

**TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 20, SERIES 2024**

**A RESOLUTION APPROVING KECHTER ROAD AND MAIN STREET
RIGHT-OF-WAY AND BRIDGE IMPROVEMENT
AND REIMBURSEMENT AGREEMENT**

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

WHEREAS, attached hereto as Exhibit A is the Kechter Road and Main Street Right-of-Way and Bridge Improvement and Reimbursement Agreement (the “Agreement”);

WHEREAS, in connection with the development of property known as Ladera Phase II (the “Property”), the owner is required to finance, design and construct certain improvements to roads adjacent to the property, specifically Kechter Road, Main Street (also known as County Road 5), and the bridge over the Poudre River (collectively, the “Improvements”), consistent with the Town’s Design Criteria Manual and Town-adopted Loveland version of the Larimer County Urban Areas Street Standards (“LCUASS”); and

WHEREAS, the Ladera Business Improvement District (“BID”) was established to help finance, design and construct public improvements necessary to develop property within its boundaries; and

WHEREAS, the Agreement sets forth which party (Developer, BID or Town) is responsible to finance, design and construct each of the Improvements and the timeframe for completion of the Improvements; and

WHEREAS, the Agreement requires the Developer to record a covenant on the Property and portions of the Ladera Phase I Property that will require payment of a 0.5% transportation public improvement fee on sales on such property to help finance the Developer’s portion of the Improvements, and the Agreement sets forth the process for reimbursing the Developer and the Town for expenses related to the Improvements;

WHEREAS, the Town Council is familiar with the Agreement and finds it to be in the best interest of the Town, its residents, and the general public.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO AS FOLLOW:

Section 1. Approval

The Agreement is hereby approved in substantially the form as attached hereto, subject to technical or otherwise non-substantive modifications, as deemed necessary by the Town Manager in consultation with the Town Planner, Engineer, Legal Counsel, and other applicable staff or consultants.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON FEBRUARY 13, 2024.

TOWN OF TIMNATH, COLORADO

DocuSigned by:

Mark Soukup

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Mark J. Soukup, Mayor

ATTEST:

DocuSigned by:

Milissa Peters-Garcia

07A8AF3B02114D7...

Milissa Peters-Garcia, CMC

Town Clerk

EXHIBIT A

**KECHTER ROAD AND MAIN STREET RIGHT-OF-WAY AND BRIDGE
IMPROVEMENT AND REIMBURSEMENT AGREEMENT**

**KECHTER ROAD AND MAIN STREET RIGHT-OF-WAY AND BRIDGE
IMPROVEMENT AND REIMBURSEMENT AGREEMENT**

This KECchter ROAD AND MAIN STREET RIGHT-OF-WAY AND BRIDGE IMPROVEMENT AND REIMBURSEMENT AGREEMENT (“**Reimbursement Agreement**”), dated as of February 13, 2024, is made by and among CONNELL LLC, a Colorado limited liability company (the “**Developer**”), the LADERA BUSINESS IMPROVEMENT DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**BID**”), and the TOWN OF TIMNATH, a Colorado municipal corporation (the “**Town**”). Developer, BID, and Town may be referred to individually as “**Party**” or collectively as “**Parties**.”

RECITALS

A. WHEREAS, Developer owns and is developing or planning to develop certain property within the Town, consisting of: (a) the property within the Ladera Subdivision and Ladera Subdivision Filing No. 2, Town of Timnath, Larimer County, Colorado (the “**Phase I Property**”), and (b) approximately 188.5 acres of land (excluding street rights-of-way) annexed into the Town pursuant to Ordinance No. 7, Series 2024 [approved by the Town Council on February 13, 2024], as legally described in Ordinance No. 7, Series 2024 (the “**Phase II Property**”). The Phase I Property and the Phase II Property are collectively referred to herein as the “**Property**.”

B. WHEREAS, Developer intends to develop retail uses and other commercial uses on a portion of the Property, as illustrated in Exhibit A (the “**Retail Property**”), as the current owner of the Retail Property, Developer is referred to herein as the “**Retail Developer**”; and

C. WHEREAS, the BID is a business improvement district encompassing a portion of the Property, which was organized to facilitate the financing, design and construction of certain public improvements associated with the Property; and

D. WHEREAS, in recognition of the projected economic benefits to be provided by the proposed commercial development of the Property and in order to allow the Parties to budget and plan for future capital improvements, the Parties wish to set forth the rights and obligations of the Parties relating to design and construction of certain road and bridge improvements and to provide for a mechanism for public financing reimbursement for related development costs by the BID; and

E. WHEREAS, the Parties want to create a collaborative relationship to coordinate regarding the Town’s future road improvements, including designing and constructing a replacement bridge over the main channel of the Cache la Poudre River and related improvements to Main Street north of the north property line of the Phase II Property, also known as County Road 5 (“**Main Street**”), and to provide that the Developer’s portion of such improvements will be fully financed; and

F. WHEREAS, under the Town’s Design Criteria Manual (“**DCM**”) and adopted Loveland version of the Larimer County Urban Areas Street Standards (“**LCUASS**”), as they may be amended from time to time and together with other Town requirements (collectively referred to as the “**Town Standards**”), the developer of the Phase II Property is responsible to design and

construct interim and ultimate right-of-way improvements for Main Street and Kechter Road, also known as County Road 36, ("**Kechter Road**"), that are adjacent to the Phase II Property, as set forth in Sections 1.01 and 1.02 of this Reimbursement Agreement (collectively, the "**Improvements**"); and

G. WHEREAS, in accordance with Town Standards, the Town wishes to agree to contribute to the costs of constructing the road improvements, including stormwater improvements, which are eligible for reimbursement from third-party property owners in the amounts set forth herein; and

H. WHEREAS, the Town's Transportation Master Plan contemplates the design and construction of a replacement bridge on Main Street, over the Cache la Poudre River, (the "**Poudre Bridge**"), which could beneficially redistribute flood flows downstream by oversizing the structure; and

I. WHEREAS, the Main Street improvement design could benefit from redistributed flood flows by reducing the length of the grade-separated storm water conveyance structure. The Parties acknowledge that the replacement Poudre Bridge and the Main Street improvement project are inextricably interconnected by the need to balance design and construction alternatives to arrive at a preferred alternative that both improves traffic and manages storm flows for the area, integrating FEMA FIRM submittals and approvals for both projects; therefore, the Town wishes to agree to undertake certain portions of the design and construction of the interconnected improvements, subject to reimbursement of Developer's and/or Retail Developer's (defined below), as applicable, portions of the costs; and

J. WHEREAS, the BID has determined it to be in the best interest of the property owners and businesses within its boundaries to cooperate and facilitate the financing, design and construction of Developer's and/or Retail Developer's, as applicable, responsibilities related to Kechter Road, Main Street and the Poudre Bridge, as set forth in more detail herein, to provide a coordinated approach in the event that there are multiple owners in the future; and

K. WHEREAS, Developer wishes to agree to record a Transportation Public Improvement Fee Covenant on the portion of the Property to be developed for commercial purposes (other than the property which currently contains a Floor and Decor store), which requires future commercial establishments to collect a Transportation Public Improvement Fee ("**Transportation PIF**"), the proceeds of which will be dedicated to and collected by the BID for the term of this Reimbursement Agreement, to finance Developer's responsibilities related to Kechter Road, Main Street and the Poudre Bridge, with the Developer or Retail Developer contributing if there is a shortfall only to the extent as expressly set forth herein; and

L. WHEREAS, the Parties acknowledge that this Reimbursement Agreement is not necessary if the Phase II Property is not annexed, and therefore agree that this Reimbursement Agreement shall take effect, following annexation of the Phase II Property and complete and final resolution of any appeals, litigation, referenda or other legal challenge to the annexation of the Phase II Property (the "**Agreement Effective Date**"), as documented in a "Acknowledgment of Agreement Effective Date" to be signed by all Parties at such time; and

M. WHEREAS, the Parties acknowledge that this Reimbursement Agreement is in the best interest of the Parties.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Improvements**. The Parties' responsibilities with respect to the Improvements are as follows:

1.01 *Town Constructed Improvements*. Because of the need to coordinate the design and construction of improvements to the Poudre Bridge and portions of Main Street impacted by the design of the Poudre Bridge, the Town will undertake the survey, design, permitting, and construction of the following:

(a) The Poudre Bridge and improvements to the Main Street Right-of-Way from the south bridge abutment to the north property line of the Property (the "**Poudre Bridge Improvements**");

(b) Interim and ultimate improvements to the Main Street Right-of-Way from the north side of the intersection with the Weitzel Street Right-of-Way to the north property line of the Property, in compliance with Town Standards applicable at the time of design and construction, not including any auxiliary lanes required to serve the development (the "**North Main Street Improvements**"); and

(c) Ultimate traffic signal improvements at the intersection of Kechter Road and Main Street (the "**Ultimate Signal Project**").

