

Active
ENVIRONMENTAL
SERVICES, INC.

16107
Roxann

October 29, 2015

6889.06

Mrs. Roxann Klika Sanders
IDEM, Office of Land Quality, LUST Section
100 North Senate Avenue
Indianapolis, Indiana 46204

Reference: Environmental Restrictive Covenant (ERC) Submittal
Valero Gas Station (Former Kirk's Point)
415 South Main Street, Kirklin, Indiana
FID# 16107
Incident Numbers: 199809504; 199910188; 200808509

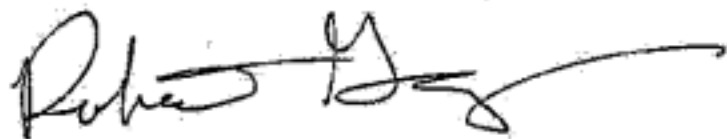
Dear Mrs. Sanders:

Active Environmental Services, Inc. is submitting the Environmental Restrictive Covenant (ERC) for the referenced site. The Draft ERC document was submitted to the Indiana Department of Environmental Management (IDEM) on August 6, 2015. IDEM requested revisions to the document during a meeting on October 26, 2015. The ERC was submitted to IDEM via email on October 27, 2015, and was approved by IDEM via telephone on October 28, 2015.

The ERC document was recorded for the property at the Clinton County Recorder's Office on October 29, 2015. A copy of the recorded ERC document is in Appendix A. Active Environmental is requesting No Further Action approval for the IDEM Incident Numbers related to the site and approval to close and abandon the monitoring well network.

This document was prepared by Active Environmental for S-Mart Real Estate, Inc. for submittal to IDEM. If you have questions please call me at (317) 871-8560.

Yours truly,
ACTIVE ENVIRONMENTAL SERVICES, INC.



Rob George, LPG #2220
President

RECEIVED

OCT 29 2015

DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
OFFICE OF LAND QUALITY

cc: S-Mart Real Estate, Inc., Mr. Warren Johnson, 5824 Plum Creek Blvd., Carmel, IN 46033
Mr. Dave Pickett, 1001 S. White Ave. Sheridan, IN 46069, (Email: handy.dave@live.com)

APPENDIX A

RECORDED ERC DOCUMENT

RECEIVED FOR RECORD

AT 9:35 AM

OCT 29 2015

2015-3887

Ronda A. Brummell
RECORDER, CLINTON CO. \$ 24.00 FEE
\$2.00 RED - \$3.00 SUPP.
1.00 MV NO NC

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 28th day of October, 2015, by S-Mart Real Estate, Inc. (5824 Plum Creek Blvd., Carmel, Indiana 46033).

WHEREAS: Owner is the fee owner of certain real estate in the County of Clinton, Indiana, which is located at 415 South Main Street 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 December 31, 2004, and recorded on January 7, 2005, as Deed Record 2005/0084, in the Office of the Recorder of Clinton County, Indiana. The Real Estate consists of approximately 1.97 acres and has also been identified by the county as parcel identification numbers 12-15-12-438-003.000-007 and 12-15-12-438-004.000-007.

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 Valero gas station site (former Kirk's Point). The incident numbers assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release are 199809504, 199910188, and 200808509, and the relevant facility identification number is 16107.

WHEREAS: Certain contaminants of concern ("COCs") remain in the soil and ground water 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 1-Methylnaphthalene and Naphthalene.

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, S-Mart Real Estate, Inc. 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 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 ground water 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 (with blanks to be filled in):

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED October 25, 2015, RECORDED IN THE OFFICE OF THE RECORDER OF CLINTON COUNTY ON October 29, 2015, INSTRUMENT NUMBER (or other identifying reference) 2015-2887 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 Clinton 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, guidance, 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:

S-Mart Real Estate, Inc.
Mr. Warren Johnson
5824 Plum Creek Blvd.
Carmel, Indiana 46033

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, S-Mart Real Estate, Inc., the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 28th day of October, 2015.

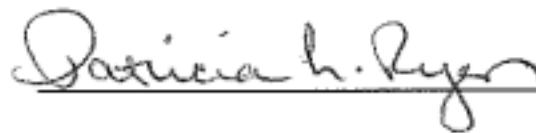

S-Mart Real Estate, Inc. – Warren Johnson

STATE OF Indiana)
COUNTY OF Marion) SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Warren K. Johnson the President of the Owner, S-Mart Real Estate, Inc. who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 28th day of October, 2015.





_____, Notary Public

Residing in Hamilton County, Indiana

My Commission Expires: 11/15/18

This instrument prepared by: Rob George
Active Environmental Services, Inc., 3906 West 86th Street, Indianapolis, IN 46268

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:

Rob George
Active Environmental Services, Inc.

