

ORDINANCE NO. 050106A

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

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF FISHERS, INDIANA - 1980. BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FISHERS, INDIANA, THAT THE ZONING ORDINANCE, A PART OF THE COMPREHENSIVE PLAN AND ORDINANCE - 1980, ORDINANCE NO. 110380, AS AMENDED, IS HEREBY AMENDED AS FOLLOWS:

**SECTION 1. DECLARATION**

That the text of the Zoning Code of the Town of Fishers, Indiana, Ordinance No. 110380, and the Official Zoning Map, Town of Fishers, Indiana, dated November 3, 1980, which accompanies and is part of the Zoning Code of the Town of Fishers, Indiana, as amended, are hereby amended as follows:

That the Zoning Classification of the following described Real Estate is hereby zoned as PUD-C and this ordinance shall hereinafter be referred to as the "Cyntheanne and SR238 PUD Ordinance":

SEE "EXHIBIT A" ATTACHED HERETO.

**SECTION 2. PURPOSE AND INTENT**

To create a neighborhood commercial district for the intersection of State Road 238 and Cyntheanne Road through the adoption of development standards including architectural design and material standards to aesthetically enhance the commercial areas to be compatible with the surrounding residential neighborhoods.

**SECTION 3. LAND USE**

- A. All uses described in Section 151.073 (C1, Commercial District) and Section 151.074 (C2, Commercial District) of the Fishers Zoning Code, as amended, shall be permitted.
- B. Neighborhood retail including grocery, drug stores and similar uses are permitted provided that no single occupancy may exceed sixty five thousand (65,000) gross square feet for an anchor tenant and provided the anchor tenant has a minimum of two (2) separate and distinct customer entrances across the front of the building.
- C. Any adult entertainment uses shall be prohibited.
- D. Package liquor sales shall be prohibited in gas stations/convenience stores or "pick up" facilities.
- E. One service station shall be allowed in the Cyntheanne Road and SR238 PUD District.

## SECTION 4. CONCEPTUAL DEVELOPMENT PLAN

The Concept Plan, attached hereto as "Exhibit B", is adopted as part of this ordinance. Adoption of the Concept Plan, however, does not constitute approval of any detailed and final development plans; such further approval is subject to the procedures set out in Section 7, below.

## SECTION 5. DEVELOPMENT STANDARDS

Except as modified by this PUD Ordinance, the development shall comply with the development, landscaping and parking standards of the Zoning Code of the Town of Fishers.

### A. Bulk and Density Standards

#### 1) Building Setbacks

Minimum Front Yard	50'
Minimum Rear Yard	20'
Minimum Side Yard	20'

#### 2) Lot Coverage

- a) Lot coverage shall not exceed seventy-five percent (75%) and is inclusive of buildings, parking area and other impervious surfaces, which results in a open space requirement of twenty five percent (25%) of the land area.

#### 3) Building Height

- a) Buildings are restricted to thirty-five feet (35') maximum of two (2) stories (pitched roofs are measured as the mid-point).

### B. Landscape Buffering

- 1) The landscape buffers for the north and west property lines of Area A shall incorporate the existing trees and shall also include a combination of six (6) trees and ten (10) shrubs per one hundred (100) lineal feet.
- 2) The landscape buffers for the north and east property lines of Area B shall incorporate the existing trees and shall also include a combination of six (6) trees and ten (10) shrubs per one hundred (100) lineal feet.

### C. Architectural Standards

- 1) All structures within an individual PUD area shall be constructed with similar design, materials and compatible architecture.
- 2) All buildings shall screen all mechanical equipment including that which is mounted to the roof and/or ground.
- 3) The exterior of all buildings adjacent to residentially zoned areas or occupied shall consist of a brick, masonry or stone facade or stucco materials with masonry surface and appearance.
- 4) Facades that have greater than one hundred feet (100') in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at

