

1 **#REZ-2022-0002**

2 **BILL NO. Z-22-02-02**

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

5 **AN ORDINANCE amending the City of Fort Wayne**
6 **Zoning Map No. N-34 (Sec. 24 of Washington 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 Southeast Quarter of Section 14, Township 30 North, Range 11 East,
14 Allen County, Indiana, more particularly described as follows, to-wit:

15 Lot 10, Section A", Washington Center Place Addition, according to the Plat thereof,
16 recorded in Plat Record 15, page 97, re-recorded in Plat Record 15, page 145, in the
17 office of the Recorder of Allen County, Indiana, except that part thereof appropriated
18 for highway purposes under Allen Superior Court No. 3 Cause No. 5082 and except
19 the North 20 feet of the above described real estate conveyed for highway purposes
20 by instrument recorded as Document 70-15115, in the office of the Recorder of said
21 County, and except the North 5 feet of Lot 10 as established by Instrument 70-
22 15115, per Street Dedication dated September 16, 1974.

23 **TOGETHER WITH:**

24 Lot 11, Section A", Washington Center Place Addition, according to the Plat thereof,
25 recorded in Plat Record 15, page 97, re-recorded in Plat Record 15, page 145, in the
26 office of the Recorder of Allen County, Indiana, except that part thereof appropriated
27 for highway purposes under Allen Superior Court No. 3 Cause No. 4898.

28 and the symbols of the City of Fort Wayne Zoning Map No. N-34 (Sec. 24 of Washington
29 Township), as established by Section 157.082 of Title XV of the Code of the City of Fort
30 Wayne, Indiana is hereby changed accordingly.

1 SECTION 2. If a written commitment is a condition of the Plan Commission's
2 recommendation for the adoption of the rezoning, or if a written commitment is modified and
3 approved by the Common Council as part of the zone map amendment, that written
4 commitment is hereby approved and is hereby incorporated by reference.
5

6 SECTION 3. That this Ordinance shall be in full force and effect from and after its
7 passage and approval by the Mayor.
8

9 _____
10 Council Member

11 APPROVED AS TO FORM AND LEGALITY:

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13 _____
14 Carol T. Helton, City Attorney
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City of Fort Wayne Common Council
DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2022-0002
Bill Number: Z-22-02-02
Council District: 3 – Tom Didier

Introduction Date: February 8, 2022

Plan Commission
Public Hearing Date: February 14, 2022 (not heard by Council)

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

Synopsis of Ordinance: To rezone 1.04 acres from C2/Limited Commercial to C3/General Commercial with a Written Commitment to restrict certain uses

Location: 5830 Coldwater Road

Reason for Request: To bring an existing gas station and convenience store into compliance with the zoning ordinance.

