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Iowa E-Filing Fee: \$4.34
Combined Fee: \$76.34
Revenue Tax:
Karol Kennedy, RECORDER
Dubuque County, Iowa

RECORDER'S COVER SHEET

IOWA LAND RECYCLING PROGRAM ENVIRONMENTAL COVENANT

Preparer Information:

Barry Lindahl, City of Dubuque, Iowa, 300 Main Street, Suite 330, Dubuque, Iowa
52001 Phone: (563) 589-4113

Taxpayer Information:

NA

Return Document To:

Barry Lindahl, City of Dubuque, Iowa, 300 Main Street, Suite 330, Dubuque, Iowa
52001 Phone: (563) 589-4113

Legal Description:

Part of Lot 2 of Riverwalk 4th Addition in the City of Dubuque, Iowa, and part of Lots 6, 11
and B of Ice Harbor Development in the City of Dubuque, Iowa

Grantors:

City of Dubuque, Iowa

Grantees:

NA

Document or Instrument of Previously Recorded Documents:

NA

IOWA LAND RECYCLING PROGRAM ENVIRONMENTAL COVENANT

This environmental covenant is established pursuant to Iowa Code (IC) 455I entitled Uniform Environmental Covenants Act.

The City of Dubuque, hereafter "grantor(s)" and "holder(s)," and the Iowa Department of Natural Resources (Department) in its capacity as an agency of the State of Iowa; enter into this environmental covenant for the purpose of subjecting the property described below to certain activity and use limitations in accordance with the terms and conditions as specified herein pursuant to the authority granted the Department in IC §§ 455B.103(7) and 455H.206 and Department rules in chapter 567 Iowa Administrative Code (IAC) 137.

1. Affected Property. The grantor(s) identified below is(are) the fee title owner(s) of the property located at 320 Bell Street, Dubuque, Dubuque County, Iowa. The property is legally described as:

Part of Lot 2 of Riverwalk 4th Addition in the City of Dubuque, Iowa, and part of Lots 6, 11 and B of Ice Harbor Development in the City of Dubuque, Iowa, more particularly described as follows:

Commencing at the Southeasterly corner of Lot B of Ice Harbor Development in the City of Dubuque, Iowa;

Thence North 58 Degrees 58 Minutes 55 Seconds West along the Southerly line of said Lot B a distance of approximately 230.00 feet to a line on the back of an existing sidewalk and the Point of Beginning;

Thence North 31 Degrees 01 Minutes 05 Seconds East along said back of sidewalk and its northerly extension a distance of approximately 175.00 feet to a line on the south edge of an existing driveway and its westerly extension;

Thence South 58 Degrees 58 Minutes 55 Seconds East along said south edge and westerly extension a distance of approximately 350.00 feet to a line on the easterly edge of an existing parking lot and its northerly extension;

Thence South 31 Degrees 01 Minutes 05 Seconds West along said easterly edge and northerly extension a distance of approximately 425.00 feet to a point on the southerly edge of an existing parking lot;

Thence North 58 Degrees 58 Minutes 55 Seconds West along said southerly edge a distance of approximately 195.00 feet;

Thence North 27 Degrees 28 Minutes 40 Seconds West a distance of approximately 181.80 feet to a point on the back of an existing sidewalk and its southerly extension;

Thence North 31 Degrees 01 Minutes 05 Second East along said back of sidewalk and southerly extension a distance of approximately 155.00 feet to the point of beginning, containing 3.25 acres, more or less.

Hereinafter, the affected property will be referred to as "the property."

2. **Land Recycling Program Risk Management.** The property subject to this covenant is enrolled in the Department's Land Recycling Program (LRP) established in IC chapter 455H and administered under Department rules in chapter 567 IAC 137.

