



7466 Shadeland Station Way • Indianapolis, IN 46256-3925
Phone (317) 570-6730 • Fax (317) 570-6731 • staff@troyrisk.com

Environmental Consulting • Geoprobe Laboratory

October 25, 2010

Ms. Rosy Hansel
Leaking Underground Storage Tank Section
Office of Land Quality
Indiana Department of Environmental Management
100 North Senate Ave., Room 1101
Indianapolis, Indiana 46204-2251

CERTIFIED MAIL
RETURN RECEIPT
REQUESTED
7008 1830 0004 2415 4045

Re: Recorded Environmental Restrictive Covenant
5430 East Washington Street, Indianapolis, Indiana
FID No.: 20184
Incident: 199010096 and 199010560

Dear Ms. Hansel,

On behalf of ROL, LLC, Troy Risk, Inc. is please to provide the Indiana Department of Environmental Management with this Environmental Restrictive Covenant (ERC) for the property at 5430 East Washington Street in Indianapolis, Indiana. The ERC was recorded at the Marion County Recorder's Office on October 18, 2010 and ROL, LLC signed the Affidavit for Recording of an ERC on October 25, 2010. With the receipt of this recorded ERC, Troy Risk respectfully requests a NFA status for Incident Numbers 199010096 and 199010560.

If you have any questions regarding this report please contact us at (317) 570-6730.

Sincerely,

TROY RISK, INC.

Jason Shriner, CHMM, CPSS
Project Manager

Paul Troy, LPG
Principal Geologist

cc: Ms. Suzanne Storer – ROL, LLC

Attachments: Recorded Environmental Restrictive Covenant
Affidavit for Recording of an ERC

**AFFIDAVIT FOR RECORDING OF
AN ENVIRONMENTAL RESTRICTIVE COVENTANT**

I, the undersigned, being of the age and majority and duly sworn upon my oath, have personal knowledge of the facts stated herein:

- The enclosed copy of the Environmental Restrictive Covenant ("ERC") and its Attachments were recorded in the Marion County Recorder's Book and were cross-referenced to parcel identification number 49-10-03-131-022.000-701, which is the property subject to the land use requirements contained in the ERC; and
- The enclosed copy represents the Environmental Restrictive Covenant and its Attachments in their entirety as agreed to by the Indiana Department of Environmental Management and the property owner.

ERC County Recorder's Book and Page or Instrument Number: 2010102824

Number of Pages Recorded: 9

I swear or affirm under the penalties for perjury that the foregoing representations are true and accurate to the best of my knowledge and belief.

Suzanne Storer
Signature of Property Owner
Suzanne Storer
Agent for ROL, LLC

Date 10/25/10

STATE OF Indiana)
COUNTY OF Hamilton) SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Suzanne Storer, who acknowledged the execution of the foregoing instrument for and on behalf of the Owner.

Witness my hand and Notarial Seal this 25 day of October, 2010.

(Bettina P. Prigman)
Notary Public

Residing in Hamilton County, Indiana

My Commission Expires: 11-29-12



October 18, 2010 2:18 PM

Julie L. Voorhies

Marion County Recorder

Pages: 9

Fee: \$46.50

By: BBB

(9) *hsh*

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 14 day of October, 2010, by ROL LLC, 6350 Rucker Road, Suite 101, Indianapolis, Indiana (together with its successors and assignees, collectively "Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Marion, Indiana, which is located at 5430 East Washington Street, Indianapolis, Indiana and more particularly described in the attached Exhibit "A" ("Real Estate"), which is hereby incorporated and made a part hereof. This Real Estate was acquired by deed on JANUARY 1, 2003, and recorded on JANUARY 3, 2003, as Deed Record 2003-1276, in the Office of the Recorder of MARION County, Indiana. The Real Estate consists of approximately 1.38 acres and has also been identified by the county as parcel identification number 49-10-03-131-022.000-701. The Real Estate, to which the restrictions in this Covenant apply, is depicted on a map attached hereto as Exhibit B.

WHEREAS: Corrective action was implemented in accordance with IC 13-23 and other applicable Indiana law as a result of a release of petroleum relating to the Former Body Shop. The incident numbers assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release are LUST # 199010096 and 199010560, and the relevant facility identification number is 20184.

