

JOSEPH P. O'CONNOR
MARION COUNTY ASSESSOR

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SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 28th day of May, 2014, by SP Investments H, LLC ("SPIH") concerning the Sherman Park - Parcel H site located at 600 N. Sherman Drive, Indianapolis, Indiana.

WHEREAS: SPIH ("Owner") is the fee owner of certain real estate in the County of Marion, Indiana, which is located at 600 N. Sherman Drive 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 May 1, 2009, and recorded on June 30, 2009, as Deed Record 2009-0072904, in the Office of the Recorder of Marion County, Indiana. The Real Estate, to which the restrictions in this Covenant apply, is depicted on a map attached hereto as Exhibit "B."

WHEREAS: Portions of the Real Estate historically were used for various industrial purposes, including the use and storage of various chemicals.

WHEREAS: On November 12, 2003, General Electric Company ("GE") enrolled the Real Estate into the Indiana Voluntary Remediation Program ("VRP"), established pursuant to IND. CODE § 13-25-5, to investigate and remediate environmental conditions at the Real Estate. GE and the Indiana Department of Environmental Management ("IDEM" or the "Department") entered into a Voluntary Remediation Agreement ("VRA") dated November 17, 2003. This VRP project has been designated VRP Site No. 602801.

WHEREAS: On August 12, 2010, IDEM approved GE's remediation work plan ("RWP") for remediation of the Real Estate. The RWP describes how hazardous substances and other constituents of concern ("COCs") present at the Real Estate are to be managed to protect human health and the environment.

WHEREAS: The RWP includes on-going monitoring and maintenance ("O&M") requirements for the Real Estate (e.g., quarterly sampling of wells, maintenance of the integrity of certain engineered barriers, etc.).

WHEREAS: The RWP provides that some of the COCs will remain at the Real Estate and requires that certain restrictions be placed on the future use of this land to ensure that human health and the environment continue to be protected. The concentrations of these COCs vary across the Real Estate. Please refer to the RWP and Remediation Completion Report (after it is submitted) for detailed information about the COCs remaining on-Site, including concentrations and possible locations. The above-referenced documents, environmental investigation reports and other related documents are hereby incorporated by reference and may be examined at IDEM's offices, which are located in the Indiana Government Center North building at 100 N.

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Senate Avenue, Indianapolis, Indiana. The documents may also be viewed electronically in IDEM's Virtual File Cabinet by accessing its Web Site (currently vfc.idem.in.gov/).

WHEREAS: Certain portions of the Real Estate where COCs are located are covered, or will be covered, by asphalt, concrete, or existing buildings. These covers serve as engineered barriers to the underlying COCs. These areas are designated as "Surface Cap Areas," and are depicted in **Exhibit "B"** attached hereto, which provides a map of the area where maintenance of these engineered barriers is required.

WHEREAS: Certain portions of the Real Estate where COCs are located will require a "Soil Management Plan" for the protection of workers and proper handling and/or disposal of soils from such areas. These areas are depicted in **Exhibit "B"** attached hereto, which provides a map of the area where a work plan for the management of soils is required.

WHEREAS: There have been, and may continue to be, various groundwater monitoring wells located at the Real Estate that have been sampled as part of the RWP.

NOW THEREFORE, SPIH 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 and all future Owners:

- (a) Shall not use or allow the use of the Real Estate for residential purposes, including, but not limited to, daily child care 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 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.
- (c) Shall not use the Real Estate for any agricultural use unless plantings are placed in raised beds filled with 18-inches of "clean" soil (demonstrated not to contain contaminants of concern above IDEM's Remediation Closure Guide, Residential Default Screening Levels) and surface soil between the raised beds is covered and maintained with at least 1 foot of clean soil and/or mulch.
- (d) Shall neither engage in nor allow excavation of soil in the areas identified via legal survey as the "Soil Management Area" or "Surface Cap Areas" on **Exhibit "B."**
- (e) Shall operate and maintain the "Soil Management Areas" and "Surface Cap Areas" depicted in **Exhibit "B"** so as to protect their functional integrity; these areas serve as engineered barriers to prevent direct contact with the underlying soils and must not be excavated, removed, disturbed, demolished, or allowed to fall into disrepair.