- least five percent (5%) of the length of the facade and extending at least twenty percent (20%) of the length of the facade. No uninterrupted length of any facade shall exceed one hundred horizontal feet (100').
- 5) Where large retail structures contain additional, separately owned or leased stores that occupy less than twenty five thousand (25,000) square feet of gross floor area and have separate, exterior customer entrances, the street level facade of such stores shall be transparent between the height of three feet and eight feet above the walkway grade for no less than sixty percent (60%) of the horizontal length of the building facade of such additional stores.
  - 6) Building facades shall include a repeating pattern that includes no less than three (3) of the following elements:
    - a) Color change;
    - b) Texture change;
    - c) Material module change;
    - d) An expression of architectural or structural bays through a change in plane no less than twelve inches (12") in width, such as an offset, reveal or projecting rib.
  - 7) Roof architecture
    - a) Roofs shall have some combination of the following features:
      - (1) All roof areas shall restrict rooftop equipment such as HVAC units from public view by extending the supporting wall or parapet. Such roof features shall contain three-dimensional cornice treatment;
      - (2) Overhanging eaves, extending no less than three feet (3') past the supporting walls;
      - (3) Three or more roof slope planes.
    - b) Gasoline service station canopies shall have pitched roofs.
    - c) Office uses, separate retail tenants, single story and buildings of less than fifty thousand (50,000) square feet must have pitched roofs to be more residential in character.
    - d) No more than fifty percent (50%) of the roof shall be flat unless the roof has an architectural addition. Flat roofs shall have architectural significance, such as different sections of flat roofs so the roof can be given articulation with different heights. The look of the building shall therefore be softened by the feel of the facade.
  - 8) Materials and colors.
    - a) Predominant exterior building materials shall be high quality materials, including, but not limited to, brick, limestone, other native stone and tinted/textured concrete masonry units.
    - b) Facade colors shall be low reflectance, subtle, neutral or earth tone colors. The use of high-intensity colors, metallic colors, black or fluorescent colors shall be prohibited.
    - c) Building trim and accent areas may feature brighter colors, including primary colors, but neon tubing shall not be an acceptable feature for building trim or accent areas.
    - d) Exterior building materials shall not include smooth-faced concrete block, tilt-up concrete panels or prefabricated steel panels.
  - 9) Entryways.

- a) Each retail establishment greater than twenty thousand (20,000) square feet shall have clearly defined, highly visible customer entrances featuring no less than three of the following:
    - (1) Canopies or porticos;
    - (2) Overhangs;
    - (3) Recesses/projections;
    - (4) Arcades;
    - (5) Raised corniced parapets over the door;
    - (6) Peaked roof forms;
    - (7) Arches;
    - (8) Architectural details such as tile work and moldings which are integrated into the building structure and design;
    - (9) Integral planters or wing walls that incorporate landscaped areas and/or places for sitting.
  - b) All building facades that are visible from adjoining properties and/or public streets shall comply with the requirements of items (1) through (9).
- 10) Pedestrian circulation
- a) Sidewalks shall be a minimum of five feet in width, however, where applicable, they shall be eight feet asphalt in conjunction with the Town Parks Plan and to integrate with neighborhoods. Sidewalks shall be provided along all sides of the lot that abut a public street.
  - b) Continuous internal pedestrian walkways, no less than eight feet in width, shall be provided from the public sidewalk or right-of-way to the principal customer entrance of each retail building on the site. At a minimum, walkways shall connect focal points of pedestrian activity such as, but not limited to, street crossings, building and store entry points, and shall feature adjoining landscaped areas that include trees, shrubs, benches, flower beds and ground cover.
  - c) Sidewalks, no less than eight feet in width, shall be provided along the full length of the building along any facade featuring a customer entrance, and along any facade abutting public parking areas. Such sidewalks shall be located at least six feet from the facade of the building to provide planting facade.
  - d) Internal pedestrian walkways provided in conformance with part b) above shall provide weather protection features such as awnings or arcades within thirty feet (30') of all customer entrances.
  - e) All internal pedestrian walkways shall be distinguished from driving surfaces through the use of durable, low maintenance surface materials such as pavers, bricks or scored concrete to enhance pedestrian safety and comfort, as well as the attractiveness of the walkways.
- 11) Trash removal, compaction, service vehicles, deliveries, parking lot sweepers, etc. shall not be permitted between the hours of 12:00 midnight and 6:00 a.m. with the exception of snow removal.

#### D. Signage

- 1) All wall signage shall be reverse channel letter neon or externally lit individual letter signs. All other signage requirements shall be in conformance with the Fishers Sign Code.

#### E. Lighting

- 1) Lighting shall be limited to 0.5-foot candles at the property line. This requirement is exempt when adjacent to public right-of-way.
- 2) There shall be no greater than a 20 to 1 ratio of lighting with a ten-foot candle maximum on site.
- 3) Light poles shall be limited to thirty feet (30') in height.
- 4) Light fixtures shall be decorative along the entrance drives and along public rights-of-way approved as part of the overall architecture, but overall site illumination into the atmosphere shall be restricted through the use of shields on the fixture to include a horizontal lamp and no more than a 180-degree angle of light.

