

Parcel No. 45-03-08-302-031.000-025

12

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 18th day of December, 2014, by the City of Whiting Redevelopment Commission, of 1443 119th Street, Whiting, Indiana, together with all successors and assignees (collectively, "Owner").

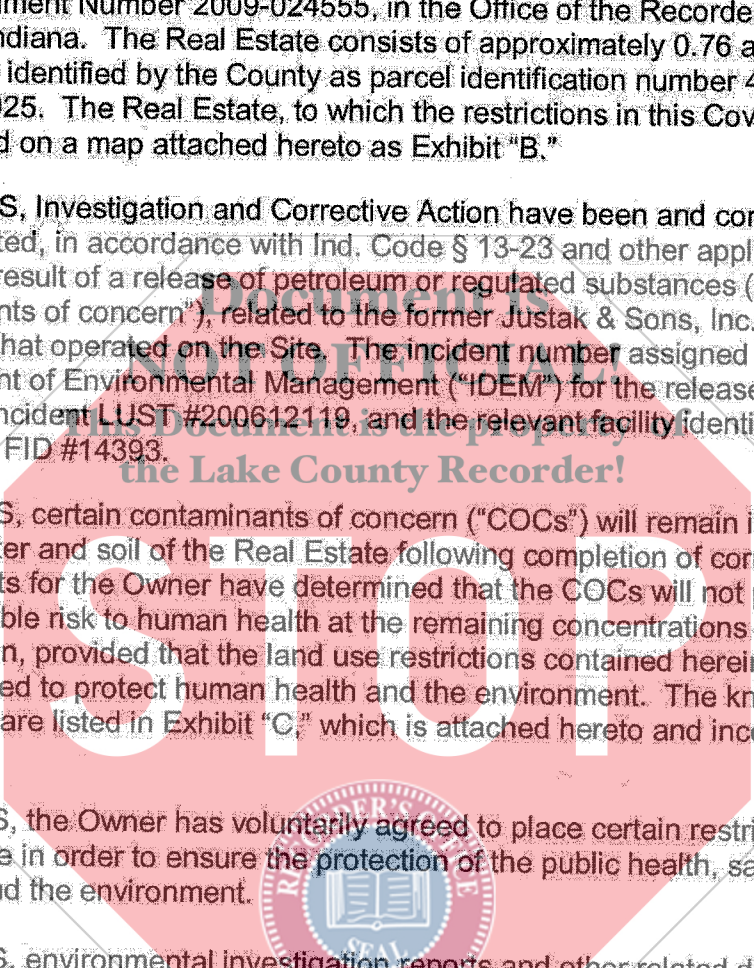
WHEREAS, Owner is the fee owner of certain real estate in the County of Lake, Indiana, which is located at 2316-36 Schrage Avenue, Whiting, Indiana, and more particularly described in the attached Exhibit "A" ("Real Estate"), which is hereby incorporated and made a part hereof. This Real Estate was acquired by deed on April 14, 2009, and recorded on April 16, 2009, as Deed Record 008389 and Instrument Number 2009-024555, in the Office of the Recorder of Lake County, Indiana. The Real Estate consists of approximately 0.76 acres, and has also been identified by the County as parcel identification number 45-03-08-302-031.000-025. The Real Estate, to which the restrictions in this Covenant apply, is depicted on a map attached hereto as Exhibit "B."

WHEREAS, Investigation and Corrective Action have been and continue to be implemented, in accordance with Ind. Code § 13-23 and other applicable Indiana law, as a result of a release of petroleum or regulated substances (collectively, "constituents of concern"), related to the former Justak & Sons, Inc. trucking business that operated on the Site. The incident number assigned by the Indiana Department of Environmental Management ("IDEM") for the release is State Cleanup Incident LUST #200612119, and the relevant facility identification number is FID #14393.

WHEREAS, certain contaminants of concern ("COCs") will remain in the groundwater and soil of the Real Estate following completion of corrective action. Consultants for the Owner have determined that the COCs will not pose an unacceptable risk to human health at the remaining concentrations after remediation, 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 "C," which is attached hereto and incorporated herein.

WHEREAS, the Owner has voluntarily agreed to place certain restrictions on the Real Estate in order to ensure the protection of the public health, safety and welfare, and the environment.

