

ARTICLE 17 36/37 Planned Mixed Use District

Section 17.01 – NATURE OF THE DISTRICT

The 36/37 Planned Mixed Use District ("36/37 PMUD") is created pursuant to Section 519.021(C) of the Ohio Revised Code to further the purpose of promoting the general public welfare, encouraging the efficient use of land and resources, promoting public and utility services, and encouraging innovation in the planning and building of appropriate types of retail, office, office/warehouse, warehouse and residential development. The 36/37 PMUD achieves this purpose by permitting flexibility of design in order to promote and accommodate environmentally sensitive and efficient use of the land, thereby allowing for a unified development that:

- Permanently preserves unique or sensitive natural resources and integrates Open Space within developments.
- Reduces the amount of infrastructure, including paved surfaces and utility easements, necessary for development.
- Reduces erosion and sedimentation by minimizing land disturbance and removal of vegetation.
- Provides an opportunity for an appropriate mix of open space, office, retail, institutional and Residential Uses not otherwise permitted within the standard zoning district classifications.
- Enables more extensive review of design characteristics to ensure that the development project is properly integrated into its surroundings and is compatible with adjacent development.
- Assures compatibility between proposed land uses within and around the 36/37 PMUD through appropriate development controls.
- Enhances the welfare and economy of the Township by making available a variety of employment opportunities, providers of goods and services as well as providing a variety of housing options for the Township residents.
- Encourages unified development projects that exhibit creative planning and design in ways that cannot be achieved through a standard zoning district, yet are imaginative in architectural design and are consistent with applicable public plans for the area and are compatible with surrounding land uses.

Section 17.02 – OVERLAY AREA ESTABLISHED

The 36/37 PMUD is created pursuant to Section 519.021(C) of the Ohio Revised Code and encompasses, includes, overlays and rezones to the 36/37 PMUD the area shown on the 36/37 PMUD Overlay Zoning District Map, which map is attached hereto and incorporated herein as Attachment 1 and is hereby adopted as the official Zoning District Map for the 36/37 PMUD as part of this amendment. The existing zoning regulations and districts for such area shall continue to apply to all property within the 36/37 PMUD unless the Berkshire Township Zoning Commission approves an Application of an owner of property to subject the owner's property to the provisions of the 36/37 PMUD. Such an Application shall be made in accordance with the provisions of **Section 17.06** of the Berkshire Township Zoning Resolution and shall include a Development Plan in compliance with the provisions of **Section 17.06(C)**. Upon receiving such an Application and Development Plan, if the Berkshire Township Zoning Commission determines that the Application and Development Plan comply with the provisions of this **Article 17** and approves the Application, the Berkshire Township Zoning Commission shall cause the zoning map to be changed so that the underlying zoning district no longer applies to such property, with the property being thenceforth located in the 36/37 PMUD and subject to the regulations thereunder. The approval of the Application and Development Plan and the removal of the prior zoning district from the zoning map is a ministerial act and shall not be considered to be an amendment to the Berkshire Township Zoning Resolution.

Section 17.03 – PERMITTED USES

- (A) Permitted uses within the 36/37 PMUD according to their 2012 North American Industry Classification System (NAICS) code numbers, may be permitted when approved by the Development Plan process and built and/or developed in strict compliance with the approved Development Plan and standards, provided that each such use is listed as a permitted use in this **Section** and is specifically set forth in the Development Plan.

The precise use or type of use of the tract shall be specified in the plan as submitted and approved and shall be subject to the Use-Specific Requirements set forth in **Section 17.03(B)** herein, as applicable.

2012 NAICS CODE #	Use
1114	Greenhouse, Nursery and Floriculture Production

311811	Retail Bakeries
441110	New Car Dealers – Subject to Sections 17.03 (B)(1)(a) and 17.03(B)(1)(c) hereof
441120	Used Car Dealers – Subject to Sections 17.03(B)(1)(b) and 17.03(B)(1)(c) hereof
4413	Automotive Parts, Accessories, and Tire Stores
442	Furniture and Home Furnishings Stores
443	Electronics and Appliance Stores
444	Building Material and Garden Equipment and Supplies Dealers
445	Food and Beverage Stores
446	Health and Personal Care Stores
447	Gasoline Stations
448	Clothing and Clothing Accessories Stores
451	Sporting Goods, Hobby, Book, and Music Stores
452	General Merchandise Stores
453	Miscellaneous Store Retailers (except Adults Only Entertainment Establishments and 45393 Manufactured Home Dealers)
491	Postal Service
493110	General Warehousing and Storage – Subject to Section 17.03(B)(2) below
51113	Book Publishers
512131	Motion Picture Theaters (except Adults Only Entertainment Establishments)
51224	Sound Recording Studios
513112	Radio Stations
51312	Television Broadcasting
5133	Telecommunications
514	Information and Data Processing Services
52	Finance and Insurance
5312	Offices of Real Estate Agents and Brokers
53211	Passenger Car Rental and Leasing
5322	Consumer Goods Rental
53242	Office Machinery and Equipment Rental and Leasing
54	Professional, Scientific and Technical Services
55	Management of Companies and Enterprises
561	Administrative and Support Services
61	Educational Services
621	Ambulatory Health Care Services
6221	General Medical and Surgical Hospitals
623	Nursing and Residential Care Facilities – but expressly limited to facilities designed for, marketed to and primarily serving persons 55 years and older and consisting solely of independent living, assisted living, memory care and/or skilled nursing care or any combination thereof, but not independent living only facilities.
71111	Theater Companies and Dinner Theaters
71112	Dance Companies
71211	Museums
71394	Fitness and Recreational Centers
71395	Bowling Centers
72111	Hotels (except casino) and Motels – Subject to Section 17.03 (B)(6) below

722	Food Services and Drinking Places (except those establishments offering or featuring entertainment included in Adults Only Entertainment Establishments as defined in Article 4).
8112	Electronic and Precision Equipment Repair and Maintenance
8114	Personal and Household Goods Repair and Maintenance
812	Personal and Laundry Services
813	Religious, Grantmaking, Civil, Professional and Similar Organizations
92	Public Administration
	Residential Use – as defined in Section 17.09 below

(B) Use-Specific Requirements. The following requirements, in addition to all other applicable development standards, shall apply to the following specific uses:

- (1) Automobile Dealer use shall be limited as follows:
 - (a) New Car Dealers under NAICS Code #441110 shall be a permitted use as a matter of right within the 36/37 PMUD, including New Car Dealers selling both new and used cars, whether on the same parcel or on separate non-contiguous parcels within the 36/37 PMUD as long as under common ownership.
 - (b) Used Car Dealers under NAICS Code #441120 may be permitted only with a divergence granted by the Zoning Commission in its discretion pursuant to **Section 17.06 (C)(29)** hereof and any such Used Car Dealer use shall be located on a site of not less than 7 acres unless a divergence is granted by the Zoning Commission in its discretion pursuant to **Section 17.06(C)(29)** hereof.
 - (c) New Car Dealers under NAICS Code #441110 and Used Car Dealers under NAICS Code #441120, if applicable, shall only be located in Zone 4A and the western half of Zone 4B.
- (2) General Warehouse and Storage use shall be limited to facilities located only in Zone 3A, Zone 3B, Zone 4A and Zone 4B, having not less than a 100-foot buffer from the northern boundary line of the 36/37 PMUD, if applicable, not exceeding 100,000 sq. ft. in size, having no more than 10 loading docks, having no outside storage unless a divergence is granted by the Zoning Commission pursuant to **Section 17.06(C)(29)** hereof, and shall require appropriate setbacks and screening as determined by the Zoning Commission.
- (3) Office-Flex. Offices and research/laboratory facilities may include ancillary space for clean manufacturing and assembly, wholesaling and/or related showroom(s), warehousing and or distribution purposes, so long as no more than forty percent (40%) of the gross floor area of any structure is used for such ancillary use(s).
- (4) Home Health Equipment Rental. The renting of home-type health and invalid equipment, such as wheel chairs, hospital beds, oxygen tanks, walkers, crutches, etc. may be permitted as an accessory use to the primary use of a structure for Professional, Scientific and Technical Services as defined by **Section 17.03(A)** of this Zoning Resolution.
- (5) Accessory Multi-Family Dwelling Structure Components. Any Multi-family Dwelling structures located within the 36/37 PMUD, if approved as part of the Development Plan, shall be permitted to include the following accessory uses, so long as those uses are either wholly contained within the Multi-Family Dwelling structures or architecturally and operationally integrated into the Multi-Family Dwelling proposal:
 - (a) Private Garages.
 - (b) Food Services and Drinking Places.

- (c) Exercise and Fitness Facilities, including exterior pools and related facilities.
 - (d) Personal and Laundry Services (except NAICS Code #812332 – Industrial Launderers) as defined in **Section 17.03(A)** of this Zoning Resolution.
 - (e) Entertainment and Recreation Facilities – Indoor and Outdoor.
 - (f) Storage facilities for bicycles, as well as individual storage facilities for the keeping of personal property owned by the residents of the Multi-Family Dwelling structures. Storage facilities shall not exceed, on average, fifty (50) square feet in floor space per Multi-Family Dwelling Unit; provided, however, that no single unit's storage space shall exceed one hundred fifty (150) square feet. Bicycle and individual storage facilities may be located wholly in a separate accessory structure, so long as that structure(s) is architecturally integrated into the Multi-Family Dwelling proposal and is authorized by an approved Development Plan.
- (6) Hotels and Motels shall only contain individual guest rooms that are held out to the public to be a place where sleeping accommodations are offered for pay to guests for an amount no less than the minimum daily rental rate as established by each hotel or motel. Each room shall not be rented out more than twice in any consecutive twenty-four (24) hour period.
- (7) Limited Home Occupations: The following professional or business activities shall be considered "Limited Home Occupations," provided that such activities are carried on solely within the confines of the dwelling, do not occupy more than twenty percent (20%) of the dwelling, retain no non-residential employees (whether paid or voluntary), generate no greater traffic, parking or deliveries than would normally be expected in a residential neighborhood, do not create a nuisance to the neighborhood or general public, are imperceptible from the exterior of the dwelling and display no sign:
- (a) Home offices used for traditional office-related tasks including, but not limited to, maintaining records and accounts, making and receiving telephone calls, faxes and emails, and generating papers, reports or similar work product, but not including the reception of patients, clients or any licensees or invitees.
- (C) Temporary Structures. Temporary structures such as manufactured/mobile home offices and temporary buildings of a non-residential character may be used incidental to construction work on the premises or on adjacent public projects or during a period while the permanent structure is being constructed. A Zoning Permit shall be obtained for such temporary use, which permit shall be valid for six (6) months and may be renewed not more than twice. Renewal of the permit shall be at the discretion of the Zoning Inspector on finding of reasonable progress toward completion of the permanent structure or project. The Zoning Inspector may require provisions for sanitary waste disposal, solid waste disposal and water supply, as the Zoning Inspector deems necessary. The fees for such permit and renewals thereof shall be established by the Board of Township Trustees. No such structure shall be occupied as a dwelling.

