy the same to the satisfaction of the Lender within 45 days after the occurrence thereof;
(e) The Borrower fails to replenish the Reserve Fund to the Reserve Requirement by the time required in Section 4.04(e) hereof;

(f) Any financial information, statement, certificate, representation or warranty given to the Lender by the Borrower in connection with entering into this Agreement or the other Financing Documents and/or any borrowing thereunder, or required to be furnished under the terms thereof, shall prove untrue or misleading in any material respect (as determined by the Lender in the exercise of its judgment) as of the time when given and shall not be duly corrected and communicated to the Lender within the first to occur of 30 days following (i) the Borrower becoming aware of such incorrect information or (ii) the Lender’s delivery of written notice to the Borrower of such incorrect information;

(g) Any final judgment, not subject to further appeals, shall be obtained against the Borrower in excess of the sum of $10,000 and shall remain unsatisfied, unpaid, unvacated, unbonded or unstayed for a period of 30 days following the date of entry thereof, or by such payment deadline as may be directed by the adjudicatory body in such judgment,

(h) (i) the Borrower shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it or seeking to adjudicate it insolvent or a bankrupt or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian or other similar official for itself or for any substantial part of its property, or the Borrower shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Borrower any case, proceeding or other action of a nature referred to in clause (i) and the same shall remain undismissed for a period of 60 days from the date of commencement; or (iii) there shall be commenced against the Borrower any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its property which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal, within 60 days from the entry thereof; or (iv) the Borrower shall take action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii) or (iii) above; or (v) the Borrower shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(i) A change occurs in the financial or operating conditions of the Borrower, that, in the Lender’s reasonable judgment, will have a materially adverse impact on the ability of the Borrower to generate revenues sufficient to satisfy the Borrower’s obligations under this Agreement or its other obligations, and the Borrower fails to cure such condition within 45 days after receipt by the Borrower of written notice thereof from the Lender;

(j) Any funds or investments on deposit in, or otherwise to the credit of, any of the 2014-2015 Project Funds, the Riverbend Project Fund, Loan Payment Fund, Surplus Fund, or Reserve Fund become subject to any writ, judgment, warrant or attachment, execution or similar process not attributable to actions of the Lender;
(k) Any determination, decision, or decree is made by the Commissioner or the
District Director of the Internal Revenue Service, or by any court of competent jurisdiction,
that the interest payable on the Loan is includable in the gross income for federal income tax
purposes of the Lender, if and so long as such determination, decision or decree is not being
appealed or otherwise contested in good faith by the Borrower.

(l) The Borrower defaults in the performance or observance of any of the
covenants, agreements, or conditions on the part of the Borrower set forth in the Financing
Documents or the Costco Agreements to which it is a party, and fails to remedy the same to
the satisfaction of the Lender within 30 days after actual notice to the Borrower thereof;

Section 8.02. Remedies on Occurrence of Event of Default.

(a) Lender’s Rights and Remedies. Upon the occurrence and continuance of
an Event of Default, the Lender shall have the following rights and remedies which may be
pursued:

(i) Acceleration. The Lender may, at its option, declare all amounts
immediately due and payable.

(ii) Receivership. Upon the filing of a bill in equity or other
commencement of judicial proceedings to enforce the rights of the Lender
hereunder, the Lender shall be entitled as a matter of right, ex parte and without
hearing and notice, the right to which is hereby waived, to the appointment of a
receiver or receivers of the Pledged Revenue, to receive such Pledged Revenue
directly from the Town, the County or such other local governmental entities as
may be appropriate, and of the revenues, income, product, and profits thereof
pending such proceedings, subject however, to constitutional limitations inherent
in the sovereignty of the Borrower; but notwithstanding the appointment of any
receiver or other custodian, the Lender shall be entitled to the possession and
control of any cash, securities, or other instruments constituting Pledged Revenue
at the time held by, or payable or deliverable under the provisions of this
Agreement to, the Lender.

(iii) Suit for Judgment. The Lender may proceed to protect and enforce
its rights under this Agreement and any provision of law by such suit, action, or
special proceedings as the Lender shall deem appropriate.

(iv) Mandamus or Other Suit. The Lender may proceed by mandamus
or any other suit, action, or proceeding at law or in equity, to enforce its rights
hereunder.

(b) Judgment. No recovery of any judgment by the Lender shall in any
manner or to any extent affect the lien of this Agreement on the Pledged Revenue or any
rights, powers, or remedies of the Lender hereunder, but such lien, rights, powers, and
remedies of the Lender shall continue unimpaired as before.
Section 8.03. Notice to Lender of Default. Notwithstanding any cure period described above, the Borrower will immediately notify the Lender in writing when it obtains knowledge of the occurrence of any Default or Event of Default.

Section 8.04. Termination of Disbursements; Additional Lender Rights. Upon the occurrence of an Event of Default, the Lender may at any time (a) Setoff (as defined below); and/or (b) take such other steps to protect or preserve the Lender’s interest in the Pledged Revenue.

Section 8.05. Account Balances; Setoff. As additional security for the payment of the obligations to the Lender described in the Financing Documents (collectively the “Obligations”), the Borrower hereby grants to the Lender a security interest in, a lien on and an express contractual right to set off against all depository account balances, cash and any other property of the Borrower now or hereafter in the possession of Compass Bank, and the right to refuse to allow withdrawals from any account to the extent any such funds and accounts constitute Pledged Revenue hereunder (collectively “Setoff”). The Lender may, at any time upon the occurrence of an Event of Default hereunder or under any other Financing Document, Setoff against the Obligations whether or not the Obligations (including future payments to be made) are then due, all without any advance or contemporaneous notice or demand of any kind to the Borrower, such notice and demand being expressly waived.

