

**ORDINANCE NO. 2022-10
OF THE TOWN OF
ZIONSVILLE, INDIANA**

**AN ORDINANCE TO MODIFY A COMMITMENT
CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE
WITHIN THE
TOWN OF ZIONSVILLE,
BOONE COUNTY, INDIANA**

**AND FIXING A TIME WHEN THE SAME SHALL TAKE
EFFECT**

**Plan Commission Petition No.
2022-20-CA**

WHEREAS, LC. § 36-7-4, et seq. empowers the Town of Zionsville Advisory Plan Commission, Boone County, Indiana, to hold public hearings and make recommendations to the Town Council of the Town of Zionsville, Boone County, Indiana, concerning ordinances for the zoning and districting of all lands within the incorporated areas of the Town of Zionsville, Boone County, Indiana; and

WHEREAS, in accordance with LC. 36-7-4-600 et seq. the Town of Zionsville Advisory Plan Commission, Boone County, Indiana conducted a public hearing on May 16, 2022, to consider a proposal to modify a recorded Commitment Concerning the Use or Development of Real Estate recorded with the Boone County Recorder as Instrument No. 2021003808 (the “Commitments”); and

WHEREAS, the Town of Zionsville Advisory Plan Commission certified the proposal to amend the Commitments to the Town Council of the Town of Zionsville, Boone County, Indiana, with a unanimous favorable recommendation on May 19, 2022 (Exhibit 1); and

WHEREAS, the Town Council of the Town of Zionsville, Boone County, Indiana, considered the Ordinance to amend the Commitments at its regular meeting on June 6, 2022.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF ZIONSVILLE, BOONE COUNTY, INDIANA, IN ACCORDANCE WITH I.C. 36-7-4-600 et seq., AND ALL ACTS AMENDATORY AND SUPPLEMENTAL THERETO, AS FOLLOWS:

Section 1. The Exhibit A to the modified Commitments, as fully set forth in Exhibit 2, incorporates the Legal Description of the Real Estate, including the additional 40 acre parcel to the west of the original site identified in the Commitments.

Section 2. The Exhibit B to the Commitments updates the Site Plan to incorporate the additional 40 acres.

Section 3. The Commitments, as amended hereby and as fully set forth in Exhibit 2, shall be recorded in the Office of the Boone County Recorder.

Section 4. Savings Clause: If any title, section, subsection, phrase, clause, sentence, or word of this Ordinance shall for any reason be held invalid or unconstitutional by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby and shall remain in full force and effect.

Section 5. Construction of Clause Headings: The clause headings appearing herein have been provided for convenience and reference and do not purport and shall not be deemed to define, limit or extend the scope or intent of the clause to which they appertain.

Section 6. Repeal of Conflicting Ordinances: The provisions of all other Town ordinances in conflict with the provisions hereof, if any, are of no further force or effect and are hereby repealed.

Section 7. Severability: If any part of this Ordinance shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remainder of this Ordinance.

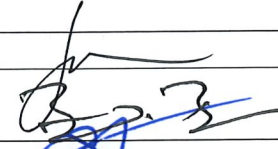
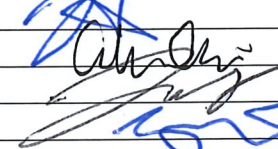
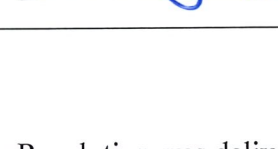
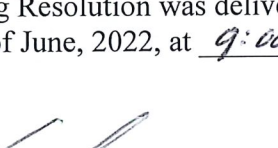
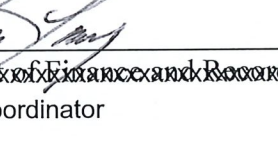
Section 8. Duration and Effective Date: The provisions of this Ordinance shall become and remain in full force and effect upon adoption according to Indiana Law and until its repeal by ordinance.

DULY PASSED AND ADOPTED this 6th day of June, 2022, by the Town Council of the Town of Zionsville, Boone County, Indiana, having been passed by a vote of 6 in favor and 0 opposed.

**TOWN COUNCIL OF THE TOWN
OF ZIONSVILLE, BOONE COUNTY, INDIANA
(Signatures of Council Members)**

YEA

NAY

Jason Plunkett, President		
Brad Burk, Vice-President		
Josh Garrett		
Alex Choi		
Joe Culp		
Craig Melton		
Bryan Traylor		

I hereby certify that the foregoing Resolution was delivered to the Town of Zionsville Mayor Emily Styron on the 7th day of June, 2022, at 9:00 A.M./P.M.

