TOWN OF TIMNATH, COLORADO

RESOLUTION NO. 105, SERIES 2016

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF TIMNATH FINDING A PETITION FOR ANNEXATION OF THE PROPERTY KNOWN AS THE FISHER ANNEXATION TO BE IN SUBSTANTIAL COMPLIANCE WITH THE PROVISIONS OF THE ACT, INITIATING ANNEXATION PROCEEDINGS AND SETTING A PUBLIC HEARING THEREON

WHEREAS, the Town Council for the Town of Timnath, Colorado has received a Petition for Annexation of certain property, signed by at least 50% of the land owners owning at least 50% of the land of said property, exclusive of public streets and alleys moreover to be in substantial compliance with the requirements of Section 31-12-107(1), Colorado Revised Statutes and Article 13 of the Timnath Land Use Code; and

WHEREAS, the Town Council for the Town of Timnath, Colorado has reviewed the draft Annexation Agreement; and

WHEREAS, the Town Council wishes to initiate annexation proceedings for the Property and set a public hearing to determine if the proposed annexation of the Property complies with the applicable requirements of the Municipal Annexation Act of 1965, CRS 31-12-101 et. seq. and Article 10 of the Timnath Land Use Code.

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

Section 1. Annexation Proceedings Initiated

Annexation proceedings are hereby initiated upon the Petition for Annexation of the following described property to the Town, which Petition appears to be in substantial compliance with the applicable provisions of Chapter 31, Article 12, Colorado Revised Statutes:

Description of property proposed for annexation: See, attached: EXHIBIT A

Section 2. Public Hearing

The Council hereby sets and gives notice of a public hearing for 6 P.M. on February 14, 2016 at the Timnath Administration Building, 4800 Goodman Street, in Timnath, Colorado, to determine if the proposed annexation complies with Sections 31-12-104 and 31-12-105, C.R.S. or such parts thereof as may be required to establish eligibility under Part 1 of Chapter 31, Article 12 of said statutes.
INTRODUCED, MOVED, AND ADOPTED THIS 7TH DAY OF DECEMBER, 2016, THE VOTE UPON ROLL CALL BEING AS FOLLOWS:

For: 4
Against: 0
Abstain: 0

FOR THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO

Milissa Peters, Town Clerk

By: [Signature]

Jan Grossman-Belisle, Mayor

NOTICE IS HEREBY GIVEN that a Petition for Annexation of property hereinafter described has been presented to the Town Council of the Town of Timnath, Colorado and found to be in apparent compliance with the applicable provisions of law. The Town Council has adopted a Resolution setting a public hearing to be held at 6 P.M. on February 14, 2017, at the Timnath Administration Building, 4800 Goodman Street, Timnath, Colorado, to determine if the proposed annexation complies with the applicable requirements of the law.

Any person may appear at the hearing and present evidence upon any matter to be considered by the Council.

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Second Publication: December 17, 2016
Third Publication: December 24, 2016
Fourth Publication: December 31, 2016
Fifth Publication: January 7, 2017
EXHIBIT A

