

ORDINANCE 07-36

AN ORDINANCE OF THE TOWN OF WESTFIELD CONCERNING AMENDMENT TO TITLE 16 – LAND USE CONTROLS

WHEREAS, The Town of Westfield, Indiana and the Township of Washington, both of Hamilton County, Indiana are subject to the Westfield Washington Township Zoning Ordinance; and

WHEREAS, the Westfield-Washington Township Advisory Plan Commission (“Commission”) considered a petition (docket 0710-REZ-05) filed with the Commission to rezone certain lands; and

WHEREAS, the Commission did take action to forward the request to the Westfield Town Council with no recommendation under the provision of IC 36-7-4-605; and

WHEREAS, the Secretary of the Commission certified the action of the Commission to the Town Council on November 27, 2007; and

WHEREAS, the Westfield Town Council is subject to the provision of IC 36-7-4-608(g) concerning any action on this request.

**NOW THEREFORE BE IT ORDAINED BY THE WESTFIELD TOWN COUNCIL
THAT TITLE 16 OF THE WESTFIELD CODE OF ORDINANCE BE AMENDED AS
FOLLOWS:**

SECTION 1. WC-16-04 Zoning maps amended as follows:

The Zoning Map accompanying and made a part of the Zoning Ordinance is amended to reclassify the Real Estate located at northeast quadrant of 161st Street and U.S. 31 and Union Street from SF-2 and GB to GB-PD. See attached Maps and zoning commitments described in the attached identified as Exhibit A entitled “Commitments concerning the Use and Development of Real Estate known as “Lantern Commons” submitted by Pinetree Commercial Realty, LLC.

SECTION 2. This ordinance shall be in full force and effect from and after its passage

ALL OF WHICH IS HEREBY ADOPTED BY THE TOWN COUNCIL OF

WESTFIELD, HAMITON COUNTY, INDIANA THIS ____ DAY OF

_____, 2007.

WESTFIELD TOWN COUNCIL

Voting For

Voting Against

Abstain

Andrew Cook

Andrew Cook

Andrew Cook

Jack Hart

Jack Hart

Jack Hart

John Dippel

John Dippel

John Dippel

Bob Smith

Bob Smith

Bob Smith

Ron Thomas

Ron Thomas

Ron Thomas

Robert Horkay

Robert Horkay

Robert Horkay

Joseph Plankis

Joseph Plankis

Joseph Plankis

ATTEST:

Clerk-Treasurer, Cindy Gossard

This ordinance prepared by
Gregory J Anderson, AICP, Director of Community Development

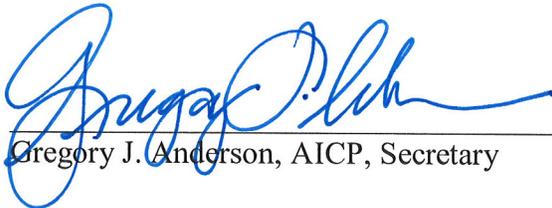
**WESTFIELD-WASHINGTON TOWNSHIP ADVISORY PLAN COMMISSION
CERTIFICATION**

The Westfield-Washington Township Advisory Plan Commission met on Monday, November 26, 2007, to consider proposed rezoning of 63.92 acres from the SF-2 and GB Districts to the GB-PD District. Notice of public hearing was advertised and noticed and presented to the Advisory Plan Commission. Notice was shown to have been published in a newspaper of general circulation in Hamilton County, Indiana. The proposed rezone is as follows:

0710-REZ-05 161st Street & Union & US 31,
Pine Tree Acquisitions, LLC requests change in zoning of
approximately 63.92 acres from SF-2 and GB to GB-PD.

A motion was made and passed to send no recommendation to Town Council regarding the rezone request for 0710-REZ-05 (5-3).

I, Gregory J. Anderson, AICP, being the Secretary of the Westfield-Washington Township Advisory Plan Commission, do hereby certify that the above is a true and accurate record of the minutes of the meeting of the Westfield-Washington Township Advisory Plan Commission held on November 26, 2007.



