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ANITA MATHER

ALLEN COUNTY RECORDER

FORT WAYNE, IN

#REZ-2016-0047

BILL NO. Z-17-01-06 AS AMENDED

ZONING MAP ORDINANCE NO. Z-12-17

**AN ORDINANCE amending the City of Fort Wayne  
Zoning Map No. F-03 (Sec. 8 of Wayne Township)**

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE,  
INDIANA:

SECTION 1. That the area described as follows is hereby designated a C2 (Limited  
Retail) District under the terms of Chapter 157 Title XV of the Code of the City of Fort  
Wayne, Indiana:

*RECORDER'S DEED BOOK 677 PAGE 528-29*

PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF FRACTIONAL SECTION 8,  
TOWNSHIP 30 NORTH, RANGE 12 EAST, IN ALLEN COUNTY, INDIANA, BY PERIMETRIC  
DIMENSIONS DESCRIBED AS FOLLOWS TO WIT:

COMMENCING AT THE NORTHEAST CORNER OF THE SUBJECT SITE AS ON THE  
SOUTHEAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 24 SITUATED AT THE POINT  
OF ITS INTERSECTION BY THE EAST LINE OF THE WEST ONE-HALF OF THE  
SOUTHWEST QUARTER OF SAID SECTION: THENCE RUNNING SOUTH ON THE LINE  
AFORESAID, A DISTANCE OF 549 FEET: THENCE SOUTH 78 DEGREES WEST BY A  
DEFLECTION RIGHT OF 78 DEGREES 38 MINUTES, A DISTANCE OF 159.61 FEET: THENCE  
NORTHWARD BY A DEFLECTION RIGHT OF 96 DEGREES 56 MINUTES, A DISTANCE OF  
447.9 FEET TO THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF SAID U.S. HIGHWAY NO.  
24; THENCE NORTHEASTWARD BY A DEFLECTION RIGHT OF 60 DEGREES 36  
MINUTES TO THE CHORD DIRECTION OF AN ARC OF A CURVE LEFT EXTRORSELY  
CONCENTRIC TO THE ZERO DEGREE 58 MINUTES CENTERLINE CURVE OF U.S.  
HIGHWAY NO. 24, THE ARC AND CHORD DISTANCE OF 230 FEET TO THE PLACE OF  
BEGINNING; CONTAINING 2.02 ACRES OF LAND.

TOGETHER WITH AN EASEMENT TO AFFORD INGRESS AND EGRESS TO AND FROM  
THE ABOVE DESCRIBED REAL ESTATE FROM U.S. HIGHWAY NO. 24, UPON A STRIP OF  
LAND 20 FEET IN WIDTH CENTERED UPON THE FOLLOWING DESCRIBED LINE;  
COMMENCING AT A POINT ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF U.S.  
HIGHWAY NO. 24, LOCATED 475 FEET SOUTHWESTWARD, AS MEASURED ALONG SAID  
RIGHT-OF-WAY LINE, FROM THE NORTHEAST CORNER OF THE ABOVE DESCRIBED  
TRACT; THENCE SOUTHEASTERLY AT RIGHT ANGLES TO THE SOUTHEASTERLY LINE  
OF SAID HIGHWAY A DISTANCE OF 60 FEET: THENCE NORTHEASTERLY A DISTANCE  
OF APPROXIMATELY 200 FEET TO A POINT LOCATED ON THE WEST LINE OF THE  
ABOVE DESCRIBED TRACT, WHICH POINT IS ALSO LOCATED 100 FEET SOUTH OF THE  
SOUTHEASTERLY LINE OF SAID HIGHWAY, AS MEASURED ALONG THE WEST LINE OF  
THE ABOVE DESCRIBED TRACT.

ALSO SUBJECT TO AND TOGETHER WITH AN EASEMENT FOR UTILITY PURPOSES  
UPON A STRIP OF LAND 12 FEET IN WIDTH CENTERED ON A LINE BEGINNING AT A  
POINT 6 FEET NORTH OF THE SOUTHEAST CORNER OF THE ABOVE DESCRIBED TRACT  
AND RUNNING THENCE SOUTH 78 DEGREES WEST PARALLEL TO THE SOUTH LINE OF

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1 THE ABOVE DESCRIBED TRACT AND SAID LINE EXTENDED A DISTANCE OF 716.76  
2 FEET, SAID EASEMENT BEING OVER THE SOUTH 12 FEET OF THE ABOVE DESCRIBED  
TRACT AND THE REAL ESTATE ADJOINING TO THE WEST THEREOF.

3 *RECORDER'S DOCUMENT #75-24037*

4 PART OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 8, TOWNSHIP 30 NORTH,  
RANGE 12 EAST, DESCRIBED AS FOLLOWS:

5 TO ARRIVE AT THE PLACE OF BEGINNING AT THE SOUTHEAST CORNER OF THE  
6 SUBJECT SITE, COMMENCE ON THE EAST LINE OF THE WEST 1/2, OF THE SOUTHWEST  
7 1/4 OF SAID SECTION AT THE POINT OF ITS INTERSECTION BY THE SOUTHEASTERLY  
8 RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 24 (AS SAID POINT IS SITUATED 329.79  
9 FEET SOUTH OF THE SOUTH LINE OF LAGRO RESERVE): THENCE RUNNING SOUTH ON  
10 THE EAST LINE OF THE SAID WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 8, A  
11 DISTANCE OF 549 FEET: THENCE SOUTH 78 DEGREES WEST A DISTANCE OF 159.61  
12 FEET TO THE PLACE OF BEGINNING; THENCE CONTINUING SOUTH 78 DEGREES WEST  
13 A DISTANCE OF 555.49 FEET TO THE SOUTHWEST CORNER OF THE SUBJECT SITE  
(WHICH POINT IS COINCIDENT TO THE NORTHWEST CORNER OF THE RECORDED PLAT  
14 OF COVINGTON CLUB ESTATES): THENCE NORTHWESTWARD BY A DEFLECTION  
15 RIGHT OF 59 DEGREES 19 MINUTES A DISTANCE OF 218.0 FEET TO THE  
16 WESTERNMOST CORNER OF THE SUBJECT SITE TO A POINT LOCATED ON THE  
17 SOUTHEASTERLY RIGHT OF WAY OF U.S. HIGHWAY NO. 24; THENCE  
18 NORTHEASTERLY ALONG THE SOUTHEASTERLY RIGHT OF WAY LINE OF U.S.  
19 HIGHWAY NO. 24 A DISTANCE OF 765.5 FEET TO THE NORTHEAST CORNER OF THE  
20 SUBJECT SITE; THENCE SOUTHEASTWARD BY A DEFLECTION TO THE RIGHT A  
21 DISTANCE OF 447.9 FEET TO THE PLACE OF BEGINNING, CONTAINING 4.60 ACRES OF  
22 LAND.

