

2017 059108

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MICHAEL B. BROWN
RECORDER

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 30th day of August, 2017, by the City of Whiting, 1443 119th Street, Whiting, Indiana 46394 ("Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Lake, Indiana, which is located at 1914 Schrage Avenue, Whiting, Indiana 46394, 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 March 5, 1953, and recorded as Deed Record Book 934 Page 99, in the Office of the Recorder of Lake County, Indiana. The Real Estate consists of approximately 0.38 acres and has also been identified by the county as parcel identification number 45-03-08-151-007.000-025. 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, IC 13-24 and/or other applicable Indiana law as a result of a release of petroleum relating to the former City of Whiting property located at 1914 Schrage Avenue, Whiting, Indiana 46394. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is 200009511 and the Facility Identification Number is 14395.

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 the land use restrictions contained herein are implemented to protect human health and the environment. These COCs are benzene, ethylbenzene, naphthalene, 1,2,4-trimethylbenzene and 1,3,5-trimethylbenzene.

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/).

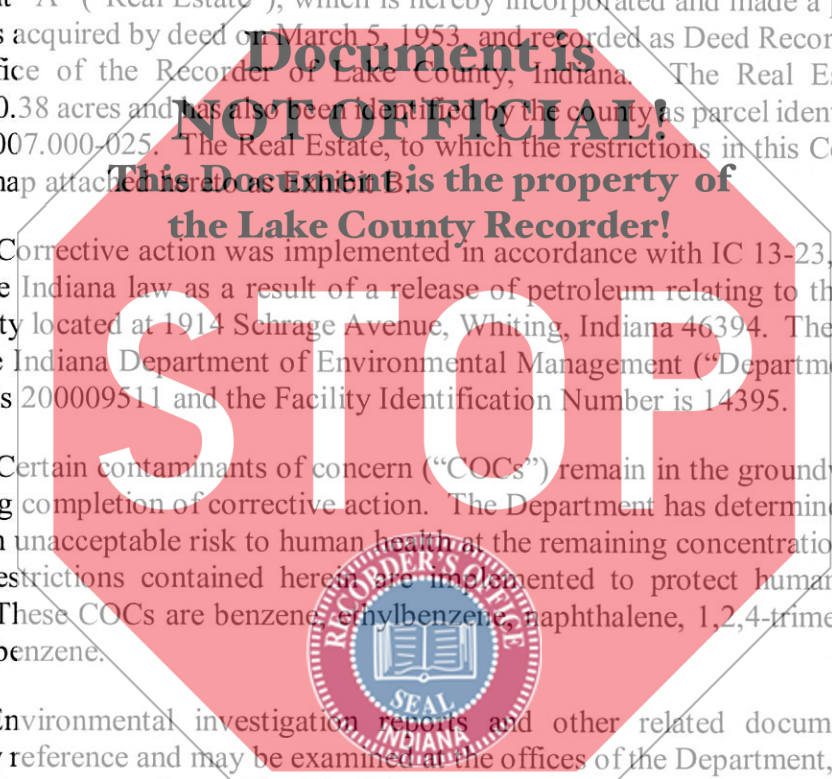
NOW THEREFORE, the City of Whiting (Owner) subjects the Real Estate to the following restrictions and provisions, which shall be binding on the current Owner and all future Owners:

FILED

AUG 31 2017

JOHN E. PETALAS
LAKE COUNTY AUDITOR

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WHITING
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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 construction of new buildings on the Real Estate, the then-current owner of Real Estate shall either:
 - (i) Confirm that there is no unacceptable exposure risk resulting from vapor migration of VOCs or SVOCs from subsurface conditions. Such analysis shall be presented to the Department for its concurrence with the findings in accordance with then-applicable remediation guidance, regulation or law; or
 - (ii) In lieu of (b)(i) above or if unacceptable exposure risks are determined by the Department to exist following the investigation identified in 1(c)(i), the then-current owner of the Real Estate shall install, operate and maintain a vapor mitigation system (consistent with U.S. EPA Brownfield Technology Primer Vapor Intrusion Considerations for Redevelopment EPA 542-R-08-00, March 2008, or other appropriate and applicable guidance or regulation) within the human-occupied building on the Real Estate.

