

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

In accordance with the Indiana Code Section 36-7-4-615 and Indiana Code 36-7-4-1512 et seq., the undersigned, MS Property, LLC, ("Owner"), owner of the following described real estate located in Hamilton County, Indiana makes the following commitments concerning the use and development of real estate ("Commitments") to the Noblesville Common Council.

1. Description of Real Estate.

Real Estate is described on Exhibit A, attached hereto and incorporated herein.

2. Ordinance No.: 28-8-97 passed by the Noblesville City Council on September 8, 1997.

3. Statement of Commitments.

A. These commitments shall impose development standards with respect to the Planned Business Development located between 141<sup>st</sup> Street and 146<sup>th</sup> Street on the east side of State Road 37 in Hamilton County, Indiana.

4. Development Standards for Improvement on Real Estate. The exterior walls of any and all buildings or other structures erected on any parcel on the development shall be of brick, masonry, glass, drivit, or other materials and products, which provide the same, desired stability and quality. High quality building design and construction shall be provided on all elevations (360 degrees same architectural treatment). Natural and muted earth tones shall be used throughout the development.

A. Exterior Construction Material.

Masonry Construction shall include all masonry construction which is composed of solid, cavity, faced or veneered-wall construction. Stone material used for masonry construction may consist of granite, sandstone, slate, limestone, marble or other hard and durable all-weather stone. Ashlar, cut stone and dimensioned stone construction techniques are acceptable. Brick material used for masonry construction shall be composed of hard-fired (kiln-fired) all-weather brick or other all-weather facing brick. Concrete finish or precise concrete panel (tilt wall) construction shall be exposed aggregate, bush hammered, sand blasted or other concrete finish as approved by the Director of Planning for the City of Noblesville.

Additionally, irregular shaped (split-faced or scored) block may be used as an accent trim and in combination with other commitment exterior building materials after approval by the Department of Planning for the City of Noblesville.

B. Glass Wall

Glass walls shall include glass curtain walls or glass block construction. Glass curtain wall shall be defined as an exterior wall which carries no floor or roof loads, and which may consist of a combination of metal, glass and other surfacing

material supported in a metal framework. No metal buildings shall be permitted on any parcel.

Glazing shall not exceed 75% on façade of small retail, office buildings. Trim and/or accent materials shall include tile (ceramic or porcelain), formed polymers (FYRON and EIPS).

All buildings at or below 15,000-SF must have pitched roofs with gabled or hipped-ends, or have a flat roof provided they are proportionately integrated with a slope roof mansard on all sides that adequately hides all roof-top mechanical equipment. The sloped mansard shall be a minimum of eight (8) FT height. The roofs shall have a minimum of slope of 6:12 and a maximum slope of 12:12 and shall not exceed one and one-half times the height of the building wall. Minimum 8-IN overhangs are required on all pitched roofs.

5. Landscaping. Landscaping treatment shall be required on all parcels and shall meet the following standards:

A. The perimeter landscaping, building landscaping and parking lot landscaping shall comply at all times with the Development Standards imposed by the Unified Development Ordinance of the City of Noblesville as a minimum standard. Compliance with those standards will be imposed on all development in the subject real estate with respect to buffer yard, base-building plantings and parking lot landscaping requirements.

B. Upon completion of construction of any building and accessory improvements, the owner must sod, seed or hydro mulch all exposed land areas remaining on its parcel, with an acceptable strain of grass. In addition, all building areas facing upon a street within the Development shall be landscaped with perimeter plants, bushes, trees and berms.

C. If construction of a building is not commenced immediately after the purchase of a parcel, then the owner shall maintain its parcel in a neatly trimmed and clean condition. All unpaved areas shall be kept mowed and the land areas of such parcel shall be kept free of debris. After improvements are constructed, the owner of such parcel similarly shall be responsible for maintaining the building; all improved areas and the landscaped or grass portions of such parcel, in good clean and neat condition.

D. All off-street parking and loading areas shall be landscaped in accordance with the Noblesville Unified Development Ordinance.

E. Trash receptacles shall be appropriately screened from view both from public roads and from adjoining parcels and shall not be permitted in any front yard.

F. There shall be imposed a twenty (20) foot landscape buffer along the entire east property line of the subject real estate parcel with plantings as per landscape exhibit marked as Exhibit "A".

