**Environmental Restrictive Covenant**

THIS Environmental RestrictiveCOVENANT (“Covenant”) is made this Choose an item. day of Choose an item., 20 Choose an item., by Owner’s name as it appears on deed Owner’s complete mailing address to include zip (together with all successors and assignees, collectively “Owner”).

WHEREAS: Owner is the fee owner of certain real estate in the County of Choose an item., Indiana, which is located at Complete Site Address andmore particularly described in the attached Exhibit “A” (“Real Estate”), which is hereby incorporated and made a part hereof.ThisReal Estate was acquired by deed on Date of Deed Signing, and recorded on Date Deed was recorded, as Deed Record Deed Instrument Number, in the Office of the Recorder of Choose an item. County, Indiana. The Real Estate consists of approximately total number of acres of the Real Estate acres andhas also been identified by the county as parcel identification number[s] insert 18-digit parcel identification number(s) as described in 50 IAC 23-8-1. The Real Estate, to which the restrictions in this Covenant apply, is depicted on a map attached hereto as Exhibit Choose an item..

WHEREAS: The Real Estate contains a solid waste disposal site, which operated from approximately Month (if known) and yearuntil Month (if known) and year on a portion of the Real Estate. The Real Estate is subject to insert titles and dates of all relevant approval documents and dates, including Operations and Maintenance Plan, if available, approved by the Indiana Department of Environmental Management (“IDEM” or “Department”) and subject to 329 IAC 10. Relevant documents can be found at Virtual File Cabinet (“VFC”) document number(s)     . A portion of the Real Estate has been used as a solid waste disposal site, and its use is restricted by the post-closure care requirements as provided by the terms in Title, Date, and VFC# of documents(s) with post-closure care requirements, if applicable and 329 IAC 10. Relevant documents provide that solid waste material will remain on the Real Estate and require land use restrictions that must be maintained to ensure the protection of public health, safety, or welfare, and the environment. The solid waste program identification number assigned by IDEM for the solid waste disposal site is Solid Waste Disposal Site ID# and the agency interest ID is Agency Interest ID #.

WHEREAS: A portion of the Real Estate was utilized as a solid waste disposal site, as depicted in Exhibit Choose an item. which exhibit also includes solid waste boundaries and depths, and which exhibit is incorporated and made part hereof. The solid waste boundary covers approximately       acres and contains insert waste type (industrial, municipal, etc). Surface contours at intervals of two (2) feet, indicating surface water run-off directions, surface water diversion structures, and final grade contours are also contained in Exhibit Choose an item., which are hereby incorporated and made a part hereof. The approximate depth of solid waste material ranges from       to       feet. Any future deed of the Real Estate shall reflect that a portion of the Real Estate has been used as a solid waste disposal site.

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/](http://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, Owner 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: [*Select from the list below those restrictions that are applicable to the site. Mark/strike out those that are not applicable and renumber list. Additional site-specific restrictions may be appropriate based on-site conditions and are to be negotiated between the property owner and the Department.* *Note certain required restrictions are not negotiable.]*

1. Shall not use or allow the use of the Real Estate for residential purposes, including, but not limited to, daily childcare facilities or educational facilities for children (e.g., daycare centers or K-12 schools).
2. 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.
3. Shall not use the Real Estate for any agricultural use.
4. Shall neither engage in nor allow excavation of waste or soil within the solid waste boundary or in the area identified as the “Restricted Area” depicted in Exhibit(s) Choose an item. and Choose an item., unless otherwise approved by the Department.
5. Shall maintain the approved cover*,* depicted in Exhibit Choose an item., so as to protect its functional integrity in accordance with 329 IAC 10 and IDEM approved document described in VFC # and all subsequent IDEM approved revisions, applicable rules, approved plans, and/or approve post closure use.
6. Shall have no construction, installation of groundwater wells, pipes, conduits, or septic system, or any other excavation on the Real Estate without approval from the IDEM Commissioner.
7. Shall not construct or allow occupancy of a dwelling or workspace on the Real Estate. [*Include if methane or vapor intrusion screens out, based on existing site buildings and/or current use, but a change in use and/or new construction would warrant a methane/vapor intrusion evaluation*].

[*Include the following if an active remediation system is employed*]

1. Shall operate and maintain the       depicted in Exhibit Choose an item., so as to protect its functional integrity in accordance with Insert title, date and VFC # of the IDEM approved document containing O&M requirementsand 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 the active remediation system unless an emergency exists. Owner shall ensure that the integrity of the Choose an item.is restored immediately after disturbance by any construction or excavation work. TheOwner shall provide written evidence showing the remedial system has been restored to its complete integrity.

