

Approved 3-20-07

RESOLUTION 2007 - 02

**RESOLUTION TO PLACE RESTRICTIONS  
AND COVENANTS ON REAL ESTATE**

WHEREAS, LaPorte County has come into possession of certain property formerly known Waste Inc. Landfill located in LaPorte County as a result of delinquent taxes; and

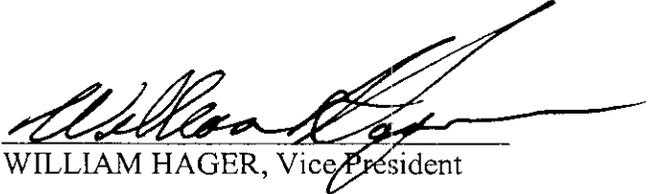
WHEREAS, the Environmental Protection Agency has requested that certain restrictions and covenants be placed on such real estate without penalty to LaPorte County.

NOW THEREFORE BE IT RESOLVED that the LaPorte County Board of Commissioners adopt and sign the Declaration of Restrictions for use of real property attached hereto as Exhibit "A" as the same is placed on such property known as Waste Inc. Landfill and that such document be recorded so that such covenants and restrictions run with the land and that all future owners regarding such property are placed on notice regarding such restrictions and covenants.

DATED this 20<sup>th</sup> day of March, 2007.

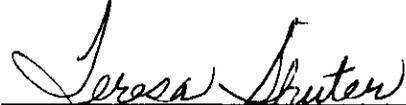
LAPORTE COUNTY BOARD OF COMMISSIONERS

  
BARBARA HUSTON, President

  
WILLIAM HAGER, Vice President

  
MIKE BOHACEK, Member

ATTEST

  
TERESA SHUTER, Auditor  
by Rita J. Layton, Chief Deputy Auditor

DECLARATION OF RESTRICTION  
FOR USE OF REAL PROPERTY

The record owner, LaPorte County by its Board of Commissioners, \_\_\_\_\_ and declare and pose the following restrictions on the use of real property also known as Waste Inc. Landfill located in the County of LaPorte, more particularly described as follows:

SEE LEGAL DESCRIPTION  
EXHIBIT "A"

WHEREAS the United States Environmental Protection Agency (U.S. EPA) has issued a Record of Decision (ROD) adopting a remedial action plan which requires remedial action to be undertaken on the property and further institutional controls to assure that the remedy is protective of human health and the environment;

WHEREAS, U.S. EPA has issued an Administrative Order under the authority of section 106 of the Comprehensive Environmental Response, compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675, which Administrative Order concerns the remedial actions to be undertaken at the Waste, Inc. Landfill. The Record of Decision, Attachment 2 to the Administrative Order, identifies institutional controls which are necessary to effectuate and protect the remedial action chosen in the ROD at the Waste, Inc. Landfill and to protect the public health or welfare or the environment at the site;

NOW THEREFORE, by this instrument there are created, declared and established at the property the following restrictive covenants and requirements, which shall, unless amended, run with the land and remain in full force and effect in perpetuity from the date hereof, irrespective of any sale, conveyance, alienation or other transfer of any interest or estate in such property.

RESTRICTIONS APPLICABLE TO THE PROPERTY

The following restrictions shall apply to the property described above:

1. There shall be no consumptive or other use of the groundwater underlying the property.

2. There shall be no use of, or activity at, the property that may interfere with the work performed or to be performed under the Consent Decree or pursuant to the ROD at the property, or any activity which may damage any remedial action component constructed for or installed pursuant to the Consent Decree or the ROD or otherwise impair the effectiveness of any Work to be performed pursuant to the Consent Decree or the ROD.
3. There shall be no installation, construction, removal or use of any buildings, wells, pipes, roads, ditches or any other structures at the property except as approved by the U.S. EPA as consistent with the Consent Decree and the ROD.
4. There shall be no residential use of the property.

The restrictions specified above shall continue in full force and effect until the Waste Inc. Landfill site is deleted from the National Priorities List, all remedial action clean-up and performance standards have been met, or until such time as the U.S. EPA issues a determination in writing or the court rules to either modify or terminate the restrictions in response to a petition from the owner (s) of the property, as provided below.

