

41.  
llp

Thompson Environmental Inc.  
316 W Indiana Ave  
Chesterton, IN 46304



2014R-11932  
LAPORTE COUNTY RECORDER  
BARBARA A. DEAN  
10/07/2014 01:50:09PM  
RECORDING FEE \$41.00  
PAGES: 16

## Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 19th day of August 2014 by Three Brothers Investments, LLC.

WHEREAS, Three Brothers Investments, LLC of 213 South State Road 49, Valparaiso, Indiana, is the fee owner of certain real estate in LaPorte County, Indiana, which is located at 2328 North US Hwy 35 A&B, LaPorte, Indiana 46350 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 Warranty Deed on November 12, 2012, and recorded on November 15, 2012, as Deed Record 2011R--15925, in the Office of the Recorder of LaPorte County, Indiana. The real estate has also been identified by the county as parcel identification number 46-06-22-401-004,000-042. The Real Estate to which this Covenant applies is also depicted on a Site Map included with **Exhibit A**.

WHEREAS: Corrective action as implemented in accordance with IC 13-23 and other applicable Indiana law as a result of a release of petroleum relating to the Three Brothers Investments, LLC site. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is LUST No. 200511510, and the relevant facility identification number is FID No. 18077.

WHEREAS: Certain contaminants of concern ("COCs") remain in the 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. The remaining COCs in the soil and groundwater are listed in **Tables 1** and **2**, respectively of **Exhibit B**, which is attached hereto and incorporated herein. **Figure 1**, which is included with Exhibit B, presents the location of the COCs in the soil. **Figure 2**, also included with **Exhibit B** presents the location of the COCs in the 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/](http://www.in.gov/idem/)).

NOW THEREFORE, FE Investments - DC South, 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) 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 \_\_\_\_ 20 \_\_\_\_, RECORDED IN THE OFFICE OF LAPORTE COUNTY ON \_\_\_\_, 20 \_\_\_\_, 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 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 LaPorte 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 waive of any other term hereof or the breach thereof.
12. Conflict of an 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 reference 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:

Three Brothers Investments, LLC  
c/o Accounting Departments  
213 South State Rd 49  
Valparaiso, IN 46383

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.

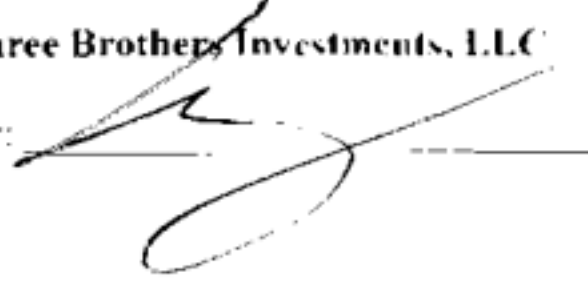
15. Severability. If any portion of this Covenant or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions or terms of this Covenant shall remain in full force and effect as if such portion found invalid had not been included 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, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 27 day of August, 2014.

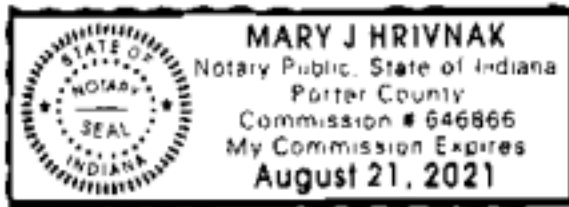
**Three Brothers Investments, LLC**

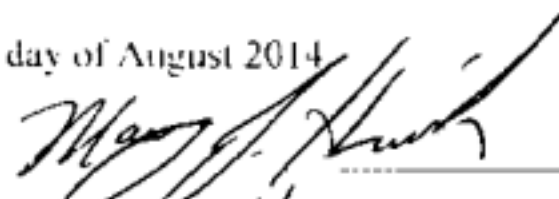
By: 

