TOWN OF TIMNATH, COLORADO

ORDINANCE NO. 25-2006

AN ORDINANCE APPROVING THE ANNEXATION
OF PROPERTY KNOWN AS FLATIRON
ANNEXATION # 2 TO THE TOWN OF TIMNATH,
COLORADO

WHEREAS, a Petition for Annexation was filed with the Town by the Flatiron Companies, LLC, (Petitioners), requesting the Town of Timnath to annex that property more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, to be known as "Flatiron Annexation # 2"; and

WHEREAS, a properly noticed public hearing was held on said Petition in accordance with CRS 31-12-108, and all persons interested in such Petition were provided an opportunity to be heard; and

WHEREAS, Petitioners are owners of 100% of the property to be annexed; and

WHEREAS, the Town and Petitioners wish to enter into an annexation agreement simultaneously with the passage of this Ordinance (the “Annexation Agreement"), as such Annexation Agreement is attached as Exhibit B; and

WHEREAS, the Town Council finds that the property is eligible for annexation and should be annexed to the Town of Timnath.

NOW, THEREFORE, THE COUNCIL OF THE TOWN OF TIMNATH, COLORADO, ORDAINS:

Section 1. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

Section 2. The Town Council of the Town of Timnath finds and declares that the property described in Exhibit A to this Ordinance (the "Property") is eligible for annexation in that all relevant conditions and requirements set forth in Sections 31-12-104 and 31-12-105, C.R.S., exist or have been met; that no election is required under Section 31-12-107(2), C.R.S.; and that no additional terms and conditions are to be imposed other than the mutual agreement memorialized in the agreement for annexation referenced in Section 4 of this Ordinance.

Section 3. The Property is hereby annexed to and shall be included in the corporate boundaries of the Town of Timnath under the terms of this Ordinance and said annexation shall be complete and effective from the effective date set forth in the Annexation Agreement, except that for purposes of general taxation this annexation shall be effective on and after January 1, 2008.
Section 4. The Annexation Agreement attached hereto as Exhibit B is hereby approved, and the Mayor and Town Clerk are hereby authorized and directed to execute the same.

Section 5. The Mayor and Town Clerk are authorized and directed to complete all the necessary procedures required for annexation of said property to the Town including: (1) filing certified copies of the annexation ordinance and a map of the area annexed containing a legal description of such area with the Larimer County Clerk and Recorder; (2) filing of the original of this annexation ordinance together with a copy of the annexation map with the Town Clerk.

Section 6. 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 Board of Trustees 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 7. Repealer. All ordinances or resolutions, or parts thereof, in conflict with this Ordinance are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance nor revive any ordinance thereby.

Section 8. Effective Date. This Ordinance shall take effect upon adoption at second reading, as provided by Section 3.5.5 of the Charter.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING, SET FOR PUBLIC HEARING AND SECOND READING AT 7:00 P.M. ON JANUARY 3, 2007, HEARING CONTINUED TO JANUARY 17, 2007 AT 7:00 P.M., AND FURTHER CONTINUED TO FEBRUARY 7, 2007 AT 7:00 P.M. AT THE TIMNATH TOWN HALL, 4100 MAIN STREET, TIMNATH COLORADO AND ORDERED PUBLISHED BY TITLE THIS 6TH DAY OF DECEMBER, 2006.

MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON THE 7th DAY OF FEBRUARY, 2007.

TOWN OF TIMNATH, COLORADO

Donna Benson, Mayor

ATTEST:

Linda Griess, Acting Town Clerk
EXHIBIT A

Legal description, Flatiron Annexation # 2

A parcel of land being part of the Southeast (SE 1/4) of Section Thirty-four (34), Township Seven North (T.7N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), Town of Timnath, County of Larimer, State of Colorado, and being more particularly described as follows:

BEGINNING at the South Quarter Corner of said Section 34 assuming the South Line of said SE1/4 as bearing South 89°47'25" East, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2,634.70 feet with all other bearings contained herein relative thereto. From said South Quarter Corner the Center Quarter Corner of said Section 34 bears North 00°06'15" West a distance of 2,642.70 feet;

THENCE North 00°06'15" East along the West line of said SE1/4 to the most Westerly and Northerly corner of Flatiron Annexation (FA) as recorded on July 8, 1999 at Reception No. 99060469, a distance of 1,051.93 feet, said point being the TRUE POINT OF BEGINNING;

THENCE continuing North 00°06'15" West along said West line a distance of 1590.77 feet to the Center Quarter Corner (C1/4) of said Section 34;

THENCE South 89°41'32" East along the North line of said SE1/4 a distance of 1608.60 feet to the centerline of the Cache La Poudre River as described by James M. Nichols, PLS 4414 in a survey completed February 4, 1970;

Thence along said centerline by the following Seven (7) courses and distances:

THENCE South 38°35'59" East a distance of 33.57 feet;

THENCE South 12°21'08" East a distance of 237.30 feet;

THENCE South 05°34'47" East a distance of 409.91 feet;

THENCE South 09°00'07" West a distance of 312.19 feet;

THENCE South 00°12'58" East a distance of 339.58 feet;

THENCE South 15°8'00" East a distance of 191.74 feet;

THENCE South 09°57'22" West a distance of 67.98 feet to the most Easterly and Northerly corner of FA;

THENCE along the Northerly line of said FA the following Three (3) courses and distances:

THENCE South 81°13'13" West a distance of 942.22 feet;

THENCE North 67°07'34" West a distance of 342.74 feet;

THENCE South 89°23'36" West a distance of 451.64 feet to the TRUE POINT OF BEGINNING.

Said parcel of land contains 62.715 acres, more or less (+), and is subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.
EXHIBIT B

[ANNEXATION AGREEMENT]
AMENDED AND RESTATED
ANNEXATION AND DEVELOPMENT AGREEMENT
BETWEEN
FLATIRON COMPANIES, LLC,
CACHE LA Poudre INVESTORS NORTH, LLC,
TIMNATH DEVELOPMENT AUTHORITY
AND
THE TOWN OF TIMNATH

Approval of this Agreement constitutes a vested property right
pursuant to Article 68 of Title 24, C.R.S., as amended
AMENDED AND RESTATED ANNEXATION AND DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED ANNEXATION AND DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of July 28, 2007, by and between FLATIRON COMPANIES, LLC, a Colorado limited liability company ("Annexor"), CACHE LA Poudre INVESTORS NORTH, LLC, a Colorado limited liability company ("Developer"), the TIMNATH DEVELOPMENT AUTHORITY, a body corporate duly organized and existing as an urban renewal Authority under the laws of the State of Colorado (together with any successors thereto, the "Authority") and the TOWN OF TIMNATH, a municipal corporation of the State of Colorado ("Town").

RECITALS

A. Annexor owns certain real property totaling approximately 62.7 acres, as more particularly described in Exhibit A-1 attached to this Agreement (the "Annexation Parcel"). Annexor has requested that the Town consider annexation of the Annexation Parcel.

B. Annexor also owns certain real property located adjacent to the Annexation Parcel totaling approximately 30 acres, as more particularly described on Exhibit A-2 attached to this Agreement (the "Existing Parcel"). The Town has previously approved annexation and zoning of the Existing Parcel in 1999, in connection with which the Town and Annexor executed that certain Memorandum of Annexation Agreement dated as of March 2, 1999 (the "Existing Parcel Agreement").

C. Annexor desires to develop the Annexation Parcel and the Existing Parcel (collectively, the "Property") for commercial and agricultural uses consistent with the Approved Uses (as defined in Section 1.1), zoned and entitled to permit commercial buildings with an FAR of up to one square foot for each square feet of area of the Property, together with open space, recreational amenities and other related uses (the "Project").

D. The Town and Annexor wish to amend and restate the Existing Parcel Agreement in order to account for subsequent events, to address the specific needs of the Project and to incorporate the Annexation Parcel into the agreement between the parties regarding the development of the Property.

E. Development of the Project in accordance with the terms and conditions of this Agreement will require substantial investments in infrastructure improvements and public facilities, both on and off-site, that will serve the needs of the Project and the Town, including, but not limited to roads, drainage facilities, grading, landscaping, parking facilities and utility facilities. Completion of these improvements will require substantial investments by Annexor and the Authority. Such investments can be supported only if there are assurances that the development of the Project, once approved by the Town, will be allowed to proceed to ultimate completion as provided in this Agreement.

F. Certain Public Improvements (as defined in Section 1.1 below) are required to be constructed in order for the Project to be developed in the manner contemplated by this
Agreement. Developer will cause the construction of and the Authority will pay for the cost of such Public Improvements.

G. The Vested Property Rights Statute (as defined in Section 1.1) provides for the establishment of vested property rights in order to advance the purposes stated therein and, together with the Town's Municipal Code, authorizes the Town to enter into development agreements with landowners providing for vesting of property development rights for periods of greater than three years.