23 SUBJECT TO AN EXISTING DRIVEWAY EASEMENT TO AFFORD INGRESS AND EGRESS  
24 TO AND FROM THE LANDS LYING SOUTH OF AND ADJOINING THE AFOREDESCRIBED  
25 PREMISES, IN FAVOR OF WALTER H. AND FRANCES LUPKE, JR., CHARLES R. AND  
26 MARILYN D. LEMASTER, AND JOHN E. AND ALICE L. HOFFMAN, AND THEIR  
27 SUCCESSORS IN TITLE, UPON A STRIP OF LAND 20 FEET IN WIDTH, CENTERED UPON A  
28 LINE COMMENCING ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY  
29 NO. 24, AT A POINT SITUATED 984.3 FEET AS MEASURED ALONG THE SAID RIGHT-OF-  
30 WAY LINE, SOUTHWESTWARD OF ITS INTERSECTION BY THE EAST LINE OF THE  
WEST 1/2, OF THE SOUTHWEST 1/4 OF SECTION 8, TOWNSHIP 30 NORTH, RANGE 12  
EAST, AS SITUATED COINCIDENT WITH THE WEST LINE OF THE PLAT AS RECORDED  
OF WESTWOOD ADDITION: THENCE EXTENDING SOUTHEASTWARD 239.3 FEET ON A  
LINE BEARING 69 DEGREES 36 MINUTES TO THE RIGHT OF THE NORTHEASTERLY  
DIRECTION OF THE CHORD SUBTENDING THE ARC OF THE SAID RIGHT-OF-WAY LINE  
AS SITUATED EXTRORSELY CONCENTRIC TO THE 0 DEGREE 58 MINUTES CENTERLINE  
CURVE OF THE SAID U.S. HIGHWAY NO. 24, AND 1,000.0 FEET IN LENGTH AS ALONG  
THE SAID RIGHT-OF-WAY LINE MEASURED SOUTHWESTWARD OF ITS INTERSECTION  
BY THE WEST LINE OF SAID WESTWOOD ADDITION: THENCE BY A DEFLECTION LEFT  
OF 43 DEGREES 25 MINUTES, 122.0 FEET, MORE OR LESS, TO THE SOUTH LINE OF THE  
PREMISES AFOREDESCRIBED.

THE ABOVE DESCRIBED REAL ESTATE IS SUBJECT TO ALL LEGAL RIGHTS-OF-WAY,  
SUBJECT TO ALL REGULATED DRAIN EASEMENTS FOR ANY REGULATED DRAINS OR  
TILES BEING ON OR WITHIN 75 FEET OF THE ABOVE DESCRIBED PARCEL, SUBJECT TO  
ALL OTHER EASEMENTS, RESTRICTIONS AND RIGHTS AFFECTING THE ABOVE-  
DESCRIBED PARCEL.

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and the symbols of the City of Fort Wayne Zoning Map No. F-03 (Sec. 8 of Wayne Township), as established by Section 157.082 of Title XV of the Code of the City of Fort Wayne, Indiana is hereby changed accordingly.

SECTION 2. If a written commitment is a condition of the Plan Commission's recommendation for the adoption of the rezoning, or if a written commitment is modified and approved by the Common Council as part of the zone map amendment, that written commitment is hereby approved and is hereby incorporated by reference.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

  
\_\_\_\_\_  
Council Member

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
Carol T. Helton, City Attorney

**City of Fort Wayne Common Council**  
**DIGEST SHEET**

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**Department of Planning Services**

Title of Ordinance: Zoning Map Amendment  
Case Number: REZ-2016-0047  
Bill Number: Z-17-01-06  
Council District: 4-Jason Arp

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Introduction Date: January 10, 2017

Plan Commission  
Public Hearing Date: January 9, 2017 (not heard by Council)

Next Council Action: Ordinance will return to Council after recommendation by the  
Plan Commission

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Synopsis of Ordinance: To rezone approximately 6.5 acres of property from RP-Planned Residential  
to C2-Limited Commercial

Location: 4900 to 5000 blocks of West Jefferson Boulevard

Reason for Request: To allow for a three-building commercial/retail development including Peter  
Franklin Jewelers.

Applicant: Peter Franklin Jewelers, Inc.

Property Owner: Mary Ann Hunter

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Related Petitions: Primary Development Plan, Peter Franklin-West Jefferson

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Effect of Passage: Property will be rezoned to the C2-Limited Commercial district, which  
will allow a variety of commercial and retail uses.

Effect of Non-Passage: The property will remain zoned RP-Planned Residential and may remain  
single family residential or develop with duplexes or multiple family uses.

## WRITTEN COMMITMENT

**THIS WRITTEN COMMITMENT** (“Commitment”) is made as of this 9<sup>th</sup> day of May, 2017, by **Mary Ann Hunter** (herein the “Owner”) and **PETER FRANKLIN JEWELERS, INC.** (herein the, “Declarant”), under the following circumstances:

### WITNESSETH:

**WHEREAS**, Owner is the fee simple owner of approximately 6.5 acres of real estate located in Fort Wayne, Allen County, Indiana, the legal description of which is attached hereto as Exhibit “A” (herein, the “Real Estate”); and

**WHEREAS**, Declarant has submitted a Zoning Map Amendment Application with the City of Fort Wayne Plan Commission (“Plan Commission”), bearing number REZ-2016-0047 (the “Zoning Application”) and has also submitted a Primary Development Plan Application with the Plan Commission bearing number PDP-2016-0047 (the “Development Plan Application”), both applications with respect to the Real Estate; and

**WHEREAS**, pursuant to the Zoning Application, Declarant, with Owner’s consent, has requested the Real Estate be rezoned to C-2 pursuant to the City of Fort Wayne zoning ordinance (the “Ordinance”) which permits development upon the Real Estate of certain professional office and personal service uses and limited and retail commercial uses; and

**WHEREAS**, Declarant, in conjunction with the Zoning Application and Development Plan Application, previously submitted a written commitment to the Plan Commission, voluntarily, pursuant to section 157.503 of the Ordinance and Indiana Code 36-7-4-1015, for the purpose of limiting certain off site impacts and certain uses arising from development upon the Real Estate; and

**WHEREAS**, the Plan Commission recommended a ‘do not pass’ recommendation to the City of Fort Wayne Common Council (“Common Council”) with respect to the Zoning Application; and

**WHEREAS**, the Zoning Application is being considered by Common Council pursuant to Bill No. Z-17-01-06; and

**WHEREAS**, Declarant and Owner, pursuant to Indiana Code 36-7-4-1015 (b)(6) have submitted this revised Commitment, voluntarily, which contains terms and conditions which are no less stringent for the Real Estate, its use and development as previously set forth in the form of written commitment submitted to the Plan Commission, and has requested that this Commitment be considered as part of the Zoning Application.

