A RESOLUTION APPROVING THE INDEPENDENT CONTRACTOR AGREEMENT FOR PROPERTY MANAGEMENT SERVICES

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 Independent Contractor Agreement for Property Management Services by and between the Town and Waypoint Property Management, LLC (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

Independent Contractor Agreement for Property Management Services
INDEPENDENT CONTRACTOR AGREEMENT
(Property Management Services)

This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the “Agreement”), is entered into as of the 10th day of December, 2019, by and between THE TOWN OF TIMNATH, a home rule municipal corporation and political subdivision of the State of Colorado (the “Town”), and WAYPOINT PROPERTY MANAGEMENT, LLC a Colorado limited liability company (the “Contractor”). The Town and the Contractor are referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Town was organized pursuant to Title 31 of the Colorado Revised Statutes to provide certain services within its corporate boundaries; and

WHEREAS, the Town is authorized to contract for the provision of such services pursuant to § 31-15-101 et seq., C.R.S.; and

WHEREAS, funds have been budgeted and are available for the work to be performed by the Contractor under this Agreement, and other necessary approvals have been obtained; and

WHEREAS, the Town owns certain real property located at 5125 4th Street, Timnath Colorado, 3927 Main Street, Timnath, Colorado and 4201 Main Street, Timnath, Colorado, and those certain improvements, fixtures, and equipment located thereon (collectively, the "Properties"); and

WHEREAS, the Town desires to engage the Contractor to render the property management services for the Properties described in this Agreement; and

WHEREAS, the Contractor has represented that it has the professional experience, skill and resources to perform the services, as set forth herein.

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:

TERMS AND CONDITIONS

1. SCOPE OF SERVICES. The Contractor shall perform the services described in Exhibit A, attached hereto and incorporated herein by this reference (the “Services”): (a) in a first-class manner, to the reasonable satisfaction of the Town, using the degree of skill and knowledge customarily employed by other professionals performing similar services in the area of the Town; (b) within the time period and pursuant to the Scope of Services specified in said Exhibit A; (c) in such a manner as to minimize any annoyance, interference or disruption to the residents, tenants, occupants and invitees within the Town; and (d) in compliance with all applicable federal, state,
county and local or municipal body or agency statutes, ordinances and regulations, including, without limitation, any licensing, bonding, and permit requirements, and including without limitation, any such laws relating to storage, use or disposal of hazardous wastes, substances or materials. **Exhibit A** may take any form, including forms which may include price and payment terms. In the event of any conflict between terms set forth in the body of this Agreement and terms set forth in **Exhibit A**, the terms in the body of this Agreement shall govern. Contractor 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.

2. **TERM/RENEWAL.**

   a. This Agreement shall be effective as of December 1, 2019 and shall terminate on the earlier to occur of: (i) termination pursuant to Section 19 hereof; or (ii) December 31, 2019. Notwithstanding the foregoing, unless terminated pursuant to subsection (i) above, or unless the Town determines not to appropriate funds for this Agreement for the next succeeding year, this Agreement shall automatically renew for each succeeding year for an additional one (1) year term commencing January 1 of the next succeeding year.

   b. This Agreement is contingent upon and subject to approval by the Town Council. If such approval is granted after the effective date, the effective date shall be extended until such approval is received.

3. **ADDITIONAL SERVICES.** The Town may request the Contractor to provide additional services not set forth in **Exhibit A**. The terms and conditions of the provision of such services shall be subject to the mutual agreement of the Contractor and the Town pursuant to a written service/work order executed by an authorized representative of the Town and the Contractor. Authorization to proceed with additional services shall not be given unless the Town has appropriated funds sufficient to cover the additional compensable amount. To the extent additional services are provided pursuant to this Section 3, the terms and conditions of this Agreement relating to Services shall also apply to any additional services rendered.

4. **REPAIRS/CLAIMS.** The Contractor shall notify the Town immediately of any and all damage caused by the Contractor to Town property and that of third parties. The Contractor will promptly repair or, at the Town’s option, reimburse the Town for the reasonable cost of repair of any damage to property caused by the Contractor or its employees, agents or equipment. In addition, the Contractor shall promptly notify the Town of all potential claims of which it becomes aware. The Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the Town the opportunity to review and inspect such evidence, including the scene of any damage or accidents. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Services and shall provide all reasonable protection to prevent damage or injury to persons and property, including any material and equipment related to the Services, whether in storage on or off site, under the care, custody, or control of the Contractor or any of its subcontractors.
5. GENERAL PERFORMANCE STANDARDS.

a. The Contractor has by careful examination ascertained: (i) the nature and location of the Services; (ii) the configuration of the ground on which the Services are to be performed; (iii) the character, quality, and quantity of the labor, materials, equipment and facilities necessary to complete the Services; (iv) the general and local conditions pertaining to the Services; and (v) all other matters which in any way may reasonably be expected to affect the performance of the Services by the Contractor. Contractor enters into this Agreement solely because of the results of such examination and not because of any representations pertaining to the Services or the provision thereof made to it by the Town or any agent of the Town and not contained in this Agreement. The Contractor represents that it has or shall acquire the capacity and the professional experience and skill to perform the Services and that the Services shall be performed in accordance with the standards of care, skill and diligence provided by competent professionals who perform services of a similar nature to those specified in this Agreement. If competent professionals find that the Contractor’s performance of the Services does not meet this standard, the Contractor shall, at the Town’s request, re-perform the Services not meeting this standard without additional compensation.

b. The Services of the Contractor shall be undertaken and completed to assure their expeditious completion in light of the purposes of this Agreement. If performance of the Services by the Contractor is delayed due to factors beyond the Contractor’s reasonable control, or if conditions of the scope or type of services are expected to change, Contractor shall give timely notice to the Town of such a delay or change and receive an equitable adjustment of time and/or compensation, as negotiated between the Parties.

c. The Services provided under this Agreement shall be adequate and sufficient for the intended purposes and shall be completed in a good and workmanlike manner.

d. The Contractor declares that it has complied with all Federal, State and local laws, rules, regulations, ordinances and/or similar directives regarding business permits, certificates and licenses that are required to provide the Services under this Agreement.

e. The responsibilities and obligations of the Contractor under this Agreement shall not be relieved or affected in any respect by the presence of any agent, consultant, subcontractor or employee of the Town. Review, acceptance or approval by the Town of the Services performed or any documents prepared by the Contractor shall not relieve the Contractor of any responsibility for deficiencies, omissions or errors in said Services or documents, nor shall it be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

6. MONTHLY STATUS REPORT. The Contractor shall provide to the Town, at the Town’s request, on or before the 25th of each month, a narrative progress and status report describing work in progress and results achieved during the reporting period, including a description of the Services performed during the invoice period and the Services anticipated to be performed during the ensuing invoice period ("Monthly Report").
7. COMPENSATION AND INVOICES.

a. Compensation. Compensation for the Services provided under this Agreement shall be in accordance with the compensation schedule attached hereto as Exhibit B. The Contractor shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as provided in Exhibit B of this Agreement, unless said reimbursement or compensation is approved in writing by the Town in advance of incurring such expenses. Any direct reimbursable costs for materials will be reimbursable at the Contractor’s actual cost, provided that the Contractor shall make a reasonable attempt to notify the Town of the estimated amount of such reimbursable costs (or any material adjustments thereto subsequently identified) prior to commencing the requested services. Concurrent with the execution of this Agreement, the Contractor shall provide the Town with a current completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification) (“W-9”). No payments will be made to the Contractor until the completed W-9 is provided. The W-9 shall be attached hereto and incorporated herein as Exhibit B-1.

b. Invoices. Invoices for the Services shall be submitted monthly, by the 10th of each month, during the term of the Agreement and shall contain the following information:

i. An itemized statement of the Services performed.

ii. Any other reasonable information required by the Town to process payment of the invoice, including project and/or cost codes as provided in any applicable written service/work order.

