**Environmental Restrictive Covenant**

THIS ENVIRONMENTAL RESTRICTIVE COVENANT (“Covenant”) is made this Choose an item day of Choose an item, 20Choose 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 Property 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 26-8-1. The Real Estate, to which the restrictions in this Covenant apply, is depicted on a map attached hereto as Exhibit Choose an item. *[If one or more of the restrictions does not apply to the entire Real Estate, then an additional map is required to depict the area where each restriction applies. This “Affected Area” must be delineated using a legal survey or GPS points based on the location of the contaminants involved. If there is more than one Affected Area on a parcel, each area must be depicted and, if the contaminants vary from one Affected Area to the other, the contaminants found at each area should be listed. Each restriction should denote the area to which it is applicable.]* An “Affected Area”, to which additional restrictions apply, is depicted on a map attached hereto as Exhibit Choose an item.

*Select one of the following six authority paragraphs based on the remediation program and delete unrelated paragraphs: 1st WHEREAS - RCRA, 2nd WHEREAS – PRS/LUST, 3rd WHEREAS – ICP/petroleum, 4th WHEREAS - State Cleanup, 5th WHEREAS – VRP, 6th WHEREAS – Federal Programs.*

WHEREAS: Corrective action was implemented in accordance with IC 13-22 and/or other applicable Indiana law as a result of a release of hazardous waste(s) and/or hazardous constituents relating to insert common name of facility and its address. The facility was assigned United States Environmental Protection Agency ID# U.S. EPA ID number.

WHEREAS: Corrective action was implemented in accordance with IC 13-23 and/or other applicable Indiana law as a result of a release of petroleum relating to the insert common name of cleanup site and its address. The incident number assigned by the Indiana Department of Environmental Management (“Department” or “IDEM”) for the release is insert PRS program incident number, and the relevant facility identification number is insert UST FID.

WHEREAS: Response action was implemented in accordance with IC 13-24 and/or other applicable Indiana law as a result of a release of petroleum relating to the insert common name of cleanup site and its address. The incident number assigned by the Indiana Department of Environmental Management (“Department” or “IDEM”) for the release is insert ICP/incident number.

WHEREAS: Response action was implemented in accordance with IC 13-25-4 and/or other applicable Indiana law as a result of a release of hazardous waste and/or hazardous substances relating to the insert common name of cleanup site and its address. The incident number assigned by the Indiana Department of Environmental Management (“Department” or “IDEM”) for the release is #insert State Cleanup program incident number.

WHEREAS: Response Action was implemented in accordance with IC 13-25-5 and/or other applicable Indiana law as a result of a release of hazardous waste and/or hazardous substances relating to the insert common name of cleanup site and its address. The incident number assigned by the Indiana Department of Environmental Management (“Department” or “IDEM”) for the release is #insert VRP program incident number.

WHEREAS: Response Action was implemented pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C § 9605, at insert common name of cleanup site Superfund Site, located at insert site address, which the U.S. Environmental Protection Agency (“EPA”) placed on the National Priorities List in insert month, year site was added to NPL, set forth at 40 C.F.R. Part 300, Appendix B. The EPA identification number is #insert EPA number, and the incident number assigned by the Indiana Department of Environmental Management (“Department” or “IDEM”) for the release is #insert IDEM incident number.

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_delete this line\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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. These COCs are insert a list of the COCs remaining above residential standards. *If there are numerous contaminants involved, consider the following language instead:* The known COCs remaining are listed in ExhibitChoose an item, which is attached hereto and incorporated herein. *For PRS and ICP sites, consider the following language instead*: The known COCs remaining are petroleum compounds related to gasoline and/or diesel.

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 website (currently [www.in.gov/idem/](http://www.in.gov/idem/)). The restricted Real Estate is also depicted on IDEM’s GIS webviewer (currently <https://on.in.gov/ideminteractivemap>).

*Include the following paragraph whenever there is an easement on the Real Estate that directly conflicts with a required restriction or obligation (e.g., easement allows or will allow installation of underground utilities that require maintenance and a restriction prohibiting excavation; or an existing easement for underground utilities installed in an area containing contamination which requires maintaining a cap and prohibits any disturbance. A Subordination Agreement or a Joinder and Consent executed by the Easement Holder must be recorded, as an Exhibit to this ERC. Subordination Agreement and Joinder and Consent templates are available at* [*https://www.in.gov/idem/cleanups/investigation-and-cleanup-programs/institutional-controls/*](https://www.in.gov/idem/cleanups/investigation-and-cleanup-programs/institutional-controls/)*.*

WHEREAS: The Real Estate is encumbered by an easement, more particularly described in the attached Exhibit Choose an item, and which was recorded on Date easement was recorded as Deed Record easement Instrument Number in the office of the Recorder of Choose an item County, Indiana (the “Easement”). Because the activities allowed by the Easement directly conflict with the Restrictions in this Covenant, which are required to protect human health and the environment, the holder of the Easement has executed a Choose an item, which is attached hereto as Exhibit Choose an item.

