

**ATTACHMENT C**

Recorded Environmental Restrictive Covenant

*Not*  
Duly Entered for Taxation  
Subject to Final Acceptance for Transfer

2014R009317  
07/22/2014 11:00:29 AM  
FEE: 34.00 PGS: 11  
LINDA SMITH  
MADISON COUNTY RECORDER, IN  
RECORDED AS PRESENTED

JUL 22 2014

*James E. Lyons*  
AUDITOR, MADISON COUNTY

### Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 22<sup>nd</sup> day of July, 2014, by Speedway, LLC, 500 Speedway Drive, Enon, Ohio 45323 (together with his/her/its/their successors and assignees, collectively "Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Madison, Indiana, which is located at 1535 Ohio Avenue, Anderson, Indiana, 46016 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 May 20, 2012 and recorded on June 19, 2012, as Deed Record 2012R009324, in the Office of the Recorder of Madison County, Indiana. The Real Estate consists of approximately 0.53 acres and has also been identified by the county as parcel identification number 48-12-18-203-156.000-003. The Real Estate, to which this Covenant applies, 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 Speedway Store Number 8089. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is 200603508, and the relevant facility identification number is 2506.

WHEREAS: Certain contaminants of concern ("COCs") remain in the 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. The remaining COCs are listed in **Table 1**, which is attached hereto and incorporated herein.

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/](http://www.in.gov/idem/)).

NOW THEREFORE, Speedway 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:

- 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) Any removal, excavation or disturbance of soil from the Real Estate must be conducted in accordance with all applicable requirements of IOSHA/OSHA, and soil that is removed, excavated or disturbed from the Real Estate must be managed and disposed of in accordance with all applicable federal and state laws and regulations.

## 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 \_\_\_\_\_ 2014, RECORDED IN THE OFFICE OF THE RECORDER OF MADISON COUNTY ON \_\_\_\_\_, 2014, 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, the Department may proceed in court by appropriate action to enforce this Covenant. Owner agrees that the restrictions are enforceable and agrees not to challenge 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 Madison 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:  
Speedway LLC  
500 Speedway Drive  
Enon, Ohio 45323  
Attn: Corporate Manager, Environmental

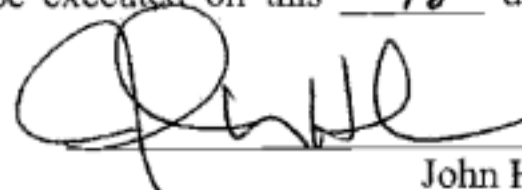
To Department:  
IDEM, Office of Land Quality  
100 N. Senate Ave.  
IGCN 1101  
Indianapolis, IN 46204-2251  
Attn: Section Chief, Leaking Underground Storage Tank Program

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. 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.
17. Authority to Execute and Record. The undersigned persons 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, **Speedway LLC**, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 18 day of July, 2014.

  
John Helms  
Corporate Manger, Environmental  
Speedway LLC

  
7/16/14

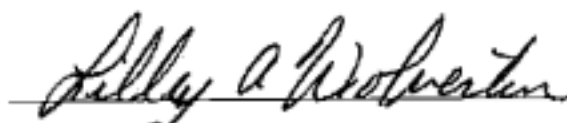
STATE OF INDIANA        )  
  ) SS:  
COUNTY OF MADISON    )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared John Helms, the Corporate Manager, Environmental of the Owner, Speedway LLC, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 18 day of July, 2014.



Lilly A Woolverton  
Notary Public, State of Ohio  
My Commission Expires 12-12-2016

  
Lilly A. Woolverton, Notary Public  
Residing in Clark County, Ohio

This instrument prepared by:

Jason L. Blackburn, Environmental Representative  
Speedway LLC  
500 Speedway Drive  
Enon, OH 45323

**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:**

Jason L. Blackburn  
500 Speedway Drive  
Enon, Ohio 45323

**EXHIBIT A**

**LEGAL DESCRIPTION OF REAL ESTATE**

25

Duly Entered for Taxation  
Subject to Final Acceptance for Transfer

JUN 14 2012

*Kathy Hoops-Whitt*  
AUDITOR, MADISON COUNTY

2012R009324  
06/19/2012 11:31:26 AM  
FEE: 20.00 PGS: 3  
ANGELA SHELTON  
MADISON COUNTY RECORDER, IN  
RECORDED AS PRESENTED