Section 17.04 – ACCESSORY USES, BUILDINGS AND STRUCTURES

Accessory uses, as defined in **Article 4** of the Zoning Resolution, may be permitted only when customary with and incidental or subordinate to and in association with a principal permitted use, and further provided that such accessory uses are specifically set forth in the Development Plan and approved as accessory uses by the Zoning Commission. Any accessory uses proposed as part of any Multi-Family Dwelling structure or Multi-Family Dwelling component shall comply with the requirements of **Section 17.03(B)(5)** hereof and this Zoning Resolution.

Accessory uses other than those authorized in **Section 17.03(B)(5)** may be located in a separate accessory structure which is subordinate to the principal structure, provided that the accessory structure is architecturally compatible with and operationally integrated into the development.

Section 17.05 – PROHIBITED USES

Uses not specifically authorized by the express terms of this **Article** of the Zoning Resolution shall be prohibited. The following uses shall be prohibited:

- (A) Uses not specifically approved by the Zoning Commission as part of the Development Plan.
- (B) Outdoor storage of inoperable, unlicensed or unused motor vehicles for a period exceeding seven (7) days. Said vehicles, if stored on the premises, shall be enclosed within a building so as not to be visible from any adjoining property or public road. This prohibition shall not apply to legal sales or repair activities if such activities are carried out in compliance with the approved Development Plan.
- (C) Except as provided in the Development Plan, no trailer of any type, no boats, no motor homes, no campers and no equipment of any type shall be parked in front of the principal structure line on any non-residential parcel within this district, and may only be parked for not more than eight (8) hours in a twenty-four (24)-hour period if located on a residential parcel. If a structure is located on the property, the principal structure line shall be considered to be the front wall of the structure, even if said structure is located behind the minimum building line established by the Development Plan.
- (D) No manufactured home, mobile home, motor home or camper shall be occupied in this district for residential purposes. Mobile office structures may be permitted in the approved Development Plan in accordance with **Section 17.03(C)**.
- (E) Sales trailers of any type.
- (F) Adults Only Entertainment Establishments as defined in **Article 4** of this Resolution.
- (G) Self-service storage facilities, pawn shops, check cashing or short term loan establishments as a primary use, tattoo parlors, and skill game establishments.
- (H) No trash, debris, discarded materials, junk vehicles, vehicle parts, rags, lumber, building materials, equipment and/or parts thereof, or any garbage, refuse, or junk (collectively "Trash") shall be permitted to accumulate on any lot or portion thereof. All Trash arising or occurring as a consequence of construction activities on a site shall be appropriately contained or located on site and routinely disposed of in order that long term unsightly conditions as a consequence of accumulation of same do not occur. All Trash arising or occurring on developed parcels from the owner or user thereof shall be contained in solid sided containers and no wire or cage-type containers shall be permitted, and no such materials shall be above the sides of the container.

Section 17.06 – PROCESS FOR PLAN APPROVAL

All Applications to submit property to the 36/37 PMUD regulations under this **Article 17** shall follow the procedures hereinafter set forth:

- (A) Pre-Application Meeting. The Applicant is encouraged to engage in informal consultations with staff from the Township and the Delaware County Regional Planning Commission prior to formal submission of an Application for approval of a Development Plan. No statement or action by Township or County officials in the course of these informal consultations shall be construed to be a waiver of any legal obligation of the Applicant or of any procedure or formal approval required by Township or County statutes or rules. Ohio's Open Meetings Law (Section 121.22 of the Ohio Revised Code) is required to be observed at pre-Application meetings involving a quorum of members of the Berkshire Township Zoning Commission.
- (B) Application and Development Plan. The Applicant shall prepare and submit eight (8) copies of an Application and Development Plan, along with an electronic copy and all applicable fees to the Berkshire Township Zoning Commission. The Application shall be signed by the Applicant and all owners of property included in the Application and Development Plan. The Berkshire Township Zoning Commission may request that any County

agency and/or any committee of the Delaware County Regional Planning Commission submit comments for consideration at the meeting.

The Application shall be accompanied by a Development Plan and the following supporting information and documentation in text and map form:

- (1) A survey plat and legal description signed by a registered Ohio surveyor showing the size and location of the proposed development.
 - (2) A grading plan drawn to scale, showing all information pertaining to surface drainage.
 - (3) A detailed Landscape Plan shall be submitted with the Development Plan and shall be subject to approval as part of the Development Plan. It shall depict and identify all proposed landscaping features.
 - (4) A detailed Signage and Exterior Lighting Plan shall be submitted with the Development Plan and shall be subject to approval as part of the Development Plan. The Signage Plan shall be in compliance with the Signage Plan established pursuant to **Section 17.07(I)** hereof.
 - (5) A detailed Parking and Loading Plan shall be submitted with the Development Plan and shall be subject to approval as part of the Development Plan.
 - (6) An explanation of the method/structure and proposed documentation and instruments to be used in order to perpetually own, maintain and preserve the Open Space, as required, that is unified and permanently protected. The location, size and proposed use(s) of all Open Space areas shall be detailed.
- (C) Development Plan Contents. The Development Plan shall include in text and map form the following:
- (1) Proposed name of the development and its location.
 - (2) Names and addresses of applicant, owners and developers. Also, the names and mailing addresses of all owners of property within and contiguous to and directly across the street from the area proposed for 36/37 PMUD approval shall be provided.
 - (3) Date, north arrow and Plan scale. Scale shall be one inch equals one hundred feet (1"= 100') or larger scale.
 - (4) A list, description and location of the precise uses proposed for the development and phases for construction, if any. Listed uses shall be defined by their 2012 NAICS Code Classification provided, however, that proposed Residential Uses shall be generically requested and described. Any listed use may be limited to specific areas delineated in the Development Plan.

If the proposed timetable for development includes developing the property in phases, all phases to be developed after the first shall be fully described in textual form in a manner calculated to give Township officials definitive guidelines for approval of future phases.
 - (5) Locations, widths and names of all existing public streets or other public ways, railroad and utility rights of way or easements, parks and other public Open Spaces, permanent structures, and section and corporation lines within or adjacent to the tract.
 - (6) Existing sewers, water mains, culverts and other underground facilities within the tract, adjacent to the tract or that will be used or are proposed to be used in developing the tract, indicating pipe sizes, grades and locations.

- (7) The adjoining lines of adjacent tracts, parcels or lots.
- (8) Existing zoning restrictions and deed restrictions, if any.
- (9) Existing topography, drainage channels, wooded areas, watercourses, wetlands and other significant physical features.
- (10) Layout of proposed streets, private or public, including their names and rights of way, easements, sewers, water lines, culverts and other major improvements.
- (11) Layout, numbering and dimensions of lots if more than one.
- (12) The total amount of Lot Coverage, as that term is defined in **Article 4** of this Resolution, proposed by the Application and Development Plan.
- (13) Parcels of land intended to be dedicated or temporarily reserved for public use or reserved by deed covenant with the condition proposed for such covenant or dedication.
- (14) Building setback lines with dimensions.
- (15) Building locations depicting the bulk, height and spatial relationships of building masses with adjacent development.
- (16) Layout, location, dimensions and architectural features of proposed structures including preliminary floor plans, exterior elevations and sections.
- (17) Color rendering of buildings(s), complete with a listing of all colors, including current Pantone Reference Numbers or, if Pantone is not available, the manufacturer's reference/serial number with samples and materials to be used.
- (18) A Detailed Parking and Loading Plan showing layout, location and design of parking and loading areas for all proposed uses, including proposed number of parking and loading spaces, traffic circulation, curb cuts, pedestrian walks and lane improvements on existing public roads.
- (19) Engineering feasibility studies of any anticipated problems which may arise due to the proposed development as required by the Zoning Commission.
- (20) Intended measures to screen the development from adjacent residentially zoned property as well as measures to screen rooftop mechanical equipment, production areas, service areas, storage areas, trash containers and loading zones from view.
- (21) Accommodations and access for emergency and fire-fighting apparatus.
- (22) A post office box/kiosk plan for mail delivery that has been discussed with the local office of the U.S. Postal Service.
- (23) Location, type, dimensions and features of all signage and exterior lighting through a detailed Signage and Exterior Lighting Plan.
- (24) The plan or mechanism to provide for the perpetual maintenance of all landscaping, buffers and shared parking areas by the ultimate owner and/or user.
- (25) Projected schedule of site development.