- (f) 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 Risk-based Closure Remediation Closure Guide. Upon the request of the Department or GE, the Owner shall provide the Department and GE written evidence (including sampling data) showing the excavated and restored area, and any other area affected by the excavation, does 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.
- (g) Shall not construct or allow occupancy of a residential dwelling on the Real Estate unless a vapor mitigation system is installed, operated, and maintained within the residential dwelling. 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.
- (h) Shall prohibit any activity at the Real Estate that may interfere with the groundwater monitoring or well network.

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 and GE. The Owner shall grant to the Department and GE, their designated representatives, successors, assigns and designees a continuous easement and the right to enter upon the Real Estate to perform the work required by the RWP, to sample and monitor soil, groundwater, and surface water, to maintain the engineered barriers in the Surface Cap Areas, to implement O&M activities, to monitor compliance with this Covenant, and to take all other actions required by IDEM pursuant to the terms of the RWP and the VRA.
- 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 MAY 2014, RECORDED IN THE OFFICE OF THE RECORDER OF MARION COUNTY ON _____, 2014, INSTRUMENT NUMBER (or other identifying reference) _____ IN FAVOR OF AND ENFORCEABLE BY THE GENERAL ELECTRIC COMPANY OR THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

6. Notice to Department and GE of the Conveyance of Property. Owner agrees to provide notice to the Department and GE 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 and GE 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 and/or GE may proceed in court by appropriate action to enforce this Covenant. Damages alone are insufficient to compensate IDEM and GE 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 and GE each 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. Further, if any action is instituted by GE seeking to enforce this Covenant, it shall also be entitled to recover (a) its reasonable attorneys' fees in such action, and on any appeal from any judgment or decree entered therein; (b) fees it incurred in connection with such action for the services of consultants, engineers, contractors, experts, and laboratories; and (c) all other costs it incurred in connection with enforcing this Covenant. Owner agrees that the provisions of this Covenant are enforceable and agrees not to challenge the provisions or the appropriate court's jurisdiction. Moreover, by virtue of taking title to the Real Estate, any subsequent Owner agrees to indemnify and hold harmless SPIH and GE from and against (i) any and all claims, judgments, damages, (including, without limitation, punitive damages), causes of action, liens, expenses, costs, fees (including, for the services of attorneys, consultants, engineers, contractors, experts, laboratories), penalties, liabilities and fines (collectively "Losses") arising from any default in the performance of any obligation to be performed under the terms of this Covenant or any breach of the restrictions and

covenants contained herein by such Owner or its Related Parties; and (ii) any and all Losses incurred by SPIH and/or GE in enforcing this Covenant or in defending any action or proceeding brought thereon. If any action or proceeding is brought against SPIH and/or GE, by reason of the foregoing, the then-current Owner of the Real Estate, upon notice from SPIH and/or GE, shall defend the same at the Owner's expense by counsel approved by the entity providing notice.

IV. TERM, MODIFICATION AND TERMINATION

9. Term. The restrictions shall apply until the Department and GE determine that the COCs 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 and GE'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 Grant County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department and GE.

V. MISCELLANEOUS

11. Waiver. No failure on the part of the Department or GE 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 or GE's right to enforce such term, and no waiver on the part of the Department or GE 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, RISC 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 any 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:

Peter Dvorak
Pinnacle Asset Management, Inc.
P.O. Box 1425
Naples, FL 34106

To Department:

IDEM, Office of Land Quality
100 N. Senate Avenue
IGCN 1101
Indianapolis, IN 46204-2251

To General Electric Company:

Eric S. Merrifield
Executive Counsel, Environmental Litigation
GE Corporate Environmental Programs
319 Great Oaks Blvd.
Albany, NY 12203

and,

Frank J. Deveau
Taft Stettinius & Hollister LLP
One Indiana Square, Suite 3500
Indianapolis, IN 46204

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.
17. Rerecording. Unless this Covenant is terminated under paragraph 10 above, this Covenant, along with any modifications completed in accordance with paragraph 10, shall be rerecorded by the then current Owner of the Real Estate forty-nine (49) years from the date hereof to ensure this Covenant's continued effectiveness under the Marketable Title for Real Property Act IND. CODE § 32-20-1-1 (as the Act may be amended, supplemented or replaced by future statutory enactments).