6. Enclosures and Loading. Loading facilities adequate to accommodate the loading needs of each structure shall be located on each parcel. No loading docks shall be constructed in the front yards abutting State Road 37 in this development nor in the front yards abutting 141<sup>st</sup> Street and 146<sup>th</sup> Street. All loading docks shall be designed to be visually obscured from public right-of-way by buildings or otherwise not visible as a result of topography, vegetation, fencing, berm, and landscaping.

Designated storage areas for merchandise or refuse may be permitted outside buildings provided that:

- i. The exterior of any trash enclosure constructed on the Development shall be screened from view on three sides by a solid brick wall or materials compatible with the building materials of the primary building and be at least 6 inches taller than the height of the dumpster. The fourth side shall contain a wood gate at least 6 inches taller than the dumpster.
- ii. The storage areas for retail do not exceed three hundred (300) square feet in area.
- iii. They are completely screened by construction materials compatible with the primary building(s).

7. Detailed Development Plan Light Standard. Lighting on the perimeter of the site shall not exceed .05 foot candle at the property line of the development, specifically the north, south, east or west property line of the overall detailed development plan.

External Lighting shall be cut-off type fixtures and a height not to exceed 25 FT from finished grade; all lighting shall be uniform and consistent with an overall theme of the development with all light poles being metal and black or bronze in color. Parking lot lighting shall be either high-pressure sodium or metal halide with building and landscaping lighting being incandescent or metal halide. Landscaping and building up lighting must be from a concealed source. All lights shall be arranged to reflect light away from any street or adjacent property and no colored up-lights or spotlights shall be used to light the exterior of any building.

8. Use Restrictions. The Real Estate shall be used and subject to the Zoning Ordinances of the City of Noblesville and as permitted in a Planned Business District. However, the following uses will be prohibited: junk yards, construction equipment or material storage, foundries or other heavy manufacturing or any vehicle repair facilities which are not contained within a building.

The additional following uses will be prohibited: mini-warehouses, kennels, auto/marine craft sales and service, auto/marine craft maintenance and repair businesses, nor any vehicle repair facilities, adult book store or massage parlor, flea market or second hand store, mortuary or funeral home, refining, smelting, recycling or mining operation, garbage or refuse dump, mobile home, trailer park or junkyard, video arcade, unless the arcade is incidental to a permitted use.

Further, no more than one (1) gasoline station and no more than two (2) drive-through carry-out food restaurants shall be permitted within this development. However, other drive-through facilities may be used incidental to the other allowed uses in the development (e.g. banks, cleaners).

The use of all parcels will be governed by the following limitations:

- a. Smoke, particulate matter, noxious materials, other uses that cause emission of smoke, particulate matter, or noxious or toxic gases are prohibited.
- b. Vibration: No use shall cause earth vibrations or concussions beyond the lot line.
- c. Odor: No use shall emit odor across lot lines offensively odorous matter.
- d. Noise: No use shall emit sound beyond the lot lines in such a manner or intensity as to endanger the public health, safety or welfare, or cause injury to property.
- e. Glare and heat: No use shall produce heat or glare of such intensity beyond the lot lines as to endanger the public health, safety or welfare, or cause injury to property.
- f. Fire and explosive hazards: The storage, utilization or manufacture of all products or materials shall conform to the standards prescribed by the National Fire Protection Association.

9. Building Setback Lines. In general, the building setback lines shall be depicted and set forth on the primary plat dated February 10, 2003. The front building setback line from the private access drive on the lots adjoining the private access drive shall be fifty-seven (57) feet measured from the center of the private access drive. Driveways and parking areas may be constructed within the above-described building setback area, but no parking shall be constructed closer than forty (40) feet from the center of the private access drive as measured from the center of the private access drive. Driveways and parking shall be allowed in all other setback areas depicted on the plat, however, no parking nor driveways shall be located within a landscape easement or the required side yard setback as depicted on the secondary plat. Access drives are permitted within, over or through the landscape area as depicted on the plat.

10. Signs. The location and construction of all signs shall be in compliance with the Noblesville Sign Ordinance.

- a. The Developer shall submit a program for signs to be approved by the plan commission. The program of signs shall include visual representation of lettering, illumination, area, height, placement and locations of the signs proposed. The items of information displayed on the signs proposed by the developer in the program of signs shall not exceed the items of information allowance.
- b. The Director of Planning shall approve all signs for their compliance with the overall program for signs.

