

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 1st day of July, 2021, by **Susan Good & Sharon Balka, Trustees of Cleo J. Albert Irrevocable Trust ½ Interest, & Shirley A. Albert ½ Interest as Successor Trustee of the Robert H. Intervivos Trust of October 23, 2000 as Warranted to David L. Albert and Susan Albert, Husband and Wife** (together with all successors and assignees, collectively "Owner"). The Real Estate consists of approximately **1.60 acres** and has also been identified by the county as parcel identification number **50-52-95-404-417.000-010 & 50-52-95-404-418.000-010**.

WHEREAS: Owner is the fee owner of certain real estate in the County of **Marshall**, Indiana, which is located at 724 South Michigan Street, LaPaz, Indiana and more particularly described in the attached **Exhibit "A"** ("Real Estate"), which is hereby incorporated and made a part hereof. **This Real Estate Owned by Susan Good & Sharon Balka, Trustees of Cleo J. Albert Irrevocable Trust ½ Interest (Real estate acquired by deed and recorded on June 10, 2022), & Shirley A. Albert ½ Interest as Successor Trustee of the Robert H. Intervivos Trust of October 23, 2000 as Warranted to David L. Albert and Susan Albert, Husband and Wife (Real estate acquired by deed recorded on August 1, 2015).** The Real Estate consists of approximately **1.60 acres** and has also been identified by the county as parcel identification number **50-52-95-404-417.000-010 & 50-52-95-404-418.000-010**. The Real Estate, to which the restrictions in this Covenant apply, is also depicted on a map attached hereto as **Exhibit A**.

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 Albert's Service Station. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is **1996-01516**, and the relevant facility identification number is **16871**.

WHEREAS: Certain contaminants of concern ("COCs") remain in the groundwater and soil 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.

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/).

NOW THEREFORE, David L. Albert and Susan Albert, and Susan Good and Sharon Balka subject 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 Owners:

- (a) Shall not use or allow the use of the Real Estate for daily childcare facilities or educational facilities for children (e.g., daycare centers or K-12 schools).
- (b) Shall not use or allow the use or extraction of the Shallow Groundwater at The Real Estate for any purpose, including, but not limited to: human or animal consumption, gardening, industrial processes, or agriculture, except that Shallow Groundwater may be extracted in conjunction with environmental investigation and/or remediation activities.
- (c) Shall neither engage in nor allow excavation of soil at depths greater than 30 (thirty) feet in the area identified by Longitude W86.310930° eastward to W86.310605°, and Latitude N41.450278° northward to N41.450441° as the “Construction Worker Restriction Area. In addition, the Owner shall provide written notice to the Department in accordance with paragraph 14 below at least 30 (thirty) days before the start of soil disturbance activities. The owner, upon the Department’s request, shall provide the Department evidence showing the excavated and restored area does not represent a threat to human health or the environment.
- (d) Prior to the construction 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, and/or soil-gas sampling for the volatile organic compounds (“VOCs”) or semi-volatile organic compounds (“SVOCs”) of concern. 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 currently 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 sampling to demonstrate the effectiveness of the approved remedy.

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 / /2021, RECORDED IN THE OFFICE OF THE RECORDER OF MARSHALL COUNTY ON / /2021, 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, and (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 MARSHALL 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 Owners:

Susan K. Good
PO Box 850
LaPaz, Indiana 46537

Sharon J. Balka
PO Box 374
LaPaz, Indiana 46537

David L. Albert and Susan Albert
P.O Box 376 (mail)
702 South Michigan Street
LaPaz, Indiana 46537

To Department:

IDEM, Office of Land Quality
100 N. Senate Avenue
IGCN 1101
Indianapolis, IN 46204-2251
Attn: Chief Petroleum Remediation 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.

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, *Susan K. Good, Sharon J. Balka and David L. Albert & Susan Albert, the* said Owner of the Real Estate described above has caused this Environmental

Restrictive Covenant to be executed on this _____ day of _____, 20____.

