TOWN OF TIMNATH, COLORADO
ORDINANCE NO. 11, SERIES 2018

AN ORDINANCE AUTHORIZING THE FINANCING OF A NEW TOWN CENTER BUILDING AND RELATED EQUIPMENT AND THE REFINANCING OF AN OUTSTANDING LOAN WITH THE DEPARTMENT OF LOCAL AFFAIRS, AND IN CONNECTION HEREBY AUTHORIZING THE CONVEYANCE OF CERTAIN TOWN PROPERTY AND THE EXECUTION AND DELIVERY BY THE TOWN OF A QUITCLAIM DEED, A LEASE PURCHASE AGREEMENT, AND OTHER DOCUMENTS AND MATTERS RELATING TO CERTAIN CERTIFICATES OF PARTICIPATION, SERIES 2018; SETTING FORTH PARAMETERS AND RESTRICTIONS WITH RESPECT TO THE FINANCING; AUTHORIZING OFFICIALS OF THE TOWN TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY; RATIFYING ACTIONS PREVIOUSLY TAKEN; AND PROVIDING FOR OTHER MATTERS RELATED THERETO.

WHEREAS, the Town of Timnath, Colorado (the “Town”) is a duly organized and existing home rule municipality of the State of Colorado, created and operating pursuant to Article XX of the Constitution of the State of Colorado and the home rule charter of the Town (the “Charter”);

WHEREAS, the Town is authorized pursuant to Section 1.3 of the Charter to purchase, lease, receive, hold and enjoy, or sell and dispose of real and personal property;

WHEREAS, pursuant to Section 15.4 of the Charter, the Town Council of the Town (the “Council”) by ordinance may purchase, sell, exchange or dispose of any interest in real property, except that any sale of any property actively in use as the Town hall, recreation center or all or part of any public park shall first be approved by a vote of the registered electors of the Town;

WHEREAS, the Town is further authorized by Part 8 of Article 15 of Title 31, Colorado Revised Statutes (“C.R.S.”), to enter into rental or leasehold agreements to provide necessary land, buildings, equipment and other property for governmental or proprietary purposes;

WHEREAS, the Town has previously entered a loan (the “DOLA Loan”) evidenced by the Loan Contract, Energy and Mineral Impact Assistance Program dated March 4, 2009, between the State of Colorado for the use and benefit of the Department of Local Affairs and the Town, the original principal amount of $900,000 and currently outstanding in the principal amount of $582,378.99;

WHEREAS, the Council has determined, and hereby determines, that it is in the best interest of the Town to (a) finance the acquisition, construction and installation of a new Town center building for the Town, including all fixtures attached thereto (the “Building”) and related machinery, equipment and tangible personal property (collectively, the “Equipment” and together with the Building, the “Improvement Project”), and (b) to repay in whole the DOLA Loan (the “Refunding Project” and together with the Improvement Project, the “Project”);

WHEREAS, the Building will be constructed on certain real property that is currently owned by the Town (the “Site”);

WHEREAS, the Council has determined and hereby determines that it is in the best interest of the Town to provide for the financing of the Project as follows:

(a) the Town will sell the Site to UMB Bank, near. (the “Trustee”) acting solely in its capacity of Trustee under the Indenture (hereinafter defined) pursuant to a Quitclaim Deed (the “Quitclaim Deed”);
(b) the Building will be constructed on the Site with a portion of the net proceeds of the Certificates (hereinafter defined), and will be owned by the Trustee;

(c) the Trustee will lease the Site and the Building (collectively, the “Leased Property”) to the Town pursuant to a Lease Purchase Agreement between the Trustee, as lessor, and the Town, as lessee (the “Lease”);

(d) the Town will have an option to purchase the Leased Property in accordance with the provisions of the Lease;

(e) the Town will acquire the Equipment with a portion of the net proceeds of the Certificates, and the Equipment will be owned by the Town and will not be subject to the Lease, except as otherwise provided in the Lease; and

(f) a portion of the net proceeds of the Certificates will be applied to the Refunding Project to repay the outstanding balance of the DOLA Loan;

WHEREAS, pursuant to the Lease, and subject to the right of the Town to terminate the Lease and other limitations as therein provided, the Town will pay certain Base Rentals and Additional Rentals (as such terms are defined in the Lease) in consideration for the right of the Town to use the Leased Property;

WHEREAS, the Town’s obligation under the Lease to pay Base Rentals and Additional Rentals shall be from year to year only; shall constitute currently budgeted expenditures of the Town; shall not constitute a mandatory charge or requirement in any ensuing budget year; and shall not constitute a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional, charter, statutory limitation or requirement concerning the creation of indebtedness or multiple fiscal year financial obligation, nor a mandatory payment obligation of the Town in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect;