Legal Description of Property Proposed for Annexation


BEGINNING AT THE CENTER QUARTER CORNER OF SAID SOUTHEAST QUARTER OF SECTION 22;
THENCE NORTH 89°46'15" EAST ALONG THE NORTHERLY LINE OF SAID SOUTHEAST QUARTER OF SECTION 22 A DISTANCE OF 2,611.12 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF COUNTY ROAD 5 AND A POINT ON THE TOWN LIMITS OF THE TOWN OF TIMNATH;
THENCE SOUTH 00°03'13" EAST ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF COUNTY ROAD 5 AND ALONG SAID TOWN LIMITS A DISTANCE OF 2,647.77 FEET TO THE SOUTHERLY LINE OF SAID NORTHEAST QUARTER OF SECTION 27;
THENCE SOUTH 89°43'34" WEST ALONG THE SOUTHERLY LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 22 AND ALONG SAID TOWN LIMITS A DISTANCE OF 10,00 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF SAID COUNTY ROAD 5;
THENCE SOUTH 00°08'45" EAST ALONG SAID WESTERLY RIGHT-OF-WAY LINE AND CONTINUING ALONG SAID TOWN LIMITS A DISTANCE OF 998.35 FEET;
THENCE SOUTH 89°51'15" WEST A DISTANCE OF 168.00 FEET;
THENCE SOUTH 00°08'45" EAST A DISTANCE OF 237.00 FEET;
THENCE NORTH 89°51'15" EAST A DISTANCE OF 168.00 FEET TO SAID WESTERLY RIGHT-OF-WAY LINE AND SAID TOWN LIMITS;
THENCE SOUTH 00°08'45" EAST ALONG SAID WESTERLY RIGHT-OF-WAY LINE AND CONTINUING ALONG SAID TOWN LIMITS A DISTANCE OF 1,330.14 FEET;
THENCE NORTH 89°56'10" WEST A DISTANCE OF 1,286.02 FEET;
THENCE NORTH 00°06'28" WEST A DISTANCE OF 1,914.41 FEET;
THENCE NORTH 28°26'45" WEST A DISTANCE OF 729.97 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID SOUTHEAST QUARTER OF SECTION 22;
THENCE SOUTH 89°43'34" WEST ALONG THE SOUTHERLY LINE OF SAID SOUTHEAST QUARTER OF SECTION 22 A DISTANCE OF 967.83 FEET TO A POINT ON THE WESTERLY LINE OF SAID SOUTHEAST QUARTER;
THENCE NORTH 00°08'26" WEST ALONG THE WESTERLY LINE OF SAID SOUTHEAST QUARTER OF SECTION 22 A DISTANCE OF 2,649.79 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS A CALCULATED AREA OF 10,276,877 SQUARE FEET, OR 235.92 ACRES, MORE OR LESS.
PETITION FOR ANNEXATION

PETITION FOR ANNEXATION TO THE TOWN OF TIMNATH, COLORADO

THE UNDERSIGNED, being “landowners” as defined in C.R.S. § 31-12-103(6), hereby petition the Town of Timnath, Colorado (the “Town”) for annexation for the following described property and further state:

1. The legal description of the land which Landowners request to be annexed to the municipality is attached hereto as Exhibit “A,” hereinafter referred to as the “Property.”

2. It is desirable and necessary that the Property be annexed to the Town.

3. The following requirements of C.R.S. § 31-12-104 exist or have been met:
   a. Not less than 1/6th of the perimeter of the Property is contiguous with the Town.
   b. A community of interest exists between the Property and the Town. The Property is urban or will be urbanized in the near future; and the Property is capable of being integrated into the Town.

4. None of the limitations provided in C.R.S. § 31-12-105 are applicable and the requirements of that statute have been met because of the following:
   a. The annexation of the Property will not result in the Property being divided into separate parts or parcels under identical ownership;
   b. No land area within the Property held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate comprising 20 acres or more and having a valuation for assessment in excess of $200,000 for ad valorem tax purposes has been included in the area of the Property to be annexed without the written consent of the landowners thereof;
   c. No annexation proceedings have been commenced for annexation of any part of the Property by any other municipality;
   d. The entire width of all streets and alleys to be included within the area annexed are included;
   e. The annexation of the Property will not result in the detachment of area from any school district or the attachment of same to another school district; and
   f. Annexation by the Town of the Property will not have the effect of, and will not result in, the denial of reasonable access to landowners, owners of an easement, or owners of a franchise adjoining a platted street or alley, inasmuch as annexation of the
Property will not result in annexation of a platted street or alley which is not bounded on both sides by the Town.

5. The annexation of the Property will not have the effect of extending a boundary of the Town more than three miles in any direction from any point of the municipal boundary in the past 12 months.

6. The Petitioners comprise the owners in fee of more than 50 percent of the area of the Property, exclusive of public streets and alleys, and comprise more than 50 percent of the landowners of the Property. The legal description of the land owned by each signer of this petition is shown on Exhibit A.

7. The Petitioners request that the Town Council approve the annexation of the Property.

8. This Petition is accompanied by four (4) copies of an annexation boundary map in the form required by C.R.S. § 31-12-107(1)(d) and attached as Exhibit B.