**NOW, THEREFORE**, in consideration of the above and foregoing recitals, Owner hereby impresses upon the Real Estate certain restrictions and covenants which shall run with the Real Estate and be binding upon Owner, Declarant and all future owners of the Real Estate, and all lessees of all or a portion of the Real Estate.

1. Use Limitations.

a. Prohibited Commercial Use Categories. The following commercial use categories, which are otherwise allowed in the C-2 zoning district, shall be prohibited upon the Real Estate:

- i. Animal service, indoor;
- ii. Automobile service, limited;
- iii. Recreation / tourism, limited;
- iv. Residential facility, general; and
- v. Residential facility, limited.

b. Prohibited Specific Uses: The following specific uses, which are otherwise allowed in the C-2 zoning district, shall be prohibited upon the Real Estate:

- i. Adoption Service
- ii. Adult Care Center
- iii. Adult Care Home
- iv. Advertising
- v. Air Conditioning Sales
- vi. Animal Grooming
- vii. Animal Hospital
- viii. Animal Kennel
- ix. Animal Obedience School
- x. Answering Service
- xi. Arcade
- xii. Artist Material and Supply Store
- xiii. Artist Studio
- xiv. Assisted Living Facility
- xv. Auction Service
- xvi. Automobile Accessory Store
- xvii. Automobile Rental (indoor)
- xviii. Automobile Sales (indoor)
- xix. Bait Sales
- xx. Bankruptcy Service
- xxi. Bar or Tavern
- xxii. Bed and Breakfast
- xxiii. Billiard or Pool Hall

- xxiv. Bingo Establishment
- xxv. Blood Bank
- xxvi. Blood or Plasma Donor Facility
- xxvii. Boarding/Lodging House
- xxviii. Bowling Alley
- xxix. Campus Housing
- xxx. Catalog Showroom
- xxxi. Caterer
- xxxii. Child Care Home (class I or II)
- xxxiii. Child Care Center
- xxxiv. Cigarette/Tobacco/Cigar Store
- xxxv. Clinic
- xxxvi. Club, Private
- xxxvii. Coin Shop
- xxxviii. Collection Agency
- xxxix. Community Center
  - xl. Community Garden
  - xli. Consignment Shop
  - xlii. Convenience Store
  - xliii. Copy or Duplicating Service
  - xliv. Correctional Services Facility
  - xlv. Counseling Service
  - xlvi. Credit Service
  - xlvii. Customer Service Facility
- xlvi. Day Care
- xlvi. Dialysis Center
  - l. Diaper Service Facility
  - li. Dinner Theater
  - lii. Dormitory
  - liii. Driving Instruction
  - liv. Drug Store
  - lv. Entertainment Facility
  - lvi. Fireworks Sales
  - lvii. Flea Market
  - lviii. Fraternity House
  - lix. Gas station
  - lx. Group Residential Facility (large)
  - lxi. Group Residential Facility (small)
  - lxii. Hardware Store
  - lxiii. Haunted House
  - lxiv. Heating Sales
  - lxv. Hobby Shop
  - lxvi. Homeless/Emergency Shelter
  - lxvii. Hotel
- lxviii. Laundromat/Coin Operated Laundry
- lxix. Live-Work Unit

- lxx. Model Unit
- lxxi. Motel
- lxxii. Movie and Game Sales and Rental
- lxxiii. Multiple Family Complex
- lxxiv. Multiple Family Dwelling
- lxxv. Neighborhood Facility
- lxxvi. Nursing Home
- lxxvii. Parking Area (off-site)
- lxxviii. Parking Structure
- lxxix. Public Transportation or Similar Public Facility
- lxxx. Radio Station
- lxxxii. Reception/Banquet Hall
- lxxxiii. Rehabilitation Facility
- lxxxiiii. Rental and/or Leasing Store
- lxxxiv. Rescue Mission
- lxxxv. Residential Facility for ~~Home~~Homeless Individuals
- lxxxvi. Skating Rink
- lxxxvii. Social Service Agency
- lxxxviii. Sorority House
- lxxxix. Swim Club
  - xc. Tattoo Establishment
  - xcii. Television Station
  - xciii. Tennis Club
  - xciv. Theater
  - xcv. Tire Sales
  - xcvi. Townhouse Complex
  - xcvii. Treatment Center
  - xcviii. Veterinary Clinic
  - xcix. Wind Energy Conversion System (micro)
- c. Zoo

In addition to the above, and without expanding the uses permitted on the Real Estate, the following uses shall also be specifically prohibited: (A) the manufacture, storage or distribution of products which increase fire, explosion or radioactive hazards or cause a dangerous or hazardous condition; (B) any business or operation which creates a public or private nuisance by reason of noise, or excess emissions of odors, dust, fumes, smoke, liquid waste, glare, vibration or radiation; (C) adult book store, night club or discotheque, massage parlor, or any other establishment which provides live adult entertainment or which sells, rents or exhibits pornographic or obscene materials; (D) masseur, reducing salon, indoor theater, hotel, or lodge; (E) advertising sign or billboard; (F) commercial communication tower; (G) manufactured home or mobile home; (H) gas station; (I) any medical or related professional use that provides abortion procedures or similar procedures; (J) a second-hand store, pawn shop, government surplus store, goodwill store, salvage store, Salvation Army store, surplus store or liquidation store; (K) an outdoor recreation facility or use, such as an athletic field, swim club, riding stable, or tennis club; (L) ground mounted solar panels; (~~xiii~~M) a residential facility for the

developmentally disabled or the mentally ill; (~~MN~~) an indoor shooting range; (~~NQ~~) a retail plant nursery or greenhouse; (~~OP~~) an automobile maintenance facility; and (~~PQ~~) any building, improvement or use which violates the applicable zoning ordinance or any other applicable law or regulation.

