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Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 12<sup>TH</sup> day of JANUARY, 2016, by DJM Holdings, LLC, 220 165<sup>th</sup> Street, Hammond, Indiana 46324 (together with his/her/its/their 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 220 165<sup>th</sup> Street, Hammond, Indiana, 46324, 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 October 10, 2012 and recorded on October 19, 2012 as Deed Records 2012-073951 and 2012-073952 in the Office of the Recorder of Lake County, Indiana. The Real Estate consists of approximately 1.1097 acres. Additionally, the Real Estate is identified by the county as parcel identification numbers: 45-06-12-127-001.000-023 and 45-06-12-127-002.000-023.

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 Marathon Petroleum Company (MPC) Store Number 3181. The incident number assigned by IDEM for the active release is 201203502, and the relevant facility identification number is 5479.

WHEREAS: Certain contaminants of concern ("COCs") remain in the soil and groundwater of the Real Estate (as shown on the Affected Area of the Real Estate as depicted in Exhibit B) 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. The known COCs are benzene and benzo (a) pyrene.

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](http://www.in.gov/idem)).

NOW THEREFORE, DJM Holdings LLC subjects the Real Estate to the following restrictions and provisions, which shall be binding on the current Owner and all future Owners:



2016 JAN 12 10:59 AM  
RECORDER'S OFFICE  
LAKE COUNTY  
STATE OF INDIANA  
FILED FOR RECORD

FILED  
JAN 12 2016

000174

JOHN E. PETALAS  
LAKE COUNTY AUDITOR

I. 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) in the Affected Area as depicted in Exhibit B.
- (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 in the Affected Area as depicted in Exhibit B.

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3rd  
\$2900  
M-2  
NASH

**EXHIBIT A**

**LEGAL DESCRIPTION OF REAL ESTATE**

**PARCEL I.D. NUMBER: 45-06-12-127-001.000-023**

Lot 1 and the North 12 feet of Lot 2, in the Redivision of Lot 1, in Woodland Addition to Hammond, as per plat of said subdivision, recorded in Plat Book 22 Page 64, in the office of the Recorder of Lake County, Indiana.

**PARCEL I.D. NUMBER: 45-06-12-127-002.000-023**

Parcel 1: Lots 3, 4, and 5 and the South 45 feet of Lot 2, in the Redivision of Lot 1, in Woodland Addition to Hammond, as per plat thereof, recorded in Plat Book 22, pages 64, in the Office of the Recorder of Lake County, Indiana.

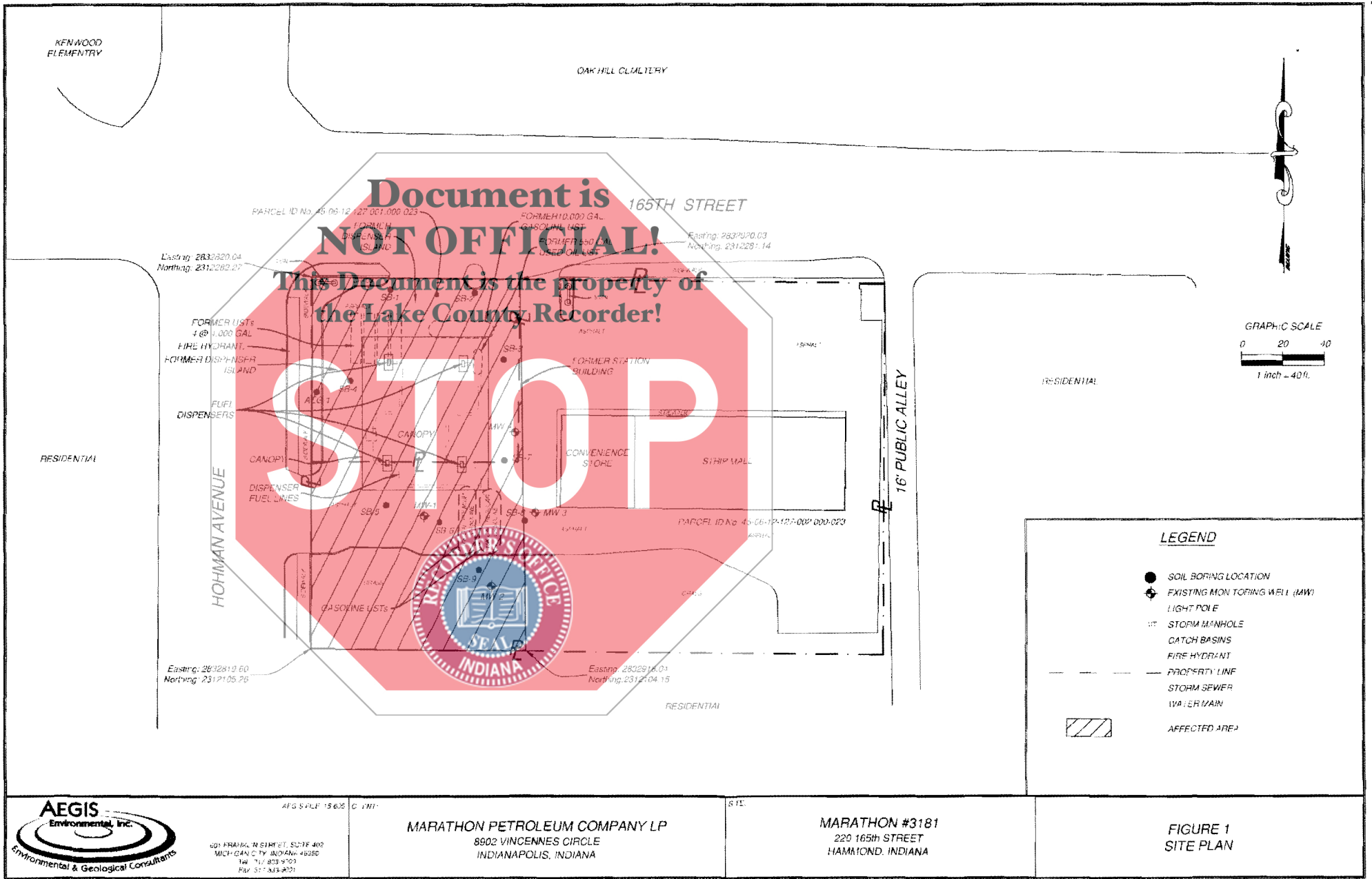
Parcel 2: The North 45 feet of Lot 2, in Woodland Addition to Hammond, as per plat Thereof, recorded in Plat Book 17, page 9, in the Office of the Recorder of Lake County, Indiana.