- (26) The ability of the applicant to carry forth this Plan by control of the land and the engineering feasibility of the Plan.
 - (27) Other supplemental information, as may be reasonably required by the Berkshire Township Zoning Commission, in order to determine compliance with this Zoning Resolution.
 - (28) The Development Plan (and the various accompanying plans) shall bear the seal of a registered engineer or surveyor and an architect or landscape architect, each of whom shall be licensed to practice in the State of Ohio.
 - (29) The applicant may request divergences (a) in connection with certain enumerated Permitted Uses, as provided in **Section 17.03** hereof, (b) from the development standards set forth in this **Article 17** and (c) from the General Development Standards applicable to all zoning districts, as set forth in the Berkshire Township Zoning Resolution. The General Development Standards shall include all standards set forth in the Zoning Resolution that are generally applicable to standard zoning districts including, without limitation, regulations dealing with signage and landscaping. An applicant making such a request shall specifically and separately list each requested divergence and the justification therefore on the Development Plan submittals, with a request that the proposed divergence be approved as part of and as shown on the Development Plan. Unless specifically supplemented by the standards contained in the Development Plan, the development shall comply with the requirements contained in **Article 17** and the General Development Standards applicable to all standard zoning districts, as set forth in the Berkshire Township Zoning Resolution.
- (D) Zoning Commission Action. After receipt of the completed Application materials and required fees, the Zoning Commission shall schedule a public hearing within forty-five (45) days after the filing of the complete Application and shall give the applicant and all owners of property within, contiguous to, and directly across the street from the area subject to the Application written notice of the hearing at least ten (10) days before the date of the hearing. Notice shall be sent by regular, first class mail to the addresses of those owners as they appear on the County Auditor's current tax list. The failure of delivery of that notice shall not invalidate any action the Zoning Commission may take on the Application. The Zoning Commission shall render a decision on the Application and Development Plan within forty-five (45) days after the conclusion of the hearing.
- (E) Condition of Approval. Unless otherwise excluded by resolution approved by the Board of Trustees, no real property shall be included in an Application and Development Plan unless such property is located in a joint economic development district created under Section 715.72 of the Ohio Revised Code and in which Berkshire Township is a contracting party (a "JEDD"). The Zoning Commission shall have no authority to grant a divergence to this provision and shall not approve an Application and Development Plan unless this condition is met at the time of filing the complete Application. Notwithstanding the foregoing, property located in Zone 5A which is proposed for and developed exclusively as an area containing solely Residential Use need not be located in a JEDD, provided that the Zoning Commission determines that such property, as proposed for development, is ineligible to be included within a JEDD under Ohio law; and further provided that the property shall be restricted by both zoning and deed restriction to such ineligible use.
- (F) Basis of Approval. In determining whether or not to approve an Application and Development Plan, the reviewing authorities shall consider the following:
- (1) Whether the proposed Application and Development Plan are consistent in all aspects with the purpose, criteria, intent, and standards of this Zoning Resolution and whether any divergence is warranted by the design and amenities incorporated in the Development Plan.
 - (2) Whether the proposed Application and Development Plan meet all of the design features required in this Zoning Resolution.

- (3) Whether the proposed Application and Development Plan are compatible with the existing land use character, consistent with the intent and purpose of **Article 17** of this Resolution, and are in keeping with the Berkshire Township, Delaware County, Ohio Comprehensive Plan and other applicable public plans for the area.
- (4) Whether the proposed development will be adequately served by essential public facilities and services including, without limitation, roads, walkways and bike paths, police and fire protection, drainage structures, potable water and centralized sanitary sewers or other approved sewage disposal systems.
- (5) Whether the proposed Application and Development Plan promote greater efficiency in providing public and utility services and encouraging innovation in the planning and building of all types of development.
- (6) Whether the proposed development can be made accessible through existing Township roadways or roadways and lane improvements actually being constructed and opened prior to the use and occupancy of the proposed development without creating unreasonable traffic congestion in the immediate vicinity of the proposed development or elsewhere in the Township.
- (7) Whether the proposed development is designed in such a way as to minimize any material adverse impact on surrounding areas of the Township.

In approving the Application and Development Plan, the Zoning Commission may impose such conditions, safeguards and restrictions deemed necessary in order to carry out the purpose and intent of the 36/37 PMUD.

(G) Effect of Approval.

- (1) The Zoning Commission's determination shall not be considered to be an amendment to the Township Zoning Resolution for purposes of Section 519.12 of the Revised Code, but may be appealed pursuant to Chapter 2506 of the Revised Code. If the Zoning Commission makes a final determination that the Development Plan included in the Application complies with this **Article 17**, or if the Zoning Commission's final determination is one of noncompliance, then if a court of competent jurisdiction makes a final non-appealable order finding compliance, the Zoning Commission shall approve the Application and upon approval shall cause the Zoning Map to be changed so that any other zoning district that applied to the property that is the subject of the owner's Application no longer applies to that property. The removal of the prior zoning district from the Zoning Map is a ministerial act and shall not be considered to be an amendment to the Township Zoning Resolution for the purposes of Section 519.12 of the Revised Code and may not be appealed pursuant to Chapter 2506 of the Revised Code.
- (2) The approval of the Development Plan shall be effective for a period of five (5) years (or for such other time period as may be approved as part of the Development Plan) in order to allow for the preparation and recording of a subdivision plat (if required under applicable law) and the commencement of construction following the issuance of a zoning permit(s). If no plat has been recorded within this approval period (or, if platting is not required, if construction has not commenced) and unless the Zoning Commission approves an extension of this time limit, the Development Plan shall expire. Upon the expiration of the Development Plan, the subject parcel(s) shall remain zoned 36/37 PMUD, but no use shall be established or changed and no building, structure or improvement shall be constructed until an Application for a new Development Plan, accompanied by a new Development Plan, has been filed with and approved by the Zoning Commission using the procedures and process then established for the approval of an initial Development Plan.

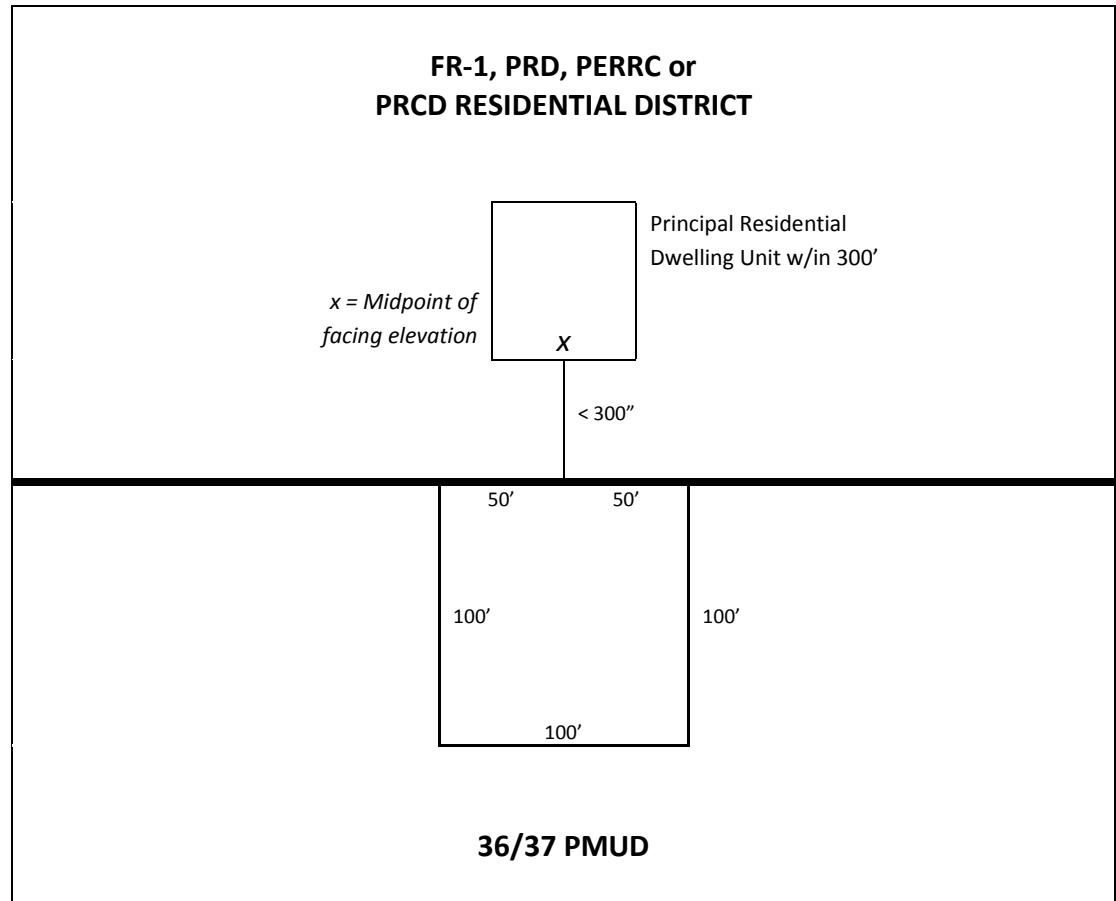
- (3) No zoning certificate shall be issued for any structure in any portion of the 36/37 PMUD for which a plat is required by the Delaware County Regional Planning Commission unless the final subdivision plat for that portion has been approved by the applicable platting authorities and recorded with the Delaware County Recorder in accordance with the approved Development Plan and with the Subdivision Regulations of Delaware County, Ohio.
 - (4) An extension of the time limit for either recording the approved subdivision plat or the commencement of construction may be granted by the Zoning Commission upon Application of the owner(s), provided the Zoning Commission determines that such an extension is not in conflict with the public interest, that there is a legitimate purpose and necessity for such extension, and that the applicant shows evidence of a reasonable effort toward the accomplishment of the recordation of the plat and the completion of the development of the project. The length of time permitted for an extension shall be determined based upon the Application submitted and at the discretion of the Zoning Commission. A request for extension shall be filed prior to the expiration of the established approval period.
 - (5) Following the approval of the Development Plan: (a) all modifications to the Development Plan involving more than one (1) lot or those requested by the originally named Applicant in an Application for approval of a Development Plan shall be presented to the Zoning Commission for its consideration pursuant to **Section 17.06(G)(6)** hereof; and (b) all proposed variations from the approved Development Plan that involve only one (1) lot under common ownership (except as otherwise provided in clause (a) above) shall be considered a variance and shall be heard by the Board of Zoning Appeals under its hearing process pursuant to **Article 28** of the Zoning Resolution.
 - (6) The Zoning Commission, upon application for modification of a Development Plan, at a meeting of the Zoning Commission duly called and held, may modify the approved Development Plan without being subject to the same procedures as the original Application. Any approval may be with such conditions or modifications as the Zoning Commission may determine. The Applicant and all owners of property within, contiguous to, and directly across the street from the area subject to the application for modification shall be given at least ten (10) days' prior notice of the hearing by regular first class mail. The notice shall be mailed to the addresses of those owners as they appear on the County Auditor's current tax list. The failure of delivery of that notice shall not invalidate any action the Zoning Commission may take on the request. The request for modification may be approved upon a showing of a compelling reason and necessity for the same and upon a showing that the owner(s) has made reasonable and diligent efforts toward the accomplishment of the original Development Plan, and that such modification is administrative in nature and not in conflict with the intent and purpose of the 36/37 PMUD. The Zoning Commission shall render a decision on the request within forty-five (45) days after the conclusion of the meeting.
- (H) Fees. A fee in an amount established by the Board of Trustees shall accompany an Application requesting approval of the Development Plan, as well as any request for extension or modification. In addition, the applicant shall also be responsible for all reasonable and necessary expenses incurred by Berkshire Township in using professional consulting services to review the Development Plan. These expenses may include, without limitation, costs for professional consultants such as attorneys, architects, landscape architects, planners and engineers utilized by the Township in connection with reviewing the Development Plan and related Application materials. As soon as reasonably practicable following the submission of an Application for approval of a Development Plan, the Zoning Commission shall decide if it needs a professional consultant(s) to assist it in reviewing the application. If the Zoning Commission decides it needs professional consulting services, it shall, in its sole discretion, designate the person(s) to be consulted and make an initial estimate of the expenses anticipated to be incurred in reviewing the Application materials. The Zoning Commission shall provide the applicant with notice of its initial estimate of such expenses. This initial estimate will be reviewed, and may be revised, from time to time during the review process, and, if such review results in an increase in the estimated professional consulting fees and charges which will be incurred in the Township's review of the Application materials, the Zoning Commission shall send the applicant written notice of the revised estimate of fees and

