



Ms. Amanda Foti  
Indiana Department of Environmental Management  
Office of Land Quality  
Voluntary Remediation Program  
100 North Senate Avenue  
Indianapolis, IN 46204

**Subject: Environmental Restrictive Covenant Submittal**  
**Liquor Barn #1**  
**4215 New York Street**  
**Indianapolis, Indiana**  
**VRP # 6130202**  
***EnviroForensics Project No. 6176***

Dear Ms. Foti:

EnviroForensics, LLC (EnviroForensics) is pleased to present you with a copy of the Environmental Restrictive Covenant (ERC) on behalf of Roquil, Inc. (Roquil) for the Liquor Barn #1 facility located at 4215 New York Street in Indianapolis, Indiana (Site). The ERC was prepared and recorded on the property deed with the Marion County Recorder's office to restrict the use or extraction of groundwater at the Site to satisfy the remaining closure objectives, per the Remediation Work Plan (RWP) and Completion Report (CR), dated October 28, 2016, which was granted approval from the Indiana Department of Environmental Management (IDEM) on July 31, 2017. With this submittal, EnviroForensics has completed the IDEM closure requirements and requests IDEM issue the Site a Certificate of Completion, which will be recorded on the property deed in accordance with the Voluntary Remediation Agreement (VRA), dated June 18, 2013, and in pursuit of a "Covenant Not-To-Sue" for the property.

EnviroForensics appreciate your attention to this matter. Please do not hesitate to contact us at 866-888-7911 if you have any questions or comments.

Sincerely,  
**EnviroForensics, LLC**

A handwritten signature in black ink, appearing to read "Michele Murday".

Michele Murday  
Project Manager

A handwritten signature in black ink, appearing to read "Nicholas Hill".

Nicholas Hill  
Senior Project Manager

Attachments

*Document: 6176-0931*  
EnviroForensics, LLC  
825 North Capitol Avenue, Indianapolis, IN 46204  
Phone: 866-888-7911 • Fax 317-972-7875



## Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this \_\_\_\_\_ day of JULY 20, 2017, by Roquil, Inc., P.O. Box 33008, Indianapolis, Indiana, 46203.

WHEREAS: Owner is the fee owner of certain real estate in the County of Marion, Indiana, which is located at 4215 East New York Street, Indianapolis, 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 deed on August 24, 1977, and recorded on August 30, 1977, as Deed Record #770056665, in the Office of the Recorder of Marion County, Indiana. The Real Estate consists of approximately 0.25 acres and has also been identified by the county as parcel identification number 49-10-04-119-155.000-101.

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 Real Estate. The Indiana Department of Environmental Management ("Department" or "IDEM") State Cleanup Section assigned incident number 2010-04-99 to the release. Owner entered into Indiana's Voluntary Remediation Program ("VRP") as VRP #6130202. A Remediation Work Plan was prepared in accordance with IC 13-25-5 and was approved by the Department.

WHEREAS: Certain contaminants of concern ("COCs") remain in the groundwater and soil of the Real Estate following the completion of corrective action and per the Department's approval of the Remediation Work Plan. The Department has determined that the COCs will not pose an unacceptable risk to human health at the remaining concentrations, provided that certain land use restrictions are implemented to protect human health and the environment. The known COCs remaining are listed in *Exhibit B*, which is attached hereto and incorporated herein.

WHEREAS: The Remediation Work Plan 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 [www.in.gov/idem/](http://www.in.gov/idem/).

**A201700084420**

**07/26/2017 1:04 PM**

**KATHERINE SWEENEY BELL  
MARION COUNTY IN RECORDER**

**FEE: \$ 36.50**

**PAGES: 10**

**By: CJ**

NOW THEREFORE, Roquil, Inc. subjects the Real Estate to the following restrictions and provisions, which shall be binding on all current and future owners of the Real Estate during the time of their ownership of the Real Estate(collectively, the "Owner"):

## 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) Shall prohibit any activity at the Real Estate that may interfere with the groundwater monitoring well network during the implementation of the IDEM approved Remediation Work Plan. This restriction will remain in place until the monitoring well network is properly abandoned per State regulations and the IDEM issues a Certificate of Completion and a Covenant Not to Sue concerning 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 lessees, and their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control and shall continue 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 the Real Estate, any subsequent owner of the Real Estate agrees to comply with all of the restrictions set forth in paragraph 1 above and with all other terms of this Covenant. As used in this Covenant, the term "Owner" includes such subsequent owner(s) during the term of their ownership of the Real Estate.
- 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 July 20 2017,  
RECORDED IN THE OFFICE OF THE RECORDER OF MARION COUNTY ON  
July 26, 2017, INSTRUMENT NUMBER [or other identifying  
reference] 8201700084430 IN FAVOR OF AND ENFORCEABLE BY THE  
INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.**

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 the Owner of the Real Estate or its Related Parties breach this Covenant or otherwise default hereunder. As a result, if the Owner of the Real Estate, or the 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 against the then-current Owner 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 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

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.

