



August 9, 2013

Clifton W. Rice
Indiana Department of Environmental Management
Office of Land Quality
MC 67-18 IGCN 1101
100 N. Senate Avenue
Indianapolis, Indiana 46204-2251

Re: No Further Action Request and
Environmental Restrictive Covenant
Circle K #52
1038 West Knable Road
Georgetown, Indiana
Facility ID Number: 15927
IDEM Incident Number: 201110504
American Environmental Project Number: 314028

Dear Mr. Rice:

On behalf of Mac's Convenience Stores LLC, American Environmental Corporation is submitting the executed and recorded Environmental Restrictive Covenant (ERC) for the site referenced above. A Record of Site Closure has been submitted under separate cover.

On behalf of Mac's Convenience Stores LLC, American Environmental Corporation respectfully requests No Further Action (NFA) status for this site.

If you have any questions or need further information, please contact us at (502) 491-0144. Thank you for your assistance.

Sincerely,
American Environmental Corporation

A handwritten signature in black ink that reads "Michael A. Hightchew".

Michael A. Hightchew, EIT
Senior Project Engineer

A handwritten signature in black ink that reads "Timothy J. Quinn".

Timothy J. Quinn, LPG
Regional Manager—Louisville

Attachments



* 20131367510 *

FLOYD CO. IN RECORDER - LOIS ENDRIS

08/01/2013 03:04:17PM

201313675 Pages:10

Transaction # 36895

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 1st day of August, 2013, by Kooshtard Property VI, LLC (Estate for Years) and Coutar Remainder VI, LLC (Remainder Interest, Reserving Estate for Years Improvements), c/o U.S. Realty Advisors, 1370 Avenue of the Americas, New York, New York 10019.

WHEREAS: Owner is the fee owner of certain real estate in the County of Floyd, Indiana, which is located at 1038 West Knable Road, Georgetown ("Real Estate") and more particularly describe in the attached Exhibit "A" ("Legal Description of Real Estate") which is hereby incorporated and made a part hereof. This Real Estate was acquired by deed on June 22, 2001, and recorded on August 17, 2001, as Document Number 200112784, in the Floyd County Recorder's Office, Indiana. The Real Estate consists of approximately 0.7073 acre and has also been identified by the county as parcel identification number 22-02-03-600-140.000-002.

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 gasoline station. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is 201110504, and the relevant facility identification number is 15927.

WHEREAS: A certain contaminant of concern ("COC") remains in the groundwater and soil of the Real Estate following completion of corrective action. The Department has determined that the COC 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. This COC is naphthalene in soil and 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, Kooshtard Property VI, LLC (Estate for Years) and Coutar Remainder VI, LLC (Remainder Interest, Reserving Estate for Years Improvements) subjects the Real Estate to the following restrictions and provisions, which shall be binding on the current Owner and all future Owners:

1. 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.

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:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED August 1 2013, RECORDED IN THE OFFICE OF THE RECORDER OF FLOYD COUNTY ON August 1, 2013, INSTRUMENT NUMBER (or other identifying reference) 201313675 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 Floyd 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:

Kooshtard Property VI, LLC (Estate for Years) and
Coutar Remainder VI, LLC (Remainder Interest, Reserving Estate for
Years Improvements)
c/o US Realty Advisors, LLC
1370 Avenue of the Americas
New York, New York 10019
Attn: Jamie Grossman, Vice President of U.S. Realty Advisors, LLC

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.

This instrument prepared by:

Timothy J. Quinn
American Environmental Corporation
410 Production Court
Louisville, Kentucky 40299

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:

Timothy J. Quinn
American Environmental Corporation
410 Production Court
Louisville, Kentucky 40299