Section 8.06. Delay or Omission No Waiver. No delay or omission of the Lender to exercise any right or power accruing upon any default shall exhaust or impair any such right or power or shall be construed to be a waiver of any such default, or acquiescence therein; and every power and remedy given by this Agreement may be exercised from time to time and as often as may be deemed expedient.

Section 8.07. No Waiver of One Default to Affect Another; All Remedies Cumulative. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other then existing Event of Default or shall impair any rights or remedies consequent thereon. All rights and remedies of the Lender provided herein shall be cumulative and the exercise of any such right or remedy shall not affect or impair the exercise of any other right or remedy.

Section 8.08. Other Remedies. Nothing in this Article is intended to restrict the Lender’s rights under any of the Financing Documents or at law, and the Lender may exercise all such rights and remedies as and when they are available.
ARTICLE IX

MISCELLANEOUS

Section 9.01. Loan Agreement and Relationship to Other Documents. This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings or agreements of the parties. This Agreement may not be contradicted by evidence of any prior or contemporaneous statements or agreements. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation, understanding, agreement, commitment, or warranty outside those expressly set forth in this Agreement. The warranties, covenants and other obligations of the Borrower (and the rights and remedies of the Lender) that are outlined in this Agreement and the other Financing Documents are intended to supplement each other. In the event of any inconsistencies in any of the terms in the Financing Documents, all terms will be cumulative so as to give the Lender the most favorable rights set forth in the conflicting documents, except that if there is a direct conflict between any preprinted terms and specifically negotiated terms (whether included in an addendum or otherwise), the specifically negotiated terms will control.

Section 9.02. Successors; Assignment. The rights, options, powers, obligations and remedies provided in this Agreement and the other Financing Documents will extend to the Lender and to its successors and permitted Lender assignees, will be binding upon the parties and their successors and will be applicable hereto and to all renewals and/or extensions hereof. This Agreement shall be assignable by the Lender to any entity without the consent of the Borrower, provided that the assignee (unless a BBVA/Compass Entity) shall provide an opinion of legal counsel to the effect that the assignee is legally authorized to perform the obligations of the Lender hereunder.

In addition, the Lender may at any time, without the consent of the Borrower, sell, to one or more commercial banks or other Persons not affiliates of the Borrower (a “Participant”) participating interests in its rights and obligations hereunder or under the other Financing Documents; provided, however, that (i) the Lender’s obligations under this Agreement shall remain unchanged, (ii) the Lender shall remain solely responsible for the performance of such obligations and (iii) the participation of one or more Participants shall not reduce or alter the Lender’s obligations under this Agreement or affect in any way the rights or obligations of the Borrower hereunder or under the Note, and the Borrower shall have the right to continue to deal solely with the Lender. The Lender will give notice of the sale of such participation, including the name of the Participant and the amount of the participation, to the Borrower within 30 days of the date of such sale. In the case of any such participation, the Participant shall be entitled to the benefit of Sections 2.09 and 9.03 hereof as though it were also the Lender hereunder, and if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default or an event which causes the Default Rate to be in effect, each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as the Lender under this Agreement.
Section 9.03. Indemnification. Except for harm arising from the Lender’s willful misconduct or gross negligence, and without waiving governmental immunity, the Borrower, to the extent allowed by law, hereby indemnifies and agrees, to defend and hold the Lender harmless from any and all losses, costs, damages, claims and expenses of any kind suffered by or asserted against the Lender relating to claims by third parties as a result of, or arising out of, the negligence or other misconduct of the Borrower, or any claim made against the Borrower, in connection with the financing provided under the Financing Documents. To the extent permitted by law, this indemnification and hold harmless provision will survive the termination of the Financing Documents and the satisfaction of the Obligations due the Lender.

Section 9.04. Notice of Claims against Lender; Limitation of Certain Damages. In order to allow the Lender to mitigate any damages to the Borrower from the Lender’s alleged breach of its duties under the Financing Documents or any other duty, if any, to the Borrower, the Borrower agree to give the Lender written notice no later than 20 days after the Borrower knows of any claim or defense it has against the Lender, whether in tort or contract, relating to any action or inaction by the Lender under the Financing Documents, or the transactions related thereto, or of any defense to payment of the Obligations for any reason. The requirement of providing timely notice to the Lender represents the parties’ agreed-to standard of performance regarding the duty of the Borrower to mitigate damages related to claims against the Lender. Notwithstanding any claim that the Borrower may have against the Lender, and regardless of any notice the Borrower may have given the Lender, the Lender will not be liable to the Borrower for consequential and/or special damages arising therefrom, except those damages arising from the Lender’s willful misconduct, gross negligence or bad faith. Failure by the Borrower to give notice to the Lender shall not waive any claims of the Borrower but such failure shall relieve the Lender of any duty to mitigate damages prior to receiving notice.

Section 9.05. Notices. Notice of any record shall be deemed delivered when the record has been (a) deposited in the United States Mail, postage pre-paid; (b) received by overnight delivery service; (c) received by telex; (d) received by telecopy; (e) received through the internet; or (f) when personally delivered at the following addresses:

If to the Borrower: Timnath Development Authority
4800 Goodman Street
Timnath, Colorado 80547
Attention: April Getchius
Telephone: (970) 224-3211

with copies to: Timnath Development Authority
c/o White, Bear & Ankele Waldron & Tanaka Professional Corporation
2154 E. Commons Avenue, Suite 2000
Centennial, Colorado 80122
Attention: Gary White, Town Attorney
Telephone: (303) 858-1800
Kutak Rock, LLP  
1801 California Street, Suite 3100  
Denver, Colorado 80202  
Attention: Saranne Maxwell  
Telephone: (303) 297-2400

To Lender:  
Compass Mortgage Corporation  
999 – 18th Street, Suite 2800  
Denver, CO 80202  
Attention: Matt Chorske  
Telephone: (303) 217-2235

with a copy to:  
BBVA Compass  
201 North Highway 183  
Leander, Texas 78641  
Attention: Credit Risk Operations LD&FC Austin - Public Finance, Susan Boswell  
Telephone: 512-421-6901

with a copy to:  
Sherman & Howard L.L.C.  
633 – 17th Street, Suite 3000  
Denver, CO 80202  
Attention: Peter J. Whitmore  
Telephone: (303) 299-8438

Section 9.06. Payments. Payments due on the Loan shall be made in lawful money of the United States. All payments may be applied by the Lender to principal, interest and other amounts due under the Note and this Agreement in any order which the Lender elects, subject to the provisions of this Agreement.