(collectively, Sections 1.01(a), 1.01(b) and 1.01(c) are the "**Town Constructed Improvements**").

Because of the interconnectedness between and among the Improvements which are the subject of this Reimbursement Agreement, the Town agrees to consult and coordinate with the Developer and the BID during design of the Town Constructed Improvements, with special attention to minimizing disturbance of improvements already constructed on the Property by Developer or the BID.

The Town shall have discretion to determine the timing for the Town Constructed Improvements, based on the Town's Transportation Master Plan, the Town's Capital Improvement Plan, traffic flow, available financing, funding priority and other factors as determined by the Town. The Town shall be reimbursed for the Developer's Share of the Town Constructed Improvements, as set forth in Section 1.05 below. In addition, the Town shall be paid a "**Project Administration Fee**" in the amount of 3.0% of Developer's Share of the Town Constructed Improvements, other than the Poudre Bridge replacement project

and Bridge Expansion (defined below), with such Project Administration Fee added to each Certified Request (defined below) submitted by the Town.

1.02 *BID Constructed Improvements.* The BID will undertake or cause the undertaking of the finance, survey, design, entitlement, permitting, and construction of:

(a) Interim traffic signal improvements at the intersection of Kechter Road and Main Street (the “**Interim Signal Project**”), which shall be substantially completed within 18 months from the Annexation Effective Date;

(b) Interim and ultimate improvements to the Kechter Road Right-of-Way from the connection into the CDOT right-of-way for Interstate-25 through the intersection with Main Street, and any auxiliary lanes and tapers required for the development outside of that area, in compliance with the Town Standards applicable at the time of design and construction, including transportation infrastructure and storm drainage systems to convey storm waters for a 100-year storm event of the Cache la Poudre River (the “**Kechter Road Improvements**”); and

(c) Interim and ultimate improvements to a portion of the Main Street Right-of-Way adjacent to the Phase II Property, from the north side of the intersection with the Weitzel Street Right-of-Way to the south side of the intersection with Kechter Road Right-of-Way, and any auxiliary lanes and tapers required for the development outside of that area, including storm drainage systems designed to convey storm waters for a 100-year storm event, in compliance with the Town Standards applicable at the time of design and construction (the “**South Main Street Improvements**”).

(collectively, Sections 1.02(a), 1.02(b), and 1.02(c) are the “**BID Constructed Improvements**”). The required timing for construction of the BID Constructed Improvements shall be as set forth in the “**Construction Schedule**,” attached hereto as **Exhibit B**. The BID Constructed Improvements shall be in compliance with all then-applicable Town Standards and plans approved by the Town in writing prior to commencing construction. Developer may perform the BID Constructed Improvements, subject to reimbursement by the BID, pursuant to an agreement between the Developer and the BID in compliance with Section 2.03 below. Following substantial completion and acceptance by the Town of any of the BID Constructed Improvements, the Town shall reimburse the BID for a percentage of the costs related thereto, as set forth in Section 1.06 below.

1.03 *Flood Premium.* The North Main Street Improvements will be designed and constructed with transportation infrastructure and storm drainage systems to convey storm waters for a 100-year storm event, per Town Standards. The Parties recognize that the Town will contribute toward the approximate cost of conveying excess storm water generated from properties other than the Property, as set forth herein. The contract for construction of the North Main Street Improvements shall include constructing the road improvements, to convey storm waters for a 100-year storm event of the Cache la Poudre

River. The engineer for the North Main Street Improvements shall then estimate the costs related to the 100-year storm event, defined as the difference between: (a) the cost to construct the North Main Street Improvements to convey waters from a 100-year storm event of the Cache la Poudre River and (b) the cost to construct the North Main Street Improvements without considering the 100-year storm event of the Cache la Poudre River (referred to herein as the “**Flood Premium**”). The estimated Flood Premium shall be submitted to the Developer for approval, which shall not be unreasonably withheld. The Developer’s Share (defined below) of the Flood Premium will be 37.5% and the Town’s share of the Flood Premium will be 62.5%, which the Parties agree is a fair distribution of costs. The base road improvements for the North Main Street, including those to convey storm waters from the development, other than those from the 100-year storm event, are referred to herein as the “**At-Grade Improvements**”.

1.04 *BID Financing / Retail Developer Advance.*

(a) *BID Financing.* If the BID lacks sufficient PIF Revenues to commence and complete the BID Constructed Improvements in accordance with the Construction Schedule deadlines set forth in Exhibit B and/or to reimburse the Town for the Developer’s Share of the Town Constructed Improvements, the BID may issue debt to finance such costs related to the Developer’s Share of the Improvements, and pledge the PIF Revenues (other than the 15.0% reserved per Section 2.02 hereof) until such debt is repaid. The BID will provide a draft bond Term Sheet and Indenture 20 days prior to issuance for Town information and review for compliance with this Reimbursement Agreement. In addition, the BID may elect, in its sole and absolute discretion, to pledge or use additional revenue sources to pay such debt, which revenue sources may include revenues from the BID’s mill levy and/or revenues from the Declaration of Covenants Imposing and Implementing the Ladera Sales and Lodging Add On Public Improvement Fee, recorded on October 4, 2022, at Reception No. 20220060055, in the Larimer County records.

(b) *Retail Developer Advance.* If the BID lacks sufficient funds to perform its requirements related to the BID Constructed Improvements by the Required Completion date set forth in Exhibit B, the Retail Developer shall advance sufficient funds to the BID to perform its obligations, subject to future reimbursement of such costs by the BID as set forth in Sections 1.06 and 2.03 below and pursuant to a reimbursement agreement between the BID and the Retail Developer. In the event of any new or amended reimbursement agreement between the BID and the Developer or Retail Developer, the BID shall provide the Town with a copy of the Agreement, which shall be in compliance with all requirements of the BID’s Operating Plan in effect at the time of new or amended reimbursement agreement.

1.05 *BID Reimbursements to Town for Developer’s Share of Town Constructed Improvements.* The BID shall reimburse the Town in accordance with Section 2.03 for all of the following costs of the Town Constructed Improvements, which would be developer expenses under the Town Standards, specifically:

(a) 5.0% of the design, preconstruction, and construction costs for the Poudre Bridge replacement project, other than:

1. Any excess costs associated with oversizing the Poudre Bridge in order to reduce the length of North Main Street Improvements conveyances that are needed for storm conveyance, and not related to oversizing created by topographic requirements (the **"Bridge Expansion"**).
2. Any costs associated with optional aesthetic improvements or public art, which shall be 100.0% borne by the Town without reimbursement.

(b) 25.0% of the design, preconstruction, and construction of the Bridge Expansion.

(c) For the North Main Street Improvements:

1. 100.0% of design and preconstruction costs.
2. The following construction costs:
 - a. If an interim section of the road is built (such as the west half plus 8 feet or other interim section), all costs associated with the construction of the At-Grade Improvements for the west half of the ultimate cross section of the Main Street road to the middle of the ultimate median, plus all costs for turn lanes and turn medians for entry or exit to the Property, or
 - b. 50.0% of costs for the At-Grade Improvements for ultimate cross section, plus all costs for turn lanes and turn medians for entry or exit to the Property.
3. 37.5% of Flood Premium.
4. 100.0% of improvements not related to Cache la Poudre River 100-year storm event or road improvements. These costs include, without limitation, costs for sidewalks, landscaping, irrigation (not including the median between two opposite directions of traffic), and utilities (water, sewer, and dry utilities) on Developer's Property or in the North Main Street Improvement area of Main Street.