H. Development of the Project in accordance with this Agreement will provide for orderly and well-planned growth in accordance with the policies and goals set forth in the Town's Comprehensive Plan, will provide a significant benefit to the surrounding properties, will increase the Town's sales and property tax base, will create new employment opportunities, will stimulate economic growth within the Town, will secure the reasonable investment-backed expectations of Annexor, will foster cooperation between the public and private sectors in the area of land use planning, will ensure reasonable certainty, stability and fairness in the land use planning process, and otherwise will achieve the goals and purposes of the Vested Property Rights Statute. In exchange for these benefits and the other benefits to the Town contemplated by this Agreement, together with the public benefits served by the orderly and well planned development of the Property, Annexor desires to receive the assurance that it may proceed with development of the Property pursuant to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Annexor, the Authority and the Town agree as follows:

ARTICLE 1
Definitions and General Provisions

1.1. Definitions. The following terms and references shall have the meanings indicated:


1.1.2. Affiliate. Any entity of which Developer has the majority of equity or majority of voting interest or is the managing member or managing partner.

1.1.3. Agreement. This Amended and Restated Annexation and Development Agreement.

1.1.4. Annexation Parcel. The real property legally described on Exhibit A-1.
1.1.5. **Annexation Petition.** The petition for annexation for the Annexation Parcel filed with the Town on October 16, 2006.

1.1.6. **Annexor.** Flatiron Companies, LLC, a Colorado limited liability company, and its successors and assigns.

1.1.7. **Approved Uses.** The primary uses and accessory uses for the Property, the density and the intensity of use, and the development standards for the Property, all as set forth in the Zoning Application, including, without limitation, (i) with respect to the commercial portion of the Property, an FAR of up to one square foot for each square feet of area of the Property, the Design Guidelines and all approved uses permitted in the C2- Community Commercial zone district plus the following additional permitted uses: tire and oil change services, drive through facilities for pharmacy operation and restaurant uses, liquor sales, outdoor storage (including, without limitation, bale and pallets storage and trailer storage), recreation vehicle and trailer parking, twenty-four hour operation, no limit on delivery hours, and outdoor/seasonal sales (no limitation on the number of days per calendar year) and (ii) with respect to the agricultural portion of the Property, all approved uses permitted in the A – Agricultural zone district.

1.1.8. **Authority.** The Timnath Development Authority, a body corporate duly organized and existing as an urban renewal authority under the laws of Colorado.

1.1.9. **Authority’s Bonds.** The Authority’s Series 2007 Bonds to be issued contemporaneously with the Closing, as described in this Agreement, and which will be in an amount sufficient to yield net bond proceeds of not less than Twenty Million Dollars.

1.1.10. **Bond Closing.** The issuance of the Authority’s Bonds and receipt of the net bond proceeds by the Authority or its bond trustee.

1.1.11. **Bonds.** Any of the bonds to be issued by the Authority from time to time.

1.1.12. **Bond Trustee.** The trustee or trustees for the holders of the Bonds appointed pursuant the Public Financing Documents.

1.1.13. **Bridge Improvements.** The Harmony Road Bridge over the Cache La Poudre River as depicted on the Concept Plan and further described on Exhibit C-1.

1.1.14. **Closing.** As defined in Section 2.10.

1.1.15. **Commencement of Commercial Construction.** The date on which the Town is notified that a general contractor has been engaged and a construction contract has been executed regarding the completion of the on-site improvements on Lot 1 that includes the construction of a large format retail store.
1.1.16. Completion of Construction. With respect to the Project, the completion of all or substantially all of the Public Improvements to be constructed in accordance with this Agreement.


1.1.18. Construction Contract(s). Each contract executed by the Developer and approved by the Town Manager for the completion of the Public Improvements.

1.1.19. Construction Plans. The plans and specifications for the Public Improvements approved by the Town, the Authority and any other applicable governmental authority.


1.1.22. Developer. Cache La Poudre Investors North, LLC, a Colorado limited liability company or any Affiliate thereof.

1.1.23. Effective Date. The later of the following: (i) the effective date of the Council ordinance approving this Agreement; or (ii) the effective date of the Authority resolution approving this Agreement.

1.1.24. Eligible Overage Costs. With respect to any particular Public Improvement, the amount, if any, by which the actual bona fide cost of designing and constructing such Public Improvement exceeds the estimated cost of such improvement set forth in the applicable Construction Contract; provided, however, that the aggregate of all Eligible Overage Costs will not exceed 10% of the Eligible Public Improvements Costs Cap.

1.1.25. Eligible Public Improvements Costs. All Hard Costs and Soft Costs paid or incurred in connection with designing, constructing and otherwise providing for the Public Improvements which may lawfully be paid for by the Authority.

1.1.26. Eligible Public Improvements Costs Cap. As defined in Section 5.3.

1.1.27. Exhibits. The following Exhibits to this Agreement, all of which are incorporated by reference into and made a part of this Agreement:

Exhibit A-1 - Legal Description of Annexation Parcel

Exhibit A-2 - Legal Description of the Existing Parcel
Exhibit B-1 – Concept Plan

Exhibit B-2 – Design Guidelines

Exhibit C-1 – Public Improvements

Exhibit C-2 – Schedule of Completion of Improvements

1.1.28. Existing Parcel. The real property legally described on Exhibit A-2.

1.1.29. Existing Parcel Agreement. The Memorandum of Annexation Agreement dated as of March 2, 1999, by and between the Town and Annexor.

1.1.30. FAR. Floor area ratio.

1.1.31. Final Approval. The later of the following events to occur: (i) the forty-first (41st) day after publication following final action by Council to approve the latest of the ordinances by which Council approves (a) this Agreement, (b) the annexation of the Property to the Town, and (c) the Zoning Application; and (ii) the Bond Closing. Final Approval shall be deemed not to have occurred if a Legal Challenge occurs prior to the time periods specified above, unless Annexor elects to waive this requirement and such Legal Challenge is concluded or resolved affirming such approvals within a period of time acceptable to Annexor in its sole discretion.

1.1.32. Hard Costs. Costs and expenses actually paid or incurred by Developer for labor, materials or equipment used for performing environmental remediation on the Property, demolishing and removing existing improvements within the Project Area and excavating, grading, landscaping, constructing and installing Public Improvements, including providing reports, testing or inspecting in connection therewith, as contemplated by this Agreement and the Project Plan. By way of example, Hard Costs will include, without limitation, the gross cost of any general or special construction contract for the demolition of existing improvements or construction of Public Improvements which is reduced to writing, and the additional charges for change orders, discharge of mechanic’s liens, and other similar extras contemplated by or resulting from such contract provided that any costs or expenses included in the computation of Soft Costs will not be included in Hard Costs.

1.1.33. Legal Challenge. For purposes of this Agreement, either of the following shall constitute a “Legal Challenge”: (1) any third party commences any legal proceeding, request for reconsideration pursuant to § 31-12-116, C.R.S. (2005), or other action that directly or indirectly challenges this Agreement, annexation and/or zoning/rezoning of the Property, or any of the Town’s resolutions or ordinances approving the annexation, the Zoning Application, or this Agreement; (2) any third party submits a petition for a referendum seeking to reverse or
nullify any of such ordinances or (3) any third party commences any legal proceeding or other action that directly or indirectly challenges the Authority’s issuance of the Authority Bonds.

1.1.34. **Net Bond Proceeds.** With respect to any issuance of Bonds, the gross proceeds from such issuance less the costs of such issuance and less the amount of any required reserves or capitalized interest.

1.1.35. **Maximum Eligible Public Improvements Costs Cap.** The maximum amount of Eligible Public Improvements Costs for which Developer will be entitled to payment pursuant to this Agreement from Net Bond Proceeds, which maximum amount is $7,000,000.00.

1.1.36. **Municipal Code.** The Town Code of the Town of Timnath, as in effect from time to time (or, where this Agreement expressly states, at the particular time stated).

1.1.37. **Parties.** Collectively, the Authority, the Town, Annexor and Developer.

1.1.38. **Payment Request.** A written request for payment of Eligible Public Improvements Costs given by Developer to the Authority, the Town and the Bond Trustee in the form reasonably specified by the Bond Trustee.

1.1.39. **Payment Termination Date.** As defined in Section 5.4.

1.1.40. **Pre-Bond Closing Property Acquisition Costs.** Costs and expenses actually paid or incurred by Developer prior to the Bond Closing for the any costs or expenses incurred in connection with the Town’s acquisition of any fee, leasehold or other interest in any property within the Public Improvements Project Area, such costs may include, without limitation, appraisals, title commitment fees, consultant fees and attorneys’ fees.

1.1.41. **Project.** As defined in Recital C.

1.1.42. **Property.** As defined in Recital C.

1.1.43. **Public Financing.** With respect to the Authority, the sale of bonds or any other acquisition of funds effected to finance any Public Improvements or services that the Authority may provide pursuant to its statutory authority including, without limitation, acquisition of any right-of-way for and the design and construction costs of the Public Improvements, all as described in or contemplated by this Agreement.

1.1.44. **Public Financing Documents.** Any documents executed or delivered in connection with the closing of any Public Financing.

1.1.45. **Public Improvements.** Collectively, those public improvements necessary for the development of the Project, the costs of which may lawfully be paid for by the Authority,
including, without limitation, public streets, sidewalks, utilities, sanitary sewer facilities, storm water facilities and open space and associated land acquisition, demolition and remediation.

1.1.46. **Public Improvement Project Plans.** Collectively (i) this Agreement, (ii) the Concept Plan; and (iii) the Construction Plans.

1.1.47. **Public Improvements Project Area.** Collectively, the parcels of real property generally described on Exhibit C-1 of this Agreement that will encompass the Public Improvements.

1.1.48. **Schedule of Completion.** The Schedule of Completion for the Public Improvements, Bridge Improvements and Sewer Improvements is set forth on Exhibit C-2.