Gregory J. Anderson, AICP, Secretary

November 27, 2007
Date

0710-REZ-05

161st Street & Union & US 31, Pine Tree Acquisitions, LLC requests change in zoning of approximately 63.92 acres from SF-2 and GB to GB-PD.

Salzman reviewed the staff report and petition history, stating this petition has been to subcommittee. He stated the petitioner has slightly modified the site plan as well as the commitments.

Spoljaric stated that part of this project is in a designated wellhead protection area.

Mr. Barry Herring, Pine Tree Acquisitions, presented changes to the project and commitments, including reintroducing small shop retail buildings located at 161st Street and US 31 rather than the big box users. He also discussed the work to 161st Street, which includes two full left turn lanes, a through lane, and a right turn lane. He further stated the agreement to share in the expense of widening the bridge on 161st Street which will widen the bridge from two lanes to four lanes. Herring further discussed significant changes to the northern boarder including adding a 60-foot tree preservation area, additional 46 feet which includes sidewalk, retaining wall, and landscape buffer; to the south from the frontage road, more landscaping and sidewalk. He further stated a roundabout has been added to the intersection on Union Street. He also discussed the new trail plan and bike- and pedestrian-friendly walkways.

Mr. Steve Hoover expressed concern about the size of the total project, single use square footage, the site plan, building height, external facade, access, truck access, landscaping, and the lack of commitments.

Mr. Steven Holloway believes Westfield needs projects like this in order to bring the residential tax base down and spoke in favor of Lantern Commons.

Horkay commented on the subcommittee discussion which included concerns of the design of the center. He further stated there was a 4-0 decision that the project does not meet the intent of the Comp Plan and a 3-1 vote to send a negative recommendation versus no recommendation.

Spoljaric expressed concern about the lack of information at this time and all the changes that have been made.

Del Greco expressed concern about the amount of changes each time a presentation is made.

Sanders expressed concern about the roundabout and truck traffic, drainage, landscaping, retaining wall, change in building height, and recommended this petition go back to subcommittee for further review.

Kingshill expressed concern about the commitments and the number of changes

Plankis stated this is a vast improvement but with all the changes, are the commitments firmed up. He also asked if this is the final site plan.

Plankis asked about the time line for the project.

Herring responded they hope to break ground in late December.

Herring responded to the comments of the Commission as well as the public.

Horkay stated the parking adjacent to the two building on the corner is all north and east and asked if the intent is to have something to look attractive, what is the plan to have those buildings functioning.

Mr. Doug Nance, Greenburg-Farrow Architects responded that they envisioned four-sided architecture; all sides of the building would have that type of flavor of architecture. He further stated they also envision the facades facing 161st Street would have pedestrian flair which could mean window displays, entrances to the shops, etc. Nance also stated the main facade would be facing the parking lot because that is more convenient for customers.

Mr. Matt Price, Attorney, representing Pine Tree Acquisitions, stated the petitioner has been up front about the timing needs of this project. He further pointed out that the petitioner is not in disagreement over the substance of the commitments but rather the wording or phraseology of the commitments.

Kelleher pointed out that Westfield does promote business and quality development such as this; however, the Commission is also trying to buffer new development inconsistent with existing development to make sure the buffering is appropriate for the residential areas. She further stated there are site design comments based on the information received previously, but that the important things are the elements in this design that impact neighbors on the other side and whether these are adequately designed. We understand the petitioner has deadlines and timetables, but there are issues with this, such as taking the commitments and making them fit what has been shown to us.

Herring proposed the Commission send a positive recommendation contingent upon adequate commitments being drafted and agreed upon prior to the December 10 Town Council Meeting.

Kelleher stated she was uncomfortable with this proposal.

Spoljaric stated she would like to see a commitment in terms of environmental preservation of certain features of this site beyond the tree preservation buffer.

Kelleher stated she is not sure the staff report supported the five points absolutely and concretely. She further stated staff was very reasonable in saying this area is open to discussion and somewhat subjective.

Spoljaric moved to send 0710-REZ-05 to the Town Council with no recommendation.