9. The Petitioners reserve the right to withdraw this Petition in the event the Property is not zoned in accordance with the Annexation Agreement, if any.

10. This instrument may be executed in one or more counterparts, all of which taken together shall constitute the same document.

PETITIONERS:
LORSON SOUTH LAND CORP., a Colorado corporation

By: ____________________________
Name: Jeff Mark

Its: Vice President

STATE OF COLORADO

COUNTY OF El Paso

Subscribed and sworn to before me this 20 day of September, 2016, by
Jeff Mark as Vice President of Lorson South Land Corp., a Colorado corporation.

Witness my hand and official seal.
My commission expires: 1-3-17

Notary Public

S E A L

BEGINNING AT THE CENTER QUARTER CORNER OF SAID SOUTHEAST QUARTER OF SECTION 22;
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SAID PARCEL CONTAINS A CALCULATED AREA OF 10,276,877 SQUARE FEET, OR 235.92 ACRES,
MORE OR LESS.
LEGAL DESCRIPTION:

A parcel of land located in the Southeast Quarter of Section 22, the East Half of the Northeast Quarter of Section 27, and a portion of the Northwest Quarter of Section 27, Township 7 North, Range 88 West of the 6th Principal Meridian, County of Larimer, State of Colorado.

SURVEYOR'S CERTIFICATE

I, [Surveyor's Name], do hereby certify that the boundaries of the parcel of land described in the foregoing Legal Description are correct and that the parcel is accurately located and described.

TIMNATH PLANNING COMMISSION APPROVAL

[Stamp or signature] Timnath Planning Commission
[Date]

CERTIFICATE OF APPROVAL BY THE TOWN COUNCIL

[Stamp or signature] Timnath Town Council
[Date]

LARIMER COUNTY CLERK & RECORDER CERTIFICATE

[Stamp or signature] Larimer County Clerk & Recorder
[Date]

ENGINEER / SURVEYOR

[Stamp or signature] [Company Name]
[Date]

NOTES:

1. This survey was conducted by [Surveyor's Name] using a total station and a GPS receiver.
2. All measurements are in feet and inches.
3. This survey has been approved by the Town of Timnath.
4. This survey was recorded in the Larimer County Recorder's Office on [Date].

OWNERSHIP

[Owner's Name]
[Address]
[Phone]

SURVEYOR

[Surveyor's Name]
[Address]
[Phone]

ENGINEER / SURVEYOR

[Company Name]
[Address]
[Phone]
FISHER PROPERTY ANNEXATION TO THE TOWN OF TIMNATH, COLORADO

FISHER PROPERTY ANNEXATION TO THE TOWN OF TIMNATH, COLORADO
ANNEXATION AGREEMENT
FOR THE FISHER FARM ANNEXATION

THIS ANNEXATION AGREEMENT ("Agreement"), is made and entered into to be effective the _____ day of __________, 2016, by and between Town of Timnath, a Colorado municipal corporation ("Town") and Lorson South Land Corp., a Colorado Corporation ("Property Owner" and collectively, the "Parties") and is made concerning the real property described on Exhibit A, attached hereto and incorporated herein by reference ("the Property"), and generally known as the Fisher Farm.

WITNESSETH:

WHEREAS, the Property consists of approximately 242 acres, more or less, located at the southwest corner of County Road 5 and County Road 42E; and

WHEREAS, Town and Property Owner will be entering into a subdivision improvement agreement (the "SIA"), which will be recorded in the real estate records of Larimer County, Colorado, and which will govern the construction of public improvements on the property and will serve as a condition precedent to approval by the Town of any future plat or plats associated with the Property; and

WHEREAS, it is the intent of Parties that this Agreement contains all the obligations of Parties which shall be performed by Parties with respect to annexation of the Property.

NOW, THEREFORE, in consideration of the foregoing and the terms, covenants, conditions and provisions hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby confessed and acknowledged, Parties hereto agree as follows:

AGREEMENT

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions for annexation and development of the Property within the Town, and the fees to be paid by Property Owner upon annexation of the Property. All conditions contained herein are in addition to any and all requirements of Town and applicable state statutes, and are not intended to supersede such requirements, except as specifically provided in this Agreement. All exhibits attached hereto are incorporated herein by this reference and are an integral part hereof.

