



June 7, 2024

Ms. Morgan Willis
Indiana Department of Environmental Management
Office of Land Quality
Petroleum Remediation Section
100 North Senate Avenue, Room 1101
Indianapolis, Indiana 46204

Re: **Revised Draft Environmental Restrictive Covenant**
Circle K #2210
201 S. Randolph Street
Garrett, Indiana 46738
IDEM Facility ID Number: 9936
IDEM Incident Number: 202106506
American Environmental Project 391063

Dear Ms. Willis:

American Environmental is pleased to provide you with the Revised Draft Environmental Restrictive Covenant (ERC) for your review for the above referenced facility, per your email dated April 29, 2024.

We trust that this submittal is responsive to your needs and if you have any questions, please contact us at (317) 871-4090.

Sincerely,

American Environmental Corporation

A handwritten signature in black ink, appearing to read "James E. Madding".

James E. Madding
Project Manager

A handwritten signature in black ink, appearing to read "Audrey S. Kortz".

Audrey S. Kortz, L.P.G. 619, C.H.M.M. 2011
Vice President, Technical Services

ATTACHMENT A

ENVIRONMENTAL RESTRICTIVE COVENANT

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT (“Covenant”) is made this ___ day of _____, 2024, by Mac’s Convenience Stores LLC, 4080 W Jonathan Moore Pike, Columbus, IN 47201 (together with all successors and assignees, collectively “Owner”).

WHEREAS: Owner is the fee owner of certain real estate in the County of Dekalb, Indiana, which is located at 201 S. Randolph Street, Garrett, IN 46738 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 August 31, 2023, and recorded on September 5, 2023, as Deed Record 202304540, in the Office of the Recorder of Dekalb County, Indiana. The Real Estate consists of approximately 0.24 acres and has also been identified by the county as parcel identification numbers 26-09-03-113-001.000-013, 26-09-03-113-002.000-013, 26-09-03-113-003.000-013, 26-09-03-113-004.000-013, 26-09-03-113-005.000-013, 26-09-03-113-006.000-013, 26-09-03-113-007.000-013, 26-09-03-113-008.000-013, 26-09-03-113-009.000-013, 26-09-03-113-010.000-013 and 26-09-03-113-011.000-013. 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 Circle K #2110. The incident numbers assigned by the Indiana Department of Environmental Management (“Department” or “IDEM”) for the releases is 200205516 and 202106506, and the relevant facility identification number is 9936.

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 Owner implements and complies with the land use restrictions contained herein are implemented to protect human health and the environment. The known COC’s remaining are petroleum compounds relating to gasoline.

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 restricted Real Estate is also depicted as a polygon on IDEM’s GIS webviewer (currently <https://on.in.gov/ideminteractivemap>).

NOW THEREFORE, Owner 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.
- (b) Prior to the change in use of the site or construction of new structures to be occupied by persons 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 volatile organic compounds (VOCs) or semi-volatile organic compounds (SVOCs) with an IDEM approved sampling plan. 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 _____, 2024, RECORDED IN THE OFFICE OF THE RECORDER OF DEKALB COUNTY ON _____, 2024, 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 DeKalb 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 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:

Mac's Convenience Stores LLC
4080 W Jonathon Moore Pike
Columbus, IN 47201

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.

Owner hereby attests to the accuracy of the statements in this document and all attachments.

IN WITNESS WHEREOF, Mac's Convenience Stores LLC, the said Owners of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this ____ day of _____, 2024.

STATE OF _____)
) SS: _____
COUNTY OF _____) Printed Name
Mac's Convenience Stores LLC

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, the _____ of the Owner, Mac's Convenience Stores LLC, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this ___ day of _____, 2024.

