

STATE OF INDIANA
BEFORE THE BOARD OF CLARK COUNTY COMMISSIONERS

ORDINANCE NO. 37-2012

**AN ORDINANCE APPROVING AN AMENDMENT TO THE CLARK
COUNTY ZONING MAP ON RECOMMENDATION BY THE CLARK
COUNTY PLAN COMMISSION.**

[See attached text of Ordinance]

BY THE CLARK COUNTY
PLAN COMMISSION

RESOLUTION 6-2012

WHEREAS, the Clark County Plan Commission (Plan Commission) met on November 14, 2012 and heard the Petition of Trio Ventures, LLC, asking that the property known by its street as 14914 Wilson Switch Road be reclassified from A-1 Agricultural Zone to M-2 Heavy Industrial Zone and

WHEREAS, the real estate for which the rezoning is being requested is more particularly described in Exhibit A, attached herewith and made a part hereof; and

WHEREAS, the Plan Commission heard the presentation of the Petitioner(s) and the objections, comments, remonstrations and other relevant information presented by those in attendance at the hearing, if any; The following spoke in opposition:
Travis Takami, Chris Howard, Brian Sweeney and Mike Denhard

NOW, THEREFORE, BE IT RESOLVED by the Plan Commission as follows:

1. The petition to rezone the real estate described in Exhibit A was heard after notice to interested persons was properly given in accordance with the ordinance and Indiana law; and
2. The Plan Commission heard and received the relevant evidence presented and deliberated on such evidence in a public meeting.
3. The Plan Commission recommends to the Board of Commissioners of Clark County as follows:

(Check One)

The real estate described in Exhibit A should be reclassified from A-1 Agricultural Zone to M-2 Heavy Industrial Zone with a Zoning Commitment (Exhibit B).

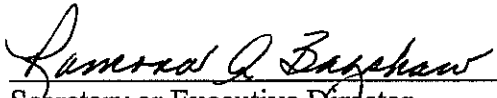
The real estate described in Exhibit A should NOT be reclassified from _____ to _____.

The Plan Commission was unable to reach consensus as required by law, and therefore sends the rezoning petition to the Clark County Commissioners WITHOUT RECOMMENDATION.

Dated this 4th day of December, 2012.

I hereby certify that this is a true and correct copy of the Resolution passed by the Clark County Plan Commission on November 14, 2012.

ATTEST:



Secretary or Executive Director

EXHIBIT A

THIS INDENTURE WITNESSETH, that Gary L. Wilder and Ruth A. Wilder, of Clark County, in the State of Indiana,

CONVEY AND WARRANT

unto Trio Ventures LLC, a limited liability company organized pursuant to the laws of the State of Kentucky, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the real estate in the County of Clark, State of Indiana, described as follows, to-wit:

BEING A PART OF A 23.9 ACRE TRACT OF LAND IN NO. 216 ILLINOIS GRANT, CARR TOWNSHIP, CLARK COUNTY, INDIANA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A STONE ON THE BOUNDARY LINE OF CLARK'S GRANT, SAID STONE BEING THE SOUTHEAST CORNER OF LOT 10, FRACTIONAL SECTION 3, TOWNSHIP 1 SOUTH, RANGE 6 EAST, THENCE SOUTH 40 DEG. EAST WITH SAID GRANT LINE, 200.15 FEET TO THE INTERSECTION OF SAID GRANT LINE AND THE MEMPHIS ROAD; THENCE CONTINUING SOUTH 40 DEG. EAST, 823.7 FEET TO THE SOUTHERN MOST CORNER OF FRAME'S 23.9 ACRE TRACT THE TRUE PLACE OF BEGINNING OF THE TRACT OF LAND TO BE HEREIN DESCRIBED. (THE ABOVE PORTION BEING REFERENCE FROM DEED DESCRIPTION, RECORDED IN DEED DRAWER 5, INSTRUMENT NO. 11493) THENCE RUNNING NORTH 53 DEG. 21' 30" EAST, 1341.5 FEET TO AN IRON PIN; THENCE NORTH 40 DEG. 00' 30" WEST, 245 FEET TO AN IRON PIPE; THENCE SOUTH 53 DEG. 21' 30" WEST, 1341.5 FEET TO THE GRANT LINE; THENCE SOUTH 40 DEG. EAST, 245 FEET TO THE PLACE OF BEGINNING, CONTAINING 7.54 ACRES.

SUBJECT TO THE RIGHT-OF-WAY OF THE COUNTY ROAD ALONG AND THROUGH THE SOUTHWEST PORTION OF THE ABOVE DESCRIBED TRACT, AND ALL EASEMENTS OF RECORD.

Subject to any and all easements and/or restrictions of public record which may apply to the above described real estate.