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

LEGAL DESCRIPTION

COUNTY OF FLOYD, STATE OF INDIANA

A 1.9757 ACRE PART OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 2 SOUTH, RANGE 5 EAST, SITUATED IN GEORGETOWN TOWNSHIP, FLOYD COUNTY, INDIANA AND MORE FULLY DESCRIBED AS FOLLOWS, TO-WIT: COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION NO. 36, TOWNSHIP 2 SOUTH, RANGE 5 EAST, THENCE NORTH 0 DEG. 15' 30" WEST, MEASURED FROM TRUE MERIDIAN, ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER, 797.28 FEET TO A THREE-QUARTER INCH IRON PIPE ON THE NORTHERLY RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 64, THE TRUE PLACE OF BEGINNING OF LAND TO BE HEREIN DESCRIBED; THENCE SOUTHWESTERLY ALONG SAID RIGHT OF WAY LINE ON A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 5 DEG. 55' 48" WEST, A RADIUS OF 1362.40 FEET AND A CHORD WHICH BEARS SOUTH 59 DEG. 28' 03" WEST, 140.94 FEET TO A THREE-QUARTER INCH IRON PIPE, THENCE CONTINUING ALONG SAID RIGHT OF WAY LINE SOUTH 62 DEG. 25' 58" WEST, 160.00 FEET TO A THREE-QUARTER INCH IRON PIPE, THENCE CONTINUING ALONG SAID RIGHT OF WAY ON A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 17 DEG. 10' 57" A RADIUS OF 1502.40 FEET AND A CHORD WHICH BEARS SOUTH 53 DEG. 50' 28" WEST, 448.88 FEET TO A THREE-QUARTER INCH IRON PIPE, THENCE CONTINUING ALONG SAID RIGHT OF WAY THE FOLLOWING THREE COURSES AND DISTANCES, SOUTH 84 DEG. 52' 08" WEST, 119.43 FEET TO A THREE QUARTER INCH IRON PIPE, NORTH 44 DEG. 45' WEST CROSSING A CHAIN LINK FENCE, 125.00 FEET TO A DRILL HOLE IN THE WEST SIDE OF THE CONCRETE BASE OF A CORNER FENCE POST, AND THENCE NORTH 4 DEG. 16' 08" EAST AGAIN CROSSING SAID FENCE, 57.23 FEET TO A DRILL HOLE IN THE EAST SIDE OF THE CONCRETE BASE OF A FENCE POST ON THE SOUTHERLY LINE OF KNABLE LANE, RELOCATED AND HAVING A 100 FOOT RIGHT OF WAY, THENCE NORTHEASTWARDLY ALONG THE SOUTHERLY LINE OF SAID KNABLE LANE ON A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 7 DEG. 22' 42" A RADIUS OF 1096.00 FEET AND A CHORD WHICH BEARS NORTH 70 DEG. 20' 07" EAST, 141.05 FEET TO A THREE-QUARTER INCH IRON PIPE, THENCE CONTINUING ALONG SAID KNABLE LANE RIGHT OF WAY LINE NORTH 74 DEG. 01' 30" EAST, 427.65 FEET TO A THREE-QUARTER INCH IRON PIPE, THENCE CONTINUING ALONG SAID RIGHT OF WAY ON A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 47 DEG. 18', A RADIUS OF 459.30 FEET AND A CHORD WHICH BEARS NORTH 50 DEG. 22' 30" EAST, 368.50 FEET TO A THREE-QUARTER INCH IRON PIPE ON THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION NO. 36, THENCE SOUTH 0 DEG. 15' 30" EAST ALONG THE LINE OF SAID QUARTER SECTION 124.82 FEET TO THE PLACE OF BEGINNING AND CONTAINING 1.957 ACRES OF LAND AS SURVEYED BY CONDRA-BRINKWORTH CONSULTING ENGINEERS IN AUGUST 1966.

EXCEPT: BEING A 1.2684 ACRE PARCEL OF LAND LYING IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 2 SOUTH, RANGE 5 EAST, GEORGETOWN TOWNSHIP, FLOYD COUNTY, INDIANA, SAME BEING PART OF THOSE SAME LANDS CONVEYED TO SHARP OIL CO., INC., AS DESCRIBED IN DEED RECORD 203 PAGE 454 OF THE FLOYD COUNTY RECORDS, BOUNDED AS FOLLOWS: BEGINNING AT A 1 INCH GALVANIZED PIPE FOUND ON THE EAST LINE OF SAID SOUTHWEST QUARTER AND ON THE NORTH RIGHT OF WAY LINE OF INTERSTATE 64, SAID PIPE BEING NORTH 00 DEG. 15' 30" WEST 797.28 FEET FROM THE SOUTHEAST CORNER OF SAID QUARTER; THENCE SOUTHWESTERLY ALONG THE CURVED R/W OF I-64, SAID CURVE HAVING A CENTRAL ANGLE OF 5 DEG. 55' 48", A RADIUS OF 1362.40 FEET, THE LONG CHORD OF WHICH BEARS SOUTH 59 DEG. 28' 03" WEST 140.94 FEET TO A 1 1/2 INCH PIPE FOUND, THENCE SOUTH 62 DEG. 25' 58" WEST WITH SAID R/W 160.00 FEET TO A 1/4 INCH PIPE FOUND, THENCE ALONG A CURVE TO THE LEFT SAID CURVE HAVING A CENTRAL ANGLE OF 16 DEG. 49' 54", A RADIUS OF 1502.40 FEET, THE LONG CHORD OF WHICH BEARS SOUTH 54 DEG. 01' 00" WEST, 439.77 FEET TO A 1/2 INCH STEEL PIN SET; THENCE LEAVING SAID R/W NORTH 05 DEG. 53' 40" WEST A DISTANCE OF 193.36 FEET TO A ROAD NAIL; THENCE NORTH 74 DEG. 01' 30" EAST WITH THE R/W OF WEST KNABLE LANE 368.80 FEET TO A 1 INCH PIPE FOUND AT THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE LEFT, SAID CURVE HAVING A CENTRAL ANGLE OF 47 DEG. 18' A RADIUS OF 459.30 FEET; THENCE NORTHEASTERLY AROUND SAID CURVE 379.14 FEET, THE LONG CHORD OF WHICH BEARS NORTH 50 DEG. 22' 30" EAST 368.50 FEET TO A 1 3/4 INCH PIPE FOUND, THENCE SOUTH 0 DEG. 15' 30" EAST 124.82 FEET TO THE BEGINNING. SUBJECT TO ALL EASEMENTS OF RECORD.