1.1.49. **Sewer District.** The South Fort Collins Sanitation District.

1.1.50. **Site Plan.** One or more site plan(s) (individually or collectively) for the Project to be approved by the Town, as amended in accordance with the Municipal Code and the terms and conditions of this Agreement, which plans shall be consistent with the Design Standards.

1.1.51. **Soft Costs.** The following costs paid or incurred by Developer with respect to any matter for which Hard Costs may be paid or incurred: reasonable fees and expenses of architects, surveyors, engineers, accountants, attorneys, construction managers and other professional consultants; direct salary and overhead expenses; development, administration and overhead charges; permit charges; commissions paid to third parties, interest charges, loan fees, and development fees; provided that any costs or expenses included in the computation of Hard Costs will not be included in Soft Costs.

1.1.52. **Term.** As defined in Section 1.3.

1.1.53. **Town.** The Town of Timnath, a municipal corporation of State of Colorado.


1.1.55. **Trail.** A ten-foot wide concrete path along the eastern property boundary of the Property in the general location depicted on the Concept Plan.

1.1.56. **Vested Property Rights Statute.** Sections 24-68-101, et seq. of the Colorado Revised Statutes in effect as of the Effective Date.
1.1.57. Zoning Application. Annexor’s application for zoning/rezoning of the Property within the C-2 Community Commercial zone district with waivers and conditions in the Agricultural zone district, submitted to the Town in connection with submission of the Annexation Petition, requesting approval of the Approved Uses, including the Design Guidelines.

1.1.58. Covenants. The provisions of this Agreement shall constitute covenants or servitudes which shall touch, attach to and run with the land comprising the Property, and 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 to the parties to this Agreement, except as otherwise provided in Section 1.3 below.

1.2. Term of Vested Rights. In recognition of the benefits the Town will derive from development of the Project, the size of the development contemplated under this Agreement, the substantial investment and time required to complete the development of the Project and related infrastructure and public facilities and the possible impact of economic cycles and varying market conditions during the course of development, the term of the vested property rights established under this Agreement shall commence on the Effective Date and shall continue until the tenth (10th) anniversary of the Effective Date, as such term may be extended pursuant to Section 11.1 below (the “Term”). After expiration of the Term, the Property shall continue to be subject to the charter, ordinances, rules and regulations of the Town for so long as it is located within the municipal boundaries of Town, and the vested property rights established by this Agreement shall be deemed terminated and of no further force or effect; provided, however, that such termination shall not affect (a) the annexation of the Property to the Town; (b) any common-law vested rights obtained prior to such termination; or (c) any right, whether characterized as vested or otherwise, arising from Town permits, approvals, zoning/rezoning, or other land use entitlements for the Property or the Project which were granted or approved prior to, subsequent to, concurrently, or in conjunction with the approval of this Agreement.

1.3. Amendment of Agreement. Except as otherwise set forth in this Agreement, this Agreement may be amended or terminated only by mutual consent in writing of the Town, the Authority, Annexor and Developer following the public notice and public hearing procedures required for approval of this Agreement. For the purposes of any amendment to this Agreement, “Annexor” and “Developer” shall mean only the signatories to this Agreement constituting Annexor and Developer and those parties, if any, to whom such signatories have specifically granted, in writing, the power to enter into such amendment.

1.4. Existing Parcel Agreement. The Parties hereby amend and restate in its entirety the Existing Parcel Agreement and agree that this Agreement shall govern and control with respect to the development of the Property. The Existing Parcel Agreement is superseded in its entirety by this Annexation Agreement.
ARTICLE 2

Conditions Precedent to Bond Closing

2.1. Actions of the Parties and Conditions Precedent to Bond Closing. The Parties shall use commercially reasonable efforts to take the actions set forth in this Article 2. The agreement by the Town to take any legislative act is an expression of intention to present such action to the Council and does not bind the Council to approve any such measure or action. The actions set forth in this Article 2 are conditions precedent to the Authority's Bond Closing (each a "Condition Precedent", collectively, the "Conditions Precedent").

2.2. Right-of-Way Acquisition. The Town shall acquire immediate possession of all right-of-way sufficient to permit the construction of the Public Improvements and the Bridge Improvements, as such areas are depicted on the Concept Plan.

2.3. Approval of Annexation and this Agreement. The Town shall have adopted an ordinance approving the annexation of Annexation Parcel and this Agreement and no third party has (i) commenced any legal proceeding, request for reconsideration pursuant to § 31-12-116, C.R.S. (2005), or other action that directly or indirectly challenges the annexation of the Annexation Parcel, this Agreement, or any of the Town's resolutions or ordinances approving the annexation or this Agreement, or (ii) submitted a petition for a referendum seeking to reverse or nullify any of such ordinances.

2.4. Approval of Zoning. The Town shall have adopted an ordinance approving the zoning/rezoning of the Property in a form substantially the same as requested by Annexor in the Zoning Application and no third party has (i) commenced any legal proceeding or other action that directly or indirectly challenges the zoning/rezoning of the Property or any of the Town's resolutions or ordinances approving the zoning/rezoning of the Property, or (ii) submitted a petition for a referendum seeking to reverse or nullify any of such ordinances.

2.5. Approval of Site Plan. The Town shall have approved the Site Plan for Lot 1 in a form acceptable to Annexor and consistent with the Design Guidelines.

2.6. Bond Resolution. The Authority shall have adopted a final resolution authorizing the issuance of the Authority's Bonds pursuant to C.R.S. § 31-25-109(8). The authorizing resolution will constitute the Authority's binding commitment to issue the Authority's Bonds subject to the Closing and to any additional terms and conditions set forth in the applicable Public Financing Documents. The resolution will state that the authority to issue the Authority's Bonds will not expire or be terminable without the Annexor's written consent unless Annexor has exercised its right to terminate this Agreement as set forth in Section 13.1.

2.7. Intergovernmental Agreement with the Loveland/Fort Collins Water District. The Town shall have entered into an intergovernmental agreement obligating the Loveland/Fort
Collins Water District to provide potable water service to the Property (the “Water IGA”) no later than thirty days after the Effective Date.

2.8. **Intergovernmental Agreement with the South Fort Collins Sanitation District.** The Town and the Authority shall have entered into an intergovernmental agreement obligating the Sewer District to provide sanitary sewer service to the Property (the “Sewer IGA”) no later than thirty days after the Effective Date.

2.9. **CLOMR Approval.** Annexor shall have received approval from the Federal Emergency Management Agency (FEMA), the Town and any other applicable governmental agencies of the CLOMR for the Property.

2.10. **Construction Contracts.** Developer shall have entered into all applicable Construction Contracts for the completion of the Public Improvements in accordance with Section 5.3.

2.11. **Closing.** Conditioned upon the completion of all Conditions Precedent set forth in Sections 2.1 through 2.10 above, Annexor shall have caused the conveyance of that portion of the Property known as Lot 1 to a large format retailer (the “Closing”).

**ARTICLE 3**

**Bond Closing**

3.1. **Bond Closing.** Bond Closing shall occur no later than fourteen (14) days after the satisfaction of the last Condition Precedent set forth in Article 2 above.

3.2. **Reimbursement of Annexor or Developer’s Pre-Development Expenses.** At Bond Closing, the Bond Trustee shall reimburse Annexor or Developer, as applicable, for the following pre-development expenses upon approval by the Authority and the Town of satisfactory evidence of such expenditures:

3.2.1. Design fees and consultant fees for the Public Improvements and Bridge Improvements, including, without limitation, the costs associated with the CLOMR, attorneys’ fees for the Project and design and engineering fees for the Public Improvements and Bridge Improvements.

3.2.2. Payments to the Town or to the Authority for attorneys’ fees and consultant fees incurred in connection with the Public Improvements and the Project.

3.2.3. Any Pre-Bond Closing Property Acquisition Costs incurred.

3.2.4. All expenses incurred prior to the Bond Closing that are associated with the site development work on the Property necessary to facilitate the Project, in an amount equal to $1,157,000.00.
ARTICLE 4

Obligations Following Bond Closing

4.1. Construction of the Public Improvements. The Authority shall finance and Developer shall construct or cause the construction of the Public Improvements in accordance with the Schedule of Completion, as further described in Article 5 below.

4.2. Construction of the Bridge Improvements. The Town shall design and construct and the Authority shall finance the Bridge Improvements in accordance with the Schedule of Completion.

ARTICLE 5

Public Improvements

5.1. Public Financing. Development of the Project will require design and construction of the Public Improvements and the Bridge Improvements. The costs of designing and constructing the Public Improvements and the Bridge Improvements will be financed in accordance with the provisions of this Agreement. The Authority will issue Bonds in an amount sufficient to fund the Public Improvements and the Bridge Improvements. Neither Annexor or Developer will be required or expected to provide a letter of credit, any collateral or any credit enhancement, directly or indirectly, for the Public Financing. Neither Annexor or Developer will be required or expected to provide any funding for the Public Improvements or the Bridge Improvements. Notwithstanding the foregoing, Developer shall be responsible for any costs of the Public Improvements that exceed the Eligible Public Improvements Costs Cap.

5.2. Construction of Public Improvements. Developer shall be responsible for constructing the Public Improvements and obtaining all applicable lien waivers. Upon Completion of Construction, the Town shall be responsible for the maintenance, repair and replacement of the Public Improvements. Developer shall ensure that all warranties relating to the Public Improvements are fully assignable to the Town without the necessity to execute any additional documentation to effectuate such assignment.

