



# Iowa Department of Transportation

800 Lincoln Way, Ames, Iowa 50010

515-239-1938  
515-239-1726 (FAX)

July 12, 2004

RE: Former Pixler Site - Dubuque  
DNR Reg. No. 8605965  
LUST No. 7LTN33

Mr. Dan Cook  
Iowa DNR – Contaminated Sites  
502 E. Ninth Street  
Des Moines, IA 50319

Dear Mr. Cook:

Enclosed is a copy of the signed and recorded restrictive covenant for the above referenced site. This restrictive covenant prohibits the installation of water extraction wells on this property and is meant to address the remaining Tier II concern as mentioned in your June 4, 2004 letter.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Bradley E. Azeltine".

Bradley E. Azeltine  
Environmental Specialist

Encl.

Kathy Flynn Thurlow

10859-C4

2004 JUN 21 AM 10:26

KATHY FLYNN THURLOW  
COUNTY RECORDER  
DUBUQUE CO., IOWA FEES

\$26.00



**Iowa Department of Transportation**

Preparer Information: Bradley E. Azeltine, Environmental Specialist, Office of Location and Environment, 800 Lincoln Way, IA 50010, 515-239-1938  
Return To: IDOT, Office of Right of Way-Property Management Section, 800 Lincoln Way, Ames, IA 50010, 515-239-1539

RECEIVED

JUL 09 2004

OFFICE OF LOCATION & ENVIRONMENT

**DECLARATION OF RESTRICTIVE COVENANTS**

THIS DECLARATION, made this 19<sup>th</sup> day of April, 2004.

Whereas, the Iowa Department of Transportation ("Declarant"), owns certain real property ("Property") located at 605 Dodge Street (northwest corner of the intersection of Dodge and Bluff Streets), Dubuque, Dubuque County, Iowa, and more fully described on Exhibit "A", attached hereto, and incorporated herein by this reference;

WHEREAS, Declarant desires to obtain a "No Further Action" certificate ("Certificate") from the Iowa Department of Natural Resources ("DNR") for the site with DNR file reference LUST No. 7LTN33; and

WHEREAS, the DNR will not issue the Certificate unless Declarant executes and files this Declaration.

NOW, THEREFORE, Declarant hereby publishes and declares that the Property shall be held, sold and conveyed subject to the following covenants, all of which are for the purpose of protecting the value and desirability of the Property and all of which shall run with the land and shall be a burden and a benefit to, and shall be binding upon, Declarant, Declarant's successors and assigns, and all parties acquiring or owning any right, title, lien or interest in the Property and their heirs, successors, assigns, grantees, executors, administrators, and devisees.

**I. RESTRICTIONS**

A. No drinking water or non-drinking water wells as defined in Iowa Department of Natural Resources Rule 567 Iowa Administrative Code 135.2 and as subsequently amended shall be installed within the boundaries of the property. For purposes of reference, drinking water well means, "any groundwater well used as a source for

drinking water by humans and groundwater wells used primarily for the final production of food or medicine for human consumption in facilities routinely characterized with the Standard Industry Codes (SIC) group 283 for drugs and 20 for foods (or the North American Industry Classification System (NAICS) Codes of 3254 for drugs and 311 for food).” Non-drinking water well means, “any groundwater well (except extraction well used as part of a remediation system) not defined as a drinking water well including a groundwater well which is not properly plugged in accordance with department rules in 567-Chapter 39 and 49.”

## **II. ENFORCEMENT**

If any person shall violate or attempt to violate any of the covenants contained herein, it shall be lawful for the DNR or any person holding any lien or other interest in the Property to prosecute a proceeding in equity to enjoin the person from such violation.

## **III. TERMS OF COVENANT**

The covenants contained herein shall be deemed covenants running with the land, and shall remain in full force and effect until the earlier of the termination of these covenants by the Declarant, or by Declarant’s successors and assigns, or twenty-one (21) years after the date these covenants are recorded in the Office of the Dubuque County Recorder where the Property is located. These covenants may be extended for successive twenty-one (21) year periods by the filing of a verified claim in accordance with Iowa Code Section 614.24, which verified claim may be filed by the DNR or any party holding any lien or other interest in the Property.

## **IV. SEVERABILITY**

Invalidation of any portion of these covenants by judgment of any court shall in no way affect any of the other covenants contained herein, which shall remain in full force and effect.

## **V. TERMINATION OF COVENANTS**

The covenants contained herein shall terminate twenty-one (21) years after the date these covenants were recorded in the Office of the Dubuque County Recorder, unless extended in accordance with Iowa Code Section 614.24; provided, however, that the Declarant, or the Declarant’s successors and assigns, may execute and file a notice of termination in the Office of the Dubuque County Recorder where the Property is located.

**IN WITNESS WHEREOF**, the undersigned, being the Declarant herein, has hereunto set its hand as of the day and year first above written.

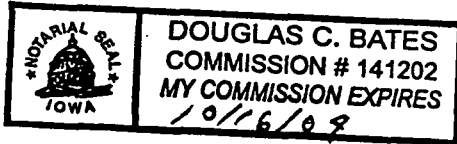
IOWA DEPARTMENT OF TRANSPORTATION

By: James S. Olson  
For: Ronald W. Otto  
Director, Office of Right of Way

STATE OF IOWA, COUNTY OF STORY: §§

On this 8<sup>th</sup> day of April, 2004, before me, the undersigned, personally appeared James S. Olson, known to me to be Designee of the Director of the Office of Right of Way for the Department of Transportation by its authority, and said Office of Right of Way Director acknowledged the execution of said instrument, which signature appears hereon, to be the voluntary act and deed of the Department of Transportation and by it voluntarily executed.

[Signature]  
Notary Public in and for the State of Iowa



(AFFIX NOTARY SEAL ABOVE)

Exhibit A

THE FEE SIMPLE TITLE GRANTED IS TO LAND DESCRIBED AS FOLLOWS:

Lot 2 of Pixler Place in the City of Dubuque, Iowa, according to the recorded plats thereof;

"Pixler Station" in the City of Dubuque, Iowa, and Easement "A" for driveway purposes, according to the recorded plat thereof recorded in Book of Plats 31, Page 123, records of Dubuque County, Iowa, subject to Easement "B" for driveway purposes;

Lot 7 of the Subdivision of Out Lot 598 in the City of Dubuque, Iowa, according to the recorded plats thereof;

Lot 2 of Lot 8 of the Subdivision of Out Lot 598 in the City of Dubuque, Iowa, according to the recorded plat thereof;

~~Lot 1 of Lot 1 of Pixler Place; Lot 2 and Lot 2 of Lot 1, both of the Subdivision of: "Lot 2 of City Lot 598 and of Lot 2 of Lot 3 of City Lot 598"; Lot 2 of Lot 599-A; Lot 2 of Lot 2 of Lot 599; Lot 9 of Out Lot 598; and Lot 2 of Lot 2 of Out Lot 694; in the City of Dubuque, Iowa, according to the United States Commissioners Map and the recorded plats thereof.~~