If the Owner, its successors and assigns, at any time violates, threatens or attempts to violate, or fails to faithfully observe or perform each of the foregoing restrictions and covenants upon the Real Estate, it shall be lawful for U.S. EPA, the State of Indiana or the Settling Defendants, in addition to other remedies available under law or equity, to institute and prosecute appropriate proceedings, judicial or other, at law or in equity for the wrong done, threatened or attempted.

#### COPY OF RESTRICTIONS

A copy of these restrictions shall be provided by the owner (s) of the property to all respective successors, assigns and transferees of the property.

#### PETITION TO MODIFY OR TERMINATE DEED RESTRICTIONS

After all work, as defined in the Administrative Order and as required to be performed under the ROD had been completed and upon achievement of Cleanup Standards, consistent with the ROD, the owner (s) of the property may petition the

Regional Administrator of the U.S. EPA, Region V or his delegate to modify or terminate the deed restrictions. Any petition for modification or termination shall state the specific provision sought to be modified or terminated and any proposed additional uses of the property. Any proposed modification or terminations must not be inconsistent with the requirements set forth in the Administrative Order.

The property owner (s) shall provide to the Respondents a copy of any petition for modification or termination of deed restriction submitted to the U.S. EPA. Any party may object to the proposed use of the property on the grounds that such use is not consistent with the Administrative Order, or may result in exceedances of the Clean-up Standards required by the ROD. Any party so objecting shall notify the owner (s) of the property, the U.S. EPA and the State of Indiana in writing, within thirty (30) days of receipt of the petition. The Regional Administrator may allow or deny the owner's petition for modification or termination in whole or in part.

#### SEVERABILITY

If any provision of this Declaration of Restriction On User of Real Property is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof. All such other provisions shall continue unimpaired in full force and effect.

#### CONFLICT OF LAWS

If any provision of this Declaration of Restrictions On Use of Real Property is also the subject of any law or regulation established by any federal, state or local government, the stricter of the standards shall prevail.

#### HARMONIOUS CONSTRUCTION

No provision of this Declaration of Restriction On Use of Real Property shall be construed so as to violate any applicable zoning laws, regulations or ordinances. If any

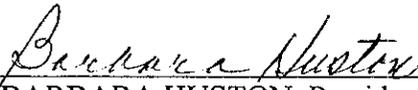
such conflict does arise, the applicable zoning laws, regulations or ordinances shall prevail , unless they are inconsistent with CERCLA.

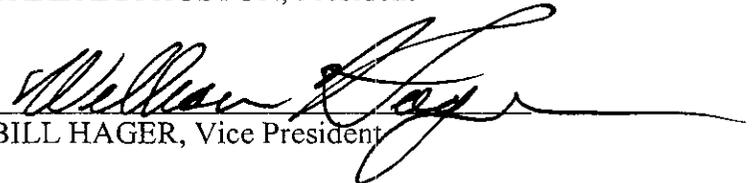
The undersigned persons executing this Declaration of Restrictions On Use of Real Property on behalf of the owner (s) of the property represent and certify that they are duly authorized and have been fully empowered to execute this Declaration.

IN WITNESS WHEREOF the owner (s) of the property have caused this Declaration of Restrictions On Use of Real Property to be executed on this 20<sup>th</sup> day of March, 2007.