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.

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 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:

To Owner:

City of Whiting
1443 119th Street
Whiting, Indiana 46394
Attn: Mayor



To Department:

IDEM, Office of Land Quality
100 N. Senate Avenue
IGCN 1101
Indianapolis, IN 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. 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, Mayor Joseph Stahura, Authorized Representative of the said Owner of the Real Estate described above, has caused this Environmental Restrictive Covenant to be executed on this 30th day of August, 2017.

This Document is the property of the Lake County Recorder!

Joseph Stahura
Mayor Joseph Stahura
City of Whiting, Indiana

STATE OF INDIANA)
) SS.
COUNTY OF LAKE)



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

Witness my hand and Notarial Seal this 30th day of August, 2017.

Jennifer Grancola
Jennifer Grancola, Notary Public

Residing in Lake County, IN

My Commission Expires: 12-04-2024

This instrument prepared by:
SESCO Group, Inc.
1426 West 29th Street
Indianapolis, IN 46208

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:

**Mayor Joseph Stahura
City of Whiting, Indiana
1443 119th Street
Whiting, Indiana 46394**



EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE



Pat 9011120
2-2-78

Return to

OSCAR A. ABLO...
MILWAUKEE

667577

Warranty Deed

This Indenture Witnesseth, That Mary Curtis and Louis P. Curtis, her husband; Anna Watkins and Lewis Watkins, her husband; Michael G. Hlavach, a bachelor; John O. Hlavach and Mary T. Hlavach, his wife; and Andrew L. Hlavach and Helen Hlavach, his wife,



of Lake County, in the State of Indiana, Convey and Warrant to City of Whiting, Indiana, a municipal corporation

of Lake County, in the State of Indiana for and in consideration of Twenty Thousand and no/100.....(\$20,000.00)...Dollars, the receipt whereof is hereby acknowledged, the following described Real Estate in Lake County in the State of Indiana, to-wit:

This Document is the property of the Lake County Recorder!

Part of the Southwest quarter of the Northwest quarter of Section 7, Township 3 North, Range 9 West of the 2nd P.M., described as commencing at a point 166 feet South and 33 feet East of the Northwest corner of said Southwest quarter of the Northwest quarter, thence East 157.9 feet, thence South 25 feet, thence West 157.9 feet, thence North 25 feet to the place of beginning, in the City of Whiting, Lake County, Indiana.

and also:

Part of the Southwest quarter of the Northwest quarter of Section 8, Township 37 North, Range 9 West of the 2nd P.M., described as commencing at a point 191 feet South and 33 feet East from the Northwest corner of said Southwest quarter of the Northwest quarter, running thence East parallel with 119th Street 164.9 feet, more or less, to the West line of Schrage Avenue, thence South along said Schrage Avenue, 75.6 feet, thence West parallel with 119th Street 12 feet, thence South 4 feet, thence West 37.9 feet, more or less, parallel with 119th Street to the East line of White Oak Avenue, thence North 79.6 feet to the place of beginning, in the City of Whiting, Lake County, Indiana.

This deed is given subject to taxes of 1953 payable in 1954 and years thereafter.



Stanley G. Olegowski
AUDITOR LAKE COUNTY

In Witness Whereof, The said Mary Curtis and Louis P. Curtis, her husband; Anna Watkins and Lewis Watkins, her husband; Michael G. Hlavach, a bachelor; John O. Hlavach and Mary T. Hlavach, his wife; and Andrew L. Hlavach and Helen Hlavach, his wife,

have hereunto set their hands and seals, this fifth day of March, 1953
Mary Curtis (Seal) *Louis P. Curtis* (Seal)
Anna Watkins (Seal) *Lewis Watkins* (Seal)
Michael G. Hlavach (Seal) *John O. Hlavach* (Seal)
Andrew L. Hlavach (Seal) *Mary T. Hlavach* (Seal)

