

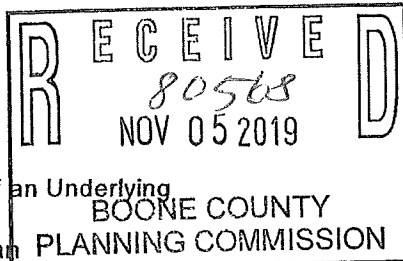
APPLICATION FORM

CONCEPT DEVELOPMENT PLAN
BOONE COUNTY PLANNING COMMISSION

SEVEN (7) COPIES OF SUBMITTED DRAWINGS ARE REQUIRED

(See Boone County Zoning Regulations)

SECTION A (To be completed by applicant)



- 1. Check One: Concept Development Plan (Includes Utilization of an Underlying Zone in a Planned Development)
2. Name of Project Jimmy Johns
3. Location of Project 87470 US 42 Florence KY 41042
4. Total Acreage of Site .97
5. Current Zoning C2/PD/CD
6. Date of Previous Zoning Map Amendment or Approved Concept Development Plan (if applicable)
7. Is the site subject to a specialized Land Use Study approved by the Boone County Planning Commission? (If so, indicate the name of the Study) NO
8. Proposed Uses (please specify each use) RESTAURANT
9. Proposed Building Intensities (please specify) See plan
10. Have you submitted a Concept Development Plan? Yes
11. Are you also applying for: X NO Conditional Use Permit, NO Dimensional Variance
12. Name of Applicant(s) Ken Butler
13. Address of Applicant(s) 2466 HIDDEN OAK CT. NEWBURGH IN 47630
14. Name of Property Owner(s) Ken Butler
15. Address of Property Owner(s) 2466 HIDDEN OAK CT NEWBURGH IN 47630
16. Are there any existing buildings on the site? NO
17. Deed Book 1120 Page No. 315 Group No. 2047
18. Have you had a pre-application meeting with BCPC Staff? NO
19. Please check the following organizations/agencies which you have discussed the proposed development with in the last several months:

- Boone County Water District
Florence Public Services Dept.
Duke Energy
Sanitation District #1

**EXHIBIT**

**“A”**

## STAFF REPORT

#2

Request of **Ken Butler (owner by contract)** for a Change in Concept Development Plan in Commercial Two/Planned Development and Office One/Planned Development (O-1/PD) zones for a 0.97 acre lot located on the south side of US 42, to the immediate west of the property at 8741 US 42 and immediate east of the property at 8755 US 42, Florence, Kentucky. The request is for a Change in Concept Development Plan to allow a multi-tenant commercial building with two drive-through facilities.

December 4, 2019

### REQUEST

The request is for a Change in an Approved Concept Development Plan for a 0.97 acre area located at 8747 US 42. The proposal is to construct a multi-tenant commercial building with two drive-through facilities.

### SITE HISTORY

- 1995 On January 18, 1995, the Boone County Planning Commission recommended approval of a proposed zoning map amendment changing the site in question from SR-1 to C-2/PD (R-95-002-A). On April 11, 1995, Florence City Council took action to deny the proposed zoning map amendment.
- 1996 On July 17, 1996, the Boone County Planning Commission recommended approval of a zoning map amendment changing the site in question from SR-1 to O-1/PD and C-2/PD (R-96-018-A). On September 10, 1996, Florence City Council adopted Ordinance Number O-17-96, approving the zoning map amendment.
- 2018 On January 3, 2018, the Boone County Planning Commission recommended approval of a Change in an Approved Concept Development Plan (R-18-003-A). The proposed change would allow "eating and drinking establishments, including alcoholic beverages and accessory drive-through facilities" as a principally permitted use. On March 20, 2018, Florence City Council adopted Ordinance Number O-5-18, approving the amended Concept Development Plan.
- 2019 On January 15, 2019, the Boone County Planning Commission approved a Major Site Plan for a 2,250 square foot Starbucks restaurant, drive-through facility, and off-street parking on the site immediately to the west of the site in question. This Site Plan included a shared access easement located on the site in question.
- 2019 On September 4, 2019, the Boone County Planning Commission recommended disapproval of a Change in an Approved Concept Development Plan (R-19-021-D). The proposed change would have allowed the development of an automobile repair facility on the site in question. The applicant withdrew the application prior to action by the city of Florence.

### APPLICABLE REGULATIONS

- A. Section 314 of the Boone County Zoning Regulations states that major amendments to the terms of an approved Zoning Map Amendment, including a Concept Development Plan, that involve substantial or significant changes in the development concept, uses, intensity, supplemental conditions of approval, or other plan elements of substantive effect

must be submitted to the Planning Commission and shall conform to the procedure and requirements described in Sections 301-310. Minor amendments to the approved Concept Development Plan that do not involve changes in the development concept, uses, intensity, supplemental conditions of approval, or other plan elements of substantive effect may be approved by the Zoning Administrator.

- B. Section 1517 of the Boone County Zoning Regulations states that the Planning Commission shall require that a Concept Development Plan be submitted for the development or redevelopment of property located in a Planned Development zone. The Concept Development Plan may be filed to the Planning Commission by the owner(s), owner by contract (option) or lessee of property for which the planned development is proposed. If the Concept Development Plan involves a zone change, then the proposal is subject to the criteria in Section 308 as well as the provisions of this article. If the Concept Development Plan does not involve a zone change, or only involves uses that are permitted in the underlying zone (also called a "Utilization of an Underlying Zone Within a Planned Development"), then the proposal is subject only to the provisions of this article. The contents of the Concept Development Plan submittal shall include the items listed in Section 303.

#### EXISTING CONCEPT DEVELOPMENT PLAN

- A. Approximately one-third of the site in question is located within Subarea 9 of the Plantation Pointe North Concept Development Plan. The remaining approximate two-thirds of the site in question are located within Subarea 10 of the Plantation Pointe North Concept Development Plan.
- B. Subarea 9 is identified to be developed with commercial uses, consistent with the C-2 Zone. Subarea 10 is identified to be developed with office uses, consistent with the O-1 Zone. Eating and drinking establishments, including alcoholic beverages, is listed as a principally permitted use in both the C-2 and O-1 zones.

#### SITE CHARACTERISTICS

- A. The approximate one (1) acre area is located along the southeast side of US 42 and along the northwest side of Cavalry Drive, approximately 170 feet northeast of Express Street.
- B. The site is currently vacant with the exception of a shared access drive and a shared stormwater detention facility.
- C. Topography of the site slopes from 864 MSL, along US 42, to 868 MSL, along Cavalry Drive.
- D. The site is located within the 55 Day/Night Noise Levels of the Greater Cincinnati/Northern Kentucky International Airport.

#### ADJACENT LAND USES AND ZONING

North: Bank (WesBanco) and medical offices (St. Elizabeth Physicians/Urgent Care) (C-2/PD/CD))

South: Vacant and offices (O-1/PD/CD)

East: Retail (Verizon) (O-1/PD/CD)

West: Restaurant (C-2/PD/CD)

RELATIONSHIP TO COMPREHENSIVE PLAN

A. Our Boone County – Plan 2040 “2040 Future Land Use Plan” designates the site for Commercial uses. This designation is described as “Retail, corporate and professional office, interchange commercial, indoor commercial recreation, restaurants, services, etc.”

B. The following Our Boone County – Plan 2040 Goals and Objectives apply to this application:

Land uses and zoning decisions shall strive to balance the rights of landowners with the rights of neighbors and the community (Overall Goal A, Objective 4).

Provide appropriate services, housing, employment, and shopping opportunities in order to meet the needs of the population in all geographic areas of the County (Demographics Goal A, Objective 4).

Boone County shall seek a combination of land uses that balances revenues generated from those uses with the expenditures required to support them Economy Goal A, Objective 8).

Compact, efficient development patterns shall be encouraged for industrial, commercial, and office uses with appropriately sized and well maintained buffer spaces between the business use and other land uses (Economy Goal B, Objective 1).

Commercial uses shall be designed and located to coordinate with the surrounding land uses and shall have safe access and adequate parking (Economy Goal B, Objective 3).

C. The following is an excerpt from Our Boone County – Plan 2040:

1. The U.S. 42 corridor should experience commercial growth on a smaller scale to mitigate any adverse impacts and to be compatible with surrounding land uses and densities. As defined by the 2000 Union Town Plan, commercial development should occur in neighborhood business district form in specified locations instead of strip type commercial (Land Use, Description and Purpose of Land Use Maps, 20 Union, page 137).

D. US 42 is identified as an arterial street providing for two-way traffic within five driving lanes (two lanes in each direction with a center left turn lane). Sidewalks are provided along both sides of the roadway. Cavalry Drive is identified as a local street providing for two way traffic within two driving lanes. Sidewalks have been provided along the roadway as development has occurred.

STAFF COMMENTS

A. The submitted Concept Development Plan indicates the following:

1. Construction of a one story, 3,640 square foot building, containing two restaurants.
2. Provision for two drive-through facilities.
3. Provision for 25 off-street parking spaces.
4. Provision for a 10' x 50' loading space.
5. Provision for an enclosed trash area.
6. Use of the existing shared access point onto Cavalry Drive.
7. Use of the existing shared stormwater detention area.

B. Staff has reviewed the submitted Concept Development Plan against the Boone County Zoning Regulations, and offers the following (some of these requirements can be adjusted by the Planning Commission and City Council pursuant to the Planned Development (PD) regulations):

1. Section 3151 provides regulations for required trash areas. Insufficient information has been submitted to determine compliance.
2. Section 3155, 1 states that drive-through facilities must be incidental and subordinate to the principal use. A determination will have to be made that the two proposed drive-through facilities meet this requirement.
3. Section 3208 requires sidewalks to be constructed along public roads. Insufficient information has been submitted to determine if a sidewalk will be constructed along Cavalry Drive, fronting the site in question.
4. Section 3325 requires one (1) parking space to be provided for every two (2) seats, plus one (1) space for every twenty (20) square feet of open wait area. Insufficient information has been submitted to determine compliance with this requirement.
5. Section 3327 provides regulations for bicycle parking. Insufficient information has been submitted to determine compliance with this requirement.
6. Section 3625 requires five percent (5%) of the vehicular use area to be landscaped. Insufficient information has been submitted to determine compliance with this requirement.

C. Staff has reviewed the submitted Concept Development Plan against the approved Plantation Pointe North – Concept Development Plan Document and Development Criteria, and offers the following:

1. Section V., B. of the Plantation Pointe North – Concept Development Plan Document states that a consistent architectural theme shall be developed for the commercial and office uses. This should be reviewed and approved as part of the Site Plan process.

2. Section 1.3, c. of the Development Criteria states that paving, curbing, and vehicular parking areas shall not be permitted within ten (10) feet of any interior property line. The submitted plan indicates that the drive-through lanes will be set back eight (8) feet from the east property line.
  3. Section 2.1, b. of the Design Criteria requires a minimum of five percent (5%) interior (vehicular use area) landscaping. Insufficient information has been submitted to determine compliance with this requirement.
  4. Section 2.2, c. of the Design Criteria states that each building shall utilize gable and/or hip roof shapes with a minimum roof slope of 4:12. Additionally, each roof shall have a gable facing roads or driveways. The submitted elevations indicate the use of flat roof construction.
  5. Section 2.2, c. of the Design Criteria states that roof materials shall be heavy weight dimensional shingles or metal and that the roof color shall be medium to dark green or hunter green. Insufficient information has been submitted to determine compliance with this requirement.
- D. A twenty-four (24) foot wide shared access easement is located on the site in question. The submitted plan indicates that this easement will be relocated. The applicant should address how this will be resolved.
- E. The intersection of the access drive with the trash area, dual ingress drive-through lanes, and the single egress drive-through lane, creates numerous turning conflicts. The applicant should address the safety issues relative to this intersection.
- F. Staff sent out an Agency Memo to the City of Florence and the Florence Fire Department. No comments have been received.
- G. Staff has received a letter of support from an adjoining property owner (attached).

### CONCLUSION

This request needs to be evaluated by the Boone County Planning Commission and Florence City Council in terms of Article 3 of the Boone County Zoning Regulations, Section 1514 of the Boone County Zoning Regulations, the appropriate planning documents noted herein, and the potential impacts on existing and planned uses in the area.

