

ORDINANCE NUMBER 15-44

Culver's Sun Park PUD

**AN ORDINANCE OF THE CITY OF WESTFIELD AND WASHINGTON
TOWNSHIP, HAMILTON COUNTY, INDIANA CONCERNING AMENDMENT TO
THE UNIFIED DEVELOPMENT ORDINANCE**

This is a Planned Unit Development District Ordinance (to be known as the "CULVER'S SUN PARK PUD DISTRICT") to amend the Unified Development Ordinance of the City of Westfield and Washington Township, Hamilton County, Indiana (the "Unified Development Ordinance"), enacted by the City of Westfield pursuant to its authority under the laws of the State of Indiana, Ind. Code § 36-7-4 et seq., as amended.

WHEREAS, the City of Westfield, Indiana (the "City") and the Township of Washington, both of Hamilton County, Indiana are subject to the Unified Development Ordinance;

WHEREAS, the Westfield-Washington Advisory Plan Commission (the "Commission") considered a petition (**Petition No. 1512-PUD-28**), requesting an amendment to the Unified Development Ordinance and to the Zoning Map with regard to the subject real estate more particularly described in **Exhibit A** attached hereto (the "Real Estate");

WHEREAS, the Commission forwarded **Petition No. 1512-PUD-28** to the Common Council of the City of Westfield, Hamilton County, Indiana (the "Common Council") with a [REDACTED] recommendation (#-#) in accordance with Indiana Code § 36-7-4-608, as required by Indiana Code § 36-7-4-1505;

WHEREAS, the Secretary of the Commission certified the action of the Commission to the Common Council on [REDACTED], 2016;

WHEREAS, the Common Council is subject to the provisions of the Indiana Code §36-7-4-1507 and Indiana Code § 36-7-4-1512 concerning any action on this request; and

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Westfield, Hamilton County, Indiana, meeting in regular session, that the Unified Development Ordinance and Zoning Map are hereby amended as follows:

Section 1. Applicability of Ordinance.

- 1.1 The Unified Development Ordinance and Zoning Map are hereby changed to designate the Real Estate as a Planned Unit Development District to be known as the " **CULVER'S SUN PARK PUD District**" (the "District").
- 1.2 Development of the Real Estate shall be governed by (i) the provisions of this Ordinance and its exhibits, and (ii) the provisions of the Unified Development Ordinance, as amended and applicable to the Underlying Zoning District or a Planned Unit Development District, except as modified, revised, supplemented or expressly made inapplicable by this Ordinance.
- 1.3 Chapter ("Chapter") and Article ("Article") cross-references of this Ordinance shall hereafter refer to the section as specified and referenced in the Unified Development Ordinance.
- 1.4 All provisions and representations of the Unified Development Ordinance that conflict with the provisions of this Ordinance are hereby made inapplicable to the Real Estate and shall be superseded by the terms of this Ordinance.

Section 2. Definitions. Capitalized terms not otherwise defined in this Ordinance shall have the meanings ascribed to them in the Unified Development Ordinance.

- 2.1 Underlying Zoning District: The Zoning District of the Unified Development Ordinance that shall govern the development of this District and its various subareas, as set forth in Section 4 of this Ordinance.

Section 3. Concept Plan. The Concept Plan, attached hereto as **Exhibit B**, is hereby incorporated in accordance with Article 10.9(F)(2) Planned Unit Development Districts; PUD District Ordinance Requirements; Concept Plan. The Real Estate shall be developed in substantial compliance with the Concept Plan.

