**ORDINANCE 2010-07**

**AN ORDINANCE ANNEXING TO THE CITY OF FRUITA APPROXIMATELY 187 ACRES OF PROPERTY LOCATED NORTH OF HIGHWAY 6 & 50, SOUTH OF L ROAD, AND WEST OF THE BIG SALT WASH (PEREGRINE VILLAGE, PROJECT #2010-01)**

**WHEREAS,** the Fruita City Council finds that it is necessary to annex certain real property contiguous to the City of Fruita in order to:

1. Promote the public health, safety, and welfare of the community; and,

2. Insure efficient provision of municipal services and fair and equitable distribution of cost amongst those who use services provided by the community; and,

3. Provide for orderly growth of the community; and,

**WHEREAS,** the City Council adopted Resolution 2010-08 finding that the real property described and shown on Exhibits A and F is eligible for annexation pursuant to C.R.S. 31-12-104 & 105, stating their intent to annex same, and initiating the annexation procedures.

**THE CITY OF FRUITA HEREBY ORDAINS:**

**Section 1:** The Fruita City Council, having reviewed a properly constituted petition of all the owners of real property in the area proposed for annexation, hereby annexes the property as described and shown in Exhibits A and B attached hereto and incorporated herein, and the Fruita City limits are hereby modified to reflect said annexation.

**Section 2:** Conditions of said annexation include:

1. This annexation of property is subject to an annexation agreement attached hereto and incorporated herein as Exhibit C. This ordinance shall become effective upon executing the annexation agreement attached as Exhibit C. In the event the property owner does not execute this annexation agreement by June 7, 2010, this ordinance shall be null and void and of no effect.

2. Zoning of said property shall be established by future public hearing which will be held within ninety days (90) of the effective day of this ordinance.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL THIS 6TH DAY OF APRIL, 2010**

ATTEST:

City Clerk

City of Fruita

H. Kenneth Henry, Mayor

**ORDINANCE 2010-07**
**EXHIBIT A**
**LEGAL DESCRIPTION**
**PEREGRINE VILLAGE**

A parcel of land situated in the NW ¼, NE ¼ and SW ¼, Section 7, T.1N., R2W., Ute Meridian, County of Mesa, State of Colorado, and being more particularly described as follows: Beginning at a found Mesa County Survey Marker for the Center ¼ of said Section 7, S00°11'27"E along the East line of the NE ¼ SW ¼ of said Section 7, 1321.39 feet to a set Mesa County Survey Marker for the Center-South 1/16 corner of said Section 7; thence S89°57'08"W, along the South line of the NE ¼ SW ¼ of said Section 7, 52.94 feet to the apparent Centerline of the Big Salt Wash; thence along said apparent Centerline the following eight (8) courses: 1) S17°37'19"W, 107.02 feet; 2) S70°15'51"W, 226.69 feet; 3) S50°31'53"W, 152.07 feet; 4) S00°31'32"W, 498.15 feet; 5) S12°10'11"E, 160.46 feet; 6) N79°27'50"W, 318.12 feet; 7) S08°07'28"W, 314.94 feet; 8) S21°05'44"E, 150.07 feet to a point on the South line of the SE ¼ SW ¼ of said Section 7; thence S89°24'59"W along the said South line, 16.76 feet to a point on the Northeasterly right-of-way line of State Highway 6 & 50; thence N56°53'09"W along said Northeasterly right-of-way line, 723.24 feet; thence departing said northeasterly right-of-way line and running N13°21'2"E, 945.71 feet to a point on the South line of the said NE ¼ SW ¼ of said Section 7; thence N89°32'22"E along said South line, 140.00 feet; thence N00°20'16"W, 600.00 feet; thence S89°32'22"W, 363.00 feet to a point on the West line of the NE ¼ SW ¼ of said Section 7; thence N00°20'16"W along said West line, 721.59 feet; thence N00°05'10"E along the West line of the NE ¼ SW ¼, 1324.51 feet; thence N00°02'19"W along the West line of the NE ¼ NW ¼ of said Section 7 and along the West line of Parcel 2 as described by a plat recorded in Book 18 at Page 86 of the Mesa County records, 882.31 feet; thence N89°44'47"E along a line of said Parcel 2, 530.19 feet; thence S00°02'19"E continuing along a line of said Parcel 2, 129.00 feet; thence N89°02'56"E continuing along a line of said Parcel 2, 246.28 feet; thence N00°02'19"W continuing along a line of said Parcel 2, 536.81 feet to a point on the Southerly right-of-way of L Road; thence N89°44'47"E along said Southerly right-of-way of L Road, 543.83 feet; thence N89°42'00"E along said Southerly right-of-way of L Road, 1319.85 feet to a point on the East line of the NW ¼ NE ¼ of said Section 7; thence S00°21'32"W along the said East line of the NW ¼ NE ¼, 799.56 feet, more or less, to the apparent Centerline of the Big Salt Wash; thence along said apparent Centerline the following eighteen (18) courses: 1) S66°58'54"W, 76.34 feet; 2) S58°39'10"W, 177.68 feet; 3) S56°04'11"W, 134.02 feet; 4) S45°11'39"W, 130.22 feet; 5) S33°10'50"W, 120.60 feet; 6) S26°22'34"W, 92.04 feet; 7) S26°23'20"W, 50.86 feet; 8) S22°46'12"W, 150.59 feet; 9) S54°29'46"E, 166.63 feet; 10) S27°48'33"E, 201.58 feet; 11) S65°25'04"W, 166.27 feet; 12) S56°07'38"E, 89.44 feet; 13) S29°15'14"E, 155.02 feet; 14) N83°36'02"E, 102.55 feet; 15) S13°50'22"E, 210.45 feet; 16) S82°53'51"W, 148.88 feet; 17) S44°16'53"W, 300.57 feet; 18) N81°51'48"W, 67.34 feet to a point on the East line of the W ½ SW ¼ NE ¼ of said Section 7; thence S00°32'30"E along the said East line, 67.34 feet to the SE corner of the said W ½ SW ¼ NE ¼ of Section 7; thence S89°40'05"W along the South line of said W ½ SW ¼ NW 1/4 , 660.81 feet to the point of beginning. Said parcel contains 187.2 acres, more or less.

