TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 9, SERIES 2016

A RESOLUTION APPROVING AN AMENDED AND RESTATEMENT SUBDIVISION
IMPROVEMENT AGREEMENT FOR
WILDWING FILING NO. 2 AND FUTURE FILINGS

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

WHEREAS, attached hereto as Exhibit A is the SUBDIVISION IMPROVEMENT AGREEMENT FOR WILDWING FILING NO. 2 AND FUTURE FILINGS between the TOWN OF TIMNATH and WW DEVELOPMENT, LLC (the "Agreement"); and

WHEREAS, the Town Council is familiar with the Agreement and finds it to be in the best interest of the Town, its residents, and the general public.

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

Section 1. Approval
The Agreement is hereby approved in substantially the form as attached hereto, subject to technical or otherwise non-substantive modifications, as deemed necessary by the Town Manager in consultation with the Town Planner, Engineer, Legal Counsel, and other applicable staff or consultants.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON JANUARY 26, 2016.

TOWN OF TIMNATH, COLORADO

Jill Grossman-Belisle, Mayor

ATTEST:

Milissa Peters, CMC
Town Clerk
EXHIBIT A

AGREEMENT
AMENDED AND RESTATED
SUBDIVISION IMPROVEMENT AGREEMENT FOR
WILDWING FILING NO. 2 AND FUTURE FILINGS

THIS AGREEMENT made as of this 26th day of January, 2016, by and between the TOWN OF TIMNATH, COLORADO, a Colorado municipal corporation (the “Town”); and WW DEVELOPMENT, LLC (the “Developer”). Collectively, the Town and the Developer are referred to herein as the “Parties”.

RECITALS

A. Developer is the owner of those certain parcels of that certain real property located in Town of Timnath, as further described in Exhibit A, a copy of which is attached hereto and incorporated herein by reference (the “Property”).

B. The Property has been annexed by the Town and is subject to the terms and conditions of that certain Annexation Agreement for the Wildwing Annexations 1 through 5 between the Town and Wild Wing Development, Limited Liability Company, dated as of November 1, 2006 and recorded against the Property in the Larimer County Real Property Records on March 20, 2007, at Reception No. 20070020756 and as amended by Ordinance 75, Series 2009 recorded against the Property in the Larimer County Real Property Records October 14, 2009 at Reception No. 20090069795, and as amended on March 15, 2012 (collectively, the “Annexation Agreement”).

C. On January 12, 2016, the Town Council of Town of Timnath, after holding all necessary public hearings and having received a recommendation of approval from the Timnath Planning Commission, approved by Resolution No. 1, Series 2016, a final plat for Filing No. 2 of the development of Property.

D. The approval of any final plat for the Property is conditioned upon the execution of this Subdivision Improvement Agreement (the “Agreement”), which establishes the obligation of Developer to provide certain public improvements and landscaping necessitated by the proposed development of the Property.

E. Developer acknowledges that the obligations of Developer set forth herein are reasonably attributable to the special impacts which will be generated by the proposed uses of the Property, and that the terms and conditions set forth in this Agreement are necessary, reasonable and appropriate.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the parties hereto agree as follows:
1. **Purpose.** The purpose of this Agreement is to set forth the terms and conditions of the Developers covenant to provide Public Improvements, as defined below, for the Property, and the fees to be paid by the Developer associated with additional public infrastructure necessary to support the development of the Property. All conditions contained herein are in addition to the provisions of the Annexation Agreement, all land use approvals previously granted by Town for the Property, any and all requirements of the Town of Timnath Municipal Code, any and all applicable local, state, and federal law, and any other ordinances of Town of Timnath. The obligations of this Agreement are not intended to supersede any statutory or regulatory requirements referenced in this paragraph.

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

   A. **“Town”** shall refer to the Town of Timnath, Colorado, a Municipal Corporation organized pursuant to the laws of the State of Colorado, and shall include Town Manager, or other designee or official, body or agency designated by resolution, ordinance, or statute to act on behalf of Town.

   B. **“Developer”** shall mean WW Development, LLC, and shall include any agent as authorized by a formal operating agreement, corporate resolution, or similar document, and person acting in accordance with a duly executed and effective power of attorney granting the attorney-in-fact full authority to act in the stead of Developer.

