

COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE MADE IN CONNECTION WITH A DEVELOPMENT PLAN APPROVAL, ZONE MAP CHANGE OR PLANNED UNIT DEVELOPMENT REQUIRED BY THE TOWN OF FISHERS ZONING ORDINANCE

In accordance with I.C. 36-7-4-613 or I.C. 36-7-4-615, the Owner of the real estate located in the Town of Fishers, Hamilton County, Indiana, which is described below, makes the following COMMITMENTS concerning the use and development of the following described parcel of real estate:

LEGAL DESCRIPTION:

See Legal Description attached as Exhibit "A".

STATEMENT OF COMMITMENTS:

1. Gasoline service station canopies shall have roof patterns similar to the principal structure.
2. Monument signs for a gasoline service station shall comply with the architectural requirements for signs set forth in the 131st Street Marketplace PUD-M. Further, monument signs for a gasoline service station shall include architectural embellishments as a base, on both sides and on the top of the sign.
3. Site Lighting shall comply with the following:
 - a. Light poles shall be ornamental in nature.
 - b. Light fixtures shall be equipped with a semi-cutoff or cut-off lens assembly.
 - c. Light fixtures shall not be of a standard, rectangular shaped, "shoe box" style.
 - d. All lights used throughout each Area of the 131st Street Marketplace PUD shall be compatible in style, design and fixture selection.
 - e. All vehicular canopy light fixtures, including but not limited to gasoline service station canopies and bank drive through canopies, regardless of wattage, shall be equipped with a flat lens that does not protrude below the bottom edge of the light fixture.
4. Buildings containing dwelling units for rent shall be prohibited unless complying with the provisions of Section 3., A., 5., of the 131st Street Marketplace PUD-M. The intent of this commitment is to prohibit the development of an apartment complex while allowing for mixed use (that is, retail / office / residential) buildings within Area 1 of the development.

*Rec'd
3-21-05*

5. For the purposes of limiting or restricting uses within the 131st Street Marketplace PUD-M, the term "adult activities" shall mean any of the following:
 - a. Adult Bookstore: An establishment having more than ten percent (10%) of its stock in trade and/or sales area in books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records or other forms of visual or audio representations which are distinguished or characterized by their emphasis on matter depicting, describing or relating to sexual, activities or sexual anatomical areas.
 - b. Adult Business: Any commercial activity whether conducted intermittently or full time, which primarily involves the sale, display, exhibition, or viewing of books, magazines, films, photographs, or other materials, distinguished or characterized by an emphasis on matter depicting, describing, or relating to human, sex acts, or by an emphasis on male or female genitals, buttocks, or female breasts. Such businesses shall include but not be limited to:
 - (1) Adult bookstores.
 - (2) Adult mini-motion picture theater.
 - (3) Adult motel.
 - (4) Adult motion picture theater.
 - (5) Cabaret.
 - (6) Massage parlor.
 - (7) Adult motion picture arcade.
 - (8) Model studio.
 - c. Adult Entertainment: An adult bookstore, adult retail store, adult motion picture theater, or adult strip club or like uses.
6. There shall be no more than one (1) gasoline service station located within the development.
7. An improvement location permit shall not be issued for any buildings or structures within the development unless provisions have been made for the installation and construction of the traffic improvements for scenario 1, 2 or 3 recommended by American Consulting, Inc. and depicted in the drawings presented to the Fishers Town Council on March 21, 2005, or such other traffic improvements as may be approved by the Town of Fishers as part of a development plan approval; and a certificate of occupancy shall not be issued for any buildings within the development unless such traffic improvements are installed or completed.

These COMMITMENTS shall run with the land, be binding on the Owner of the above-described real estate, subsequent owners of the above-described real estate and other persons acquiring an interest therein. These COMMITMENTS may be modified or terminated by a decision of the Town of Fishers ~~Plan Commission~~ made at a public hearing after proper notice has been given.

Council MC

COMMITMENTS contained in this instrument shall be effective upon the adoption of Ordinance No. 090704B pursuant to the Town of Fishers Zoning Ordinance, and shall continue in effect until modified or terminated by the Town of Fishers Plan Commission.

These COMMITMENTS may be enforced jointly or severally by:

1. The Town of Fishers Plan Commission; and,
2. Owners of all parcels of ground adjoining the real estate to a depth of two (2) ownerships, but not exceeding six-hundred (600) feet from the perimeter of the real estate, and all owners of real estate within the area included in the petition who were not petitioners for approval.