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

RECEIVED FOR RECORD
AT 10:40 A M

JAN 7 - 2005

2005/0084

Leida A. Brammell
RECORDER, CLINTON CO. \$ 13.00 FEE
2.00 NOC

WARRANTY DEED

Clinton County Parcel/Key No: 017-01003-00

THIS INDENTURE WITNESSETH, that POC, INC. (hereafter, the "Grantor"), an Indiana corporation, by and through Bruce W. Pickett, as the duly qualified, elected and authorized President of Grantor, being over the age of eighteen (18) years, of Clinton County, Indiana, for and in consideration of One Dollar (\$1.00) and other good, valuable and legal consideration, the receipt and legal adequacy of which are hereby acknowledged, hereby CONVEYS AND WARRANTS to S-MART REAL ESTATE, INC. (hereafter, the "Grantee"), an Indiana corporation, the following described real estate located in Kirklin, Clinton County, Indiana (the common street address of which is 415 South Main Street, Kirklin, Indiana 46050), and all the improvements, easements, buildings, structures, rights, rights-of-way, privileges, fixtures, equipment, appurtenances and other hereditaments thereon and/or thereto (hereafter, the "Real Estate"), to-wit:

Legal Description:

A part of the East Half of the Southeast Quarter of Section 12, Township 20 North, Range 1 East of the Second Principal Meridian in Clinton County, Indiana, more particularly described as follows:

Beginning at a point on the east line of said section, 1419 feet North of the southeast corner of said Section 12; thence North 150 feet; thence West 602 feet to the centerline of the Michigan Road; thence South 20 degrees East on said centerline 160.46 feet; thence East 545.04 feet to the place of beginning containing 1.97 acres more or less, and being Tracts 1 and 2 of a survey recorded in Miscellaneous Record 39 at page 539 in the Office of the Recorder of Clinton County, Indiana.

The grant and conveyance of the Real Estate, by the Grantor to the Grantee, pursuant to this Warranty Deed, and this Warranty Deed and the fee simple title to the Real Estate, are subject only to the following:

(a) All real estate taxes relating to and that are assessed against and are now a lien (but not currently due or payable) against the Real Estate, for 2005 and which are due and payable in May 2006 and November 2006; and, all real estate taxes relating to and that are or will be assessed against and are now a lien (but not currently due or payable) against the Real Estate, for 2006 and which are due and payable in May 2007 and November 2007;

(b) Annual Assessment for McClamrock Drain for 2005, in the sum or approximate sum of \$5.00, which is not currently due or payable;

(c) Rights of the Public, State of Indiana, County and Municipality in and to that part of the premises of record (i.e., the Real Estate) taken or used for road purposes, if any;

(d) Rights of way for drainage tiles, ditches, feeders, laterals, swales and underground drain tile or pipe of record, if any; and,

(e) All assessments for public improvements against the Real Estate that became or become a lien, after 10:00 a.m., E.S.T., on December 31, 2004, if any.

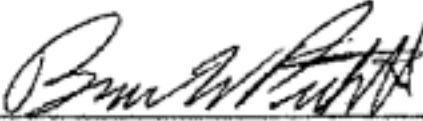
ENTERED FOR TAXATION

1-7 2005
Caroline A. Clements
AUDITOR CLINTON CO.

Grantor Execution:

Grantor:

By:



Bruce W. Pickett, President
POC, Inc.

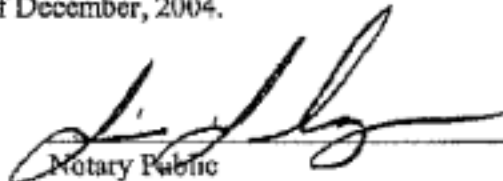
Acknowledgement:

STATE OF INDIANA)
COUNTY OF HAMILTON) SS:

Before me, a Notary Public in and for said County and State, personally appeared Bruce W. Pickett, as President of and on behalf of POC, Inc., who acknowledged the execution of the foregoing Warranty Deed, and who, having been duly sworn, stated that any representations therein contained are true.

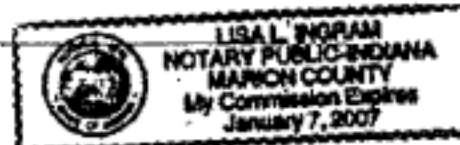
Witness my hand and Notarial Seal this 31st day of December, 2004.

My Commission Expires: _____


Notary Public

County of Residence: _____

Printed



Miscellaneous Information:

Send Tax Statements To: S-Mart Real Estate, Inc.
Attn: Warren K. Johnson, President
5824 Plum Creek Boulevard
Carmel, Indiana 46033

Send This Warranty Deed To: S-Mart Real Estate, Inc.
Attn: Warren K. Johnson, President
5824 Plum Creek Boulevard
Carmel, Indiana 46033

This Document Prepared for Grantee By: Timothy P. Brazill, Esq., Smyth Hester & Associates LLP, Fidelity Plaza Tower 1, 11550 North Meridian Street, Suite 125, Carmel, Indiana 46032, Tel: 317.843.5566, Fax: 317.843.5369, Email: tbrazill@sh-law.com.

