

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT (“Covenant”) is made this [Choose an item.](#) day of [Choose an item.](#), 20[Choose an item.](#), by the Northern Indiana Public Service Company LLC (“NIPSCO LLC”), 801 East 86th Avenue, Merrillville, Indiana 46410, (together with all successors and assignees, collectively “Owner”).

WHEREAS: Owner is the fee owner of certain real estate in the County of Marshall, Indiana, which is located at 500 West Monroe Street, Plymouth, Indiana, 46563, and more particularly described in the attached Exhibit “A” (“Real Estate”), which is hereby incorporated and made a part hereof. A portion of this Real Estate was acquired by deed on June 10, 1910, and recorded on June 17, 1910, as Deed Record 79, Pages 30 - 31, in the Office of the Recorder of Marshall County, Indiana. Another portion of this Real Estate was acquired by deed on August 10, 1954, and recorded on August 10, 1954, as Deed Record 149, Page 431, in the Office of the Recorder of Marshall County, Indiana. The Real Estate consists of approximately 5.2 acres and has also been identified by the county as parcel identification number 50-32-05-201-980.000-019. The portion of the Real Estate, to which the restrictions of this Covenant apply, hereinafter referred to as the “ERC Real Estate,” is defined by the Indiana State Plane East Zone NAD83 coordinates depicted on a map attached hereto as Exhibit “B”.

WHEREAS: NIPSCO LLC entered into Indiana’s Voluntary Remediation Program (“VRP”) to address one or more historical releases of petroleum, regulated substances, or hazardous substances (“contaminants of concern”) believed to have occurred in connection with the historical operation of a manufactured gas plant at the ERC Real Estate. The Indiana Department of Environmental Management (“IDEM” or the “Department”) assigned the VRP number 6031206. A remediation work plan (“RWP”) was prepared in accordance with IC 13-25-5, approved by the Department on May 24, 2017, and implemented by NIPSCO LLC.

WHEREAS: Certain contaminants of concern (“COCs”) remain in the soil and groundwater of the ERC Real Estate following completion of the response actions. The Department has determined that the COCs will not pose an unacceptable risk to human health at the remaining concentrations, provided that the Owner implements and complies with the land use restrictions and with any operation and maintenance requirements for engineered controls as required herein. The known COCs remaining are listed in Exhibit “C”, 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/). The Real Estate is also depicted as a polygon on IDEM’s GIS webviewer (currently <https://on.in.gov/ideminteractivemap>).

NOW THEREFORE, Owner subjects the ERC 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 ERC Real Estate for residential purposes, including, but not limited to, daily childcare 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 ERC 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 not use the ERC Real Estate for any agricultural use.
- (d) 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.
- (e) Shall neither engage in nor allow excavation of soil at depths greater than four feet in the ERC Real Estate identified via Indiana State Plane East Zone NAD83 coordinates, also designated as the "Construction Worker Restriction Area," depicted on Exhibit "B". The Owner, upon the Department's request, shall provide the Department evidence showing the excavated and restored area does not represent a threat to human health or the environment in accordance with Soil Management Plan approved by IDEM on July 7, 2024, described in VFC #83641874, and any IDEM approved updates.
- (f) Prior to the construction of new structures to be occupied by persons at the ERC Real Estate, the current Owner of the ERC 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 volatile organic compounds ("VOCs") or semi-volatile organic compounds ("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.

- (g) Shall not construct or allow occupancy of a dwelling or work space on the ERC Real Estate unless a vapor mitigation system or other effective IDEM approved remedy is installed, operated, and maintained within the dwelling or work space. IDEM may waive this restriction in writing if the Owner has provided data and analysis demonstrating to IDEM's satisfaction that there is no unacceptable risk to human health via the vapor intrusion exposure pathway.
- (h) Shall maintain the integrity of the existing groundcover, including both paved and gravel covered areas, which are depicted on "Exhibit B" via legal survey; these areas serve as engineered barriers to prevent direct contact with the underlying soils and must not be excavated, removed (unless replaced with an equivalent barrier), disturbed, demolished, or allowed to fall into disrepair, per the Operation Monitoring and Maintenance (OM&M) Plan approved by IDEM on January 26, 2024 (and any IDEM approved updates), described in VFC #83550726.