Temporary Concept Plan: In the event the adjacent segment of Tournament Trail is not available at the time of developing the Real Estate, the Temporary Concept Plan, attached hereto and incorporated as **Exhibit C**, may be used in lieu of the Concept Plan found in **Exhibit B**. However, at the time the adjacent segment of Tournament Trail segment is constructed, the site layout, including but not limited to site access, shall be reconstructed/improved in a manner that is in substantial compliance with **Exhibit B**. All expenses associated with making these improvements shall be borne by the Property Owner. ~~The timing of these~~ These improvements shall ~~be installed~~ be installed ~~at~~ at the same time as Tournament Trail construction, or if subsequent to construction, within six (6) months of formal notice by the Economic and Community Development Department. ~~Tournament Trail construction being completed.~~

East Cross-Access: Vehicular cross-access easement(s) to the east ("East Cross-Access") shall be provided. Such easement(s) shall be provided in accordance

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with the commitment agreement found in **Exhibit F** of this Ordinance and shall be developed in substantial compliance with Exhibit "2" of **Exhibit F**, as determined by the Director.

The East Cross-Access easements shall be provided in accordance with *Article 6.14, G9*. All expenses associated with making these improvements shall be borne by the Property Owner, unless otherwise agreed by the parties. These improvements shall be installed at the same time as the adjacent parking lot construction, or if subsequent to construction, within six (6) months of formal notice by the Economic and Community Development Department.

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Section 4. Underlying Zoning District(s). The Underlying Zoning District of this District shall be the GB: General Business District. The US Highway 31 Overlay District (Article 5.2) shall not apply to the Real Estate. The State Highway 32 Overlay District (Article 5.3) shall apply to the development of the Real Estate, except as otherwise modified herein.

Section 5. Permitted Uses. All uses permitted in the Underlying Zoning District, as set forth in Chapter 4 and Chapter 13, shall be permitted.

Section 6. General Regulations. The standards of Chapter 4: Zoning Districts, as applicable to the Underlying Zoning District, shall apply to the development of the District, except as otherwise modified herein or superseded by the State Highway 32 Overlay District.

Section 7. State Highway 32 Overlay District. The standards of Article 5.3: State Highway 32 Overlay District (the "SR32 Overlay District") shall apply to the development of the Real Estate, except as otherwise modified below.

7.1 Article 5.3(J) Building Size Requirements: Shall apply; however, a minimum seven hundred (700) square foot outdoor seating area, as depicted in the Concept Plan, shall be credited toward this requirement.

7.2 Article 5.3(K) Architectural Design Requirements: Shall apply. In addition, the following shall apply:

A. Character Exhibit. The Character Exhibit, attached hereto as **Exhibit D**, is hereby incorporated as a compilation of images designed to capture the intended quality of structures to be constructed in the District. Although the exhibits do not necessarily represent the final design or specify a required architectural style or element, they do hereby establish a benchmark for the quality and appearance of structures that are permitted to be constructed and that contribute to the District's intent and vision.

Section 8. Development Standards. The standards of Chapter 6: Development Standards shall apply to the development of the District, except as otherwise modified

below.

8.1 Article 6.1, H. Dumpster Enclosure: Shall apply, except that the dumpster may be located within an Established Front Yard, Side Yard, or Rear Yard, as depicted in Exhibit B and Exhibit C.

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8.1.2 Article 6.8 Landscaping Standards: Shall apply, except as otherwise modified below:

A. Landscape Plan: The Landscaping Plan, attached hereto as **Exhibit E**, is hereby incorporated as the intended planting plan for the Real Estate.

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A-B. Article 6.8 (N) Buffer Yard Requirements: Shall not apply to the north, west or east property lines.

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B-C. Article 6.8(O)(1) Interior Parking Area Landscaping: Shall apply; however, the minimum Interior Parking Area Landscaping for the Real Estate shall be nine hundred (900) square feet, which shall be landscaped with a minimum aggregate of five (5) trees and twenty (20) shrubs.

D. Article 6.8(O)((2) Perimeter Parking Area Landscaping: Shall apply, except as otherwise modified below: ; however,

a. in ~~In~~ the event Tournament Trail is not available for the initial development of the site and **Exhibit C** is used, the perimeter parking lot landscaping required along the north property line shall not be required until the Tournament Trail extension is constructed. At that time, the Property Owner shall install perimeter parking area landscaping in coordination with the City.