2. Hours of Operation and Deliveries. No business or use upon the Real Estate shall have hours of operation open to the general public prior to 6:00 a.m. or after 11:00 p.m. No truck deliveries will be made to any business or use upon the Real Estate prior to 6:00 a.m. or after 7:00 p.m.

3. Landscaping, Buffering, and Site Development Features.

- a. A buffer and landscape area shall be maintained along the south boundary of the Real Estate, as depicted on the development plan for the Real Estate approved by the Plan Commission (the "Buffer and Landscape Area"). The Buffer and Landscape Area shall include a six (6) foot high earthen mound with evergreen and/or deciduous plantings and a six (6) foot tall solid board fence located at the peak of the mound. The Buffer and Landscape Area shall be installed prior to the issuance of the first improvement location permit for any improvements on the Real Estate.
- b. All landscaping planted and fencing installed by Declarant upon the Real Estate shall be maintained, watered and fertilized by Declarant pursuant to a commercially reasonable standard for similar landscaping and fencing in Allen County, Indiana and shall be replaced within a commercially reasonable time in the event of decay, disease or death of said landscaping or vandalism, casualty or other non-repairable condition to such fencing.
- c. A water feature and accompanying recreation space shall be installed and maintained north of the building improvements on Lot 3, substantially as depicted on the renderings attached hereto and incorporated herein by reference as Exhibit C (the "Water Feature"). The Water Feature shall be installed prior to the issuance of the first certificate of occupancy for any improvements on the Real Estate.

4. Lighting. All pole and parking lot lighting upon the Real Estate shall be restricted to a height of no greater than fifteen feet (15'); provided, however, that no pole or parking lot lighting greater than twelve feet (12') in height shall be permitted within an area of one hundred feet (100') from the south property line of the Real Estate. All pole, parking lot, and building mounted lighting shall utilize sharp cut-off fixtures as defined by the Illuminating Engineers Society of North America and otherwise be of a type to minimize light pollution onto any adjacent residential property.

5. Signage.

- a. No pole or pylon signage shall be permitted upon the Real Estate. Freestanding monument signage erected upon the Real Estate shall be no greater than fifteen feet (15') in height.
  - b. All building mounted signs must be mounted either flat on the surface of the walls or mounted on raceways which blend with the building exterior color and do not extend beyond six (6) feet from the building wall surface, and no signage is to project above the roof line. Individual, internally illuminated channel letters are encouraged. No hand-painted or flashing signs are permitted. No rooftop mounted signage is permitted.
  - c. No banners, mobile or trailer signs, commercial flags, pennants, balloons, or temporary signs shall be permitted. This excludes temporary real estate signage for the purpose of marketing parcels or buildings as for sale or lease.
6. Maximum Building Height. No building improvement constructed upon the Real Estate shall be greater than thirty feet (30') in height.
7. Outside Storage. Outside storage of trash, trash receptacles, and ground mounted HVAC units must be visually screened on three sides with a wood fence or masonry structure no less than eight (8) feet in height, with a gate enclosure on the fourth side. In addition, no outdoor storage of trash or trash receptacles shall be permitted within fifty (50) feet of any residentially zoned real estate. Except as otherwise provided herein, outside storage of any inventory or business related materials is prohibited. All commercially reasonable efforts shall be used for trash receptacles to be emptied between the hours of 8:00 a.m. and 5:00 p.m.
8. Architectural Standards. All improvements constructed upon the Real Estate shall be constructed in a first-class manner and shall reflect a high degree of quality, durability, and craftsmanship. Construction of all buildings and related improvements upon the Real Estate shall comply with the requirements established herein.
- a. All exterior building walls for improvements constructed upon the Real Estate shall consist predominantly (with a minimum area of 60% of the total wall surface for each building facade, excluding windows) of the following materials: (i) masonry including, but not limited to, brick, granite, marble, limestone, slate, and natural stone; (ii) Stucco; or (iii) E.I.F.S. Such exterior building walls may also incorporate (not to exceed 40% of the total wall surface for each building facade, excluding windows) painted or stained wood, pre-formed metal siding or panels, and glass panels. Exterior building walls and other materials shall not include plain concrete block masonry, fluted concrete block, pre-formed vinyl residential style lap siding, adhesive applied brick, porcelain panels or simulated materials such as plastic siding. Exterior building metal may include standing seam metal roofing and trim and accent materials such as copings, cornices, sills, soffits, sashes, railings, and equipment screens. Permitted metals may include anodized and factor-finished aluminum and steel, copper and lead-coated and polished stainless steel.

- b. Roofs shall be either pitched or flat only. Pitched roofs shall be of either hip or gable design. Acceptable pitched roof materials shall include asphaltic shingles, slate, and standing-seam metal. No mansard or opposing shed roofs are permitted. All roof appurtenances projecting above the roof such as exhaust fans, rooftop HVAC units, condensers, plumbing vents and stacks shall be screened from view or minimized from view through appropriate location on roof plans.

9. Future Development; Access to and from West Jefferson Boulevard. The full access cut to and from West Jefferson Boulevard, as depicted on the development plan for the Real Estate approved by the Plan Commission, shall be reserved for the exclusive use and benefit of the Real Estate and shall not provide connectivity to West Jefferson Boulevard for the benefit of future development located upon the real estate immediately east or west of the Real Estate, as more particularly described on Exhibit B attached hereto and incorporated herein by reference (collectively, the “Adjoining Real Estate”), unless and until (a) a written commitment, restrictive covenant, or similar agreement running with the Adjoining Real Estate is duly executed and placed of record to bind the Adjoining Real Estate to substantially the same restrictions, limitations, and architectural standards contained in Sections 1 through 8 of this Commitment; and (b) the Declarant has reviewed and approved the design and building materials for such proposed development to insure consistency with the improvements located upon the Real Estate.

10. Limitation on Drive Through Facilities. Notwithstanding anything contained herein to the contrary, there shall be no business or improvement located upon the Real Estate with a drive-through with the exception of a drive-through facility used in combination with a bank, credit union, loan association, or automated teller machine (ATM). A drive-through shall be defined as a building or structure used to provide or dispense products or services through an attendant, a window or an automated machine to persons remaining in vehicles in a designated stacking aisle.