Section 9.07. Applicable Law and Jurisdiction; Interpretation; Severability. This Agreement will be governed by and interpreted in accordance with the internal laws of the State of Colorado, except to the extent superseded by Federal law. Invalidity of any provisions of this Agreement will not affect any other provision. THE BORROWER AND THE LENDER HEREBY CONSENT TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITUATED IN DENVER, COLORADO, AND WAIVE ANY OBJECTIONS BASED ON FORUM NON CONVENIENS, WITH REGARD TO ANY ACTIONS, CLAIMS, DISPUTES OR PROCEEDINGS RELATING TO THIS AGREEMENT, THE NOTE, OR THE PLEDGED REVENUE OR ANY TRANSACTIONS ARISING THEREFROM, OR ENFORCEMENT AND/OR INTERPRETATION OF ANY OF THE FOREGOING. Nothing in this Agreement will affect the Lender’s rights to serve process in any manner permitted by law. This Agreement, the other Financing Documents and any amendments hereto (regardless of when executed) will be deemed effective and accepted only at the Lender’s offices, and only upon the Lender’s receipt of the executed originals thereof. Invalidity of any provision of this Agreement shall not affect the validity of any other provision.
Section 9.08. Copies; Entire Agreement; Modification. The Borrower hereby acknowledges the receipt of a copy of this Agreement and all other Financing Documents.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING, EXPRESSING CONSIDERATION AND SIGNED BY THE PARTIES ARE ENFORCEABLE. NO OTHER TERMS OR PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. THE TERMS OF THIS AGREEMENT MAY ONLY BE CHANGED BY ANOTHER WRITTEN AGREEMENT. THIS NOTICE SHALL ALSO BE EFFECTIVE WITH RESPECT TO ALL OTHER CREDIT AGREEMENTS NOW IN EFFECT BETWEEN THE BORROWER AND THE LENDER. A MODIFICATION OF ANY OTHER CREDIT AGREEMENT NOW IN EFFECT BETWEEN THE BORROWER AND THE LENDER, WHICH OCCURS AFTER RECEIPT BY THE BORROWER OF THIS NOTICE, MAY BE MADE ONLY BY ANOTHER WRITTEN INSTRUMENT. ORAL OR IMPLIED MODIFICATIONS TO ANY SUCH CREDIT AGREEMENT ARE NOT ENFORCEABLE AND SHOULD NOT BE RELIED UPON.

Section 9.09. Waiver of Jury Trial. THE BORROWER AND THE LENDER HEREBY JOINTLY AND SEVERALLY WAIVE, TO THE EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO ANY OF THE FINANCING DOCUMENTS, THE OBLIGATIONS THEREUNDER, ANY COLLATERAL SECURING THE OBLIGATIONS, OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. EACH OF THE BORROWER AND THE LENDER REPRESENTS TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

Section 9.10. Attachments. All documents attached hereto, including any appendices, schedules, riders, and exhibits to this Agreement, are hereby expressly incorporated by reference.

Section 9.11. No Recourse Against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Public Securities Act, if a member of the Board of the Borrower, or any officer or agent of the Borrower, acts in good faith in the performance of his duties as a member, officer, or agent of the Board or the Borrower and in no other capacity, no civil recourse shall be available against such member, officer or agent for payment of the principal of and interest on the Loan. Such recourse shall not be available either directly or indirectly through the Board of the Borrower, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the delivery of the Note evidencing the Loan and as a part of the consideration for such transfers, the Lender and any person purchasing or accepting the transfer of the obligations representing the Loan specifically waives any such recourse.
Section 9.12. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Public Securities Act, this Agreement is entered into pursuant to certain provisions of the Supplemental Public Securities Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Note and this Agreement after delivery for value.

Section 9.13. Limitation of Actions. Pursuant to Section 11-57-212 of the Supplemental Public Securities Act, no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the authorization or issuance of the Note and this Agreement shall be commenced more than 30 days after the authorization of the Note and this Agreement.

Section 9.14. Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Loan provided herein and therein shall be governed by Section 11-57-208 of the Supplemental Public Securities Act, this Agreement, the Note and the Authorizing Resolution. The amounts pledged to the payment of the Note and this Agreement shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge shall have a first priority. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the Borrower irrespective of whether such persons have notice of such liens.

Section 9.15. Payment on Non-Business Days. Except as provided herein, whenever any payment hereunder shall be stated to be due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of the amount due.

Section 9.16. Termination. This Agreement shall terminate at such time as no amounts are due and owing to the Lender hereunder or under any of the other Financing Documents.
IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Loan Agreement as of the date set forth above.