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 ERC 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 ERC 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 ERC 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 ERC 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 ERC 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 ERC 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 MARSHALL 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 ERC 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 Marshall County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department. In accordance with 329 IAC 1-2-7 and IC 13-14-2-9(d), the applicant shall reimburse the department for the administrative and personnel expense incurred by the department in evaluating a proposed modification or termination of a restrictive covenant under this rule.

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. The parties intend that this Covenant shall not 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. If necessary to enforce this Covenant, the parties agree to amend this Covenant to conform to any such change. 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:

Northern Indiana Public Service Company LLC
801 East 86th Avenue
Merrillville, Indiana 46410
Attn: NiSource Environmental Remediation

To Department:

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

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.

This instrument prepared by:
Daniel J. Deeb
ArentFox Schiff LLP
233 South Wacker Drive, Suite 7100
Chicago, IL 60606

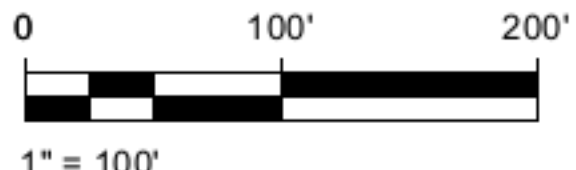
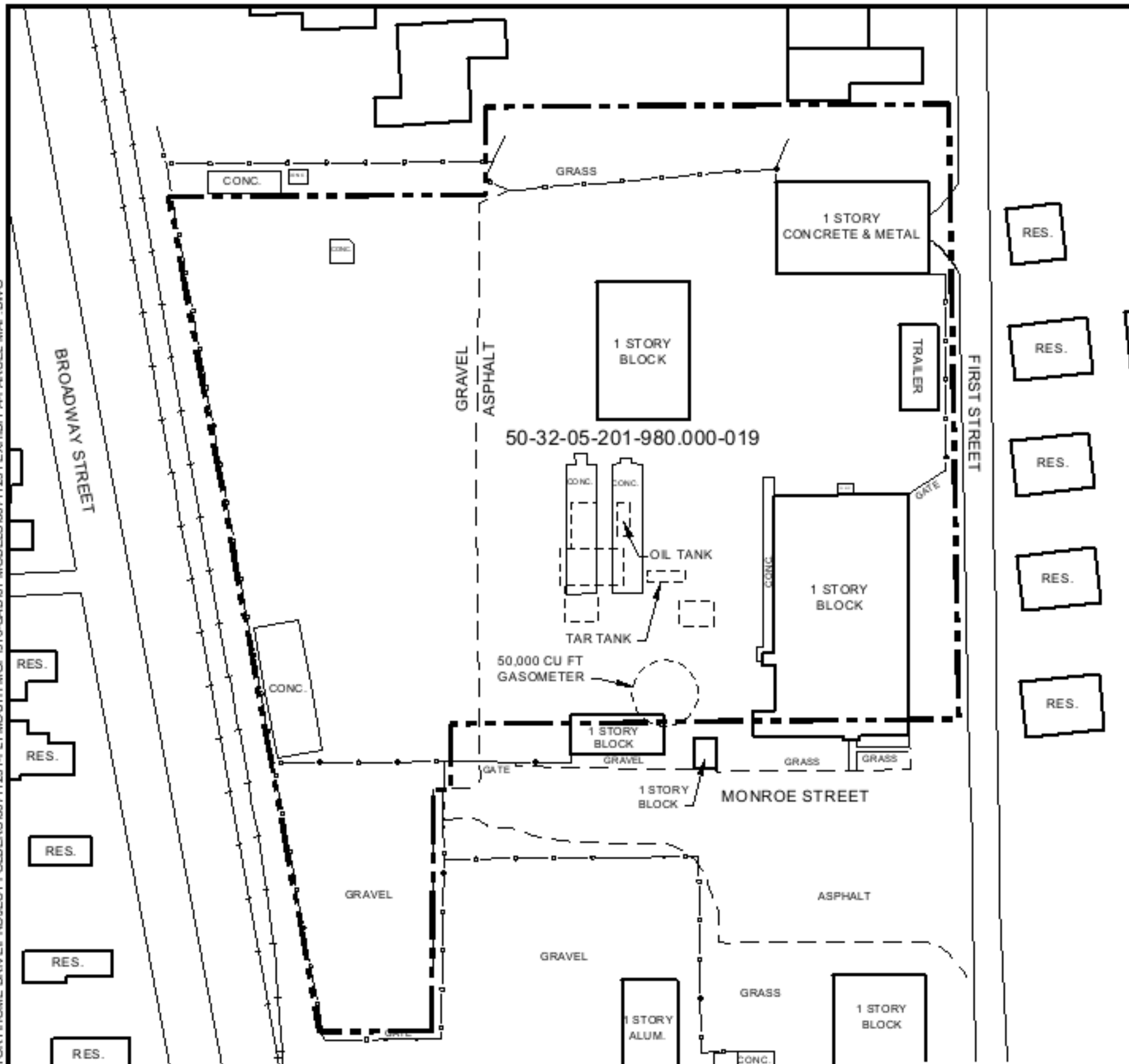
I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law:

Daniel J. Deeb
ArentFox Schiff LLP
233 South Wacker Drive, Suite 7100
Chicago, IL 60606

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

Project Management Initials: Designer: NLW Checked: RB Approved: _____ ANSI A 8.5" x 11"
 Last saved by: WILZBACHERN(2024-02-09) Last Plotted: 2024-02-09
 Filename: C:\USERS\WILZBACHERN\ONE DRIVE - AECOM\DIRECTOR\HOME DRIVE\PROJECT FOLDERS\60711251-PLYMOUTH MGP\910-CAD\01 MODELS\60711251 EXHIBIT A-PARCEL MAP.DWG



LEGEND

- PROPERTY BOUNDARY
- BORDER OF ASPHALT / GRAVEL
- CHAIN-LINK FENCE
- RAILROAD TRACKS
- BUILDING
- HISTORIC STRUCTURE

NOTES:

1. PROPERTY BOUNDARY AND PARCEL NUMBER OBTAINED FROM MARSHALL COUNTY GIS WEBSITE ON FEBRUARY 9, 2024 (www.beacon.schneidercorp.com).

REAL ESTATE RECORD

COMPANY NORTHERN INDIANA PUBLIC SERVICE COMPANY
 PLAT NO. 1 COUNTY Marshall DATE 2/25/42
 LOCATION Plymouth DISTRICT Plymouth
 TITLE Gas Holder

South Bend & Mishawaka Gas Co.) Deed June 13, 1910
 to) Recorded June 17, 1910
 Northern Indiana Gas & Electric Co.) Record 79, Pages 30 and 31

All that central portion of Cut-lot seventeen (17) Merrill's Addition to the Town (now City) of Plymouth, said county and state, contained within the acres and bounds set forth as follows:

Commencing on the east line of said Cut-lot seventeen (17) Merrill's Addition at the point of intersection of the south line of Lot twenty-four (24) of Wilson's Subdivision of Cut-lot eighteen (18) of said Merrill's Addition be continued west to said Lot seventeen (17) Merrill's Addition; continuing, thence, from that point of beginning west in a direct line with said south line of said Lot twenty-four (24) Wilson's Subdivision along the continuation of such south line to the east line of the right of way of the Lake Erie & Western Railroad, formerly the right of way of the Indianapolis, Peru and Chicago Railroad; continuing, thence, southeasterly along the east line of said right of way to a point directly in line with the center of Monroe Street in said City of Plymouth, being the point of intersection of the center line of said Monroe Street be extended to said railroad; thence, continuing east in a direct line with and along such continuation of the center line of said Monroe Street to the east line of said Cut-lot seventeen (17) Merrill's Addition; thence north along and over the east line of said Cut-lot seventeen (17) Merrill's Addition, to the place of beginning.

