

AMENDED USE AND DEVELOPMENT COMMITMENT

Evansville-Vanderburgh County Convention & Visitors Commission Building Corporation is the petitioner ("**Petitioner**") to apply for Special Use certain real estate situated in Evansville, Vanderburgh County, Indiana, more particularly described on Exhibit "A," attached hereto and by this reference made a part hereof (the "**Real Estate**"); and

WHEREAS, the Real Estate is currently classified as R-3 & C-4 zoning districts under the Vanderburgh County Zoning Code and is so indicated on the zoning maps maintained by the staff of the Evansville-Vanderburgh County Area Plan Commission; and

WHEREAS, Petitioner has requested that the Real Estate be reclassified to zoning district SU-7; and

WHEREAS, Petitioner wish to accommodate possible concerns of surrounding property owners by making a written commitment concerning the use and development of the Real Estate pursuant to I.C. 36-7-4-1015;

NOW, THEREFORE, in consideration of the foregoing, Petitioner and Owner make the following use and development commitments concerning the use of the Real Estate:

1. **Use.** This Use and Development Commitment shall not prevent or be construed to prevent future rezoning of the Real Estate or amendment of this Use and Development Commitment in the manner provided by law and after notice to the Keystone Homeowners Association in any case and with at least as much notice as would be given to the owner of property directly adjoining the Real Estate. Use of the Real Estate shall be limited to the following uses permitted in the SU-7 zoning districts, as described below effective as of the date of this Use and Development Commitment and as approved by the Vanderburgh County Area Plan Commission, and use of the Real Estate shall also include all other reasonable and necessary uses allowed in SU-7. The Petitioner covenants to the following:

(a) Shall construct and maintain the improvements upon the Real Estate in a design similar to that shown in the Project Summary attached hereto as Exhibit "B". Without limitation, the Petitioner shall maintain the existing park trail, and shall allow access to neighbors each day to and from the park trail and any green space and play areas (other than the softball/baseball play fields and surrounding areas that are shown as separately fenced on Exhibit "B") on the softball and baseball complex through a man gate accessible from Heckel Road from dawn to the later of dusk or the time that the lights for the fields are turned off, provided however, that during tournaments at the Real Estate vendors and team use of the green space and park trail may limit neighbors use. Further, the existing parking lots will be located to the north of the fields, provided however, any new parking lots may be located substantially as set forth in Exhibit "B".

(b) Shall abide by the following as it relates to lighting:

(1) Lighting for all field areas will be Musco Light-Structure Green with full shielding or similar lighting, but in any case, all field, parking lot area and other lighting shall be fully shielded and horizontal light trespass shall not exceed .5 foot candles along the north side of Heckel Road as that road exists as of September 18, 2013. Internal optics and external visors shall be used on all sports lights fixtures to reduce spill and glare issues and shall be as dark-skies friendly as technologically practical;

(2) No lighting shall be turned on more than thirty (30) minutes prior to dusk. Field Lighting shall be turned off by 10:30 PM and all lighting shall be turned off by 11:00 PM on any night for which school is scheduled to be in session on the following day in the Evansville Vanderburgh School Corporation (or any successor that serves students in what is the Oak Hill elementary school district at the time of the filing of this Use and Development Commitment) (a "School Night"). On nights other than School Nights, field lighting shall be turned off by 11:00 PM and all lighting shall be turned off by 11:30 PM. Despite the foregoing, the following exceptions shall exist. In the event that there is a delay in a game caused by weather (other than heat and/or heat index), the lights are permitted to remain on until the earlier of the conclusion of the game or one hour after the time that the lights would otherwise be required to be turned off. The Petitioner may from time to time designate up to a total of twenty-five (25) nights each year as a Permitted Late Tournament Night. Permitted Late Tournament Nights may only be on Friday or Saturday nights. During Permitted Late Tournament Nights, field lighting shall be turned off by 1:00 AM the next morning and all lighting shall be turned off by 1:30 AM the next morning. The Petitioner may also from time to time designate up to ten (10) School Nights as Late School Nights. During Late School Nights field lighting shall be turned off by 11:00 PM and all lighting shall be turned off by 11:30 PM.

(3) In order to keep game activity as far north as possible after dusk, during any time that field lights are permitted to be on, if at any time not all of the fields of play are required for game use, the Petitioner shall cause the fields to be taken out of play in a south to north order. When a field is not being played upon, the field lights on it shall be turned off.

(c) Shall install all stadium speakers to face inward toward the northeast direction within the complex, and all noise from any speaker or other amplified sound source shall not exceed seventy (70) decibels as measured from any point along the north side of Heckel Road as that road exists as of September 18, 2013. Access to the sound and speaker system shall be limited to tournament play, and no speakers or other sound amplification device shall be used after the time that field lights are required to be turned off above;

(d) Shall maintain a six foot (6') privacy fence along the entire south side of the complex; and

(e) Shall not sell alcohol upon the Real Estate during any youth tournament in which the fields are fully occupied by youth players and shall not sell recreational drugs (even if it becomes legal to do so) upon the Real Estate.