SPECIAL WARRANTY DEED

**THIS INDENTURE WITNESSETH**, That effective May 20, 2012, GasAmerica Services, Inc., an Indiana corporation ("Grantor"), *Conveys and Specially Warrants* to Speedway LLC, a Delaware limited liability company, ("Grantee"), for the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following described real estate in Madison County, State of Indiana:

**SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN**

Property Address: 1535 Ohio Avenue, Anderson, Indiana ✓

It is understood and agreed by the parties hereto that the title to the Real Estate herein conveyed is warranted only insofar as it might be affected by any act of the Grantor during its ownership thereof and not otherwise.

*Subject* to current taxes not delinquent, and all easements, agreements and restrictions of record and all public rights of way.

The undersigned person(s) executing this deed on behalf of Grantor represent and certify that he/she/they is/are duly elected officer(s) of Grantor and has/have been fully empowered, by proper resolution of the Board of Directors of Grantor, to execute and deliver this deed; that Grantor has full capacity to convey the real estate described herein; and that all necessary corporate action for the making of such conveyance has been taken and done.

**IN WITNESS WHEREOF**, Grantor has executed this deed this 8th day of May, 2012. ✓

GRANTOR

GasAmerica Services, Inc.

By: *Dennis Spegal V.P.*  
Dennis Spegal, Vice President

481218203156000003  
481218203157000003  
481218203158000003  
481218203167000003  
481218203168000003

JUN 19 AM 11:31

GA # 218  
Speedway 2009



WHEN RECORDED RETURN TO:  
LAWYERS TITLE COMMERCIAL SERVICES  
135 N. PENNSYLVANIA STREET  
SUITE 710  
INDIANAPOLIS, IN 46204  
CASE NO. 12-026429

**ACKNOWLEDGMENT**

STATE OF INDIANA            )  
  )SS:  
COUNTY OF MARION        )

Before me, a Notary Public in and for said County and State, personally appeared Dennis Spegal, as Vice President of GasAmerica Services, Inc., an Indiana corporation, who acknowledged the execution of the foregoing Deed for and on behalf of said Grantor, and who, having been duly sworn, stated that the representations therein contained are true.

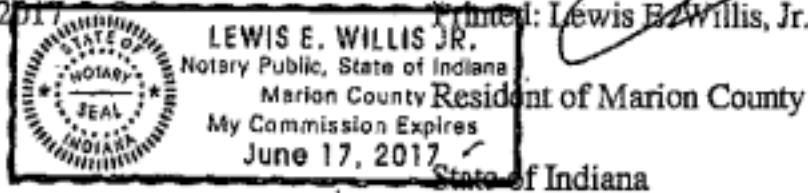
Witness my hand and Notarial Seal this 8th day of May, 2012.

My Commission expires:

Signature \_\_\_\_\_

June 17, 2017

Printed: Lewis E. Willis, Jr.



Send Tax Bills to: Speedway LLC, c/o Property Tax Records, 539 S. Main Street, Findlay, OH 45840

Grantee's Mailing Address: P.O. Box 1500, Springfield, OH 45501

When recorded please return to:  
Melissa A. Hoovler  
Fidelity National Title Insurance Co.  
4111 Executive Pkwy., Suite 304  
Westerville, OH 43081

This instrument prepared by: Brian J. Tuohy, Esq., Doninger Tuohy & Bailey, LLP, 50 South Meridian Street, Suite 700, Indianapolis, Indiana 46204.

I affirm, under penalty of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Brian J. Tuohy, Esq.

