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STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2016 056482

2016 AUG 19 AM 10: 54

MICHAEL B. BROWN  
RECORDER

**Environmental Restrictive Covenant**

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 19 day of August, 2016, by Zel's, LLC, 801 North Main Street, Crown Point, Indiana.

WHEREAS: Owner owns certain real estate in the County of Lake, Indiana, which is located at 801 North Main Street, Crown Point, 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 September 30, 2002, and recorded on May 21, 2003, as Deed Record Corporate, in the Office of the Recorder of Lake County, Indiana. The Real Estate consists of approximately 0.3 acres and has also been identified by the county as parcel identification number 9-218-28 and 29.

WHEREAS: The corrective action plan was prepared and implemented in accordance with IC 13-23, IC 13-24 and/or IC 13-25 and/or other applicable Indiana law as a result of a release of petroleum or regulated substances (collectively, "contaminants of concern") relating to the *Luke Oil Company's Former Zieko's facility, IDEM incident No. 199906501, FID No. 11409*, which affected the Real Estate. The address of the affected Real Estate is: 801 North Main St., Crown Point, Indiana. IDEM's Leaking Underground Storage Tank (LUST) Section implemented certain response activities at the Real Estate, including the following: Monitored Natural Attenuation and Groundwater Monitoring.

WHEREAS: The corrective action plan, as approved by the Indiana Department of Environmental Management ("Department"), provides that contaminants of concern will remain in the groundwater and/or in the soil of the Real Estate and requires land use restrictions that must be maintained to ensure the protection of public health, safety, or welfare, and the environment. The affected area is limited to onsite areas adjacent to MW-5. Exhibit B shows the locations of the monitoring wells and the limits of the affected area. Table 1 summarizes the analytical results of the chemicals of concern in the groundwater collected from the monitoring network. Those areas where the contaminants of concern remain on the Real Estate are termed "Affected Area(s)" and are depicted on Exhibit B, attached hereto. A list of the contaminants of concern and the concentration levels/detected parameters are set forth in Table 1, attached hereto. The corrective action plan and related site documents are incorporated herein by reference and may be examined at the offices of the Department in public file.

NOW THEREFORE, the Owner hereby, in consideration for the promises contained herein and other good valuable consideration imposes restrictions on the Real Estate and covenants and agrees that:

I. GENERAL PROVISIONS

1. Property Conveyance – Continuance of Provisions. The Owner shall refer a conveyance of title, easement, or other interest in the Real Estate from being

NO SALES DISCLOSURE NEEDED

Approved Assessor's Office

By: \_\_\_\_\_



JOHN E. PETALAS  
LAKE COUNTY AUDITOR

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consummated without adequate and complete provision for compliance with the corrective action plan and prevention of exposure to contaminants of concern as described in paragraph 8, below.

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 determining whether the land use restrictions described in paragraph 8 are being maintained (and operated as applicable) in a manner that ensures the protection of public health safety, or welfare and the environment; this 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 8/19, 2016, RECORDED IN THE OFFICE OF THE RECORDER OF LAKE COUNTY ON 8/19, 2016, INSTRUMENT NUMBER (or other identifying reference) \* IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.**  
**\* 2016-056482**
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.

## II. RESTRICTIONS

8. Restrictions. The Owner shall:

- (a) Prohibit any activity at the Real Estate that may interfere with the response activities, long-term monitoring, or measures necessary to assure the effectiveness and integrity of any response action, or component thereof, selected and/or undertaken at the Real Estate.
- (b) Not use or allow the use of the Real Estate for residential purposes, including, but not limited to, daily care facilities (e.g., daycare centers, schools, and senior facilities).
- (c) Not use the Real Estate for any agricultural use.
- (d) There shall be no consumptive, extractive or other use of the groundwater underlying the Real Estate that could cause exposure of humans or animals to the groundwater underlying the Real Estate, other than for site investigation and/or remediation purposes, with prior Department approval.
- (e) Neither engage in nor allow excavation of soil below 4-feet below the ground surface without prior approval of the Real Estate as depicted on Exhibit "B" without first submitting a work plan for approval by Department at least 30 days prior to beginning work. Any removal, excavation or disturbance of soil from or within the Affected Areas of the Real Estate must be conducted in accordance with all applicable requirements of IOSHA/OSHA, and soil that is removed, excavated or disturbed from the Affected Areas of the Real Estate must be managed and disposed of in accordance with all applicable federal and state laws and regulations. In addition, the Owner shall provide written notice to the Department in accordance with paragraph 13 below at least 30 days prior to the start of soil disturbance activities. 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.
- (f) Shall maintain the integrity of the existing asphalt pavement so as to protect public health, safety or welfare, and the environment.
- (g) Shall notify the Department if there is a change in the land use and/or any zoning changes that affect the Real Estate.