The Town shall be charged only for the actual time and direct costs incurred for the performance of the Services. Invoices received by the Town after the 10th of each month may be processed the following month.

8. TIME FOR PAYMENT. Payment for the Services shall be made by the Town within thirty (30) days of receipt of: (i) a timely, satisfactory and detailed invoice; and (ii) if applicable, a satisfactory and detailed Monthly Report, for that portion of the Services performed and not previously billed. The Town may determine to waive or extend the deadline for filing the Monthly Report, or may make payment for Services to the Contractor notwithstanding a delay in filing the Monthly Report, upon reasonable request of the Contractor, if it is in the best interest of the Town to do so. In the event a Town Council meeting is not scheduled in time to review payment of an invoice, the Town hereby authorizes payment for Services, subject to the appropriation and budget requirements under Section 28, without the need for additional Town Council approval, so long as any payment required to be made does not exceed the amounts appropriated for such Services as set forth in the Town’s approved budget. Such payment shall require review and approval of each Monthly Report and invoice by the Town Manager or applicable Department Head, as appropriate, subject to ratification at the next succeeding special or regular Town Council meeting.
9. INDEPENDENT CONTRACTOR. The Contractor is an independent contractor and nothing in the Agreement shall constitute or designate the Contractor or any of its employees or agents as employees or agents of the Town. The Contractor shall have full power and authority to select the means, manner and method of performing its duties under this Agreement, without detailed control or direction from the Town, and shall be responsible for supervising its own employees or subcontractors. The Town is concerned only with the results to be obtained. The Town shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state or federal income or other tax contributions, insurance contributions (e.g. FICA taxes), workers' compensation, disability, injury, health or life insurance, professional liability insurance, errors and omissions insurance, vacation or sick-time benefits, retirement account contributions, or any other form of taxes, benefits or insurance. The Contractor shall be responsible for its safety, the safety of its employees, the public and the work site in general and shall comply with all applicable provisions of local, state and federal laws, regulations and orders affecting safety and health, including but not limited to the Occupational Safety and Health Act of 1970 (OSH Act). All personnel furnished by the Contractor will be deemed employees of the Contractor and will not for any purpose be considered employees or agents of the Town, and the Contractor will comply with all employment laws relative to such employees, including but not limited to Wage and Hour laws, Worker Compensation Laws, Immigration Laws and OSHA-type laws. The Contractor is not entitled to worker's compensation benefits or unemployment insurance benefits, unless unemployment compensation coverage is provided by the Contractor or some other entity other than the Town, and the Contractor is obligated to pay federal and state income taxes on moneys earned pursuant to this Agreement.

10. PUBLIC EMPLOYEES’ RETIREMENT ASSOCIATION: EMPLOYEE MEMBERSHIP. Contractor agrees that, concurrent with execution of this Agreement, Contractor will disclose to the Town the membership status of any of Contractor’s employees that are members of the Colorado Public Employees’ Retirement Association pursuant to § 24-51-301 et seq., C.R.S. Failure to meet this requirement shall be a material breach of this Agreement, and the Town’s obligations to perform under this Agreement are specifically conditioned on Contractor’s performance as required under this Paragraph 10.

11. EQUAL OPPORTUNITY / EMPLOYMENT ELIGIBILITY. This Agreement is subject to all applicable laws and executive orders relating to equal opportunity and non-discrimination in employment and the Contractor represents and warrants that it will not discriminate in its employment practices in violation of any such applicable law or executive order.

The Contractor hereby states that it does not knowingly employ or contract with illegal aliens and that the Contractor has participated in or has attempted to participate in the E-Verify Program or Department Program (formerly known as the Basic Pilot Program) (as defined in § 8-17.5-101, C.R.S.) in order to verify that it does not employ any illegal aliens. The Contractor affirmatively makes the follow declarations:

a. The Contractor shall not knowingly employ or contract with an illegal alien who will perform work under the public contract for services contemplated in the Agreement and will
participate in the E-Verify Program or Department Program (as defined in § 8-17.5-101, C.R.S.) in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services contemplated in the Agreement.

b. The Contractor shall not knowingly enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform the services contemplated in the Agreement.

c. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.

d. The Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

e. If the Contractor obtains actual knowledge that a subcontractor performing the services under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to:

i. Notify the subcontractor and the Town within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien.

ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required above the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

f. The Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that such Department is undertaking pursuant to the authority established in § 8-17.5-102, C.R.S.

g. If the Contractor violates a provision of the Agreement pursuant to § 8-17.5-102, C.R.S., the Town may terminate the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the Town.

12. CONTRACTOR'S INSURANCE.

a. The Contractor shall acquire and maintain, at its sole cost and expense, during the entire term of this Agreement, insurance coverage in the minimum amounts set forth in Exhibit C, attached hereto and incorporated herein by this reference. A waiver of subrogation and rights of recovery against the Town, its directors, officers, employees and agents is required for each coverage provided. The Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the Town as an additional insured. All
coverage provided pursuant to this Agreement shall be written as primary policies, not contributing with and not supplemental to any coverage that the Town may carry, and any insurance maintained by the Town shall be considered excess. The Town shall have the right to verify or confirm, at any time, all coverage, information or representations required by this Section 12 of the Agreement.

b. Prior to commencing any work under this Agreement, the Contractor shall provide the Town with a certificate or certificates evidencing the policies required by this Agreement, as well as the amounts of coverage for the respective types of coverage, which certificate(s) shall be attached hereto as Exhibit C-1. If the Contractor subcontracts any portion(s) of the Services, said subcontractor(s) shall be required to furnish certificates evidencing statutory workers' compensation insurance, comprehensive general liability insurance and automobile liability insurance in amounts satisfactory to the Town and the Contractor. If the coverage required expires during the term of this Agreement, the Contractor or subcontractor shall provide replacement certificate(s) evidencing the continuation of the required policies.

c. The Contractor's failure to purchase the required insurance shall not serve to release it from any obligations contained in the Agreement; nor shall the purchase of the required insurance serve to limit the Contractor's liability under any provision in the Agreement. The Contractor shall be responsible for the payment of any deductibles on issued policies.

13. CONFIDENTIALITY AND CONFLICTS.

a. Confidentiality. During the performance of this Agreement, if the Contractor is notified that certain information is to be considered confidential, the Contractor, on behalf of its employees, agrees to enter into a confidentiality agreement. Any information deemed confidential by the Town and given to the Contractor by the Town, or developed by the Contractor as a result of the performance of a particular task, shall remain confidential. In addition, the Contractor shall hold in strict confidence, and shall not use in competition, any information which the Contractor becomes aware of under or by virtue of this Agreement which the Town deems confidential, or which the Town has agreed to hold confidential, or which, if revealed to a third party, might reasonably be construed to be contrary to the best interests of the Town, provided, however, the Town shall notify the Contractor in writing of the confidential nature of any confidential information and such notification shall be a prerequisite to Contractor's duties under this Section 13(a).

b. Conflicts. Prior to the execution of, and during the performance of this Agreement and prior to the execution of future agreements with the Town, the Contractor agrees to notify the owner of conflicts that impact the Services to the Town.