WHEREAS, environmental investigation reports and other related documents are hereby incorporated by reference, and may be examined at the offices of the IDEM, 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 IDEM's Virtual File Cabinet by accessing the Department's Web Site (currently, www.in.gov/idem/).



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2014 DEC 19 AM 10:21
MICHAEL B. BROWN
RECORDER OF DEEDS

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

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city of
Whiting
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DEC 19 2014

PEGGY HOLINGA KATONA
LAKE COUNTY AUDITOR

I

NOW THEREFORE, the 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 of the Real Estate for residential purposes, including, but not limited to, daily child care 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 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 or allow any building to be erected south of 41°40' 18.70" N on the Site (as shown on Figure B) without a vapor intrusion ("VI") investigation being conducted on the Site to evaluate the future VI pathway. Prior to human occupancy of any newly-constructed building(s) in the Affected Area of the Real Estate as depicted in Exhibit B, either indoor air samples must be collected as outlined in IDEM's RCG Section 5.9 to confirm, with IDEM concurrence, that concentrations of contaminants in indoor air are below their respective IDEM RCG Commercial/Industrial Air Vapor Exposure Levels for a commercial or industrial structure or below their respective IDEM RCG Residential Indoor Air Vapor Exposure Levels for a residential structure, or a vapor mitigation system must be installed, operated, and maintained within such building(s) on-site. Such vapor mitigation system must be operated until IDEM concurs that its operation is no longer necessary to protect human health, based upon the verified achievement of the applicable indoor air vapor exposure levels contained within IDEM's RCG or site-specific levels calculated utilizing equations contained in IDEM's RCG.

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 IDEM. The Owner shall grant to IDEM, 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):

NOT OFFICIAL!

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED _____, 2014, RECORDED IN THE OFFICE OF THE RECORDER OF LAKE COUNTY ON _____, 2014, INSTRUMENT NUMBER (or other identifying reference) _____ IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.
6. Notice to IDEM of the Conveyance of Property. Owner agrees to provide notice to IDEM 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 IDEM 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; (b) and, 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 Ind. Code § 13-14-2-6 and other applicable law, IDEM 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 IDEM determines that the COCs 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 IDEM'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 IDEM.

V. MISCELLANEOUS

11. Waiver. No failure on the part of IDEM 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 IDEM's right to enforce such term, and no waiver on the part of IDEM 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, RISC 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:
The City of Whiting
c/o Denise L. Sejna, Esq.
City Attorney
1443 119th Street
Whiting, IN 46394

With a copy to:
Michael O. Nelson, Esq.
Nelson Law Group LLC
8777 Purdue Road, Suite 310
Indianapolis, IN 46268

To IDEM:
IDEM, Office of Land Quality
100 N. Senate Avenue
Indianapolis, IN 46204-2251
Attn: Kristy McIntire

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 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.

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

IN WITNESS WHEREOF, the said Authorized Representative of the Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 18th day of December, 2014.

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.



Joseph M. Stahura
President
Whiting Redevelopment Commission




STATE OF INDIANA)
LAKE) SS:
COUNTY OF MARION)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Joseph M. Stahura, the President and Authorized Representative of the Owner, the City of Whiting Redevelopment Commission, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 18th day of December, 2014.

