

**ORDINANCE NO. 020303 and 021803G**

**AN ORDINANCE AMENDING THE ZONING ORDINANCE  
OF FISHERS, INDIANA - 1980**

THIS ORDINANCE #020303 and 021803G (the "Avalon PUD-R") IS AN ORDINANCE AMENDING THE ZONING ORDINANCE OF FISHERS, INDIANA, DATED NOVEMBER 3, 1980 - Ordinance No. 110380, as amended (the "Zoning Ordinance"), which Zoning Ordinance includes the Comprehensive Plan – Chapter 150, as amended (the "Comprehensive Plan") and the Zoning Code, Chapter 151, as amended (the "Zoning Code");

**SECTION 1. DECLARATION**

It is hereby ordained by the Town Council (the "Council") of the Town of Fishers, Indiana (the "Town") that the text of the Zoning Ordinance and the Official Zoning Map (the "Zone Map") of the Town, which accompanies and is part of the Zoning Code, are hereby amended as follows:

That the Zoning Classification of the real estate described in what is attached hereto and incorporated herein by this reference as Exhibit "A" (the "Real Estate") is hereby zoned PUD-R per the terms and conditions of this Avalon PUD-R.

**SECTION 2. PURPOSE AND INTENT**

The purpose and intent of the Avalon PUD-R is to provide an innovative residential development which promotes creativity and flexibility in the development of the Real Estate.

**SECTION 3. PRIOR COMMITMENTS**

Cross reference is hereby made to commitments given in connection with this Avalon PUD-R (the "Commitments"). These Commitments replace and supersede all prior commitments made in connection with the Real Estate including, without limitation, (i) all commitments made in connection with Docket Number 17-IZ-01 and Ordinance #010702A and (ii) the commitments recorded with the Recorder of Hamilton County, Indiana, as Instrument #200300003127.

**SECTION 4. DEFINITIONS**

The following definitions shall apply throughout this PUD Ordinance:

- A. **Declaration.** The term "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions prepared and recorded by the Developer with the Recorder of Hamilton County, Indiana.
- B. **Detached Single Family Residence.** The term "Detached Single Family Residence" shall mean and refer to a single family residence which is not attached to another single family residence.

- C. **Developer.** The term Developer shall mean and refer to Pulte Homes of Indiana, LLC, or its successors and assigns.
- D. **Homeowners Association.** The term “Homeowners Association” shall mean and refer to a non-profit corporation established by the developer per the terms of the Declaration.
- E. **Neighborhood Association.** The term “Neighborhood Association” shall mean and refer to the non-profit corporation established by the Developer per the terms of the Neighborhood Declaration.
- F. **Neighborhood Declaration.** The term “Neighborhood Declaration” shall mean and refer to the Neighborhood Declarations of Covenants, Conditions, and Restrictions prepared and recorded by the Developer, with the Recorder of Hamilton County, Indiana, for District A, District B, District C, and District C1.
- G. **Private Streets.** The term “Private Streets” shall mean and refer to any streets which are located within District A and District B, which are maintained by the applicable neighborhood association designated by the Developer, and which are not dedicated to the public but, instead, are maintained by the applicable neighborhood association designated by the developer.
- H. **Shared Driveway.** The term “Shared Driveway” shall mean and refer to a driveway which is shared by more than one Townhouse or Detached Single Family Residence and which, therefore, provides ingress and egress to more than one garage. In the Declaration or applicable Neighborhood Declaration, as designated by the Developer, there shall be provisions providing that any shared drive shall be maintained by the owners of the Detached Single Family Residences or Townhouses which are served by the Shared Driveway.
- I. **Townhouse.** The term “Townhouse” shall mean and refer to a single family residence which is attached to one or more other single family residences.
- J. **Townhouse Building.** The term “Townhouse Building” shall mean and refer to a building containing one (1) or more Townhouses.

**SECTION 5. LAND USE**

Detached Single Family Residences, Townhouses, and other related and accessory residential land uses are permitted in the areas illustrated on the conceptual plan attached hereto and made a part hereof as Exhibit “B” (the “District Map”) and as further specified in the development standards matrix attached hereto and made a part hereof as Exhibit “C” (the “Development Standards Matrix”).

The District Map allocates the Real Estate into Districts (the “Districts”) to which the Development Standards Matrix corresponds.

## SECTION 6. DEVELOPMENT STANDARDS

The development standards applicable to different areas illustrated in the District Map shall be as specified in the Development Standards Matrix and further as specified below:

**A. Detached Single Family Residential Standards.** The following standards shall be applicable to Districts C1, C2 upon expiration of the life estate occupying the residence located within District C1 on the date of the enactment of this Avalon PUD-R, D, E, and F and all detached single family residences located therein:

- (1) Streets shall have sidewalks and street trees on both sides of the street. Street trees shall be placed approximately forty (40) feet to sixty (60) feet on center in a planting strip between the street and sidewalks. The planting strip shall be a minimum of four (4) feet wide. Trees shall be a minimum two (2) inch caliper at planting, as measured twelve (12) inches from the ground. Trees shall be deciduous and selected from the Town of Fishers approved List of Recommended Species.
- (2) Between (i) all lots immediately adjacent to 126<sup>th</sup> Street, Olio Road or State Road 238, and (ii) 126<sup>th</sup> Street, Olio Road, and State Road 238 there shall be a minimum twenty (20) foot common area, adjacent to such thoroughfares or right-of-ways. This common area shall not be used as part of utility easements. This common area shall contain either (i) a wall or fence of ornamental block, brick, metal or wood, or (ii) an undulating earthen berm (averaging six (6) feet in height along 126<sup>th</sup> Street and State Road 238 and averaging seven (7) feet in height along Olio Road), in combination with landscape plant material. Evergreen or deciduous trees shall be planted at a minimum rate of twelve (12) trees per one hundred (100) lineal feet and may be evenly spaced or clustered. Deciduous trees shall be of at least two (2) inch caliper at planting as measured twelve (12) inches above the ground, and evergreen trees will be at least seven (7) feet in height at planting. A minimum of fifty (50) percent of such trees shall be evergreen trees. This tree requirement is in addition to the street tree requirement. These improvements shall be provided by the Developer and maintained by the Homeowners Association.
- (3) The height of accessory structures shall not exceed fifteen (15) feet.
- (4) A standard landscaping package shall be included with each residence sold. This landscape package shall provide for trees and shrubs around the residence. In addition to the street tree requirement, lots greater than sixty-five (65) feet in width at the setback line shall be planted with at least two (2) deciduous trees and/or evergreen trees, and a minimum of eleven (11) shrubs. The deciduous tree shall be of at least two-inch caliper at planting as measured twelve (12) inches from the ground, and the evergreen at least six (6) feet in height at planting. Lots with street frontage less than sixty-five (65) feet shall have one (1) deciduous or evergreen lawn tree of the same dimensions as stated above in this paragraph four (4), and a minimum of eleven (11) shrubs planted at the foundation of the residence.
- (5) Street lights shall not exceed fifteen (15) feet in height, and shall be located at major intersections throughout the subdivision. The height of such lights shall be measured

