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GREGORY S. BELL (RET.)
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4600 N. BRANDYWINE DRIVE
SUITE 200
PEORIA, ILLINOIS 61614-5591

PHONE (309) 688-9400
FAX (309) 688-9430

SENDER'S E-MAIL
dschroeder@hrbkllaw.com

JUNE 20, 2019

Via Electronic Mail (Lallison@Peoriagov.org)
and Certified Mail Return Receipt Requested

Leah Allison
Senior Planner
City Hall
419 Fulton St., Rm. 300
Peoria, IL 61602-1217

Re: MacDonald Properties, LLC
Petition For Vacating, Waiver or Modification Of City Setback Rights For
Specific Parcels:
1106 W. Main St., Peoria, Illinois and
710 W. Detweiller Dr., Peoria, Illinois

Dear Ms. Allison:

I represent the MacDonald family which has operated numerous MacDonald Shell Stations in Peoria for the past 40 years.

I have been communicating with Ross Black regarding my client's request that the 100 ft. setbacks now in effect at the above gasoline station/convenient store sites be removed so as to eliminate the possibility that these stores might be torn down in the future.

My client recently sold these stores and will suffer a severe hardship if the setbacks are not eliminated by December 18, 2019 in that there will be a \$50,000 penalty, per store (\$100,000 total), that my client will incur.

In this regard, I am enclosing Petition which I would ask that you file on my client's behalf and distribute to the Council members. Ross indicated that this matter would be taken up at the meeting on July 9, 2019 and that I should work through you.

If I can be of assistance in answering any questions that you may have, please feel free to contact me.

Thanks to you and the Council for your prompt attention to this matter.

Very truly yours,

Hasselberg, Rock Bell & Kuppler LLP

Danny L. Schroeder

DLS

ENCLOSURE

CC: MACDONALD PROPERTIES, LLC

T:\DLS\WPDOCS\DLS\MACDONAL\MACDONALDPROPERTIESLLC\AXIS\2018\SetBacks\ALLISON[PETITIONREMOVESETBACKS]LTR1.WPD

CITY OF PEORIA ILLINOIS

CHARLES D. MacDONALD, JEFF W.)	
MacDONALD and MacDONALD)	
PROPERTIES, LLC)	
Petitioners)	
)	No.
1106 W. Main St., Peoria, Illinois)	and
710 W. Detweiler Dr. Peoria, Illinois)	
)	
Affected Parcels)	

PETITION FOR VACATING, WAIVER OR MODIFICATION OF CITY SETBACK RIGHTS FOR SPECIFIC PARCELS

NOW COME the Petitioners, CHARLES D. MacDONALD, JEFF W. MacDONALD, and MacDONALD PROPERTIES, LLC, by and through their attorneys, DANNY L.

SCHROEDER and the law firm of HASSELBERG, ROCK, BELL & KUPPLER LLP., and submit this, their Petition For Vacating, Waiver Or Modification Of City Setback Rights For Specific Parcels, and in support thereof, states as follows:

- 1) That the Petitioner, CHARLES D. MacDONALD, and his family have owed and/or operated numerous gasoline filling stations and convenient stores located throughout the City of Peoria, Illinois for 40 years.
- 2) That on or about December 18, 2018 the Petitioners contracted to sell all six (6) of their station/convenient stores in Peoria, Illinois (“Stores”).
- 3) That the Store located at **1106 W. Main St.**, Peoria, Illinois is subject to a certain “SETBACK ENCROACHMENT AGREEMENT dated April 7, 1978 and recorded as document no. 78-07566. Another Store located at **710 W. Detweiler Dr.**, Peoria, Illinois (jointly “the Properties”) is subject to a similar “SETBACK ENCROACHMENT AGREEMENT” dated July 10, 1979 and recorded as document no. 79-14889, (hereinafter “the Agreements”). Copies of the Setback Encroachment Agreements are

attached hereto as Exhibits A and B, respectively, and by express reference made a part hereof.

