

**TOWN OF TIMNATH COLORADO
RESOLUTION 23, SERIES 2023**

**A RESOLUTION MAKING CERTAIN FINDINGS OF FACT AND DECLARING
ELIGIBILITY OF THE PROPOSED ANNEXATION OF A PARCEL OF LAND TO THE
TOWN OF TIMNATH, COLORADO, KNOWN AS THE WHITEWING AT TIMNATH
MANOR ANNEXATION**

WHEREAS, the Town Council of the Town of Timnath, Colorado, has found a petition for the annexations of the hereinafter described parcels of land to be in substantial compliance with the requirements of Section 31-12-107(1), Colorado Revised Statutes; and

WHEREAS, the Town has provided notice of public hearing on the proposed annexations by publication once per week for four successive weeks and by registered mail to the Clerk of the Board of County Commissioners, the County Attorney, the school district and to any special district having property in the area to be annexed; and

WHEREAS, the Town has prepared an Annexation Impact Report per C.R.S. 31-12-108.5, as the area being annexed is more than 10 acres in size; and

WHEREAS, the Town Council has completed a public hearing to determine if the proposed annexation complies with Sections 31-12-104 and 105, Colorado Revised Statutes, to establish eligibility for annexation.

**BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH,
COLORADO:**

Section 1. Findings.

A. The Town Council hereby finds and concludes with regard to the annexation of the property described in **Exhibit A** attached hereto and incorporated herein, that not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the existing boundaries of the Town; and therefore, because of such contiguity, a community of interest exists between the property proposed to be annexed and the Town; the property proposed to be annexed is urban or will be urbanized in the near future, and that the property proposed to be annexed is integrated or is capable of being integrated with the Town.

B. The Town Council hereby finds and concludes that no land held in identical ownership has been divided or included without written consent of the owner thereof; that no annexation proceedings have been commenced by another municipality; that the annexation will not result in the detachment of the area from a school district; that the annexation will not result in the extension of a municipal boundary more than three miles; that the Town has in place a plan for said three mile area; and that in establishing the boundaries of the area to be annexed the entire width of any street or alley is included within the area annexed.

C. The Town Council hereby finds and concludes that an election is not required, and no additional terms or conditions are to be imposed upon the area to be annexed other than set forth in the Intergovernmental Agreement attached hereto as **Exhibit B**.

Section 2. Effective Date

This Resolution shall be effective upon adoption.

PASSED, APPROVED AND ADOPTED THIS 28th DAY OF MARCH, 2023. THE VOTE UPON ROLL CALL BEING AS FOLLOWS:

For: 5

Against: 0

Abstain: 0

FOR THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO

TOWN OF TIMNATH

By: 
Mark J. Soukup, Mayor

ATTEST:


Milissa Peters-Garcia, CMC
Town Clerk



EXHIBIT A

Legal Description of Proposed Annexation

(See Attached)

The South half of the Southeast quarter of Section 26, Township 7 North, Range 68 West of the 6th P.M.,
Except that part conveyed in Deed recorded in Book 1711 at Page 95.

County of Larimer, State of Colorado.

EXHIBIT B

Annexation Agreement

(See Attached)

**ANNEXATION AGREEMENT
FOR THE WHITEWING AT TIMNATH MANOR ANNEXATION**

THIS ANNEXATION AGREEMENT (“**Agreement**”), is made and entered into to be effective the ____ day of _____, 2023, by and between Town of Timnath, a Colorado municipal corporation (“**Town**”) and **TIMNATH LAND HOLDINGS, LLC**, an Arizona limited liability company (“**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 “**Whitewing at Timnath Manor Annexation**”.

WITNESSETH:

WHEREAS, the Property consists of approximately 40.09 acres, more or less, located North of Buss Grove Road, in Larimer County, 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 applicable rights of way and roadways 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 Estate 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.

6. Sanitary Sewer Utilities. Property Owner shall obtain sewer service from the Boxelder Sanitary District.

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:

Carolyn Steffl, Esq.
Town of Timnath Attorney
Dietze and Davis, P.C.
2060 Broadway, Suite 400
Boulder, CO 80302
Telephone: (303) 447-1375

Notice to Property Owner:

Timnath Land Holdings, LLC
325 S Higley Road
Suite 110
Gilbert, AZ 85296
Telephone: 480.941.1584
Facsimile: 480.941.1601

with a copy to:

David O'Leary, Esq.
SPENCER FANE
1700 Lincoln St., #2000
Denver, CO 80203
Telephone: 303.839.3800
Facsimile: 303.839.3838

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.

EXHIBIT A
(Property Description)

DRAFT

EXHIBIT B
(Annexation Map)

DRAFT