ORDINANCE NO. 13-2006

AN ORDIANANCE TERMINATING JURISDICTION OF THE MUNICIPAL PLAN COMMISSION OF CITY OF JEFFERSONVILLE FOR EXERCISE OF TERRITORIAL ZONING JURISDICTION

- (1) WHEREAS, The Board of Commissioners of Clark County, Indiana ("Board") is the Legislative body of Clark County, Indiana government pursuant to I.C. 36-1-2-9;
- (2) WHEREAS, the Board, in other legal capacity, is responsible for the making of appointments to the County Plan Commission and has certain responsibilities under statutes for zoning functions of the county from time to time;
- (3) WHEREAS, the citizens of Clark County, Indiana, ("county") residing in both incorporated and unincorporated areas, are entitled to certainty and predictability with respect to the exercise of governmental zoning functions from the county government and, it is submitted respectfully, from municipal governments so that citizens and homeowners can make appropriate planning decisions with respect to their home, property and other lands in which they may have an interest;
- (4) WHEREAS, the Indiana General Assembly has previously enacted I.C. 36-7-4-205, and has enacted revisions to this statute over the years, so as to provide some type of mechanism for municipalities to exercise zoning jurisdiction beyond their legal municipal boundaries, which is sometimes referred to as "extraterritorial jurisdiction" or "two-mile fringe zoning jurisdiction," which will hereafter be referred to as "fringe jurisdiction."
- (5) WHEREAS, the Board, in its experience and in the exercise of its discretion, has utilized best intentions throughout the years to attempt to support fringe jurisdiction for the City of Jeffersonville ("City") and its Municipal Plan Commission. However,

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throughout the years, since 1993 at a minimum, several uncertainties have arisen which have illustrated that the practical application of fringe jurisdiction has been fraught with confusion, lack of consistency, difficulties concerning drainage issues, enforcement issues, road issues, animal control issues, building standard issues, road specification issues and other points where ordinances, policies or statutes applicable to both county government should provide clear levels of service to citizens;

- (6) WHEREAS, the result of the above-described experiences has raised more questions and uncertainties from the citizenry of the county than it has promoted uniformity, predictability and organized public service with respect to fringe jurisdiction of the City within a two-mile distance from that City's municipal boarders;
- (7) WHEREAS, additionally, I.C. 36-7-4-701(c) is another statute that has been in effect during all times that fringe jurisdiction has been purportedly exercised by the City within the two-mile distance referenced above in the unincorporated county. This statute, under circumstances stated, retains exclusive County Plan Commission control over subdivision approval in the county, whether or not within any claimed fringe jurisdiction of a municipality. In practice, however, there may have been instances of "subdivision approval" by the Municipal Plan Commission that has not been approved, formally and legally by the County Plan Commission under this statute;
- (8) WHEREAS, earlier versions of I.C. 36-7-4-205, as well as the present version of I.C. 36-7-4-205(f) (applicable to counties with populations less than 95,000 citizens) provided a mechanism whereby a Municipal Plan Commission could simply notify the county of its intention to extend municipal extraterritorial zoning jurisdiction to an area

within two miles of the city's corporate boundaries. In 1993, this Board was delivered such a notice from the Jeffersonville Plan Commission;

- (9) WHEREAS, since 1993, the population of the county has grown in excess of 95,000 citizens. (see attachments marked "Exhibit A," including references to I.C. 1-1-3.5-3 and I.C. 1-1-3.5-5; see also, U.S. Census Bureau Report marked "Exhibits B-1 and B-2," confirming that Clark County's population was in excess of 95,000 persons in the year 2000.) Additionally, since 1993, the foregoing illustrations of confusion, lack of certainty, the mixture of zoning policies, confusion over fees, enforcement and specifications have continued and have not well served this county, including those residing in the City;
- make the exercise of municipal fringe jurisdiction compatible with neighboring lands or surrounding lands in the county. These difficulties are illustrated by the differences between the fence permit standards of the City vs. the policy of the county regarding fences, application of the Jeffersonville Building Code to several particular instances compared to the State Building Code that is applicable in the county, the difference in set-back requirements of the City compared to those of the county, or different procedures regarding address assignments on private lanes. The county is to assign each specific residence a particularized, individual address. In this latter example, the Board deems it of the highest necessity to have separate, distinctive addresses for each home so that emergency, police or other public service vehicles can readily locate and reach a particular home in exigent circumstances or in circumstances of family necessity.