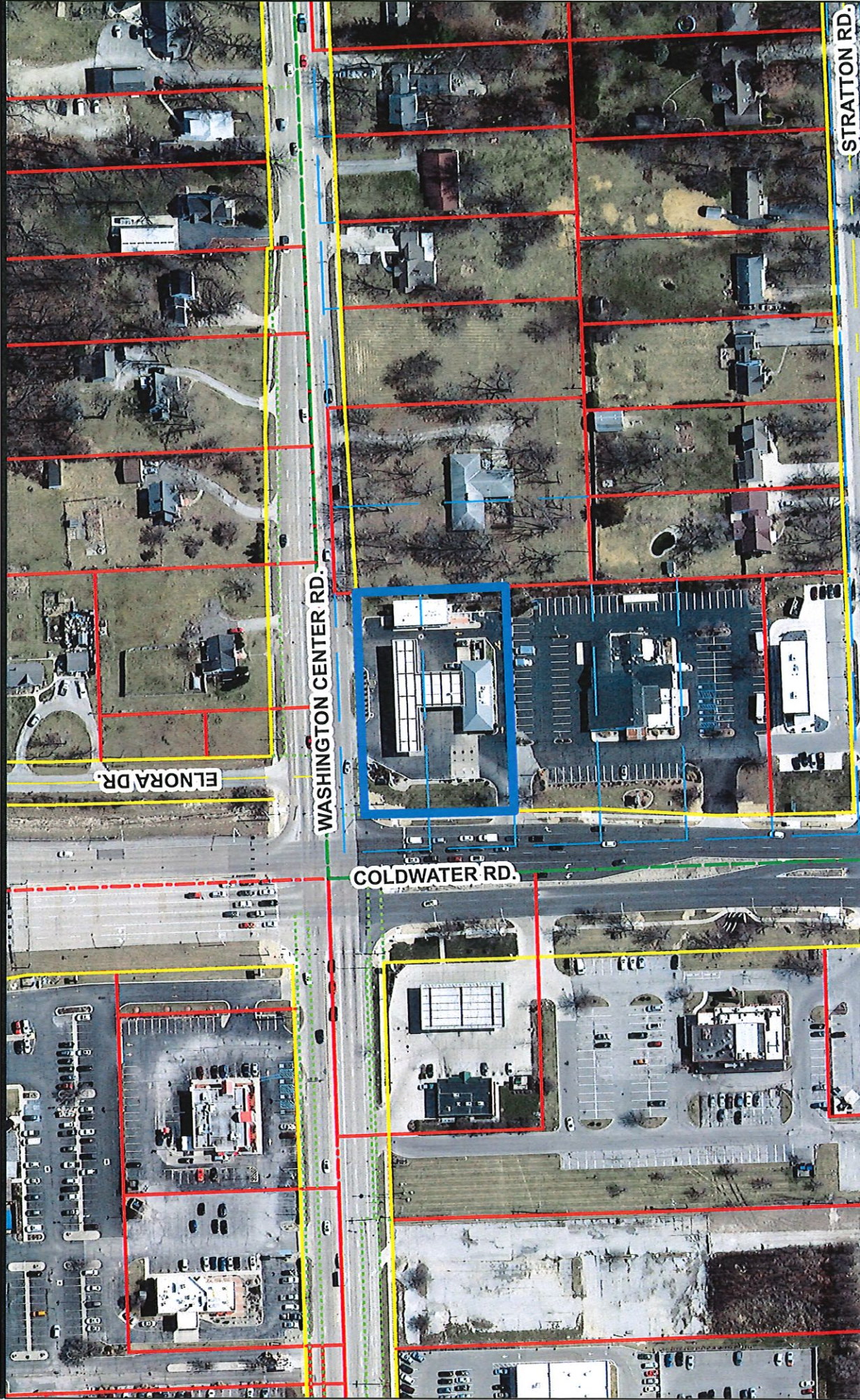
Applicant: Onkar Oil, LLC

Property Owner: Onkar Oil, LLC

Related Petitions: none

Effect of Passage: Property will be rezoned to the C3/General Commercial zoning district, which will allow the existing use as a permitted use by right. A recorded Written Commitment on the property will restrict all C3 uses except those on site currently and those permitted in the C2/Limited Commercial district.

Effect of Non-Passage: The property will remain zoned for limited commercial uses. The gas station and convenience store may remain as a non-conforming use, but the owner may be limited on future maintenance, expansion, and financing resources because of the non-conforming status.



