



ENVIRONMENTAL HEALTH AND SAFETY OFFICE
NORTH SERVICE BUILDING

3401 North Tillotson Avenue
Muncie, Indiana 47306-0745
Phone: 765-285-2807
Fax: 765-285-6607

March 10, 2015

Mike Greening
Environmental Manager
IDEM State Cleanup Program
Office of Land Quality
100 North Senate Avenue
IGCN 1101
Indianapolis, IN 46204-6015

Dear Mike:

Re: Environmental Restrictive Covenant (Recorded)
Ball State University Heat Plant
State Cleanup No. 199304264
Facility ID No. 019316

Enclosed is a copy of the final *Environmental Restrictive Covenant* (ERC) in the above-referenced matter that was recorded by the Delaware County Recorder on March 6, 2015. The content and format of the ERC were approved through your email correspondence of February 17, 2015. The ERC copy is stamped with the instrument number, number of pages recorded, and the date recorded, all as directed in your message.

Please contact me at 765-285-2807, or by email at tlrussell@bsu.edu, if you have any questions, or if any other actions are necessary on our part to finalize this matter.

Thank you for your assistance in completing this process,

Thomas L. Russell, CHMM, REHS, CCHO
Environmental Health Manager/Chemical Hygiene Officer
Environmental Health and Safety Office

Enclosure:

Copies: Jim Lowe, BSU FPM
Jennifer Tarrance, BSU

Tom Russell
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2015R02486
MELANIE MARSHALL
DELAWARE COUNTY RECORDER
RECORDED ON
03/06/2015 12:51 PM
REC FEE: 23.00
PAGES: 7

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 26 day of February, 2015, by the Owner, Ball State University, 2000 West University Avenue, Muncie, Indiana 47306.

WHEREAS: Owner is the fee owner of certain real estate in the County of Delaware, Indiana, which is located at 2331 West Riverside Avenue and 2400 West Campus Drive, Ball State University, Muncie, Indiana 47306 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 April 3, 1918, and recorded on April 5, 1918, as Deed Record No. 164, in the Office of the Recorder of Delaware County, Indiana. The ERC Area 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 and other applicable Indiana law as a result of a release of petroleum relating to the former underground fuel oil storage tanks serving the Ball State University Heating Plant. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is 199304264, and the relevant facility identification number is 019316.

WHEREAS: Certain contaminants of concern (COCs), including benzene, toluene, ethylbenzene, and xylenes (BTEX), methyl tertiary butyl ether (MTBE), carcinogenic polycyclic aromatic hydrocarbons (cPAHs), naphthalene, and Total Petroleum Hydrocarbons (TPH), in the form of weathered fuel oil, remain in the groundwater and subsurface soil of the ERC Area following completion of corrective action. The Department has determined that this material will not pose an unacceptable risk to human health, at the remaining concentrations and locations, provided that the land use restrictions contained herein are implemented to protect human health and the environment.

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, Ball State University subjects 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 ERC Area 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 not use or allow the use or extraction of groundwater at the ERC Area 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.
- (c) Shall not use the ERC Area for any agricultural use.
- (d) Shall neither engage in nor allow excavation of soil at depths greater than 12 feet within the ERC Area identified on Exhibit B, unless the soil disturbance obligations listed in the following paragraph are followed. In addition, the Owner shall provide written notice to the Department in accordance with paragraph 14 below at least 10 days after the start of soil disturbance activities at or below that depth within the subject area. 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.
- (e) Shall restore soil disturbed as a result of excavation and construction activities within the area and depths described in paragraph (d) above 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 current risk based guidance. 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 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 February 26, 2015, RECORDED IN THE OFFICE OF THE RECORDER OF DELAWARE COUNTY ON March 6, 2015, INSTRUMENT NUMBER (or other identifying reference) 2015RO2486 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 Delaware 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:

Ball State University
2000 West University Avenue
Muncie, Indiana 47306

To Department:

IDEM, Office of Land Quality
100 N. Senate Avenue
IGCN 1101
Indianapolis, Indiana 46204-2251
Attn: Section Chief, State Cleanup 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.

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, Ball State University, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 26 day of February, 2015.

Leisa Julian

Ball State University

STATE OF Indiana)
) SS:
COUNTY OF Delaware)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Leisa Julian, the signatory of the Owner, Ball State University, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 26 day of February, 2015.

Stephanie A. Shockey
Stephanie A. Shockey, Notary Public

Residing in Delaware County, Indiana

My Commission Expires: February 14, 2020

This instrument prepared by: Thomas L. Russell, Environmental Specialist, Ball State University, 2000 West University Avenue, Muncie, Indiana 47306

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: Thomas L. Russell

Signature: Thomas L. Russell

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

Description of Proposed ERC Area

A part of the land described in Deed Record Book 164 page 370, more particularly being a part of Lots numbered 63, 64, 81, 82, 99, 100, 101, 116, 117, 118, 135, 136, 153, 154, 155, 171, and 172, and a part of Hutchison Avenue, Sutton Street, Brittan Avenue, and the alley adjacent to said lots (heretofore vacated by Declaratory Resolution 932-1922, as shown in Board of Works Minute Record 5 at pages 59-62), located in the Southeast Quarter of Section Eight (8), Township Twenty (20) North, Range Ten (10) East of the Second Principal Meridian in Delaware County, Indiana, and being more particularly described as follows:

Considering the North line of the Southeast Quarter as bearing South 89°26'18" West with all other bearings herein contained relative thereto; Commencing at the Northeast corner of said Southeast Quarter; thence on the North line of said Southeast Quarter, South 89°26'18" West, a distance of 2043.27 feet; thence South 00°33'42" East, a distance of 454.67 feet to the POINT OF BEGINNING; thence South 13°44'56" East, a distance of 336.03 feet; thence South 81°30'06" West, a distance of 183.27 feet; thence North 67°17'08" West, a distance of 226.61 feet; thence North 31°44'01" West, a distance of 62.06 feet; thence North 07°55'36" East, a distance of 110.78 feet; thence North 50°34'20" East, a distance of 161.83 feet; thence North 89°48'14" East, a distance of 202.78 to the Point of Beginning, containing 2.57 Acres (112,146 sq ft), more or less.

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