STATE OF Indiana )  
COUNTY OF Porter ) **WITNESSES:**

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

Witness my hand and Notarial Seal this 27 day of August 2014

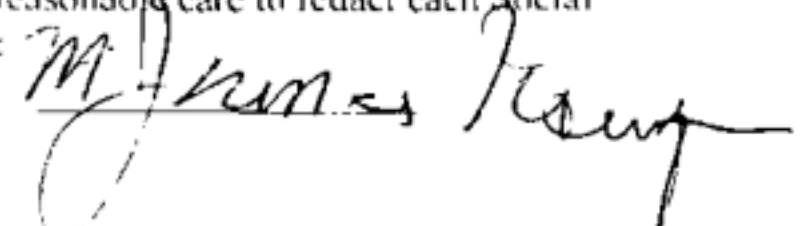


  
Mary J. Hrivnak, Notary Public

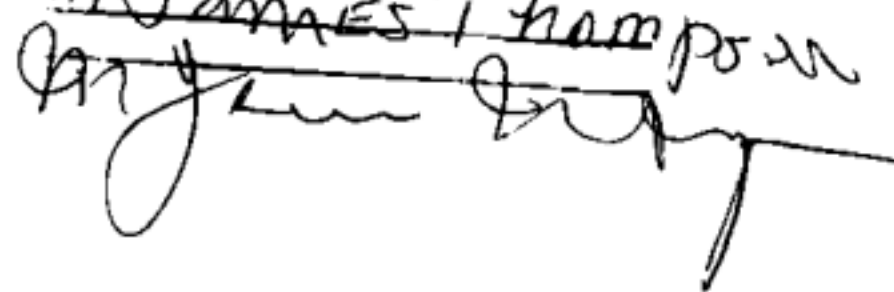
Residing in Porter County.

My Commission Expires:

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:



THIS INSTRUMENT WAS PREPARED BY

M. JAMES THOMPSON  


**EXHIBIT A**

**LEGAL DESCRIPTION OF REAL ESTATE**

18  
20  
Family Express  
213 S. St. Rd 39  
Valparaiso, IN  
46383



\* 2012R-15925 2 \*

2012R-15925

LAPORTE COUNTY RECORDER  
JOHN STIMLEY  
11/15/2012 11:02:56AM  
RECORDING FEE \$18.00  
PAGES: 2

Mail Tax Bills to:

TAX KEY NO.: 46-06-22-401-00<sup>4</sup>/~~002~~-042

Three Brothers' Investments, LLC  
c/o Accounting  
213 S. State Road 49  
Valparaiso, IN 46383

→ grantee address

**WARRANTY DEED**

FE Investments-DC South, LLC, an Indiana limited liability company, CONVEYS AND WARRANTS to Three Brothers' Investments, LLC, an Indiana limited liability company, in consideration of the sum of One Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, the following described real estate in LaPorte County, State of Indiana:

A Tract of land in the Southeast 1/4 of Section 22, Township 37 North, Range 3 West, Center Township, LaPorte County, Indiana, bounded and described as follows: Commencing at the center of Section 22; thence South 00 degrees 40 minutes 00 seconds East, a distance of 918.51 feet along the North South centerline of Section 22 to the Place of Beginning; thence South 89 degrees 15 minutes 32 seconds East, a distance of 265.63 feet to the point of curve of a nontangent curve to the left, of which the radius point lies South 84 degrees 00 minutes 57 seconds East, a radial distance of 1,004.93 feet; thence Southerly along the arc, a distance of 281.50 feet along the Westerly right of way of U.S. #35, subtended by a chord bearing of South 02 degrees 02 minutes 26 seconds East and length of chord 280.58 feet; thence South 63 degrees 05 minutes 08 seconds West, A distance of 76.00 feet along the Westerly right of way of U.S. #35; thence South 18 degrees 05 minutes 08 seconds West, a distance of 20.00 feet along the Westerly right of way of U.S. #35; thence North 71 degrees 54 minutes 52 seconds West, a distance of 208.77 feet along the centerline of Johnson Road; thence North 00 degrees 40 minutes 00 seconds West, a distance of 272.46 feet along the North South centerline of Section 22, to the place of beginning.