Under the LRP, the environmental response project as defined in IC § 455I.2(5) has consisted of a soil and groundwater investigation and risk assessment of an affected area which includes this property. This response action has been undertaken by The City of Dubuque. Soil and/or groundwater contamination has been identified on the property. The Department has approved a response action plan which includes the use of this environmental covenant as one method for managing the risk of future exposure to this contamination.

An Environmental Sampling Report was prepared by Blackstone Environmental dated December 6, 2022 that consisted of sampling of four groundwater monitoring wells and vapor sampling of onsite sewer lines. The report recommended closure of the property including the use of institutional controls. The Department approved the report and use of this covenant as an institutional control in an email dated January 23, 2023.

3. **Institutional Controls.** IC § 455H.206 and Department rules in chapter 567 IAC 137 authorize the use of an environmental covenant as an institutional control. The purpose of this environmental covenant is to manage the risk of future exposure to existing contaminant conditions by limiting specified land use activities at this property, establishing affirmative obligations and enforcing the terms of this covenant.

4. **Reopening.** The signatories to this covenant acknowledge that failure of the activity and use limitations enumerated in section eight (8) to serve their intended purpose of preventing the risk of exposure to contaminant conditions could result in the Department reopening review and regulation of the property as provided under the terms of this environmental covenant, IC chapters 455H and 455I, and applicable Department administrative rules.

5. **Identity of Grantor(s) and Holder(s):**

GRANTOR(S): City of Dubuque

HOLDER(S): City of Dubuque, owner

Platinum Holdings, LLC, holder of a right of first refusal on a part of the Property pursuant to a Lease Agreement dated June 4, 2001 between the City of Dubuque and Platinum Holdings, LLC.

Diamond Jo, LLC, holder of a nonexclusive privilege for its management employees and patrons to park on a part of the Property pursuant to a Lease Agreement dated June 1, 2005 between the

City of Dubuque, Iowa and Peninsula Gaming Company, LLC, and the Amended and Restated Port of Dubuque Public Packing Facility Development Agreement dated October 1, 2007 between the City of Dubuque, Iowa and Diamond Jo, LLC.

AGENCY: Iowa Department of Natural Resources

6. **Representations and Warranties.** The grantor(s) warrant to the other signatories to this covenant the following:

- a. that the grantor[s] is [are] the sole fee title owner[s] of the property;
- b. that the grantor[s] hold[s] hold sufficient fee title to the property to grant the rights and interests described in this covenant free of any conflicting legal and equitable claims;
- c. that the grantor[s] has [have] identified all other persons holding legal or equitable interests, including but not limited to contract buyers, mortgage holders, other consensual lienholders, and lessees and secured their consent either by signatures on this covenant.

7. **Running with the Land.** This environmental covenant is perpetual and runs with the land as provided in IC § 455L.9 until modified or terminated. The terms of this environmental covenant are binding on the grantors and all successors in interest, assigns and all transferees acquiring or owning any right, title, lien or interest in the property and their heirs, successors, assigns, grantees, executors, administrators and devisees. The term "transferee," as used in this environmental covenant, shall mean any future owner of any interest in the property or any portion thereof, including, but not limited to, owners of an interest in fee simple, contract buyers, mortgagees, easement holders and/or lessees.

8. **Activity and Use Limitations and Terms.** The property is subject to the following use limitations and terms:

(1) 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 Industrial 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 an 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-Chapters 39 and 49."

(2) The property may not be redeveloped as a residential area. "*Residential land-use area*" means an area zoned for residential use or an area where residential use currently exists, is planned, or is not otherwise precluded. In addition, a residential land-use area includes other areas where frequent, long-term, close contact with soils is likely to occur (e.g., playgrounds, sport fields, gardens, child care facilities).