11. Successors and Assigns. This Commitment and the restrictions set forth above shall inure to the benefit of all persons who own property comprising the Real Estate, their successors and assigns, and shall also inure to the benefit of the Zoning Administrator of the City of Fort Wayne and the Plan Commission. This Commitment and the restrictions and limitations set forth herein shall run with the Real Estate, and any conveyance thereof, shall be binding upon Declarant and its successors and assigns as owners of the Real Estate.

12. Enforcement Rights. The City of Fort Wayne Zoning Administrator (the “Zoning Administrator”) and the Plan Commission each shall have the option (but not the obligation) to enforce this Commitment, at law or in equity, in the event of a breach of an obligation in this Commitment; and in the event such an enforcement action is commenced, the Zoning Administrator or the Plan Commission (as applicable) shall have the remedies allowed by the Ordinance (or the ordinance governing the Real Estate at the time of the enforcement action) and I.C. §36-7-4-1015, which remedies shall be cumulative and not exclusive. A violation of this Commitment shall be deemed a violation of the Ordinance, or the ordinance governing the Real Estate at the time of the violation; provided, however, that nothing in this Commitment shall be

construed as giving any person the right to compel enforcement of it by the Zoning Administrator or the Plan Commission, or any successor agency having zoning jurisdiction over the Real Estate.

13. Amendment or Termination. This Commitment may be amended or terminated upon application by an owner of the Real Estate and only with the prior written consent of all owners of the Real Estate and the Plan Commission, following a public hearing to consider said amendment or termination. Written notice of the public hearing shall be given by the applicant for said amendment or termination to the association president of record with the City of Fort Wayne Plan Commission for Westwood-Fairway Community Association, Inc., the Reckeweg Road Area Association, the Westmoor Park Community Association, Inc. and the Wildwood Park Community Association Inc. with said notice being mailed no later than the date application is made to the Plan Commission for said amendment or termination.

14. Remedies. In addition to any remedies that may be available at law, temporary, preliminary and permanent injunctive relief may be granted to enforce any provision of this Commitment, without the necessity of proof of actual damage, in the event of an actual breach or violation, or threatened breach or violation, of any restriction or covenant under this Commitment. Such remedies shall be cumulative and nonexclusive, and shall be afforded to any owner of property which comprises all or a portion of the Real Estate, the Zoning Administrator of the City of Fort Wayne and the Plan Commission.

15. Attorney Fees. In the event any action is brought to enforce the terms and conditions of this Commitment, the prevailing party shall be awarded its costs and reasonable attorney fees.

16. Severability. Each covenant or restriction contained in any paragraph of this Commitment shall be severable and separate, and if any court shall rule that any particular restriction or covenant is unenforceable, such ruling shall not affect the enforceability of any other restriction or covenant under this Commitment, and such other restriction or covenant shall be enforced.

17. Governing Law. This Commitment, including the restrictions and covenants hereunder, shall be governed by the laws of the State of Indiana.

18. Effective Date. This Commitment shall be effective upon its recording in the Office of the Recorder of Allen County, Indiana.

19. Statutory Authority. This Commitment is made pursuant to I.C. §36-7-4-1015(a)(2).

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

"OWNER"

*Mary Ann Hunter*  
\_\_\_\_\_  
MARY ANN HUNTER

"DECLARANT"

PETER FRANKLIN JEWELERS, INC.

By: *Peter F. Ball*  
\_\_\_\_\_  
Peter F. Ball


Its: President

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF ALLEN        )

Before me, the undersigned, a Notary Public, in and for said County and State, this 9th day of May, 2017, personally appeared Mary Ann Hunter and Peter F. Ball, the President of Peter Franklin Jewelers, Inc., an Indiana corporation, and acknowledged the execution of the foregoing.

In witness whereof, I have hereunto subscribed my name and affixed my official seal.

*Thomas M. Niezer*  
\_\_\_\_\_  
Thomas M, Niezer, Notary Public



My Commission Expires: October 18, 2024

My County of Residence: Allen

THIS INSTRUMENT prepared by Joshua C. Neal, Esq., Barrett McNagny LLP, 215 East Berry Street, Fort Wayne, Indiana 46802.

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Joshua C. Neal

**When recorded, return to: Joshua C. Neal, Barrett McNagny LLP, 215 East Berry Street, Fort Wayne, Indiana 46802.**

**EXHIBIT "A"**

**PARCEL I:**

Part of the West Half of the Southwest Quarter of Fractional Section 8, Township 30 North, Range 12 East, in Allen County, Indiana, by pertimetric dimensions described as follows, to wit:

Commencing at the Northeast corner of the subject site as on the Southeast right of way line of U.S. Highway No. 24 situated at the point of intersection by the East line of the West One-half of the Southwest Quarter of said Section; thence running South on the line aforesaid, a distance of 549 feet; thence South 78 degrees West by a deflection right of 78 degrees 38 minutes, a distance of 159.61 feet; thence Northward by a deflection right of 96 degrees 56 minutes, a distance of 447.9 feet to the Southeasterly right of way line of said U.S. Highway No. 24; thence Northeastward by a deflection right of 60 degrees 36 minutes to the chord direction of an arc of a curve to the left extrorsely concentric to the 0 degrees 58 minutes centerline curve of U.S. Highway No. 24, the arc and chord distance of 230 feet to the place of beginning, said in previous deed to contain 2.02 acres of land, more or less.

TOGETHER WITH an easement to afford ingress and egress to and from the above described real estate from U.S. Highway No. 24, upon a strip of land 20 feet in width centered upon the following described line:

Commencing at a point on the Southeasterly right of way line of U.S. Highway No. 24, located 475 feet Southwestward as measured along said right of way line, from the Northeast corner of the above described tract; thence Southeasterly at right angles to the Southeasterly line of said highway a distance of 60 feet; thence Northeasterly a distance of approximately 200 feet to a point located on the West line of the above described tract, which point is also located 100 feet South of the Southeasterly line of said highway, as measured along the West line of the above described tract.

**PARCEL II:**

Part of the West Half of the Southwest Quarter of Fractional Section 8, Township 30 North, Range 12 East, in Allen County, Indiana, more particularly described as follows, to wit:

Commencing on the East line of the West Half of the Southwest Quarter of said Section at the point of it's intersection by the Southeasterly right of way line of U.S. Highway No. 24 as situated 329.79 feet South of the South line of LaGro Reserve Section; thence running South on the East line of the tract initially mentioned, a distance of 549.0 feet; thence South 78 degrees West, a distance of 716.76 feet; thence North 42 degrees 37 minutes West, 213 feet to the Southeasterly right of way line of the said U.S. Highway No. 24; thence Northeastward along the said right of way line of the arc of a curve left, running extrorsely concentric to the 0 degrees 58 minute center line curve of said highway, a distance of 1000.0 feet, more or less, to the place of beginning, said in previous deeds to contain 6.65 acres, more or less. EXCEPT for that real estate sold off thereof in a deed recorded in the Recorder's Office of Allen County as Deed Record No. 677, pages 256-569.