**EXHIBIT B**

**SITE PLAN SHOWING AFFECTED AREA**





REF SCALE: 1/8" = 1'-0"  
 601 FRANKLIN STREET, SUITE 400  
 MICHIGAN CITY, INDIANA 46360  
 TEL: 717-833-9100  
 FAX: 317-833-8701

MARATHON PETROLEUM COMPANY LP  
 6902 VINCENNES CIRCLE  
 INDIANAPOLIS, INDIANA

MARATHON #3181  
 220 165th STREET  
 HAMMOND, INDIANA

FIGURE 1  
 SITE PLAN

17. 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, **DJM Holdings LLC**, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 6<sup>th</sup> day of JANUARY, 2016

David McCoy  
David McCoy  
Registered Agent  
DJM Holdings LLC

STATE OF INDIANA)  
) SS:  
COUNTY OF LAKE )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared DAVID F. MCCOY the \_\_\_\_\_ of the Owner, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

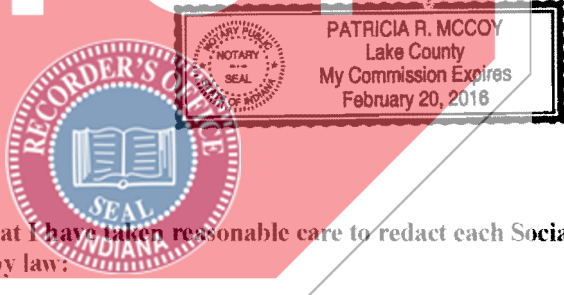
Witness my hand and Notarial Seal this 6<sup>th</sup> day of JANUARY, 2016

My Commission Expires:

2-20-16

Patricia McCoy Notary Public  
Residing in \_\_\_\_\_ County, LAKE

This instrument prepared by:  
James Hoover  
Aegis Environmental, Inc.  
1013 North Bluff Road  
Greenwood, Indiana 46142



**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 Hoover  
Aegis Environmental, Inc.  
1013 North Bluff Road  
Greenwood, Indiana 46142

## 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.

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**This Document is the property of the Lake County Recorder!**

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:
- Document is NOT OFFICIAL!**  
**This Document is the property of the Lake County Recorder!**
- To Owner:  
DJM Holdings, LLC  
220 165<sup>th</sup> Street  
Hammond, Indiana 46324  
Attn: Corporate Manager, Environmental
- To Department:  
IDEM, Office of Land Quality  
100 N. Senate Avenue  
IGCN 1101  
Indianapolis, Indiana 46204-2251  
Attn: Section 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.
16. Liability. An Owner's rights and obligations under this instrument terminate upon transfer if the Owner's interest in the Real Estate, except that liability for acts or omissions occurring prior to transfer shall survive transfer.