Respectfully submitted,



Michael D. Schwartz  
Planner

MDS/ss

Attachments:

- \*Vicinity Map
- \*Aerial Map
- \*Topographical Map
- \*Zoning Map
- \*2040 Future Land Use Map
- \*Noise Contour Map
- \*Application
- \*Concept Development Plan
- \*Letter of support from Cavalry Drive, LLC, dated 11/22/19

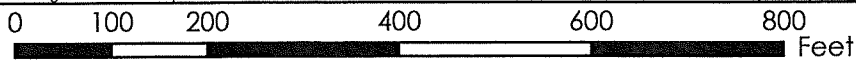
# Vicinity Map

www.boonecountygis.com



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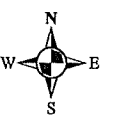
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1 inch = 200 feet



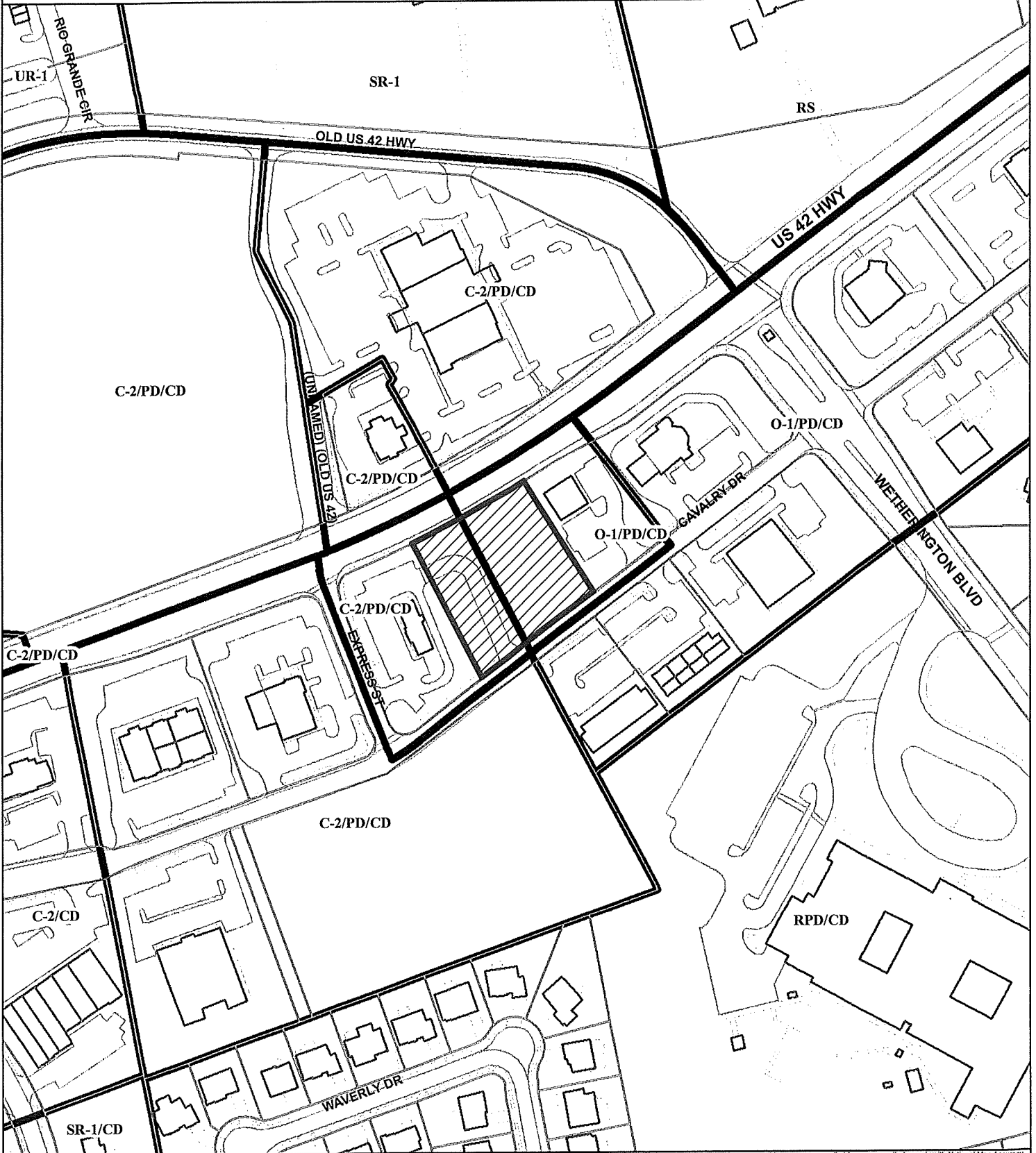
**Boone County GIS - Putting Northern Kentucky on the Map**





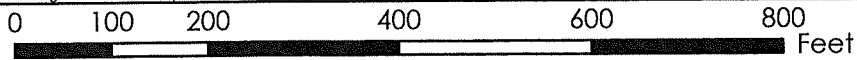
# Zoning Map

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1 inch = 200 feet



**Boone County GIS - Putting Northern Kentucky on the Map**

Map Created: 01/01/2018

Boone County GIS  
ArcMap Document: \*.mxd

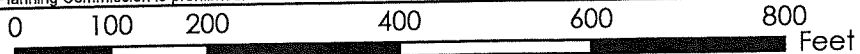
# Topographical Map

www.boonecountygis.com



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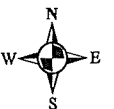
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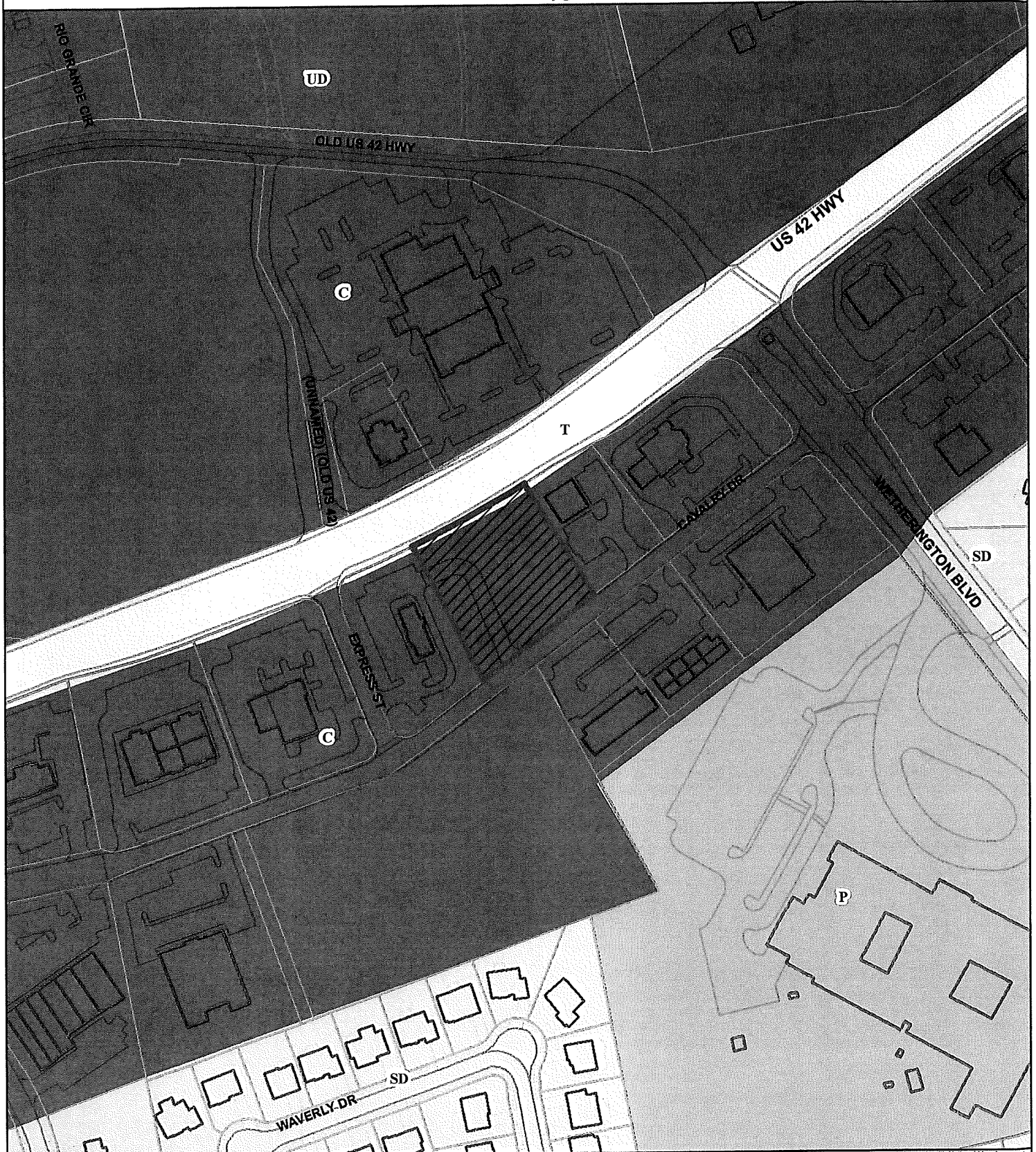


**Boone County GIS - Putting Northern Kentucky on the Map**



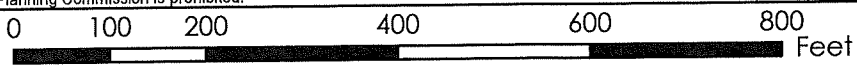
# 2040 Future Land Use Map

www.boonecountygis.com



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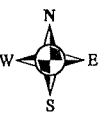
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1 inch = 200 feet



**Boone County GIS - Putting Northern Kentucky on the Map**



Map Created: 01/01/2018

ArcMap Document: \*.mxd

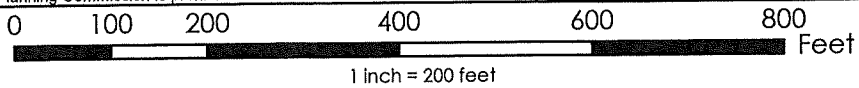
# Noise Contour Map

www.boonecountygis.com

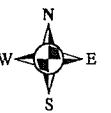


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**Boone County GIS - Putting Northern Kentucky on the Map**



Map Created: 01/01/2018

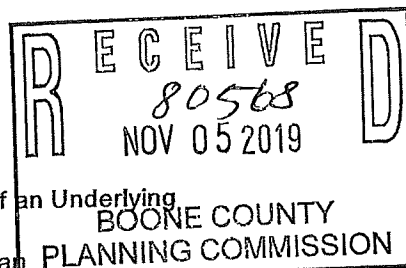
Boone County GIS  
ArcMap Document: \*.mxd

APPLICATION FORM

CONCEPT DEVELOPMENT PLAN  
BOONE COUNTY PLANNING COMMISSION

SEVEN (7) COPIES OF SUBMITTED DRAWINGS ARE REQUIRED

(See Boone County Zoning Regulations)  
SECTION A (To be completed by applicant)



1. Check  one:
  - Concept Development Plan (Includes Utilization of an Underlying Zone in a Planned Development)
  - Change in an Approved Concept Development Plan
  - Long Range Planning Committee Review (As stated in the Houston-Donaldson Study)
  - Long Range Planning Committee Review (As stated in the Union Town Plan)
  - Zone Change Committee Review of previously approved Concept Development Plan Conditions or Zoning Map Amendment Conditions
  - Zoning Administrator Review (As stated in the Central Florence Strategic Plan, An Update of the Parkway Corridor Study)
  - Zoning Administrator Review (As stated in the Mall Road District Study)
2. Name of Project Jimmy Johns
3. Location of Project 87470 US 42 Florence KY 41042
4. Total Acreage of Site .97
5. Current Zoning C2/PD/CD
6. Date of Previous Zoning Map Amendment or Approved Concept Development Plan (if applicable) \_\_\_\_\_
7. Is the site subject to a specialized Land Use Study approved by the Boone County Planning Commission? (If so, indicate the name of the Study) NO
8. Proposed Uses (please specify each use) Restaurant
9. Proposed Building Intensities (please specify) See Plan
10. Have you submitted a Concept Development Plan? Yes
11. Are you also applying for:
  - no Conditional Use Permit
  - no Dimensional Variance
12. Name of Applicant(s) Ken Butler
- Phone Number 812-319-1558 Fax No. \_\_\_\_\_ E-Mail KEN@STINLER.ROCKS
13. Address of Applicant(s) 2466 HIDDEN OAK CT.  
NEWBURGH IN 47630  
City State Zip
14. Name of Property Owner(s) Ken Butler
- Phone Number 812-319-1558 Fax No. \_\_\_\_\_ E-Mail Ken@Stinler.rocks
15. Address of Property Owner(s) 2466 Hidden Oak Ct  
NEWBURGH IN 47630  
City State Zip
16. Are there any existing buildings on the site? NO  
How many? -
17. Deed Book 1120 Page No. 315 Group No. 2047
18. Have you had a pre-application meeting with BCPC Staff? no
19. Please check the following organizations/agencies which you have discussed the proposed development with in the last several months:

- Boone County Water District
- Florence Public Services Dept.
- Duke Energy
- Sanitation District #1

- Cincinnati Bell
- Owen Electric Cooperative, Inc.
- Boone County Public Works Department
- Kentucky Transportation Cabinet
- Boone County Building Department
- Northern Kentucky Health District
- USDA NRCS/Boone County Conservation District
- KY Division of Water
- Local School District
- Local Fire District
- Other: \_\_\_\_\_

20. Concept Development Plan Jurisdiction/Location
- Unincorporated Boone County       Walton Union
- Florence       Union

21. ~~Waiver of 60 Day Time Requirement by Originator for Final Planning Commission Action~~
- Check if Applicable

In accordance with the provisions in KRS 100.211, the applicant(s) and property owner(s) or originators above, hereby waive the 60 day time limit for the Boone County Planning Commission to take final action on my (our) Zoning Map Amendment and/or Concept Development Plan\* application. This time limit waiver is considered effective immediately upon receipt by the Boone County Planning Commission and expires on 1-15-20.