14. OWNERSHIP OF DOCUMENTS. All documents produced by or on behalf of the Contractor prepared pursuant to this Agreement, including, but not limited to, all maps, plans, drawings, specifications, reports, electronic files and other documents, in whatever form, shall remain the property of the Town under all circumstances, upon payment to the Contractor of the invoices representing the work by which such materials were produced. The Contractor shall maintain electronic and reproducible copies on file of any such instruments of service involved in
the Services, shall make them available for the Town’s use and shall provide such copies to the Town upon request at no cost.

15. **LIENS AND ENCUMBRANCES.** The Contractor shall not have any right or interest in any Town assets, nor any claim or lien with respect thereto, arising out of this Agreement or the performance of the services contemplated in the Agreement. The Contractor, for itself, hereby waives and releases any and all statutory or common law mechanic’s, materialmen’s or other such lien claims, or rights to place a lien upon the Town’s property or any improvements thereon in connection with any Services performed under or in connection with this Agreement, and the Contractor shall cause all permitted subcontractors, suppliers, materialmen, and others claiming by, through or under the Contractor to execute similar waivers prior to commencing any work or providing any materials in connection with the Services. The Contractor further agrees to execute a sworn affidavit respecting the payment and lien releases of all subcontractors, suppliers and materialmen, and release of lien respecting the Services at such time or times and in such form as may be reasonably requested by the Town for any work or supplies for which Contractor has been paid. The Contractor will provide indemnification against all such liens for labor performed, materials supplied or used by the Contractor and/or any other person in connection with the Services undertaken by the Contractor, in accordance with Section 16(b), below, for all work or supplies for which Contractor has been paid.

16. **INDEMNIFICATION.**

   a. The Contractor shall defend, indemnify and hold harmless the Town and each of its directors, officers, contractors, employees, agents and consultants, from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses, including reasonable legal expenses and attorneys’ fees, by the degree or percentage of negligence or fault arising directly or indirectly, out of the errors or omissions, negligence, willful misconduct, or any criminal or tortious act or omission of the Contractor or any of its subcontractors, officers, agents or employees, in connection with this Agreement and/or the Contractor’s performance of the Services or work pursuant to this Agreement. The Contractor is not obligated to indemnify the Town for the Town’s own errors or omissions, negligence, willful misconduct or any criminal or tortious act or omission of the Town or its employees, agents, independent contractors and representatives. This indemnification obligation will not be limited in any way by any limitation on the amount or types of damages, compensation or benefits payable by or for the Contractor under worker’s compensation acts, disability acts or other employee benefit acts.

   b. The Contractor will at all times indemnify, defend and hold the Town and its directors, officers, managers, agents and employees harmless against any liability for claims and liens for labor performed or materials used or furnished in the performance of Contractor’s Services for which Contractor has been paid, including any costs and expenses incurred in the defense of such claims and liens, reasonable attorneys’ fees and any damages to the Town resulting from such claims or liens. After written demand by the Town, the Contractor will cause the effect of any suit or lien related to labor performed or materials used or furnished for which Contractor has been paid to be removed from the Town’s property within fourteen (14) days. In the event the Contractor fails to do so, the Town is authorized to use whatever means in its discretion it may deem appropriate to cause said lien or suit to be removed or dismissed, and the costs thereof,
together with reasonable attorneys’ fees, will be immediately due and payable by the Contractor or may, at the Town’s option, be offset against any sums due and payable to Contractor pursuant to this Agreement. In the event a suit on such claim or lien related to labor performed or materials used or furnished for which Contractor has been paid is brought, the Contractor will, at the option of the Town, defend said suit at its own cost and expense, with counsel reasonably satisfactory to the Town and will pay and satisfy any such claim, lien, or judgment as may be established by the decision of the Court in such suit. The Contractor may litigate any such lien or suit, provided the Contractor causes the effect thereof to be removed promptly in advance from the Town’s property as required above.

c. This indemnity coverage shall also cover the Town’s defense costs in the event that the Town, in its sole discretion, elects to provide its own defense. The Town retains the right to disapprove counsel, if any, selected by the Contractor to fulfill the foregoing defense indemnity obligation, which right of disapproval shall not be unreasonably exercised. Insurance coverage requirements specified in the Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the Town’s protection in the performance of this Agreement. This defense and indemnification obligation shall survive the expiration or termination of this Agreement. Notwithstanding the foregoing, the parties, on behalf of themselves and their respective insurers, waive any rights of subrogation they may have up to the limits of any applicable insurance policy. Further, each party waives any rights of recovery they may have against the other party for any damages of any kind or nature to the extent such damages are covered by any insurance policy covering such party.

17. **ASSIGNMENT.** The Contractor shall not assign this Agreement or parts thereof, or its respective duties, without the express written consent of the Town. Any attempted assignment, delegation or subcontracting of this Agreement in whole or in part with respect to which the Town has not consented, in writing, shall be null and void and of no effect whatsoever.

18. **SUB-CONTRACTORS.** The Contractor is solely and fully responsible to the Town for the performance of all Services under this Agreement, whether performed by the Contractor or a subcontractor engaged by the Contractor. The Contractor shall not subcontract any Services without prior written approval by the Town, which will not be unreasonably withheld. The Contractor agrees that each and every agreement of the Contractor with any subcontractor to perform Services under this Agreement shall contain an indemnification provision identical to the one contained in Section 16 of this Agreement holding the Town harmless for the acts of the subcontractor. The Contractor further agrees that any such subcontract shall be terminable for cause or convenience and that, unless directed otherwise by the Town, the Contractor shall immediately terminate all such subcontracts immediately upon termination of this Agreement. Prior to commencing any Services, a subcontractor shall provide evidence of insurance coverage to the Town. The Contractor further agrees that all such subcontracts shall provide that they may be terminated immediately without further cost upon termination of this Agreement. Neither the Town’s approval of any subcontractors, suppliers or materialmen, nor the failure of performance thereof by such parties, will relieve, release or affect in any manner any of the Contractor’s duties, liabilities or obligations under this Agreement, and the Contractor will at all times be and remain fully liable. The Contractor agrees that each of its employees, and any subcontractors, suppliers
and materialmen will be properly qualified and will use reasonable care in the performance of their duties.

19. **TERMINATION.** In addition to the termination provisions contained in Section 2, above, this Agreement may be terminated for cause or for convenience by the Contractor upon delivery of sixty (60) days prior written notice to the Town and by the Town by giving the Contractor sixty (60) days prior written notice. Such notice shall not be required for automatic expiration under Section 2, above. If this Agreement is terminated, the Contractor shall be paid for all the Services satisfactorily performed prior to the designated termination date, including reimbursable expenses due. Said payment shall be made in the normal course of business. Should either Party to this Agreement be declared bankrupt, make a general assignment for the benefit of creditors or commit a substantial and material breach of this Agreement in the reasonable view of the other Party (and such breach continues after the cure periods set forth in Section 20), said other Party shall be excused from rendering or accepting any further performance under this Agreement. In the event of termination by either Party hereto, the Contractor shall cooperate with the Town to ensure a timely and efficient transition of all work and work product to the Town or its designee and each Party shall pay their own expenses associated with the transition of all work and work product.