charges. Within fourteen (14) days of the date of the notice of the initial estimate of fees and charges (and, if applicable, within fourteen (14) days of the date of the notice of any revised estimate), the applicant shall deposit in the office of the Township Fiscal Officer or the Fiscal Officer's designee, an amount equal to the estimated cost of the Township's expenses. In making the estimate of the professional consulting fees and charges anticipated to be incurred, the Zoning Commission shall consider the reasonable commercial rates of qualified professionals. Upon request, the Township shall provide the Applicant with an itemized copy of any consultant(s) bill paid for in accordance with this **Section 17.06(H)**. Notwithstanding the foregoing, bills for legal services shall only disclose the costs incurred and narrative descriptions shall not be disclosed, in that these are privileged communications and protected from disclosure under attorney-client privilege.

Section 17.07 – GENERAL DESIGN STANDARDS

The proposed development shall be designed in accordance with generally accepted planning principles, including the design standards included in this Section, to ensure that the use of land, buildings and other structures; the building location, bulk, layout, arrangement, design, and height; the percentages of lot areas that may be occupied; the setback of buildings; and the sizes of yards and other spaces are in compliance with the purposes and standards of this Section. The Development Plan shall comply with the following design standards:

- (A) **Access.** Any 36/37 PMUD development shall have direct access to one or more dedicated and improved public roads of sufficient capacity to accommodate traffic generated by the proposed development. Provision for future connections to other public roads as required by the Township, or other applicable governmental authorities, shall be provided. Unless otherwise provided by an approved Development Plan, emergency vehicular connectivity shall be provided.
- (B) **Setbacks and Yard Areas.** The location and arrangements of buildings and structures within the 36/37 PMUD shall be configured in a manner to appropriately balance Open Spaces and commercial areas and to provide safe separation between buildings and uses and to ensure convenient access within the area. The development should be accomplished as a mixed use development, with the potential to provide multi-family housing to the area and associated office and accessory retail and service providers, and designed to create an integrated housing area and economic center for the Township and the surrounding area.
- (C) **Residential Density.** The density of all proposed residential units in the 36/37 PMUD shall be subject to the requirements and limitations of **Section 17.08(C)** hereof.
- (D) **Perimeter Area.** When located contiguous to a residential district (FR-1, PRD, PERRC, PRCD), no building shall be constructed within fifty (50) feet of the perimeter property line of the contiguous property, the perimeter boundary shall be adequately landscaped to screen the development from adjacent property and no parking shall be constructed closer than fifty (50) feet to a contiguous property line. Notwithstanding the foregoing, in the event that a Multi-Family Dwelling exceeding two Stories in height is proposed to be developed and constructed within the 36/37 PMUD adjacent to a contiguous residential district as above designated and a principal residential dwelling unit is located in such contiguous residential district within three hundred (300) feet of the perimeter property line of the 36/37 PMUD, the aforementioned fifty (50) feet setback shall be increased to one hundred (100) feet for all purposes of this Section 17.07(D) for the area within the 36/37 PMUD immediately adjacent to such principal residential dwelling unit and such increased setback shall have a width of one hundred (100) feet, the midpoint thereof being the centerline of the elevation of the adjacent principal residential dwelling unit that faces the perimeter property line of the 36/37 PMUD. An illustration of the increased setback discussed in the preceding sentence is as follows:



- (E) **Buildings.** The physical relationship of buildings and other site improvements to one another and the surrounding area, as created by building size, mass, height, shape and setback, shall result in a harmonious development within the 36/37 PMUD and with those areas adjacent to it. The bulk and height of buildings within the proposed development shall be compatible with the surrounding area and sufficiently buffered from the surrounding areas in order to mitigate any potential adverse impact. Buildings, structures and parking areas shall be designed and located within the development in ways that conserve environmentally sensitive or unique natural, historic or cultural features, and minimize environmental impacts. Buildings and structures shall be designed to enhance both areas within the development and surrounding areas, giving due regard to building footprints, building orientation, massing, roof shape, pitch and exterior materials.
- (F) **Building Size.** Building size shall be limited in areas not conducive to absorbing the impacts associated with larger types of commercial, office or Multi-Family Dwelling establishments. Buildings may contain such area of floor space as is approved in the Development Plan.
- (G) **Tract Coverage.** Ground coverage by buildings and paved areas shall be designed to foster compatibility both within the project area and adjacent properties.
- (H) **Lighting.** Exterior building and parking lot lighting including the style and height shall be minimized and shall not be directed toward or impact adjacent areas.
- (I) **Signage.** All signs and graphics within the 36/37 PMUD shall be compatible in size, location, material, height, shape, color, and illumination. A Signage Plan for the entire 36/37 PMUD shall be submitted as part of the first Development Plan Application and shall set forth the design parameters for the entire 36/37 PMUD to ensure a consistent and comprehensive character throughout the 36/37 PMUD. The Signage Plan shall include the

design, layout and dimensions of all ground, monument, window, wall and all other types of signage that may be seen from the exterior of any building, as well as distances from right of ways and the type and intensity of illumination. Signs should contribute to an overall cohesive design, reflect simplicity, and avoid visual clutter. The overall design and placement of buildings should take into account the general placement of signs so that all permanent signs and associated lighting fixtures complement the appearance and architecture of the buildings and the 36/37 PMUD and do not contribute to environmental degradation. Ground signs shall be designed to relate to and share common design elements with the building. The materials and colors of the sign, sign background and sign frame shall be compatible with the buildings' materials and colors.

- (J) Landscaping. All yards (front, side and rear) and all Open Space not covered by structure, asphalt and the like shall be landscaped. All landscaping shall be maintained and kept in accordance with the Landscape Plan as submitted and approved. All vacant areas shall be kept seeded and maintained in such a manner as to prevent erosion of the property and excess drainage on adjoining land. The Landscape Plan shall show the caliper, height, quantity, name and placement of all proposed plant materials. The pattern of landscaping shall be coordinated in design and type of materials, mounding and fencing used. Landscaping may vary in density, spacing and other treatments to reflect variations of topography, existing landscape or land uses. The landscape treatment proposed to be provided shall emphasize a pedestrian environment, separate pedestrian ways from parking areas, enhance architectural features, provide shade and strengthen vistas and serve as an important axis between the development and other locations.

The Landscape Plan shall preserve and be sensitive to the natural characteristics of the site and shall provide screening from adjacent Residential Uses and districts. Where natural or existing topographic patterns positively contribute to the appearance and utility of a development, they shall be preserved. Any proposed landscape mounds shall be designed with such slope, plant and other landscape materials so as to minimize maintenance requirements and maximize the health and durability of the chosen plants and landscape materials. Overall unity of design shall be encouraged through landscape treatment. Plants that are indigenous to the area and others that are hardy, harmonious to the design, consistent with adjacent land uses, and, where applicable, of good appearance, shall be used. Landscaped parking lot islands shall be designed in accordance with these landscape principles as well as to facilitate snow removal techniques.

- (K) Parking and Loading Areas. Off-street parking shall be provided prior to receipt of a Certificate of Compliance from the Township for the main structure or building, with adequate provisions for ingress and egress. Parking areas shall be designed to discourage single, large, unbroken paved lots for off-street parking and shall encourage smaller, defined parking areas within the total parking system. Such defined parking areas shall be delineated and accented by landscaped areas. Parking aisles, whenever possible, shall be oriented perpendicular to the building fronts. All service and delivery and loading areas shall be made to the rear of the structure(s) unless special design treatment or circumstances warrant an alternative. The layout of parking areas, service areas and related entrances, exits, signs, lighting, noise sources or other potentially adverse influences shall be designed, located and, in certain instances, screened to protect the character of the area as well as those areas adjacent to the development.
- (L) Floodplains and Environmentally Sensitive Areas. Floodplains shall be protected from building or pavement encroachment. A riparian buffer shall be provided for stream beds along the entire length and on both sides of a river or Perennial Stream Channel. The buffer area shall have a width of not less than fifty (50) feet as measured from the river, creek or stream high water mark on both sides. The buffer area shall have a width of not less than twenty-five (25) feet as measured from any Tributary stream high water mark on both sides. This buffer area shall be restricted from development and managed to promote the growth of vegetation indigenous to the area capable of maintaining the structural integrity of the stream bank. A wetlands buffer shall be provided for all wetlands required to be retained by the U.S. Army Corps of Engineers or the Ohio Environmental Protection Agency. The buffer area shall have a width not less than twenty-five (25) feet, measured from the edge of the designated wetland. The buffer area shall not be disturbed other than as is necessary to establish a natural landscape. Existing trees should be preserved and protected to the extent practicable.

