1. REGULAR MEETING Call to Order
   a. Roll Call
      Chairperson Philip Goldstein
      Vice Chairperson Scott Taylor
      Commissioner Aaron Pearson
      Commissioner Scott Roys
      Commissioner Dick Weiderspon
      Alternate Kristen Seidel
      Alternate Donald Risden

2. Amendments to the Agenda

3. Administrative
   a. Determination of Alternate voting (if necessary)

4. Consent Agenda
   a. Approval of the October 15, 2013, Planning Commission Meeting Minutes

5. Business and Discussion items
   a. Land Use Code Amendment Public Hearing: PD Overlay Zoning
   b. Resolution No. 2, Series 2013; a resolution for the petition for annexation of the
      property known as the I-25 and Harmony Southeast Annexation
   c. Ordinance No 17, Series 2013, Public Hearing; zoning of the property known as
      the I-25 and Harmony Southeast Annexation

6. Reports (if available)
   a. Town Manager
   b. Town Planner
   c. Town Engineer

7. Adjournment
Timnath Planning Commission
Regular Meeting Minutes
October 15, 2013, 6:00 p.m.
Meeting was held at Timnath Administration Building,
4800 Goodman Street, Timnath, Colorado

1. Call to Order
Chair Goldstein called to order the meeting of the Planning Commission on Tuesday, October 15, 2013 6:00 p.m.

Present
Commissioner Philip Goldstein
Commissioner Aaron Pearson
Commissioner Scott Roys
Commissioner Scott Taylor
Commissioner Dick Weiderspon
Alternate Don Risden
Alternate Kristen Seidel

Others in attendance
April Getchius, Town Manager
Matt Blakely, Interim Town Planner
Don Taranto, Contracted Town Engineer
Brian Williamson, Town Clerk
Mark Tingey, Harmony LLC
Sheri Jensen, Harmony LLC
Tom Dugan, Pinecrest Planning

1. Administrative:
   a. Determination of Alternate voting (if necessary)

2. Consent Agenda:
   a. Approval of the September 17, 2013, Planning Commission Meeting Minutes

Commissioner Scott Taylor moved to approve the consent agenda. Commissioner Dick Weiderspon seconded the motion. Motion passed by unanimous voice vote.

3. Business and Discussion items:
   a. Site Plan: Harmony Campus Site Plan – Fitness and Pool Complex (ST-2013-005)

Staff Presentation:
• Mr. Blakely introduced the project and the Harmony ownership group. Overview of the project including the details of the site and buildings, uses, and parking requirements. Mr. Blakely gave an overview of the conditions of the approval, comments and pending of 3rd Filing Final Plat Recordation. Applicant has acknowledged these conditions and agrees.

Applicant Comments:
• Mr. Tingey of Harmony LLC spoke about the long process from conception in (2005) to get here and changes in landscaping to screen from 4th filing. He also spoke about the architecture blends with other homes in close proximity and establishing a separate identity from county club.

Commissioner Comments:
• Commissioner Taylor asked about the parking space reductions and Mr. Blakely described staff's approach to the parking count.
• Chairperson Goldstein asked about the future of the current golf parking lot and Mr. Tingey described off site events usually happen on a Monday, so as not to impact the parking situation. Mr. Tingey also spoke about shuttling staff if needed.
• Alternate Risden asked about the interface between the golf carts and the cars and Commissioner Taylor asked about future of the expansion pad site.
• Commissioner Taylor asked about bar, tavern, nightclub designation and Ms. Jensen explained the categories and that the pavilion would have a grill for quick foods.
• Alternate Seidel asked about the photometric plan and it was explained that HPS lights were chosen to minimize the visual impact.

Commissioner Pearson moved to approve the motion as written in the staff report. Commissioner Taylor seconded the motion. Motion passed by unanimous voice vote.

2. Adjournment
Chair Goldstein adjourned the October 15, 2013 Planning Commission meeting at 6:35 p.m.

TOWN OF TIMNATH
PLANNING COMMISSION

Philip Goldstein, Chair

ATTEST:

Brian Williamson
EXECUTIVE SUMMARY: This Ordinance is to update the Town’s PD Overlay Zoning.

- Currently PD Overlays are limited to development that are a minimum of 80 acres
- The amendment will provide flexibility in application of the PD overlay standards while maintaining the intent of the overlay district, zoning code, and comprehensive plan
- Expansion of the language of code section 16.3.4.N will provide flexibility in the application of the minimum acreage required for a PD overlay zoning application

STAFF RECOMMENDATION: Staff recommends approval of the ordinance amending the PD Overlay Code, sections 16.3.4.N.1 and 16.3.4.N.3(a).

KEY POINTS/SUPPORTING INFORMATION:
Revisions to this code section are as follows:

16.3.4.N.1: The (PD) Overlay District is intended to be used as an overlay zone district that supplements the underlying standard zone district. The intent and purpose of this district is to permit and encourage innovative design and high quality, master-planned developments on large parcels of land.

16.3.4.N.3.(a): All PD applications shall include a gross land area of not less than eighty (80) acres. This requirement may be reduced at the discretion of staff when all other requirements of the PD Overlay District are met.

The code currently requires a minimum gross acreage of eighty (80) acres for application of the PD overlay standards and references “large parcels of land.” Staff is suggesting that this be revised to be at staff discretion, allowing flexibility in the code in order to allow smaller developments to apply this overlay. The language revision is to expand this code language without creating an open door for application of the PD overlay to any development. Staff feels that this will provide the Town leverage in the application of this standard as it relates to community and economic development. The PD Overlay District Review and all other code criteria must be satisfied for consideration of the application of the PD Overlay Zoning. These criteria are as follows:

i. The proposed benefits offset the proposed exceptions to the Zoning and Subdivision standards, and that such exceptions are in the best interest of the public health, safety, and welfare.

ii. The proposed PD conforms to the PD restrictions, and that the proposed zoning is compatible with the surrounding land uses.

iii. The PD proposes creative and innovative design, and high quality development thereby protecting and
promoting public safety, convenience, health and general welfare.

iv. The uses and densities in the proposed PD are compatible, and will be effectively integrated with adjacent neighborhoods which now exist or are proposed in the future.

v. The proposed PD is in general conformance with the Town of Timnath Comprehensive Plan.

vi. One or more of the criteria for amendment of the official zoning map has been satisfied.

Staff feels that the requirements specified within this section of the code will be consistent with the principles set forth in the zoning code, comprehensive plan, and general interests of the Town.

<table>
<thead>
<tr>
<th>ADVANTAGES:</th>
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<tbody>
<tr>
<td>• Allows flexibility in the application of the PD overlay design standards</td>
</tr>
<tr>
<td>• Provides alternatives for improved economic development in the Town of Timnath</td>
</tr>
<tr>
<td>• Would allow staff discretion in application without allowing extensive use of the overlay application</td>
</tr>
<tr>
<td>• Allows for smaller creative and innovatively designed and high quality developments</td>
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<table>
<thead>
<tr>
<th>DISADVANTAGES:</th>
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<tbody>
<tr>
<td>• Potential for small increase in volume of insignificant requests by developers to change specific</td>
</tr>
<tr>
<td>portions of the code to suit the needs of individual developments</td>
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<table>
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<tr>
<th>FINANCIAL IMPACT:</th>
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<tbody>
<tr>
<td>• Potential to increase business opportunities within the Town of Timnath GMA</td>
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<tr>
<th>RECOMMENDED MOTION:</th>
</tr>
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<tbody>
<tr>
<td>• I move approval of Ordinance No. 13, Series 2013 entitled “An Ordinance Amending the Town of</td>
</tr>
<tr>
<td>Timnath Land Use Code Section 16.3.4.N.”</td>
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<table>
<thead>
<tr>
<th>ATTACHMENTS:</th>
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<tbody>
<tr>
<td>1. Ordinance</td>
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</table>
TOWN OF TIMNATH, COLORADO

ORDINANCE NO. 13, SERIES 2013

AN Ordinance Amending the Town of Timnath Land Use Code Section 16.3.4.N

WHEREAS, the Town Council of the Town of Timnath (“Town”) pursuant to C.R.S. § 31-15-103 has the power to make and publish Ordinances; and

WHEREAS, pursuant to that power, the Town Council has previously enacted Chapter 16, Article 3 – Zoning Regulations of the Timnath Land Use Code (“Code”); and

WHEREAS, in order to ensure Chapter 16 reflects the desires of the Town and includes provisions which are fair to all in enforcement and applicability, the Town Council desires to amend certain provisions of that Article; and

WHEREAS, the Town of Timnath maintains at least one (1) copy of the Town of Timnath Land Use Code and the amendments thereto, on file in the office of the Town Clerk and may be inspected by any interested person between regular business hours.