WHEREAS, the Trustee will enter into an Indenture of Trust (the “Indenture”) pursuant to which there will be executed and delivered certain certificates of participation (the “Certificates”) that will evidence the right to receive certain revenues under the Lease, which Certificates shall be payable solely from the sources therein provided and shall not directly or indirectly obligate the Town to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect;

WHEREAS, it is expected that the Certificates will be purchased by Compass Mortgage Corporation (the “Initial Purchaser”);

WHEREAS, the proceeds from the sale of the Certificates will finance the Improvement Project, the Refunding Project and the costs of issuance in connection therewith;

WHEREAS, Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S., as amended (the “Supplemental Act”), provides that a public entity, including the Town, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act;

WHEREAS, there has been presented to the Council and are on file at the Town offices the following: (i) the proposed form of the Quitclaim Deed; and (ii) the proposed form of the Lease; and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease.
NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO:

Section 1. Recitals Incorporated. The foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Council.

Section 2. Ratification and Approval of Prior Actions. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Council or the officers, agents or employees of the Town relating to the conveyance of the Site to the Trustee pursuant to the Quitclaim Deed, the Lease, the acquisition and construction of the Improvement Project, the implementation of the Refunding Project, and the sale, execution and delivery of the Certificates to the Initial Purchaser, is hereby ratified, approved and confirmed.

Section 3. Finding of Best Interests. The Council hereby finds and determines, pursuant to the Constitution, the laws of the State of Colorado and the Charter, that the acquisition, construction and installation of the Improvement Project, the implementation of the Refunding Project, and the financing of the costs thereof, including the costs of issuance incurred in connection therewith, pursuant to the terms set forth in the Quitclaim Deed, the Lease and the Indenture are necessary, convenient, and in furtherance of the Town’s public purposes and are in the best interests of the Town and the Council hereby authorizes and approves the same.

Section 4. Supplemental Act: Parameters. The Council hereby elects to apply all the provisions of the Supplemental Act to the Lease and in connection therewith delegates to each of the Mayor or the Town Manager the independent authority to make any determination delegable pursuant to § 11-57-205(1)(a-l) C.R.S., as amended, in relation to the Lease, and to execute a sale certificate (the “Sale Certificate”) setting forth such determinations, including without limitation, the term of the Lease, and the rental amount to be paid by the Town pursuant to the Lease, subject to the following parameters and restrictions:

a. the consideration to be received by the Town from the Trustee for the conveyance of the Site shall not be less than $650,000, which shall be paid by the Trustee with the net proceeds of the Certificates;

b. the aggregate principal amount of the Base Rentals payable by the Town pursuant to the Lease shall not exceed $9,110,000;

c. the Lease Term shall not extend beyond December 31, 2030;

d. the maximum annual Base Rentals under the Lease shall not exceed $1,090,000, and the total aggregate Base Rentals under the Lease shall not exceed $13,215,000;

e. the maximum tax-exempt interest rate on the interest component of the Base Rentals relating to the Certificates shall not exceed 5.870%, provided that the Certificates may bear interest at the Taxable Rate upon the occurrence and continuation of an Event of Taxability; and

f. the purchase price of the Certificates shall not be less than 100% of the principal amount of the Certificates.

Pursuant to § 11-57-205 of the Supplemental Act, the Council hereby delegates to each of the Mayor or the Town Manager the independent authority to select the purchaser of the Certificates, to sign a contract for the purchase of the Certificates or to accept a binding bid for the Certificates and to execute any agreement or agreements in connection therewith.
The delegation set forth in this Section 4 shall be effective for one year following the date hereof.

Section 5. Approval of Documents. The Quitclaim Deed and the Lease, in substantially the forms presented to the Council and on file with the Town, are in all respects approved, authorized and confirmed, and the Mayor or Mayor Pro Tem of the Town is hereby authorized and directed for and on behalf of the Town to execute and deliver the Quitclaim Deed and the Lease, in substantially the forms and with substantially the same contents as presented to the Council, provided that such documents may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance.

Section 6. Authorization to Execute Collateral Documents. The Town Clerk is hereby authorized and directed to attest all signatures and acts of any official of the Town in connection with the matters authorized by this Ordinance and to place the seal of the Town on any document authorized and approved by this Ordinance. The Mayor, the Town Clerk, the Town Manager, the Finance Director and other employees and officials of the Town are hereby authorized and directed to execute and deliver for and on behalf of the Town all additional certificates, documents and other papers, and to perform all other acts that they may deem necessary or appropriate to implement and carry out the transactions and other matters authorized by this Ordinance. The approval hereby given to the various documents referred to above includes an approval of such additional details therein as may be necessary and appropriate for their completion, deletions therefrom and additions thereto as may be approved by the Mayor or Town Manager prior to the execution of the documents. The execution of any instrument by the appropriate officers of the Town herein authorized shall be conclusive evidence of the approval by the Town of such instrument in accordance with the terms hereof.

