

2019 027288

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2019 MAY 10 AM 8:51

MICHAEL S. BROWN
RECORDER

Environmental Restrictive Covenant

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THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 26th day of March, 2019, by CKNP OIL COMPANY, INC. (CKNP Oil Company), 1849 Calumet Ave., Whiting, Indiana 46394 (together with all successors and assignees, collectively "Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Lake, Indiana, which is located at 1849 Calumet Avenue, Hammond, 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 March 1, 2019, and recorded on March 20, 2019, as Deed Record 2019-016910, in the Office of the Recorder of Lake County, Indiana. The Real Estate consists of approximately 0.273 acres and has also been identified by the county as parcel identification number 45-03-07-104-012-000-023. The Real Estate, to which the restrictions in this Covenant apply, 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 CKNP Oil Company cleanup site. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is 199305545, and the relevant facility identification number is 2875.

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. These COCs are benzene, ethylbenzene, 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, 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, CKNP Oil Company subjects the Real Estate to the following restrictions and provisions, which shall be binding on the current Owner and all future Owners:

I. RESTRICTIONS

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1. Restrictions. The Owner:

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JOHN E. PETALAS
LAKE COUNTY AUDITOR

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- (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.
- (b) Prior to the change in use of the site at the Real Estate, the current Owner of the Real Estate shall confirm there is no unacceptable exposure risk due to vapor migration in accordance with then-applicable agency guidance, regulation, or law. This may include conducting groundwater, soil, and/or soil-gas sampling for the VOCs or SVOCs of concern. The results and analyses of such sampling shall be presented to IDEM in support of the Owner's determination whether an unacceptable vapor exposure risk exists. If the results demonstrate that no such risk currently exists, IDEM will provide its concurrence in writing and grant the Owner a waiver of this restriction for the proposed change in site use and/or new construction. If the results demonstrate that an unacceptable risk to human health exists, then the Owner must submit plans for mitigation for approval by IDEM and must conduct adequate indoor sampling to demonstrate the effectiveness of the approved remedy.

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 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 Lake 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:

CKNP Oil Company
1849 Calumet Avenue
Whiting, IN 46394
Attn: Anish Chittalakattu

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.

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:

**Kim T. Miller, P.E.
TriCore Environmental, LLC
2368 Corporate Lane, Suite 116
Naperville, IL 60563**

EXHIBIT A

**LEGAL DESCRIPTION OF REAL ESTATE LOCATED AT
1849 CALUMET AVENUE, WHITING, INDIANA**

PIN: 45-03-07-104-012-000-023

Common Address: 1849 Calumet Avenue, Whiting, IN 46394

Legal Description: Lots 28 and 29, Block 10, in Sheffield, in the City of Hammond, as per plat thereof, recorded in Plat Book 14, page 6, in the Office of the Recorder of Lake County, Indiana, excepting therefrom that portion of Lot 29 appropriated to the State of Indiana in Cause No. 45D04-0511-PL-00053, on January 30, 2006 and described as follows: Beginning at the Southwest corner of said lot; thence North 0 degrees 28 minutes 31 seconds East 6.005 meters (19.70 feet) along the West line of said lot; thence South 46 degrees 35 minutes 07 seconds East 8.617 meters (28.27 feet) to the South line of said lot; thence South 89 degrees 14 minutes 37 seconds West 6.309 meters (20.70 feet) along said South line to the point of beginning.