The undersigned hereby authorizes the Secretary of the Town of Fishers Plan Commission to record this Commitment in the Office of the Recorder of Hamilton County, Indiana, upon adoption of Ordinance No. 090704B.

IN WITNESS WHEREOF, Owner has executed this instrument this ____ day of February, 2005

By _____

Printed _____

Title _____

STATE OF _____)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, the _____ of _____, a(n) _____, Owner(s) of the real estate described above who acknowledged the execution of the foregoing instrument in such capacity and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this _____ day of February, 2005

Signature _____

Printed _____

County of Residence _____

My Commission expires: _____

This instrument was prepared by Joseph M. Scimia, Attorney at Law, Baker & Daniels, 600 East 96th Street, Suite 600, Indianapolis, Indiana 46240.

EXHIBIT "A"

Legal Description

All of that land granted to Britton Golf Course, Inc. recorded in Instrument Numbers 8800421, 8821825, 9228487, 200100050288 & 200100050289 in the Office of the Recorder of Hamilton County, Indiana, being located in the Northeast Quarter of Section 30, Township 18 North, Range 5 East and the Southeast Quarter of Section 19, Township 18 North, Range 5 East, Delaware Township, Hamilton County, Indiana, being more particularly described as follows:

Beginning at the Southeast Corner of the Northeast Quarter of Section 30, Township 18 North, Range 5 East, said point being the POINT OF BEGINNING this description; thence South 89 degrees 36 minutes 52 seconds West (assumed bearing) 2,452.17 feet along the South line of said Northeast Quarter to the eastern Right-of-Way line of State Road 37 per a Right-of-Way Document Recorded in Deed Record 149, page 441 in the Office of the Recorder of Hamilton County, Indiana; the next three (3) courses are along said eastern Right-of-Way line; (1) thence North 00 degrees 02 minutes 06 seconds West 24.26 feet; (2) thence North 45 degrees 38 minutes 32 seconds West 200.12 feet; (3) thence North 00 degrees 02 minutes 06 seconds West 2,491.17 feet to the North line of said Northeast Quarter; thence continue North 00 degrees 02 minutes 06 seconds West 1,336.28 feet along the eastern Right-of-Way line of State Road 37 per a Right-of-Way Document Recorded in Deed Record 147, page 1155 in said Office of the Recorder to the northwest corner of a tract of land granted to Britton Golf Course, Inc. ("Golf Course 1"), Recorded in Instrument Number 88 00421 in said Office of the Recorder; the following two (2) courses are along the northern & eastern boundary lines of said "Golf Course 1"; (i) thence North 89 degrees 28 minutes 01 seconds East 359.46 feet; (2) thence South 00 degrees 00 minutes 16 seconds East 1,336.04 feet to the North line of said Northeast Quarter; thence North 89 degrees 25 minutes 12 seconds East 913.26 feet along said North line to Northwest Corner of the East Half of said Northeast Quarter; thence North 89 degrees 25 minutes 31 seconds East 41.70 feet along the North line of said East Half to the Northwest Corner of a tract of land granted to Hamilton Southeastern Schools ("School Tract") recorded in Deed Record 266, page 398 in said Office of the Recorder; thence South 00 degrees 10 minutes 47 seconds West 1485.80 feet along the western boundary line of said "School Tract" to the Northeast Corner of a tract of land granted to Britton Golf Course, Inc. ("Golf Course 2") Recorded in Instrument Number 200100050288 in said Office of the Recorder; the next two (2) courses are along the eastern and southern boundary lines of the tracts described in said ("Golf Course 2"); (1) thence South 00 degrees 10 minutes 47 seconds West 42.49 feet; (2) thence South 89 degrees 25 minutes 19 seconds West 95.31 feet. to a eastern boundary line of a tract of land granted to Britton Golf Course, Inc. ("Golf Course 3") Recorded in Instrument Number 8821825 in said Office of the Recorder; the following two (2) courses are along the eastern and northern boundary lines of said "Golf Course 3"; (1) thence South 00 degrees 10 minutes 47 seconds West 632.17 feet; (2) thence North 89 degrees 36 minutes 54 seconds East 1386.78 feet to the East line of said Northeast Quarter; thence South 00 degrees 10 minutes 47 seconds West 500.00 feet along said East line to the POINT OF BEGINNING containing 104.012 acres, more or less.