

Year

2013

v.09.20.13

## Fishers Marketplace

An amendment to the Fishers Marketplace  
Planned Unit Development District

Town of Fishers  
Planned Development  
Ordinance

No. \_\_\_\_\_

## 1.01 Fishers Marketplace, Declaration, Purpose and Intent, and Permitted Uses

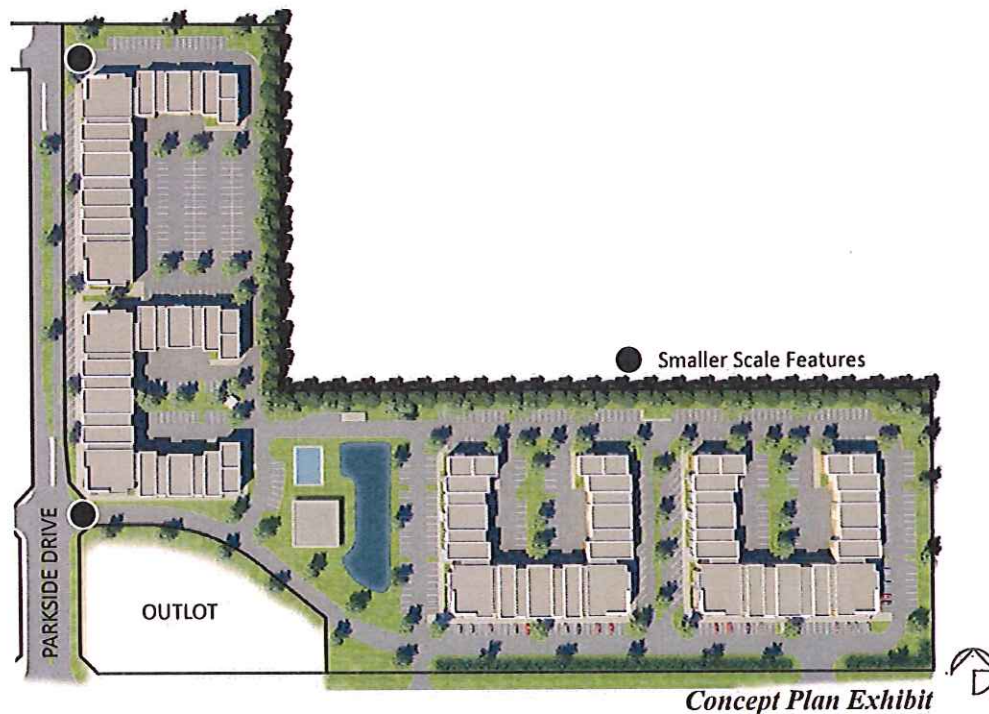
Declaration	Purpose and Intent	Permitted Uses
<p><b>Ordinance No.</b> _____ (this "Ordinance") <b>Adopted:</b> _____</p> <p>The text of the Fishers Marketplace Planned Unit Development District (the "District") Ordinance No. 090704B, as amended by Ordinances No. 070506 and 081808D, (collectively, the "PUD Ordinance") and of the Unified Development Ordinance of the Town of Fishers, Indiana, Ordinance No. 090605A, and the OFFICIAL ZONING MAP, TOWN OF FISHERS, INDIANA, dated October 16, 2006, which accompanies and is a part of the Zoning Code of the Town of Fishers, Indiana, as amended (the "UDO"), are hereby amended as follows:</p> <p>This Ordinance shall apply to the real estate described in Section 1.10 of this Ordinance (the "Real Estate").</p> <p>Certain provisions of this Ordinance (see Sections 1.01(Excluded Uses), 1.04(Z), 1.06(B) and (C) and 1.07 of this Ordinance) may also apply to the real estate described in Section 1.11 of this Ordinance (the "South Real Estate"), which includes the Real Estate.</p> <p>Development of the Real Estate shall be governed entirely by (i) the provisions of this Ordinance, (ii) those provisions of the UDO specifically referenced in this Ordinance, and (iii) those provisions of the PUD Ordinance specifically referenced in this Ordinance. All provisions of the UDO or the PUD Ordinance that conflict with the provisions of this Ordinance are hereby rescinded as applied to the Real Estate and shall be superseded by the terms of this Ordinance.</p> <p>Except with respect to the South Real Estate, the text of the PUD Ordinance shall remain in effect with the adoption of this Ordinance.</p> <p>This Ordinance replaces and supersedes Ordinance No. 032111B, adopted May 16, 2011 (the "2011 Amendment Ordinance"), except for Section 1.07: Commitments, which section remains in effect.</p>	<p>The purpose of this PUD is to encourage improved design in the development of land by promoting the following objectives:</p> <ul style="list-style-type: none"> <li>• Provide for the development of diverse residential neighborhoods;</li> <li>• Greater flexibility in applying the ordinances to the development of the Real Estate;</li> <li>• Innovative approach to meet the demands of the residential market;</li> <li>• The recognition of the interdependency of various markets;</li> <li>• Efficient use of land resulting in more cost effective networks of utilities, streets and other facilities; and</li> <li>• Coordination of architectural styles, building forms and relationships, graphics and other private improvements.</li> </ul>	<p><b>Permitted Uses:</b></p> <ul style="list-style-type: none"> <li>• All uses described in <i>Article 02.017 M2 Multifamily Residential District</i></li> </ul> <p><b>Excluded Uses:</b></p> <ul style="list-style-type: none"> <li>• automobile sales shall be prohibited on the South Real Estate</li> <li>• hotel/motel, veterinary clinic, car wash, and kennel shall be prohibited on the property identified as "outlot" on the Concept Plan</li> </ul>

