

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2014 028396

2014 MAY 19 AM 8:46

MICHAEL B. BROWN
RECORDER

ENVIRONMENTAL RESTRICTIVE COVENANT

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 5th day of May, 2014, by Cerestar USA, Inc., a Maine corporation ("Owner"), with a principal address at 15407 McGinty Road West, Wayzata, Minnesota 55391.

WHEREAS: Owner is the fee owner of certain real estate in the County of Lake, Indiana, which is located at 1100 Indianapolis Boulevard, Hammond, Indiana, and more particularly described as part of the North half (1/2) of Section (1), Township Thirty-Seven (37) North, Range Ten (10) West (the "Property"). The Property was acquired by deed dated November 15, 1918, and recorded on December 19, 1918, in Deed Record Book 251, Page 395, in the Office of the Recorder of Lake County, Indiana. That portion of the Property, to which the restrictions in this Covenant apply (the "Real Estate"), consisting of approximately 2.11 +/- acres, has also been identified by the county by tax parcel identification number 45-02-01-252-005.000-023. The legal description of the Real Estate is described on attached Exhibit A, and is shown by cross-hatching depicted on the map attached hereto as Exhibit B.

WHEREAS: By that certain Lease dated as of September 1, 2002, Owner leased the Real Estate, and other land, to Cargill, Incorporated, a Delaware corporation ("Tenant") for an initial term of 15 years, commencing on September 1, 2002, and expiring on August 31, 2017, with provision for automatic renewal for periods of one year each until Tenant exercises its option to purchase the Real Estate, and other land, as provided therein.

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 Owner's facility located at 1100 Indianapolis Boulevard, Hammond, Indiana. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is 2011-26180.

WHEREAS: Certain contaminants of concern ("COCs") remain in the 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 TPH-ERO, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene.

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/).

FILED
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PEGGY HOLINGA KATONA
LAKE COUNTY AUDITOR

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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:

RESTRICTIONS

1. Restrictions. The Owner:
 - (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 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, 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.

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 MAY 5, 2014, RECORDED IN THE OFFICE OF THE RECORDER OF LAKE COUNTY ON _____, 2014, 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.

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.

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

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, 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 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:

Cerestar USA, Inc.
1100 Indianapolis Boulevard
Hammond, IN 46320-1094
Attn: Facility Manager

To Tenant:

Cargill, Incorporated
1100 Indianapolis Boulevard
Hammond, IN 46320-1094
Attn: Facility Manager

With Copy to:

Cargill, Incorporated
Law Department – MS 24
15407 McGinty Road West
Wayzata, MN 55391
Attn: CTS Attorney

To Department:

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

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 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 Exhibits A and B attached hereto and made a part hereof.

IN WITNESS WHEREOF, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 5th day of May, 2014.

OWNER:

Cerestar USA, Inc.

By: 

Printed Name: Robert E. Siegart

Title: Vice President, Operations & Engineering

Document is NOT OFFICIAL!

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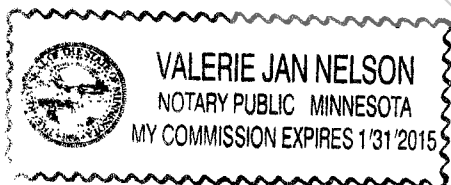
STATE OF MINNESOTA)

) SS:

COUNTY OF HENNEPIN)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Robert E. Siegart, the Vice President of Operations & Engineering, a duly authorized representative of the **Owner, Cerestar USA, Inc.**, a Maine corporation, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 5th day of May, 2014.



Valerie Jan Nelson, Notary Public

Residing in Hennepin County, _____

My Commission Expires: January 31, 2015

CONSENT

The undersigned as Tenant of the Real Estate, subject to the Environmental Restrictive Covenant granted herein, joins in this Agreement for the sole purpose of acknowledging its consent to the grant of the Environmental Restrictive Covenant.

TENANT:

Cargill, Incorporated

By: Jeanne E. McCaherty

Print Name: Jeanne E. McCaherty

Title: Vice President, Cargill Texturizing Solutions

STATE OF MINNESOTA)

) SS:

COUNTY OF HENNEPIN)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Jeanne E. McCaherty, the Vice President of Cargill Texturizing Solutions, a duly authorized representative of the Tenant, **Cargill, Incorporated**, a Delaware corporation, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 5 day of May, 2014.



Evelyn J. Lange
EVELYN J. LANGE, Notary Public

Residing in Hennepin County, Minnesota

My Commission Expires: Jan 31, 2015

This instrument prepared by:
Michael D. Golando
Environmental Manager – Hammond
1100 Indianapolis Boulevard
Hammond, Indiana 46320
219.473.2567

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:

Michael D. Golando
1100 Indianapolis Boulevard, Hammond, Indiana 46320

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

LEGAL DESCRIPTION

TAX PARCEL 6a:

Part of the North Half of Section 1, Township 37 North, Range 10 West of the Second Principal Meridian, in the City of Hammond, Lake County, Indiana more particularly described as follows:

Commencing at a point of intersection of the West line of 5th Avenue, which is 66 feet wide, 33 feet on either side of centerline, and the South line of 112th Street, which is 80 feet wide, 40 feet on either side of centerline; thence N89°51'46"E (Calculated), along the South line of 112th Street extended, a distance of 695.00 feet (C); to a point, said point being the parcel point of beginning (POB);

1. Thence S54°19' 5"E (C), a distance of 185.00 feet(C);
2. Thence S35°40' 55"W (C), a distance of 300.00 feet (C);
3. Thence S89°51' 46"W (C), a distance of 130.00 feet (C);
4. Thence S35°40' 55"W (C), a distance of 300.00 feet (C);
5. Thence S89°51' 46"W (C), a distance of 100.00 feet (C);
6. Thence N35°40' 55"E (C), parallel to existing railroad tracks, a distance of 735.00 feet (C); returning to The POB, said parcel containing a total of Two and eleven hundredths acres, more or less. (2.11 ac. +/-)



EXHIBIT B

MAP DEPICTION OF REAL ESTATE