20. **DEFAULT.** 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 Section 21 below, and the defaulting party will have fifteen (15) days from and after receipt of the notice to cure the default. If the default is not of a type which can be cured within such fifteen (15)-day period and the defaulting party gives written notice to the non-defaulting party within such fifteen (15)-day period that it is actively and diligently pursuing a cure, the defaulting party will have a reasonable period of time given the nature of the default following the end of the fifteen (15)-day period to cure the default, provided that the defaulting party is at all times within the additional time period actively and diligently pursuing the cure. If any default under this Agreement is not cured as described above, the non-defaulting party will, in addition to any other legal or equitable remedy, have the right to terminate this Agreement and enforce the defaulting party's obligations pursuant to this Agreement by an action for injunction or specific performance.

21. **NOTICES.** Any notice or communication required under this Agreement must be in writing, and may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent; or (ii) three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight carrier service, a notice will be deemed to have been given and received on the first to occur of: (i) one business day after being deposited with a nationally recognized overnight air courier service; or (ii) delivery to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided in this Section 21 of the Agreement, designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or
communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

To the Town: 
Town of Timnath
4800 Goodman Street
Timnath, CO 80547
Attention: Town Manager
970-224-3211 (phone)
970-224-3217 (fax)

With copy to: 
WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law
2154 East Commons Avenue, Suite 2000
Centennial, Colorado 80122
Attention: Robert G. Rogers, Esq.
(303) 858-1800 (phone)
(303) 858-1801 (fax)
rrogers@wbapc.com

Contractor: 
Waypoint Property Management, LLC
120 W. Olive, Suite 220
Fort Collins, Colorado 80524
Attention: Tom Hall
(970) 632-5050 (phone)
thall@waypointre.com

22. **AUDITS.** The Town shall have the right to audit, with reasonable notice, any of the Contractor’s books and records which may be necessary to substantiate any invoices and payments under this Agreement (including, but not limited to, receipts, time sheets, payroll and personnel records) and the Contractor agrees to maintain adequate books and records for such purposes during the term of this Agreement and for a period of two (2) years after termination of the Agreement and to make the same available to the Town at all reasonable times and for so long thereafter as there may remain any unresolved question or dispute regarding any item pertaining thereto.

23. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the Parties hereto relating to the Services, and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except by a writing executed by both the Contractor and the Town.

24. **BINDING AGREEMENT.** This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties hereto.

25. **NO WAIVER.** No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such
waiver constitute a continuing waiver unless otherwise expressly provided in the Agreement, nor shall the waiver of any default be deemed a waiver of any subsequent default.

26. GOVERNING LAW / DISPUTES.

a. Arbitration. All claims, counterclaims, disputes and other matters in question between the Parties hereto arising out of or relating to this Agreement or the breach hereof may be decided by Arbitration upon the mutual agreement to do so by the Parties to this Agreement. In that case, arbitration will be administered by the Judicial Arbiter Group in Denver, Colorado under its arbitration rules, by a single arbitrator, unless a different arbitrator is agreed upon by the Parties. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. THE PARTIES RECOGNIZE THAT BY AGREEING TO BINDING ARBITRATION AS THE METHOD FOR DISPUTE RESOLUTION, THEY RELINQUISH THE RIGHT TO BRING AN ACTION IN COURT AND WAIVE THE RIGHT TO A JURY TRIAL AND THE EXTENSIVE DISCOVERY RIGHTS TYPICALLY PERMITTED IN JUDICIAL PROCEEDINGS. Colorado law shall apply to any dispute, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado. Each Party will be responsible for paying one half of all fees and expenses charged by the arbitrator. Notice of request for arbitration must be filed in writing with the other Party(ies) to this Agreement. If agreed to, notice must be filed with the Judicial Arbiter Group. The request must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. In the event that the Parties do not agree to arbitration, each party shall be permitted to pursue all available legal and equitable remedies.

b. Litigation and Venue. In the event the Parties do not agree to arbitration pursuant to Section 26(a), above, venue for all actions arising from this Agreement shall be in the District Court in and for the county in which the Town is located. The Parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including, but not limited to, forum non-conveniens or otherwise. At the Town’s request, the Contractor shall carry on its duties and obligations under this Agreement during any legal proceedings and the Town shall continue to pay for the Services performed under this Agreement until and unless this Agreement is otherwise terminated.

c. Prevailing Party. Other than arbitration fees as set forth in Section 26(a) of the Agreement, in the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, whether by litigation, arbitration or other proceedings, the prevailing party shall recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney’s fees. For purposes of this Agreement, “prevailing party” shall mean the party in whose favor a judgment, decree, or final order is rendered, either by an arbitrator or the court, after appeal, if any. In the event both Parties prevail on one or more claims, the prevailing party shall mean the net winner of a dispute, taking into account the claims pursued, the claims on which the pursuing party was successful, the amount of money sought, the amount of money awarded, and offsets or counterclaims pursued (successfully or unsuccessfully) by the other Party. Notwithstanding the
foregoing, if a written offer of compromise made by either Party is not accepted by the other Party within thirty (30) days after receipt and the Party not accepting such offer fails to obtain a more favorable judgment, the non-accepting Party shall not be entitled to recover its costs of suit and reasonable attorney's fees and costs (even if it is the prevailing party) and shall be obligated to pay the costs of suit and reasonable attorney's fees and costs incurred by the offering Party.

d. The Contractor shall not be responsible for delays in the performance of the Services caused by factors beyond its reasonable control including delays caused by Act of God, accidents, failure of any governmental or other regulatory authority to act in a timely manner or failure of the Town to furnish timely information or to approve or disapprove of Contractor's Services in a timely manner.

27. GOOD FAITH OF PARTIES. In the performance of this Agreement, or in considering any requested approval, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.

28. SUBJECT TO ANNUAL APPROPRIATION AND BUDGET. The Town does 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 Town pursuant to this Agreement requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations. The Contractor expressly understands and agrees that the Town's obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by the Town 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 the Town, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the Town or statutory debt limitation, 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 Town funds. The Town's obligations under this Agreement exist subject to annual budgeting and appropriations, and shall remain subject to the same for the entire term of this Agreement.

29. 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, §§ 24-10-101 et seq., C.R.S.

30. 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.
31. **SEVERABILITY.** If any covenant, term, condition or provision of 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 in the Agreement, 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.

32. **NO THIRD PARTY BENEFICIARIES.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

33. **OPEN RECORDS.** The Parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, §§ 24-72-202 et seq., C.R.S.

34. **WARRANTY.** The Contractor shall and does by this Agreement guarantee and warrant that all workmanship, materials, and equipment furnished, installed, or performed for the accomplishment of the Services (collectively, the “Work”) will be of good quality and new, unless otherwise required or permitted by the Agreement. The Contractor further warrants that the Work will conform to all requirements of the Agreement and all other applicable laws, ordinances, codes, rules and regulations of any governmental authorities having jurisdiction over the Work. All Services are subject to the satisfaction and acceptance of the Town, but payments for the completed Work will not constitute final acceptance nor discharge the obligation of the Contractor to correct defects at a later date. Such warranties set forth in the Agreement are in addition to, and not in lieu of, any other warranties prescribed by Colorado law.

35. **TAX EXEMPT STATUS.** The Town is exempt from Colorado State sales and use taxes. Accordingly, taxes from which the Town is exempt shall not be included in any invoices submitted to the Town. The Town shall, upon request, furnish Contractor with a copy of its certificate of tax exemption. Contractor and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase the materials tax free. The Contractor and subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.