Sanders seconded, and the motion passed 5-3 (Plankis, Del Greco, Kelleher).

**WESTFIELD-WASHINGTON TOWNSHIP ADVISORY PLAN COMMISSION
CERTIFICATION**

The Westfield-Washington Township Advisory Plan Commission met on Monday, November 26, 2007, to conduct a public hearing for 0710-ZOA-03 Section WC 16.08.010, (I), a revision to the language of the Westfield-Washington Township Zoning Ordinance to provide for signage for second-floor tenants in multi-tenant commercial structures. Notice of public hearing was advertised and noticed and presented to the Advisory Plan Commission. Notice was shown to have been published in a newspaper of general circulation in Hamilton County, Indiana.

A Public Hearing was held at the Westfield Washington Advisory Plan Commission Meeting.

A motion was made and passed to send a positive recommendation to Town Council to approve 0710-ZOA-03 (7-1).

I, Gregory J. Anderson, AICP, being the Secretary of the Westfield-Washington Township Advisory Plan Commission, do hereby certify that the above is a true and accurate record of the minutes of the meeting of the Westfield-Washington Township Advisory Plan Commission held on November 26, 2007.

Gregory J. Anderson, AICP, Secretary

November 27, 2007

Date

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

Pine Tree Commercial Realty, LLC (the "Developer") or its Assigns, makes the following commitments to the Westfield Town Council (and the City Council following Westfield's conversion to a city) and Westfield-Washington Plan Commission (collectively, the "City") regarding the use and development of the following described real estate located in Hamilton County, Indiana:

Section 1. Description of Real Estate:

See attached Exhibit "A" (hereinafter, the "Real Estate").

Section 2. Docket No.: 0710-REZ-05

Section 3. Statement of Commitments:

A. GENERAL

(1) Floor Area Limitations.

- i. Improvements constructed upon the Real Estate for retail use shall be limited to no more than four hundred fifty thousand (450,000) square feet of floor area.
- ii. The foregoing shall not prohibit additional development above the ground floor levels.

(2) Maximum Single Use Limitation.

- i. Only two (2) single uses shall be permitted upon the Real Estate which occupy more than sixty thousand (60,000) square feet of gross floor area.
- ii. The maximum floor area of any single user shall be one hundred fifty thousand (150,000) square feet.

(3) Illustrative Conceptual Site Plan.

- i. The Real Estate shall be developed in substantial conformity to the Illustrative Conceptual Site Plan (the "Plan"), a reduced copy of which is attached hereto for reference purposes as Exhibit "B".
- ii. In the event of a conflict between the provisions of these Commitments and the Plan, the provisions of these Commitments shall control.

(4) Parking.

- i. A minimum of four (4) parking spaces shall be provided for each one thousand (1,000) square feet of gross floor area.

(5) Trash Removal.

- i. Trash and garbage removal by garbage trucks from dumpsters located upon the Real Estate shall not be allowed between the hours of 9:00 PM and 7:00 AM.

(6) Permits.

- i. Prior to applying for a building permit on the Real Estate, the Developer shall first acquire written consent from the then owner(s) of the Real Estate.

- ii. Once the Developer, its successor(s) or assign(s) closes on a portion of the Real Estate, such written consent shall not be required from the owner of that portion of the Real Estate

B. ARCHITECTURAL

- i. **General.** Any proposed development shall conform generally with the Exhibits attached to these Commitments (“Exhibits”), and shall be of a cohesive and consistent architectural character. “Franchise” architectural elements shall be discouraged, and shall be permitted only when integrated into the larger overall character of the development.

(2) Height of Buildings.

- i. From the North property line of the Property no building height shall exceed a proximity slope of 5 to 1 from the grade at the north property line.
- ii. The minimum height of any building abutting the right-of-way of US 31 and Union Street shall be twenty-four feet (24’) above finished floor.
- iii. Cupolas, and other similar architectural features, and antennae having a height of up to fifteen feet (15’) or a diameter up to eight inches (8”), and satellite dishes having a diameter of up to twenty-four inches (24”) shall represent permitted exceptions from the maximum height limitation imposed hereby.