Section 1.
The Town of Timnath Land Use Code, Chapter 16, Article 3, Section 4.N.1, is amended to read as follows:

Intent. The (PD) Overlay District is intended to be used as an overlay zone district that supplements the underlying standard zone district. The intent and purpose of this district is to permit and encourage innovative design and high quality, master-planned developments on large parcels of land. This district is created to allow and encourage compatible uses to be developed in accordance with a unified development plan in harmony with the environment and surrounding neighborhood. The PD Overlay District is intended to permit greater flexibility in the application of zoning and development standards and greater freedom in providing a mix of land uses in the development of a balanced community. PD’s are expected to preserve critical environmental resources, provide above-average open space and recreational amenities, include exceptional design, and provide greater efficiency in the layout and provision of roads, utilities and other infrastructure.

The Town of Timnath Land Use Code, Chapter 16, Article 3, Section 4.N.3.(a), is amended to read as follows:
All PD applications shall include a gross land area of not less than eighty (80) acres. This requirement may be reduced at the discretion of staff when all other requirements of the PD Overlay District are met.

Section 2. Code Revision

Minor changes such as the format and other changes to unify the revised Code may be necessary. The Town Clerk is hereby authorized to make such changes, provided that neither the intent nor substantive content will be altered by such changes.

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 Council hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one or parts be declared unconstitutional or invalid.

Section 4. Repeal

Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this Ordinance.

Section 5. 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 Code 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 NOVEMBER 12, 2013, AND SET FOR PUBLIC HEARING AND SECOND READING AT 6:00 P.M. ON NOVEMBER 26, 2013 AT THE TIMNATH ADMINISTRATION BUILDING, 4800 GOODMAN STREET, TIMNATH COLORADO AND ORDERED PUBLISHED BY TITLE THIS 26TH DAY OF NOVEMBER, 2013.
MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON NOVEMBER 26, 2013.

TOWN OF TIMNATH, COLORADO

______________________________
Jill Grossman-Belisle, Mayor

ATTEST:

______________________________
Milissa Peters, Town Clerk
PLANNING COMMISSION COMMUNICATION

Meeting Date: 11/05/2013

Item: Resolution No. 2, Series 2013, A resolution of the Planning Commission of the Town of Timnath finding a petition for annexation of the property known as the I-25 and Harmony Road Southeast Annexation

Presented by: Matt Blakely

EXECUTIVE SUMMARY: This annexation consists of a 7.805 acre parcel of land currently residing in Larimer County. Through this annexation the previously annexed Gateway Timnath South will be extended to the west to the Interstate 25 right-of-way to incorporate the adjacent land. This will create a new commercial development parcel in the Town of Timnath. The petition has been reviewed against all applicable local code requirements and state statutes and is consistent with the April 2013 Town of Timnath Comprehensive Plan.

STAFF RECOMMENDATION: Staff recommends the approval of this resolution to annex the aforementioned property

KEY POINTS/SUPPORTING INFORMATION:

Owner: Cache La Poudre Investors South, LLC / Bill McDowell
Applicant: Galloway -- Dave Guetig

Application Type: Annexation Petition  Case Number: AX-2013-002

Process Schedule

<table>
<thead>
<tr>
<th>Task</th>
<th>Description</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-application</td>
<td>With property owner, Mayor, and town staff</td>
<td>08/27/13</td>
</tr>
<tr>
<td>Application Submitted</td>
<td></td>
<td>9/20/13</td>
</tr>
<tr>
<td>Acceptance of Application</td>
<td></td>
<td>9/20/13</td>
</tr>
<tr>
<td>Town Council</td>
<td>Substantial compliance</td>
<td>09/24/13</td>
</tr>
<tr>
<td>Referral Agency Notification</td>
<td>Referral comments were due by 10/11/13.</td>
<td>9/25/13</td>
</tr>
<tr>
<td>Comments Issued</td>
<td></td>
<td>10/31/13</td>
</tr>
<tr>
<td>Resubmittal</td>
<td></td>
<td>TBD</td>
</tr>
<tr>
<td>Comments Issued</td>
<td></td>
<td>TBD</td>
</tr>
<tr>
<td>Notices</td>
<td>Signs posted on property</td>
<td>10/21/13</td>
</tr>
<tr>
<td></td>
<td>Notifications posted at Town of Timnath and Post Office</td>
<td>10/25/13</td>
</tr>
<tr>
<td></td>
<td>Notifications in Fort Collins Coloradoan</td>
<td>9/27; 10/4; 10/11; 10/18; 10/25</td>
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</table>
### Planning Commission

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
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<tbody>
<tr>
<td>Public hearing</td>
<td>11/05/13</td>
</tr>
<tr>
<td>Eligibility hearing</td>
<td>11/26/13</td>
</tr>
<tr>
<td>Second reading</td>
<td>12/10/13</td>
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</tbody>
</table>

**Location:** South of Harmony Road, west of Weitzel Rd, southeast and adjacent to I-25, north of and adjacent to Swetsville Zoo Rd

**Parcel Size (Acres):** Approximately 7.8 acres

**Existing Zoning:** FA-1

**Proposed Zoning:** C-2 with PD Overlay

**Existing Land Use:** Vacant

**Proposed Land Use:** Commercial

**SERVICES:**

- **Water:** Fort Collins – Loveland Water District
- **Sewer:** South Fort Collins Sanitation District
- **Fire:** Poudre Fire Authority
- **Special Districts:** None

**Adjacent Zoning/Land Uses:**

<table>
<thead>
<tr>
<th>Direction</th>
<th>Zoning</th>
<th>Land Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>North</td>
<td>Harmony Road; C-2</td>
<td>Major Arterial and Commercial</td>
</tr>
<tr>
<td>South</td>
<td>Swetsville Rd; Agricultural (FA-1)</td>
<td>Local Collector; vacant/farming</td>
</tr>
<tr>
<td>East</td>
<td>C-2 with PD Overlay</td>
<td>Vacant/undeveloped</td>
</tr>
<tr>
<td>West</td>
<td>I-25 ROW</td>
<td>Interstate 25</td>
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**ADVANTAGES:**

- The addition of this parcel to the Town of Timnath will be consistent with the existing character of the I-25 Frontage and adjacent commercial developments
- Increase in the amount of commercial land within the Town of Timnath GMA
- Consistent with the Town of Timnath Comprehensive Plan

**DISADVANTAGES:**

- Increase in services supplied by Town

**FINANCIAL IMPACT:**

- An economic impact report is to be provided
- Increase in tax revenues, job creation

**RECOMMENDED MOTION:**

- Finding that a complete application was submitted and reviewed in accordance with all applicable Town of Timnath regulations, criteria outlined in section 16.13 of the Town of Timnath Municipal...
Code, and C.R.S. 31-12-101 et. seq. have been met, I move to approve Resolution No. 2, series 2013 to annex the I-25 and Harmony Road Southeast Annexation, as it meets all criteria for annexation

ATTACHMENTS:
1. Annexation Map
2. Annexation Assessment Report
3. Annexation Petition
4. Draft Annexation Agreement
5. Resolution 2, Series 2013
I-25 and HARMONY ROAD SOUTHEAST ANNEXATION to the Town of Timnath, Colorado

Being a Part Of The Northeast Quarter Of Section 3, Township 6 North, Range 68 West Of The 6th P.M., County Of Larimer, State Of Colorado

PROPERTY INFORMATION
A parcel of land lying in a portion of the Southeast Quarter of Section Three (3) Township Six (6) North Range Sixty-Eight (68) West Of The 6th P.M., County Of Larimer, State Of Colorado

CONSTRUCTION:
A parcel of land lying in a portion of the Southeast Quarter of Section Three (3) Township Six (6) North Range Sixty-Eight (68) West Of The 6th P.M., County Of Larimer, State Of Colorado

APPROVAL OF ANNEXATION
The Planning and Zoning Commission of Timnath, Colorado, has hereby adopted and approved this Annexation Plan on the 9th day of October, 2006.