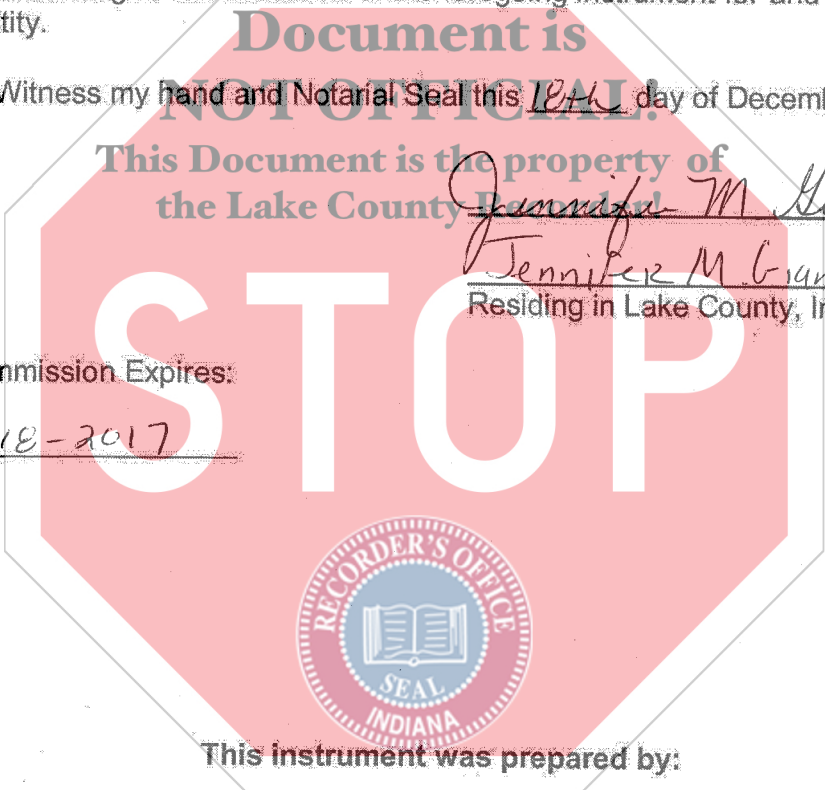
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Jennifer M. Granoff, Notary Public
Residing in Lake County, Indiana

My Commission Expires:

02-18-2017



This instrument was prepared by:

Michael O. Nelson, Esq.
Nelson Law Group LLC
8777 Purdue Road, Suite 310
Indianapolis, Indiana 46268

EXHIBIT A

COPY OF CURRENT DEED FOR THE REAL ESTATE



ID NO. 45-03-08-302-031.000-025/28-29-0080-0002

Mail Tax Bills To: Whiting Redevelopment Commission, 1443 - 119th Street,
Whiting, Indiana 46394

QUIT CLAIM DEED

This indenture witnesseth that THE CITY OF WHITING, an Indiana municipal corporation, Grantor, of Lake County in the State of Indiana RELEASES AND QUIT CLAIMS TO the City of Whiting, Indiana, by and through its REDEVELOPMENT COMMISSION, Grantee, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration the receipt whereof is hereby acknowledged, the following Real Estate in Lake County in the State of Indiana, to wit:

Lots 2 to 11, both inclusive, and the North 15 feet of Lot 12, Subdivision of Lot 43 and 78 of Forsyth's Terminal Subdivision, as per plat thereof, recorded in Plat Book 5 page 16, in the Office of the Recorder of Lake County, Indiana.

Commonly known as: 2316 - 2336 Schrage Avenue, Whiting, Lake County, Indiana 46394.

Dates this 14th day of April, 2009.

CITY OF WHITING, INDIANA

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BY: Joseph M. Stahura
Joseph M. Stahura, Mayor
City of Whiting, Indiana

STATE OF INDIANA
COUNTY OF LAKE

This Document is the property of the Lake County Recorder!

Before me, a Notary Public in and for said County and State, personally appeared Joseph M. Stahura, the Mayor of the City of Whiting, Indiana, who acknowledged execution of the foregoing Deed, for and on behalf of said Grantor, and who, having been duly sworn, stated that the representation therein contained are true.

Witness my hand and Notarial Seal this 14th day of April, 2009.

Carol R. Stelov
Signature, Notary Public

Carol R. Stelov
Printed Name

Resident of Lake County.
Commission Expires 01/29/12



008384

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.


(signature)

Denise L. Sejna
(print name)

This instrument prepared by Denise L. Sejna, Attorney at Law, 1443 - 119th Street, Whiting, IN 46394

Mail To: The City of Whiting
By and Through its Redevelopment Commission
1443 - 119th Street
Whiting, Indiana 46394