(3) Internal Facade Requirements.

- i. Each facade of a structure incorporating its main entrance shall be considered an “Internal Facade.”
- ii. An Architectural Break is any break in the plane of a façade that occurs at least every seventy-five lineal feet (75’) lineal feet and consists of a building offset of a minimum of one (1) foot, four (4) inches, or the inclusion of a canopy or roof element projecting a minimum of five (5) feet from the building (“Architectural Break”).
- iii. Any large single use occupying sixty thousand (60,000) square feet or more (hereinafter referred to as a “Large Use”) shall incorporate an Internal Facade and Architectural Break as follows:
 - 1. One (1) Architectural Break shall be incorporated into the Internal Facade of the building for each thirty thousand (30,000) square feet (or part thereof) of gross floor area occupied beginning at sixty thousand (60,000) square feet up to the maximum size otherwise permitted by these Commitments.
 - 2. Two (2) Architectural Breaks shall be incorporated into the Internal Facade of the building for each thirty thousand (30,000) square feet (or part thereof) of gross floor area occupied beginning at seventy-five thousand (75,000) square feet up to the maximum size otherwise permitted by these Commitments.
 - 3. Three (3) Architectural Breaks shall be incorporated into the Internal Facade of the building for each twenty-five thousand (25,000) square feet (or part thereof) of gross floor area occupied beginning at ninety-one thousand (91,000) square feet up to the maximum size otherwise permitted by these Commitments.

- iv. Any single use occupying less than sixty thousand (60,000) square feet shall provide at least one (1) Internal Facade and roof line break.

(4) External Facade Requirements

- i. Each facade of a structure, other than an Internal Facade, shall be considered an “External Facade.”
- ii. Any External Facade shall include similar building materials, colors and other similar design elements to those used on the Internal Facade of the building.
 - 1. Similar design elements shall include window openings or faux window openings, as well as door openings or faux door openings, of a number, arrangement, and spacing consistent with the Internal Facade of the building.
 - 2. Similar design elements shall also include lighting elements and fixtures of a number, arrangement, and spacing consistent with the internal facade.
- iii. External Facades of any building abutting the right-of-way of US 31 shall include Architectural Breaks consistent with those required of Internal Facades as stated above in (B)(2)(ii).

(5) Elevations and Building Materials.

- i. Any proposed development shall be comprised of a cohesive and consistent palette of building materials which possess the same architectural integrity as those depicted in the conceptual renderings attached to these Commitments.
- ii. All buildings constructed on the Real Estate shall include, or be comprised of, a combination of the following:
 - 1. decorative concrete wall panels (including pre-cast),
 - 2. brick, cultured stone, and other masonry,
 - 3. storefront glazing and EIFS accents.
- iii. Interspacing design elements such as canopies, awnings and pilasters, using complimentary colors and architectural components which are reasonably consistent with and possess the same architectural integrity as the conceptual renderings attached to these Commitments shall be provided.

(6) Roof Top Equipment. Any roof top heating and cooling equipment, ventilation equipment, refrigeration equipment, condensers or communication equipment (not including antennae having a height up to fifteen feet (15’) or a diameter up to eight inches (8”) or satellite dishes having a diameter of up to twenty-four inches (24”) shall be completely screened from Union Street, 161st Street, US 31, the Adjacent Real Estate (as defined hereafter) and otherwise installed in a manner consistent with, and which compliments, the architectural character of the buildings where located, using similar or complimentary building materials, colors and other similar design elements.

(7) Trash Facilities.

- i. Any stand-alone dumpsters used for trash shall be enclosed on all four (4) sides and the exterior of at least three (3) sides shall be a minimum of six feet (6’) in height so as to conceal functions within and finished in materials similar to those used on the buildings for which they provide service.
- ii. The gate or door of any dumpster enclosure which opens to permit use and trash removal shall be closed when not in use.