- (M) Utilities. Centralized water supply and sanitary sewage disposal systems and storm water management shall be provided, subject to the Delaware County Sanitary Engineer, Delaware County Engineer, Delaware General Health District, and the Ohio Environmental Protection Agency approval. All utility service lines shall be located underground.
- (N) Fire and Explosion Hazards. All activities, including storage, involving flammable or explosive materials shall include the provision of adequate safety devices against hazard of fire and explosion. All standards enforced by the Occupational Safety and Health Administration shall be adhered to. Burning of waste materials in open fire is prohibited, as enforced by the Ohio Environmental Protection Agency.
- (O) Air Pollution. No emission of air pollutants shall be permitted which violate the Clean Air Act of 1977 or later amendments as enforced by the Ohio Environmental Protection Agency.
- (P) Dust and Erosion. Dust or silt shall be minimized through landscaping or paving in such a manner as to prevent their transfer by wind or water to points off the lot in objectionable quantities.
- (Q) Liquid or Solid Wastes. No discharge at any point into any public sewer, private sewage disposal system, or stream, or into or onto the ground, of any materials of such nature or temperature as can contaminate any water supply or interfere with bacterial processes in sewage treatment, shall be permitted. The standards of the Ohio Environmental Protection Agency shall apply.
- (R) Vibrations and Noise. No uses shall be located and no equipment shall be installed in such a way as to produce intense, earth shaking vibrations which are discernable without instruments at or beyond the property line of the subject premises. Noise standards of the Ohio Environmental Protection Agency shall be adhered to.
- (S) Odors. No use shall be operated so as to produce the continuous, frequent or repetitive emission of odors or odor causing substances in such concentrations as to be readily perceptible at any point at or beyond the lot line of the property on which the use is located. The applicable standards of the Ohio Environmental Protection Agency shall be adhered to.

Section 17.08 – MINIMUM DEVELOPMENT STANDARDS

The Development Plan shall comply with the following development standards:

- (A) Tract Size. No minimum lot or tract size is required. However, all lots and development tracts shall be of sufficient area to comply with the required yard areas, setbacks and other design and development standards.
- (B) Intensity of Use. All buildings shall be erected on permanent foundations and shall be constructed of conventional building materials of a quality equal to or better than those used in existing buildings in nearby areas or as specified herein. All office and retail activities shall be completely enclosed within buildings, except for patios and similar facilities accessory to any permitted use.
- (C) Residential Density and Location. The Berkshire Township Comprehensive Plan, 2008, as well as the 2015 update, have designated the U.S. 36/S.R. 37 Corridor as an area within the Township targeted for economic growth. Parcels located along this Corridor provide the ideal location and opportunity for a mix of professional office, commercial, institutional, and Residential Uses within the Township, while allowing for the preservation of net developable acres within the 36/37 PMUD. A higher density Residential Use is permitted and included in this mix to provide the area with housing for individuals that will work at companies and businesses that locate in and around the U.S. 36/ S.R. 37 Corridor. To achieve this goal, the Township has determined that a density cap be placed on areas within the 36/37 PMUD. Residential Densities shall be as follows within the 36/37 PMUD:
 - (1) Multi-Family Density. The total number of new Multi-Family Dwelling Units (as defined in **Section 17.09** herein and **Article 4**) proposed to be located within the 36/37 PMUD shall not exceed a maximum of one thousand two hundred sixty seven (1,267) Dwelling Units; provided that no single Multi-Family

development shall contain in excess of five hundred (500) Multi-Family Dwelling units; and provided further that such maximum density shall be limited to one thousand (1,000) Dwelling Units unless and until such time as the development of Zone 5A is irrevocably included in and developed under the 36/37 PMUD and as opposed to the Northstar PUD, as hereinafter defined.

Notwithstanding anything to the contrary contained in this **Article 17**, if any portion of Zone 5A is developed under this **Article 17** as a part of the 36/37 PMUD, all of Zone 5A shall be considered removed from and no longer a part of the NorthStar Residential Planned Unit Development ("NorthStar PUD") zoning; provided, however, that the development standards contained in the Northstar PUD, to the extent not inconsistent with this **Article 17** shall continue to apply to Zone 5A.

Except in Zone 2B, Multi-Family Dwelling Units shall be constructed at a minimum density of six (6) Multi-Family Dwelling Units per acre of net developable area (d.u./n.d.a.) as defined in **Article 4**, and a maximum density of fifteen (15) d.u./n.d.a. In Zone 2B such density shall be reduced to a minimum of four (4) d.u./n.d.a and a maximum of ten (10) d.u./n.d.a.

Multi-Family Dwelling Units fronting on U.S. 36/S.R. 37 in Zones 4A and/or 4C must be set back at least four hundred (400) feet from the center line of U.S. 36/S.R. 37 unless they are part of a mixed-use development with no first floor Dwelling Units within such setback area.

Any Multi-Family Dwelling Unit proposal shall not only comply with these density requirements, but also shall conform to all other applicable requirements of this **Article 17** including square footage requirements listed in **Section 17.08(E)(3)** hereof.

- (2) Other Densities. Other types of residential units may be built without limitations noted under **Section 17.08(C)(1)** hereof. Such units may be developed at a maximum density of four (4) d.u./n.d.a. for detached single-family units and detached patio homes and six (6) d.u./n.d.a. for attached units such as common wall attached, townhomes, patio homes, or four-unit structures. In the case of developments consisting of both attached and detached units, density shall be blended based on the number of attached and detached units.
- (3) There shall be no density limitations on Nursing and Residential Care Facilities, as those are defined in **Section 17.09** hereof.

(D) Frontage, Setbacks and Yard Areas.

- (1) Frontage. Lots shall front upon and/or have access to an improved, public road. Outlots may be located on an improved, public or private road. Adjacent road frontage in either case shall be no less than fifty-two (52) feet except in the case of patio homes otherwise complying with setback requirements of this **Article 17**.
- (2) Minimum Side Yard. A side yard of at least twenty-five (25) feet on each side shall be provided for principal and accessory structures, processing, and servicing or loading areas, or as authorized by an approved Development Plan, except as hereinafter provided. No principal commercial or Multi-Family Dwelling structure shall be located closer than twenty-five (25) feet to another principal structure unless the adjacent walls of both structures are masonry, in which event said principal structures shall be no closer than fifteen (15) feet. No principal commercial or Multi-Family Dwelling structure shall be located closer than fifteen (15) feet to another principal structure unless otherwise authorized by an approved Development Plan. No principal single-unit Residential Use may be closer than fifteen (15) feet to another principal single-unit Residential Use except in the case of Patio Home Developments, in which case such fifteen (15) feet building separation shall be reduced to ten (10) feet.

- (3) Minimum Rear Yard per Tract. A rear yard of at least twenty-five (25) feet shall be provided for principal and accessory structures, including open storage, processing, and servicing or loading areas, or as authorized by an approved Development Plan.
- (4) Right-of-Way Setback. With respect to developments having frontage on U.S. 36/S.R. 37 or Wilson Road, right-of-way, no building or structure shall be located closer than thirty five (35) feet to such right-of-way and there shall be a clear strip of land from back of curb (if any) or otherwise edge of pavement extending to a width of at least twenty (20) feet upon which no building, structure or any other improvement shall be erected. With respect to all other public street rights-of-way located within the 36/37 PMUD, there shall be a clear strip of land extending to a width of at least twenty (20) feet from back of curb (if any) or otherwise edge of pavement upon which no building, structure or any other improvement shall be erected. Notwithstanding the foregoing setback limitations, the following shall be exceptions thereto:
 - (a) Driveways for ingress and egress.
 - (b) Parking approved in accordance with the approved Off-Street Parking and Loading Plan.
 - (c) Signage approved in accordance with the approved Signage Plan.
 - (d) Signs not over four (4) square feet for direction of traffic only.
 - (e) Plantings no higher than three (3) feet above road grade.
 - (f) Trees, except that branches shall not interfere with the paved portion of the road and shall be trimmed to a height of six (6) feet from the ground.
 - (g) Utility easements for the erection of public utility poles, hydrants and similar items.
 - (h) Sidewalks and Bike Paths.
 - (i) Patios not exceeding ground level elevation, by more than eight (8) inches.
 - (j) Current silo signage located in Zone 4A.
 - (k) Public utility poles, hydrants and similar items.
- (E) Lot Coverage and Building Height.
 - (1) Lot Coverage. The ground area occupied by all the buildings, structures, driveways, traffic circulation areas, parking areas, sidewalks and all other Impervious Surfaces shall not exceed in the aggregate eighty percent (80%) of the total area of the tract.
 - (2) Maximum Stories: Building Height.
 - (a) Multi-Family Dwellings Maximum Stories: The maximum Stories of Multi-Family buildings shall be determined by Zone, and in each Zone no building or structure having Multi-Family Dwelling Units shall exceed the following number of stories:
 - o Zones 4A and 4C – 4 Stories
 - o Zone 3A – 3 Stories
 - o Zones 2A, 2B, 3B and 4B – 2 Stories
 - o Zone 5A – 2 Stories

- (b) All Structures: No building or structure shall exceed forty-five (45) feet in height, except if such building or structure is located in Zone 4A or 4C, in which event the height limit shall be increased to eighty-five (85) feet. Chimneys, flagpoles, steeples, parapets, cupolas and other similar architectural elements may exceed this height limitation by no more than ten (10) feet.
 - (3) Building Dimensions. Buildings may contain such floor area as is approved in the Development Plan. However, all Multi-Family Dwelling Units erected within the 36/37 PMUD shall have a minimum of seven hundred (700) square feet of residential floor area for a studio or one-bedroom unit and a minimum of nine hundred (900) square feet of residential floor area for a two-bedroom unit.
 - (4) The use of environmentally conscious construction standards, such as the use of Leadership in Energy & Environmental Design (LEED) standards, on structures built in the 36/37 PMUD is encouraged by the Township, but not required.
- (F) Architectural Standards. Buildings shall be designed to be seen from three hundred sixty (360) degrees and have the same caliber of finish on all elevations. Building additions and accessory structures, whether attached or detached, shall be of similar design, materials, and construction to that of the existing or principal structure. The following standards shall apply to structures for:
- (1) Design Elements. The architectural style and design of structures shall create harmony throughout the site. All materials used to construct buildings within the 36/37 PMUD shall be utilized in such a manner as to be architecturally and aesthetically compatible, so long as the proposal utilizes the permitted materials as specified by **Section 17.08(F)(2)** hereof. Creativity in design is encouraged; however, that creativity shall be consistent with the goals and requirements established for the 36/37 PMUD by this **Article 17**.
 - (2) Materials. The exterior elevations of all proposed buildings and screening structures shall only consist of any combination, or all, of the following natural materials:
 - (a) Wood;
 - (b) Red or earth tone brick;
 - (c) Native or cultured stone;
 - (d) Stucco/EIFS;
 - (e) Pre-cast concrete where used as an accent;
 - (f) Cementitious siding (such as HardiPlank® or similar) and/or composite siding (such as SmartSide® or similar);
 - (g) Metal and glass (except for multi-family uses);
 - (h) Any materials including vinyl siding, deemed by the Zoning Commission in its sole discretion to be acceptable substitutions for the above natural materials.