**ORDINANCE 2010-07**
**EXHIBIT B**
**PEREGRINE VILLAGE**

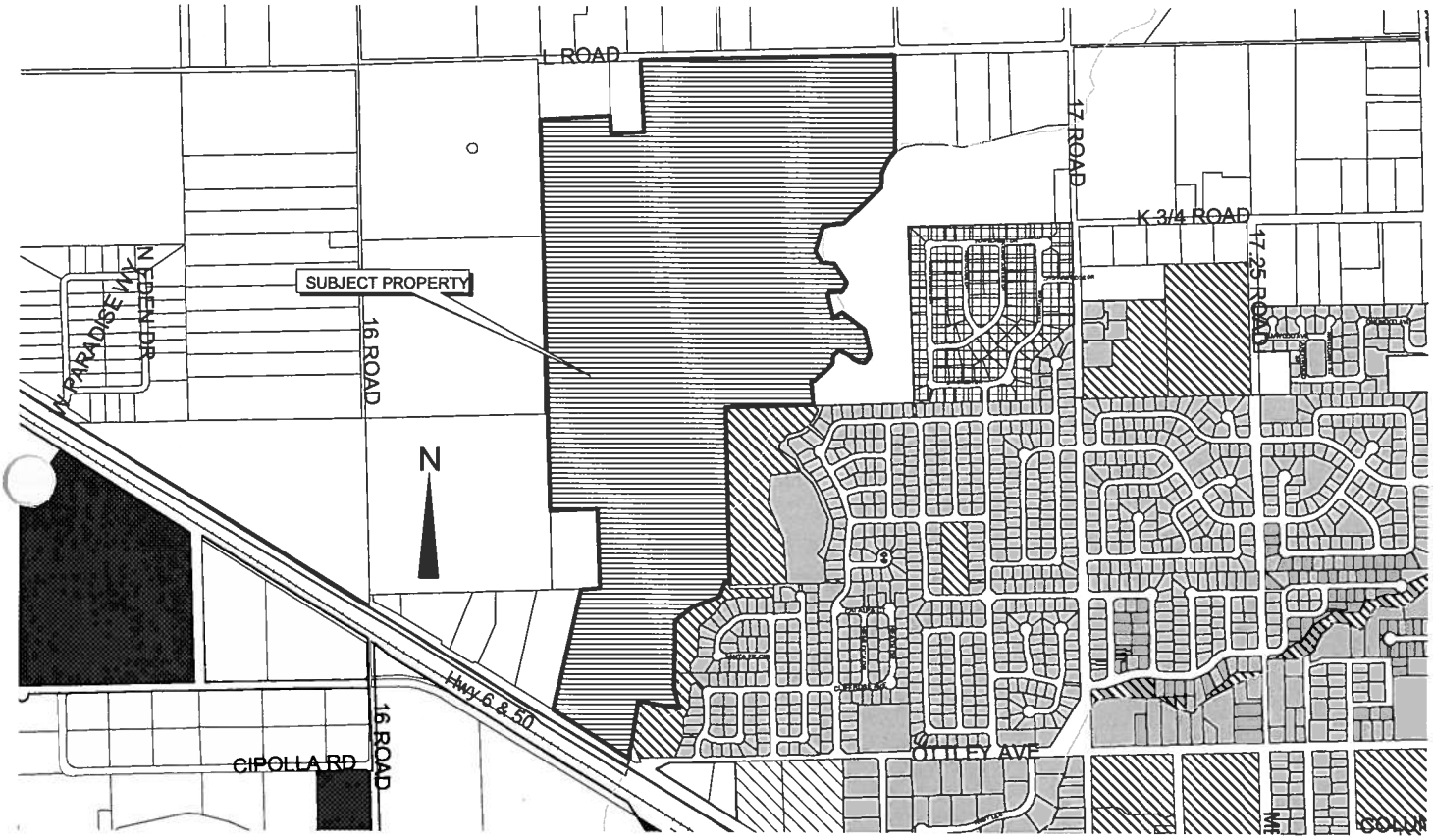


EXHIBIT C
Ordinance 2010-07

**ANNEXATION AND DEVELOPMENT AGREEMENT**
**Peregrine Village**

THIS ANNEXATION AGREEMENT is entered into this 27 day of APRIL, 2010, by and between the CITY OF FRUITA, COLORADO, a Colorado municipal corporation, whose address is 325 E. Aspen Ave, Fruita, Colorado, 81521, (the "City") and BEN E. CARNES, whose address is 831 Elberta Drive, Fruita, Colorado 81521 (the "Developer").