EXHIBIT B
SCALED MAP OF THE SITE

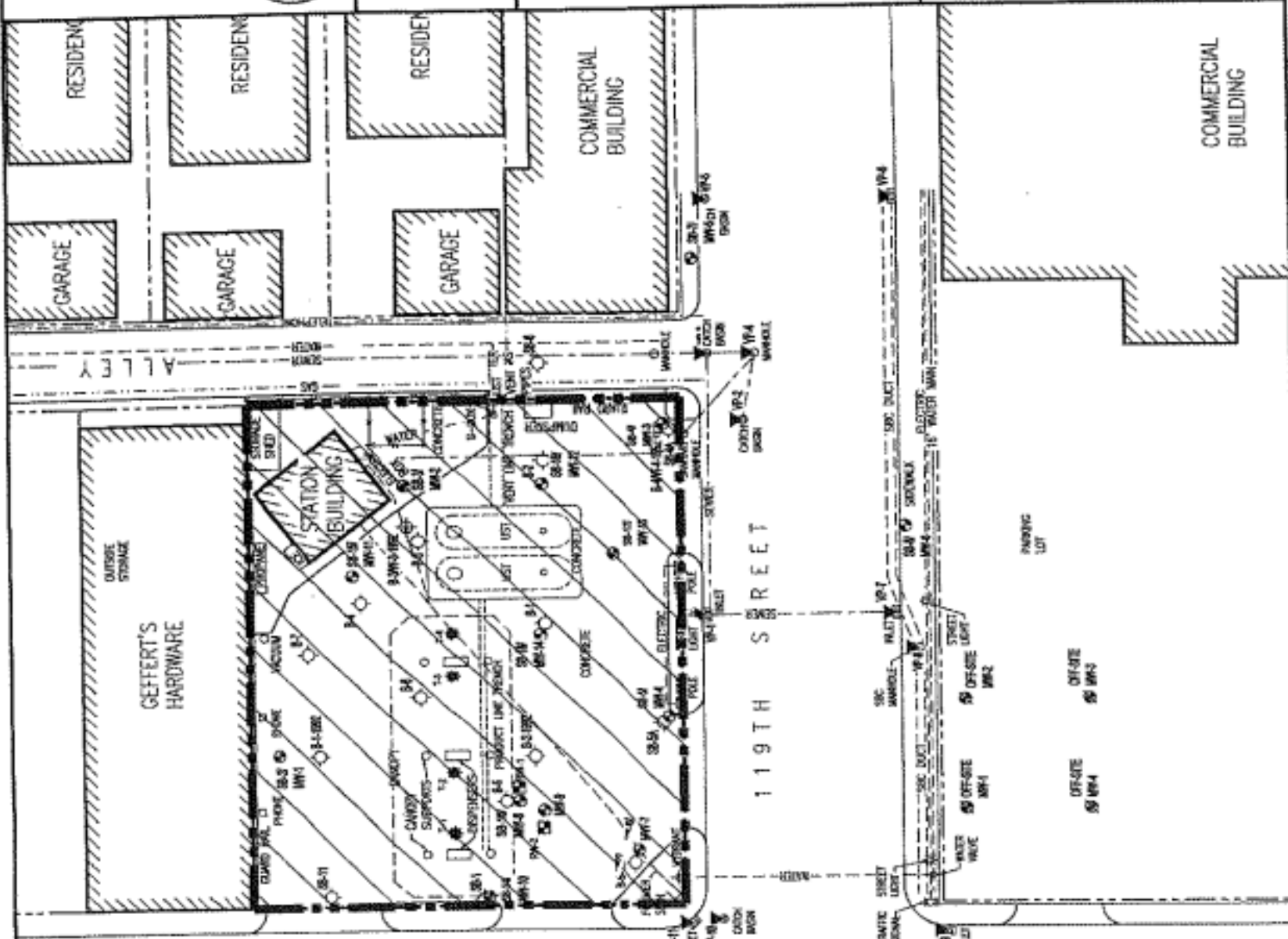
B
EXHIBIT

DRAWN BY: SAA
APPROVED BY: KTM
SCALE: 1" = 30'
DATE: 5/21/2018
DRAWING FILE: M014-149

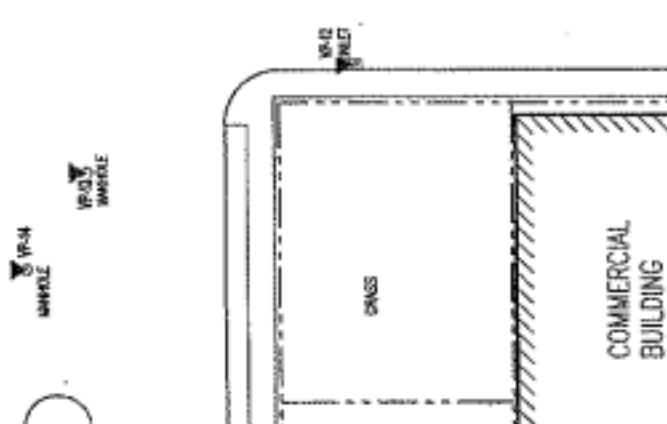
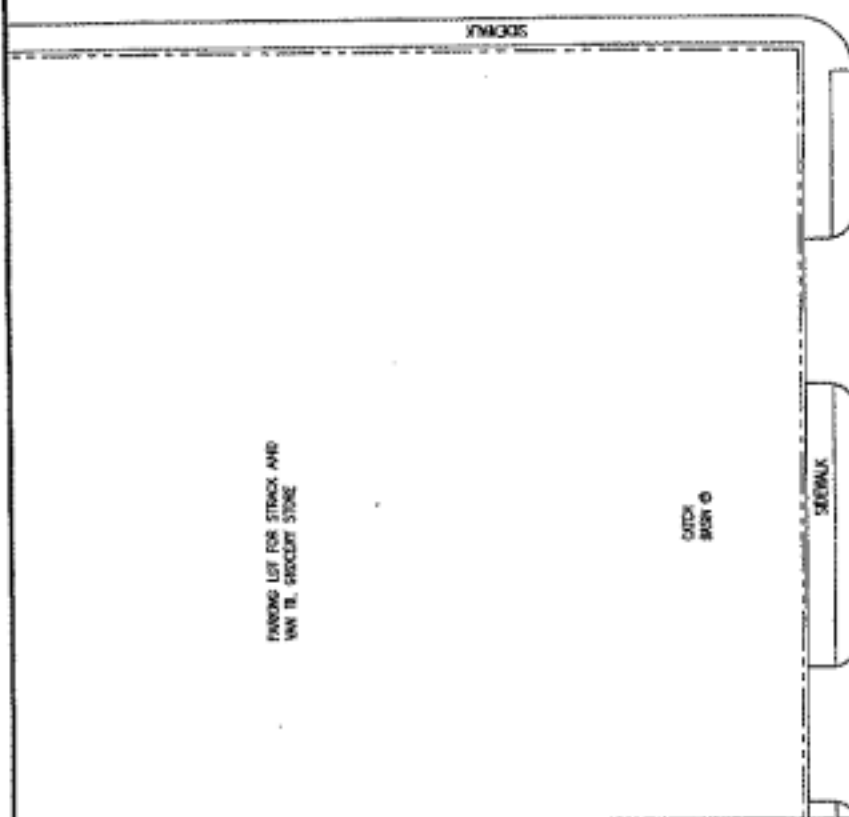
SITE MAP
FORMER CLARK RETAIL STATION #1171
1849 CALUMET AVENUE
WHITING, LAKE COUNTY, INDIANA 46394