5.3. Construction Contract. Throughout the contractor selection and bid process for the Public Improvements, Developer shall provide the Town Manager with periodic updates and pertinent materials related thereto. At least five (5) business days prior to executing any construction contract for the completion of the Public Improvements, Developer shall provide the Town Manager with a copy of the proposed construction contract (each a "Construction Contract"), which will be accompanied by and include a description of the applicable work and a complete budget of the total costs to be incurred for the applicable Construction Contract, including any reserves or allowances for overruns that may be incurred. Each Construction Contract will be subject to the approval of the Town Manager, which will not be unreasonably withheld or delayed, prior to Developer executing such Construction Contract. It will be
unreasonable for the Town Manager to withhold consent if the related costs to be incurred conform to good construction management practices and prevailing market values and rates for arm’s-length transactions. Upon execution of the applicable Construction Contracts, the total anticipated costs associated with the Public Improvements shall be calculated by Developer and provided to the Town Manager. For purposes of this Agreement, the “Eligible Public Improvements Costs Cap” shall mean the aggregate costs of the Public Improvements set forth in the applicable Construction Contracts plus any Eligible Overage Costs. By way of example, if the total of the Construction Contracts anticipated costs for the Public Improvements equals $6,000,000.00, then the Eligible Public Improvements Costs Cap, plus any Eligible Overage Costs, is $6,600,000.00. Notwithstanding the foregoing, the Eligible Public Improvements Costs Cap shall not exceed the Maximum Eligible Public Improvements Costs Cap.

5.4. Developer Payment Requests. In order to receive any payment for Eligible Public Improvements Costs pursuant to this Article 5, Developer will provide to the Authority, the Town and the Bond Trustee a monthly Payment Request. The Payment Request will indicate the aggregate Eligible Public Improvements Costs to be paid to Developer and such other information as the Authority, the Town or the Bond Trustee may from time to time reasonably require, such as, for example, evidence substantiating any or all of the Eligible Public Improvements Costs indicated in such notice. The Payment Request will further include (a) a certification by Developer that all Eligible Public Improvements Costs requested in such Payment Request were actually incurred in the completion of the Public Improvements and have not been previously requested pursuant to a prior Payment Request; and (b) a certification by the architect of the subject Public Improvements that the Public Improvements made therewith were constructed in compliance with applicable laws, ordinances and regulations and the Public Improvements Project Plans. The Parties agree that the Trust Indenture for the Authority’s Bonds direct the Bond Trustee to disperse the Net Bond Proceeds in accordance with this Agreement.

5.5. Disbursements to Developer. No later than 15 days following receipt by the Town, the Authority and the Bond Trustee of a Payment Request, subject to the requirements of the Public Financing Documents, the Bond Trustee will pay to Developer any Eligible Public Improvements Costs for which Developer has submitted such Payment Request; provided, however, that the maximum amount of payments for Eligible Public Improvements Costs that Developer may receive under this Agreement may not exceed the Eligible Public Improvements Costs Cap. If Developer has not yet received payments from the Net Bond Proceeds in an amount equal to the Eligible Public Improvements Costs Cap, then the Authority will cause the Bond Trustee to hold the same until the earlier of the following events occurs (the “Payment Termination Date”): (i) the date on which Developer has received amounts equal to the Eligible Public Improvements Costs Cap; or (ii) the date on which Developer has submitted its final Payment Request and all Eligible Public Improvements Costs have been paid in full.

5.6. Authority’s Payment Obligation. Notwithstanding anything to the contrary in this Agreement, the Authority’s obligation to commence payments to Developer will not occur until
the date that Commencement of Commercial Construction has occurred. Nothing in this Agreement will be construed to require the Authority to make any payments to Developer, on a periodic or aggregate basis, in excess of such amount or to make any payments to Developer that, in the aggregate, exceed the Eligible Public Improvements Costs Cap. The Authority’s payment obligation hereunder will terminate upon the Payment Termination Date.

5.7. **Grant of License.** The Authority hereby grants to Developer and its assigns (together with their managers, contractors, sub-contractors, employees and other design and/or construction professionals), at no cost to Developer, a license to enter upon, and to occupy any portion of the real property comprising the Public Improvements Project Area for the purpose of accomplishing timely commencement of construction of the Public Improvements, including but not limited to performing any inspections, tests, grading, construction and other activities reasonably necessary for commencement of construction of the Public Improvements, effective as of the time that the Authority obtains title and/or any possessory interest thereto, whereupon Developer and its agents may enter upon the Public Improvements Project Area to conduct due diligence and to commence development activities.

5.8. **Other Payments.** In addition to the obligation to pay Developer for the Eligible Public Improvements Costs, the Authority will also pay the Sewer District directly for the design and inspection fees incurred by or on behalf of the Sewer District in connection with the Public Improvements (the “Sewer Costs”). The Sewer Costs shall not to be included within the Eligible Public Improvements Costs or be applied towards the Eligible Public Improvements Costs Cap.

5.9. **Management Fee.** As consideration for the overseeing and managing the completion of the Public Improvements, Developer shall receive a management fee of 4% of Eligible Public Improvements Costs (the “Management Fee”). The Authority shall pay Developer the Management Fee in connection with each Payment Request. The Management Fee shall be subject to the Town Manager’s reasonable review based upon expenses incurred by Developer in completion of the Public Improvements.

**ARTICLE 6**

**Streets**

6.1. **Access; Streets.** Unless otherwise agreed to by Annexor, all streets within the Project shall be privately owned and maintained by Annexor or its successors or assigns. All street design standards and specifications within the Project shall be in accordance with requirements set forth in the Traffic Study. All streets within the Project will be directly opposite existing roadway intersections or offset in accordance with the requirements of the Municipal Code.
ARTICLE 7
Water, Sewer, Utilities and Municipal Services

7.1. Water. The Town does not currently provide water service to the Property. As stated in Section 2.8 above as a Condition Precedent, the Town shall enter into the Water IGA no later than thirty (30) days after the Effective Date. Annexor will meet Loveland/Fort Collins Water District’s requirements for water service. The Town will require proof of purchase of a water tap for any building site before any building permit will be issued for the site. In the event that the Town in the future undertakes to include water utility service within the scope of its municipal services, the Town will provide water utility service to the Property on the same terms and conditions that it provides water utility service to other property within the Town.

7.2. Sewer. The Town does not currently provide sewer service to the Property. As stated in Section 2.8 above as a Condition Precedent, the Town and the Authority shall enter into the Sewer IGA with the Sewer District no later than thirty (30) days after the Effective Date. Annexor will meet Sewer District’s requirements for sewer service. The Town will require proof of purchase of a sewer tap for any building site before any building permit will be issued for the site. In the event that the Town in the future undertakes to include sewer utility service within the scope of its municipal services, the Town will provide sewer utility service to the Property on the same terms and conditions that it provides sewer utility service to other property within the Town.

7.3. Utilities. Annexor will meet Poudre Valley REA, Xcel Energy and Qwest’s requirements for gas, electrical and telephone service to the Property.

7.4. Fire Protection. Annexor will meet Poudre Fire Authority’s requirements for fire protection service to the Property. Annexor shall be solely responsible for installing all fire hydrants and other fire protection measures on the Property and its perimeter as may be required by the Poudre Fire Authority.

7.5. Municipal Services. Except as this Agreement expressly states otherwise, the Town shall have the responsibility and obligation to provide all municipal services to the Project on an equivalent basis to those provided to any other area of the Town on a uniform and non discriminatory basis, including, without limitation: police and fire protection, snow removal and road construction, building code enforcement, maintenance of such public facilities and other administrative and utility services.

ARTICLE 8
Storm Drainage

8.1. Annexor’s Construction Obligations. Annexor shall design, finance and cause the construction of all on-site storm drainage facilities in accordance with the requirements of the Municipal Code in effect as of the Submission Date. The applicable scope of improvements,
construction standards, technical requirements and construction schedules shall be determined by
the Town Engineer based on future drainage studies provided by Annexor in connection with
future permit applications and approvals for the Project.

ARTICLE 9
Open Space Requirements

9.1. Open Space. Annexor shall convey to the Town a trail along the eastern property
boundary of the Property in the general location depicted on the Concept Plan (the “Trail”) and
the park commonly known as Outlot D (the “Park”) on or before the date of the recordation of
the final plat for the Property. The final plat shall bear a note describing such conveyance and
reciting that they shall occur and be recorded of even date with that of the recording of the final
plat. It is expressly understood that the Title Company shall be instructed by Annexor to record
the conveyance of the Trail and the Park immediately after the recordation of the final plat for
the Property. Annexor will receive 100% credit towards the public open space requirements for
the Trail and the Park, and in no event shall the Trail exceed 100 feet in width unless otherwise
agreed to by Annexor. Annexor conveyance of the Trail and the Park to the Town will be
subject to an easement over and across the Trail and the Park for any and all purposes needed to
serve the Project, including, without limitation, drainage, utilities and access purposes. In
addition, Annexor will receive 100% credit toward the public open space requirements specified
in the Municipal Code for all detention areas, drainage ways and floodplain areas provided such
areas are included within Annexor’s landscape plans (the “Project’s Open Space”). The
Project’s Open Space locations are generally depicted on the Concept Plan. The Town agrees
that the Project’s Open Space satisfies all requirements of the Municipal Code for public open
space.