DENOTES CONTIGUOUS BOUNDARY
/
/
/
/
/
/
/
a. An assessment of the community needs for the proposed annexation and land use;

This property is a natural extension of the Town boundaries to include approximately 7.8 acres of land along the most westerly boundary of the Town to result in the Town boundary now abutting I-25 to the west and includes the annexation of Swetsville Zoo Road. The remaining portion of the annexed property, not including Swetsville Zoo Road, will ultimately be subdivided and incorporated into the lots within development known as Gateway Timnath South. This project will further develop the Town of Timnath commercial area, and is consistent with the Town’s Comprehensive Plan.

b. The economic impact to the Town of the proposed annexation. This is to include an analysis of short-term and long-term revenues to the Town to be generated by the development, short-term and long-term expenses of the Town likely to be incurred as a result of the annexation and development, and proposals to mitigate any negative impacts;

A brief economic impact draft has been submitted to the Town, with a full report to follow in the near future. This report will outline the direct and indirect benefits of this development to the Town.

c. The school impact including an estimated of the number of students to be generated by development of the property, capital construction required to educate the students, and proposals to mitigate any negative school impacts;

This property will be zoned commercial and will not impact schools.

d. The source of water, both potable and nonpotable, and sanitary sewer systems anticipated to serve the property, including a description of any regional facilities that must be constructed or upgraded to serve the development on the property;

Water and sewer extensions will be from existing service lines located in Harmony Road and Weitzel Road. The water service will be supplied by the Fort Collins Loveland Water District, and the Sanitary Sewer service will be provided by the South Fort Collins Sanitation District. The property is currently located within the Water District Boundary, and will need to petition to be included in the Sanitation District.

e. The impact on the existing transportation system and proposals to mitigate any negative transportation impacts upon the community (arterial and collector street improvements, intersection improvements, intersection signalization, alternative modes of transportation, etc.);

A brief memo has been submitted to the Town of Timnath that shows that the previous 2007 Traffic study is consistent with the new improvements. A fully updated traffic study is underway and will be submitted to the Town for review in the near future.
f. The impact of the proposed development on the existing storm drainage system and proposals to mitigate any negative drainage impacts upon the community (historic rainfall drainage patterns, detention and retention areas, storm sewer requirements, discharged irrigation ditches, floodways and floodplains, etc.);

A preliminary drainage letter has been submitted to the Town of Timnath outlining the general historic and proposed conditions, along with the proposed treatment of the Stormwater. A full drainage report will be submitted with the applications for Preliminary and Final Plat.

g. The impact of the proposed development on law enforcement in Timnath and proposals to mitigate any impact upon the existing law enforcement services (special security needs, additional officers required, additional equipment requirements, etc.);

The addition of this development, similar to all developments, will result in an increase in the demand for Law Enforcement Services. The direct result of this development will be an increase in criminal cases and traffic accidents that will require a response from the Police Department. There may be other indirect impacts to the Police Department that will need to be addressed in the future.

h. The impact of the proposed development on the Poudre Fire Protection Authority and proposals to mitigate any impact upon the existing fire protection services (special fire hazards, fire prevention, fire detection, emergency access, additional equipment requirements, additional manpower requirements, additional fire stations, etc.);

The impact of this development on the Poudre Fire Authority will be less than that of the Police Department, however there will be an increase in their service area and thus a likely increase in their calls for response.

i. The impact of the proposed development on the Town park facilities and recreation programs and proposals to mitigate any impact upon the existing facilities and programs;

The addition of this property will not result in any additional impact on Town park facilities.

j. The impact of the proposed development on the environment of the Town and proposals to mitigate any negative impact (identify environmentally sensitive areas, endangered species, significant habitats, etc.);

The addition of this property will not result in any additional impact on the environment. There are no special environmental issues associated with this property or Gateway Timnath South.
**ANNEXATION ASSESSMENT REPORT**

**k.** The short-term and long-term economic development potential for the property (numbers of jobs to be created, sales and use tax generation, property tax generation, utility revenue generation, incentives to be offered, etc.);

*A brief economic impact draft has been submitted to the Town, with a full report to follow in the near future. This report will outline the direct and indirect benefits of this development to the Town.*

**l.** The compatibility of the proposed development with the street master plan as depicted by the *Transportation Map* contained in the Town Comprehensive Plan and proposals for mitigating any negative impact;

*A brief memo has been submitted to the Town of Timnath that shows that the previous 2007 Traffic study is consistent with the new improvements. A fully updated traffic study is underway and will be submitted to the Town for review in the near future.*

**m.** The compatibility of the proposed development with the Town Comprehensive Plan and any plan amendments that may be necessary for the proposed development;

*The inclusion of this property is consistent with the Town comprehensive plan and is simply an extension of existing C2 zoning with a PD Overlay for Gateway Timnath South.*

**n.** The compatibility of the proposed development with the Town Land Use Code and any deviations in setbacks, space requirements, and permitted uses that may be required for the proposed development; and

*The inclusion of this property is consistent with the Town comprehensive plan and is simply an extension of existing C2 zoning with a PD Overlay for Gateway Timnath South.*

**o.** A review of existing and adjacent land uses, areas of compatibility or conflict, and possible mitigation measures that may be required for the proposed development.

*The annexed property is located adjacent to the I-25 Right of Way on the west, the Timnath Gateway South Property to the east, the Harmony Road Right of Way to the north and unincorporated Larimer County to the south. This development does not create a conflict or the requirement of mitigation issues with any of the surrounding properties.*
The I-25 and Harmony Southeast Annexation includes approximately eight acres of real property. This property will be zoned and subdivided as a collective project with the existing Gateway Timnath South development bordering the east side of these parcels. Once these parcels are combined under the revised final plat and unified ownership, the property will be developed for commercial uses, including a Costco. The Costco is expected to generate over $50MM in Town/TDA sales tax revenues and $5MM for its first 20 years of operation. The Town is in the process of obtaining a more detailed economic impact report associated with the Costco that will include direct, indirect and induced economic outputs from the construction and operation of the Costco, as well as the number of direct, indirect and induced jobs created. Upon completion of this report, the Planning Commission will be provided a copy of the same.
November 1, 2013

Via Email and U.S. Mail
Matthew J. Blakely
Town Planner
4800 Goodman Street
Timnath, Colorado 80547

Re: Water Rights Report for I-25 and Harmony Southeast Annexation

Dear Matt:

As you are aware, this firm is assisting with the above annexation. In connection with the Town’s annexation submittal requirements, we understand that a water rights report is required detailing specific water rights associated with the annexation parcel. I am writing to provide notification that there are no separate water rights associated with the property comprising the I-25 and Harmony Southeast Annexation. As such, this letter shall be utilized to satisfy the water rights report requirement for annexations.

If you have any questions, please do not hesitate to call me.

Very truly yours,

[Signature]

Keirstin K. Beck
PETITION FOR ANNEXATION

TO THE BOARD OF TRUSTEES OF THE TOWN OF TIMNATH, COLORADO:

The undersigned (collectively, the “Petitioners”), in accordance with the Municipal Annexation Act of 1965 as set forth in Article 12, Title 31, Colorado Revised Statutes, as amended and as in effect on the submission date set forth below (“Annexation Act”), hereby petition (“Petition”) the Board of Trustees of the Town of Timnath, Colorado (“Town Board”), to annex to the Town of Timnath (“Town”) the unincorporated territory located in the County of Larimer, State of Colorado, which property is more particularly described in Exhibit A attached hereto and incorporated herein by reference (“Property”). In support of this Petition, Petitioners allege that:

1. It is desirable and necessary that the Property be annexed to the Town.
2. The requirements of Sections -104 and -105 of the Annexation Act exist or have been met.
3. Not less than one-sixth (1/6) of the perimeter of the Property is contiguous with the Town’s current municipal boundaries.
4. A community of interest exists between the Property and the Town.
5. The Property is urban or will be urbanized in the near future.
6. The Property is integrated with or is capable of being integrated with the Town.
7. Petitioners comprise more than fifty percent (50%) of the landowners in the Property owning more than fifty percent (50%) of the Property, excluding public streets, and alleys and any land owned by the annexing municipality, and Petitioners hereby consent to the establishment of the boundaries of the Property as shown on the annexation plat submitted herewith.
8. The Property is not presently a part of any incorporated city, city and county, or town; nor have any proceedings been commenced for incorporation or annexation of an area that is part or all of the Property; nor has any election for annexation of the Property or substantially the same territory to the Town been held within the twelve (12) months immediately preceding the filing of this Petition.
9. The proposed annexation will not result in detachment of area from any school district or attachment of same to another school district.
10. Except to the extent necessary to avoid dividing parcels within the Property held in identical ownership, at least fifty percent (50%) of which are within the three (3) mile limit, the proposed annexation will not extend the municipal boundary of the Town more than three (3) miles in any direction from any point of the current municipal boundary.
11. The proposed annexation will not result in the denial of reasonable access to any landowner, owner of an easement, or owner of a franchise adjoining a platted street or alley which has been annexed by the Town but is not bounded on both sides by the Town.
12. In establishing the boundaries of the Property, no land which is held in identical ownership, whether consisting of a single tract or parcel of real estate or two or more contiguous tracts or parcels of real estate:
   (a) is being divided into separate parts or parcels without the written consent of the landowner or landowners thereof unless such tracts or parcels are separated by a dedicated street, road or other public way; or
   (b) comprising twenty (20) acres or more and together with buildings and improvements situate thereon having a valuation for assessment in excess of $200,000.00
for ad valorem tax purposes for the year next preceding the proposed annexation, is included in the Property without the written consent of the landowner or landowners.

