



ORDINANCE NO. 021516A

**AN ORDINANCE TO AMEND THE
UNIFIED DEVELOPMENT ORDINANCE OF THE
CITY OF FISHERS, HAMILTON COUNTY, INDIANA**

This is an ordinance to amend the Southwest Corner 116th/Olio Road Planned Unit Development Ordinance No. 100702B (Revised 11/4/02) (the "SWC 116th/Olio PUD Ordinance"), previously enacted by the City of Fishers pursuant to its authority under the laws of the State of Indiana, IC 36-7-4 *et seq.*, as amended.

WHEREAS, the Plan Commission of the City of Fishers has conducted a public hearing on Docket No. 2-TA-16, as required by law, in regard to the application by Flynn & Zinkan Holdings II, LLC to amend the SWC 116th/Olio PUD Ordinance with respect to the real estate described in Exhibit A attached hereto and incorporated herein (the "Real Estate"), and depicted on the site plan attached hereto as Exhibit B and incorporated herein; and

WHEREAS, the Plan Commission, at its March 8, 2016 public hearing, sent a favorable recommendation to the Common Council of the City of Fishers by a vote of nine (9) in favor and zero (0) opposed;

NOW, THEREFORE, BE IT ENACTED by the Common Council of the City of Fishers, Hamilton County, Indiana, meeting at its regular session, that the SWC 116th/Olio PUD Ordinance shall be and hereby is amended as follows:

Section 1. Section 3 of the SWC 116th/Olio PUD Ordinance is hereby amended to add the following Item J and Item K:

- J. Lot 2, as shown on the site plan attached hereto as Exhibit B, may be used for a coffee shop with a drive-through window; provided, however, in no event will Lot 2 ever be used for a fast food restaurant. All other uses described under C-2, Commercial District and C-3, Commercial District sections of the Fishers Unified Development Ordinance, as amended, are also permitted uses for such Lot 2.
- K. All uses described under C-2, Commercial District and the additional specific C-3, Commercial District uses listed below of the Fishers Unified Development Ordinance, as amended, shall be permitted in the 9,100 square foot building to be constructed on Lot 7 as shown on the site plan attached hereto as Exhibit B, allowing restaurant and other retail uses within such building:
 - 1. General service business
 - 2. Indoor commercial amusement/recreation facility
 - 3. Parking lot or parking structure
 - 4. Parking structure

- 5. Retail, medium intensity
- 6. Hospital
- 7. Post office

Notwithstanding the foregoing, no fuel sales shall be permitted on Lot 7 and any dry cleaning operation on Lot 7 shall be restricted to a drop-off/pick-up location only, with any on-site dry cleaning strictly prohibited. Additionally, outdoor seating for any restaurant within the building on Lot 7 is permitted on the north and east sides of the building, but not on the south or west sides of the building, and no outdoor entertainment or outdoor speakers shall be permitted in any outdoor seating areas associated with such restaurants on Lot 7.

Section 2. All other provisions of the SWC 116th/Olio PUD Ordinance shall remain in effect with the adoption of this Amendment Ordinance. All provisions and representations of the SWC 116th/Olio PUD Ordinance that conflict with the provisions of this Amendment Ordinance hereby are rescinded as applied to the Real Estate and shall be superseded by the terms of this Amendment Ordinance.

Section 3. This Amendment Ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Fishers and after the occurrence of all other actions required by law. All provisions or parts therein in conflict herewith hereby are repealed.

This Ordinance was fully passed and approved by the members of the Common Council of the City of Fishers this 16th day of MAY, 2016.