ATTEST: 

Amy Lacy, ~~Director, Department of Finance and Records~~
Municipal Relations Coordinator

**MAYOR'S
APPROVAL**



Emily Styron, Mayor

6/8/2022

DATE

**MAYOR'S
VETO**

Emily Styron, Mayor

DATE

EXHIBIT 1

Zionsville Advisory Plan Commission Certification

[attached]



**CERTIFICATION TO THE
TOWN COUNCIL
OF THE TOWN OF ZIONSVILLE, BOONE COUNTY, INDIANA**

May 19, 2022

To the Town Council of the Town of Zionsville, Indiana:

Be it advised that, pursuant to Indiana Code 36-7-4, on May 16, 2022, the Town of Zionsville Advisory Plan Commission (the "Commission"), by a vote of 6 in favor and 0 opposed, gave a ***Favorable Recommendation*** to proposal 2022-20-CA to amend the recorded Commitments Concerning the Use or Development of Real Estate, recorded with the Boone County Recorder as Instrument No. 2021003808 ("Commitments") specifically applicable to the property commonly addressed as 5190 South State Road 267, Lebanon, Indiana. The proposed amendment revises Exhibit A of the Commitments which identifies the Legal Description of the Real Estate and updates Exhibit B, the Site Plan of the involved property.

The Town of Zionsville Advisory Plan Commission hereby certifies proposal #2022-20-CA to amend the recorded Commitments (a copy of which is attached to this Certification and incorporated here by this reference) to the Town Council of Zionsville, Indiana, with a Favorable Recommendation.

**TOWN OF ZIONSVILLE
ADVISORY PLAN COMMISSION**



David Franz, President

Attest: 

Wayne DeLong, AICP
Secretary Town of Zionsville Advisory Plan Commission

EXHIBIT 2

Modified Commitments

[attached]

ZIONSVILLE PLAN COMMISSION
Docket Number 2022-____-Z

**COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE
VOLUNTARILY MADE IN CONNECTION WITH ZONING CHANGE APPROVALS
PER THE TOWN OF ZIONSVILLE ZONING ORDINANCE**

In accordance with Indiana Code, Prologis, L.P. ("Initial Owner") represents that Initial Owner is the owner of certain real estate located in the Town of Zionsville, Boone County, Indiana, and commonly known as 5190 South State Road 267, and described on Exhibit A attached hereto (the "Real Estate"), and as the owner of said Real Estate, voluntarily makes the undertakings set forth herein subject to the terms hereof concerning the use and development of the Real Estate. The following "COMMITMENTS" shall be binding on the Real Estate and each of the Owners of the Real Estate, and other persons or entities acquiring an interest herein. Said Initial Owner and subsequent owners of the Real Estate are referred to herein, as "Owners," and "Owner" shall refer to (i) Initial Owner during Initial Owner's period of ownership of the Real Estate and (ii) each subsequent owner of the Real Estate during such subsequent owner's period of ownership of the Real Estate.

STATEMENT OF COMMITMENTS:

Initial Owner hereby makes the following commitments (the "COMMITMENTS") to the Town of Zionsville, Boone County, Indiana (the "Town"), as a condition to the Town's approval of that certain site plan submitted to the Town with respect to Initial Owner's proposed development of the Real Estate:

- 1) Light poles constructed on the Real Estate shall not be more than 20 feet in height.
- 2) Lighting installed on buildings constructed on the Real Estate shall be shielded (*i.e.*, directed downwards) LED lights and not placed higher than 20 feet from ground level.
- 3) Landscape buffers will be provided in accordance with the Zionsville Zoning Ordinance with a 5'-0 Type "A" buffer adjacent to industrial zoned properties and 20'-0 Type "H" buffer adjacent to all agricultural zoned properties. The type of trees will be based on the ordinance requirements. Evergreen trees can be substituted as determined by the Planning Commission.
- 4) The development of the Real Estate shall comply with the submitted Site Plan attached hereto as Exhibit B with regard to buffer areas as shown on such plan; however, the number and size of buildings and number and orientation of drive aisles, parking spaces and access drives may be revised and established during Development Plan review.
- 5) Owner will screen any outside dumpsters in accordance with Zionsville's ordinance requirements.

These COMMITMENTS shall be executed and recorded by Initial Owner in the Office of the Boone County Recorder, Boone County, Indiana, and shall be considered a covenant running with the land and encumbering the Real Estate.