RECITALS

A. WHEREAS, Developer owns 100% of the real property described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property", the "Development" or "PEREGRINE VILLAGE" as applicable), and

B. WHEREAS, on or about Nov. 9, 2009, Developer submitted an Annexation Petition for the Property to the City Clerk of the City of Fruita, Colorado, and

C. WHEREAS, on or about February 2, 2010, the City Council of the City (the "City Council") adopted Resolution No. 2010-08, wherein it determined that the petition for the proposed annexation complied with Section 31-12-107, C.R.S., as amended, or such parts thereof as may be required to establish eligibility under the terms of the Municipal Annexation Act of 1965, as amended, Sections 31-12-101, *et seq*., C.R.S., and

D. WHEREAS, on February 2, 2010, the City Council conducted a public hearing at which it adopted Resolution No. 2010-08, wherein it determined the proposed annexation complies with Sections 31-12-104 and 31-12-105 C.R.S., as amended or such parts thereof as may be required to establish eligibility under the terms of the Municipal Annexation Act of 1965, as amended, Sections 31-12-101, *et seq*., C.R.S., and

E. WHEREAS, Developer has submitted to the City a request for development and zoning of the Property as a combined Community Mixed Use Zone and Planned Unit Development Zone as those terms are defined in the City's Municipal Code, and

F. WHEREAS, if the Property is annexed into the City, the City will have the authority to zone the Property and approve the subdivision of the Property in accordance with this Agreement, the City's Master Plan and the applicable City requirements and policies; and the City will have the authority to govern development of the Property in accordance with applicable State law, the Fruita Municipal Code, this Agreement, and other applicable City requirements and policies, and

G. WHEREAS, the City desires to annex the Property in order to provide for orderly growth in and around the City, and

H. WHEREAS, the City and Developer mutually agree that the maters hereinafter set forth are reasonable conditions and requirements to be imposed by the City upon the Developer and its successors in connection with the acceptance and favorable annexation on the Developer's Petition for Annexation, the City recognizing and reciting that such matters are necessary to protect promote and enhance the public welfare, and

I. WHEREAS, the parties agree that it is desirable for the Developer to annex the Property to the City.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

## SECTION 1
## DEFINITIONS

1.1 Agreement. This Annexation Agreement between Developer and the City.

1.2 Annexation Petition. As defined in Recital B above.

1.3 City. The City of Fruita, Colorado, a home rule municipal corporation.

1.4 City Council. The City Council of the City of Fruita Colorado.

1.5 Developer. Ben E. Carnes and, unless specifically excluded in this Agreement, the Developer's successors and assigns.

1.6 Development. As defined in Recital A above.

1.7 Effective Date. The date of the City Council Ordinance approving this Agreement.

1.8 Final Approval. As defined in subsection 3.2 below.

1.9 Municipal Code. The City's codification of its ordinances as in effect from time to time.

1.10 Property. The real property described in Exhibit A attached to this Agreement.

1.11 Subdivision Final Plat. Final plats(s) for all or any portion of the Development to be approved by the City pursuant to the requirements and procedures set forth in Chapter 17.15 of the Municipal Code in effect as of the date of the subdivision application for each portion of the Development.

1.12 Uniform, Non-Discriminatory Regulations. Collectively, City ordinances, rules, regulations, policies and standards applicable in the same manner to all developments within the City.

## SECTION 2
## SCOPE AND INTENT OF AGREEMENT

2.1 Scope of this Agreement.

2.1.1 This Agreement is intended to set forth the parties' understandings and agreements as to the annexation of the Property pursuant to the Municipal Annexation Act of 1965, as amended; as to the procedures, limitations, and standards applicable to the construction of future improvements that may be installed to serve the Property; as to the responsibilities of the parties for

various costs, fees and charges; and to such other matters the parties believe can be adequately addressed at this time.

2.1.2 Except as otherwise provided in this Agreement, this Agreement is not intended to address those matters which are more appropriately considered at the time Developer submits to the City for its review and approval Subdivision Final Plat applications for each development phase of the Property. The Developer has submitted an application to the City to zone the Property a combination of Community Mixed Use and Planned Unit Development as those terms are defined in the Municipal Code. The City has tentatively approved such zoning conditioned upon the Property being annexed, and shall not unreasonably withhold or condition its final approval of such zoning. If within 90 days after the Effective Date of this Agreement, the City does not (1) grant final zoning approval for the Property as requested by the Developer then the City shall consent to and take all actions necessary for disconnection of the Property from the City. Except as otherwise set forth in this Agreement, the City reserves all rights to review, approve or deny any future zoning application, land use(s) or future Subdivision application on any portion of the Property in accordance with State law and the ordinances and policies of the City then in effect.

2.1.3 It is not the intention of the parties in any way to diminish or limit the City's legislative judicial quasi-judicial or other non-delegable discretionary powers. Except as otherwise provided in this Agreement, it is not the intention of the parties to impose on the City any duty, beyond its ordinances and regulations as they may from time to time exist, nor to impose any special obligation on the City to approve or accept any items submitted by the Developer or Developer's successors and assigns including, but not limited to, future plans, drawings, reports, security documents, improvements, and conveyances. It is furthermore the expressed intention of the parties as set forth herein, to the extent such rights and obligations are consistent with law. The parties expressly agree they will fully perform this Agreement.

2.2 Covenants. The provisions of this Agreement shall constitute covenants or servitudes which shall touch, attach to and run with the land compromising 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 the Agreement.

2.3 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 City and Developer following the public notice and public hearing procedures required for approval of this Agreement.

2.4 Cooperation in Defending Legal Challenges. If any legal or equitable action or other proceeding is commended by a third part challenging the validity of any provision of this Agreement, Developer and the City agree to cooperate in defending such action or proceeding and to bear their own expenses in connection therewith. Unless the City and Developer otherwise agree, each party shall select and pay its own legal counsel to represent it in connection with such action or proceeding. If any part of this Agreement is held to be invalid or of no effect by a court of competent jurisdiction, such judicial determination shall not affect any other part of this Agreement which will continue in full force and effect subject to subsection 9.10 below. If any part of this Agreement is determined by a court of competent jurisdiction to be in excess of the City's power and authority, such part shall be unenforceable by either party to this Agreement. If any challenge to this Agreement results in disconnection of any portion of the Property from the City, this Agreement shall be null and void at the

option of Developer. Each party represents to the other that it is unaware of any pending or threatened actions or circumstances which would void this Agreement or make any provision of it illegal or impossible to perform.