EXHIBIT B

ZONING COMMITMENT

This Zoning Commitment made in accordance with the provisions of IND. CODE § 36-7-4-1015 by and between:

The **BOARD OF COMMISSIONERS OF CLARK COUNTY, INDIANA**, and the **CLARK COUNTY PLAN COMMISSION** (collectively the "County"), with an address of Clark County Government Building, Room 404, 501 E. Court Avenue, Jeffersonville, Indiana 47130; and,

TRIO VENTURES, LLC (the "Owner"), with an address of 1215 Herr Lane, Suite 210, Louisville, Kentucky 40222.

RECITALS:

WHEREAS, pursuant to deed recorded as Instrument 201102712, the Owner owns that certain tract of real estate located at the commonly known address of 14914 Wilson Switch Road, Borden, Clark County, Indiana (the "Real Estate"), which Real Estate is more particularly described as follows, *to-wit*:

Being a part of a 23.9 acre tract of land in No. 216 Illinois Grant, Carr Township, Clark County, Indiana, and being more particularly described as follows:

Beginning at a stone on the boundary line of Clark's Grant, said stone being the southeast corner of Lot 10, fractional Section 3, Township 1 South, Range 6 East, thence South 40° East with said Grant Line, 200.15 feet to the intersection of said Grant Line and the Memphis Road; thence continuing South 40° East, 823.7 feet to the southernmost corner of Frame's 23.9 acre tract, the TRUE PLACE OF BEGINNING of the tract of land to be herein described. (The above portion being reference from deed description recorded in Deed Drawer 5, Instrument No. 11493) thence running North 53°21'30" East, 1341.5 feet to an iron pin; thence North 40°00'30" West, 245 feet to an iron pipe; thence South 53°21'30" West, 1341.5 feet to the Grant Line; thence South 40° East, 245 feet to the PLACE OF BEGINNING, containing 7.54 acres.

Subject to the right-of-way of the County Road along and through the southwest portion of the above described tract, and all easements of record.

;and,

WHEREAS, the Real Estate is presently located within the unincorporated territory of Clark County, subject to the jurisdiction of the Clark County Plan Commission, and designated as "A1" (Agricultural) on the Clark County Zoning Map; and,

WHEREAS, the Owner has filed an application with the County to change the zoning designation of the Real Estate to "M2" (Heavy Industrial) in order to be able to develop and operate the planned Ohio Valley Creative Energy Sustainable Arts and Education Center, which facility intends to utilize methane gas produced and captured at the adjacent Clark-Floyd Counties Landfill (the "Landfill") in order to fuel ceramic kilns, metal forging and fabrication equipment, and other artistic endeavors; and,

WHEREAS, following a public hearing held in accordance with Indiana law during the regular meeting of the Plan Commission on November 14, 2012, the Owner's application was certified to the Board of Clark County Commissioners (the "Board") with a favorable recommendation in accordance with the provisions of IND. CODE § 36-7-4-605(a)(3); and,

WHEREAS, in order to address certain issues raised at the Plan Commission hearing on the petition, the Owner now voluntarily tenders this Zoning Commitment pursuant to the provisions of IND. CODE § 36-7-4-1015 as an inducement to the granting of its petition for zoning map change by the Board.

NOW, THEREFORE, in consideration of the grant of the requested zoning map change regarding the Real Estate to "M2" (Heavy Industry), the Owner expressly and voluntarily commits to the following:

1. Development of the Real Estate shall not result in the construction of impervious surfaces covering more than thirty-five percent (35.00%) of the entirety of the tract.
2. Any pipe conveying methane gas from the Landfill collection facilities to the Real Estate shall be constructed entirely underground.
3. Notwithstanding the grant of the requested M2 zoning designation, the Real Estate shall not in any manner be used for the Permitted Uses specified in

subsections (b), (d), (e), (f), (g), (h), or (j) of Article XVI of the Clark County Zoning Ordinance in effect as of November 14, 2012.

4. Notwithstanding the grant of the requested M2 zoning designation, no portion of the Real Estate shall be used as a municipal solid waste landfill.

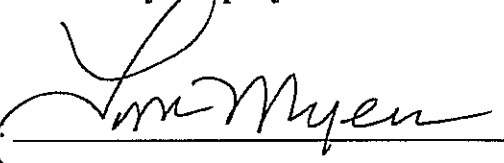
This Zoning Commitment shall become binding on the Owner, its successors and assigns, following the grant of final approval of the Zone Map change regarding the Real Estate to "M2" (Heavy Industry) as requested by the Owner. Subsequent to the grant of such final approval, this Zoning Commitment may thereafter be modified or terminated only by a decision of the Clark County Plan Commission or its successor in interest made at a public hearing after notice of the hearing has been provided under its then applicable rules in accordance with the provisions of IND. CODE § 36-7-4-1015(b)(5). Further subsequent to the grant of such final approval, the County shall be entitled to record this Zoning Commitment in the office of the Recorder of Clark County, Indiana.