- iii. No separate or stand-alone dumpster may be placed between the building line of the structure and the closest right-of-way of Union Street, 161st Street, or US 31.
- iv. Dumpsters and dumpster enclosures must be visually integrated into the main structure with which they are associated for buildings the External Façade for which is oriented towards the rights-of-way of Union Street, 161st Street, or US 31, in the manner described below.
 - 1. Dumpster enclosures visually integrated into structures abutting Union Street, 161st Street, or US 31 shall be at least eight (8) feet in height.
 - 2. Dumpster enclosures visually integrated into structures shall incorporate architectural elements and building materials consistent with the structures which they serve.

(8) Loading Docks.

- i. Loading Docks must be oriented substantially parallel to one of the rights-of-way of Union Street, 161st Street, and US 31.
- ii. Screening walls shall be provided parallel to the recessed channel associated with any exterior loading dock.
 - 1. The screening wall shall extend the entire length of the loading dock recessed channel, inclusive of tractor and trailer length.
 - 2. The screening wall shall have a minimum height equal to the height of the loading dock overhead door and/or any visible exterior mechanical equipment associated with the operation of the overhead door.
 - 3. Screening walls associated with loading docks shall be subject to the same elevation and building materials as the associated building wall they parallel.
- iii. Loading Docks on an Internal Façade.
 - 1. Doors for interior loading docks shall be an integral part of building architecture.
 - 2. The interior loading dock area shall accommodate the largest anticipated delivery vehicle for tenants, inclusive of tractor and trailer.

C. ACCESS

(1) Union Street Ingress and Egress.

- i. No more than two (2) driveways and curb cuts shall be permitted to provide direct vehicular ingress and egress to/from the Real Estate along that segment of Union Street comprising the eastern boundary of the project.
- ii. The northern most driveway shall be designed and/or posted to prohibit use by trucks making deliveries to the development.
- iii. The southern most driveway shall be designed to provide vehicular and truck traffic ingress and egress to and from the development.

(2) US 31 Ingress and Egress.

- i. No direct ingress and egress to and from the Real Estate shall be permitted along US 31.

(3) 161st Street Ingress and Egress.

- i. No more than one (1) driveway and curb cut shall be permitted to provide direct vehicular and truck traffic ingress and egress to and from the Real

Estate along 161st Street. Such driveway shall be designed to allow right-in and right-out ingress and egress only. The right-in and right-out shall remain until the City or Indiana Department of Transportation (“INDOT”) requires the driveway to be removed. The Developer will not charge the City or INDOT to eliminate the right-in and right-out driveway and curb cut off of 161st Street.

(4) Adjacent Parcel Access.

- i. Subject to working out a reasonable access easement agreement(s) with acceptable terms to the Developer, the Developer shall provide access to the approximately five (5) acres of land immediately adjacent to the Real Estate lying to the west of the Real Estate (the "Adjacent Real Estate"), as more particularly identified on the Illustrative Conceptual Site Plan.

(5) US 31 Future Improvements.

- i. A portion of the Real Estate along US 31 shall remain undeveloped in order to accommodate INDOT’s plans for construction of a vehicular on-ramp along US 31 at its intersection with 161st Street and for future utility infrastructure improvements to be made by the City.
- ii. This undeveloped portion of the Real Estate shall be configured in substantial conformity to the Illustrative Conceptual Site Plan.

(6) Frontage Road Ingress and Egress

- i. No more than three (3) driveways and curb cuts shall be permitted to provide direct vehicular and truck traffic ingress and egress to and from the Real Estate along the frontage road, being that segment of proposed new roadway along the northern boundary of the Real Estate.

D. INFRASTRUCTURE

(1) Union Street Improvements.

- i. The Developer shall be responsible for the reconstruction of Union Street to City of Westfield Department of Public Works Utility and Infrastructure Construction Standards and Specifications (October, 2006), or such other standards and specifications as agreed to by the City and Developer (collectively, “WPWD Standards”)
 1. The Developer shall dedicate all land needed for right of way within the project boundaries necessary for the described Union Street improvements.
 2. The Developer, in coordination with the City, shall acquire such additional land as may be reasonably required to install and construct the Union Street improvements described herein.
 3. The roadway section shall conform to the City’s Thoroughfare Plan (as in effect on the date herein).
- ii. The Developer shall construct northbound left turn lanes at both Union Street entrances to the development.
- iii. Southbound right turn lanes shall also be provided at each entrance. Widening of the existing road will be required to accommodate such turn lanes.