22. ORIGINAL Property Owner's Signature \_\_\_\_\_ *See Attached*  
 (Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

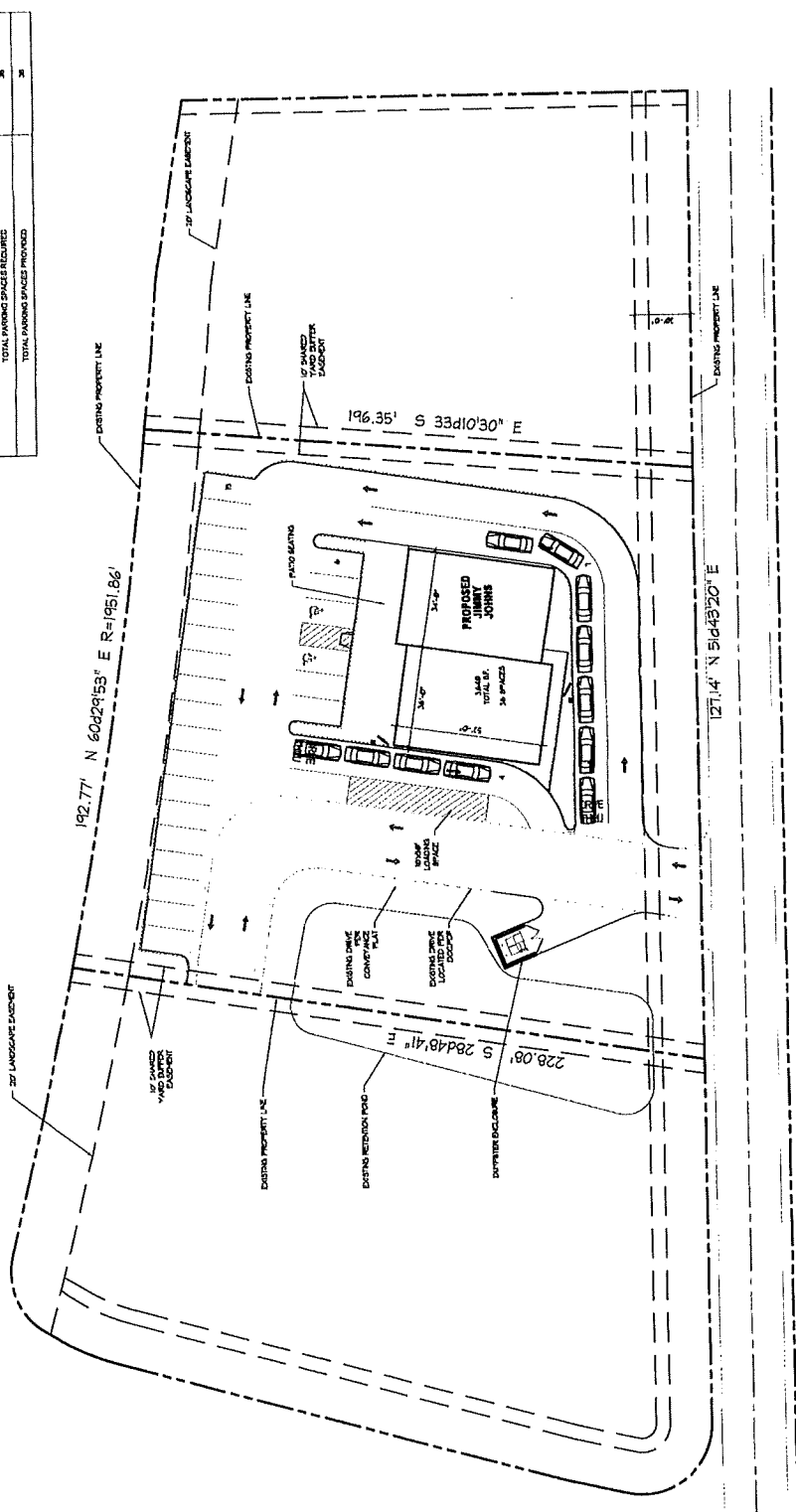
23. ORIGINAL Applicant's Signature \_\_\_\_\_  
 (Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

**SECTION B** (To be completed by BCPC Staff)

1. Date Received 11-5-19 Fee Received \$ 2,301.41 R# 80568
2. Check what has been submitted:
  - Application  Fee  Legal Description
  - Concept Development Plan  Addresses of Adjoining Property Owners
  - No. of copies of plan received \*\*
3. Date Application is Administratively Complete as Defined in KRS 100.211 \_\_\_\_\_
4. Staff Reviewer MICHAEL SCHWARTZ
5. Committee Chairperson \_\_\_\_\_
6. Scheduled Public Hearing Date \_\_\_\_\_
7. Boone County Planning Commission Action:
  - Approved  Approved With Conditions
  - Denied
8. Other: \_\_\_\_\_

Boone County Planning Commission  
 Boone County Administration Building  
 2950 Washington Street, Room 317  
 P.O. Box 958  
 Burlington, Kentucky 41005  
 Phone (859) 334-2196 - Fax (859) 334-2264  
 plancom@boonecountyky.org - E-Mail  
 www.boonecountyky.org - Web Page

Note: See Boone County Planning Commission Fee Schedule for Concept Development Plan Fees. An application consists of all fees paid in full, submitted drawings and a completed application form.



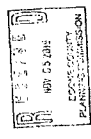
PARKING REQUIREMENTS		SPACE MIN. CALCULATION
SPACE	AREA	SPACES MINIMUM
FUTURE TRAVEL	1,823.37	1 SPACES PER 2 SEATS = 1 SPACE PER 20.5 F. DRIVEWAY AREA
PROPOSED JIMMY JOHN'S	1,708.57	1 SPACES PER 2 SEATS = 1 SPACE PER 20.5 F. DRIVEWAY AREA
TOTAL PARKING SPACES REQUIRED		34
TOTAL PARKING SPACES PROVIDED		34



JIMMY JOHN'S  
STORE # 1319  
8747 US 42  
FLORENCE, KY

ARCHITECTURAL SITE PLAN  
JOB NO. 19052  
DATE: 11/20/18  
SCALE: AS SHOWN  
DRAWN: SHAP  
CHECKED: SHAP  
DATE: 11/20/18  
PLANNING COMMISSION  
AS-1

PROPOSED SITE PLAN  
1" = 30'-0"









# Cavalry Drive, LLC

POB 975

Union, KY 41091

O (859) 657-6700 Fax (859) 384-5272

November 22, 2019

Michael D Schwartz  
Boone County Planning Commission  
2950 Washington Street, Room 317  
Burlington, KY 41005

Mr. Schwartz,

I have reviewed the Change in Concept Development Plan submitted for the property in Plantation Pointe located between 8741 and 8755 US 42. As manager of Cavalry Drive, LLC, the owner of record of adjoining property, I (we) have no objections to the proposed development. I will not be attending the meeting on December 4<sup>th</sup> and am submitting this letter as a means of expressing our support of the proposal. Thank you.

Sincerely,



Mike J. Kegley  
Manager

**EXHIBIT**

**“B”**

## ZONE CHANGE/CONCEPT PLAN COMMITTEE REPORT

#2

**TO:** Boone County Planning Commission

**FROM:** Kim Bunger, Chairman

**DATE:** January 8, 2020

**RE:** Request of Ken Butler (owner by contract) for a Change in Concept Development Plan in Commercial Two/Planned Development and Office One/Planned Development (O-1/PD) zones for a 0.97 acre lot located on the south side of US 42, to the immediate west of the property at 8741 US 42 and immediate east of the property at 8755 US 42, Florence, Kentucky. The request is for a Change in Concept Development Plan to allow a multi-tenant commercial building with two drive-through facilities.

### REMARKS:

We, the Committee, recommend approval of the above referenced request based on the following findings of fact and with the following conditions:

### FINDINGS OF FACT:

1. The Committee has concluded that the proposed Concept Development Plan is in agreement with the Our Boone County – Plan 2040 “2040 Future Land Use Plan” which designates the site in question for Commercial uses. This designation is described as “retail, corporate and professional office, interchange commercial, indoor commercial recreation, restaurants, services, etc.” The proposed Concept Development Plan indicates the construction of two restaurants.
2. The Committee has concluded that the proposed Concept Development Plan is in agreement with the comprehensive plan due to its agreement with the following Our Boone County – Plan 2040 Goals and Objectives:
  - a. Land uses and zoning decisions shall strive to balance the rights of landowners with the rights of neighbors and the community (Overall Goal A, Objective 4).
  - b. Provide appropriate services, housing, employment, and shopping opportunities in order to meet the needs of the population in all geographic areas of the County (Demographics Goal A, Objective 4).
  - c. Boone County shall seek a combination of land uses that balances revenues generated from those uses with the expenditures required to support them (Economy Goal A, Objective 8).
  - d. Compact, efficient development patterns shall be encouraged for industrial,

ZONE CHANGE/CONCEPT PLAN COMMITTEE REPORT

Jimmy Johns/US 42

January 8, 2020

Page 2

commercial, and office uses with appropriately sized and well maintained buffer spaces between the business use and other land uses (Economy Goal B, Objective 1).

- e. Commercial uses shall be designed and located to coordinate with the surrounding land uses and shall have safe access and adequate parking (Economy Goal B, Objective 3).
3. The Committee has concluded that the Proposed Concept Development Plan is consistent with the Plantation Pointe North Concept Development Plan. Approximately one-third of the site in question is located within Subarea 9 of the Plantation Pointe North Concept Development Plan. The remaining approximate two-thirds of the site in question are located within Subarea 10 of the Plantation Pointe North Concept Development Plan. Subarea 9 is identified to be developed with commercial uses, consistent with the C-2 Zone. Subarea 10 is identified to be developed with office uses, consistent with the O-1 Zone. Eating and drinking establishments, including alcoholic beverages, is listed as a principally permitted use in both the C-2 and O-1 zones.
4. The applicant has submitted a revised Concept Development Plan, dated December 13, 2019, which addresses most of the staff comments contained in the Staff Report. Most notably, the revised Concept Development Plan shows a single drive-through lane, making it incidental and subordinate to the principal use.
5. The Committee has concluded that the attached conditions are necessary to achieve consistency with the specific goals, objectives, and policies of Our Boone County – Plan 2040 and Article 3 “Amendment” of the Boone County Zoning Regulations. The Committee has also concluded that the attached conditions are necessary to mitigate any foreseeable community impacts that may be created by the development. The property owner has signed a letter demonstrating agreement with these conditions.

CONDITIONS:

1. That the site be developed in a manner consistent with the Revised Concept Development Plan and Elevations, dated December 13, 2019, that were submitted at the Committee’s December 18, 2019 meeting.
2. That the final architectural details and building materials be evaluated and approved as part of the Site Plan, with the exception that: (a) EIFs should be used as an accent and not as a predominant building material; and (b) brick shall be installed to the top of the windows, at a minimum, on all four sides of the building.
3. That specific parking requirements be reviewed and approved either as part of a Site Plan or a Tenant Finish permit.
4. That signage be reviewed and approved through separate sign permits.

5. The location of the menu board shall be at the southwest corner of the building to maximize stacking distance in the drive through lane.
6. The dumpster shall be turned 90 degrees counter clockwise and the enclosure shall be made of brick that matches the building.

A copy of the Public Hearing minutes accompanies the findings and recommendation serving as a summary of the evidence and testimony presented by the proponents and opponents of this request. Attached is the signature page for the Zone Change/Concept Development Plan Committee Vote.

**ZONE CHANGE/CONCEPT PLAN COMMITTEE VOTE**

TO: Boone County Planning Commission

FROM: Kim Bunger, Chairman

DATE: December 18, 2019

**CHANGE IN CONCEPT DEVELOPMENT PLAN - Kim Bunger, Chairman, Michael Schwartz, Staff**

2. Request of **Ken Butler (owner by contract)** for a Change in Concept Development Plan in Commercial Two/Planned Development (C-2/PD) and Office One/Planned Development (O-1/PD) zones for a 0.97 acre lot located on the south side of US 42, to the immediate west of the property at 8741 US 42 and immediate east of the property at 8755 US 42, Florence, Kentucky. The request is for a Change in Concept Development Plan to allow a multi-tenant commercial building with two drive-through facilities.

**REMARKS:**

We, the Committee Members were present at the Committee Meeting and voted on the above request or else were absent from voting. Further, based upon the vote, the Committee directs the Staff to draft the findings of fact and conditions if deemed necessary in order to complete the Committee Report.

