

City of Fort Wayne Common Council

DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2019-0006
Bill Number: Z-19-02-16
Council District: 4-Jason Arp

Introduction Date: February 26, 2018

Plan Commission
Public Hearing Date: March 11, 2019 (not heard by Council)

Next Council Action: Ordinance will return to Council after recommendation by the Plan Commission

Synopsis of Ordinance: To rezone approximately 2.0 acres of property from AR-Low Intensity Residential to C3-General Commercial.

Location: 12012 West US 24

Reason for Request: To rezone the property of an existing Lassus gas station and convenience store to bring the gas station use into compliance with the current zoning ordinance.

Applicant: LBO Investors, LLC

Property Owner: LBO Investors, LLC

Related Petitions: none

Effect of Passage: Property will be rezoned to the C3-General Commercial zoning district, along with a Written Commitment to prohibit other C3 uses. The rezoning will allow the existing use to conform to the ordinance.

Effect of Non-Passage: The property will remain zoned AR-Low Intensity Residential, which does not permit new gas stations. The existing investment is non-conforming, which affects how the property can be developed or expanded in the future.

1 **#REZ-2019-0006**

2 **BILL NO. Z-19-02-16**

3
4 **ZONING MAP ORDINANCE NO. Z-_____**

5 **AN ORDINANCE amending the City of Fort Wayne**
6 **Zoning Map No. EE-27 (Sec. 28 of Aboite Township)**

7
8 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE,
9 INDIANA:

10 SECTION 1. That the area described as follows is hereby designated a C3 (General
11 Commercial) District under the terms of Chapter 157 Title XV of the Code of the City of Fort
12 Wayne, Indiana:

13 Part of the Southwest Quarter of the Southwest Quarter of Section 28, Township 30
14 North, Range 11 East, more particularly described as follows:

15 BEGINNING at the intersection of the East line of said Southwest Quarter, Southwest
16 Quarter, with the North line of Route U.S. #24; thence North along the East line of said
17 Southwest Quarter, Southwest Quarter, a distance of 208.71 feet; thence West parallel
18 with the South line of said Southwest Quarter, Southwest Quarter, a distance of 417.42
19 feet; thence South parallel with the East line of said Southwest Quarter, Southwest
20 Quarter, to the North line of said Route
21 U.S. #24; thence East along the North line of said Route U.S. #24 to the point of
22 beginning, containing 2 acres, more or less.

23 and the symbols of the City of Fort Wayne Zoning Map No. EE-27 (Sec. 28 Aboite
24 Township), as established by Section 157.082 of Title XV of the Code of the City of Fort
25 Wayne, Indiana is hereby changed accordingly.

26 SECTION 2. If a written commitment is a condition of the Plan Commission's
27 recommendation for the adoption of the rezoning, or if a written commitment is modified and
28 approved by the Common Council as part of the zone map amendment, that written
29 commitment is hereby approved and is hereby incorporated by reference.
30

SECTION 3. That this Ordinance shall be in full force and effect from and after its
passage and approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY:

Carol T. Helton, City Attorney

Department of Planning Services
Rezoning Petition Application

Applicant	Applicant	LBO Investors, LLC		
	Address	1800 Magnavox Way		
	City	Fort Wayne	State	IN Zip 46804
	Telephone	260-436-1415	E-mail	lassust@lassus.com

Contact Person	Contact Person	Scott M. Federoff, Synder Morgan Federoff & Kuchmay LLP		
	Address	4211 Clubview Drive		
	City	Fort Wayne	State	IN Zip 46804
	Telephone	260-602-8000	E-mail	smf@smfklaw.com

All staff correspondence will be sent only to the designated contact person.