2. **Enforcement.** All commitments and undertakings herein expressed shall be binding upon Petitioner, its successors and assignees, and shall run in favor of the Area Plan Commission of Evansville-Vanderburgh County and all Owners of the real estate lying within the radius of one (1) mile from the Real Estate and may be enforced by any of the foregoing invoking any legal, equitable or special remedy, including specific performance, injunction or equitable relief pursuant to the manner of enforcement as set forth in 36-7-4-1013, 36-7-4-1014, and 36-7-4-1015. If it is necessary to initiate administrative or judicial proceedings to enforce any such commitment or undertaking, the person or entity obtaining enforcement in such proceedings shall also recover its reasonable attorneys' fees and costs of suit from the undersigned.

3. **Recording.** This Commitment shall be recorded in the office of the Recorder of Vanderburgh County, Indiana, and shall take effect upon the adoption of the zoning Classification of the Real Estate to a SU-7 District with Use and Development Commitment.

IN WITNESS WHEREOF, this Use and Development Commitment is hereby made and entered into this __ day of _____, 2022, by the Evansville-Vanderburgh County Convention & Visitors Commission Building Corporation.

**EVANSVILLE-VANDERBURGH COUNTY
CONVENTION & VISITORS COMMISSION
BUILDING CORPORATION**

By: _____

Printed Name: Alexis Berggren

Title: Chief Executive Officer

STATE OF _____)

) SS:

COUNTY OF _____)

BEFORE ME, a Notary Public in and for said County and State, personally appeared Alexis Berggren, the Chief Executive Officer of Evansville-Vanderburgh County Convention & Visitors Commission Building Corporation, the Corporation which executed the foregoing instrument, who having been duly sworn, acknowledged and affirmed that they did sign said instrument as such officers, respectively, for and on behalf of said Corporation, and its board of directors, and by authority granted in its Articles of Incorporation and by its governing body, that the same is their free act and deed as said officers, respectively, and the free and corporate act and deed of said Corporation.

IN WITNESS WHEREOF, the parties have duly executed this instrument, and I have hereunto set my hand and official seal as of the __ day of _____, _____.

My Commission Expires:

Signature of Notary Public

My County and State of Residence is:
_____ County, _____

Printed Name of Notary

[SEAL]

Commission Number: _____

This Instrument Prepared by:

G. Michael Schopmeyer, Esq.
Kahn, Dees, Donovan & Kahn, LLP
501 Main Street, Suite 305
P.O. Box 3646
Evansville, Indiana 47735-3646
(812) 423-3183

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. _____

EXHIBIT A TO
USE AND DEVELOPMENT COMMITMENT

Parcels Along Vieth Road

A part of the Southeast Quarter of Section 35, Township 5 South, Range 10 West, Center Township, Vanderburgh County, Indiana, and more particularly described as follows:

Commencing at the southeast corner of Section 35, Township 5 South, Range 10 West; thence North 88 degrees 56 minutes 12 seconds West 1471.92 feet along the south line of said quarter section; thence North 00 degrees 55 minutes 13 seconds East 40.00 feet to the POINT OF BEGINNING, being a point where the Owner's west line intersects the north right-of-way of Heckel Road; thence continue North 00 degrees 55 minutes 13 seconds East 1288.48 feet to a point on the north line of the Southeast Quarter of the Southeast Quarter of said section; thence South 88 degrees 53 minutes 25 seconds East 516.59 feet along said quarter quarter section line; thence North 02 degrees 29 minutes 38 seconds West 204.39 feet; thence South 87 degrees 47 minutes 47 seconds East 328.15 feet; thence South 02 degrees 11 minutes 42 seconds West 197.75 feet to a point on the north line of the Southeast Quarter of the Southeast Quarter of said section; thence North 88 degrees 53 minutes 25 seconds West 78.25 feet along the north line of said quarter quarter section; thence South 01 degree 02 minutes 44 seconds West 1287.87 feet to a point on the north right-of-way of Heckel Road; thence North 88 degrees 56 minutes 12 seconds West 747.01 feet to the POINT OF BEGINNING.

ALSO, Lots 9, 10, 11, 12, 13, 14, 15, 16, and 17 in Heckel Road Commercial, the plat of which is recorded in Plat Book U, page 45 (Instrument 2016R00022699) in the office of the Recorder of Vanderburgh County.