All cost reimbursements to the Town set forth in this Section 1.05 plus all costs of the BID Constructed Improvements other than the Town reimbursements pursuant to Section 1.06 below are collectively referred to herein as the **"Developer's Share"**.

The Town reserves the right to apply for grants for any expenses related to the Improvements, and in the event of receiving such grants, the Town shall not submit reimbursement requests for any costs that were funded by the grant, as determined

in the Town's reasonable discretion, provided that the construction project complied with any grant-funding requirements.

1.06 *Town Reimbursement to BID for Costs Attributable to other Properties.* Upon substantial completion and acceptance of any of the BID's obligations, the Town shall reimburse the BID for the following costs, which would have been reimbursable by other property owners under Town Standards:

- (a) 75.0% of the Interim Signal Project.
- (b) Road Construction Costs for Kechter Road Improvements and South Main Street Improvements.
 - 1. If an interim cross-section of a road is constructed (e.g. the half adjacent to the Property plus 8 feet), 100.0% of any interim road improvements constructed that are not on Developer's half of the required improvements (with Developer's half meaning the side of the road from the center of the road median between two opposite directions of traffic to the Property);
 - 2. If the road is constructed to the ultimate cross-section, 50.0% of ultimate improvements costs for the At-Grade Kechter Road Improvements and the At-Grade South Main Street Improvements other than items (a) and (c); and
- (c) 100.0% of any turn lanes, acceleration or deceleration lanes, or medians needed for entry and exit from property on the opposite side of the road from the Property from the center of the road median.

All of the Town's reimbursements to the BID shall be used to reimburse the Developer and/or Retail Developer (if such cost was paid by or advanced by the Developer and/or Retail Developer) or used for repayment of debt incurred by the BID for such BID Constructed Improvements.

The Town may, in its sole discretion, determine the source of funding for the reimbursements set forth in this Section, which may include without limitation, sales tax revenues generated by the development of the Property, grants, loans or reimbursements and contributions required from other landowners.

1.07 *Scope of Work.* Subject to a Force Majeure Event (defined below), the Town and the BID are responsible for commencing and completing each component of the Improvements assigned to them as set forth in this Section 1. In the case of the BID, construction shall be completed in accordance with the Construction Schedule set forth in **Exhibit B**. The Developer and Retail Developer shall use their best efforts to require the BID to complete construction in accordance with the Construction Schedule and all requirements herein.

2. Procedures for Reimbursement or Advance from BID.

2.01 *PIF Covenant.*

(a) *Establishment of PIF Covenant.* Developer agrees to execute and record a declaration of covenants (“**PIF Covenant**”), no later than six months after the Agreement Effective Date, on the portions of the Property which are planned for commercial development, other than the parcel currently containing the Floor and Decor store, which PIF Covenant will impose and implement the Transportation PIF in the amount of 0.5% of the amounts of all retail sales and services initiated, consummated, conducted, or transacted within the Property, which recording deadline may be extended administratively without amendment of this Reimbursement Agreement with the written approval of the Town Manager, for up to six months, as determined in their reasonable discretion. The Transportation PIF is a fee and not a tax imposed by the Town or the BID. The revenues (“**PIF Revenues**”) derived from the imposition of the Transportation PIF will be used only to finance Developer’s Share (whether advanced by and reimbursed to the Town, the BID, the Developer and/or the Retail Developer, as applicable) of the actual cost of the Kechter Road Improvements, North Main Street Improvements, South Main Street Improvements and Poudre Bridge, as set forth in Section 1 of this Reimbursement Agreement until such time as those Improvements have been fully funded or reimbursed as contemplated herein. Once the Improvements have been fully funded or reimbursed, Developer, BID, or its successors or assigns may use PIF Revenues for other improvements on the Property or to repay BID debt obligations as the Developer or BID deems necessary in their sole discretion and as permitted by the PIF Covenant and applicable law. In no event will the PIF Revenues include revenues derived from the imposition of the: (i) Declaration of Covenants Imposing and Implementing the Ladera Sales Credit Public Improvement Fee, recorded on October 4, 2022, at Reception No. 20220060056, in the Larimer County records; (ii) Declaration of Covenants Imposing and Implementing the Ladera Sales and Lodging Add On Public Improvement Fee, recorded on October 4, 2022, at Reception No. 20220060055, in the Larimer County records; or (iii) Declaration of Covenants Imposing and Implementing the Ladera Services Add On Public Improvement Fee, recorded on October 4, 2022, at Reception No. 20220060057, in the Larimer County records, though the BID may in its discretion elect to contribute such extra revenue to pay for the Developer’s Share.

(b) *Town and BID Review of PIF Covenant.* The Town and the BID will have the right to review and comment on the form of PIF Covenant prior to its execution and recordation. The Town and the BID will have 10 days following receipt of the form of PIF Covenant to review and comment on the form of PIF Covenant. In the event the Town and/or the BID fail to respond within such 10-day period, the Town and/or the BID will be deemed to not have objected to the form of PIF Covenant, without waiving any requirement that the PIF Covenant comply with the requirements of this Reimbursement Agreement. In the event that the Town or the BID objects to language in the PIF Covenant that would adversely impact the

Town's reimbursement rights set forth herein, the BID's ability to collect the PIF Revenue and disburse it in compliance with this Reimbursement Agreement or pledge the PIF Revenues, or because any language is inconsistent with this Reimbursement Agreement, the Developer will not record the PIF Covenant until the Town's and/or the BID's concerns have been resolved to the satisfaction of all Parties, which satisfaction may not be unreasonably withheld, conditioned, delayed, or denied. During the Term (defined below), the PIF Covenant shall not be terminated, waived, reduced, or released (as to any or all of the subject property) without the prior written consent of the Town and the BID, which may not be unreasonably withheld, conditioned, delayed, or denied. In addition, during the Term, the PIF Covenant shall not be amended or modified in any way without the Developer providing a copy of the proposed amendment or modification to the BID and the Town, and providing both with an opportunity to comment. The Town and the BID will have 10 days following receipt of the proposed amendment or modification to review and comment on the proposed amendment or modification. In the event the Town and/or the BID fail to respond within such 10-day period, the Town and/or the BID will be deemed to have not to have objected to the proposed amendment or modification, without waiving any requirement that the PIF Covenant comply with the requirements of this Reimbursement Agreement. In the event that the Town or the BID objects to language in the amendment or modification that would adversely impact the Town's reimbursement rights set forth herein, the Developer will not record the PIF Covenant until the Town's and the BID's concerns have been resolved to the satisfaction of all Parties, which satisfaction may not be unreasonably withheld, conditioned, delayed, or denied.

(c) If the Developer elects to record the PIF Covenant prior to the Agreement Effective Date on some or all of the Property, the PIF Revenues collected before the Agreement Effective Date will be transferred to the BID promptly after the Agreement Effective Date and thereafter treated in the same manner as other PIF Revenues.

2.02 Collection and Escrow of the Transportation PIF. The Transportation PIF shall be collected by the BID through its designated collection agent in accordance with the PIF Covenant. The BID shall deposit the full amount of the PIF Revenues into a **"Transportation PIF Escrow Account"**. The Transportation PIF Escrow Account shall be deposited an interest-bearing escrow account held with a third-party financial institution in accordance with the Public Deposit Protection Act ("**PDPA**"), pursuant to an escrow agreement with the BID and the Town. The interest earned on the escrow account will be treated as part of the PIF Revenues for purposes of reimbursement under this Reimbursement Agreement. Until all BID Constructed Improvements are completed and fully reimbursed, 15.0% of all Transportation PIF deposited into the Transportation PIF Escrow Account will be reserved for future Town reimbursements for the Developer's Share and may be distributed to the Town at any time, in its discretion, to apply toward the Developer's Share reimbursable to the Town under this Reimbursement Agreement. The remaining 85.0% of the Transportation PIF funds will be collected and distributed as set forth in Section 2.03 below. Once all BID Constructed Improvements are completed and reimbursed, all PIF Revenues will be distributed as set forth in Section 2.03 below.