36. **COUNTERPART EXECUTION.** 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.

[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 and political subdivision of the State of Colorado

[Signature]
Jill Grossman-Belisle, Mayor

ATTEST:

[Signature]
Town Clerk

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law

[Signature]
[General Counsel to the Town]

Town's Signature Page to Independent Contractor Agreement for Property Management Services with the Town of Timnath, dated December 10, 2019
CONTRACTOR:

WAYPOINT PROPERTY MANAGEMENT, LLC,
a Colorado limited liability company

[Signature]

Printed Name: Tom Hall
Title: UP OF PROP MNT

STATE OF COLORADO )
COUNTY OF Larimer ) ss.

The foregoing instrument was acknowledged before me this 9th day of December, 2019, by Tom Hall, as the VP of Property Management of Contractor.

WITNESS my hand and official seal.

My commission expires: 8.22.2020

(SEAL)

Notary Public

LAURA L. PAPISH
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19964014371
MY COMMISSION EXPIRES AUGUST 22, 2020

Contractor's Signature Page to Independent Contractor Agreement for Property Management Services with the Town of Timnath, dated December 10, 2019
EXHIBIT A
SCOPE OF SERVICES

Contractor shall provide property management services for the Properties according to this Agreement and the following terms.

1. Contractor shall act as a “landlord’s agent.” A landlord’s agent is a limited agent with the following duties and obligations:

   a. To perform the terms of the Agreement;
   b. To exercise reasonable skill and care;
   c. To promote the interest of the Town with the utmost good faith, loyalty, and fidelity, including, but not limited to:
      i. Seeking rental rates and terms which are acceptable to the Town; except that Contractor shall not be obligated to seek additional offers to lease the premises while the premises are subject to an agreement to lease the premises;
      ii. Using the Town’s form lease for the Properties, as attached in Exhibit D;
      iii. Providing access to maintenance help twenty-four (24) hours a day, seven (7) days a week, via a phone number for residents to call regarding after-hours emergency requests at the Properties. This phone number shall be 970-632-5050, option #1;
      iv. Presenting all offers to and from the Town in a timely manner regardless of whether the property is subject to a contract for lease or letter of intent to lease;
      v. Disclosing to the Town adverse material facts actually known by Contractor;
      vi. Counseling the Town as to any material benefits or risks of a transaction which are actually known by the Contractor;
      vii. Advising the Town to obtain expert advice as to material matters about which the Contractor knows but the specifics of which are beyond the expertise of the Contractor;
      viii. Accounting in a timely manner for all money and property received; and
      ix. Informing the Town that it may be vicariously liable for the acts of the Contractor or any agent of Contractor or any subagent when the Contractor is acting within the scope of the agency relationship.

   d. To comply with all requirements of the Colorado Real Estate Commission § 12-61-804 and any rules promulgated pursuant to said Section.
   e. To comply with any applicable federal, state, or local laws, rules, and regulations.

2. The following information shall not be disclosed by Contractor acting as a landlord’s agent without the informed consent of the Town:

   a. That the Town is willing to accept less than the stated rental rate for the premises;
   b. What the motivating factors are for the Town to lease the property;
   c. That the Town will agree to lease terms other than those offered;
   d. Any material information about the Town unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing; or
   e. Any facts or suspicions regarding circumstances which may psychologically impact or stigmatize the premises pursuant to Colorado law.
3. Contractor shall disclose to any prospective tenant all adverse material facts actually known by Contractor including, but not limited to, adverse material facts pertaining to the title to the premises and the physical condition of the premises, any material defects in the premises, and any environmental hazards affecting the premises which are required by law to be disclosed.

4. Contractor shall not offer sub-agency to any other broker with respect to the Properties.

5. Contractor shall set up a trust account on behalf of the Town which shall be used to collect rent for the Properties and pay any bills for Properties with prior approval from the Town Manager. The account will maintain an operating balance of $2,500 for the duration of the Agreement. Contractor shall remit any excess funds to the Town via ACH on or about the 25th of each month. Upon termination of the Agreement, Contractor shall remit any and all remaining funds to the Town.
EXHIBIT B
COMPENSATION SCHEDULE

Town agrees to pay Contractor pursuant to the following Compensation Schedule:

1. 9% of the total monthly gross receipts from each property for each reporting period or $500/month, whichever is greater.

2. A fee of $500 for each issuance and completion of a lease, for each Property.

3. The services of staff employees of Contractor who perform general maintenance and repair on the Property are billed at an hourly rate, currently a maximum of $53.50.

4. All out of pocket costs actually incurred by Contractor related to the Property will be charged to Town.

5. Any late fees, penalties and interest collected on delinquent tenant accounts shall be divided one-half to the Town and one-half to the Contractor.

6. Contractor may assess tenants for certain fees including but not limited to the following, and Contractor shall be entitled to retain 100% of any such fees collected:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>Utility billing and handling fee assessed per occurrence for utility bills paid and charged to tenant if tenant has failed to transfer billing in accordance with the lease, or failed to pay for final utility services through the end of tenancy.</td>
<td>$75.00</td>
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<tr>
<td>Insufficient funds check fees assessed each time a tenant check is returned unpaid.</td>
<td>$50.00</td>
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<tr>
<td>Administrative fee set forth in leases for the review of a lease assignment or a sublease.</td>
<td>$500.00</td>
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</tbody>
</table>

* The above fees may be increased by Contractor at any time without notice to Town. However, at no time shall Town be responsible for the payment of any of the fees set forth above.

7. The Town agrees to reimburse Contractor for marketing costs incurred for professional photos. This reimbursement is limited to $200 for each Property.

Extraordinary Services.
In addition to the basic services to be provided by the Contractor to the Town and which are included in the Compensation Schedule, the Town may, from time to time, request that the Contractor provide certain extraordinary services ("Extraordinary Services") which exceed the customary and normal responsibilities of a property manager. Such Extraordinary Services shall include, by way of illustration and not by limitation, the following:
1. Participation by the Contractor as a witness and/or agent of the Town in any litigation relative to the enforcement of any obligation of the Town, or for enforcement of terms of leases of the Property, articles of incorporation, by-laws and/or rules and regulations relative to the property owned by the Town and/or the property owners' association governing the same, except that routine and non-contested collection of tenant obligations shall be included within the basic services.

2. Implementation of required changes resulting from federal, state or local laws, ordinances, resolutions and/or regulations adopted subsequent to the execution of this Agreement.

3. Other duties requested by the Town which are not included within the basic services to be provided by the Contractor and which are not usual and customary duties to be performed by a property manager.

Upon request of the Town to provide Extraordinary Services, the following charges will apply:

a. $150.00 per hour for services of the corporate officers of Contractor
b. $75.00 per hour for services of other management personnel of Contractor
c. $45.00 per hour for services of clerical personnel of Contractor.
d. Reimbursement of all out-of-pocket costs and expenses including, but not limited to, legal fees, accounting fees, engineering fees, postage, and copier fees.

Payments due to Contractor for periods of less than a calendar month shall be prorated over the number of days for which compensation is due. The term "gross receipts" shall be deemed to include all rents (including reasonable and customary triple net expenses for taxes, insurance and common area maintenance) and other income and charges from the normal operation of the Property. Gross receipts shall NOT be deemed to include income arising out of the sale of real property, or the settlement of fire or other casualty losses and items of a similar nature.
EXHIBIT C
INSURANCE REQUIREMENTS

NOTE: All insurance required and provided hereunder shall also comply with the provisions of Section 12 of the Agreement.