*Kim Bunger*  
\_\_\_\_\_  
**Kim Bunger (Chairman)**

For Project  Absent \_\_\_\_\_  
Against Project \_\_\_\_\_  
Abstain \_\_\_\_\_ Deferred \_\_\_\_\_

\_\_\_\_\_  
**Mark Hicks (Alternate)**

For Project \_\_\_\_\_ Absent \_\_\_\_\_  
Against Project \_\_\_\_\_  
Abstain \_\_\_\_\_ Deferred \_\_\_\_\_

\_\_\_\_\_  
**Janet Kegley**

For Project \_\_\_\_\_ Absent \_\_\_\_\_  
Against Project \_\_\_\_\_  
Abstain \_\_\_\_\_ Deferred \_\_\_\_\_

\_\_\_\_\_  
**Lori Heilman (Alternate)**

For Project \_\_\_\_\_ Absent \_\_\_\_\_  
Against Project \_\_\_\_\_

*Rick Lunnemann*  
\_\_\_\_\_  
**Rick Lunnemann**

For Project  Absent \_\_\_\_\_  
Against Project \_\_\_\_\_  
Abstain \_\_\_\_\_ Deferred \_\_\_\_\_

\_\_\_\_\_  
**Steve Turner (Alternate)**

For Project \_\_\_\_\_ Absent \_\_\_\_\_  
Against Project \_\_\_\_\_  
Abstain \_\_\_\_\_ Deferred \_\_\_\_\_

\_\_\_\_\_  
**Kim Patton**

For Project \_\_\_\_\_ Absent \_\_\_\_\_  
Against Project \_\_\_\_\_  
Abstain \_\_\_\_\_ Deferred \_\_\_\_\_

\_\_\_\_\_  
**Randy Bessler (Alternate)**

For Project \_\_\_\_\_ Absent \_\_\_\_\_  
Against Project \_\_\_\_\_  
Abstain \_\_\_\_\_ Deferred \_\_\_\_\_

*Brad Shipe*  
\_\_\_\_\_  
**Brad Shipe**

For Project  Absent \_\_\_\_\_  
Against Project \_\_\_\_\_  
Abstain \_\_\_\_\_ Deferred \_\_\_\_\_

TOTAL: \_\_\_\_\_ DEFERRED 3 FOR PROJECT \_\_\_\_\_ ABSENT  
\_\_\_\_\_ AGAINST PROJECT \_\_\_\_\_ ABSTAIN

**COMMISSION MEMBERS PRESENT:**

Mr. Randy Bessler  
Ms. Corrin Gulick  
Mr. Steve Harper  
Mrs. Lori Heilman  
Mr. Mark Hicks  
Mr. Rick Lunnemann  
Mr. Kim Patton  
Mr. Charlie Rolfsen, Chairman  
Mr. Tom Szurlinski  
Mr. Steve Turner, Temporary Presiding Officer

**COMMISSION MEMBERS NOT PRESENT:**

Mr. Kim Bunger, Secretary/Treasurer  
Mrs. Janet Kegley  
Mr. Don McMillian  
Mr. Bob Schwenke  
Mr. Brad Shipe

**LEGAL COUNSEL PRESENT:**

Mr. Dale T. Wilson

**STAFF MEMBERS PRESENT:**

Kevin P. Costello, AICP, Executive Director  
Mr. Todd K. Morgan, AICP, Senior Planner  
Mr. Michael D. Schwartz, Planner

Mrs. Janet Kegley announced that she had a conflict of interest on this request and left the meeting room.

Chairman Rolfsen introduced the second item on the Agenda at 8:46 p.m.

**CHANGE IN CONCEPT DEVELOPMENT PLAN - Michael Schwartz, Staff**

2. Request of **Ken Butler (owner by contract)** for a Change in Concept Development Plan in Commercial Two/Planned Development (C-2/PD) and Office One/Planned Development (O-1/PD) zones for a 0.97 acre lot located on the south side of US 42, to the immediate west of the property at 8741 US 42 and immediate east of the property at 8755 US 42, Florence, Kentucky. The request is for a Change in Concept Development Plan to allow a multi-tenant commercial building with two drive-through facilities.

Staff Member, Michael Schwartz, presented the Staff Report, which included a PowerPoint presentation. The site is approximately one acre in size. In 1996, there was a Zoning Map Amendment request that changed the zoning on the site from Suburban Residential One (SR-1) to Office One/Planned Development (O-1/PD) and Commercial Two/Planned Development (C-2/PD). In 2018, there was a Change in Concept Development Plan application, which permitted eating and drinking establishments along with accessory drive-thru facilities. In 2019, a Major Site Plan was approved for a Starbucks store on the adjoining site. A few months ago, there was an application for a Change in Concept Development Plan for a Firestone auto repair service facility. The Planning Commission recommended disapproval and the applicant withdrew the request prior to City of Florence action. Approximately one-third of the site is zoned C-2/PD and the other two-thirds is zoned O-1/PD. Subareas 9 and 10 of the Plantation Pointe North Concept Development Plan permits eating and drinking establishments as principally permitted uses. The topography of the site is relatively flat. Mr. Schwartz showed the location of the existing stormwater detention basin. It straddles the property line. The 2040 Future Land Use Map identifies the site for commercial uses. Page 3 of the Staff Report includes those sections of the Comprehensive Plan that are pertinent to the request. Mr. Schwartz showed some photos of the site and adjoining properties. He also showed the submitted Concept Development Plan. The proposed building will be 3,640 square feet in size. It will include 2 tenants. One of the tenants is a Jimmy John's restaurant and an unnamed restaurant. There will be 2 independent drive thru facilities. The one closest to the building will be used for Jimmy John's. The other one will be on the outside and will serve the other restaurant. Mr. Schwartz showed the locations of the drive thru, travel lane and the dumpster. All of the movements converge at one point. He also showed photographs of a prototypical building design. It is included on Pages 4 & 5 of the Staff Report as well as an evaluation of the submitted Concept Development Plan against both the Zoning Regulations as well as the existing approved Concept Plan for Plantation Pointe North Subdivision.

In regard to Staff Comments, the drive thru facilities must be incidental according to the requirements and subordinate to the principal use. A determination will have to be made whether the proposal of 2 independent drive thru facilities is still subordinate and incidental. Paving, curbing and vehicular parking must be setback a minimum of 10 feet from any interior property line. There is an 8 foot setback. Each building in the area shall utilize a gable or hip roof shape. The applicant's design shows a flat roof construction. There are multiple turning movements at the existing driveway entrance.

At this time, Chairman Rolfsen asked if the applicant was present and wanted to proceed with their presentation?

Mr. Ken Butler, owner by contract, stated that he is open to any suggestions even if it means turning the dumpster in a different direction.

Chairman Rolfsen expressed a concern about another possible restaurant with a drive thru. It would result in a lot of traffic.

Ms. Gulick inquired about the type of queing and the amount of cars that will be in line or stacked. It would be for not only Jimmy Johns's but also for the unnamed restaurant. How do you expect the traffic to circulate through the site without backing out to any of the adjoining streets?

Mr. Butler replied that it isn't a McDonald's or Chick-fil-A restaurant that have a double drive thru. Those restaurants are already in the area. The stacking for Jimmy John's is not a lot of cars. Jimmy John's has merged with Rusty Taco and it doesn't have a high traffic count. That is what he envisions for the site.

Ms. Gulick stated that her experience has been that drive thrus usually wrap around a building completely. How many cars do you typically see at your 16 locations during your peak hours? Would the other restaurant have the same peak hours? Would it open at the same time? Could there be one drive thru that serves both businesses?

Mr. Butler replied that he hopes the other restaurant is as "freaky fast" as their restaurant. They don't have to stack up. The other restaurant could always move their menu board down in order to stack more cars.

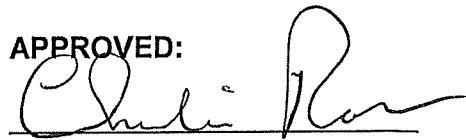
Mr. Lunnemann noted that the previous project for the same site had similar problems to what is proposed. It seems like there is a lot being crammed on the site and into a small space. He asked the applicant to consider eliminating the second drive thru and moving the Jimmy John's restaurant to the other side of the building? Mr. Butler answered that he is open to any suggestions. He feels it would be overkill. Starbucks owns the whole parcel and is requiring them to buy the whole acre. Their building is about 1,500 square feet on a one acre parcel. He could make the building a little smaller. Mr. Butler stated that he put his restaurant on the east side so it could hold more cars in the stacking area. Mr. Lunnemann also suggested that the design should accommodate drive thru and pedestrian traffic equally. Chairman Rolfsen emphasized that traffic at times is horrendous due to the Starbucks and the shared driveway. Mr. Butler replied that he could add angled parking in the drive thru area for the second restaurant if the drive thru is eliminated.

At this time, Chairman Rolfsen asked if there was anyone in the audience who wanted to speak in favor or against the request?

Seeing no one, Chairman Rolfsen asked if any Board members had any comments or questions?

**Seeing no further questions or comments, Chairman Rolfsen announced that the Committee Meeting for this item will be on December 18, 2019 at 5:00 P.M. in the Boone County Administration Building 2<sup>nd</sup> Floor IT Conference Room (Room 204A) . This item will be on the Agenda for the Business Meeting on January 8, 2019 at 7:00 P.M. Chairman Rolfsen closed the Public Hearing at 9:03 P.M.**

APPROVED:



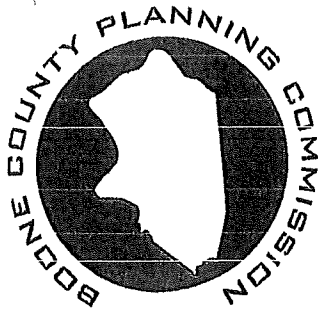
Charlie Rolfsen  
Chairman

Attest:



Kevin P. Costello, AICP  
Executive Director

# SUPPORTING INFORMATION



# BOONE COUNTY PLANNING COMMISSION

[www.boonecountyky.org/pc](http://www.boonecountyky.org/pc)  
[www.boonecountygis.com](http://www.boonecountygis.com)

Boone County Administration Building  
2950 Washington Street, Room 317  
P.O. Box 958  
Burlington, KY 41005

Phone (859) 334-2196; Fax (859) 334-2264  
[plancom@boonecountyky.org](mailto:plancom@boonecountyky.org)

December 20, 2019

Mr. Ken Butler  
2466 Hidden Oak Court  
Newburgh, Indiana 47630

**RE:** Recommended Conditions of Approval for Ken Butler (applicant/owner by contract) for a Change in a Concept Development Plan in Commercial Two/Planned Development and Office One/Planned Development (O-1/PD) zones for a 0.97 acre lot located on the south side of US 42, to the immediate west of the property at 8741 US 42 and immediate east of the property at 8755 US 42, Florence, Kentucky. The request is for a Change in Concept Development Plan to allow a multi-tenant commercial building with two drive-through facilities.

Dear Mr. Butler:

The following represents the recommended conditions of approval for the above referenced application as discussed by the Planning Commission's Zone Change Committee at their December 18, 2019 meeting. If you, as the authorized representative of the applicant and property owner agree to these conditions, please so indicate by signing in the space provided at the end of this letter and return the original letter to the Planning Commission's office by Friday, January 3, 2020.

## CONDITIONS

1. That the site be developed in a manner consistent with the Revised Concept Development Plan and Elevations, dated December 13, 2019, that were submitted at the Committee's December 18, 2019 meeting.
2. That the final architectural details and building materials be evaluated and approved as part of the Site Plan, with the exception that: (a) EIFs should be used as an accent and not as a predominant building material; and (b) brick shall be installed to the top of the windows, at a minimum, on all four sides of the building.
3. That specific parking requirements be reviewed and approved either as part of a Site Plan or a Tenant Finish permit.
4. That signage be reviewed and approved through separate sign permits.
5. The location of the menu board shall be at the southwest corner of the building to maximize stacking distance in the drive through lane.

Mr. Ken Butler  
December 20, 2019  
Page 2

- The dumpster shall be turned 90 degrees counter clockwise and the enclosure shall be made of brick that matches the building.

Sincerely,



Michael D. Schwartz  
Planner

MDS/ss

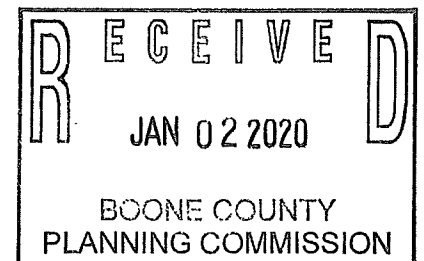
AGREEMENT

I, the authorized representative of the property owner of the approximate 0.97 acre lot located on the south side of US 42, to the immediate west of the property at 8741 US 42 and immediate east of the property at 8755 US 42, Florence, Kentucky, agree to the conditions listed herein for the above referenced Change in Concept Development Plan.



Ken Butler (Applicant/Owner By Contract)

12/25/19  
Date



~~AFTER RECORDING RETURN TO:~~

**RETURN TO:**

Robln Rash, Esq.  
InSite Real Estate, LLC  
1400 16<sup>th</sup> Street, Suite 300  
Oak Brook, IL 60523

Record and Return to:  
Title Agency Support, LLC  
10800 Timberwood Circle, Suite 11  
Louisville, KY 40223

### GENERAL WARRANTY DEED

This deed made this 21 day of December, 2018, by and between **A & K ENTERPRISE, INC.**, a Kentucky corporation ("Grantor") with an address of 4205 Dixie Highway, Elsmere, Kentucky 41018 and **FLORENCE, KY (SEC HWY 42 AND EXPRESS LOT 2C) LLC**, an Illinois limited liability company ("Grantee") with an address of 1400 16<sup>th</sup> Street, Suite 300, Oak Brook, Illinois 60523.