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

   D. **“Landscaping”** shall refer to the landscaping for the Property described in this agreement and shown on the Landscaping Plan attached hereto as Exhibit D and G, including the cost thereof.

   E. **“Final Plat”** shall refer to WildWing Filing No. 2 and any **“WildWing Subdivision”** plat filing or amendment approved in the future by the Town Council and that has been or will be submitted by Developer in connection with any given Phase of development of the Property.

   F. **“Final Acceptance”** shall have the meaning set forth in Paragraph 13.

   G. **“Initial Acceptance”** shall have the meaning set forth in Paragraph 12.

   H. **“Phases”** shall refer to development of the Property in up to 5 separate phases, in accordance with the Phase Plan attached hereto as Exhibits E, Exhibits B-H, inclusive and as applicable, attached hereto and incorporated herein by reference, identifying Public Improvements and Landscaping, are each separated into the appropriate Phase. It is assumed that all Phases shall be constructed in sequential numerical order. If Phases are not constructed in sequential order, any Public Improvements and Landscaping tied to a Phase that is being
passed over nonetheless may, upon the Town’s determination in its reasonable discretion that such Public Improvements and Landscaping are necessary for the Phase being constructed, be required as if the Phases are being constructed in sequential order.

I. “Property” shall mean the real property described in the recitals hereto.

J. “Public Improvements” shall refer to those facilities described in this Agreement and the Exhibits hereto, and shall include but not be limited to all potable and non-potable waterlines, sewer lines, fire hydrants, potable and non-potable water (if required) or sewer distribution facilities, irrigation facilities, drainage structures, paved streets, including curbs, sidewalks, gutters and necessary appurtenances, as shown on the Final Plat for each Phase and the associated construction documents.

K. “Warranty Period” shall have the meaning set forth in Paragraph 12.

3. Agreement and Other Requirements. Developer hereby understands and agrees that the Property is subject to the conditions and requirements of this Agreement, the Annexation Agreement, all Final Plats, and the zoning for the Property. The Parties agree and acknowledge that the official zoning map as described in Ordinance No. 12, Series 2015 approved by the Town and recorded in the Larimer County Real Property Records at Reception No. 20150083433, reflects the current zoning for the Property. Nothing herein shall relieve Developer of any financial obligation to Town contained in this Agreement or any other agreements to which Developer is a party or pursuant to Town Code.

4. Fees. In addition to all fees due pursuant to the Annexation Agreement, and as a condition to any person seeking a building permit for any improvement on the Property, the person seeking such building permit shall be required to pay all fees, charges and costs required by the Code at the time of application for the building permit. The below specifies how the Town will handle certain specific fees.

A. Developer or its predecessor has previously dedicated a 21-acre community park site to Town. That dedication satisfied all park dedication requirements for all Phases of development of the Property.

B. Developer or its predecessor conveyed a 21-acre community park site, an irrigation system to serve said community park, and water rights purportedly consisting of two/fifths (2/5ths) of seventy percent (70%) of the “Clyde Smith Reservoir”, for use in irrigating said community park. Town has previously agreed and hereby renews its agreement to reimburse Developer for the cost of such land dedication, irrigation system, and water rights so conveyed for park improvements (“Community Park Improvements Reimbursement”). The Town further agrees that it will reimburse developer for a portion of the Developer’s costs associated with widening the stretch of County Road 1 that is immediately adjacent to Developer’s Property (“Adjacent County Road 1 Widening Improvements”). Together, the Community Park Improvements Reimbursement and the Adjacent County Road 1 Widening Improvements shall be referred to as the “Filing 1 Developer Reimbursement”. Said Filing 1 Developer
Reimbursement shall be paid by Town as a “pass through transfer” of the $3,500.00 per dwelling unit fee paid at the time of the issuance of the building permits in all Phases as shown on Exhibit E. Said Filing I Developer Reimbursement “pass through transfer” shall be limited to a total cap of $952,000, applicable to building permits number one (1) through two hundred seventy two (272), such building permits being the aggregate total issued through all phases.