The above material requirements shall not be applicable to vinyl soffits, fascia, windows, doors, garage doors, downspouts, gutters, window glazing and reveals, as well as hardware and similar accents.

- (3) Façade Appearance. A building wall that exceeds a width of fifty (50) feet shall incorporate sectioning and design elements that offset the wall plane to inhibit a large expanse of blank wall and add interest

to the façade. When multi-family uses are part of a structure, such design elements may include any combination, or all, of the following:

- (a) A door measuring at least twenty (20) square feet in area but not exceeding sixty (60) square feet in area including architectural features, such as, but not limited to, an awning, window, faux window or other feature subject to approval by the Zoning Commission;
 - (b) A window of at least six (6) square feet in area. Windows closer than ten (10) feet shall be considered as one (1) element. A set of adjacent windows, such as double or bay windows, shall be considered one element;
 - (c) A gabled vent of at least four (4) square feet in area;
 - (d) Porches, decks, or similar structures that create the illusion of a porch, deck, or window balcony; or
 - (e) A similar significant permanent architectural feature consistent with the style of the building upon approval of the Zoning Commission, as applicable.
- (4) Glass. The use of black, gold, green, silver, opaque, or any other reflective or colored glass on a building is prohibited. Frosted glass may be permitted in some cases, subject to approval of the Zoning Commission.
- (5) Roofing. All pitched roofs shall be of dimensional shingles, standing seam metal, slate or simulated slate.
- (6) Drive In/Drive Thru Features. A drive in/drive thru facility, if deemed appropriate within the 36/37 PMUD, shall be designed as an integral part of the structure it serves. Features incorporated with such a facility include, but are not limited to, canopies, awning, and support posts, which shall match or be coordinated with the materials and color scheme of the building they are serving. Drive in/drive thru features shall not have any drive-thru pickup windows, located on the front elevation of a building, but pedestrian only pickup windows shall be permitted on the front elevation.
- (7) In-Line Retail Exemption. Side or rear elevations of an In-Line Retail development may be exempt from the building design standards of the 36/37 PMUD if such elevations are not visible to customer traffic, a right-of-way, or if a future phase of the In-Line Retail development is adjacent to the elevation. Such exempt elevations shall use materials complimentary to the primary elevation and be screened by landscaping, mounding, fencing, or a combination thereof, as deemed appropriate.
- (G) Exterior Lighting. The Exterior Lighting Plan is subject to the following requirements:
- (1) Traffic signals, where necessary, shall utilize a monopole design with mast arms extending over the intersection, in accordance with any applicable county or state regulations.
 - (2) Site lighting shall be required for all developments and be designed to sufficiently illuminate the site and eliminate spillover from the property onto adjacent property based on best engineering practices and a lighting plan included as a part of the Application pursuant to **Section 17.06(B)(4)** hereof.
 - (3) Light pole heights should be in harmony with the parcel, building, and parking lot size as well as the surrounding area. Parking lot lighting shall be of a standard light source and type. The style shall reflect a traditional design, ideally consistent throughout the corridor.

- (4) Building, pedestrian and landscape lighting may be incandescent, LED, metal halide or other sustainable lighting as determined by the Zoning Commission.
 - (5) All parking lot areas shall have a maximum light intensity of twenty (20) foot candles and an average light intensity between one (1) foot candle and three (3) foot candles.
 - (6) All external lighting shall be decorative, cut-off type fixtures and downcast to reduce spillover. Outdoor lighting shall be directed, reflected, or shielded so as not to be of excessive brightness or cause glare hazardous to pedestrians or drivers, create a nuisance or unreasonably interfere with a neighboring property owner's right to enjoy his, her or its property.
 - (7) Luminaries should have a minimum cut-off of forty-five (45) degrees, so as to provide glare control to pedestrian and vehicular traffic, as well as distinct beam cut-off on the outer perimeter of the setback areas.
 - (8) All Landscape Uplight Fixtures shall be screened by landscaping and cut-off in design. This type of lighting shall be equipped with automatic timing devices and shielded and focused to eliminate light pollution.
 - (9) No permanent colored lights or neon lights shall be used on the exterior of the buildings. Flashing lights shall be prohibited.
 - (10) External building lighting shall be limited to wall-mounted sconces.
- (H) Signage. The Signage Plan for the 36/37 PMUD shall conform to **Section 17.07(I)** hereof and **Article 22** of the Zoning Resolution or as approved by the Zoning Commission.
- (I) Landscaping. All yard areas and Open Spaces shall be landscaped in accordance with the approved landscape plan. Natural foliage shall be retained as buffers where practicable. The Landscape Plan shall comply with the following requirements:
- (1) Right-of-Way. Any surface parking areas adjacent to an existing or planned right-of-way shall be screened from the respective right-of-way with shade trees having a minimum caliper of two and a half (2½) inches for every forty (40) lineal feet of road frontage, and shall be located not less than three (3) feet outside of the right-of-way. Such trees, so long as satisfying the requirements of **Section 17.08(I)(2)** hereof, shall count towards the street tree requirements of such **Section 17.08(I)(6)**. This requirement does not apply in the areas of ingress and egress, or to existing trees which are undisturbed by the project.
 - (2) Residential District Screening. Non-Residential Uses, excluding multi-family accessory uses, adjacent to Residential Uses (both within and adjacent to the 36/37 PMUD) shall install a continuous planting hedge and tree combination or fencing to provide screening from such adjacent use. The required planting hedge and tree combination or fencing shall be a minimum of six (6) feet in height at the time of installation. Mounding may be used to achieve the required height and fencing. Fencing or other screening materials shall be made of those materials listed in such **Section 17.08(F)(2)** hereof or deemed compatible with those materials. Each tree used for screening purposes shall have a minimum caliper of two and a half (2 ½) inches per forty (40) lineal feet required to be screened. Trees used for screening shall be of the evergreen or deciduous classification.
 - (3) Exterior Areas. Grass (seed or sod), shrubs, trees, garden planting areas or other appropriate landscape materials shall be planted in all exterior areas. Other groundcover, such as ivy, may be planted in exterior areas which are not occupied by required landscaping material or required for drainage. All

vacant areas shall be kept seeded and maintained in such a manner as to prevent erosion of the property and excess drainage.

- (4) Plants. All plants shall meet or exceed the American Standard for Nursery Stock as set forth by the American Association of Nurserymen.
 - (5) Maintenance. All trees and landscaping shall be well maintained. All maintenance and upkeep of landscaping shall be the responsibility of the owner of such yard, space or area where the landscaping is located. Dead trees, shrubs and other landscaping material shall be promptly removed and shall be replaced within six (6) months or the next planting season, whichever is sooner.
 - (6) Street Trees. Trees shall be planted at a minimum distance of forty (40) feet along all internal public streets. Trees shall be of deciduous species normally attaining full-grown height in excess of fifty (50) feet and shall be two and a half inch (2 ½") caliper or greater at the time of planting.
 - (7) Tree Preservation. Reasonable and good faith efforts shall be made to preserve existing trees. Consideration shall be given to laying out service roads, lots, structures and parking areas to avoid the unnecessary destruction of wooded areas and individual trees. Additionally, standard tree preservation practices shall be used to preserve and protect trees during all phases of construction, including the installation of snow fencing at the drip line.
- (J) Parking and Loading. Parking shall be paved prior to receipt of a final Certificate of Compliance, with adequate provisions for ingress and egress according to the approved Development Plan, unless a phasing schedule is approved as part of the Development Plan. In preparing the Parking and Loading Plan, all parking and loading areas shall conform with **Section 21.01** of the Berkshire Township Zoning Resolution and the following provisions:
- (1) Parking Bays and Minimum Parking Space Requirements. No parking bay shall contain more than twenty-four (24) total parking spaces, with a maximum of twelve (12) spaces in a single row. All parking spaces shall be not less than nine (9) feet wide and eighteen (18) feet long.
 - (2) Parking Lot Location. Non-Residential Uses may be permitted to locate parking spaces in front of the principal structure if authorized by the approved Development Plan, provided that such parking complies with all other criteria contained in this **Article 17**. All parking spaces for Multi-Family Dwellings shall be located such that no parking is allowed between the public right-of-way and principal or accessory structures, with no more than fifty percent (50%) of such parking spaces located to the side of a principal building. No parking lot or parking area shall be located closer than ten (10) feet to the side or rear line of the tract on which the structure is located. In no event shall the parking be located closer than twenty (20) feet to any right-of-way, unless authorized by the approved Development Plan.
 - (3) Parking Lot Islands. Interior tree islands shall be required within parking lots and shall be of sufficient number and size to provide for a ratio of one (1) shade tree for every twelve (12) parking spaces or fractions thereof. Each landscaped tree island in a single loaded parking stall shall have a minimum area of one hundred sixty two (162) square feet with a minimum width of nine (9) feet. Each landscaped island in a double-loaded parking stall design shall have a minimum area of three hundred twenty four (324) square feet, with a minimum width of nine (9) feet. Parking lot islands may be combined into one (1) or more larger parking lot islands, so long as they meet the area and landscaping requirements of this Zoning Resolution and are approved as part of the Development Plan. All landscaped tree islands shall contain at least one (1) shade tree a minimum of two (2) inches in caliper and include at least fifty (50) square feet of other plant materials. The Parking and Loading Plan or the Landscape Plan shall identify all types of trees to be used in parking lot islands.