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: *In accordance with IC 13-14-2-8, select from the list below those restrictions that are applicable to the Site. Delete 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.*

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.

*[Include the following soil disturbance restriction if COCs remain in soil at levels above residential land use criteria]*

1. Shall restore soil disturbed as a result of excavation and construction activities 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, do 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.

*[In addition to the preceding general soil disturbance restriction, additional soil disturbance restrictions may be appropriate for high levels of contamination and should be tailored accordingly. The following is an example restriction illustrating the case where COCs remain in soil as free product, or at levels above construction worker criteria. Refer to IDEM’s nonrule policy document,* [*Waste 0075-NPD*](https://www.in.gov/idem/files/nrpd_waste-0075.pdf)*, for guidance in developing a Soil Management Plan. A title search to determine if there are conflicting easements must be conducted and documentation provided to IDEM prior to implementing this restriction]*

1. Shall neither engage in nor allow excavation of soil at depths greater than depth restriction feet in the area identified via Choose an item as the “Construction Worker Restriction Area” depicted on Exhibit Choose an item. The Owner, upon the Department’srequest, shall provide the Department evidence showing the excavated and restored area do not represent a threat to human health or the environment. In accordance with insert title and date of the IDEM approved Soil Management Plan, described in VFC #VFC Number, and any IDEM approved updates.

*[Include if 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 vapor intrusion evaluation]*

1. Prior to the change in use of the site orconstruction of new structures to be occupied by persons at the Real Estate, the current Owner of the Real Estate shall confirm there is no unacceptable exposure risk due to vapor migration in accordance with then-applicable agency guidance, regulation, or law. This may include conducting groundwater, soil, indoor air and/or soil-gas sampling for volatile organic compounds (“VOCs”) or semi-volatile organic compounds (“SVOCs”), with an IDEM approved sampling plan. The results and analyses of such sampling shall be presented to IDEM in support of the Owner’s determination whether an unacceptable vapor exposure risk exists. If the results demonstrate that no such risk exists, IDEM will provide its concurrence in writing and grant the Owner a waiver of this restriction for the proposed change in site use and/or new construction. If the results demonstrate that an unacceptable risk to human health exists, then the Owner must submit plans for mitigation for approval by IDEM and must conduct adequate indoor air sampling to demonstrate the effectiveness of the approved remedy.

*[Include the following if there is a potential future vapor intrusion threat at undeveloped or unoccupied sites]*

1. Shall not construct or allow occupancy of a dwelling or workspace on the Real Estate unless a vapor mitigation system or other effective IDEM approved remedy is installed, operated, and maintained within the dwelling or workspace. IDEM may waive this restriction in writing if the Owner has provided data and analysis demonstrating to IDEM’s satisfaction that there is no unacceptable risk to human health via the vapor intrusion exposure pathway.

*[Include the following if current buildings are subject to OSHA PELs due to continued use of COCs on-site]*

1. Shall confirm there is no unacceptable exposure risk due to vapor migration in accordance with then-applicable agency guidance, regulation, or law in both of the following situations:
	* 1. After the use of insert a list of the COCs currently in use at the facility inside the building at the Real Estate ceases; and/or
		2. When any new structures to be occupied by persons at the Real Estate are constructed.

Both situations require an IDEM-approved sampling plan and may include conducting groundwater, soil, indoor air, and/or soil-gas sampling for volatile organic compounds (“VOCs”) or semi-volatile organic compounds (“SVOCs”). The results and analyses of such sampling shall be presented to IDEM in support of the Owner’s determination whether an unacceptable vapor exposure risk exists. If the results demonstrate that no such risk exists, IDEM will provide its concurrence in writing and grant the Owner a waiver of this restriction for the proposed change in site use and/or new construction. If the results demonstrate that an unacceptable risk to human health exists, then the Owner must submit plans for mitigation for approval by IDEM and must conduct adequate indoor air sampling to demonstrate the effectiveness of the approved remedy.