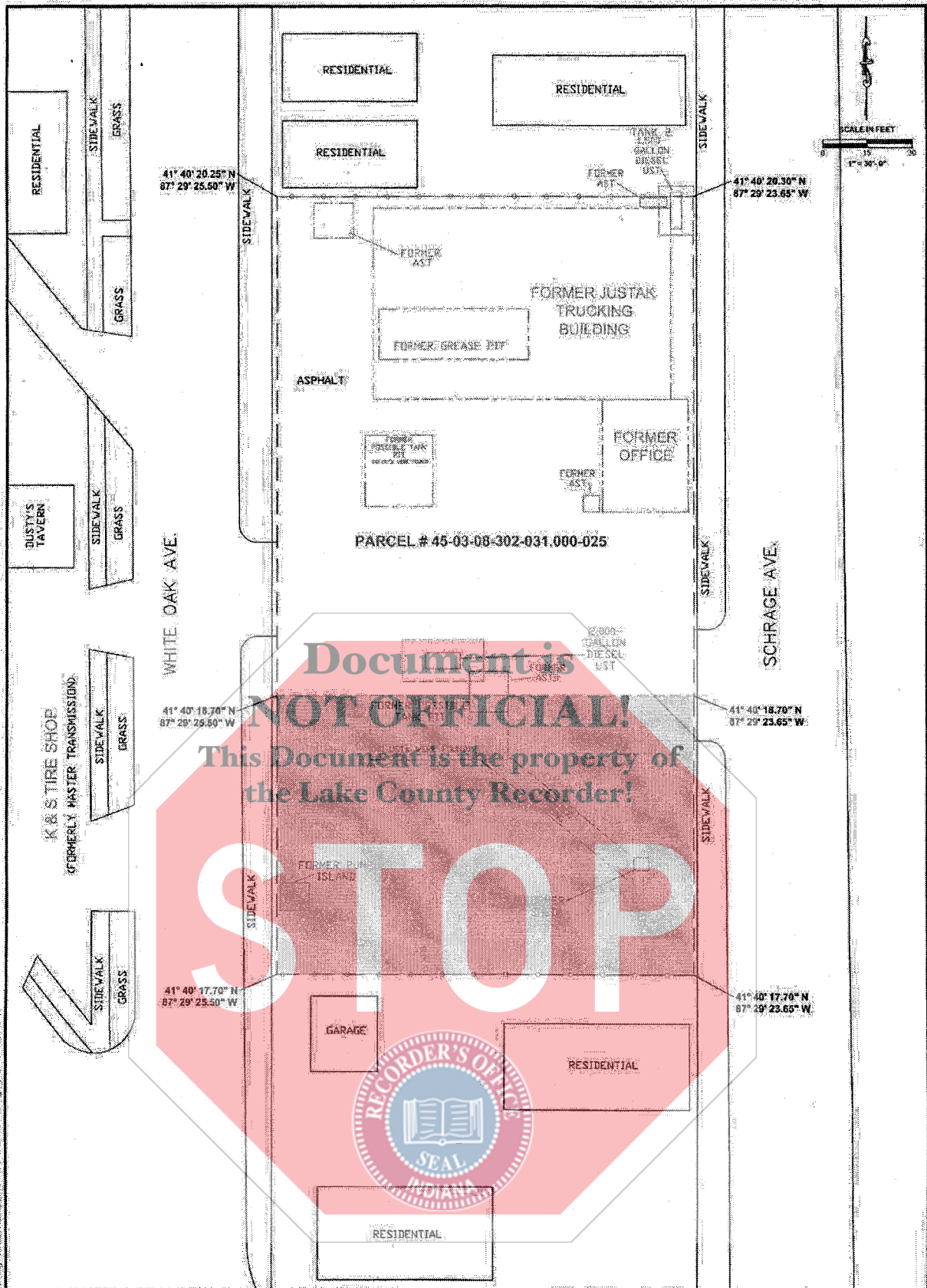
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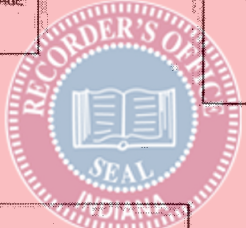
EXHIBIT B

SITE MAP





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
 SESOCO group ENVIRONMENTAL SOLUTIONS	LEGEND ——— PROPERTY/PARCEL BOUNDARY  SOUTHERN RESTRICTION BOUNDARY  FENCE 41° 40' 21.25" N LATITUDE 87° 29' 25.50" W LONGITUDE	PARCEL MAP FORMER JUSTAK TRUCKING PROPERTY 2338 SCHRAGE AVE. WHITING, IN
		PROJECT # 3390 FIGURE # 1

EXHIBIT C

CONTAMINANTS OF CONCERN

**Contaminants of Concern
at 2336 Schrage Avenue, Whiting Indiana**

Benzo(a)pyrene

dibenzo(a,h)anthracene