Commonly known as 2328 North US Hwy 35 A & B, LaPorte, Indiana 46350

SUBJECT, NEVERTHELESS, TO THE FOLLOWING:

1. Real estate taxes for 2010, payable in 2011, and all years thereafter.
2. Covenants, restrictions, and easements of record.
3. Applicable building codes and zoning ordinances.

The undersigned persons executing this deed represent and certify on behalf of the Grantor that each of the undersigned is a duly elected member or manager of the Grantor and has been fully empowered by proper consent or the Operating Agreement of the Grantor to execute and deliver this deed; that the Grantor is a limited liability company in good standing in the state of its origin and, where

DULY ENTERED FOR TAXATION  
SUBJECT TO FINAL ACCEPTANCE FOR TRANSFER

NOV 15 2012

Craig Huchman  
LAPORTE COUNTY AUDITOR

required, in the state where the subject real estate is situated; that the Grantor has full capacity to convey the real estate described; and that all necessary action for the making of this conveyance has been duly taken.

IN WITNESS WHEREOF, the Grantor has executed this Warranty Deed on November 12, 2012.

FE Investments-DC South, LLC

By:   
Family Express Corporation, Manager

STATE OF INDIANA )

) SS:

COUNTY OF PORTER)

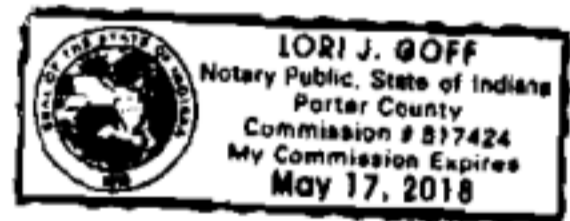
Before me, a Notary Public in and for said County and State, this November 12, 2012, personally appeared Monique A. Horn, CAO of Family Express Corporation, who acknowledged the execution of the foregoing Warranty Deed for and on behalf of said Grantor, and who, having been duly sworn, stated that the representations therein contained are true.