- (11) WHEREAS, additional difficulties have surfaced with respect to (a) pre-existing roads within the claimed fringe jurisdiction and (b) newly constructed roads in subdivisions "approved" by the City Plan Commission, despite the requirements of I.C. 36-7-4-701(c) which retains exclusive subdivision approval control with the County Plan Commission. No fixed procedures have consistently been followed, nor developed since 1993, establishing protocols relative to fixed road specifications (city or county?) for new roads, maintenance responsibilities for pre-existing roads, inspection of road construction within the fringe jurisdiction area at different phases;
- (12) WHEREAS, a prior Board, in what appears to have been an attempt to address some of the issues thus far mentioned in this instrument, enacted County Ordinance 10-2003 on July 17, 2003 (copy attached as "Exhibit C"). Among the recitals and premises of this Ordinance were the following stated particulars:
 - (a) The delegation of such authority to Jeffersonville has created administrative confusion and has deprived the County of needed revenue from subdivision application fees, permit fees and road inventory revenue.
 - (b) It is not prudent for the County to forego the opportunity to collect legal fees and road and street funds.
 - (c) The delegation of subdivision control, flood plain control, collection of building permit fees and other related County functions to the cities and towns has been a failed experiment which should be rescinded for all cities and towns to which it has been delegated.
- (13) WHEREAS, consistent with the above recitals and failed experiment findings of Ordinance 10-2003, that prior Board, acting as the legislative body of the County on July 17, 2003, ordained that it would assert "all of its statutory rights related to subdivision control, collection of permit fees, issuance of building permits, issuance of location

approvals, administration of flood plain regulations and any and all related inspections and enforcement actions within the extraterritorial jurisdiction of the Counties, cities and towns."

- (14) WHEREAS, the remainder of this Ordinance purported to state that Ordinance 10-2003 was not to be construed as abolishing the extraterritorial jurisdiction of Jeffersonville; however, despite this language assertion, the practical effect of Ordinance 10-2003 did not significantly improve clarity, certainty and predictability for the citizenry of Clark County.
- (15) **WHEREAS,** problems and confusion heretofore recited continued even after the enactment of Ordinance 10-2003.
- (16) WHEREAS, as of the time of enactment of this Ordinance, the City has not continuously provided the county Plan Commission office with original maps, or revised maps, setting forth what it identifies as its fringe area, or area of extraterritorial zoning jurisdiction, since the early 1990s. This has contributed to the uncertainty facing citizens who are in need of official zoning actions from zoning boards of the county;
- (17) WHEREAS, specifically, that portion of Ordinance 10-2003 which purportedly had the county asserting its statutory rights to subdivision control, which this Board herein states was never divested from county government control under I.C. 36-7-4-701;
- (18) WHEREAS, that, further, and despite the best of intentions by the predecessor Board on July 17, 2003 in Ordinance 10-2003, the phraseology "issuance of location approvals" is not sufficiently certain so as to provide definition, precise information.

certainty and predictability to citizens who are in need of zoning decisions from governmental zoning agencies involved;

- (19) WHEREAS, an earlier Board of the county, acting in the legislative capacity provided by law, on July 6, 1993, approved "Resolution 16/1993" which purported to recognize the original City fringe jurisdiction when the population of the county was less than 95,000 citizens, a fact which does not exist any longer;
- (20) WHEREAS, current provisions of I.C. 36-7-4-205(e) provide that the jurisdiction of a municipal plan commission, in a fringe zoning jurisdiction matter, may be terminated by Ordinance at the discretion of the legislative body of the county, but only if the county has adopted a Comprehensive Plan for that area that is as comprehensive in scope and subject matter as that in effect by the municipal ordinance;
- (21) WHEREAS, the Board herein confirms that the county has adopted a Comprehensive Plan for the so-called purported fringe area that is as comprehensive in scope and subject matter as that in effect by the City, as applied to what is believed to be the City fringe area;

NOW THEREFORE BE IT ORDAINED BY THE BOARD AS FOLLOWS:

- That each and every recital set forth above is adopted into this Ordinance and officially recognized and made effective, this date;
- 2. That the Board finds it necessary to the public interest to eliminate the uncertainty, confusion, lack of clarity and lack of predictability that has developed since at least 1993 with respect to claimed fringe jurisdiction of the City;
- 3. That it is without dispute that Clark County Government has always retained subdivision control jurisdiction under the authority of I.C. 36-7-4-701(c) throughout all years at issue, though the City Plan Commission has, apparently, purported to "approve" plats and re-plats in the unincorporated county, without forwarding said

- approvals to the county Plan Commission for final legal approval under the foregoing statutory section;
- 4. The Board herein states that legal procedures that exist for annexation contain more detail, precise and informative provisions and responsibilities for delivery of governmental services that would better serve the interests of citizens owning land or residing within any two-mile distance from the City's existing municipal boundaries. Statutory procedures for Annexation address those steps necessary for the effective transfer of both jurisdiction and public service responsibilities in a manner not contemplated, implied nor addressed under any section of l.C. 36-7-4-205;
- 5. That as a result of the confusion that has resulted with respect to the fringe area since at least 1993, and in order to be of realistic and reasonable service to citizens, the Board hereby ratifies, approves and confirms those plats, re-plats, subdivision and zoning decisions (rezoning, changing of maps and variance grants included) that have been enacted by the City through its Plan Commission, Board of Zoning Appeals or Common Council through and including December 1, 2006, the effective date of this Ordinance;
- 6. That the Board, in the exercise of the discretion granted to it by virtue of I.C. 36-7-4-205(e) hereby terminates and rescinds any and all Ordinances, Resolutions and/or official action votes of the Board, acting in either its executive or legislative capacity, that previously permitted or authorized the exercise of extraterritorial zoning jurisdiction (fringe jurisdiction or two-mile fringe jurisdiction included) previously extended to the City under any version or amendment of I.C. 36-7-4-205. This termination is effective at 4:00 p.m. on December 1, 2006.
- 7. The sole exception(s) to the terms of this Ordinance, including the foregoing sub-paragraph, are for written requests already filed with City zoning agencies for rezoning, variance, change of zoning maps, special exception or matters not pertaining to subdivision approval or plat or re-plat requests ("remaining City matters") that were filed with the City before 4:00 p.m. on December 1, 2006. If already filed with City zoning offices before this time and date, the County, through the exercise of the discretion granted this Board in its legislative capacity, will honor final City decisions on such authorized remaining City matters.

- 8. The Board recognizes and acknowledges that citizens or developers have paid fees to the City to process zoning or subdivision "approvals" of various types prior to December 1, 2006 ("prior approvals"). To the extent these persons or developers have relied upon such prior approvals of the City, Clark County government will honor them through completion of the respective project approved until completion. To the extent the City has received such fees, or secured bonds or other instruments of surety prior to December 1, 2006 as a part of such prior approval process, the Board anticipates, in order to minimize disruption, unfairness and confusion to the paying party, that the City will continue oversight, compliance and enforcement functions, as well as supervision of each such matter or project approved through completion (subdivision "approvals " included) before the county assumes any responsibility approvals for any such project that was the object of a prior approval by the City.
- 9. The Director of the County Plan Commission is authorized and directed to deliver a copy of this Ordinance to the Office of the Mayor of the City of Jeffersonville and to the Executive Director/Director of the Jeffersonville Plan Commission within five (5) days after enactment hereof. The County Plan Commission staff shall expeditiously coordinate information and identification of matters, projects, subdivisions and other pending or approved official action of the City that is addressed in this Ordinance.
- 10. This Ordinance is enacted after several efforts, and significant dedication of staff and commissioner time, in 2006 toward communications with Executive officials of the City and its professional and legal staff to attempt to resolve several of the problematic issues, and other issues created, under attempted fringe jurisdiction. The Board has approved drafts of proposed Interlocal Agreements before this date which have not been signed, after detailed negotiation, by City officials. At the time of enactment hereof, the Board finds that the paramount interest at stake in all of these issues is the elimination of confusion and the delivery of clear, precise, organized and somewhat predictable zoning services to all citizens of Clark County

THIS ORDINANCE PASSED by unanimous vote of the Board on the day of December, 2006. This Ordinance made effective as of the 1st day of December, 2006.