ARTICLE 10
Annexation, Zoning and Development

10.1. Annexation. Annexation of the Property shall be in accordance with the terms
and conditions of the Annexation Petition, this Agreement, and the Municipal Annexation Act of
1965, as amended (§§ 31-12-101, et seq., C.R.S. (2005)).

10.1.1. Conditions Precedent. Annexation of the Property to the Town shall not
become effective until the following conditions have been satisfied: (a) Annexor, the Authority
and the Town have mutually executed and delivered this Agreement; and (b) Final Approval has
occurred.

10.1.2. Failure of Conditions. Unless and until all of the conditions set forth in
Section 10.1.1 have been satisfied, neither Annexor nor the Town shall record or cause to be
recorded the items described in § 31-12-113(2)(a)(II)(A), C.R.S. (2005) unless such requirement
is waived by Annexor.
10.2. Zoning/Rezoning. Concurrently with taking final action on the ordinance approving the annexation of the Annexation Parcel, the Council shall take final action on an ordinance approving the Zoning Application for the Property. Annexor’s consent to annexation of the Property is contingent on obtaining the Town’s approval of zoning/rezoning for the Property that is substantially consistent with the Project as described in this Agreement. As used herein, the phrase “substantially consistent with the Project” means the Town’s approval of a final, non-appealable ordinance zoning/rezoning the Property to the “C2 – Community Commercial” zone district with waivers and conditions and the “A – Agricultural” zone district consistent with the Zoning Application. The development parcel sizes and locations, roadway locations and other aspects of the Project shall be as generally depicted on the Concept Plan. The Approved Uses shall be uses by right which are not subject to further discretionary review on the basis of compatibility.

10.3. Subdivision Plat, Site Plan and Other Plans Review Process. Concurrently with taking final action on the ordinance approving the annexation of the Annexation Parcel and the zoning/rezoning of the Property, the Council shall consider a resolution regarding the approval of the final plat for the Property. The requirements, standards and specifications for every application, permit or plans submitted by Annexor shall be those in effect as of the Effective Date, unless otherwise agreed to by Annexor. With respect to future site plan applications, in the event of any conflict between the Municipal Code and the Design Guidelines, the Design Guidelines shall control. The Town will process and review in an expeditious manner all subdivision plats, replats, site plans, grading permits, building plans and specifications and other plans relating to the development of the Property, filed by Annexor. The Town will review Annexor’s submittal for grading permits, building plans and specifications, and any other final construction permits and provide Annexor with an affirmative or negative decision on such submittal within thirty (30) days after a Complete Submittal. For purposes of this Section 10.3, a “Complete Submittal” means that Annexor has submitted to the Town a completed application with all necessary materials and fees required by the Town for such processing such application, permit or plans. The Town will notify Annexor within five (5) business days of submission if such submittal is not considered a Complete Submittal.

10.4. LOMR. The Town will not condition any certificate of occupancy upon the issuance of a LOMR for the Property.

10.5. Grading Permit. The Town recognizes that Annexor may desire to grade certain portions of the Property and deposit fill on other portions of the Property prior to the approval of an applicable final plat and/or site plan. Upon release of the current mining permit for the Property issued by the Colorado Division of Minerals and Geology, the Town will issue Annexor permits for such grading and filling of the Property prior to the approval of an applicable final plat and/or site plan, at Annexor’s sole risk. Annexor will comply with any and all applicable laws, ordinances, rules and regulations governing such activities and obtain any other permits required by any other governmental entity having jurisdiction. The Town reserves the right to
require Annexor to modify any such grading completed by Annexor upon further review or in connection with subsequent land use approvals.

10.6. Impact Fees. Annexor shall pay the impact fee of nine cents ($0.09) per square foot of commercial building space in accordance with the requirements of the Municipal Code in effective as of the Effective Date. Annexor shall not be subject to any additional impact fees adopted by the Town after the Effective Date.

10.7. Mining and Reclamation. Current mining and reclamation activities on the Property may continue unaffected by this Agreement. Reclamation shall be governed by the Colorado Division of Minerals and Geology, and the Town shall not impose any additional requirements on the mining or reclamation of the Property.

ARTICLE 11
Vested Property Rights

11.1. Vesting of Property Rights. This Agreement constitutes an approved “site-specific development plan” as defined in the Vested Property Rights Statute. Each subdivision plat, site plan and each amendment to any of the foregoing, that Annexor submits to the Town subsequent to the Effective Date shall, if Annexor so requests, be processed as a “site specific development plan” as defined in the Vested Property Rights Statute. The vested property rights created in connection with such approved subdivision plats, site plans, and each amendment to any of the foregoing, shall be supplemental and in addition to those property rights initially vested through this Agreement as of the Effective Date, and shall be vested pursuant to the Vested Property Rights Statute until (a) the tenth (10th) anniversary of the Effective Date or, if later, (b) ten (10) years from the date sanitary sewer service is physically available to the Property.

11.2. Compliance with General Regulations. Subject to the terms, conditions and limitations of the Vested Property Rights Statute and except as otherwise provided in this Agreement, the establishment of vested property rights pursuant to this Agreement shall not preclude the application on a uniform and non-discriminatory basis of Town regulations of general applicability (including, but not limited to, building, fire, plumbing, electrical and mechanical codes, the Municipal Code, and other Town rules and regulations) or the application of state or federal regulations, as all of such regulations exist on the Effective Date or may be enacted or amended after the Effective Date. Annexor does not waive its right to oppose the enactment or amendment of any such regulations.

11.3. Property Rights Vested. Subject to the terms, conditions and limitations of the Vested Property Rights Statute and except as otherwise provided in this Agreement, the rights identified below shall constitute the vested property rights under this Agreement during the Term:
11.3.1. The right to develop, plan and engage in land uses within the Property in the order, at the rate and at the time as market conditions dictate, in a manner that is substantially consistent with the Project as described in this Agreement and in the Zoning Application, including the Approved Uses, the Design Guidelines and the entitlement to develop at an FAR of one square feet for each square feet of area of the Property.

11.3.2. The right to commence and complete development of the Project (including, without limitation, the right to receive all Town approvals and permits necessary for the development of the Project) with conditions, standards and dedications which are no more onerous than those imposed by the Town upon other developers in the Town on a uniform, non discriminatory and consistent basis.

11.3.3. The right to apply for and, upon compliance with the terms and conditions of this Agreement and the Municipal Code, to receive grading permits, building permits, certificates of occupancy, and other permits necessary for development, construction and occupancy of improvements within the Project.

11.3.4. The right to have the Town accept and process applications for subsequently required development approvals including, without limitation, each subdivision plat, site plan, and each amendment to any of the foregoing, as site specific development plans which, if approved, shall establish vested property rights pursuant to the Vested Property Rights Statute in the manner described in Section 11.1 above.

11.3.5. Except as the Vested Property Rights Statute expressly provides otherwise, no initiated or referred zoning/rezoning, subdivision, land use or other legal or administrative action which would directly or indirectly have the effect of materially and adversely altering, impairing, preventing, diminishing, imposing a moratorium on development, delaying or otherwise adversely affecting any of the Annexor's rights set forth in this Agreement shall apply to or be effective against the Property or the Project.

11.4. No Obligation to Develop. Annexor shall have no obligation to develop all or any portion of the Project and shall have no liability under this Agreement to the Town, the Authority or to any other party for its failure to develop all or any part of the Project. The Parties contemplate that the Project will be developed in phases. Annexor shall have no obligation to develop all or any portion of any phase, notwithstanding the development or non-development of any other phase, and Annexor shall have no liability under this Agreement to the Town, the Authority or any other party for its failure to develop all or any portion of any phase of the Project.
ARTICLE 12
Legal Challenges

12.1. Expiration or Termination During Pendency of Legal Challenge. Notwithstanding any contrary provision of this Agreement, if a Legal Challenge occurs, this Agreement shall not expire or terminate during the pendency of any Legal Challenge and shall, unless earlier terminated or modified by a written amendment signed by all parties hereto, remain in full force and effect through and until the thirty-first (31st) day following entry of a final, non-appealable order resolving such Legal Challenge.

12.2. Successful Legal Challenge Contingency. If any Legal Challenge successfully voids, enjoins, or otherwise invalidates annexation and/or zoning/ rezoning of the Property, this Agreement or any portion thereof, the Town and Annexor shall cooperate to cure the legal defect and to pursue annexation and/or zoning/ rezoning of the Property or portion thereof in a manner that most fully implements the intent and purpose of this Agreement.

ARTICLE 13
Default; Remedies; Termination

13.1. Termination.

13.1.1. Failure of Conditions Precedent. In the event that any of the Conditions Precedent set forth in Article 2 above fails to occur within two hundred and seventy days (270) days after the Effective Date, then any party may suspend its performance upon providing the other parties with fifteen (15) day written notice of its intention to suspend its performance (the "Suspension Notice"). If the remaining Conditions Precedent have not occurred within forty-five (45) days from the Suspension Notice, than any party may terminate this Agreement in accordance with Section 13.7.

13.1.2. Commencement of Commercial Construction. If Commencement of Commercial Construction does not occur within three hundred and sixty five (365) days after the Bond Closing, the Authority may suspend its obligation to pay for the Public Improvements upon providing the other parties with the Suspension Notice. If the Commencement of Commercial Construction has not occurred within forty-five (45) days from the Suspension Notice, than any party may terminate this Agreement in accordance with Section 13.7.

