

**TOWN OF TIMNATH, COLORADO  
ORDINANCE NO. 14, SERIES 2022**

**AN ORDINANCE APPROVING THE ANNEXATION OF CERTAIN REAL PROPERTY  
TO BE KNOWN AS THE OCHSNER ANNEXATION  
TO THE TOWN OF TIMNATH, COLORADO, LOCATED EAST OF THREE BELL  
PARKWAY**

**WHEREAS**, a petition (the “Petition”) for Annexation was filed with the Town by Overland Trail Farm, LLC (“Petitioner”), requesting the Town of Timnath annex that property more particularly described in **EXHIBIT A** (legal description) and **EXHIBIT B** (annexation map), attached hereto and incorporated herein by this reference (the “Property”); and

**WHEREAS**, a properly noticed Planning Commission public hearing was held on September 6, 2022 regarding said Petition in accordance with C.R.S. § 31-12-108, and all persons interested in such Petition were provided an opportunity to be heard: and

**WHEREAS**, over 50% of the property owners owning more than 50% of the Property, exclusive of streets and alleys have signed the Petition and requested the Property be annexed; and

**WHEREAS**, the Town Council finds the Property is eligible for annexation and should be annexed to the Town of Timnath; and

**WHEREAS**, the contiguity required by C.R.S. § 31-12-104(1)(a) exists in that the property annexed hereby has at least one-sixth boundary contiguity with a present municipal boundary of the Town; and

**WHEREAS**, the Town and Petitioners wish to enter into an annexation agreement (**Exhibit C**).

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

**Section 1. Findings.**

The Council hereby finds that a Petition for Annexation, together with four (4) copies of the annexation map as required by law, was filed with the Town Council on April 25, 2022, by the owners of over fifty percent (50%) of the area of the property hereinafter described in **EXHIBIT A** (legal description) and **EXHIBIT B** (annexation map), and comprising more than fifty percent (50%) of the landowners of the property to be annexed, exclusive of public streets and alleys.

A properly noticed public hearing was held on August 9, 2022 regarding said Petition in accordance with C.R.S. § 31-12-108, at which all persons interested in such Petition were provided an opportunity to be heard.

The Council by resolution at the public hearing accepted said Petition and found and determined that the applicable parts of the Municipal Annexation Act of 1965, as amended, have been met

and further determined that an election was not required under the Act and that no additional terms and conditions were to be imposed upon said annexation.

The contiguity required by CRS Sec. 31-12-104(1)(a) exists in that the property annexed hereby has at least one-sixth boundary contiguity with a present municipal boundary of the Town.

The Property is eligible for annexation and should be annexed to the Town of Timnath.

An Annexation Agreement between the property owners and the Town has been prepared, is incorporated herein, and approved (**EXHIBIT C**).

**Section 2. Annexation Approved.**

The annexation to the Town of the following described real property is hereby approved (see attached):

**Exhibit A – Property Description**

**Exhibit B – Annexation Map**

**Exhibit C – Annexation Agreement**

**Section 3. Severability.**

If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Town Council hereby declares that it would have adopted this Ordinance and each part or parts hereof irrespective of the fact than any one or parts be declared unconstitutional or invalid.

**Section 4. Effective Date.**

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

**INTRODUCED, MOVED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING ON SEPTEMBER 13, 2022, SET FOR PUBLIC HEARING AND SECOND READING AT 6:00 P.M. ON SEPTEMBER 27, 2022 AT THE TIMNATH TOWN CENTER, 4750 SIGNAL TREE DRIVE, TIMNATH, COLORADO AND ORDERED PUBLISHED BY TITLE THIS 13TH DAY OF SEPTEMBER, 2022.**

**MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON THE 27TH DAY OF SEPTEMBER, 2022.**

**TOWN OF TIMNATH**



  
Mark J. Soukup, Mayor

**ATTEST:**



Milissa Peters-Garcia, CMC  
Town Clerk

## **EXHIBIT A**

### **Legal Description of Property Annexed**

[attached]

A parcel of land being annexed into the Town of Timnath and being a portion of the Southwest Quarter of Section 12, Township 6 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado, and being more particularly described as follows:

Lot 1, Ochsner M.R.D. S-18-91, recorded July 17, 1991 at Reception No. 91032623

(Also known as "Out Parcel", Timnath South Subdivision First Filing, recorded at Reception No. 20050101411)

Said parcel of land contains 6.811 acres, more or less.

