



### Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 22 day of October, 2018, by S & H Petroleum Inc., 7251 East State Road 7, Columbus, Indiana 47203 (together with all successors and assignees, collectively "Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Bartholomew, Indiana, which is located at 7251 East State Road 7, Columbus, Indiana 47203 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 January 31, 2008, and recorded on February 1, 2008, as Deed Record 200800001154, in the Office of the Recorder of Bartholomew County, Indiana. The Real Estate consists of approximately 2.15 acres and has also been identified by the county as parcel identification number 03-86-03-000-002.800-004.

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 Columbus BP. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is 200604507, and the relevant facility identification number is 19451.

WHEREAS: Certain contaminants of concern ("COCs") remain in the groundwater 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. The known COCs remaining are listed in Exhibit B, 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, S & H Petroleum 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 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 (with blanks to be filled in):

**NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED October 22 2018, RECORDED IN THE OFFICE OF THE RECORDER OF BARTHOLOMEW COUNTY ON October 22, 2018, INSTRUMENT NUMBER (or other identifying reference) 2018010650 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 Bartholomew 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 & H Petroleum Inc.  
Ragbir S. Palia  
7251 East State Road 7  
Columbus, Indiana 47203

To Department:  
IDEM, Office of Land Quality  
100 N. Senate Avenue  
IGCN 1101  
Indianapolis, IN 46204-2251  
Attn: 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.



**EXHIBIT A**

**LEGAL DESCRIPTION OF REAL ESTATE**

200800001154  
Filed for Record in  
BARTHOLOMEW COUNTY, IN  
BETTY JEAN BESHEAR  
02-01-2008 At 12:11 pm.  
WARR DEED 18.00

## WARRANTY DEED

**THIS INDENTURE WITNESSETH**, That **MANN COMPANY, LLC**, an Indiana Limited Liability Company (Grantor) **CONVEYS AND WARRANTS** to **S&H PETROLEUM INC.**, an Indiana Corporation, (Grantee) for the sum of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following described real estate in Bartholomew County, State of Indiana:

Part of the Southeast Quarter of the Northeast Quarter and part of the Northeast Quarter of the Southeast Quarter of Section 3 in Township 8 North of Range 6 East described as follows:

For a place of beginning, measure 494.6 feet North from the Southwest corner of the Southeast Quarter of the Northeast quarter of said section, to the intersection of the west line of said quarter quarter with the center line of State Road #7 (said intersection known as station 863 plus 88.1 feet, line "A" Project #163); thence South 54 degrees 29 ½ minutes East along said center line, measure 149.5 feet to the place of beginning, (known as Station 862 plus 38.6 feet, of said project); thence deflecting an angle to the right of 56 degrees 35 minutes, go South 2 degrees 2 minutes West and measure 503.4 feet along the center line of new state road to be designated as #31 East to the center of a bridge across Fisher's Fork (known as Station 770 plus 80.5 feet, Line "A", Project #87); thence deflecting an angle to the left of 90 degrees measure 80 feet along the center of Fisher's Fork; thence deflecting an angle to the left of 16 degrees 52 minutes measure 380 feet along the meanders of said stream; thence deflecting an angle to the left of 39 degrees 43 minutes, measure 84 feet to the center of a bridge across Fisher's Fork (known as Station 856 plus 50.2 feet, Line "A", Project #163); thence deflecting an angle of 90 degrees to the left; measure 588.4 feet along the center line of State Road #7 to the place of beginning.

EXCEPT so much of the right of way of State Road #7 as is included in the above description; the limits of which are defined by a line parallel to and 35 feet distant from said center line. ALSO EXCEPT so much of the right of way of State Road 31 East (aka US 31) as is included in the above description, the limits of which for all practical purposes are defined by a line parallel to and 55 feet distant from said centerline.

ALSO EXCEPTING, that portion of the above real estate taken by Judgment entered in Civil Order Book 147, pages 1354-1358 on November 15, 1977 under Cause #24757.

SUBJECT to taxes presently a lien.

Instrument PG 2 OF 2  
200800001154

IN WITNESS WHEREOF, Grantor has executed this deed this 31 day of Jan, 2008.

MANN COMPANY, LLC

By: Larry R Mann  
Larry R. Mann, Manager

STATE OF INDIANA )

COUNTY OF BARTHOLOMEW ) ss: )

ACKNOWLEDGMENT

Before me, a Notary Public in and for said County and State, personally appeared Mann Company, LLC, by its Manager, Larry R. Mann, 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 31 day of January, 2008.

County of Residence:  NOTARY PUBLIC  
Commission Expires: Linda J. Boyd  
Resident-Johnson Co. Commission Expires 3-16-2008

Linda J Boyd  
, Notary Public

I affirm, under the penalties for perjury, that I, Thomas C. Bigley, Jr., have taken reasonable care to redact each Social Security number in this document, unless required by law.

This instrument prepared by Thomas C. Bigley, Jr., SHARNACK BIGLEY STROH & WASHBURN LLP, 321 Washington St., Columbus, IN 47201.

Return deed to: SMART & JOHNSON TITLE CORP.

Send tax bills to Grantee's address: : 7251 E SR 7, Columbus IN 47201

Property Address: 7251 E SR 7, Columbus, IN 47201

DULY ENTERED FOR TAXATION  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER

FEB 01 2008

Nancy McKinney  
Auditor Bartholomew Co., Indiana

## EXHIBIT B

### LIST OF CONTAMINANTS OF CONCERN

- Benzene
- 1,2,4-trimethylbenzene
- 1,3,5-trimethylbenzene
- Benzo(a)anthracene
- Benzo(a)pyrene
- Benzo(b)fluoranthene
- Dibenzo(a,h)anthracene
- Ideno(1,2,3-cd)pyrene
- 1-Methylnaphthalene
- Naphthalene