13.1.3. Termination Not a Default. In the event any party terminates this Agreement in accordance with this Section 13.1 or 13.2, the termination shall not constitute a default as otherwise provided in this Article 13.

13.2. Default by Town. A "breach" or "default" by the Town under this Agreement shall be defined as: (a) subsequent to the initial zoning at time of annexation, any zoning/ rezoning, land use or other action or inaction, direct, indirect or pursuant to an initiated
measure, taken without Annexor's consent, that alters, impairs, prevents, diminishes, imposes a moratorium on development, delays or otherwise materially and adversely affects any development, use or other rights of Annexor under this Agreement; or (b) following Bond Closing, the Town's failure to fulfill or perform any material obligation of the Town contained in this Agreement.

13.3. Default by Authority. A "breach" or "default" by the Authority shall be defined as Authority's failure to fulfill or perform any material obligation of the Authority contained in this Agreement following Bond Closing.

13.4. Default by Annexor. A "breach" or "default" by Annexor shall be defined as Annexor's failure to fulfill or perform any material obligation of Annexor contained in this Agreement following Bond Closing.

13.5. Notices of Default. In the event of a default by either party under this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of such default, at the address specified in Section 14.13, and the defaulting party shall have twenty (20) days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such 20-day period and the defaulting party gives written notice to the non-defaulting party within such 20-day period that it is actively and diligently pursuing such cure, the defaulting party shall have a reasonable period of time given the nature of the default following the end of such 20-day period to cure such default, provided that such defaulting party is at all times within such additional time period actively and diligently pursuing such cure.

13.6. Remedies.

13.6.1. Default by the Town or the Authority. If Default by the Town or the Authority occurs and is continuing hereunder, Annexor may (i) seek damages at law for actual out-of-pocket expenses, but not consequential damages, lost profits or punitive damages; (ii) seek enforcement of the Town and/or the Authority's obligations hereunder by any equitable remedies, such as specific performance or injunction, to the extent allowed by law; or (iii) elect to terminate this Agreement; provided that except pursuant to § 24-68-105(1)(c), C.R.S., Annexor's remedies for a default by the Town resulting from an initiated measure shall be limited to specific performance.

13.6.2. No Effect on Vested Rights. The Town acknowledges that since this Agreement extends the period of vesting for more than three years, as provided in the Vested Property Rights Statute, in the event of a breach or default by the Town, in addition to any of the foregoing remedies, Annexor shall be entitled to recover from the Town any damages and/or compensation that would have been specifically available to Annexor as contemplated in Colorado Revised Statutes Section 24 68 105(1)(c) as in effect on the Effective Date, plus any other and additional damages provable at law.
13.6.3. **Default by Annexor.** If Default by Annexor occurs and is continuing hereunder, the Town or Authority, as applicable, may (i) seek any available remedy at law for actual out-of-pocket expenses, but not consequential damages, lost profits or punitive damages; or (ii) seek enforcement of Annexor’s obligations hereunder by any equitable remedies, such as specific performance or injunction.

13.7. **Action to Terminate.** Notice of termination must be accomplished by written notification delivered to the other parties hereto in accordance with Section 14.13. Termination will be effective on the date specified in such notice.

13.8. **Venue.** Venue for any action to enforce or interpret the terms of this Agreement shall be in District Court, Larimer County, Colorado.

**ARTICLE 14**

**Miscellaneous**

14.1. **Expiration.** This Agreement shall expire on the thirty-fifth (35th) anniversary of the Effective Date.

14.2. **I-25 Corridor Plan.** The Project shall remain a legal, conforming use, regardless of whether or not it complies with the I-25 Corridor Plan. This provision shall survive any termination or expiration of this Agreement.

14.3. **No Waiver of Town Power.** Nothing contained in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or abnegation of Town’s legislative, governmental, or police powers to promote and protect the health, safety, or general welfare of the municipality or its inhabitants; nor, subject to the terms and conditions of 10.6 of this Agreement, shall this Agreement prohibit the enactment by the Town of any fee which is of uniform or general application.

14.4. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

14.5. **No Joint Venture or Partnership.** No form of joint venture or partnership exists between the Town and Annexor, and nothing contained in this Agreement shall be construed as making Town and Annexor joint venturers or partners.

14.6. **Merger and Ratification.** This Agreement constitutes the entire understanding and agreement of the parties, integrates all of the terms and conditions mentioned therein and incidental thereto, and supersedes all negotiation or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of this Agreement must be made in writing and signed by the appropriate authorities of the Town or of the Annexor. All
amendments hereto must be in writing signed by the appropriate authorities of the Town and Annexor in a form suitable for recording.

14.7. Expenses. Except as otherwise provided in this Agreement, Annexor and the Town shall each bear their respective costs and expenses associated with entering into, implementing and enforcing the terms of this Agreement.

14.8. Attorney's Fees. If any action is filed or maintained by either party in relation to this Agreement, the substantially prevailing party shall be awarded its reasonable costs and attorney's fees, which rights shall survive termination of this Agreement.

14.9. Waiver. No waiver of one or more of the terms of this Agreement shall constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance shall constitute a waiver of such provision in other instances.

14.10. Town Findings. Town hereby finds and determines that execution of this Agreement is in the best interests of the public health, safety, and general welfare and the provisions of this Agreement are consistent with the Town's Comprehensive Plan, development laws, regulations and policies.

14.11. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall, unless amended or modified by mutual consent of the parties, continue in full force and effect so long as enforcement of the remaining provisions would not be inequitable to the party against whom they are being enforced under the facts and circumstances then pertaining.

14.12. Further Assurances. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges under this Agreement.

14.13. Notices. Any notice or communication required under this Agreement between the Town and Annexor must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided in this Section, designate additional persons to whom notices or communications shall be given, and designate any other
address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to Town:

Town of Timnath
4100 Main Street
Timnath, Colorado 80547
Attention: Becky Davidson

With a required copy to:

Town Attorney
Town of Timnath
Murray Dahl Kuechenmeister & Renaud LLP
2401 15th Street, Suite 200
Denver, CO 80202
Attention: Gerald Dahl

If to Authority:

Timnath Development Authority
4100 Main Street
Timnath, Colorado 80547
Attention: Becky Davidson

With a required copy to:

Timnath Development Authority Attorney
Murray Dahl Kuechenmeister & Renaud LLP
2401 15th Street, Suite 200
Denver, CO 80202
Attention: Malcolm Murray

If to Annexor, by mail delivery:

Flatiron Companies, LLC
2465 Central Avenue, Suite 504
P.O. Box 229
Boulder, Colorado 80306
Attention: William McDowell
With a required copy to:

Packard & Dierking, LLC
2595 Canyon Blvd., Suite 200
Boulder, Colorado 80302
Attention: David Packard
Keirstin Beck

14.14. **Assignment.** This Agreement shall be binding upon and, except as otherwise provided in this Agreement, shall inure to the benefit of the successors in interest or the legal representatives of the parties hereto, including an assignment solely for the purpose of constructing the Public Improvements and receiving reimbursement of costs associated therewith in accordance with Article. Annexor shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement to third parties acquiring an interest or estate in the Property, including, but not limited to, purchasers or long term ground lessees of individual lots, parcels, or of any improvements now or hereafter located within the Property, provided that to the extent Annexor assigns any of its obligations under this Agreement, the assignee of such obligations shall expressly assume such obligations. The express assumption of any of Annexor's obligations under this Agreement by its assignee or transferee shall, upon written notice to Town, thereby relieve Annexor of any further obligations under this Agreement with respect to the matter so assumed.

14.15. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

14.16. **No Third-Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the parties hereto, their successors and assigns, and nothing contained in this Agreement shall give or allow any claim or right of action by any other or third person under this Agreement. It is the express intention of the parties that any person other than the parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

14.17. **No Additional Conditions Imposed.** Annexor and the Town acknowledge and affirm that this Agreement does not impose additional terms and conditions within the meaning of Section 31-12-107(l)(g), C.R.S. As the owner of 100% of the Property, Annexor acknowledges and affirms that it would approve the terms and conditions of this Agreement if an
election were held and waives any right or claim of right to an election on the question of whether it approves the terms and conditions of this Agreement.

[Signature Page Follows]
IN WITNESS WHEREOF, Annexor and the Town have executed this Agreement as of the date first written above.

ANNEXOR:

FLATIRON COMPANIES, LLC, a Colorado limited liability company

By: [Signature]
Name: Edward C. McDaniels, Jr.
Title: Managing Member

TOWN:

TOWN OF TIMNATH, a municipal corporation of the County of Larimer, State of Colorado

By: [Signature]
Name: Donna Benson
Title: Mayor

ATTEST:

[Signature]
Town Clerk

Approved as to legal form by:

[Signature]
Town Attorney

AUTHORITY:

TIMNATH DEVELOPMENT AUTHORITY, a body corporate

By: [Signature]
Name: Donna Benson
Title: Chair Person
ATTEST:

Linda Shier
Authority Secretary

Approved as to legal form by:

[Signature]
Authority Attorney
STATE OF COLORADO

COUNTY OF BOULDER

The foregoing instrument was acknowledged before me this 14th day of March ______, 2007, by Edwin C. McDowell Jr. as Managing Member of Flatiron Companies, LLC, a Colorado limited liability company.