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C-b. Perimeter Parking Area Landscaping shall not apply to a parking lot(s) located within five (5) feet of the Real Estate's eastern lot line.

Section 9. Infrastructure Standards. The District's infrastructure shall comply with the Unified Development Ordinance and the City's Construction Standards (see *Chapter 7: Subdivision Regulations*), unless otherwise approved by the Plan Commission or Department of Public Works in consideration to the preservation of the natural topography and environment and in consideration to the unique design intent of the District.

Section 10. Design Standards. The standards of Chapter 8: Design Standards shall apply to the development of the District, except as otherwise modified below:

A. Easements: Cross-access across the Real Estate to the eastern property line shall be established at the time of Secondary Plat approval, as set forth in the Rezoning Commitments attached hereto as **Exhibit F**.

ALL OF WHICH IS ORDAINED/RESOLVED THIS ____ DAY OF _____, 2016.

WESTFIELD CITY COUNCIL

Voting For

Voting Against

Abstain

Jim Ake

Jim Ake

Jim Ake

Steven Hoover

Steven Hoover

Steven Hoover

Robert L. Horkay

Robert L. Horkay

Robert L. Horkay

Mark Keen

Mark Keen

Mark Keen

Charles Lehman

Charles Lehman

Charles Lehman

Robert J. Smith

Robert J. Smith

Robert J. Smith

Cindy L. Spoljaric

Cindy L. Spoljaric

Cindy L. Spoljaric

ATTEST:

Cindy Gossard, Clerk Treasurer

I hereby certify that **ORDINANCE 15-44** was delivered to the Mayor of Westfield on the _____ day of _____, 2016, at _____ m.

Cindy Gossard, Clerk-Treasurer

I hereby APPROVE **ORDINANCE 15-44**
this _____ day of _____, 2016.

I hereby VETO **ORDINANCE 15-44**
this _____ day of _____, 2016.

J. Andrew Cook, Mayor

J. Andrew Cook, Mayor

This document prepared by:

SCHEDULE OF EXHIBITS

- Exhibit A Real Estate (Legal Description)
- Exhibit B Concept Plan
- Exhibit C Temporary Concept Plan
- Exhibit D Character Exhibit
- Exhibit E Landscaping Plan
- Exhibit F Commitments

EXHIBIT A

Legal Description of the Culver's Sun Park PUD District Real Estate

PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 19 NORTH, RANGE 3 EAST IN HAMILTON COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID QUARTER QUARTER SECTION; THENCE ALONG THE SOUTH LINE THEREOF NORTH 89 DEGREES 42 MINUTES 22 SECONDS WEST 576.00 FEET; THENCE PARALLEL WITH THE EAST LINE OF SAID QUARTER QUARTER SECTION NORTH 00 DEGREES 46 MINUTES 41 SECONDS EAST 30.00 FEET TO THE POINT OF BEGINNING; THENCE PARALLEL WITH THE SOUTH LINE OF SAID QUARTER QUARTER SECTION NORTH 89 DEGREES 42 MINUTES 22 SECONDS WEST 180.01 FEET TO THE EASTERLY RIGHT OF WAY LINE OF AN ACCESS ROAD; THENCE ALONG SAID EASTERLY LINE NORTH 44 DEGREES 27 MINUTES 51 SECONDS WEST 28.16 FEET; THENCE NORTH 00 DEGREES 46 MINUTES 41 SECONDS EAST 295.01 FEET; THENCE SOUTH 89 DEGREES 42 MINUTES 22 SECONDS EAST 200.01 FEET; THENCE SOUTH 00 DEGREES 46 MINUTES 41 SECONDS WEST 315.01 FEET TO THE PLACE OF BEGINNING.

EXCEPT:

A PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 19 NORTH, RANGE 3 EAST, HAMILTON COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

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TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS AS RECORDED IN INSTRUMENT NUMBER 8919077.