- (4) Driveways. Driveways shall be set back no less than fifteen (15) feet from the right-of-way or front property line, whichever is greater, and no less than five (5) feet from side and rear property lines. Driveways connecting the site to an improved and dedicated street or Driveways utilized to access adjacent properties shall be exempt from this requirement. Location of Driveways that connect to a public road shall be reviewed and approved by the appropriate governing agency (Delaware County Engineer, Ohio Department of Transportation, etc.).
- (5) Service Parking. Parking for vehicles providing services to a building or development such as delivery, repair and maintenance vehicles (but excluding employee or visitor parking) shall be provided at a level determined appropriate for each specific use by the Zoning Commission, as applicable. All service areas shall be located behind the front elevation of the primary building.
- (6) Minimum Number of Parking Spaces Required. For Multi-Family developments, a minimum of one and nine tenths (1.9) parking spaces per unit is required. In calculating such minimum parking, all surface parking, garages, shared parking and on-street parking as permitted pursuant to **Section 17.08(J)(7)** hereof shall be included. For Residential Care Developments, a minimum of one (1) parking space per 2,000 sq. ft. of building area with a minimum of not less than ten (10) parking spaces is required. Contiguous developments shall be permitted to share parking to satisfy parking requirements so long as collectively, the required number of parking spaces is not less than the sum of the requirements for each development computed separately. For Patio Home Developments, a minimum of two (2) parking spaces per Dwelling Unit is required. For all other buildings constructed in the 36/37 PMUD, a minimum of one parking space per two hundred fifty (250) square feet of building area shall be required, unless satisfactory shared parking arrangements are established to the satisfaction of the Zoning Commission. Applicants may elect to provide one (1) space per employee plus one (1) visitor space per ten (10) employees if the Development Plan shows that there is sufficient room to expand the parking lot to provide the required amount of spaces in the future should the lot be sold to a new owner or the needs of the business change.
- (7) On-Street Parking in Multi-Family Developments. In Multi-Family Dwelling Developments in the 36/37 PMUD, an applicant shall be allowed to count parallel or angled On-Street Parking spaces located along private streets towards the minimum parking requirements of this 36/37 PMUD, so long as those parking spaces are within a three hundred (300)-foot radius of any entryway to the proposed Multi-Family Dwelling structure(s). Those parking spaces shall be striped and meet the minimum size requirements for off-street parking spaces, as described by this **Section 17.08(J)** hereof and the Zoning Resolution. On-Street Parking located along a public street within a three hundred (300)-foot radius of any entryway to the proposed Multi-Family Dwelling Structure(s) may, subject to the approval of the Zoning Commission, be allowed to be counted toward the minimum parking requirements of this **Section 17.08(J)** hereof and the Zoning Resolution, so long as On-Street Parking along those streets has been approved by the Board of Trustees in accordance with Section 505.17 of the Ohio Revised Code and complies with the regulations adopted in accordance with the same. Any On-Street Parking utilized to meet the minimum parking requirements of this **Section 17.08(J)** hereof or the Zoning Resolution, whether along a private street or public street, shall only be permitted in accordance with an approved Development Plan. Once a parking space has been counted toward the parking requirement for any Application or phase of a Multi-Family Dwelling proposal, it cannot be used to meet the parking requirements of subsequent phases or Applications. In all cases, On-Street Parking spaces shall not exceed twenty-five percent (25%) of the minimum number of spaces required.
- (8) Loading Areas. All loading areas shall be screened from view by landscape planting (which provides seventy-five percent (75%) opacity), or walls and fences at least six (6), but not more than twelve (12), feet in height. All walls and fences used for screening shall be constructed of materials permitted by **Section 17.08(F)(2)** hereof.

- (9) Big Box Retail Parking. Notwithstanding the foregoing provisions of this **Section 17.08(J)** hereof, in connection with so-called “big box” or grocery anchored developments having a principal user proposing to occupy or in fact occupying 50,000 square feet or more of building area, the following standards shall apply:
- (a) A minimum of four (4) parking spaces per 1,000 square feet of gross floor area shall be provided.
 - (b) A minimum of (5) percent of the total paved area shall be comprised of interior landscape peninsulas or islands. A minimum of (1) one tree a minimum of two inches (2”) in caliper per (5,000) square feet of paved area shall be provided.
 - (c) Main entrance drives providing access from a public right-of-way shall be defined with landscaping and an accessible pedestrian walkway connecting from the public right-of-way to a main entrance of the primary building.
 - (d) All parking bays shall be terminated with an “end cap” landscape island to define the primary circulation drive aisles, meeting the minimum dimensional requirements as defined in **Section 17.08(J)(3)** hereof.
 - (e) Parking bays located along the perimeter of a parking lot shall provide at least one (1) landscape “peninsula” every (15) spaces. Landscape peninsulas shall have a minimum area of one hundred thirty (130) square feet with a minimum width of eight (8) feet.
 - (f) Interior parking bays shall include at least one of the following approaches to providing interior parking lot islands:
 - (1) At least one (1) landscape island every (15) spaces, meeting the minimum dimensional requirements as defined in **Section 17.08(J)(3)** hereof, or
 - (2) At least one (1) landscape island every (20) spaces, oriented in an alternating pattern in one out of every (3) co-parallel parking bays, with such islands having a minimum width of (16) feet and minimum area of (600) square feet. Such islands shall contain at least two (2) shade trees a minimum of two inches (2”) in caliper and include other plant materials covering at least (50) percent of the island area.
 - (g) The parking lot perimeter shall be landscaped with a buffer with a minimum width of (10) feet, planted with a minimum of (1) shade tree per (40) linear feet a minimum of two inches (2”) in caliper, plus a minimum 3-foot average height continuous hedge, planting, earthen mound, fence, or wall. A continuous hedge shall achieve a minimum 75% opacity after two years from date of installation.
- (K) Open Space. A minimum of thirty percent (30%) of the total 36/37 PMUD acreage shall remain and be utilized as Open Space. Twenty percent (20%) open space must be located on-site while the remaining 10% may be located either on-site, off-site within the Township at a location or locations approved by the Zoning Commission, or mitigated with a contribution in lieu to be utilized for public improvement. Such contribution will be at the rate of \$10,000 per acre or fraction thereof. Such contributions will be placed in a special fund by the Township and used only for the improvement or acquisition of park areas, recreational facilities, playgrounds, trails, or wetlands.

Open Space shall be distributed throughout the development as part of a unified open space system, which shall serve to unify the development visually and functionally, and buffer surrounding land uses. Open Space features may include, but are not limited to bike paths, walking paths, existing bodies of water, water impoundments, forested areas and landscaped areas, in each case that are not included in yard requirements contained in

Section 17.08(D)(2), (3) and (4) hereof, and similar features. Open Space may be used for the disposal of storm water drainage. No features shall be designed which are likely to cause erosion or flooding.

To help promote the creation of a unified open space system, an open space master Development Plan may be submitted that may only include the areas within the 36/37 PMUD that will be utilized in the open space system. Once an open space master Development Plan is approved, future applicants within the 36/37 PMUD may be permitted to utilize that Open Space to meet up to half of the Open Space requirement for their proposed Development Plan. If a portion of the area included in the open space master Development Plan is utilized by an approved Development Plan to meet an open space set aside requirement, it can no longer be utilized by future applicants for that purpose.

The responsibility for the maintenance of all Open Space shall be specified by the applicant in writing within the Development Plan. Open Space may be proposed to be owned by an Association, the Township or other governmental entity, a land trust or other conservation organization recognized by the Township, or by a similar entity, or may remain in private ownership if appropriately restricted.

- (L) Multi-Use Paths and Pedestrian/Bike Access. Interconnectivity, in the form of multi-use paths, shall be provided for pedestrians and non-motorized uses (including bicycles) and each Application for approval of a Development Plan shall indicate how it will contribute to interconnectivity for the 36/37 PMUD. Sidewalks shall be located along internal streets and roads with additional facilities through open spaces and connections at logical locations. Wider bike paths shall be provided on at least one side of larger arterial roads and where connections to regional systems are warranted.
- (M) Trash and Garbage Control. All trash and garbage shall be stored in container systems which are located at the rear of the building or at the side of the building if the side is not oriented towards an existing or planned right-of-way(s) and must be enclosed on all four (4) sides with either a masonry enclosure or wood fencing at a minimum of six (6) feet in height.
- (N) Utilities. All utility lines constructed to service the proposed development shall be located underground. Mechanicals, whether roof mounted or on the ground, shall be screened with architectural features and/or landscaping.
- (O) Stormwater Basins. All stormwater basins shall be constructed per the requirements of the Ohio Department of Natural Resources Rainwater and Land Development Handbook and any applicable standards adopted by the Delaware County Engineer. Wet stormwater basins shall require aeration devices. Bioretention basins, or rain gardens, may be used only when approved by the Zoning Commission as part of the Development Plan. Dry detention basins are permitted on private property only with a maintenance plan and divergence approved by the Zoning Commission. In addition to the minimum design standards required by the Delaware County Engineer, dry detention basins shall meet the following layout requirements:
 - (1) Dry detention basins shall be designed to drain toward the outlet or micropool so as to minimize standing water or excessively saturated soil conditions that interfere with regular maintenance and mowing. Basins shall be designed to drain within 48 hours and maintained in a condition to maximize vector control at all times.
 - (2) Side slopes shall not exceed 5 (H) to 1 (V) to prevent bank erosion, minimize safety hazards during peak stormwater events, and maintain an aesthetic landscape appearance. Maximum cross slope for vehicular accessways shall not exceed 10 (H) to 1 (V).
 - (3) The bottom of the detention basin shall be a minimum of twelve (12) feet in width to allow for maintenance vehicle access. The minimum transverse slope for the basin bottom shall be 2.0 percent,

and the bottom shall be sloped to drain in such a manner so as to avoid the development of flat spots and inadequate soil conditions.