Section 7. No General Obligation Debt. No provision of this Ordinance, the Quitclaim Deed, the Lease, the Indenture, or the Certificates shall be construed as creating or constituting a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional, statutory or Charter provision, nor a mandatory charge or requirement against the Town in any ensuing fiscal year beyond the then current fiscal year. The Town shall have no obligation to make any payment with respect to the Certificates except in connection with the payment of the Base Rentals and certain other payments under the Lease, which payments may be terminated by the Town in accordance with the provisions of the Lease. Neither the Lease nor the Certificates shall constitute a mandatory charge or requirement of the Town in any ensuing fiscal year beyond the then current fiscal year or constitute or give rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional, statutory or Charter debt limitation and shall not constitute a multiple fiscal year direct or indirect debt or other financial obligation whatsoever. No provision of the Quitclaim Deed, the Lease or the Certificates shall be construed or interpreted as creating an unlawful delegation of governmental powers nor as a donation by or a lending of the credit of the Town within the meaning of Sections 1 or 2 of Article XI of the Colorado Constitution. Neither the Lease nor the Certificates shall directly or indirectly obligate the Town to make any payments beyond those budgeted and appropriated for the Town’s then current fiscal year.

Section 8. Adequate Consideration; Reasonableness of Rentals. The Council hereby determines that the consideration to be received by the Town for the conveyance of the Site to the Trustee pursuant to the Quitclaim Deed, in an amount not less than $650,000, is fair and adequate consideration for the conveyance of the Site. The Council further finds and directs that the consideration so received by the Town for the conveyance of the Site pursuant to the Quitclaim Deed shall be applied by the Town to the acquisition of the Equipment, to the repayment of the DOLA Loan, to the payment of the costs of issuance incurred in connection with the execution and delivery of the Lease and the Certificates, and to any other expenditures
that are in accordance with the Tax Certificate executed by the Town in connection with the execution and delivery of the Certificates.

The Council further hereby determines and declares that the Base Rentals due under the Lease, in the maximum amounts authorized pursuant to Section 4 hereof, constitute the fair rental value of the Leased Property and do not exceed a reasonable amount to place the Town under an economic compulsion to renew the Lease or to exercise its option to purchase the Leased Property pursuant to the Lease. The Council hereby determines and declares that the period during which the Town has an option to purchase the Leased Property (i.e., the entire maximum term of the Lease) does not exceed the useful life of the Leased Property.

Section 9. No Recourse against Officers and Agents. Pursuant to § 11-57-209 of the Supplemental Act, if a member of the Council, or any officer or agent of the Town acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the Certificates. Such recourse shall not be available either directly or indirectly through the Council or the Town, or otherwise, whether by any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Certificates and as a part of the consideration of their sale or purchase, any person purchasing or selling such Certificate specifically waives any such recourse.

Section 10. Repealed. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealed shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 11. Severability. If any article, section, paragraph, sentence, clause, phrase or other provision of this Ordinance is held to be unconstitutional, invalid or unenforceable for any reason, the invalidity or unenforceability of such article, section, paragraph, sentence, clause, phrase or other provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

Section 12. Charter Controls. Pursuant to Article XX of the State Constitution and the Charter, all State statutes that might otherwise apply in connection with the provisions of this Ordinance are hereby superseded to the extent of any inconsistencies or conflicts between the provisions of this Ordinance and the Sale Certificate authorized hereby and such statutes. Any such inconsistency or conflict is intended by the Council and shall be deemed made pursuant to the authority of Article XX of the State Constitution and the Charter.

Section 13. Effective Date. This Ordinance shall take effect upon final adoption at second reading, as provided by Section 3.5.5 of the Charter. The Town Clerk shall certify to the passage of this Ordinance and make not less than one copy of the adopted Ordinance available for inspection by the public during regular business hours.

INTRODUCED, MOVED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING ON JUNE 6, 2018, AND SET FOR PUBLIC HEARING AND SECOND READING AT 6:00 P.M. ON JUNE 12, 2018 AT THE TIMNATH ADMINISTRATION BUILDING, 4800 GOODMAN STREET, TIMNATH COLORADO AND ORDER PUBLISHED BY TITLE THIS 6th DAY OF JUNE 2018.

MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY TIMNATH TOWN COUNCIL ON JUNE 12, 2018.
TOWN OF TIMNATH

[Signature]
Jill Grossman-Belisle, Mayor

ATTEST:

[Signature]
Milissa Peters-Garcia, CMC
Town Clerk