THE COMMON COUNCIL OF THE CITY OF FISHERS, HAMILTON COUNTY, INDIANA

<p>AYE</p> <p><i>[Signature]</i></p> <p>_____</p> <p><i>David C. George</i></p> <p>_____</p> <p><i>[Signature]</i></p> <p>_____</p> <p><i>[Signature]</i></p> <p>_____</p> <p><i>[Signature]</i></p> <p>_____</p>	<p style="text-align: center;">021516A</p> <p style="text-align: center;">NAY</p> <p>John W. Weingardt, _____ President</p> <p>David C. George, _____ Vice-President</p> <p>C. Pete Peterson, _____ Member</p> <p>Eric Moeller, _____ Member</p> <p>Selina M. Stoller, _____ Member</p> <p>Richard W. Block, _____ Member</p>
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021516A

Cecilia Coble Cecilia C. Coble, _____
Member

Todd P. Zimmerman Todd P. Zimmerman, _____
Member

Brad DeReamer Brad DeReamer, _____
Member

I hereby certify that the foregoing Ordinance was delivered to the City of Fishers Mayor Scott A. Fadness on the 16th day of MAY, 2016, at 8:00 P.m.

ATTEST: Jennifer L. Kehl
Jennifer L. Kehl, City Clerk

MAYOR'S APPROVAL
Scott A. Fadness
Scott A. Fadness, Mayor

Date 5-17-16



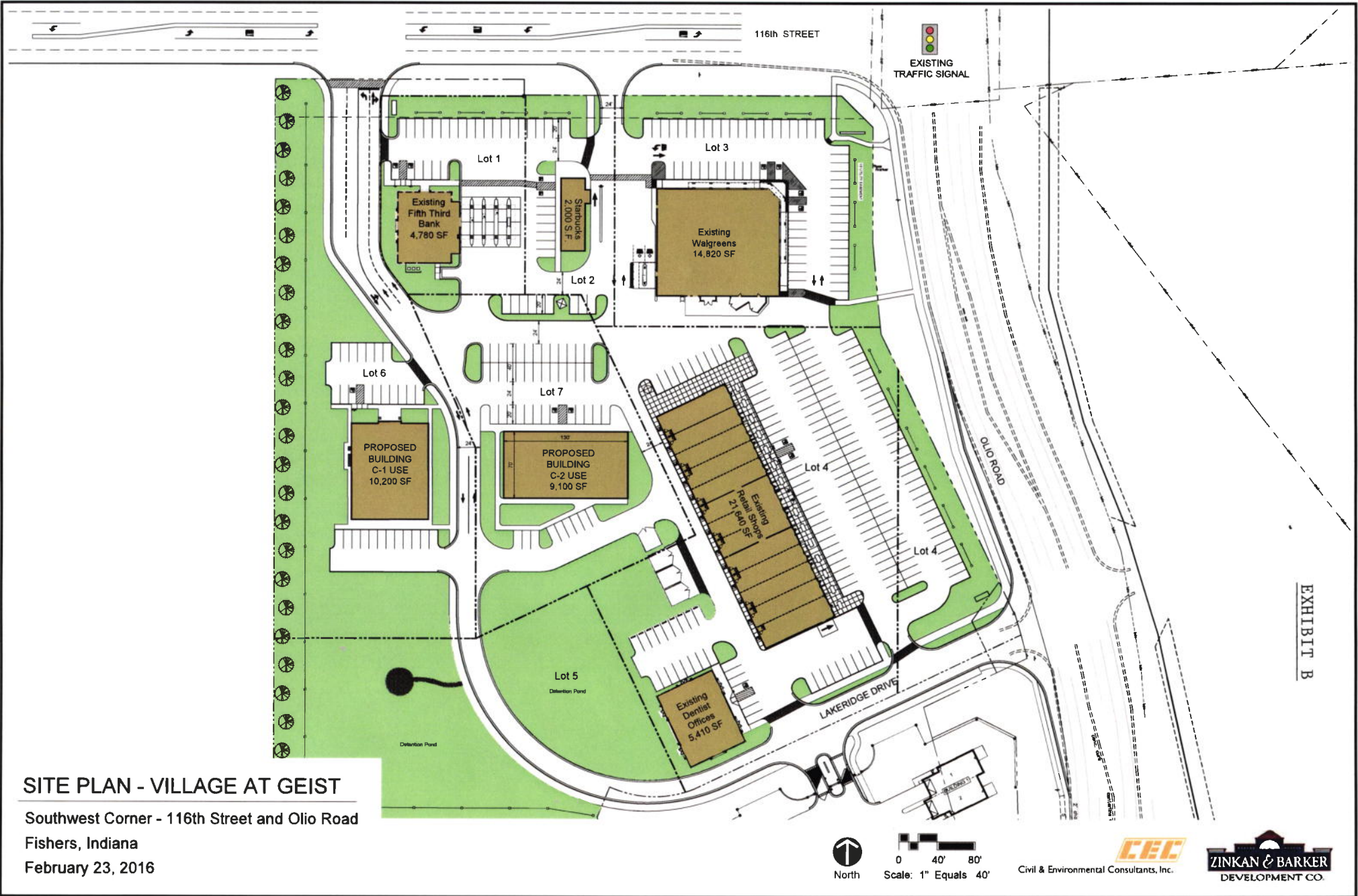
Approved by: Chris Greisl, City of Fishers, City Attorney
Prepared by: Diane M. Johnson, Attorney-at-Law
Zinkan & Barker Development Company, LLC
5332 North Temple Avenue, Indianapolis, IN 46220
(317) 396-1600

