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RECORDED WABASH COUNTY
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WABASH COUNTY RECORDER
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PAGES: 14

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this August day of 29, 2018, by William R. Floyd, 206 North Maple Street, North Manchester, Indiana 46962 ("Owner").

WHEREAS: Owner is the fee Owner of certain real estate in the County of Wabash, Indiana, which is located at 307 Main Street, North Manchester, Indiana 46962 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 Affidavit of Heirship and for Transfer of Real Property on May 3, 2017, and recorded on May 3, 2017, as Record 2017R447893 of the Office of the Recorder of Wabash County, Indiana. The Real Estate consists of approximately 0.6 acres and has also been identified by the county as parcel identification number 85-07-05-202-027.000-002.

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 Floyd's Sunoco site. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is 2009-03-500, and the relevant facility identification number is 1874.

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 and the environment. The known COCs remaining are listed in Exhibit B, which is attached hereto and incorporated herein. The locations of the remaining COCs above applicable residential and/or commercial screening levels are depicted on the site map, which map is attached hereto as Exhibit C 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/).

NOW THEREFORE, William R. Floyd 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 on 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.
- (b) 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 current risk based guidance. 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.
- (c) Prior to construction of any new buildings on the Real Estate, the then-current owner of the Real Estate shall either:
 - i. Confirm that there is no unacceptable exposure risk resulting from vapor migration of VOCs or SVOs from subsurface conditions. Such analysis shall be presented to the Department for its concurrence with the findings in accordance with the then-applicable remediation guidance, regulation, or law; or
 - ii. In lieu of 1(c)(i) above or if unacceptable exposure risks are determined by the Department to exist following the investigation identified in 1(c)(i), the then current owner of the Real estate shall mitigate vapors or potential vapors by any acceptable means demonstrated to be effective by adequate sampling.

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 Owners 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 THE RECORDER OF _____ 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 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 Wabash 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 Owner's 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, 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:

William R. Floyd
307 Main Street
North Manchester, IN 46962

To Department:

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

Owner may change her 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 persons executing this Covenant represents that they the current fee Owner of the Real Estate, and further represent and certify that they are 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.

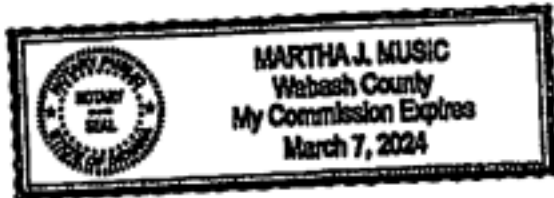
IN WITNESS WHEREOF, William R. Floyd, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 29 day of August, 2018.

William R. Floyd
William R. Floyd

STATE OF Indiana)
COUNTY OF Wabash) SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared William R. Floyd, the Owner, who acknowledged the execution of the foregoing instrument.

Witness my hand and Notarial Seal this 29 day of August, 2018.



Martha J. Music
Martha J. Music, Notary Public
Residing in Wabash County, Indiana

My Commission Expires: 3/7/2024

This instrument prepared by:

Kathryn A. Watson
Spalding & Hilmes, PC
P.O. Box 199020
Indianapolis, IN 46219-9020
(317) 257-5970

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:

Kathryn A. Watson
Spalding & Hilmes, PC
P.O. Box 199020
Indianapolis, IN 46219-9020

EXHIBIT A
LEGAL DESCRIPTION OF REAL ESTATE

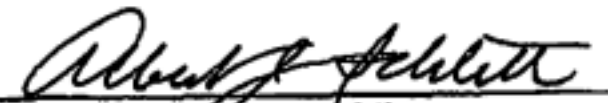


STATE OF INDIANA)
) SS:
COUNTY OF WABASH)

Before me, a Notary Public in and for said County and State, personally appeared WILLIAM R. FLOYD, who acknowledged the execution of the foregoing Affidavit of Heirship and for Transfer of Real Property for the uses and purposes therein contained.

WITNESS my hand and Notarial Seal this 3rd day of May, 2017.




Albert J. Schlitt, Notary Public
(A resident of Wabash County, IN)

Send tax statements to:
William R. Floyd
206 N. Maple St.
North Manchester, IN 46962

Parcel number: 85-07-05-202-027.000-002
Parcel address: 307 E. Main Street,
No. Manchester, IN 46962

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. Albert J. Schlitt

THIS INSTRUMENT PREPARED BY: ALBERT J. SCHLITT, ATTORNEY AT LAW
TIEDE METZ DOWNS TANDY & PETRUNIW, P.C., 105 WEST SECOND STREET, SUITE 100
NORTH MANCHESTER, INDIANA 46962 (260) 982-7373

EXHIBIT B

**LIST OF CONTAMINANTS OF CONCERN,
REMAINING CONCENTRATION LEVELS AND SCREENING LEVELS**

Exhibit B-1
Contaminants of Concern & Concentration Levels - Soil
Floyd's Sunoco - LUST #2009-03-500 - FID #1874

307 Main Street, North Manchester, IN

Sample ID	COC	CAS No.	Depth of Sample (feet bgs)	Sample Collection Date	Concentration (mg/kg)
HA-5	1,2,4-Trimethylbenzene	95-63-6	4-5	08/17/11	383
	Ethylbenzene	100-41-4	4-5	08/17/11	84.5
	Total Xylenes	1330-20-7	4-5	08/17/11	505