My Commission Expires: May 17, 2018  
Resident of Porter County

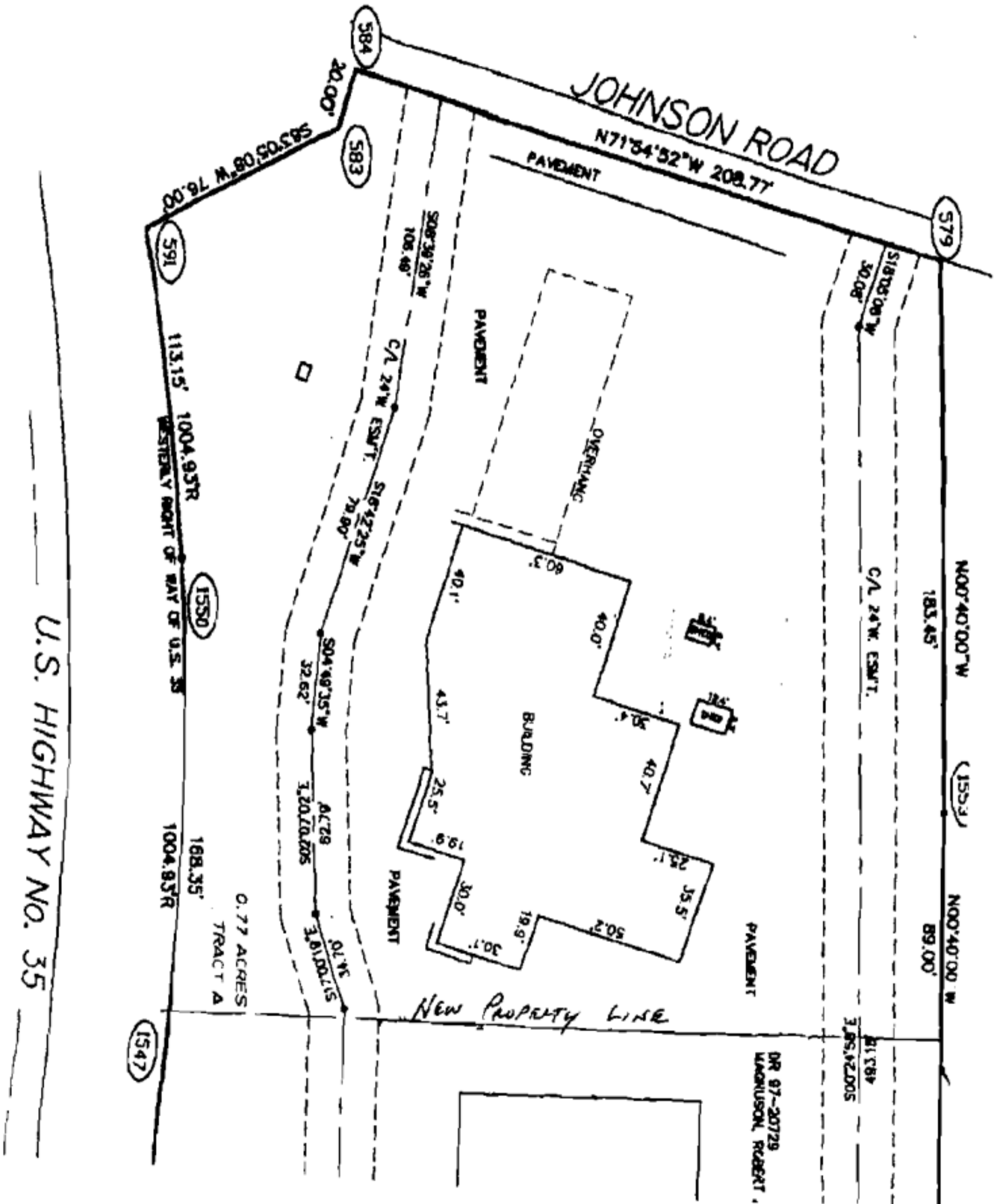
, Notary Public

*This Instrument Prepared by  
and Please Return To:*

*Todd A. Etzler  
Family Express Corporation  
213 S. State Road 49  
Valparaiso, IN 46383*



*I affirm, under the penalties of perjury, that I have taken reasonable care to redact any security number in this document, unless required by law. Todd A. Etzler*



U.S. HIGHWAY NO. 35

JOHNSON ROAD  
N71°34'52"W 208.77'