LENDER

COMPASS MORTGAGE CORPORATION, an Alabama corporation

By __________________________________________
Matthew J. Chorske, Vice President

BORROWER

TIMNATH DEVELOPMENT AUTHORITY

By __________________________________________
Chairperson, Board of Commissioners

[SEAL]

Attest:

By __________________________________________
Secretary, Board of Commissioners

[Signature Page to Amended and Restated Loan Agreement]
EXHIBIT A

FORM OF NOTE

PROMISSORY NOTE

US $36,725,000.00

February 26, 2014

September 30, 2015

FOR VALUE RECEIVED, TIMNATH DEVELOPMENT AUTHORITY, a public body corporate and politic duly organized and existing as an urban renewal authority under the laws of the State of Colorado (hereinafter referred to as “Maker”), promises to pay to the order of COMPASS MORTGAGE CORPORATION, an Alabama corporation, its successors and assigns (hereinafter referred to as “Payee”), at the office of Payee or its agent, designee, or assignee, or such place as Payee or its agent, designee, or assignee may from time to time designate in writing, the principal sum of THIRTY-SIXFIFTY MILLION SEVEN HUNDRED TWENTY-FIVE THOUSAND AND 00/100 DOLLARS (US $36,725,000.00) pursuant to the terms of the Amended and Restated Loan Agreement dated of even date herewith (the “Loan Agreement”) by and between Maker and Payee, in lawful money of the United States of America. Unless and until otherwise designated in writing by Payee to Maker, all payments hereunder shall be made to Payee in accordance with the Amended and Restated Loan Agreement dated September 30, 2015 (the “Loan Agreement”).

Amounts received by Payee under this Promissory Note (this “Note”) shall be applied in the manner provided by the Loan Agreement. This Note shall bear interest, be payable, mature and be enforceable pursuant to the terms and provisions of the Loan Agreement. All capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed in the Loan Agreement.

This Note is governed by and interpreted in accordance with the internal laws of the State of Colorado, except to the extent superseded by Federal law. Invalidity of any provisions of this Note will not affect any other provision.

Pursuant to Section 11-57-210 of the Colorado Revised Statutes, as amended, this Note is entered into pursuant to certain provisions of the Supplemental Public Securities Act, being Title 11, Article 57, of the Colorado Revised Statutes, as amended. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of this Note after delivery for value.

THE PROVISIONS OF THIS NOTE MAY BE AMENDED OR REVISED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY MAKER AND PAYEE. THERE ARE NO ORAL AGREEMENTS BETWEEN MAKER AND PAYEE WITH RESPECT TO THE SUBJECT MATTER HEREOF.
IN WITNESS WHEREOF, an authorized representative of Timnath Development Authority, as Maker, has executed this Promissory Note as of the day and year first above written.

TIMNATH DEVELOPMENT AUTHORITY

By ________________________________
Chairperson, Board of Commissioners

[SEAL]

Attest:

By ________________________________
Secretary, Board of Commissioners

[Signature Page to Promissory Note]
## EXHIBIT B

### PRINCIPAL REPAYMENT SCHEDULE

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Principal Payment Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/1/2014</td>
<td>$1,120,000</td>
</tr>
<tr>
<td>12/1/2015</td>
<td>$1,800,000</td>
</tr>
<tr>
<td>12/1/2016</td>
<td>$1,875,000 $1,800,000</td>
</tr>
<tr>
<td>12/1/2017</td>
<td>$2,150,000 $2,150,000</td>
</tr>
<tr>
<td>12/1/2018</td>
<td>$2,025,000 $2,705,000</td>
</tr>
<tr>
<td>12/1/2019</td>
<td>$2,105,000 $3,125,000</td>
</tr>
<tr>
<td>12/1/2020</td>
<td>$25,850,000 $3,260,000</td>
</tr>
<tr>
<td>12/1/2021</td>
<td>$3,415,000</td>
</tr>
<tr>
<td>12/1/2022</td>
<td>$3,570,000</td>
</tr>
<tr>
<td>12/1/2023</td>
<td>$3,735,000</td>
</tr>
<tr>
<td>12/1/2024</td>
<td>$3,900,000</td>
</tr>
<tr>
<td>12/1/2025</td>
<td>$4,080,000</td>
</tr>
<tr>
<td>12/1/2026</td>
<td>$4,265,000</td>
</tr>
<tr>
<td>12/1/2027</td>
<td>$4,460,000</td>
</tr>
<tr>
<td>12/1/2028</td>
<td>$4,660,000</td>
</tr>
<tr>
<td>12/1/2029</td>
<td>$4,875,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$36,725,000</strong></td>
</tr>
<tr>
<td></td>
<td><strong>$50,000,000</strong></td>
</tr>
</tbody>
</table>
EXHIBIT D

FORM OF ANNUAL COMPLIANCE CERTIFICATE

ANNUAL COMPLIANCE CERTIFICATE OF THE AUTHORITY

(TO BE COMPLETED NO LATER THAN 210 DAYS AFTER THE END OF EACH FISCAL YEAR)

The undersigned, on behalf of the Timnath Development Authority, a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado and the home rule city charter of the Town of Timnath, Colorado (the “Authority”), as required by Section 5.11(a) of the Amended and Restated Loan Agreement dated as of February 26, 2014 (the “Loan Agreement,” to which reference is made for the definition of capitalized terms not otherwise defined herein), by and between the Authority and Compass Mortgage Corporation (the “Lender”), relating to the Loan (as defined in the Loan Agreement), hereby states and certifies to the Lender, as of the date hereof, that:

(a) **Authorization.** The undersigned is the duly authorized officer of the Authority, and as such, is familiar with the facts herein and is authorized to certify the same.

(b) **Annual Financial Information.**

[ ] financial information concerning the Authority as a component unit of the Town including, without limitation, a balance sheet of the Authority as of the end of the immediately preceding Fiscal Year and the related statements of income, retained earnings and cash flows for such Fiscal Year, prepared in accordance with generally accepted accounting principles consistently applied, in reasonable detail and certified by a firm of independent certified public accounts selected by the Authority and satisfactory to the Lender; and

[ ] attached hereto is a copy of the Authority’s annual budget for the next Fiscal Year; or

[ ] a copy of the Authority’s annual budget for the next Fiscal Year has been provided to the Lender separately.

