TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 69, SERIES 2019

A RESOLUTION APPROVING THE INTERGOVERNMENTAL AGREEMENT REGARDING FUNDS FOR THE TIMNATH LANDING GENERAL IMPROVEMENT DISTRICT

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

WHEREAS, attached hereto as Exhibit A is the Intergovernmental Agreement Regarding Funds for the Timnath Landing General Improvement District (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 to enter into the Agreement.

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

Section 1. Approval
The Agreement is hereby approved in substantially the form attached hereto as Exhibit A, with such modifications and additions as the Town Manager, in consultation with legal counsel, determines to be necessary and appropriate to protect the interests of the Town or effectuate the purposes set forth herein and not otherwise inconsistent with this resolution.

INTRODUCED,MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON DECEMBER 10, 2019.

TOWN OF TIMNATH, COLORADO

Jill Grossman-Belisle, Mayor

ATTEST:

Milissa Peters-Garcia, CMC
Town Clerk
EXHIBIT A

Intergovernmental Agreement Regarding Funds for the Timnath Landing General Improvement District
INTERGOVERNMENTAL AGREEMENT REGARDING FUNDS FOR THE TIMNATH
LANDING GENERAL IMPROVEMENT DISTRICT

This INTERGOVERNMENTAL AGREEMENT REGARDING FUNDS FOR THE
TIMNATH LANDING GENERAL IMPROVEMENT DISTRICT (the “Agreement”) is
made and entered into as of this 10th day of December, 2019, by and between the TOWN OF
TIMNATH, a home-rule municipal corporation of the State of Colorado (the “Town”), and the
TOWN OF TIMNATH – TIMNATH LANDING GENERAL IMPROVEMENT
DISTRICT, a general improvement district located in the Town of Timnath (the “District”).
The Town and the District are collective referred to as the “Parties.”

RECITALS

WHEREAS, the District was organized pursuant to Ordinance No. 9, Series 2019 with
the power to provide any public streets, park and recreation, water, sanitation, and safety,
including but not limited to improvements to Timnath Landing Parkway, improvements to
Harmony Road, Boxelder Floodplain mitigation, and County Road 40 extra improvements
(collectively, the “Improvements”); and

WHEREAS, the District has incurred and will incur costs in furtherance of the District’s
permitted purposes, including but not limited to, costs in the nature of general operating,
administrative and maintenance costs, such as attorney, engineering, architectural, surveying,
district management, accounting, auditing, insurance, and other costs necessary to continued
good standing under applicable law (the “Costs”); and

WHEREAS, the District does not presently have financial resources to provide funding
for payment of Costs that are projected to be incurred prior to the anticipated availability of
funds; and

WHEREAS, the District has determined that delay in the provision of the Improvements
and the conduct of other service functions by the District will impair the ability to provide
facilities and services necessary to support the Timnath Landing project on a timely basis; and

WHEREAS, the Town is willing to loan funds to the District, from time to time, on the
condition that the District agrees to repay such loans, in accordance with the terms set forth in
this Agreement; and

WHEREAS, the District is willing to execute one or more reimbursement notes, bonds,
or other instruments (“Reimbursement Obligations”), in an aggregate principal amount not to
exceed the Maximum Loan Amount (as defined below), to be issued to or at the direction of the
Town upon its request, subject to the terms and conditions hereof, to further evidence the
District’s obligation to repay the funds loaned hereunder; and

1229.0300; 999493
WHEREAS, the District anticipates repaying moneys advanced by the Town hereunder, including as evidenced by any requested Reimbursement Obligations, with funds available from ad valorem taxes, fees, or other legally available revenues of the District, net of any debt service obligations or annual operations and maintenance costs of the District; and

WHEREAS, the Town and the District have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and stipulations set forth the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

COVENANTS AND AGREEMENTS

1. Loan Amount and Term. The Town agrees to loan to the District one (1) or more sums of money to be used to fund Costs, not to exceed the aggregate of $50,000 per annum for five (5) years, up to $250,000 (as the same may be subsequently increased by agreement of the Parties and execution of a supplement or addendum to this Agreement) (the “Maximum Loan Amount”). Any amounts loaned to the District prior to the date of this Agreement shall not count against the $50,000 per annum loan amount. These funds shall be loaned to the District in one (1) or a series of installments and shall be available to the District through December 31, 2024 (as the same may be amended pursuant to a supplement or amendment hereto, the “Loan Obligation Termination Date”). Thereafter, the Town may agree to renew its obligations hereunder by providing written notice thereof to the District, in which case the Loan Obligation Termination Date shall be amended to the date provided in such notice, which date shall not be earlier than December 31 of the succeeding year. Any and all amounts loaned to the District to fund Costs, shall be documented from time to time on the schedule set forth in Exhibit A, attached hereto and incorporated herein by reference.