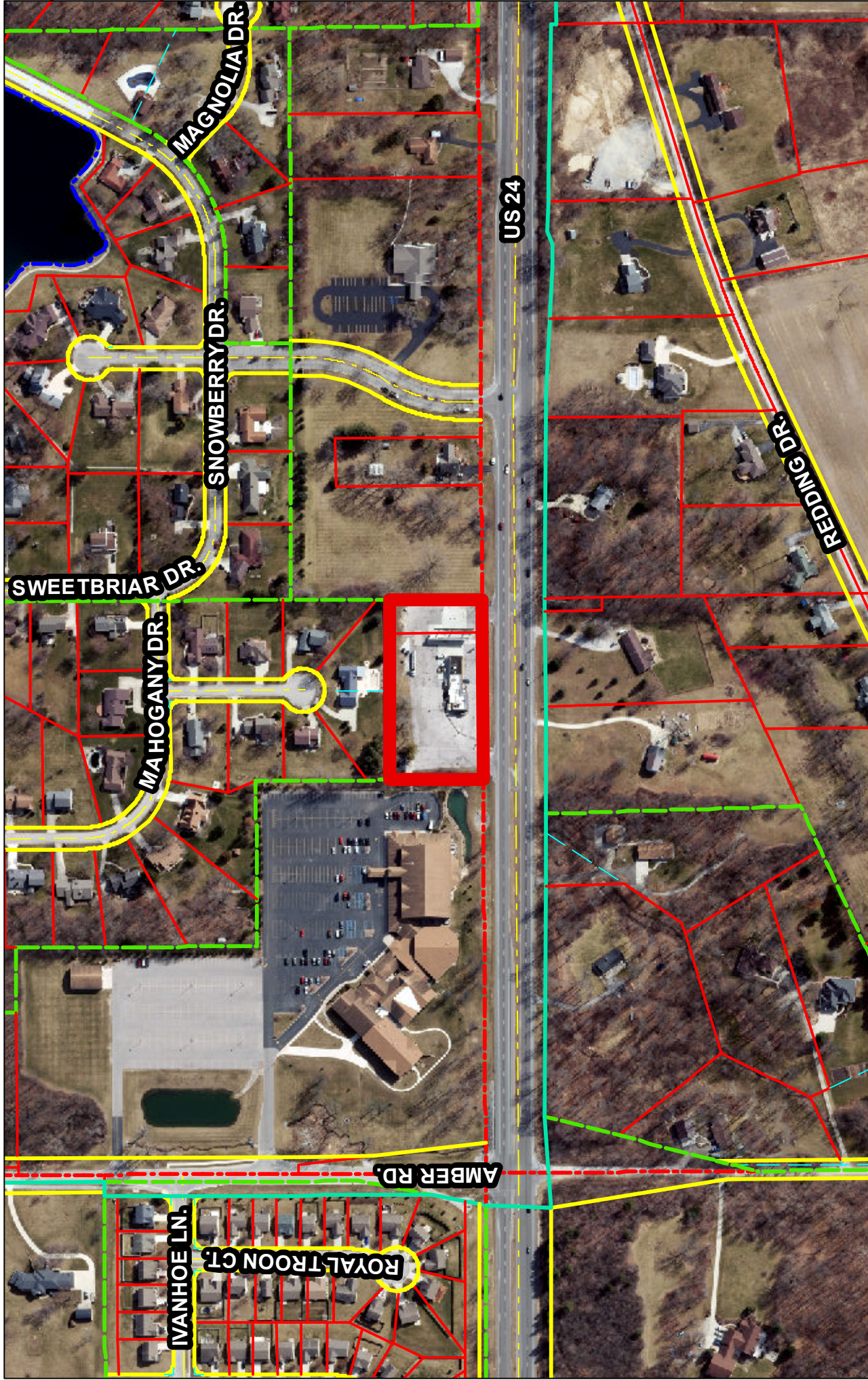
Request	<input type="checkbox"/> Allen County Planning Jurisdiction	<input checked="" type="checkbox"/> City of Fort Wayne Planning Jurisdiction				
	Address of the property 12012 US Highway 24, Ft. Wayne, IN 46814					
	Present Zoning	AR	Proposed Zoning	C3	Acreage to be rezoned	2.0
	Proposed density	1	units per acre			
	Township name	Aboite	Township section #	28		
	Purpose of rezoning (attach additional page if necessary) To bring an existing convenience store and gas station use into conformance with the City of Fort Wayne Zoning Ordinance.					
	Sewer provider	Aqua Indiana	Water provider	City of Fort Wayne		

Filing Requirements	Applications will not be accepted unless the following filing requirements are submitted with this application. Please refer to checklist for applicable filing fees and plan/survey submittal requirements.	
	<input checked="" type="checkbox"/> Applicable filing fee	
	<input checked="" type="checkbox"/> Applicable number of surveys showing area to be rezoned (plans must be folded)	
	<input checked="" type="checkbox"/> Legal Description of parcel to be rezoned	
	<input type="checkbox"/> Rezoning Questionnaire (original and 10 copies) County Rezoning Only	

I/We understand and agree, upon execution and submission of this application, that I am/we are the owner(s) of more than 50 percent of the property described in this application; that I/we agree to abide by all provisions of the Allen County Zoning and Subdivision Control Ordinance as well as all procedures and policies of the Allen County Plan Commission as those provisions, procedures and policies related to the handling and disposition of this application; that the above information is true and accurate to the best of my/our knowledge; and that I/we agree to pay Allen County the cost of notifying the required interested persons at the rate of \$0.85 per notice and a public notice fee of \$50.00 per Indiana code.

