

### **Environmental Restrictive Covenant**

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the City of Indianapolis Department of Metropolitan Development, 200 East Washington Street, Suite 2042, Indianapolis, Indiana 46204 (together with all successors and assignees, collectively "Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Marion, Indiana, which is located at the common address of 600 North Sherman Drive, Indianapolis, Indiana 46201 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 March 17, 2017, and recorded on March 17, 2017, as Deed Record No. A201700032483, in the Office of the Recorder of Marion County, Indiana. The Real Estate consists of approximately 26.54 acres and has also been identified by the county as parcel identification number XXXXXXXXXXXXXXXX (Marion County parcel identification number XXXXXXXX). 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 utilized for various industrial purposes, including the use and storage of various chemicals, including hazardous substances and petroleum products.

WHEREAS: The Real Estate, along with the large former industrial campus the Real Estate is associated with and adjoins, was enrolled by General Electric Company ("GE") into the [Indiana Department of Environmental Management \("IDEM" or the "Department"\)](#) Voluntary Remediation Program ("VRP") on November 12, 2003, established pursuant to Indiana Code § 13-25-5, to investigate and remediate environmental conditions at the Real Estate. GE and the Department entered into a Voluntary Remediation Agreement ("VRA") dated November 17, 2003. This VRP Project has been designated VRP Site No. 6020801. The Real Estate is associated with the former industrial facility referred to commonly as the former Radio Corporation of America ("RCA") Sherman Park Facility and/or the former Thompson Consumer Electronics – GE Sherman Park Facility.

WHEREAS: On August 12, 2010, IDEM approved GE's Remediation Work Plan ("RWP") for the 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 provides documentation of historically conducted site investigation and remedial action activities, which includes an assessment of the Real Estate and the entirety of the former RCA Sherman Park campus. The RWP provides that some of COCs will remain at the

Real Estate (along with the remainder of the former industrial campus) and requires that certain restrictions be placed on the future usage of this land to ensure that human health and the environmental continue to be protected. The concentrations of these COCs vary across the former industrial campus. Concentrations and possible locations of the COCs throughout the entirety of former industrial campus are identified in greater detail in the RWP and subsequent report submittals.

WHEREAS: Certain COCs will remain in the groundwater and soil on 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. The known COCs remaining are volatile organic compounds ("VOCs") in the form of chlorinated solvents and polynuclear aromatic hydrocarbons (PAHs).

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

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:

- (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.
- (b) 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 COCs 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.

- (c) Shall operate and maintain the “Soil Management Areas” or “Surface Cap Areas” depicted in Exhibit “B” and as identified in the previously submitted RWP so as to protect their functional integrity. These areas serve as engineering barriers to prevent direct contact with the underlying soils and must not be excavated, removed, disturbed, demolished, or allowed to fall into disrepair. Any party intending to disturb the Soil Management Area or Surface Cap Area must submit—unless a plan, documenting the extent of activities, mitigation measures to be implemented to protect human health, worker exposure and the environment, and repair / finishing activities, as well as a plan for managing and disposing of impacted media—be submitted to the Department and GE for review. If the Department and GE elect, in their respective sole and absolute discretion, to waive this restriction, they will each provide their approval and approval prior to implementation. The Department and GE will provide its concurrence in writing and grant the Owner a waiver of the applicable restrictions listed in Section I.1 at this restriction for the proposed change in site usage, including the change in the identified “Soil Management Area” or “Surface Cap Area.” Should GE and the Department elect to waive the restrictions listed in Section I.1 above, Owner will indemnify and hold GE harmless for any and all damages resulting from any disturbance to the Surface Cap Area or Soil Management Area.
- (d) In all areas other than the “Soil Management Area” or “Surface Cap Area”, Sshall 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 the human health or the environment. This determination shall be made using the Department’s Risk-based Remediation Closure Guide. Upon the request of the Department and GE, the Owner shall provide the Department and GE written evidence (including sampling data, if available and pertinent) showing the excavated and restored areas, and any other area affected by the excavation, does not represent such a threat. Contaminated soils that are subject to excavation must be managed in accordance with all applicable federal, state and municipal laws; and disposal of such soils must also be done in accordance with all applicable federal, state and municipal laws.
- (e) Shall not construct or allow occupancy of any residential dwelling or commercial structure on the Real Estate unless a vapor intrusion mitigation system is installed, operated and maintained with the new dwelling or structure. IDEM may waive this restriction in writing if the Owner demonstrates to IDEM’s satisfaction that there is no unacceptable risk to human health via the vapor intrusion exposure pathway.
- (f) 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 and their designated representatives, successors, assigns and designees, 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 \_\_\_\_\_ 20\_\_, RECORDED IN THE OFFICE OF THE RECORDER OF MARION COUNTY ON \_\_\_\_\_, 20\_\_, 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 of the Conveyance of Property. Owner agrees to provide notice to GE and 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 GE and 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 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 shall each 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 attorney's fees in such action, and on any appeal from 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 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, liability 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 GE in enforcing this Covenant or in defendant any action or proceeding brought thereon. If any action or proceeding is brought against GE, by reason of the foregoing, the then-current Owner of the Real Estate, upon notice from 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 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 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 Marion County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department and GE. If GE has been terminated or is no longer in existence, then its approval of any requested amendment, modification, or termination is not required. 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 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 respective rights 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. 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 or sent by first class mail, postage prepaid, addressed as follows:

To Owner:

City of Indianapolis  
Department of Metropolitan Development  
200 East Washington Street, Suite 2042  
Indianapolis, Indiana 46204  
Attn: Mr. Piers Kirby, Administrator

To Department:

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

Attn: IDEM Institutional Controls Group

To General Electric Company:

Eric S. Merrifield

Executive Counsel, Environmental ~~Litigation~~ Health and Safety

GE Aerospace Corporate Environmental Programs

~~319 Great Oaks Boulevard~~ 1 River Road, Building 33-2

~~Schenectady~~ Albany, New York 12345-203

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. Unless this Covenant is terminated under paragraph 10, this Covenant, along with any modifications completed in accordance with paragraph 10, shall be recorded 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 s. 32-20-1-1 (as the act may be amended, supplemented, or replaced by future statutory enactments.)~~
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.

City of Indianapolis

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*Printed Name & Title of Signatory*

STATE OF \_\_\_\_\_)

) SS:

COUNTY OF \_\_\_\_\_)

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Residing in \_\_\_\_\_ County, \_\_\_\_\_

My Commission Expires:

**This instrument prepared by:**

Nivas R. Vijay, CHMM, Heartland Environmental Associates, Inc.

1324 East 16<sup>th</sup> Street, Indianapolis, Indiana 46202

**I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security**

Nivas R. Vijay, CHMM, Heartland Environmental Associates, Inc.

1324 East 16<sup>th</sup> Street, Indianapolis, Indiana 46202

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF REAL ESTATE**

#### **HISTORIC DESCRIPTION**

Part of the Northeast Quarter of Section 5, Township 15 North, Range 4 East, Marion County, Indiana, more particularly described as follows, to-wit:

Beginning at a point 180 feet west of the east line and 345 feet north of the south line of said quarter section, said point being the northwest corner of East North Street and the first alley west of Sherman Drive, as shown by the plat of Metzger's East Michigan Street Addition to the City of Indianapolis, which plat is recorded in Plat Book 10, page 151, in the Office of the Recorder of Marion County, Indiana; running thence North along the west line of said alley and a straight extension thereof, 668.50 feet to the south line of St. Clair Street; thence West along the south line of said street 320 feet to the west line of Kealing Avenue, now vacated; thence North 25 feet to a point; thence West 217.78 feet to a point in the southeastern line of a tract of land conveyed to William W. Knight by deed recorded in Deed Record 81, page 14, in the Office of the Recorder of Marion County, Indiana; thence along said line of said tract South 75 degrees 36 minutes West 45.10 feet; thence South 79 degrees 12 minutes West 47.20 feet; thence South 78 degrees 21 minutes West 26.90 feet to the south line of St. Clair Street, now vacated; thence continuing South 78 degrees 21 minutes West 23.85 feet; thence South 88 degrees 38 minutes West 46.50 feet; thence South 63 degrees 41 minutes West 48.70 feet; thence South 52 degrees 57 minutes West 45.30 feet; thence South 70 degrees 52 minutes West 14.30 feet to the southeastern line of the right-of-way of the Belt Railroad; thence southwesterly along said right-of-way line to the north line of East North Street, thence East along said north line 1144 feet, more or less, to the place of beginning, being formerly known as Lots 43 to 93, both 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, and Lot 10 to 57, both inclusive, in Sherman Heights Addition to the City of Indianapolis, the plat 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.