- 4) That the Setbacks note a 100 ft. setback from the right-of-way of Main St. for the Main Street Store, and the same distance from N. Knoxville Ave., for the Detweiler Store which setbacks were originally established by ordinance. Enforcement of the setback areas have been temporarily waived in the Agreements in order for buildings and other improvements to have been constructed on the sites - with a reservation that if the city ever wanted to make improvements to the right-of-way that would require the taking of all or any part of that 100 ft. setback, the owner would agree to demolish and remove any improvements with thirty (30) days.
- 5) Also attached please find plats of both Stores which have been marked as Exhibits C and D, respectively. The plats confirm that the enforcement of the full 100 ft. setback distances would require the pumps, canopies and part of the station of Main Street Store and the pumps, canopies and practically all of the station of the Detweiler Store would have to be demolished and removed.
- 6) That a similar Setback Encroachment Agreement is not recorded against the property adjacent and to the east of the Main St. Store. This creates a practical impossibility that the city would ever exercise its right to take back the 100 ft. setback area at this Store which is in an area which has already undergone substantial commercial developed and would result would be a 100 ft. "hole" stretching only the length of the Petitioners lot from Bourland Avenue on the west side to the adjacent property on the east which would have no use except as a "brown field" (due to the current and previous existence of underground storage tanks), and therefore would seemingly produce little practical or

potential usefulness or value for the city - certainly not when compared to the real estate, sales and motor fuel tax revenue currently being generated by the Station on the site.

7) That although the Setback Agreement also is in effect with respect to the property which is adjacent, and south of, the Detweiler Store, the Illinois Department of Transportation ("IDOT") has waived any right or interest in taking any part of the setback area, no doubt due to the fact that commercial development in that area has already taken place and it is unlikely that any further expansion of Knoxville Ave. which already consists of six (6) traffic lanes (four traffic lanes, a center turn lane and north turn lane onto Detweiler Dr.) will be needed. It is IDOT's position that it is entirely up to the city whether or not the city wishes to exercise its rights under its own ordinance. That would seem logical given that any decision by the city to further widen N. Knoxville Ave., would be unlikely to create any result which would be worth the loss of the real estate, sales and motor fuel taxes currently being generated at the site..

8) Failure or refusal of the city to waive the Setbacks will result in an extreme hardship to Petitioners. The terms of sale require that in the event that Petitioners are unsuccessful in getting the city to waive the Setbacks within one year from closing (closing having taken place on December 18, 2018), the Petitioners will lose \$50,000 per Station (total \$100,000) from the proceeds of sale which are being held in escrow by a local title company as confirmed by the copy of the First Amendment To Asset Purchase Agreement which is attached hereto as Exhibit E.

WHEREFORE, Petitioners, CHARLES D. MacDONALD, JEFF W. MacDONALD and MacDONALD PROPERTIES, LLC, respectfully request that this Honorable Council as follows:

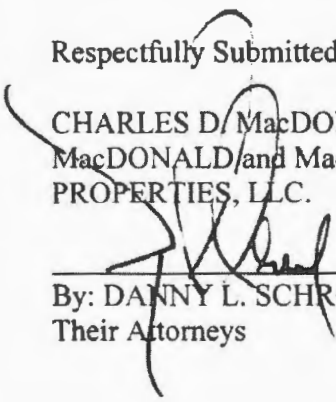
A. To totally and permanently vacate the city's right pursuant to Section 2-4.1001 of the Zoning Ordinance of the City of Peoria (or the current embodiment thereof) to

exercise its entire 100 ft. setback rights as are described in the SETBACK ENCROACHMENT AGREEMENT dated April 7, 1978 and recorded as document no. 78-07566 and as are described in the "SETBACK ENCROACHMENT AGREEMENT" dated July 10, 1979 and recorded as document no. 79-14889;

- B. Alternatively, to partially and permanently waive said setback rights to a specific modified depth far less than 100 ft. for both Stores; and
- C. For such other and further relief as equity as the Council deems just and appropriate.

Respectfully Submitted,

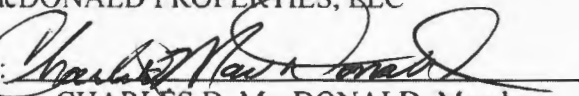
CHARLES D. MacDONALD, JEFF W.
MacDONALD and MacDONALD
PROPERTIES, LLC.

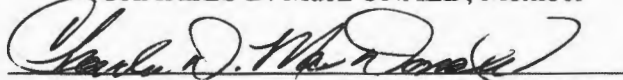

By: DANNY L. SCHROEDER, one of
Their Attorneys

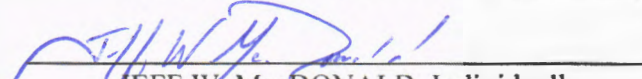
STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

CHARLES D. MacDONALD and JEFF W. MacDONALD, on oath, state that they are members of MacDONALD PROPERTIES, LLC, a Wyoming limited liability company, and the Petitioners in the above entitled cause, and that they are duly authorized to execute this Petition on its behalf; that have read the above and foregoing Petition, have knowledge of the contents thereof, and that the matters set out therein are true in substance and in fact to the best of their knowledge, except as to such matters as stated therein to be on information and belief, and as to such matters, the undersigned certify as aforesaid that they verily believe the same to be true.

