

## PRE-ANNEXATION AGREEMENT

This Agreement is entered into, by and between the City of Powell, Ohio, an Ohio charter municipal corporation (hereinafter “City”), and Market at Liberty Crossing, LLC, an Ohio limited liability company (hereinafter referred to as “The Market”).

### PURPOSE

The Market is the owner of two tracts of land consisting of approximately 26.994 acres located north of Powell Road and west of Sawmill Parkway. More specifically, The Market is the owner of the following tracts of land in Liberty Township, Delaware County, Ohio: (1) a 22.907 acre parcel having Auditor’s Parcel Identification Number 31931501005008; and (2) a 1.397 acre parcel having Auditor’s Parcel Identification Number 31931501005005. A portion of the property is currently developed as a shopping center known as “The Market At Liberty Crossing” and a portion of the property is currently undeveloped. The property is contiguous with the boundaries of the City of Powell. The property is shown with more particularity on the map attached hereto as Exhibit “A” and incorporated herein by reference.

The Market intends to construct certain improvements to the property in the foreseeable future. The property would benefit from City services including police protection and planning and zoning services. As described in more detail in the following sections of this Agreement, the City can offer its municipal services to the area if the area is annexed to the City. The mutual purposes of the City and The Market can be accomplished through the annexation of the property to the City.

Therefore, in order to gain mutual benefits, the City and The Market agree as follows:

1. Annexation Petition. The City will prepare and provide an annexation petition to the The Market. The Market will sign the annexation petition agreeing to annex the property

described in this Agreement to the City and appointing Powell Law Director Eugene L. Hollins as the petitioner's agent. The annexation petition may be filed solely with the The Market property or may be filed as a joint annexation petition with other parcels so long as all other parcel so joined are supported by one hundred (100%) of the owners of each parcel. The petition will be filed with the Delaware County Commissioners. The City agrees that all costs and expenses in petitioning for the annexation will be borne by the City. Should The Market desire for its own attorney to represent its interests with regard to the annexation petition, those costs will be borne by The Market. Once this Agreement is signed and accepted by the City, The Market agrees that it will not remove its name from the petition and will continue to support the annexation to the City throughout the entire annexation process, including any appeal or court action at no further expense to The Market. The Market will provide affidavits to the City for presentation to the Delaware County Board of County Commissioners in support of annexation and, if necessary, The Market or its agents or assigns will testify at the request of the City regarding the merits of the annexation at the hearing held before the Delaware County Board of Commissioners or subsequent court hearings.

2. Service Resolution. Pursuant to R.C. Section 709.03(D), the City agrees to enact the appropriate City Service Resolution stating the services that will be provided to the area sought to be annexed including the property owned by The Market. The City agrees to provide witnesses for the hearing before the County Commissioners and to provide affidavits in support of its Service Resolution.

3. Zoning. The property sought to be annexed is currently zoned in the township. Contemporaneously with the annexation petition, The Market will file an application to re-zone the property to the Planned Commercial District (PC). The City agrees that it will expeditiously process

the application to re-zone the property to Planned Commercial District (PC) such that the rezoning ordinance will be considered in tandem with the annexation acceptance ordinance. The City agrees that, in connection with the re-zoning to PC, it will approve the current form of the Final Development Plan and Development Standards Text as adopted by the Liberty Township Trustees (which plan and text are attached hereto as Exhibits B and C and incorporated herein by reference), with the modifications set forth in the Addendum attached hereto as Exhibits D and E and incorporated herein by reference. The City of Powell will not require The Market to add any further common elements (e.g., sidewalks) to the approved site plan. If during the anticipated development agreement, another property (or properties) annexes into the City, and receives greater or better zoning modifications than what has been approved for The Market and attached hereto as an Addendum or Exhibit (e.g., better signage), then The Market may request that the City reopen the discussions regarding the zoning, and the parties agree to meet to consider enhancing the zoning Addendum and Exhibits attached hereto and possible amendments to this Agreement or the development agreement and to negotiate in good faith. This statement of intent is intended to operate as a "Most Favored Nation Clause." Moreover, zoning and administrative staff of the City of Powell agrees to take whatever actions are necessary to support the existing Giant Eagle supermarket at the Market at Liberty Crossing shopping center to expand through additional construction of up to another 26,000 square feet, including without limitation providing staff reports recommending approval to Planning and Zoning Commission and/or City Council.

