



ENVIRONMENTAL ENGINEERING

*Taking Pride In What We Do!*

- PO Box 114, Montpelier, IN 47359
- 6801 Lake Plaza Dr, Ste C301, Indianapolis, IN 46220
- 2328 N. US Hwy 35, Unit A, Laporte, IN 46350

October 3, 2014

67-02 bdavis  
Indiana Department of Environmental Management  
Office of Land Quality – ELTF Section  
100 North Senate Avenue, Room 1101  
Indianapolis, Indiana 46204-2251  
Attn: Mr. Loic Maniet

**RE: Recorded ERC and Request for No Further Action Status  
Pak-A-Sak  
204 East Huntington Street  
Montpelier, Indiana  
Incident #199403537  
Facility ID #5246**

Dear Mr. Maniet,

On behalf of Jay Petroleum Incorporated (Jay), Creek Run L.L.C. Environmental Engineering (Creek Run) is pleased to provide the attached certified copy of the Environmental Restrictive Covenant (ERC) recorded on the property deed as approved by the Indiana Department of Environmental Management (IDEM) with the modifications requested in a letter dated September 22, 2014 for the above referenced site. Additionally, a signed and notarized Affidavit for Recording of an Environmental Restrictive Covenant is included as Attachment B.

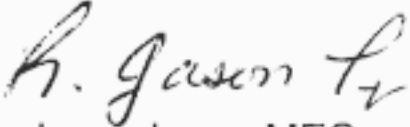
Based on the lack of complete exposure pathways for residual contaminants of concern (COCs) along with the recorded ERC providing institutional controls resulting in prevention of future exposure pathways for residual COCs, Creek Run requests No Further Action status for Incident #199403537.

We trust this submittal meets your needs and expectations. If you have any questions or comments during your review of this document, please feel free to call the undersigned.

Sincerely,

  
Stephanie Bragg, GIT  
Project Manager

  
Dennis Livingston, LPG  
Assistant Director of Technical Services

  
R. Jason Lenz, MES  
Chief Operating Officer



## ATTACHMENT A

### Certified Copy of Recorded Environmental Restrictive Covenant



20141209 MISC \$31.00  
09/30/2014 11:15:30A 11 PGS  
LAURA A COONS  
BLACKFORD County Recorder IN  
Recorded as Presented  
[Barcode]

**Environmental Restrictive Covenant**

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 26 day of September, 2014, by Jay Petroleum, P.O. Box 1285, Portland, Indiana 47371.

WHEREAS: Owner is the fee owner of certain real estate in the County of Blackford, Indiana, which is located at 204 East Huntington Street, Montpelier, 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 July 26, 1972, and recorded on August 7, 1972, as Deed Record Number 59 Page 453, in the Office of the Recorder of Blackford County, Indiana. The Real Estate consists of approximately 0.457 acres and has also been identified by the county as parcel identification number 03-03-303-112.000-06. 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 the Pak-A-Sak. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is 199403537, and the relevant facility identification number is 5246.

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. These COCs are total petroleum hydrocarbons (TPH) gasoline range organics (GRO).

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/)).

STATE OF INDIANA  
BLACKFORD COUNTY  
I, Laura Coons, recorder of Blackford County  
Indiana, do hereby certify that this is a complete  
copy of Misc. recorded on  
2014-12-09  
in Book \_\_\_\_\_, Page \_\_\_\_\_  
this office and witness whereof I hereunto set my  
hand and official seal at Hartford City, IN  
this 30 day of SEP, 2014  
Laura Coons  
Recorder, Blackford County

NOW THEREFORE, Jay Petroleum 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).

### 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 September 26 2014, RECORDED IN THE OFFICE OF THE RECORDER OF BLACKFORD COUNTY**

ON September 30, 2014, INSTRUMENT NUMBER (or other identifying reference) 20141209 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 Blackford 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:

Jay Petroleum, Inc.  
P.O. Box 1285  
Portland, Indiana 47371  
Attn: Mr. Tim Caster

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, Jay Petroleum Inc., the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 26 day of SEPTEMBER, 2017.

**Jay Petroleum Inc.**

By: Kevin Huffman

Its: Kevin Huffman VP-Operations

STATE OF INDIANA )  
 ) SS:  
COUNTY OF JAY )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared KEVIN HUFFMAN, the VICE PRESIDENT of the Owner, JAY PETROLEUM INC., who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 26 day of SEPTEMBER, 2017.