Owner hereby attests to the accuracy of the statements in this document and all attachments.

IN WITNESS WHEREOF, SPIH, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 28th day of May, 2014.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, as required by law.

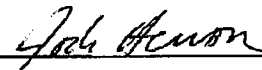

SP Investments H, LLC

FLORIDA
STATE OF ~~INDIANA~~)
COLLIER) SS:
COUNTY OF ~~MARION~~)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Peter Dvorak, the Manager of the Owner, SP Investments H, LLC, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 28th day of May, 2014.

JODI HERRON
Notary Public, State of Florida
My comm. Expires July 16, 2016
Comm. No. EE 216858


Jodi Herron, Notary Public

Residing in Collier County, Florida

My Commission Expires:

7/16/16

This instrument prepared by:

Frank J. Deveau
Taft Stettinius & Hollister LLP
One Indiana Square, Ste. 3500
Indianapolis, Indiana 46204

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

LEGAL DESCRIPTION:

PART OF THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 15 NORTH, RANGE 4 EAST, MARION COUNTY, INDIANA, ALSO BEING PART OF THE FOLLOWING:

ALL OR PARTS OF LOTS 43 TO 65 AND 72 TO 93 IN METZGER'S EAST MICHIGAN STREET ADDITION TO THE CITY OF INDIANAPOLIS, THE PLAT OF WHICH IS RECORDED IN PLAT BOOK 10, PAGE 151, IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA, AND ALL OR PARTS OF LOTS 1 TO 42 AND 45 TO 56 IN SHERMAN HEIGHTS ADDITION TO THE CITY OF INDIANAPOLIS, THE PLATE OF WHICH IS RECORDED IN PLAT BOOK 17, PAGE 169, IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA, ALL OF WHICH LOTS HAVE NOW BEEN VACATED, TOGETHER WITH THE VACATED PARTS OF STREETS AND ALLEYS ADJOINING SAID LOTS.

PART OF BLOCK "A" IN VOGEL'S RE-SUBDIVISION, AND ADDITION TO THE CITY OF INDIANAPOLIS, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 25, PAGE 139, IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA.

LOTS 100 TO 118 IN METZGER'S EAST MICHIGAN STREET ADDITION TO THE CITY OF INDIANAPOLIS, THE PLAT OF WHICH IS RECORDED IN PLAT BOOK 10, PAGE 151, IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA, ALL OF WHICH LOTS HAVE BEEN VACATED.

ALSO, THE VACATED ALLEY WEST OF AND ADJACENT TO LOTS 1 THROUGH 9 SHERMAN HEIGHTS ADDITION TO THE CITY OF INDIANAPOLIS, THE PLAT OF WHICH IS RECORDED IN PLAT BOOK 17, PAGE 169 AS SET OUT IN VACATION PROCEEDINGS RECORDED IN DEED RECORD 1669, PAGE 45 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA.

ALSO, VACATED WALNUT STREET VACATED BETWEEN THE WEST LINE OF SHERMAN DRIVE AND THE EAST LINE OF THE FIRST ALLEY WEST OF SHERMAN DRIVE AS SET OUT IN DEED RECORD 1669, PAGE 45 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA.

LOTS 29 THROUGH 42 INCLUSIVE IN METZGER'S EAST MICHIGAN STREET ADDITION TO THE CITY OF INDIANAPOLIS, THE PLAT OF WHICH IS RECORDED IN PLAT BOOK 10, PAGE 151, IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA.