Witness my hand and official seal.

[Signature]
Notary Public
My commission expires: 8-15-09
Cache La Poudre Investors North, LLC, a Colorado limited liability company

By: 
Name: [redacted]
Title: [redacted]

STATE OF COLORADO )
COUNTY OF Boulder ) ss.

The foregoing instrument was acknowledged before me this 30th day of July, 2007, by Mark A. Goldberg, as Manager of Cache La Poudre Investors North, LLC, a Colorado limited liability company.

Witness my hand and official seal.

Notary Public
My commission expires:

Barbara L. Siefkes, Notary Public
State of Colorado
My Commission Expires 4/19/2009
EXHIBIT A-1
Legal Description of the Annexation Parcel

A parcel of land being part of the Southeast (SE 1/4) of Section Thirty-four (34), Township Seven North (T.7N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), Town of Timnath, County of Larimer, State of Colorado, and being more particularly described as follows:

BEGINNING at the South Quarter Corner of said Section 34 assuming the South Line of said SE1/4 as bearing South 89°47'25" East, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2,634.70 feet with all other bearings contained herein relative thereto. From said South Quarter Corner the Center Quarter Corner of said Section 34 bears North 00°06'15" West a distance of 2,642.70 feet;

THENCE North 00°06'15" East along the West line of said SE1/4 to the most Westerly and Northerly corner of Flatiron Annexation (FA) as recorded on July 8, 1999 at Reception No. 99060469, a distance of 1,051.93 feet. said point being the TRUE POINT OF BEGINNING;

THENCE continuing North 00°06'15" West along said West line a distance of 1590.77 feet to the Center Quarter Corner (C1/4) of said Section 34;
THENCE South 89°41'32" East along the North line of said SE1/4 a distance of 1608.60 feet to the centerline of the Cache La Poudre River as described by James M. Nichols, PLS 4414 in a survey completed February 4, 1970;
Thence along said centerline by the following Seven (7) courses and distances:
THENCE South 38°13'59" East a distance of 33.57 feet;
THENCE South 11°21'08" East a distance of 237.30 feet;
THENCE South 05°13'47" East a distance of 409.91 feet;
THENCE South 09°30'07" West a distance of 312.19 feet;
THENCE South 00°12'58" East a distance of 339.58 feet;
THENCE South 15°08'00" East a distance of 191.74 feet;
THENCE South 09°57'22" West a distance of 67.98 feet to the most Easterly and Northerly corner of FA;
THENCE along the Northerly line of said FA the following Three (3) courses and distances:
THENCE South 81°13'13" West a distance of 942.22 feet;
THENCE North 67°07'34" West a distance of 342.74 feet;
THENCE South 89°23'36" West a distance of 451.64 feet to the TRUE POINT OF BEGINNING.

Said parcel of land contains 62.715 acres, more or less (+), and is subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.
EXHIBIT A-2
Legal Description of the Existing Parcel

A parcel of land situated in Section Thirty-four (34), Township Seven (7) North, Range Sixty-eight (68) West of the 6th P.M., all within the County of Larimer, State of Colorado, more particularly described as follows:

All that part of the SE ¼ of Section 34, Township 7 North, Range 68 West of the 6th P.M., lying west of the center line of the Cache La Poudre River, more particularly described as follows:

Considering the South line of Section 34, Township 7 North, Range 68 West as bearing South 89 degrees 12 minutes 00 seconds East and all bearings contained herein relative thereto. Commencing at the South ¼ corner of Section 34; Thence North 00 degrees 29 minutes 39 seconds east and along the North-South centerline of Section 34, 753.36 feet to the intersection with the East Right-of-way line of Interstate 25, said point being the True Point of Beginning;

Thence continuing along the north-south centerline of said section, N 00 degrees 29 minutes 39 seconds, 298.53 feet;
Thence North 89 degrees 59 minutes 30 seconds East, 451.64 feet;
Thence South 66 degrees 31 minutes 40 seconds East, 342.74 feet;
Thence North 81 degrees 49 minutes 07 seconds East, 942.20 feet;
Thence in a Southerly direction along the centerline of the Cache La Poudre River, South 10 degrees 33 minutes 16 seconds West, 314.17 feet;
Thence South 20 degrees 24 minutes 47 seconds West, 204.45 feet;
Thence South 06 degrees 06 minutes 01 seconds West, 251.94 feet;
Thence South 01 degrees 28 minutes 23 seconds East, 141.32 feet;
Thence leaving the centerline of said River North 58 degrees 19 minutes 56 seconds West, 115.12 feet, to the beginning of a 280.64 feet radius curve to the left, bearing to radius point being South 58 degrees 19 minutes 56 seconds East, said curve having a central angle of 42 degrees 06 minutes 56 seconds, and a chord bearing of South 30 degrees 43 minutes 18 seconds West, 203.50 feet;
Then along the arc of said curve 206.28 feet;
Thence North 80 degrees 18 minutes 40 seconds West, 1155.05 feet;
Thence North 35 degrees 37 minutes 22 seconds West, 175.92 feet;
Thence North 16 degrees 30 minutes 45 seconds West, 389.20 feet to the True Point of Beginning.
EXHIBIT B-1
Concept Plan
(See Attached)
EXHIBIT B-2
Design Guidelines
[See Attached]
EXHIBIT B-2 TO ANNEXATION AGREEMENT
BETWEEN FLATIRON COMPLIANCES, LLC, CACHE LA POUDRE NORTH,
LLC, TIMNATH DEVELOPMENT AUTHORITY AND
THE TOWN OF TIMNATH

GATEWAY TIMNATH SUBDIVISION DESIGN GUIDELINES &
WAIVER OF CERTAIN PROVISIONS OF THE SIGN CODE

1. DESIGN GUIDELINES

The Gateway Timnath Subdivision shall adopt as Design Guidelines those specific principles outlined in Chapter 16, Article 2: Community Design Principles, of the Timnath Land Use Code as modified below. All other provisions of Chapter 16, Article 2 not specifically identified below remain in full force and effect.

Intent of modifications to Article 2: Community Design Principles

The modifications to the Community Design Principles proposed below are intended for locations within 1,600 feet of the easterly right-of-way of Interstate 25. These locations are specifically intended to support both community and regional commercial uses that normally feature national retail, specialty and general merchandising tenants. These national tenants bring design and architectural elements to their projects that are valuable to the successful operation of each tenant.

16.2.9 Parking.

B. General Provisions.

3. Location. Parking lots shall be in close proximity to buildings.

C. Paved off-street parking.

1. Off-street parking for commercial uses shall be sufficient to provide parking for employees of all proposed uses as well as long-term customer parking. Spaces reserved for employees shall be designated as such by means of striping and signage.

2. The location of required off street parking facilities for the other than residential uses shall have no less than 50% of the overall parking within 400 feet of the building they are intended to serve when measured from the nearest point of the building or structure.

F. Bicycle parking spaces.

1. Locations for industry standard (4 space) bicycle parking facilities (racks) must be provided within 100 feet of building entrances of “big box” retailers or on
the lot for smaller "pad" lots. Adjacent pad lots may combine bicycle parking racks if the site design can accommodate combined bike parking facilities. For "big box" retailers 8 bicycle parking spaces must be provided; for "pad" sites a minimum of 2 bicycle parking spaces must be provided per pad.

16.2.11 Easements and Utilities

A. Multiple installations within easements. Easements shall be designed and located so as to provide for the efficient installation of utilities.

16.2.12 Parks and open space

C. General Provisions. 3. Buffering Appropriate buffering and setbacks shall be used between environmental resources and proposed development to ensure that the proposed development does not degrade the existing habitat. Developers shall provide and open space buffer zone around all natural areas unless otherwise authorized by the Town.

16.2.15 Landscape Design

B. General provisions.

a. The minimum planting sizes on all required landscaping shall be 2 ½ inch caliper deciduous trees, 2 inch caliper ornamental trees, 6 foot tall evergreen trees and 5 gallon shrubs.

B. Landscape design standards.

2. Business/Commercial and Industrial Development Landscape Standards.

c. The developer or assigns shall provide:

iii. Groundcover - establish irrigated grass turf maintained to appropriate standards for active recreation in areas that will function for active recreation. Where appropriate use native grass for areas that will not function as active recreation areas. Native grass must be weed free and maintained at a maximum height of 8 inches except for ornamental grasses as appropriate. For active recreation areas a turf type tall fescue or brome/fescue mix will be used.

iv. Landscape setback to parking lots. The landscape setback shall be 30 feet from arterials or 25 feet from other public rights of way, as measured from the back of curb. This setback may be reduced to 15 feet if used in combination with a 3 or 4 foot masonry or stone decorative wall. Signage is allowed within this setback.
v. Screen loading areas. Loading areas (including vehicles being loaded), service and storage areas visible from the public right-of-way or adjacent property, shall be screened to the extent possible with an opaque screen that is an integral part of the building architecture - or by landscaping. Chain link fencing with or without slats, pallets, tires, stacks of products, or used building materials are unacceptable screening materials.

4. Parking lot landscape standards.

a. Site trees - a minimum of 1 tree per 5 parking spaces located either within the parking lot or on the associated property outside of the parking lot. If in parking lots, trees shall be grouped within landscape islands which are a minimum of 10 feet wide. Use the landscaping to break up large expanses of pavement and create a tree canopy for summer shade.