4. Job Creation Incentive. The parties contemplate that, in connection with the annexation of the property to the City of Powell, The Market will enter into an agreement with a Community Improvement Corporation (the "CIC"), to be formed pursuant to Chapter 1724 of the

Ohio Revised Code, providing for a job creation incentive payment to The Market in the amount of thirty-three percent (33%) of the City of Powell income taxes paid by employees of the tenants of the Market At Liberty Crossing shopping center as it may be expanded (not to exceed \$10,000 per year) for a period of five years. The City agrees to cooperate and take the necessary steps to facilitate the formation of the Community Improvement Corporation and to enter into a development agreement whereby the Community Improvement Corporation will be designated as an agent of the municipality for economic development purposes. The City thereafter agrees to provide the funds to the Community Improvement Corporation necessary to make the job creation incentive payments to The Market.

If during the term of the anticipated development agreement granting the job creation incentive, the City of Powell and/or the proposed Community Improvement Corporation enter into a development agreement with a third party landowner or developer which provides for a financial incentive package greater than the terms set forth in the foregoing paragraph, The Market may request that the City and/or the Community Improvement Corporation reopen the discussions regarding the job creation incentive, and the parties agree to meet to consider enhancing the economic incentives described above and possible amendments to this Agreement or the development agreement and to negotiate in good faith.

5. Tax Increment Financing District. The Market acknowledges that it is the City's intention to create a non-school commercial Tax Increment Financing ("TIF") district on the property for purposes of funding road and other infrastructure that will directly benefit property within the TIF district. The Market agrees to cooperate with respect to the formation and implementation of the TIF district, including cooperation in filing Form DTE-24 exemption applications with the appropriate

tax officials and requesting that employers within the TIF district annually provide such information to the City and/or the applicable Tax Incentive Review Council as required by Ohio law.

6. Standard of Conduct by City. In all matters related to the i) adoption of a service resolution, (ii) review, administration and granting of a building permit, certificate of occupancy, or other construction related permits sought to facilitate construction at the Market at Liberty Crossing Shopping Center, (iii) creation and funding of the CIC, and (iv) creation of the TIF, the City will act in good faith with all reasonable dispatch.

7. No Representation or Warranty as to Economic Impact. The Market does not warrant or represent that its tenants shall maintain present levels or achieve any increase in employment levels, as both parties acknowledge that general business factors not within the control of The Market may substantially impair the ability of the tenants of the Market at Liberty Crossing shopping center to maintain or increase present employment levels. The failure of the tenants of the Market at Liberty Crossing shopping center to reach any given level of employment at any time shall result in no liability to The Market.

8. Condition Precedent. The Market and the City acknowledge and agree that this Agreement is not effective until approved by formal action of the City Council and shall take effect upon such approval.

9. Miscellaneous.

(a) This Agreement and the rights and obligations of the parties hereunder shall be subject to the terms and conditions hereof and shall inure to the benefit of and be binding on the respective successors and assigns.

(b) This Agreement supersedes any and all prior agreements, arrangements, negotiations,

letters of understandings and acknowledgments between the City and the The Market, or any related party, relative to matters contained herein whether oral or written. No amendment, modification or alteration of this Agreement shall be valid unless in writing and signed by the parties hereto.

(c) If for any reason any one or more articles, sections, sentences, clauses or parts of this Agreement are held invalid by any court of law or duly authorized public body such determination shall not affect, impair or invalidate the remaining provisions of this Agreement but shall be confined in its operation to the specific articles, sections, sentences, clauses or parts of this Agreement held invalid and the invalidity of any article, section, sentence, clause or part of the Agreement in any one or more instance shall not prejudice in any way the validity of the Agreement in any other instance nor shall such finding alter the understandings of both parties as to the intent of this Agreement and both parties agree to use their best efforts to bring to fruition the results contemplated in this Agreement regardless of the findings of any court of law or other duly authorized public body.

(d) This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

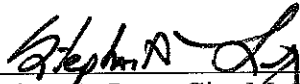
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**SIGNATURE PAGE TO IMMEDIATELY FOLLOW.**


This Agreement shall be effective on the date last signed below.

Signed this 27<sup>th</sup> day of APRIL, 2009.