2.5 No Additional Annexation Conditions Imposed. The City and the Developer acknowledge and affirm that this Agreement does not impose additional terms and conditions within the meaning of Section 33-12-107 (1)(g), C.R.S. To the extent that Section 31-12-107(1)(g), C.R.S., might be construed as being ambiguous as to what might be considered additional terms and conditions, Developer, as owner of 100% of the land described in Exhibit A, hereby declares that it has voluntarily entered into this Agreement and states that if an election were held, Developer would approve the terms and conditions of this Agreement at such election.

## SECTION 3
## ANNEXATION

3.1 Annexation. Annexation of the Property shall be in accordance with this Agreement and the Colorado Municipal Annexation Act of 1965, as amended (Sections 31-12-101, *et seq.*, C.R.S.).

3.2 Conditions Precedent. As used in this Agreement, "Final Approval" shall mean the thirtieth (30th) day following: the effective date of the latest of the ordinances by which the City Council approves this Agreement; or annexation of the Property to the City. Final Approval shall be deemed not to have occurred if on or before such 30th day either: any third party commences any legal proceeding challenging any of such approvals, or; any third party submits a petition for a referendum seeking to reverse or nullify any of such approvals.

3.3 Failure of Conditions. Until all of the conditions set forth in subsection 3.2 above have been satisfied, this document shall constitute an offer by Developer and the City to enter into this Agreement (notwithstanding the parties' mutual execution and delivery of this document) and the annexation of the Property to the City shall not be effective. Consequently, except as otherwise set forth in subsection 3.2 above, at any time before such conditions are satisfied, Developer may withdraw the Petition for Annexation and Developer or the City may withdraw its offer to enter into this Agreement. If Developer withdraws the Petition for Annexation, either party withdraws its offer to enter into this Agreement, or if Final Approval does not occur, then this Agreement shall be deemed void and of no force or effect, and the Property shall be deemed not annexed to the City.

## SECTION 4
## DEVELOPMENT

4.1 General Description. The Property is comprised of approximately 187.2 acres of land adjacent to the City of Fruita. Developer anticipates a development of a combination of the uses that are allowed in the Community Mixed Use Zone and as a Planned Unit Development Zone as those terms are described in the Municipal Code. The Developer has submitted a General Development Plan to the City which shall serve as a guide to the development of the Property. A copy of the General Development Plan is attached hereto as Exhibit B and incorporated herein by this reference.

4.2 Compliance with Current Regulations. Prior to the City approving Final Subdivision Plats and building plans for the Property, Developer shall meet all then current Uniform, Non-discriminatory Regulations of the City (including but not limited to building, fire, plumbing, electrical and mechanical

codes, public improvement design standards the Municipal Code and other rules and regulations) unless varied pursuant to subdivision approval; submit all required plans, specifications and other information; and pay all applicable review fees. Developer states that Developer has reviewed all applicable zoning, subdivision, building and other development regulations and ordinances of the City currently in effect. To the extent expressly set forth in this Agreement, Developer agrees as a matter of contract and as a condition of the City's annexation of the Property to abide by the requirements in such regulations as they exist on the Effective Date and as they may be amended from time to time, to the extent such requirements are not inconsistent with the vested development rights that shall be conferred upon the approval of Subdivision Final Plats.

4.3 Construction of Public Improvements. In the subdivision and or development of the Property, the Developer hereby agrees to dedicate, develop and pay for construction of all public improvements and the extension of all required utility services in accordance with Section 6 of this Agreement, any applicable subdivision improvements agreements, and the City ordinances and regulations then in effect, unless otherwise provided in this Agreement. Such improvements may include, but are not limited to, paving, grading, landscaping, curbs, streets including street widening, gutter, sidewalks, traffic lights, street lighting, street signs, bicycle and pedestrian paths, flood protection devices, drainage structures, water lines, mains and related facilities, and wastewater collection facilities. Unless otherwise provided in any subdivision improvements agreement to be entered into by the parties, design criteria for such improvements, as well as building sites, parking, landscaped areas and open spaces shall be subject to City approval and shall be part of any Subdivision Final Plat submitted and approved for the Property. As long as the concurrency standards are upheld, this foregoing provision does not preclude the Developer from negotiating with any utility provider, including the City, for a reduction in any utility assessment, fee, or rate for the provision of any utility service to the Property obtained as a result of an agreement between the Developer and a utility provider or as provided for in any subdivision improvements agreement to be entered into by the City and the Developer.

4.4 No Obligation to Develop. Developer shall have no obligation under this Agreement to develop all or any portion of the Development and shall have no liability under this Agreement to the City or any other party for its failure to develop all or any part of the Development, unless otherwise expressly set forth in this Agreement. Nothing in this subsection 4.4 shall be construed as a waiver or release by the City of its right to require Developer, in conjunction with obtaining approval of Subdivision Final Plats within the Development to enter into subdivision improvements agreements setting forth public improvements and certain private improvements required to be constructed by the Developer and deadlines for the construction of such improvements. Nothing in this subsection 4.4 shall be construed as a waiver or release by the City to enforce against Developer the terms and conditions of such subdivision improvements agreements.

4.5 Phased Development. The City agrees that subdivision of the Property may occur in phases and in the timing determined by Developer consistent with the General Development Plan and the process required to obtain a final subdivision plat for each phase of development. The General Development Plan allows an overall gross housing density for the Project not exceeding an average of five (5) dwelling units per gross acre within the Community Mixed Use Zone sections of the Property, and not exceeding six (6) dwelling units per acre within the Planned Unit Development Zone sections of the Property. Said overall maximum density will be an absolute maximum of 686 dwelling units in the Community Mixed Use Zone section, an absolute maximum of 105 dwelling units in the south Planned Unit Development Zone section, and an absolute maximum of 195 dwelling units in the north Planned

Unit Development Zone section as shown in the General Development Plan. The Developer is not absolutely entitled to the maximum densities stated herein. Actual allowed densities may be achieved by constructing the Development in planned phases and will be strictly dependent on meeting the criteria established in the Municipal Code

4.6 Submittal of Phased Development Applications. Sketch Plans and Concept Plans will be required for each phase of development of the Property as a first step in the subsequent land development review process; however, the City Council may agree to allow exemptions to this requirement at the Council's discretion as the Development progresses.