2. Annexation of Property. The Property shall be annexed to Town by ordinance, not by election, in accordance with the terms of this Agreement, including [ANY INCLUDED RIGHTS OF WAY AND ROADS], as shown on the annexation map attached hereto as Exhibit B. The annexation of the Property is subject to this Agreement and the Subdivision Improvement Agreement executed contemporaneously herewith.

3. Zoning and Development of the Property. The Property will be zoned R2 and MU. Property Owner will develop the Property in accordance with a final plat to be subsequently approved by the Town. The Property, or any portion thereof, may be rezoned or
the Final Plat amended with the consent of Town and Property Owner, but without amending or modifying this Agreement.

4. Water Utilities. Property Owner shall obtain water service from the East Larimer County Water District.

5. Sanitary Sewer Utilities. Property Owner shall obtain sewer service from Boxelder Sanitation District.

6. Utilities and Infrastructure. Parties recognize that Town does not provide infrastructure to serve the Property and Property Owner will be responsible for extending all utilities and streets to serve the Property. Failure of Property Owner to obtain utilities or provide streets to the Property shall not be grounds for disconnection.

7. Water and Water Rights. Property Owner acknowledges that Property Owner shall be required to meet Town Code requirements for irrigation of common areas, open space areas, and parks. Property Owner shall not be required to provide to Town any water or water rights, well or well rights, reservoir or storage rights, stock in mutual ditch and irrigation companies, or any other water or water rights appurtenant to or historically used in connection with the Property except as otherwise set forth herein.

8. Fire Protection Services. The Property Owner acknowledges and represents that Property Owner has submitted a Petition for Exclusion from the fire protection district currently serving the Property, as necessary, and that Property Owner has submitted a Petition for Inclusion into the Poudre Valley Fire Protection District.

9. Coordination with Adjacent Properties. Property Owner shall coordinate with owners of properties within Town adjacent to the Property to provide pedestrian and vehicular access between the Property and the adjacent properties as may be necessary to implement Town’s current transportation plan.

10. Obligations Run with the Land. This Agreement and the annexation map shall be recorded in the real estate records of Larimer County and all obligations herein shall run with the land and shall be binding upon and inure to the benefit of Parties hereto and their respective heirs, personal representatives, successors, and, to the extent permitted, assigns as the case may be.

11. Cure of Legal Defects. In the event that the annexation or zoning of the Property or any portion of this Agreement, is declared void or unenforceable by final court action, Parties shall cooperate to cure any legal defects cited by the court, and immediately upon such cure, Town shall reinstitute and complete proceedings to annex and zone the Property according to the terms of this Agreement and to otherwise carry out the terms and provisions hereof.


a. Acknowledgements. Parties acknowledge the following:
(1) The Property is estimated to have a minimum of three (3) year build-out period for each phase of development and is expected to be constructed within 9 years in total for the initial three phases of development.

(2) Property Owner will be required to make substantial financial commitments and complete major public infrastructure improvements for the development of the Property.

(3) A material consideration of Property Owner’s annexation of the Property and Property Owner’s willingness to develop the Property within Town (rather than developing the Property within the County or another municipality) is Town’s agreement to permit development of the Property in accordance with the terms and conditions of this Agreement and the Final Plat, particularly the vested property rights granted herein.

b. Vesting of Property Rights. In recognition of the size of the development contemplated under this Agreement, the substantial financial investment and time required to complete the development of the Property, and the possible impact of economic cycles and varying market conditions during the course of development, Town agrees to grant extended vested property rights in this Agreement pursuant to Section 16.5.2 of the Timnath Municipal Code in accordance with the following “performance vesting” schedule. The initial vesting period for the Property shall be from annexation of the Property through three (3) years from the date of approval of each phase of development for the project beginning from an effective date of July 1, 2016 through July 1, 2025 (unless otherwise extended by mutual agreement of the Parties)(“Vesting Period”). Thereafter extended vested property rights shall be granted according to the following provisions and expressly on the conditions stated herein and in the Subdivision Improvement Agreement executed contemporaneously herewith. Such extended vested property rights shall be available to Property Owner for each “Phase” (defined below) of proposed development of the Property, as depicted in Exhibit C attached hereto and incorporated herein by this reference, shall be subject to vesting of property rights, conditionally and serially, as follows:

The initial Vesting Period shall be determined and defined at the time of final plat. However, it is currently anticipated that each phase of development shall require three (3) years to construct from the time of each phase of development’s approval by the Town. Based upon the current development and phasing plan, through December 31, 2028 (unless otherwise approved by the Parties by mutual agreement).
(1) If Phase I is “completed through build-out” by December 31, 2019, provided there is approval received by the Town of Timnath for phase I development prior to December 31, 2019, the Vesting Period shall be extended through December 31, 2022, on condition that Property Owner applies to Town by December 31, 2019, and receives from Town, in writing, a letter authorized by Town Council concurring that Phase I has been completed through build-out by December 31, 2019.

(2) If Phase II is completed through build-out by December 31, 2022, the Vesting Period shall be extended through December 31, 2025, on condition that Property Owner applies to Town by December 31, 2022, and receives from Town, in writing, a letter authorized by Town Council concurring that Phase II has been completed through build-out by December 31, 2022.

(3) If Phase III is completed through build-out by December 31, 2025, the Vesting Period shall be extended through December 31, 2028, on condition that Property Owner applies to Town by December 31, 2025, and receives from Town, in writing, a letter authorized by Town Council concurring that Phase III has been completed through build-out by December 31, 2025.

For purposes of extended vested rights, the term “completed through build-out” shall mean, as respects a Phase of the Property, that (i) all public improvements required by Town for such Phase (per Town Code or agreement between Parties) have been constructed by Property Owner and that Initial Acceptance and provision to Town of Warranty Security has occurred pursuant to the Subdivision Improvement Agreement, (ii) that the Water District and the Sewer District have finally accepted the water and wastewater improvements and evidence thereof has been provided to Town, and (iii) that all obligations of Property Owner in the Amended and Restated Subdivision Improvement Agreement and this Agreement as the same may affect Property within such Phase have been performed to the satisfaction of Town in its sole reasonable discretion.

c. Compliance with Agreement and Final Plat. Pursuant to the contractual commitments made herein, Property Owner shall have vested property rights to undertake and complete the development and use of the Property under the terms and conditions of this Agreement, the Subdivision Improvement Agreement, and the Final Plat.

d. Final Plat. The Final Plat shall be considered a site specific development plan as defined by Colorado law and the Timnath Municipal Code for the conditional Vesting Period identified above for the Property and
conditional extended vesting periods for all subsequent phases of the Property.

e. Limitation on Vested Rights. Notwithstanding anything in this Section to the contrary, in no event shall the vested rights granted herein prevent Town, by its citizens through initiative or referendum or by Town Council, from acting as reasonably necessary to protect property, businesses or residents within the Town from natural or man-made hazards, which hazards if uncorrected would pose a serious threat to the public health, safety and welfare of residents, businesses or properties within Town.

f. Infrastructure Standards. Parties acknowledge and agree that Town Code and Town’s then-existing design and construction standards shall be applicable to all future construction of items historically considered to be public in nature, including generally, water lines, sewer lines, streets, drainage improvements, park improvements, traffic safety and control devices, etc. common to similar developments in Town. Accordingly, the vested rights previously granted and extended herein shall not include design and construction standards for public improvements. With regard to adjacent or prior constructed streets, Property Owner shall be responsible for upgrading or improving adjacent streets in accordance with the Town Code in effect at the time of development plan approval.