#### F. Commitments

- 1) The Developer shall be subject to the Commitments, attached hereto as "Exhibit C", which shall include the following:
  - a) Prior to the formal annexation of the Real Estate into the Town of Fishers, the Developer agrees that any home constructed within Briarwood at Fishers shall voluntarily contribute to the Town of Fishers, at the time that a building permit is issued, the then standard impact fees normally assessed by the Town of Fishers for the residential building.
  - b) The Developer agrees not to remonstrate against annexation of the Real Estate by the Town of Fishers;
    - (1) The Developer agrees to include a Waiver of Remonstrance provision in the covenants and restrictions for the Real Estate, which will be recorded and provided to the purchaser of each lot with the Real Estate;
    - (2) The Developer agrees to include a Waiver of Remonstrance provision on the recorded Subdivision Plat. *In consideration of Town sewer treatment serv*
    - (3) The Developer agrees to include a Waiver of Remonstrance in the PUD Ordinance. *In consideration of Town sewerage treatment service.*

### SECTION 6. OTHER REQUIREMENTS

The Real Estate shall comply with all Town Ordinances (e.g., Zoning Code, Landscaping Ordinance, Parking Ordinance, Subdivision Control Ordinance) in effect May 1, 2006, as applicable, except as provided or modified by this PUD Ordinance. The underlying zoning district shall be C2 Commercial.

**SECTION 7. PROCEDURES.**

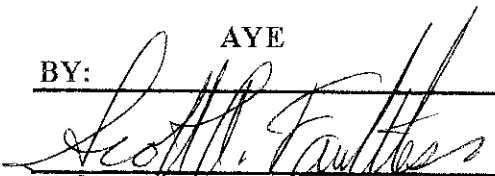
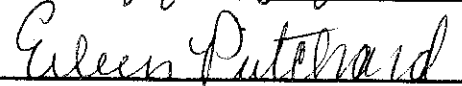
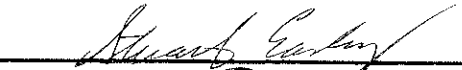


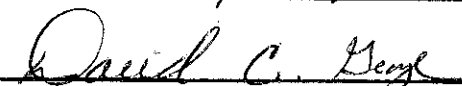
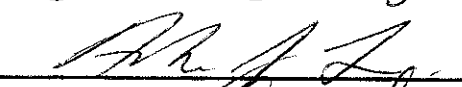
The adoption of this ordinance and the subsequent consideration of any detailed and final development Plan shall be consistent and pursuant to the provisions of the Planned Unit Development process as set forth in Section 151.072 Planned Unit Development District.


**SECTION 8. APPROVAL**

This ordinance shall be in full force and effect from and after its passage by the Town Council and after the occurrence of all other actions required by law. 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 Oct, 2006.

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

BY:	AYE	NAY
	Scott A. Faultless, President	<hr/>
	Eileen N. Pritchard, Vice President	<hr/>
	Stuart F. Easley, Member	<hr/>
	Daniel E. Henke, Member	<hr/>
	Charles P. White, Member	<hr/>
	David George, Member	<hr/>
	Arthur J. Levine, Member	<hr/>

ATTEST:   
Linda Gaye Cordell, Clerk/Treasurer,  
The Town of Fishers, Indiana

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

Prepared by: Steven D. Hardin, Esq., Baker & Daniels LLP,  
970 Logan Street, Noblesville, IN 46060

EXHIBIT "A"

LAND DESCRIPTION  
CYNTHIANNE/SR238 PLANNED DEVELOPMENT

*(Cythianne Road at 238 LLP parcel)*

A part of the Southwest Quarter of the Northwest Quarter of Section 32, Township 18 North, Range 6 East, Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of said Northwest Quarter; thence South 00 degrees 01 minutes 15 seconds West along the west line of said Quarter Section a distance of 941.12 feet to the Point of Beginning; thence North 89 degrees 37 minutes 07 seconds East 570.02 feet; thence South 00 degrees 01 minutes 15 seconds West 394.75 feet to the south line of said Quarter Section; thence South 89 degrees 35 minutes 51 seconds West along said south line a distance of 191.18 feet to the centerline of State Road 238; thence North 55 degrees 58 minutes 12 seconds West along said centerline a distance of 456.99 feet to the west line of said Quarter Section; thence North 00 degrees 01 minutes 15 seconds East along said west line a distance of 136.55 feet to the Point of Beginning. Containing 176,121 square feet or 4.043 acres, more or less.