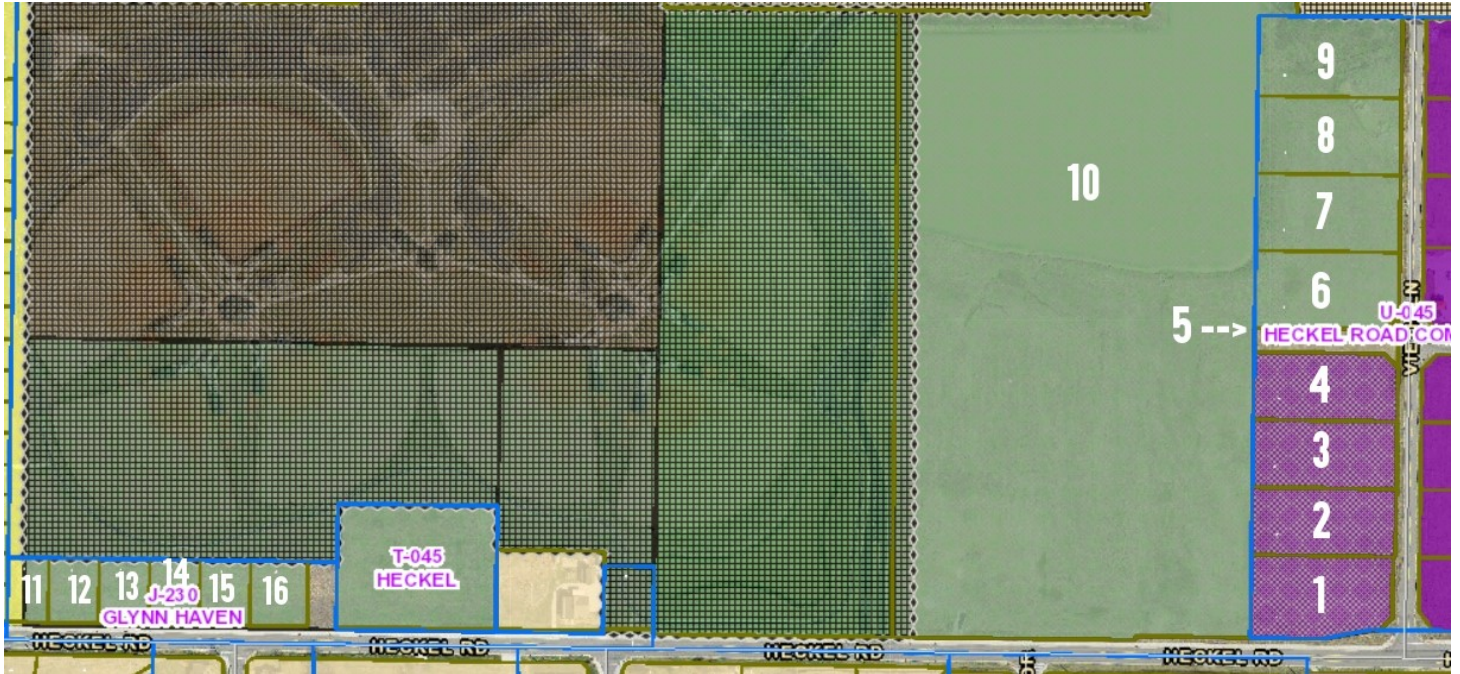
Parcels Along Heckel Road

Lots 7, 8, 9, 10, 11, and 90.00 feet off the east side of Lot 6 adjoining Lot 7 in Glynn Haven (or sometimes known as Glennhaven) Subdivision as recorded in Plat Book J, page 230 in the office of the Recorder of Vanderburgh County, Indiana.

Excepting therefrom those portions of said lots described in a deed to the Board of Commissioners of Vanderburgh County by Instrument 2016R00000593 in the office of said Recorder.

EXHIBIT "A" TO
USE AND DEVELOPMENT COMMITMENT

AERIAL PHOTO



Map Key

| Number on Map | Color on Map | Zoning Classification | Property Address |
|---------------|--------------|-----------------------|------------------|
| 1 | Purple | C-4 | 6316 Vieth Lane |
| 2 | Purple | C-4 | 6332 Vieth Lane |
| 3 | Purple | C-4 | 6416 Vieth Lane |
| 4 | Purple | C-4 | 6434 Vieth Lane |
| 5 | Green | R-3 | 6500 Vieth Lane |
| 6 | Green | R-3 | 6514 Vieth Lane |
| 7 | Green | R-3 | 6536 Vieth Lane |
| 8 | Green | R-3 | 6610 Vieth Lane |
| 9 | Green | R-3 | 6630 Vieth Lane |
| 10 | Green | R-3 | 4404 Heckel Road |
| 11 | Green | R-3 | 3808 Heckel Road |
| 12 | Green | R-3 | 3816 Heckel Road |
| 13 | Green | R-3 | 3824 Heckel Road |
| 14 | Green | R-3 | 3900 Heckel Road |
| 15 | Green | R-3 | 3908 Heckel Road |
| 16 | Green | R-3 | 3916 Heckel Road |

EXHIBIT "B" TO
USE AND DEVELOPMENT COMMITMENT