from the ground. Each light shall have shielding to direct light downward in order to minimize light spillover.

- (6) Cul-de-sac islands shall be landscaped with plant material.
- (7) All residences shall have a minimum two-car garage.
- (8) Lot coverage shall not exceed forty-five (45) percent and shall include buildings, parking areas and all other impervious surfaces.
- (9) All lots shall have a minimum depth of one hundred ten (110) feet.
- (10) Corner lots shall be deemed to have two (2) front yards; therefore, the front yard landscaping and fencing requirements apply to both street frontages on corner lots.
- (11) Side load or courtyard entry garages shall have two (2) windows located on the front elevation of the garage.
- (12) Front loading garages protruding more than eight (8) feet shall also contain a window on the side of the garage closest to the entry. Residences which are on lots more than sixty-five (65) feet in width and which have a front-loading garage that protrudes in front of the first floor facade shall have a front facade which, including the garage, shall be equal to or greater than forty (40) feet wide.
- (13) A third car garage may be added to residences. The third car garage entrance must be recessed a minimum of two (2) feet from the two (2) car garage door. Any three (3) car driveway must taper to a maximum of sixteen (16) feet wide at the lot line.
- (14) Like model residences on the same side of the street shall be separated by at least one (1) lot. No like model elevations shall be directly across the street from one another. For purposes of this determination, (i) any particular residence shall have only one (1) residence directly across the street from it and (ii) any two (2) residences which are directly across the street from each other shall be the two (2) residences which, if not separated by a street, would have the greatest area of overlapping front elevations. No two (2) adjacent residences on the same side of the street shall have the same exterior siding color.
- (15) In order to achieve any of the following, one (1) driveway may serve two (2) residences, but not more than two (2) residences:
  - a. Remove garage entrances from the street; and/or
  - b. Provide distinctive open space opportunities; and/or
  - c. Take advantage of unique topography
- (16) Residences with either (i) brick on at least fifty (50) percent of the area of the front façade (windows, doors, garage doors, accompanying frames and any other opening are excluded from calculations of the area) or (ii) a covered front porch, with railings, of at least eight feet in width and four feet in depth or a minimum of thirty-two (32) square feet, shall have at least two (2) of the following significant architectural design features. Residences with neither (i) fifty (50) percent brick on the area of the front facade (windows, doors, garage doors, accompanying frames and any other opening are excluded from calculations of the area) nor (ii) a front porch of the preceding dimensions shall have a combination of four (4) or more of the following features.
  - a. A reverse gable peak;
  - b. A covered front porch, with railings on front and side, of at least eight (8) feet in width and four (4) feet in depth or a minimum of thirty-two (32) square feet;
  - c. A thirty-two (32) inch brick or stone plinth with water table on all sides;

- d. Architectural treatment on gable ends;
- e. Two separate overhead garage doors for each two (2) car garage, and three (3) separate overhead garage doors for each three (3) car garage;
- f. Covered front stoop/steps with pathway leading from sidewalk or driveway;
- g. A bay-window on the front elevation;
- h. Architecturally treated entranceways for residences without a front porch;
- i. Garage doors containing windows of high standard and quality;
- j. Overhang or soffit of at least eight (8) inches from exterior walls;
- k. Transom windows;
- l. A veranda/balcony;
- m. Two or more roof planes;
- n. A brick accent area of at least twenty-five (25) percent of the area of the front elevation (windows, doors, garage doors, accompanying frames and any other openings are excluded from calculations of the area);
- o. At least two (2) dormers;
- p. At least two (2) feet of relief at two (2) or more points along the front facade elevation, excluding relief for doors and windows and garage;
- q. Decorative shutters; or
- r. Architecturally-enhanced articulated trim moldings, such as fipons above windows.

**B. Townhouse Standards.** The following standards shall be applicable to Districts A and B and all Townhouses located therein:

- (1) Streets shall have sidewalks and street trees on both sides of the street. All street trees shall be placed approximately forty (40) feet to sixty (60) feet on center in a planting strip between the street and sidewalks. Street trees shall be placed in a manner whereby they are outside the corner vision clearance and do not obstruct views of any required signage. The planting strip shall be a minimum of four (4) feet wide. All trees shall be a minimum two (2) inch caliper, as measured twelve (12) inches from the ground. All trees shall be deciduous and selected from the Town of Fishers approved List of Recommended Species.
- (2) Between (i) any Townhouses immediately adjacent to 126<sup>th</sup> Street, Olio Road or State Road 238 and (ii) 126<sup>th</sup> Street, Olio Road, and State Road 238, there shall be a minimum twenty (20) foot common area, adjacent to such thoroughfares or right-of-ways. This common area shall not be used as part of utility easements. This common area shall contain an opaque screen of either (i) a wall or fence of ornamental block, brick, metal or wood, or (ii) an earthen berm (averaging six (6) feet in height along 126<sup>th</sup> Street and State Road 238 and averaging seven (7) feet in height along Olio Road), in combination with landscape plant materials. Evergreen or deciduous trees shall be planted at a minimum rate of twelve (12) trees per one hundred (100) lineal feet and may be evenly spaced or clustered. The deciduous trees shall be of at least two (2) inch caliper as measured twelve (12) inches from the ground and the evergreens shall be at least seven (7) feet in height. A minimum of fifty (50) percent such trees shall be evergreen. This tree requirement is in addition to the street tree

