

#REZ-2020-0018

BILL NO. Z-20-07-02

ZONING MAP ORDINANCE NO. Z-_____

**AN ORDINANCE amending the City of Fort Wayne
Zoning Map No. R-10 (Sec. 5 of Adams Township)**

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

SECTION 1. That the area described as follows is hereby designated an I2
(General Industrial) District under the terms of Chapter 157 Title XV of the Code of the City
of Fort Wayne, Indiana:

PARCEL 1

LOT NO. 13 IN W.A. EWING'S SUBDIVISION IN THE NORTHWEST QUARTER OF
SECTION 5, TOWNSHIP 30 NORTH, RANGE 13 EAST, FORT WAYNE, ALLEN
COUNTY, INDIANA.

EXCEPT THEREFROM THAT PORTION THEREFROM DESCRIBED AS FOLLOWS,
TO WIT:

BEGINNING AT A POINT ON THE NORTH LINE OF LOT NO. 13 IN W. A. EWING'S
SUBDIVISION, SAID POINT BEING SITUATED 421.7 FEET EAST OF THE
NORTHWEST CORNER THEREOF; THENCE SOUTH ON A LINE PARALLEL TO
THE WEST LINE OF SAID LOT 220.0 FEET, THENCE EAST ON A LINE PARALLEL
TO THE NORTH LINE OF SAID LOT 413.2 FEET TO THE WEST RIGHT-OF-WAY
LINE OF U.S. HIGHWAY NO. 30, THENCE NORTHERLY ON SAID WEST RIGHT -
OF-WAY 220.09 FEET TO THE NORTH LINE OF LOT NO. 13 IN SAID ADDITION,
THENCE WEST ON THE NORTH LINE OF SAID ADDITION TO THE POINT OF
BEGINNING.

EXCEPTING THE FOLLOWING:

PART OF LOT NO. 13 IN W. A. EWING'S SUBDIVISION OF LOT NO. 2 AS
RECORDED IN DEED RECORD 61, PAGE 433, (OR THE MIDDLE PART) OF
SECTION 5, TOWNSHIP 30 NORTH, RANGE 13 EAST, IN ALLEN COUNTY,
INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT A POINT IN THE WEST RIGHT-OF-WAY LINE OF U.S. HIGHWAY
#30, SAID POINT BEING 9.78 FEET NORTH OF THE INTERSECTION OF THE
SOUTH LINE OF LOT #13 IN W. A. EWING'S SUBDIVISION AND THE WEST
RIGHT-OF- WAY LINE OF U.S. HIGHWAY #30; THENCE SOUTH 90 DEGREES 00
MINUTES WEST, A DISTANCE OF 413.2 FEET TO A POINT; THENCE NORTH 02

1 DEGREES 05 MINUTES 21 SECONDS EAST (NORTH 02 DEGREES 24 MINUTES
2 EAST, RECORDED), A DISTANCE OF 100.13 FEET TO A POINT; THENCE NORTH
3 90 DEGREES 00 MINUTES EAST, A DISTANCE OF 413.21 FEET TO A POINT IN THE
4 WEST RIGHT-OF-WAY LINE OF U.S. HIGHWAY #30; THENCE SOUTH 02
5 DEGREES 05 MINUTES 21 SECONDS WEST (SOUTH 02 DEGREES 24 MINUTES
6 WEST, RECORDED) ALONG SAID LINE, A DISTANCE OF 100.13 FEET TO THE
7 POINT OF BEGINNING, CONTAINING 0.95 ACRES, MORE OR LESS.

8 PARCEL II

9 THE SOUTH 200 FEET OF LOT NO. 16 IN W. A. EWING'S SUBDIVISION OF LOT
10 NO.2 OF SECTION 5, TOWNSHIP 30 NORTH, RANGE 13 EAST, IN ALLEN COUNTY,
11 INDIANA.