16.2.16 Buffering and screening techniques

C. Location and screening of required loading and service areas.

2. Screening, buffering and landscaping shall be incorporated to minimize direct views of the loading areas and their driveways from adjacent properties or from the public right-of-way. These loading and service areas shall be as visually unobtrusive as possible. Screening and landscaping shall also prevent spill-over glare, noise, or exhaust fumes. Screening and buffering shall be achieved through walls, architecture features, and landscaping; and shall be visually impervious. Recesses in the building or depressed access ramps shall be used.

E. Screening of big box use on Lot #1.

1. Screening of the proposed big box retailer will be accomplished via the following methods:
   a. Increased plantings in an expanded buffer area at northern and eastern sides of Lot 1 to screen the building;
   b. Tree planting including no less than 100 evergreen specimens and 100 deciduous specimens; and
   c. Mix of shrub and plant species to complete landscape screening.

16.2.17 Fences and walls

B. General Provisions.

5. Height limitations. Fences or walls shall be:

b. No more than 72 inches high if located on a side yard line in the front yard except if required for demonstrated unique security purposes. No more than 120 inches if used to screen dumpster enclosures, bale and pallet storage areas, truck dock and loading areas. Fences and walls shall not be solid, except for retaining
walls and screen walls for dumpster enclosures, bale and pallet storage areas and at truck docks and truck loading areas.

16.2.19 Commercial and Industrial Architecture

B. General Provisions:

A. Intent

1. Regional Commercial Shopping Centers. Regional Commercial Shopping Centers (RCSC) by their nature include large national retail merchants often referred to as big box retailers. RCSC’s also feature moderately sized retail merchants that specialize in a specific area of merchandising such as sporting goods, home improvement or home furnishings, pet supplies and theaters; often referred to as mid-sized box tenants. Restaurants and other retail merchants of smaller specialty and general merchandise tenants are also tenants at RCSC’s and depend on the customer drawing capacity of the large and mid-sized box tenants. For the most part, tenants in a RCSC are national chain stores. Typically, national chain stores adopt in their architecture and signage, unique styles and features to set themselves apart from competitors. As an example, a restaurant specializing in southwestern or Mexican cuisine may adopt as a part of their architecture a southwestern style. The unique architectural features attributed to each tenant are a valuable part of the tenants merchandising technique which allows these tenants to achieve high volume retail sales. Architecture that supports the RCSC shall be allowed.

B. General provisions.

2. Accessibility. Developments must be accessible to pedestrians and bicyclists as well as motorists. Site plans must provide for pedestrian access to the site and buildings; gathering areas for people; and auto access and parking lots.

3. Walkways. Walkways shall be located and aligned to directly and continuously connect areas or points of pedestrian origin and destination. At least one 8 foot wide sidewalk will connect the big box retailer on Lot 1 with East Harmony Road. An 8 foot wide sidewalk will connect the trail around the reservoir parcel to a sidewalk serving the big box retailer at a point along the eastern façade (or within a point at the front façade line) of that retailer.

4. On-street parking. On-street parking is not allowed in the RCSC’s area. No parking signs must be posted by the Developer on all access roads.

5. Building orientation. If a building cannot be brought to a setback line, the larger setback area shall have landscaping, low walls, low fencing, a tree canopy or other site improvements along any adjacent sidewalk. The setback area shall be designed to provide for pedestrian interest, scale and comfort.
6. Thematic Architecture. Thematic architectural styles associated with chain-type restaurants, big box retailers and service stores are allowed in the Regional Commercial Shopping Center. Architectural plans shall provide enhanced architectural elements including windows, wall articulations, canopies, cornice details, entry features or other improvements to the standard corporate model.

8. Blank walls and wall articulation.

   a. Blank windowless walls are discouraged. Pilasters, texture transitions, windows, color transitions, stepping of the wall plane or intensively planted landscape elements are required.

9. Façade treatment. Elements of the architectural treatment of the front façade shall be continued (e.g. base course, brickwork, cornice details, etc.) on visibly exposed sides of the building.

11. Awnings. Fixed or retractable awnings are permitted. Canvas is the preferred material although other water proofed fabrics and metal or aluminum may be used.

12. Screening. All air conditioning units, HVAC systems, exhaust pipes or stacks, elevator housings, satellite dishes, other telecommunications receiving devices and any other apparatus placed on the roof of a building shall be screened from I-25 and Harmony Road by using walls, fencing, roof elements, and landscaping. In addition, all trash facilities, loading and parking areas shall be screened from public view by landscaping, building elements or approved fencing.

E. C-2 Community Commercial District architecture standards.

   1. Design of development with internal orientation. In multiple-building developments, with independent tenants and an internal traffic orientation, any driveway crossings must place priority on the pedestrian access.

   2. Connections. Deleted in its entirety as it is not an architectural standard.

   3. Requirement for four sided design. A building’s special architectural features and treatments shall not be restricted to a single façade, but must be extended to and present on all sides of the building except for the north side of the “Big Box.”

   4. Building form. The design of all buildings shall employ textured surfaces, projections, recesses, shadow lines, color, window patterns, overhangs, reveals, changes in parapet heights, or intensively planted landscape elements to avoid monolithic shapes and surfaces and to emphasize building entries. Buildings shall
not feature unbroken flat walls over 75 feet in length visible to the public without one or more of the elements listed above.

a. Features to be used to meet the provision above include:

   i. Changes in color, graphic patterning, textures, or in material;
   ii. Pilasters;
   iii. Projections, recesses and reveals;
   iv. Windows and fenestration;
   v. Arcades and pergolas;
   vi. Towers;
   vii. Gable projections;
   viii. Horizontal/vertical breaks;
   xi. Groupings of trees and shrubs and /or
   x. Other similar techniques

5. Figure B-2, attached, is an example of an architectural program which meets the requirements and standards of this Exhibit B-2.
GATEWAY TIMNATH SUBDIVISION SIGN WAIVERS

The Gateway Timnath Subdivision is allowed waivers to Chapter 16, Article 7 of the Timnath Land Use Code as identified below. All other provisions of Chapter 16, Article 7 not specifically modified below remain in full force and effect.

Intent of waivers to Article 7: Signs

The proposed waivers to the Sign Code are intended for locations adjacent to, or within sight of the Interstate 25 corridor and within Regional Commercial Shopping Centers. These locations are specifically intended to support both community and regional commercial uses that normally feature national retail, specialty and general merchandising tenants.

16.7.4. A. Exempt signs

5. Banners.
   c. May be displayed no more than three times per calendar year per establishment.

8. Construction
   b. Signs in conjunction with all other uses shall have a maximum area of one hundred square feet each.

25. Sale, Lease, Rent.
   a. One sign per street frontage advertising real estate (“For Sale”, “For Rent”, “For Lease” or “For Development”) not greater than eight square feet in area in a residential district and fifty square feet in area in nonresidential districts may be located on the property being advertised so long as said sign is located behind the street right-of-way. If the property so advertised lies on a corner lot or double frontage lot, then a second sign may be oriented along the second street so long as the two signs are at least one hundred feet apart as measured by the shortest straight line.

   d. Deleted

16.7.5. A. Prohibited signs

4. Roof signs, except if used as part of the trademark of the building or property owner.
16.7.6 Measurement of sign area and height

C. Back to Back (Double-Faced) Signs. Back-to-back signs shall be regarded as a single sign only if mounted on a single structure, and the distance between each sign face does not exceed six feet at any point.

16.7.7 Sign design

A.4. c. Unified sign band. Deleted

B.1. Select colors carefully. Deleted

C. 1. Signs shall be constructed of durable, high quality architectural materials. The sign package must use materials, colors, and designs that are compatible with the building façade. Sign materials must be of proven durability.

16.7.9 Standards for specific types of signs

C: Freestanding Signs

1. Location. The sign may be located only on a site frontage adjoining a public street. No freestanding sign in any zoning district can be erected closer than 4 feet to any building. No freestanding signs in business and industrial districts may be located less than 25 feet from any property line adjacent to a residential zoning district line.

D: Monument Signs

1. Location. The sign may be located only along a site frontage adjoining a public street or visible from a State or Federal highway.

I: Wall Signs

1. Location. The sign shall not be placed to obstruct any portion of a window, doorway or other architectural detail. Locate wall signs on buildings at the first floor level only for retail uses. No part of a will sign shall be located more than forty feet above grade level.

3. Projection from wall. No sign part, including cut-out letters may project from the surface upon which it is attached more than required for construction purposes.

4. Design. Wall signs shall identify the individual business, building or building complex by name, trademark, or services.
### 16.7.10 Sign Standards by Zoning District

**B. Business and Commercial Signs, B, C-1, C-2 and MU Zone Districts**

<table>
<thead>
<tr>
<th>Description</th>
<th>Max. Area</th>
<th>Max. Height</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pole signs adjacent to Interstate or State Highway: 1 every 1,500' of frontage</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pole sign at SW corner of Lot 1</td>
<td>200 sq. ft. per face</td>
<td>48 ½ feet</td>
</tr>
<tr>
<td>Entry monument sign: 1 per entrance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Entry monument sign along Harmony Rd.</td>
<td>120 sq. ft. per face</td>
<td>17 feet</td>
</tr>
</tbody>
</table>
EXHIBIT C-1
Description of Public Improvements
{See Attached}
EXHIBIT C-2
Schedule of Completion
{See Attached}