**GAS AMERICA NO. 212**

**SPEEDWAY NO. 8089**

*1535 OHIO AVENUE,  
ANDERSON, IN 46016*

**RECORD LAND DESCRIPTIONS:**

**TRACT A**

**GasAmerica Services, Inc. (INST. NO. 2007006074)**

A PART OF LOT 25 IN ORR AND McCLURE'S AVENUE ADDITION TO THE CITY OF ANDERSON, INDIANA AND A PART OF OUTLOT 3 IN ANDREW JACKSON'S ADDITION OF OUTLOTS, ALL IN THE CITY OF ANDERSON, MADISON COUNTY, INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 25 IN ORR AND McCLURE'S AVENUE ADDITION TO THE CITY OF ANDERSON, INDIANA, AND RUNNING THENCE SOUTHEASTERLY ALONG THE SOUTHERLY LINE OF OHIO AVENUE IN SAID CITY OF ANDERSON, A DISTANCE OF 204.5 FEET TO THE EAST LINE OF OUTLOT 3 IN ANDREW JACKSON'S ADDITION OF OUTLOTS, AND RUNNING THENCE SOUTH 109.5 FEET TO THE NORTHEAST CORNER OF LOT 27 IN SAID AVENUE ADDITION, THENCE WESTERLY 99.25 FEET TO THE SOUTHEAST CORNER OF LOT 26 IN SAID AVENUE ADDITION, THENCE NORTHEASTERLY, ALONG THE EASTERLY LINES OF SAID LOTS 26 AND 25, A DISTANCE OF 96.05 FEET, THENCE WESTERLY 84.6 FEET TO A POINT ON THE EAST LINE OF JEFFERSON STREET, SAID POINT BEING 135 FEET SOUTH OF THE POINT OF BEGINNING, THENCE NORTH 135 FEET TO THE POINT OF BEGINNING.

**TRACT B-1**

**GasAmerica Services Inc. (INST. NO. 2007006071)**

BEGINNING AT THE SOUTHWEST CORNER OF LOT NUMBERED 25 IN AVENUE ADDITION TO THE CITY OF ANDERSON, AND RUNNING THENCE NORTH WITH THE EAST LINE OF SAID LOT, 60 FEET; THENCE EAST TO A POINT ON THE EAST LINE OF SAID LOT, 47 1/2 FEET NORTH OF THE SOUTHEAST CORNER OF SAID LOT; THENCE SOUTH WITH THE EAST LINE OF SAID LOT TO THE SOUTHEAST CORNER OF THE SAME; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT TO THE PLACE OF BEGINNING.

**TRACT B-2**

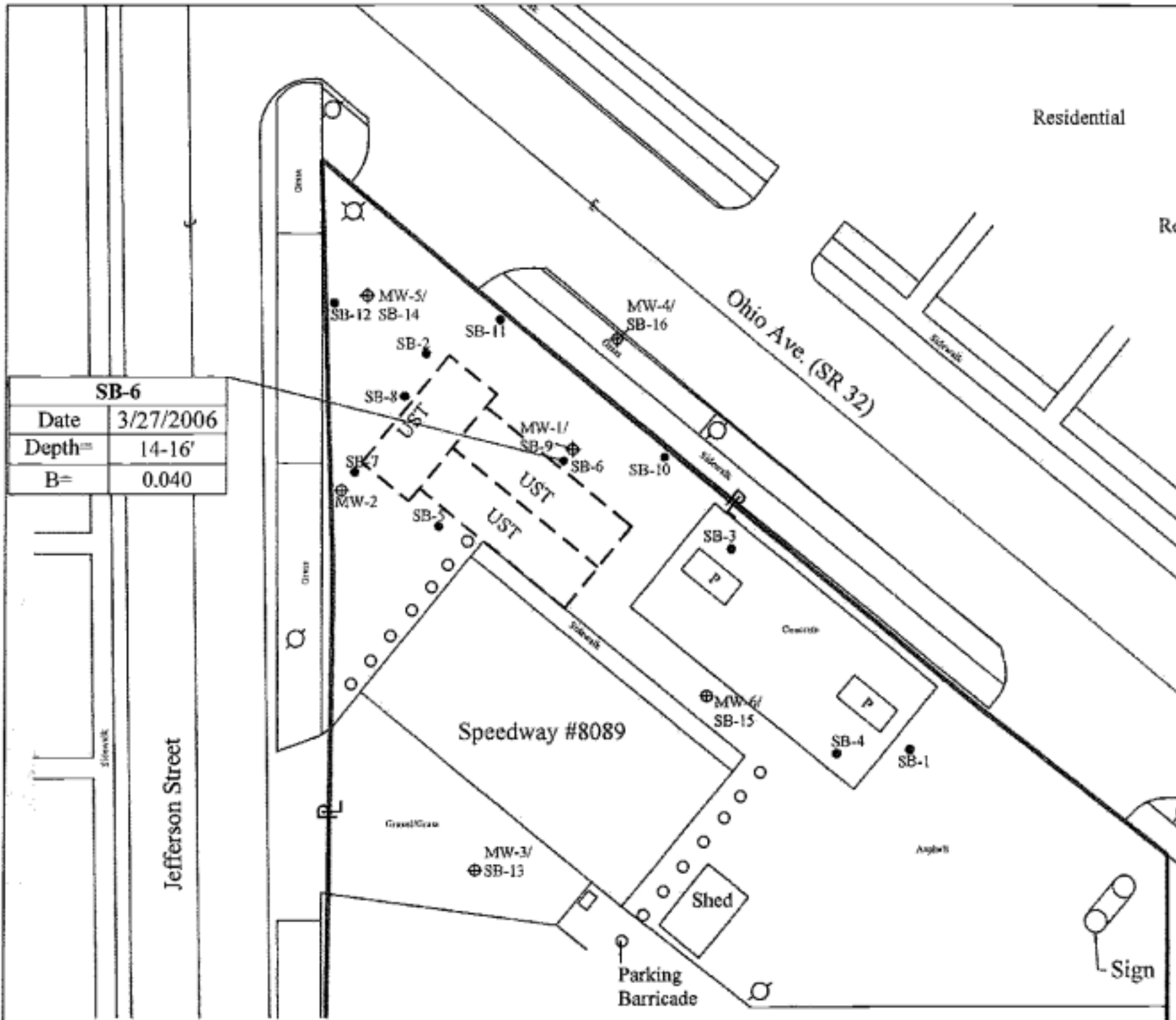
**GasAmerica Services Inc. (INST. NO. 2007006071)**