COC = Contaminant of Concern
CAS = Chemistry Abstract Service
bgs = below ground surface
mg/kg = milligrams per kilogram

Exhibit B-2
 Contaminants of Concern & Concentration Levels - Groundwater
 Floyd's Sunoco - LUST #2009-03-500 - FID #1874

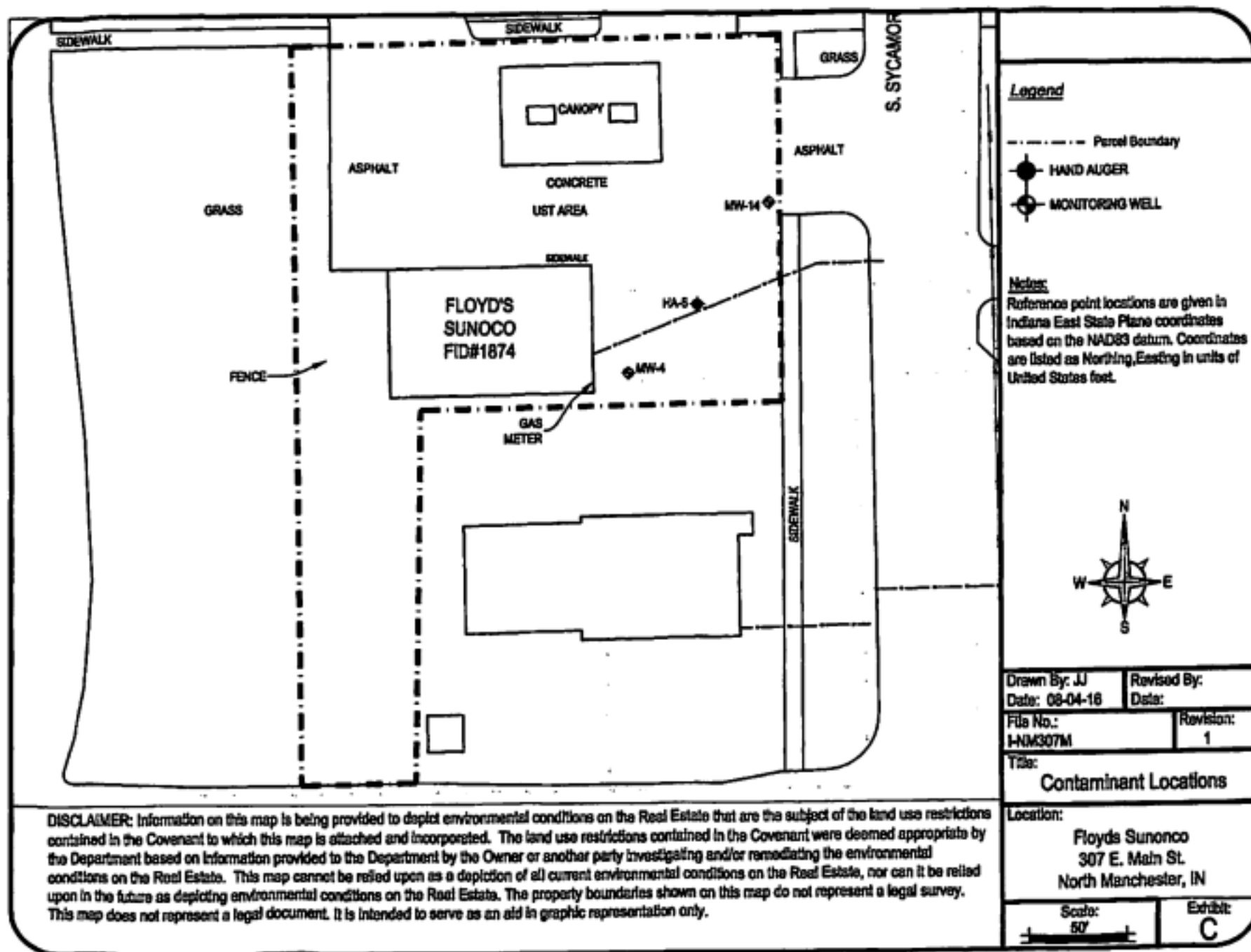
307 Main Street, North Manchester, IN

Sample ID	COC	CAS No.	Sample Collection Date	Concentration (ug/L)
MW-4	Benzene	71-43-2	12/16/16	138.0
	Naphthalene	91-20-3	12/16/16	211.0
	1,2,4-Trimethylbenzene	95-63-6	12/16/16	91.3
MW-14	Benzene	71-43-2	12/16/16	151.0
	Naphthalene	91-20-3	12/16/16	150.0
	1,2,4-Trimethylbenzene	95-63-6	12/16/16	10.2

COC = Contaminant of Concern
 CAS = Chemistry Abstract Service
 ug/L = micrograms per liter

EXHIBIT C

MAP DEPICTING THE LOCATION OF THE CONTAMINANTS 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. The property boundaries shown on this map do not represent a legal survey. This map does not represent a legal document. It is intended to serve as an aid in graphic representation only.