TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 75, SERIES 2016

A RESOLUTION APPROVING THE STATUE AND LANDSCAPE MAINTENANCE LICENSE AGREEMENT (LANDSCAPE – RIVERBEND VENTURES, LLC)

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, the Town Council has previously approved the Final Plat of the Riverbend subdivision in March of 2015; and

WHEREAS, the Town Council is generally familiar with the Agreement attached and feels that it is in the best interest of the Town to enter into said agreement; and

WHEREAS, the Town of Timnath and Riverbend Ventures, LLC (the "Developer") wish to enter into a statue and landscape maintenance license agreement for that portion of Signal Tree Drive within the Riverbend Subdivision, more particularly described in Exhibit A (agreement); and

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

Section 1. Approval
The Statue and Landscape Maintenance License Agreement is approved with the following condition:

a. Allow staff to continue to work with the applicant to make minor, non substantive changes to the plans.

b. The whip and rope depicted in the statue renderings will not be installed.


TOWN OF TIMNATH, COLORADO

Jill Grossman-Belisle, Mayor
STATUE AND LANDSCAPE MAINTENANCE LICENSE AGREEMENT
(STATUE – RIVERBEND VENTURES, LLC)

This STATUE AND LANDSCAPE MAINTENANCE LICENSE AGREEMENT (this “Agreement”) is made and entered into as of the 23rd day of August, 2016 (the “Effective Date”), by and between the TOWN OF TIMNATH, a municipal corporation of the State of Colorado (the “Town”), with its principal office at 4800 Goodman Street, Timnath, Colorado 80547; and RIVERBEND VENTURES LLC, a Colorado limited liability company (“Riverbend Ventures”), with its principal office at 4605 S. County Road 3F, Timnath, Colorado 80547. The Town and Riverbend Ventures shall be referred to collectively as the “Parties.”

RECITALS

WHEREAS, the Town, Riverbend Ventures, and the Timnath Development Authority, are parties to that certain Public Improvements Agreement dated February 10, 2012 and recorded February 25, 2012 at reception number 2012-0027087 of the Larimer County, Colorado records, which agreement was amended and restated October 14, 2014 and recorded June 26, 2015 at reception number 20150040691 of the Larimer County, Colorado records (as amended, the “PIA”); and

WHEREAS, capitalized terms used in this License Agreement and not otherwise defined herein shall have the meaning given in the PIA; and

WHEREAS, the Town owns the right of way for Signal Tree Drive between Harmony Road and Stone Fly Drive and the right of way for Stone Fly Drive between County Road 3F and the easterly Riverbend Ventures Property line, referenced in the PIA, and dedicated and conveyed to the Town pursuant to the provisions of the Riverbend 1st Filing Final Plat recorded June 23, 2015, at Reception No. 20150039320, in the records of Larimer County, Colorado, as described in Exhibit A (collectively, the “Town ROW”); and

WHEREAS, Riverbend Ventures desires to place a statue (“Statue”) in the Town ROW, access the Town ROW, and to assume responsibility for operation and maintenance of the Statue and certain landscape maintenance on the Town ROW as more fully set forth in this Agreement and as shown in Exhibit B; and

WHEREAS, the Town desires to grant Riverbend Ventures a license to place the Statue on the Town ROW and to access the Town ROW to perform operation and maintenance of the Statue and landscape maintenance on the Town ROW; and

WHEREAS, the Parties desire to set forth the terms and conditions upon which Riverbend Ventures will be allowed to access the Town ROW and be responsible for the Statue and landscape maintenance on the Town ROW.
NOW, THEREFORE, in consideration of the mutual covenants and stipulations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

I. License

A. Subject to strict compliance by Riverbend Ventures with the terms and conditions set forth in this Agreement, the Town hereby grants to Riverbend Ventures a revocable, non-exclusive license (the "License") to enter upon the Town ROW, install, use, operate, maintain, repair and replace the Statue and any real property owned by the Town upon which the Statue is located, and to operate, maintain, repair, and replace landscaping and irrigation in the Town ROW. The License is granted for pedestrian and maintenance vehicle traffic.

B. Upon three (3) years from the date of this approval, the Town may, by unanimous vote of the Town Council, relocate said statue to Riverbend Ventures’ Manager’s residence in Timnath, and replace it with a statue approved unanimously by the Town Council, all actions at the Town’s sole expense.

