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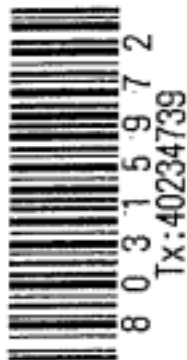
2013 JUL 21 A 10:30

DULY ENTERED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

A201300092421

07/31/2013 10:28 AM

JULIE L. VOORHIES
MARION COUNTY IN RECORDER
FEE: \$ 55.00
PAGES: 12
By: TP



Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 21 day of July 2013, by the Indiana Department of Transportation (INDOT) Office of Facilities Management, 100 North Senate Avenue Rm N925, Indianapolis, Indiana 46204.

WHEREAS: Owner is the fee owner of certain real estate in the County of Marion, Indiana, which is located at 1040 South Madison Avenue Indianapolis, Indiana and more particularly the real estate designated as the "Surveyed Tract" is defined by a professional boundary survey and described in the attached Exhibit "A" ("Real Estate"), which is hereby incorporated and made a part hereof. This "Surveyed Tract" was acquired as an inclusive part of the real estate by deed on May 9, 1957, and recorded on July 18, 1957, as Deed Record 1670, page 216, in the Office of the Recorder of Marion County, Indiana. The Real Estate consists of approximately 1.27 acres and has also been identified by the county as parcel identification number 49-11-12-234-006.000-101 and by the Department as FID number 003730.

WHEREAS: Corrective action was implemented in accordance with IC 13-23 and other applicable Indiana law as a result of a release of petroleum substances relating to the Indiana Department of Transportation Madison Morris Unit, located at 1040 South Madison Avenue, Marion County, Indiana concerning Release Number 199803510, which affected the "Surveyed Tract" of the Real Estate. The INDOT implemented certain response activities at the "Surveyed Tract" portion of the Real Estate, as approved by the Indiana Department of Environmental Management.

WHEREAS: Certain contaminants of concern ("COCs") remain in the soil 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 benzo (a) anthracene, benzo (b) fluoranthene, benzo(a)pyrene, and dibenzo(a,h)anthracene.

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/).

RECEIVED

AUG 07 2013

DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
OFFICE OF LAND QUALITY

147p

NOW THEREFORE, INDOT subjects the "Surveyed Tract" of 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 "Surveyed Tract" 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 restore soil disturbed as a result of excavation and construction activities in such a manner that the remaining contaminant concentrations do not present a threat to human health or the environment. This determination shall be made using the Department's Remediation Closure Guide (RCG). Upon the Department's request, the Owner shall provide the Department written evidence (including sampling data) showing the excavated and restored area, and any other area affected by the excavation, does not represent such a threat. Contaminated soils that are excavated must be managed in accordance with all applicable federal and state laws; and disposal of such soils must also be done in accordance with all applicable federal and state laws.

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 "Surveyed Tract" 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 Surveyed Tract of 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 Surveyed Tract of the Real Estate by any person shall affect the restrictions set forth herein. This Covenant is imposed upon the entire "Surveyed Tract" of the 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 "Surveyed Tract" 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 "Surveyed Tract" 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 July 29 2013, RECORDED IN THE OFFICE OF THE RECORDER OF MARION COUNTY ON 8-1-13, 20 , INSTRUMENT NUMBER (or other identifying reference) 2013-92421 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 Marion 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, 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:
INDOT
Office of Facilities Management
100 North Senate Avenue
Rm N925
Indianapolis, IN 46204

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

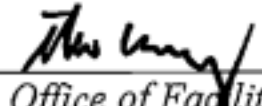
An Owner may change its address or the individual to whose attention a notice is to be sent by giving written notice via certified mail.

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, INDOT, the said Owner of the "Surveyed Tract" of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 29 day of July, 2013.


Steve McAvoy, Manager, Office of Facilities Management

STATE OF Indiana)
COUNTY OF Marion) SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Steve McAnany, the representative of the Owner, State of Indiana, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 29 day of July, 2013

Margie Freeman

Notary Public

Residing in Marion County, Indiana

My Commission Expires: 5/27/2017

This instrument prepared by:

Betsy Williford

Project Geologist

☒ Cardno ATC

7988 Centerpoint Drive, Suite 100

Indianapolis, IN 46256

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:

Betsy Williford

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE.

EXHIBIT B

VOL 1670 PAGE 216

This indenture witnesseth that the undersigned, as grantors and sole owners of land in _____ County, Indiana, more definitely described below, through, over and upon which will pass a public highway which it is proposed by the State of Indiana to improve, hereby grant, bargain, warrant and convey to the State of Indiana, for Right of Way, lands as described below and located by surveys and shown on plans on file in the office of the State Highway Department of Indiana. The description from said plans of said right of way hereby granted is as follows:

PLANS ON SR. NO. 31 SEC. 12 T. 15 N. R. 3 E. SEC. 8 DATED 2.80 ACRES MORE OR LESS ACQUIRED

Descriptions are of parcels of land lying between the plan centerline and the plan right of way line on the above designated project.

Measured distances along plan centerline are indicated by Station Number and plus.

Widths of parcels are indicated in feet, measured at a right angle from plan centerline at designated Station Number and plus; however, when Station Number and plus is followed by the letters P.L., F.L., F.D., L.L. or C/L.S. (indicating property line, Fence Line, Field Division, Lot Line and Centerline of Stream respectively) or other identifying notations, it shall mean that the boundary line follows said identified line from plan centerline to plan right of way line.

