

4

MEMORANDUM OF UNDERSTANDING AND COMMITMENT
2002 074725

2002 AUG 21 11:09:51

DYER RETAIL, L.L.C., a/k/a MID-NORTHERN EQUITIES, 3100 Dundee Road, Suite 304, Northbrook, Illinois 60062, here and after referred to as "**DYER RETAIL**" and **THE TOWN OF DYER PLAN COMMISSION**, One Town Square, Dyer, Indiana 46311, here and after referred to as "**PLAN COMMISSION**" do hereby enter in and agree to this certain Memorandum of Understanding and Commitment, based upon the following residuals, terms and conditions:

RECITALS

WHEREAS, **Dyer Retail** has applied to **Plan Commission** for Secondary (Final) Subdivision Approval of a commercial subdivision known as Mid-Northern Equities Commercial Subdivision, which subdivision is currently under consideration and scheduled for final approval on July 15, 2002 at 7:30 p.m.; and

WHEREAS, **Dyer Retail** has developed and submitted, as part of the Approval process and in compliance with the Terms and Conditions of the Subdivision Control Ordinance of the Town of Dyer a certain storm water drainage plan which provides, in part, for on-site detention and storage of water on Lot 6 of said subdivision plat; that a copy of the legal description of said commercially zoned property is enclosed hereto, made a part hereof and marked as Exhibit "A"; and

WHEREAS, the aforementioned detention/storage pond is but one (1) segment of a storm water drainage/detention/storage system that incorporates an additional seventy-seven (77) acres of undeveloped property to the north, currently zoned residential, owned by the Petitioner and intended for residential development; that a copy of the legal description of said residentially zoned property is enclosed hereto, made a part hereof and marked as Exhibit "B"; and

WHEREAS, it is anticipated that the approximately seventy-seven (77) acres of residentially zoned property will be conveyed to a third party for development thereof; and

WHEREAS, the planning staff and consulting engineer and members of the **Plan Commission** have expressed concern and reservations regarding possible overflow drainage of storm water from the commercial development into the as yet undeveloped storm water/detention/storage system of the residentially zoned property; and

WHEREAS, **Dyer Retail** desires to ensure the **Plan Commission** of the adequacy of its overall storm water/detention/storage system for the entirety of the effected area.

NOW, THEREFORE, it is the understanding of the parties, and the commitment of **Dyer Retail**, as follows:

*Wesley & Starba
425 W. Lincoln Hwy
Schererville 46375*

*ck 16:00
2P
10375*

1. **Dyer Retail** represents that it has designed a storm water/detention/storage system that is adequate and meets the criteria of the Subdivision Control Ordinance of the Town of Dyer.
2. **Onsite Storm Water Detention/Retention.** That such storm water/detention/storage system necessarily includes a series of proposed storm water/detention/storage ponds on property currently owned by **Dyer Retail** to the north of the proposed commercial subdivision, of approximately seventy-seven (77) acres, a copy of which legal description is attached hereto, made a part hereof, and marked Exhibit "B".
3. **Offsite Storm Water Detention/Retention.** The commercial subdivision, and the residentially zoned property to the north, of approximately seventy-seven (77) acres, is to provide storm water detention/retention for the real property located on the south side of Highway U.S. 30, commonly known as Checker Commercial Subdivision, excluding therefrom Lots 1 and 2, a copy of which legal description is attached hereto, made a part hereof, and marked Exhibit "C".
 - a. That **Dyer Retail** commits to the **Plan Commission** that said proposed storm water/detention/storage system planned for the residentially zoned property, which is necessarily designed to facilitate storm water drainage of the proposed commercial subdivision and property located south of U.S. 30, as described in Paragraph 3 above, will be constructed and implemented on said residentially zoned property, when developed, whether owned by **Dyer Retail**, a Successor entity or a subsequent third party bona fide purchaser.
4. **Additional Storm Water Detention/Retention.** **Dyer Retail** acknowledges that the storage volume of the proposed commercial storm water detention pond is based on an average ground water elevation, based upon numerous soil borings obtained throughout the site. Although not contemplated, if the actual ground water table is above the average elevation, then the proposed commercial detention pond will not have the required storage volume. In said event, where additional storm water detention/retention volume is necessary, **Dyer Retail** shall provide for the same in the system of storage developed and stated in Paragraph 2 above.
5. **Dyer Retail** agrees that the operation, maintenance and conveyance system of the proposed commercial detention pond and storm water lift station shall be the responsibility of **Dyer Retail** and not that of the Town of Dyer or any other municipal entity.

6. That **Dyer Retail** shall make any subsequent sale or transfer of the residentially zoned property subject to the foregoing commitment concerning the construction, installation and implementation of the foregoing storm water detention/drainage/storage plan.
7. That the **Plan Commission** shall condition its Approval of the proposed commercial subdivision known as Mid-Northern Equities Commercial Subdivision upon the Agreements and Understandings contained herein.

This Agreement is made solely in conjunction with the Application for Secondary (Final) Subdivision Approval of a commercial subdivision submitted by **Dyer Retail** and known as and for no other purpose. In the event that Secondary (Final) Subdivision Approval of the said commercial subdivision is not obtained, granted and/or denied, for whatever reason, the Terms and Conditions of this Agreement shall become null and void.

The undersigned hereby authorize and direct the recordation of this Memorandum of Understanding and Commitment in the office of the Recorder of Lake County, Indiana, upon final non-appealable approval of the application in this proceeding for Secondary (Final) Subdivision Approval.

IN WITNESS WHEREOF, the parties have herein to executed this Agreement on the 30 day of July, 2002 by their dually designated representative.

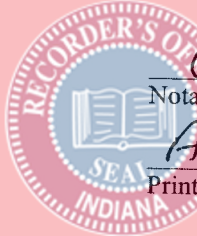
Document is NOT OFFICIAL!
 This Document is the property of the Lake County Recorder's Office.

[Signature]
 Dyer Retail, L.L.C
 By: William Shiner, Manager Member

STATE OF ^{Illinois} INDIANA)
 COUNTY OF ^{DuPage} LAKE)

BEFORE ME, the undersigned, a Notary Public, personally appeared William A. Shiner, authorized agent for or officer of DYER RETAIL, LLC, who acknowledged the execution of this instrument, this 30th day of July, 2002.

My commission expires: 6/29/05
 County of Residence: Lake



[Signature]
 Notary Public
Annrita Mitchell
 Printed Name



The foregoing Memorandum of Understanding and Commitment having been considered by the members of the Dyer Plan Commission on the 15th day of July, 2002, the same is hereby approved and accepted by a vote of 10 members in favor and 0 members against.

Scott Ceasing
Town of Dyer Plan Commission
By: President

Paul Hayes
Town of Dyer Plan Commission
By: Secretary

STATE OF INDIANA)
)
COUNTY OF LAKE)

BEFORE ME, the undersigned, a Notary Public, personally appeared Scott Ceasing & Paul Hayes, authorized agent for or officer of DYER PLAN COMMISSION, who acknowledged the execution of this instrument, this 14 day of August, 2002.

My commission expires: 8/31/05
County of Residence: Lake

Patricia Hawrot
Notary Public

Patricia Hawrot
Printed Name