13. If a portion of a platted street or alley is to be annexed, the entire width thereof is included within the Property.

14. The affidavit of the circulator of this Petition certifying that the signature on this Petition is the signature of the person whose name it purports to be and certifying the accuracy of the date of such signature is attached hereto as Exhibit E and is incorporated herein by this reference.

15. This Petition is accompanied by four prints of an annexation map containing, among other things, the following information:

(a) A written legal description of the boundaries of the Property;

(b) A map showing the boundary of the Property;

(c) Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks; and

(d) Next to the boundary of the Property, a drawing of the contiguous boundary of the annexing municipality abutting the Property.

16. In connection with the processing of this Petition, Petitioner requests that the Town:

(a) Institute zoning and subdivision approval processes for the Property in accordance with Section 115 of the Annexation Act and Chapter 16 of the Municipal Code of the Town; and

(b) Approve and execute an annexation and development agreement ("Annexation and Development Agreement") which establishes vested property rights for the Property for an agreed upon term greater than three years pursuant to Article 68, Title 24, Colorado Revised Statutes, and otherwise establishes the development plan for the Property.

17. Petitioner has filed this Petition subject to the following conditions:

(a) Concurrently with its approval of annexation of the Property, the Town Board: (i) approves for those portions of the Property which are not public right-of-way, zoning and subdivision which is substantially consistent with the applications for zoning and subdivision which Petitioners submit in connection with this Petition; and (ii) approves and authorizes execution of the Annexation and Development Agreement.

(b) Petitioners hereby reserve the sole, exclusive and unilateral right to withdraw this Petition by so notifying the Town Clerk in writing at any point prior to the later to occur of: (i) forty (40) days after the latest effective date of the final ordinance(s) approving annexation of the Property, the Annexation and Development Agreement, or zoning of the Property as requested pursuant to this Petition; or (ii) any later date contemplated in such Annexation and Development Agreement.

(c) Prior to expiration of the period described in the foregoing subparagraph (b) without Petitioners having withdrawn the Petition, neither Petitioners nor the Town shall cause or permit the occurrence of the conditions to effectiveness of the annexation as set forth in Section -113(2)(b) of the Annexation Act.

18. Upon the annexation of the Property becoming effective, and subject to the conditions set forth in this Petition and to be set forth in the Annexation and Development Agreement, the Property shall become subject to all ordinances, resolutions, rules and regulations of the Town, except as otherwise set forth in the Annexation and Development Agreement, and except for general property taxes of the Town, which shall become effective on January 1 of the next succeeding year following adoption of the annexation ordinance.
19. This Petition is filed on the condition that, concurrently with its approval of annexation of the Property, (i) the Town Board approve zoning and subdivision of the Property that is substantially consistent with the applications for zoning and subdivision approvals which Petitioners will submit following the Town making the required finding of this Petition’s substantial compliance with the requirements of the Annexation Act, and (ii) the Town Board approves and authorizes execution of the Annexation and Development Agreement.

20. Except for the terms and conditions of this Petition and of the Annexation and Development Agreement, which terms and conditions Petitioners expressly approve and therefore do not constitute an imposition of additional terms and conditions within the meaning of Section -107(1)(g) of the Annexation Act, Petitioners request that no additional terms and conditions be imposed upon annexation of the Property to the Town.

THEREFORE, Petitioners request that the Board of the Town of Timnath, Colorado, complete and approve the annexation of the Property pursuant to the provisions of the Municipal Annexation Act of 1965, as amended.

Respectfully submitted this 19th day of September, 2013.

Signature of Landowners/Petitioners:

WILLIAM DEXTER SWETS aka WILLIAM D. SWETS, an individual

By: [Signature]

Date of Signature: 9/19/2013

Mailing Address: C/O Goldberg Properties
195 West 12th Ave.
Denver, CO 80204

Resident of the Property? NO

STATE OF COLORADO )
COUNTY OF ) ss.

The foregoing instrument was acknowledged before me this 10th day of September, 2013, by WILLIAM DEXTER SWETS aka WILLIAM D. SWETS, an individual.

Witness my hand and official seal.

Notary Public

My commission expires: 8/19/17

My Commission Expires 8/19/17
JOHN CHARLES SWETS, aka JOHN C. SWETS, deceased, and MARJORIE E. SWETS, an individual and as successor in interest to JOHN CHARLES SWETS aka JOHN C. SWETS

By: /\ mark Goldberg, Authorized Agent

Date of Signature: 9/13/13

Mailing Address: C/O Goldberg Properties
195 West 12th Ave.
Denver, CO 80204

Resident of the Property? NO

STATE OF COLORADO )

COUNTY OF ( )

The foregoing instrument was acknowledged before me this 15th day of September, 2013, by Mark Goldberg, as Authorized Agent to Marjorie Swets, an individual and as successor in interest to JOHN CHARLES SWETS, aka JOHN C. SWETS, deceased.

Witness my hand and official seal.

Notary Public

My commission expires 8/19/17

[Notary Seal]

My Commission Expires 8/19/17

[Notary Seal]
A parcel of land being a portion of the Northeast Quarter of Section Three (3), Township Six North (T.6N.), Range Sixty-eight West (R.68W.), Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado:

COMMENCING at the North Quarter Corner of said Section 3 and assuming the North line of the Northeast Quarter of said Section 3 as bearing South 89°47'25" East a distance of 2634.70 feet with all other bearings contained herein relative thereto:

THENCE South 89°47'25" East along the North line of the Northeast Quarter of said Section 3 a distance of 198.83 feet to the West line of the Harmony Road Second Annexation to the Town of Timnath;

THENCE South 00°12'35" West along the West line of the Harmony Road Second Annexation to the Town of Timnath a distance of 69.00 feet to the Southwest corner thereof;

THENCE South 89°47'25" East along the South line of the Harmony Road Second Annexation to the Town of Timnath a distance of 147.11 feet to the POINT OF BEGINNING;

THENCE South 89°47'25" East continuing along the South line of the Harmony Road Second Annexation to the Town of Timnath a distance of 51.17 feet to the Westerly line of the Harmony Road Enterprises, LLP First Annexation to the Town of Timnath;

The following Two (2) courses are along the Westerly lines of the Harmony Road Enterprises, LLP First Annexation to the Town of Timnath.

THENCE South 14°18'05" West a distance of 367.05 feet;

THENCE South 22°35'27" East a distance of 91.93 feet to the most Northeasterly corner of the I-25 Annexation No. 2 to the Town of Timnath;

The following Four (4) courses are along the Northerly, Westerly and Southerly lines of the I-25 Annexation No. 2 to the Town of Timnath:

THENCE South 44°24'41" West a distance of 108.12 feet;

THENCE North 22°35'34" West a distance of 84.24 feet;

THENCE South 11°06'35" East a distance of 213.47 feet;

THENCE North 44°24'41" East a distance of 98.23 feet to the Westerly line of the Harmony Road Enterprises, LLP Second Annexation to the Town of Timnath;

THENCE South 20°05'29" East along the Westerly line of the Harmony Road Enterprises, LLP Second Annexation a distance of 724.35 feet to the Northerly line of that parcel of land conveyed to the Town of Timnath for use as a Public Road in a Special Warranty Deed recorded November 13, 2008 as Receipt No. 20080070753 of the Records of Larimer County;

The following Six (6) courses are along the perimeter lines of said parcel of land conveyed for use as a Public Road in a Special Warranty Deed recorded as Receipt No. 20080070753:

THENCE North 89°31'13" East a distance of 504.07 feet to the Northeast corner thereof;

THENCE South 00°28'47" East a distance of 60.00 feet to the Southeast corner thereof;

THENCE South 89°31'13" West a distance of 794.29 feet to a Point of Curvature;

THENCE along the arc of a curve concave to the Southeast a distance of 373.41 feet, said curve has a Radius of 246.00 feet, a Delta of 86°58'11" and is subtended by a Chord bearing South 46°02'08" West a distance of 338.58 feet to the West line of the Northeast Quarter of said Section 3;