**EXHIBIT B**

**Annexation Map**

[attached]



**EXHIBIT C**

**Annexation Agreement**

[attached]

**ANNEXATION AGREEMENT  
FOR THE OCHSNER PROPERTY**

THIS ANNEXATION AGREEMENT (“**Agreement**”), is made and entered into to be effective the 27th day of September, 2022, by and between Town of Timnath, a Colorado municipal corporation (“**Town**”) and Timnath Ranch Investments, LLC (“**Property Owner**” and collectively, the “**Parties**”) and is made concerning the real property described on **Exhibit A**, attached hereto and incorporated herein by reference (“the **Property**”), and generally known as the “Ochsner Annexation”.

WITNESSETH:

WHEREAS, the Property consists of approximately 6.811 acres, more or less, being a portion of the Southwest Quarter of Section 12, Township 6 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado; and

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

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

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

**AGREEMENT**

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

2. Annexation of Property. The Property shall be annexed to Town by ordinance, not by election, in accordance with the terms of this Agreement, including [ANY INCLUDED RIGHTS OF WAY AND ROADS], as shown on the annexation map attached hereto as **Exhibit B**. The annexation of the Property shall be in accordance with the Colorado Municipal Annexation Act of 1965 (as amended, the “**Act**”), the Code and all applicable laws, and is subject to this Agreement and the SIA executed in connection herewith. Property Owner agrees that it will not withdraw the annexation petition.



3. Application of Town Laws - Town Services. Except as expressly provided herein, all Town ordinances, regulations, codes, policies and procedures in existence and as the same may change from time to time, shall be applicable to the use and development of the Property, upon annexation. Upon annexation, the Town shall provide all customary municipal services to the Property, to the same extent and upon the same terms and conditions as such services are provided to other properties throughout the Town.

4. Zoning and Development of the Property. The Property will be zoned R3-Two Family/Multi-Family Residential. Property Owner will develop the Property in accordance with a site specific development plan to be subsequently approved by the Town. The Property Owner shall take all action necessary to timely apply for and diligently pursue appropriate zoning by Town of the Property. The Property, or any portion thereof, may be rezoned or the site specific development plan amended with the consent of Town and Property Owner, but without amending or modifying this Agreement.

5. Water Utilities. Property Owner shall obtain water service from the Fort Collins Loveland Water District (FCLWD).

6. Sanitary Sewer Utilities. Property Owner shall obtain sewer service from South Fort Collins Sanitary District (SFCSD).

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

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

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

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

11. Covenants Run With the Land. This Agreement and the annexation map shall be recorded in the real estate records of Larimer County. The provisions of this Agreement shall constitute covenants or servitudes that shall touch, attach to and run with title to the Property. The burdens and benefits of this Agreement shall bind and inure to the benefit of all estates and interests in the Property and all successors in interest of the parties to this Agreement, except as

may be otherwise expressly provided in this Agreement.

12. Cure of Legal Defects. In the event that the annexation or zoning of the Property or any portion of this Agreement, is declared void or unenforceable by final court action, meaning that no appeal can be made or the time to appeal has expired, Parties shall cooperate to cure any legal defects cited by the court, and immediately upon such cure, Town shall reinstitute and complete proceedings to annex and zone the Property according to the terms of this Agreement and to otherwise carry out the terms and provisions hereof. The Property Owner shall reapply for annexation when the Property becomes eligible for annexation as determined by the Town.

13. Breach by Property Owner - Town's Remedies. In the event of a breach of any of the terms and conditions of this Agreement by Property Owner, and until such breach is corrected, the Town may take such actions as are permitted and/or authorized by the ordinances of the Town, this Agreement, and/or other law as the Town reasonably deems necessary in order to protect the public health, safety and welfare; to protect lot buyers and builders; and to protect the citizens of Town from undue hardship and undue risk. These remedies include, but are not limited to:

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

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

14. Breach by Town: Property Owner's Remedies. Property Owner shall have any and all remedies against Town for breach of this Agreement available at law or in equity for a

material breach of this Agreement by Town, including the right to seek statutory disconnection for a material breach which substantially impairs Property Owner's ability to develop the Property

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

16. Acknowledgement. It is expressly understood that Town cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with Town Code and the laws of the State of Colorado. Nothing contained in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances, or as a waiver or abrogation of Town's legislative, governmental, or police powers to promote and protect the health, safety and general welfare of Town or its inhabitants; nor shall this Agreement prohibit the enactment by Town of any fee, ordinance, resolution, rule or regulation which is of uniform and general application.

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

Notice to Town:

Town of Timnath  
Mathew J. Blakely, RLA, LEED AP  
Community Development Director  
4750 Signal Tree Drive  
Timnath, Colorado 80547  
Telephone: (970) 224-3211  
Facsimile: (970) 224-3217

with copy to:

Lori Graham, Esq.  
Town of Timnath Attorney  
4750 Signal Tree Drive  
Timnath, CO 80547  
Telephone: (970) 224-3211  
Facsimile: (970) 224-3217

Notice to Property Owner:

Timnath Ranch Investments, LLC  
Dino DiTullio, Manager  
1927 Wilmington Drive, #101  
Fort Collins, CO 80528  
Telephone: (970) 207-0102  
Facsimile: (970) 207-0104

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

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

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

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

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

23. Further Assurances. The parties shall execute such additional documents and take such additional action as may be necessary to effectuate the intent of this Agreement.