III. ENFORCEMENT

9. Enforcement. Pursuant to IC 13-14-2-6(5) and other applicable law, the Department may proceed in court by appropriate action to enforce this Covenant. 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

10. 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.
11. 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.

12. 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.

13. 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.

14. Change in Law, Policy or Regulation. In the event that the Risk Integrated System of Closure ("RISC") is adopted by rule in Indiana, or in the event of any other change in applicable law or regulations, this Covenant shall be interpreted so as to ensure the continuing validity and enforceability of the restrictions listed in paragraph 8, above. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, RISC guidelines, or policies for environmental restrictive covenants or institutional or engineering controls change as to form content. All statutory references include any successor provisions.

15. 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:  
Zell's, LLC  
P.O. Box 96  
Hobart, IN 46342

To Department:  
IDEM, Office of Land Quality  
100 N. Senate Avenue  
IGCN 1101  
Indianapolis, IN 46204-2251  
Attn: Section Chief, Excess Liability Trust Fund Section

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.

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

IN WITNESS WHEREOF, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 17<sup>th</sup> day of August, 2016.

**Document is NOT OFFICIAL!**  
*Brahat Shah*  
Owner

STATE OF IN  
COUNTY OF LAKE

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

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Brahat Shah, the owner of ~~the~~ Owner, Zell's LLC, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 17 day of August, 2016

STACEY L. RODRIGUEZ  
Seal  
Notary Public - State of Indiana  
Lake County  
My Commission Expires Feb 16, 2024



*Stacey Rodriguez*, Notary Public  
Residing in INDIANA County, LAKE

My Commission Expires:  
This instrument prepared by:  
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:  
Tom Collins, II, 3580 N. Hobart Road, Hobart, IN 46342

**EXHIBIT A**

**LEGAL DESCRIPTION OF REAL ESTATE**



STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

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EXECUTRIX DEED

MORRIS W. C...

Chicago Title Insurance Company

THIS INDENTURE WITNESSETH, that DONNA HANIFORD, as Executrix of the Estate of Dorothy Belanger, deceased, also known as Dorothy E. Belanger, by order of the Lake Circuit Court, Lake County, Indiana, entered on the 4th day of June, 1998 in Estate No. 45CO1-9804-ES-106, conveys to LUKE OIL CO., INC., an Indiana Corporation, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the following described real estate located in Lake County, Indiana, to-wit:

Lots 28 and 29, Broadview, an Addition to the City of Crown Point, as shown in Plat Book 24, Page 76, in Lake County, Indiana.

Address of property: 801 North Main Street, Crown Point Indiana 46307

Key No. 9-218-28 and 29

MAIL TAX STATEMENTS TO: LUKE OIL CO., INC., P.O. BOX 96, HOBART, IN 46342

Subject to covenants and restrictions, easements for streets and utilities, and building lines, as contained in plat of subdivision and as contained in all other documents of record; and taxes for 1998.

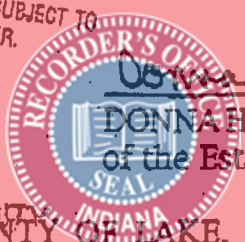
IN WITNESS WHEREOF, the said DONNA HANIFORD, Executrix of the Estate of Dorothy Belanger, deceased, also known as Dorothy E. Belanger, has hereunto set her hand and seal this 27th day of July, 1998.

AUG 26 1998

SAM ORLICH

AUDITOR LAKE COUNTY

STATE OF INDIANA, COUNTY OF LAKE, SS:



DONNA HANIFORD, Executrix of the Estate of Dorothy Belanger

Before me, the undersigned, a Notary Public in and for said County and State, this 27th day of July, 1998, personally appeared