In accordance with Indiana Code, I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. – Diane M. Johnson

EXHIBIT A

Legal Description of Real Estate

Lots 2 and 7 of The Village at Geist, Section 2, an addition to Hamilton County, Indiana, as per plat thereof recorded September 23, 2005, in Plat Cabinet 3, Slide 725, as Instrument No. 200500062792 in the Office of the Recorder of Hamilton County, Indiana.



SITE PLAN - VILLAGE AT GEIST

Southwest Corner - 116th Street and Olio Road
 Fishers, Indiana
 February 23, 2016

EXHIBIT B

North
 0 40' 80'
 Scale: 1" Equals 40'

CEC
 Civil & Environmental Consultants, Inc.

ZINKAN & BARKER
 DEVELOPMENT CO.

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into this ~~2016~~ day of May, 2016 (“Effective Date”), by and between the City of Fishers, Hamilton County, Indiana, an Indiana municipal corporation (“City”) and Flynn & Zinkan Holdings II, LLC (“Company”), an Indiana limited liability company, as follows:

WHEREAS, Company owns real property generally known as (a) 0 Lakeridge Drive and identified by parcel identification no. 13-15-02-00-21-006.000; and (b) 0 East 116th Street and identified by parcel identification no. 13-15-02-00-21-001.000 (individually or jointly, “Parcels”);

WHEREAS, Company desires to develop a Starbucks coffee shop (Lot 2 on plat) and/or retail building (Lot 7 on plat) (individually or jointly, “Development”) on the Parcels;

WHEREAS, Company acknowledges and agrees that better traffic flow at or near the Parcels will positively impact their value and can be achieved with the installation of traffic signals (a) on 116th Street near Lakeridge Drive (“116th Signal”); and (b) on Olio Road between 117th Street and 116th Streets (“Olio Signal”);

WHEREAS, prior to City issuing a building permit for the Development on the Parcels, Company shall contribute Sixty Thousand and no/100 Dollars (\$60,000.00) to the City to later be applied to the cost to install the Olio Signal (“Company Contribution”);

WHEREAS, Hamilton County has jurisdiction over the portion of Olio Road where the Olio Signal may be installed; and

WHEREAS, in consideration of and in material reliance on the Company Contribution, the City has agreed to pursue installation of the 116th Signal and pursue installation of the Olio Signal with the County.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

ARTICLE I. RECITALS

The representations, covenants and recitations set forth in the foregoing recitals are material to this MOU and are hereby incorporated into and made a part of this MOU as though they were fully set forth in this Article 1.

ARTICLE II. MUTUAL ASSISTANCE

The parties agree, subject to further proceedings required by law, to take such actions timely, including the execution and delivery of such documents, instruments, approvals, permits, petitions and certifications, as may be necessary or appropriate, from time to time, to carry out

the terms, provisions and intent of this MOU and to aid and assist each other in carrying out said terms, provisions and intent of this MOU.

