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2014-12186

JUL 11 2014

INDIANA FINANCE AUTHORITY  
ENVIRONMENTAL PROGRAMS

ELKHART COUNTY RECORDER  
JERRY L WEAVER  
FILED FOR RECORD ON  
AS PRESENTED  
07/09/2014 11:55 AM

Cross Reference: Instrument No. 2013003670

**MODIFICATION OF  
ENVIRONMENTAL RESTRICTIVE COVENANT**

THIS MODIFICATION of Environmental Restrictive Covenant ("ERC") is made this 8<sup>th</sup> day of April, 2014, by City of Elkhart ("Owner") with the approval of the Indiana Department of Environmental Management ("IDEM").

**I. Recitals**

A. Owner is the fee owner of certain real estate in the County of Elkhart, Indiana, which is located at 318 Elkhart Avenue, and is more particularly described in the attached legal description designated as "Exhibit A" (the "Real Estate"). The Real Estate was acquired by deed on March 16, 2010, and recorded on March 29, 2010, as Deed Record 2010-06068, in the Office of the Recorder of Elkhart County, Indiana. The Real Estate consists of approximately 4.79 acres, and has also been identified as parcel identification number 20-06-05-432-025.000-012;

B. The Real Estate is subject to an ERC ("Original ERC") recorded on February 12, 2013, as Instrument Number 2013003670. The Original ERC established certain restrictions and/or obligations on the Real Estate and its future use to ensure the protection of public health, safety or welfare and the environment due to a release of hazardous materials and petroleum products relating to the former Elkhart Foundry & Machine, Program Site number BFD #4060067, "Parcel #1";

C. Paragraph 11 of the Original ERC provides that, if any owner desires to modify the Original ERC, the person shall obtain IDEM's prior written approval.

D. The Original Site Status Letter issued by IDEM to the City of Elkhart dated October 25, 2012 approved a non-default commercial/industrial closure for the western portion of Parcel #1 and a non-default recreational closure for the eastern third of Parcel #1, as long as a protective cover is maintained. Since levels of arsenic, lead, benzo(a)pyrene, benz(a)anthracene, benzo(b)fluoranthene, dibenz(a,h)anthracene and ideno(1,2,3-cd)pyrene in the soil at the Site in Parcel #1 were detected above their respective Risk Integrated System of Closure ("RISC") Technical Resource Guidance Document (February 15, 2001 and applicable revisions) residential default closure levels ("RDCLs"), industrial default closure levels ("IDCLs") and/or to IDEM's April 15, 2009 Interim RISC Nondefault Recreational Surface Soil Closure Levels ("RecCLs"). RDCLs, IDCLs and/or RecCLs, as applicable, an environmental restrictive covenant ("ERC") is required to be recorded on the deed for Parcel #1. The Original

recorded ERC included restrictions: not use the Site for residential purposes, including, but not limited to, daily care facilities (e.g., daycare centers, schools and senior citizen facilities), and not use the Real Estate for agricultural purposes unless plantings are placed in raised beds (18 inches) filled with "clean" soil (demonstrated not to contain contaminants of concern above RISC RDCLs). However, one additional restriction included in the October 25, 2012 Site Status Letter, which requires maintaining the existing one-foot thick and two-foot thick layers of "clean" soil over remaining contaminated soil above applicable RISC Direct Contact RDCLs, was absent from the Original recorded ERC.

## **II. Modification of Original ERC**

A. Owner desires to modify the Original ERC described in Section I, Paragraph 1 of this instrument. IDEM provided a written request of the modification in a letter dated March 5, 2014.

B. Maintain the existing one-foot thick and two-foot thick layers of "clean" soil over remaining contaminated soil above the applicable RISC Direct Contact RDCLs; or the "clean" layer of soil can be replaced by four to six-inches of concrete and/or asphalt underlain by at least six-inches of gravel sub-base or clean material; or excavate contaminated Site soils exceeding RISC IDCLs and/or RecCIs, where applicable, as denoted on the attached Site map and either a) consolidate the excavated soils on-Site and cap the consolidated material with two feet of "clean" soil (demonstrated not to contain contaminants of concern above RISC RDCLs), or b) properly dispose of the excavated soils in accordance with applicable regulations. Such excavation shall not be conducted without prior approval by IDEM of a work plan for the soil excavation which shall be submitted to IDEM at least sixty (60) days prior to initiating work.

C. After approval and signature by IDEM, Owner shall record this Modification of ERC with the Office of the Recorder of Elkhart County and provide a copy to IDEM within 30 days of recording.

D. Except as expressly modified by this instrument, all other restrictions, obligations and requirements established in the Original ERC recorded on February 12, 2012 as Instrument Number 2013003670 shall remain in full force and effect.

E. This Modification of ERC is effective when signed by the parties.

## **III. Approval**

Pursuant to the terms of Paragraph 11 of the Original ERC, IDEM has reviewed and approves the Modification of ERC.

#### IV. Authorization

The undersigned persons executing this Modification of ERC on behalf of Owner and IDEM represent and certify that they are empowered and duly authorized by their respective entities to execute this document. The undersigned person on behalf of the Owner further represents and certifies that Owner is the current owner of the Real Estate.

OWNER

By: Steven C. Eldridge

Printed: STEVEN C. ELDRIDGE

Title: PRESIDENT

#### Affirmation of Notary for the Owner

STATE OF INDIANA       )  
  ) SS:  
COUNTY OF MARION    )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Steven C. Eldridge, the President of the Owner, who acknowledged the execution of the foregoing Modification of ERC and on behalf of said entity.