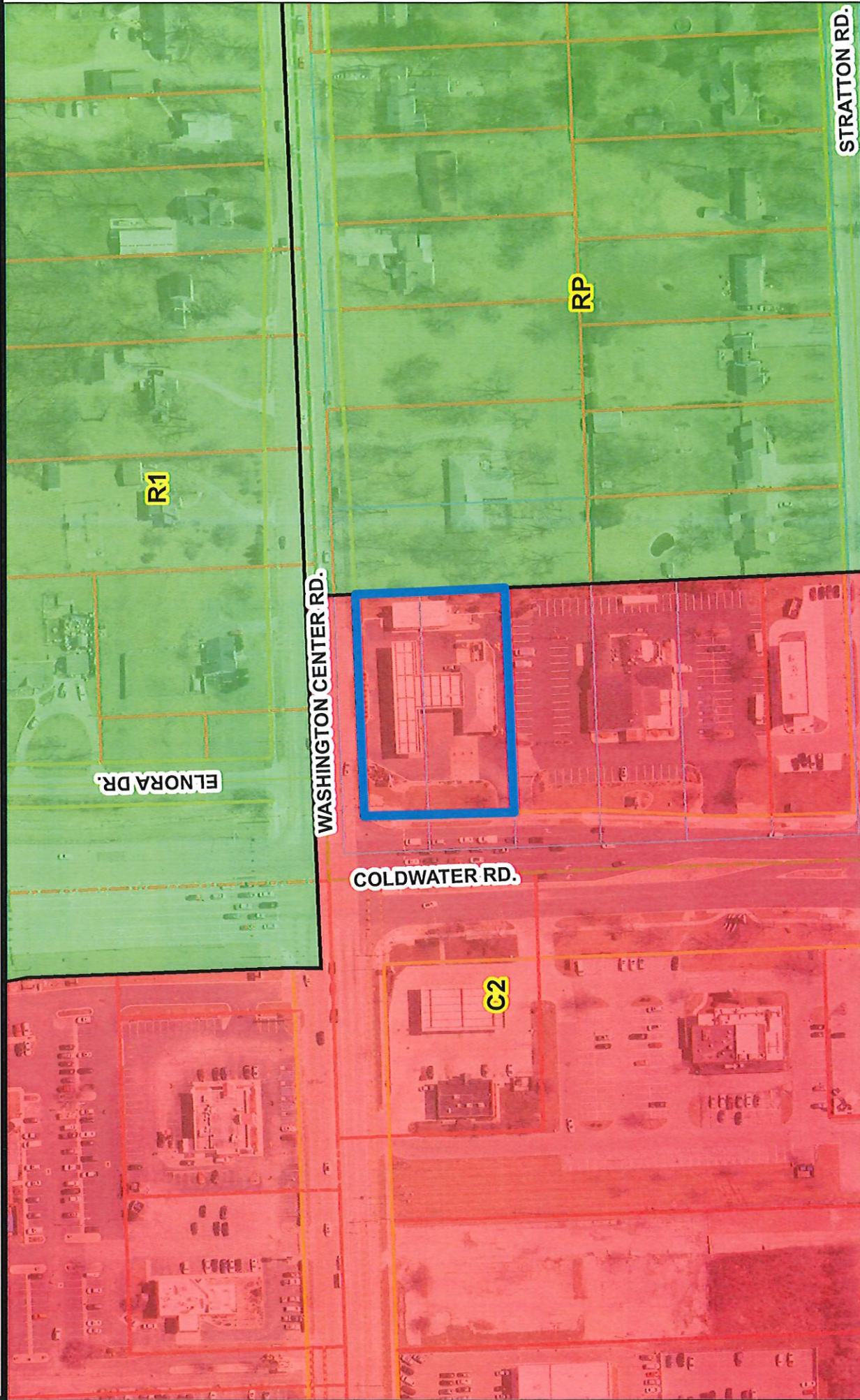
Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

© 2004 Board of Commissioners of the County of Allen
North American Datum 1983
State Plane Coordinate System, Indiana East
Photos and Contours: Spring 2009
Date: 1/19/2022



1 inch = 150 feet





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1 inch = 150 feet



Department of Planning Services
Rezoning Petition Application

Applicant Onkar Oil, LLC
Address 624 East Lewis Street
City Fort Wayne State IN Zip 46802
Telephone 260-452-7728 E-mail _____

Contact Person Kelly Tappy Design, Inc. (Matt Kelly)
Address 116 East Berry Street, Suite 700
City Fort Wayne State IN Zip 46802
Telephone 260-426-7770 E-mail matt@kellytappy.com
All mail correspondence will be sent only to the designated contact person.