13. Town Ordinances, Regulations, Codes, Policies, and Procedures. To the extent consistent with vested property rights granted above, the provisions of this Agreement, and the Final Plat, the Parties agree that all current and future Town ordinances, regulations, codes, policies and procedures (collectively, “Regulations”) shall be applicable to the use and development of the Property. If such Regulations are inconsistent with the vested property rights granted herein, such inconsistent Regulations shall apply to development of the Property only if, in Town’s sole reasonable discretion, such Regulations are necessary to preserve the public’s health, safety and welfare. If the Property is replatted in any manner, all Regulations in effect at the time of replat shall be applicable to the use and development of the Property or portion of the Property that is subject to the replat. With regard to oil and gas rights, the Town agrees to work reasonably will not unreasonably withhold or delay any applications for gas & oil operations on the Property in accordance with and consistent with the Town policies and regulations in place with regard to oil and gas drilling and operations within the boundaries of the Town in effect at the time of approval of this Agreement.

14. If the development is considered a subdivision under the Regulations and a fee-in-lieu of dedication of land is due, such fee-in-lieu shall be due at such time as dedication of land would otherwise be required. The timing and procedures for determining the requirements, notices, or payment of a fee-in-lieu of dedication of land will be subject to written agreement between the Property Owner and the Town in accordance with the Subdivision Improvement Agreement (to be negotiated and agreed upon pursuant to the Town Regulations.)
15. **Breach by Property Owner - Town's Remedies.** In the event of a breach of any of the terms and conditions of this Agreement by Property Owner, and until such breach is corrected, the Town may take such actions as are permitted and/or authorized by the ordinances of the Town, this Agreement, and/or other law as the Town reasonably deems necessary in order to protect the public health, safety and welfare; to protect lot buyers and builders; and to protect the citizens of Town from undue hardship and undue risk. These remedies include, but are not limited to:

   a. The refusal to issue any building permit;
   b. The revocation of any building permit previously issued under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party;
   c. Refusal to accept further land use applications for the Property;
   d. Disconnection of the Property from Town;
   e. Specific performance of this Agreement;
   f. Placement of a lien on the Property to be collected with the property taxes;
   g. Any other remedy available at law or equity.

   Unless necessary to protect the immediate health, safety and welfare of Town or to protect Town's interest with regard to security given for the completion of the public improvements, Town shall provide Property Owner thirty (30) days prior written notice of its intent to take any action under this paragraph, specifying the claimed breach or default of such person or entity. If during such thirty (30) day period Property Owner commences to cure the breach described in the notice and proceeds reasonably thereafter to cure the breach, any action taken by Town to enforce this Agreement shall be discontinued and no further action shall be taken by Town to the extent that the Property Owner diligently pursues the cure to completion.

16. **Breach by Town: Property Owner's Remedies.** Property Owner shall have any and all remedies against Town for breach of this Agreement available at law or in equity for a material breach of this Agreement by Town, including the right to seek statutory disconnection for a material breach which substantially impairs Property Owner's ability to develop the Property.

17. **Attorney's Fees.** In the event of any litigation to enforce or construe the terms of this Agreement, the substantially prevailing party shall be entitled to payment of its costs of litigation, including attorney fees, by the other party.

18. **Acknowledgement.** 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 Town Code and the laws of the State of Colorado. Nothing contained in this Agreement shall
constitute or be interpreted as a repeal of existing codes or ordinances, or as a waiver or abrogation of Town’s legislative, governmental, or police powers to promote and protect the health, safety and general welfare of Town or its inhabitants; nor shall this Agreement prohibit the enactment by Town of any fee that is of uniform or general application.

19. Notice. All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by facsimile, or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of Parties herein set forth. All notices so given shall be considered effective on the date of delivery, or facsimile if sent during normal business hours, or seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which further notices shall be sent.