ALSO EXCEPT THAT PART CONVEYED TO THE STATE OF INDIANA BY WARRANTY DEED RECORDED JULY, 17, 2007 AS INSTRUMENT NO. 2007040165, DESCRIBED AS FOLLOWS:

A PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 19 NORTH, RANGE 3 EAST, HAMILTON COUNTY, INDIANA, AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID QUARTER SECTION; THENCE NORTH 89 DEGREES 50 MINUTES 43 SECONDS WEST 576.07 FEET ALONG THE SOUTH LINE OF SAID SECTION TO THE PROLONGED EAST LINE OF THE GRANTOR'S LAND; THENCE NORTH 00 DEGREES 38 MINUTES 07 SECONDS EAST 40.00 FEET ALONG SAID EAST LINE PROLONGED TO THE NORTH BOUNDARY OF S.R. 32 AND THE POINT OF BEGINNING OF THIS

DESCRIPTION; THENCE NORTH 89 DEGREES 50 MINUTES 43 SECONDS WEST 189.81 FEET (190.01) FEET BY INSTRUMENT NUMBER 9327322) ALONG THE BOUNDARY OF SAID S.R. 32 TO THE NORTHEASTERN BOUNDARY OF THE INTERSECTION OF SAID S.R. 32 AND SUNPARK DRIVE; THENCE NORTH 44 DEGREES 00 MINUTES 56 SECONDS WEST 14.22 FEET ALONG THE BOUNDARY OF THE INTERSECTION OF SAID S.R. 32 AND SAID SUNPARK DRIVE TO THE EAST BOUNDARY OF SAID SUNPARK DRIVE; THENCE NORTH 00 DEGREES 38 MINUTES 07 SECONDS EAST 249.58 FEET ALONG THE BOUNDARY OF SAID SUNPARK DRIVE; THENCE SOUTH 89 DEGREES 21 MINUTES 40 SECONDS EAST 14.13 FEET; THENCE SOUTH 00 DEGREES 28 MINUTES 20 SECONDS WEST 194.80 FEET; THENCE SOUTH 47 DEGREES 31 MINUTES 04 SECONDS EAST 27.80 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 164.98 FEET TO THE EAST LINE OF GRANTOR'S LAND; THENCE SOUTH 00 DEGREES 38 MINUTES 07 SECONDS WEST 46.59 FEET ALONG SAID EAST LINE TO THE POINT OF BEGINNING AND CONTAINING 0.285 ACRES, MORE OR LESS.