- requirement. These improvements shall be provided by the Developer and maintained by Homeowners Association.
- (3) The height of accessory structures shall not exceed fifteen (15) feet.
  - (4) A standard landscaping package shall be included with each Townhouse sold. This landscape package shall provide for trees and shrubs on the front of a Townhouse and, in the case of end Townhouses, also on the side facing the street, as well. In addition to the street tree requirement, one (1) deciduous or evergreen lawn tree of the same dimensions as stated above shall be planted for every two (2) Townhouses, and a minimum of four (4) shrubs per Townhouse shall be planted at the foundation of the Townhouse.
  - (5) Street lights shall not exceed fifteen (15) feet in height and shall be located at major intersections throughout the subdivision. The height of such lights shall be measured from the ground. Each light shall have shielding to direct light downward in order to minimize light spillover.
  - (6) Parcel coverage shall not exceed (i) fifty (50) percent of the District and (ii) fifty (50) percent of District B. Parcel coverage shall include buildings, parking areas and all other impervious surfaces. A minimum separation of twenty (20) feet between structures containing Townhouses is required.
  - (7) The predominant building material on Townhouse buildings shall feature natural tones/hues and be permitted to be accented with brighter, more intense complementary or contrasting tones. Decorative pre-cast panels, wood, composite lap, heavy grade vinyl or shingle siding shall also be used. Townhouse buildings of two (2) stories or less shall use brick, wood, composite lap or shingle siding as the predominant building material.
  - (8) Multiple Townhouses may be served by one (1) Shared Driveway in order to accomplish any of the following:
    - a. Remove garage entrances from the street
    - b. Provide distinctive open space opportunities
    - c. Take advantage of unique topography
  - (9) Each Townhouse building shall be architecturally complimentary to the adjacent Townhouse building. Variations shall be approved by the Exit 10 PUD Committee.
  - (10) A landscaping area shall be required on the perimeter of the development between any adjacent public street and parking area. The perimeter shall be landscaped with a buffer screen of either a wall or fence of ornamental block, brick, metal or wood, or an earthen berm. These shall be in combination with a hedge of evergreen and/or deciduous shrubs and trees. Evergreen or deciduous trees shall be planted at a rate twelve (12) trees per one hundred (100) lineal feet and may be evenly spaced or clustered. This tree requirement is in addition to the street tree requirement.
  - (11) Each Townhouse shall have a minimum two (2) car garage. Rear-loaded garages on Townhouses are permitted, but not required. Garages shall not protrude more than four (4) feet from the front facade. Townhouse buildings with front-loading garages shall have no more than two (2) garage entrances next to one another. The Exit 10 PUD Committee shall approve variations.
  - (12) Pedestrian crossings shall be clearly identified by color or texture change, through the use of stamped asphalt or concrete, pavers or paint markings.

- (13) Final review of Townhouse plans shall be subject to approval by the Exit 10 PUD Committee and the Department of Development.
- (14) Any dumpsters shall be screened from view and shall not be placed in required parking spaces.
- (15) Private Streets and Shared Drives shall be permitted in District A and District B.

**SECTION 7. PROCEDURES**

The adoption of this ordinance and the subsequent consideration of any detailed and final development plan shall be consistent and pursuant to the provisions of the Exit 10 Planned Unit Development Committee and the Planned Unit Development process as set forth in Section 151.072 Planned Unit Development District. Any requirements not specified by this PUD Ordinance shall be subject to Chapters 151.070 R6 and 151.071 R7 Residential Districts of the Town of Fishers Code of Land Use Ordinances.

The petitioner shall follow all Procedures for Detailed Development Plan Approval, provided by Department of Development staff. In addition, the petitioner shall:

- A. Meet with staff to discuss the project,
- B. Meet with the PUD Committee to present preliminary plans and drawings for the project; the PUD Committee will review the preliminary plans and drawings and will make a recommendation to the Plan Commission,
- C. Submit preliminary elevations and lighting along with material samples, color boards and other materials which further illustrate the project to the PUD committee,
- D. Meet with the PUD Committee for review of the final detailed development plan and approval of final plans and drawings for the project,
- E. A fee for PUD architectural review shall be established as no less than \$200.00 and may be amended as part of the Town Fee Structure Ordinance. The fee is due at the time of application to the Exit 10 PUD Committee.

**SECTION 8. APPROVAL**

This ordinance shall be in full force and effect from and after its passage by the Town Council. All provisions or parts thereof in conflict herewith are hereby repealed.

ADOPTED BY THE Town Council of the Town of Fishers, Indiana on this 2nd day of June, 2003.

**THE TOWN COUNCIL OF FISHERS, HAMILTON COUNTY, INDIANA**

**AYE**

**NAY**

BY:

\_\_\_\_\_ Scott A. Faultless, \_\_\_\_\_

Scott H. Faulkless

President

Stuart F. Easley

Vice President

Timothy O. Lima

Member

Eileen N. Pritchard

Member

Daniel E. Henke

Member

Charles P. White

Member

David C. George

Member

ATTEST:

Linda Gaye Cordell

Linda Gaye Cordell, Clerk-Treasurer,  
Town of Fishers, Indiana

DATE: 6-2-03

Approved by: Douglas D. Church: Church, Church, Hittle, and Antrim - Town Attorney



# Exhibit A

## Legal Description

A part of Section 25, Township 18 North, Range 5 East, in Fall Creek Township, Hamilton County, Indiana, more particularly described as follows:

Beginning at the Southeast corner of the Southwest Quarter of said Section 25; thence South 89 degrees 15 minutes 10 seconds West along the South line thereof 1,435.66 feet; thence North 00 degrees 44 minutes 06 seconds West 39.81 feet; thence South 89 degrees 15 minutes 54 seconds West 328.08 feet; thence North 85 degrees 01 minutes 28 seconds West 362.69 feet; thence North 89 degrees 10 minutes 22 seconds West 361.02 feet; thence North 79 degrees 25 minutes 30 seconds West 50.19 feet; thence North 20 degrees 58 minutes 02 seconds West 34.93 feet; thence North 01 degrees 03 minutes 13 seconds West 362.32 feet; thence North 00 degrees 35 minutes 26 seconds West 147.94 feet; thence North 05 degrees 02 minutes 02 seconds West 180.71 feet; thence North 01 degrees 54 minutes 42 seconds West 524.93 feet; thence North 00 degrees 57 minutes 02 seconds East 65.70 feet; thence North 01 degrees 54 minutes 42 seconds West 98.42 feet; thence North 03 degrees 03 minutes 27 seconds West 164.07 feet; thence North 20 degrees 52 minutes 14 seconds East 177.92 feet; thence North 32 degrees 52 minutes 32 seconds West 57.39 feet; thence North 10 degrees 02 minutes 31 seconds West 115.99 feet; thence North 04 degrees 21 minutes 57 seconds West 459.74 feet; thence North 00 degrees 21 minutes 55 seconds East 202.78 feet to the Northwest corner of said Southwest Quarter; thence North 89 degrees 24 minutes 55 seconds East along the North line thereof 311.21 feet to a point on the thread of Mud Creek; thence along said thread of Mud Creek by the next 12 calls; (1) North 01 degrees 55 minutes 21 seconds East 89.60 feet; (2) North 46 degrees 57 minutes 19 seconds East 141.43 feet; (3) North 19 degrees 35 minutes 06 seconds East 199.77 feet; (4) North 22 degrees 31 minutes 09 seconds West 208.14 feet; (5) South 88 degrees 51 minutes 19 seconds East 102.43 feet; (6) North 24 degrees 55 minutes 52 seconds East 82.64 feet; (7) South 75 degrees 30 minutes 08 seconds East 89.91 feet; (8) North 26 degrees 18 minutes 12 seconds East 78.93 feet; (9) North 81 degrees 36 minutes 21 seconds East 210.32 feet; (10) North 66 degrees 46 minutes 59 seconds East 111.54 feet; (11) South 66 degrees 46 minutes 41 seconds East 212.34 feet; (12) North 77 degrees 54 minutes 03 seconds East 114.11 feet to the East line of the aforesaid Quarter, Quarter Section; thence North 00 degrees 12 minutes 43 seconds West along the West line of the East Half of the Northwest Quarter of said Section 25 a distance of 1,865.46 feet to the South right-of-way line of State Road 238; thence South 58 degrees 11 minutes 05 seconds East along said right-of-way line 223.64 feet; thence South 71 degrees 09 minutes 40 seconds East along said right-of-way line 51.31 feet; thence North 31 degrees 48 minutes 55 seconds East 17.05 feet to a point on the centerline of State Road 238, said point being on a curve concave northeasterly, the radius point of said curve being North 31 degrees 41 minutes 07 seconds East 4,971.02 feet from said point; thence southeasterly along said curve and along said centerline 147.52 feet to the point of tangency of said curve, said point being South 29 degrees 59 minutes 06 seconds West 4,971.02 feet from the radius point of said curve; thence South 60 degrees 00 minutes 37 seconds East along the centerline of State Road 238 a distance of 1,097.46 feet to a point on the East line of the Northwest Quarter of said Section 25; thence South 00 degrees 12 minutes 00 seconds East along said East line

186.28 feet; thence North 89 degrees 34 minutes 25 seconds East 315.17 feet to the centerline of State Road 238; thence along said centerline by the next four (4) courses; (1) South 57 degrees 58 minutes 16 seconds East 402.64 feet to the point of curvature of a curve concave southwesterly, the radius point of said curve being South 32 degrees 01 minutes 44 seconds West 535.00 feet from said point; (2) southeasterly along said curve 186.19 feet to the point of tangency of said curve, said point being North 51 degrees 58 minutes 08 seconds East 535.00 feet from the radius point of said curve; (3) South 38 degrees 01 minutes 52 seconds East 567.98 feet to the point of curvature of a curve concave northeasterly, the radius point of said curve being North 51 degrees 58 minutes 08 seconds East 1,250.00 feet from said point; (4) southeasterly along said curve 259.58 feet to a point on said curve, said point being South 40 degrees 04 minutes 14 seconds West 1,250.00 feet from the radius point of said curve; thence South 00 degrees 25 minutes 27 seconds East 631.78 feet to the Northwest corner of the Northeast Quarter of the Southeast Quarter of said section 25; thence South 00 degrees 21 minutes 37 seconds East along the East line of said Half Quarter Section 1,325.52 feet to the Southeast corner said Quarter, Quarter Section; thence North 89 degrees 20 minutes 30 seconds East along the North line of the Southeast Quarter of the Southeast Quarter of said Section 25 a distance of 1,323.01 feet to a point on the East line of said Quarter, Quarter Section; thence South 00 degrees 22 minutes 01 seconds East along said East line 1,323.39 feet to the Southeast corner thereof; thence South 89 degrees 15 minutes 25 seconds West along the South line of said Quarter, Quarter Section 2,646.13 feet to place of beginning, containing 394.996 acres, more or less.