C. Town agrees that it will facilitate reimbursement to Developer for a portion of the sections of the County Road 1 road widening improvements that are not immediately adjacent to the property, and are not reimbursable pursuant to Section 4(B) above. The Town agrees to take reasonable steps to ensure that future developers pay their pro rata share of such improvements. The term of this obligation shall run 15 years. Due to the unpredictable timeline and development expectations associated with the properties abutting County Road 1, the Parties acknowledge that the exact terms of any reimbursement agreements concerning these properties will need to be negotiated on case-by-case basis.

5. Completion of Public Improvements and Landscaping. Developer shall install all Public Improvements and Landscaping in compliance with the requirements of this Agreement at Developer’s expense. Toward this end, Developer is authorized to coordinate with a metropolitan district or districts to provide Public Improvements but Developer shall retain primary responsibility for all Public Improvements. Any metropolitan districts are separate entities and are not parties to this Agreement. The Public Improvements and Landscaping required by this Agreement and shown on the Final Plat for each Phase and associated construction documents, are set forth on the Exhibits hereto, which Exhibits shall be supplemented as future plats are processed. The anticipated costs of the Public Improvements and the Landscaping are included in line-item format on the Exhibits hereto, as applicable. Developer acknowledges these costs are estimates and the actual costs of such Public Improvements and Landscaping may vary between approval of this Agreement and construction of the applicable Public Improvements and Landscaping. All Public Improvements and Landscaping covered by this Agreement shall be constructed in accordance with the Final Plat for each Phase and associated plans and construction documents, which shall be approved by the Town and shall be drawn according to the Town’s then-existing regulations and construction standards for such Public Improvements and Landscaping (collectively, the “Approved Plans”).

6. Public Improvements to be Managed by Districts. Developer has included the Property within the Town’s boundaries for the purpose of securing potable water services to the Property to be provided by North Weld County Water District (the “Water District”), and for the purpose of securing sanitary sewer services to the Property to be provided by Boxelder Sanitation District (the “Sewer District”) (the Water District and Sewer District are collectively referred to as the “Districts”). Developer acknowledges that it is in the Town’s best interest that ongoing potable water and sanitary sewer services and infrastructure are properly coordinated with services and infrastructure to be provided by the Town. Therefore, the Public Improvements, except where specifically provided otherwise, include the facilities to be constructed by the Developer that are required by each of the Districts.
7. **Building Permits.** There shall be no issuance of any building permits by the Town for lots within any defined Phase until all Public Improvements within that Phase, excluding Landscaping and irrigation, have been granted Initial Acceptance, as defined below, by the Town as provided for in the Code. There shall be no issuance of any occupancy certificates within any Phase until all Public Improvements within that Phase, including Landscaping, irrigation, and signage, have been granted Initial Acceptance by the Town as provided for in the Code. As a limited exception to the requirements contained in this Paragraph, the Town hereby agrees that up to six (6) building permits for model homes may be issued and outstanding at any given time for the entirety of the Property upon the completion of water and sanitary sewer improvements, which have been approved by all applicable regulatory entities, and completion of an all-weather surface on streets within the applicable Phase of the Property.

8. **Performance Guarantee - Public Improvements.**

A. **Completion Security for Public Improvements.** To assure the construction, installation, and completion of the Public Improvements in all Phases of the Property, Developer shall, prior to commencing any work within a particular Phase of the Property, furnish Town an irrevocable sight draft letter of credit or other security reasonably acceptable to Town ("**Completion Security**") to secure the completion of Public Improvements required by this Agreement for the applicable Phase of the development. Town shall be designated as a beneficiary of the Completion Security. The Completion Security shall be provided Phase by Phase and shall be in an amount equal to the then-current Town Code Requirements based on the estimated costs of the Public Improvements to be completed within a Phase. The amount of the Completion Security shall not include the portion of the Public Improvements which are to be constructed for the water improvements managed by the Water District or the sanitary sewer improvements managed by the Sewer District. Upon provision of such Completion Security to Town in a manner acceptable to Town for the applicable Phase, construction permits for public improvements may be issued by Town within such Phase. Upon issuance of a letter of Initial Acceptance by the Town engineer in accordance with the provisions herein, the Completion Security will be reduced to twenty percent (20%) of the actual costs related to the specific Public Improvements which received Initial Acceptance. Upon Initial Acceptance of all of the Public Improvements within a Phase, the Town may, at its discretion, reduce the Completion Security to ten percent (10%) of the actual costs of the Public Improvements for that Phase. The Completion Security shall remain in place until Final Acceptance, as defined below, is issued by the Town for the improvements within the applicable Phase.