## 1.02 Applicability

- A. If the Real Estate is developed to include the Permitted Uses, as set forth in Section 1.01 of this Ordinance, then only the provisions of this Ordinance and those provisions of the PUD Ordinance specifically referenced by this Ordinance shall apply and shall replace and supersede in its entirety the standards of the PUD Ordinance otherwise applicable to the Real Estate. If the Real Estate is otherwise developed with uses permitted by the PUD Ordinance, then the provisions of the PUD Ordinance, as amended, shall apply to the development of the Real Estate.
- B. The standards of the UDO applicable to the **M2** *Multifamily Residential District* shall apply to the development of the Real Estate, except as modified, revised, or expressly made inapplicable by this PUD District Ordinance (this "Ordinance"). "Article" cross-references of this Ordinance shall hereafter refer to the *Article* section as specified and referenced in the UDO. Capitalized terms that are not otherwise defined herein shall have the meaning ascribed to them in the UDO. Pursuant to *Article 04.002(F): Amendments to the Unified Development Ordinance*, an amendment to the UDO shall apply to this Ordinance unless this Ordinance has specified an alternative development or design standard.

## 1.03 Concept Plan

- A. The Concept Plan is hereby incorporated. Per *Article 09.017(A)(2)(a): Planned Unit Development District; General; Purpose & Intent*, the Concept Plan provides the Plan Commission and Town Council with a general vision for the development of the Real Estate.



## 1.04 Development Standards

- A. Cross References: The regulations of *Article 05: Development Standards* shall apply except as modified by this Ordinance.
- B. General Regulations: *Article 02.018: M2 Multifamily Residential District Development Standards* shall apply except as modified below:
  - (1) Maximum Number of Dwelling Units: 306
  - (2) Minimum Project Area shall not apply; rather the project area shall be the Real Estate.

- (3) Minimum Setbacks shall apply except as modified below:
    - Minimum Front Setback: 50 feet for 131st Street  
10 feet for Parkside Drive
    - Minimum Side Setback: 20 feet
    - Minimum Rear Setback: 20 feet
    - Minimum Building Separation: 20 feet
  - (4) Maximum Impervious Surface Coverage: 85% of Lot Area
  - (5) Minimum Living Unit Area
    - Studio: 640 square feet
    - One-bedroom: 675 square feet
    - Two-bedroom: 840 square feet
    - Three-bedroom: 1,100 square feet
  - (6) Maximum Structure Height:
    - Primary Structure: 42 feet
- C. Accessory Structure Standards (AS): shall apply.
- D. Architectural Design Standards (AD): shall apply except as modified below:
- (1) *Article 05.013 AD-02(A)(1): Architectural Design; Multifamily Residential; Facade; Detailing* shall apply. In addition, the building corners of a front facade shall include enhanced architecture, which shall be consistent for all buildings. Furthermore, architectural design elements to address the vertical massing (e.g., to focus the eye up and down instead of horizontal) shall be incorporated, as illustrated by the Illustrative Architectural Exhibit below, on all front and side elevations visible from the public right-of-way.
  - (2) *Article 05.013 AD-02(A)(2): Architectural Design; Multifamily Residential; Facade; Materials* shall apply; however, shall be further restricted to: (i) prohibit aluminum and vinyl siding; (ii) require that a minimum of fifty percent (50%) of any facade (exclusive of doors, windows, garage doors, other openings and interior courtyard facades) shall be brick or stone; and (iii) E.I.F.S. products shall only be used a minimum of eight (8) feet above grade, unless otherwise approved by the PUD Committee as appropriate for the proposed architectural style.
  - (3) *Article 05.013 AD-02(C): Architectural Design; Multifamily Residential; Roof* shall only apply to buildings with pitched roofs. Flat roofs with parapets and cornices shall be permitted. Elements of the roofline treatment (e.g., trim and/or cornice details, roof articulation) that are used on the front elevation shall also be incorporated along the side and rear elevations, exclusive of interior courtyards, to create a consistently detailed roofline around the building.
  - (4) *Article 05.013 AD-02(D): Architectural Design; Multifamily Residential; Automobile Storage; Garage Access* shall be modified to require that all attached garages shall provide access internally from the garage into the building (e.g., directly into a common area or an individual unit).
  - (5) *Article 05.013 AD-02(C)(4) and (E): Architectural Design; Multifamily Residential; Roof; Facade and Roof Articulation and Windows* shall apply. All front and side facades visible from the public right-of-way should incorporate windows, balconies, cornices and roof articulation. These elements, as would otherwise qualify, shall qualify as architectural features eligible towards the requirement of *Article 05.013 AD-02(F): Architectural Design; Multifamily Residential; Architectural Features*.
  - (6) The Illustrative Architectural Exhibit is hereby incorporated. The Real Estate's buildings shall be substantially similar in quality and character as shown in the Illustrative Architectural Exhibit.
- E. Density & Intensity Standards (DI): shall apply.
- F. Entrance & Driveway Standards (ED): shall apply.
- G. Environmental Standards (EN): shall apply.
- H. Fence & Wall Standards (FW): shall apply.
- I. Floodplain Standards (FP): shall apply.
- J. Floor Area Standards (FA): shall apply.
- K. Height Standards (HT): shall apply.
- L. Home Occupation Standards (HO): shall apply.