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:

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

08/11/2015 01:59:18PM
REC FEE: \$20.00 PGS: 3

TRUSTEE'S DEED

Property Address:
S. Michigan Street
La Paz, IN 46537

Tax Parcel No.: 50-52-95-404-417.000-010 and
50-52-95-404-418.000-010

This Indenture Witnesseth, That Shirley A. Albert as Successor Trustee of The Robert H. Albert Intervivos Trust U.T.D. of October 23, 2000

Convey(s) and Warrant(s) to David L. Albert and Susan Albert, husband and wife

for the sum of **Ten & 00/100 Dollars (\$10.00)** and other valuable consideration, the following described real estate in **Marshall County, in the State of Indiana:**

An undivided one-half (1/2) interest in and to the following:

Parcel I:

COMMENCING AT THE NORTHWEST CORNER OF THE FOLLOWING DESCRIBED REAL ESTATE:

Commencing at the intersection of the west line of the Michigan Road (now called U.S. Road 31) and the north right-of-way line of U.S. Road 6; thence Westerly along the said north right-of-way line of U.S. Road 6 a distance of 12-2/3 rods; thence Northerly parallel with the west line of the Michigan Road a distance of 12-2/3 rods; thence Easterly parallel with the north line of U.S. Road 6 to the west line of the Michigan Road; thence Southerly along the west line of the Michigan Road to the place of beginning, said in previous deeds to contain 1 acre, more or less, excepting a triangular tract in the southeast corner of the above described tract that is taken over for road purposes; said real estate being located in the Southwest Quarter of Section 5 Michigan Road Lands.

Thence Northerly parallel with the west line of the Michigan Road 120 feet to a point, thence Easterly parallel with the north line of U.S. Road 6 to the west line of the Michigan Road, thence Southerly along the west line of the Michigan Road 120 feet to the northeast corner of the above described real estate, thence Westerly along the north line of the above described real estate to the place of beginning, situate in the East 80 acres of the South 160 acres of the Southwest fraction, West of the Michigan Road, of Section 5 Michigan Road Lands in North Township, Marshall County, State of Indiana.

File No.: 4041-74902

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Duly entered for taxation subject to final
acceptance for transfer 8-17-2015
50-52-95-404-417.000-010
50-52-95-404-418.000-010
Key Number Auditor, Marshall Co.

Julie A. Fox

AS PRESENTED

AUG 13 2015

MARLENE MAHLER, RECORDER
MARSHALL COUNTY, INDIANA

Parcel II:

Commencing at the intersection of the west line of the Michigan Road (now called U.S. Road 31) and the north right-of-way line of U.S. Road 6; thence Westerly along the north right-of-way line of U.S. Road 6 a distance of 12-2/3 rods; thence Northerly parallel with the west line of the Michigan Road a distance of 12-2/3 rods; thence Easterly parallel with the north line of U.S. Road 6 to the west line of the Michigan Road; thence Southerly along the west line of the Michigan Road to the place of beginning, said in previous deeds to contain 1 acre, more or less, excepting a triangular tract in the southeast corner of the above described tract that is taken over for road purposes; said real estate being located in the Southwest Quarter of Section 5, Michigan Road Lands, situate in North Township, Marshall County, Indiana.

Subject to real estate taxes not yet due and payable.

Robert H. Albert, the original Trustee of the Trust died on December 25, 2009.

The undersigned is the Successor Trustee of said Trust as provided in Article I of said Trust.

The undersigned certifies that said trust is in full force and effect, that the undersigned is/are the duly qualified trustee/trustees of said trust with full power to execute this document on behalf of such trust, and that the real estate described herein has not previously been transferred from said trust.

Responsibility for the performance of the undersigned fiduciary's obligations hereunder, is limited to, and assured only by the trust estate it administers, and no personal or individual liability of the fiduciary in its non-fiduciary or private status or capacity, is created by this instrument.

Subject To any and all easements, agreements, and restrictions of record, and to legal highways.

Signed this 13th day of August, 2015.

The Robert H. Albert Intervivos Trust U.T.D. of October 23, 2000

By: Shirley A. Albert
Shirley A. Albert
Its: Successor Trustee

EXHIBIT A - Continued
Legal Description of Real Estate

EXHIBIT A - Continued Real Estate

Image & Restriction Area