II. Duties and Authority

A. Incorporation of Recitals. The Recitals are incorporated into and made a substantive part of this Agreement.

B. General Limitations and Requirements. Riverbend Ventures shall perform the duties and have the authority specified in this Article II. Riverbend Ventures shall have no right or authority, express or implied, to take any action, expend any sum, incur any obligation, or otherwise obligate the Town in any manner whatsoever, except to the extent specifically provided in this Agreement or specifically authorized or ratified by the Board of Directors of the Town as reflected in the minutes of Town board meetings. Riverbend Ventures shall at all times conform to the stated policies established and approved by the Town.

C. Services. Riverbend Ventures shall:

1. Install, operate, maintain, repair, and replace the Statue and associated lighting in perpetuity.

2. Operate, maintain, repair, and replace landscaping and irrigation in the Town ROW in perpetuity. Landscaping includes landscaping within the roundabout, within the center median and between the curbs and sidewalks on both sides of the street, except the Landscaping within the public right of way immediately adjacent to the PFA Property, as defined in the PIA ("Landscaping"). Pursuant to the PIA, such maintenance is to commence two years after the date of substantial completion of the Landscaping.

3. Reimburse the Town for the percentage of the tap fee that is used by Riverbend Ventures for the Town ROW Landscaping according to paragraph III.A below.
4. Advise the Town of the status of operations, maintenance or other work performed with respect to the Landscaping, Statue, and water tap under this Agreement on an annual basis, and work with the Town’s consultants and agents to ensure the Town has the most complete information available for the exercise of the Town’s powers and discretionary authority with respect to the Landscaping and Statue.

5. Not enter into any contract, oral or written, in the name of the Town, and not incur any debt, liability or obligation for or on behalf of the Town, unless consented to in writing by the Town. All obligations incurred by Riverbend Ventures shall be obligations of Riverbend Ventures, and Riverbend Ventures shall hold the Town harmless therefrom.

The duties and obligations set forth above in paragraphs C1.-C.5, collectively, are the "Services."

D. Compliance with Applicable Law. Riverbend Ventures shall provide the Services set forth in this Agreement in full compliance with all applicable laws, rules, permits and regulations of any federal, state, county, or municipal body or agency thereof having jurisdiction over the Statue.

E. No Right or Interest in Town Assets. Riverbend Ventures shall have no right or interest in any of the Town’s assets, nor any claim or lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated herein.

F. Independent Contractor Status. Nothing herein contained shall constitute or designate Riverbend Ventures or any of its employees, agents, subcontractors or suppliers as employees of the Town. The Services to be performed by Riverbend Ventures shall be at its sole cost, risk and expense, and no part of the cost thereof shall be charged to the Town. The Town shall not be responsible for Riverbend Ventures’ means, methods, techniques, sequences or procedures of work or for safety precautions incident thereto.

G. Services Standards.

1. Riverbend Ventures shall perform the Services in the same manner as required for the common areas under the PIA.

2. The Town may review and inspect the Landscaping and Statue periodically. If the Town believes Riverbend Ventures is not providing adequate Services, the Town shall provide specific details of such deficiency(ies) to Riverbend Ventures in writing ("Written Notification"). Riverbend Ventures will have thirty (30) days from the date of receipt of the Written Notification in which to address the deficiency(ies) set forth in the Written Notification (the "Cure Period"). If Riverbend Ventures fails to address the deficiency(ies) within the Cure Period, the Town shall have the remedies set forth in Article IV(B), below. If the deficiency(ies) cannot be cured within the Cure Period, Riverbend Ventures shall not be in default under this License Agreement so long as Riverbend Ventures provides to the Town a plan to correct the deficiency(ies) that is acceptable to the Town within the Cure Period and thereafter acts in good faith and uses commercially reasonable efforts to correct the deficiency(ies) as soon as reasonably possible. The Town’s approval of any plan to correct the deficiency(ies) shall not be unreasonably delayed, conditioned or withheld.

3. Riverbend Ventures shall not upgrade or improve the Landscaping or Statue if such upgrade or improvement would increase the actual expenses or
increase the Town’s obligations, without prior written approval of the Town, which approval shall not be unreasonably delayed, conditioned or withheld.

4. Riverbend Ventures shall obtain and shall cause its subcontractors to maintain in full force and affect all required licenses, permits and bonds, and comply with all applicable laws. Riverbend Ventures shall ensure that each subcontractor obtains and provides to Riverbend Ventures evidence of insurance as may be required by the Declaration. Upon written request by the Town, Riverbend Ventures shall use commercially reasonable efforts to obtain and provide to the Town mechanic’s lien waivers from all of its contractors, subcontractors and materials suppliers, confirming that all work performed and all materials supplied with respect to or on account of Riverbend Ventures’ activities on or about the Landscaping and Statue have been paid in full.