4.7 Amendments to the Municipal Code. Except as specifically provided herein, all codes, ordinances, rules, regulations, policies and impact fees of the City shall apply to the Property to the same extent as any other property within the City. Upon annexation, all subsequent development of the Property shall be subject to and bound by the applicable provision of the City's ordinances and regulation in effect at the time land development applications are submitted, subject, however, to the provisions of this Agreement. Changes or amendments to the Municipal Code after the date of this Agreement shall in no way limit or impair the Developer's obligation hereunder except as specifically set forth in this Agreement.

## SECTION 5
## OFFSITE IMPROVEMENTS FEES AND COSTS

5.1 Payment of Fees. The Developer expressly agrees, as a matter of contract and as a condition of the City annexing the Property, to pay impact fees as required by the Municipal Code in effect at the time subsequent development applications are submitted.

5.2 Waiver of Right to Challenge Fees and Costs. The Developer specifically acknowledges that the off-site improvements described below in Section 6 are reasonable and necessary to mitigate the offsite impacts generated from development or subdivision of the Property. Such acknowledgment by Developer shall be binding on any subsequent owner of the Property. The Developer hereby waives and releases any right it may have to challenge or contest such fees in any court of competent jurisdiction on the basis that such offsite improvements are not reasonably related in the impacts of development or subdivision of the Property. Developer states that such release and waiver is knowing, voluntary and made with the advice of legal counsel.

## SECTION 6
## CONSTRUCTION OF IMPROVEMENTS

6.1 Developer's Obligation. The Developer agrees that immediately following annexation, the City shall have no obligation to provide any public access to or upon the Property, nor any obligation to maintain any roads or public access to the Property. The City shall provide public access and street maintenance on the Property when the Developer, at the Developer's cost and expense, shall have located and constructed streets, sidewalks, pedestrian paths or other access in accordance with any subdivision improvements agreement to be executed by the parties, and in accordance with such Uniform, Non-discriminatory Regulations as the City may from time to time adopt and in a manner and place acceptable to the City.

6.2 Infrastructure Development Plans Required. The Developer agrees to provide to the City, at the Developer's sole cost, Infrastructure Development Plans for the entire Development to include at a minimum, but not necessarily limited to: a Water and Wastewater Capacity Analysis; Stormwater Plan; Irrigation Plan; a Parks, Open Space and Trails Plan for the Development; Public Facilities Analysis; Transportation System Plan; as well as a Traffic Impact Study of the site and surrounding transportation network. The Developer shall have the scope, content and findings of these Infrastructure Development Plans, and any amendments, agreed to and approved by the City of Fruita prior to submitting a concept plan or sketch plan for the first phase or filing of the Development. All infrastructure completed in a phase or filing must support the infrastructure needs of current and subsequent phases of the Development as called out in the Infrastructure Development Plans. Infrastructure Development Plans must be based on the assumptions of the General Development Plan. If the assumptions of the General Development Plan change, amendments to the Infrastructure Development Plans will be required. Approval by the City of Fruita will be required for these changes prior to any further development approvals. The Infrastructure Development Plans must address issues of concurrency.

6.3 Infrastructure Concurrency. Construction of infrastructure shall meet all concurrency requirements called for in the Infrastructure Development Plans and shall occur such that all necessary infrastructure is in place or guaranteed to be in place prior to approval of development that would generate the impacts necessitating the construction of such infrastructure improvements. Concurrency requirements are intended to match public infrastructure requirements with private development. Concurrency standards require that development not occur unless the required public infrastructure needed to support specific development, as called for in the General Development Plan and Infrastructure Development Pans, is in place or guaranteed to be in place in accordance with those Plans. Concurrency requirements are designed to be an effective supplement to development impact fees and land use regulations employed by the City of Fruita to ensure adequate levels of service can be provided to the Development.

6.4 Parks, Open Space and Trails Development Plan. Specific to the required Parks, Open Space and Trails Development Plan, the following items shall be addressed at a minimum: the Primary Trail along the Big Salt Wash including pedestrian bridges across the wash; an off-street trail connection from the Primary Trail along the Big Salt Wash connecting to the public lands located at the northwest corner of the Property; a minimum of a 2-acre park to be located in the south half of the Development; and the timing of construction and completion of these trails and parklands.

6.5 Fire Protection. An automatic fire sprinkler system shall be installed in all new Group A, B, E, H, I, M, R, S, and U occupancies of more than zero (0) square feet as defined in the International Fire Code.

6.6 Construction of L Road Improvements. Concurrently with the development of the Property the Developer shall construct, at its sole cost, improvements to L Road in accordance with the Infrastructure Development Plans. Such improvements shall be constructed in accordance with the requirements of the City of Fruita.

6.7 Credit Against Offsite Improvements. The cost of all off-site improvements shall be eligible for credit against the Transportation Impact Fees in effect at the time of development application submittal, provided, however, that if the cost of the off-site improvements exceeds the

impact fee amounts that are to be credited, the off-site improvements will still be required to be constructed as indicated by the Infrastructure Development Plans at the Developers sole cost.

## SECTION 7
## REIMBURSEMENT OF COSTS

Pursuant to the Municipal Code, the Developer shall pay to the City the actual cost to the City for reasonable and customary engineering, surveying, and legal services incurred by the City related to this Agreement prior to the passage of the ordinance approving the annexation of the Property. Upon making such request, the City shall provide the Developer with detailed invoices reflecting the nature and description of such costs the City is requesting to be reimbursed for by the Developer.