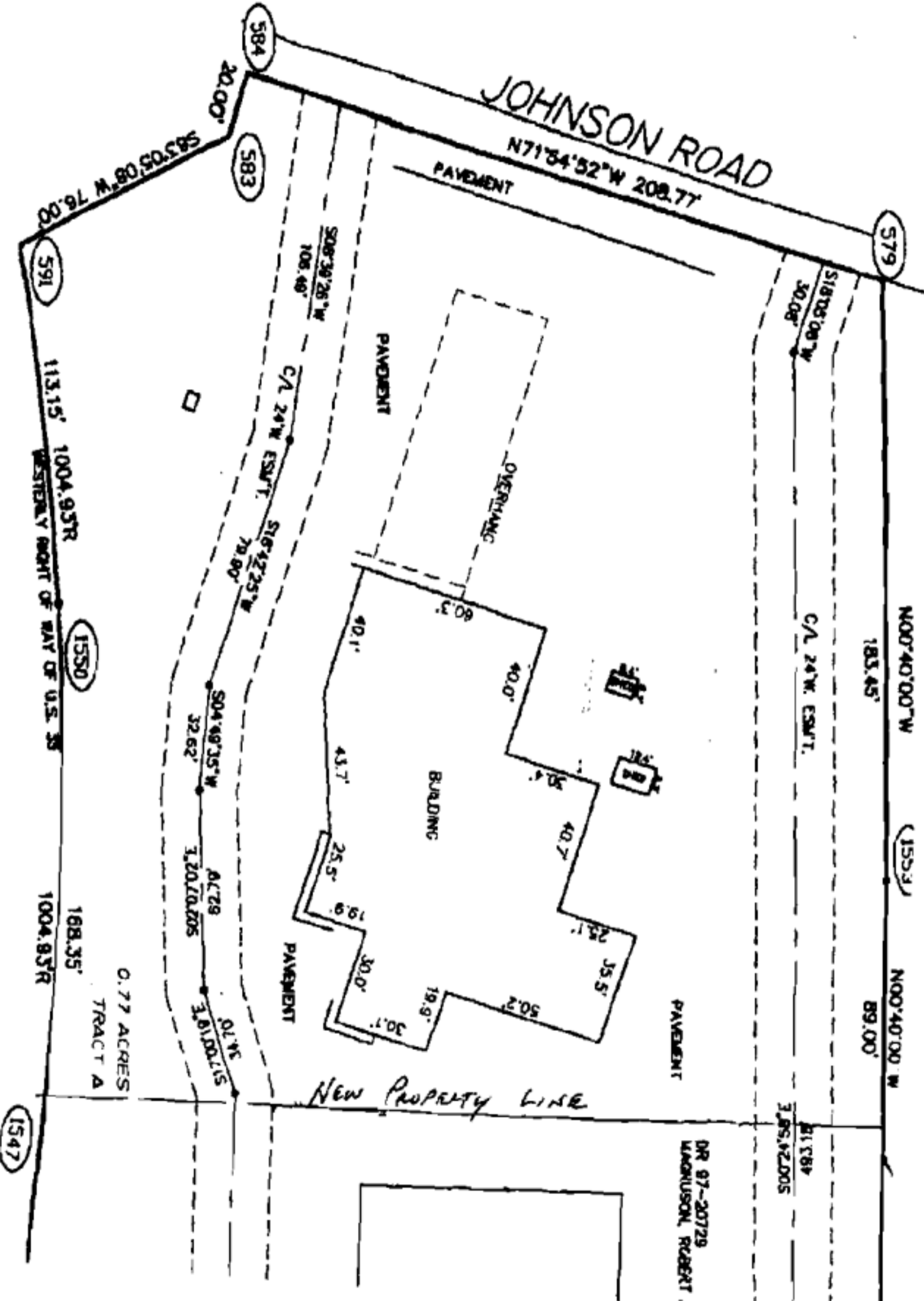
NEW PROPERTY LINE

WESTERN RIGHT OF WAY OF U.S. 35

0.77 ACRES  
TRACT A

DR 97-20729  
MARRISON, ROBERT

31.784  
3,954,2005



**EXHIBIT B**

**DESCRIPTION OF CONTAMINATION**

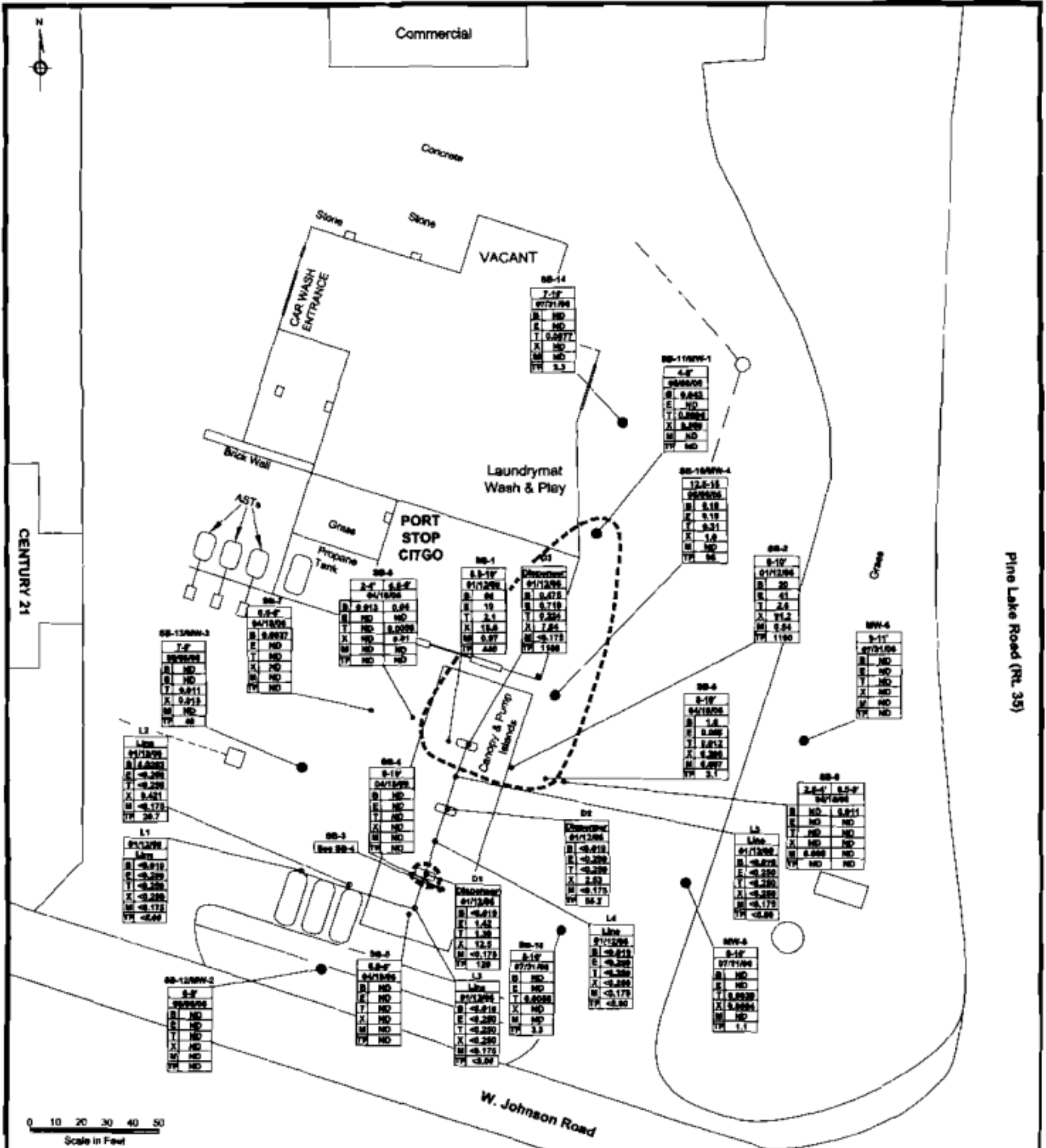


FIGURE 1

| LEGEND |  |
|--------|--|
|        | Approximate Extent of Contamination Exceeding IDEM RSC Residential Cleanup Objectives  |
|        | SS-1289W-2 Soil Boring/Monitoring Well Location (TEL, 2008)  |
|        | SS-1 Soil Boring Location  |
|        | D3 Dispenser Sampling Location   |
|        | L1 Line Sampling Location  |
|        | SS-1 Sampling Location Designation   |
|        | Depth of Sample in Feet<br>Date Sampled  |
|        | Benzene Concentration in mg/kg<br>Ethylbenzene Concentration in mg/kg<br>Toluene Concentration in mg/kg<br>Xylenes Concentration in mg/kg<br>MTBE Concentration in mg/kg<br>TPH Concentration in mg/kg |
|        | ND Compound Not Detected   |
|        | Underground Storage Tank   |