☒ Allen County Planning Jurisdiction ☐ City of Fort Wayne Planning Jurisdiction
Address of the property 5830 Coldwater Road, Fort Wayne, IN 46825
Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned 1.04 acres
Proposed density (see attached site development schematic) _____ units per acre
Township name Washington Township section # 0024
Purpose of rezoning (attach additional page if necessary) Purpose of re-zoning is to
accomplish zoning consistent with current use.

Sewer provider Fort Wayne Water provider Fort Wayne

*Applications will not be accepted unless the following filing requirements are submitted with this application.
Please refer to checklist for applicable filing fee and preliminary submission requirements.*

- Filing Requirements**
- ☒ Applicable filing fee
 - ☒ Applicable number of surveys showing area to be rezoned (plans must be filed)
 - ☒ 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/we have read the ordinance(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 Planning 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 \$25 per notice and a public notice fee of \$50.00 per Indiana code.

Matt Onkar
(printed name of applicant) _____
Signature of applicant _____
(signature of property owner) _____
December 23, 2021
(date)

Matt Onkar
(printed name of property owner) _____
Signature of property owner _____
(signature of property owner) _____
December 20, 2021
(date)

(printed name of property owner) _____
Signature of property owner _____
(signature of property owner) _____
(date)

(printed name of property owner) _____
Signature of property owner _____
(signature of property owner) _____
(date)

Received	1/30/21	Receipt No.	139173	Filing Date	2/14/21	Petition No.	REZ-2020-0002
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COLDWATER RD

2019059993
RECORDED: 11/20/2019 12:40:10 PM
ANITA MATHER
ALLEN COUNTY RECORDER
FORT WAYNE, IN

CORPORATE WARRANTY DEED

Washington 12331865 Parcel number: 02-07-24-101-001.000-073

THIS INDENTURE WITNESSETH, that National Oil & Gas, Inc. ("Grantor"), an Indiana corporation in good standing under the laws of the State of Indiana, CONVEYS AND WARRANTS UNTO J.K. Coldwater LLC, a limited liability company, located in Allen County in the State of Indiana ("Grantee"), in consideration of Ten Dollars and No Cents (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, real estate located in Allen County, Indiana, more particularly described as follows, to-wit, on the attached Exhibit "A" ("Real Estate");

SUBJECT to all easements, restrictions, and limitations of record, as well as all applicable zoning ordinances.

SUBJECT to real estate taxes due and payable in November 2019, and thereafter.

SUBJECT to the restrictive covenants and conditions which are attached hereto made a part hereof and marked as Exhibit "B."

This deed given in satisfaction of that certain Contract for Conditional Sale of Real Estate as evidenced by that certain Memorandum of Contract for Conditional Sale of Real Estate between National Oil & Gas, Inc., vendor(s), and BPR Oil Corp., RESHAM SINGH, an individual residing in Indiana, and BALBIR S. BANWAIT, vendee(s), dated October 20, 2009, recorded October 21, 2009, in Document No. 2009054194; amended by Amendment to Contract for Conditional Sale of Real Estate, dated January 22, 2013, recorded February 13, 2015 as Document No. 2015007969. Said vendee's interest being transferred by the ASSIGNMENT OF CONTRACT by and between NATIONAL OIL & GAS, INC., an Indiana corporation ("Land Contract Seller") and BPR OIL CORP., an Indiana corporation, with its principal office at 3830 Coldwater Road, Fort Wayne, Indiana 46825, RESHAM SINGH, an individual residing in Indiana, and BALBIR S. BANWAIT, an Indiana resident (collectively "Grantor"), to J.K. COLDWATER LLC dated _____ and recorded _____ as Instrument No. _____.

The individuals signing this Corporate Warranty Deed warrant and represent that pursuant to the By-laws or duly adopted resolutions of the Grantor, that the undersigned has all necessary authority to execute this Corporate Warranty Deed conveying the real estate described above, that no further corporate action is necessary for the making of this conveyance, and that the Grantor is in good standing in the state of its organization and, if required, in the State where the aforescribed real estate is located.

IN WITNESS WHEREOF, Grantor has caused this Corporate Warranty Deed to be executed
October 2, 2019.

