



Department of
Community Investment

Redevelopment Commission Agenda Item

TO: South Bend Redevelopment Commission

FROM: Ann Kolata,

SUBJECT: Environmental Restrictive Covenant for Former Studebaker Museum Lot

DATE: September 7, 2016

Attached is an Environmental Restrictive Covenant for the former Studebaker Museum Lot. It is related to the cleanup of a petroleum release from an underground storage tank that was previously located at that site. The City of South Bend has remediated the release through work done by Weaver Boos Consultants. Although the site has been satisfactorily remediated, there are still some contaminants of concern that remain in the groundwater and soil of the property that IDEM has determined will not pose an unacceptable risk to human health as long as certain land use restrictions are implemented to protect human health and the environment. For that reason the Indiana Department of Environmental Management has requested that the Environmental Restrictive Covenant be adopted by the Commission, as the Owner of the property, and recorded in the Office of the Recorder of St Joseph County.

The only restriction in this Environmental Restrictive Covenant is to forbid use or extraction of groundwater at the Real Estate for any purpose (except future environmental investigation or remediation if needed). This Environmental Restrictive Covenant will ride with the land and bind future owners of the property.

Once the Covenant is approved and recorded, it will be sent to the Indiana Department of Environmental Management. At that time IDEM will send the City/Commission a No Further Action letter as completion of this cleanup.

INTERNAL USE ONLY: Project Code: _____
 Total Amount new/change (inc/dec) in budget: _____; broken down by:
 Acct # _____ Amt: _____; Acct # _____ Amt: _____;
 Acct # _____ Amt: _____; Acct # _____ Amt: _____;
 Going to BPW for Contracting? Y/N Is this item ready to encumber now? _____
 Existing PO# _____ Inc/Dec \$ _____



Environmental Restrictive Covenant

Former Studebaker Museum Facility Identification (FID) 24951

THIS ENVIRONMENTAL RESTRICTIVE COVENANT (“Covenant”) is made this 15th day of September, 2016, by Department of Redevelopment of the City of South Bend “Owner”, 1400 S. County-City Building, 227 W. Jefferson Boulevard, South Bend 46601.

WHEREAS: Owner is the fee owner of certain real estate in the County of St. Joseph, Indiana, which is located at 520 South Lafayette Boulevard 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 June 17, 2015, and recorded on June 24, 2015, as Deed Record 1515650, in the Office of the Recorder of St. Joseph County, Indiana. The Real Estate consists of approximately 0.82 acres and has also been identified by the county as parcel identification number 71-08-12-305-008.000-026 and as denoted as Parcel 3 in the Deed Record shown above.

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 Former Studebaker Museum. The incident number assigned by the Indiana Department of Environmental Management (“Department” or “IDEM”) for the release is 200702503, and the relevant facility identification number is 24951.

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. These COCs are benzo(a)anthracene, naphthalene, 1,2-dichloroethane, trichloroethene, and Total Petroleum Hydrocarbons 8-36.

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, the 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:
 - (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.

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 September 15, 2016, RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY ON _____, 2016, INSTRUMENT NUMBER (or other identifying reference) _____ IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

6. 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

7. 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

8. 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.
9. 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 St. Joseph County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department.

V. MISCELLANEOUS

10. 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.
11. 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.

12. 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.

13. 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:

Department of Redevelopment of the City of South Bend
227 W. Jefferson Blvd, Suite 1400
South Bend, IN 46601

To Department:

IDEM, Office of Land Quality
100 N. Senate Avenue
IGCN 1101
Indianapolis, IN 46204-2251
Attn: Chief, Leaking Underground Storage Tank 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.

14. 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.

15. 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, Department of Redevelopment of the City of South Bend, acting by and through The South Bend Redevelopment Commission, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 15th day of September, 2016.

Department of Redevelopment of the City of South Bend,
acting by and through the South Bend Redevelopment Commission

STATE OF INDIANA)
) SS:
COUNTY OF ST. JOSEPH)

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 _____, 2016.

_____, Notary Public

Residing in _____ County

My Commission Expires:

This instrument prepared by:

Mr. Edward B. Stefanek
Weaver Consultants Group, 7121 Grape Road, Granger, IN

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:

**Mr. Edward B Stefanek
Weaver Consultants Group, 7121 Grape Road, Granger, IN 46530**

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

Lots Numbered Fifty-eight (58), Fifty-nine (59), and Sixty (60) as shown on the recorded Plat of Samuel Martin's Addition to the Town, now City of South Bend, recorded in the Office of the Recorder of St. Joseph County, Indiana, in Plat Book 3, Page 28, together with the West half of the vacated alley lying East of and adjacent to said Lots and together with the South half of the vacated alley lying North of and adjacent to said Lot Fifty-eight (58).