

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT (“Covenant”) is made this _____ day of [*month*], 20___, by JDM Enterprise, LLC, 115 East National Avenue, Brazil, Indiana 47834 (together with all successors and assignees, collectively (“Owner”).

WHEREAS: Owner is the fee owner of certain real estate in the County of Clay, Indiana, which is located at 115 East National Avenue in Brazil, Indiana 47834 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 December 9, 2020, and recorded on December 10, 2020, as Deed Record 20200004565 in the Office of the Recorder of Clay County, Indiana. The Real Estate consists of approximately 0.04 acres and has also been identified by the county as parcel identification number 11-02-36-400-200.000-002. The Real Estate, to which this Covenant applies, is depicted on a map attached hereto as Exhibit B.

WHEREAS: Response Action was implemented in accordance IC 13-25-5 with and/or other applicable Indiana law as a result of a release of hazardous waste and/or hazardous substances relating to the former Reberger Dry Cleaners site located at 113 East National Avenue, Brazil, Indiana 47834. The incident number assigned by the Indiana Department of Environmental Management (“Department or “IDEM”) for the release is # 6190601. A remediation work plan is being prepared in accordance with IC 13-25-5 and will be submitted to the Department for approval.

WHEREAS: Certain contaminants of concern (“COCs”) remain in the Choose an item. of the Real Estate following completion of the response actions. The Department has determined that the COCs will not pose an unacceptable risk to human health at the remaining concentrations, provided that the Owner implements and complies with the land use restrictions and with any operation and maintenance requirements for engineered controls as required herein. The remaining COCS are tetrachloroethene, trichloroethene, cis-1,2-dichloroethene, trans-1,2-dichloroethene, and vinyl chloride.

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/). The Real Estate is also depicted as a polygon on IDEM’s GIS webviewer (currently <https://on.in.gov/ideminteractivemap>).

NOW THEREFORE, JDM Enterprise, LLC, 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 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 operate and maintain the vapor mitigation system, depicted on Exhibit C, so as to protect its functional integrity in accordance with the Sub-Slab Depressurization System Operation, Maintenance, & Monitoring Manual – 115 East National Avenue, Brazil, Indiana, dated September 28, 2022, described in VFC# 83374372 and all subsequent IDEM approved revisions. Owner shall notify the Department in writing at least fifteen (15) days in advance of conducting any construction or excavation work that may impact an engineered control, unless an emergency exists. Owner shall ensure that the integrity of the vapor mitigation system is restored immediately after disturbance by any construction or excavation work. Upon IDEM's request, the Owner shall provide written evidence showing the vapor mitigation system has been restored to its complete integrity. Should the Owner wish to terminate operation of the system in the future, Owner shall notify the Department in writing at least fifteen (15) days in advance of performing system termination sampling and shall report the findings of the sampling to the Department with a request to consider whether system deactivation is protective of human health and the environment.

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 _____ 20__, RECORDED IN THE OFFICE OF THE RECORDER OF CLAY COUNTY ON _____, 20__, INSTRUMENT NUMBER (or other identifying reference) _____ 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; (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 Clay 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:

JDM Enterprise, LLC
Jayne McCoy
115 East National Avenue
Brazil, Indiana 47834

_____, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this ___ day of _____, 20__.

_____, Notary Public

Residing in _____ County, _____

My Commission Expires:

This instrument prepared by:

Robert (Louie) Jorczak, Associate, Ice Miller, LLP, One America Square, Suite 2900,
Indianapolis, IN 46282

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:

**Robert (Louie) Jorczak, Associate, Ice Miller, LLP, One America Square, Suite 2900,
Indianapolis, IN 46282**

This instrument prepared by:

Robert (Louie) Jorzak, Associate, Ice Miller, LLP, One America Square, Suite 2900,
Indianapolis, IN 46282

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:

**Robert (Louie) Jorzak, Associate, Ice Miller, LLP, One America Square, Suite 2900,
Indianapolis, IN 46282**

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EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

LOT NUMBERED TWO (2) IN REBECCA THOMAS' FIRST ADDITION TO THE CITY OF BRAZIL, CLAY COUNTY, INDIANA AS PER PLAT THEREOF RECORDED NOVEMBER 17, 1881 IN PLAT BOOK 2, PAGE 76 IN THE OFFICE OF THE RECORDER OF CLAY COUNTY, INDIANA.

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DULY ENTERED FOR TAXATION
SUBJECT TO FINAL

ACCEPTANCE FOR TRANSFER
THIS 10 DAY OF Dec 20 20

Auditor Clay County
By Jane M. Hayes

202000004565

Filed for Record in
CLAY COUNTY INDIANA
PATRICIA NICHOLE KELLER
12/10/2020 11:48:43 AM
WD 25.00
OR Book 193 Page 1787
Number of Pages: 3

LIMITED LIABILITY PARTNERSHIP DEED

THIS INDENTURE WITNESSETH, That *Premier Enterprise, LLP, by its General Partners and co-owners, Jayne D. McCoy and Pamela G. Hayes*, a Limited Liability Partnership duly organized and existing under the laws of the State of Indiana, conveys and warrants to *JDM Enterprise, LLC*, a Limited Liability Company duly organized and existing under the laws of the State of Indiana, for valuable consideration, the receipt whereof is hereby acknowledged, the following described Real Estate in Clay County, in the State of Indiana, to-wit:

Lot Numbered Two (2) in Rebecca Thomas' First Addition to the City of Brazil, Clay County, Indiana, as per plat thereof recorded November 1, 1881 in Plat Book 2, page 76 in the Office of the Recorder of Clay County, Indiana.

EXCEPTING a strip half of a foot in width on the West side thereof.
Subject to all rights-of-way and pertinent easements of record.