III. Budget and Compensation

A. Share of Expenses for Tap Fee. Pursuant to the PIA, the upfront cost of the water tap will be paid for by the Town. The water service will be submetered to distinguish the amount of water used by the Town for the median project and Riverbend Ventures for the Town ROW Landscaping. Two years after the date of substantial completion of the Landscaping, the usage will be totaled and Riverbend Ventures or their assigns shall reimburse the Town for the percentage of the Tap fee based on the usage split. Upon transition from Town maintenance to Riverbend Ventures maintenance (two years after the date of substantial completion of the Landscaping), the majority user will take over responsibility of the water tap. Riverbend Ventures or their assigns will supply a new irrigation controller and separate the Riverbend ROW system from the Town Median system at their sole cost.

IV. Term and Default

A. Term of Agreement. The Term of this License Agreement in regards to the Statue shall commence immediately and shall continue in effect for perpetuity unless the Parties agree otherwise in writing. The Term of this Agreement in regards to the Landscaping shall commence two years after the date of substantial completion of the Landscaping, and shall continue in effect for perpetuity unless the Parties agree otherwise in writing.

B. Self-Help/Remedies. In the event Riverbend Ventures defaults in providing the Services hereunder, and such default is not cured as provided in Article II, Section G.2 hereinafore, the Town shall have the right to perform the same. Notwithstanding the foregoing, the Town shall have the right to make emergency repairs to the Landscaping and Statue without providing such notice as described herein, if the Town reasonably believes the failure to immediately make such repairs will cause injury or damage to persons or property, it being understood that the Town shall nevertheless advise Riverbend Ventures of such emergency condition as soon as reasonably possible, including the corrective measures taken and the cost thereof. If the Town performs any such Services with respect to the Landscaping and Statue, Riverbend Ventures shall be responsible to pay the reasonable third-party out of pocket expenses attributable to the Landscaping and Statue incurred by the Town, and shall pay the same to the Town within
thirty (30) days following receipt of an invoice therefor (along with reasonable proof of such payment and lien waivers). In addition, in the event any Party defaults hereunder and such default is not cured as provided in Article II, Section G.2 hereinabove, the non-defaulting Party shall have all remedies available to it at law or in equity, as limited herein, including but not limited to specific performance and actual damages. No Party hereto shall be entitled to consequential or punitive damages hereunder. In the event that the Town has to repair and maintain the Landscaping and Statue in order to protect the integrity of the Statue or the health, safety and welfare of persons or property, Riverbend Ventures shall be responsible for all reasonable costs related thereto.

V. Miscellaneous

A. Assignment. Riverbend Ventures shall not assign this Agreement or parts thereof, or its respective duties, without the express written consent of the Town, except as specified below, which consent will not be unreasonably delayed, conditioned or withheld. The parties acknowledge that the PIA contemplates the assignment of this Agreement to a nonprofit corporation the members of which will be the owners of Lots within the Riverbend Ventures Property (the “Association”). In the event of such transfer, and pursuant to the terms of the PIA, the Association will maintain, repair and replace the Statue and all Landscaping within the Town ROW (except adjacent to the PFA Property). Accordingly, this License Agreement and the duties and obligations of Riverbend Ventures may be assigned to the Association without the consent of the Town so long as Riverbend Ventures promptly notifies the Town of such assignment, the assignment documents are executed by the Association and provide for the assumption by the Association of all of Riverbend Ventures’ duties, liabilities, and obligations under this License Agreement, and a copy of the assignment document with original signatures of Riverbend Ventures and the Association is provided to the Town within 10 days after the occurrence of such assignment. Upon assignment of this License Agreement to the Association and assumption in writing by the Association of all of Riverbend Ventures’ duties, liabilities, and obligations under this License Agreement, Riverbend Ventures shall automatically be released from any and all obligations for performance of the terms of this License Agreement from and after the date of such Assignment without further action, consent or approval by the Town. Any attempted assignment, delegation or subcontracting of this Agreement in whole or in part in violation of the foregoing provisions shall be null and void and of no effect whatsoever.

B. Notices. All notices, certificates or other communications required to be given pursuant to any provision of this Agreement shall be in writing, shall be given either in person or by certified or registered mail, and if mailed, shall be addressed as follows:

To Town: Town of Timnath
4800 Goodman Street
Timnath, Colorado 80547
970-224-3211 (phone)
970-224-3217 (fax)

With copy to: Town General Counsel
Robert G. Rogers, Esq.
White, Bear & Ankele Professional Corporation
2154 E. Commons Ave, Suite 2000
Any Party may change its notice address by written notice to the other Parties as provided in this Section.