**EXHIBIT "B"**

**Tract 1**

3.22 acres of land in the Southwest Quarter of Section 8, in Township 30 North of Range 12 East, being particularly described as follows, to-wit:

Beginning at a point in said Southwest Quarter of Section 8, located 375 feet North 89 degrees, 53 minutes East from the Southwest corner of said Quarter Section and 428.6 feet North of the South line of said Quarter Section; thence North 79 degrees, 45 minutes East a distance of 318 feet; thence North zero degrees, 52 minutes West a distance of 323.57 feet; thence North 42 degrees, 37 minutes West a distance of 218 feet to the South line of U.S. Highway # 24; thence following said South line of U.S. Highway# 24, a distance of 174 feet; thence South a distance of 457.3 feet to the place of beginning.

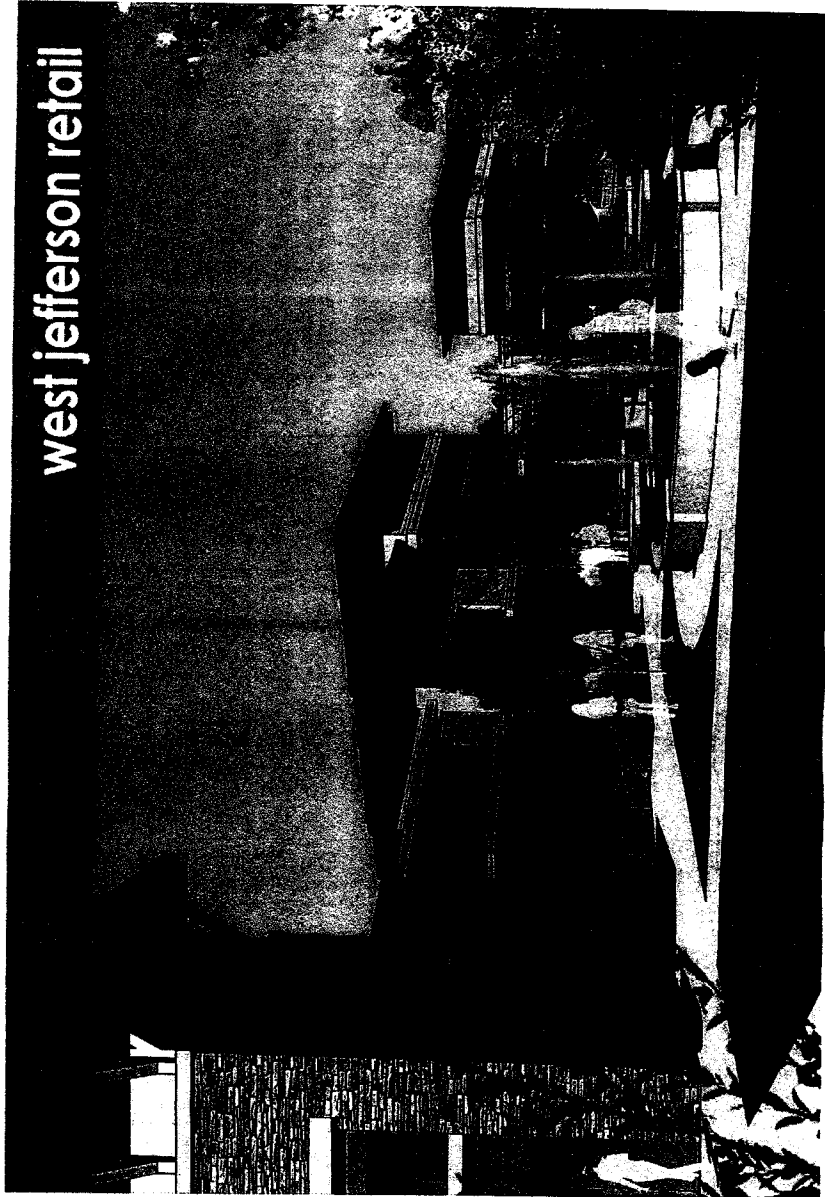
(Commonly known as 5115 West Jefferson Boulevard, Fort Wayne, Indiana 46804)

**Tract 2**

Lot Number Six (6) in Westwood Addition, Allen County, Indiana, according to the recorded plat thereof.

More commonly known as: 4827 West Jefferson Boulevard, Fort Wayne, IN 46804

**EXHIBIT "C"**



west jefferson retail



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**ELEVATION**

**Department of Planning Services  
Rezoning Petition Application**

**Applicant**  
 Applicant Peter Franklin Jewelers, Inc.  
 Address 507 Broadway Street  
 City New Haven State Indiana Zip 46774  
 Telephone (260) 749-4315 E-mail jball@peterfranklin.com

**Contact Person**  
 Contact Person Joshua C. Neal, Barrett McNagny LLP  
 Address 215 East Berry Street  
 City Fort Wayne State Indiana Zip 46802  
 Telephone (260) 423-8935 E-mail jcn@barrettllaw.com

*All staff correspondence will be sent only to the designated contact person.*

**Request**  
 Allen County Planning Jurisdiction  City of Fort Wayne Planning Jurisdiction  
 Address of the property 4901 West Jefferson Boulevard  
 Present Zoning RP Proposed Zoning C-2 Acreage to be rezoned 6.5  
 Proposed density \_\_\_\_\_ units per acre  
 Township name Wayne Township section # 30  
 Purpose of rezoning (attach additional page if necessary) To allow subject real estate to be developed into a retail store for Peter Franklin Jewelers, Inc. and complimentary retail uses.  
 Sewer provider City of Fort Wayne Water provider City of Fort Wayne

*Applications will not be accepted unless the following filing requirements are submitted with this application. Please refer to checklist for applicable filing fees and plan/survey submittal requirements.*

- Filing Requirements**
- Applicable filing fee
  - Applicable number of surveys showing area to be rezoned (plans must be folded)
  - Legal Description of parcel to be rezoned
  - Rezoning Questionnaire (original and 10 copies) County Rezonings Only

I/We understand and agree, upon execution and submission of this application, that I am/we are the owner(s) of more than 50 percent of the property described in this application; that I/we agree to abide by all provisions of the Allen County Zoning and Subdivision Control Ordinance as well as all procedures and policies of the Allen County Plan Commission as those provisions, procedures and policies related to the handling and disposition of this application; that the above information is true and accurate to the best of my/our knowledge; and that I/we agree to pay Allen County the cost of notifying the required interested persons at the rate of \$0.85 per notice and a public notice fee of \$50.00 per Indiana code.