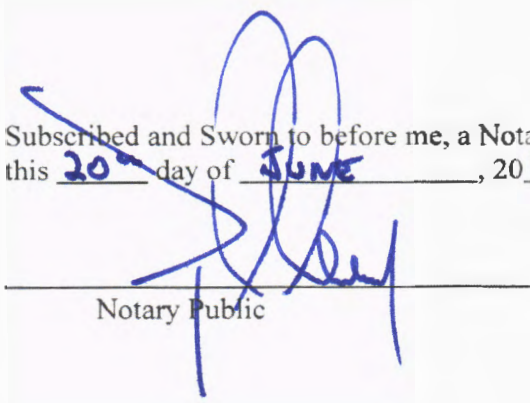
MacDONALD PROPERTIES, LLC

By: 
CHARLES D. MacDONALD, Member


CHARLES D. MacDONALD, Individually


JEFF W. MacDONALD, Individually

Subscribed and Sworn to before me, a Notary Public,
this 20th day of JUNE, 2019.



Notary Public



Danny L. Schroeder
Hasselberg, Rock, Bell & Kuppler LLP
4600 N. Brandywine Dr., Suite 200
Peoria, IL 61614
Tel. (309)688-9400
Fax.(309)688-9430

DOCUMENT NO.

78-07566

APR 7, 1978

STATE OF ILLINOIS }
County of Peoria } SS
HELEN G. BLAIR, County Recorder, on
Helen G. Blair
Recorder of Deeds

SETBACK ENCROACHMENT AGREEMENT

In consideration of an exception granted by the City of Peoria from the application of Section 2-4.1001 of the Zoning Ordinance of the City of Peoria permitting the undersigned to construct a structure within the limits prescribed by that section, the undersigned hereby agrees that in the event the City of Peoria, or the County of Peoria, or the State of Illinois make any improvements to any of the right-of-way abutting the premises upon which the structure is to be located and requires the space upon which the structure is located, the undersigned shall remove the structure forthwith upon receipt of thirty (30) days written notice to do so at his own expense and shall hold the City of Peoria free and harmless from any expense or liability arising out of the removal or relocation of the structure, and from any liability for any damage to remaining property of the undersigned.

This agreement shall be binding upon all heirs, assigns and successors of the undersigned and shall be recorded in the office of the Recorder of Deeds of Peoria County and shall run with the land in relation to the following described property:

SEE ATTACHMENT NO. 1

IN WITNESS WHEREOF the undersigned has placed his signature hereto personally in behalf of his respective principal.

SHELL OIL COMPANY

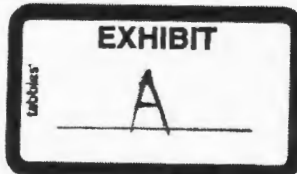
[Signature]
W. R. COX
DISTRICT MANAGER

APPROVED:

Wayne E. Anthony
for Planning Director

DATE: 3-20-78

THIS INSTRUMENT WAS PREPARED BY



ATTACHMENT NO. 1

LEGAL DESCRIPTION OF PROPERTY LOCATED AT 1108 W. MAIN & BOURLAND
PEORIA, ILLINOIS

PARCEL I:

Part of Lots Four and Five (4 & 5) in Block Two (2), UNDERHILL AND BOURLAND'S ADDITION, being 75 feet on Main Street by 75 feet in depth, situated, lying and being in the City of Peoria, County of Peoria and State of Illinois.

PARCEL II:

Fourteen (14) feet off the Northerly side of Lot One (1), all of Lots Two and Three (2 & 3), the Southerly Twenty-five (25) feet of Lot Four (4), the Northeasterly Twenty-five (25) feet by Seventy-five (75) feet in depth of Lot Four (4), and the North-easterly Half of Lot Five (5), all in Block Two (2), UNDERHILL AND BOURLAND'S ADDITION to the City of Peoria, County of Peoria and State of Illinois;

DOCUMENT NO.
79-14899

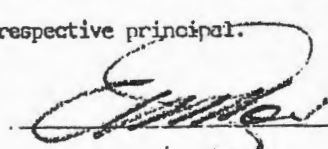
SETBACK ENCROACHMENT AGREEMENT

In consideration of an exception granted by the City of Peoria from the application of Section 2-4.1001 of the Zoning Ordinance of the City of Peoria permitting the undersigned to construct a structure within the limits prescribed by that section, the undersigned hereby agrees that in the event the City of Peoria, or the County of Peoria, or the State of Illinois make any improvements to any of the right-of-way abutting the premises upon which the structure is to be located and requires the space upon which the structure is located, the undersigned shall remove the structure forthwith upon receipt of thirty (30) days written notice to do so at his own expense or liability arising out of the removal or relocation of the structure, and from any liability for any damage to remaining property of the undersigned.