B. **Warranty Security.** Developer shall warrant any and all Public Improvements for a period of two (2) years from the date Town issues a letter of Initial Acceptance for the applicable Phase that has been constructed. As a condition to issuance of any letter of Initial Acceptance of any Public Improvements, Developer shall provide to Town a warranty bond or other security in a form satisfactory to Town ("**Warranty Security**"), and in the amount of the remaining Completion Security set forth in the paragraph above, to ensure that Public Improvements for which Initial Acceptance has occurred will attain Final Acceptance by Town during the Warranty Period, which Warranty Security will be satisfied by either retention or replacement of the remaining Completion Security. If prior to the issuance of a letter of Final Acceptance, any significant warranty work is required in connection with Public Improvements for which a letter of Initial Acceptance has
been issued by Town, Town may require Warranty Security for up to two (2) years from the date of completion of such significant warranty work, provided that the two (2) year period for the remainder of the Public Improvements in such Phase shall not be so extended. In such event, Town shall issue a supplemental letter of Initial Acceptance specifying the Warranty Security required by Town and the work to be completed by Developer prior to issuance of a letter of Final Acceptance for such Public Improvements. Town and Developer acknowledge that Town is currently considering amendments to its Land Use Code that may require lower or different completion and warranty security standards than those contained in Paragraphs 8(A) and 8(B). In the event these proposed amendments are included in the Land Use Code, in the interest of consistent administration Town and Developer agree that such amended Land Use Code Completion Security and Warranty Security requirements shall be applied to the current and future phases of Wildwing that are governed under this Agreement.

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

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

11. Construction Inspection. At all times during construction of the Public Improvements and until Final Acceptance thereof by Town, Town shall have the right, but not the duty, to inspect materials and workmanship to ascertain conformance with the Approved Plans and applicable standards and specifications. Developer shall reasonably cooperate and assist Town in gaining appropriate access to the areas designated for the inspection. It shall be the duty of Developer for a period of two (2) years after Final Acceptance of any Public Improvement to notify Town upon discovery of any nonconformance of such Public Improvement with said plans, standards and specifications. Inspection and acceptance of work by the Town shall not relieve Developer of any responsibility under third party claims under common law, regardless of initial or Final Acceptance thereof.

12. Initial Acceptance of Public Improvements. Upon substantial completion of construction by Developer of the applicable Phase of such Public Improvements, and upon notification thereof to Town by Developer, the Town engineer shall inspect such Public Improvements and certify
with specificity their conformity or lack thereof with the Approved Plans. At such time, Developer shall make all corrections necessary to bring the Public Improvements into conformity with such Approved Plans. Upon satisfactory completion of the initial inspection and completion of corrections by Developer, and after submission of required documents to Town, including written and electronic record plans and the applicable Warranty Security, Town shall certify Initial Acceptance of the Public Improvements and evidence the same by issuance of letter of initial acceptance from Town engineer to Developer specifying in detail the Public Improvements being initially accepted ("Initial Acceptance Letter"). Initial Acceptance for any Phase shall be deemed to have occurred upon the issuance of the applicable Initial Acceptance Letter or such earlier date as may be specified therein. The two (2) year Warranty Period (the “Warranty Period”) for the applicable Phase shall commence on the date set forth in set forth in the Initial Acceptance Letter. Except as otherwise set forth herein, Initial Acceptance of all Public Improvements by Town for any Phase shall be an express condition to the issuance of any certificates of occupancy for such Phase of the Property for which such Public Improvements are required.

13. Final Acceptance of Public Improvements. Upon expiration of the Warranty Period set forth in the Initial Acceptance Letter for Public Improvements for the applicable Phase, Developer shall provide notice to Town engineer that the Public Improvements are ready for final inspection. Upon satisfactory completion of the final inspection, and after conveyance of the Public Improvements as provided herein, and after payment of all fees due Town related to the Property, Town shall certify Final Acceptance of the Public Improvements and evidence the same by issuance of letter of Final Acceptance from Town engineer to Developer specifying in detail the Public Improvements being finally accepted and the Warranty Security for such Phase shall be released ("Final Acceptance"). If upon final inspection by Town, significant defects are discovered, Town may elect to issue a supplemental letter of Initial Acceptance (instead of Final Acceptance) specifying corrective work to be completed and additional Warranty Period in accordance with paragraph 8 above. All such corrective work shall be the sole expense of Developer.