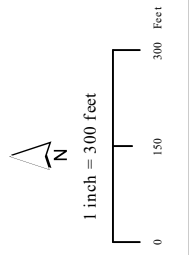
LBO Investors, LLC by Todd J. Lassus, Member		2/5/19
(printed name of applicant)	(signature of applicant)	(date)
LBO Investors, LLC by Todd J. Lassus, Member		2/5/19
(printed name of property owner)	(signature of property owner)	(date)
(printed name of property owner)	(signature of property owner)	(date)
(printed name of property owner)	(signature of property owner)	(date)

Received	Receipt No.	Hearing Date	Petition No.
----------	-------------	--------------	--------------



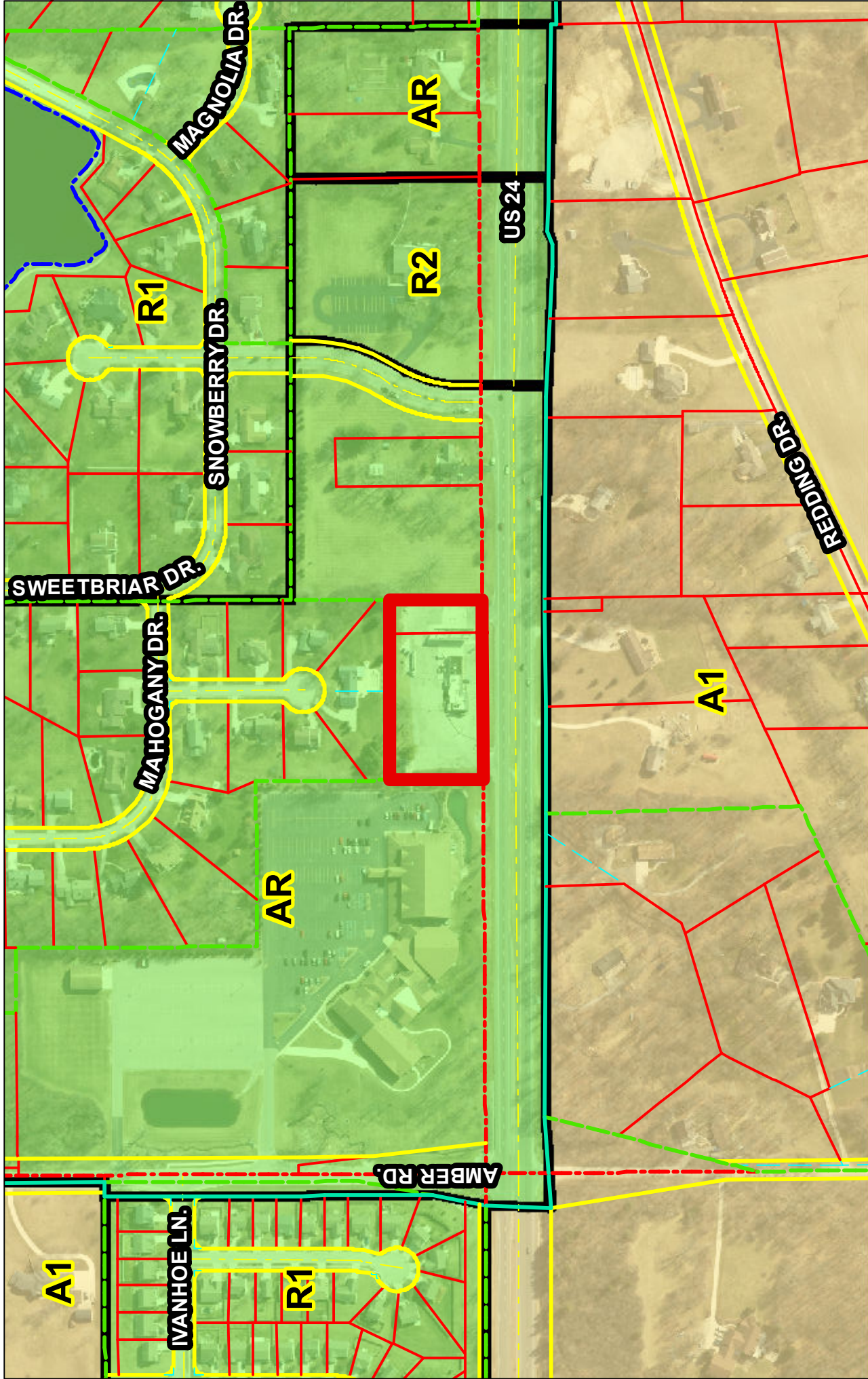
Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