[SIGNATURES ON NEXT PAGE]
METROPOLITAN TITLE OF IN
9604 COLDWATER ROAD
SUITE 105
FORT WAYNE IN 46825
145424

1405921170008246-4JB
AUDITOR'S OFFICE
Duly entered for taxation. Subject
to final acceptance for transfer.
Nov 20 2019
Nicholas D Jordan
AUDITOR OF ALLEN COUNTY

STATE OF INDIANA)
COUNTY OF Allen) SS:

Before me, a Notary Public in and for said County and State, this 2nd day of October, 2019, appeared Alan J. Gunkel, the Vice President of National Oil & Gas, Inc., who acknowledged the execution of the above and foregoing Corporate Warranty Deed for and on behalf of the above Grantor, and who, having been duly sworn, stated that the above representations are true.

My Commission Expires: 11-04-2022
Resident of: Allen
Commission no. 1658465



CHAD R. ELDRIDGE, Notary Public
Allen County, State of Indiana
Commission Number 836455
My Commission Expires November 4, 2022

NOTARY PUBLIC

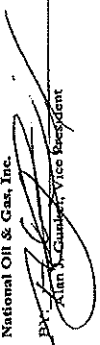
This instrument prepared by JEFFREY B. HARDING (ID. #17162-71), Attorney at Law, Haller & Colvin, P.C., 444 East Main Street, Fort Wayne, Indiana 46802; telephone: (260) 426-1444; fax: (260) 422-0274. I affirm, under the penalties for perjury, that I have taken reasonable care to reduce each Social Security Number in this document, unless required by Law. /s/Jeffrey B. Harding

McDowell/Chad R. Eldridge 11/04/2022 1658465 (10/20 11:09AM)

Grantee mailing address:
5830 Coldwater Road
Fort Wayne, IN 46825

Mall tax bills to:
5830 Coldwater Road
Fort Wayne, IN 46825

National Oil & Gas, Inc.

BY: 
Alan J. Gunkel, Vice President

146303110082445-4JB

EXHIBIT A

5830 Coldwater Road, Fort Wayne, Indiana 46825

Lot 10, Section A", Washington Center Place Addition, according to the Plat thereof, recorded in Plat Record 15, page 97, re-recorded in Plat Record 15, page 145, in the office of the Recorder of Allen County, Indiana, except that part thereof appropriated for highway purposes under Allen Superior Court No. 3 Cause No. 5082 and except the North 20 feet of the above described real estate conveyed for highway purposes by instrument recorded as Document 70-15113, in the office of the Recorder of said County, and except the North 5 feet of Lot 10 as established by Instrument 70-15115, per Street Dedication dated September 16, 1974.

TOGETHER WITH:

Lot 11, Section A", Washington Center Place Addition, according to the Plat thereof, recorded in Plat Record 15, page 97, re-recorded in Plat Record 15, page 145, in the office of the Recorder of Allen County, Indiana, except that part thereof appropriated for highway purposes under Allen Superior Court No. 3 Cause No. 4898.

1463031100082445-4JB

EXHIBIT B

This deed is subject to the following reservations, restrictions and conditions which shall be covenants running with the land ("Real Estate") and shall be binding upon Grantee, its successors, assigns and all future owners of the Real Estate, and their respective directors, officers, employees, contractors, agents, representatives, lessees, licensees, invitees, and any user or occupant of all or any portion of the Real Estate.

1. Grantee agrees that for a period of twenty-five (25) years from and after October 20, 2009, the Real Estate shall not be used for the sale, marketing, storage or advertising of motor fuels or motor oils, except the trademarked products of Marathon Petroleum Company LLC, its successors and assigns, purchased either directly from Marathon Petroleum Company LLC, its successors and assigns or from a MARATHON® branded Jobber and that this restriction shall be a covenant running with the land and shall be contained in and made a part of every deed, mortgage, lease or other instrument affecting the title to said Real Estate.