**THE CITY OF POWELL:**

By:   
Stephen A. Lutz, City Manager

**MARKET AT LIBERTY CROSSING, LLC:**

By:   
Printed: TODD A. WYATT  
Title: MANAGER

**The following items are additional criteria that are intended to further define permitted planning, design, signage and use requirements within The Market at Liberty Crossing. Each item is in addition to, or modifies the Liberty Township approved zoning package and text dated April 4, 2008 and approved lot split site plan dated July 3, 2008.**

**Anything contained in any applicable provision of the City of Powell Zoning Code, (Chapter 11, Titles One, Three and Five of the Codified Ordinances), notwithstanding, this development text is intended to be and shall be construed as the sole source of zoning and development standards for the Market at Liberty Crossing PC, Planned Commercial District as adopted by the City of Powell. In particular, the City recognizes that upon adoption, the uses specified herein are sufficient to address the standards, procedures and requirements of the City of Powell Zoning Code, and Codified Ordinances, and that all uses herein are approved as permitted uses in the PC district.**

#### **SITE ITEMS**

1. Giant Eagle Expansion: The Giant Eagle store may be expanded to the west as illustrated in Exhibits E-1, E-2, E-3 and E-4. The existing building square footage shall be increased up to 40,000 SF on the north side of the existing retail shops. The total square footage of the building will exceed 65,000 SF. Provisions of Sections 1147.15 and 1147.16 of the City of Powell Codified Ordinances shall not apply.
2. Giant Eagle Pharmacy Drive-thru: As part of the Giant Eagle store expansion, a single lane pharmacy drive-thru shall be permit on the west end of the store as generally illustrated in Exhibits E-1, E-2 and E-4 or to the southeast end of the store as illustrated in Exhibit E-3. These exhibits are options that can be chosen from by the Owner with final approval by the City of Powell Zoning Administrator.
3. East Retail Shop Drive-thru: A single lane drive thru pick-up canopy and lane may be permitted at the north wall of the existing east retail shops as generally illustrated in Exhibit E-5.
4. Exterior Coolers: Exterior cooler units may be permitted on the rear of the buildings. No limit as the number of coolers is established. Each exterior cooler unit shall be constructed of permanent materials and shall be screened as approved by the City of Powell Zoning Administrator.
5. Additional building areas to the north side of Buildings 3 and 4 have been previously approved by Liberty Township and shall be permitted as indicated in the approved site plan dated April 4, 2008.

#### **EXTERIOR STORAGE, SALES AND DINING**

The following items are in addition to the approved 1997 Development Plan for The Market at Liberty Crossing (formerly know as the Market at Big Bear Farms). As illustrated on the Liberty Township approved Development Plan dated April 4, 2008, exterior storage and sales is permitted in association with the proposed hardware store.

1. Exterior storage and sales shall be permitted with a retail use when accessory to a permitted use [i.e. garden centers and garden products, equipment or home improvement

products], provided the materials are located at the side or rear of the principle building and contained within a screened enclosure. All exterior storage and sales areas must be screened with permanent masonry walls to a height of one foot above the products stored. The design of the masonry screen wall shall be consistent in materials and details of the building to which it is attached.

2. Live seasonal sales items, such as flowers and plants may be offered for sale in the public sidewalk areas along the front façade of the retail center. All sales must be directly in front of the business that is selling the merchandise. At least eight (8) feet of clear passage along the sidewalk for pedestrian travel must be maintained. No display area for a single tenant may exceed one hundred fifty (150) square feet.
3. No exterior vending machines shall be permitted.
4. Designated seating and dining areas adjacent to Buildings 3 and 4 have been previously approved by Liberty Township and shall be permitted as illustrated on the approved site plan dated April 4, 2008.
5. East Retail Shop Exterior Dining Area: An exterior seating and dining area shall be permitted at the east end of the main retail building as illustrated in E-5.
6. Additional exterior seating and dining areas shall be permitted within the public sidewalk areas along the front façade of the retail center as designated by the center's owner. All seating and dining areas must be directly in front of or adjacent to the business that they serve. At least eight (8) feet of clear passage along the sidewalk for pedestrian travel must be maintained.
7. Architectural and furniture details related to exterior seating and dining areas shall be reviewed and approved by the City of Powell Zoning Administrator. Text and/or logos on outdoor umbrellas should be permitted and shall not be considered signage.