2.03 *Use of Funds.* Until the following amounts are paid in full, the Parties hereby agree that the PIF Revenues will only be used for:

- (a) The finance, survey, design, permitting, and/or construction of the BID Constructed Improvements not advanced by the Developer or Retail Developer; and
- (b) Reimbursements to the Developer or Retail Developer for survey, design, permitting, and/or construction of the BID Constructed Improvements costs advanced by the Developer or Retail Developer;
- (c) The BID reimbursements for Town Constructed Improvements pursuant to Section 1.05, plus the Project Administration Fee, which the Town shall add to each reimbursement request; and
- (d) Interest on items in Sections 2.03(a), (b) and (c), pursuant to Section 2.05(c).

Upon receipt of Certified Requests (defined below), the PIF Revenues will be disbursed to the Parties in accordance with the sequence set forth in **Exhibit C**. Reimbursements by the Town to the BID for BID Constructed Improvements pursuant to Section 1.06, for which the BID has already made progress payments funded from the Transportation PIF Escrow Account during construction will be redeposited in the Transportation PIF Escrow Account.

2.04 *Revenue Pledge.* Developer hereby pledges all PIF Revenues to the BID and the BID hereby pledges all PIF Revenues to payment of Developer's Share only, until such time as Developer's Share has been paid in full (or, if after the Town Commencement Date, all Certified Requests have been paid in full and the Town has been advanced the full amount of the Estimated Remaining Developer's Share), following which the BID or the Developer may use the PIF Revenues for any legal purpose, in accordance with the terms and conditions of the PIF Covenant. The BID may pledge the PIF Revenues to repayment of debt issued by the BID for the purpose of funding the BID Constructed Improvements or Developer's Share of the Town Constructed Improvements, other than the 15% reserve, so long as such debt is sufficient to satisfy the BID's obligations hereunder and the Retail Developer remains obligated to advance any shortfall of funds for the BID Constructed Improvements to the BID.

2.05 *Procedures for Reimbursement.* Any and all funds paid by the Town, the BID, Developer and/or Retail Developer, as applicable, in connection with the Improvements that are eligible for reimbursement under this Reimbursement Agreement commencing on the Agreement Effective Date and continuing during the Term, may be reimbursed as follows:

- (a) The Town, the BID, Developer, and/or Retail Developer, as applicable, may initiate a request for reimbursement of costs and/or fees relating to the applicable Improvement by submitting to the BID a written request for reimbursement, which request will include a detailed invoice for work completed or other reasonable evidence of the incurrence of costs and expenses, calculation of the percentage of

the invoice that is part of Developer's Share per this Reimbursement Agreement, and in the case of the Town, the Project Administration Fee, and which request shall be certified by an engineer of the BID or the Town that to the engineer's reasonable satisfaction the work in the invoice has been performed and the costs are reasonable (the "**Certified Request**"). Requests for reimbursement may be submitted on a monthly basis. Copies of the Certified Requests will be available to all Parties upon request.

(b) Certified Requests shall be paid by the BID to the requesting Party, within 45 days after delivery of a Certified Request (the "**Due Date**"), provided that: (a) the BID has not notified the requesting Party of some deficiency in the Certified Request within 15 days of delivery, in which case payment will be made within 45 days after delivery of a corrected Certified Request; (b) the Certified Request is for the Developer's Share; (c) funds are available in the Transportation PIF Escrow Account (other than the reserved 15%, in the event of requests from the Developer, Retail Developer and/or the BID); and (d) that the work has been completed as set forth in the Certified Request. In the event funds are not available to pay all Certified Requests at such time, the Certified Requests shall be paid in the order set forth in Exhibit C. Additional payments, or partial payments, shall be made on any Certified Requests, in the order set forth in Exhibit C, on a monthly basis, distributing all collected PIF Revenues. Any Certified Request by the Town, the BID, the Developer or the Retail Developer that is not paid on or before the Due Date shall accrue interest from the date following the Due Date until paid by the BID at the interest rate set forth in (c) below.

(c) The interest rate shall be equal to interest at the prevailing yield on the most recently issued 10-year U.S. Treasuries, plus 200 basis points, compounded annually.

(d) Certified Requests for funding shall not be subject to any right of offset by the Town, BID, the Developer, and/or the Retail Developer.

1. The BID shall provide quarterly reports, 60 days after the end of each quarter, to the Town, Developer, and/or Retail Developer, as applicable, which shall include (a) all PIF Revenues received by the BID, (b) all interest earned on the Transportation PIF fund account and the current balance, (c) the amount of PIF Revenues reserved in the 15% reserve for Town reimbursements, (d) all expenses and reimbursements made, (e) all Certified Requests received to date from the Town, BID, Developer, and/or Retail Developer, along with the amount paid and the amount outstanding and interest accrued on outstanding amounts; provided that such reports shall use aggregated data that is anonymized such that it is not associated with any individual retailer or service provider.

2.06 *Advance if Town Improvements Not Commenced by Town Commencement Dates.* Although the Town has the right to determine the timing of the Town Constructed

Improvements, the Town currently expects to commence construction of both the Poudre Bridge and the North Main Street Improvements by the following dates:

- (a) 20 years after the Agreement Effective Date, if the Town has issued certificates of occupancy for 75.0% or more of gross square footage of all commercial units in the Phase II Property; or
- (b) 25 years after the Agreement Effective Date, if the Town has not issued certificates of occupancy for 75.0% or more of gross square footage of all commercial units in the Phase II Property.

(individually, Sections 2.06(a) and 2.06(b) are a “**Town Commencement Date**” and collectively are the “**Town Commencement Dates**”).

If the Town has not commenced construction of the Poudre Bridge and the North Main Street Improvements by the applicable Town Commencement Date, the Town Engineer shall provide an estimate of Developer’s Share of the costs of the remaining Town Constructed Improvements (the “**Estimated Remaining Developer’s Share**”), to the BID, Developer, and Retail Developer, if applicable.

The BID shall use all “**Available PIF Revenues**” (defined as all PIF Revenues after payment of all Certified Requests, with interest if applicable, that are not pledged to repay existing debt issued to fund Developer’s Share of the Improvements) to advance to the Town the full amount of the Estimated Remaining Developer’s Share (the “**Improvements Advance**”). In the event that there are insufficient available PIF Revenues to pay the full amount of the Estimated Remaining Developer’s Share, the BID shall pay all Available PIF Revenues to the Town and continue to collect and advance to the Town the PIF Revenues until the full amount of the Estimated Remaining Developer’s Share has been advanced, which additional PIF Revenues will be considered part of the Improvements Advance. The Improvements Advance will be reserved by the Town and may be used only to pay for the Improvements. The Town will deposit the Improvements Advance into an interest-bearing account and separately account for such funds, and the interest earned by the Town on the Improvements Advance will be treated as part of the Improvements Advance for purposes of reimbursement under this Section 2.06.

After the BID’s advance to the Town of the full Improvements Advance, the BID, Developer, and/or Retail Developer may use the PIF Revenues to reimburse themselves for any amounts advanced or incurred or expend the PIF Revenues for any other legal purpose, in accordance with the terms and conditions of the PIF Covenant and applicable law.

If the actual costs of the Developer’s Share of the Town Constructed Improvements commenced after the Town Commencement Dates exceed the Improvements Advance, the Town shall be responsible for any additional costs. If the actual costs of the Developer’s Share of the Town Constructed Improvements commenced after the Town Commencement Dates is less than the Improvements Advance, the Town shall return the excess Improvements Advance, to the BID.