See Exhibit "A"  
 \_\_\_\_\_ (printed name of applicant) \_\_\_\_\_ (signature of applicant) \_\_\_\_\_ (date)

See Exhibit "B"  
 \_\_\_\_\_ (printed name of property owner) \_\_\_\_\_ (signature of property owner) \_\_\_\_\_ (date)

\_\_\_\_\_  
 (printed name of property owner) \_\_\_\_\_ (signature of property owner) \_\_\_\_\_ (date)

\_\_\_\_\_  
 (printed name of property owner) \_\_\_\_\_ (signature of property owner) \_\_\_\_\_ (date)

Received	Receipt No.	Hearing Date	Petition No.
12-c-16	122746	7/9/17	Rez-2016-0047

EXHIBIT "A"

Rezoning Petition Application

"APPLICANT"

PETER FRANKLIN JEWELERS, INC.

By: \_\_\_\_\_

James Ball

Dated: \_\_\_\_\_

EXHIBIT "B"

Rezoning Petition Application

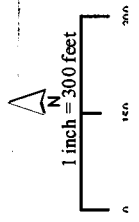
"Property Owner"

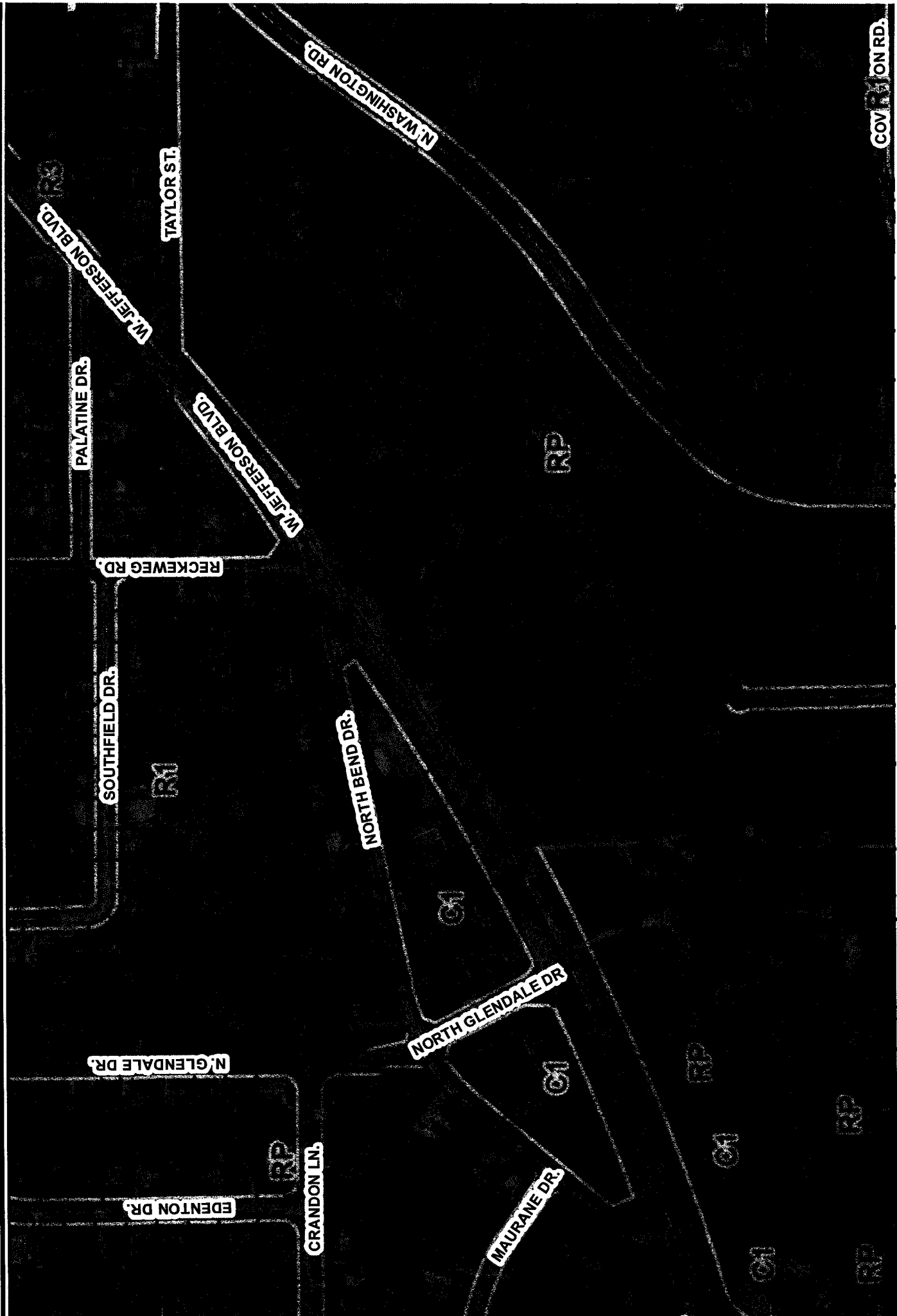
By: Mary Ann Hunter  
Mary Ann Hunter

Dated: 12 / 6 / 16



Although not a survey, this map was prepared for the purpose of providing a visual representation of the information contained herein and does not constitute a warranty or any other form of assurance. The user assumes all responsibility for any error or omission in this map. © 2008, Board of Commissioners of the County of Allen, State of Ohio. Prepared by: State Plane Coordinate System, Indiana East. Photo and Content: Spring 2009.