[Signature]

TIMOTHY D. CASTER, Notary Public

Residing in JAY County,

My Commission Expires:



This instrument prepared by:  
Creek Run L.L.C. Environmental Engineering  
P.O. Box 114  
Montpelier, Indiana 47359

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:

Stephanie Bragg, GIT  
Creek Run L.L.C. Environmental Engineering  
P.O. Box 114  
Montpelier, Indiana 47359

**EXHIBIT A**

**LEGAL DESCRIPTION OF REAL ESTATE**

QUITCLAIM DEED

THIS INDENTURE WITNESSETH, That Sun Oil Company of Pennsylvania, a Pennsylvania corporation, successor by merger to Sun Oil Company, a New Jersey corporation,

of Philadelphia County, in the State of Pennsylvania RELEASE AND QUITCLAIM TO Jay Petroleum, Inc., an Indiana corporation

of Jay County, in the State of Indiana for end in consideration of Ten Thousand Five Hundred (\$10,500.00) Dollars the receipt whereof is hereby acknowledged, the following described Real Estate in Blackford County in the State of Indiana, to-wit:

Part of Lots Three, Four, Five and Six in Block Nine of the Original Plat of the Town, now City, of Montpelier, Indiana.

Beginning at an iron pipe at the northwesterly corner of Lot Five; thence South 72° 08' East, 158.50 feet, along the northerly lines of Lots Five, Four and Three, to an iron pipe; thence South 18° 00' West, 80.00 feet to an iron pipe; thence South 71° 52' East, 1.50 feet to an iron pipe; thence South 18° 00' West, 20.00 feet more or less to a point; thence North 72° 08' West, 49.50 feet to a point; thence North 18° 00' East, 20.00 feet to a point; thence North 72° 08' West, 24.00 feet to a point; thence North 18° 00' East, 17.00 feet to a point; thence North 72° 08' West, 86.5 feet to a point in the westerly line of Lot Five; thence North 18° 00' East, 68.00 feet, along the westerly line of Lot Five, to the point and place of beginning.

Together with an eight foot sewer easement reserved by Sun Oil Company in deed dated August 13, 1958 to John W. Long and Eleanor G. Long,

Being part of the same premises conveyed to Sun Oil Company by deed recorded Blackford County, Indiana in Book No. 48, page 328.

Subject to easements, restrictions and conditions of record and easements or restrictions visible upon the ground.

IN WITNESS WHEREOF, the said grantor(s) Sun Oil Company of Pennsylvania has hereunto affixed its name and seal, this 26th day of July 1972

Signatures and seals of Sun Oil Company of Pennsylvania, Assistant Secretary, and Manager, Marketing Real Estate and Development.

Notary Seal STATE OF PENNSYLVANIA Philadelphia County, ss: Corporate Seal

Before me, the undersigned, a Notary Public in and for said County and State, this 26th day of July 1972, personally appeared R. H. Sterling, Manager, Marketing Real Estate and Development and E. E. Roszman, Assistant Secretary of Sun Oil Company of Pennsylvania

and acknowledged the execution of the foregoing deed. Michael Brady Notary Public My Commission expires November 28, 1974.

Auditor Stamp

Recorder Stamp

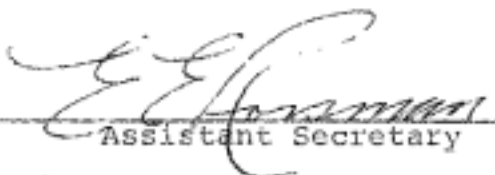
RECEIVED FOR RECORD This...7...day of...Aug... A.D. 1972 at 11:30 o'clock A.M. and recorded in...Deed...Record No. 59...Pages...4, 5, 3... Vardella, Recorder Recorder of Blackford County SUN Oil Company of Pennsylvania, 1608 Walnut Street, Philadelphia, Pa. 19103. \$.....

This Document Prepared by S. Morton Rutherford III, Esq., 1608 Walnut Street, Philadelphia, Pa. 19103. \$.....

Sign in BLACK INK for better Micro copies

I, E. E. Rossman, Assistant Secretary of Sun Oil Company of Pennsylvania, do hereby certify that at a meeting of the Board of Directors of Sun Oil Company of Pennsylvania, held at 1608 Walnut Street, Philadelphia, Pennsylvania, on July 24, 1972 upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED, that Richard H. Sterling, Manager, Marketing Real Estate and Development, is hereby authorized to enter into, execute and deliver in the name of this corporation, contracts for the purchase or sale of real property, deeds, instruments of all kinds relating to the acquisition, transfer or use of real property and to perform all acts necessary or desirable in connection with the execution, filing or recording of such instruments.