**Thompson Environmental, Inc.**

316 W. INDIANA AVE. CHESTERTON, IN 46304      219-395-8331      FAX 219-395-8481

**EXTENT OF SOIL CONTAMINATION**  
**PORT STOP CITGO**  
**243 WEST JOHNSON ROAD, LAPORTE, INDIANA**

|              |                 |                                      |
|--------------|-----------------|--------------------------------------|
| DRAWN: DBH   | SCALE: As Shown | FILE: 01 Port Stop Citgo 2nd CAP.dwg |
| CHECKED: MUT | DWG # 14388     | DATE: 08/18/14                       |



**Table 1 (pg. 1/2)**  
**SOIL ANALYTICAL RESULTS - JANUARY & APRIL 2006**  
**Port Stop Citgo**  
**LaPorte, Indiana**

| Soil Boring  | Sampling Interval | Date      | Benzene      | Toluene | Ethylbenzene | Xylenes | MTBE  | TPH  |
|--|-------------------|-----------|--------------|---------|--------------|---------|-------|------|
| SB-1   | 8.5 - 10'         | 1/12/2006 | 56           | 2.1     | 19           | 18.6    | 0.97  | 440  |
| SB-2   | 8 - 10'           | 1/12/2006 | 20           | 2.6     | 41           | 91.2    | 0.54  | 1100 |
| SB-4   | 8 - 10'           | 4/18/2006 | ND           | ND      | ND           | ND      | ND    | ND   |
| SB-5   | 6.5 - 8'          | 4/18/2006 | ND           | ND      | ND           | ND      | ND    | ND   |
| SB-6   | 2 - 4'            | 4/18/2006 | 0.013        | ND      | ND           | ND      | ND    | ND   |
|  | 2 - 4' Dup        | 4/18/2006 | 0.022        | ND      | ND           | ND      | 0.005 | ND   |
|  | 6.5 - 8'          | 4/18/2006 | 0.04         | 0.0056  | ND           | 0.01    | ND    | ND   |
| SB-7   | 6.5 - 8'          | 4/18/2006 | 0.0037       | ND      | ND           | ND      | ND    | ND   |
| SB-8   | 8 - 10'           | 4/18/2006 | 1.6          | 0.012   | 0.058        | 0.205   | 0.097 | 3.1  |
| SB-9   | 2.5 - 4'          | 4/18/2006 | ND           | ND      | ND           | ND      | 0.008 | ND   |
|  | 6.5 - 8'          | 4/18/2006 | 0.011        | ND      | ND           | ND      | ND    | ND   |
| <b>RISC Residential Default Criteria<sup>1</sup></b> |                   |           | <b>0.034</b> | 12      | 13           | 170     | 0.18  | 100  |
| <b>RISC Industrial Default Criteria<sup>1</sup></b>  |                   |           | <b>0.35</b>  | 96      | 160          | 170     | 3.2   | 100  |

Notes

1 RISC Technical Guidance - Appendix 1 (January 31, 2006 update)

2 ppm = parts per million

3 ND = Not Detected, NA = Not Analyzed

4 Bureau of Underground Storage Tank Regulations Technical Guidance Manual For 1992 Closure and Corrective Action Rules

5 Values exceeding RISC Residential Default Closure Criteria are in bold. Values exceeding RISC Industrial Default Closure Criteria are bolded and shaded.