WITNESSETH:

That for valuable consideration in the total amount of Four Hundred Thirty-Nine Thousand One Hundred Sixty-One and 00/100 Dollars (\$439,161.00) paid in cash, the receipt of which is hereby acknowledged, Grantor does hereby bargain, sell, grant and convey, with covenant of general warranty, unto Grantee, its successors and assigns forever, the following described real estate situated in Boone County, Kentucky, and being more particularly described as follows:

LOT 2C OF THE RESUBDIVISION OF LOT 3 AND LOT 2B OF THE PLANTATION POINTE COMMERCIAL SUBDIVISION, A PLAT OF WHICH IS RECORDED IN PLAT CABINET 6, PAGE 205, IN THE OFFICE OF THE CLERK OF BOONE COUNTY, COMMONWEALTH OF KENTUCKY.

BEING A PORTION OF THE SAME PROPERTY CONVEYED TO A & K ENTERPRISE, INC., A KENTUCKY CORPORATION, BY DEED DATED JANUARY 11, 2007, OF RECORD IN DEED BOOK D928, PAGE 421, IN THE OFFICE OF THE CLERK OF BOONE COUNTY, AT BURLINGTON, KENTUCKY. ✓

Commonly known as: 8747 U.S. Highway 42, Florence, Kentucky

*Group # 4904 and 5474*

Together with all the privileges and appurtenances to the same belonging; to have and to hold the same to the said Grantee, its successors and assigns forever, the Grantor, its successors and assigns, hereby covenanting with the Grantee, its successors and assigns, that the title so conveyed is clear, free and unencumbered, and that it will warrant and defend the same against all legal claims whatsoever. Grantor further covenants that Grantor is lawfully seized of the estate hereby conveyed, that Grantor has full right and power to convey the same, and that said property is free from all encumbrances except all taxes due or payable in 2019 and the Grantee assumes and agrees to pay them together with all taxes thereafter.

Provided, however, there is excepted from the foregoing covenants and warranties any real estate taxes and general and special assessments not yet due and payable; and easements, restrictions and stipulations of record ("Permitted Exceptions") on Exhibit "A" attached hereto.

Boone County  
D1120 PG 315

180426854

written.

GRANTOR:

**A & K ENTERPRISE, INC.,**  
a Kentucky corporation,

By: Raymond Erpenbeck  
Name: Raymond Erpenbeck  
Title: Vice President

State of Kentucky )  
County of KENTON ) SS:

The foregoing instrument was acknowledged and sworn to before me this 20 day of December, 2018, by Raymond Erpenbeck, Vice President of **A & K ENTERPRISE, INC.**, a Kentucky corporation, for and on behalf of said corporation, who hereby acknowledges the execution of the foregoing instrument to be its and his free act and deed.

Walter Tubatunga #529387  
Notary Public, State at Large, Kentucky

My commission expires:  
2/10/19

**Consideration Certificate**

**A & K ENTERPRISE, INC.**, a Kentucky corporation, whose address is 4205 Dixie Highway, Elsmere, Kentucky 41018, Grantor, and **FLORENCE, KY (SEC HWY 42 AND EXPRESS LOT 2C) LLC**, an Illinois limited liability company, whose address is 1400 16<sup>th</sup> Street, Suite 300, Oak Brook, Illinois 60523, Grantee, do hereby certify, pursuant to KRS Chapter 382, that the above-stated consideration in the amount of \$439,161.00, is the true, correct and full consideration paid for the property herein conveyed.

GRANTOR:

**A & K ENTERPRISE, INC.**,  
a Kentucky corporation,

By: Raymond Erpenbeck  
Name: Raymond Erpenbeck  
Title: Vice President

State of Kentucky )  
County of KENTON ) SS:

The foregoing Consideration Certificate was subscribed and sworn to before me this 20 day of December, 2018, by Raymond Erpenbeck, Vice President of **A & K ENTERPRISE, INC.**, a Kentucky corporation, for and on behalf of said corporation, who hereby acknowledges the execution of the foregoing certificate to be its and his free act and deed.

Walter Tubatunga #529387  
Notary Public, State at Large, Kentucky

My commission expires:  
3/12/19

GRANTEE:

**FLORENCE, KY (SEC HWY 42 AND EXPRESS LOT 2C) LLC,**  
an Illinois limited liability company,

By: *Robin Rash*  
Name: Robin Rash  
Title: Manager

State of Illinois                    )  
  ) SS:  
County of DuPage                )

I, the undersigned, a Notary Public in and for the County and State aforesaid, does hereby certify that the above named Manager of **FLORENCE, KY (SEC HWY 42 AND EXPRESS LOT 2C) LLC**, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed and sworn to the foregoing Consideration Certificate as such Manager appeared before me this day in person and acknowledged that as such Manager, she signed and delivered the said Consideration Certificate pursuant to authority given by the Members of said Limited Liability Company as her free and voluntary act as Manager, and as the free and voluntary act of the Limited Liability Company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this 21 day of December, 2018.

*Elizabeth Ann Irving*  
Notary Public

My commission expires:  
11/17/20



THIS INSTRUMENT PREPARED BY:  
*Robin Rash*  
Robin Rash, Esq.  
InSite Real Estate, LLC  
1400 16<sup>th</sup> Street, Suite 300  
Oak Brook, IL 60523

**EXHIBIT "A"**

**PERMITTED EXCEPTIONS**

1. Non-exclusive Easement for Landscape by and between Plantation Pointe Commercial Association, Inc. and ERPS, Inc., dated May 23, 2002, of record in EA64, Page 609, in the Office of the Clerk of Boone County, at Burlington, Kentucky.
2. Easement granted Boone-Florence Water Commission, dated June 13, 2002, of record in EA65, Page 495 in the Office of the Clerk of Boone County, at Burlington, Kentucky.
3. Subject to restrictions, covenants, stipulations and provisions as imposed by Declaration of Covenants, Conditions and Restrictions and Reservations of Easements and Declaration for Commercial Association, recorded June 18, 1999, of record in Book 774, Page 176; and as amended by First Amendment of record in MC846, Page 713; by Second Amendment of record in MC1048, Page 58; by Third Amendment of record in MC1048, Page 908; by Fourth Amendment dated July 26, 2006, of record in MC1057, Page 291; by Fourth Amendment dated January 19, 2007 of record in MC1069, Page 460; by Fifth Amendment dated January 25, 2007, of record in MC1069, Page 950; by Sixth Amendment dated April 10, 2007, of record in MC1075, Page 678; by Seventh Amendment dated April 9, 2007, of record in MC1075, Page 550; by Eighth Amendment dated April 16, 2007, of record in MC1076, Page 42; by Plantation Pointe-Commercial Development Criteria Amendment, dated January 22, 2008, of record in MC1094, Page 974; by Ninth Amendment dated January 2, 2008, of record in MC1096, Page 166; by Tenth Amendment dated February 27, 2008, of record in MC1097, Page 302; by Eleventh Amendment dated November 25, 2008, of record in MC1116, Page 84, and by Twelfth Amendment dated June 30, 2011, of record in MC1177, Page 273, all in the Office of the Clerk of Boone County, at Burlington, Kentucky.
4. Conditions, stipulations, restrictions, building lines and easements, together with incidental rights, as provided for on the recorded plat of record in Plat Cabinet 5, Slide 163, and Plat Cabinet 5, Slide 392, in the Office of the Clerk of Boone County, at Burlington, Kentucky.
5. Conditions, stipulations, restrictions, building lines and easements, together with incidental rights, as provided for on the recorded plat of record in Plat Cabinet 6, Page 166, in the Office of the Clerk of Boone County, at Burlington, Kentucky.
6. All matters set forth on the Plat of Resubdivision of Lot 3 and Lot 2B of the Plantation Pointe Commercial Subdivision, a Plat of which is recorded in Plat Cabinet 6, Page 205, in the office of the Clerk of Boone County, Commonwealth of Kentucky.

DOCUMENT NO: 766591  
RECORDED ON: JANUARY 03, 2019 11:36:55AM  
TOTAL FEES: 120.00  
TRANSFER TAX: 1439.50  
GROUP : 4904  
COUNTY CLERK: KENNY BROWN  
COUNTY: BOONE COUNTY CLERK  
DEPUTY CLERK: MICHELLE E  
BOOK 0120 PAGES 315 - 318



## PURCHASE AND SALE CONTRACT

This Purchase and Sale Contract (the "**Contract**") is entered into as of the Effective Date between Purchaser and Seller.

### BASIC TERMS AND DEFINITIONS

"**Purchaser**": KEB REAL ESTATE, LLC, a(n) Indiana Corp

"**Seller**": FLORENCE, KY (SEC HWY 42 AND EXPRESS LOT 2C) LLC an Illinois limited liability company

"**Property**": Generally, the real property and improvements located at the Southeast Corner of Hwy 42 and Express Street, Florence, Kentucky, consisting of approximately 0.97 acres of land. The Property is more specifically defined in Section 1 and has an address of 8747 US 42 Hwy, Florence, KY with a parcel ID 062.00-37-002.03.

"**Purchase Price**": \$595,000.00

"**Earnest Money Deposit**": \$15,000.00

"**Effective Date**": The later of the dates that the Contract has been executed by Purchaser or by Seller.

"**Investigation Period**": Beginning on the Effective Date and ending on the date that is one hundred twenty (120) days after the Effective Date.

"**Title and Survey Comment Deadline**": Ten (10) days after the Effective Date.

"**Closing Date**": Thirty (30) days after the end of the Investigation Period.

**Addresses for Notice to Seller:** FLORENCE, KY (SEC HWY 42 AND EXPRESS LOT 2C) LLC  
c/o InSite Real Estate, L.L.C.  
1400 16th Street, Suite 300  
Oak Brook, IL 60523  
Attn: Maggie Byrne  
Phone: 630/617-9178  
Fax: 630/617-9120  
Email: [mbyrne@insiterealestate.com](mailto:mbyrne@insiterealestate.com)

And:

FLORENCE, KY (SEC HWY 42 AND EXPRESS LOT 2C) LLC  
c/o InSite Real Estate, L.L.C.  
1400 16th Street, Suite 300  
Oak Brook, IL 60523  
Attn: Robin Rash, Chief Legal Officer  
Phone: 630/617-9117  
Fax: 630/617-9120  
Email: [rrash@insiterealestate.com](mailto:rrash@insiterealestate.com)

(both are required for notice to be effective)

**Address for Notice to Purchaser:** KEB Real Estate, LLC  
c/o Ken Butler  
PO Box 1172  
Evansville, IN 47708  
Email: ken@stinler.ocks

**"Seller's Broker":** OnSite Retail Group  
9545 Kenwood Road, Suite 202  
Cincinnati, OH  
Attn: Jeffery J. Smith  
Phone: 513/678-7541  
Email: [jeff@onsiteretailgroup.com](mailto:jeff@onsiteretailgroup.com)

**"Purchaser's Broker":** Woodward Commercial Realty  
4763 Rosebud Lane, Suite B  
Newburgh, IN 47630  
Attn: Lisa Raben  
Phone: 812-457-2020  
Email: [lraben@woodwardrealty.com](mailto:lraben@woodwardrealty.com)

**"Escrow Agent and Title Company":** First American Title Insurance Company  
National Commercial Services  
25 West Main Street, Suite 400  
Madison, WI 53703  
Title Underwriter: Cat Heath, 608/286-3584, [caheath@firstam.com](mailto:caheath@firstam.com)  
Escrow Agent: Rachael Schroeder, 608/286-3579, [rschroeder@firstam.com](mailto:rschroeder@firstam.com)  
(Earnest Money Deposit and contact for notices)

**Exhibits:** The following exhibits are attached to and incorporated into this Contract:

Exhibit A – Legal Description of the Property  
Exhibit B – Seller Deliveries  
Exhibit C – Declaration

## TERMS AND CONDITIONS

### 1. SALE AND PURCHASE; DESCRIPTION OF THE PROPERTY.

1.1 Agreement to Purchase and Sell. Seller agrees to sell the Property to Purchaser, and Purchaser agrees to purchase the Property from Seller, on the terms and conditions in this Contract. The Property includes the Land and the Improvements.

1.2 Land. The term "**Land**" means fee simple title to the real property legally described in Exhibit A including: (a) all rights appurtenant to the Land, whether or not of record; and, (b) all tenements, hereditaments, privileges, and appurtenances belonging or related to the Land.

1.3 Improvements. The term "**Improvements**" means any structures, driveways, parking areas, sidewalks, landscaped areas, amenities and similar items on the Land.

2. PAYMENT OF PURCHASE PRICE. The Purchase Price will be paid by Purchaser to Seller as follows:

2.1 Earnest Money Deposit. Within three (3) business days after the Effective Date, Purchaser will deliver the Earnest Money Deposit to the Escrow Agent. The Escrow Agent will hold the Earnest Money Deposit in escrow pursuant to the terms and conditions of this Contract.