ARTICLE III. COMPANY'S OBLIGATIONS

In consideration of the commitment provided by the City pursuant to Article IV below, Company shall pay the Company Contribution by or before seeking a building permit for the Development on the Parcels. Unless or until Company satisfies the Company Contribution, the City shall not issue any type of building permit for a Development on the Parcels.

ARTICLE IV. THE CITY'S OBLIGATIONS

In consideration of and in material reliance on the Company Contribution, the City shall install the 116th Signal and shall reasonably pursue installation of the Olio Signal with Hamilton County. Company agrees that absent the Company Contribution, the City would not pursue installation of the Olio Signal with the County.

ARTICLE V. SUCCESSORS AND ASSIGNS

Company specifically acknowledges and agrees that its obligations pursuant to this MOU shall inure to the benefit of and be binding upon and enforceable against Company and its heirs, executors, administrators, successors and assigns. In any merger, acquisition or assignment of assets, such obligation shall continue as a liability of Company and shall be disclosed as a binding obligation and liability of Company and any successors in interest.

ARTICLE VI. GENERAL PROVISIONS

6.01 Indemnity; No Joint Venture or Partnership. Company agrees to indemnify, defend, and hold harmless the City and its respective officers, agents, officials and employees for any and all third party claims, actions, causes of action, judgments and liens to the extent they arise out of any negligent or wrongful act or omission or breach of any provision of this MOU by Company or any of its officers, agents, employees or subcontractors regardless of whether or not it is caused in part by the negligence of a party indemnified hereunder. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein. However, nothing contained in this MOU shall be construed as creating either a joint venture or partnership relationship between the City and Company or any affiliate thereof.

6.02 Amendment. This MOU may be amended only by the written, mutual consent of the parties.

6.03 No Other Agreement. Except as otherwise expressly provided herein, this MOU supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

6.04 Severability. If any provision, covenant, agreement or portion of this MOU or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this MOU and, to that end, any provisions, covenants, agreements or portions of this MOU are declared to be severable.

6.05 Indiana Law and Venue. This MOU shall be construed in accordance with the laws of the State of Indiana. All proceedings arising in connection with this MOU shall be tried and litigated only in the state courts in Hamilton County, Indiana.

6.06 Notices. All notices and requests required pursuant to this MOU shall be deemed sufficiently made if delivered, as follows:

To Company:

Flynn & Company Holdings II, LLC
Attn: Stephen P. Zinkan
5332 North Temple Avenue
Indianapolis, Indiana 46220

With a copy to:

To the City:

City of Fishers
Attn: Jeff Hill, Director of Engineering
1 Municipal Drive
Fishers, Indiana 46038

With a copy to:

City of Fishers
Attn: Chris Greisl, City Attorney
Municipal Drive
Fishers, Indiana 46038

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof, or by electronic mail. Electronic mail shall be deemed effective on the day sent as long as mail notice is deposited with the US Mail on that same day; mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

6.07 Counterparts. This MOU may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

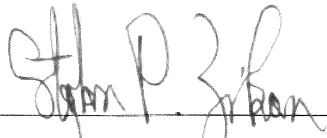
6.08 Assignment. The rights and obligations contained in this MOU may not be assigned by Company or any affiliate thereof without the express prior written consent of the City.

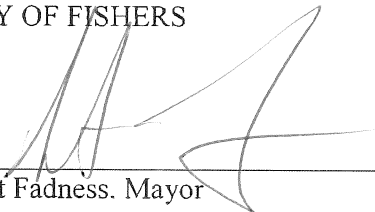
6.09 No Third Party Beneficiaries. This MOU shall be deemed to be for the benefit solely of the parties hereto and shall not be deemed to be for the benefit of any third party.

6.10 Effective Date. Notwithstanding anything herein to the contrary, this MOU shall not be effective until all parties hereto have executed this MOU.

Flynn & Zinkan Holdings II, LLC

CITY OF FISHERS





By: Stephen P. Zinkan

Scott Fadness, Mayor

Its: Operating Manager