_____, Notary Public
Residing in _____ County, _____

My Commission Expires:

This instrument prepared by:
James E. Madding
Project Manager
American Environmental Corp.
8500 Georgetown Road
Indianapolis, Indiana 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:

**James E. Madding
Project Manager
American Environmental Corp.
8500 Georgetown Road
Indianapolis, Indiana 46268**

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

DULY ENTERED
FOR TAXATION
Sep 01 2023
Susan Sleeper
AUDITOR DeKALB COUNTY

202304540
09/05/2023 08:31:46 AM
RECORDER OF DEKALB CO, IN
LETA HULLINGER
RECORDED AS PRESENTED
FEE AMOUNT: 25.00

SPECIAL WARRANTY DEED

THIS INDENTURE WITNESSETH, that **Horizon Properties I, LLC**, an Indiana limited liability company (“Grantor”), CONVEYS AND WARRANTS to **Mac’s Convenience Stores LLC**, a Delaware limited liability company (“Grantee”), for the sum of Ten Dollars (\$10.00), and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the real estate, including any improvements thereon, situated in DeKalb County, State of Indiana, more particularly described in Exhibit A attached hereto and made a part hereof (the “Real Property”), and commonly known as 201 S. Randolph, Garrett, IN 46738.

This conveyance is subject to: (i) all easements, highways, rights-of-way, covenants, conditions, restrictions and other matters of record; (ii) all current, non-delinquent real estate taxes and assessments; and (iii) all matters that would be disclosed by a survey or a physical inspection of the Real Property.

Prior Deed Reference: Document 20309454 of the DeKalb County, Indiana Recorder.

GRANTOR IS CONVEYING THE REAL PROPERTY IN AN “AS-IS” AND “WHERE-IS” CONDITION “WITH ALL FAULTS” AND ALL PHYSICAL LATENT OR PATENT DEFECTS AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE, OR TYPE WHATSOEVER FROM OR ON BEHALF OF GRANTOR.

Grantor shall warrant and defend title to the Real Property to Grantee, its successors and assigns, against the lawful claims and demands of all persons claiming by, through or under Grantor but against none other.

The undersigned represents and certifies that he is duly authorized and fully empowered, to execute and deliver this deed; that Grantor has full capacity to convey the Real Property described herein; and that all necessary action for the making of such conveyance has been taken and done.

IN WITNESS WHEREOF, Grantor has caused this deed to be executed effective as of August 31, 2023.

“GRANTOR”

HORIZON PROPERTIES I, LLC, an Indiana limited liability company

By: *Jeffrey N. Bush*
Jeffrey N. Bush, Manager

STATE OF INDIANA)
) SS:
COUNTY OF Marion)

Before me, a Notary Public in and for said County and State, personally appeared Jeffrey N. Bush, as Manager of Horizon Properties I, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing instrument, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 30th day of August, 2023.

Signature: *Jessica Contos*
Printed: Jessica Contos

Resident of: Marion County, Indiana.

My Commission expires: April 8, 2024.

Commission # NP0680108
Grantee’s address and send tax statements to: 4080 Jonathan Moore Pike
Columbus, IN 47201



This instrument was prepared by (and return recorded instrument to): Alexandra S. Sylvia, Esq., Plews Shadley Racher & Braun LLP, 1346 N. Delaware Street, Indianapolis, IN 46202.

I affirm, under penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. /s/ Alexandra S. Sylvia

EXHIBIT "A"
Legal Description

Lots Numbered One (1), Two (2), Three (3), Four (4), Five (5), Six (6) and Seven (7) in Block Number Thirty-Three (33) in the Original Plat of the Town, now City of Garrett, DeKalb County, Indiana, recorded in Plat Book 3, Page 92 of the DeKalb County, Indiana Records.

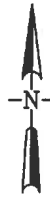
Commonly known as 201 S Randolph, Garrett, IN 46738