13. Change in Law, Policy or Regulation. In the event that IDEM's RCG is adopted by rule, modified, or superseded, or in the event of any other change in applicable law or regulations, this Covenant shall be interpreted so as to ensure the continuing validity and enforceability of the restrictions listed in paragraph 1, above. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, RCG 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:

[The address of record of the then-current Owner as found in by the Marion County Recorder's Office]

To Roquil, Inc.:

Roquil, Inc.

Attn: Mr. Jim Miller

P.O. Box 33008

Indianapolis, Indiana 46203

To Department:

IDEM, Office of Land Quality

100 N. Senate Avenue

IGCN 1101

Indianapolis, IN 46204-2251

Attn: Section Chief, Voluntary Remediation Program

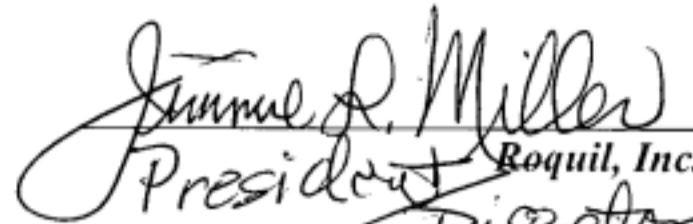
The Owner may change its address or the individual to whose attention a notice is to be sent by giving written notice via certified mail.

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.

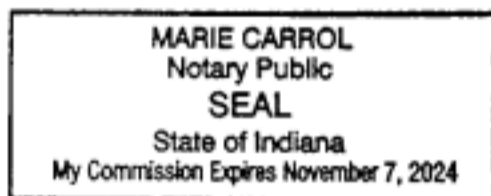
IN WITNESS WHEREOF, Roquil, Inc., the current Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 20<sup>th</sup> day of JULY, 2017.

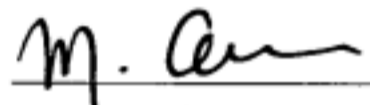
  
President ~~Roquil, Inc.~~  
Director  
Jimmie R. Miller

STATE OF INDIANA \_\_\_\_\_ )  
 ) SS:  
COUNTY OF MARION \_\_\_\_\_ )

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

Witness my hand and Notarial Seal this 20 day of July, 2017.



  
Marie Carroll, Notary Public  
Residing in Marion County, IN

My Commission Expires:

November 7, 2024

This instrument prepared by: Thomas W. Baker, Hatchett and Hauck LLP, 111 Monument Circle #301, Indianapolis, IN 46204

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. Thomas W. Baker

**EXHIBIT A**

**LEGAL DESCRIPTION OF REAL ESTATE**

**[REDACTED]**

770056665

Note: Use of this form constitutes practice of law and is limited to practicing lawyers.

Form No. 1

2.50

**WARRANTY DEED**

THIS INDENTURE WITNESSETH, That James E. Ayres and Sharon L. Ayres, husband and wife, ("Grantor")  
 of Marion County, in the State of Indiana, CONVEY  
 AND WARRANT to Roquil, Inc., a corporation

of Marion County, in the State of Indiana, for the sum  
 of One and 00/100 Dollars (\$ 1.00 ) and other  
 valuable consideration, the receipt of which is hereby acknowledged, the following described real  
 estate in Marion County, in the State of Indiana:

Lots 26 and 27, in Block 3, in Tuxedo Park, an  
 addition to the City of Indianapolis, as per  
 plat thereof, recorded in Plat Book 10, Page 68,  
 in the Office of the Recorder of Marion County,  
 Indiana.

Subject to all easements, restrictions and rights-  
 of-way of record.

Subject to all real estate taxes due and payable  
 in November of 1977 and all taxes due thereafter.

Commonly known as 4215 East New York, Indianapolis,  
 Indiana.

RECEIVED FOR RECORD  
 PRECIOUS BYRD  
 RECORDER-MARION CO  
 AUG 30 9 58 AM '77

AUG 30 1977 2 65 46  
 TAXATION  
 James E. Ayres  
 Sharon L. Ayres

IN WITNESS WHEREOF, Grantor has executed this deed this 24<sup>th</sup> day of

August, 19 77  
 Signature James E. Ayres (SEAL)  
 Printed James E. Ayres

Signature Sharon L. Ayres (SEAL)  
 Printed Sharon L. Ayres

STATE OF INDIANA  
 COUNTY OF MARION

} SS:

Before me, a Notary Public in and for said County and State, personally appeared

James E. Ayres and Sharon L. Ayres

who acknowledged the execution of the foregoing Warranty Deed, and who, having been duly  
 sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 24<sup>th</sup> day of August, 19 77

My commission expires

Signature William F. Diehl

Printed WILLIAM FORREST DIEHL, Notary Public

This instrument was prepared by William F. Diehl, attorney at law.