- iv. The Developer shall be responsible for constructing any additional box culvert sections, as needed after consultation with the City, under Union Street to accommodate the existing legal drain.

(2) 161st Street Improvements.

- i. The Developer shall dedicate all land needed for right of way within the project boundaries for the described 161st Street improvements and shall be responsible for the reconstruction of the same to WPWD Standards.
 - 1. The Developer, in coordination with the City, shall acquire such additional land as may be reasonably required to install and construct the 161st Street improvements described herein.
 - 2. The roadway section shall conform to the City's Thoroughfare Plan (as in effect on the date herein).
- ii. The Developer shall reconstruct the northbound right turn lane at the intersection of US 31 and 161st Street and construct a left turn lane, in the westbound lanes of 161st Street, to southbound US 31.
- iii. A westbound turn lane into the right-in and right out driveway shall also be provided.
- iv. Widening of the existing road will be required to accommodate turn lanes.
- v. The Developer shall also construct a two (2) lane roundabout at the intersection of Union Street and 161st Street.
 - 1. The Developer and the City shall coordinate with one another to assure that the roundabout is aligned with the 161st Street bridge that crosses over Cool Creek, as reconstructed, and the Developer shall construct the new pavement section from the roundabout up to the bridge.
- vi. The Developer shall also construct a two (2) lane roundabout at the intersection of Union Street and Frontage Road.

(3) 161st Street Bridge Improvements.

- i. The Developer shall only be responsible to pay the City's share of the construction costs relative to the installation of the bridge along 161st Street that crosses over Cool Creek. The Developer shall be responsible for the City's share of the bridge improvements (i.e., twenty (20) percent of the total construction costs) or Eighty Thousand Dollars (\$80,000), whichever is less.

(4) Frontage Road Improvements.

- i. The Developer shall construct a frontage road extending from Union Street to the northwest corner of the development.
- ii. The Developer must dedicate all right of way for the frontage road within the project boundaries.
- iii. The frontage road shall adhere to the City's Thoroughfare Plan (as in effect on the date hereof).
- iv. Three (3) access driveways and curb cuts shall be permitted along the frontage road to provide direct vehicular traffic ingress and egress to and from the Real Estate and the Adjacent Real Estate.

(5) Traffic Signals.

- i. The Developer shall pay in full for all traffic signals necessary to serve this project, provided, that the installation of any traffic signal is subject to the approval of INDOT or the City, as appropriate. The signals shall be installed per WPWD standards and must provide Opticom.

(6) Lift Station Improvements.

- i. The Developer shall be responsible for installing a regional lift station located at the corner of 161st Street and Union Street.
- ii. The Developer will be responsible to connect the regional lift station to the Viking Meadow's lift station.
 1. The regional lift station shall be designed to function in such a manner as to eliminate the Hamilton Square and Cool Creek lift stations by connecting them to the regional lift station with a gravity system.
 2. All hardware from the Hamilton Square and Cool Creek lift stations shall be returned to the City.
- iii. The Developer, in consultation with the City, shall construct the system in accordance with WPWD Standards, and the City shall make the final decision on size and capacity following reasonable consultation with the Developer concerning the necessary size and capacity specifications for such system.

(7) Fiber Optic Line. The Developer shall be responsible for the relocation of the City's fiber optic line that runs along the north side of 161st Street.

(8) Water Main. The Developer shall be responsible for the relocation, or replacement, of the twenty inch (20") water main along the south side of 161st Street. The Developer shall relocate or replace the twenty inch (20") water main in accordance with WPWD Standards. The lift station improvements, the fiber optic line and the water main are collectively referred to herein as the "Utility Infrastructure."