*Illustrative Architectural Exhibit*

M. Landscaping Standards (LA): shall apply except as modified below:

- (1) *Article 05.038 LA-01(A): Landscaping Standards; Placement* shall only apply to buffer yard landscaping.
- (2) *Article 05.039 LA-02(D): Landscaping Standards; Street Trees; Arterial, Collector, and Local Streets* shall apply. If the existing gas line easement would otherwise prohibit the required landscaping, then in coordination with the Development Department, the street trees may be planted elsewhere on the Real Estate or within the 131st Street right-of-way.
- (3) *Article 05.041 LA-04(B)(2): Landscaping Standards; Multifamily Lot and Foundation Plantings* shall be modified to provide that at least one (1) shrub or ornamental tree shall be planted for every twelve (12) lineal feet of building circumference exclusive of windows, doors, garages, and loading dock openings. Foundation plantings may be evenly distributed or clustered in planters or in the ground.
- (4) *Article 05.043 LA-06(A): Landscaping Standards; Parking Lot Plantings; Perimeter Landscaping* shall apply. If the existing gas line easement would otherwise prohibit the required landscaping, then in coordination with the Development Department, the landscaping may be planted elsewhere on the Real Estate or within the 131st Street right-of-way.
- (5) *Article 05.044 LA-07(E): Landscaping Standards; Buffer Yards; Small-sized Bufferyard* shall apply to the Real Estate's north and east property lines (except abutting the legal drain and where any cross-access may occur for the property to the east of the Real Estate) and shall be modified as follows:
  - (i) *Article 05.044 LA-07(E)(1):* Minimum twenty-foot (20') wide buffer yard.
  - (ii) *Article 05.044 LA-07(E)(2):* Minimum number of trees shall be modified to require a minimum of:
    - (i) two (2) staggered rows of spruce evergreen trees, a minimum of seven (7) feet tall at planting, each row planted twenty (20) feet on center; and
    - (ii) a minimum of two (2) deciduous or ornamental trees per one hundred (100) lineal feet. The deciduous/ornamental trees and shrubs may be grouped or clustered throughout the buffer (e.g., near corners or common areas) to accent the buffer and implement best management practices for the longevity of the plantings.
  - (iii) *Article 05.044 LA-07(E)(6):* Undulating mound with a minimum height of two (2) feet shall be installed for a distance equivalent to sixty percent (60%) of the distance contiguous to the conflicting zoning district or use.

N. Lighting Standards (LT): shall apply except as modified below:

- (1) *Article 05.046 LT-01(A): Lighting Standards; General; Uniformity* shall apply to the Real Estate, which requires all lighting fixtures and poles within a single development to be consistent in style, color, size, height and design and compatible with the architecture of the building. In addition, Section 1.04(N) (3) below, shall apply.
- (2) *Article 05.046 LT-01(B): Lighting Standards; General; Cutoff* shall apply; however, all freestanding or wall mounted outdoor light fixtures used to illuminate a surface parking area or service area shall utilize full cutoff fixtures.

- (3) *Article 05.048 LT-03(C): Lighting Standards; Multifamily, Commercial & Industrial; Decorative Light Fixtures* shall apply, which requires decorative light fixtures to be provided along the entrance drives and public rights-of-way, or buildings and pedestrian pathways. As such and for consistency with the PUD Ordinance's standards for the District:
- (i) Decorative fixtures and architecturally enhanced and human-scaled poles shall be incorporated along Parkside Drive and at the Real Estate's 131st Street entrances ("Street Lights"). The Real Estate's Street Lights shall not exceed twenty (20) feet in height and shall be substantially similar in quality and character as the Illustrative Street Light Design Exhibit.
  - (ii) If used, outdoor lighting fixtures that illuminate any pedestrian way or landscape feature internal to the Real Estate shall be of a bollard style not exceeding four (4) feet in height above grade.

*Illustrative Street Light Design Exhibit*



*Decorative Fixtures*

*Architecturally Enhanced & Human-Scaled Poles*

- O. Loading Standards (LD): shall apply.
- P. Lot Standards (LO): shall apply.
- Q. Outdoor Storage Standards (OS): shall apply.
- R. Parking Standards (PK): shall apply except as modified below:
  - (1) *Article 05.063 PK-01(M)(1): Parking Standards; General; Bicycle Parking; Minimum Number of Spaces* shall be modified to provide that no more than five (5) bicycle parking spaces shall be required for any primary structure.
  - (2) *Article 05.065 PK-03(A): Parking Standards; Multifamily Residential; Off-Street Parking Spaces* shall be modified to require a minimum number of parking spaces, which includes visitor parking spaces, as set forth below. At least ten percent (10%) of the parking spaces shall be covered. Parking spaces adjacent to covered spaces shall qualify toward the minimum parking space count requirement.
    - (i) One-bedroom: 1.5 space per dwelling unit
    - (ii) Two-bedroom: 2.0 spaces per dwelling unit
    - (iii) Three-bedroom: 2.5 spaces per dwelling unit
  - (3) *Article 05.065 PK-03(C)(1): Parking Standards; Multifamily Residential; Visitor Parking Spaces* shall not apply. See Section 1.04(R)(2) of this Ordinance. Visitor parking shall be spread evenly throughout the Real Estate.
  - (4) *Article 05.063 PK-01(H)(4): Parking Standards; General; Parking Lot Layout* shall be added to provided that parking areas should primarily be sited to the rear or side of the Real Estate rather than along street frontages. As a result, there shall be no more than a single row of parking (either on-street or off-street) in the Established Front Yard. On-street parking (angled, parallel or perpendicular) shall be permitted and encouraged along Parkside Drive and the Real Estate's internal drives.
  - (5) Cross-Access Agreement. Subject to the Real Estate's Owner and the Owner of the adjacent property reaching a satisfactory cost sharing agreement, a cross-access easement shall be established on the Real Estate to provide vehicular access to the Real Estate's eastern most entrance on 131st Street for the property to the east of the Real Estate.