2.2 Balance of Purchase Price. If the closing of the sale of the Property to Purchaser (the "**Closing**") occurs under the terms and conditions of this Contract, the balance of the Purchase Price, plus or minus adjustments for prorations and any reconciliation, will be paid by Purchaser to Seller on the Closing Date in immediately available funds.

3. SELLER DELIVERIES. Within five (5) business days after the Effective Date, Seller will deliver to Purchaser each of the items listed on Exhibit B ("**Seller Deliveries**").

### 4. PURCHASER'S INVESTIGATION.

4.1 Purchaser's Right to Investigate. During the Investigation Period, Purchaser may, at Purchaser's sole cost and expense, investigate the Property, including the conduct of any tests, assessments, studies, and interviews that Purchaser deems necessary (including environmental tests and assessments, physical condition inspections and assessments, investigation of government requirements including zoning and other legal requirements, and assessments of the availability of utilities) ("**Purchaser's Investigation**").

4.2 Purchaser's Right to Enter. Seller grants to Purchaser, its agents, representatives, and contractors the right to enter the Property to conduct Purchaser's Investigation subject to the following conditions:

4.2.1 Purchaser must provide Seller with at least forty-eight (48) hours' prior informal notice of its intent to enter the Property. Informal notice must be given via email or telephone call to Christopher Hutter per his contact information listed in the Basic Terms and Conditions.

4.2.2 All entries onto the Property will be at reasonable times.

4.2.3 Before going onto the Property, Purchaser will obtain and deliver to Seller a certificate: (a) evidencing that Purchaser (and any contractor hired by Purchaser to enter onto the Property) has commercial general liability insurance in the amount of Two Million Dollars (\$2,000,000.00) per single occurrence; and (b) naming Seller and any party reasonably designated by Seller, as additional insureds under this commercial general liability insurance policy.

4.2.4 Seller may have its representative present during any entries onto the Property.

4.2.5 Purchaser must obtain the prior written consent of Seller before Purchaser performs any invasive testing on the Property.

4.3 Purchaser's Right to Extend. Purchaser may extend the Investigation Period for one (1) thirty (30) day period by delivering written notice to Seller before the end of the Investigation Period. Within three (3) business days after the time the extension goes into effect, Purchaser will deliver to the Escrow Agent \$5,000 as an additional Earnest Money Deposit. The additional Earnest Money Deposit will be held and disbursed in the same manner as the initial Earnest Money Deposit, except that the additional Earnest Money delivered by Purchaser pursuant to this Section 4.3 shall be non-refundable to Purchaser.

Purchaser will promptly repair any physical damage to the Property caused by Purchaser's Investigation and will promptly remove, bond over, or insure over any mechanic's liens arising from the work performed to complete Purchaser's Investigation.

Purchaser will indemnify and hold Seller harmless from any loss, cost, or damage (including reasonable attorney's fees and costs) to Seller, the Property, or any person or property on the Property resulting from Purchaser's Investigation or Purchaser's failure to comply with its obligations under this Section 4.2. This indemnification will survive Closing and termination of this Contract and will not be subject to any liquidated damages provisions or limitation on Purchaser's liability.

4.4 Waiver or Termination. At any time before the end of the Investigation Period, Purchaser may give written notice to Seller to: (a) waive Purchaser's Investigation; or (b) terminate this Contract if Purchaser is not satisfied with the Property. If Purchaser fails to give this notice, Purchaser will be deemed to have waived Purchaser's Investigation under (a) above. If Purchaser terminates this Contract before the end of the Investigation Period, then Escrow Agent will return the initial Earnest Money Deposit to Purchaser and neither party will have any further obligations or liabilities under this Contract except as otherwise expressly provided for in this Contract. If Purchaser does not terminate this Contract before the end of the Investigation Period, then the initial Earnest Money Deposit will be non-refundable to Purchaser and Purchaser will proceed to Closing.

## 5. TITLE AND SURVEY.

5.1 Existing Title and Existing Survey. As part of the Seller Deliveries, Seller will deliver to Purchaser the Existing Title and Existing Survey.

5.2 Title Commitment. Promptly after the Effective Date, Purchaser will order from the Title Company a commitment for an owner's policy of title insurance for the Property (the "**Title Commitment**"), including copies of all documents described in the Title Commitment (the "**Title Documents**").

5.3 Title Objections. Before the Title and Survey Comment Deadline, Purchaser will notify Seller of any liens, encumbrances, and other matters described in the Title Commitment, Title Documents, and Existing Survey that are unacceptable to Purchaser (the "**Title and Survey Comment Notice**"). Any liens, encumbrances, and other matters described in the Title Commitment, Title Documents, and Existing Survey, to which Purchaser does not object before the Title and Survey Comment Deadline will be deemed to be acceptable to Purchaser. Seller will then have until the date that is ten (10) days after Seller's receipt of any Title and Survey Comment Notice (the "**Cure Deadline**") to remove or remedy any matters raised in the Title and Survey Comment Notice. If Seller fails to cure or remedy any items raised in the Title and Survey Comment Notice, Purchaser may either: (a) proceed with this Contract without any reduction of the Purchase Price; or (b) terminate this Contract and the Earnest Money Deposit will be returned to Purchaser and neither party will have any further obligations or liabilities under this Contract, except as otherwise expressly provided. Purchaser will exercise one of these options by providing written notice to Seller within two (2) days after the Cure Deadline. If Purchaser fails to provide this notice within two (2) days after the Cure Deadline, then Purchaser will be deemed to have elected to proceed with this Contract under (a) above. Notwithstanding the foregoing, at Closing Purchaser shall take title to the Property subject to the terms and conditions contained in that certain Declaration or Easements, Covenants, Conditions, and Restrictions dated December 21, 2018, and recorded on January 3, 2019, in Book EA81, Page 460, in the Office of the Clerk of Boone County, Commonwealth of Kentucky, as amended by that certain First

Amendment to Declaration or Easements, Covenants, Conditions, and Restrictions dated July 16, 2019, and recorded on August 1, 2019, in Book MC1349, Page 956, in the Office of the Clerk of Boone County, Commonwealth of Kentucky (collectively, the "**Declaration**"), attached hereto as Exhibit C.

5.4 Title Policy. At the Closing, the Title Company will deliver to Purchaser an owner's title policy or marked-up title commitment in the amount of the Purchase Price and dated as of the time of recording of the Deed (the "**Title Policy**").

## 6. REPRESENTATIONS AND WARRANTIES.

6.1 Seller's Representations and Warranties. Seller represents and warrants to Purchaser as follows:

6.1.1 Seller has full power and authority to enter into this Contract, bind Seller and the Property to the commitments made in this Contract, and convey or cause the conveyance of the Property to Purchaser.

6.1.2 The execution, delivery, and performance by Seller of this Contract will not be or cause a default or breach of any agreement or undertaking of Seller or concerning the Property.

6.2 Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller that:

6.2.1 Purchaser has the power and authority to execute and deliver this Contract and to perform its obligations under this Contract.

6.2.2 The execution of this Contract by Purchaser is the authorized and legally binding action of Purchaser. Upon execution of this Contract, Purchaser will be bound by and subject to the terms and provisions of this Contract.

6.3 "**AS IS**" Condition of Property.

6.3.1 EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS CONTRACT, SELLER DISCLAIMS ALL WARRANTIES OF ANY KIND OR NATURE (INCLUDING WARRANTIES OF HABITABILITY, MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE), WHETHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES WITH RESPECT TO THE PROPERTY, THE ZONING OF THE LAND, THE SOIL CONDITIONS OF THE LAND, OR THE SUITABILITY OF THE PROPERTY FOR PURCHASER'S INTENDED USE. PURCHASER ACKNOWLEDGES THAT PURCHASER WILL CONDUCT A DILIGENT INVESTIGATION OF THE PROPERTY REGARDING ITS CONDITION, PERMITTED USE, AND SUITABILITY FOR PURCHASER'S INTENDED USE, AS WELL AS ALL OTHER FACTORS DEEMED MATERIAL TO PURCHASER. PURCHASER WILL EMPLOY INDEPENDENT PROFESSIONALS IN CONNECTION WITH PURCHASER'S INVESTIGATION. PURCHASER FURTHER ACKNOWLEDGES THAT PURCHASER IS PURCHASING THE PROPERTY "AS IS" AND IN ITS PRESENT CONDITION AND THAT PURCHASER IS NOT RELYING UPON ANY REPRESENTATION MADE BY SELLER, OR ANY OF ITS EMPLOYEES, OR AGENTS WITH RESPECT TO THE PROPERTY, AND THAT, IN FACT, NO REPRESENTATIONS WERE MADE, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS CONTRACT. PURCHASER ACKNOWLEDGES RECEIPT OF THE SELLER DELIVERIES AND ACCEPTS ALL MATTERS DESCRIBED IN THE SELLER DELIVERIES.

6.3.2 ADDITIONALLY, SELLER MAKES NO WARRANTY WITH RESPECT TO THE PRESENCE ON OR BENEATH THE PROPERTY (OR ANY PARCEL IN PROXIMITY TO THE PROPERTY) OF HAZARDOUS SUBSTANCES OR MATERIALS WHICH ARE CATEGORIZED AS HAZARDOUS OR TOXIC UNDER ANY LOCAL, STATE OR FEDERAL LAW, STATUTE, ORDINANCE, RULE, OR REGULATION PERTAINING TO ENVIRONMENTAL OR SUBSTANCE REGULATION, CONTAMINATION, CLEANUP OR DISCLOSURE. SELLER WILL HAVE NO LIABILITY TO PURCHASER FOR THE ENVIRONMENTAL CONDITION OF THE PROPERTY.

PURCHASER ACKNOWLEDGES THAT ITS OPPORTUNITY FOR INSPECTION AND INVESTIGATION OF THE PROPERTY (AND OTHER PARCELS IN PROXIMITY TO THE PROPERTY) HAS BEEN ADEQUATE TO ENABLE PURCHASER TO MAKE ITS OWN DETERMINATION WITH RESPECT TO THE PRESENCE ON OR BENEATH THE PROPERTY (AND OTHER PARCELS IN PROXIMITY TO THE PROPERTY) OF HAZARDOUS SUBSTANCES OR MATERIALS, AND PURCHASER ACCEPTS THE RISK OF THE PRESENCE OF ANY HAZARDOUS SUBSTANCES OR MATERIALS.

**7. SALE COMMISSION.**

7.1 Seller's Broker. Seller represents and warrants to Purchaser that Seller has dealt only with Seller's Broker in connection with this Contract and no other person or entity acting as real estate broker, finder, or agent negotiated this Contract on Seller's behalf or is entitled to any commission by reason of its representation of Seller in connection with this Contract. Seller will indemnify, defend, and hold Purchaser harmless from and against any claims for a fee or commission made by any broker, other than Seller's Broker, claiming to have acted by or on behalf of Seller in connection with this Contract. At Closing, Seller will pay a commission to Seller's Broker pursuant to the terms and conditions of a separate agreement.

7.2 Purchaser's Broker. Purchaser represents and warrants to Seller that Purchaser has dealt only with Purchaser's Broker in connection with this Contract and no other person or entity acting as real estate broker, finder, or agent negotiated this Contract on Purchaser's behalf or is entitled to any commission by reason of its representation of Purchaser in connection with this Contract. Purchaser will indemnify, defend, and hold Seller harmless from and against any claims for a fee or commission made by any broker, other than Purchaser's Broker, claiming to have acted by or on behalf of Purchaser in connection with this Contract. At Closing, Seller will pay a commission to Purchaser's Broker pursuant to the terms and conditions of a separate agreement.

**8. CONDEMNATION.** If a Material Condemnation occurs before Closing, or if any type of proceeding for a Material Condemnation begins before Closing, then Seller will immediately notify Purchaser. Upon receipt of this notice, Purchaser may either: (a) terminate this Contract and the Earnest Money Deposit will be returned to Purchaser and neither party will have any further obligations or liabilities under this Contract, except as otherwise expressly provided; or (b) proceed with the Closing. If Purchaser proceeds with the Closing and (i) if the Material Condemnation is completed before Closing, then the Purchase Price will be reduced by the amount of the award actually received by Seller as a result of the Material Condemnation, or (ii) if the Material Condemnation is not completed before the Closing, then Seller will assign to Purchaser all of Seller's right, title, and interest, in and to the condemnation proceeds and awards, and Purchaser will have the sole and exclusive right to negotiate, contest, and settle all Material Condemnation proceedings. Purchaser will exercise its option under this Section 8 by providing Seller with a written notice of its decision within ten (10) days after Purchaser receives from Seller written notice of the proposed Material Condemnation and the Closing Date will be extended, if necessary, to permit Purchaser to make its election within such time period. If this written notice is not timely received, then Purchaser will be deemed to have elected to proceed with Closing. For the purposes of this Contract, a "**Material Condemnation**" means a condemnation or other taking of the Property, any part of the Property, or rights of access or other rights benefitting the Property, as a result of the exercise of the power of eminent domain, with an award that equals or exceeds \$200,000.00.