12 ALSO CONVEYED HERewith:

13 LOT NO. 16 IN W.A. EWING'S SUBDIVISION OF LOT NO. 2 OF SECTION 5
14 TOWNSHIP 30 NORTH, RANGE 13 EAST, IN ALLEN COUNTY, INDIANA, EXCEPT
15 THE SOUTH 200 FEET THEREOF.

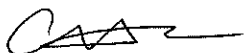
16 and the symbols of the City of Fort Wayne Zoning Map No. R-10 (Sec. 5 of Adams
17 Township), as established by Section 157.082 of Title XV of the Code of the City of Fort
18 Wayne, Indiana is hereby changed accordingly.

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

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

25 _____
26 Council Member

27 APPROVED AS TO FORM AND LEGALITY:

28 
29 _____
30 Carol T. Helton, City Attorney

**Department of Planning Services
Rezoning Petition Application**

Applicant
 Applicant Nalin Kumar
 Address 6729 Harbour Town Lane
 City Fort Worth State Texas Zip 76132
 Telephone 817-880-3880 E-mail kumarmaple@aol.com

Contact Person
 Contact Person Henry Najdeski, Esq.
 Address 215 East Berry Street
 City Fort Wayne State Indiana Zip 46802
 Telephone 260-423-8838 E-mail hpn@barrettllaw.com

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

Request
☐ Allen County Planning Jurisdiction ☒ City of Fort Wayne Planning Jurisdiction
 Address of the property 809, 819 and 829 North Coliseum Boulevard, Fort Wayne, Indiana 46805
 Present Zoning C4 and I1 Proposed Zoning I2 Acreage to be rezoned 9.598 acres
 Proposed density N/A units per acre
 Township name Adams Township section #5
 Purpose of rezoning (attach additional page if necessary) See attached

Sewer provider City of Fort Wayne 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.
☒ Applicable filing fee
☒ Applicable number of surveys showing area to be rezoned (plans must be folded)
☒ Legal Description of parcel to be rezoned
☐ 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 \$30.00 per Indiana code.

Nalin Kumar

(printed name of applicant)

(signature of applicant)

(date)

Rick Stoller, as Trustee of The Ronald W. Stoller Revocable Trust U.D.O., June 14, 2007

(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.
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Exhibit A Legal Description

PARCEL I

LOT NO. 13 IN W.A. EWING'S SUBDIVISION IN THE NORTHWEST QUARTER OF SECTION 5, TOWNSHIP 30 NORTH, RANGE 13 EAST, FORT WAYNE, ALLEN COUNTY, INDIANA.

EXCEPT THEREFROM THAT PORTION THEREFROM DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT A POINT ON THE NORTH LINE OF LOT NO. 13 IN W. A- EWING'S SUBDIVISION, SAID POINT BEING SITUATED 421.7 FEET EAST OF THE NORTHWEST CORNER THEREOF; THENCE SOUTH ON A LINE PARALLEL TO THE WEST LINE OF SAID LOT 220.0 FEET, THENCE EAST ON A LINE PARALLEL TO THE NORTH LINE OF SAID LOT 413.2 FEET TO THE WEST RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 30, THENCE NORTHERLY ON SAID WEST RIGHT-OF-WAY 220.09 FEET TO THE NORTH LINE OF LOT NO. 13 IN SAID ADDITION, THENCE WEST ON THE NORTH LINE OF SAID ADDITION TO THE POINT OF BEGINNING.