BOARD OF COUNTY COMMISSIONERS

M. Edward Meyer, Commissioner

Augh Julian
Ralph Guthrie, Commissioner

Vicky Kent Haire, Commissioner

ATTEST:

Barbara Bratcher Haas Clark County Auditor WEST'S ANNOTATED INDIANA CODE

TITLE 1. GENERAL PROVISIONS

ARTICLE 1. LAWS GOVERNING THE STATE

CHAPTER 3.5. POLITICAL SUBDIVISIONS CLASSIFIED BY **POPULATION**; EFFECTIVE DATE OF DECENNIAL CENSUS

1-1-3.5-3 Reference to population

Sec. 3. (a) For purposes of the statutes described in section 5(c) of this chapter, a reference to population is a reference to population as determined by the most recent of the following:

- (1) Federal decennial census.
- (2) Federal special census.
- (3) Special tabulation.
- (4) Corrected population count.
- (b) For purposes of statutes relating to drawing boundaries of county executive districts, county fiscal body districts, municipal legislative body districts, or the districts of any other political subdivision, a reference to population is a reference to population as determined by the most recent of the following:
- (1) Federal decennial census.
- (2) Federal special census.
- (3) Special tabulation.
- (4) Corrected population count.
- (c) For purposes of a noncode statute, a reference to population is the population determined by the most recent federal decennial census in effect before the passage of the statute, unless the population description in the statute is changed by subsequent legislation.
- (d) For purposes of statutes not described in subsection (a), (b), or (c), a reference to population is the population determined by the most recent federal decennial census in effect, unless the statute specifically provides otherwise.
- (e) This subsection applies to a political subdivision located in more than one (1) county. If a political subdivision is described in a statute by reference to the county in which the political subdivision is located, the reference is to the county that contains a majority of the population of the political subdivision.
- (f) The effective date of each:
- (1) federal decennial census;
- (2) federal special census;
- (3) special tabulation; or
- (4) corrected population count;

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"EXXIBIT A-P31"

is April 1 of the calendar year following the year in which the tabulation of population or corrected population count is delivered to the state by the United States Secretary of Commerce under 13 U.S.C. 141 and received by the governor.

- (g) Promptly upon receiving the tabulation of population or corrected population count, the governor shall issue an
- (1) evidencing the date of receipt; and
- (2) noting that the effective date of the tabulation of population or corrected population count for purposes of any statute described in this section is April 1 of the following year.

CREDIT(S)

As added by Acts 1981, P.L.1, SEC.1. Amended by P.L.1-1988, SEC.3; P.L.2-1990, SEC.2; P.L.170-2002, SEC.1 ; P.L.66-2003, SEC.1.

HISTORICAL AND STATUTORY NOTES

2006 Electronic Update

2002 Legislation

P.L.170-2002, Sec.1, eff. April 1, 2002, rewrote this section, which prior thereto read:

- "Sec. 3. (a) Except as provided in section 6 of this chapter, in any Indiana statute that classifies political subdivisions by population, the effective date of each:
- "(1) federal decennial census;
- "(2) federal special census;
- "(3) special tabulation; or
- "(4) corrected population count;
- "is April 1 of the calendar year following the year in which the tabulation of population or corrected population count is delivered to the state by the United States Secretary of Commerce under 13 U.S.C. 141 and received by the
- "(b) Promptly upon receiving the tabulation of population or corrected population count, the governor shall issue
- "(1) evidencing the date of receipt; and
- "(2) noting that the effective date of the tabulation of population or corrected population count for purposes of any statute described in this section is
- "(A) April 1 of the following year or
- "(B) the date prescribed by section 6 of this chapter."

2003 Legislation

P.L.66-2003, Sec.1, amended this section by inserting present Subsec. (b), and redesignating former Subsecs. (b) through (f) as present Subsecs. (c) through (g); and making a related nonsubstantive change in Subsec. (d).

