TOWN OF TIMNATH, COLORADO
ORDINANCE NO. 21, SERIES 2017

AN ORDINANCE APPROVING THE FIRST AMENDMENT TO THE AMENDED AND
RESTATED ANNEXATION AND DEVELOPMENT AGREEMENT FOR THE
HARMONY SUBDIVISION

WHEREAS, the Town of Timnath (the “Town”) is a home rule municipality operating under
the Timnath Home Rule Charter (the “Charter”) adopted on November 7, 2006 and the Town’s
Municipal Code (the “Code”). Pursuant to the Charter, the Code and the authority given home
rule municipalities, the Town may adopt and amend ordinances; and

WHEREAS, the Town and Rodney L. Nelson, an individual, and Harmony, LLC, (the
“Developer”) are parties to that certain Amended and Restated Annexation and Development
Agreement for the Harmony Subdivision which was executed on December 12, 2011 (the
“Original ADA”); and

WHEREAS, the Town and the Developer desire to amend the Original ADA to accommodate
delays in the planned development; and

WHEREAS, attached hereto as Exhibit A is the First Amendment to the Amended and Restated
Annexation and Development Agreement for Harmony Subdivision (the “Amendment”); and

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

NOW, THEREFORE, THE COUNCIL OF THE TOWN OF TIMNATH, COLORADO,
ORDAINS:

ARTICLE 1 – AMENDMENT
The Town Council hereby approves the Amendment 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.

ARTICLE 2 – SEVERABILITY
If any part or provision of this Ordinance, or its application to any person or circumstance, is
adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part,
provision, or application shall not affect any of the remaining parts, provisions or applications of
this Ordinance that can be given effect without the invalid provision, part or application, and to
this end the provisions and parts of this Ordinance are declared to be severable.
ARTICLE 3 – REPEALER
All ordinances or resolutions, or parts thereof, in conflict with this Ordinance are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance nor revive any ordinance thereby.

ARTICLE 4 – EFFECTIVE DATE
This Ordinance shall take effect upon adoption at second reading, as provided by Section 3.5.5 of the Charter.


MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON SEPTEMBER 26, 2017

TOWN OF TIMNATH, COLORADO

[Signature]

TOWN OF TIMNATH, COLORADO

Bryan Voronin, Mayor Pro Tem

ATTEST:

[Signature]

Milissa Peters, CMC
Town Clerk

[Seal]
EXHIBIT A

FIRST AMENDMENT TO THE AMENDED AND RESTATED ANNEXATION AND DEVELOPMENT AGREEMENT FOR THE HARMONY SUBDIVISION
FIRST AMENDMENT TO
AMENDED AND RESTATED
ANNEXATION AND DEVELOPMENT AGREEMENT
FOR THE HARMONY SUBDIVISION

THIS FIRST AMENDMENT TO AMENDED AND RESTATED ANNEXATION AND
DEVELOPMENT AGREEMENT FOR THE HARMONY SUBDIVISION (the
“Amendment”), is made and entered into to be effective the ___ day of ____________, 2017, by
and between the TOWN OF TIMNATH, a Colorado municipal corporation (the “Town”);
RODNEY L. NELSON, an individual, and HARMONY, LLC, a Colorado limited liability
company (the “Developer”). The Town, Rodney L. Nelson, and the Developer are referred to
herein individually as a “Party” and collectively as the “Parties.”

RECITALS

A. The Parties entered into that certain Amended and Restated Annexation and
Development Agreement for the Harmony Subdivision, dated December 12, 2011 (the
“Agreement”). Capitalized terms used herein shall have the meanings given to them in the
Agreement.

B. Pursuant to Paragraph 32 of the Agreement, the Agreement may be amended only
by written agreement among the Property Owners, Development, and the Town. In the event the
Property is subdivided and lots are sold to different individuals in the future, the Agreement may
be amended only by agreement between the Property Owners, Developer, and the Town, without
consent of such lot owners to the extent such amendment does not materially adversely affect
such other lot owners in any material manner.

C. The Parties desire to amend the Agreement to extend the vesting of property
rights from December 31, 2019 until December 31, 2029, and to update the site specific
development plan that is being vested.

D. The property has been subdivided and lots have been sold to different individuals.
However, the Parties agree that this Amendment does not materially adversely affect such other
lot owners in any material manner.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained
herein, and for other good and valuable consideration, the receipt and sufficiency of which are
hereby acknowledged, the Parties covenant and agrees as follows:

AGREEMENT

1. Amendment. Paragraph 23.B of the Agreement is hereby amended and restated in
its entirety as follows:
B. Vesting of Property Rights. In recognition of the land size of the development contemplated under this Agreement, the substantial financial investment and time required to complete the development of the Property, the phased development of the Property and the possible impact of economic cycles and varying market conditions during the course of development, the Town agrees to grant extended vested property rights in that certain Plan Development Overlay approved by Ordinance No. 20, Series 2017 pursuant to the provisions of Timnath Municipal Code as of the effective date of this agreement through December 31, 2029.

2. Prior Provisions Effective. Except as expressly modified by this Amendment, all other provisions of the Agreement shall remain in full force and effect.

3. Counterpart Execution. This Amendment 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 of this Amendment may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories to this Amendment.

[Signature page follows.]
IN WITNESS WHEREOF, the Parties have executed this Amendment to be effective on the date first written above. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Amendment.

THE TOWN:

Attest:

By: Milissa Peters, Town Clerk

TOWN OF TIMNATH, COLORADO

By: Bryan Voronin, Mayor Pro Tem
PROPERTY OWNER:

Rodney L. Nelson

STATE OF COLORADO  )
)ss.
COUNTY OF LARIMER  )

The foregoing instrument was acknowledged before me on ______________, 2017, by Rodney L. Nelson.

Witness my hand and official seal.

My commission expires: ______________

Notary Public
PROPERTY OWNER AND DEVELOPER:

HARMONY, LLC, a Colorado limited liability company

By: __________________________
Byron R. Collins, Manager

STATE OF COLORADO )
)ss.
COUNTY OF LARIMER )

The foregoing instrument was acknowledged before me on _____________, 2017, by Byron R. Collins, as Manager of HARMONY, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: ________________

___________________________________
Notary Public