Andrew L. Hlavach for 884,000 00

STATE OF INDIANA, County of Wayne

Know all men to whom these presents shall come, that John C. Blayach and Mary L. Blayach, his wife, and Andrew L. Blayach and Helen Blayach, his wife,

Grantor, in the above conveyance, and acknowledged the execution of the same to be his free, voluntary act and deed, for the uses and purposes herein mentioned.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

My Commission expires May 11, 1953

Osborn A. Blayach Notary Public
 (Osborn A. Blayach)

STATE OF INDIANA, County of Wayne

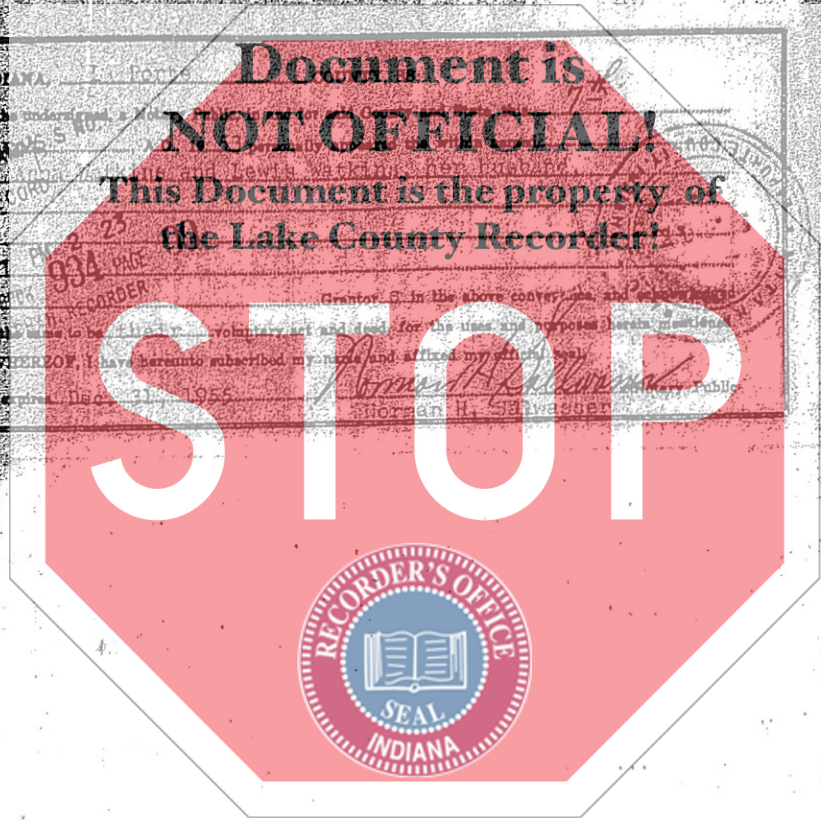
Before me, the undersigned authority, on this 17th day of May, 1953, personally appeared John C. Blayach, Mary L. Blayach, his wife, Andrew L. Blayach, and Helen Blayach, his wife,

Grantor, in the above conveyance, and acknowledged the execution of the same to be his free, voluntary act and deed, for the uses and purposes herein mentioned.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

My Commission expires Dec 31, 1955

Norman H. Salwasser Notary Public
 (Norman H. Salwasser)