24. No Duress. Parties agree that this Agreement is freely and voluntarily executed by them after extensive negotiations between them and an opportunity for each party to obtain legal advice.

25. Execution and Counterparts. This Agreement may be executed and filed in any number of counterparts, all of which when taken together shall constitute the entire agreement of Parties. Signature pages may be removed from any counterpart and attached to another counterpart to constitute a single document.

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

27. Time is of the Essence. Time is of the essence for both parties with respect to the obligations herein. The Parties agree that they will each act in as expeditious a manner as is reasonably possible in performing the obligations herein.

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

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

30. Captions. The captions to this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

31. Approvals. Whenever approval or acceptance of Town is necessary pursuant to any provisions of this Agreement, Town shall act reasonably and in a timely manner in responding to such request for approval or acceptance.


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

TOWN:

TOWN OF TIMNATH, COLORADO,  
A Municipal Corporation

ATTEST:

  
Milissa Peters-Garcia, Town Clerk

  
Mark J. Soukup, Mayor

PROPERTY OWNER:

[PROPERTY OWNER]

By: \_\_\_\_\_  
[Dino DiTullio, Manager]

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF LARIMER    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of [MONTH], 201-  
, by [NAME AND TITLE].

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

**EXHIBIT A**  
**(Property Description)**

**A parcel of land being annexed into the Town of Timnath and being a portion of the Southwest Quarter of Section 12, Township 6 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado, and being more particularly described as follows:**

**Lot 1, Ochsner M.R.D. S-18-91, recorded July 17, 1991 at Reception No. 91032623 (Also known as "Out Parcel", Timnath South Subdivision First Filing, recorded at Reception No. 20050101411)**

**Said parcel of land contains 6.811 acres, more or less.**

**EXHIBIT B**  
**(Annexation Map)**



# OCHSNER ANNEXATION TO THE TOWN OF TIMNATH

## LOT 1, OCHSNER M.R.D. S-18-91 (ALSO KNOWN AS "OUT PARCEL", TIMNATH SOUTH SUBDIVISION FIRST FILING), LOCATED IN THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 6 NORTH, RANGE 68 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO



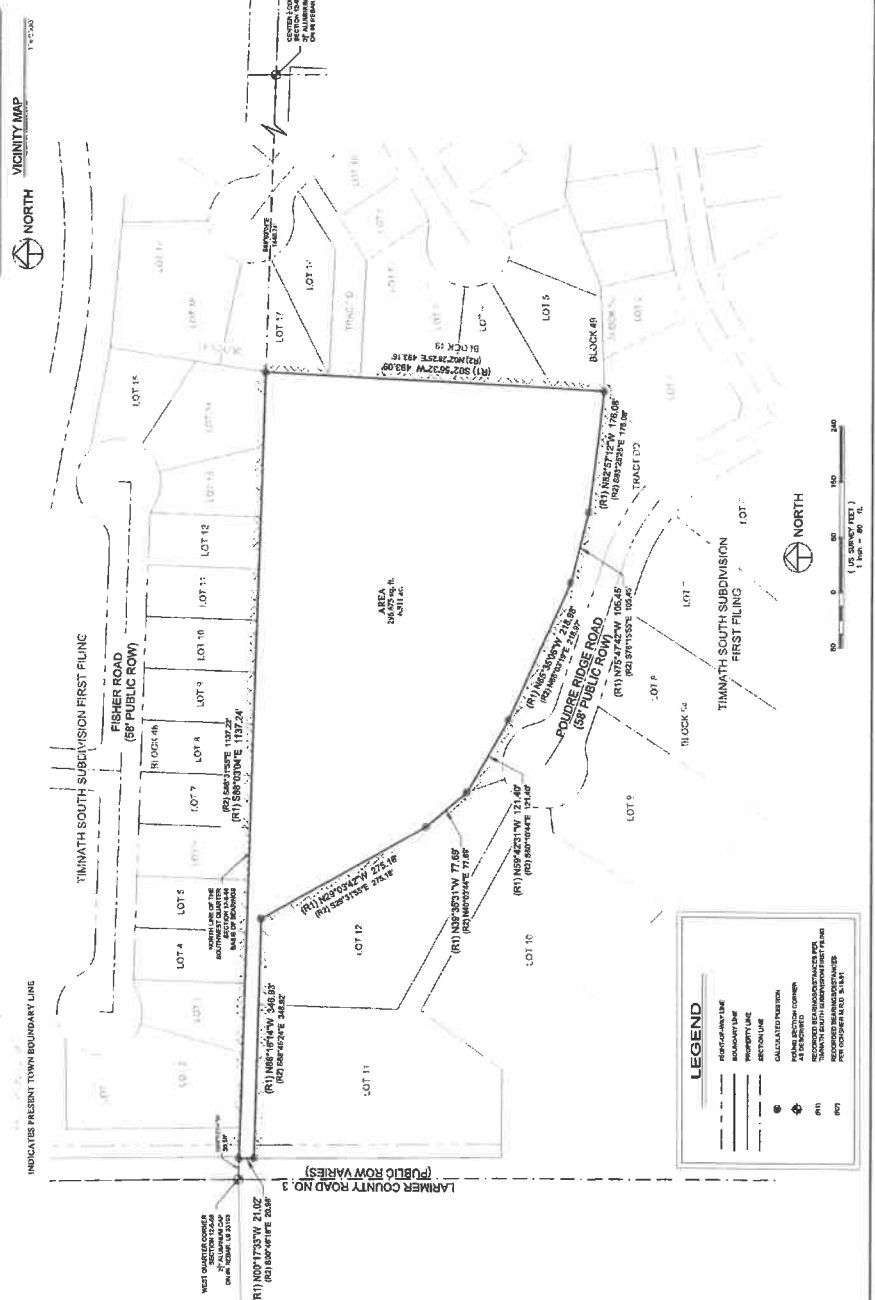
**DRAFT**  
6-14-22  
NOT FOR CONSTRUCTION,  
RECORDING PURPOSES OR IMPLEMENTATION