2. Grantee agrees that for a period of twenty-five (25) years from and after October 20, 2009, the Real Estate, if converted to a use other than a MARATHON® retail motor fuel outlet, shall not be used for a convenience store or for the sale, marketing, storage or advertising of tobacco products, and that this restriction shall be a covenant running with the land and shall be contained in and made a part of every deed, mortgage, lease or other instrument affecting the title to said Real Estate.

3. In the event that Grantee desires to sell any Real Estate and the Real Estate is used for the purpose other than as a MARATHON® retail motor fuel outlet, Grantee shall upon the closing of such sale, pay to Grantor an amount equal to a percentage, determined according to the schedule in Section 5 below, of the amount by which the price (which shall include the payment of any amounts related to the Real Estate including, but not limited to, business value, goodwill, and other intangible assets) of such sale exceeds the sum of \$1,250,000.00 plus the improvements made to the Real Estate since the date of original conveyance, which sum shall be adjusted, as of the date of the closing of such sale, as provided in subsection 5 below.

4. Alternatively, in the event that Grantee desires to lease the Real Estate for use other than a MARATHON® retail motor fuel outlet Grantee shall, commencing upon the closing of such lease and monthly thereafter until expiration or termination of such lease, pay to Grantor a percentage, determined according to the schedule in Section 5 below, of the amount by which the monthly rental under such lease exceeds one percent (1%) of the sum of \$1,250,000.00, plus the improvements made by Grantor or Grantee to the Real Estate since the date of October 20, 2009, which sum shall be adjusted, as of the date of closing such lease, as provided in subsection 5 below.

14638031100682446-JDB

5. Percentage to be paid:

Date of Sale or Lease	Percentage
Up to 6 years after original conveyance	40%
6 through 10 years after original conveyance	30%
11 through 15 years after original conveyance	20%

Real property shall be appreciated at a rate of three percent (3%) per annum from date of original conveyance and improvements shall be depreciated at a rate of ten percent (10%) per annum from date of improvement.

6. The restrictive covenants set out in sections 1, 2, 3, 4 and 5 above are part of the consideration for this conveyance running from Grantor to Grantee, and the purchase price was reduced because of same. Nothing herein shall be construed to require or obligate Grantor to repurchase the Real Estate at any time.

7. The restrictive covenants of sections 2 and 3 above shall be deemed covenants running with the land and shall be made a part of every deed, lease, mortgage or other instrument affecting the title to the Real Estate. The restrictive covenants in sections 1, 2 and 3 above shall be binding upon the Grantee, his grantees, heirs, personal representative, successors and assigns for a period of twenty-five (25) years from October 20, 2009. The restrictive covenant in section 5 above shall be binding upon the Grantee, his grantees, heirs, personal representative, successors and assigns for a period of fifteen (15) years from October 20, 2009. However, subsequent to Grantor receiving notice as set forth above and Grantor in sections 2 and 3 above and Grantee's payment to Grantor in compliance with sections 2 and 3 above, remote grantees shall take the Real Estate free of said covenants of sections 2 and 3, but the restrictive covenant set out in section 1 above shall not be affected.

8. In case any one or more of the reservations, restrictions or conditions (or portions thereof) contained in this deed shall, for any reason, be held to be invalid, illegal or legally unenforceable, in any respect, such invalidity, illegality or unenforceability shall not affect any other portion of that provision or any other provision hereof (whether or not clearly divisible from such provision or portion thereof), and the above reservations, restrictions and conditions shall be construed and interpreted in the manner which is valid, legal and legally enforceable, and which is most nearly consistent with the intention of Grantor and Grantee as evidenced by the above reservations, restrictions and conditions.