1. Standard Worker’s Compensation and Employer’s Liability Insurance covering all employees of Contractor involved with the performance of the Services, with policy amounts and coverage in compliance with the laws of the jurisdiction in which the Services will be performed.

2. Commercial General Liability Insurance with minimum limits of liability of not less than $1,000,000 per occurrence for bodily injury and property damage liability; $2,000,000 designated location, general aggregate. Such insurance will include coverage for contractual liability, personal injury and broad form property damage, and shall include all major divisions of coverage and be on a comprehensive basis including, but not limited to:
   a. premises operations;
   b. personal injury liability without employment exclusion;
   c. blanket contractual;
   d. broad form property damages, including completed operations;
   e. medical payments;
   f. products and completed operations;
   g. independent consultants coverage;
   h. coverage inclusive of construction means, methods, techniques, sequences, and procedures, employed in the capacity of a construction consultant; and

This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.

3. Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than $1,000,000 combined single limit bodily injury and property damage. This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.
CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Flood and Peterson
PO Box 578
Greeley, CO 80632

CONTACT NAME: Shannon Kammerer
PHONE (AIC NO. Ext.): (970) 356-0123
FAX (AIC NO. Ext.): (970) 330-1867
EMAIL: Skammerer@floodpeterson.com

INSURED
Waypoint Property Management, LLC
120 W. Olive St. Ste 220
Fort Collins, CO 80524

INSURER(S) AFFORDING COVERAGE

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<td>Hanover Insurance Company</td>
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COVERAGE

COVERAGES

CERTIFICATE NUMBER: x11/4/19-20

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERMIT, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

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<th>INDI</th>
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<td>ANY PROPRIETOR/OWNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)</td>
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</table>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 191, Additional Remarks Schedule, may be attached if more space is required)

Town of Timnath, its directors, officers, employees and agents are included as Additional Insured as required by written contract but only as respects to liability arising out of work performed by the named insured. The coverage is primary and non-contributory to any other valid and/or collectible insurance to the fullest extent the law allows per policy terms and conditions. Waiver of subrogation applies.

CERTIFICATE HOLDER

Town of Timnath
4600 Goodman Street
Timnath, CO 80547

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.
Exhibit D

LEASE AGREEMENT

This Lease Agreement (this "Agreement") is made this ____________, 2019, by and between the Town of Timnath, a Colorado home rule municipality (the "Landlord") and ____________ ("Tenant"). Each Landlord and Tenant may be referred to individually as a "Party" and collectively as the "Parties."

1. Premises. The premises leased is a house located at ____________, Timnath, CO 80547 (the "Premises"). The Premises includes the following furnishings: refrigerator, stove, dishwasher.

2. Agreement to Lease. Landlord agrees to lease to Tenant and Tenant agrees to lease from Landlord, according to the terms and conditions set forth herein, the Premises.

3. Term. This Agreement will be for a term beginning on ____________, 2019 and ending on ____________, 2020 (the "Term").

4. Rent. Tenant will pay Landlord a monthly rent of $1,800.00 for the Term. Rent will be payable in advance and due on the 1st day of each month during the Term. The first rent payment is payable to Landlord when Tenant signs this Agreement. Rent for any period during the Term which is for less than one month will be a pro rata portion of the monthly installment. Rent will be paid to Landlord at Landlord's address provided herein (or to such other places as directed by Landlord) by mail or in person by one of the following methods: Personal check, Cashier's check, Money order, Credit card, and will be payable in U.S. Dollars.

5. Late Fee. Rent paid after the 1st day of each month will be deemed as late; and if rent is not paid within ten (10) days after such due date, Tenant agrees to pay a late charge of $25.00 per day. Such fee will be considered additional rent as set forth in paragraph 6 below.

6. Additional Rent. There may be instances under this Agreement where Tenant may be required to pay additional charges to Landlord. All such charges are considered additional rent under this Agreement and will be paid with the next regularly scheduled rent payment. Landlord has the same rights and Tenant has the same obligations with respect to additional rent as they do with rent.

7. Utilities. Tenant is responsible for payment of all utility and other services for the Premises.

8. Security Deposit. Upon signing this Agreement, Tenant will pay a security deposit in the amount of $1,800.00 to Landlord. The security deposit will be retained by Landlord as security for Tenant's performance of its obligations under this Agreement. The security deposit may not be used or deducted by Tenant as the last month's rent of the Term. Tenant will be entitled to a full refund of the security deposit if Tenant returns possession of the Premises to Landlord in the same condition as accepted, ordinary wear and tear excepted. Colorado state law defines "normal wear
and tear” as “that deterioration which occurs based upon the use for which the rental unit is intended, without negligence, carelessness, accident or abuse of the premises or equipment by the tenant or members of his household, or their invitees or guests.”]** Within thirty (30) days after the termination of this Agreement, Landlord will return the security deposit to Tenant (minus any amount applied by Landlord in accordance with this section). Any reason for retaining a portion of the security deposit will be explained in writing. The security deposit will not bear interest while held by Landlord in accordance with applicable state laws and/or local ordinances.

9. **Landlord’s Failure to Give Possession.** In the event Landlord is unable to give possession of the Premises to Tenant on the start date of the Term, Landlord will not be subject to any liability for such failure, the validity of this Agreement will not be affected, and the Term will not be extended. Tenant will not be liable for rent until Landlord gives possession of the Premises to Tenant.

10. **Holdover Tenancy.** Unless this Agreement has been extended by mutual written agreement of the Parties, there will be no holding over past the Term under the terms of this Agreement under any circumstances. If it becomes necessary to commence legal action to remove Tenant from the Premises, the prevailing Party will be entitled to attorney’s fees and costs in addition to damages.

11. **Use of Premises.** The Premises will be used only for residential purposes. Tenant will not engage in any objectionable conduct, including behavior which will make the Premises less fit to live in, will cause dangerous, hazardous or unsanitary conditions or will interfere with the rights of others to enjoy their property. Tenant will be liable for any damage occurring to the Premises and any damage to or loss of the contents thereof which is done by Tenant or Tenant’s guests or invitees.

12. **Condition of the Premises.** Tenant has examined the Premises, including the appliances, fixtures and furnishings, and acknowledges that they are in good condition and repair, normal wear and tear excepted, and accepts them in its current condition.

13. **Maintenance and Repairs.** Tenant will maintain the Premises, including the grounds and all appliances, fixtures and furnishings, in clean, sanitary and good condition and repair. Tenant will not remove Landlord’s appliances, fixtures, or furnishings from the Premises for any purpose. If repairs other than general maintenance are required, Tenant will notify Landlord for such repairs. In the event of default by Tenant, Tenant will reimburse Landlord for the cost of any repairs or replacement.

14. **Rules and Regulations.** Landlord has prescribed the rules and regulations governing Tenant’s use and enjoyment of the Premises, attached hereto as Exhibit A, and incorporated by reference herein. Tenant acknowledges receipt of and agrees to adhere to such regulations.

15. **Reasonable Accommodations.** Landlord agrees to comply with all applicable laws providing equal housing opportunities, including making reasonable accommodations for known physical or mental limitations of qualified individuals with a disability, unless undue hardship would result. Tenant is responsible for making Landlord aware of any such required accommodations that are
reasonable and will not impose an undue hardship. If Tenant discloses a disability and requests an accommodation, Landlord has the right to have a qualified healthcare provider verify the disability if the disability is not readily apparent, and Landlord has the right to use the qualified healthcare provider verifying the disability as a resource for providing the reasonable accommodation.