If the Town does not commence construction of the remaining improvements to the Poudre Bridge or the North Main Street Improvements within seven years after BID's advance of the full amount of the Improvements Advance, the Town shall return the full amount of the Improvements Advance to the PID, with such interest which returned funds may be used by the BID, Developer and/or Retail Developer for any legal purpose, in accordance with the terms and conditions of the PIF Covenant and applicable law.

3. **Right(s) of Way.** If acquisition of any real property or structures owned by any third party, not related to or directly or indirectly, controlling, controlled by, or under common control or ownership with Developer or any of its successors or assigns, is required in connection with right(s)-of-way or easements (permanent, temporary, construction, or flood control) (collectively, "**Right(s) of Way**") required in connection with the Improvements (not including utility easements), the Town is solely responsible for acquiring such right(s)-of-way at the Town's sole cost and expense, without reimbursement under this Reimbursement Agreement. If a portion of the Construction Schedule or completion of BID Constructed Improvements under this Reimbursement Agreement are adversely affected or otherwise delayed by the Town's inability to acquire the necessary right(s)-of-way, the Parties will work together in good faith to revise the design to allow a portion of the project to move forward, and the timing for construction of the Improvements relying on acquisition of the right(s)-of-way will be extended by a period of time from the expected commencement of the construction until the Town acquisition of the required right(s)-of-way.

4. **Conflict with Larimer County Urban Area Street Standards.** The Town has adopted by reference the City of Loveland's version of LCUASS. LCUASS applies to the design and construction of new and reconstructed streets. In any event of any conflict between LCUASS and this Reimbursement Agreement relating to: (a) the respective Parties' obligations to construct the Improvements; (b) the Construction Schedule; (c) the payment of Developer's Share; or (d) the sequence of payments, this Reimbursement Agreement will supersede and control. In the event of any other conflict between Town Standards (including LCUASS) and this Reimbursement Agreement, Town Standards in effect at such time will supersede and control, except as otherwise agreed to in writing by the Parties.

5. **Estoppels.** Any Party shall, from time to time, no later than 15 days after receipt of written request from another Party, or any successor, assignee or agent of a Party (each, a "**Requesting Party**"), execute, acknowledge and deliver to such Requesting Party, any prospective lender, or prospective purchaser of any portion of the Property an estoppel certificate ("**Estoppel Certificate**") stating to the best of the Party's, as applicable, knowledge: (a) That the terms and provisions of this Reimbursement Agreement are unmodified and are in full force and effect, or, if modified, identifying any such modifications; (b) Whether there are currently any sums which the Town, Developer, Retail Developer, and/or BID, as applicable, is entitled to receive or demand from the Requesting Party, and if there is any such sum, specifying the nature and amount thereof; (c) Whether there is any uncured Event of Default (defined below) under this Reimbursement Agreement on the part of the Requesting Party and, if so, specifying the nature and extent thereof; and (d) Such other matters as may be reasonably requested by the Requesting Party.

6. Representations and Warranties.

6.01 Representations and Warranties by the Town. The Town represents and warrants that as of the Agreement Effective Date:

(a) The Town is a municipal corporation of the State of Colorado and has all requisite power and authority to enter into and perform its obligations under this Reimbursement Agreement; and

(b) By proper action of the Town, the Town's signatories have been duly authorized to execute and deliver this Reimbursement Agreement. Except as may be specifically set forth herein, no approvals or consents not heretofore obtained by the Town are necessary in connection with the execution of this Reimbursement Agreement by the Town or with the performance by the Town of its obligations hereunder.

6.02 Representations and Warranties by Developer. Except as disclosed in writing to the other Parties, Developer represents and warrants that as of the Agreement Effective Date:

(a) Developer has all requisite power and authority to carry out its business as now and whenever conducted and to enter into and perform its obligations under this Reimbursement Agreement;

(b) The execution of this Reimbursement Agreement by Developer does not violate any provision of any other agreement or other document to which Developer is a party;

(c) Except as may be specifically set forth in this Reimbursement Agreement, no approvals or consents not heretofore obtained by Developer are necessary in connection with the execution of this Reimbursement Agreement by Developer or with the performance by Developer of its obligations hereunder; and

(d) The persons executing this Reimbursement Agreement on behalf of Developer have full and complete authority to sign this Reimbursement Agreement on behalf of Developer.

6.03 Representations and Warranties by the BID. The BID represents and warrants that as of the Agreement Effective Date:

(a) The BID is a quasi-municipal corporation and political subdivision of the State of Colorado, and the BID has all requisite power and authority to enter into and perform its obligations under this Reimbursement Agreement;

(b) The BID's signatories have been duly authorized to execute and deliver this Reimbursement Agreement;

(c) To the BID's actual knowledge, the execution, delivery and performance of this Reimbursement Agreement by the BID will not (i) conflict with or be in

contravention of any provision of law, order, rule or regulation applicable to the BID or the Property, or (ii) result in any lien, charge or encumbrance of any nature on the Property or the project;

(d) The execution of this Reimbursement Agreement by the BID does not violate any provision of any other agreement to which the BID is a party;

(e) The BID knows of no material litigation, proceeding or investigation, pending or threatened, contesting the powers of the BID with respect to this Reimbursement Agreement; and

(f) Except as may be specifically set forth herein, no approvals or consents not heretofore obtained by the BID are necessary in connection with the execution of this Reimbursement Agreement by the BID or with the performance by the BID of its obligations hereunder.

7. **Inspection and Audit of Books and Records.** All books, records and reports (except those allowed or required by applicable law to be kept confidential) in the possession of the Town, Developer, Retail Developer, and/or BID, as applicable, relating to the PIF Revenues or Improvements, will at all reasonable times be open to inspection by such accountants or other agents as the respective Parties may from time to time designate. The Parties will have the right, but not the obligation, at their sole cost and expense, at any reasonable time to inspect, copy and/or have an audit performed of the books and records of the respective Parties relating to the PIF Revenues or Improvements.

8. **Notices.** Any notice, demand or request, or other communication hereunder will be sufficiently given and will be deemed given (a) one business day after deposit with a nationally-recognized overnight delivery service, addressed to the appropriate addresses below or at such other address or addresses as either Party will designate in writing to the other Parties hereto, (b) three business days after mailed by certified or registered mail, postage prepaid, addressed to the appropriate addresses below or at such other address or addresses as either Party will designate in writing to the other Parties hereto, (c) by hand delivery, or (d) when by email, on the day sent if sent on a day during regular business hours (9:00 a.m. to 5:00 p.m.) of the recipient, otherwise on the next day at 9:00 a.m., provided that the email is followed by a copy provided by Sections 8(a), (b), or (c) above, within one business day:

TO TOWN:

Town of Timnath
Attn: Town Manager
4750 Signal Tree Drive
Email: aadams@timnathgov.com

WITH A COPY TO:

Town of Timnath
Attn: Town Attorney
4750 Signal Tree Drive
Email: csteffl@dietzedavis.com

TO DEVELOPER:

Connell LLC
Attn: Sheri C. Welch
7785 Highland Meadow Pkwy #100
Fort Collins, CO 80528

WITH A COPY TO:

Brownstein Hyatt Farber Schreck, LLP
Attn: Carolynne C. White, Esq.
675 15th Street, Suite 2900
Denver, CO 80202

Email: swelch@connellresources.com

Email: cwhite@bhfs.com

TO BID:

Ladera Business Improvement District
Attn: Board of Directors
1700 Lincoln Street, Suite 2000
Denver, CO 80203
Email: rnavant@spencerfane.com

WITH A COPY TO:

Spencer Fane, LLP
Attn: Russell Dykstra
1700 Lincoln Street, Suite 2000
Denver, CO 80203
Email: rdykstra@spencerfane.com

Notice of a change of address of a Party will be given in the same manner as set forth above.