[*Include the following if an engineered control is employed*]

1. Shall operate and maintain the Choose an item., depicted in Exhibit Choose an item., so as to protect its functional integrity in accordance with Insert title, date and VFC # of the IDEM approved document containing O&M requirementsand 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 Choose an item.is restored immediately after disturbance by any construction or excavation work. TheOwner shall provide written evidence showing the engineered control has been restored to its complete integrity.

[*Include the following if pavement or a building serves as a passive engineered control or barrier*]

1. Shallmaintain the integrity of the existing Choose an item., which is depicted on Exhibit Choose an item. via Choose an item.; this area serves as an engineered barrier to prevent direct contact with the underlying waste and must not be excavated, removed, disturbed, demolished, or allowed to fall into disrepair.
2. Shall not permit the addition of new solid waste on the Real Estate. All surficial exposed waste not covered by or to be covered by approved final cover shall be removed and disposed at an appropriate approved disposal facility.
3. Shall not allow deterioration of the final cover that would allow existing solid waste to be exposed. All exposed waste shall be covered with two (2) feet of uncontaminated soil or removed and disposed at an appropriate approved disposal facility.
4. Shall not permit leachate seeps. Any leachate seeps shall be eliminated within sixty (60) days of detection and documentation shall be submitted to IDEM within thirty (30) days of work completion.

[*Include the following if the landfill contains municipal solid waste*]

1. Shall install and maintain methane alarms within all enclosed structures on the Real Estate. The number, type and location of alarms are to be pre-approved by the Department.

[*Include the following if groundwater monitoring is being conducted*]

1. Shallprohibit any activity at the Real Estate that may interfere with the groundwater monitoring or well network as depicted on Exhibit Choose an item..
2. [*Insert other site-specific restriction(s) here.*]

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 andtheir 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 rightincludes 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** Choose an item. **COUNTY ON \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, INSTRUMENT NUMBER (or other identifying reference) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.**

1. Notice to Department of the Conveyance of Property. Owner agrees to provide notice to the Department ofany 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 theDepartment 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 address of the transferee.
2. 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

1. 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 as long as solid waste remains in place and/or until the Department determines that any 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 Choose an item. County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department. In accordance with 329 IAC 1-2-7 and IC 13-14-2-9(d), the applicant shall reimburse the department for the administrative and personnel expense incurred by the department in evaluating a proposed modification or termination of a restrictive covenant under this rule.

V. MISCELLANEOUS

11. Waiver. No failure on the part of the Department at any time to require performance or to pursue enforcement options due to a lack of 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 complywith any other applicable laws.

13. Change in Law, Policy or Regulation. The parties intend that this Covenant shall not 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. If necessary to enforce this Covenant, the parties agree to amend this Covenant to conform to any such change. 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, sent via email, or by first class mail, postage prepaid, addressed as follows:

To Owner:

Owner’s Name

Owner’s Mailing Address

City, State Zip

To Department:

IDEM, Office of Land Quality

100 N. Senate Avenue

IGCN 1101

Indianapolis, IN 46204-2251

Attn: Section Chief, Engineering Section or [AntiqueLandfill@idem.IN.gov](mailto:AntiqueLandfill@idem.IN.gov)

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 portionsor termsof 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 certifiesthat he or she isduly 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, Owner’s name as it appears on deed, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Owner’s name as it appears on deed (or authorized representative), Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name of Signatory

STATE OF )

) SS:

COUNTY OF )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the Owner, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 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:

insert name and address of preparer. Note: not IDEM staff

**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:**

insert name and address of preparer. Note: not IDEM staff

**EXHIBIT A**

**LEGAL DESCRIPTION OF REAL ESTATE**

**EXHIBIT B**

**MAP OF REAL ESTATE**

**EXHIBIT \_\_\_**

***Instructions:*** *Attach separate sheets as necessary, labeled as ‘Exhibit C’, ‘Exhibit D’, etc. The following are some examples of additional Exhibits.*

1. *Scaled map(s) showing the location of engineered barriers or other engineering controls.*
2. *Scaled map showing the location of monitoring well network, if applicable.*
3. *Scaled map(s) showing the solid waste boundary.*
4. *Legal description for the solid waste boundary.*
5. *Map and legal description of easements.*