P. 2 of 2

Avalon Development Standards Matrix

District	Land Use Type	Permitted Land Use	Open Space Acreage <sup>1</sup>	Dwelling Units <sup>1</sup> (Max.)	Density <sup>1</sup>	Square Feet Per Residential Unit (Min.)	Lot Width (Min.)	Front Setbacks							
								Internal Public Street <sup>5</sup>	Ohio Road (Min.)	126th Street (Min.)	SR 238 (Min.)	Rear Setback <sup>4</sup>	Side Setback (Min.)	Bldg Ht (Max.)	
A	Single-family attached/Multi-family (for sale)	R6	28.6	250	8.7	800 sq. ft. single story 1000 sq. ft. multi-story	n/a	5' min 15' max	20'	20'	n/a	n/a	(see note 4)	(see note 4)	35'
B	Single-family attached/Multi-family (for sale)	R6	42.3	186	4.4	800 sq. ft. single story 1000 sq. ft. multi-story	n/a	5' min 15' max	n/a	n/a	n/a	n/a	(see note 4)	(see note 4)	35'
C1	Single-family detached	R3-C	70.9	175	2.5	1300 sq. ft. single story 1800 sq. ft. multi-story	52'	25' Bldg.	25'	n/a	n/a	n/a	25'	6'	35'
C2	Single-family detached	R3-C	1.8	4	2.2	1300 sq. ft. single story 1800 sq. ft. multi-story	52'	25' Bldg.	25'	n/a	n/a	n/a	25'	6'	35'
D	Single-family detached	R3-C	47.5	80	1.7	1500 sq. ft. single story 2200 sq. ft. multi-story	80'	25' Bldg.	n/a	n/a	n/a	n/a	25'	6'	35'
E	Single-family detached	R3-C	111.5	260	2.3	1400 sq. ft. single story 1900 sq. ft. multi-story	70'	25' Bldg.	n/a	20'	n/a	n/a	25'	6'	35'
F	Single-family detached	R3-C	96.8	295	3.0	1400 sq. ft. single story 1600 sq. ft. multi-story	60'	25' Bldg.	n/a	20'	n/a	n/a	25'	6'	35'
G	Single-family detached/School	R3-C	21.8	0	0	1400 sq. ft. single story 1900 sq. ft. multi-story	70'	25' Bldg.	n/a	20'	n/a	n/a	25'	6'	35'
TOTALS <sup>1</sup>			421.3	1250	2.97										

Notes:

- 1) The acreages and units within each district are approximate and may change with final engineering. Variation within each district is permitted up to 10%, however the maximum density per district, overall density (3.2), and total units (1250) shall remain the same.
- 2) Rear-yard setbacks shall exist outside of any landscape easements.
- 3) Distance shown is a minimum unless otherwise specified.
- 4) In Districts A and B: for buildings with equal to or less than 4 units, buildings must be separated by 15'; for buildings with more than 4 units, buildings must be separated by 20'.

EXHIBIT " " EB

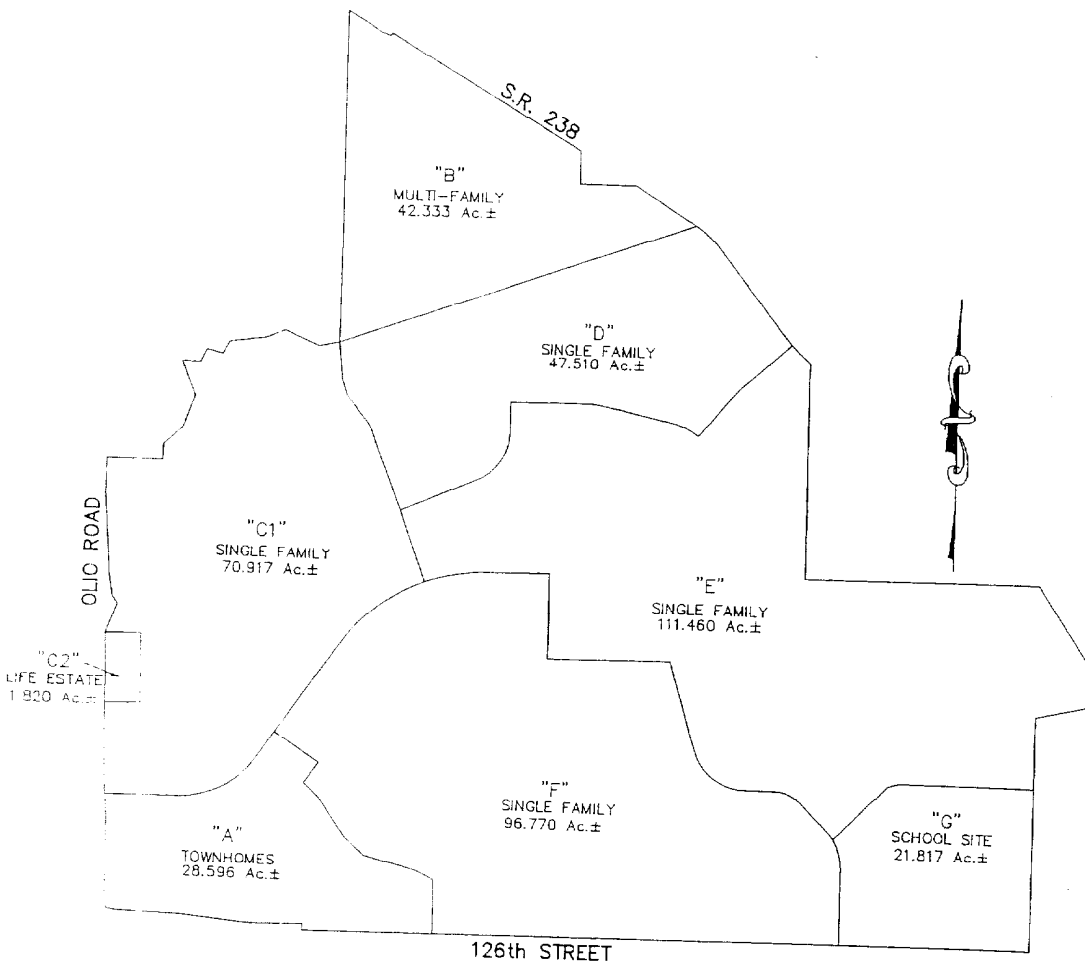


CONSULTING ENGINEERS  
LAND SURVEYORS

9940 Allisonville Rd. • Fishers, IN 46038  
(317) 849-5935 • 1-800-728-6917 • FAX: (317) 849-5942  
DIR: 44930 X-FILE: 44930 SUB-FILE: DISTRICT MAP