WHEREAS: Certain contaminants of concern ("COCs") remain in groundwater and soil of the Real Estate following completion of corrective action. The Department has determined that the COCs will not pose an unacceptable risk to human health at the remaining concentrations, provided that the land use restrictions contained herein are implemented to protect human health and the environment. These COCs, which are greater than the residential land use criteria (benzene in soil and groundwater, and total petroleum hydrocarbons in the gasoline range of organics in soil) are located north of the center of the Real Estate. The highest concentration of benzene in soil was from soil boring TRI-1, which contained 576 micrograms per kilogram. The highest concentration of TPH-GRO in soil was from soil boring TRI-4, which contained 732 milligrams per kilogram. The highest concentration of benzene in groundwater was collected from monitoring well MW-6. A map depicting the location of soil borings and monitoring wells is attached as Exhibit B. Concentrations of COCs in soil and groundwater are attached as Table 1.

WHEREAS: Environmental investigation reports and other related documents are hereby incorporated by reference and may be examined at the offices of the Department, which is located in the Indiana Government Center North building at 100 N. Senate Avenue, Indianapolis, Indiana. The documents may also be viewed electronically in the Department's Virtual File Cabinet by accessing the Department's Web Site (currently www.in.gov/idem/).

NOW THEREFORE, ROL LLC subjects the Real Estate to the following restrictions and provisions, which shall be binding on the current Owner and all future Owners:

I. RESTRICTIONS

1. Restrictions. The Owner shall:

- (a) Not use or allow the use of the Real Estate for residential purposes, including, but not limited to, daily child care facilities or educational facilities for children (e.g., daycare centers or K-12 schools).
- (b) Not engage in nor allow the installation of extraction wells for groundwater use at the Real Estate. There shall be no consumptive, extractive or other use of the groundwater underlying the Real Estate for any purpose, including, but not limited to: human or animal consumption, gardening, industrial processes, or agriculture, except that groundwater may be extracted in conjunction with environmental investigation and/or remediation activities.
- (c) Not use the Real Estate for any agricultural use.
- (d) Shall maintain the integrity of the existing asphalt pavement, which is depicted on Exhibit B; this asphalt area serves as an engineered barrier to prevent direct contact with the underlying soils and must not be excavated, removed, disturbed, demolished, or allowed to fall into disrepair.
- (e) Notify the Department if there is a change in the land use and/or any zoning changes that affect the Real Estate.

II. GENERAL PROVISIONS

2. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon, and inure to the benefit of the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees and their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control (hereinafter "Related Parties") and shall continue as a servitude running in perpetuity with the Real Estate. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in or right to occupancy in all or any part of the Real Estate by any person shall affect the restrictions set forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof.
3. Binding upon Future Owners. By taking title to an interest in or occupancy of the Real Estate, any subsequent Owner or Related Party agrees to comply with all of the restrictions set forth in paragraph 1 above and with all other terms of this Covenant.

4. Access for Department. The Owner shall grant to the Department and its designated representatives the right to enter upon the Real Estate at reasonable times for the purpose of determining whether the land use restrictions described in paragraph 1 are being maintained in a manner ensuring its protectiveness; this right includes the right to take samples and inspect records
5. Written Notice of the Presence of Petroleum Contamination. Owner agrees to include in any instrument conveying any interest in any portion of the Real Estate, including but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances), the following notice provision:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED OCTOBER 14 2010, RECORDED IN THE OFFICE OF THE RECORDER OF MARION COUNTY ON OCTOBER 18, 2010, INSTRUMENT NUMBER (or other identifying reference) 2010102824 IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

5. Conveyance of Property. Owner shall prevent any conveyance of title, easement, or other interest in the Real Estate from being consummate without adequate and complete provision for compliance with the corrective action plan and prevention of exposure to the contaminants of concern described above.
6. Indiana Law. This Covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Indiana.

III. ENFORCEMENT

7. Enforcement. Pursuant to IC 13-14-2-6 and other applicable law, the Department may proceed in court, by appropriate action to enforce this Covenant. Owner agrees that the provisions of this Covenant are enforceable and agrees not to challenge the provisions or the appropriate court's jurisdiction.

IV. TERM, MODIFICATION AND TERMINATION

8. Term. The restrictions shall apply until the Department determines that the contaminants of concern no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment.
9. Modification and Termination. This Covenant shall not be amended, modified, or terminated except by written instrument executed between the Department and the Owner of the Real Estate within thirty (30) days of executing an amendment, modification, or termination of the Covenant. Record of such amendment, modification, or termination shall be recorded with the Office of the Recorder of Marion County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department.