THENCE North 02°04'05" West a distance of 163.25 feet to the beginning point of a curve non-tangent to this course;

THENCE along the arc of a curve concave to the Southeast a distance of 292.91 feet, said curve has a Radius of 506.00 feet, a Delta of 54°50'38" and is subtended by a Chord bearing North 62°05'54" East a distance of 281.85 feet to the South line of Lot 2 of the Northeast Quarter of said Section 3;

THENCE South 89°31'13" West along said South line a distance of 253.78 feet to the West line of the Northeast Quarter of said Section 3;

THENCE North 02°04'05" West along the West line of the Northeast Quarter of said Section 3 a distance of 85.27 feet to the Easterly line of Tract No. 19 of the Colorado Department of Highways Project No. 125-3 (31)258;

THENCE North 14°18'03" East along the Easterly line of said Tract No. 19 a distance of 1216.81 feet to the South line of the Harmony Road Second Annexation and the POINT OF BEGINNING;

TOTAL ANNEXED AREA for the I-25 and Harmony Road SE Annexation is 7.805 acres, more or less (4).
A parcel of land being a portion of Lot 2 of the Northeast Quarter of Section Three (3), Township Six North (T.6N.), Range Sixty-eight West (R.68W.), Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado:

COMMENCING at the North Quarter Corner of said Section 3 and assuming the North line of the Northeast Quarter of said Section 3 as bearing South 89°47'25" East a distance of 2634.70 feet with all other bearings contained herein relative thereto:

THENCE South 89°47'25" East along the North line of the Northeast Quarter of said Section 3 a distance of 198.83 feet to the West line of the Harmony Road Second Annexation to the Town of Timnath;
THENCE South 00°12'35" West along the West line of the Harmony Road Second Annexation to the Town of Timnath a distance of 69.00 feet to the Southwest corner thereof;
THENCE South 89°47'25" East along the South line of the Harmony Road Second Annexation to the Town of Timnath a distance of 147.11 feet to the POINT OF BEGINNING;
THENCE South 89°47'25" East continuing along the South line of the Harmony Road Second Annexation to the Town of Timnath a distance of 51.17 feet to the Westerly line of the Harmony Road Enterprises, L.L.P. First Annexation to the Town of Timnath;

The following Two (2) courses are along the Westerly lines of the Harmony Road Enterprises, L.L.P. First Annexation to the Town of Timnath:

THENCE South 14°18'05" West a distance of 367.05 feet;
THENCE South 22°25'27" East a distance of 91.03 feet to the most Northeasterly corner of the I-25 Annexation No. 2 to the Town of Timnath;

The following Four (4) courses are along the Northerly, Westerly and Southerly lines of the I-25 Annexation No. 2 to the Town of Timnath:

THENCE South 44°24'41" West a distance of 108.12 feet;
THENCE North 22°35'34" West a distance of 84.24 feet to the Easterly line of Tract No. 19 of the Colorado Department of Highways Project No. I.25-3 (31)258;
THENCE North 14°18'03" East along the Easterly line of said Tract No. 19 a distance of 454.27 feet to the South line of the Harmony Road Second Annexation and the POINT OF BEGINNING;

Said described parcel of land contains 0.669 acre, more or less.

A parcel of land being a portion of Lot 2 of the Northeast Quarter of Section Three (3), Township Six North (T.6N.), Range Sixty-eight West (R.68W.), Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado:

COMMENCING at the North Quarter Corner of said Section 3 and assuming the North line of the Northeast Quarter of said Section 3 as bearing South 89°47'25" East a distance of 2634.70 feet with all other bearings contained herein relative thereto:

THENCE South 89°47'25" East along the North line of the Northeast Quarter of said Section 3 a distance of 198.83 feet to the West line of the Harmony Road Second Annexation to the Town of Timnath;
THENCE South 00°12'35" West along the West line of the Harmony Road Second Annexation to the Town of Timnath a distance of 69.00 feet to the Southwest corner thereof;
THENCE South 89°47'25" East along the South line of the Harmony Road Second Annexation to the Town of Timnath a distance of 147.11 feet to the POINT OF BEGINNING;

THENCE South 89°47'25" East continuing along the South line of the Harmony Road Second Annexation to the Town of Timnath a distance of 51.17 feet to the Westerly line of the Harmony Road Enterprises, L.L.P. First Annexation to the Town of Timnath;

The following Two (2) courses are along the Westerly lines of the Harmony Road Enterprises, L.L.P. First Annexation to the Town of Timnath:

THENCE South 14°18'05" West a distance of 367.05 feet;
THENCE South 22°25'27" East a distance of 91.03 feet to the most Northeasterly corner of the I-25 Annexation No. 2 to the Town of Timnath;

The following Four (4) courses are along the Northerly, Westerly and Southerly lines of the I-25 Annexation No. 2 to the Town of Timnath:

THENCE South 44°24'41" West a distance of 108.12 feet;
THENCE North 22°35'34" West a distance of 84.24 feet to the Easterly line of Tract No. 19 of the Colorado Department of Highways Project No. I.25-3 (31)258;
THENCE North 14°18'03" East along the Easterly line of said Tract No. 19 a distance of 454.27 feet to the South line of the Harmony Road Second Annexation and the POINT OF BEGINNING;

Said described parcel of land contains 5.191 acre, more or less.
EXHIBIT C
TO PETITION FOR ANNEXATION

Affidavit of Circulator

The undersigned, being of lawful age, who being first duly sworn upon oath deposes and says:

That (s)he was the circulator of the foregoing Petition for Annexation of lands to the Town of Timnath, Colorado, consisting of 6 pages, excluding the page(s) of this Exhibit C, and that the signatures of the petitioners thereon were witnessed by the circulator and are the true and original signatures of the persons whose names they purport to be, and that the dates of such signatures are correct.

Circulator – William McDowell

STATE OF COLORADO  
COUNTY OF

) ss.

The foregoing AFFIDAVIT OF CIRCULATOR was subscribed and sworn to before me this ___ day of __________ 2013, by William McDowell.

Witness my hand and official seal.
My commission expires:

Notary Public

[Notary seal with expiration date]
MEMORANDUM OF ANNEXATION

THIS MEMORANDUM OF ANNEXATION ("Memorandum"), is an agreement made and entered into this 6th day of February, 2001, by and between HARMONY ROAD ENTERPRISES, LLLP ("Harmony") and the TOWN OF TIMNATH, a statutory town of the State of Colorado. County of Larimer (the "Town").

RECITALS

WHEREAS, annexation petitions for the Harmony Road Enterprises first and second annexations signed by one hundred percent (100%) of the owners of that certain real property situated in the County of Larimer, State of Colorado, as more particularly described in Exhibit A attached hereto and incorporated herein (the "Property") have been filed with the Town pursuant to C.R.S. Sec. 31-12-107(1);

WHEREAS, Harmony desires to obtain from the Town such municipal services as the Town may now or in the future extend to its residents and properties within its boundaries, including, but not limited to, those described herein;

WHEREAS, the Town has determined that it is in its best interests to annex the Property, to provide municipal services thereto, and to receive revenues from the development occurring thereon upon the terms and conditions contained herein;

WHEREAS, the annexation complies with all applicable Town and State annexation requirements;

WHEREAS, the Town and Harmony are entering into this Agreement in furtherance of annexation and zoning on the Property.

NOW, THEREFORE, in consideration of the above, the parties agree as follows:

1. \textbf{Annexation of Property}. Harmony has submitted a petition of 100% of the owners of the Property for annexation of the Property to the Town by ordinance, not by election, in accordance with the terms of this Memorandum. If the petition meets the requirements of the Municipal Annexation Act, the Town agrees to approve the annexation of the Property without terms and conditions other than those contained in this Memorandum and the petition.

2. \textbf{Easements}. Harmony agrees to dedicate to the Town such easements as the Board of Trustees deems necessary for present and future utility services. The location of such easements shall not unreasonably interfere with the use and development of the Property.

3. \textbf{Zoning}. The zoning designation for the Property shall permit the following activities to be conducted: all commercial uses including, without limitation, retail, sales, office, research and development, and manufacturing. Approval of any use under this zoning designation shall be
contingent upon approval of a PUD (Article VIII of Ordinance No. 1-1994 or the land use code in effect at the time of the use proposed) the PUD approval shall permit development of buildings with a floor area of up to 0.5 square feet for each square foot of the area of the Property unless the Town has adopted the I-25 corridor plan or any similar regional land use plan limiting uses or densities. If the Town adopts a new land use code for the entire Town or amends Ordinance No. 1-1994 to accept a regional land use plan for the I-25 corridor then the Property will be developed in accordance with the new land use code or the adopted regional land use plan. This Memorandum and the Annexation Petition are contingent on approval of a zoning classification that meets the requirements described in this Paragraph 3. If for any reason the Town fails to approve a zoning designation for the Property meeting these requirements, this Memorandum shall be null and void and Petitioner may withdraw its signature from the Annexation Petition. Development of the Property as provided in this paragraph shall be pursuant to a planned unit development in accordance with Article 8 of Ordinance No. 1-1994.