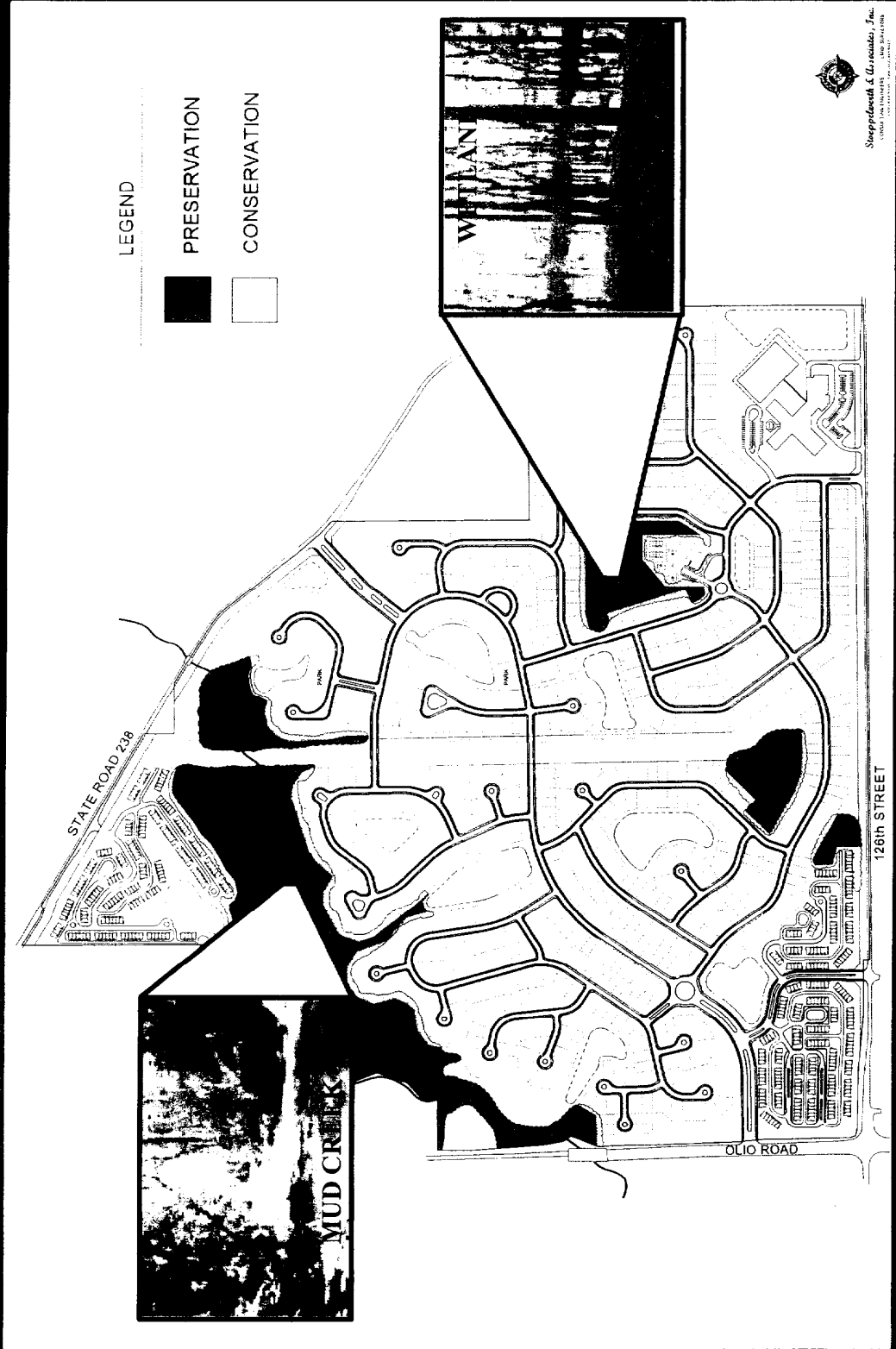
JOB ID \_\_\_\_\_

CONTROL # 44930



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# PULTE'S COMMITMENT TO PRESERVATION



## COMMITMENTS CONCERNING THE USE AND DEVELOPMENT OF REAL ESTATE

PULTE HOMES OF INDIANA, LLC, (hereafter, "Pulte"), the contract purchaser of the real estate located in Hamilton County, Indiana, and described in what is attached hereto and incorporated herein by referenced as Exhibit "A" (the "Real Estate"), makes the following Commitments (the "Commitments") to the Advisory Plan Commission of the Town of Fishers (the "Plan Commission") and the Town Council of the Town of Fishers, Indiana (the "Council").

**Section 1. Cross Reference.** These Commitments are made in connection with approvals obtained under Docket Numbers 1-R-03 and 4-IZ-03, and Ordinance Numbers 020303 and 021803G.

**Section 2. Exhibits.** The following exhibits are attached hereto and incorporated herein by reference:

Exhibit "A". Attached hereto and incorporated herein by reference as Exhibit "A" is the legal description of the real estate (the "Real Estate");

Exhibit "B". Attached hereto and incorporated herein by reference as Exhibit "B" is the district map (the "District Map") which apportions the Real Estate into districts A, B, C1, C2, D, E, and F (the "Districts");

Exhibit "C". Attached hereto and incorporated herein by reference as Exhibit "C" is the development standards matrix (the "Development Standards Matrix") which specifies the development standards applicable to each District;

Exhibit "D". Attached hereto and incorporated herein by reference as Exhibit "D" is the preservation/conservation drawing identifying "Preservation Areas" and "Conservation Areas".

**Section 3. Definitions.** Different words and terms are defined throughout these Commitments and, further, the following definitions shall apply throughout these Commitments:

1. Conservation Area. The term "Conservation Area" shall mean and refer to the areas identified on Exhibit D as Conservation Areas. The secondary plat of the Real Estate, to be recorded with the Recorder of Hamilton County, Indiana, shall also identify the Conservation Areas. These Conservation Areas will be generally in the area identified on Exhibit D; however, the exact area of the Conservation Area shall be as designated on the final plat by the Developer, in the Developer's sole discretion.
2. Detached Single Family Residence. The term "Detached Single Family Residence" shall mean and refer to a single family residence which is not attached to another single family residence;
3. Developer. The term "Developer" shall mean and refer to Pulte Homes, LLC, and its successors and assigns.