2. Improvement Funding. The Town and CAC Timnath, LLC (the “Developer”) entered into that certain Amended and Restated Master Subdivision Improvement Agreement for Timnath Landing dated October 24, 2017 (the “SIA”). Pursuant to the SIA, the Developer will from time to time pay funds to the Town for the purposes of funding the Improvements. Any and all amounts paid by the Developer to the Town for the Improvements, shall be documented from time to time on the schedule set forth in Exhibit B attached hereto and incorporated herein by reference.

3. Interest. No interest shall be paid or shall accrue on any funds loaned by the Town to the District or any funds paid by the Developer to the Town for the purposes of funding the Improvements.

4. Subject to Annual Appropriation and Budget. The Parties do not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The performance of those obligations of the Parties pursuant to this Agreement requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations. Each Party expressly understands and agrees that the other Party’s obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement and shall not constitute a mandatory charge, requirement, or liability in any ensuing fiscal year beyond the then-current
fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by either Party, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of either Party’s funds.

5. **Notices.** All notices, demands, requests, or other communications to be sent by one Party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address of by courier delivery, via United Parcel Service or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the Town:

Town of Timnath
4750 Signal Tree Drive
Timnath, Colorado 80547
Telephone: 970-224-3211
Fax No. 970-224-3217

With a copy to:

**WHITE BEAR ANKELE TANAKA & WALDRON**
Attorneys at Law
Attention: Robert G. Rogers, Esq.
2154 E. Commons Avenue, Suite 2000
Centennial, CO 80122
rrogers@wbapc.com

To the District:

Town of Timnath - Timnath Landing General Improvement District
4750 Signal Tree Drive
Timnath, Colorado 80547
Telephone: 970-224-3211
Fax No. 970-224-3217

All notices, demands, requests, or other communications shall be effective upon such personal delivery, or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service, or three (3) business days after deposit in the United States mail. By giving the other Party at least ten (10) days’ written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right to change its address.

6. **Good Faith.** Except for any matters expressly stated to be in the sole discretion of a Party, the Parties shall act in good faith and shall not act unreasonably, arbitrarily, or capriciously in the performance of their obligations under this Agreement. Any consent required to be given pursuant to the terms of this Agreement, unless stated to be in the sole discretion of one Party, shall not be unreasonably withheld, conditioned, delayed, or denied.
7. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the Parties.

8. Assignment. Neither Party shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other Party, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

9. Default/Remedies. If either Party fails to perform in accordance with the terms, covenants and conditions of this Agreement, or is otherwise in default of any of the terms of this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of the default, at the address specified in this Agreement, and then the defaulting party will have fifteen (15) days from receipt of the notice to cure the default. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall be entitled to obtain its reasonable attorneys’ fees from the other Party.

10. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for any dispute shall be in the District Court for Larimer County, Colorado.

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

12. 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 the District 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 District and the Town shall be for the sole and exclusive benefit of the District and the Town.

13. 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.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

15. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

[Signature Pages to Follow.]
IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first written above.

TOWN:

THE TOWN OF TIMNATH

[Signature]
Jill Grossman-Belisle, Mayor

ATTEST:

[Signature]
Milissa Peters-Garcia, CMC
Town Clerk
DISTRICT:

TOWN OF TIMNATH – TIMNATH LANDING
GENERAL IMPROVEMENT DISTRICT

Jill Grossman-Belisle, Mayor/Chairman of the
Board of Directors

ATTEST:

Milissa Peters-Garcia, CMC,
Town Clerk/District Secretary
EXHIBIT A

AMOUNTS LOANED TO FUND COSTS
## EXHIBIT B

### IMPROVEMENT FUNDING

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