*[Include if an active engineered control (vapor mitigation system, etc.) has been implemented at the site requiring operation and maintenance of an engineered control]*

1. Shall operate and maintain the type of engineered control*,* identified via Choose an item, anddepicted in Exhibit Choose an item,so as to protect its functional integrity in accordance with insert title and date of the document containing operations and maintenance requirements described in VFC #VFC Number 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 type of engineered control is restored immediately after disturbance by any construction or excavation work. Upon IDEM’s request, theOwner shall provide written evidence showing the type of engineered control has been restored to its complete integrity.

*[Include if a passive engineered control or barrier has been implemented such as pavement or a building foundation.* *A title search to determine if there are conflicting easements must be conducted and documentation provided to IDEM prior to implementing this restriction]*

1. Shallmaintain the integrity of the existing type of passive engineered control, which is depicted on Exhibit Choose an item via Choose an item; this type of passive engineered control serves as an engineered barrier to prevent direct contact with the underlying soils and must not be excavated, removed, disturbed, demolished, or allowed to fall into disrepair in accordance with insert title of the document containing maintenance requirements described in VFC #VFC Number and all subsequent IDEM approved revisions.

 *[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 via Choose an item.
2. *Insert other site-specific restriction(s) here.*

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 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.
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 rightincludes 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\_\_\_\_\_\_\_\_\_\_\_\_ 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 business 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 13-14-2-6and 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

1. 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.
2. 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 approved by IDEM, 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

1. 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.
2. 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.
3. 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.
4. 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:

 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: Institutional Controls Group

 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.

1. 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.
2. Authority to Execute and Record. The undersigned personexecuting 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 represent**s** 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\_\_\_\_.

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

Choose an item.

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

*[Optional: this line can be removed if signatory name is typed above]* 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:

Name and address of preparer, Note: Not the IDEM project manager

**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:**

Name and address of preparer, Note: Not the IDEM project manager

**EXHIBIT A**

**LEGAL DESCRIPTION OF REAL ESTATE**

**EXHIBIT \_\_\_**

***Instructions:*** *Attach separate sheets as necessary, labeled as ‘Exhibit B’, ‘Exhibit C’, etc.*

* *All attachments should be in standard 8.5 by 11 inch, black and white format to ensure legibility after being scanned or copied. Maps should be non-aerial and avoid extraneous details.*
* *A copy of the current deed should be provided during the review process so IDEM can verify ownership and accuracy of the ERC.*

*The following are some examples of additional Exhibits:*

1. *A non-aerial scaled map of the site to include street names and State Parcel Identification Numbers (PINs).*
2. *If not identified in the ERC, a list, description, or table of COCs (optional for non-CERCLIS and non-hazardous waste facilities).*
3. *Scaled map(s) showing the location of engineered barriers or other engineering controls subject to operation and maintenance provisions, which must be defined with either GPS coordinates or a survey.* *\*required if there are engineered barriers/controls on the site.*
4. *Scaled map(s) showing the location of contamination above construction worker levels, identifying the area as the “Construction Worker Restriction Area”, which must be defined with either GPS coordinates or a survey in addition to an IDEM approved Soil Management Plan (SMP) and referenced by VFC number within the associated restriction. \*required for free product or if concentrations remain above construction worker levels.*
5. *Scaled map(s) showing the legal boundary (survey, GPS coordinates, etc.) of areas within a property (i.e., “carve outs” or “affected areas”) subject to specific restrictions or obligations. \*required if any restrictions are not applied to the entire Real Estate.*
6. *Copies of recorded easements* *that conflict with land use restrictions and an executed Subordination Agreement or Joinder and Consent should be included as additional exhibits if such conflicts exist. Locations of easements should be identified with GPS coordinates or a survey and depicted on the map of the site. \*required if conflicting easements exist.*
7. *CERCLIS and former hazardous waste facilities (a hazardous waste facility is defined in IC 13-11-2-100 to mean a plant or site where hazardous waste is subjected to treatment, storage or disposal) are required by IC 13-25-4-24(c) to describe the identity, quantity, and location of hazardous substances remaining on the property. Two methods of relaying this information include the following exhibit types:*
	1. *Scaled map(s) identifying the location of contamination exceeding land use criteria for each contaminant of concern. This should be depicted on the map showing “Affected Areas”. For clarity purposes, it is recommended that analytical information (identification and quantity of hazardous substances) be showed separately in a table.*
	2. *A narrative summary of the identity, quantity, and location of hazardous substances remaining on the property.*