(c) **Compliance with Covenants.**

The Authority is in compliance with the covenants contained in the following subsections of the Loan Agreement:

5.02 [ ] yes [ ] no (Litigation)
5.03 [ ] yes [ ] no (Performance of Covenants)
5.04 [ ] yes [ ] no (Defaults)
5.05 [ ] yes [ ] no (Pledged Revenue Accounting)
5.06 [ ] yes [ ] no (Enforcement and Collection Plan Amendment)
5.07 [ ] yes [ ] no (Use of Proceeds)
5.08 [ ] yes [ ] no (Tax Covenants)
5.09 [ ] yes [ ] no (Payment of Other Liabilities)
5.10 [ ] yes [ ] no (Financial Statements Other Matters)
5.14 [ ] yes [ ] no (Additional Debt)
5.15 [ ] yes [ ] no (Continued Existence)
5.17 [ ] yes [ ] no (Operation and Management)
5.18 [ ] yes [ ] no (Annual Audit and Budget)
5.19 [ ] yes [ ] no (No Exclusion of Property)
5.20 [ ] yes [ ] no (Investment Practices)
5.21 [ ] yes [ ] no (Maintenance of Insurance)
5.22 [ ] yes [ ] no (Amendments to Documents)

[If no, include description of circumstances]

(h) No Default or Event of Default.

[ ] no Default or Event of Default has occurred and is continuing; or

[ ] a Default or Event of Default has occurred and is continuing, under the following circumstances, and the Authority is taking or proposes to take the following steps with respect thereto:

[Include description of circumstances and Authority remedial actions]

Dated_________________________ TIMNATH DEVELOPMENT AUTHORITY
EXHIBIT E

FORM OF QUARTERLY COMPLIANCE CERTIFICATE

QUARTERLY COMPLIANCE CERTIFICATE

(TO BE COMPLETED NO LATER THAN EACH APRIL 30, JULY 31, OCTOBER 31 AND JANUARY 31)

The undersigned, on behalf of the Timnath Development Authority, a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado and the home rule city charter of the Town of Timnath, Colorado (the “Authority”), as required by Section 5.11(c) of the Amended and Restated Loan Agreement dated as of February 26, 2014 (the “Loan Agreement,” to which reference is made for the definition of the capitalized terms not otherwise defined herein), by and between the Authority and Compass Mortgage Corporation (the “Lender”), relating to the Loan (as defined in the Loan Agreement), hereby states and certifies to the Lender, as of the date hereof, that:

(a) Authorization Consultation. The undersigned is duly authorized to execute this certificate on behalf of the Authority. The Authority has consulted with its attorneys, accountants, managers and any other advisors with applicable knowledge and/or expertise to familiarize itself with the fact herein.

(b) Pledged Revenues. The amount of Pledged Property Tax Revenue, Non-Costco Pledged Incremental Sales Tax Revenue and Costco Incremental Sales Tax Revenue actually received each month for the 12 calendar months immediately preceding the date of this certificate (not including the month in which this certificate is dated) is as follows:

<table>
<thead>
<tr>
<th>Month Ending</th>
<th>Actual Pledged Property Tax Revenue Received</th>
<th>Pledged Sales Tax Revenue</th>
<th>Debt Service</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Actual Pledged Sales Tax Revenue attributed to Costco Incremental Sales Tax Revenue Received</td>
<td>Actual Pledged Sales Tax Revenue Received (excluding Costco Incremental Sales Tax Revenue)</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>$</td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>
(c) **Debt Service Coverage Calculation (to be used only for the purpose of complying with the Additional Debt provisions in Section 5.14(a)).**

*Net Pledged Revenue:* For the twelve-months ended ______, 20___; total Pledged Property Tax Revenue and Pledged Sales Tax Revenue (which amounts do *not* include amounts on deposit in or drawn from the Reserve Fund and the Surplus Fund, or amounts derived from any one-time or non-repeating revenue source) was $_________.

*Maximum Annual Debt Service:*

- Maximum Annual Debt Service on the Loan $_________
- Maximum Annual Debt Service on Subordinate Debt (Including Subordinate Debt to be issued) $_________
- Total Maximum Annual Debt Service $_________

*Debt Service Coverage Ratio:* Net Pledged Revenue divided by Total Maximum Annual Debt Service is __________.

(d) **Status of the Urban Renewal Projects.** The current status of the redevelopment of the Plan Area is as follows:

[Including description of permit status, construction status, leases, land sales and store openings]

(e) **Compliance with Financial Covenants.**

[ ] the Authority is in compliance with the financial covenants as set forth in Sections 5.05, 5.06, 5.08, 5.14, 5.19, 5.18 and 5.20 of the Loan Agreement [Confirm these]; or

[ ] the Authority is not in compliance with the financial covenants set forth in Sections 5.05, 5.06, 5.08, 5.14, 5.19, 5.18 and 5.20 of the Loan Agreement, in the following circumstances;

[Include description of circumstances]

(f) **No Default or Event of Default.**

[ ] no Default or Event of Default has occurred and is continuing; or
[ ] a Default or Event of Default has occurred and is continuing, under the following circumstances, and the Authority is taking or proposes to take the following steps with respect thereto;

[Including description of circumstances and Authority remedial actions]

Dated: _____________

TIMNATH DEVELOPMENT AUTHORITY

By: ____________________________________________
Name: __________________________________________
Title: __________________________________________
EXHIBIT F

FORM OF ESTIMATED PLEDGED PROPERTY TAX REVENUE CERTIFICATE

(TO BE COMPLETED NO LATER THAN DECEMBER 31 OF EACH YEAR)