001692

Handwritten initials and number: 1260

**EXHIBIT B**

**MAPS (Figure 1a and Figure 2a) DEPICTING THE LOCATION OF THE CHEMICALS OF CONCERN**



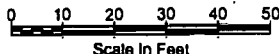




Domino's Pizza

Asphalt

Grass Field



Asphalt

B-1	
4-5'	7-8'
B 6000	480
E 53000	
M <1000	
H 3100	

B-1a	
15'	
B 5200	
E 41000	
H 3200	

B-2	
3.5-5'	
B 300	
M <200	
H 790	

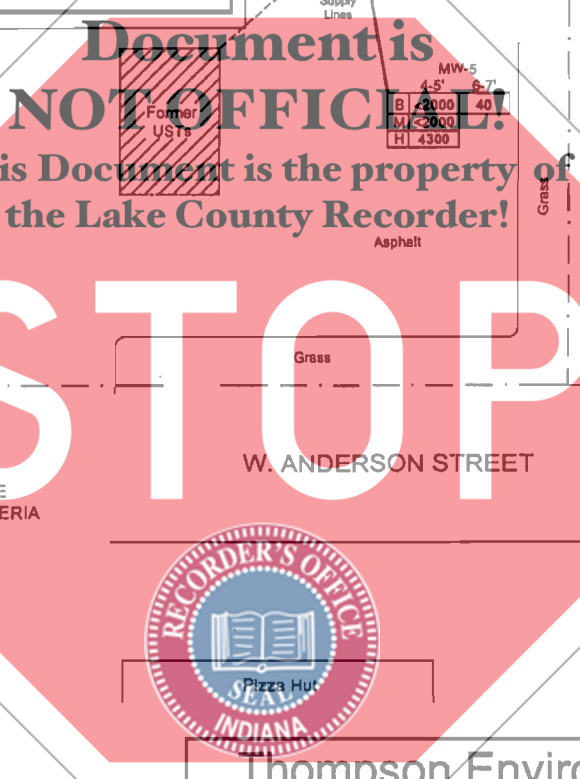
B-11	
7'	
B <4.0	
E <4.0	
T <4.0	
X <4.0	
M <4.0	
H 0.40	

B-3	
5-6'	
B 1000	
E 31000	
M <1000	
H 3100	

B-8	
5-8.5'	
B <200	
M <200	
H 550	

B-3a	
15.5'	
B 1700	
E 92000	
H 4800	

ZELL'S RESTAURANT (FORMER ZEIKO'S 76)



N. MAIN STREET (ROUTE 55, 4-LANE)

Long John Silvers

Residential

LEGEND

- EXTENT OF IMPACTED SOIL ABOVE RISC RESIDENTIAL CLEANUP CRITERIA
- BORING/SAMPLING LOCATION
- B-4 BORING DESIGNATION
- 3-4 Sample Depth
- B BENZENE concentration in (ug/kg)
- E ETHYLBENZENE concentration in (ug/kg)
- T TOLUENE concentration in (ug/kg)
- X XYLENE concentration in (ug/kg)
- M MTBE concentration in (ug/kg)
- H <1.0 TPH concentration in (mg/kg)
- HA HAND AUGER DESIGNATION
- B BORING DESIGNATION
- \*- FENCE
- .-.- APPROXIMATE PROPERTY BOUNDARY
- (NS) NOT SAMPLED
- ND NOT DETECTED

W. ANDERSON STREET

FIGURE 1A

Thompson Environmental, Inc.

316 W. INDIANA AVE. CHESTERTON, IN 46304		219-395-8331	FAX 219-395-8481
<b>BETX, MTBE &amp; TPH IMPACTED SOIL EXCEEDING RISC RESIDENTIAL CLEANUP CRITERIA</b> <b>FORMER ZEIKO'S "76"</b> <b>801 NORTH MAIN, CROWN POINT, INDIANA</b>			
DRAWN:	DSH	SCALE:	AS SHOWN
CHECKED:	MJT	DWG #:	09-0481
FILE:	01A ZellkosSoil121409.dwg		DATE:
		12/14/09	



Domino's Pizza

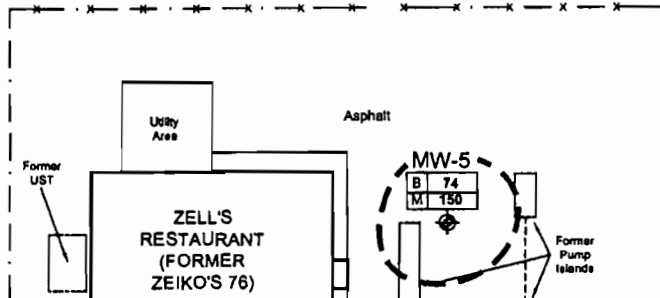
Asphalt

N. MAIN STREET  
(ROUTE 55, 4-LANE)

Grass  
Field

Asphalt

Residential

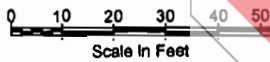


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the Lake County Recorder!**

**STOP**

W. ANDERSON STREET



**LEGEND**

--- Extent of Impacted Groundwater Exceeding RISC Residential Cleanup Criteria

NT Not Tested

MW-1	Monitoring Well Designation
B <5	Benzene results in ug/L
E <5	Ethylbenzene results in ug/L
T <5	Toluene results in ug/L
X <5	xylene results in ug/L
M <5	MTBE results in ug/L
◆	Monitoring Well/Sampling Location

x x x Fence

--- Approximate Property Line



**FIGURE 2A**

Thompson Environmental, Inc.