V. MISCELLANEOUS

10. Waiver. No failure on the part of the Department at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's right to enforce such term, and no waiver on the part of the Department of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.
11. Conflict of and Compliance with Laws. If any provision of this Covenant is also the subject of any law or regulation established by any federal, state, or local government, the strictest standard or requirement shall apply. Compliance with this Covenant does not relieve the Owner of its obligation to comply with any other applicable laws.
12. Change in Law, Policy or Regulation. In the event of any change in applicable law or regulations, this Covenant shall be interpreted so as to ensure the continuing validity and enforceability of the restrictions listed in paragraph 1, above. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, RISC guidelines, or remediation policies for environmental restrictive covenants or institutional or engineering controls change as to form or content. All statutory references include any successor provisions.
13. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other pursuant to this Covenant shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner:

ROL LLC
6350 Rucker Road, Suite 101
Indianapolis, IN 46220

To Department:

IDEM, Office of Land Quality
100 N. Senate Avenue
IGCN 1101
Indianapolis, IN 46204-2251
Attn: Section Chief, Leaking Underground Storage Tank Program

An party may change its address or the individual to whose attention a notice is to be sent by giving written notice via certified mail.

14. Severability. If any portion of this Covenant or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions or terms of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

15. Liability. An Owner's rights and obligations under this instrument terminate upon transfer of the Owner's interest in the Real Estate, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
16. Authority to Execute and Record. The undersigned person executing this Covenant represents that he or she is the current Owner of the Real Estate or is the authorized representative of the Owner, and further represents and certifies that he or she is duly authorized and fully empowered to execute and record, or have recorded, this Covenant.

Owner hereby attests to the accuracy of the statements in this document and all attachments.

IN WITNESS WHEREOF, ROL LLC, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 14 day of October, 2010.

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

Suzanne Storer
 Agent for ROL LLC
 SUZANNE STORER

STATE OF Indiana)
 COUNTY OF Hamilton) SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Suzanne Storer, the Agent of the Owner, ROL, LLC, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 14th day of October, 2010.

Bettina Perryman
 BETTINA PERRYMAN, Notary Public
 Residing in Hamilton County, IN

My Commission Expires: 11-29-12

This instrument prepared by:
 * Jason E. Shriner, Troy Risk, Inc. 7466 Shadeland Station Way, Indianapolis, IN 46236

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

CONSOLIDATED LEGAL DESCRIPTION

Lots numbered 1, 2, 3, 4, 17, and 18, and adjacent vacated alleyways in McLeod, Graham, and Bittler's Subdivision of Lots 9, 10, and 11 in Ritter's Addition to the Town of Irvington, now in the City of Indianapolis, as per plat thereof recorded in Plat Book 10, page 117, in the Office of the Recorder of Marion County, Indiana, more particularly described as follows:

BEGINNING at the Southwest corner of Lot 4 in said McLeod, Graham, and Bittler's Subdivision, said point being the intersection of the north line of Washington Street and the East line of Whittier Place; thence North 00 degrees 29 minutes 36 seconds East (basis of bearings) on and along the East line of said Whittier Place 313.98 feet to the Northwest corner of Lot 18 in said McLeod, Graham, and Bittler's Subdivision; thence South 89 degrees 23 minutes 34 seconds East on and along the North line of said Lot 18 a distance of 183.41 feet to the Northeast corner thereof; thence South 00 degrees 31 minutes 00 seconds West on and along the East lines of Lots 18 and 17 in said McLeod, Graham, and Bittler's Subdivision 75.62 feet; thence South 89 degrees 29 minutes 00 seconds East 15.00 feet to a point on the East line of said McLeod, Graham, and Bittler's Subdivision; thence South 00 degrees 31 minutes 00 seconds West on and along the East line of said McLeod, Graham, and Bittler's Subdivision 226.60 feet to a point on the North line of Washington Street; thence South 87 degrees 12 minutes 22 seconds West on and along the North line of said Washington Street 198.61 feet to the **POINT OF BEGINNING**, containing 1.38 acres, more or less.