- (4) Dry detention basins shall be designed in manner that coordinates with the overall site layout and landscape design.
- (5) Dry detention basins shall be finished with topsoil and seeded and mulched to prevent soil erosion. Grasses seeded within the basin shall be of a mix selected to survive forty-eight (48) hours under water. Mowing and/or trimming of vegetation shall be performed as necessary to sustain stormwater management functionality and landscape aesthetics. Mixed native planting schemes may be installed with an accepted landscape plan and maintenance schedule, as approved by the Zoning Commission.
- (6) Deciduous and/or evergreen trees shall be planted around the perimeter of the basin, provided that the plantings can be adequately located so as not to interfere with the integrity or functionality of the facility. A minimum of one (1) tree per forty (40) linear feet of basin perimeter shall be provided; however, trees may be grouped together in naturalized arrangements or to provide screening, per an approved landscape plan.
- (7) Soil compaction of the basin bottom shall be avoided during construction, or soils shall be amended and restored to functional condition as required by the Delaware County Engineer.
- (8) Maintenance inspections shall be the responsibility of the property owner and shall occur on a regular basis to remove excessive debris and sediment accumulation, as determined in an approved maintenance plan.
- (P) Supplemental Conditions and Safeguards. The Zoning Commission may impose additional conditions relating to the Development with regard to the type and extent of the public improvements to be installed; landscaping; improvements and maintenance of Open Space areas; and other development characteristics.
- (Q.) Other Requirements. Unless specifically supplemented by the standards contained in **Article 17** herein or those standards approved by divergence, the General Development Standards (as defined in **Section 17.06(C)(29)**) found in this Zoning Resolution shall apply unless a divergence has been specifically requested and approved. In the event of a conflict between the General Development Standards and those contained in **Article 17** that cannot be reconciled by the Zoning Commission, those contained in **Article 17** shall prevail.

Section 17.09 – Definitions

The following definitions shall apply to terms that are used specifically in the 36/37 PMUD. Otherwise, the definitions in **Article 4** shall apply.

Floor Area:

- a. **Residential** – the square foot area of a building at all finished levels, within its largest outside dimensions, exclusive of open porches, breezeways, terraces, garages, exterior stairways, secondary stairways, and unfinished basements and attics.
- b. **Non-Residential** – the square foot area of a building at all levels, whether finished or not, including open porches, breezeways, terraces, garages, exterior stairways, secondary stairways, unfinished basements, attics, and mezzanines.

Impervious Surfaces: areas that have been, or are proposed to be, paved and/or covered with buildings and materials that do not readily and freely absorb and/or allow water to penetrate, including, but not limited to, concrete, asphalt, rooftop, blacktop, brick, blocks, and pavers.

In-line Retail: a retail complex consisting of stores or restaurants in adjacent spaces in one continuous, long building or structure typically having a parking area in front of the stores that opens to a public street.

Landscape Uplight Fixture: a light fixture sitting on the ground that is incorporated into landscaping that shines upward and is typically utilized to illuminate certain architectural or landscaped features.

Multi-Family Dwelling: for the purposes of **Article 17** only, Multi-Family Dwelling is defined as a residential building arranged or designed with multiple Dwelling Units for lease as separate and complete housekeeping units. Multi-Family Dwelling shall not include Patio Home Developments or Residential Care Developments.

Non-Residential Use: any use of land that is permitted by the Berkshire Township Zoning Resolution and does not include the human inhabitation of a structure or any use incidental or accessory to such inhabitation.

Nursing and Residential Care Facilities: for purposes of **Article 17** only, Nursing and Residential Care Facilities is defined as a facility designed for, marketed to and primarily serving persons 55 years and older and including one or more components of a Nursing and Residential Care Facility pursuant to NAICS Code #623, but expressly limited to facilities consisting solely of independent living, assisted living, memory care and/or skilled nursing care or any combination thereof, but not independent living only facilities.

Outlot: a lot located adjacent to a public or private street in a larger, commercial style development that is reserved for a specific use.

On-Street Parking: striped, angled, or parallel parking spaces that are permitted within a public road or along a private street.

Parking Aisle: the traveled path through an off-street parking lot or facility between one or two rows of parked vehicles.

Parking Bay: a row of parking spaces typically separated by a parking island or some other feature used to break up large expanses of asphalt used for surface parking.

Patio Home Development: for purposes of **Article 17** only, a Patio Home Development is defined as a development consisting solely of for sale attached and/or detached patio homes designed with small yards and general overall community maintenance, controlled by either a condominium association or a homeowner's association.

Perennial Stream Channel: a stream that flows in a well-defined channel throughout most of the year under normal climatic conditions.

Private Road: a road or driveway on privately-owned property, limited to the use of the owner or a group of owners who share the use and maintain the road without help from a government agency.

Public Road: any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

Residential Use: any permitted use of land where a dwelling has been constructed with the intent of human inhabitation of that structure. Structures may be Detached Single Family Dwelling, Two Family Dwelling, or Multi-Family Dwelling. Residential Uses also include all uses that are incidental to or accessory to the human inhabitation of a structure.

Road or Roadway: each road is defined by its classification as those classifications are delineated in **Section 21.09** of this Zoning Resolution.

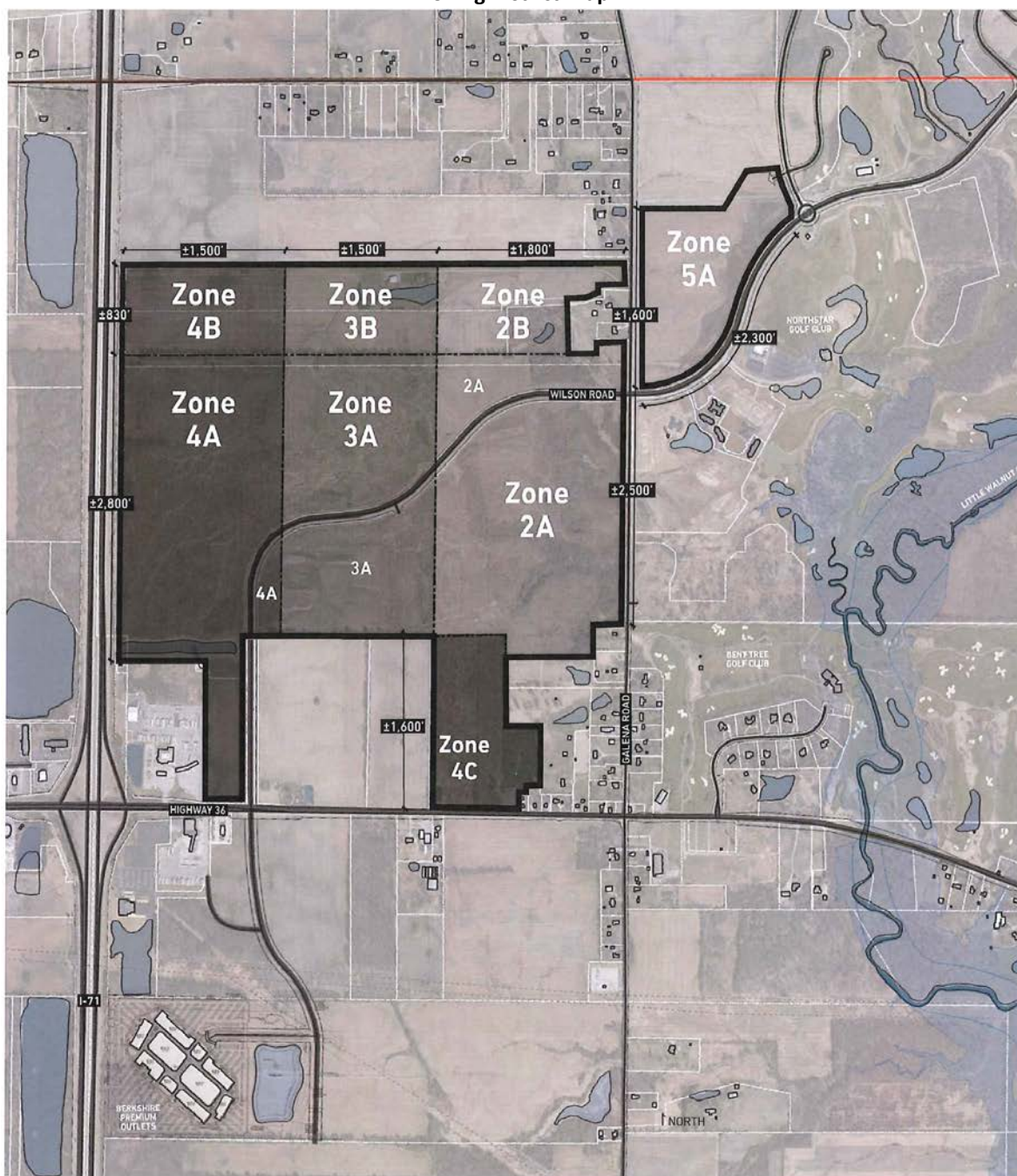
Story or Stories: each habitable living level elevation in a Multi-Family Dwelling, not to exceed fifteen (15) feet per Story.

Tributary: any stream or waterway that flows to a larger stream or other body of water.

Zone: each of the Zones depicted on the attached Zoning District Map, being Zone 2A and Zone 2B, Zone 3A and Zone 3B, Zone 4A, Zone 4B and Zone 4C, and Zone 5A.

Zoning District Map: the Zoning District Map attached hereto as Attachment 1.

Attachment 1
36/37 PMUD Overlay
Zoning District Map



This page intentionally blank.