4. Planning and Zoning Commission Recommendations. The recommendations of the Town Planning and Zoning Commission regarding the Property permitting reasonable development of the Property are attached as Exhibit B.

5. Annexation Map. Harmony agrees to provide the Town with a map of the Property in such form as the Town may reasonably require.

6. Improvements. The improvements deemed necessary to serve the Property are listed below. Harmony agrees to provide such improvements prior to the issuance of any building permits for all or any portion of the Property.

   a. Sewer Service Facilities. Harmony has petitioned for inclusion of the Property in the Boxelder Sanitation District. The inclusion was accepted and recorded in the records of the Larimer County Clerk and Recorder under Reception No. 2000055385.

   b. Water Service Facilities. Harmony shall be responsible for the construction of all water, potable and nonpotable, internal distribution lines and fire hydrants from the Property boundary (Internal Water Improvements).

   c. Water and Sewer Taps. Harmony will pay the water and sewer tap fees generally required by Fort Collins-Loveland Water District and the Boxelder Sanitation District, or other provider of utility services to the Property.

   d. Electric Utilities. Harmony will pay necessary costs required by Public Service Co. of Colorado, Inc., the Rural Electric Association, or the City of Fort Collins to provide electric service to the Property.

   e. Natural Gas. Harmony will pay necessary costs required by Public Service Co. of Colorado, Inc. to provide natural gas service to the Property.

7. Mining and Reclamation. Mining and reclamation activities on the Property, if any, may commence unaffected by this Memorandum. Reclamation shall be governed by the Colorado
Division of Mineral and Geology, and the Town shall not impose any additional requirements on the mining or reclamation of the Property.

8. **Street Improvements.** The Parties acknowledge that certain street improvements may be necessary to serve the Property from Harmony Road. Harmony shall be responsible for the construction of all street improvements constructed on the Property (internal Street Improvements) and all costs associated therewith. Harmony shall construct the Internal Street Improvements pursuant to plans and specifications which are subject to the reasonable approval of the Town. The Town may, at its option, require within a reasonable time following completion of the Internal Street Improvements that the ownership, operation and maintenance of the Internal Street Improvements (exclusive of parking lots) be dedicated to the town. The Town may require Harmony to contribute toward the cost of improvements to Harmony Road in reasonable proportion to the impact the development of the Property has on the use of Harmony Road.

9. **Timing of Development.** The Town agrees that Harmony may develop the Property consistent with the uses and limitations described in Paragraph 3 above and that the Town will take no actions to alter or restrict those uses or limitations of the Property for (a) ten (10) years from the date of final action on the Annexation Petition, or, if later, (b) three (3) years from the date sanitary sewer service is physically available to the Property. The uses and limitations described in Paragraph 3 above shall be conclusively deemed acceptable uses and limitations of the Property, vested in the owner(s) of the Property, if Harmony has commenced development of the Property within such period. Except as expressly provided in this paragraph, the parties intend that the Town shall fully exercises its legislative functions, including zoning, with respect to the Property following annexation.

10. **Dedicated Open Space.** Harmony agrees to satisfy any public land dedication requirements specified in the Town’s Code.

11. **Fees of Annexation.** Harmony agrees to pay all reasonable costs incurred by the Town in connection with the annexation of the Property, such costs not to exceed $10,000.00. Such costs include, by way of illustration, the cost to review the Annexation Petition and Memorandum of Annexation, and the cost to complete an impact study.

12. **Condition to Memorandum.** This Memorandum is conditioned on the Annexation of the Property. If the Town of Timnath fails to annex the Property by February 28, 2001, this Memorandum shall be null and void.

13. **Obligations Run with the Land.** On the effective date of the annexation, this Memorandum shall be recorded in the real estate records of Larimer County and all obligations herein shall run with the land.

14. **Town Ordinances, Regulations, Codes, Policies and Procedures.** Except as expressly provided herein, all Town regulations, codes, policies and procedures shall be applicable to the use and development of the Property.
15. **Town Services.** The Town agrees to provide police protection and all other Town services to the Property to the same extent and upon the same terms and conditions as those services are provided throughout the Town.

16. **Defense of Memorandum.** Harmony and the town agree to participate and cooperate in the defense of the Memorandum in the event any legal challenge is raised by a third party as to its validity or enforceability. Harmony shall bear the legal cost of such defense, not to exceed $50,000.00 without Harmony’s consent. In the event that the cost of defense of the Town exceeds $50,000.00 or such greater sum as Harmony agrees to accept, the Town shall not be obligated to continue its defense of this Memorandum. During the pendency of any such legal challenge, the Town and Harmony agree to abide by and carry out all of the terms of this Memorandum.

17. **Cure of Legal Defects.** In the event that the annexation or zoning of the Property or any portion of this Memorandum is declared void or unenforceable by final court action, the Town and the Harmony shall cooperate to cure any legal defects cited by the court, and immediately upon such cure, the Town shall re instituted and complete proceedings to annex, zone and include the Property according to the terms of this Memorandum and to otherwise carry out the terms and provisions hereof.

18. **Assignment.** Harmony may assign its rights and obligations under this Memorandum to subsequent owners of the Property with the consent of the Town, which shall not be unreasonably withheld. Notwithstanding the foregoing, Harmony shall be released from any obligations hereunder upon the last to occur of the sale of the Property and the recording of this Memorandum.

19. **Entire Agreement – Amendments.** This Memorandum embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein. and this Memorandum shall supersede all previous communications, representations or agreements, either verbal or written, between the parties thereto. This Memorandum may be amended by written agreement signed by the parties.

20. **Remedies.** The parties acknowledge that monetary damages will be inadequate to compensate a non-breaching party hereunder and that therefore either party hereto shall be entitled to seek specific performance of the provisions hereof. This Memorandum may be enforced in any court of competent jurisdiction with the prevailing party entitled to recover its reasonable attorney fees and costs incurred in prosecution or defending any action arising hereunder.

21. **Effective Date.** This Memorandum shall be effective and binding upon the parties immediately upon the execution hereof by all parties; provided however, this Memorandum shall be terminated if the Property is not irrevocably annexed to the Town on or before February 28, 2001.

22. **Further Assurances.** The Town and Harmony shall execute such additional documents and take such additional action as may be necessary to effectuate the intent of this Memorandum.

23. **Execution and Counterparts.** This Memorandum may be executed and filed in any number of counterparts, all of which when taken together shall constitute the entire agreement of the
24. **Governing Law.** This Memorandum shall be governed by and construed in accordance with the law of the State of Colorado.

25. **Time is of the Essence.** Time is of the essence for all parties with respect to the obligations herein. The parties agree that they will each act in as expeditious a manner as reasonably possible in performing the obligations herein. For the Town, that includes setting any necessary public hearings and meetings of their respective Boards to reasonably accommodate the performance schedules herein and making decisions promptly upon completion of such hearings. For Harmony, this requirement includes submitting all documents necessary for action by the Town Board in compliance with the applicable requirements and in sufficient time before the hearing to allow any necessary review by Town staff and Board Members prior to the public meeting or hearing.

26. **Successors.** This Memorandum shall be binding upon and inure to the benefit of the parties hereto and their heirs, successors and assigns.