**Table 1 (pg 2/2)**  
**SOIL ANALYTICAL RESULTS - JUNE 6 and July 31, 2006, and March 17, 2009**  
**Port Stop Citgo**  
**LaPorte, Indiana**

| Soil Boring  | Sampling Interval (feet) | Date      | Benzene | Toluene | Ethylbenzene | Xylenes | MTBE    | TPH-gro |
|--|--------------------------|-----------|---------|---------|--------------|---------|---------|---------|
| <b>SB-10 / MW-4</b>                                  | <b>12.5 - 15</b>         | 6/6/2006  | 0.18    | 0.31    | 0.19         | 1.0     | ND      | 95      |
| <b>MW-4R</b>   | <b>6 - 8</b>             | 3/17/2009 | 29      | 63      | 92           | 440.0   | <0.0052 | 6300    |
| <b>DUP (duplicate 4R)</b>                            | <b>6 - 8</b>             | 3/17/2009 | 12      | 72      | 72           | 290.0   | <0.0056 | 1500    |
| <b>MW-4R</b>   | <b>14 - 16</b>           | 3/17/2009 | 0.015   | 0.012   | <0.0056      | <0.0056 | <0.0056 | 0.83    |
| <b>SB-11 / MW-1</b>                                  | <b>4 - 8</b>             | 6/6/2006  | 0.043   | 0.0094  | ND           | 0.008   | ND      | ND      |
| <b>SB-12 / MW-2</b>                                  | <b>6 - 8</b>             | 6/6/2006  | ND      | ND      | ND           | ND      | ND      | ND      |
| <b>SB-13</b>   | <b>7 - 8</b>             | 6/6/2006  | ND      | 0.011   | ND           | 0.013   | ND      | 46      |
| <b>SB-14</b>   | <b>7 - 10</b>            | 7/31/2006 | ND      | 0.0077  | ND           | ND      | ND      | 2.3     |
| <b>SB-15</b>   | <b>8 - 10</b>            | 7/31/2006 | ND      | 0.0058  | ND           | ND      | ND      | 3.3     |
| <b>MW-5</b>  | <b>8 - 10</b>            | 7/31/2006 | ND      | 0.0039  | ND           | 0.0064  | ND      | 1.1     |
| <b>MW-6</b>  | <b>9 - 11</b>            | 7/31/2006 | ND      | ND      | ND           | ND      | ND      | ND      |
| <b>Trip Blank</b>                                    | <b>---</b>               | 3/17/2009 | <.0005  | <.0005  | <.0005       | <.0005  | <.0005  | NT      |
| <b>RISC Residential Default Criteria<sup>1</sup></b> |                          |           | 0.034   | 12      | 13           | 170     | 0.18    | 100     |
| <b>RISC Industrial Default Criteria<sup>1</sup></b>  |                          |           | 0.35    | 96      | 160          | 170     | 3.2     | 100     |

Notes

1 RISC Technical Guidance - Appendix I (January 31, 2006 update)

2 ppm = parts per million

3 ND = Not Detected, NA = Not Analyzed

4 Bureau of Underground Storage Tank Regulations' Technical Guidance Manual For 1992 Closures and Corrective Action Rules

5 Values exceeding RISC Residential Default Closure Criteria are in bold. Values exceeding RISC Industrial Default Closure Criteria are bolded and shaded.

6 TPH = Total petroleum hydrocarbons, gro = gasoline range organics, dro = diesel range organics

**TABLE 2**  
**GROUNDWATER ANALYTICAL RESULTS**  
**Port Stop C/1go**  
**La Porte, Indiana**

Concentrations express in units of µg/l.

| Monitoring Well                         | Date       | Benzene | Toluene | Ethylbenzene | Xylenes | MTHF | Naphthalene |
|---|------------|---------|---------|--------------|---------|------|-------------|
| RISC Residential Default Criteria (ppb) |            | 4       | 1000    | 700          | 10,000  | 40   | 8           |
| RISC Industrial Default Criteria (ppb)  |            | 52      | 8,200   | 16,000       | 70,000  | 750  | 7000        |
| MW-4R                                   | 12/31/2013 | 100     | <0.50   | 12           | 1       | 1.0  | <1.0        |

Notes:

1. A/N - Analytical conditions - Appendix 1 (2010 update)
2. ppb - parts per million
3. N1 - Not Tested
4. ND - Not Detected / Value Analyzed