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BEGINNING AT A POINT IN THE WEST RIGHT-OF-WAY LINE OF U.S. HIGHWAY #30, SAID POINT BEING 9.78 FEET NORTH OF THE INTERSECTION OF THE SOUTH LINE OF LOT #13 IN W. A. EWING'S SUBDIVISION AND THE WEST RIGHT-OF - WAY LINE OF U.S. HIGHWAY #30; THENCE SOUTH 90 DEGREES 00 MINUTES WEST, A DISTANCE OF 413.2 FEET TO A POINT; THENCE NORTH 02 DEGREES 05 MINUTES 21 SECONDS EAST (NORTH 02 DEGREES 24 MINUTES EAST, RECORDED), A DISTANCE OF 100.13 FEET TO A POINT; THENCE NORTH 90 DEGREES 00 MINUTES EAST, A DISTANCE OF 413.21 FEET TO A POINT IN THE WEST RIGHT-OF-WAY LINE OF U.S. HIGHWAY #30; THENCE SOUTH 02 DEGREES 05 MINUTES 21 SECONDS WEST (SOUTH 02 DEGREES 24 MINUTES WEST, RECORDED) ALONG SAID LINE, A DISTANCE OF 100.13 FEET TO THE POINT OF BEGINNING, CONTAINING 0.95 ACRES, MORE OR LESS.

This page is only a part of an ALTA® for Title Insurance Westcor Title Insurance Company. This Commitment is not valid without [the Notice;] the Commitment to Issue Policy; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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PARCEL II

THE SOUTH 200 FEET OF LOT NO. 16 IN W. A. EWING'S SUBDIVISION OF LOT NO. 2 OF SECTION 5, TOWNSHIP 30 NORTH, RANGE 13 EAST, IN ALLEN COUNTY, INDIANA

ALSO CONVEYED HEREWITH:

LOT NO. 16 IN W.A. EWING'S SUBDIVISION OF LOT NO. 2 OF SECTION 5 TOWNSHIP 30 NORTH, RANGE 13 EAST, IN ALLEN COUNTY, INDIANA, EXCEPT THE SOUTH 200 FEET THEREOF.

IN20487

This page is only a part of an ALTA® for Title Insurance Westcor Title Insurance Company. This Commitment is not valid without [the Notice;] the Commitment to Issue Policy; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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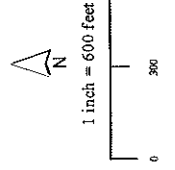
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State Plane Coordinate System, Indiana East
Photos and Contours © Spring 2009
Date: 6/1/2020





Rezoning Petition REZ-2020-0018 (909 N Coliseum)



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

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North American Datum 1983
State Plane Coordinate System, Indiana East
Photos and Contours: Sep 11/2009
Date: 8/11/2020

1 inch = 600 feet

0 300 600 Feet

WRITTEN COMMITMENT

THIS WRITTEN COMMITMENT (“Commitment”) is made this ____ day of _____, 2020 by Nalin Kumar (the “Declarant”).

WITNESSETH:

WHEREAS, the Declarant is the owner of approximately 9.6 acres of real estate located on North Coliseum Boulevard in Fort Wayne, Allen County, Indiana, the legal description of which is attached hereto as Exhibit “A” (the “Real Estate”); and

WHEREAS, the Declarant submitted a rezoning petition with respect to the Real Estate to rezone the Real Estate from C4/Intensive Commercial and I1/Limited Industrial zoning districts to an I2/General Industrial zoning district, bearing number REZ-2020-0018 (the “Petition”), which Petition has been approved by the City of Fort Wayne Plan Commission (the “Plan Commission”) and the Fort Wayne Common Council (“City Council”); and

WHEREAS, the Declarant has offered this Commitment, voluntarily, pursuant to Indiana Code § 36-7-4-1015, for the purpose of limiting certain uses for the Real Estate; and

WHEREAS, in conjunction with the Petition, the Plan Commission has accepted the Declarant’s offer of this Commitment and its recordation with the Office of the Recorder of Allen County, Indiana upon approval of the Petition by the Plan Commission and City Council.

NOW, THEREFORE, in consideration of the above and foregoing recitals, the Declarant hereby impresses upon the Real Estate certain restrictions and covenants which shall run with the Real Estate and be binding upon the Declarant and all future owners of the Real Estate, and all lessees of all or any portion of the Real Estate.