ALSO INCLUDING:

*(Littleton Partners LLC parcel)*

Part of the Southeast Quarter of the Northeast Quarter of Section 31, Township 18 North, Range 3 East in Hamilton County, Indiana, more particularly described as follows: Beginning at the Northeast corner of the Southeast Quarter of the said Northeast Quarter Section, which corner is collinear and equidistant from the Northeast and Southeast corners of said Quarter Section; thence South 00 degrees 01 minutes 15 seconds West (assumed bearing) along the East line of said Quarter Section 792.78 feet to the Northeast corner of land described in Instrument Number 9809816383 in the Office of the Recorder of Hamilton County, Indiana; thence North 89 degrees 58 minutes 45 seconds West along the North line of said land 416.00 feet to the centerline of State Road 238; thence North 55 degrees 33 minutes 51 seconds West along said centerline 495.77 feet to a point which lies 825.00 feet Westerly, measured parallel with the North line of said Quarter Quarter Section, from the aforesaid East line; thence North 00 degrees 01 minutes 15 seconds East, parallel with said East line, 510.85 feet to the North line of said Quarter Quarter Section; thence North 89 degrees 54 minutes 01 seconds East along said North line 825.00 feet to the point of beginning, containing 13.68 acres, more or less.

EXCEPT:

A part of the Southeast Quarter of the Northeast Quarter of Section 31, Township 18 North, Range 6 East, Hamilton County, Indiana, and being that part of the grantor's land lying within the right-of-way lines depicted on the attached Right-of-Way Parcel Plat marked "Exhibit B", described as follows: Commencing at the Northeast Corner of the Southeast Quarter of said Northeast Quarter Section, which corner is collinear and equidistant from the Northeast and Southeast corners of said Quarter Section, thence South 0 degrees 01 minutes 15 seconds West (assumed bearing) along the East line of said Quarter Section 792.78 feet to the Northeast corner of land described in Instrument Number 9809816383 in the Office of the Recorder of Hamilton County, Indiana; thence North 89 degrees 58 minutes 45 seconds West along the North line of said land 416.00 feet to the centerline of State Road 238 (the foregoing portion of this description following the words "Commencing at" is taken from Instrument Number 200000045667) which point is on a southwest corner of the grantor's land and the point of beginning of this description: thence North 55 degrees 48 minutes 43 seconds West 138.712 meters (455.09 feet)

along said centerline to the intersection with the west line of the grantor's land; thence North 0 degrees 17 minutes 4 seconds West 18.768 meters (61.58 feet) along said west line to the point designated "301" on said plat; thence South 56 degrees 5 minutes 1 seconds East 173.325 meters (568.65 feet) to the intersection with the south line of the grantor's land; thence North 90 degrees 0 minutes 0 seconds West 28.999 meters (95.14 feet) along said south line to the point of beginning and containing 0.2494 hectares (0.612 acres) more or less, inclusive of the present existing right-of-way which contains 0.2475 hectares (0.122 acres), more or less, for a net additional taking of 0.1981 hectares (0.490 acres), more or less.

ALSO INCLUDING:

*(Parker Family parcel)*

A part of the Northeast Quarter of Section 31, Township 18 North, Range 6 East, in Hamilton County, Indiana described as follows: Begin in the center of State Road No. 238, 838.00 feet West and 835.0 feet North of the Southeast corner of the Northeast Quarter of Section 31, Township 18 North, Range 6 East; thence North parallel with the East line of said Quarter Sections 838.0 feet to corner post; thence West 264.0 feet to corner post thence South parallel with the East line of said quarter 658.0 feet to the center of State Road No. 238; thence Southeasterly on and along center of said State Road to place of beginning, containing 4.53 acres, more or less.

ALSO INCLUDING:

*(Lahr parcel)*

Beginning at an iron pin on Section line Two Hundred Eighty (280) feet (258.00 feet, + measured) North of a stone at the Southeast corner of the Northeast Quarter of Section Thirty-One (31), Township Eighteen (18) North, Range Six (6) East, in Hamilton County, Indiana, running thence North on Section line Two Hundred Eighty-Five (285) feet to an iron pin; thence West at right angle to said Section line Four Hundred Sixteen (416) feet to an iron pin; thence Southeast Five Hundred Four and Twenty-Six Hundredths (504.26) feet to the Place of Beginning. Containing 1.36 acres, more or less, in Hamilton County, Indiana.