The undersigned, on behalf of the Timnath Development Authority, a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado and the home rule city charter of the Town of Timnath, Colorado (the “Authority”), as required by Section 5.11(b) of the Amended and Restated Loan Agreement dated as of February 26, 2014 September 30, 2015 (the “Loan Agreement,” to which reference is made for the definition of the capitalized terms not otherwise defined herein), by and between the Authority and Compass Mortgage Corporation (the “Lender”), relating to the Loan (as defined in the Loan Agreement), hereby states and certifies to the Lender, as of the date hereof, that the Authority’s calculation of Pledged Property Tax Revenue for Fiscal Year _________ has been calculated as follows:

1. Assessed valuation of the Plan Area as of December _____: $__________________.
2. Minus assessed valuation allocable to the “base amount”: $__________________.
3. Equals incremental assessed valuation: $__________________.
4. Total mill levy certified in December ____ for collection in ____ is as follows:

<table>
<thead>
<tr>
<th>Taxing Entity</th>
<th>Mill Levy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poudre School District R-1</td>
<td></td>
</tr>
<tr>
<td>Larimer County</td>
<td></td>
</tr>
<tr>
<td>Poudre Valley Fire Protection District</td>
<td></td>
</tr>
<tr>
<td>Windsor-Severance Fire Protection District</td>
<td></td>
</tr>
<tr>
<td>Town of Timnath</td>
<td></td>
</tr>
<tr>
<td>Poudre River Public Library District</td>
<td></td>
</tr>
<tr>
<td>Fort Collins-Loveland Water District</td>
<td></td>
</tr>
<tr>
<td>Health District of Northern Larimer County</td>
<td></td>
</tr>
<tr>
<td>Northern Colorado Water Conservancy District</td>
<td></td>
</tr>
<tr>
<td>Larimer County Pest Control</td>
<td></td>
</tr>
<tr>
<td>South Fort Collins Sanitation District</td>
<td></td>
</tr>
<tr>
<td>Timnath Farms Metropolitan District Nos. 1-3</td>
<td></td>
</tr>
<tr>
<td>Timnath Ranch Metropolitan District Nos. 1-4</td>
<td></td>
</tr>
<tr>
<td>[other]</td>
<td></td>
</tr>
<tr>
<td>[other]</td>
<td></td>
</tr>
<tr>
<td>South Timnath Metropolitan District Nos. 1-2</td>
<td></td>
</tr>
<tr>
<td>TOTAL:</td>
<td></td>
</tr>
</tbody>
</table>
5. Line 3 times Line 4 = $_________________. In lieu of this calculation, the Authority may describe its methodology for calculating the projected total property tax revenue attributable to the incremental assessed valuation, recognizing that portions of the Plan Area (as defined in the Loan Agreement) are within different taxing jurisdictions from other portions. This description, and the resulting calculation of projected total property tax revenue, is as follows:

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________.

6. The amount of Line 5 which consists of revenue required to be remitted to other local governments pursuant to the TDA Agreements (as defined in the Loan Agreement) = $____________.

7. Line 5 minus Line 6 = $_________________.

8. Line 6 multiplied by 90% = $_________________. Such amount is the Estimated Pledged Property Tax Revenue for the Fiscal Year.

9. For purposes of comparing the amount of the Estimated Pledged Property Tax Revenue calculated in Line 8 to the amounts required to be accumulated pursuant to the flow of funds in FIRST through THIRD in Section 4.02(a) of the Loan Agreement, the following additional calculations are made:
   a. Estimated Debt Requirements (as defined in the Loan Agreement) for the Fiscal Year = $_________________.
   b. Amounts required to replenish the Reserve Fund to the Reserve Requirement, if any, for the Fiscal Year = $_________________.
   c. Amounts which are known to the Authority to be due and owing to the Lender under the Loan Agreement other than principal and interest payments on the Loan = $_________________.
   d. Lines 9(a) plus 9(b) plus 9(c) = $_________________.

10. _________ (check if applicable). Line 8 is equal to or greater than Line 9(d), in which case, pursuant to Section 4.02(a), the Authority is not required to transfer NetPledged Sales Tax Revenue to the Lender pursuant to Section 4.02(a), unless an Event of Default has occurred and is continuing, subject to the more detailed requirements and provisions of Section 4.02(a).
11. _________ (check if applicable). Line 8 is less than Line 9(d), in which case, pursuant to Section 4.02(a), the Authority is required to transfer NetPledged Sales Tax Revenue to the Lender as further described in Section 4.02(a). The amount of such deficiency = $_____________ (which amount is equal to Line 8 minus Line 9(d)).

Dated:_____________ TIMNATH DEVELOPMENT AUTHORITY

By ______________________________
Name ______________________________
Title ______________________________

The foregoing Estimated Property Tax Revenue Certificate is hereby acknowledged and approved by Compass Mortgage Corporation on the date set forth below.

Dated ____________________________ COMPASS MORTGAGE CORPORATION

By ______________________________
Name ______________________________
Title ______________________________
EXHIBIT G

FORM OF MID-YEAR ACTUAL PLEDGED PROPERTY TAX REVENUE CERTIFICATE

(TO BE COMPLETED NO LATER THAN JULY 31 [AUGUST 15] OF EACH YEAR)
PRIOR TO THE MATURITY DATE

The undersigned, on behalf of the Timnath Development Authority, a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado and the home rule city charter of the Town of Timnath, Colorado (the “Authority”), as required by Section 4.02(a) of the Amended and Restated Loan Agreement dated as of February 26, 2014 [September 30, 2015] (the “Loan Agreement,” to which reference is made for the definition of the capitalized terms not otherwise defined herein), by and between the Authority and Compass Mortgage Corporation (the “Lender”), relating to the Loan (as defined in the Loan Agreement), hereby states and certifies to the Lender, as of the date hereof, the following:

1. For the period January 1, _____, through [July 15, 30], _____, the actual Pledged Property Tax Revenue received by the Authority is $__________________.