Also, part of the Northeast Quarter of Section 5, Township 15 North, Range 4 East, Marion County, Indiana, more particularly described as follows, to-wit:

Beginning at the southwest corner of Kealing Avenue and East North Street; running thence West upon and along the south line of East North Street, 623.80 feet to the East line of the first alley west of Kealing Avenue; thence in a southwesterly direction 129.60 feet to the north line of the first alley south of East North Street; thence East upon and along the North line of said alley 857.50 feet to the west line of Kealing Avenue; thence North upon and along the west line of Kealing Avenue 125 feet to the place of beginning, being formerly known as Lots 100 to 120, both 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 of which lots have been vacated.

Also, Lots 1 through 25 inclusive, Lot 28, and the west half of Lot 26 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, Lots 1 through 9 inclusive in Sherman Heights, and Addition to the City of Indianapolis, the plat of which is recorded in Plat Book 17, page 169, in the Office of the Recorder of Marion County, Indiana.

Also, the vacated alley West of and adjacent to said Lots 1 through 9 as set out in vacation proceedings recorded in Deed Record 1869, 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 1869, page 45 in the Office of the Recorder of Marion County, Indiana.

Also, 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 1869, page 45, in the Office of the Recorder of Marion County, Indiana.

Also, 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.

Also, 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.

Also, 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. 66-4820.

Also a 25 foot strip, being the south half of St. Clair Street vacated between the Belt Railroad and the first alley west of Sherman Drive.

#### **MODERNIZED DESCRIPTION**

Part of the Northeast Quarter of Section 5, Township 15 North, Range 4 East, Marion County, Indiana, more particularly described as follows:

Beginning at the intersection of the north boundary of East Michigan Street and the west boundary of North Sherman Drive, which point is the southeast corner of Lot 29 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; thence South 89 degrees 09 minutes 03 seconds West along the north line of said East Michigan Street 200.09 feet to the east line of Lot 27 in said Metzger's East Michigan Street Addition; thence North 0 degrees 51 minutes 55 seconds West along the east line of said lot 140.00 feet to the north line of the first alley north of East Michigan Street in said addition, now vacated; thence South 89 degrees 09 minutes 05 seconds West along the north line of said vacated alley 60.00 feet to the prolonged west line of the east half of Lot 26 in said addition; thence South 0 degrees 54 minutes 08 seconds East along the prolonged west line and the west line of the east half of said lot 140.07 feet to the north boundary of East Michigan Street; thence South 89 degrees 09 minutes 05 seconds West along the north boundary of said street 1,104.50 feet to the east boundary of the CSX Railroad; thence along the east boundary of said CSX Railroad Northeasterly 1,154.46 feet along an arc to the right having a radius of 1,791.50 feet and subtended by a long chord having a bearing of North 25 degrees 19 minutes 35 seconds East and a length of 1,134.59 feet to the center of vacated St. Clair Street; thence North 89 degrees 56 minutes 01 seconds East along the center of vacated St. Clair Street 862.53 feet to the west boundary of North Sherman Drive; thence South 0 degrees 56 minutes 16 seconds East along the west boundary of said North Sherman Drive 1,006.47 feet to the point of beginning.