9. Marathon Petroleum Company LLC and its successors and assigns ("Marathon") reserved the right to have access to the Real Estate, at no cost to Marathon, at reasonable times to conduct any Corrective Action only as and when required by the governmental agency with

jurisdiction (the "Agency") in connection with a release of petroleum hydrocarbons on the Real Estate. As used herein, the term, "Corrective Action," shall refer to one or more of the following activities, investigation, assessment, monitoring, sampling, analysis, cleanup, removal, disposal, on-site treatment, off-site treatment, active remediation, passive remediation, remediation alternatives including, but not limited to, risk-based corrective action ("RBCA"), if applicable, and/or other activities concurred in or required by the Agency. In performing any Corrective Action at the Real Estate, Grantor will have the right to rely on and use any current, future or revised or amended state cleanup standards, guidelines or criteria or revised federal cleanup standards, if applicable, including without limitation any site-specific risk-based soil and groundwater cleanup objectives or other similar RBCA policies administered by the Agency. In performing any Corrective Action at the Real Estate, Marathon may also rely on and implement institutional controls as provided for in applicable laws, regulations and policies to ensure the protection of public health, safety or welfare and the environment. Grantee acknowledges that such institutional controls may require deed recordations running with the land at the Real Estate. Such deed recordation would contain certain restrictions based on site-specific exposure such as prohibiting the use of groundwater or requiring the Real Estate, or a portion of the Real Estate, to be paved or that existing pavement remain in place and be properly maintained. Grantee agrees to permit reasonable institutional controls regarding the Real Estate in connection with Grantor's performance of any Corrective Action thereon. Grantee agrees to provide Marathon, at no cost to Marathon, with Grantee's written consent and signature as needed in connection with the preparation, execution and recording of any necessary documents relating to any institutional controls which are to be recorded with the deed in accordance with Marathon's performance of Corrective Action. Such institutional controls, if necessary, would not prohibit the use of the Real Estate for industrial/commercial purposes. Marathon reserves its legal appeal rights with respect to any orders, directives or requests of the Agency concerning but not limited to Corrective Action at the Real Estate.

10. The Grantee shall not have any claim against Grantor or Marathon Petroleum Company LLC, its parents, affiliates, predecessors, successors, assigns, subsidiaries or their respective past, present and future officers, employees, agents and/or representatives (the "Released Parties"), based upon, related to or arising out of the presence of any contamination on, under or at the Real Estate. The Released Parties are hereby forever released from any and all such claims.

11. To reduce risks to human health and/or the environment, and to permit application of corrective action standards which are consistent with the non-residential use (or other lower-risk use) of the Real Estate, this conveyance is made by Grantor and accepted by Grantee upon the express condition and subject to the restrictions and covenants that (i) the use of the Real Estate shall be restricted solely to industrial/commercial use, (ii) the Real Estate shall not be used or occupied (if used or occupied at all) for residential purposes or for purposes of a child care or elder care facility, a nursing home facility or hospice, a hotel or motel, a medical or dental facility, a school, a church, a park or a hospital, (iii) any building constructed on the Real Estate shall have a slab-on-grade foundation with the top of the slab at or above surface level, (iv) in the event that any activities occur at the Real Estate that involve any digging, trenching or excavation of soils by Grantee, Grantee shall take proper precautions to ensure the protection of health, safety and the environmental, including but not limited to, testing the soils, providing

adequate notification and protection to workers, and proper handling and/or disposal of any contaminated soils in accordance with all applicable laws, rules and regulations, and (v) no water supply wells of any kind (including without limitation water wells used for drinking, bathing or other human consumption purposes and water wells used for livestock, farming or irrigation) shall be installed or used on the Real Estate (collectively, "Exposure Restriction"), provided, however, that the Exposure Restriction does not prohibit the installation or use of any compliance wells, or any groundwater monitoring, recovery or extraction wells or similar devices used for or related to the performance of assessments, remediation or any other corrective action on the Real Estate now or in the future.

12. Grantee hereby agrees to indemnify, defend and hold harmless the Grantor and Marathon Petroleum Company LLC from and against any and all losses, damages, claims, suits or actions, judgments and costs (including without limitation reasonable attorney fees) that arise out of or relate to any violation of the reservations, restriction and/or conditions contained in this deed, including, but not limited to, any use of the Real Estate which is in violation of or inconsistent with the Exposure Restriction.

14830311/0080245-4JB