2. The Estimated Debt Requirements for this Fiscal Year is equal to $__________________.

3. If Line 1 is equal to or exceeds Line 2, then the Authority will be entitled to retain all Pledged Sales Tax Revenue for the remainder of such Fiscal Year pursuant to Section 4.02(a) of the Loan Agreement.

4. If Line 1 is less than Line 2, then the Authority shall be required to transfer all amounts comprising Pledged Sales Tax Revenue (in an amount equal to the Net Pledged Sales Tax Revenue) to the Lender according to the requirements of Section 4.02(a) of the Loan Agreement.

Dated:_____________ TIMNATH DEVELOPMENT AUTHORITY

By __________________________________________
Name _______________________________________
Title ________________________________________
The foregoing Mid-Year Actual Pledged Property Tax Revenue Certificate is hereby acknowledged and approved by Compass Mortgage Corporation on the date set forth below.

Dated ______________________ COMPASS MORTGAGE CORPORATION

By __________________________
Name _________________________
Title __________________________
EXHIBIT H

FORM OF YEAR-END ACTUAL PLEDGED SALES TAX REVENUE CERTIFICATE

TO BE COMPLETED NO LATER THAN JANUARY 15 OF EACH YEAR AFTER THE MATURITY DATE IF THE LOAN IS NOT REPAID IN FULL BY THE MATURITY DATE

The undersigned, on behalf of the Timnath Development Authority, a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado and the home rule city charter of the Town of Timnath, Colorado (the “Authority”), as required by Section 4.02(b) of the Amended and Restated Loan Agreement dated as of February 26, 2014 (the “Loan Agreement,” to which reference is made for the definition of the capitalized terms not otherwise defined herein), by and between the Authority and Compass Mortgage Corporation (the “Lender”), relating to the Loan (as defined in the Loan Agreement), hereby states and certifies to the Lender, as of the date hereof, the following:

1. To the best of its knowledge, no Event of Default has occurred and is continuing (other than an Event of Default caused by the Authority’s failure to pay the Balloon Amount on the Maturity Date after the Authority has taken all reasonable steps to refinance the Loan).

2. No Parity Debt is outstanding.

3. The Pledged Sales Tax Revenue for Fiscal Year _________ has been calculated as follows:
   a. Sales Tax Increment is equal to $__________________.
   b. Net Sales Tax Revenue is equal to $__________________.
   c. Pledged Property Tax Revenue is equal to $__________________.
   d. The amount of $4,200,000 minus the Pledged Property Tax Revenue is equal to $__________________.
   e. 50% of Sales Tax Increment is equal to $__________________.
   f. The greater of Line D and Line E is $__________________.
   g. The lesser of Line B and Line F is $__________________. Such amount constitutes Pledged Sales Tax Revenue for Fiscal Year ________.

4. The actual amount of Pledged Sales tax Revenue deposited by the Borrower into the Revenue Fund pursuant to Section 4.02(b) of the Loan Agreement for Fiscal Year ________ is ________.
5. If Line 3(g) is greater than Line 4, then the Authority shall pay to Lender, no later than January 31, additional Sales Tax revenue equal to the amount by which Line 3(g) exceeds Line 4.

6. If Line 3(g) is less than Line 4, then Lender shall remit to the Authority, no later than January 31, amounts in the Surplus Fund equal to the amount by which Line 4 exceeds Line 3(g).

Dated:______________________________ TIMNATH DEVELOPMENT AUTHORITY

By _________________________________
Name ________________________________
Title _________________________________

The foregoing Year-End Actual Pledged Sales Tax Revenue Certificate is hereby acknowledged and approved by Compass Mortgage Corporation on the date set forth below.

Dated ______________________________ COMPASS MORTGAGE CORPORATION

By _________________________________
Name ________________________________
Title _________________________________
EXHIBIT I

LEGAL DESCRIPTION OF THE RIVERBEND LOTS

That part of the Northwest Quarter of Section 2, Township 6 North, Range 68 West of the 6th P.M., Larimer County, Colorado, described as follows:
Commencing at the North Quarter Corner of said Section 2 monumented with a 2 1/2" aluminum cap stamped LS 16404;
Thence North 89°56'19" West for 807.77 feet on the north line of said Section 2 to the extended west line of that parcel recorded at Reception Number 93033424 in the Larimer County, Colorado Clerk and Recorder's office;
Thence South 09°54'21" East for 417.62 feet on said west line to the TRUE POINT OF BEGINNING;
Thence continuing South 09°54'21" East for 316.51 feet on said west line;
Thence South 80°05'39" West for 313.00 feet;
Thence North 09°54'21" West for 246.51 feet parallel with and 313.00 feet west of said west line;
Thence along a curve to the right (having a radius of 70.00 feet and a long chord bearing North 35°05'39" East for 98.99 feet) for an arc length of 109.96 feet;
Thence North 80°05'39" East for 243.00 feet to the TRUE POINT OF BEGINNING, TO BE KNOWN AS LOT 14.

That part of the Northwest Quarter of Section 2, Township 6 North, Range 68 West of the 6th P.M., Larimer County, Colorado, described as follows:
Commencing at the North Quarter Corner of said Section 2 monumented with a 2 1/2" aluminum cap stamped LS 16404;
Thence North 89°56'19" West for 807.77 feet on the north line of said Section 2 to the extended west line of that parcel recorded at Reception Number 93033424 in the Larimer County, Colorado Clerk and Recorder's office;
Thence South 09°54'21" East for 974.89 feet on said west line to the TRUE POINT OF BEGINNING;
Thence continuing South 09°54'21" East for 210.92 feet on said west line;
Thence South 80°05'39" West for 280.02 feet;
Thence along a curve to the left (having a radius of 100.00 feet and a long chord bearing North 52°56'38" West for 48.33 feet) for an arc length of 48.81 feet;
Thence North 09°54'21" West for 175.60 feet parallel with and 313.00 feet west of said west line;
Thence North 80°05'39" East for 313.00 feet to the TRUE POINT OF BEGINNING, TO BE KNOWN AS LOT 16.
EXHIBIT J

LEGAL DESCRIPTION OF THE COSTCO PROPERTY

A PARCEL OF LAND BEING LOTS 1 & 2, BLOCK 1 OF THE GATEWAY TIMNATH SOUTH SUBDIVISION LOCATED IN 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.
TO: Compass Mortgage Corporation

Ladies and Gentlemen:

Reference is made to that certain Amended and Restated Loan Agreement dated as of February 26, 2014, September 30, 2015 (as further amended or otherwise modified from time to time, the “Loan Agreement”) among by and between Timnath Development Authority (the “Borrower”) and Compass Mortgage Corporation (the “Lender”). All capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to them in the Loan Agreement.