1. Prohibited Uses. Subject to the terms and conditions herein contained, the following uses shall be prohibited upon the Real Estate:
 - 1) Boat dry dock facility
 - 2) Contractor (construction, excavation, landscape)
 - 3) Correctional services facility
 - 4) Equipment rental (limited and general)
 - 5) Foundry
 - 6) Junk yard (indoor)
 - 7) Railroad spur
 - 8) Sales yard for:
 - Building materials
 - Lumber
 - Sand, gravel, stone
 - 9) Salvage yard (indoor)
 - 10) Tree service
 - 11) Truck depot/terminal
 - 12) Truck stop
2. Permitted Uses. Any use otherwise permitted in an I2 zoning district pursuant to the Ordinance which is not expressly prohibited pursuant to Section 1 above shall be a permitted use upon the Real Estate.
3. Permits. No permits shall be issued under the Ordinance by the Zoning Administrator of City of Fort Wayne (the "Zoning Administrator") until this Commitment is recorded with the Office of the Recorder of Allen County, Indiana. The Declarant shall deliver to the Zoning Administrator and the Plan Commission an executed and recorded copy of this Commitment.
4. Binding Effect, Modification, and Termination. This Commitment shall run with the Real Estate, and shall be binding upon the Declarant and each subsequent owner of the Real Estate and each other person acquiring an interest in the Real Estate, unless this Commitment is modified or terminated. The recitals are incorporated herein by reference and are expressly made a part of this Commitment. This Commitment may be modified or terminated only by a decision of the Plan Commission, as applicable, following a

public hearing held by the Plan Commission wherein notice has been given as provided by the Plan Commission's rules of procedure.

5. Recording. The Declarant shall, at its expense, record this Commitment with the Office of the Recorder of Allen County, Indiana and shall provide two copies of the recorded Commitment to the Zoning Administrator.
6. Enforcement. Any violation of this Commitment shall be deemed a violation of the zoning ordinance in effect 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 Plan Commission or any enforcement official designated in the zoning ordinance, or any successor agency having zoning jurisdiction over the Real Estate. Pursuant to Indiana Code § 36-7-4-1015, the Plan Commission or any enforcement official designated in the zoning ordinance, shall be entitled to all legal and equitable remedies available, including specific performance and injunctive relief, for any violation of this Commitment. The enforcement rights of the Plan Commission or any enforcement official designated in the zoning ordinance are cumulative, not exclusive.
7. Authority to Sign. The person signing this Commitment in a representative capacity on behalf of the Declarant warrants and represents that: (a) the person has the actual authority and power to so sign, and to bind the respective entity to the provisions of this Commitment; and (b) all corporate or other entity action necessary for the making of this Commitment has been duly taken.
8. Last Deed of Record. The most recent deed of record for the Real Estate was recorded in the Office of the Recorder of Allen County, Indiana as Document Number _____.
9. 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.
10. Governing Law. This Commitment, including the restrictions and covenants hereunder, shall be governed by the laws of the State of Indiana.
11. Effective Date. The effective date of this Commitment shall be the date of its recordation with the Office of the Recorder of Allen County, Indiana.

“DECLARANT”

Nalin Kumar

STATE OF _____)
) SS:
COUNTY OF _____)

Before me, the undersigned, a Notary Public, in and for said County and State, this ____ day of _____, 2020, personally appeared Nalin Kumar and acknowledged the execution of the foregoing. In witness whereof, I have hereunto subscribed my name and affixed my official seal.

Notary Public

My Commission Expires: _____

My County of Residence: _____

THIS INSTRUMENT prepared by Henry P. Najdeski, Attorney No. 20284-02, Barrett McNagny LLP, 215 East Berry Street, Fort Wayne, Indiana 46802.

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. Henry P. Najdeski.

When recorded, mail to: Henry P. Najdeski, Barrett McNagny LLP, 215 East Berry Street,
Fort Wayne, Indiana 46802.