ALSO INCLUDING:

*(Lakin parcels)*

Part of the Northeast Quarter of the Northeast Quarter of Section 31, Township 18 North, Range 6 East, described as follows: Begin 60 rods South of the Northeast corner of the Northeast Quarter of said Section, Township and Range and run West 50 rods; thence South 20 rods; thence East 50 rods; thence North 20 rods to the place of beginning, containing 6.25 acres. EXCEPT: Beginning 60 rods South of the Northeast corner of the Northeast Quarter of Section 31, Township 18 North, Range 6 East, running thence South 256 feet; thence West 340 feet; thence North 256 feet; thence East 340 feet to the place of beginning, containing 1.98 acres, more or less. Containing after said exception 4.27 acres, more or less.

Beginning Sixty (60) rods South of the Northeast corner of the Northeast Quarter of Section Thirty-one (31), Township Eighteen (18) North, Range Six (6) East, running thence South Two hundred fifty-six feet (256'); thence West Three hundred forty feet (340'); thence North Two hundred fifty-six feet (256'); thence East Three hundred forty feet (340') to the place of beginning. Containing 1.98 acres, more or less in Hamilton County, Indiana.



# EXHIBIT B



## "FALL CREEK MARKETPLACE" CONCEPT PLAN

SCALE:

N.T.S.

Date:

04-17-06

SHEET No.:

1

**EMHT**  
Eng'rs, Arch'cts, Planners & Interiors  
Engineers • Surveyors • Planners • Scientists  
7406 North Shadwood Avenue  
Suite 200 Indianapolis, IN 46226  
Phone: 317.552.0000 Fax: 317.552.0000  
E-mail: info@emht.com Website: www.emht.com

**COMMITMENTS CONCERNING THE USE  
AND DEVELOPMENT OF REAL ESTATE**

JC Partners, LLC and Littleton Partners, LLC (the "Developers") make the following commitments to the Fishers Town Council (the "Town") regarding the use and development of the following described real estate (the "Real Estate") located in Hamilton County, Indiana:

**Section 1. Description of Real Estate:**

See attached Exhibit "A".

**Section 2. Ordinance No.: 050106A**

**Section 3. Statement of Commitments:**

- A. Prior to the formal annexation of the Real Estate into the Town of Fishers, any structure constructed within the Real Estate shall voluntarily contribute to the Town of Fishers, at the time that a building permit is issued, the then standard impact fees normally assessed by the Town of Fishers for the applicable land use.
- B. The Developers agree not to remonstrate against annexation of the Real Estate by the Town of Fishers;
  - 1) The Developers agree to include a Waiver of Remonstrance provision in the covenants and restrictions for the Real Estate, which will be recorded and provided to the purchaser of each lot with the Real Estate;
  - 2) The Developers agree to include a Waiver of Remonstrance provision on the recorded Subdivision Plat.
  - 3) The Developer agrees to waive all rights to remonstrate against annexation of the Real Estate by the Town. *in consideration of Town sewage treatment service.*
- C. The Developers agree to move the schoolhouse structure currently located on the northwest corner of Cyntheanne Road and State Road 238 within one (1) mile of its current location, and at their expense, prior to its demolition if the Town, the school district, or another entity approved by the Town requests the move and provides a site for the structure prior to its demolition.
- D. The Developers agree to donate right-of-way to the Town in the future in an amount that is reasonable and consistent with prior Town requests in the event the Town needs additional right-of-way from the Real Estate.

**Section 4. Binding Effect**

- A. These commitments are binding upon the Developer, each subsequent owner of the Real Estate and each other person acquiring an interest in the Real Estate, unless modified or terminated.
- B. These commitments may be modified or terminated only by a decision of the Fishers Town Council following a public hearing held by the Fishers Plan Commission wherein notice has been given as provided by the Plan Commission's rules.

**Section 5.     Effective Date**

The commitments contained herein shall be effective upon adoption of an ordinance by the Town Council of Fishers, Indiana assigning the requested "Fall Creek Marketplace" PUD-C zoning classification to the real estate identified in Ordinance No. 050106A.

**Section 6.     Recording**

The undersigned hereby authorizes the Town to record these commitments in the Office of the Recorder of Hamilton County, Indiana.

**Section 7.     Enforcement**

These commitments may be enforced by the Plan Commission and by the Town Council of Fishers, Indiana.