If Initial Owner fails to cause these COMMITMENTS to be recorded in accordance with the terms of the preceding paragraph, and a subsequent Owner fails to perform and/or comply with these COMMITMENTS, the Town of Zionsville shall be entitled to receive from Initial Owner jointly and/or severally, any and all damages which arise from this failure and shall be entitled to injunctive relief to terminate any non-compliance herewith.

These COMMITMENTS may be modified or terminated only by the agreement of the then-applicable Owner and a decision of the Town Council made after a public hearing for which proper notice is given, including hearings for other land use or zoning approvals involving the Real Estate or any portion thereof.

These COMMITMENTS shall be effective upon approval of the Town Council's approval of the rezoning, or upon the proposal being deemed effective in the event the Council fails to timely act on it (per I.C. 36-7-4-608(f)).

These COMMITMENTS may be enforced either individually or collectively by the Town of Zionsville Plan Commission, the Director of Planning for the Town of Zionsville, the Town and/or owners of any parcel of ground adjoining the Real Estate. Owner shall indemnify the Town of Zionsville Plan Commission and the Town and hold the Town of Zionsville Plan Commission and the Town and their respective authorized representatives, including the Director of Planning for the Town, harmless from any liability, expense (including reasonable attorney fees and court costs), costs, or damages which result from Owner's failure to perform Owner's obligations under the terms and conditions of these COMMITMENTS.

In the event it becomes necessary to enforce these COMMITMENTS in a court of competent jurisdiction and Owner is found to be in violation of these COMMITMENTS, Owner shall pay all reasonable costs and expenses the Town and the Town's Plan Commission and other authorized representative(s) incur in the enforcement of these COMMITMENTS, including reasonable attorney fees, expert witness fees, and court costs.

Owner shall be responsible, at its expense, for recording these Statements of Commitments in the Office of the Recorder of Boone County, Indiana, and shall promptly provide the Planning Department of the Town of Zionsville with a copy if such recording as a condition precedent to commencing any work upon the Real Estate or receiving a permit therefor.

Initial Owner represents and warrants to the Town that (i) Initial Owner is the sole owner of all the Real Estate (subject to matters of record), (ii) that execution of these COMMITMENTS by the undersigned on behalf of Initial Owner has been duly authorized and is voluntarily undertaken and requires no authorization of a third party, and (iii) that these COMMITMENTS shall be binding upon Initial Owner as to all the particulars herein, and Initial Owner agrees that these COMMITMENTS shall be considered COVENANTS running with the land and encumbering the Real Estate, including any portion thereof.

If at any time the Real Estate is owned by more than one party those parties shall jointly and severally constitute an "Owner" during their period of joint ownership of the Real Estate.

The issuance of a certificate of occupancy with respect to the Real Estate shall be conclusive evidence that the Initial Owner's construction and development of the Real Estate complies with all of the COMMITMENTS.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, Owner has executed this instrument this ____ day of _____, 2022.

“OWNER”

PLD/Browning Venture LLC

By: _____
_____, Authorized Representative

EXECUTED AND DELIVERED in my presence:

_____ [Witness' Signature]

Witness: _____ [Witness' Printed Name]

STATE OF INDIANA)
) SS:
COUNTY OF BOONE)

Before me, a Notary Public in and for said County and State, personally appeared _____, as Authorized Representative of PLD/Browning Venture LLC, who, on behalf of such company, acknowledged the executed of the foregoing instrument and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this ____ day of _____, 2022.

Signature: _____

Printed: _____

County of Residence: _____

My Commission Expires: _____

STATE OF INDIANA)
) SS:
COUNTY OF BOONE)

Before me, a Notary Public in and for said County and State, personally appeared _____ [Witness' Name], being known or proved to me to be the person whose name is subscribed as a witness to the foregoing instrument, who, being duly sworn by me, deposes and says that the foregoing instrument was executed and delivered by _____ [PLD/Browning Venture LLC Authorized Rep] in the foregoing subscribing witness' presence.

Witness my hand and Notarial Seal this _____ day of _____, 2022.

Signature: _____

Printed: _____

County of Residence: _____

My Commission Expires: _____

This instrument was prepared by and upon recording return to: Matthew M. Price, Esq., Dentons Bingham Greenebaum LLP, 10 West Market Street, Suite 2700, Indianapolis, Indiana 46204.