FROM STATION to STATION	LEFT SIDE OF CENTERLINE	RIGHT SIDE OF CENTERLINE
ON CENTERLINE (C/L)		
1045 + 35 to 1047 + 59 PL	West P.L.	
to	feet	feet
to	feet	feet
The Description above is intended to describe and to cover all of Out Lot		
# 118, owned by Frederick S. Ballweg.		
to	feet	feet
to	feet	feet
to	feet	feet
to	feet	feet
to	feet	feet
to	feet	feet
Vacation date to June 15, 1957	feet	feet
to	feet	feet
to	feet	feet
to	feet	feet
to	feet	feet
to	feet	feet
to	feet	feet

APPROVED

Asst. Dir. Field

Asst. Dir. C.E.

Director

The above and foregoing grant is made in consideration of payment of the sum of Three Hundred Nine Thousand Six Hundred thirty-five Dollars (\$ 309,635.00), which sum shall be paid or held in escrow as specified to the order of _____

Frederick S. Ballweg
2292 Wynnedale Road

Indianapolis, Indiana

(Give address of Payee)

The right of way hereby conveyed may be used, subject to the discretion of the grantee, for the establishment, construction, control and maintenance of a limited access facility as defined in the act of 1945 (Act 1945, ch. 345, page 1114) and is subject to such regulations as therein provided and to such subsequent regulations or use as may be made, changed or provided under or by law governing such facilities or highways in general.

It is further understood and agreed that this conveyance transfers only the right to build, construct and maintain such highway on said lands and to use any materials lying within the above-described lands for use in constructing and maintaining said highway and does not convey any right of any minerals or other substances underlying the surface, except as it may be used for the construction or maintenance of such limited access facility.

217

Frederick S. Ballweg
2292 Wynndale Road

Indianapolis, Indiana

(Give address of Pages)

File 217

The right of way hereby conveyed may be used, subject to the discretion of the grantee, for the establishment, construction, control and maintenance of a limited access facility as defined in the act of 1945 (Acts 1945, ch. 244, page 1118) and is subject to such regulations as therein provided and to such subsequent regulations or use as may be made, adopted or provided under or by law governing such facilities or highways in general.

It is further understood and agreed that this conveyance transfers only the right to make, construct and maintain such highway on said lands and to use any material lying within the above described limits suitable for use in constructing and maintaining said highway and does not convey any rights to any minerals or other substances underneath the surface, except as it may be used for the construction or maintenance of such improved highway.

Any and all timber, shrubbery, fences, buildings and all other physical improvements on the above granted right of way, not specifically reserved by special provision stated above, shall become the property of the State of Indiana.

When, by special provisions as stated above, any trees and/or shrubs are to be left standing on said right of way, it is mutually agreed and understood by grantor and grantee, that such special provision is only for such period as the excepted trees and/or shrubs shall not constitute an obstruction to future construction or hazard to power lines or traffic as shall be determined from time to time by the State Highway Department of Indiana through its authorized representatives.

It is understood and agreed that all provisions of this grant are stated above and that no verbal agreements or promises are binding.

It is also mutually agreed by grantor and grantee that this is a permanent agreement unless otherwise specified for Highway purposes and shall be binding until specifically vacated by resolution by the State Highway Department of Indiana.

The undersigned Grantors

being duly sworn, says that he, she (is) or they (are) the sole owner(s) of the above described property, and said grantors further represent that there are no encumbrances, leases, liens or options of any kind or character on said lands as conveyed, except as shown below, and that they make this representation for the purpose of inducing the State Highway Department of Indiana to pay them the amount herein stipulated.

Grantor further agrees to assume for the property described above all taxes payable for current and prior years and any taxes now a lien on said property.

Mortgages:

This grant is to be and become effective and binding from and after its approval by the Chairman of the State Highway Department of Indiana.

Frederick S. Ballweg
Charlotte S. Ballweg

(Grantor)

(Grantor)

(Grantor)

(Grantor)

(Grantor)

(Grantor)

DULY ENTERED
FOR TAXATION

JUL 18 1957

E. Allen Hunt
COUNTY AUDITOR

(Grantor)

(Grantor)

(Grantor)

(Grantor)

(Grantor)

(Grantor)

Dated May 9, 1957

CHECKED WITH PROJECT
PLANS DATED _____
BY _____

AMOUNT MAY 15 1957
APPROVED BY _____

THE ABOVE GRANT IS HEREBY ACCEPTED
STATE OF INDIANA
BY _____
Chairman, STATE HIGHWAY DEPARTMENT OF INDIANA
DATE _____ 1957

DESCRIPTION
& FORM OK'D
BY _____

PAID BY
WARRANT No. _____
DATED _____ 1957

State of Indiana, County of _____ ss.

Personally appeared before me _____
and acknowledged the execution of the above agreement, and being duly sworn, upon their oath stated the facts therein are true, this _____ day of _____

Witness my hand and official seal.

My Commission expires _____

DULY ENTERED
FOR TAXATION
JUL 18 1957
E. Allen Hunt
COUNTY AUDITOR

Notary Public.

State of Indiana, County of MARION ss.

Personally appeared before me FREDERICK S. BALLWEG & CHARLOTTE S. BALLWEG
and acknowledged the execution of the above agreement, and being duly sworn, upon their oath stated the facts therein are true, this 9th day of May, 1957

Witness my hand and official seal.

My Commission expires 12-19-1957

RECORDED AT _____
MARION COUNTY, INDIANA

Isa Thompson
(Washington Co)
Notary Public.

State of Indiana, County of _____ ss.

Personally appeared before me _____
and acknowledged the execution of the above agreement, and being duly sworn, upon their oath stated the facts therein are true, this _____ day of _____ 1957

Witness my hand and official seal.

My Commission expires _____

Notary Public.