Lots six (6), eight (8), nine (9), ten (10), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), and twenty-three (23), all in Wilson's Subdivision of Cut-lot eighteen (18), Merrill's Addition to the Town (now City) of Plymouth, said County and State.

Together with all the rights and privileges to make connections with and use sewer pipe and drains and water pipe heretofore furnished and laid in, upon and through certain real estate heretofore owned and used in connection with the above described tract of real estate.

2. Calvin Gill, Sr. and Annabelle Gill, husband and wife))
 to) Deed dated August 10, 1954
) Recorded August 12, 1954
) Book 149, Page 431
 Northern Indiana Public Service Company)

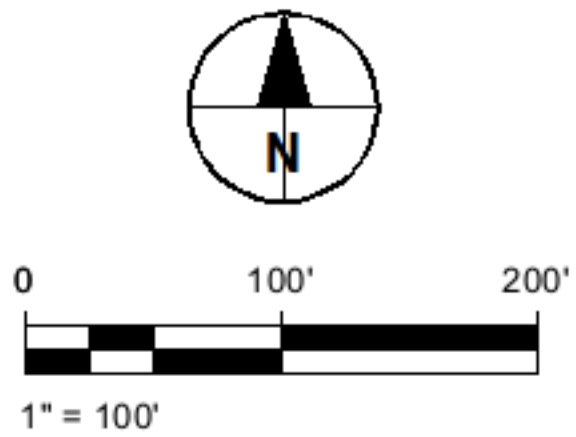
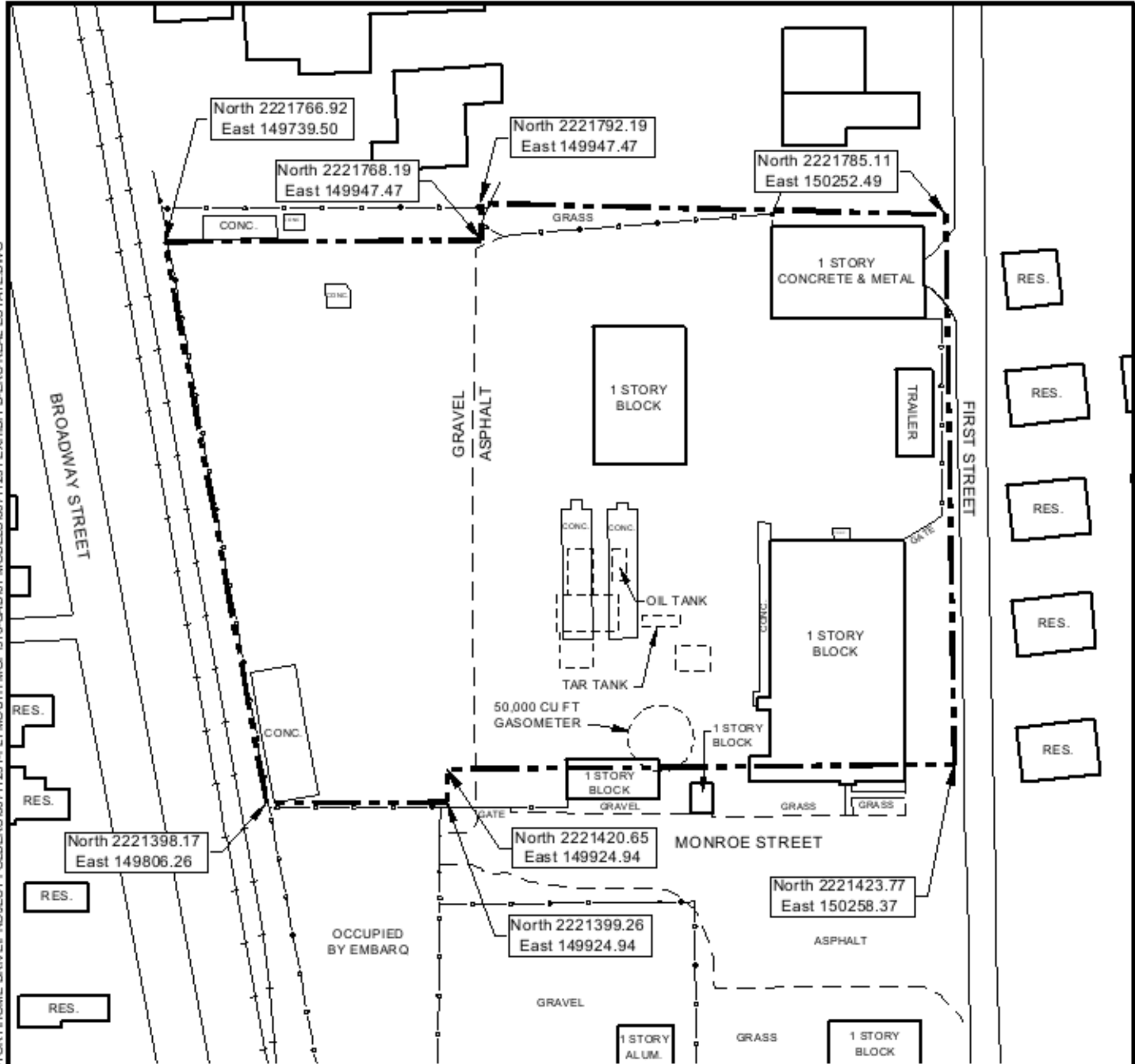
Beginning at the Southwest Corner of Lot Seven (7) of Wilson's Subdivision of Outlot Eighteen (18) in Merrill's Addition to the Town, now City, of Plymouth, in Marshall County, Indiana; running thence west six (6) feet to the center line of the vacated alley; thence north ninety-nine (99) feet to the center line of Jackson Street vacated; thence east along the center line of Jackson Street vacated eighteen (18) feet; thence south ninety-nine (99) feet to the south line of Lot Seven (7); thence west along the south line of Lot Seven (7) twelve (12) feet to the place of beginning.

Subject to the taxes of 1954 due and payable in 1955.

EXHIBIT B

ERC REAL ESTATE

Project Management Initials: Designer: NLW Checked: RB
 Approved: _____ ANSI A 8.5" x 11"
 File name: C:\USERS\WILZBACHER\NEDRIVE - AECOM DIRECTORY\HOME DRIVE\PROJECT FOLDERS\60711251-PLYMOUTH MGP\910-CAD\01 MODELS\60711251 EXHIBIT B-ERC REAL ESTATE.DWG
 Last saved by: WILZBACHERN(2024-02-09) Last Plotted: 2024-02-12
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LEGEND

	ERC BOUNDARY
	BORDER OF ASPHALT / GRAVEL
	CHAIN-LINK FENCE
	RAILROAD TRACKS
	BUILDING
	HISTORIC STRUCTURE

NOTES:

- COORDINATE SYSTEM IS INDIANA STATE PLANE, EAST ZONE, NAD83.

EXHIBIT C

CONTAMINANTS OF CONCERN

Polynuclear Aromatic Hydrocarbons
Benzo(a)anthracene
Benzo(a)pyrene
Benzo(b)fluoranthene
Naphthalene