## SECTION 8
## DEFAULT, REMEDIES AND TERMINATION

8.1 Default by the City. A "breach" or "default" by the City under this Agreement shall be defined as the City's failure to fulfill or perform any material obligation of the City contained in this Agreement.

8.2 Default by the Developer. A "breach" or "default" by the Developer shall be defined as the Developer's failure to fulfill or perform any material obligation of the Developer contained in this Agreement.

8.3 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 subsection 9.7 below, and the defaulting party shall have thirty (30) 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 thirty (30) day period and the defaulting party gives written notice to the non-defaulting party within such thirty (30) 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 thirty (30) 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.

8.4 Remedies. If any default under this Agreement is not cured as described above, the non-defaulting party shall have the right to enforce the defaulting party's obligations hereunder by an action in equity for any equitable remedy, including injunction and/or specific performance. Only in the event that the remedy of specific performance is not available, either party may seek an equitable monetary award in accordance with applicable law and as limited by the Agreement in lieu of such specific performance remedy.

## SECTION 9
## MISCELLANEOUS PROVISIONS

9.1 Voluntary Agreement. The Developer agrees that the provisions and requirements of this Agreement are entered into with full knowledge, free will and without duress.

9.2 Recordation of Agreement. This Agreement shall be recorded in the records of the Mesa County Clerk and Recorder, and upon recording shall be deemed a covenant running with all the real property described in Exhibit A, for the benefit of the City and any real property owned by the City.

9.3 Enabling Ordinances Required. To the extent required by law and by the terms of this Agreement, the obligations and covenants of the City are conditional upon the adoption by the City of appropriate enabling ordinances.

9.4 Attorneys Fees. In the event that any action or proceeding is filed or maintained by either party in relation to this Agreement, the prevailing party shall be entitled to its costs and reasonable attorney fees, including legal assistants fees. All rights concerning remedies or attorneys fees shall survive termination of this Agreement.

9.5 Complete Agreement. This Agreement contains all of the understandings, conditions, and agreements between the parties relating to annexation and development at this time, and no other prior or current representations, oral or written, shall be effective or binding upon the parties, except for representations made by the Developer, or its agent, or the City Council and City staff members at public hearings concerning annexation of the Property and development of the Property, not in conflict with express provisions of this Agreement.

9.6 Authorization. The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meeting and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

9.7 Notices. All notices required or given by the terms of this Agreement shall be made by certified first class mail, postage prepaid, return receipt requested, to the parties at their address listed below. All notices shall be effective upon mailing. These addresses shall remain valid until notice of a change of address is given in accordance herewith.

| | |
|---|---|
| If to the City: | City of Fruita, Colorado<br>City Council<br>325 E. Aspen Ave. #155<br>Fruita, Colorado 81521<br>Attn.: Community Development Director |
| with a copy to: | Carter & Sands, P.C.<br>450 West Avenue, Suite 204<br>Rifle, Colorado 81650<br>Attn.: Edward P. Sands, Esq. |
| If to Developer: | Ben E. Carnes<br>831 Elberta Drive,<br>Fruita, Colorado 81521 |
| with a copy to: | Jim Majors<br>The Majors Law Firm PC<br>2474 Patterson Road, Suite 204<br>Grand Junction, CO 81505 |

Rod Thonen
1901 Broadway
Grand Junction, CO 81507

9.8 Waiver of Defects. In executing this Agreement, Developer waives all rights it may have concerning defects, if any, of the form or substance of the Agreement and the formalities whereby it is executed; concerning the power of the City to impose conditions on Developer as set forth herein, and concerning the procedure, substance, and form of the ordinances or adopting this Agreement. Similarly, the City waives all rights it may have concerning defects, if any, of the form or substance of this Agreement, and the formalities whereby it is executed as well as defects, if any, concerning the procedure, substance, and form of the ordinances or resolutions adopting this Agreement.

9.9 Colorado Law Applicable. This Agreement is made and delivered within the State of Colorado, and the laws of the State of Colorado shall govern its interpretation validity, and enforceability.

9.10 Provisions Deemed Severable. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision hereof unless a manifest injustice or inequity would result from applying or enforcing any such remaining provisions.

9.11 Binding on Successors, Assignees. This Agreement shall be binding upon and shall inure to the benefit of the successors in interest or the legal representatives of the parties hereto. Developer shall have the right to assign or transfer all or any portion of its interest, 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. The express assumption of any of Developer's obligations under this Agreement by its assignee or transferee shall, upon approval by the City, relieve Developer of any further obligations under this Agreement with respect to the matter so assumed.

9.12 Execution of Other Documents. The parties agree to execute any additional documents and to take any additional actions necessary to carry out this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

CITY OF FRUITA, COLORADO, a municipal corporation acting by and through its City Council.

By: _____
H. Kenneth Henry, Mayor

ATTEST:

_____

Margaret Steelman, City Clerk

DEVELOPER:

By: Ben E. Carnes
Ben E. Carnes

STATE OF COLORADO )
)ss.
COUNTY OF MESA )

The foregoing instrument was acknowledged before me this 6th day of April, 2010, by H. Kenneth Henry and Margaret Steelman, as Mayor and City Clerk, respectively, of the City of Fruita, Colorado.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: 1/23/2013

NOTARY PUBLIC DEBRA WOODS STATE OF COLORADO

Debra Woods
Notary Public

STATE OF COLORADO )
)ss.
COUNTY OF MESA )

The foregoing instrument was acknowledged before me this 27th day of April, 2010, by Ben E. Carnes.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: 08-21-13