Return to: W. ROBERT NATIONAL BANK, 128 E. Market Street, INDIANAPOLIS, IND.

© Copyright, 1977, by Indianapolis Bar Association.

Send tax statements to:

770056665

**EXHIBIT B**  
**LIST OF CONTAMINANTS OF CONCERN**

[REDACTED]

**EXHIBIT B-1**  
**SUMMARY OF GROUNDWATER MONITORING WELL SAMPLE ANALYTICAL RESULTS**  
 Liquor Barn #1  
 4215 East New York Street  
 Indianapolis, IN  
 VRP# 6130202

Sample Location	Sample Date	Screened Interval (ft bgs)	VOCs (µg/L)		cPAHs (µg/L)		
			Benzene	1,2,4 - Trimethylbenzene	1-Methylnaphthalene	2-Methylnaphthalene	Naphthalene
MW-1	8/11/2014	5-15	135	< 5	44.7	44.2	< 1.0
	123		< 5	46.4	68.8	1.05	
	131		< 5	66.1	98.2	< 1.0	
	152		< 5	87.6	94.5	< 1.0	
	102		< 5	44.9	59.6	< 1.0	
	112		< 5	66.7	96.2	1.11	
MW-2	8/11/2014	5-15	< 5	261	6.73	14.8	10.9
	116		91.3	< 1.0	< 1.0	< 1.0	
	28.5		18.6	< 1.0	< 1.0	1.15	
	42.2		29.2	< 1.0	< 1.0	< 1.0	
	81.3		33.2	< 1.0	< 1.0	1.16	
	105		48.9	1.64	1.48	4.28	
MW-3	8/11/2014	9-19	7.56	13.7	73.9	107	< 1.0
	7.03		< 5	45.1	48.6	< 1.0	
	5.53		< 5	48.6	52.4	< 1.0	
	10.9		< 5	80.6	103	< 1.0	
	< 5		< 5	< 1.0	< 1.0	< 1.0	
	< 5		< 5	60.7	59.8	< 1.0	
RCG "Tap" Groundwater Screening Levels			5	15	11	36	1.7

**Notes:**

Screening levels are from Table A-6 of the 2016 Indiana Department of Environmental Management (IDEM) Remediation Closure Guide (RCG)  
 Volatile Organic Compounds (VOCs) analyzed using the United States (U.S.) Environmental Protection Agency (EPA) SW-846 Method 8260  
 Carcinogenic Polycyclic Aromatic Hydrocarbons (cPAHs) analyzed using the U.S. EPA SW-846 Method 8270  
 Sample results only shown for contaminant concentrations exceeding the RCG "Tap" Groundwater Screening Levels for more than one (1) quarter of sampling  
 Constituents not shown are below laboratory reporting limit  
**Bolded** values exceed the IDEM RCG "Tap" Groundwater Screening Levels  
 Units in micrograms per liter = µg/L  
 ft bgs = feet below ground surface

## EXHIBIT B-2

### SUMMARY OF GRAB GROUNDWATER SAMPLE ANALYTICAL RESULTS

Liquor Barn #1  
4215 East New York Street  
Indianapolis, IN  
VRP# 6130202

Sample Location	Sample Date	Screened Interval (ft bgs)	VOCs (µg/L)		Lead (µg/L)
			Benzene	Naphthalene	
DP-2	2/25/2010	12	11.5	NA	NA
DP-3	3/15/2011	11.5	147	30.9	NA
DP-13	8/8/2014	8-12	21.3	< 1.0	60
RCG "Tap" Groundwater Screening Levels			5	2	15

**Notes:**

Screening levels are from Table A-6 of the 2016 Indiana Department of Environmental Management (IDEM) Remediation Closure Guide (RCG)

Sample results only shown for contaminant concentrations exceeding the RCG "Tap" Groundwater Screening Levels

Volatile Organic Compounds (VOCs) analyzed using the United States (U.S.) Environmental Protection Agency (EPA) SW-846 Method 8260

Lead analyzed using the U.S. EPA SW-846 Method 6010

**Bolded** values exceed IDEM RCG "Tap" Groundwater Screening Levels

Units in micrograms per liter = µg/L

ft bgs = feet below ground surface

NA = Not Analyzed