14. Documents Provided to Town Upon Initial Acceptance. Developer shall provide all necessary engineering designs, surveys, field surveys, and incidental services related to the construction of the Public Improvements, at its sole cost and expense, including reproducible record plans drawings certified accurate by a professional engineer registered in the State of Colorado. Developer shall provide Town and the Districts copies of such record plans drawings in written and electronic format as specified by Town upon Initial Acceptance. As-built drawings shall be required for all Public Improvements constructed by the Developer that will be dedicated to the Town.

15. Conveyance or Dedication of Improvements. Except for Public Improvements dedicated to the Water District, Sewer District, or metropolitan districts organized to serve the Property, as applicable, as a condition of Final Acceptance, Developer shall convey to Town all Public Improvements required by the Final Plat for each Phase and, upon request by Town, shall execute such bills of sale as Town may request to assure title thereto is vested in Town notwithstanding the date of construction or Initial Acceptance of such Public Improvements. Acceptance of Public Improvements by dedication on the Final Plat shall not constitute Initial or Final Acceptance of such improvements.

16. Proof of Ownership. Prior to the recordation of any plat, a title commitment for the
Property shall be provided to Town at the expense of Developer. The title commitment shall show that any portion of the Property to be dedicated to Town, and all property reserved or dedicated for public purposes, is or shall be, free and clear of all liens and encumbrances (other than real estate taxes which are not yet due and payable) which would make the dedications unacceptable as Town determines in its reasonable discretion. A title policy evidenced by the title commitment shall be provided by Developer within thirty (30) days of execution thereof as to any property to be dedicated to Town pursuant to such Plat in an amount equal to the fair market value of such property. An update to such title commitment shall be provided upon request of Town as a condition of Final Acceptance, with the policy evidenced by such commitment update to be provided thirty (30) days after Final Acceptance. Developer further agrees to provide quitclaim deeds as deemed necessary by the Town in order to facilitate proper categorization of the property for tax assessment purposes by the Larimer County Tax Assessor.

17. Trails. The plans for the Property include trails to be open to the public. Such trails shall be constructed with the Public Improvements of the Property as identified on the applicable Exhibits. In addition, Developer shall construct any trails designated on the Property by the Town Parks, Recreation, Open Space, and Trails Master Plan, dated May 2011, as amended and updated from time to time (the “PROST Plan”) in compliance with all then-required width, materials, and thickness requirements.

18. Improvements to Abutting Streets and Other Offsite Improvements. Exhibit C sets forth the obligations of Developer for Phase by Phase improvements to abutting streets and other offsite improvements necessitated by the development of the Project.

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

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

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

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

D. Any other remedy available at law or in equity.

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

20. Indemnification. Developer shall indemnify and hold harmless Town, its officers, employees, agents or servants from any and all suits, actions, and claims of every nature and description caused by, arising from or on account of any act or omission of Developer, or of any other person or entity for whose act or omission Developer is liable with respect to construction of the Public Improvements through the date of Final Acceptance; and Developer shall pay any and all judgments rendered against Town as the result of any suit, action or claim, together with all reasonable expenses and attorneys fees incurred by Town in defending any such suit, action or claim, excluding only suits, actions and claims arising from Town’s independent gross negligence or intentional malfeasance. Developer’s indemnity obligations under this Section 20 shall run through the expiration of all applicable statutes of limitations commencing upon the issuance of Final Acceptance. Developer shall pay all property taxes on the Property dedicated to Town to the date of conveyance after Final Acceptance, and shall indemnify and hold harmless Town for any property tax liability until such time as the Larimer County Tax Assessor updates its records to reflect said dedication.