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL ESTATE

(to be attached)

City of Fort Wayne Common Council
DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2020-0018
Bill Number: Z-20-07-02
Council District: 1 – Paul Ensley

Introduction Date: July 14, 2020

Plan Commission
Public Hearing Date: June 8, 2020 (not heard by Council)

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

Synopsis of Ordinance: To rezone approximately 9.6 acres from C4/Intensive Commercial and
I1/Limited Residential to I2/General Industrial.

Location: 909 N. Coliseum

Reason for Request: To bring all of the property into one industrial district to allow for new
research and development, and light manufacturing.

Applicants: Nalin Kumar

Property Owner: Nalin Kumar

Related Petitions: none

Effect of Passage: Properties will be rezoned to the I2/General Industrial district which will
allow the existing structure to be used for research and development and
light manufacturing.

Effect of Non-Passage: The properties will remain zoned C4/Intensive Commercial and
I1/Limited Residential which does not permit the proposed uses. The
building is currently underutilized and the property is in need of
investment and improvement.

FACT SHEET

Case #REZ-2020-0018		Bill # Z-20-07-02	Project Start: June 2020
APPLICANT:	Nalin Kumar		
REQUEST:	To rezone property from C4/Intensive Commercial and I1/Limited Industrial to I2/General Industrial to permit a research and development facility including warehousing, manufacturing, machine testing, and fabrication of precision instruments and specialty equipment.		
LOCATION:	The addresses of the subject property are 909, 919, and 929 North Coliseum Boulevard (Section 5 of Adams Township).		
LAND AREA:	Approximately 9.6 acres		
PRESENT ZONING:	C4/Intensive Commercial and I1/Limited Industrial		
PROPOSED ZONING:	I2/General Industrial		
COUNCIL DISTRICT:	1-Paul Ensley		
ASSOCIATED PROJECT:	new tenant		
SPONSOR:	City of Fort Wayne Plan Commission		

June 8, 2020 Public Hearing

- No one from the public spoke at the hearing.
- Paul Sauerteig and Rachel Tobin-Smith were absent.

June 15, 2020 – Business Meeting

Plan Commission Recommendation: DO PASS w/Written Commitment

A motion was made by Paul Sauerteig and seconded by Judi Wire to return the ordinance with a Do Pass recommendation and Written Commitment to Common Council for their final decision.

6-0 MOTION PASSED

- Don Schmidt, Justin Shurley and Rachel Tobin-Smith were absent.

Fact Sheet Prepared by:

Michelle B. Wood, Senior Land Use Planner

July 9, 2020

PROJECT SUMMARY

SITE HISTORY:

- The site has been developed with commercial/industrial uses since the early 1970's. The existing multi-tenant building appears to have one active tenant.

STAFF DISCUSSION:

The petitioner is requesting to rezone the property that comprises 909, 919, and 929 North Coliseum Boulevard. The existing building, known as Eastland Plaza, has multiple tenant spaces, including Atlas Restaurant Supply. The prospective buyer, Nalin Kumar, owner of several businesses, intends to relocate to Fort Wayne and start a business at this location. The primary use at this location would be a research and development facility that would include warehousing, manufacturing, machine testing, assembly and fabrication of industrial controls, scientific and precision instruments, and specialty equipment. The applicant is requesting I2/General Industrial because it would allow all proposed uses, and allow flexibility for retail uses for the remainder of the tenant spaces.