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

**HARmony ROAD ENTERPRISES. LLC**
A Colorado Limited Liability Limited Partnership

By: [Signature]
C. Andrew Graham, General Partner

**TOWN OF TIMNATH, COLORADO**
A Statutory Town

By: [Signature]
Timothy Gaines, Mayor
EXHIBIT A

PROPERTY DESCRIPTION

A tract of land which begins at a point which bears S89°34'00"E 1031.86 feet, and again S01°03'00"E 29.02 feet, thence N89°34'00"W 271.70 feet, and again S00°26'00"W 40.00 feet, and again N89°34'00"W 162.80 feet from the North ¼ Corner of Section 3, Township 6 North, Range 68 West of the Sixth P.M., and run thence S00°26'00"W 104.89 feet; thence S27°48'01"W 177.58 feet; thence S44°38'08"W 248.43 feet; thence N21°22'00"W 91.92 feet; thence N14°31'30"E 367.00 feet; thence S89°34'00"E 201.10 feet to the point of beginning, containing 1.7032 acres, more or less, and being subject to all easements and rights-of-way now of record or indicated on the plat;

AND

A tract of land situate in the Northeast ¼ of Section 3, Township 6 North, Range 68 West of the Sixth P.M., County of Larimer, State of Colorado, which, considering the North line of said Northeast ¼ as bearing S89°34'00"E and with all bearings contained herein relative thereto, is contained within the boundary lines which begin at a point which bears S89°34'00"E 1031.86 feet, and again S01°03'00"E 61.84 feet from the North ¼ Corner of said Section 3, and run thence S01°03'00"E 1260.59 feet; thence S89°37'00"W 468.94 feet; thence N19°52'00"W 725.14 feet; thence N44°38'08"E 537.33 feet; thence N24°49'54"E 221.31 feet; thence S89°34'00"E 221.80 feet to the point of beginning, containing 14.8802 acres, more or less, and being subject to all easements and rights-of-way now of record or indicated on the plat.
EXHIBIT B

Town of Timnath
Planning and Zoning Commission

November 1, 2000

Per the Town of Timnath Ordinance No. 1-1994, Article III, Annexation of Land, the Planning and Zoning Commission reviewed the Harmony Road Enterprises petition for annexation at the October 18, 2000 Planning and Zoning Commission meeting, and provides to the Board of Trustees the following finding of compliance:

1. The proposed annexation is in conformance with the Area Plan of the Town of Timnath.

2. If annexed, the zoning classification of ‘Commercial with a P.U.D. Overlay’ should be applied to the parcel.

3. The topography of the parcel with regard to the flood plain could potentially pose a hazard. The gravel deposits and mineral rights of the property, and their implication on commercial development of the property should also be considered.

4. The sewage disposal methods to be used in the area to be annexed may potentially be provided by:
   a. South Fort Collins Sanitation District.
   b. Box Elder Sanitation District.
   c. Septic system.

5. The estimated impact on the town due to the population and development increases resulting from the annexation appears to be minimal, given the location of the parcel in relation to the rest of the present town boundaries.

6. The estimated impact of the loss of agricultural land and impacts on the surrounding agricultural land appears to be minimal.

7. The following subjects are pertinent to the annexation and may require inclusion in a Memorandum of Agreement between the Town and the petitioner before the annexation is approved:
   a. Impact of the subsequent development of the parcel to be annexed on the surrounding residential properties.
   b. Petitioner has identified a potential need for two variances to the Area Requirements:
      i. Minimum Lot Area of nine thousand nine hundred (9,900) square feet if public water and sewer are used.
      ii. Minimum Lot Width of fifty (50) feet if public water and sewer are used.

Greg Rosing
Town of Timnath PZC Chairman
AMENDMENT TO MEMORANDUM OF ANNEXATION

This Amendment to the Memorandum of Annexation ("Memorandum") dated [Month, Day, Year], 2001, by and between Harmony Road Enterprises, LLLP and the Town of Timnath, a statutory town of the State of Colorado, County of Larimer.

1. Amendment Controls. In the case of conflict between the terms of this Amendment and the Memorandum, the provisions of this Amendment will control.

2. Condition to Memorandum. Paragraph 12 ("Condition to Memorandum") of the Memorandum is hereby revised to read in its entirety as follows:

   "12 Condition to Memorandum. This Memorandum is conditioned on the Annexation of the Property."

3. Effective Date. Paragraph 21 ("Effective Date") of the Memorandum is hereby revised to read in its entirety as follows:

   "21 Effective Date. This Memorandum shall be effective and binding upon the parties immediately upon the execution hereon by all parties."

Date: February 26, 2001

Harmony Road Enterprises, LLLP
A Colorado Limited Liability Partnership

By: C. Andrew Graham, General Partner

Town of Timnath, Colorado

By: Timothy Gaines, Mayor

/\ Beverly McBride
Clerk of the Town of Timnath
P.O. Box 57
Timnath, CO 80547
A RESOLUTION OF THE TINMNATH PLANNING COMMISSION RECOMMENDING APPROVAL OF THE I-25 AND HARMONY ROAD SOUTHEAST ANNEXATION (LOCATED SOUTH OF HARMONY ROAD, WEST OF WEITZEL RD, SOUTHEAST OF AND ADJACENT TO I-25, NORTH OF AND ADJACENT TO SWETSVILLE ZOO RD)

WHEREAS, the Planning Commission of the Town of Timnath has reviewed the petition for annexation and find it to be in conformance with the criteria outlined in section 16.13 of the town of Timnath Municipal Code; in conformance with C.R.S. 31-12-101 et. seq; and to be in conformance with the Town of Timnath Comprehensive Plan, April 2013 and;

WHEREAS, the Planning Commission of the Town of Timnath has reviewed the annexation assessment report and find it will benefit the Town and to be in conformance with the Town of Timnath Comprehensive Plan, April 2013; and;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE TOWN OF TIMNATH, COLORADO, as follows:

Section 1. The Planning Commission of the Town of Timnath, Colorado hereby recommends to the Timnath Town Council, approval of the I-25 and Harmony Road Southeast Annexation, with no conditions.

ADOPTED this 5th day of November, 2013.

Philip Goldstein, Planning Commission Chairperson

ATTEST:

Milissa Peters, Town clerk
PLANNING COMMISSION COMMUNICATION

Meeting Date: 11/05/2013

Item: Ordinance No. 17, Series 2013, an ordinance to zone the property known as the I-25 and Harmony SE Annexation

Presented by: Matt Blakely

Ordinance √
Resolution □
Discussion □
For Information □

EXECUTIVE SUMMARY: A recommendation to Town Council for an ordinance to zone property located at the SE corner of I-25 and Harmony Road, associated with the I-25 and Harmony Southeast Annexation. This property is currently being annexed into the Town of Timnath and is requesting a new zone designation of C-2, Community Commercial District. This zoning and use is consistent with the Town Comprehensive Plan.

STAFF RECOMMENDATION: Staff recommends the approval of this ordinance to zone the aforementioned property.

KEY POINTS/SUPPORTING INFORMATION:

The property is currently zoned FA-1 (Farming) in Larimer County. The proposal is to zone the property after annexation to C-2, Community Commercial District. This proposed zoning extends the existing C-2 of the adjacent Timnath Gateway South development (currently vacant). This proposal is consistent with adjacent uses.

Owner: Cache La Poudre Investors South, LLC / Bill McDowell
Applicant: Galloway – Dave Guetig

Application Type: Zoning  Case Number: Ax-2013-002

Process Schedule

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**Location:** South of Harmony Road, west of Weitzel Rd, east of and adjacent to I-25, north of and adjacent to Swetsville Zoo Rd

**Parcel Size (Acres):** Approximately 7.8 acres

**Existing Zoning:** FA-1

**Proposed Zoning:** C-2, Community Commercial

**Existing Land Use:** Vacant

**Proposed Land Use:** Commercial

**SERVICES:**
- **Water:** Fort Collins – Loveland Water District
- **Sewer:** South Fort Collins Sanitation District
- **Fire:** Poudre Fire Authority
- **Special Districts:** None

**Adjacent Zoning/Land Uses:**

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<td>North</td>
<td>Harmony Road; C-2</td>
<td>Major Arterial and Commercial</td>
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<td>South</td>
<td>Swetsville Rd; Agricultural (FA-1)</td>
<td>Local Collector; vacant/farming</td>
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<td>East</td>
<td>C-2 with PD Overlay</td>
<td>Vacant/undeveloped</td>
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<tr>
<td>West</td>
<td>I-25 ROW</td>
<td>Interstate 25</td>
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**ADVANTAGES:**
- The addition of this parcel to the Town of Timnath will be consistent with the existing character of the I-25 Frontage and adjacent commercial developments
- Increase in the amount of commercial land within the Town of Timnath GMA
- Consistent with the Town of Timnath Comprehensive Plan
**DISADVANTAGES:**
- Increase in services supplied by Town

**FINANCIAL IMPACT:**
- An economic impact report is to be provided
- Increase in tax revenues, job creation

**RECOMMENDED MOTION:**
- Finding that a complete application was submitted and reviewed against all applicable criteria, I move to recommend approval of Ordinance No. 17, series 2013 to zone the I-25 and Harmony Southeast Annexation to C-2, Community Commercial, to the Timnath Town Council as it meets all criteria for annexation and zoning

**ATTACHMENTS:**
1. Zoning Map
2. Zoning Assessment Report
3. Ordinance No. 17, Series 2013
i. Need for the proposed rezoning;