- S. Pedestrian Accessibility Standards (PA): shall apply.
- T. Performance Standards (PF): shall apply.
- U. Property Identification Standards (PI): shall apply.
- V. Public Improvement Standards (PV): shall apply.
- W. Setback Standards (SB): shall apply.
- X. Sewer & Water Standards (SW): shall apply.
- Y. Sexually Oriented Business Standards (SX): shall apply.
- Z. Sign Standards (SG): shall not apply; rather, the sign standards in Section 12 of the PUD Ordinance shall apply. In lieu of any permitted wall signs for the Real Estate (as set forth in Section 12(C) of the PUD Ordinance), one (1) ground sign shall be permitted at the Real Estate's vehicular entrance on Parkside Drive and shall be subject to the standards set forth in § 158.40(B) of the Sign Code, as amended. All of the South Real Estate's freestanding signs shall be constructed with a similar or compatible design and materials.
- AA. Structure Quantity Standards (SQ): shall apply.
- BB. Telecommunication Facility Standards (TC): shall apply.
- CC. Temporary Use/Structure Standards (TU): shall apply.
- DD. Use-specific Standards (US): shall apply.
- EE. Vision Clearance Standards (VC): shall apply.

#### 1.05 Design Standards

- A. Cross References: The regulations of *Article 07: Design Standards* applicable to a *Planned Unit Development (PUD)* shall apply except as modified by this Ordinance:
- B. Access Road Standards (AC): shall apply.
- C. Alley Standards (AL): shall apply.
- D. Anti-monotony Standards (AM): shall apply.
- E. Common Area Standards (CA): shall apply.
- F. Covenant Standards (CE): shall apply.
- G. Dedication of Public Improvement Standards (DD): shall apply.
- H. Density & Intensity Standards (DE): shall apply.
- I. Development Name Standards (DN): shall apply.
- J. Easement Standards (EA): shall apply.
- K. Erosion Control Standards (EC): shall apply.
- L. Floodplain Standards (FL): shall apply.
- M. Lot Establishment Standards (LT): shall apply.
- N. Mixed Use Development Standards (MU): shall apply.
- O. Monument & Marker Standards (MM): shall apply.
- P. On-street Parking Standards (OG): shall apply.
- Q. Open Space Standards (OP): shall not apply.
- R. Pedestrian Network Standards (PN): shall apply. In addition, the following shall apply:
  - (1) *Article 07.028 PN-01(C): Pedestrian Network Standards; Residential; Minimum External Pedestrian Network Standards* shall apply. The perimeter walkway located along the Real Estate's 131st Street frontage shall be a minimum six (6) foot wide asphalt path in order to accommodate the existing gas line easement and required landscaping.
  - (2) *Article 07.028 PN-01(B): Pedestrian Network Standards; Residential; Minimum Internal Pedestrian Network Standards* shall apply. In addition, the following shall apply:
    - (i) Internal Walkway. Continuous internal walkways, a minimum of six (6) feet in width, shall be provided from the perimeter walkways along 131st Street to the principal entrances of all buildings.
    - (ii) Walkway Delineation. In order to enhance pedestrian safety, all internal walkways that cross roadways or parking lots shall be distinguished from driving surfaces through the use of durable, low maintenance surface materials such as integrated colored concrete pavers, scored or textured concrete, or brick.

- S. Perimeter Landscaping Standards: shall apply except as modified below:
  - (1) *Article 07.032 PL-01(C)(3): Perimeter Landscaping Standards; Residential Development; Single- and Multi-family Residential; Perimeter Mounds* shall not apply where the perimeter landscaping area overlaps an existing gas line easement that prohibits such mounding. In addition, if the existing gas line easement would otherwise prohibit the required landscaping, then in coordination with the Development Department, the landscaping may be planted elsewhere on the Real Estate or within the 131st Street right-of-way.
- U. Storm Water Standards (SM): shall apply.
- V. Street & Right-of-way Standards (SR): shall apply.
- W. Street Lighting Standards (SL): shall apply.
- X. Street Name Standards (SN): shall apply.
- Y. Street Sign Standards (SS): shall apply.
- Z. Surety Standards (SY): shall apply.
- AA. Utility Standards (UT): shall apply.

#### 1.06 Miscellaneous Standards

- A. *Section 6(E)(2) and (3) Site Design Guidelines for Retail, Mixed-Use, Office or Recreation Areas; Signature Features* of the PUD Ordinance shall apply. Two (2) smaller scale signature features shall be required and located as generally shown on the Concept Plan.
  - (1) If the District's signature features have been approved by the PUD Committee at the time the Real Estate's Final Development Plan is approved, then the Real Estate's signature features shall be constructed upon development of the Real Estate.
  - (2) If the District's signature features have not been approved by the PUD Committee at the time the Real Estate's Final Development Plan is approved, then an area shall be set aside on the development plans to accommodate the Real Estate's signature features. The Real Estate's signature features shall then be constructed once the theme and design of the District's signature features are approved by the PUD Committee.
- B. *Section 6(B)(4) Site Design Guidelines for Retail, Mixed-Use, Office or Recreation Areas; Roadway Design; Traffic Improvements* of the PUD Ordinance shall be rescinded with respect to the South Real Estate.
- C. On December 17, 2007, the Fishers Marketplace Road Impact Fee Intent Agreement was executed between the Town of Fishers and Britton Park Development, LLC (the "Intent Agreement"). The Intent Agreement was strictly conditioned upon the completion of certain road improvements within a stated time as specified therein. The improvements were not completed within the stated time period, and thus the Intent Agreement terminated and is of no force and effect.