11. That these commitments being given in support of the Planned Unit Development Ordinance passed by the Noblesville Common Council on September 8, 1997, including restrictions on land use and development standards and other terms and conditions relating to the development, shall be in addition to other terms and conditions of the Planned Business zone designated in the Unified Development Ordinance of the City of Noblesville. However, when there is a conflict between the detailed development plan

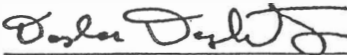
dated February 10, 2003 and any development standard imposed by the Planned Business zone district of the Noblesville Unified Ordinance, then these commitments and/or the primary plat shall apply, (i.e. the lot layout in the primary plat shall not be required to be 2 for 1 and any building and parking setbacks will be measured from the center of the private drive block on the interior roads).

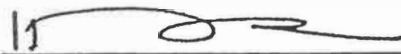
12. Modification and Termination. These commitments, at the initiated request of the Developer/Owner, MS Property, LLC, its successors or assigns, may be terminated or modified by the Noblesville Common Council or other governmental unit exercising zoning jurisdiction over the real estate after notice and hearing.

MS PROPERTY, LLC

By: Marsh Supermarkets, LLC  
Chief Operating Officer

Dated: March 27, 2003

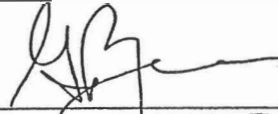
By:   
Douglas W. Dougherty, Senior  
Vice President, Chief Financial  
Officer, and Treasurer

ATTEST:   
P. Lawrence Butt, Secretary

STATE OF INDIANA        )  
  ) SS:  
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Douglas W. Dougherty and P. Lawrence Butt, Representatives of Marsh Supermarkets, LLC, and acknowledged the execution of the foregoing Commitments, and who, having been duly sworn, stated that the representations contained herein are true.

Witness my hand and Notarial Seal this 27 day of March, 2003.

  
Notary Public  
Printed: Gordon Byers

My Commission Expires: Sept 5, 2008  
My County of Residence: Hamilton

Instrument prepared by Gordon D. Byers, Attorney at Law, 949 Conner St., Suite 101 Noblesville, IN 46060 (317) 773-3221.

## EXHIBIT "A"

Land being a part of the Northeast Quarter of Section 19, Township 18 North, Range 05 East of the Second Principal Meridian in Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of the Northeast Quarter of Section 19, Township 18 North, Range 05 East; thence North 89 degrees 34 minutes 00 seconds East ( all bearings recited in this description are referenced from the West line of said quarter section, the bearing of which being North 00 degrees 00 minutes 00 seconds East ) along the North line of said section 209.86 feet; thence South 00 degrees 26 minutes 00 seconds East 20.00 feet to a point on the East right-of-way line of State Road 37; thence South 43 degrees 12 minutes 43 seconds West along said East right-of-way line 110.64 feet to a point on the South right-of-way line of 146th Street and the Point of Beginning; thence North 89 degrees 34 minutes 00 seconds East along said South right-of-way line and parallel with the North line of said quarter section 665.98 feet; thence North 00 degrees 13 minutes 05 seconds West along said right-of-way line 10.17 feet; thence North 89 degrees 34 minutes 00 seconds East along said South right-of-way line and parallel with the North line of said quarter section 190.35 feet; thence South 00 degrees 00 minutes 00 seconds West parallel with the West line of said quarter section 1087.58 feet; thence South 90 degrees 00 minutes 00 seconds West 423.51 feet; thence South 00 degrees 00 minutes 00 seconds West parallel with the West line of said quarter section 1452.88 feet to a point on the North right-of-way line of 141st Street; thence South 89 degrees 31 minutes 31 seconds West along said North right-of-way line 372.50 feet to a point on the East right-of-way line of State Road 37; thence North 46 degrees 58 minutes 34 seconds West along said East right-of-way line 147.06 feet; thence North 00 degrees 00 minutes 00 seconds East along said East right-of-way and parallel with the West line of said quarter section 2376.26 feet; thence North 43 degrees 12 minutes 43 seconds East along said East right-of-way line 69.01 feet to the Point of Beginning, containing 38.20 acres, more or less, subject to easements, restrictions and rights-of-way.