EXHIBIT B
CONCEPT PLAN

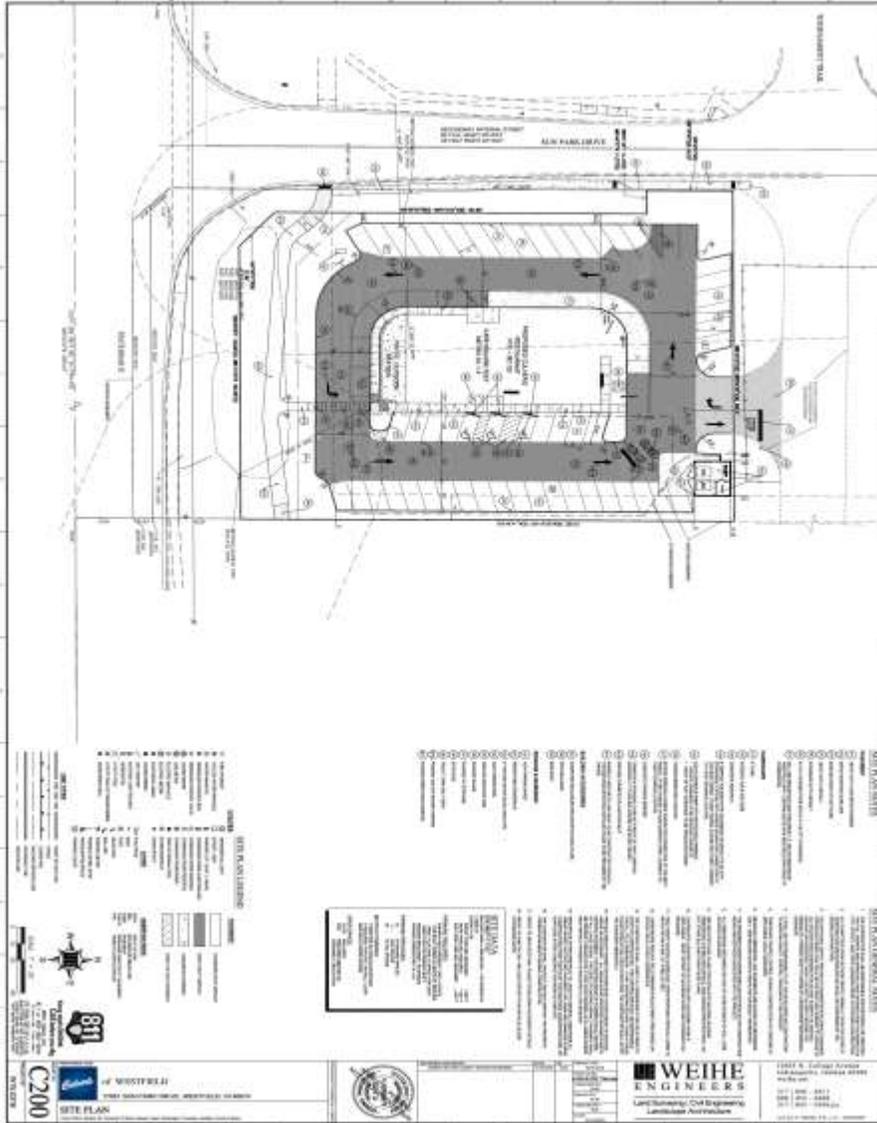


EXHIBIT C
TEMPORARY CONCEPT PLAN

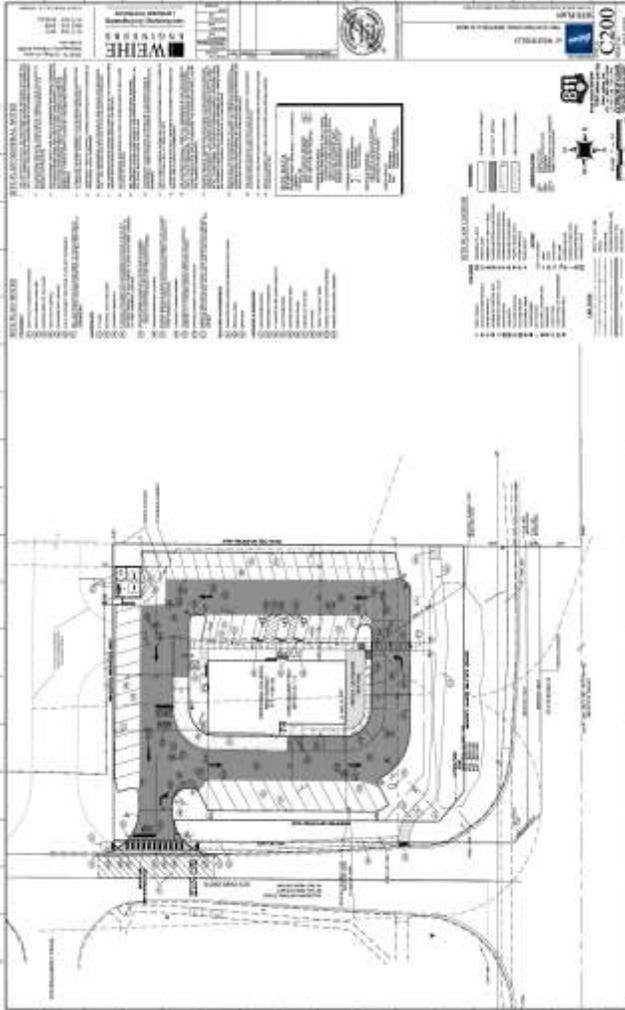


EXHIBIT D