#### 1.07 Commitments

- A. Certain commitments, executed December 5, 2006, and recorded December 12, 2006, as Instrument No. 2006073522 in the Office of the Recorder of Hamilton County, Indiana (the "Commitments"), were made in connection with the adoption of the PUD Ordinance. The Modification to Commitments instrument, attached hereto as Exhibit A, was approved by the 2011 Amendment Ordinance and has been recorded with respect to the South Real Estate as Instrument No. 2011030033 in the Office of the Recorder of Hamilton County, Indiana.

#### 1.08 Procedures

- A. The procedures set forth in *Article 09: Processes, Permits & Fees; Planned Unit Development* shall apply.
- B. This District shall be assigned to the Town's general PUD Committee (the "Committee") for review pursuant to *Article 09.020 Planned Unit Development; Final Development Plan*.
- C. The PUD Committee shall have discretion and flexibility to consider and approve modifications pertaining to architecture, signage and landscaping design standards established or referenced by this Ordinance if the Committee determines such modifications are consistent with the intent of this Ordinance and consistent with the quality and character represented in this Ordinance.



# Fishers Marketplace

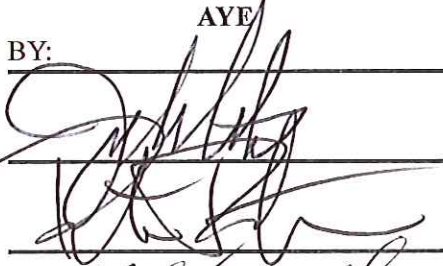


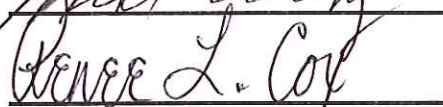
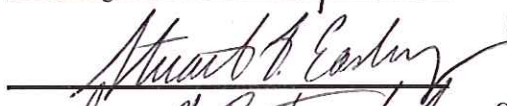
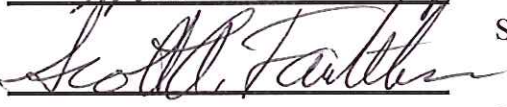

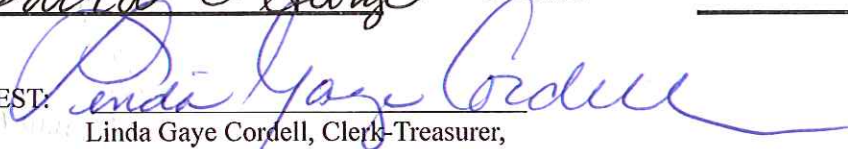
Year  
**2013**

## 1.09 Adoption

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 7<sup>th</sup> day of Oct, 2013.

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

AYE	NAY
BY: _____	_____
	_____
John W. Weingardt, President	_____
_____	_____
	_____
C. Pete Peterson, Vice President	_____
_____	_____
	_____
Michael Colby, Member	_____
_____	_____
	_____
Renee Cox, Member	_____
_____	_____
	_____
Stuart F. Easley, Member	_____
_____	_____
	_____
Scott A. Faultless, Member	_____
_____	_____
	_____
David C. George, Member	_____
_____	_____
ATTEST: 	
Linda Gaye Cordell, Clerk-Treasurer, The Town of Fishers, Indiana Ordinance No. <u>081913</u>	

Approved by: Douglas D. Church, Esq., Church, Church, Hittle and Antrim, Town Attorney  
Prepared by: Steven D. Hardin, Esq.,  
Faegre Baker Daniels, LLP, 600 East 96th Street, Suite 600,  
Indianapolis, Indiana 46240. (317) 569-9600.

## 1.10 Real Estate

A part of the Northeast Quarter of Section 30, Township 18 North, Range 5 East, in Hamilton County, Indiana, more particularly described as follows:

Commencing at the southeast corner of said Northeast Quarter; thence South 89 degrees 36 minutes 52 seconds West (basis of bearings per Instrument Number 200500021250, on file in the Office of the Recorder of Hamilton County, Indiana) along the south line of said Northeast Quarter 377.01 feet to the POINT OF BEGINNING; thence continuing along said south line South 89 degrees 36 minutes 52 seconds West 938.59 feet; thence North 00 degrees 23 minutes 06 seconds West 146.03 feet; thence North 51 degrees 42 minutes 47 seconds West 127.50 feet to the point of curve of a curve concave to the south having a radius of 299.00 feet, the radius point of which bears South 38 degrees 17 minutes 13 seconds West; thence westerly along said curve 201.81 feet to a point that bears North 00 degrees 23 minutes 08 seconds West from said radius point; thence South 89 degrees 16 minutes 28 seconds West 84.22 feet; thence North 00 degrees 23 minutes 08 seconds West 33.00 feet; thence South 89 degrees 36 minutes 52 seconds West 2.83 feet; thence North 41 degrees 52 minutes 20 seconds West 45.28 feet; thence North 05 degrees 31 minutes 42 seconds West 63.36 feet; thence North 00 degrees 23 minutes 08 seconds West 633.42 feet; thence North 89 degrees 36 minutes 52 seconds East 11.50 feet; thence North 00 degrees 23 minutes 08 seconds West 11.16 feet; thence North 89 degrees 29 minutes 44 seconds East 336.94 feet to the east line of the land granted to Britton Park Development, LLC described in said Instrument Number 200500021250, the following two (2) courses are along the east and north lines of said Britton park Development tract; 1)thence South 00 degrees 10 minutes 47 seconds West 566.10 feet; 2)thence North 89 degrees 36 minutes 54 seconds East 1,009.76 feet; thence South 00 degrees 10 minutes 47 seconds West 500.00 feet to the POINT OF BEGINNING. Containing 17.529 acres, more or less.