21. Insurance. Developer shall, during the construction of Public Improvements and through the date of Final Acceptance, have and maintain in full force and effect comprehensive liability insurance providing coverage to such Developer and its employees, providing general liability, and comprehensive automobile liability insurance. Developer shall also require that all its contractors, subcontractors, representatives and agents have and maintain similar coverage, including professional liability, if applicable. Coverage on all policies shall not be less than the per occurrence cap as set forth in the Colorado Governmental Immunity Act as that Act may from time to time be amended. Additionally, the policies of Developer and each of Developer’s contractors, subcontractors, representatives and agents shall name Town and its agents, officials and employees, provided such individuals are acting within the ordinary scope of their duties to the Town, as additional insureds. Developer shall at all times fully comply with the Colorado Worker’s Compensation Act, and shall use its best reasonable efforts to ensure that each of its contractors and subcontractors are in full compliance with the Act. Prior to, and as a condition of the issuance of any building permits by Town, Developer shall submit certificates of insurance in compliance with the standards set forth above. Nothing herein shall be construed to relieve or discharge Developer of its liability to Town or the Districts under the terms of this Agreement should Developer for any reason fail to procure and maintain any required insurance in sufficient amounts.

22. Waiver of Defects. In executing this Agreement, Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of Town to impose conditions on Developer as set forth herein, and concerning the procedure, substance and form of the ordinances or resolutions adopting this Agreement, the Annexation Agreement, or any Final Plat.
23. **Modifications.** This Agreement shall not be amended except by subsequent written agreement of the parties.

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

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

26. **Invalid Provision.** If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other of which render the provision valid, then the provision shall have the meaning which renders it valid.

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

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

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

Notice to Town: Town of Timnath
4800 Goodman Street
Timnath, Colorado 80547
Fax No. (970) 224-3217
30. **Force Majeure.** Whenever a Developer is required to complete construction, repair or replacement of Public Improvements by an agreed deadline, such Developer shall be entitled to an extension of time equal to a delay in completing the foregoing due to unforeseeable causes beyond the control and without the fault or negligence of such Developer, including but not restricted to, acts of God, weather, fires and strikes.

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

32. **Entire Agreement.** It is expressly understood that Town cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with documents approved by the Town Council at a public meeting. This Agreement, all Final Plats, and the Annexation Agreement embody the whole agreement of the Parties with respect to the Property. There are no promises, terms, conditions or obligations other than those contained herein, which together supersede all previous communications, representations or agreements, either verbal or written between the Parties hereto. In the event that the Property is subdivided and lots are sold to different individuals in the future, this Agreement may be amended by agreement between the Developer and Town, without consent of such future lot owners to the extent such amendment does not adversely affect such other future lot owners in a material manner as determined in the sole and absolute discretion of Town. With
the exception of the Filing 1 Developer Reimbursement addressed in Paragraph 4(b), this Agreement shall not affect the obligations of the Parties under that certain Amended and Restated Subdivision Improvement Agreement for the WildWing 1st Filing Subdivision, dated March 15, 2012, as amended by that certain First Amendment thereto dated June 21, 2012, and that certain Second Amendment thereto, dated August 28, 2012 (collectively, the 1st Filing SIA”).

33. Assignment or Assignments. There shall be no transfer or assignment of any of the rights or obligations of a Developer under this Agreement without the prior written approval of Town, which approval shall not be unreasonably withheld if the transferee has qualifications and net worth acceptable to Town in its reasonable discretion and which transferee has assumed the obligations of Developer under this Agreement in writing to the satisfaction of Town. Any attempted assignment or delegation in violation hereof shall be null and void.

34. Recording of Agreement. The covenants of this Agreement touch and concern the Property. Therefore, this Agreement shall be promptly recorded in the real estate records of Larimer County and shall be a covenant running with the Property in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

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

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

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

38. Title and Authority. Developer expressly warrants and represents to Town that as of the date hereof it is the record owner of all of the property constituting the Property. All the parties represent and warrant, together with the undersigned individual(s), that the undersigned individual(s) have full power and authority to enter into this Subdivision Improvement Agreement. Each party understands that the other parties are relying on such representations and warranties in entering into this Agreement.

39. This Agreement shall be signed concurrently with recordation of a Final Plat. The exhibits to this Agreement shall be supplemented to include future filings concurrently with recordation of the Final Plat for each future filing.