(9) Easements. The Developer shall grant all easements reasonably required by the City upon terms and conditions mutually agreed to between the City and the Developer to construct and install the Utility Infrastructure for areas within the project boundaries. The Developer, in coordination with the City, shall acquire such additional easement rights and other property rights reasonably required to install and construct the Utility Infrastructure for areas outside the project boundaries.

E. SITE AMENITIES.

(1) General Site Amenities.

- i. Site amenities shall be provided in the development.
- ii. Amenities include:
 1. Benches;
 2. Bike racks;
 3. Trash receptacles;
 4. Decorative site lighting;
 5. Gazebos;
 6. Fountains;
 7. Seating areas;
 8. Outdoor dining areas;
 9. Internal vehicle and pedestrian bridges;

10. Clock tower that includes tenant signage for users occupying in excess of 75,000 square feet of floor area;
11. Street trees and planters;
12. Natural landscaped areas; and
13. Trail network.

(2) Stream Enhancements.

- i. The Developer shall preserve and enhance and may relocate portions of the existing stream, running west to east on site.
- ii. A minimum thirty (30) foot wide natural buffer shall be provided on each side of the stream as measured from the centerline of the creek.
 1. The minimum natural buffer may be required to be increased by review agencies with jurisdiction over the proposed creek, including but not limited to FEMA, the Army Corps of Engineers, IDEM, and IDNR.
- iii. The Developer is responsible for submitting and obtaining applicable approvals from all local, state and federal agencies in connection with the initial construction of the project.

(3) Trails

- i. During and as part of development of the Real Estate and before completion thereof, a pedestrian trail or path for public use (Monon Trail) shall be completed.
 1. Said trail shall be located within a perpetual, non-exclusive easement of twenty feet (20') in width, which shall be granted to the City and reserve to the Developer rights to construct improvements within the segment of the easement area internal to the shopping center, provided such improvements do not substantially interfere with the public's use and enjoyment of the trail, as depicted on the Illustrative Conceptual Site Plan. Such easement shall be granted to permit public use of the trail following initial completion by the Developer of the Real Estate at its sole cost and expense.
 2. The trail shall be constructed of a material composition and at a location acceptable to the City, and shall generally be located as depicted on the attached Exhibit B, or as otherwise reasonably agreed by the Developer and the City.
- ii. During and as part of development of the Real Estate and before completion thereof, pedestrian trails or paths for public use shall be completed within the rights-of-way of Union Street and 161st Street.
 1. The trail shall be constructed of a material composition and at a location acceptable to the City, and shall generally be located as depicted on the attached Exhibit B, or as otherwise reasonably agreed by the Developer and the City.
 2. Said trails shall be permitted to run from within the abutting public rights-of-way into the Development, provided;
 - a. The trail shall be located within a perpetual, non-exclusive easement twenty feet (20') in width, which shall be granted to the City. Such easement shall be granted to permit public use, and

- b. The location is generally parallel to the associated rights-of-way.

F. LANDSCAPING

(1) Landscaping General.

- i. Development of the subject site shall comply with the terms of the Westfield-Washington Township Landscape Ordinance (“Landscape Ordinance”) in effect at the time Development Plan Review of the subject site is requested.
- ii. Landscaping and screening in addition to that which is required by the terms of the applicable Landscape Ordinance shall be provided in accordance with the following commitments.
- iii. Loose store, rock or gravel may be used as a landscaping accent, but shall not exceed fifteen percent (15%) of the Landscaped Area.

(2) US 31 Road Frontage.

- i. Developer shall include a screen fence as a part of screening the loading and service areas from US 31.
 - 1. Said fence shall be a minimum of six feet (6’) in height measured from the average finished pavement elevation in the loading and service areas immediately adjacent to the west.
- ii. A partial or full retaining wall may be used on the west side of the fence in lieu of a side slope.

(3) North Boundary Tree Conservation Area and Buffer.