  
Assistant Secretary

Philadelphia, Pennsylvania

July 26, 1972

**EXHIBIT B**

**SITE MAP**



**ENVIRONMENTAL ENGINEERING**  
 PO Box 114 Phone: 765-728-8081  
 5181 N 600 E Fax: 765-728-3041  
 Montpelier, IN 47359 www.creekrun.com

**Standard Legend**

Water Line	Electric Line
Gas Line	Phone Line
Sewer Line	Storm Sewer Line
Fiber Optic Line	Overhead Line
Monitoring Well	Soil Boring

**Legend**

Wood Fence	Wire Fence
Utility Poles	

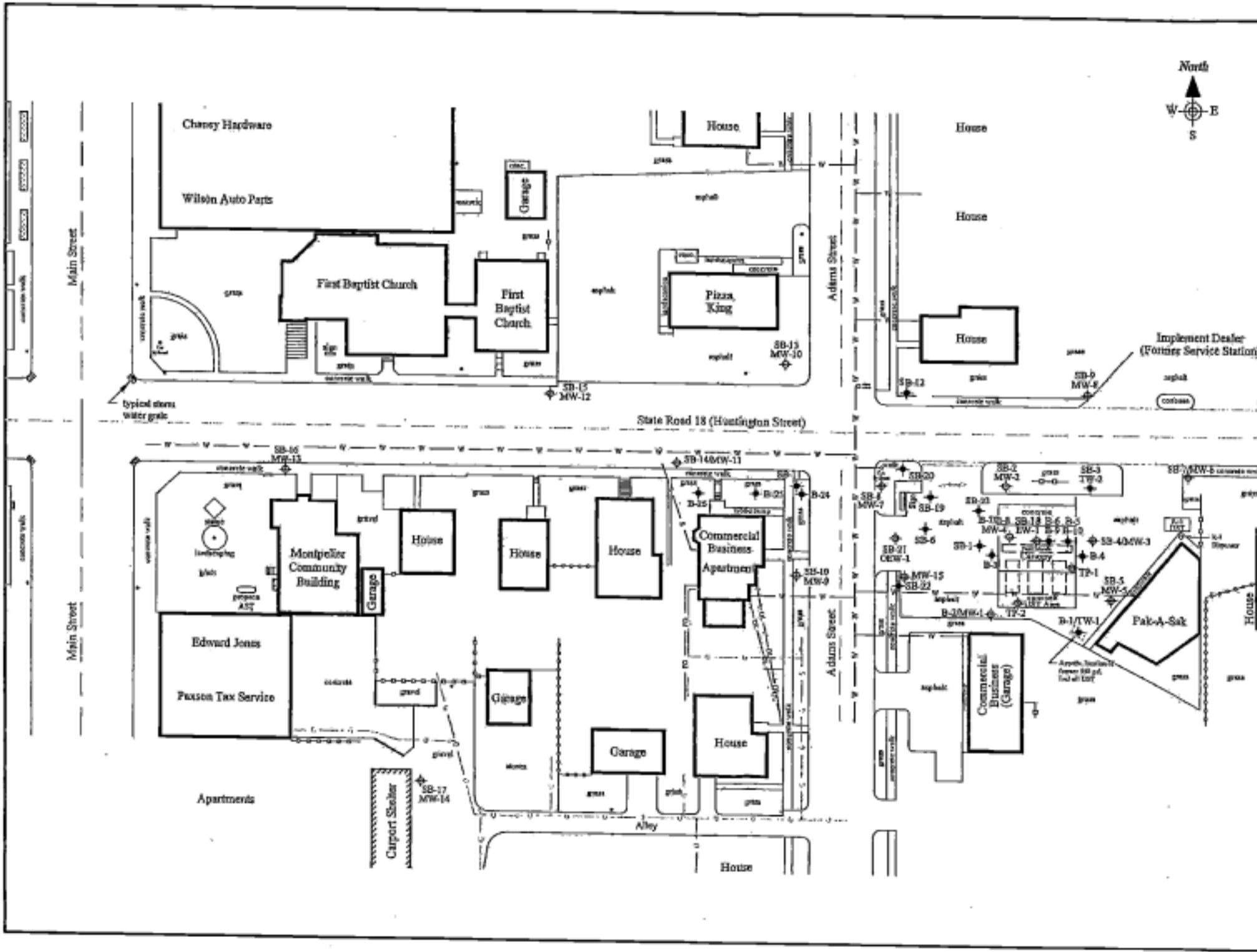
Drawn By: R.N. Checked By: S.B.  
 Date: 2-6-13 Date: 2-7-13

File No.: J100-MON1-100-21 Revision: 21

Title: **Site Map**

Location: **Pak-A-Sak  
 204 E. Huntington Street  
 Montpelier, IN**

Scale: 1" = 50'  
 Figure: 1



## ATTACHMENT B

### Affidavit for Recording of An Environmental Restrictive Covenant