LINDA G. WILSON NOTARY PUBLIC STATE OF COLORADO

Linda G. Wilson
Notary Public

## LIST OF EXHIBITS

Exhibit A: Legal Description

Exhibit B: General Development Plan

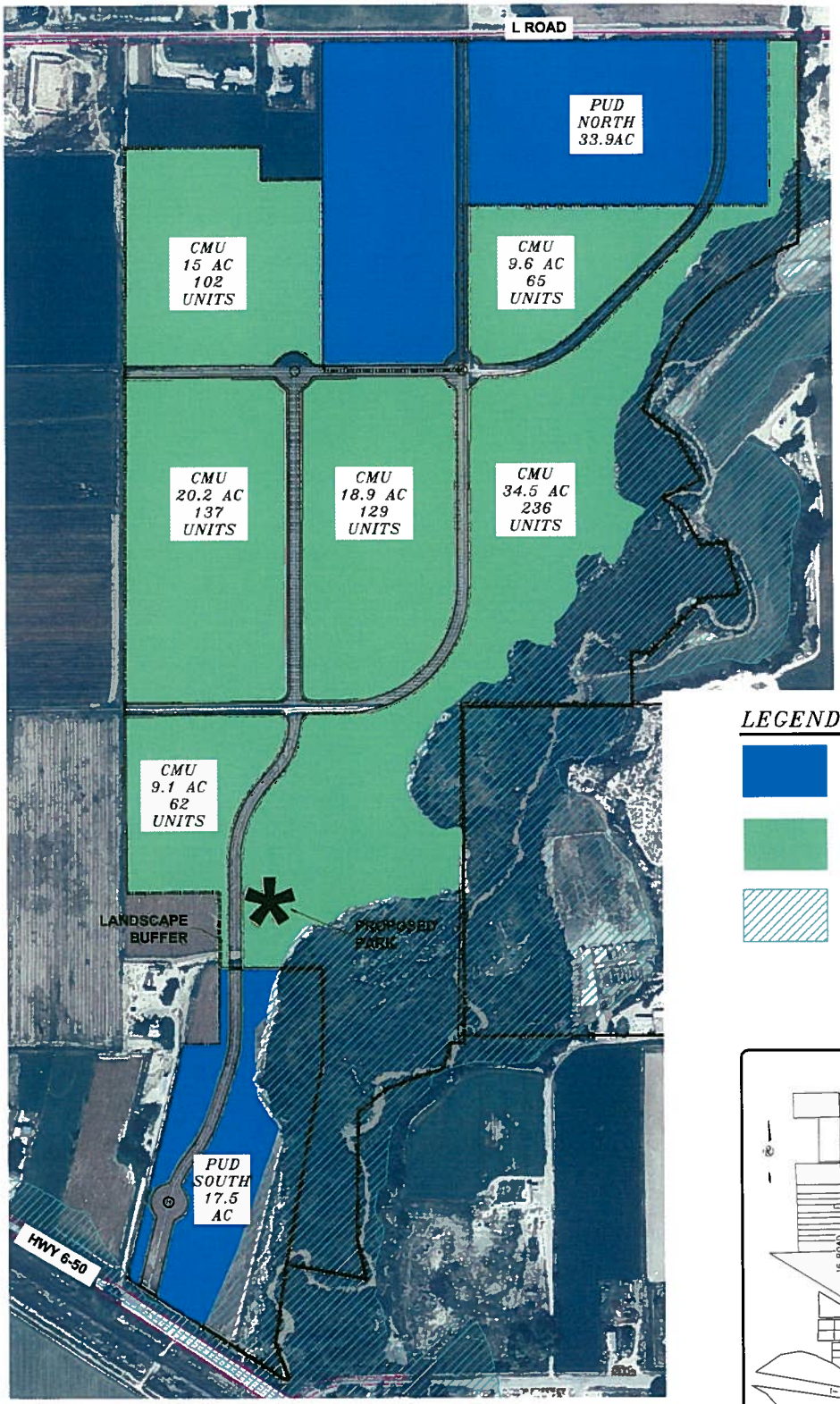
# Annexation Agreement

## EXHIBIT A
## LEGAL DESCRIPTION
## PEREGRINE VILLAGE

A parcel of land situated in the NW ¼, NE ¼ and SW ¼, Section 7, T.1N., R2W., Ute Meridian, County of Mesa, State of Colorado, and being more particularly described as follows: Beginning at a found Mesa County Survey Marker for the Center ¼ of said Section 7, S00°11'27"E along the East line of the NE ¼ SW ¼ of said Section 7, 1321.39 feet to a set Mesa County Survey Marker for the Center-South 1/16 corner of said Section 7; thence S89°57'08"W, along the South line of the NE ¼ SW ¼ of said Section 7, 52.94 feet to the apparent Centerline of the Big Salt Wash; thence along said apparent Centerline the following eight (8) courses: 1) S17°37'19"W, 107.02 feet; 2) S70°15'51"W, 226.69 feet; 3) S50°31'53"W, 152.07 feet; 4) S00°31'32"W, 498.15 feet; 5) S12°10'11"E, 160.46 feet; 6) N79°27'50"W, 318.12 feet; 7) S08°07'28"W, 314.94 feet; 8) S21°05'44"E, 150.07 feet to a point on the South line of the SE ¼ SW ¼ of said Section 7; thence S89°24'59"W along the said South line, 16.76 feet to a point on the Northeasterly right-of-way line of State Highway 6 & 50; thence N56°53'09"W along said Northeasterly right-of-way line, 723.24 feet; thence departing said northeasterly right-of-way line and running N13°21'2"E, 945.71 feet to a point on the South line of the said NE ¼ SW ¼ of said Section 7; thence N89°32'22"E along said South line, 140.00 feet; thence N00°20'16"W, 600.00 feet; thence S89°32'22"W, 363.00 feet to a point on the West line of the NE ¼ SW ¼ of said Section 7; thence N00°20'16"W along said West line, 721.59 feet; thence N00°05'10"E along the West line of the NE ¼ SW ¼, 1324.51 feet; thence N00°02'19"W along the West line of the NE ¼ NW ¼ of said Section 7 and along the West line of Parcel 2 as described by a plat recorded in Book 18 at Page 86 of the Mesa County records, 882.31 feet; thence N89°44'47"E along a line of said Parcel 2, 530.19 feet; thence S00°02'19"E continuing along a line of said Parcel 2, 129.00 feet; thence N89°02'56"E continuing along a line of said Parcel 2, 246.28 feet; thence N00°02'19"W continuing along a line of said Parcel 2, 536.81 feet to a point on the Southerly right-of-way of L Road; thence N89°44'47"E along said Southerly right-of-way of L Road, 543.83 feet; thence N89°42'00"E along said Southerly right-of-way of L Road, 1319.85 feet to a point on the East line of the NW ¼ NE ¼ of said Section 7; thence S00°21'32"W along the said East line of the NW ¼ NE ¼, 799.56 feet, more or less, to