



ENVIRONMENTAL ENGINEERING

Taking Pride In What We Do!

- PO Box 114, Montpelier, IN 47359
- 6801 Lake Plaza Dr, Ste C301, Indianapolis, IN 46220
- 2328 N. US Hwy 35, Unit A, Laporte, IN 46350

August 6, 2015

67-02 bdavis
Mr. Kay Ifekoya
Indiana Department of Environmental Management
Underground Storage Tank Branch – ELTF Technical Section
100 North Senate Avenue, Room 1101
Indianapolis, Indiana 46204-2251

**RE: Recorded ERC Submittal and Request for
No Further Action (NFA)
Former State Road 1 Shell
1543 North State Road 1
Cambridge City, Wayne County
Incident #199408043
FID#10986**

Dear Mr. Ifekoya,

On behalf of Herdrich Petroleum (Herdrich), Creek Run L.L.C. Environmental Engineering (Creek Run) is pleased to provide the following enclosures:

- *Environmental Restrictive Covenant (ERC) (copy); and*
- *Affidavit for Recording of an Environmental Restrictive Covenant (original).*

The ERC was recorded at the Wayne County Recorder's Office on August 5, 2015. A draft of the ERC was approved by the Indiana Department of Environmental Management (IDEM) in a letter entitled *Draft Environmental Restrictive Covenant (ERC) Review and IDEM Request for Recorded ERC* dated June 19, 2015. Based on the fact that the ERC has been recorded, Creek Run requests the issuance of a "No Further Action" (NFA) determination for Incident #199408043. Once a NFA has been issued by IDEM, monitoring wells will be decommissioned. Please feel free to contact the undersigned with any questions or comments.

Sincerely,

Mohamed Asif, PE
Senior Engineer

R. Jason Lenz, PhD
Chief Operating Officer

**AFFIDAVIT FOR RECORDING OF
AN ENVIRONMENTAL RESTRICTIVE COVENANT**

I, the undersigned, being of the age of majority and duly sworn upon my oath, have personal knowledge of the facts stated herein:

- the enclosed copy of the Environmental Restrictive Covenant ("ERC") and its Attachments were recorded in the ^{Wayne} ~~Case~~ County Recorder's Book and were cross-referenced to deed number 1999000255, which is the recorded deed that concerns the property subject to the land use requirements contained in the ERC; and
- the enclosed copy represents the ERC and its Attachments in their entirety as agreed to by the Indiana Department of Environmental Management and the property owner.

ERC County Recorder's Book and Page or Instrument Number: 2015006556

Number of Pages Recorded: 10

I swear or affirm under the penalties for perjury that the foregoing representations are true and accurate to the best of my knowledge and belief.

Robert Herdrich
Signature of Owner

8/5/2015
Date

Robert Herdrich
Print or type name

V. Pres.
Position

STATE OF INDIANA

) SS:

COUNTY OF Blackford

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Robert Herdrich, who acknowledged the execution of the foregoing instrument for and on behalf of the Owner.

Witness my hand and Notarial Seal this 5th day of August, 20 15.

Brooke Thornburgh, Notary Public

Residing in Blackford County, Indiana

My Commission Expires: 3/26/2023



2015006556 RESTRV COV \$29.00
08/05/2015 10:26:31A 10 PGS
Debra S Tiemann
Wayne County Recorder IN
Recorded as Presented



Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 31st day of July, 2015, by Airborne Limited Partnership One, 471 North Countrybrook Lane, Connersville, Indiana 47331.

WHEREAS: Owner is the fee owner of certain real estate in the County of Wayne, Indiana, which is located at 1543 North State Road 1, Cambridge City, 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 warranty deed Number 1999000255 on January 07, 1999, and recorded in the Office of the Recorder of Wayne County, Indiana. The Real Estate consists of approximately 1.151 acres and has also been identified by the county as parcel identification number 27-12-000-309.000-09. 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 and other applicable Indiana law as a result of a release of petroleum relating to the State Road 1 Shell. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is 199408043, and the relevant facility identification number is 10986.

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 in groundwater are benzene and methyl tert-butyl ether (MTBE) exceeding the Risk Integrated System of Closure (RISC) Residential Default Closure Levels (RDCLs).

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

STATE OF INDIANA, WAYNE COUNTY ss
This is to certify that this is a true and correct copy of the original
Dated this 5th day of Aug. 2015
Identification # 001742030
Debra S. Tiemann
RECORDER WAYNE COUNTY, INDIANA



electronically in the Department's Virtual File Cabinet by accessing the Department's Web Site (currently www.in.gov/idem/). NOW THEREFORE, Airborne Limited Partnership One 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: shall not use or allow the use or extraction of groundwater at the Real Estate from any well, **other than the existing drinking water well installed on 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 conjunction with environmental investigation and/or remediation activities.

II. GENERAL PROVISIONS

1. 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.
2. 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.
3. 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
4. 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 July 31 2015, RECORDED IN THE OFFICE OF THE RECORDER OF WAYNE COUNTY ON August 5, 2015, INSTRUMENT NUMBER (or other identifying reference) 2015006556 IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

5. 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.
6. 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

7. 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

8. 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.
9. 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 Wayne County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department.

V. MISCELLANEOUS

- 10. 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.
- 11. 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.
- 12. 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.
- 13. 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:
Airborne Limited Partnership One
c/o Robert F. Herdrich
471 North Countrybrook Lane
Connersville, Indiana 47331

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.

14. 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.

15. 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.

EXHIBIT A
LEGAL DESCRIPTION OF REAL ESTATE

Identification # 00174203
Record of instruments copied and proofed.
Debra S. Tiemann, Recorder Wayne County, Ind.