North American Datum 1983
 State Plane Coordinate System, Indiana East
 Photos and Contours: Spring 2009
 Date: 2/15/2019





Rezoning Petition REZ-2019-0006 - Lassus Hwy 24

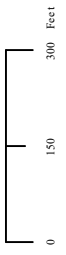


Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

North American Datum 1983
State Plane Coordinate System, Indiana East
Photos and Contours: Spring 2009
Date: 2/15/2019



1 inch = 300 feet



WRITTEN COMMITMENT

This Written Commitment (this “Commitment”) is made effective as of the __ day of ___, 2019, by LBO Investors, LLC, an Indiana limited liability company (“Company”).

RECITALS

A. By virtue of that certain Deed of Personal Representative dated January 1, 1997 and recorded on March 26, 2007 as Document Number 970014809 in the Office of the Recorder of Allen County, Indiana, Company is the owner of record in fee simple of certain real estate located in Allen County, Indiana, which is legally described in the addendum attached to this Commitment as Exhibit “A” (the “Real Estate”).

B. Company filed an application under Case Number REZ-2019-00___ (the “Rezoning Application”) to change the zoning map applicable to the Real Estate from the AR Zoning District to the C3 Zoning District.

D. Pursuant to Ind. Code § 36-7-4-1015(a)(1) and the City of Fort Wayne Zoning Ordinance (the “Ordinance”), the Fort Wayne Plan Commission (the “Plan Commission”) may require an owner of real property to make a written commitment concerning the use or development of the real property as part of rezoning application (the “Approval”).

E. In connection with the Rezoning Application, Company offered to make, and the Plan Commission required Company to make, a written commitment concerning the use and development of the Real Estate.

COMMITMENT

In consideration of the Approval, Company makes the following written commitments pursuant to I.C. §36-7-4-1015(a)(1):

1. ***PROHIBITED USES.*** The following uses shall be prohibited as a primary use upon the Real Estate as permitted in the C3/General Commercial zoning district under §157.217 and §157.218 of the Ordinance:

- a) Agricultural equipment sales;
- b) Agricultural equipment service;
- c) Agricultural supply sales;
- d) Amusement park;
- e) Animal grooming with outdoor runs;
- f) Animal Kennel or Obedience School with outdoor runs;
- g) Automobile Detailing and Trim Shop;
- h) Arcade;
- i) Arena;
- j) Auction hall;
- k) Auction service;
- l) Automobile auction
- m) Automobile body shop;
- n) Automobile repair;
- o) Automobile Sales Facility (new or used);
- p) Bar or Tavern;
- q) Batting cages;
- r) Betting or other gambling facility;
- s) Billiard or pool hall;
- t) Bingo establishment;
- u) Blood bank;
- v) Blood or plasma donor facility;
- w) Boarding/lodging house;
- x) Boat/watercraft sales;
- y) Bowling alley;
- z) Campus housing;
- aa) Clinic;
- bb) Club, private;
- cc) Coin shop;
- dd) Collection agency;
- ee) Correctional services facility;
- ff) Dating service;
- gg) Dormitory;
- hh) Entertainment facility;
- ii) Equipment service;
- jj) Exhibit hall;
- kk) Exterminator;
- ll) Feed store;
- mm) Flea market;
- nn) Fraternity house;
- oo) Garage sales;
- pp) Go-kart facility;
- qq) Golf course, miniature;