Iowa Admin. Code r. 567-137.2(455H)

(3) Vapor Intrusion (VI) Evaluation, Technological Control, and/or Mitigation Requirement:

This environmental covenant requires that a Department-approved VI evaluation be conducted in the future if any redevelopment is to take place on the property. Prior to any such activity, the Department shall be notified by the property owner and the property owner shall be responsible for the development and submittal of a VI evaluation work plan detailing the proposed site activities. The results of the VI evaluation may require a response action in the form of a technological control or VI mitigation, as determined by the Department. In that case, the property owner shall develop and submit a response action work plan to the Department for approval. Alternatively, technological control or VI mitigation would be required on future structures.

9. Notice of Non-Compliance. Any property owner or subsequent transferee of an interest in the property shall notify the Department as soon as possible of conditions which would constitute a breach of the activity and use limitations in paragraph eight (8) if they have actual knowledge of these conditions or would reasonably be deemed to have knowledge within the normal course of administration of their property interest.

10. Notice to Lessees. Grantor(s), any holder(s) with a property interest sufficient to grant a lease of the property, and any subsequent transferee shall incorporate the activity and use limitations of this covenant either in full or by reference to this instrument in any lease, license, or other instrument granting a right to possession of the property.

11. Access to Property. Reasonable access to the property is granted the Department or any authorized representative of the Department, public or private, for the purpose of implementation, monitoring and enforcement of the terms of this environmental covenant. The Department, its authorized representatives, or other persons entitled to access shall provide the current owner of the property with reasonable notice, an explanation of the reasons for entry and the scope of onsite activities prior to access. Right of access includes, but is not limited to, the following activities:

- a. repair and maintenance of remedial action equipment, soil caps, groundwater monitoring wells and associated aboveground or subsurface structures
- b. fencing and other technological controls
- c. groundwater sampling and monitoring
- d. additional drilling
- e. construction of soil boring and/or groundwater monitoring wells
- f. other activities authorized or otherwise directed by the Department.

12. Groundwater Hazard Statement Notice. IC § 558.69 requires submission of a groundwater hazard statement and disclosure if "hazardous waste" exists on the property as defined in IC § 455B.411(3) or if the Department determines that solid waste exists on the property that is potentially hazardous. If hazardous waste is present, the groundwater hazard statement must state that the condition is being managed in accordance with Department rules. The signatories and all subsequent transferees required to submit a groundwater hazard statement

under IC § 558.69 shall make reference to this environmental covenant in substantially the following form:

THE INTEREST CONVEYED IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED TBD RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE DUBUQUE COUNTY RECORDER ON [date - TBD] IN [TBD - document, book and page, or parcel number].

THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

(1) 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 Industrial 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 an 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-Chapters 39 and 49."

(2) The property may not be redeveloped as a residential area. "Residential land-use area" means an area zoned for residential use or an area where residential use currently exists, is planned, or is not otherwise precluded. In addition, a residential land-use area includes other areas where frequent, long-term, close contact with soils is likely to occur (e.g., playgrounds, sport fields, gardens, child care facilities). Iowa Admin. Code r. 567-137.2(455H)

(3) Vapor Intrusion (VI) Evaluation, Technological Control, and/or Mitigation Requirement:

This environmental covenant requires that a Department-approved VI evaluation be conducted in the future if any redevelopment is to take place on the property. Prior to any such activity, the Department shall be notified by the

property owner and the property owner shall be responsible for the development and submittal of a VI evaluation work plan detailing the proposed site activities. The results of the VI evaluation may require a response action in the form of a technological control or VI mitigation, as determined by the Department. In that case, the property owner shall develop and submit a response action work plan to the Department for approval. Alternatively, technological control or VI mitigation would be required on future structures.

13. **Modification and Termination.** Modification or termination of the terms of this covenant shall comply with the standards in IC chapter 455H.206 and applicable Department administrative rules. The terms of this environmental covenant may be modified or terminated by written consent of the Director of the Department, the then current fee simple title owner and all original signatories (unless exempted under the provisions of IC § 455I.10(1) "c" in accordance with and subject to the provisions of IC § 455I.10). The termination or modification is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any modification or termination of this environmental covenant shall be in accordance with IC § 455I.9 and such additional terms as specified in this covenant.