EXHIBIT B

SITE MAP

EAST KEYSER STREET

SOUTH RANDOLPH STREET



41.349330
-85.135513

41.349330
-85.135232

41.349330
-85.135047

41.349260
-85.135513

41.349260
-85.135232

41.349260
-85.135047

41.349192
-85.135513

41.349192
-85.135232

41.349192
-85.135047

41.349122
-85.135513

41.349122
-85.135232

41.349155
-85.135047

41.349066
-85.135513

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-85.135047

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-85.135513

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-85.135232

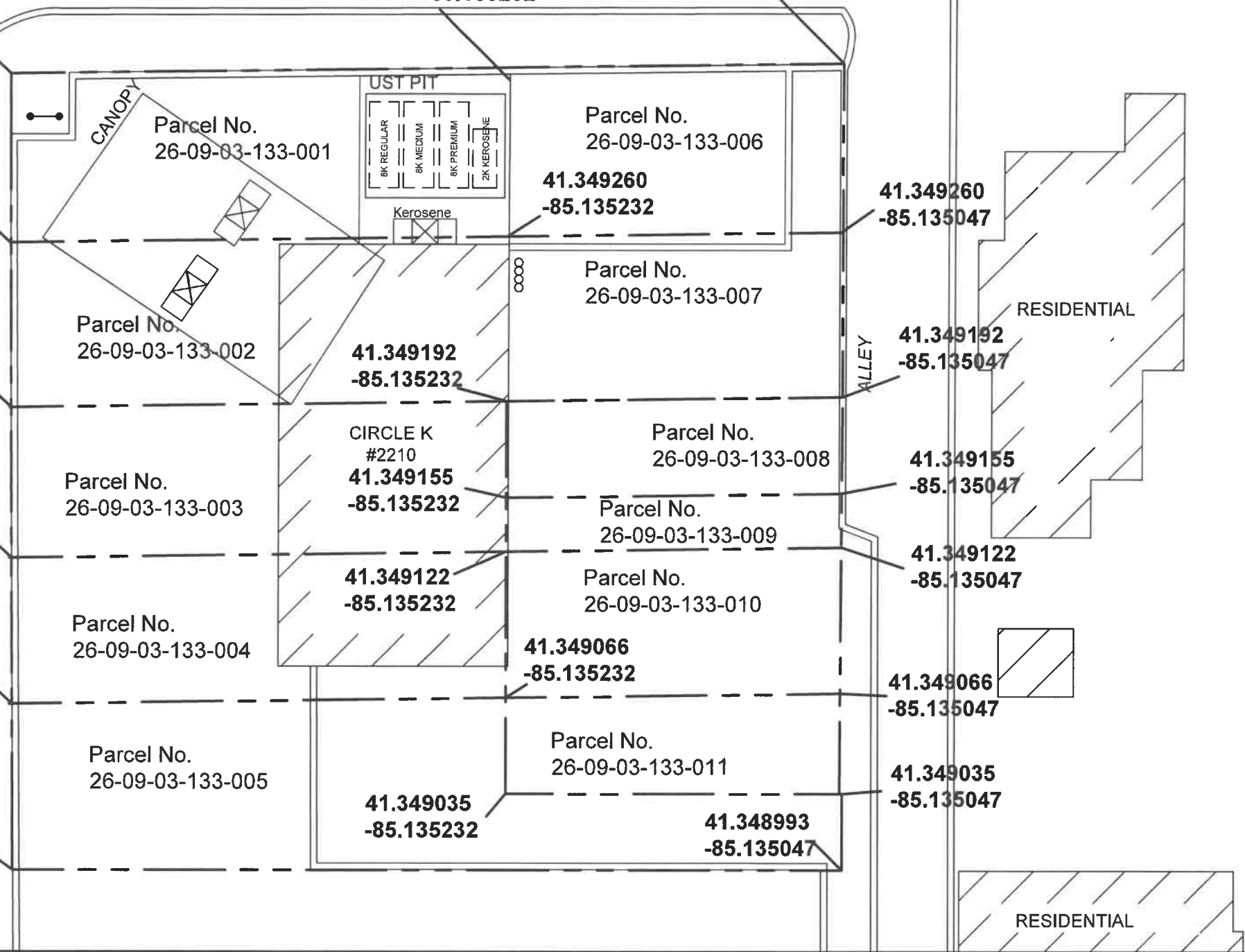
41.348993
-85.135047

41.349035
-85.135047

LEGEND

EI

- MONITORING WELL
- SOIL PROBES
- BUILDING
- BILL BOARD SIGN
- STEEL UST
- PUMP ISLAND
- UST VENTS



American Environmental
 Indianapolis, Indiana-Corporate Office (317) 871-4090
 Louisville, Kentucky-Regional Office (502) 491-0144
 Springfield, Illinois-Regional office (217) 585-9517
 Fairfield, Ohio-Regional Office (513) 874-7740

SITE MAP
CIRCLE K #2210
201 SOUTH RANDOLPH STREET
GARRETT, INDIANA

Project No.:
411106
 Drawing File:
411106
 Date:
1/23/2024

SCALE:
AS SHOWN
 FIGURE:
1