4. Homeowners Association. The term "Homeowners Association" shall mean and refer to a non-profit corporation established by the Developer per the terms of the Umbrella Declaration.
5. Neighborhood Association. The term "Neighborhood Association" shall mean and refer to the non-profit corporation established by the Developer per the terms of the Neighborhood Declaration.
6. Neighborhood Declaration. The term "Neighborhood Declaration" shall mean and refer to the Neighborhood Declarations of Covenants, Conditions, and Restrictions prepared and recorded by the Developer, with the Recorder of Hamilton County, Indiana, for District A, District B, District C, and District C1.
7. Preservation Area. The term "Preservation Area" shall mean and refer to the areas identified on Exhibit D as Preservation Areas. The secondary plat of the Real Estate, to be recorded with the Recorder of Hamilton County, Indiana, shall also identify the Preservation Areas. These Preservation Areas will be generally in the area identified on Exhibit D; however, the exact area of the Preservation Area shall be as designated on the final plat by the Developer, in the Developer's sole discretion.
8. Townhouse. The term "Townhouse" shall mean and refer to any single family residence which is attached to one or more other single family residences.
9. Umbrella Declaration. The term "Umbrella Declaration" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions applicable to all Districts prepared and recorded by the Developer with the Recorder of Hamilton County, Indiana.

**Section 4. Commitments Applicable to All Districts.** The following commitments are applicable to all Detached Single Family Residences and Townhouses within any District:

1. Decorative Washington-style street lights, or similar style street lights, with reflectors, shields, and attached decorative street signs, shall be utilized and shall be maintained by the Homeowners Association and/or Neighborhood Association designated by the Developer.
2. Traffic control signage shall be mounted on decorative posts, similar in style to the decorative street lights, and shall also be maintained by the Homeowners Association and/or Neighborhood Association designated by the Developer.
3. The colors utilized for exterior building materials, other than brick and stone, shall feature a base color with natural tones and subtle hues, and may be accented with brighter, more intense or complimentary contrasting tones.
4. All fences shall be subject to review and approval by the Architectural Review Committee, and shall comply with the following requirements:

- A. All chain link fences shall be vinyl coated and not greater than forty-two (42) inches in height. Chain link fences are prohibited in front yards and, in this regard, a corner lot shall be deemed to have two front yards.
  - B. Front yard fences shall not exceed forty-two (42) inches in height and shall be a minimum of 50% open. Unless otherwise restricted or qualified in these Commitments, fences in all yards other than front yards shall not exceed six (6) feet in height.
  - C. Stockade fences are prohibited.
  - D. Any fence located between (i) a Townhouse or Detached Single Family Residence adjacent to Olio Road, State Road 238, and 126<sup>th</sup> Street and (ii) Olio Road, State Road 238, and 126<sup>th</sup> Street shall be a wood shadow box style fence not greater than five (5) feet in height.
- 5. Mini barns are prohibited.
  - 6. Satellite dishes shall not exceed thirty (30) inches in diameter and shall meet all applicable FCC standards.
  - 7. Pedestrian crossings shall be identified by color or texture change, through the use of stamped asphalt or concrete, pavers, or thermoplastic.

**Section 5. District A Commitments.** The following commitments shall apply to District A and the Townhouses contained therein:

- 1. The Developer shall establish a Neighborhood Declaration which shall provide for lawn and landscaping maintenance, snow removal, and certain exterior maintenance of the structure, all (i) in a manner and to an extent to be determined by the Developer in its discretion and (ii) to be funded by mandatory assessments to be collected by the Neighborhood Association;
- 2. There shall be a mandatory Neighborhood Association established for District A which shall require (i) an initiation fee, (ii) a budget to fund general reserves for the above-described lawn and landscaping maintenance, snow removal, and exterior maintenance, and (iii) professional management upon turnover of the Neighborhood Association by the Developer to the homeowners;
- 3. Group mailboxes shall be utilized;
- 4. The predominant exterior building materials on all buildings containing Townhouses shall be decorative precast panels, brick, wood, composite lap, heavy grade vinyl or shingle siding; and
- 5. All Townhouses shall have a light at the front door.

**Section 6. District B Commitments.** The following commitments shall apply to District B and the Townhouses contained therein:



1. The Developer shall establish a Neighborhood Declaration which shall provide for lawn and landscaping maintenance, snow removal, and certain exterior maintenance of the structure, all (i) in a manner and to an extent to be determined by the Developer and (ii) to be funded by mandatory assessments to be collected by the Neighborhood Association;
2. There shall be a mandatory Neighborhood Association established for District B which shall require (i) an initiation fee, (ii) a budget to fund general reserves for the above-described lawn and landscaping maintenance, snow removal, and exterior maintenance, and (iii) a requirement of professional management upon turnover of the Neighborhood Association by the Developer to the homeowners;
3. Group mailboxes shall be utilized;
4. The predominant exterior building materials on all buildings containing Townhouses shall be decorative precast panels, brick, wood, Hardeee-Pank or similar siding, composite lap, heavy grade vinyl or shingle siding; and
5. All Townhouses shall have a light at the front door.

**Section 7. District C1 and District C2 Commitments.** The following commitments shall apply within (i) District C1 and (ii) District C2, upon the expiration of the life estate held by the occupant on the date of these Commitments:

1. The Developer will establish a Neighborhood Declaration which shall provide for lawn and landscaping maintenance, and snow removal, all (i) in a manner and to an extent to be determined by the Developer in its discretion and (ii) to be funded by mandatory assessments to be collected by the Neighborhood Association;
2. There shall be a mandatory Neighborhood Association established for Districts C1 and C2 which shall require (i) an initiation fee, (ii) a budget to fund general reserves for the above-described lawn and landscaping maintenance and snow removal, and (iii) a requirement of professional management upon turnover of the Neighborhood Association by the Developer to the homeowners;
3. Standard mailboxes consisting of at least two mailboxes per post with newspaper holders shall be utilized; and
4. The permitted exterior building materials on all Detached Single Family Residences shall be decorative precast panels, brick, wood, Hardeee-Plank or similar siding, composite lap, heavy grade vinyl or shingle siding.

**Section 8. District D and E Commitments.** The following commitments shall apply to Districts D and E:

1. Each residence shall have a uniform mailbox;

2. The permitted exterior building material shall be decorative precast panels, brick, wood, composite lap, Hardeee Plank or similar type siding, or shingle siding. Vinyl is not permitted as an exterior building material; provided, however, that vinyl-clad windows and soffits shall be permitted.