The subject property is approximately 6.2 acres of land that abuts the current Town boundary along I-25. The annexation of this property is a natural extension of the Town boundaries and the proposed zoning of this property is to incorporate these 6.2 acres into the adjacent 15 acre zone district to maximize the regional commercial uses along the I-25- Harmony Road corridor.

ii. Present and future impacts on the existing adjacent zone districts, uses, and physical character of the surrounding area;

This property being incorporated into the existing C2 zoning and PD overlay for the adjacent property is fitting within the character of the surrounding area. This property borders I-25 to the west, the existing Wal-Mart to the north and future commercial uses to the south.

iii. Impact of the proposed zone on area accesses and traffic patterns;

A traffic study for all of Gateway Timnath South will be completed in connection with the subdivision process.

iv. Availability of utilities for any potential development;

All necessary utilities are available for the proposed development.

v. Present and future impacts on public facilities and services, including, but not limited to, fire, police, water, sanitation, roadways, parks, schools, and transit;

The inclusion of this property within the overall Gateway Timnath South project will not result in a significant increase in demand for Town services. It is only 6.2 acres, with some of these uses planned for as just commercial parking areas.

vi. The relationship between the proposal and the Town Comprehensive Plan;

and

The Town Comprehensive Plan and growth management plan includes this property and the proposed zoning of C2 with the PD overlay is consistent with the same.

vii. Public benefits arising from the proposal.

The public will benefit from additional regional commercial property along the I-25 – Harmony Road corridor and the corresponding sales and property tax revenue benefits.
AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE TOWN OF TIMNATH FOR THE PURPOSE OF ZONING CERTAIN REAL PROPERTY TO BE KNOWN AS I-25 AND HARMONY SOUTHEAST ANNEXATION ANNEXATION (LOCATED SOUTH OF HARMONY ROAD, WEST OF WEITZEL RD, SOUTHEAST OF AND ADJACENT TO I-25, NORTH OF AND ADJACENT TO SWETSVILLE ZOO RD)

WHEREAS, Cache La Poudre Investors South, LLC, LLC has submitted a request for zoning of real property within the Town of Timnath more particularly described in Exhibit A and attached hereto and incorporated herein by this reference; and

WHEREAS, the Town Council finds the location of the zoning to be appropriate and in conformance with the Town Comprehensive Plan; and

WHEREAS, the zone change was recommended for approval to C-2, by the Town of Timnath Planning Commission on Tuesday, November 5, 2013.

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

Section 1. Property Zoned

That Article 3 of the Timnath Land Use Codes and the map referred to therein as the "Official Zoning Map of the Town of Timnath", said map being part of said Zoning Code and showing the boundaries of the district specified, shall be and the same is hereby amended in the following particulars, to wit:

C-2 – See attached Exhibit A

Section 2. Public Hearing

The Town Council held a public hearing on Tuesday, December 10, 2013 regarding the zoning of the property.

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 Council hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that 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 NOVEMBER 26, 2013, AND SET FOR PUBLIC HEARING, AND SECOND READING AT 6:00 P.M. ON DECEMBER 10, 2013 AT THE TIMNATH ADMINISTRATION BUILDING, 4800 GOODMAN STREET, TIMNATH COLORADO AND ORDERED PUBLISHED BY TITLE THIS 10 DAY OF DECEMBER, 2013.

MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON DECEMBER 10, 2013.

**TOWN OF TIMNATH, COLORADO**

______________________________
Jill Grossman-Belisle, Mayor

**ATTEST:**

______________________________
Milissa Peters, Town Clerk
EXHIBIT A

Legal Description of Property Proposed for Zoning

Zone C-2
DESCRIPTION:
PLANNING COMMISSION COMMUNICATION

Meeting Date: November 5, 2013

Item: Community Development Report

Presented by: Matt Blakely

Ordinance ☐
Resolution ☐
Discussion ☐
For Information X

KEY POINTS/SUPPORTING INFORMATION:

1. **Issued Building Permits:**
   - **2011 Single-Family Residential Total = 132**
   - **2012 Single-Family Residential Total = 141**
   - **2013 Single-Family Residential September = 21**
   - **2013 Single-Family Residential MTD = 3**
   - **2013 Single-Family Residential YTD (1/1/13 to 10/11/13) = 151**

2. **Current Development Actions:**
   a. **4148 Main Street Site Plan:** This application is for the renovation of the existing Feed and Grain building. The application includes removing a portion of the existing building that fronts Main Street and constructing a mixed-use structure that in the first phase includes a residential dwelling unit and an unfinished space for a future business/restaurant use. The applicant has resubmitted plans and documents and Staff is currently reviewing those items. The applicant will also be submitting a building permit on or before October 28, 2013.
   b. **Brunner Farm Annexation:** This application is for annexation of approximately 108 acres south of and adjacent to County Road 36 (River Pass Road) and west of and adjacent to Three Bell Parkway. The applicant is proposing to zone the property R-2 and providing lots ranging in size from 7,000 square feet to 1/3 of an acre. Staff is currently reviewing the application.
   c. **Brunner Farm Sketch Plan, Preliminary Plat, and Final Plat:** On 9/3/13 the Town of Timnath Planning Commission held a public meeting to review the Sketch Plan for the above property. The applicant has submitted a Sketch Plan application and it is currently being reviewed by the Town and referral agencies.
   d. **Harmony Campus Site Plan:** This application is for the development of a Pavilion Building, Wellness Center, swimming pool, tennis courts, basketball court, and other related facilities on approximately 8.25 acres located west of and adjacent to Club Drive and south of Rams Gate Drive. On 10/15/13 the Town of Timnath Planning Commission approved the Site Plan for this application with conditions.
   e. **I-25 and Harmony Road Southeast Annexation and Zoning:** This application is for annexation and zoning, to C-2, of approximately 7.8 acres south of Harmony Road, west of and adjacent to the Harmony Road Enterprises First and Second Annexations. The applicant has submitted the required documents and it is currently being reviewed by staff and referral agencies. The Planning Commission will hold a public hearing on 11/5/13 and make recommendation to the Town Council. Town Council will hold an Eligibility Public Hearing on 11/12/13. The first reading is planned for Town Council on 11/26/13 and the second reading and public hearing is planned for 12/10/13.
   f. **Gateway Timnath South Subdivision Sketch Plan, Preliminary Plat, and Final Plat:** This application is for the area south of and adjacent to Harmony Road, west of and adjacent to Weitzel Street and north of and adjacent to Swetsville Zoo Road and includes the I-25 and Harmony Road Southeast Annexation. This subdivision includes the lots required for the
Costco Wholesale warehouse building and gas station.

g. **Gateway Timnath South Subdivision PD Overlay Zoning Amendment**: This application is to amend the currently approved PD Overlay for the property currently annexed to the Town associated with the Gateway Timnath South Subdivision. The amendments include the addition of the I-25 and Harmony Road Southeast Annexation and minor revisions to the PD Overlay requirements. The applicant has submitted documents for this application and it is currently being reviewed by staff and referral agencies.

h. **Costco Wholesale Warehouse and Gas Station Site Plan**: This application is for a Site Plan for the warehouse building and gas station. The location is south of and adjacent to Harmony Road and west of and adjacent to Weitzel Street. The applicant has submitted documents for the application and these are currently being reviewed by staff and referral agencies.

i. **Burton Properties Site Plan**: This application is for a 5,292 sq. ft. building for offices and light manufacturing by Northwest Instruments and Controls. The building will be located on Lot 8, Block 1 Timnath Ranch Subdivision 4th Filing, 4950 Goodman Road. The applicant has submitted Site Plan documents to the Town and these are currently being reviewed by staff and referral agencies.

### 3. Projects:

a. **Timnath Reservoir Phase 1 Improvements**: The ramp and parking lot improvements have been completed at the reservoir. The fencing work has commenced and tree trimming and clean-up will be completed this fall. Plans are being discussed for the upcoming 2014 season.

b. **Wildwing Park Seeding**: The seeding work has been completed for the season. The contractor will spray for weeds and fertilize in early Spring of 2014.

c. **Land Use Code Update**: Orion Planning Group is continuing with drafting the Land Use Code language and will be reviewing with Town Staff over the next couple of months.

### ADVANTAGES:
N/A

### DISADVANTAGES:
N/A

### FINANCIAL IMPACT:
N/A

### RECOMMENDATIONS:
N/A

### ATTACHMENTS:
1. Building Department Statistics
MEMORANDUM

TO: Timnath Planning Commission
FROM: Matt Blakely, Town Planner
       Crystal Croissant, Building Permit Technician
RE: Timnath Single-Family Building Permits - YTD 10/11/13
DATE: November 5, 2013

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