CHARACTER EXHIBIT

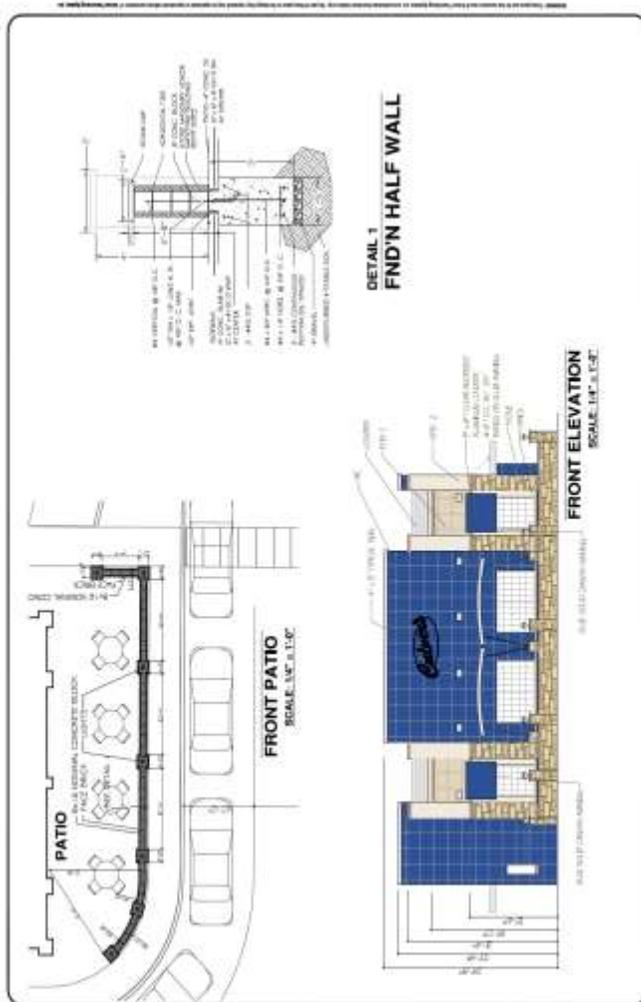


EXHIBIT E
LANDSCAPING PLAN

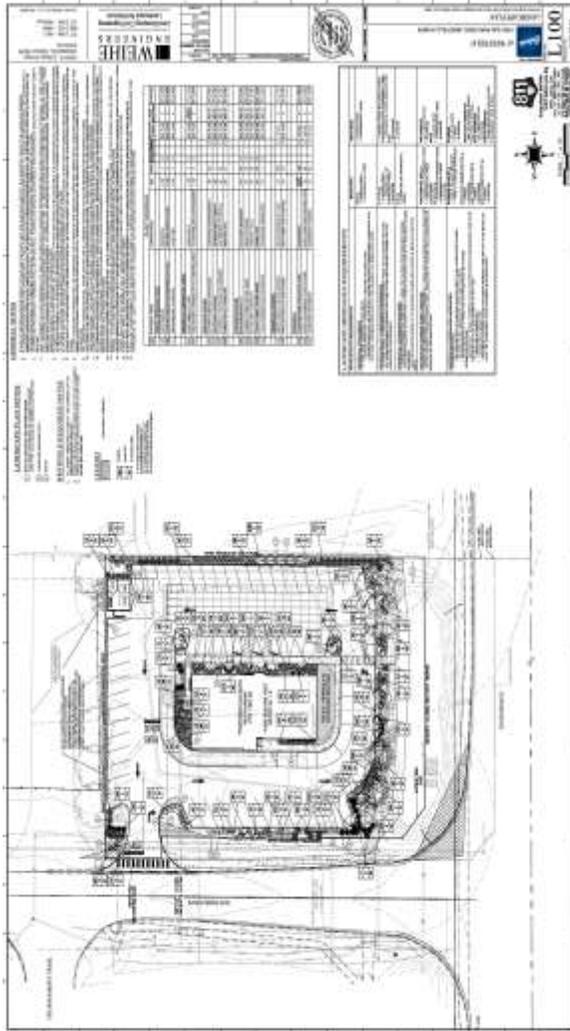


EXHIBIT "F"

COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE
MADE IN CONNECTION WITH A ZONING MAP CHANGE UNDER
THE CITY OF WESTFIELD, INDIANA UNIFIED DEVELOPMENT ORDINANCE

In accordance with I.C. 36-7-4-1015, the owner of the real estate located in the City of Westfield, Hamilton County, Indiana, which is described below, makes the following COMMITMENTS concerning the use and development of that parcel of real estate:

LEGAL DESCRIPTION: (See attached description.)

See EXHIBIT "~~A~~1" ATTACHED HERETO
(the "Subject Property")

STATEMENT OF COMMITMENTS:

- 4- Owner shall grant the owner of the property immediately adjacent to and to the east of the Subject Property (Parcel 090536000039101) (the "Adjacent Parcel") easements for ingress and egress, in substantially the location(s) shown on Exhibit "~~B~~2", subject to normal and customary terms agreed to between the respective property owners (the "Cross Access Easement"), so long as: (i) the Cross Access Easement provides the Subject Property with a shared, reciprocal parking easement to park passenger vehicles on the Adjacent Parcel in the general area shown on Exhibit "~~B~~2" as "shared parking", such that there will always be spaces secured on the Adjacent Parcel in a number that would at least replace any spaces eliminated from the Subject Property as a result of providing the Cross Access — spaces available to serve the Subject Property at Easement, no cost to the owner of the Subject Property; and (ii) to the extent allowed by the appropriate governing agencies, there shall be a curb cut onto State Road 32 ("SR 32") on the Adjacent Property or the property adjacent to and to the east of the Adjacent Property (the "32 Curb Cut") and the Subject Property shall have an access easement to allow ingress and egress between the Subject Property and the 32 Curb Cut. The Owner acknowledges that SR 32 is under the jurisdiction of the State of Indiana Department of Transportation and that the City of Westfield does not have exclusive authority over granting curb cuts on SR 32.

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These COMMITMENTS shall run with the land, be binding on the Owner of the above-described real estate, subsequent owners of the above-described real estate and other persons acquiring an interest therein. These COMMITMENTS may be modified or terminated by a decision of the City of Westfield made at a public hearing after proper notice has been given.

COMMITMENTS contained in this instrument shall be effective upon the approval of Petition #1512-PUD-28 pursuant to the City of Westfield Unified Development Ordinance, and shall continue in effect until modified or terminated by the City of Westfield – Washington Advisory Plan Commission.

These COMMITMENTS may be enforced by

1. The City of Westfield – Washington Advisory Plan Commission; and

The undersigned hereby authorizes the City of Westfield to record these Commitments in the Office of the Recorder of Hamilton County, Indiana, upon final approval of petition # 1512-PUD-28.

IN WITNESS WHEREOF, owner has executed this instrument this _____ day of _____, 2016

CUSTARD KINGS, INC.

By: _____

Printed: _____

Title: _____

(Acknowledgment)

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, the _____ of Custard Kings, Inc., an Indiana corporation, Owner(s) of the real estate described above, who acknowledged the execution of the foregoing instrument for and on behalf of said corporation.

Witness my hand and Notarial Seal this _____ day of _____, 2016

Signature _____

Printed _____

County of Residence _____

My Commission expires: _____

This instrument was prepared by Joseph D. Calderon, Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700 Indianapolis, Indiana, 46204

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. Joseph D. Calderon, Esq.

EXHIBIT A1

PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 19 NORTH, RANGE 3 EAST IN HAMILTON COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

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EXHIBIT B2
TO BE PROVIDED

EXHIBIT C