- i. A portion of the Real Estate, no less than sixty feet (60’) in width running generally along and directly south of the north boundary of the Real Estate, shall be preserved as a tree conservation area (the "Tree Conservation Area").
 - 1. Any tree(s) within the Tree Conservation Area removed shall be replaced on the subject site.
 - 2. Beyond the above-stated replacement requirement and notwithstanding any other provision of the Landscape Ordinance, the trees in the Tree Conservation Area shall be preserved to the extent practical, taking into account topographic changes necessitated by development.
 - 3. Unless necessary in regards to design requirements, Developer shall use best efforts to make no grade changes in the Tree Conservation Area.
- ii. During development of the Real Estate, all existing trees which Developer determines are to be preserved shall be maintained without injury and with sufficient area for the root system to sustain the tree.
- iii. Protective care and physical restraint barriers at the root line shall be provided to prevent alteration, compaction or increased depth of the soil around the root systems of the preserved trees.
- iv. Developer shall construct a fence along, or south of, the south border of the Tree Conservation Area, which fence shall be six (6) feet high and shall meet such other design requirements as the Developer and City shall agree.

(4) Westfield Tree Relocation

- i. At a time determined by Developer after consultation with the City and prior to any site clearing activity, the Westfield Parks and Recreation Department Director or the Director’s designee (the “Director”) shall be provided access

to the subject site for the purposes of the Director identifying trees not otherwise to be maintained on-site for relocation to City properties.

- ii. The Developer agrees to relocate the identified trees to the selected City property at the Developer's expense; provided, the total expense to Developer may not exceed ten thousand dollars (\$10,000.00).
- iii. Should development of the subject site occur in a phased manner, the City and Developer agree trees may be identified and relocated in phases.
- iv. The Developer disclaims any warranty respecting such relocated trees and shall have no maintenance obligations with regard to any relocated tree.

(5) Maintenance.

- i. Following completion of the Landscaped Area, including the Fence, the owner or owners of the Real Estate shall, in perpetuity, reasonably: (i) maintain the Fence in a good state of structural condition at all times and make repairs and replacements as necessary and at its or their sole cost and expense; and (ii) maintain the landscaping and periodically replace trees, evergreens or shrubs as reasonably required to maintain the character of the Landscaped Area.

Section 4. Third-Party Approvals

With regard to any county, state or federal permit, approval or private property or easement acquisition the Developer may undertake as a part of developing the Real Estate in conformance with these Commitments ("Approvals"), the Developer will only be required to make reasonable efforts to obtain the Approvals from the appropriate governmental agency or land owner. Developer's respective obligations hereunder are subject to obtaining the applicable Approvals. If the Developer is unable to obtain the Approvals, even after assistance and cooperation from the City of Westfield, these Commitments and the corresponding rezone ordinance approved for the Real Estate will otherwise remain in effect as if the Developer obtained the Approvals.

Section 5. 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 majority decision of the Westfield City Council.

Section 6. Effective Date

The Commitments contained herein shall be effective upon adoption of an ordinance by the Town Council of Westfield, Indiana assigning the requested GB-PD zoning district classification to the Real Estate identified in Docket No. 0710-REZ-05 and upon approval by the Developer and the City of Westfield or its Redevelopment Commission of a mutually acceptable development agreement regarding the infrastructure improvements discussed herein.

Section 7. Recording

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

Section 8. Enforcement

These Commitments may be enforced by the City Council of Westfield, Indiana.

IN WITNESS WHEREOF, Pine Tree Commercial Realty, LLC, has caused these Commitments to be executed as of the _____ day of December, 2007.

Pine Tree Commercial Realty, LLC

By: _____
Its: _____

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

BEFORE ME, a Notary Public in and for said County and State, personally appeared _____, the duly authorized Manager of Pine Tree Commercial Realty, LLC, who executed the foregoing Commitments on behalf of such limited liability company, and acknowledged the signing and execution of said Commitments to be his voluntary act and deed and the voluntary act and deed of such limited liability company for the uses and purposes therein mentioned.

Witness my hand and Notarial Seal this _____ day of December, 2007.

My Commission Expires:

Notary Public

Printed _____
Residing in _____ County

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: Matthew M. Price.

Prepared by: Matthew M. Price, 10 West Market Street, Indianapolis, Indiana 46204