**9. CASUALTY.** If damage to the Property occurs before Closing, Seller will immediately notify Purchaser in writing, and if the cost to repair the damage exceeds \$200,000.00 (as determined by an independent insurance adjuster selected by Seller), Purchaser may either: (a) terminate this Contract and the Earnest Money Deposit will be returned to Purchaser and neither party will have any further obligations or liabilities under this Contract except as otherwise expressly provided; or (b) proceed with the Closing. Purchaser must make this election by delivering written notice to Seller within ten (10) days after Seller's notice regarding the casualty. If Purchaser fails to timely deliver this written notice, then Purchaser will be deemed to have elected to proceed with Closing. If Purchaser is not entitled to terminate or elects not to terminate this Contract under this Section 9, then Seller will pay over and assign to Purchaser all insurance proceeds payable to Seller as a result of the damage to the Property.

10. **CLOSING.**

10.1 **Time and Place of Closing.** The Closing will occur on the Closing Date, however, Purchaser may elect to close at an earlier date by providing written notice to Seller at least five (5) days before the date Purchaser desires to close. The Closing will take place at the office of the Escrow Agent. Neither party is obligated to attend the Closing so long as they deliver their documents to the Escrow Agent at least one (1) business day before Closing and deliver their funds to the Escrow Agent on or before the Closing Date.

10.2 **Seller's Closing Deliveries.** Seller will deliver to Purchaser at Closing the following, all in form and substance reasonably acceptable to Purchaser:

10.2.1 A special warranty deed or local equivalent, conveying to Purchaser fee simple title to the Property (the "**Deed**").

10.2.2 Intentionally Omitted.

10.2.3 Intentionally Omitted.

10.2.4 An ALTA extended coverage statement and/or title affidavit, gap undertaking, and all other affidavits, certifications, and documents required by the Title Company in connection with its issuance of the Title Policy.

10.2.5 A FIRPTA Statement from Seller certifying that Seller is not a "foreign person," "foreign estate," "foreign corporation", "foreign partnership", or any other foreign entity as these terms are defined in §1445 of the Internal Revenue Code and the income tax regulations promulgated under the Internal Revenue Code.

10.2.6 A certificate executed by Seller confirming that the representations and warranties made by Seller in this Contract remain true and correct on the Closing Date ("**Seller's Closing Certificate**").

10.2.7 All warranties and guaranties, if any.

10.2.8 Intentionally Omitted.

10.2.9 A settlement statement prepared by Escrow Agent.

10.2.10 Any other documents reasonably required by the Title Company to consummate the transaction contemplated by this Contract.

10.3 **Purchaser's Closing Deliveries.** Purchaser will deliver to Seller at Closing:

10.3.1 The balance of the Purchase Price, plus or minus adjustments made for prorations or any reconciliation.

10.3.2 Intentionally Omitted.

10.3.3 A settlement statement prepared by Escrow Agent.

10.3.4 A certificate executed by Purchaser confirming that the representations and warranties made by Purchaser in this Contract remain true and correct on the Closing Date ("**Purchaser's Closing Certificate**").

10.3.5 Any other documents reasonably required by the Title Company to consummate the transaction contemplated by this Contract.

Approximately five (5) business days before Closing, Seller will draft and circulate for comment by Purchaser the Deed, Seller's Closing Certificate, Purchaser's Closing Certificate, and Prorations Statement.

10.4 Prorations. Before the Closing Date, Seller will prepare and deliver to Purchaser a prorations statement (the "**Prorations Statement**"). The parties will work in good faith to agree upon, execute and deliver the Prorations Statement to Escrow Agent before the Closing Date. If any prorations or computations made under this Section 10 are based on estimates or prove to be incorrect, then either party will be entitled to an adjustment to correct the same, if it makes written demand on the party from whom it is entitled to the adjustment within one hundred eighty (180) days after the end of the calendar year in which the Closing occurs (or within thirty (30) days after the amount is ascertained, if later). For purposes of calculating the prorations provided for in this Contract, Purchaser will be deemed to be the owner of the Property on the Closing Date. The provisions of this Section will survive the Closing.

10.5 Real Estate Taxes and Assessments. Real estate taxes and assessments levied or assessed on or against the Property will be prorated on an accrual basis as of the Closing Date. At the Closing, Purchaser will receive a credit against the Purchase Price equal to all accrued and unpaid real estate taxes and assessments as of the Closing Date, including: (a) all real estate taxes and assessments attributable to the year before the Closing but not payable until after Closing; and (b) all real estate taxes and assessments attributable to the year in which the Closing occurs but not payable until the following year. At Closing, Seller will receive a credit equal to all real estate taxes and assessments which have been paid by Seller and which are applicable to the period after the Closing Date. The credit for accrued real estate taxes and assessments for which bills have not been issued on the Closing Date will be based on the most recent taxes and assessments.

10.6 Intentionally Omitted.

10.7 Miscellaneous. All other items that are customarily prorated in transactions similar to this transaction and that are not otherwise addressed in this Contract will be prorated as of the Closing Date.

10.8 Intentionally Omitted.

10.9 Possession. Seller will deliver possession of the Property to Purchaser at Closing.

10.10 Seller's Closing Costs. Seller will pay the following closing expenses incurred in connection with this transaction: (a) one-half of all closing fees charged by the Escrow Agent and/or the Title Company (including escrow and closing charges, but excepting any lender's charges, which will be the responsibility of Purchaser); (b) all transfer taxes and documentary stamps; and (c) Seller's legal fees and expenses.

10.11 Purchaser's Closing Costs. Purchaser will pay all other costs and expenses incurred in connection with this transaction including: (a) the fee for the recording of the Deed; (b) one-half of all closing fees charged by the Escrow Agent and/or the Title Company (including escrow and closing charges); (c) Purchaser's legal fees and expenses; (d) the costs of the Title Commitment and Title Policy; and (e) any lender's charges.

## 11. DEFAULT AND REMEDY.

11.1 Seller Default. In the event of a default by Seller in the performance or observance of any of Seller's duties or obligations under this Contract, and provided that Purchaser is not in default of any of its obligations under this Contract, Purchaser, as its sole remedy, may terminate this Contract and the Earnest Money Deposit will be returned to Purchaser, as fair and reasonable compensation for Seller's default and as liquidated damages, actual damages being difficult, if not impossible to ascertain.

11.2 Purchaser Default. In the event of a default by Purchaser in the performance or observance of any of Purchaser's duties or obligations under this Contract, then Seller may terminate this Contract and receive the Earnest Money Deposit, as fair and reasonable compensation for Purchaser's default and as liquidated damages, actual damages being difficult, if not impossible to ascertain.

11.3 Notice and Cure. In the event of a default by either party, the non-defaulting party will not be permitted to exercise any rights or remedies because of the default until after the non-defaulting party

has given the defaulting party written notice of the default and an opportunity to cure the default within five (5) days after the default notice.

11.4 Attorneys' Fees and Legal Costs. If either Seller or Purchaser brings an action or proceeding to enforce or defend its rights under this Contract, the Prevailing Party in any action or proceeding, or related appeal, will receive from the non-prevailing party all its costs, charges, and expenses (including court costs and reasonable attorneys' fees). Costs, charges, and expenses may be awarded in the same suit or recovered in a separate suit, whether or not the action or proceeding is pursued to decision or judgment. "**Prevailing Party**" means the party who, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense, substantially either: (a) attains the relief sought; or (b) defeats the relief sought.

12. NOTICES. Every notice required by this Contract must be in writing and will be deemed to have been delivered: (a) upon receipt or refusal of delivery, when delivered personally; (b) the day deposited with the U.S. Postal Service, when sent by certified or registered mail, postage prepaid, return receipt requested; or (c) the day deposited with a nationally recognized overnight courier service such as Federal Express, when sent next business day delivery to a U.S. address. In each case, a notice sent to a party must be directed to the address for that party set forth in the Basic Terms and Definitions. The facsimile and email addresses included in the Basic Terms and Definitions are for information purposes only, and may not be used to satisfy the notice requirements of this Section 12.

### 13. MISCELLANEOUS.

13.1 Assignability. Purchaser may assign this Contract to any Affiliated Entity of Purchaser without the Seller's prior written consent if Purchaser notifies Seller of this assignment five (5) business days before Closing. Purchaser may not assign this Contract to any other party or entity other than an Affiliated Entity without the Seller's consent. "**Affiliated Entity**" means any entity that owns, is owned by, controlled by or is under common control with Purchaser. Any Affiliated Entity to which Purchaser assigns this Contract must assume the obligations of Purchaser under this Contract. Purchaser will not be released from liability under this Contract as a result of any assignment by Purchaser.

13.2 Entire Agreement. This Contract is the complete agreement between Seller and Purchaser and supersedes all prior agreements and understandings, written and oral, between the Purchaser and Seller relating to the subject matter of this Contract, including any purchase proposals or so-called letters of intent executed by one or both of the parties. No modification or amendment of or waiver under this Contract will be binding upon Seller or Purchaser unless in writing and signed by Seller and Purchaser.

13.3 Time of Essence. Time is of the essence with respect to this Contract and each of its provisions. If the date for payment of any sum or the performance of any obligation under this Contract by either party falls on a Saturday, Sunday, or national holiday, then the date for payment or performance will be extended to the first business day after such Saturday, Sunday, or national holiday.

13.4 Severability. The invalidity or unenforceability of any provision of this Contract will not affect or impair any other provisions.

13.5 Successors and Assigns. Each provision of this Contract will extend to, bind, and inure to the benefit of Seller and Purchaser and their successors, and assigns; and all references in this Contract to Seller and Purchaser will be deemed to include all such parties.

13.6 Governing Law. This Contract will be governed by and construed under the laws of the state in which the Property is located.

13.7 Counterparts. This Contract may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same document. Documents and signatures transmitted via facsimile or electronic mail (including the execution of this Contract and exchange of counterparts) will be considered original signatures for the purpose of creating a valid and binding Contract.

13.8 Indemnity. Seller and Purchaser agree that, except for those items to be prorated or reconciled under this Contract, each party will be solely liable for the payment and performance of all costs and expenses, liabilities, obligations, and claims arising out of the party's ownership and operation of the Property before or on and after, as the case may be, the Closing Date, and the party will indemnify, defend, and hold the other party harmless therefrom, including any costs, expenses, liabilities, obligations, or claims arising under or with respect to any lease, management agreement, leasing agreement, or other agreement affecting the ownership, operation, management, or leasing of the Property entered into during the party's period of ownership.

13.9 Tax Deferred Exchange. If requested by either party, the other party will cooperate in effectuating a tax-deferred exchange (the "**Exchange**"), including executing any documents, instruments or agreements reasonably requested or necessary to complete the Exchange, provided the other party will not be obligated to expend any costs in connection with the Exchange or accept or assume any additional obligations or liabilities.

13.10 No Public Disclosure. The parties will keep confidential each of the provisions of this Contract and all business strategies, plans, discoveries, or marketing information in connection with this Contract, except such disclosures as may be necessary to each party's broker, lender, attorney, accountant or engineering professionals, or such disclosures as are required by law or governmental agencies.

13.11 Rule of Construction. Purchaser and Seller acknowledge that each party has actively participated in the drafting, preparation and negotiation of this Contract and each party has consulted its own independent counsel relating to any and all matters contemplated under this Contract. Each party has agreed to enter into this Contract after the review and the rendering of such advice and each party agrees that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Contract or any amendments to it.

13.12 Provisions Regarding Escrow Agent. The Escrow Agent agrees to hold and apply the Earnest Money Deposit in accordance with the terms and conditions of this Contract. The following provisions will control with respect to the rights, duties and liabilities of the Escrow Agent:

13.12.1 The Escrow Agent acts as a depository only and is not responsible or liable in any manner for the: (a) sufficiency, correctness, genuineness or validity of any written instrument, notice or evidence of a party's receipt of any instruction or notice which is received by the Escrow Agent, or (b) identity or authority of any person executing such instruction, notice or evidence.

13.12.2 In the performance of its duties and obligations of this Contract, Escrow Agent may rely upon any and all statements, certifications and/or representations made to the Escrow Agent by Seller or Purchaser, without investigation or inquiry.

13.12.3 The Escrow Agent will have no responsibility under this Contract except for the performance by it in good faith of the acts to be performed by it under this Contract, and the Escrow Agent will have no liability except for its own breach of this Contract, willful misconduct or gross negligence.

13.12.4 The Escrow Agent will not be responsible for the solvency or financial stability of any financial institution with which Escrow Agent is directed to invest funds escrowed under this Contract.

13.12.5 The Escrow Agent will be reimbursed on an equal basis by Purchaser and Seller for any reasonable expenses incurred by the Escrow Agent arising from a dispute with respect to the amount held in escrow, including the cost of any legal expenses and court costs incurred by the Escrow Agent, should the Escrow Agent deem it necessary to retain an attorney with respect to the disposition of the amount held in escrow.

13.12.6 In the event of a dispute between the parties with respect to the disposition of the amount held in escrow, the Escrow Agent may, at its own discretion, deliver such amount to an


appropriate court of law pending resolution of the dispute.

**SIGNATURE PAGE TO FOLLOW**

Purchaser and Seller have executed this Contract on the dates written below.