ALSO, THE VACATED ALLEY WEST OF AND ADJACENT TO LOTS 36 THROUGH 42 AS SET OUT IN VACATION PROCEEDINGS RECORDED IN DEED RECORD 1669, PAGE 45, IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA.

LOTS 94 THROUGH 99 INCLUSIVE IN METZGER'S EAST MICHIGAN STREET ADDITION TO THE CITY OF INDIANAPOLIS, THE PLAT OF WHICH IS RECORDED IN PLAT BOOK 10, PAGE 151, IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA.

ALL OR PARTS OF LOTS 9 THROUGH 22 INCLUSIVE IN PERKINS SHERMAN DRIVE, AN ADDITION TO THE CITY OF INDIANAPOLIS, THE PLAT OF WHICH IS RECORDED IN PLAT BOOK 13, PAGE 122 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA.

A 50 FOOT STRIP, BEING NORTH STREET VACATED BETWEEN THE WEST LINE OF KEALING AVENUE AND THE EAST RIGHT-OF-WAY LINE OF THE BELT RAILROAD AS SET OUT IN VACATION PROCEEDINGS RECORDED IN DEED RECORD 1842, PAGE 161, IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA.

THE PART OF NORTH STREET VACATED BETWEEN THE WEST LINE OF SHERMAN DRIVE AND THE WEST LINE OF KEALING AVENUE, ALSO THAT PART OF KEALING AVENUE BETWEEN THE SOUTH LINE OF NORTH STREET AND THE NORTH LINE OF THE FIRST ALLEY SOUTH OF NORTH STREET, AND ALSO THE FIRST ALLEY WEST OF SHERMAN DRIVE BETWEEN THE SOUTH LINE OF NORTH STREET AND THE NORTH LINE OF THE FIRST ALLEY SOUTH OF NORTH STREET, ALL AS SET OUT IN VACATION PROCEEDINGS RECORDED JANUARY 26, 1966 AS INSTRUMENT NO. 66-4620.

BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8 INCH MSE CAPPED REBAR (FLUSH) MARKING THE NORTHEAST CORNER OF LOT 9 IN SAID PERKINS SHERMAN DRIVE ADDITION AS RECORDED IN PLAT BOOK 13, PAGE 122 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST (ASSUMED BASIS OF BEARING) ALONG THE WEST LINE OF THE PLATTED RIGHT OF WAY OF SHERMAN DRIVE 1582.00 FEET TO THE NORTH PLATTED RIGHT OF WAY OF MICHIGAN STREET; THENCE NORTH 89 DEGREES 56 MINUTES 41 SECONDS WEST ALONG SAID RIGHT OF WAY 135.00 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST 140.00 FEET; THENCE NORTH 89 DEGREES 56 MINUTES 47 SECONDS WEST 334.08 FEET; THENCE SOUTH 00 DEGREES 33 MINUTES 03 SECONDS WEST 140.00 FEET TO THE NORTH LINE OF SAID MICHIGAN STREET RIGHT OF WAY; THENCE NORTH 89 DEGREES 56 MINUTES 48 WEST 628.30. (THE "REAL ESTATE").