FOR AND ON BEHALF OF THE ANNEXING TOWN OF TIMNATH, COLORADO  
CONVEYED BY DEED TO THE ANNEXING TOWN OF TIMNATH, COLORADO  
CONVEYED BY DEED TO THE ANNEXING TOWN OF TIMNATH, COLORADO

**NOTES:**

- 1) Basis of Bearings is the North line of the Southwest Quarter of Section 12, Township 6 North, Range 68 West of the 6th Principal Meridian in Section 36° 30' 00" East.
- 2) The final unit of measurement for this plan is U.S. Survey Feet.
- 3) This survey does not constitute a title search by Northern Engineering to determine ownership or easements of record. The following documents were utilized in preparation of this Annexation Map: Ochsner M.R.D. S-18-91, recorded July 17, 2009 (1811); Ochsner M.R.D. S-18-91 and Timnath South Subdivision First Filing, recorded at Reception No. 20090104(1).
- 4) The word "adjacent" or "adjacent" or shown and used herein is an expression of professional opinion regarding the four corners of the survey, and does not constitute a warranty or guaranty, expressed or implied.
- 5) This is not a survey boundary survey, lines shown hereon have not been established for title rights within or adjacent.

**ANNEXATION TO TIMNATH**  
TOTAL PERIMETER: 3,973.86'  
CONTIGUOUS BOUNDARY: 3,951.06'  
MINIMUM CONTIGUOUS PERIMETER FEET REQUIRED: 495.51'



**PROPERTY DESCRIPTION:**  
A portion of land being annexed to the Town of Timnath and being a portion of the Southwest Quarter of Section 12, Township 6 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado, and being more particularly described as follows:

Lot 1, Ochsner M.R.D. S-18-91, recorded July 17, 1991 at Reception No. 20090104(1)  
(Also known as "Out Parcel", Timnath South Subdivision First Filing, recorded at Reception No. 20090104(1))  
Sub parcel of land contains 0.411 ac. more or less.

**CERTIFICATE OF OWNERSHIP:**  
I, the undersigned, being the owner of the property, do hereby consent to this Annexation Map and join in the conveyance and delivery of all taxes, maps, maps, easements, public ways, and other items.

In witness whereof, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

OWNER: \_\_\_\_\_

**NOTARIAL CERTIFICATE:**  
STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by \_\_\_\_\_ of \_\_\_\_\_, Colorado, My commission expires: \_\_\_\_\_

Notary Public: \_\_\_\_\_

**TOWN COUNCIL CERTIFICATE:**  
Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by the Town Council, Timnath, Colorado.

By: \_\_\_\_\_  
Town Clerk

**PLANNING COMMISSION CERTIFICATE:**  
Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by the Town Planning Commission, Timnath, Colorado.

By: \_\_\_\_\_  
Chairperson

**LEGEND**

- RIGHT-OF-WAY LINE
- SUBDIVISION LINE
- PROPERTY LINE
- SECTION LINE
- CALCULATION POINT
- CORNER
- WELL
- EASEMENT
- RECORDED BOUNDARY
- RECORDED SURVEY