2000 Main Volume

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"EXHIBITA -P52"

WEST'S ANNOTATED INDIANA CODE

TITLE 1. GENERAL PROVISIONS

ARTICLE 1. LAWS GOVERNING THE STATE

CHAPTER 3.5. POLITICAL SUBDIVISIONS CLASSIFIED BY **POPULATION**; EFFECTIVE DATE OF DECENNIAL CENSUS

1-1-3.5-5 Notification of effective date of tabulation of population

Sec. 5. (a) The governor shall forward a copy of the executive order issued under section 3 of this chapter to:

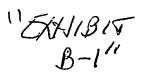
- (1) the director of the Indiana state library;
- (2) the election division; and
- (3) the Indiana Register.
- (b) The director of the Indiana state library, or an employee of the Indiana state library designated by the director to supervise a state data center established under IC 4-23-7.1, shall notify each state agency using population counts as a basis for the distribution of funds or services of the effective date of the tabulation of population or corrected population count.
- (c) The agencies that the director of the Indiana state library must notify under subsection (b) include the following:
- (1) The auditor of state, for distribution of money from the following:
- (A) The cigarette tax fund in accordance with IC 6-7-1-30.1.
- (B) Excise tax revenue allocated under IC 7.1-4-7-8.
- (C) The local road and street account in accordance with IC 8-14-2-4.
- (D) The repayment of loans from the Indiana University permanent endowment funds under IC 21-7-4.
- (2) The board of trustees of Ivy Tech Community College of Indiana, for the board's division of Indiana into service regions under IC 20-12-61-9.
- (3) The lieutenant governor, for the distribution of money from the rural development fund under IC 4-4-9.
- (4) The division of disability and rehabilitative services, for establishing priorities for community residential facilities under IC 12-11-1.1 and IC 12-28-4-12.
- (5) The department of state revenue, for distribution of money from the motor vehicle highway account fund under IC 8-14-1-3.
- (6) The Indiana economic development corporation, for the evaluation of enterprise zone applications under IC 5-28-15.
- (7) The alcohol and tobacco commission, for the issuance of permits under IC 7.1.
- (8) The Indiana library and historical board, for distribution of money to eligible public library districts under IC 4-23-7.1-29.
- (9) The state board of accounts, for calculating the state share of salaries paid under IC 33-38-5, IC 33-39-6, and IC 33-41-2.

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Census 2000 Population Compared to 1990: Indiana Counties

County	Census 2000		Census 1990		Change	Percent	Rank in
	Total	Rank	Total	Rank		Change	% Chg.
State of Indiana	6,080,485	N/A	5,544,159	! N/A	536,326	9.7%	N/A
Adams	33,525	47	31,095	1 44	2,530	8.1%	44
Allen	331,849	3	300,836	. 3	31,013	10.3%	30
Bartholomew	71,435	21	63,657	1 23	7,778	12.2%	26
Benton	9,421	88	9,44:	i 88	-20	-0.2%	83
Blackford	14,048	83	14,067	ı 82	-19	-0.1%	82
Boone	46,107	30	38,147	: 54	7,960	20.9%	8
Brovn	14,957	8:	14,080	i 81	877	6.2%	58
Carroll	20,165	73	18,809	: 73	1,356	7.2%	52
Cass	40,930	35	38,413	; 33	2,517	6.6%	55
Clark	96,472	17	87,777	16	8,595	9.9%	32
Clay	26,556	60	24,705	: 59	1,851	7.5%	48
Clinton	33,866	46	30,974	: 45	2,592	9.3%	35
Crawford	10,743	86	9,914	i 87	829	8.4%	41
Davless	29,820	54	27,533	! 52	2,287	8.3%	43
Dearborn	46,109	29	38,835	1 32	7,274	18.7%	12
Decatur	24,555	64	23,645	63	910	3.8%	66
De Kalb	40,285	36	35,324	1 40	4,961	14.0%	22
Delaware	118,769	12	119,659	; 10	-890	-0.7%	86
Dubois	39,674	37	36,616	38	3,058	8.4%	42
Elkhart	182,791	5	156,198	1 6	26,593	17.0%	15
Fayette	25,588	62	26,015	; 55	-427	-1.6%	91
Floyd	70,823	23	64,404	1 22	6,419	10.0%	31
Fountain	17,954	77	17,808	i 78	146	0.8%	77
Franklin	22,151	67	19,580	1 68	2,571	13.1%	25
Fullon	20,511	71	18,840	i 72	1,671	8.9%	38
Glbson	32,500	50	31,913	1 43	587	1.8%	74
Grant	73,403	20	74,169	! 18	-766	-1.0%	87
Greene	33,157	49	30,410	1 46	2,747	9.0%	37
Hamilton	182,740	6	108,938	: 12	73,804	67.7%	1
Hancock	55,391	25	45,527	I 26	9,864	21.7%	6
Harrison	34,325	45	29,890	1 48	4,435	14.8%	18
Hendricks	104,093	16	75,717	! 18	28,376	37.5%	. 2
Henry	48,508	27	48,139	! 25	369	0.8%	78
Howard	84,964	18	80,827	i 17	4,137	. 5.1%	61
Huntington	38,075	39	35,427	i 39	2,648	7.5%	51
Jackson	41,335	34	37,730	: 36	3,605	9.6%	33
Jaspor	30,043	53	24,960	58	5,083	20.4%	£
Jay	21,806	63	21,512	1 66	294	1.4%	75
Jelferson	31,705	51	29,797	i 49	1,908	6.4%	56
Jennings	27,554	56	23,661	1 62	3,893	16.5%	1
Johnson	115,209	13	88,109	15	27,100	30.8%	
Клох	39,258	38	39,884	: 31	-628	-1.6%	
Kosclusko	74,057	19	65,294	• 21		13.4%	2.
Lagrange	34,909	44	29,477	50		18.4%	1:
Lake	484,584	2	475,594	2			7.
La Porte	110.106	14	107,086	13		2.8%	7
Lawrence	45,922	31	42,836				5
Madison	133,358	10	130,669				
Markin	860.454	1	797,159		 		4
Marshall	45,128	32					