9. **Events of Default.** The occurrence of any one or more of the following events will constitute an “**Event of Default**”:

9.01 *Events of Default by Developer and/or Retail Developer.* The failure of Developer to: (a) record the PIF Covenant against the Property; (b) pledge the PIF Revenues to the BID during the Term (defined below); (c) with respect to the Developer or the Retail Developer, advance funds to the BID as set forth in Section 1.04(b), and each such failure(s) is not cured by the Developer and/or Retail Developer within the time provided in Section 9.05. In addition, the following shall be deemed to be a default by Developer or the Retail Developer: (a) the institution by or against Developer or the Retail Developer of any proceedings under the Bankruptcy Code (11 U.S.C. §101, *et. Seq.*) or any other law in which the Developer or Retail Developer is alleged to be insolvent or unable to pay its debts as they mature; (b) corporate dissolution of Developer or Retail Developer; (c) a material judgment or material judgments for the payment of money such that it impairs the Developer’s or Retail Developer’s ability to perform its obligations under this Reimbursement Agreement shall be rendered against Developer or Retail Developer, as applicable, and such judgment or judgments shall remain unsatisfied and in effect for a period of thirty (30) consecutive days without a stay of execution.

9.02 *Events of Default by the Town.* The failure of the Town to: (a) design and construct the Town Constructed Improvements upon such timeframe as determined by the Town; (b) reimburse the BID for amounts required to be reimbursed under Section 1.06 hereof; or (c) provide the Estoppel Certificate within the 15-day period set forth in Section 5, and each such failure(s) is not cured by the Town within the time provided in Section 9.05.

9.03 *Events of Default by the BID.* The failure of the BID to (a) design and construct the BID Constructed Improvements; (b) commence and complete the BID Constructed Improvements in accordance with the Construction Schedule or in accordance with Town Standards; (c) pledge the PIF Revenues to pay for Developer’s Share; (d) escrow 15.0% of the PIF Revenues per Section 2.02, (d) make reimbursements in the time and manner set forth in Sections 1.05 and 1.06, or (e) provide the Estoppel Certificate within the 15-day period set forth in Section 5, and each such failure is not cured by the BID within the time provided in Section 9.05.

9.04 *Additional Events of Defaults; Impacts on the Project.* In addition to the Events of Default set forth in Sections 9.01, 9.02, and 9.03, the failure of any Party to materially

observe or perform any covenant, obligation or agreement of the such Party in this Reimbursement Agreement and such failure is not cured by such Party within the time provided in Section 9.05.

9.05 *Notice of Defaults; Opportunity to Cure.* Notwithstanding anything hereunder to the contrary, no default under this Section 9 will constitute an Event of Default until notice of such default is given to the defaulting Party by the non-defaulting Party or Parties in accordance with Section 8 and such defaulting Party has had 30 days after receipt of such notice (or 10 days in the event of a payment / reimbursement default) to correct or cause to be corrected said Event of Default, and has not corrected or caused to be corrected said Event of Default; provided, however, that if a non-payment Event of Default cannot be corrected within the applicable period and the defaulting Party gives written notice to the non-defaulting Party(s) within such 30-day period that it is actively and diligently pursuing such cure, the defaulting Party will have a reasonable period of time given the nature of the Event of Default following the end of such 30-day period to cure such Event of Default, provided that such defaulting Party is at all times within such additional time period actively and diligently pursuing such cure in good faith.

10. **Remedies.** Upon the occurrence and continuation of an Event of Default, the non-defaulting Party or Parties' remedies will be as follows:

10.01 *Developer, Retail Developer, and BID's Remedies.* If any Event of Default by the Town occurs and is continuing hereunder, Developer, Retail Developer, and/or the BID may seek enforcement of the Town's obligations hereunder, including without limitation, the design and construction of the Town Constructed Improvements, by any equitable remedies, such as an action for injunction, specific performance, declaratory judgment, or other appropriate equitable remedy or for mandamus. In the event that the Event of Default is the failure of the Town to make a reimbursement required pursuant to Section 1.06, other than a reimbursement contested by the Town, the BID may withhold payment of a reimbursement to the Town, in which case the funds for the Town's Certified Request shall be reserved by the BID until the Town's reimbursement is made or the dispute is resolved by agreement of the Parties or by a court of law.

In the event that the Town revokes this Agreement before the BID, the Developer, and/or the Retail Developer have commenced construction of the BID constructed improvements, the Developer and/or Retail Developer may apply for disconnection of the Phase II Property or some portion thereof from the Town pursuant to Section 12 hereof, and the Town shall not be liable for any other damages related thereto.

10.02 *Town's Remedies.* If any Event of Default by Developer, the Retail Developer and/or the BID occurs and is continuing hereunder, the Town may (a) with respect to the BID, (i) seek enforcement of the BID's obligations hereunder, including without limitations, the design and construction of the BID Constructed Improvements and payment of reimbursement amounts by any equitable remedies, such as specific performance or injunction, or (ii) assume and take over the design and construction of the applicable Improvement(s) upon 90 days' written notice to the BID or (iii) withhold issuance of new building permits for the Retail Property until BID Constructed

Improvements are completed; or (b) the Town and/or the BID may, with respect to Developer and/or Retail Developer, (i) seek enforcement of Developer's and/or Retail Developer's obligations hereunder by any equitable remedies, such as an action for injunction, specific performance, declaratory judgment, or other appropriate equitable remedy or for mandamus, (ii) by an action to collect and enforce payment of sums owing hereunder by the Developer or the Retail Developer, or (iii) during the continuation of an Event of Default by Developer and/or Retail Developer, withhold issuance of new building permits for the Retail Property.

10.03 *Consequential Damages.* IN NO EVENT WILL ANY PARTY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, LOST REVENUES, LOST PROFITS, OR OTHER COMMERCIAL OR ECONOMIC LOSS.

11. Term and Termination.

11.01 *Term.* This Reimbursement Agreement will commence on the Agreement Effective Date and will continue for so long as Developer's Share is outstanding (the "**Term**"). At such time as the Phase II Property has been annexed into the Town and any appeals, litigation, referenda or other legal challenge to the annexation of the Phase II Property have been completely and finally resolved, without the possibility of appeal, the Parties agree to execute an Acknowledgment of Agreement Effective Date, setting forth the Agreement Effective Date and documenting the commencement of this Agreement. No Party shall be liable for any damages if this Reimbursement Agreement does not commence.

11.02 *Termination.* This Reimbursement Agreement will remain in effect for the entirety of the Term set forth in Section 2.03(e), unless:

- (a) Terminated by written agreement of all Parties; or
- (b) In the event that annexation of the Phase II Property is reversed, revoked, invalidated or disconnected for any reason, including without limitation pursuant to citizen referendum, initiative or court order, this Reimbursement Agreement shall automatically be terminated and neither Party shall have any remaining obligations hereunder or be liable to any other Parties for any damages related hereto.

11.03 *Effect of Expiration or Termination.* Upon expiration of the Term and full reimbursement to the Town of Developer's Share, including without limitation the Project Administration Fee and any accrued interest, this Reimbursement Agreement will automatically terminate and be of no further force and effect; provided, however, that the Parties will execute such documents as may be reasonably requested by another Party to evidence such termination. Notwithstanding the foregoing, Sections 10, 13.03, and 13.04 will survive the termination of this Reimbursement Agreement and will continue to be in

effect and binding on the Parties. Upon termination of this Reimbursement Agreement, the remittance and disbursement of any remaining PIF Revenues will be governed by the terms of the PIF Covenant.

12. **Disconnection.** In the event that no horizontal development, other than grading, has occurred on the Phase II Property within five years from the Agreement Effective Date of this Reimbursement Agreement, including without limitation installation of water, sewer, stormwater or road improvements, the Developer may petition for disconnection of the Phase II Property from the boundaries of the Town. In the case of such disconnection, this Reimbursement Agreement will terminate per Section 11.02, provided that any PIF Revenues received prior to the date of the termination or collected after termination from the Phase I Property will be used to reimburse the Town for Developer's Share incurred by the Town prior to such notice of termination.

13. **Miscellaneous.**

13.01 **Developer's Reserved Rights.** Developer reserves any and all rights to: (i) discontinue, continue, increase, decrease, or otherwise modify the PIF Covenant, following written approval of the BID and the Town as set forth in Section 2.01; or (ii) impose additional declarations of covenants on the Property at any time, as allowed by law.