The North Coliseum Boulevard corridor, from the Maumee River to Lake Avenue, has experienced a decline in active retail businesses in the past 10 to 15 years. Frank's Nursery, K-Mart, Value City, and Home Depot, all bigger-box retailers, closed during that time period. However there has been some reinvestment along the corridor lately, and a new Dollar General retail store was completed last year. The predominate zoning of the corridor does not reflect the majority of the current uses, and it is not the desired zoning district for reinvestment along Coliseum Boulevard. C4/Intensive Commercial is the most permissive of the commercial districts, allowing the widest variety of outdoor commercial uses, and also sexually oriented businesses. Rezoning to I2/General Industrial could be considered a downzoning, as the impact of I2 uses are more in line with C2 commercial uses. Outdoor storage is limited and shall be screened, and all operations shall be performed indoors. The applicant is also willing to provide a Written Commitment to restrict uses. Staff pointed out several I2 uses that might encourage more outdoor storage or display, or have more of a visual impact on the corridor. The remaining uses in I2 would give the applicant flexibility to find new tenants to invest in this site. Staff is mostly concerned with setting a desired precedent for reinvestment along the corridor. The I2/General Industrial zoning with a Written Commitment will suit the new owner's desired uses while limiting future negative impacts on the corridor.

The proposal can be supported by the following goals and policies of the Comprehensive Plan:

LU3. Use land resources efficiently by encouraging new development, revitalization and redevelopment in areas already served by infrastructure;

LU8. Use land resources efficiently by encouraging compact development alternatives in infill areas where utilities and other infrastructure currently exist.

PUBLIC HEARING SUMMARY:

Presenter: Henry Najdeski presented the proposal as outlined above.

Public Comments:

none



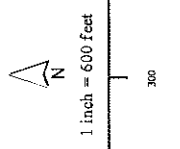
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 North American Datum 1983
 State Plane Coordinate System, Indiana East
 Photos and Contours: Spring 2019
 Date: 6/1/2020



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 Photo and Cartographic Spring 2009
 Date 6/1/2020



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WITNESSETH:

WHEREAS, the Declarant is the owner of approximately 9.6 acres of real estate located on North Coliseum Boulevard in Fort Wayne, Allen County, Indiana, the legal description of which is attached hereto as Exhibit “A” (the “Real Estate”); and

WHEREAS, the Declarant submitted a rezoning petition with respect to the Real Estate to rezone the Real Estate from C4/Intensive Commercial and I1/Limited Industrial zoning districts to an I2/General Industrial zoning district, bearing number REZ-2020-0018 (the “Petition”), which Petition has been approved by the City of Fort Wayne Plan Commission (the “Plan Commission (the “Plan Commission”) and the Fort Wayne Common Council (“City Council”); and

WHEREAS, the Declarant has offered this Commitment, voluntarily, pursuant to Indiana Code § 36-7-4-1015, for the purpose of limiting certain uses for the Real Estate; and

WHEREAS, in conjunction with the Petition, the Plan Commission has accepted the Declarant’s offer of this Commitment and its recordation with the Office of the Recorder of Allen County, Indiana upon approval of the Petition by the Plan Commission and City Council.

NOW, THEREFORE, in consideration of the above and foregoing recitals, the Declarant hereby impresses upon the Real Estate certain restrictions and covenants which shall run with the Real Estate and be binding upon the Declarant and all future owners of the Real Estate, and all lessees of all or any portion of the Real Estate.

1. Prohibited Uses. Subject to the terms and conditions herein contained, the following uses shall be prohibited upon the Real Estate:

- 1) Boat dry dock facility
- 2) Contractor (construction, excavation, landscape)
- 3) Correctional services facility
- 4) Equipment rental (limited and general)
- 5) Foundry
- 6) Junk yard (indoor)
- 7) Railroad spur
- 8) Sales yard for:
 - Building materials
 - Lumber
 - Sand, gravel, stone
- 9) Salvage yard (indoor)
- 10) Tree service
- 11) Truck depot/terminal
- 12) Truck stop

2. Permitted Uses. Any use otherwise permitted in an I2 zoning district pursuant to the Ordinance which is not expressly prohibited pursuant to Section 1 above shall be a permitted use upon the Real Estate.

3. Permits. No permits shall be issued under the Ordinance by the Zoning Administrator of City of Fort Wayne (the "Zoning Administrator") until this Commitment is recorded with the Office of the Recorder of Allen County, Indiana. The Declarant shall deliver to the Zoning Administrator and the Plan Commission an executed and recorded copy of this Commitment.