## 1.11 South Real Estate

A part of the Northeast Quarter of Section 30, Township 18 North, Range 5 East located in Delaware Township, Hamilton County, Indiana being bounded as follows:

BEGINNING at the southwestern corner of the 3.987 acre tract of land described in the WARRANTY DEED recorded as instrument #2007002262 by the Recorder of Hamilton County, Indiana, said point of beginning being on the South Line of the Northeast Quarter of Section 30, Township 18 North, Range 5 East and being South 89 degrees 36 minutes 52 seconds West (assumed bearing) 357.02 feet from the Southeast Corner of said Northeast Quarter; thence South 89 degrees 36 minutes 52 seconds West 1,379.32 feet along the South Line of said Northeast Quarter to the southeastern corner of the 0.502 acre tract of land described in the WARRANTY DEED recorded as instrument #20060006116 by said Recorder, the following three (3) courses are along the boundary of said 0.502 acre tract of land; 1) thence North 00 degrees 21 minutes 23 seconds West 12.68 feet; 2) thence North 63 degrees 40 minutes 12 seconds West 55.90 feet; 3) thence South 89 degrees 45 minutes 54 seconds West 39.99 feet to the southeastern corner of the 0.426 acre tract of land described in the WARRANTY DEED recorded as instrument #2008005304 by said Recorder, the following four (4) courses are along the boundary of said 0.426 acre tract of land; 1) thence North 00 degrees 14 minutes 06 seconds West 27.00 feet; 2) thence North 87 degrees 22 minutes 21 seconds West 160.20 feet; 3) thence South 89 degrees 45 minutes 54 seconds West 400.00 feet; 4) thence North 85 degrees 38 minutes 09 seconds West 127.54 feet to the eastern right-of-way line of State Road 37 per said Right-of-way Document recorded in Deed Record 149, page 441; thence North 45 degrees 38 minutes 32 seconds West 95.71 feet to the eastern boundary of State Road 37, the eastern boundary of the 0.237 acre tract of land, described in the WARRANTY DEED WITH LIMITATION OF ACCESS recorded as instrument #200600061115 by said Recorder; thence North 00 degrees 02 minutes 06 seconds West 1,002.99 feet and along said eastern boundary and the eastern boundary of the 0.059 acre tract of land described in the WARRANTY DEED WITH LIMITATION OF ACCESS recorded as instrument 2008005305 by said Recorder to the southern boundary of the 46.496 acre tract of land described in the LIMITED WARRANTY DEED recorded as instrument #2007000985 by said Recorder, said point being on a non-tangent curve concave to the south and being North 37 degrees 41 minutes 27 seconds West 385.00 feet from said radius point of said curve; thence northeasterly and easterly 249.88 feet along the southern

boundary of said 46.496 acre tract of land and along said curve to its point of tangency, said point of tangency being North 00 degrees 30 minutes 16 seconds West 385.00 feet from said radius point of said curve; thence North 89 degrees 29 minutes 44 seconds East 555.38 feet along the southern boundary of said 46.496 acre tract of land and along the southern boundary of the of the 0.383 acre tract of land described in the QUITCLAIM DEED recorded as instrument #2008003589 by said Recorder to its southeastern corner, the following four (4) courses are along the boundary of said 0.383 acre tract of land; 1) thence North 00 degrees 23 minutes 08 seconds West 55.16 feet to the point of curvature of a curve to the left (said curve hereinafter referred to as Curve #1), said point of curvature being North 89 degrees 36 minutes 52 seconds East 463.00 feet from said radius point of Curve #1; 2) thence northerly 169.94 feet along Curve #1 to its point of tangency, said point of tangency being North 68 degrees 35 minutes 04 seconds East 463.00 feet from said radius point of Curve #1; 3) thence North 21 degrees 24 minutes 56 seconds West 110.41 feet to the point of curvature of a curve to the right (said curve hereinafter referred to as Curve #2), said point of curvature being South 68 degrees 35 minutes 04 seconds West 537.00 feet from said radius point of Curve #2; 4) thence northerly 1.80 feet along said curve to the eastern boundary of said 46.496 acre tract of land, said point being South 68 degrees 46 minutes 31 seconds West 537.00 feet from said radius point; thence North 00 degrees 10 minutes 21 seconds East 239.89 feet to a southwestern corner of said 46.496 acre tract of land; thence South 89 degrees 49 minutes 13 seconds East 37.00 feet to the northwestern corner of the 3.000 acre tract of land described in the LIMITED WARRANTY DEED recorded as instrument #2008003590 by said Recorder, the next six (6) courses are along the boundary of said 3.000 acre tract of land and along the boundary of the 3.298 acre tract of land described in said instrument #2008003590; 1) thence South 00 degrees 10 minutes 21 seconds West 43.97 feet to the point of curvature of a curve to the left (said curve is concentric with Curve #2), said point of curvature being North 89 degrees 49 minutes 39 seconds West 463.00 feet from the radius point said curve; 2) thence southerly 174.45 feet along said curve to its point of tangency, said point of tangency being South 68 degrees 35 minutes 04 seconds West 463.00 feet from said radius point of said curve; 3) thence South 21 degrees 24 minutes 56 seconds East 110.41 feet to the point of curvature of a curve to the right (said curve is concentric with Curve #1), said point of curvature being North 68 degrees 35 minutes 04 seconds East 537.00 feet from said radius point of said curve; 4) thence southerly 197.10 feet along said curve to its point of tangency, said point of tangency being North 89 degrees 36 minutes 52 seconds East 537.00 feet from said radius point of said curve; 5) thence South 00 degrees 23 minutes 08 seconds East 55.01 feet; 6) thence North 89 degrees 29 minutes 44 seconds East 433.93 feet to the eastern boundary line of the 103.901 acre tract of land described in the CORPORATE LIMITED WARRANTY DEED recorded as instrument #200500021250 by said Recorder, following four (4) courses are along the boundary of said 103.901 acre tract of land; 1) thence South 00 degrees 10 minutes 47 seconds West 103.82 feet; 2) thence South 89 degrees 25 minutes 19 seconds West 95.31 feet; 3) thence South 00 degrees 10 minutes 47 seconds West 632.17 feet; 4) thence North 89 degrees 36 minutes 54 seconds East 1,029.76 feet to the northwestern corner of said 3.987 acre tract of land; thence South 00 degrees 10 minutes 47 seconds West 500.00 feet along the western boundary of said 3.987 acre tract of land to the POINT OF BEGINNING containing 45.290 acres, more or less.