13.02 **Integration; Amendment.** This Reimbursement Agreement contains the complete Reimbursement Agreement between the Parties with respect to the subject matter hereof (Interim Signal Project, Final Signal Project, Kechter Road, Main Street and Poudre Bridge design, construction and reimbursement responsibilities). The Parties agree that there are no oral Reimbursement Agreements, understandings, representations or warranties which are not expressly set forth herein. This Reimbursement Agreement may be amended or supplemented only by an instrument in writing signed by the Parties. It may not be amended or modified by course of conduct or by an oral understanding or agreement among any of the Parties. The Parties agree that nothing herein supersedes the existing Annexation Agreements or Subdivision Improvement Agreement for the Phase I Property and that they will enter into a separate Subdivision Improvement Agreement for the Phase II Property.

13.03 **Governing Law; Venue.** This Reimbursement Agreement will be governed by, and construed in accordance with, the laws of the State of Colorado. The Parties stipulate and agree that in the event of any dispute arising out of this Reimbursement Agreement, the State courts will have exclusive jurisdiction over such dispute and venue will be proper in Larimer County. All Parties hereby submit themselves to jurisdiction of the State District Court, 8th Judicial District, County of Larimer, State of Colorado (the "**Court**").

13.04 **Attorneys' Fees.** In any proceeding brought to construe, interpret or enforce any of the terms or provisions of this Reimbursement Agreement, the Court will award to the Party that substantially prevails in such litigation reasonable attorneys' fees, actual court costs, and other expenses incurred in such litigation.

13.05 **Incorporation of Exhibits.** All exhibits referred to in this Reimbursement Agreement are incorporated into and made a part of this Reimbursement Agreement as if set forth fully here.

13.06 Business Days. If any date herein set forth for the performance of any obligations by Developer, Retail Developer, Town, or BID or for the delivery of any item, instrument or notice as herein provided should be on a Saturday, Sunday, or legal holiday, the compliance with such obligations or delivery will be deemed acceptable on the next business day following such Saturday, Sunday, or legal holiday. As used herein, the term “legal holiday” means any federal or state holiday for which financial institutions or post offices are generally closed in the State of Colorado.

13.07 Multiple Counterparts. This Reimbursement Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered will be deemed to be an original and all of which will constitute one and the same instrument. This Reimbursement Agreement may be executed and delivered by electronic mail in portable document format (.pdf), or by using a third-party electronic signature capture service provider (e.g. DocuSign), and delivery of the signature page using either such method, which will be deemed to contain authentic reproductions of signatures, and will be deemed to have the same effect as if the original signature had been delivered to the other Parties.

13.08 Time of the Essence. Time is of the essence of this Reimbursement Agreement and every provision herein.

13.09 Force Majeure. Any delays in or failure of performance by the Town, Developer, Retail Developer, and/or BID, as applicable, of its obligations under this Reimbursement Agreement, will be excused if such delays or failure are a result of any one or more of the following “**Force Majeure Events**”, whether alone or in combination: flood, fire, earthquake, storm or other casualty or significant weather event; strikes, lockouts, or other labor interruptions; pandemics, including COVID-19; war, rebellion, riots, acts of terrorism, or other civil unrest; acts of God or of any government, including specifically the action or inaction of the Federal Emergency Management Agency; disruption to local, national or international transport services; shortages of materials; epidemics; utility delays; and any other events or circumstances, whether similar or dissimilar, that are beyond the respective Party’s reasonable control and have not been caused by the actions or inactions of the respective Party. In the event of such Force Majeure Event, the deadline for performance shall be extended by the number of days that the Force Majeure Event prevented performance.

13.10 Severability. Wherever possible, each provision of this Reimbursement Agreement will be interpreted in such manner as to be effective and valid under applicable laws, but if any provision of this Reimbursement Agreement will be prohibited by or invalid under applicable laws, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Reimbursement Agreement.

13.11 Binding Effect. This Reimbursement Agreement and the terms and provisions herein will inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns.

13.12 Construction; Headings. The Parties hereto have participated jointly in the negotiation and drafting of this Reimbursement Agreement. If an ambiguity or question of intent or interpretation arises, this Reimbursement Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship. The article headings contained herein are for purposes of identification only and will not be considered in construing this Reimbursement Agreement. The following terms may be used interchangeably in this Reimbursement Agreement: (i) (A) "Kechter Road," (B) "LCR 36," and (C) "Kechter Road (LCR 36)," and (ii) (X) "County Road 5," (Y) "LCR 5," and (Z) "Main Street (LCR 5)."

13.13 Assignment. No Party hereto may assign this Reimbursement Agreement or any rights or obligations hereunder without the prior written consent of the other Parties, except for the Retail Developer assignment set forth below.

If the Developer sells or conveys all or substantially all of the Retail Property to a single entity, the Developer shall assign the Retail Developer's rights and obligations under this Agreement to such entity. Subsequently, if any future Retail Developer sells or conveys all or substantially all of the Retail Property to a single entity, the Retail Developer shall assign its rights and obligations under this Reimbursement Agreement to such successor owner. In either event, the assignor shall continue to be joint and severally liable for its obligations hereunder, except that the assignor Developer or Retail Developer may be released from its obligations hereunder upon:

(a) Assignment of this Agreement to a future Retail Developer, which owns all or a substantial portion of the Retail Property, and written acceptance of the assignment by the assignee; and

(b) Written consent to the Assignment and Release of Developer by the Town, which shall not be unreasonably withheld provided that:

1. the Town Engineer determines that the assignee has sufficient skills and experience to complete the development of the Retail Property, which may be demonstrated by ten years' experience developing projects of similar size and complexity; and

2. The assignee is in good standing with the Colorado Secretary of State, agrees to the representations and warranties set forth in Section 6.02 hereof and further certifies that assignee has the legal, financial and technical capabilities to complete development of the Retail Property and performance of the Retail Developer's obligations set forth herein; and

3. If the BID Constructed Improvements have not yet been completed *and* the BID lacks sufficient funds to complete the BID Constructed Improvements, the Town Finance Director determines that the assignee has sufficient financial capabilities to finance or borrow the funds to finance the design and construction of the BID Constructed Improvements, which may be demonstrated by a letter of pre-qualification for a construction loan in at

least the amount of the estimated costs of the BID Constructed Improvements from a well-established financial institution or other evidence satisfactory to the Town Finance Director.

The determinations by the Town Engineer and Town Finance Director set forth above shall not be unreasonably withheld.

Any attempted assignment without consent required hereunder will be void and of no force and effect. Upon assignment of all of Retail Developer's rights and responsibilities under this Reimbursement Agreement, the Town's written consent to such assignment pursuant to section (b) above, and the express assumption by assignee(s) of all of Retail Developer's obligations under this Reimbursement Agreement, Retail Developer will be released from any and all future obligations under this Reimbursement Agreement.

13.14 Multi-Fiscal Year Obligations. The Town and the BID will have no financial obligations under this Reimbursement Agreement except as expressly provided in this Reimbursement Agreement, and any obligations of the Town and the BID under this Reimbursement Agreement will not constitute the creation of an indebtedness or authorize borrowing of money by the Town and the BID within the meaning of any constitutional, home rule charter or statutory limitation or provision. Any obligations of the Town and the BID to make payments, if any, under this Reimbursement Agreement will be from year to year only and shall not constitute a mandatory payment obligation of the Town and the BID in any fiscal year beyond the present fiscal year and shall be subject to annual budget and appropriation. In the event that the BID fails to appropriate expenditures from the Transportation PIF Escrow Account to make reimbursements due hereunder, the Town may instruct the escrow agent to make such reimbursements.

13.15 Additional Documents or Action. If all or any portion of this Reimbursement Agreement, or other agreements approved in connection with this Reimbursement Agreement are asserted or determined to be invalid, illegal or are otherwise precluded, the Parties, within the scope of their powers and duties and to the extent permitted by law, will cooperate in the joint defense of such documents. Subject to Section 13.04, each Party shall pay its own attorneys' fees in any legal proceeding.