4. Binding Effect, Modification, and Termination. This Commitment shall run with the Real Estate, and shall be binding upon the Declarant and each subsequent owner of the Real Estate and each other person acquiring an interest in the Real Estate, unless this Commitment is modified or terminated. The recitals are incorporated herein by reference and are expressly made a part of this Commitment. This Commitment may be modified or terminated only by a decision of the Plan Commission, as applicable, following a

public hearing held by the Plan Commission wherein notice has been given as provided by the Plan Commission's rules of procedure.

5. Recording. The Declarant shall, at its expense, record this Commitment with the Office of the Recorder of Allen County, Indiana and shall provide two copies of the recorded Commitment to the Zoning Administrator.
6. Enforcement. Any violation of this Commitment shall be deemed a violation of the zoning ordinance in effect 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 Plan Commission or any enforcement official designated in the zoning ordinance, or any successor agency having zoning jurisdiction over the Real Estate. Pursuant to Indiana Code § 36-7-4-1015, the Plan Commission or any enforcement official designated in the zoning ordinance, shall be entitled to all legal and equitable remedies available, including specific performance and injunctive relief, for any violation of this Commitment. The enforcement rights of the Plan Commission or any enforcement official designated in the zoning ordinance are cumulative, not exclusive.
7. Authority to Sign. The person signing this Commitment in a representative capacity on behalf of the Declarant warrants and represents that: (a) the person has the actual authority and power to so sign, and to bind the respective entity to the provisions of this Commitment; and (b) all corporate or other entity action necessary for the making of this Commitment has been duly taken.
8. Last Deed of Record. The most recent deed of record for the Real Estate was recorded in the Office of the Recorder of Allen County, Indiana as Document Number _____.
9. 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.
10. Governing Law. This Commitment, including the restrictions and covenants hereunder, shall be governed by the laws of the State of Indiana.
11. Effective Date. The effective date of this Commitment shall be the date of its recordation with the Office of the Recorder of Allen County, Indiana.

Nalin Kumar

Before me, the undersigned, a Notary Public, in and for said County and State, this ____ day of _____, 2020, personally appeared Nalin Kumar and acknowledged the execution of the foregoing. In witness whereof, I have hereunto subscribed my name and affixed my official seal.

My County of Residence: _____

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. Henry P. Najdeski.

When recorded, mail to: Henry P. Najdeski, Barrett McNagny LLP, 215 East Berry Street,
Fort Wayne, Indiana 46802.

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL ESTATE

(to be attached)

Department of Planning Services
Rezoning Petition Application

Applicant **Nalin Kumar**
Address **6729 Harbour Town Lane**
City **Fort Worth** State **Texas** Zip **76132**
Telephone **817-880-3880** E-mail **kumarmaple@aol.com**

Contact Person **Henry Najdeski, Esq.**
Address **215 East Berry Street**
City **Fort Wayne** State **Indiana** Zip **46802**
Telephone **260-423-8838** E-mail **hpn@barrettllaw.com**

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

☐ Allen County Planning Jurisdiction ☒ City of Fort Wayne Planning Jurisdiction
Address of the property **809, 919 and 929 North Colliseum Boulevard, Fort Wayne, Indiana 46805**
Present Zoning **C4 and I1** Proposed Zoning **I2** Acreage to be rezoned **9.598 acres**
Proposed density **N/A** units per acre
Township name **Adams** Township section # **5**
Purpose of rezoning (attach additional page if necessary) **See attached**

Sewer provider **City of Fort Wayne** Water provider **City of Fort Wayne**

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.

- Filing Requirements
- ☒ Applicable filing fee
 - ☒ Applicable number of surveys showing area to be rezoned (plans must be folded)
 - ☒ Legal Description of parcel to be rezoned
 - ☐ 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.