IN WITNESS WHEREOF, \_\_\_\_\_, an Indiana limited liability company, has caused this commitment to be executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
By: \_\_\_\_\_

STATE OF INDIANA     )  
  ) SS:  
COUNTY OF HAMILTON )

Before me the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, of \_\_\_\_\_, who having been duly sworn acknowledged the execution of the foregoing Commitments.

Witness my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

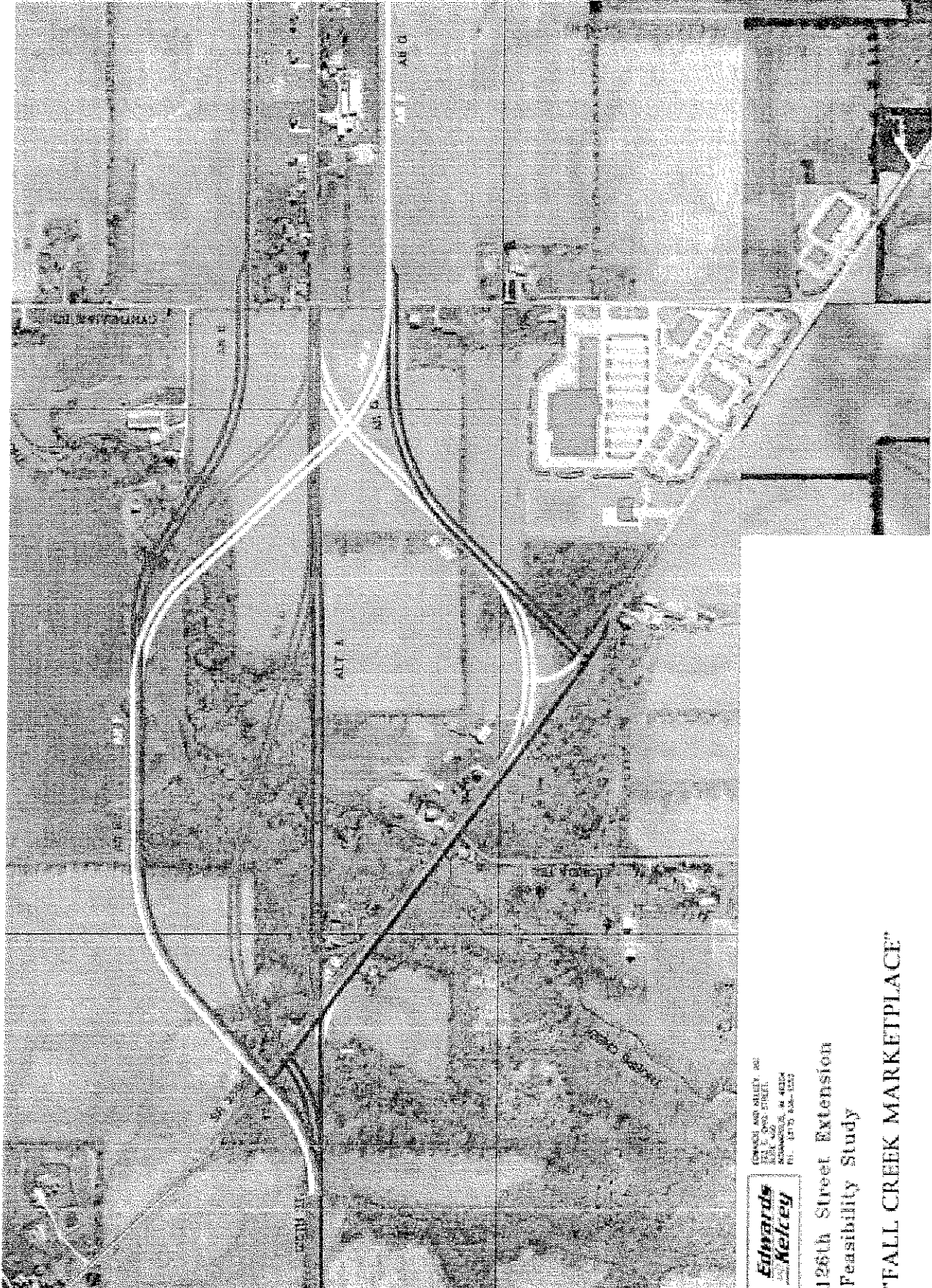
My Commission Expires:

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

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

Prepared by: Steven D. Hardin, Attorney at Law, Baker & Daniels, LLP  
970 Logan Street, Noblesville, Indiana 46060, (317) 569-9600.