(Signature page to follow)
the exception of the Filing 1 Developer Reimbursement addressed in Paragraph 4(b), this Agreement shall not affect the obligations of the Parties under that certain Amended and Restated Subdivision Improvement Agreement for the WildWing 1st Filing Subdivision, dated March 15, 2012, as amended by that certain First Amendment thereto dated June 21, 2012, and that certain Second Amendment thereto, dated August 28, 2012 (collectively, the “1st Filing SIA”).

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

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

38. **Title and Authority.** Developer expressly warrants and represents to Town that as of the date hereof it is the record owner of all of the property constituting the Property. All the parties represent and warrant, together with the undersigned individual(s), that the undersigned individual(s) have full power and authority to enter into this Subdivision Improvement Agreement. Each party understands that the other parties are relying on such representations and warranties in entering into this Agreement.

39. This Agreement shall be signed concurrently with recordation of a Final Plat. The exhibits to this Agreement shall be supplemented to include future filings concurrently with recordation of the Final Plat for each future filing.

*(Signature page to follow)*
EXHIBIT LIST

The following Exhibits are a part of and incorporated within the Subdivision Improvement Agreement for Wildwing Filing No. 2 and Future Filings.

| EXHIBIT A | Property Description |
| EXHIBIT B | Public Improvement Schedule By Phase including Costs in Line-Item Format |
| EXHIBIT C | Abutting And Offsite Public Improvements By Phase Including Costs In Line-Item Format |
| EXHIBIT D | Landscape Plan By Phase Including Costs In Line-Item Format |
| EXHIBIT E | On-Site Phasing Plan |
| EXHIBIT F | Off-Site Phasing Plan |
| EXHIBIT G | Landscape Phasing |
| EXHIBIT H | Trail Plan By Phase Including Costs In Line-Item Format |
EXHIBIT A
Property Description

Recorded Plat to be Substituted upon Recordation
EXHIBIT B
Public Improvement Schedule By Phase Including Costs In Line-Item Format
**Phase 2A**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site work &amp; Dry Utilities</td>
<td>$599,879.00</td>
</tr>
<tr>
<td>Earthwork</td>
<td>$282,115.00</td>
</tr>
<tr>
<td>Storm Sewer</td>
<td>$169,861.00</td>
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<tr>
<td>Concrete</td>
<td>$417,729.00</td>
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<tr>
<td>Asphalt Paving</td>
<td>$620,312.00</td>
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<tr>
<td>Landscape/Irrigation</td>
<td>$246,144.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$2,336,040.00</strong></td>
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**Phase 2B**

<table>
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<th>Description</th>
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<tr>
<td>Site work &amp; Dry Utilities</td>
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<td>Earthwork</td>
<td>$173,935.00</td>
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<tr>
<td>Storm Sewer</td>
<td>$96,735.00</td>
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<td>Concrete</td>
<td>$358,537.00</td>
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<td>Asphalt Paving</td>
<td>$494,562.00</td>
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<td>Landscape/Irrigation</td>
<td>$210,835.00</td>
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<td><strong>Total</strong></td>
<td><strong>$1,903,094.00</strong></td>
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**Phase 2C**

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<td>Site work</td>
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<td>Concrete Work</td>
<td>$315,854.00</td>
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<td>Landscaping/Irrigation</td>
<td>$146,000.00</td>
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<td><strong>Total</strong></td>
<td><strong>$832,721.00</strong></td>
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**Phase 3A**

<table>
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<th>Description</th>
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<tbody>
<tr>
<td>Site work &amp; Dry Utilities</td>
<td>$622,630.00</td>
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<tr>
<td>Earthwork</td>
<td>$252,444.00</td>
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<tr>
<td>Storm Sewer</td>
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<td>Concrete</td>
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<td>Asphalt Paving</td>
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<td>Landscape/Irrigation</td>
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<td><strong>Total</strong></td>
<td><strong>$3,129,712.00</strong></td>
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**Phase 3B**

<table>
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<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Site work &amp; Dry Utilities</td>
<td>$793,915.00</td>
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<td>Storm Sewer</td>
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<tr>
<td>Concrete</td>
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<tr>
<td>Asphalt Paving</td>
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<td>Landscape/Irrigation</td>
<td>$118,420.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$1,878,152.00</strong></td>
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</table>
PROPOSAL:

Wild Wing Phase 2A

Please see the attached proposal to complete the above referenced project. Quotation is based on unsigned plans from unsigned Galloway Plans dated July 2015.