the apparent Centerline of the Big Salt Wash; thence along said apparent Centerline the following eighteen (18) courses: 1) S66°58'54"W, 76.34 feet; 2) S58°39'10"W, 177.68 feet; 3) S56°04'11"W, 134.02 feet; 4) S45°11'39"W, 130.22 feet; 5) S33°10'50"W, 120.60 feet; 6) S26°22'34"W, 92.04 feet; 7) S26°23'20"W, 50.86 feet; 8) S22°46'12"W, 150.59 feet; 9) S54°29'46"E, 166.63 feet; 10) S27°48'33"E, 201.58 feet; 11) S65°25'04"W, 166.27 feet; 12) S56°07'38"E, 89.44 feet; 13) S29°15'14"E, 155.02 feet; 14) N83°36'02"E, 102.55 feet; 15) S13°50'22"E, 210.45 feet; 16) S82°53'51"W, 148.88 feet; 17) S44°16'53"W, 300.57 feet; 18) N81°51'48"W, 67.34 feet to a point on the East line of the W ½ SW ¼ NE ¼ of said Section 7; thence S00°32'30"E along the said East line, 67.34 feet to the SE corner of the said W ½ SW ¼ NE ¼ of Section 7; thence S89°40'05"W along the South line of said W ½ SW ¼ NW 1/4 , 660.81 feet to the point of beginning. Said parcel contains 187.2 acres, more or less.

EXHIBIT B: Peregrine Village - Annexation Agreement

# PEREGRINE VILLAGE
## GENERAL DEVELOPMENT PLAN




### MATRIX

CMU 686* DU

PUD NORTH 195 DU**

PUD SOUTH 105 DU**

MAXIMUM DENSITY

* ALLOWABLE MAXIMUM DENSITIES FOR EACH PARCEL ARE SET FORTH ON THIS DOCUMENT PROVIDED HOWEVER THAT ANY POD ZONED CMU MAY CONTAIN UP TO 1.5 TIMES THE TOTAL NUMBER OF ALLOWABLE DWELLING UNITS. EACH SUCH INCREASE IN DENSITY OF ANY INDIVIDUAL RESIDENTIAL "POD" SHALL BE OFFSET BY AN EQUAL DECREASE IN DENSITY FROM ANOTHER RESIDENTIAL "POD". THE INTENT OF THIS PROVISION IS TO ALLOW FLEXIBILITY IN PLANNING TO TAKE INTO ACCOUNT VARYING SITE CONDITIONS, MARKET CONDITIONS AND OTHER DESIGN FACTORS. IN NO CASE SHALL THE TOTAL NUMBER OF DWELLING UNITS WITHIN THE ENTER CMU ZONE EXCEED 686 DWELLING UNITS

**TOTAL COMMERCIAL DEVELOPMENT NOT TO EXCEED 275,000 SQUARE FEET.

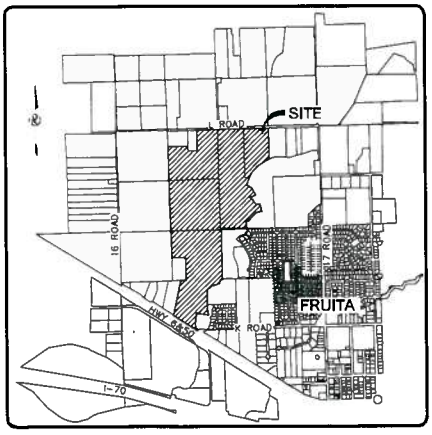
ORIGINAL SCALE: 1"= 200' HORIZ 1"= 20' VERT

### LEGEND

PUD- PROPOSED USES WILL INCLUDE COMMERCIAL/RETAIL, OFFICE SPACE AND MULTI FAMILY RESIDENTIAL

CMU- PROPOSED USES WILL INCLUDE SINGLE FAMILY, MULTI FAMILY, TOWN HOMES, PATIO HOMES, APARTMENTS AND CONDOS

FLOODPLAIN, PARKS AND OPENSPACE APPROXIMATELY 40.0 AC




VICINITY MAP
N.T.S.

| | | | | | |
|---|---|---|---|---|---|
| PEREGRINE | 02-19-10 | 1"=200' | | RAW / JAL | PEREGRINE VILLAGE<br>GENERAL SPECIFIC PLAN |

TERRA VISION Consulting
GRAND JUNCTION, COLORADO

| REVISIONS | | | |
|---|---|---|---|
| NO. | DESCRIPTION | DATE | BY |
| 1 | REVISIONS PER CITY COMMENTS | 3/31/10 | RAW |

Call utility notification center of Colorado 2-business days in advance before you dig. Dig Safely. 1-800-922-1987

SCALE VERIFICATION
BAR IS ONE INCH ON ORIGINAL DRAWING
IF NOT ONE INCH ON THIS SHEET ADJUST SCALES ACCORDINGLY