- rr) Golf driving range;
- ss) Group residential facility (large);
- tt) Group residential facility (small);
- uu) Gun sales;
- vv) Haunted house;
- ww) Homeless/emergency shelter ;
- xx) Hotel;
- yy) Landscape contracting service;
- zz) Laundromat/coin operated laundry;
- aaa) Manufactured home sales;
- bbb) Motel;
- ccc) Motor vehicle sales;
- ddd) Parking area (off-site);
- eee) Parking structure;
- fff) Pawn shop;
- ggg) Public transportation or similar public facility;
- hhh) Reception/banquet hall;
- iii) Rehabilitation facility;
- jjj) Residential facility for homeless individuals;
- kkk) Riding stable;
- lll) Shooting range (indoor);
- mmm) Stadium/racetrack;
- nnn) Treatment center;
- ooo) Truck stop;
- ppp) Warehouse/storage facility;
- qqq) Wholesale facility;
- rrr) Zipline;
- sss) Zoo.

2. ***ENFORCEMENT RIGHTS.*** The Fort Wayne Zoning Administrator (the “Zoning Administrator”) and the Plan Commission each shall have the option (but not the obligation) to enforce this Commitment, at law or in equity, in the event of a breach of an obligation in this Commitment; and in the event such an enforcement action is commenced, the Zoning Administrator or the Plan Commission (as applicable) shall have the remedies allowed by the Ordinance (or the ordinance governing the Real Estate at the time of the enforcement action) and I.C. §36-7-4-1015, which remedies shall be cumulative and not exclusive. A violation of this Commitment shall be deemed a violation of the Ordinance, or the ordinance governing the Real Estate at the time of the violation; provided, however, that nothing in this Commitment shall be construed as giving any person the right to compel enforcement of it by the Zoning Administrator or the Plan Commission, or any successor agency having zoning jurisdiction over the Real Estate.

3. ***EFFECTIVE DATE.*** This Commitment shall be effective upon its recording in the Office of the Recorder of Allen County, Indiana.

4. ***SUCCESSORS AND ASSIGNS.*** This Commitment and the restrictions set forth above shall inure to the benefit of: (a) all persons who own property comprising the Real Estate, and their successors and assigns; and (b) the Zoning Administrator and the Plan Commission, together with any successor agency having zoning jurisdiction over the Real Estate.

5. ***SEVERABILITY.*** Each covenant or restriction contained in any paragraph of this Commitment shall be severable and separate, and if any court shall rule that any particular restriction or covenant is unenforceable, such ruling shall not affect the enforceability of any other restriction or covenant under this Commitment, and such other restriction or covenant shall be enforced.

6. ***GOVERNING LAW.*** This Commitment, including the restrictions and covenants hereunder, shall be governed by the laws of the State of Indiana.

7. ***STATUTORY AUTHORITY.*** This Commitment is made pursuant to I.C. §36-7-4-1015(a)(2).

8. ***MODIFICATION AND TERMINATION.*** Modification and termination of this Commitment may only be made in accordance I.C. §36-7-4-1015, as such statute may be amended from time-to-time.

[SIGNATURE PAGE FOLLOWS.]

LBO Investors , LLC,
an Indiana limited liability company

By: _____
Todd J. Lassus, Member

“Company”

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned Notary Public in and for said County and State, this _____ day of _____, 2019, personally appeared Todd J. Lassus, as a Member of LBO Investors, LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing Written Commitment on behalf of said company.

WITNESS my hand and Notarial Seal.

My commission expires:
June 28, 2028

Scott M. Federoff, Notary Public
Resident of Allen, County, Indiana

This instrument prepared by: Scott M. Federoff, SNYDER MORGAN FEDEROFF & KUCHMAY LLP, 4211 Clubview Drive, Fort Wayne, Indiana 46804.

After recording, return to: _____.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Scott M. Federoff

Exhibit "A"
Legal Description of the Real Estate

Part of the Southwest Quarter of the Southwest Quarter of Section 28, Township 30 North, Range 11 East, more particularly described as follows:

BEGINNING at the intersection of the East line of said Southwest Quarter, Southwest Quarter, with the North line of Route U.S. #24; thence North along the East line of said Southwest Quarter, Southwest Quarter, a distance of 208.71 feet; thence West parallel with the South line of said Southwest Quarter, Southwest Quarter, a distance of 417.42 feet; thence South parallel with the East line of said Southwest Quarter, Southwest Quarter, to the North line of said Route U.S. #24; thence East along the North line of said Route U.S. #24 to the point of beginning, containing 2 acres, more or less.