	10.350	87	10,369	. 86	01	0.0%	81
Martin	10,369		36,897	. 37	-815	-2.2%	92
Mlami	36,082	41	108,978	11	11,585	10.5%	29
Monroe	120,583	40	34,436	42	3,193	9.3%	36
Montgomery	37,629	24		24	10,769	19.3%	10
Morgan	66,689	82	55,920	83	1,015	7.5%	50
Newton	14,566	28	13,551 37,877	35	8,398	22.2%	5
Ncble	46,275			92	308	5.8%	59
Ohio	5,623 19,306	92 74	5,315 18,409	74	897	4.9%	62
Orange	21,786	69	17,281	77	4,505	26.1%	4
Owen	17,241	78	15,410	1 80	1,831	11.9%	27
Parke	18,899	75	19,107	1 70	-209	-1.1%	88
Репу		85	12,509	. 85	328	2.6%	71
Pike	12,837	9	128,932	1 8	17,866	13.9%	23
Porter	146,798	59	25,968		1,093	4.2%	64
Posey	27,061			i 56		8.5%	39
Pulaski	13,755	84	12,643	47	1,112	18.8%	11
Putnam	36.019	42	30,315	54	5,704 253	0.9%	76
Randolph	27,401	57	27,148			7.7%	47
Ripley	26,523	61	24,816	. 60	1,907	0.7%	79
Rush	18,261	76	18,129	' 75	132	7.5%	49
St Joseph	255,559	4	247,052	: 4	18,507		34
Scott	22,960	86	20,991	87	1,969	9.4%	46
Shelby	43,445	33	40,307	: 30			63
Spencer	20,391	72	19,490	. 69		4.6%	67
Starke	23,556	65	22,747	65			7
Steuben	33,214	48	27,446	i 53			
Sullivan	21,751	70	18,993	! 71			20
Switzerland	9,065	89	7,738	90			14
Tippecanoe	148,955	В	130,598				21
Tiplon	18,577	80	16,119				69
Union	7,349	91	8,976				60
Vanderburgh	171,922	7	165,058				65
Vormillon	15,788	79	16,773				80
Vigo	105,848	15	108,107				
Wabash	34,960	43	35,069				85
Warren	8,419		8,176				
Warrick	52,383	26	44,920				
Washington	27,223	58	23,717				
Wayпе		22	71,95	2			
Wells		55	25,94	3 I 5	7 1,85		
White			23,26				
Whitley			27,65	1 5	1 3.05	6 11.1%	21

Data source: U.S. Census Bureau, Census 2000 P.L.94-171
Calculations: Indiana Business Research Center, IU Kelley School of Business

This table was produced by STATS Indiana on March 9, 2001

EXHIBIT B-2"

8/19/02