Witness my hand and Notarial Seal this 8<sup>th</sup> day of April, 2014.

(Signature)

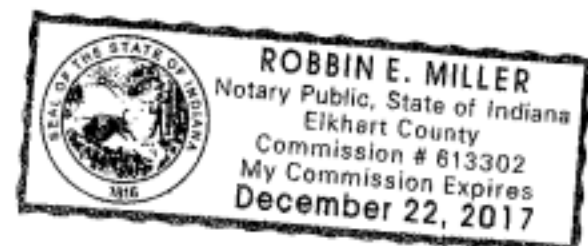
Robbin E. Miller

(Printed Name) Notary Public

Residing in Elkhart County, IN

My Commission Expires:

12.22.2017



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

This Modification of ERC is approved this 4<sup>th</sup> day of March, 2014, by IDEM.

By: Peggy Dorsey

Printed: Peggy Dorsey

Title: Deputy Assistant Commissioner

**Affirmation of Notary for IDEM:**

STATE OF INDIANA       )  
  ) SS:  
COUNTY OF MARION    )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Peggy Dorsey, the Deputy Assistant Commissioner of the Indiana Department of Environmental Management, who acknowledged the execution of the foregoing Modification of Environmental Restrictive Covenant for and on behalf of said entity.

Witness my hand and Notarial Seal this 4<sup>th</sup> day of March, 2014.



Carolyn M. Koontz  
(Signature)

Carolyn M. Koontz  
(Printed Name) Notary Public

Residing in Boone County, IN

My Commission Expires:

5-14-16

This instrument prepared by: GARY D. BOYN, WARRICK & BOYN, LLP  
121 W. FRANKLIN ST., SUITE 400, ELKHART, IN 46516

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document as required by law. GARY D. BOYN

**EXHIBIT A**

**LEGAL DESCRIPTION OF REAL ESTATE**

## EXHIBIT A

Key No. 20-06-05-432-025-000-012

A part of the East half of Section Five (5), Township Thirty-seven (37) North, Range Five (5) East, more particularly described as follows:

Assuming the centerline of South Elkhart Avenue as the same is platted south of East Jackson Boulevard in the City of Elkhart to have a bearing of north 45 degrees east; commencing 165 feet northeastwardly from the south line of the north abutment of the bridge over the Elkhart River headrace in the center of South Elkhart Avenue (formerly East Franklin Street); thence South 45 degrees East at right angles to the center line of said street 30 feet to the east line thereof for the beginning point of this description, said point being 615 feet Southwestwardly from the south line of East Lexington Avenue, said distance measured along the east line of said South Elkhart Avenue; thence north 45 degrees east along the said east line of said South Elkhart Avenue 385 feet; thence south 45 degrees east at right angles to said street approximately 521 feet to an iron stake, which is 145 feet due east of the west line of Prairie Street, as the same is platted in the City of Elkhart; thence South parallel with the said west line of Prairie Street 38.4 feet; thence east on a line at right angles to the said west line of Prairie Street 145 feet to an iron stake on the said west line of Prairie Street; thence south along the said west line of Prairie Street to the Elkhart River; thence southwestwardly along said river to a point which is south 45 degrees east of the place of beginning; thence north 45 degrees west to the place of beginning.

### EXCEPTING THEREFROM:

A part of the Southeast Quarter of Section 5, Township 37 North, Range 5 East, situate in the City of Elkhart, Concord Township, Elkhart County, State of Indiana, being more particularly described as follows:

Assuming the East line of Elkhart Avenue to have the bearing of North 39 degrees 46 minutes 0 seconds East, said line historically has been known as North and South; commencing at an iron pipe marking the South face of the North abutment of the former bridge across the head race crossing Elkhart Avenue in the City of Elkhart; thence North 39 degrees 46 minutes 0 seconds East along the Easterly line of said Elkhart Avenue 23 feet to an iron pipe; thence continuing North 39 degrees 46 minutes 0 second East along the Easterly line of said Elkhart Avenue a distance of 142 feet to the place of beginning of this description; thence continuing North 39 degrees 46 minutes 0 seconds East along the Easterly line of said Elkhart Avenue a distance of 48.33 feet; thence South 50 degrees 15 minutes 0 seconds East a distance of 463.58 feet; thence continuing South 50 degrees 15 minutes 0 seconds East a distance of 36 feet more or less to the water's edge of the Elkhart River; thence downstream along the water's edge of said Elkhart River a distance of 53.5 feet more or less to a point that is South 50 degrees 15 minutes 0 seconds East from the place of beginning of this description; thence North 50 degrees 15 minutes 0 seconds West a distance of 36 feet more or less; thence North 50 degrees 15 minutes 0 seconds West a distance of 315.86 feet; thence North 50 degrees 15 minutes 0 seconds West a distance of 124.96 feet (125 feet Deed) to the place of beginning of this description.

RECORDED  
JAN 11 1900  
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JAN 11 1900  
DEED

**COUNTY OF ELKHART, INDIANA**

I hereby certify that this is a true and complete copy  
of document 2014-12186 as recorded  
in this office on 7/9/14 Total page(s) 6

DATED 7/9/2014

**JERRY L. WEAVER**  
Recorder of Elkhart County, Indiana

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

Jessica Saunders  
Deputy Recorder