316 W. INDIANA AVE. CHESTERTON, IN 46304 218-395-8331 FAX 218-395-8481

**BETX & MTBE IMPACTED GROUNDWATER EXCEEDING  
RISC RESIDENTIAL CLEANUP CRITERIA  
FORMER ZEIKO'S "76"  
801 NORTH MAIN, CROWN POINT, INDIANA**

DRAWN: DSH	SCALE: AS SHOWN	FILE: 02A ZeikosGWCon121409.dwg
CHECKED: MJT	DWG #: 09-0478	DATE: 12/14/09

**EXHIBIT C**

**TABLES (Table 1a and Table 2a)  
LIST OF CHEMICALS OF CONCERN AND CONCENTRATION LEVELS/DETECTED  
PARAMETERS**



**TABLE 1a**  
 Subsurface Assessment (Historical and Current Results)  
 Laboratory Results—Soil Analyses  
 Former Ziecko's 76, Crown Point, IN

Sampling Loc.	Interval (ft)	Sample Type	Matrix		Date	Benzene	Ethylbenzene	Toluene	m,p,o-Xylene	MTBE	TPH-gro (mg/Kg)
			Cleanup Objectives (ug/kg)	Residential / Industrial / Soil							
B-1	4-5	Grab	Soil	Soil	7/30/2003	350	167,000	95,000	170,000	180	120
B-1	7-8	Grab	Soil	Soil	7/30/2003	6000	53,000	2000	150,000	3200	1500
B-1a	15	Grab	Soil	Soil	10/10/2008	460	13	12	57	5	2.1
B-1a	4-6	Grab	Soil	Soil	4/6/2009	4.6	4.6	4.6	4.6	4.6	0.46
B-2	3.5-5	Grab	Soil	Soil	7/31/2003	5208	41,000	540	5100	27	3200
B-3	5-6	Grab	Soil	Soil	7/30/2003	300	700	200	800	200	790
B-3a	4-6	Grab	Soil	Soil	7/30/2003	1000	31,000	1000	15000	1000	3100
B-8	5-6.5	Grab	Soil	Soil	4/6/2009	1700	92,000	6100	110000	<0.28	4600
MW-5	4-5	Grab	Soil	Soil	7/30/2003	200	500	200	200	200	550
MW-5	6-7	Grab	Soil	Soil	11/3/2004	2006	2000	2000	2000	2000	4300
					11/3/2004	40	20	20	50	280	1.0

**NOTES**

Soil analytical results presented in terms of micrograms per kilogram (ug/kg).

NT: Compound / Constituent Not Tested

DL=Method Detection Limit

# Cleanup objectives per ILM-RIIS-RIIS Residential Levels, January 2006, Revised May 2006



# TABLE 2a

Laboratory Results--Groundwater Analyses  
Former Ziecko's 76, Crown Point, IN

Sampling Loc.	Interval (ft)	Sample Type	Matrix	Date	Benzene		Ethylbenzene		Toluene		m,p,o-Xylene		MTBE		
					Cleanup Objectives (ug/L)#		700		1,000		10,000			20,000	
					Residential	Industrial	Residential	Industrial	Residential	Industrial	Residential	Industrial		Residential	Industrial
MW-5	Water	Grab	Groundwater	12/3/2004	<	5	<	5	<	5	<	6	340		
MW-5	Water	Grab	Groundwater	3/4/2005	123	5	<	5	<	5	<	6	870		
MW-5	Water	Grab	Groundwater	4/21/2005	14	5	<	5	<	5	<	6	1100		
MW-5	Water	Grab	Groundwater	8/6/2005	8.9	5	<	5	<	5	<	10	500		
MW-5	Water	Grab	Groundwater	10/13/2005	<	5	<	5	<	5	<	10	430		
MW-5	Water	Grab	Groundwater	1/23/2006	26	5	<	5	<	5	<	5	250		
MW-5	Water	Grab	Groundwater	5/23/2006	65	5	<	25	8.3	7.9	<	5	56		
MW-5	Water	Grab	Groundwater	7/28/2006	12	5	<	25	8.3	7.9	<	5	240		
MW-5	Water	Grab	Groundwater	10/23/2006	380	5	<	17	6.1	<	<	5	180		
MW-5	Water	Grab	Groundwater	1/10/2007	66	5	<	5	<	5	<	5	5		
MW-5	Water	Grab	Groundwater	0/4/2007	13	5	<	5	<	5	<	5	200		
MW-5	Water	Grab	Groundwater	1/3/2008	74	5	<	6	<	5	<	5	150		

**NOTES**

Groundwater analytical results presented in terms of micrograms per liter (ug/L)  
 NT: Compound / Constituent Not Tested  
 DL=Method Detection Limit  
 # Cleanup objectives per IDEM's RISC Residential Levels, January 2006 Revised May 2009