The quoted price includes the following:

* Labor, Equipment & Material

The quoted price excludes the following:

* Permits, licenses, development fees
* Unstable Street/Parking Subgrade
* Dewatering and/or Dewatering Permit
* Rock Excavation/Blasting, Muck or Frost Excavation
* Underground Utility Conflicts and/or Relocation
* Storm Water Management/Inspections
* Hazardous Waste, Import and Export of Material,
* Winter Protection
* Park Grading or Utility Work/Club House/Pool House

<table>
<thead>
<tr>
<th>Bid Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sitework</td>
</tr>
<tr>
<td>Storm Sewer</td>
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<tr>
<td>Concrete Work</td>
</tr>
<tr>
<td>Asphalt Paving</td>
</tr>
<tr>
<td>Landscape/Irrigation</td>
</tr>
<tr>
<td><strong>SUB-TOTAL</strong></td>
</tr>
</tbody>
</table>

Acceptance of Proposal:

[Signature] [Date]

Coyote Ridge Construction, LLC

Prices are good for 30 days from date of quotation.
PROPOSAL: Wild Wing Phase 2C

Please see the attached proposal to complete the above referenced project. Quotation is based on unsigned plans from unsigned Galloway Plans dated March 2015.

The quoted price includes the following:

* Labor, Equipment & Material

The quoted price excludes the following:

* Permits, licenses, development fees
* Unstable Street/Parking Subgrade
* Dewatering and/or Dewatering Permit
* Rock Excavation/Blasing, Muck or Frost Excavation
* Underground Utility Conflicts and/or Relocation
* Storm Water Management/Inspections
* Hazardous Waste, Import and Export of Material,
* Winter Protection
* Park Grading or Utility Work/Club House/Pool House

<table>
<thead>
<tr>
<th>Bid Summary</th>
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<tbody>
<tr>
<td>Sitework (ROW/Improvements)</td>
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<td>Concrete Work (ROW)</td>
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<tr>
<td>Landscape/Irrigation</td>
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<td><strong>GRAND TOTAL</strong></td>
<td><strong>$ 124,362.80</strong></td>
</tr>
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</table>

Acceptance of Proposal:

[Signature]

Date

Coyote Ridge Construction, LLC

Date

Prices are good for 30 days from date of quotation.
EXHIBIT C
Abutting and Offsite Public Improvements Including Costs by Phase in Line-Item Format

NO OFFSITE PUBLIC IMPROVEMENTS ARE REQUIRED. ALL OFFSITE IMPROVEMENTS ARE GOVERNED UNDER THE SUBDIVISION IMPROVEMENT FOR FILING ONE.
EXHIBIT D
Landscape Plan by Phase Including Costs in Line-Item Format
## Exhibit D

<table>
<thead>
<tr>
<th>Landscape Costs</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>2A</td>
<td>$246,144.00</td>
</tr>
<tr>
<td>2B</td>
<td>$210,835.00</td>
</tr>
<tr>
<td>2C</td>
<td>$146,000.00</td>
</tr>
<tr>
<td>3A</td>
<td>$226,000.00</td>
</tr>
<tr>
<td>3B</td>
<td>$118,420.00</td>
</tr>
</tbody>
</table>
WILDWING - CONSTRUCTION PHASING

The Property will be developed pursuant to the above On-Site Phasing Plan with the following clarifications and exceptions. Phase 2A must preceede Phase 2B. Phase 2C is independent of all other Phases and may be started at any time. Phase 3A must start before Phase 3B but Phases 3A and 3B are independent of the other Phases and may be started at any time. Phase 4 and Phase 5 as shown above will be the subject of future applications with the Town and will be developed consistent with the entitlements derived therefrom. Any alternative phasing ordering shall be subject to the requirements of Paragraph 2(H) of the Agreement.
EXHIBIT F
Off-site Phasing Plan

NO OFF-SITE PHASING PLAN IS REQUIRED OR INCLUDED AS A PART OF THIS AGREEMENT SINCE NO OFF-SITE IMPROVEMENTS WILL BE CONSTRUCTED.
EXHIBIT G
Landscape Phasing Plan
Landscape Phasing
EXHIBIT H
Trails Phasing Plan