# 126TH STREET EXTENSION EXHIBIT



CONNOR AND ASSOCIATES, INC.  
121 E. 120th STREET  
SUITE 200  
MINNEAPOLIS, MN 55425  
TEL: 612-338-1234

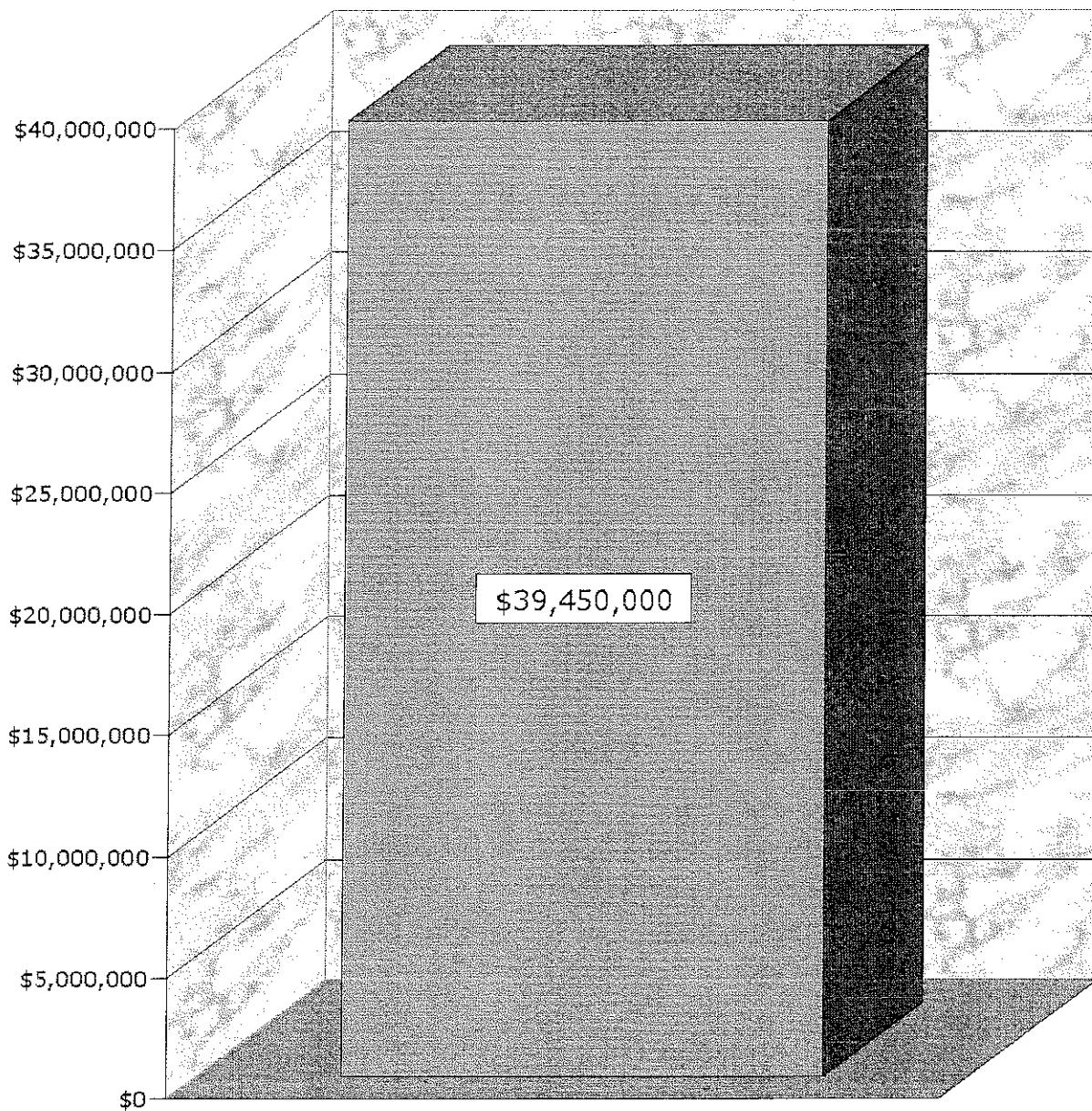


126th Street Extension  
Feasibility Study

"FALL CREEK MARKETPLACE"