This agreement shall be binding upon all heirs, assigns and successors of the undersigned and shall be recorded in the office of the Recorder of Deeds of Peoria County and shall run with the land in relation to the following described property: **710 W. Detweiler Peoria, Illinois**

See reverse side

IN WITNESS WHEREOF the undersigned has placed his signature hereto personally in behalf of his respective principal.

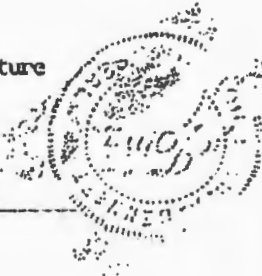


for Shell Oil Co.

APPROVED:

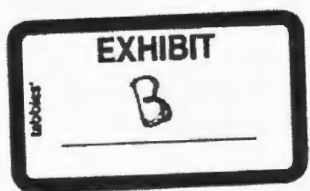
Wayne E. Anthony
Planning Director

DATE: July 10, 1979



JUL 18 1979

STATE OF ILLINOIS } ss
County of Peoria }
HELEN G. BLAIR, County Recorder
Helen G. Blair
Recorder of Deeds



PREMISES at the intersection of Mt. Hawley Road
(S.B.I. Route No. 88) and Detweiller Drive in Peoria, County
of Peoria, State of Illinois.

A PART of the Southeast Quarter of Section 5, Township 9 North,
Range 8 East, of the Fourth Principal Meridian more particularly
described as follows:

COMMENCING at the center of said Section 5; thence South 2 degrees
09 minutes West along the West line of the Southeast Quarter of
said Section 5, a distance of 849.60 feet; thence South 87 degrees
39 minutes East, a distance of 2,444.30 feet; thence South 2 degrees
07 minutes West, a distance of 25.0 feet to the POINT OF BEGINNING
of the tract to be described; thence continuing South 2 degrees 07
minutes West, a distance of 150.0 feet; thence South 87 degrees 39
minutes East, a distance of 150.0 feet to the West right-of-way
line of S.B.I. Route 88; thence North 2 degrees 07 minutes East
along the West right-of-way line of S.B.I. Route 88, a distance
of 80.59 feet; thence North 3 degrees 09 minutes West, a distance
of 39.73 feet; thence North 45 degrees 24.1 minutes West, a
distance of 44.41 feet; thence North 87 degrees 39 minutes West,
a distance of 113.60 feet to the point of beginning.

5/ 79-14899

Return to: Shell Oil Co.
2435 Kimberly Rd
Bethesda, Md. 20814
52722
Attn: H. Leonard

FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT (this "Amendment") is made and entered into as of the 14th day of December, 2018 by and among: (i) MACDONALD OIL, INC., an Illinois corporation ("MacDonald Oil"), (ii) MACDONALD PROPERTIES, LLC, a Wyoming limited liability company ("MacDonald Properties"), (iii) P.K.M. CORPORATION, an Illinois corporation ("PKM"), (iv) THE CHARLES D. MACDONALD LIVING TRUST dated May 19, 2005 (the "Living Trust"), (v) THE PATRICIA K. MACDONALD LIVING TRUST dated May 19, 2005 (the "Patricia K. MacDonald Trust" and collectively and jointly and severally with MacDonald Oil, MacDonald Properties, PKM, the Living Trust, the "Sellers" and each a "Seller"), and (vi) AXIS INVESTMENTS, LLC, a Kentucky limited liability company ("Buyer").

RECITALS:

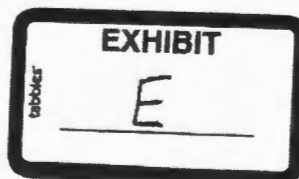
A. Sellers and Buyer entered into that certain Asset Purchase Agreement dated as of October 25, 2018 (the "Purchase Agreement") pertaining to certain real property located in Peoria and East Peoria, Illinois, and certain tangible and intangible personal property related thereto, comprising eight gas station and convenience store businesses.

B. The parties have agreed to amend the Purchase Agreement in accordance with the terms and conditions of this Amendment.