OWNER RESPONDENT

LAPORTE COUNTY BY ITS  
BOARD OF COMMISSIONERS

  
\_\_\_\_\_  
BARBARA HUSTON, President

  
\_\_\_\_\_  
BILL HAGER, Vice President

  
\_\_\_\_\_  
MIKE BOHACEK, Member

## LEGAL DESCRIPTION

Twenty-one and fifty one hundredths (21.51) acres in the East half (E 1/2) of the West half (W 1/2) of the Northeast Quarter (NE 1/4) North of Trail Creek, in Section Twenty-eight (28), Township Thirty-eight (38) North, Range Four (4) West of the Second Principal meridian, EXCEPT Commencing at the Northeast (NE) corner of said Section Twenty-eight (28), thence South eighty-eight degrees and twenty-eight minutes West (S88° 28'W) along the North line of said section Twenty-eight (28) a distance of one thousand three hundred thirty-five (1335.0) feet; thence South one degree and forty-six minutes East (S1° 46'E) along the east line of the East half (E 1/2) of the West half (W 1/2) of the Northeast Quarter (NE 1/4) of said Section Twenty-eight (28), a distance of seventy-five and twenty-five hundredths (.75.25) feet to the place of beginning of the parcel to be described; thence continuing South one degree and forty-six minutes East (S1° 46'E) along the East line of the East half (E 1/2) of the West half (W 1/2) of the Northeast Quarter (NE 1/4) a distance of one hundred twenty-eight and twenty-four hundredths (128.24) feet; thence South eighty-eight degrees and fourteen minutes West (S88° 14'W) a distance of sixty-nine and forty-eight hundredths (69.48) feet; thence North one degree and forty-six minutes West (N1° 46'W) to the Southerly line of the Crosby Road, a distance of One hundred (100) feet; thence North sixty-nine degrees and seven minutes East (N69° 07'E) along the Southerly line of the Crosby Road a distance of Seventy-five (75) feet to the place of beginning, containing eighteen hundredths (0.18) of an acre, more or less, ALSO EXCEPT all that part of the East half (E 1/2) of the West half (W 1/2) of the Northeast Quarter (NE 1/4) of Section Twenty-eight (28), Township Thirty-eight (38) North, Range Four (4) West lying North of the Crosby Road and South of the property owned by the Michigan Central Railroad Company as shown by deed recorded in Deed Record 90, page 25. Said parcel to be conveyed is more particularly described as follows: Part of the East half (E 1/2) of the West half (W 1/2) of the Northeast Quarter (NE 1/4) of Section Twenty-eight (28), Township Thirty-eight (38) North, Range Four (4) West, LaPorte County, Indiana, more fully described as follows: Commencing at the Northeast (NE) corner of said Section Twenty-eight (28); thence South eighty-eight degrees and twenty-eight minutes West (S88° 28'W) along the North line of said Section Twenty-eight (28) a distance of One thousand three hundred thirty-five and no hundredths (1335.0) feet; thence South one degree and forty-six minutes East (S01° 46'E) a distance of Two hundred three and forty-nine hundredths (203.49) feet to the place of beginning for the following description; thence continue South one degree and forty-six minutes East (S01° 46'E) a distance of One thousand three hundred sixty-six and seventy-six hundredths (1366.76) feet to the North line of Trail Creek; thence Westerly along the North line of Trail Creek, a distance of Six hundred forty (640) feet more or less to the West line of the East half (E 1/2) of the West half (W 1/2) of the Northeast Quarter (NE 1/4) of said Section Twenty-eight (28); thence North one degree and fifty-four

minutes East (N 01° 54'E) along said West line a distance of One thousand two hundred twenty-two and no hundredths (1222.00) feet to the Southerly line of the Crosby Road; thence North sixty-six degrees and seven minutes East (N66° 07'E) along the Southerly line of Crosby Road, a distance of Five hundred ninety-two and twenty hundredths (592.20) feet; thence South one degree and forty-six minutes East (S01° 46'E) a distance of One hundred and no hundredths (100.00) feet; thence North eighty-eight degrees and fourteen minutes East (N88° 14'E) a distance of sixty-nine and forty-eight hundredths (69.48) feet to the place of beginning, containing Eighteen and ninety hundredths (18.90) acres, more or less.

Subject to the lien for current real estate taxes which the Grantee assumes and agrees to pay.

Subject to easement to the City of Michigan City dated September 18, 1973 and recorded September 28, 1973 as Document No. 73-10285, Office of the Recorder of LaPorte County, Indiana.

Subject to the terms and conditions of a Recommended Agreed Order before the Stream Pollution Control Board of the State of Indiana, Cause Nos. B-305 and B-419; a copy of which is attached hereto, made a part hereof and hereby incorporated by reference as a restriction