LEGAL DESCRIPTION – PARCEL #27-12-000-309.000-09

A part of the Southwest Quarter of Section 12, Township 16 North of Range 12 East in Wayne County, Indiana, being more particularly described as follows, towit:

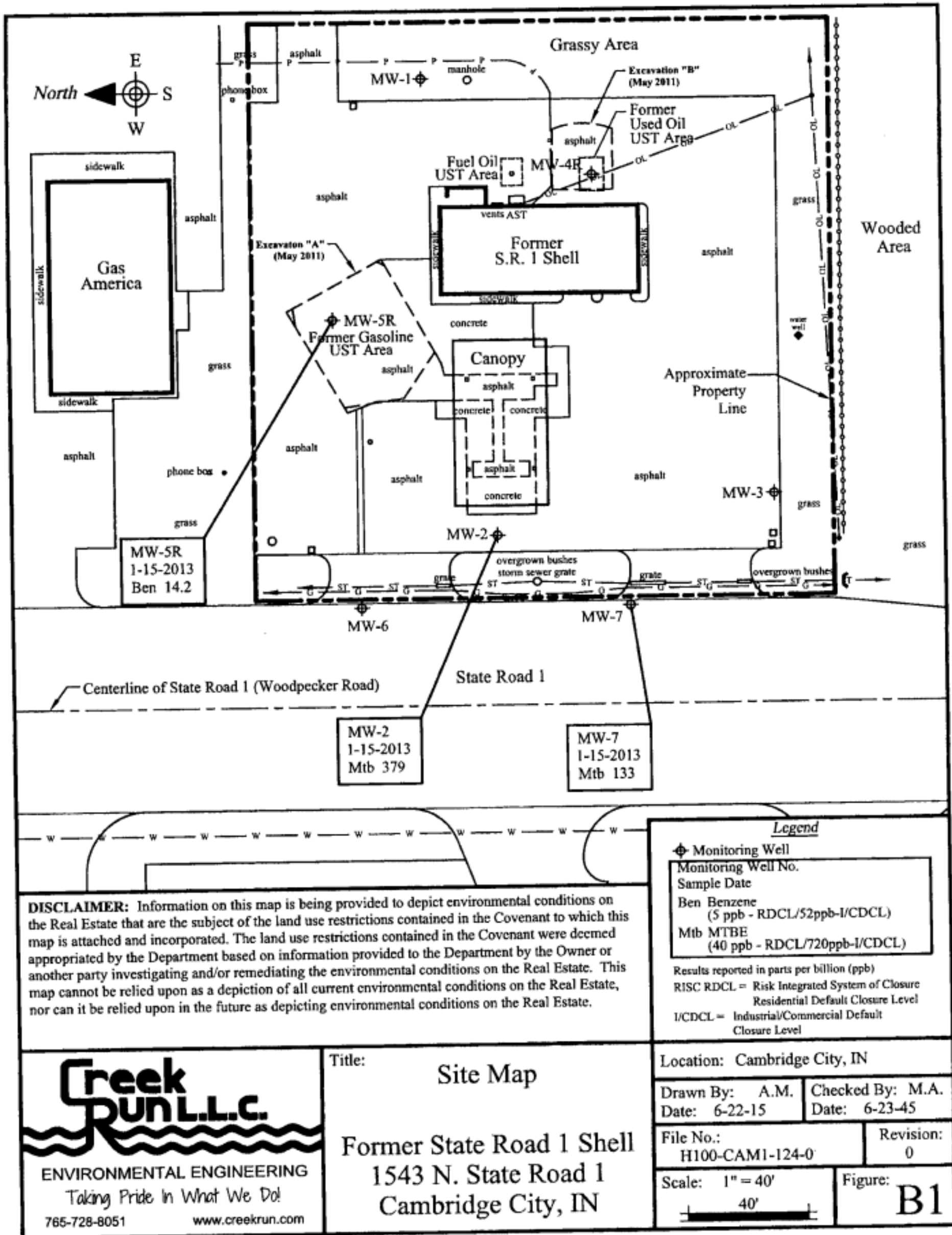
Commencing at the Southwest corner of the said Quarter section: thence South 89 degrees 23 minutes East 40.20 feet to the East right-of-way line for State Road #1 (Woodpecker Road) as now located and established: thence North 00 degrees 37 minutes 00 seconds East 455.40 feet to a point; thence North 01 degree 53 minutes 23 seconds east 450.11 feet to a point; thence North 01 degree 06 minutes 06 seconds West 400.18 feet to the POINT OF BEGINNING OF THIS DESCRIPTION: thence North 01 degree 06 minutes 06 seconds West 100.05 feet to a point; thence North 00 degrees 37 minutes 00 seconds East 100.00 feet to a point (the preceding five (5) described courses being continuous and contiguous with the said east right-of-way line); thence South 89 degrees 23 minutes 00 seconds East 250.00 feet to a point; thence South 00 degrees 14 minutes 32 seconds East 200.022 feet to a point; thence North 89 degrees 23 minutes 00 seconds West 250.00 feet to the POINT OF BEGINNING, containing 1.151 acres more or less.

Identification # 00174203
Record of instruments copied and proofed.
Debra S. Tiemann, Recorder Wayne County, Ind.

EXHIBIT B

SITE MAP

Identification # 00174203
Record of instruments copied and proofed.
Debra S. Tiemann, Recorder Wayne County, Ind.



RECORDED AUG 05 2015 DEBRA S. TIEMANN, R.W.C

Identification # 00174203
 Record of instruments copied and proofed.
 Debra S. Tiemann, Recorder Wayne County, Ind.