The undersigned persons executing this deed on behalf of Grantor represents and certifies that they have has been fully empowered, by proper resolution, or other action, to execute and deliver this deed; that Grantor has full capacity to convey the real estate described herein; and that all necessary action for the making of such conveyance has been taken and is done.

IN WITNESS WHEREOF, *Premier Enterprise, LLP, by its General Partners and co-owners, Jayne M. McCoy and Pamela G. Hayes*, have executed the foregoing Deed this 9 day of December, 2020.

Premier Enterprise, LLP

Jayne D. McCoy
Jayne D. McCoy,
As General Partner and co-owner

Pamela G. Hayes
Pamela G. Hayes,
As General Partner and co-owner

WITNESS to the above signatures:

Michelle Vinzant
Printed Name: Michelle Vinzant

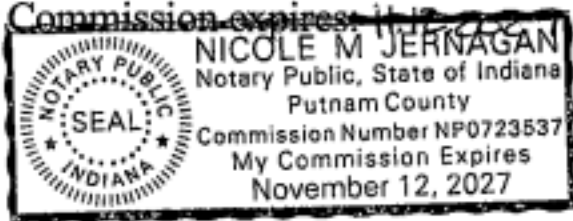
A.O.

STATE OF INDIANA, COUNTY OF Clay, SS:

Before me, the undersigned, a Notary Public in and for said County, this 9 day of December, 2020, personally appeared Premier Enterprise, LLP, by its General Partners and co-owners, Jayne D. McCoy and Pamela G. Hayes, who acknowledged the execution of the foregoing instrument.

WITNESS my hand and official seal.

My Commission expires: 11/12/27



Nicole M Jernagan
Printed Name: Nicole M Jernagan
Resident of Putnam County, IN

STATE OF INDIANA, Clay COUNTY SS:

Before me, the undersigned, a Notary Public in and for said County, this 9 day of December, 2020, personally appeared Michelle Vincent, the above named WITNESS to the foregoing instrument, who, being duly sworn by me, did depose and say that he/she knows Jayne D. McCoy and Pamela G. Hayes to be the individual/s described herein and who executed the foregoing instrument; that said WITNESS was present and saw Jayne D. McCoy and Pamela G. Hayes execute the same; and that said WITNESS at the same time subscribed his/her name as a witness thereto; and that the above named subscribing witness is not a party to the transaction described in the foregoing instrument and will not receive any interest in or proceeds from the property that is the subject of the transaction.

WITNESS my hand and official seal.

My Commission expires: 11.12.2027

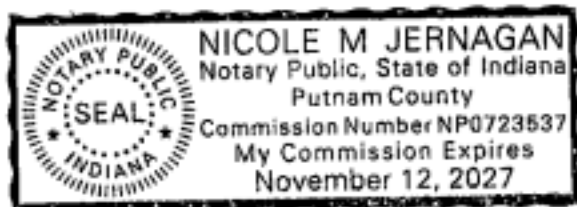
Nicole M Jernagan

Name: Nicole M Jernagan
Resident of Putnam County, IN

MAIL TAXES TO: 115 E National Ave, Brazil, IN 47834

I affirm under penalties of perjury that I have taken reasonable care to redact each social security number in this document, unless required by law. Gary G. Hanner

PREPARED BY: Gary G. Hanner, HANNER LAW, Old Parke State Bank Bldg., P.O. Box 122, Rockville, IN 47872 (765) 569-3122. www.hannerlaw.com



A.O.

DRAFT

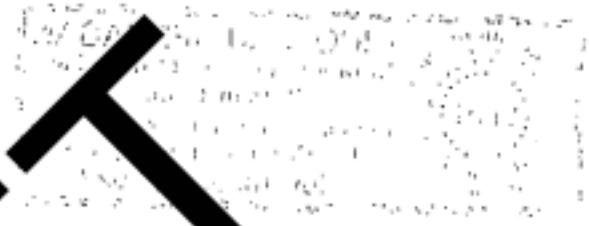


EXHIBIT B
REAL ESTATE MAP

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East National Avenue
(U.S. Highway 40)

HA-8

115 E. National Ave.
Commercial

SSV-1




HA-4

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APPROXIMATE SCALE: 1" = 20'

Legend

-  Property boundary
- HA-4  Hand auger location
- SSV-1  Sub-slab vapor sample

No.	Date	Revision	Approved



Date:	4/9/20
Designed:	EB
Drawn:	EB
Checked:	NH
DWG file:	6379-2385

ERC REAL ESTATE MAP

Premier Tax Service, LLP
115 East National Avenue
Brazil, Indiana

Exhibit	B
Project	6379

EXHIBIT C

VAPOR MITIGATION SYSTEM LAYOUT

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East National Avenue
(U.S. Highway 40)

Basement/Slab

Commercial
115 E. National Ave.

Former Reberger Cleaners
113 E National Avenue

EP-2

EP-1

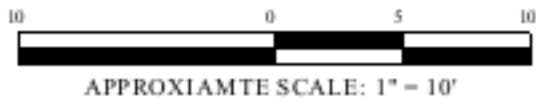
Crawl space

Asphalt Parking


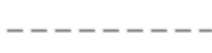



Mitigation fan

Slab

Alley



Legend

-  Property boundary
-  Basement/Crawl space
-  conveyance piping
-  perforated extraction piping
-  SSDS extraction point

No.	Date	Revision	Approved



825 North Capitol Avenue • Indianapolis, IN 46204
EnviroForensics.com

Date:	2/5/21
Designed:	EB
Drawn:	EB
Checked:	NH
DWG file:	6379-2643

VAPOR MITIGATION SYSTEM LAYOUT

Premier Tax Service, LLP
115 East National Avenue
Brazil, Indiana

Exhibit	C
Project	6379