NOW, THEREFORE, for and in consideration of the foregoing recitals, the parties hereby agree as follows:

1. **TITLE ISSUES.** Commencing on the date of this Amendment, Sellers shall use their best efforts, at Sellers' sole cost and expense, to obtain releases of, or provide such information as is required for First American Title Insurance Company to insure over (each a "Release" and collectively the "Releases") that certain Setback Encroachment Agreement, dated April 7, 2018 and having Document No. 78-07566 with the Peoria County Recorder, and that certain Setback Encroachment Agreement, dated July 10, 1979 and having Document No. 79-14889 with the Peoria County Recorder, which respectively affect the Facilities located at 1106 W. Main St., Peoria, Illinois and 710 W. Detweiler Dr., Peoria, Illinois (each an "Encumbered Facility" and collectively the "Encumbered Facilities"). Sellers shall provide periodic updates relating to their efforts to obtain the Releases to Buyer and its legal counsel, and Sellers shall use their best efforts to provide such updates to Buyer every 15 days during the time period such activities are taking place. If Sellers are not successful in obtaining Releases for either or both of the Encumbered Facilities on or before the date that is 12 months after the date of Closing, Buyer shall be entitled to obtain payment from the Escrow Amount in the amount of Fifty Thousand Dollars (\$50,000.00) per Encumbered Facility. Buyer shall have the right to review and approve the terms of the Releases in Buyer's discretion. The provisions of this Section 1 shall survive the Closing. Sellers and Buyer shall each bear their respective attorneys' fees incurred in connection with the Releases.

2. **NO MODIFICATION.** This Amendment is subject in all respects to the provisions of the Purchase Agreement and is not meant to alter, enlarge, or otherwise modify the provisions of the Purchase Agreement except as expressly set forth herein. In the event of any conflict between the terms of the Purchase Agreement and this Amendment, the terms of this Amendment shall prevail and control in the



interpretation, operation and effect thereof. Except as expressly modified in this Amendment, the Purchase Agreement shall remain in full force and effect and is expressly ratified and confirmed by the parties hereto.

3. **COUNTERPARTS.** This Amendment may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement. Facsimiles of the executed copies of this Amendment may be delivered to the parties by facsimile transmission or email and, upon receipt, shall be deemed delivery of an original and binding upon the parties hereto.

4. **DEFINED TERMS.** All capitalized terms used but not defined in this Amendment shall have the same meaning as that ascribed to them in the Purchase Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties have entered into this Amendment as of the date first written above.

BUYER:

AXIS INVESTMENTS, LLC

By: [Signature]

Name: Sanjit Puncher

Title: member

SELLER:

MACDONALD OIL, INC.

By: [Signature]

Name: JEFF MAC DONALD

Title: PRESIDENT

MACDONALD PROPERTIES, LLC

By: [Signature]

Name: JEFF MAC DONALD

Title: MANAGER

P.K.M. CORPORATION

By: [Signature]

Name: JEFF MAC DONALD

Title: PRESIDENT

THE CHARLES D. MAC DONALD LIVING TRUST

By: [Signature]

Name: CHARLES D. MAC DONALD

Title: TRUSTEE

THE PATRICIA K. MACDONALD LIVING TRUST

By: Patricia K. Mac Donald

Name: Patricia K. Mac Donald

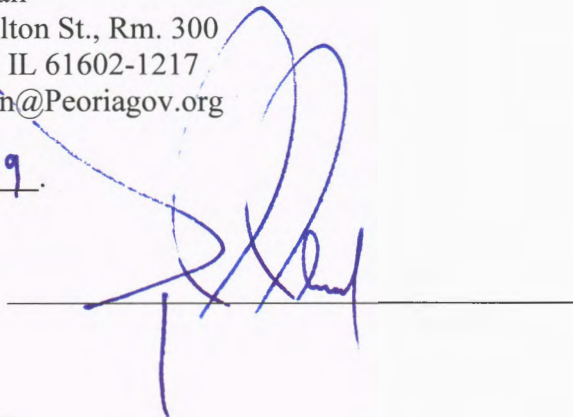
Title: Trustee

PROOF OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil procedure, the undersigned certifies that he transmitted a true and correct copy of the foregoing Petition together with supporting documents to the City of Peoria Community Development Department, by electronic mail and by certified mail, return receipt requested, with first class postage prepaid, in sealed envelope, addressed as to:

Leah Allison, Senior Planner
Community Development Dept.
City Hall
419 Fulton St., Rm. 300
Peoria, IL 61602-1217
Lallison@Peoriagov.org

on JUNE 20, 2019.



Danny L. Schroeder
Hasselberg, Rock, Bell & Kuppler LLP
4600 N. Brandywine Dr., Suite 200
Peoria, IL 61614
Tel. (309)688-9400
Fax.(309)688-9430