Pursuant to Section 4.06(b) of the Loan Agreement, the Borrower hereby requests that the Lender disburse from the 2014 Unrestricted Project Fund the amount of $___________. This disbursement is to be paid to or at the direction of the Borrower, as follows (check the applicable box):

☐ The disbursement shall be made for the account of the Borrower at the following account: [insert wire instructions], or

☐ The disbursement shall be made as follows: [insert instructions].

Attached hereto is (i) an invoice for the requested amount and (ii) a certification from the Town’s engineer that such invoice amount represents qualified and eligible Capital Project Expenses as defined in the Loan Agreement.

The Borrower hereby represents and warrants to the Lender that (i) all of the representations and warranties made by the Borrower in the Loan Agreement and the other Financing Documents are true and correct in all material respects on as of the date hereof as if made on and as of the date hereof (except to the extent stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct as of such earlier date), (ii) no Default or Event of Default has occurred and is continuing and (iii) the amounts on deposit in
the Reserve Fund as of the date of the disbursement requested herein equals the Reserve Requirement.

TIMNATH DEVELOPMENT AUTHORITY

By __________________________
Authorized Person
EXHIBIT LK

FORM OF 2014 RESTRICTED PROJECT FUND “B” TRANSFER REQUEST

2014 RESTRICTED PROJECT FUND “B” TRANSFER REQUEST

Date ______________

TO: Compass Mortgage Corporation

Ladies and Gentlemen:

Reference is made to that certain Amended and Restated Loan Agreement dated as of February 26, 2014, (as further amended or otherwise modified from time to time, the “Loan Agreement”) among by and between Timnath Development Authority (the “Borrower”) and Compass Mortgage Corporation (the “Lender”). All capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to them in the Loan Agreement.

Pursuant to Section 4.06 of the Loan Agreement, the Borrower hereby requests that the Lender transfer the amount of $___________ from the 2014 Restricted Project Fund “B” to the 2014 Unrestricted Project Fund.

The Borrower hereby represents and warrants to the Lender that (check the applicable box):

☐ (i) the Initial Project Fund “B” Deposit Release Conditions have been satisfied and the amount to be transferred represents the Initial Project Fund “B” Deposit, plus interest earned thereon, or (ii) the Lender has provided written consent to the Borrower to transfer the Initial Project Fund “B” Deposit, plus interest earned thereon, to the 2014 Unrestricted Project Fund notwithstanding that the Initial Project Fund “B” Deposit Release Conditions have not been satisfied, or

☐ the amount to be transferred represents Additional Project Fund “B” Deposits and the Lender has provided written consent to the Borrower to transfer the Additional Project Fund “B” Deposits to the 2014 Unrestricted Project Fund.

The Borrower hereby represents and warrants to the Lender that (i) all of the representations and warranties made by the Borrower in the Loan Agreement and the other Financing Documents are true and correct in all material respects on as of the date hereof as if made on and as of the date hereof (except to the extent stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct as of such earlier date), (ii) no Default or Event of Default has occurred and is continuing and (iii) the amounts on deposit in
the Reserve Fund as of the date of the disbursement requested herein equals the Reserve Requirement.

TIMNATH DEVELOPMENT AUTHORITY

By

______________________________

Authorized Person
FORM OF RIVERBEND PROJECT FUND DISBURSEMENT REQUEST

RIVERBEND PROJECT FUND DISBURSEMENT REQUEST

Date ______________

TO: Compass Mortgage Corporation

Ladies and Gentlemen:

Reference is made to that certain Amended and Restated Loan Agreement dated as of February 26, 2014, September 30, 2015, (as further amended or otherwise modified from time to time, the “Loan Agreement”) among by and between Timnath Development Authority (the “Borrower”) and Compass Mortgage Corporation (the “Lender”). All capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to them in the Loan Agreement.

Pursuant to Section 4.07(a) of the Loan Agreement, the Borrower hereby requests that the Lender disburse from the Riverbend Project Fund the amount of $___________. This disbursement is to be paid to or at the direction of the Borrower, as follows (check the applicable box):

☐ The disbursement shall be made for the account of the Borrower at the following account: [insert wire instructions], or

☐ The disbursement shall be made as follows: [insert instructions].

Attached hereto is (i) an invoice for the requested amount and (ii) a certification from the Town’s engineer that such invoice amount represents qualified and eligible Riverbend Capital Project Expenses as defined in the Loan Agreement.

The Borrower hereby represents and warrants to the Lender that (i) all of the representations and warranties made by the Borrower in the Loan Agreement and the other Financing Documents are true and correct in all material respects on as of the date hereof as if made on and as of the date hereof (except to the extent stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct as of such earlier date), (ii) no Default or Event of Default has occurred and is continuing and (iii) the amounts on deposit in the Reserve Fund as of the date of the disbursement requested herein equals the Reserve Requirement.
TIMNATH DEVELOPMENT AUTHORITY

By

____________________________
Authorized Person
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- Style change
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- Padding cell

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