# "FALL CREEK MARKETPLACE"

## ASSESSED VALUE EXHIBIT



*\*The assessed value for this exhibit was calculated based on an estimated 10,000 square feet per acre (not including proposed fire station site) and an estimated value of \$150 per square foot.*

# "FALL CREEK MARKETPLACE"

## LIST OF PERMITTED USES

### **C1 Commercial District**

- Office or Office complex
  - Professional offices
  - Bank, savings and loan, financial services
  - Real estate, insurance
  - Clinic, medical or dental
  - Nursing and convalescent homes
  - Medical or dental laboratories
  - Utility business office
  - Business offices related to local services
  - Mortuaries
  
- Public and semi-public
  - Libraries
  - Community centers
  - Governmental offices and buildings, limited to offices or clerical use only
  - Fire stations
  - Civic clubs or recreational facilities
  - Parking areas for employees and public use
  
- Schools, private and professional
  - Dance
  - Music
  - Business
  - Clerical
  - Kindergarten, day nursery
  - Arts and crafts
  
- Related accessory structures and uses

### **C2 Commercial District**

- Shops and markets
  - Bakery, retail outlet only
  - Barber shop
  - Beauty shop
  - Dairy—ice cream shop
  - Drug store
  - Meat market
  - Restaurant—(sit down may also have a liquor license under certain circumstances)
  - Conventional table service
  - Cafeteria
  - Delicatessen
  - Grocery
  
- Service shops
  - Apparel store
  - Appliance store
  - Appliance repair
  - Shoe repair shop
  - Flower and garden shop
  - Gift shop
  - Jewelry shop
  - Dry cleaners, retail outlet only
  - Self service laundry and cleaners
  - Pet shop
  - Post office
  - Record shop
  - Stationery store
  - Variety store
  - Millinery shop
  - Hardware and paint store
  - Tailor shop
  - Utilities office, retail service only
  - Photographic studios
  - Reducing or health salons
  
- Neighborhood shopping center (not to exceed 90,000 sq. ft. of gross floor area)
  
- Auto service stations
  
- Related accessory structures and uses

## **COMMITMENTS CONCERNING THE USE AND DEVELOPMENT OF REAL ESTATE**

JC Partners, LLC and Littleton Partners, LLC (the “Developers”) make the following commitments to the Fishers Town Council (the “Town”) regarding the use and development of the following described real estate (the “Real Estate”) located in Hamilton County, Indiana:

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**Section 2. Ordinance No.: 050106A**

**Section 3. Statement of Commitments:**

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- B. The Developers agree not to remonstrate against annexation of the Real Estate by the Town of Fishers;
  - 1) The Developers agree to include a Waiver of Remonstrance provision in the covenants and restrictions for the Real Estate, which will be recorded and provided to the purchaser of each lot with the Real Estate;
  - 2) The Developers agree to include a Waiver of Remonstrance provision on the recorded Subdivision Plat.
  - 3) The Developer agrees to waive all rights to remonstrate against annexation of the Real Estate by the Town.
- C. The Developers agree to move the schoolhouse structure currently located on the northwest corner of Cyntheanne Road and State Road 238 within one (1) mile of its current location, and at their expense, prior to its demolition if the Town, the school district, or another entity approved by the Town requests the move and provides a site for the structure prior to its demolition.
- D. The Developers agree to donate right-of-way to the Town in the future in an amount that is reasonable and consistent with prior Town requests in the event the Town needs additional right-of-way from the Real Estate.

**Section 4. Binding Effect**

- A. These commitments are binding upon the Developer, each subsequent owner of the Real Estate and each other person acquiring an interest in the Real Estate, unless modified or terminated.
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The commitments contained herein shall be effective upon adoption of an ordinance by the Town Council of Fishers, Indiana assigning the requested "Fall Creek Marketplace" PUD-C zoning classification to the real estate identified in Ordinance No. 050106A.

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**Section 7.    Enforcement**

These commitments may be enforced by the Plan Commission and by the Town Council of Fishers, Indiana.

IN WITNESS WHEREOF, \_\_\_\_\_, an Indiana limited liability company, has caused this commitment to be executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
By: \_\_\_\_\_

STATE OF INDIANA        )  
  ) SS:  
COUNTY OF HAMILTON )

Before me the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, of \_\_\_\_\_, who having been duly sworn acknowledged the execution of the foregoing Commitments.

Witness my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

My Commission Expires:

\_\_\_\_\_  
Notary Public  
  
Printed \_\_\_\_\_  
Residing in \_\_\_\_\_ County

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