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RECORDER
VANDERBURGH COUNTY
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2011R00020802
09/16/2011 08:40AM
RECORDING FEES: \$26.00
PAGES: 8

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 1st day of ~~September~~ 2011, by *Marathon Petroleum Company LP, 539 S. Main Street, Findlay, Ohio 45840* (together with its successors and assignees, collectively "Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Vanderburgh, Indiana, which is located at 3101 Mount Vernon Avenue, Evansville, 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 dated December 18, 1997, and recorded on March 20, 1998, as Deed Record 98-08751, in the Office of the Recorder of Vanderburgh County, Indiana. The Real Estate consists of approximately 1.34 acres and has also been identified by the county as parcel identification number[s] 82-05-23-019-028.002-025.

WHEREAS: Corrective action was implemented in accordance with IC 13-23 and other applicable Indiana law as a result of a release of petroleum or regulated substances relating to the former Marathon filling station, located at 3101 Mount Vernon Avenue, Evansville, Vanderburgh County. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is 2009-10-111, and the relevant facility identification number is F.I.D. #660.

WHEREAS: Certain contaminants of concern ("COCs") remain in the soil and groundwater 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 are Total Petroleum Hydrocarbons (TPH) Gasoline Range Organics (GRO), 2-Methylnaphthalene, and Naphthalene in soil and Benzene and Naphthalene in groundwater.

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, Owner 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:

- (a) Shall 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) Shall not use or allow the use or extraction of groundwater at 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) Shall restore soil disturbed as a result of excavation and construction activities in such a manner that the remaining contaminant concentrations do not present a threat to human health or the environment. This determination shall be made using the Department's Risk Integrated System of Closure ("RISC") Technical Guidance Document. Upon the Department's request, the Owner shall provide the Department written evidence (including sampling data) showing the excavated and restored area, and any other area affected by the excavation, does not represent such a threat. Contaminated soils that are excavated must be managed in accordance with all applicable federal and state laws; and disposal of such soils must also be done in accordance with all applicable federal and state laws.

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 monitoring compliance with this Covenant and ensuring its protectiveness; this right

includes the right to take samples and inspect records

5. Written Notice of the Presence of 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 (with blanks to be filled in):

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED _____ 2011, RECORDED IN THE OFFICE OF THE RECORDER OF VANDERBURGH COUNTY ON _____, 2011, INSTRUMENT NUMBER (or other identifying reference) _____ IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

6. Notice to Department of the Conveyance of Property. Owner agrees to provide notice to the Department of any conveyance (voluntary or involuntary) of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide the Department with the notice within thirty (30) days of the conveyance and: (a) include a certified copy of the instrument conveying any interest in any portion of the Real Estate, and (b) if it has been recorded, its recording reference, and (c) the name and business address of the transferee.
7. 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

8. 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. Damages alone are insufficient to compensate IDEM if any owner of the Real Estate or its Related Parties breach this Covenant or otherwise default hereunder. As a result, if any owner of the Real Estate, or any owner's Related Parties, breach this Covenant or otherwise default hereunder, IDEM shall have the right to request specific performance and/or immediate injunctive relief to enforce this Covenant in addition to any other remedies it may have at law or at equity. 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

9. 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.

10. Modification and Termination. This Covenant shall not be amended, modified, or terminated without the Department's prior written approval. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant, Owner shall record such amendment, modification, or termination with the Office of the Recorder of Vanderburgh County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department.

V. MISCELLANEOUS

11. 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.
12. 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.
13. Change in Law, Policy or Regulation. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, RISC guidelines, or remediation policies (including those concerning environmental restrictive covenants, or institutional or engineering controls) change as to form or content. All statutory references include any successor provisions.
14. 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:
Marathon Petroleum Company LP
539 S. Main Street
Findlay, Ohio 45840

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

15. 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.
16. Authority to Execute and Record. The undersigned person executing this Covenant represents that he or she is the current fee 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, Marathon Petroleum Company LP, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 1st day of September, 2011.

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.

Owner:

Marathon Petroleum Company LP

By: MPC Investment LLC, its General Partner

By:

Jeffrey W. Cleemput
Name: Jeffrey W. Cleemput

Title: Environmental Safety & Security Manager



STATE OF OHIO)

) SS:

COUNTY OF HANCOCK)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Jeffrey W. Cleemput, the Environmental Safety & Security Manager of the Owner, Marathon Petroleum Company LP, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 1 day of September, 2011.

Paula R. Shaw

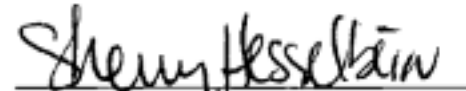
_____, Notary Public

Residing in Allen County, OH

My Commission Expires: 1-5-2016

This instrument prepared by:
Sherry Hesselbein, Esq.
539 South Main Street
Findlay, Ohio 45840

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:



Sherry Hesselbein

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

3101 Mount Vernon Avenue
Evansville, Indiana

That part of the Northeast Quarter of the Southwest Quarter of Section Twenty-three (23), Township Six (6) South, Range Eleven (11) West in the City of Evansville, Vanderburgh County, Indiana, commonly known as 3101 Mount Vernon Avenue and more particularly described as:

Beginning at a pointing the center of Upper Mount Vernon Road which is located by commencing at the Northwest Corner of said Quarter Quarter Section and measuring South $2^{\circ} 54'$ West along the West line thereof for 652.32 feet to a point in the center of said road; thence South $78^{\circ} 53' 30''$ East along the center of said road for 111.81 feet to the place of beginning of subject real estate; from said place of beginning thence North $12^{\circ} 28' 30''$ East for 233.97 feet; thence South $78^{\circ} 29'$ East for 250.00 feet to the westerly right-of-way line of Harmony Way; thence South $12^{\circ} 28' 30''$ West along said right-of-way for 232.19 feet to a point in the center of Upper Mount Vernon Road; thence North $78^{\circ} 53' 30''$ West along the said centerline for 250.00 feet to the place of beginning.

Forty (40) feet is reserved off the South side of the above described real estate for right-of-way for Upper Mount Vernon Road.

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

I, the undersigned, being of the age of 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 Vanderburgh County Recorder's # 2011 R 000 20802 8 Book and were cross-referenced to Deed Record Number 98-08751, which is the recorded deed that concerns the property subject to the land use requirements contained in the ERC; and
- the enclosed copy represents the ERC 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: # 2011 R 000 20802

Number of Pages Recorded: 8

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.

Martin E. Clifford
Signature

9/16/11
Date

Martin E Clifford
Print or type name

Environmental Consultant
Position/Relationship to Owner

STATE OF INDIANA)
COUNTY OF Vanderburgh) SS:

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

Witness my hand and Notarial Seal this 16th day of September, 2011.

DENA D GOAD
Dena D Goad, Notary Public
Residing in Vanderburgh County, IN

My Commission Expires:



DENA D. GOAD
Notary Public, State of Indiana
Residing in Vanderburgh County
My Commission Expires April 4, 2015