



USE AND DEVELOPMENT COMMITMENT

WHEREAS the undersigned petitioner, **J.J. Brodi, LLC**, ("Petitioner") an Indiana limited liability company, is the owner of certain real estate situated in the County of Vanderburgh, Indiana, commonly described as 4504 and 4510 Heckel Road which real estate (the "Real Estate") is more particularly described as follows, to wit:

See attached "Exhibit A".

WHEREAS, as the Real Estate is currently classified as A, R-3 and C-4 (with use and development commitment) 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 C-4 (the "Rezoning Petition"); and

WHEREAS, Petitioner is desirous of accommodating the concerns of the surrounding property owners by making a written commitment concerning the use and development of the Real Estate pursuant to I.C. 36-7-4-613;

NOW, THEREFORE, in consideration of the foregoing, Petitioner makes the following use and development commitment which shall become effective upon the approval of the Rezoning Petition by the Vanderburgh County Commissioners as evidenced by the recording of the rezoning ordinance:

1. Landscape Buffer. Paragraph 1 of the Use and Development Commitment entered into by Petitioner dated November 4, 2002, and of record in the Office of the Recorder of Vanderburgh County, Indiana, in Miscellaneous Drawer 7, Card 2468, as Instrument No. 2002R0004989 (the "Prior UDC") is hereby deleted in its entirety.

2. Noise. The sound emitting from any outside speakers on the Real Estate shall be no louder than sound emitted by outside speakers associated with the drive-up window of a bank. Moreover, any and all noise from any speakers or other amplified sound source shall not exceed 70 decibels as measured from any point along the north side of Heckel Road as that road exists as of December 1, 2014.

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AUDITOR

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AUDITOR

3. Mechanical Device/Dumpsters. The second sentence of Section 2 of the Prior UDC is hereby deleted in its entirety and, in lieu thereof, the following is substituted:

“Any mechanical devices and trash dumpsters located on any lots or lot contained within the Real Estate adjacent to Heckel Road shall be located either on the north side of any building or buildings or on top of said buildings or be enclosed and/or screened if locating such equipment on the north side of any building is not practical. Moreover, no trash or recycling pickup shall be allowed after 6:00 p.m. or before 8:00 a.m.”

4. Fencing on West. Petitioner agrees to install a six foot (6’) privacy fence along the entire west property line of the Real Estate at such a time as a hard surface parking lot or structure is constructed within three hundred feet (300’) of the west property line of the Real Estate.

5. Lighting. Petitioner agrees that parking and exterior lighting appliances will be installed on the Real Estate with appropriate shields so as to direct light downward at low enough angles to eliminate any direct lighting onto or into the residential areas south of the Real Estate. Without limiting the foregoing, 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 December 1, 2014. Internal optics and external visors shall be used on all light fixtures to reduce spill and glare issues and lighting shall be as dark-skies friendly as technologically practical.

6. Use of the Real Estate. Use of the Real Estate shall be limited to those uses permitted in the General Commercial District (C-4), as defined by Vanderburgh County Code 17.16.130 effective as of the date of this Use and Development Commitment. Further, no individual store or business can exceed forty-five thousand (45,000) square feet of floor area. Use of the Real Estate shall be further limited to exclude the following uses:

SECTION 17.20.100 USE GROUP 7:

Offices for the following business and professions:

- Broadcasting station

SECTION 17.20.110 USE GROUP 8:

Retail stores specializing in the sale or rental of any of the following:

- Package Liquor Store
- Pawn Shop

The following service uses:

- Mortuary

The following recreational uses:

- Bar (excluding a sports bar or other bar that has higher gross sales for food over alcohol provided that such establishment closes before midnight)

- Bowling Alley
- Party house
- Lodges and private clubs
- Nightclub, pool and billiard room
- Tavern

SECTION 17.20.120 USE GROUP 9:

- Off-track betting facility

SECTION 17.20.130 USE GROUP 10:

Retail stores specializing in the sale or rental of any of the following:

- Feed
- Welding supplies and equipment

The following service uses:

- Aluminum can collection/recycling center
- Ambulance service
- Automobile repair and specialized service (excluding overhauling, rebuilding, painting and body work, oil change store, tire store and transmission repair shop which are located more than 300' from the north right of way line of Heckel Road as it exists on December 1, 2014)
- Automobile seat cover installation
- Battery repair and rebuilding (excluding retail battery sale stores)
- Bottling plant
- Crating, packing or shipping service (except retail type packing and shipping services)
- Dairy or milk distribution station
- Dry-cleaning, dyeing, laundry or rug cleaning plant
- Food vendor operation
- Motorcycle repair
- Pest control
- Photographic development laboratory
- Taxi service
- Tool sharpening or grinding
- Welding shop

The following warehouse, wholesale and storage uses:

- Cold storage or frozen food plant
- Ice storage plant
- Storage warehouse
- Wholesale broker or establishment

SECTION 17.20.140 USE GROUP 11:

Retail specializing in the sale or rental of any of the following:

- Agricultural implements
- Automobile (excluding auto repair or auto parts stores)
- Boats and marine supplies
- Building supplies with outside storage
- Construction equipment
- Flea markets
- Industrial equipment
- Lumber (excluding home improvement stores)
- Machinery
- Monuments
- Motorcycles
- Swimming pool supplies and equipment
- Trailers
- Trucks

The following service uses:

- Boat repair
- Contractor shops
- Excavating contractor
- Railroad transfer, storage and team tracks
- Shrub and plant nursery
- Sign shop (with outside storage)
- Tire recapping or retreading
- Trailer repair
- Truck repair

The following outdoor recreational use:

- Archery range

SECTION 17.20.220 USE GROUP 19:

The following recreational and service uses:

- Amusement park or theme park
- Animal or vehicle race track
- Campground or premises used for temporary parking of trailers, campers or recreational vehicles
- Drive-in theater
- Permanent circus or carnival grounds

SECTION 17.20.240 USE GROUP 21:

- Adult Arcade
- Adult Bookstore, Adult Novelty Store or Adult Video Store

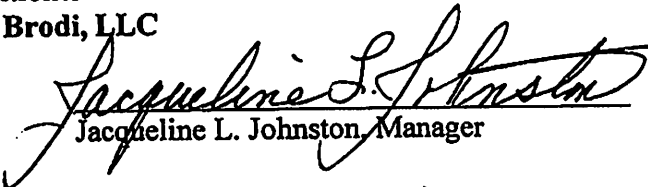
- Adult Cabaret or Juice Bar or Bikini Bar
- Adult Motion Picture Theater
- Adult Theater
- Nude Model Studio
- Sexual Encounter Center
- Peep Show Facility

7. Successors and Assigns. All commitments and undertakings herein expressed shall be binding on the Petitioner and the Petitioner's heirs, legal representative, successors and assigns, and shall run in the favor of the Area Plan Commission of Evansville-Vanderburgh County and all the owners of real estate lying within the radius of one (1) mile from the real estate described and shall be enforced by invoking any legal, equitable or special remedy, including specific performance, injunction or equitable relief pursuant to the manner of enforcement as set forth in I.C. 36-7-4-613, 36-7-4-1013, and 36-7-4-1014. 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.

IN WITNESS WHEREOF, this Use and Development Commitment is hereby made and entered into this 4th day of December, 2014 by Petitioner, J.J. Brodi, LLC, for the purposes set forth herein.

"Petitioner"
J.J. Brodi, LLC

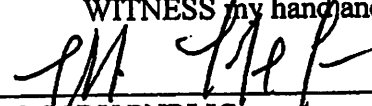
By:


Jacqueline L. Johnston, Manager

STATE OF INDIANA)
)SS:
COUNTY OF VANDERBURGH)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Jacqueline L. Johnson, the Manager of J.J. Brodi, LLC, who acknowledged the execution of the foregoing Use and Development Commitment to be her free voluntary act and deed.

WITNESS my hand and Notarial Seal this 4th day of December, 2014.



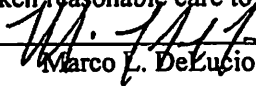
NOTARY PUBLIC

A resident of Vanderburgh County, Indiana.

My commission expires: 12/12/16

This instrument prepared by:
Marco L. DeLucio, Esq.
Ziemer, Stayman, Weitzel & Shoulders, LLP
20 N.W. First Street, Ninth Floor
P.O. Box 916
Evansville, IN 47706-0916
Telephone: (812) 424-7575

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.



Marco L. DeLucio

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Exhibit A
Legal Description

Part of the Southeast Quarter of Section 35, Township 5 South, Range 10 West of the 2nd P.M., lying in Center Township, Vanderburgh County, Indiana and being more particularly described as follows:

Commencing at the Southeast corner of said Quarter Section; thence along the South line of said Quarter Section, North 88°56'12" West 725.00 feet to the true point of beginning; thence continuing along said South line

1st: North 88°56'12" West 746.92 feet; thence

2nd: North 00°55'13" East 1328.48 feet to the North line of the East Half of the Southwest Quarter of the Southeast Quarter of said Section; thence along the North line of said Half, Quarter, Quarter Section and the Southeast Quarter of the Southeast Quarter

3rd: South 88°53'25" East 516.69 feet; thence

4th: North 02°25'49" West 204.86 feet; thence

5th: South 87°43'58" East 328.15 feet; thence

6th: South 02°15'41" West 197.88 feet to the North line of the Southeast Quarter of the Southeast Quarter of said Section; thence along said North line

7th: South 88°53'25" East 271.68 feet; thence parallel with the East line of said of said Quarter Section

8th: South 01°02'44" West 1267.59 feet to the North line of Heckel Road: thence along said North line for the following three (3) courses

9th: North 88°56'12" West 100.24 feet; thence

10th: South 79°45'12" West 101.98 feet; thence

11th: North 88°56'12" West 149.75 feet; thence

12th: South 01°02'44" West 40.00 feet to the point of beginning, containing 34.572 acres more or less.

SUBJECT TO: The right-of-way for Heckel Road as described in the Right-of-way Grant recorded in Volume 441, page 379 in the office of the Recorder of Vanderburgh County.