13.16 No Third-Party Beneficiaries. No person or entity shall be a third-party beneficiary of any provision of any of this Reimbursement Agreement, and the provisions hereof are intended to benefit only the Parties and their successors and permitted assigns.

13.17 Recording. The Parties acknowledge and agree that this Reimbursement Agreement shall be recorded in the real property records of Larimer County, Colorado.

13.18 Impact Fees and Other Fees. Nothing herein shall be deemed a waiver of any requirement to pay impact fees to the Town, including without limitation transportation or road impact fees, or other fees duly imposed by the Town.

13.19 No Precedent. The provisions of this Reimbursement Agreement are drafted in consideration of the unique circumstances involving the Property and are not intended to

constitute a precedent as to any future agreement between the Parties or with any other property owner.

13.20 Governmental Immunity. Nothing in this Reimbursement Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Town or the BID, their respective officials, employees, contractors, or agents, or any other person acting on behalf of the Town or the BID and, in particular, governmental immunity afforded or available to the Town and BID pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S.

13.21 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Reimbursement Agreement and in commencing and completing the Improvements and in attempting to resolve any disputes which may arise hereunder.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed the foregoing Reimbursement Agreement.

TOWN:

Town of Timnath, Colorado,
a municipal corporation

DocuSigned by:

By: Mark Soukup
Name: Mark J. Soukup
Position: Mayor

ATTEST:

DocuSigned by:

By: Milissa Peters-Garcia
Name: Milissa Peters-Garcia
Title: Town Clerk

APPROVED AS TO FORM

DocuSigned by:

Carolyn Steffl
Carolyn R. Steffl
Town Attorney

DEVELOPER:

Connell LLC,
a Colorado limited liability company

By: Sheri C. Welch
Name: Sheri C. Welch
Title: Manager

RETAIL DEVELOPER:

Connell LLC,
a Colorado limited liability company

By: Sheri C. Welch
Name: Sheri C. Welch
Title: Manager

BID:

Ladera Business Improvement District,
a quasi-municipal corporation and political
subdivision of the State of Colorado

By: 
Name: Grant R. Nelson
Position: President

ATTEST:

By: 
Title: Secretary
Name: Tony A. Connell

EXHIBIT A

Retail Property Illustration

(A Portion of the Ladera Subdivision, Ladera Subdivision Filing No. 2 and property known as Ladera Annexation No. 3, Town of Timnath, County of Larimer)

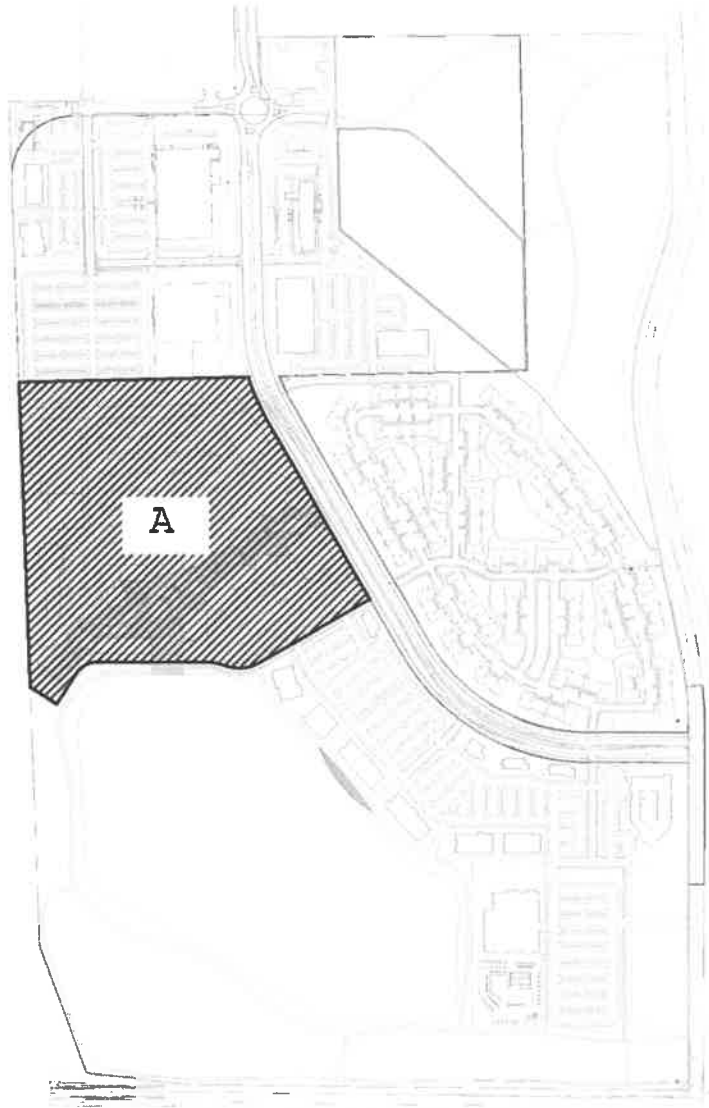


Exhibit B

Construction Schedule for BID Constructed Improvements

All terms capitalized herein will have the meanings set forth in the Kechter Road and Main Street Right-of-Way and Bridge Improvement and Reimbursement Agreement.

<u>Project Description</u>	<u>Required Completion Date</u>	<u>Comments</u>
South Main Street (LCR 5) Project	The Earlier of: A. 10 years from the Agreement Effective Date; or B. 2 years after 65.0% of gross square footage of sales tax generating commercial units in the Retail Property have received certificates of occupancy (not including any fitness centers, based on an approved sketch plan); or C. 2 years after 75.0% of gross square footage of all commercial units in the Retail Property have received certificates of occupancy (not including any fitness centers) based on an approved master plan), based on an approved sketch plan.	This project is located south of Weitzel Street. It includes the Main Street (LCR 5) and Kechter Road intersection.
Interim Signal Project	18 months after the Agreement Effective Date	This project is the traffic signal only.
Kechter Road (LCR 36) and Flood Project	The Earlier of: A. 10 years from the Agreement Effective Date; or B. 2 years after 65.0% of gross square footage of sales tax generating commercial units in the Retail Property have received certificates of occupancy (not including any fitness centers), or C. 2 years after 75.0% of gross square footage of all commercial units in Retail Property have received certificates of occupancy (not including any fitness centers).	This project includes improvements to Kechter Road, to convey 100-year storm event waters.

EXHIBIT C

Sequence of Payments Exhibit

All terms capitalized herein will have the meanings set forth in the Kechter Road and Main Street Right-of-Way and Bridge Improvement and Reimbursement Agreement.

Commencing on the Agreement Effective Date and continuing during the Term of the Reimbursement Agreement, all PIF Revenues shall be used as follows:

As the PIF Revenues are received by the BID, 15.0% of all PIF Revenues shall be retained as a reserve to fund Developer's Share of reimbursements to the Town and may be drawn on by the Town in the Town's discretion.

The additional 85.0% of PIF Revenues will be used to reimburse the Town, BID, Developer and/or Retail Developer, as applicable, for Certified Requests to be paid in the following order:

First to BID (or if paid / advanced by the Developer and/or Retail Developer, to the Developer and/or Retail Developer, as applicable) for reimbursement of costs for 100.0% of the Developer's Share of the Interim Signal Project, until all such funds have been reimbursed in full;

Second, to the Town for reimbursement of Developer's Share of costs for the following Improvements: (a) the Poudre Bridge replacement project; and (b) for the Bridge Expansion costs, until all such funds have been reimbursed in full;

Third, to the BID (or if paid / advanced by the Developer and/or Retail Developer, to the Developer and/or Retail Developer, as applicable) for reimbursement of costs for 100.0% of the BID's Constructed Improvements, until all such funds have been reimbursed in full (provided that if Town reimbursements have been advanced to the BID, Developer or Retail Developer, the PIF Revenues can be used to reimburse such costs); and

Fourth, to the Town for reimbursement of 37.5% of the Flood Premium and all additional Developer's Share costs for the Improvements, including the Project Administration Fee, until all such funds have been reimbursed in full.