WARRANTY DEED

From _____

To _____

STATE OF INDIANA, County of Wayne

Recorded in Book No. 21 Page 120

Filed for Record May 17, 1953

Recorder: Richard County _____

Date entered for taxation 1953

Day of _____

Auditor's fee \$ _____

County _____

120
LC

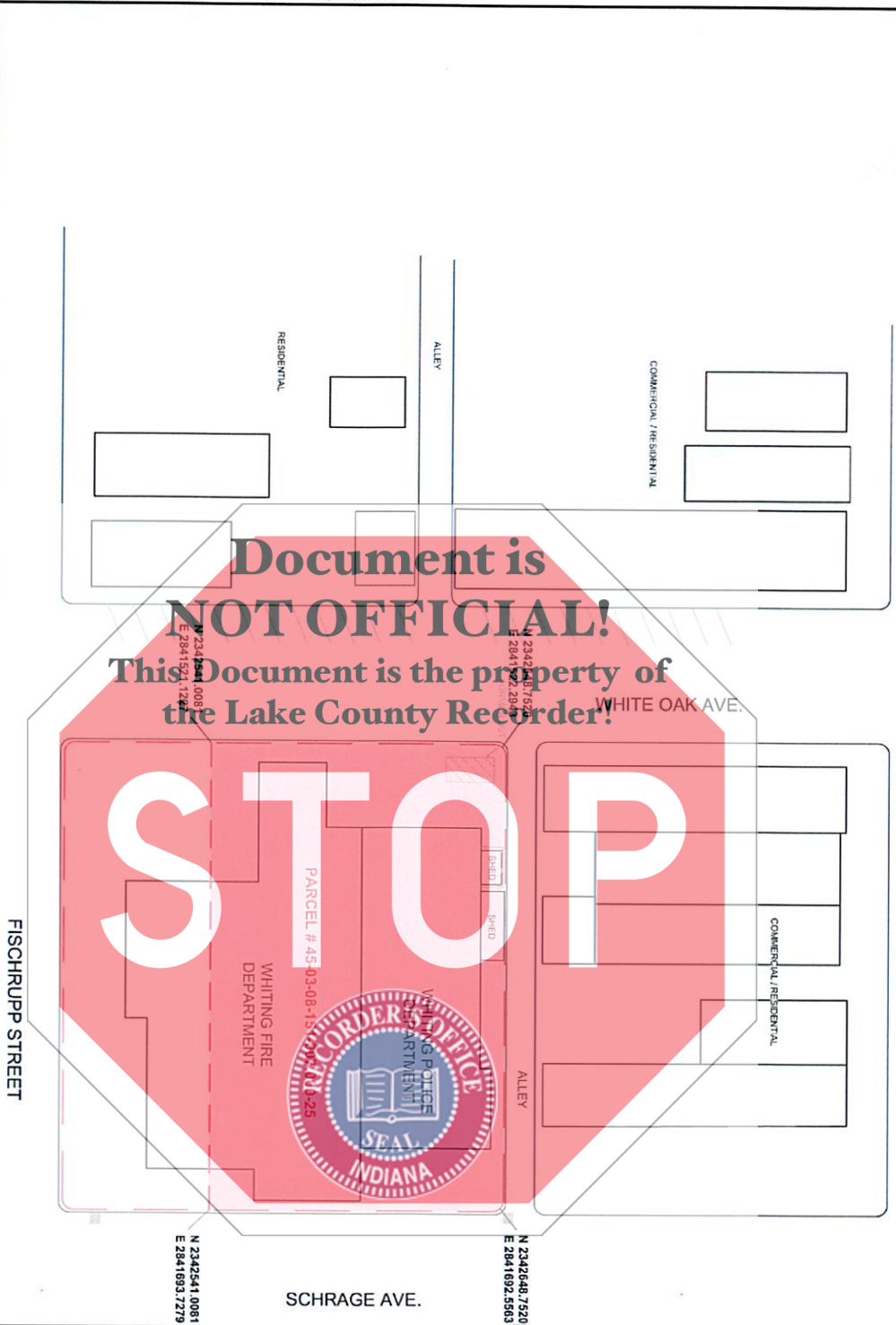
EXHIBIT B

PARCEL MAP OF REAL ESTATE





- LEGEND**
- DRAINAGE STRUCTURES
 - PROPERTY BOUNDARY
 - PARCEL BOUNDARY
 - FENCE



PARCEL MAP

WHITING POLICE DEPARTMENT
1914 SCHRAGE AVE.
WHITING, INDIANA

DRAWN BY: ELC	DATE: 08-10-17	PROJECT # 3560	FIGURE # 1
REVIEWED BY: KAU			