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

with copy to: 
White, Bear & Ankele Professional Corporation  
c/o Robert G. Rogers, Esq.  
2154 E. Commons Ave., Suite 2000  
Centennial, CO 80122  
Telephone: (303) 858-1800  
Facsimile: (303) 858-1802

Notice to Property Owner: 
Lorson South Land Corp.  
Attn: Jeff Mark  
212 N. Walsatch Ave., Suite 301  
Colorado Springs, CO 80903  
Telephone: 719-635-3200  
Facsimile: 719-635-3244

with a copy to: 
Spence Fane LLP  
Attn: David O’Leary  
1700 Lincoln Street, Suite 2000  
Denver, CO 80203  
Telephone: 303-839-3952  
Facsimile: 303-839-3838

20. Assignment. Property Owner shall have the right to assign or transfer all or any of its interests, rights, or obligations under this Agreement to any person or entity that is an “affiliate” of Property Owner without the consent of Town. Property Owner shall also have the right to assign or transfer all or any of its interests, rights, or obligations under this Agreement to any other person or entity having the legal authority and financial ability to perform the obligations being assigned to such person or entity after at least thirty (30) days prior written
notice to Town. Upon such notice and written assumption of the obligations of Property Owner by an assignee, the assignor shall be relieved of any further obligations or liability with respect to the performance of any of the duties or obligations of Property Owner arising after the date such duties and obligations are assumed by the Assignee. The term “affiliate” as used hereinabove, shall mean and refer to any person or entity, directly or indirectly, controlling, controlled by, or under common control with Property Owner. The terms “controlling,” “controlled by,” or “under common control with,” shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity whether through the ownership of voting securities or otherwise.

21. **Title and Authority.** Property Owner warrants and represents to Town that it is the record owner of the Property, except for county roads shown on the annexation map. Each person signing this Agreement on behalf of an entity represents and warrants that he or she has full power and authority to enter into this Agreement on behalf of the entity. Property Owner and the undersigned individuals understand that the Town is relying on such representations and warranties in entering into this Agreement.

22. **Entire Agreement - Amendments.** This Agreement embodies the whole agreement of the Parties with respect to the annexation of the Property to the Town and development of the Property within the Town. There are no promises, terms, conditions, or obligations other than those contained herein, which shall supersede all previous communications, representations or agreements, either verbal or written, between the Parties hereto. This Agreement may be amended only by written agreement between the Property Owner and the Town. In the event that the Property is subdivided and lots are sold to different individuals in the future, this Agreement may be amended by agreement between the Property Owner and the Town, without consent of such lot owners to the extent such amendment does not adversely affect such other lot owners in a material manner.

23. **Severability.** If any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid, and Parties shall cooperate to cure any such defect.

24. **Effective Date-Termination.** This Agreement shall be effective and binding upon both Parties but shall not affect the effective date of the ordinance annexing the Property to Town. This Agreement shall be terminated and considered null and void on the date of disconnection if the Property is subsequently disconnected from Town.

25. **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.

26. **No Duress.** 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.
27. Execution and Counterparts. This Agreement may be executed and filed in any number of counterparts, all of which when taken together shall constitute the entire agreement of Parties. Signature pages may be removed from any counterpart and attached to another counterpart to constitute a single document.

28. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Should any party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that exclusive venue of such suit or action shall be in Larimer County, Colorado.

29. 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 is reasonably possible in performing the obligations herein.

30. Third Party Beneficiaries. This Agreement is made by and between Parties and their successors and, to the extent permitted, assigns and solely for their benefit. No third parties, including but not limited to adjacent property owners and/or individual lot owners or buyers, shall be entitled to enforce the duties or enjoy the rights created herein.

31. Integration. It is expressly understood that Town cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with documents approved by the Board of Trustees at a public meeting, the Town Code, and the laws of the State of Colorado.

32. 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.

33. 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.
IN WITNESS WHEREOF, this Agreement has been executed by Parties, intending to be legally bound hereby, as of the date set forth above.

TOWN: TOWN OF TIMNATH, COLORADO, A Municipal Corporation

ATTEST: ________________________
Jill Grossman-Belisle, Mayor

Milissa Peters, Town Clerk

PROPERTY OWNER: LORSON SOUTH LAND CORP., A Colorado corporation

By: __________________________
Name: _______________________
Title: _______________________

STATE OF COLORADO )
COUNTY OF ____________ ) ss.

The foregoing instrument was acknowledged before me this ___ day of ______, 2016, by ________________________, as ________________ of Lorson South Land Corp.

WITNESS my hand and official seal.

__________________________
Notary Public
My Commission expires: ____________
EXHIBIT A
(Property Description)