The Board, the Clark County Plan Commission, and any owner of property adjoining the Real Estate shall have continuing jurisdiction over, and authority to enforce, this Zoning Commitment in accordance with the terms set forth herein. If Owner or its successor violates this Zoning Commitment, and if an action to enforce this Zoning Commitment is successful, then the Owner or its successor shall be liable to reimburse the Plaintiff for all litigation expenses, including reasonable attorney fees.

This instrument was prepared without benefit of title work.

IN WITNESS WHEREOF, this Zoning Commitment is voluntarily made, undertaken, and tendered to the County for its acceptance in consideration of the grant of the Zoning Map change requested by the Owner, this 6th day of December, 2012.

**TRIO VENTURES, LLC, a Kentucky
limited liability company**

By: 

Printed: Tim MYERS

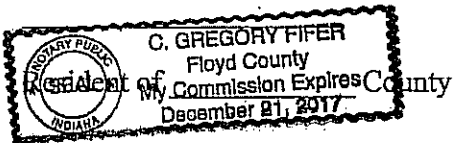
Title: MEMBER-MANAGER

STATE OF INDIANA)
) SS:
COUNTY OF CLARK)

Before me, a Notary Public in and for the above-named County and State, personally appeared TIM MYERS, as the duly authorized ~~MEMBER-MANAGER~~ of Trio Ventures, LLC, and acknowledged the execution of the foregoing Zoning Commitment on behalf of such Owner as its free and voluntary act and deed for the uses and purposes specified therein.

Witness my hand and Notarial seal this 6th day of December, 2012.

My Commission expires:



[Signature]
Notary Public

Printed Signature

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, and that this instrument was prepared by:

C. Gregory Fifer, Attorney
APPLGATE FIFER PULLIAM LLC
428 Meigs Avenue
Jeffersonville, IN 47130
(812) 284-9499

Name Tris Ventures, LLC

Petition No. 6-2012

The Clark County Plan Commission does hereby recommend approval, denial or no recommendation of said petition on this 14th day of November, 2012, by a 5-2 vote.

MEMBER	APPROVED	DENIED	NO RECOMMENDATION	ABSTAIN
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<u>David Hynes</u> David Hynes, County Ag Agent	_____	✓ _____	_____	_____
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<u>John Uhl</u> John Uhl	_____	✓ _____	_____	_____
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_____	_____	_____	_____	_____
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Jeff Stamper

<u>Paul E. Coffman</u> Paul Coffman	_____	✓ _____	_____	_____
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<u>Brian Lenfert</u> Brian Lenfert, County Council	_____	✓ _____	_____	_____
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Brian Lenfert, County Council

<u>David Blankenbeker</u> David Blankenbeker, County Surveyor	_____	✓ _____	_____	_____
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David Blankenbeker, County Surveyor

<u>Edward Meyer</u> Edward Meyer, Co. Commissioner	_____	✓ _____	_____	_____
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Edward Meyer, Co. Commissioner

_____	_____	_____	_____	_____
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Michael Killen

<u>R. Wardlaw</u> Rick Wardlaw	_____	✓ _____	_____	_____
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Rick Wardlaw

ACTION TAKEN BY BOARD OF COMMISSIONERS
OF CLARK COUNTY, INDIANA

This matter having come before the Board of Commissioners of Clark County, Indiana (County Commissioners) on 12-20-2012 on the petition of Trio Ventures, LLC to reclassify the real estate described in Exhibit A from A-1 Agricultural Zone to M-2 Heavy Industrial Zone with a Zoning Commitment (Exhibit B); and the Plan Commission has adopted the forgoing resolution in which it makes its recommendations to the County Commissioners and the County Commissioners having read the recommendation, having reviewed all available evidence, having considered the county's comprehensive plan, having balanced the competing interests of those in the area affected, if any, now, therefore, determines as follows:

X The real estate described in Exhibit A should be reclassified on the zoning maps from A1 (AGRICULTURAL) to M2 (HEAVY INDUSTRIAL)

 The real estate described in Exhibit A SHOULD NOT be reclassified on the zoning maps.

Dated this 12th day of December, 2012

Board of Commissioners of
Clark County, Indiana

Les Young
Les Young, President

Edward Meyer
Edward Meyer, Commissioner

John Perkins
John Perkins, Commissioner

Attest:

R. Monty Snelling
R. Monty Snelling, Clark County Auditor