LOT NUMBERED 26 IN AVENUE ADDITION TO THE CITY OF ANDERSON, MADISON COUNTY, INDIANA, THE PLAT OF WHICH IS RECORDED IN PLAT BOOK 3, PAGE 20, IN THE OFFICE OF THE RECORDER OF MADISON COUNTY, INDIANA

**END OF DOCUMENT**

**EXHIBIT B**

MAP DEPICTING THE LOCATION OF THE  
CHEMICALS OF CONCERN



**Disclaimer:**

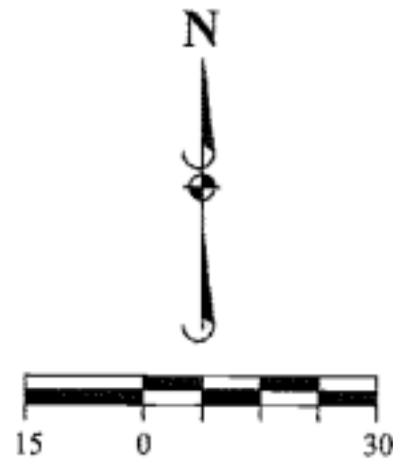
Information on this map is being provided to depict environmental conditions on the Real Estate that are the subject of the land use restrictions contained in the Covenant to which this map is attached and incorporated. The land use restrictions contained in the Covenant were deemed appropriate by the Department based on information provided to the Department by the Owner or another party investigating and/or remediating the environmental conditions on the Real Estate. This map cannot be relied upon as a depiction of all current environmental conditions on the Real Estate, nor can it be relied upon in the future as depicting environmental conditions on the Real Estate.

Soil Analytical Results	
2006 RISC Default Closure Levels	Benzene
Residential	0.034
Industrial	0.35

Results are reported in milligrams per kilogram (mg/kg).

**Symbols and Abbreviations:**

- = Monitoring Well
- = Soil Boring
- = Centerline
- = Property Line
- = Benzene



Drawn By:	CW
Checked By:	ZS
Date Drawn:	8/12/13
Revised:	-



**Soil Analytical Map**

**Speedway #8089**  
1535 Ohio Avenue  
Anderson, Indiana 46016

**Figure 1**

Project # 12889