I affirm under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. ~ *Matthew M. Price, Esq.*

EXHIBIT A
LEGAL DESCRIPTION OF THE REAL ESTATE

South Parcel

A part of the West half of the Northeast Quarter of Section 34, Township 18 North, Range 1 East, in Perry Township, Boone County, Indiana, described as follows:

Beginning at the Southwest corner of said half quarter section marked by a railroad spike; thence North 00 degrees 39 minutes 46 seconds West (grid bearing) 994.33 feet to a 5/8 inch rebar with red cap stamped Firm #0066 (hereafter referred to as rebar); thence North 88 degrees 42 minutes 30 seconds East 1331.49 feet to the East line of said half-quarter section being North 88 degrees 42 minutes 30 seconds 28.68 feet from a rebar on the West right of way line of State Road 267; thence South 00 degrees 42 minutes 28 seconds East, along said East line to a point being 330.00 feet North of the Southeast corner of said half quarter section; thence South 88 degrees 43 minutes 27 seconds West, parallel with the South line of said half quarter section 660.00 feet; thence South 00 degrees 42 minutes 28 seconds East, parallel with said East line, 330.00 feet to a point on said South line; thence South 88 degrees 43 minutes 27 seconds West 672.25 feet to the point of beginning, containing 25.407 acres, more or less.

Middle Parcel

A part of the West half of the Northeast Quarter of Section 34, Township 18 North, Range 1 East, in Perry Township, Boone County, Indiana, described as follows:

Commencing at the Southwest corner of said half quarter section marked by a railroad spike; thence North 00 degrees 39 minutes 46 seconds West (grid bearing) 994.33 feet to a 5/8 inch rebar with red cap stamped Firm #0066 (hereafter referred to as rebar) at the point of beginning; thence North 00 degrees 39 minutes 46 seconds West along said West line 830.00 feet to a rebar; thence North 88 degrees 42 minutes 30 seconds East 1330.84 feet to a point on the East line of said half-quarter section being North 88 degrees 42 minutes 30 seconds 27.26 feet from a rebar on the West right of way line of State Road 267; thence South 00 degrees 42 minutes 28 seconds East, along said East line, 830.00 feet to a point being North 88 degrees 42 minutes 30 seconds East 28.68 feet from a rebar on the West right of way line of State Road 267; thence South 88 degrees 42 minutes 30 seconds West 1331.49 feet to the point of beginning, containing 25.363 acres, more or less.

North Parcel

A part of the West half of the Northeast Quarter of Section 34, Township 18 North, Range 1 East, in Perry Township, Boone County, Indiana, described as follows:

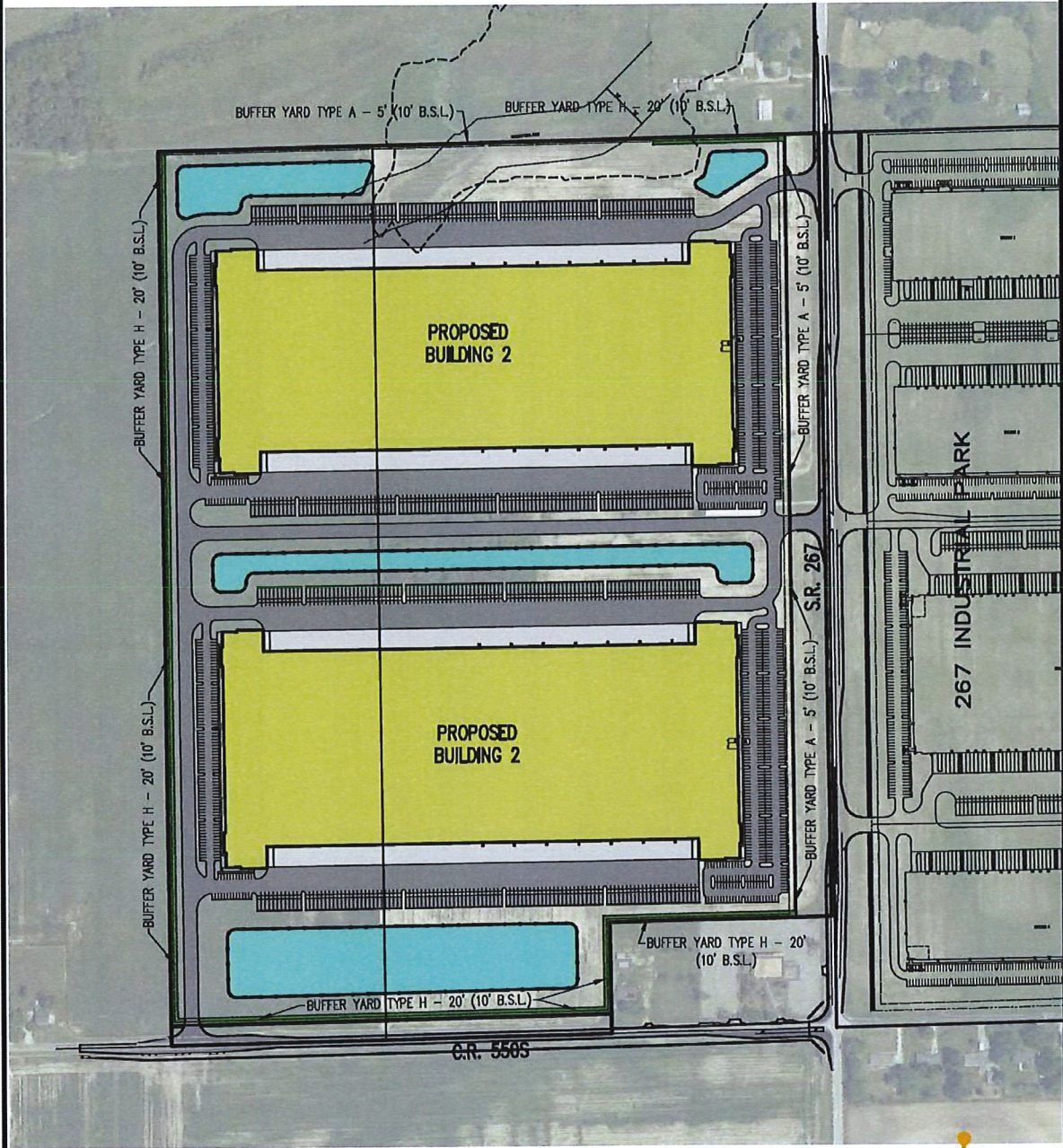
Commencing at the Southwest corner of said half quarter section marked by a railroad spike; thence North 00 degrees 39 minutes 46 seconds West (grid bearing) 1824.33 feet to a 5/8 inch rebar with red cap stamped Firm #0066 (hereafter referred to as rebar) at the point of beginning; thence North 00 degrees 39 minutes 46 seconds West, along said West line 830.00 feet to a harrison monument marking the Northwest corner of said half-quarter section; thence North 88 degrees 42 minutes 30 seconds East 1330.18 feet to the Northeast corner of said half quarter section; thence South 00 degrees 42 minutes 28 seconds East, along the East line of said half quarter section, 830.00 feet to a point being North 88 degrees 42 minutes 30 seconds East 27.26 feet from a rebar on the West right of way line on State Road 267; thence South 88 degrees 42 minutes 30 minutes West 1330.84 feet to the point of beginning, containing 25.351 acres, more or less.

West Property

A PART OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 18 NORTH, RANGE 1 EAST, IN PERRY TOWNSHIP, BOONE COUNTY, INDIANA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT THE SOUTHEAST CORNER OF THE AFORESAID NORTHWEST QUARTER SECTION AND MONUMENTED BY A RAILROAD SPIKE; THENCE SOUTH 88 DEGREES 45 MINUTES 43 SECONDS WEST (BASIS OF BEARINGS ESTABLISHED BY GPS/GNSS SURVEY DATA PROJECTED ONTO THE STATE PLANE COORDINATE SYSTEM-NAD '83-INDIANA WEST ZONE-1302) ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER 656.37 FEET; THENCE NORTH 00 DEGREES 39 MINUTES 55 SECONDS WEST PARALLEL TO THE EAST LINE OF SAID NORTHWEST QUARTER 2655.34 FEET TO THE NORTH LINE OF SAID NORTHWEST QUARTER; THENCE NORTH 88 DEGREES 51 MINUTES 53 SECONDS EAST ALONG SAID NORTH LINE 656.36 FEET TO THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER MONUMENTED BY A HARRISON MONUMENT; THENCE SOUTH 00 DEGREES 39 MINUTES 55 SECONDS EAST ALONG THE EAST LINE OF SAID NORTHWEST QUARTER 2654.16 FEET TO THE POINT OF BEGINNING AND CONTAINING 40.000 ACRES, MORE OR LESS.

Exhibit B Site Plan



Innovative
ENGINEERING & CONSULTING

3961 Perry Boulevard
Ph. 317-769-2916

Whitestown, IN 46075
www.innovativecl.com

Site Plan Rendering
Prologis Development
Zionsville, Indiana