C. **Parties Interested Herein.** Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the Town and Riverbend Ventures any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Town and Riverbend Ventures shall be for the sole and exclusive benefit of the Town and Riverbend Ventures.

D. **Governing Law and Jurisdiction.** This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for any legal action relating to this Agreement shall be exclusive to the State Town Court in and for the County of Arapahoe, Colorado.

E. **Subject to Annual Appropriation and Budget.** The performance by the Town of any of its obligations pursuant to this Agreement requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations, and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year.

F. **Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Town, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded or available to the Town pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

G. **Negotiated Provisions.** This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed substantially and materially to the preparation of this Agreement and has had the opportunity to have their legal counsel review and comment on the Agreement.

H. **Inurement.** Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

I. **Integration.** This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.
J. **Severability.** If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

K. **Paragraph Headings.** Paragraph headings are inserted for convenience of reference only.

L. **Amendment.** This Agreement may be amended from time to time by agreement between the Parties, provided, however, that no amendment, modification, or alteration of the terms or provisions hereof shall be binding upon the Town or Riverbend Ventures unless the same is in writing and duly executed by the Parties.

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

N. **Counterparts.** This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

O. **Conflict.** Nothing contained in this License Agreement shall be construed as an amendment or modification of the PIA. In the event of any conflict between the terms and provisions of this License Agreement and the terms and provisions of the PIA, the PIA shall govern and control over this License Agreement.

[Remainder of page intentionally left blank. Signature pages follow].
IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

TOWN:

THE TOWN OF TIMNATH, a home rule municipal corporation of the State of Colorado

____________________
Jill Grossman-Belisle, Mayor

ATTEST:

____________________
Town Clerk

STATE OF COLORADO )
) s.s.
COUNTY OF Larimer )

The foregoing instrument was acknowledged before me this 23 day of August, 2016 by Jill Grossman-Belisle, as Mayor, and________________ as Town Clerk of THE TOWN OF TIMNATH, a home rule municipal corporation of the State of Colorado.

WITNESS my hand and official seal.

My commission expires: 8/8/20

____________________
Notary Public

Town’s Signature Page to Landscape License Agreement
RIVERBEND VENTURES, LLC, a Colorado limited liability company

By: __________________________
    Craig Harrison, Manager

STATE OF COLORADO )
COUNTY OF Larimer ) ss.

The foregoing instrument was acknowledged before me this ___ day of ____________,
20___, by Craig Harrison, as the Manager of Riverbend Ventures, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: __________________________

(SEAL)

__________________________
Notary Public

Riverbend Ventures’ Signature Page to Landscape License Agreement
SCULPTURE TO BE ATTACHED PER DETAIL SHOWN THIS SHEET

MASONVILLE BUFF COLORED SANDSTONE CAP 4" THICK, MINIMUM; STONE CAP SHALL MATCH SANDSTONE BOULDERS, TYPICAL

DIMENSION SANDSTONE SQUARES ON ENTIRE FRONT FACADE MEASURE IN FIELD FOR EXACT DIMENSIONS

8" AND 4" MASONVILLE BUFF COLORED STRIPSTONE, GROUTED TO CONCRETE; STONE SHALL BE BUFF COLORED SANDSTONE TO MATCH MASONVILLE BUFF SANDSTONE BOULDERS, TYPICAL

FOUNDATION MATERIALS PER STRUCTURAL PLANS

CONCRETE REINFORCEMENT PER STRUCTURAL PLANS

CONCRETE FOUNDATION TO SUPPORT PEDESTAL WIDTH AND DEPTH VARIES, REFER TO STRUCTURAL PLANS

COMPACTED SUBGRADE PER SOILS REPORT

CONCRETE BASE FOUNDATION REFER TO STRUCTURAL PLANS REFER TO STRUCTURAL PLANS FOR BASE AND FOUNDATION DIMENSIONS

SCULPTURE TO BE ATTACHED WITH 1/2" DIAMETER X 12" ALL-THREAD

DRILL HOLES INTO MONUMENT BASE EPOXY INTO PLACE PER STRUCTURAL PLAN

CONCRETE FOUNDATION

NOTE: COORDINATE WITH FOUNDRY TO WELD BRACKET ONTO SCULPTURE BASE FOR ALL THREAD ATTACHMENT.

Statue Pedestal

SCALE: 1" = 38"