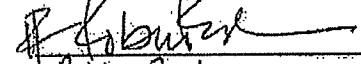
**PURCHASER:**

**KEB REAL ESTATE, LLC, a(n)**  
INDIANA

By:   
Name: Ken Butler  
Its: MGR. MEMBER  
Date: 10-18-19

**SELLER:**


**FLORENCE, KY (SEC HWY 42 AND EXPRESS  
LOT 2C) LLC**, an Illinois limited liability company

By:   
Name: Robin Rash  
Its: Manager  
Date: 10-23-2019

**ESCROW AGENT:**

Acknowledgment: By executing below, Escrow Agent acknowledges that this Contract constitutes the escrow instructions with respect to this Contract

**FIRST AMERICAN TITLE INSURANCE  
COMPANY**, a Nebraska corporation

By:   
Name: Rachael R. Schroeder  
Its: Sr Commercial Escrow Office  
Date: 10-23-19

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

LOT 2C OF THE RESUBDIVISION OF LOT 3 AND LOT 2B OF THE PLANTATION POINTE COMMERCIAL SUBDIVISION, A PLAT OF WHICH IS RECORDED IN PLAT CABINET 6, PAGE 205, IN THE OFFICE OF THE CLERK OF BOONE COUNTY, COMMONWEALTH OF KENTUCKY.

BEING THE SAME PROPERTY CONVEYED TO FLORENCE, KY (SEC HWY 42 AND EXPRESS) LLC BY DEED DATED DECEMBER 21, 2018, OF RECORD IN DEED BOOK 1120, PAGE 315, IN THE OFFICE OF THE CLERK OF BOONE COUNTY, AT BURLINGTON, KENTUCKY.

Commonly known as: 8747 U.S. Highway 42, Florence, Kentucky

**EXHIBIT B**

**SELLER DELIVERIES**

1. A copy of the existing ALTA survey of the Property dated December 18, 2018 and prepared by Power of Design Group, LLC (the "**Existing Survey**");
2. A copy of the Phase I Environmental report dated August 28, 2018 and prepared by TRC Environmental Corporation (the "**Environmental Report**");
3. A copy of the Soils Report dated October 10, 2018 and prepared by CTL Engineering, Inc. (the "**Soil Report**"); and
4. An existing ALTA Form B standard coverage owner's title policy or loan policy for the Property (the "**Existing Title**")

**EXHIBIT C**  
**DECLARATION**

(attached)

**ORDINANCE NO. O-2-20**

**AN ORDINANCE ADOPTING AND APPROVING A CHANGE IN A CONCEPT DEVELOPMENT PLAN IN A COMMERCIAL TWO/PLANNED DEVELOPMENT (C-2/PD) ZONE AND OFFICE ONE/PLANNED DEVELOPMENT (O-1/PD) ZONE FOR A 0.97 ACRE LOT LOCATED ON THE SOUTH SIDE OF U.S. 42, TO THE IMMEDIATE WEST OF THE PROPERTY AT 8741 U.S. 42 AND IMMEDIATE EAST OF THE PROPERTY AT 8755 U.S. 42, FLORENCE, KENTUCKY, TO ALLOW A MULTI-TENANT COMMERCIAL BUILDING. (KEN BUTLER/JIMMY JOHNS)**

WHEREAS, the City of Florence, Kentucky, is a member of the county-wide planning unit with a county-wide planning commission known as the Boone County Planning Commission, and

WHEREAS, the Boone County Planning Commission by Resolution No. R-20-001-A recommended approval for a change in a concept development plan, and

WHEREAS, the recommendation for approval by the Boone County Planning Commission is based upon certain findings and conditions attached to the Commission's Resolution, all of which have been reviewed by the City Council for the City of Florence, Kentucky.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF FLORENCE, KENTUCKY, AS FOLLOWS:

**SECTION I**

That the request of Ken Butler (Owner by Contract) for a change in a concept development plan in a Commercial Two/Planned Development (C-2/PD) Zone and Office One/Planned Development (O-1/PD) Zone, for an approximate 0.97 acre lot located on the south side of U.S. 42, to the immediate west of the property at 8741 U.S. 42 and immediate east of the property at 8755 U.S. 42, Florence, Kentucky, to allow a multi-tenant commercial building, shall be and is hereby approved. The zoning map of Boone County, Kentucky, as it applies to the City of Florence, Kentucky, shall be designated to reflect the approval of this change in the concept development plan for this subject property.

**SECTION II**

The approval of this change to the concept development plan is granted subject to the terms and provisions of the Boone County Planning Commission recommendation, including its Committee Report, made a part of that recommendation, and all provisions comprising the development plan herein, a copy of that recommendation and Committee Report of the Boone County Planning Commission being attached, marked Exhibit "A" and incorporated herein as if fully set out, this recommendation being in the form of Resolution No. R-20-001-A of the Boone County Planning Commission, including the exhibits referenced to that Resolution.

**SECTION III**

In addition to those conditions set forth in the recommendation of the Boone County Planning Commission, this approval of the City of Florence, Kentucky, through its City Council, shall be and is hereby subject to those additional conditions that have been agreed to in writing by the property owner/applicant as shown on Exhibit "B", a copy of which is attached and incorporated herein by reference.

**SECTION IV**

This approval is granted based on the Findings of Fact made by the Boone County Planning Commission and contained within its recommendation that is attached and part of the Commission's Resolution No. R-20-001-A, marked Exhibit "A", and attached hereto.

**SECTION V**

If the approval for this change in the concept development plan shall be held invalid, in whole or in part, by any Court of proper jurisdiction, that invalidity shall not affect the validity of any of the other zoning regulations, zoning map, comprehensive plan, or other portions, provisions or terms of the approved concept development plan for this property as they are severable from this Ordinance and are intended to have full force and effect regardless of any invalidity relating to this particular Ordinance.

**SECTION VI**

This Ordinance shall be published by posting on the City's internet website.

PASSED AND APPROVED ON FIRST READING THIS 11 DAY OF February, 2020.

PASSED AND APPROVED ON SECOND READING AND PUBLICATION ORDERED THIS 25 DAY OF February, 2020.

APPROVED:

Quane & Whalen  
MAYOR

ATTEST:

Nancy Zebman  
CITY CLERK

**CITY OF FLORENCE, KENTUCKY**  
**PLANNING AND ZONING COMMITTEE**

**IN RE:**           AGREED ADDITIONAL CONDITIONS - REQUEST OF KEN BUTLER (OWNER BY CONTRACT) FOR A CHANGE IN CONCEPT DEVELOPMENT PLAN FOR A 0.97 ACRE LOT LOCATED ON THE SOUTH SIDE OF U.S. 42, TO THE IMMEDIATE WEST OF THE PROPERTY AT 8471 U.S. 42 AND IMMEDIATE EAST OF THE PROPERTY AT 8755 U.S. 42., FLORENCE, KENTUCKY. THE REQUEST IS FOR A CHANGE IN CONCEPT DEVELOPMENT PLAN IN A COMMERCIAL TWO/PLANNED DEVELOPMENT (C-2/PD) AND OFFICE ONE/PLANNED DEVELOPMENT (O-1/PD) TO ALLOW A MULTI-TENANT COMMERCIAL BUILDING.

The Planning and Zoning Committee has recommended and the Applicant has agreed that the following additional conditions will apply to the request described above.

1.       Box curb and appropriate storm utilities to the existing access road, service, and landscape areas shall be installed.
2.       The dumpster enclosure shall be constructed of the same brick materials as the approved building materials; stone veneer may be used as an accent. The gate shall be of a durable material, color, and design that will blend with the enclosure.
3.       Boone County Planning Commission, Condition Number 2 shall be amended as follows:

Condition 2) That the final architectural details and building materials be evaluated and approved as part of the Site Plan, with the exception that: ~~(a) EIFs should be used as an accent and not as a predominant building material; and (b) brick shall be installed to the top of the windows, at a minimum~~ brick shall be the predominant building material on all four sides of the building. Stone veneer may be used as a secondary material. EIFs/Stucco may only be used for trim or incidental areas.

Agreed to this 29 day of January, 2020.

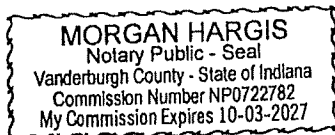
**Ken Butler**

BY: 

(Title)

COUNTY OF Vanderburgh STATE Indiana

The foregoing instrument was acknowledged before me this 29 day of January, 2020, by Ken Butler, the member, on behalf of the company.



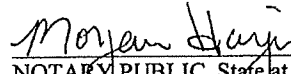
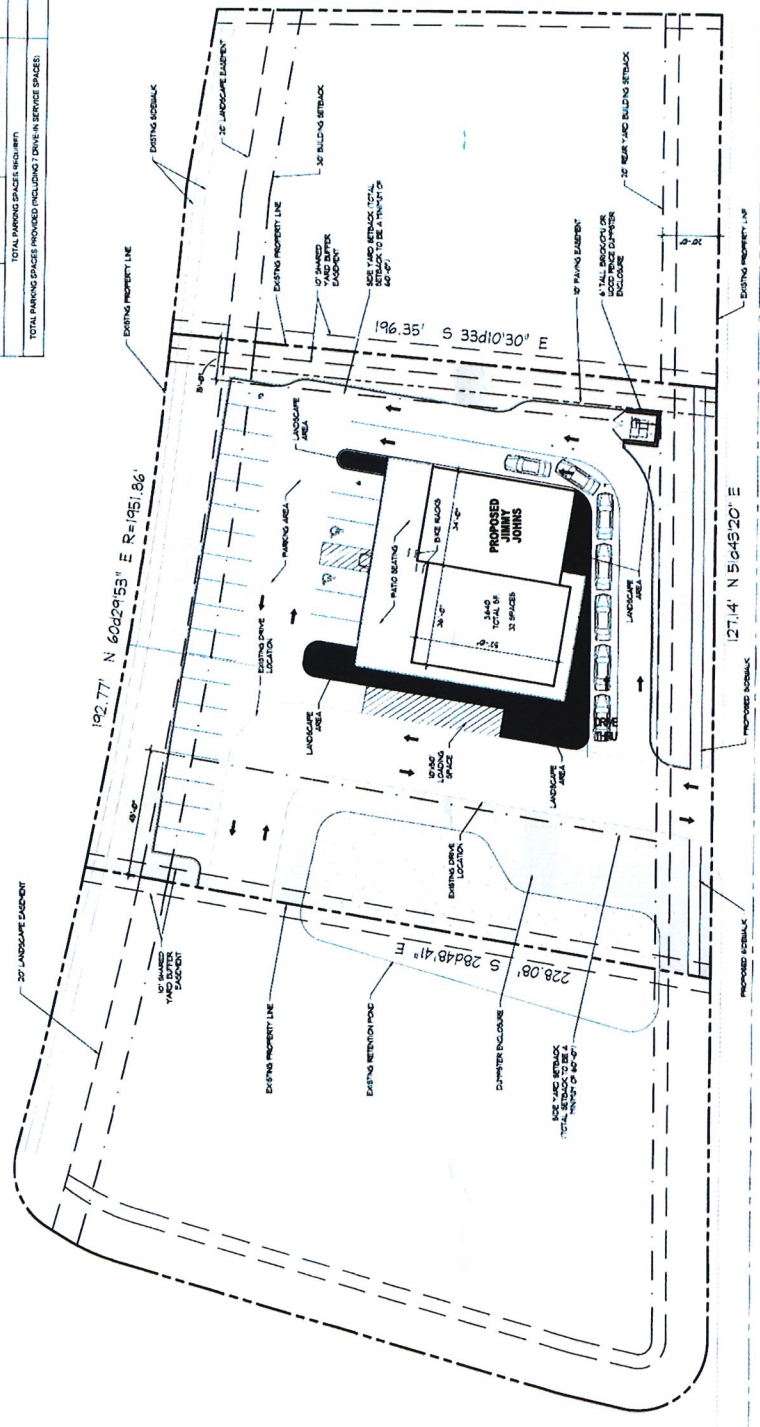
  
NOTARY PUBLIC, State at Large  
My Commission Expires: 10-3-2027

EXHIBIT 'A'

PARKING REQUIREMENTS		
SPACE	AREA	SPACE MIN. CALCULATION
FUTURE TRUCK	1875 SF	1 SPACES PER 1500 SF OF OPEN PAVED AREA
PROPOSED JIMMY JOHN'S	1785 SF	1 SPACES PER 1500 SF OF OPEN PAVED AREA
TOTAL PARKING SPACES REQUIRED:		2



SITE STATISTICS		
SPACE	AREA	% OF SITE
ASPHALT PARKING LOT	12,320	32.34%
LANDSCAPE AREA	1,613	5% MINIMUM UNPAVED AREA
LANDSCAPE AREA OUTSIDE PAVED AREA	11,644	31.8%
CONCRETE	3,371	9.25%
BUILDING	3,468	9.5%
RETENTION POND	3,528	9.6%
ACCESS ROAD	3,742	10.1%
TOTAL	42,265	100.00%



PROPOSED SITE PLAN

AESTHETIC LANDSCAPE STATISTICS		
SPACE	AREA	% OF PAVED AREA
ASPHALT PARKING LOT	12,320	8.6%
LANDSCAPE AREA IN SIDE PAVED AREA	1,613	1.3%