16. Sex Offender Registry. Pursuant to law, information about specified registered sex offenders is made available to the public. Tenant understands and agrees that Tenant is solely responsible for obtaining any and all information contained in the state or national sex offender registry for the area surrounding the Premises, which can be obtained online or from the local sheriff’s department or other appropriate law enforcement officials. Depending on an offender’s criminal history, this information will include either the address at which the offender resides or the community of residence and zip code in which he or she resides.

17. Compliance. Tenant agrees to comply with all applicable laws, ordinances, requirements and regulations of any federal, state, county, municipal or other authority.

18. Mechanics’ Lien. Tenant understands and agrees that Tenant and anyone acting on Tenant’s behalf do not have the right to file for mechanic’s liens or any other kind of liens on the Premises. Tenant agrees to give actual advance notice to any contractors, subcontractors or suppliers of goods, labor or services that such liens are invalid. Tenant further agrees to take the additional steps necessary to keep the Premises free of any and all liens that may result from construction completed by or for Tenant.

19. Subordination. With respect to the Premises, this Agreement is subordinate to any mortgage that now exists, or may be given later by Landlord.

20. Alterations. Tenant will not make any alteration, addition or improvement to the Premises without first obtaining Landlord’s written consent. Any and all alterations, additions or improvements to the Premises are without payment to Tenant and will become Landlord’s property immediately on completion and remain on the Premises, unless Landlord requests or permits removal, in which case Tenant will return that part of the Premises to the same condition as existed prior to the alteration, addition or improvement. Tenant will not change any existing locks or install any additional locks on the Premises without first obtaining Landlord’s written consent and without providing Landlord a copy of all keys.

21. Smoking. Smoking of any kind is strictly prohibited on any part of the Premises. This prohibition applies to Tenant and any visitors, guests or other occupants on the Premises.

22. Pets. Tenant may have or keep one (1) pet on the Premises in accordance with the Pet Agreement Form, attached hereto as Exhibit B. Tenant agrees to pay an additional non-refundable pet fee in the amount of $250 prior to taking occupancy or bringing the pet on the Premises.

23. Inspection Checklist. In order to avoid disagreements about the condition of the Premises, at the time of accepting possession of the Premises, Tenant will complete the Inspection Checklist incorporated herein by reference and attached hereto as Exhibit C and record any damage or
deficiencies that exist at the commencement of the Term. Landlord will be liable for the cost of any cleaning or repair to correct damages found at the time of the inspection. Tenant will be liable for the cost of any cleaning and/or repair to correct damages found at the end of the Term if not recorded on the inspection checklist, normal wear and tear excepted.

24. **Fire and Casualty.** If the Premises are damaged by fire or other serious disaster or accident and the Premises becomes uninhabitable as a result, Tenant may immediately vacate the Premises and terminate this Agreement upon notice to Landlord. Tenant will be responsible for any unpaid rent or will receive any prepaid rent up to the day of such fire, disaster or accident. If the Premises are only partially damaged and inhabitable, Landlord may make full repairs and will do so within a prompt and reasonable amount of time. At the discretion of Landlord, the rent may be reduced while the repairs are being made.

25. **Liability.** Landlord is not responsible or liable for any loss, claim, damage or expense as a result of any accident, injury or damage to any person or property occurring anywhere on the Premises, unless resulting from the negligence or willful misconduct of Landlord.

26. **Renter's Insurance.** Tenant is required to obtain, and maintain at all times during the Term, a renter’s insurance policy with a minimum of $100,000.00 personal liability coverage. Tenant will name Landlord as an interested party or additional insured. Tenant will provide Landlord with a certificate or proof of insurance upon request.

27. **Assignment and Subletting.** Tenant will not assign this Agreement as to any portion or all of the Premises or make or permit any total or partial sublease or other transfer of any portion or all of the Premises.

28. **Insurance Requirements.** Tenant will not do or permit to be done any act or thing that will increase the insurance risk under any policy of insurance covering the Premises. If the premium for such policy of insurance increases due to a breach of Tenant’s obligations under this Agreement, Tenant will pay the additional amount of premium as additional rent under this Agreement.

29. **Right of Entry.** Tenant shall permit Landlord to enter the premises at reasonable times and upon reasonable notice for the purpose of making necessary or convenient repairs or reasonable inspections or to show the premises to prospective residents, purchasers, or lenders. Entry may be made without prior notice only if owner reasonably believes that an emergency exists, such as fire or broken water pipe, or that the premises have been abandoned.

30. **Surrender.** Tenant will deliver and surrender to Landlord possession of the Premises immediately upon the expiration of the Term or the termination of this Agreement, clean and in as good condition and repair as the Premises was at the commencement of the Term, reasonable wear and tear excepted.

31. **Default.** In the event of any default under this Agreement, Landlord may provide Tenant a notice of default and an opportunity to correct such default. If Tenant fails to correct the default,
other than a failure to pay rent or additional rent, Landlord may terminate this Agreement by giving a thirty (30) day written notice. If the default is Tenant’s failure to timely pay rent or additional rent as specified in this Agreement, Landlord may terminate this Agreement by giving a thirty (30) day written notice to Tenant. After termination of this Agreement, Tenant remains liable for any rent, additional late, costs, including costs to remedy any defaults, and damages under this Agreement.

32. Remedies If this Agreement is terminated due to Tenant’s default, Landlord may, in addition to any rights and remedies available under this Agreement and applicable law, use any dispossession, eviction or other similar legal proceeding available in law or equity.

33. Hazardous Materials. Tenant shall not keep on the Premises any item of a dangerous, flammable, or explosive character that might unreasonably increase the danger of fire or explosion on the Premises or that might be considered hazardous or extra hazardous by any responsible insurance company.

34. Notices. All notices given under this Agreement must be in writing. A notice is effective upon receipt and shall be delivered in person, sent via certified or registered mail to the following addresses (or to another address that either Party may designate upon reasonable notice to the other Party):

If to Landlord: Town of Timnath
4750 Signal Tree Drive
Timnath, CO 80547

If to Tenant: ______________________

35. 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 Landlord, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the Landlord and, in particular, governmental immunity afforded or available to the Landlord pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

36. Quiet Enjoyment. If Tenant pays the rent and performs all other obligations under this Agreement, Tenant may peaceably and quietly hold and enjoy the Premises during the Term.

37. No Waiver. No Party shall be deemed to have waived any provision of this Agreement or the exercise of any rights held under this Agreement unless such waiver is made expressly and in writing.

38. Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable part had not been included in this Agreement.
39. Successors and Assigns. This Agreement will inure to the benefit of and be binding upon the Parties and their permitted successors and assigns.

40. Governing Law. The terms of this Agreement and the rights and obligations of the Parties hereto shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to its conflicts of laws provisions.

41. Disputes. Any dispute arising from this Agreement shall be resolved in the courts of Larimer County, Colorado.

42. Amendments. This Agreement may be amended or modified only by a written agreement signed by the Parties.

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

44. Headings. The section headings herein are for reference purposes only and shall not otherwise affect the meaning, construction or interpretation of any provision in this Agreement.

45. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes and cancels all prior agreements of the Parties, whether written or oral, with respect to the subject matter.