# EXHIBIT A

2011030033 MISC \$20.00  
06/23/2011 09:11:29A 5 PGS  
Mary L. Clark  
HAMILTON County Recorder IN  
Recorded as Presented  


## MODIFICATIONS TO 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

On March 29, 2005, Britton Park Development, LLC executed certain Commitments Concerning the Use and Development of Real Estate in connection with the approval of the Fishers Marketplace Planned Unit Development District, Town of Fishers Ordinance No. 090704B (the "PUD Ordinance"). The Commitments were recorded April 11, 2005 as Instrument No. 200500021251 in the Office of the Recorder of Hamilton County, Indiana.

On December 5, 2006, Britton Park Development, LLC executed a Modification to Commitments Concerning the Use and Development of Real Estate in connection with the approval an amendment to the PUD Ordinance, Town of Fishers Ordinance No. 070506. The Commitments were modified and restated by the Modification to Commitments recorded December 12, 2006, as Instrument No. 2006073522 in the Office of the Recorder of Hamilton County, Indiana (the "Commitments").

The Commitments include certain provisions related to the development of the real estate described on the attached Exhibit A (the "Real Estate"). ONB Realty I, LLC now owns the Real Estate and has petitioned to modify the Commitments with respect to the Real Estate.

The Town Council held a public hearing on this petition on May 4, 2011, and, following the public hearing, the Town Council now hereby approves the following modification with connection with the approval an amendment to the PUD Ordinance, Town of Fishers Ordinance No. 032111B:

### Section 1. Modified Commitments

- 1.1 Section 4 of the Commitments shall not apply to the Real Estate.
- 1.2 Section 7 of the Commitments shall not apply to the Real Estate.
- 1.3 Section 8 of the Commitments shall not apply to the Real Estate.
- 1.4 Section 9 of the Commitments shall not apply to the Real Estate.

**Section 2. Binding Effect**

- 2.1 This Modification is binding upon ONB Realty I, LLC, each subsequent owner of the Real Estate and each other person acquiring an interest in the Real Estate, unless modified or terminated.
- 2.2 This Modification may be modified or terminated only by a decision of the Town Council after a public hearing wherein notice as provided by the rules of the Town Council has been made.
- 2.3 The Commitments, except as modified herein, shall remain in full force and effect.

**Section 3. Effective Date**

- 3.1 The Modification contained herein shall be effective immediately upon approval by the Town Council.

**Section 4. Recording**

- 4.1 The undersigned hereby authorizes the Secretary of the Town Council of the Town of Fishers to record this Modification in the Office of the Recorder of Hamilton County, Indiana.

**Section 5. Enforcement**

- 5.1 This Modification may be enforced by the Plan Commission and by the Town Council of Fishers, Indiana.

APPROVED BY THE Town Council of the Town of Fishers, Indiana, this 16<sup>th</sup> day of May, 2011.

THE TOWN COUNCIL OF FISHERS, HAMILTON COUNTY, INDIANA

AYE		NAY
BY: <u>Scott A. Faultless</u>	Scott A. Faultless, President	_____
<u>Michael Colby</u>	Michael Colby, Vice President	_____
_____	Stuart F. Easley, Member	_____
<u>Eileen N. Pritchard</u>	Eileen N. Pritchard, Member	_____
_____	Daniel E. Henke, Member	_____
<u>David C. George</u>	David George, Member	_____
_____	Arthur J. Levine, Member	<u>Arthur J. Levine</u>
ATTEST: <u>Linda Gaye Cordell</u>		
	Linda Gaye Cordell, Clerk-Treasurer, The Town of Fishers, Indiana	

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law: Steven D. Hardin.

Prepared by: Steven D. Hardin, Attorney at Law, Baker & Daniels, LLP,  
600 East 96<sup>th</sup> Street, Suite 600, Indianapolis, Indiana 46240, (317) 569-9600

**EXHIBIT A**  
**Legal Description**

A part of the Northeast Quarter of Section 30, Township 18 North, Range 5 East located in Delaware Township, Hamilton County, Indiana being bounded as follows:

BEGINNING at the southwestern corner of the 3.987 acre tract of land described in the WARRANTY DEED recorded as instrument #2007002262 by the Recorder of Hamilton County, Indiana, said point of beginning being on the South Line of the Northeast Quarter of Section 30, Township 18 North, Range 5 East and being South 89 degrees 36 minutes 52 seconds West (assumed bearing) 357.02 feet from the Southeast Corner of said Northeast Quarter; thence South 89 degrees 36 minutes 52 seconds West 1,379.32 feet along the South Line of said Northeast Quarter to the southeastern corner of the 0.502 acre tract of land described in the WARRANTY DEED recorded as instrument #20060006116 by said Recorder, the following three (3) courses are along the boundary of said 0.502 acre tract of land; 1) thence North 00 degrees 21 minutes 23 seconds West 12.68 feet; 2) thence North 63 degrees 40 minutes 12 seconds West 55.90 feet; 3) thence South 89 degrees 45 minutes 54 seconds West 39.99 feet to the southeastern corner of the 0.426 acre tract of land described in the WARRANTY DEED recorded as instrument #2008005304 by said Recorder, the following four (4) courses are along the boundary of said 0.426 acre tract of land; 1) thence North 00 degrees 14 minutes 06 seconds West 27.00 feet; 2) thence North 87 degrees 22 minutes 21 seconds West 160.20 feet; 3) thence South 89 degrees 45 minutes 54 seconds West 400.00 feet; 4) thence North 85 degrees 38 minutes 09 seconds West 127.54 feet to the eastern right-of-way line of State Road 37 per said Right-of-way Document recorded in Deed Record 149, page 441; thence North 45 degrees 38 minutes 32 seconds West 95.71 feet to the eastern boundary of State Road 37, the eastern boundary of the 0.237 acre tract of land, described in the WARRANTY DEED WITH LIMITATION OF ACCESS recorded as instrument #200600061115 by said Recorder; thence North 00 degrees 02 minutes 06 seconds West 1,002.99 feet and along said eastern boundary and the eastern boundary of the 0.059 acre tract of land described in the WARRANTY DEED WITH LIMITATION OF ACCESS recorded as instrument 2008005305 by said Recorder to the southern boundary of the 46.496 acre tract of land described in the LIMITED WARRANTY DEED recorded as instrument #2007000985 by said Recorder, said point being on a non-tangent curve concave to the south and being North 37 degrees 41 minutes 27 seconds West 385.00 feet from said radius point of said curve; thence northeasterly and easterly 249.88 feet along the southern boundary of said 46.496 acre tract of land and along said curve to its point of tangency, said point of tangency being North 00 degrees 30 minutes 16 seconds West 385.00 feet from said radius point of said curve; thence North 89 degrees 29 minutes 44 seconds East 555.38 feet along the southern boundary of said 46.496 acre tract of land and along the southern boundary of the of the 0.383 acre tract of land described in the QUITCLAIM DEED recorded as instrument #2008003589 by said Recorder to its southeastern corner, the following four (4) courses are along the boundary of said 0.383 acre tract of land; 1) thence North 00 degrees 23 minutes 08

seconds West 55.16 feet to the point of curvature of a curve to the left (said curve hereinafter referred to as Curve #1), said point of curvature being North 89 degrees 36 minutes 52 seconds East 463.00 feet from said radius point of Curve #1; 2) thence northerly 169.94 feet along Curve #1 to its point of tangency, said point of tangency being North 68 degrees 35 minutes 04 seconds East 463.00 feet from said radius point of Curve #1; 3) thence North 21 degrees 24 minutes 56 seconds West 110.41 feet to the point of curvature of a curve to the right (said curve hereinafter referred to as Curve #2), said point of curvature being South 68 degrees 35 minutes 04 seconds West 537.00 feet from said radius point of Curve #2; 4) thence northerly 1.80 feet along said curve to the eastern boundary of said 46.496 acre tract of land, said point being South 68 degrees 46 minutes 31 seconds West 537.00 feet from said radius point; thence North 00 degrees 10 minutes 21 seconds East 239.89 feet to a southwestern corner of said 46.496 acre tract of land; thence South 89 degrees 49 minutes 13 seconds East 37.00 feet to the northwestern corner of the 3.000 acre tract of land described in the LIMITED WARRANTY DEED recorded as instrument #2008003590 by said Recorder, the next six (6) courses are along the boundary of said 3.000 acre tract of land and along the boundary of the 3.298 acre tract of land described in said instrument #2008003590; 1) thence South 00 degrees 10 minutes 21 seconds West 43.97 feet to the point of curvature of a curve to the left (said curve is concentric with Curve #2), said point of curvature being North 89 degrees 49 minutes 39 seconds West 463.00 feet from the radius point said curve; 2) thence southerly 174.45 feet along said curve to its point of tangency, said point of tangency being South 68 degrees 35 minutes 04 seconds West 463.00 feet from said radius point of said curve; 3) thence South 21 degrees 24 minutes 56 seconds East 110.41 feet to the point of curvature of a curve to the right (said curve is concentric with Curve #1), said point of curvature being North 68 degrees 35 minutes 04 seconds East 537.00 feet from said radius point of said curve; 4) thence southerly 197.10 feet along said curve to its point of tangency, said point of tangency being North 89 degrees 36 minutes 52 seconds East 537.00 feet from said radius point of said curve; 5) thence South 00 degrees 23 minutes 08 seconds East 55.01 feet; 6) thence North 89 degrees 29 minutes 44 seconds East 433.93 feet to the eastern boundary line of the 103.901 acre tract of land described in the CORPORATE LIMITED WARRANTY DEED recorded as instrument #200500021250 by said Recorder, following four (4) courses are along the boundary of said 103.901 acre tract of land; 1) thence South 00 degrees 10 minutes 47 seconds West 103.82 feet; 2) thence South 89 degrees 25 minutes 19 seconds West 95.31 feet; 3) thence South 00 degrees 10 minutes 47 seconds West 632.17 feet; 4) thence North 89 degrees 36 minutes 54 seconds East 1,029.76 feet to the northwestern corner of said 3.987 acre tract of land; thence South 00 degrees 10 minutes 47 seconds West 500.00 feet along the western boundary of said 3.987 acre tract of land to the POINT OF BEGINNING containing 45.290 acres, more or less.