## **SIGNAGE**

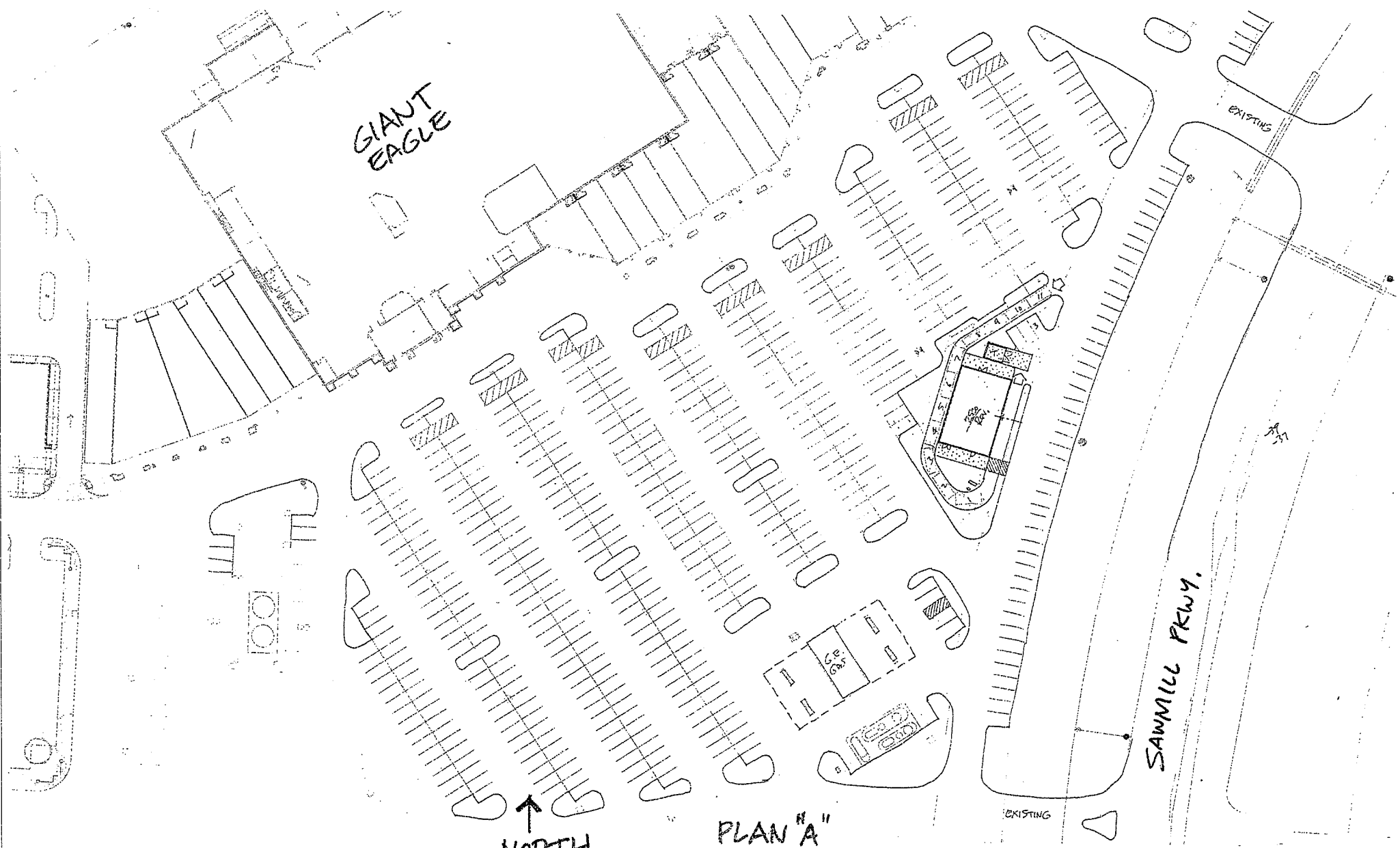
The following items are in addition to the approved 1997 Graphics Plan for The Market at Liberty Crossing (formerly know as the Market at Big Bear Farms) and the following signage types shall be permitted with the shopping center. If a sign type or condition is not addressed in the 1997 Graphics Plan or within this outline, then the current City of Powell Signage Code shall be used as the standard.

1. Portable Signs/Sidewalk Signs: "A"-frame signs or other type of portable sign shall not require a Zoning Certificate to be issued by the Zoning Administrator. Each business will be allowed to use one portable sign located on their property for the advertising of a special event or sale for no more than one hundred eighty (180) total days per calendar year.
  - a. The maximum size of a portable sign shall be three and one half (3.5) feet high and two (2) feet wide.
  - b. There shall be no more than two (2) sides to each sign.
  - c. The signs shall be placed near the front of the business establishment. The signs shall be moved to the interior of a tenant space when the tenant is not open for business.