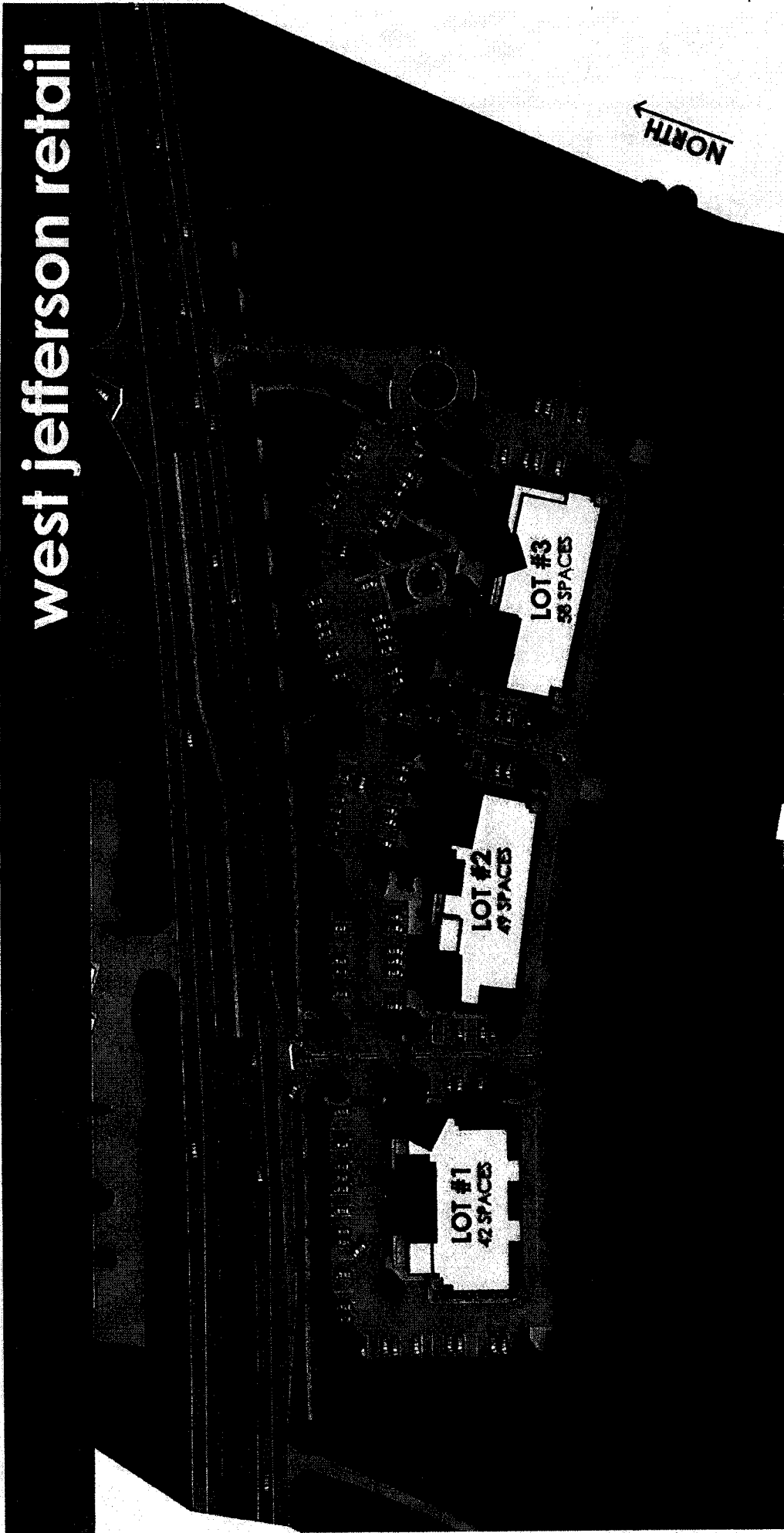




COV REGION RD.

Although not a survey, this map has been prepared in accordance with the standards of the American Society of Professional Surveyors. Allen County does not warrant or guarantee the accuracy of the information shown on this map and shall not be liable for any errors or omissions in this map. © 2009 Board of Commissioners of the County of Allen. For more information, contact the Planning Department, One North Dearborn Street, Kansas City, Missouri 64106. Photo and Contour: Spring 2009

# west jefferson retail



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# SCHEMATIC SITE PLAN

Document comparison by Workshare Professional on Wednesday, May 17, 2017 9:57:20 AM

Input:	
Document 1 ID	interwovenSite://IMANAGE/iManage8/1712668/8
Description	#1712668v8<iManage8> - Written Commitment - City Council
Document 2 ID	C:\NRPortbl\iManage8\JCN\1712668_9.docx
Description	C:\NRPortbl\iManage8\JCN\1712668_9.docx
Rendering set	Standard

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	6
Deletions	6
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	12

**BILL NO. Z-17-01-06** **AS AMENDED**

**REPORT OF COMMITTEE ON REGULATIONS**

**May 9, 2017**

**John Crawford Chair**

**Michael Barranda Co-Chair**

**All Council Members**

An Ordinance amending the City of Fort Wayne Zoning Map No. F-03 (Sec. 8 of Wayne Township)

COMMITTEE ON REGULATIONS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>	<u>NO REC</u>
<i>John N. Crawford</i>			
<i>[Signature]</i>			
<i>[Signature]</i>	<i>[Signature]</i>		
		<i>[Signature]</i>	
	<i>[Signature]</i>		
<i>[Signature]</i>	<i>[Signature]</i>		

**LANA R. KEESLING**  
**CITY CLERK**  
*Lana R. Keesling*

Public Hearing Date: January 9, 2017

Read the first time in full and on motion by Councilman Crawford.

Read the second time by title and referred to the Regulations Committee.

Read the third time in full and on motion by Councilman Crawford, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BARRANDA	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CRAWFORD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED: May 9, 2017

  
LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

Zoning Ordinance No. Z-17-01-06AA on the 9th day of May, 2017

ATTEST:

  
LANA R. KEESLING  
CITY CLERK

  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 10th of May 2017, at the hour of 10:30 o'clock A.M. E.S.T.

  
LANA R. KEESLING, CITY CLERK

Approved and signed by me this 19<sup>TH</sup> day of MAY 2017, at the hour of 9:30 O'clock AM . E.S.T.

  
THOMAS C. HENRY, MAYOR



8 4 7 2 6 3 5  
Tx:4274705

**2017030520**

**RECORDED: 06/16/2017 1:53:50 PM**

**ANITA MATHER**

**ALLEN COUNTY RECORDER**

**FORT WAYNE, IN**

# Recording Cover Page

RECORDED  
AS  
RECEIVED

AUDITOR'S OFFICE  
May entered for taxation. Subject  
to final acceptance for transfer.

**JUN 16 2017**

  
AUDITOR OF ALLEN COUNTY

27 NK