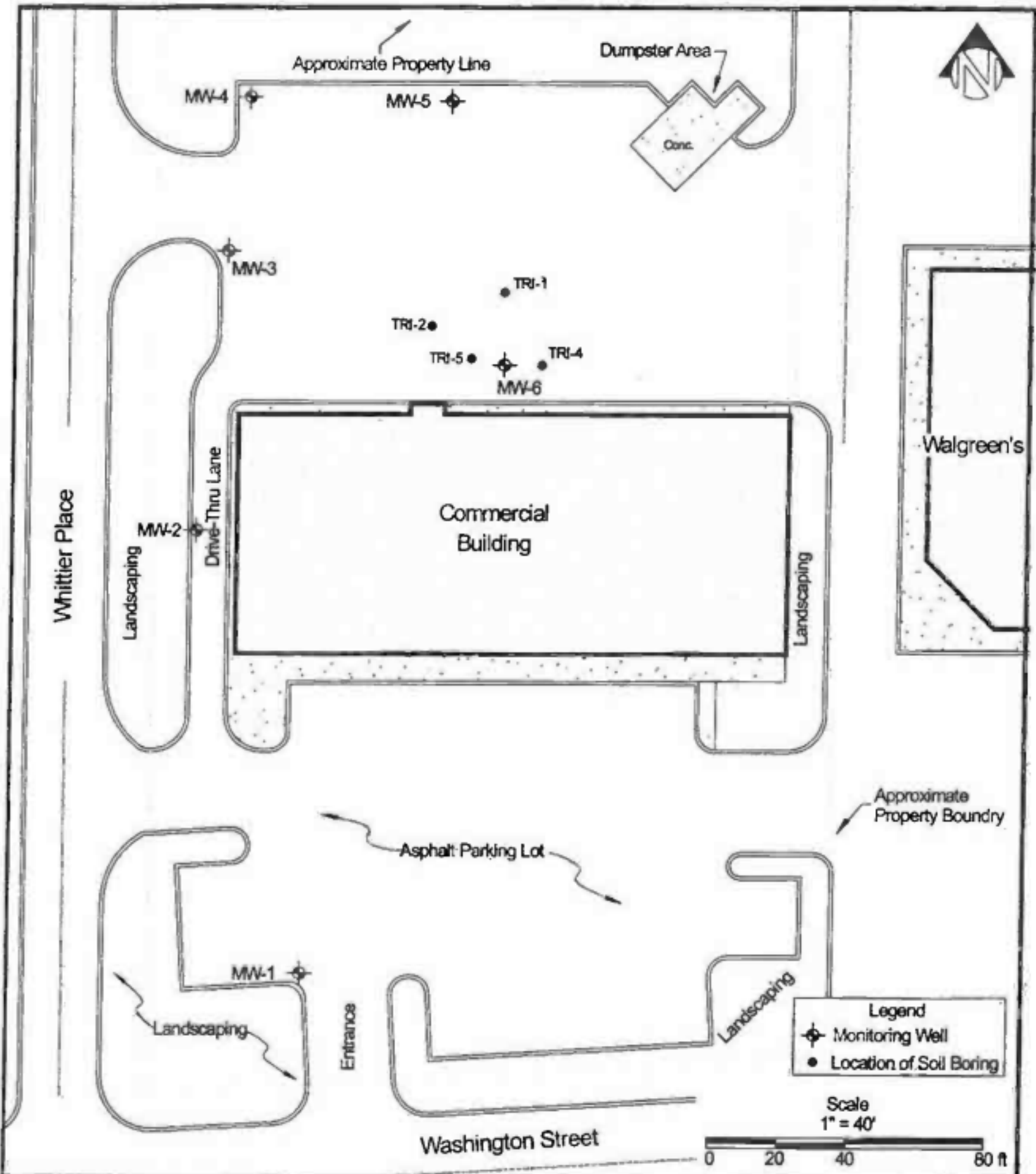


Exhibit B
Affected Area

Former Body Shop
 5430 East Washington Street
 Indianapolis, Indiana

Project Number:	24.13.06
Drawing File:	Affected Area
Date:	September 28, 2010
Scale:	1" = 40'
Drawn By:	JS
Checked by:	PT

TRACY RISK INC.

Exhibit **B**

Table 1. Soil and Groundwater Analytical Results
 5430 East Washington Street
 Indianapolis, Indiana
 LUST Incident Numbers 199010096 and 199010560

Soil Analytical Data
 Benzene results reported in micrograms per kilogram ($\mu\text{g}/\text{kg}$), TPH results reported in milligrams per kilogram (mg/kg)

Sample ID	Date	Depth (Ft.)	Benzene	TPH-GRO
TRI-1	2/17/2006	6-8	576	<1
TRI-2	2/21/2006	7.5-9.5	71.1	<1
TRI-4	2/21/2006	6-8	<5	732
IDEM 2009 RISC RDCL			34	120
IDEM 2009 RISC IDCL			350	1,500

TPH-GRO = total petroleum hydrocarbons in the gasoline range of organics
 BOLD = Exceeds RISC Residential Default Closure Level
 RDCL = Residential Default Closure Level
 IDCL = Industrial Default Closure Level

Groundwater Analytical Data
 Results reported in micrograms per Liter ($\mu\text{g}/\text{L}$)

Sample ID	Date	Benzene
TRI-1W	2/17/2006	10.9
TRI-4W	2/21/2006	7.84
TRI-5W	2/21/2006	159
MW-8	1/26/2009	221
IDEM 2009 RISC RDCL		5
IDEM 2009 RISC IDCL		52

BOLD = Exceeds RISC Residential Default Closure Level
 RDCL = Residential Default Closure Level
 IDCL = Industrial Default Closure Level