- d. A total of ten (10) portable signs shall be permitted at any given time within the center.
2. Window signs: No sign erected or maintained in the window of a building, visible from any public or private street or highway, shall occupy more than fifty percent (50%) of the window surface and not more than thirty (30%) of the glass on any one elevation.
3. At each business door message areas addressing the entrance or exit instructions, business hours and/or discount or credit systems accepted shall not exceed a combined total of two (2) square feet.
4. Temporary signs or banners to announce the "grand opening" of business may be permitted. Each sign shall be a maximum of twenty-four (24) square feet in area and shall not exceed six (6) feet in height. Multiple banners may be permitted within the retail center at the same time.
5. Directories: Multiple exterior ground mounted tenant directories may be provided assist shoppers in locating retailers and services within a shopping center.
6. Broker Signs: Broker and leasing signs shall be permitted within each vacant tenant lease space as well as ground mounted signs located along the perimeter of the site. No ground sign shall exceed forty-eight (48) square feet in area and 10 feet above finish grade. Broker signs may be installed within a lease space for a period of ninety (90) days prior to the space being vacated or from the date the tenant delivers notice to the landlord that they are terminating the lease, which ever is greater, and may remain until the space is occupied. One (1) sign shall be permitted per tenant space frontage.
7. Silo signs: Permanent signs to identify the anchor tenant, Giant Eagle, and the City of Powell, if so desired, may be installed onto the face of each of the existing silos. The text may be a maximum of thirty-six (36) inches in height and shall be installed at a maximum elevation above grade of twenty-eight (28) feet or higher if so determined by the Owner and the City of Powell Zoning Administrator.
8. Blade Signs: Each tenant may be permitted one (1) blade sign projecting from the storefront or underside of the storefront canopy. Signs may not be larger than three (3) square feet in area and shall not be lower than eight (8) feet above the finished sidewalk or higher than fifteen (15) feet above grade.
9. Primary Identification Ground Signs: Two (2) additional primary identification ground signs with electronic reader boards shall be permitted. One sign shall be located at the southern most entry drive from Sawmill Parkway (E-11) and the second sign shall be located at the main entrance drive from Powell Road (E-10). See Exhibits E-1, E-2, E-3 and E-4 for locations.
  - a. The maximum height of the sign structure shall be fifteen (15) feet above finish grade and shall not be greater than twelve (12) feet in length.
  - b. The sign structure shall be constructed of the same materials as the retail building [i.e. brick and stone].
  - c. The primary identification ground signs shall be set back from the right-of-way a minimum of fifteen (15) feet.

- d. The center identification text/logos graphic area shall not exceed sixteen (16) square feet.
  - e. The maximum electronic text area shall not exceed twenty (20) square feet.
  - f. Messages on the electronic reader board signs shall be limited to tenant names, tenant logos, tenant specific messages or to identify seasonal events within the shopping center. In addition, the City of Powell may reserve time on the reader board for public event announcements.
  - g. For daytime programming the average illumination is limited to 2,000 nits with a maximum daytime illumination of 5,000 nits.
  - h. For nighttime programming the average illumination is limited to 5,000 nits with a maximum nighttime illumination of 25 percent of the daytime illumination, but can be adjusted up or down, in one percent increments, with photocell software for incremental dimming.
10. Secondary Identification Ground Signs: Two (2) additional secondary identification ground signs shall be permitted. One sign shall be located at the middle access drive on Sawmill Parkway and one sign shall be located on the middle access drive on Farmington Avenue, See Exhibits E-1, E-2, E-3 and E-4. Each sign shall meet the following conditions (See E-12):
- a. The maximum height of the sign structure shall be eight (8) feet above finish grade and shall not be greater than fifteen (15) feet in length.
  - b. Each secondary identification sign shall be constructed of the same materials as the retail building [i.e. brick and stone].
  - c. The secondary identification ground signs shall be set back from the right-of-way a minimum of fifteen (15) feet.
  - d. The maximum text area shall not exceed twenty (20) square feet.
  - e. The graphic area may contain specific names and/or logos.
  - f. Each sign shall be externally illuminated.
11. Seasonal Sales Signage:
- a. The seasonal sales area may utilize up to two (2) two signs. One sign may be portable and of the "A"- frame type. No "A"-frame type sign shall exceed sixteen square feet in surface area per side. A second banner sign may be permitted on one the existing silos.
  - b. Temporary banner signs shall be permitted to be affixed to the face of the existing silos as follows:
    - i. Sign shall be no high than fifteen (15) feet above finish grade.
    - ii. Banner shall be twenty (20) square feet maximum.
    - iii. One banner per silo will be permitted (maximum of two at any given time).
    - iv. Maximum length of time permitted per sign to be forty-two (42) days.

**End of Text**



GIANT  
EAGLE

EXISTING

SAWMILL PKWY.

EXISTING

↑  
NORTH  
1" = 30'

PLAN "A"