46. Miscellaneous. Lease may be terminated by either party with ninety (90) days’ notice. The lease has the option to renew for two (2) six (6) month periods after the initial one year term and subject to Landlord's approval.

[Remainder of page intentionally left blank. Signature pages follow].

IN WITNESS WHEREOF, the Parties hereto, individually or by their duly authorized representatives, have executed this Agreement as of the Effective Date.

TOWN OF TIMNATH

By: Town Manager

Attest:
Town Clerk

APPROVED AS TO FORM:

Town Attorney

TENANT

Printed Name

Signature
EXHIBIT A

RULES AND REGULATIONS

Tenant shall abide by the following rules and regulations while occupying the Premises:

- Tenant agrees not to make any excessive noise or to create any nuisance that will disturb the peace and quiet of neighbors.
- Tenant has the responsibility to use the Premises in a reasonably clean and safe manner; dispose of garbage and waste in a clean, safe, sanitary and legally compliant manner; use facilities and appliances on the premises in a reasonable manner; not disturb any neighbors’ peaceful enjoyment of their dwelling unit; promptly notify the landlord if the premises are uninhabitable or could become uninhabitable due to an existing condition; and shall not knowingly or negligently damage or remove any part of the premises or allow a person within the Tenant’s control to do so.
- Tenant will not cause or permit any locks or hooks to be placed upon any door or window without the prior written consent of Landlord.
- Tenant will keep all air conditioning filters clean and free from dirt.
- Tenant will keep all bathrooms, sinks, toilets, and other water and plumbing supplies in good order and repair, and shall use same only for the purposes for which they were constructed.
- Tenant will abide by and be bound by any and all rules and regulations affecting the Premises or the common areas of the Premises which may be adopted or promulgated from time to time by Landlord.
- Tenant shall be responsible for: (1) Mowing the Lawn; (2) Watering lawn, shrubs and trees; (3) Removing weeds; (4) Raking leaves; and (5) Removing snow and ice from driveway, sidewalks, and walkways.
EXHIBIT B

PET AGREEMENT

This Pet Agreement is attached to and made a part of the Lease Agreement between the Town of Timnath ("Landlord") and the Tenant dated ________________, 20__. Tenant desires to keep one (1) small dog or cat ("Pet"), under the weight of 25 pounds, in the Premises that Tenant will occupy under the Lease Agreement referred to above. Tenant agrees to the following terms and conditions in exchange for Landlord's permission to have or keep a pet on the Premises. Tenant agrees that Tenant at all times shall:

1) Be solely responsible for the maintenance of the Pet and keep the Pet under control at all times.

2) Keep the Pet restrained, but not tethered, when Pets are outside the Premises. The Pet is not allowed to run loose on the grounds or other common areas.

3) In the event the Tenant will be gone longer than 24 hours, Tenant will find a responsible party to take care of the Pet.

4) Clean up after the Pet and dispose of the Pet's waste properly and quickly.

5) Not leave food or water for the Pet or any other animal outside the Premises where such food or water may attract other animals.

6) Prevent the Pet from being unnecessarily noisy or aggressive or cause any annoyance or discomfort to others and will remedy immediately any complaints made by other tenants and residents in the complex to the Landlord.

7) Adhere to local ordinances, including leash and licensing requirements. Comply with the requirement to provide the Pet with identification tags that the Pet will wear at all times while on the Premises. Tenant will be required to provide veterinary certification with proof of rabies vaccination per Colorado state requirements and verification that the Pet has been neutered or spayed (cats only). In addition to rabies, Colorado recommends the Parvo shot for dogs and Feline Distemper for cats. Dogs must be registered with the county; failure to register may result in a fine from the state. A copy of the certification and licensing will be kept with the Lease Agreement.

8) Not breed or allow the Pet to reproduce, but if this should occur, the Pet's offspring will be placed within eight (8) weeks of birth.

9) Immediately pay for any damage, loss, or expense caused by the Pet.

10) Pay for pest extermination services that may be required while Pets are domiciled in the Premises or upon surrender of the Premises.
Tenant asserts that the Pet has never bitten or injured another person and that the Pet has any propensity or predisposition to bite or injure someone. Tenant further asserts that the Pet has never bitten or injured another domestic animal or has any propensity or predisposition to bite or injure another domestic animal.

Tenant agrees to furnish to Landlord the names, breed, and photograph of the Pet prior to occupancy for identification purposes. Tenant agrees that this Pet Agreement applies only to the specific Pet described herein and that no other pet may be substituted.

Should Tenant fail to comply with any part of this Pet Agreement, Landlord reserves the right to revoke its permission to the Pets in the Premises. In such event, Tenant agrees to permanently remove the Pet from the Premises within 48 hours of receiving written notice thereof from Landlord. Failure to comply with these requirements shall be grounds for immediate termination of the Lease Agreement.

Tenant agrees that Landlord shall not be responsible for the injury, harm, or death of the Pet, and agrees to hold Landlord harmless for any damages suffered as a result of any harm caused by the Pet or by the Pet upon another person, guest, or employee. Tenant shall be responsible for the entire amount of all damages caused by the Pet as well as the entire amount of any injury to individuals or property. Tenant shall obtain a Pet Liability Policy endorsement to Tenant’s renters insurance policy required in Paragraph 5(b) of the Lease Agreement.

IN WITNESS WHEREOF, this Pet Agreement has been executed effective the day and year first written above.

LANDLORD
TOWN OF TIMNATH, a Colorado municipal corporation

BY: _______________________________ Date

Town Manager

TENANT

______________________________ Date

______________________________ Date

______________________________ Date
EXHIBIT C

RENTAL INSPECTION CHECKLIST

Complete this inventory checklist as soon as you sign the lease. Do not move anything into the Premises until after you have filled out this checklist. Take time-stamped pictures of any damages, dents, marks, or problems you find. Ask your Landlord to sign the checklist and/or send them a copy. You should keep the original for your records. Please write n/a next to the item if the item is not included on the Premises.

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<th>Living Room</th>
<th>Condition on Arrival</th>
<th>Condition on Departure</th>
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<td>Walls and Ceiling</td>
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<td>Floor Covering</td>
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<td>Lamp(s)</td>
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<td>Baseboards/Moldings</td>
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<th>Kitchen</th>
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<td>Stove, Oven, Range, Hood, Broiler, Pans, Burners, etc…</td>
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<td>Counter Surfaces</td>
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<td>Sink, Garbage Disposal, Faucet</td>
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<td>Microwave Oven</td>
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<td>Refrigerator</td>
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<td>Toilet/Tissue Holder</td>
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<td>Shower and Tub</td>
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<td>Towel Racks</td>
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<td>Mirror/Medicine Cabinet</td>
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<td>Water (heat and pressure)</td>
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<td>Floor Covering</td>
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<td>Closets (Doors and tracks)</td>
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<td>Book Shelves</td>
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<td>Molding and Baseboards</td>
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<td>Furniture (if applicable)</td>
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<td>Mirror</td>
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<td>Furniture (if applicable)</td>
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<td>Doorbell/Knocker</td>
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<td>Mailbox (check lock)</td>
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<td>Yard, Patio, Deck</td>
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<td>External Doors and Locks</td>
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<td>Outside Lights</td>
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Move in:

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<tr>
<th>Tenant Signature</th>
<th>Tenant Name</th>
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Accepted and acknowledged by:

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<tr>
<th>Landlord Signature</th>
<th>Town of Timnath</th>
<th>Landlord Name</th>
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Move out:

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