Nalin Kumar

(printed name of applicant)

(signature of applicant)

(date)

Rick Stoller, as Trustee of The Ronald W. Stoller Revocable Trust U.D.O., June 14, 2007

(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.

Exhibit A Legal Description

PARCEL I

LOT NO. 13 IN W.A. EWING'S SUBDIVISION IN THE NORTHWEST QUARTER OF SECTION 5, TOWNSHIP 30 NORTH, RANGE 13 EAST, FORT WAYNE, ALLEN COUNTY, INDIANA.

EXCEPT THEREFROM THAT PORTION THEREFROM DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT A POINT ON THE NORTH LINE OF LOT NO. 13 IN W. A. EWING'S SUBDIVISION, SAID POINT BEING SITUATED 421.7 FEET EAST OF THE NORTHWEST CORNER THEREOF; THENCE SOUTH ON A LINE PARALLEL TO THE WEST LINE OF SAID LOT 220.0 FEET, THENCE EAST ON A LINE PARALLEL TO THE NORTH LINE OF SAID LOT 413.2 FEET TO THE WEST RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 30, THENCE NORTHERLY ON SAID WEST RIGHT-OF-WAY 220.09 FEET TO THE NORTH LINE OF LOT NO. 13 IN SAID ADDITION, THENCE WEST ON THE NORTH LINE OF SAID ADDITION TO THE POINT OF BEGINNING.

EXCEPTING THE FOLLOWING:

PART OF LOT NO. 13 IN W. A. EWING'S SUBDIVISION OF LOT NO. 2 AS RECORDED IN DEED RECORD 61, PAGE 433, (OR THE MIDDLE PART) OF SECTION 5, TOWNSHIP 30 NORTH, RANGE 13 EAST, IN ALLEN COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT A POINT IN THE WEST RIGHT-OF-WAY LINE OF U.S. HIGHWAY #30, SAID POINT BEING 9.78 FEET NORTH OF THE INTERSECTION OF THE SOUTH LINE OF LOT #13 IN W. A. EWING'S SUBDIVISION AND THE WEST RIGHT-OF-WAY LINE OF U.S. HIGHWAY #30; THENCE SOUTH 90 DEGREES 00 MINUTES WEST, A DISTANCE OF 413.2 FEET TO A POINT; THENCE NORTH 02 DEGREES 05 MINUTES 21 SECONDS EAST (NORTH 02 DEGREES 24 MINUTES EAST, RECORDED), A DISTANCE OF 100.13 FEET TO A POINT; THENCE NORTH 90 DEGREES 00 MINUTES EAST, A DISTANCE OF 413.21 FEET TO A POINT IN THE WEST RIGHT-OF-WAY LINE OF U.S. HIGHWAY #30; THENCE SOUTH 02 DEGREES 05 MINUTES 21 SECONDS WEST (SOUTH 02 DEGREES 24 MINUTES WEST, RECORDED) ALONG SAID LINE, A DISTANCE OF 100.13 FEET TO THE POINT OF BEGINNING, CONTAINING 0.95 ACRES, MORE OR LESS.

This page is only a part of an ALTA® for Title Insurance Westcor Title Insurance Company. This Commitment is not valid without [the Notice;] the Commitment to Issue Policy; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its Issuing agent that may be in electronic form.

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PARCEL II

THE SOUTH 200 FEET OF LOT NO. 16 IN W. A. EWING'S SUBDIVISION OF LOT NO. 2
OF SECTION 5, TOWNSHIP 30 NORTH, RANGE 13 EAST, IN ALLEN COUNTY,
INDIANA

ALSO CONVEYED HEREWITH:

LOT NO. 16 IN W.A. EWING'S SUBDIVISION OF LOT NO. 2 OF SECTION 5 TOWNSHIP
30 NORTH, RANGE 13 EAST, IN ALLEN COUNTY, INDIANA, EXCEPT THE SOUTH 200
FEET THEREOF.

IN20487

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