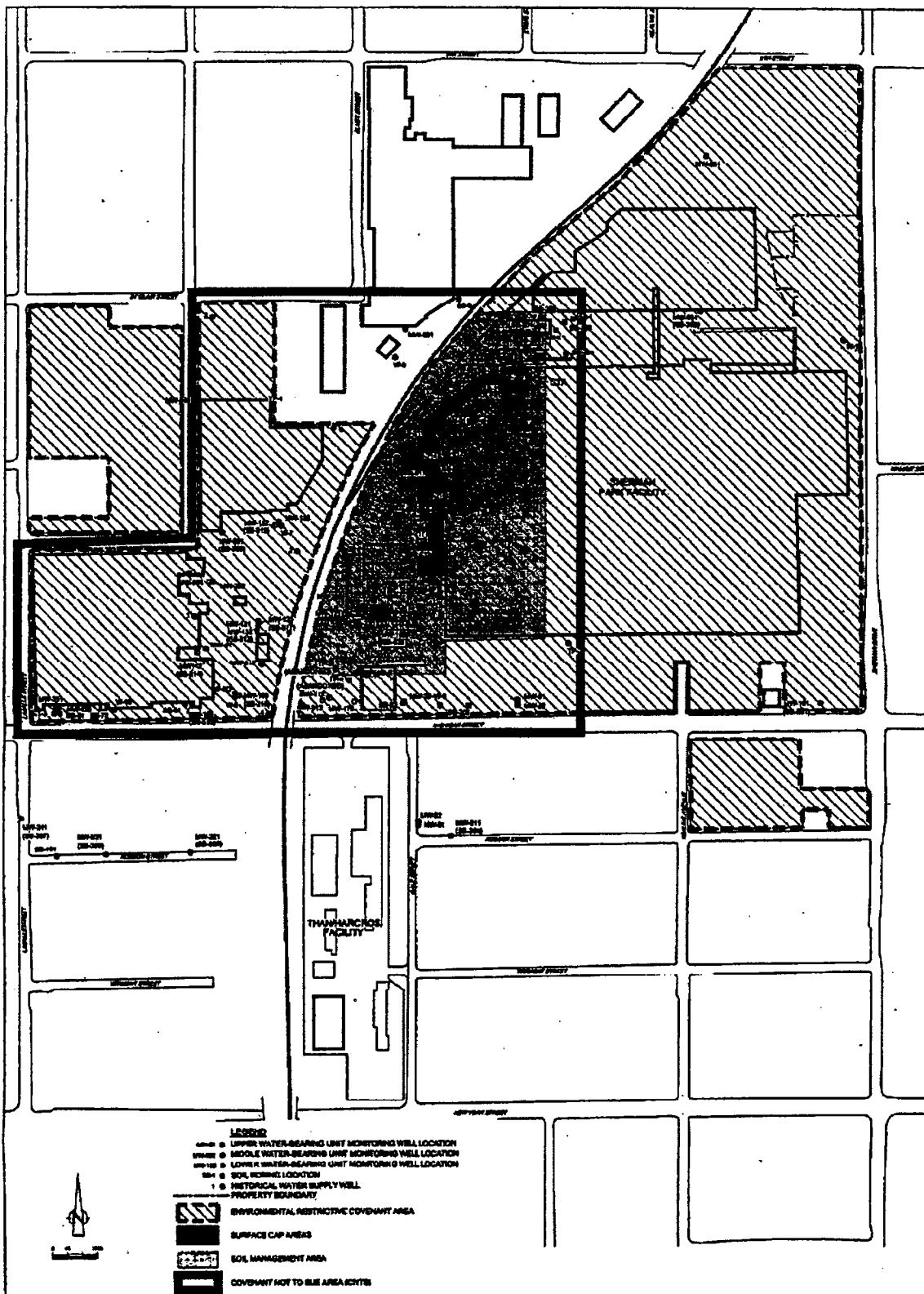
EXHIBIT B

SITE MAP AND MAP OF SURFACE CAP AND SOIL MANAGEMENT AREAS

As noted in recitals of this Covenant, this Exhibit B consists of two (2) pages, including this page, which indicate the area covered by this Covenant and the location of the Surface Cap Areas and Soil Management Areas.

However, owners and prospective owners of the Real Estate should consult the Remediation Work Plan and Remediation Completion Report (when submitted) for detailed information about the COCs remaining at the Real Estate, including concentrations and possible locations. The Remediation Work Plan and related documents are available electronically on IDEM's virtual file cabinet on its Web Site (currently vfc.idem.in.gov/) or at IDEM's Public File Room located at 100 North Senate Avenue, Room 1201, Indianapolis, Indiana, in the project file designated as VRP Site No. 602801.

Page 2: Figure of Environmental Restrictive Covenant Area, Soil Management Areas, and Surface Cap Areas



SHEET VERIFICATION				SHERMAN PARK FACILITY INDIANAPOLIS, INDIANA		CONEYDOGA-ROVERS & ASSOCIATES	
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