

**ORDINANCE NO. 1177**

**AN ORDINANCE MODIFYING THE WILSON RANCH  
ANNEXATION AND DEVELOPMENT AGREEMENT**

**Section 1**

**WHEREAS**, The Town of Berthoud, the Town of Berthoud Wastewater Enterprise, the Town of Berthoud Water Enterprise, the Wilson Homestead Limited Partnership, a Nevada limited partnership, as owner, and McWhinney Property Group, LLC, a Colorado limited liability company, as developer (“Original Developer”), entered into the Wilson Ranch Annexation and Development Agreement on or about February 24, 2004 (“Agreement”) which establishes vested property rights for the property legally described in the Agreement (the “Property”); and

**WHEREAS**, the rights of Original Developer have been assigned to Front Range Investment Holdings, LLC (“Developer”); and

**WHEREAS**, the Agreement constitutes a “Site Specific-Development Plan” pursuant to C.R.S. § 24-68-101 *et seq.* and was adopted via legislative act of the Town pursuant to Ordinance No. 988; and

**WHEREAS**, Section 12.4.1. of the Agreement provides the Town of Berthoud with the right to terminate the Agreement and the Vested Rights Period, as defined therein, if Developer fails to spend five million dollars (\$5,000,000) in any ten year period on improvements related to the development of the Property as more particularly set forth in the Agreement (the “Required Expenditure”); and

**WHEREAS** the initial Required Expenditure was not made due to economic conditions, and rather than terminating the Agreement and the Vested Rights Period, the Town desires to modify the Required Expenditure and to allow the Developer additional time to make the Required Expenditure; and

**WHEREAS** the Developer requested the changes set forth in this Resolution, and all parties to the Agreement have stated their willingness to enter into the proposed modification;

**NOW THEREFORE BE IT ORDAINED BY THE BOARD OF TRUSTEES  
OF THE TOWN OF BERTHOUD, COLORADO AS FOLLOWS:**

**Section 2**      Approval of Modification of Agreement

The Board of Trustees hereby approves and authorizes the Town Mayor to execute a modification of the Agreement as stated in the below paragraphs. Changes to the original text of the Agreement are italicized solely for the sake of clarity.

Section 12.4.1 of the Agreement shall be modified to read as follows:

12.4.1 Cause for Early Termination. The Town shall have the right to terminate this Agreement and the Vested Rights Period granted herein in the event that Developer, and its successors or assigns, if any, in any *twenty (20)* year period of the Term, have failed collectively to pay the cost to design, construct or install Public Improvements to service the ODP whether such improvements are on-site or off-site (the “**ODP Improvements**”), in the amount of *Ten Million Dollars (\$10,000,000)* (the “**Required Expenditure**”), provided that costs incurred by the Developer and its successors and assigns in any given *twenty (20)* year period in excess of the Required Expenditure may be counted toward the Required Expenditure for any succeeding *twenty (20)* year period.

Sections 12.4.2 and 12.4.3 of the Agreement shall be modified so that all references to “*ten (10)* year period” contained therein shall be replaced with “*twenty (20)* year period”.

Section 15.16 of the Agreement shall be modified to read as follows:

15.16 Nonconforming Sign. The existing nonconforming sign located in the MU-R Mixed-Use District of the ODP (the “**Nonconforming Sign**”) shall be removed or brought into conformance with the applicable sign regulations of the Development Code no later the twenty (20) years after the effective date of the annexation of the Annexation Property (the “**Time Period**”) if permitted by the existing lease, license or agreement for such sign. Subject to the existing lessee’s rights, Owner agrees that the Town shall have a right of first refusal to lease the sign during the Time Period at the offered terms. Additionally, when the sign is not in use by Owner or another lessee, the Town shall be entitled to lease the sign at no cost (except that the Town will be responsible for paying to put up and remove the advertising) for a total of five weeks during the Time Period, with the condition that it is limited to two free weeks of leasing per calendar year. Notwithstanding the foregoing, the Town shall be authorized to require the sign to be removed or brought into conformance with the applicable sign regulations, at any point in time, in the event that it determines in its reasonable discretion that it is not structurally sound or contains advertising content that is prohibited.

### Section 3      Effective Date

At its meeting on March 25, 2014, a public hearing was held by the Board of Trustees of the Town of Berthoud at which hearing the public was provided the opportunity to be heard.

The Board of Trustees of the Town of Berthoud hereby finds, determines and designates that pursuant to C.R.S. Section 31-16-105, this Ordinance is necessary to the immediate preservation of the public health and safety and is approved by three-fourths

of the Board of Trustees of the Town of Berthoud. Accordingly it shall become effective upon adoption. The Board of Trustees of the Town of Berthoud desire that the Agreement remain in full force and effect. Without the immediate action of the Board of Trustees of the Town of Berthoud, the Agreement could be terminated and the development contemplated by the Agreement would be further delayed.

PASSED, ADOPTED AND APPROVED BY AT LEAST THREE-FOURTHS OF THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD ON THIS 25<sup>th</sup> DAY OF MARCH, 2014, AND ORDERED TO BECOME EFFECTIVE IMMEDIATELY, AS PROVIDED IN C.R.S. SECTION 31-16-105.

TOWN OF BERTHOUD

BY:

  
David Gregg, Mayor

ATTEST:

  
Mary Cowdin, Town Clerk