KNIP Oil Company
1849 Calumet Avenue
Whiting, Indiana 46394

TRICORE Environmental, LLC
2388 Corporate Lane, Suite 118
Naperville, IL 60563
(630) 520-8973



CALUMET AVENUE



LEGEND

- PROPERTY BOUNDARY
- SOIL BORING LOCATION
- MONITORING WELL LOCATION
- OFF-SITE MONITORING WELL LOCATION
- SOIL SAMPLE LOCATION
- TEMPORARY WELL LOCATION
- SECURITY WELL LOCATION
- WORK SURVEY POINT LOCATION

APPROX. SCALE IN FEET
0 30

ALL MAP LOCATIONS ARE APPROXIMATE

NOTE: AREA SUBJECT TO RESTRICTIONS LISTED IN COVENANT, SECTION 3, ITEM 1, (c), THROUGH (g). ALL UTILITIES ARE SUBSURFACE UNLESS OTHERWISE NOTED.

ATTACHMENT C
DRAFT NOTIFICATION LETTER



January 9, 2019

**VIA USPS PRIORITY MAIL
WITH SIGNATURE CONFIRMATION**

Ms. Debra Malone
Hammond Department of Environmental Management
5925 Calumet Avenue, Room 304
Hammond, IN 46320

RE: Groundwater Ordinance Notification
CKNP Oil Company
1849 Calumet Avenue
Whiting, Indiana 46394

Dear Ms. Malone:

Pursuant to the Indiana Department of Environmental Management (IDEM), TriCore Environmental, LLC (TriCore), on behalf of CKNP Oil Company (CKNP), is providing written notification to the City of Hammond associated with the City of Hammond ordinance identified as Title V, Chapter 52, Section 52.02 (Ord. 8581, passed 7-26-2004) of the City Code.

From March 2005 to the present, soil and groundwater investigation activities were conducted to delineate the concentrations of the constituents of concern (COCs) above the Tier 1 soil and groundwater cleanup objectives established by IDEM. The concentrations of the COCs resulted from a release that occurred at the property. The release was unleaded gasoline from the underground storage tanks (USTs) at the property. As a result of this release, the IDEM was notified and incident number 199305545 was assigned to the release.

CKNP is notifying the City of Hammond that the right-of-way of 119th Street south of the site may contain contaminated soil and/or groundwater. Since the City of Hammond has jurisdiction of 119th Street, we are providing this notification.

To learn more about the site, please contact the IDEM at the number listed below.

Mr. Jeff Turley
Project Manager
Indiana Department of Environmental Management
Excess liability Trust Fund Technical Section
100 North Senate Avenue, Room 1101
Indianapolis, Indiana 46204-2251
(317) 234-5063

If you have any questions concerning this submittal, please contact either of the undersigned at (630) 520-9973.

Sincerely,

Kim T. Miller, P.E.
Senior Project Manager

Shawn Rodeck, P.E.
President

cc: Mr. Anish Chittalakattu, CKNP Oil Company, 1849 Calumet Avenue, Whiting, IN 46394