**Section 9.**      **District F Commitments.** The following commitments shall apply to District F:

1. Each residence shall have a uniform mailbox.
2. Permitted exterior building materials shall be decorative precast panels, brick, wood, Hardee-Plank, composite lap, heavy grade vinyl or shingle siding.

**Section 10.**      **Central Park Commitments.** The Developer shall install the following within the central park, all of which shall hereafter be referred to as the Improvements:

1. One swimming pool of approximately nineteen hundred and eighty (1980) square feet;
2. One wading pool of approximately one hundred and forty four (144) square feet;
3. One pool house;
4. One basketball court;
5. One playground containing playground equipment appropriate for preschool children through grade school children;
6. One nature trail which shall be a minimum of 4' in width and which shall meander through the Conservation Areas and the Preservation Areas. Those segments of the trail which cross a wetland shall be a boardwalk style;
7. A pavilion of approximately ten (10) feet by ten (10) feet;
8. Landscaping to provide shade around seeding areas, playgrounds, and parking lots, and to define pedestrian ways. Such landscaping shall include, but shall not be limited to, a combination of deciduous trees, evergreens, and ornamental flowering species.

The Improvements shall be of a type, location, size, design, configuration, architecture, and composition determined by the Developer in the Developer's sole discretion.

**Section 11.**      **Conservation Area Commitments.** The commitments applicable to the Conservation Areas are as follows:

1. Except as noted immediately below, each builder and/or Developer shall endeavor to conserve trees within the Conservation Area, and owners of lots shall not remove trees within Conservation Areas:

- A. The clearing of underbrush, as defined and determined by the Developer's certified arborist, and the clearing of dead trees shall be allowed;
- B. The removal of trees necessary for the installation of utilities, walking trails, and drainage improvements and infrastructure shall be allowed; and
- C. Trees may be removed as necessary for public health and safety.

Except as set forth immediately above in subparagraphs A, B, and C, each tree within the Conservation Area which is badly damaged or destroyed by a lot owner or during the course of construction activities and which is greater than four (4) inches in diameter, measured six (6) inches above the ground, shall be replaced within one (1) year, by the person or entity causing such damage or destruction, with a tree which is at least two and one-half (2-1/2) inches in diameter measured six (6) inches above the ground. Any trees which are so replaced and which die within one (1) year of their planting shall promptly be replaced with a substantially similar tree.

**Section 12. Preservation Area Commitments.** The commitments applicable to Preservation Areas shall be as follows:

- 1. Preservation Areas shall be owned and maintained by the Homeowners Association as a common area, and residential construction shall not occur within the Preservation Areas. Except as noted immediately below, each builder and/or developer shall endeavor to preserve trees within the Preservation Areas, and the owners of lots shall not remove trees within the Preservation Areas:
  - A. The clearing of underbrush and dead trees shall be allowed;
  - B. The removal of trees necessary for the installation of utilities, drainage improvements and infrastructure, and trails shall be allowed; and
  - C. The removal of trees for public health and safety shall be allowed.

Except as set forth in paragraphs A, B, and C immediately above, each tree within the Preservation Area which is badly damaged or destroyed by a lot owner or during the course of construction activities and which is greater than four (4) inches in diameter, measured six (6) inches above the ground, shall be replaced within one (1) year, by the person or entity causing such damage or destruction, with a tree which is at least two and one-half (2-1/2) inches in diameter measured six (6) inches above the ground. Any trees which are so replaced and which die within one (1) year of their planting shall promptly be replaced with a substantially similar tree.

- 2. Subject only to alteration and tree removal in order to accommodate drainage, utilities, and trails, the flood plain along Mud Creek shall be maintained in its natural state, to the best of the Developer's ability; and

3. The Developer shall install a twelve (12) foot asphalt path, consistent with the Town's perimeter path specifications. The Developer shall dedicate to the Town of Fishers this twelve (12) foot asphalt path, together with a ten (10) foot wide easement on each side of the path. The Town of Fishers shall maintain the path upon acceptance of the dedication thereof. The location of the path shall be determined by the Developer, but shall follow the line of Mud Creek along the route of the interceptor sewer.

**Section 13. Binding on Successors**

These Commitments are binding on the Owner of the Real Estate, each subsequent Owner of the Real Estate, and each other person acquiring an interest in the Real Estate, unless modified or terminated by the Commission. These Commitments may be modified or terminated only by a decision of the Plan Commission after a public hearing wherein notice as provided by the rules of the Plan Commission has been made.

**Section 14. Effective Date**

The Commitments contained herein shall be effective upon the adoption of an ordinance by the Town Council of Fishers, Indiana, assigning the requested PUD-R Classification to the Real Estate.

**Section 15. Prior Commitments**

These Commitments replace and supersede all prior commitments made in connection with the Real Estate including, without limitation, (i) all commitments made in connection with Docket Number 17-IZ-01 and Ordinance #010702A and (ii) the commitments recorded with the Recorder of Hamilton County, Indiana, as Instrument #200300003127.

**Section 16. Recording**

The undersigned hereby authorizes the Secretary of the Commission to record these Commitments in the Office of the Recorder of Hamilton County, Indiana.

**Section 17. Enforcement**

These Commitments may be enforced by the Commission and the Town Council of Fishers, Indiana and any property owner within or immediately adjacent to the Real Estate.

IN WITNESS WHEREOF, PULTE HOMES OF INDIANA, LLC, has caused these Commitments to be executed as of the date first written above.

PULTE HOMES OF INDIANA, LLC

By: \_\_\_\_\_  
Mark Thomas, Division President  
Indiana Division

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF MARION     )

Before me the undersigned, a Notary Public in and for said County and State, personally appeared *Mark Thomas*, as Division President, Indiana Division, of Pulte Homes, LLC, and having been duly sworn, acknowledged execution of the foregoing Commitments.

Witness my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Notary Public

Residing in \_\_\_\_\_ County

\_\_\_\_\_  
Printed Name

Prepared By: David M. Compton, Director of Land Acquisitions, Pulte Homes of Indiana, LLC.

Reviewed By: Charles D. Frankenberger, Nelson & Frankenberger, 3021 East 98<sup>th</sup> Street, Suite 220, Indianapolis, Indiana 46280 (317) 844-0106