14. **Enforcement.** The terms of this environmental covenant may be enforced in a civil action for injunctive or other equitable relief by the signatories and those persons authorized by and in accordance with IC § 455I.11.

15. **Severability.** If any provision of this environmental covenant is found to be unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

16. **Governing Law.** This environmental covenant shall be governed by and interpreted in accordance with the laws of the State of Iowa.

17. **Recordation.** Within thirty (30) days after Department approval of this environmental covenant, the grantor[s] shall record the environmental covenant in the same manner as a deed to the property with the Dubuque County Recorder's Office.

18. **Effective Date.** The effective date of this environmental covenant shall be the date upon which the fully executed environmental covenant has been properly recorded with the Dubuque County Recorder's Office.

19. **Notice.** Unless otherwise notified in writing by the Department, any document or communication required by this environmental covenant shall be submitted to:


Iowa Department of Natural Resources
Land Recycling Program
Wallace State Office Building
502 E 9th Street

Des Moines, IA 50319

20. Subordination and Consent. By signing this environmental covenant, the signatories knowingly and intelligently acknowledge their consent to the terms of this agreement. The following persons have expressly consented:

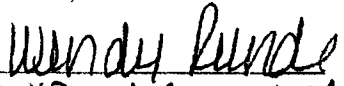
Platinum Holdings, LLC

By:


Its MEMBER Mgr.
Charles M. Neuman
Member Mgr.

Diamond Jo, LLC


By:


Its VP and General Manager
Wendy Runde
VP and General Manager

21. Notice of Change in Ownership. Grantor and holder with sufficient property interest to convey a possessory interest in the property and any subsequent transferee with sufficient interest shall reference and incorporate the terms of this agreement into any subsequent instrument which conveys a possessory interest in the property.

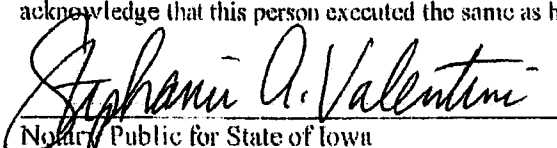
ACKNOWLEDGMENTS

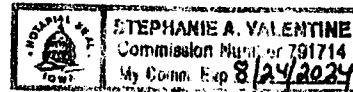
GRANTORS

 Signed this 16th day of April, 202⁴.
Michael C. Van Milligen, City Manager

State of Iowa)
County of Dubuque) ss.

On this 16th day of April, 202⁴, before me personally appeared Michael C. Van Milligen, known to me to be the City Manager of the Grantor who executed the foregoing instrument, and acknowledge that this person executed the same as his/her/their voluntary act and deed.


Notary Public for State of Iowa

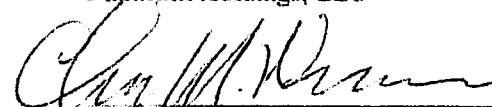


Print Name: Stephanie A. Valentine
(Seal, if any)

My commission expires: 8/24/2024

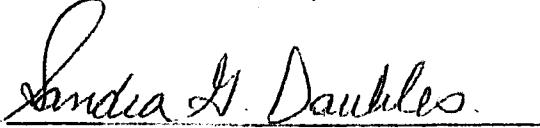
HOLDERS:

Platinum Holdings, LLC

 Signed this 22 day of MARCH, 202⁴.
Charles M. Neuman

State of Iowa) FLORIDA
County of Dubuque) ss. LEE

On this 22ND day of MARCH, 202⁴, before me personally appeared CHARLES M. NEUMAN, known to me to be MEMBER/MANAGER of Platinum Holdings, LLC, who executed the foregoing instrument, and acknowledge that this person executed the same as his/her/their voluntary act and deed.


Notary Public for State of Iowa



FLORIDA

Print Name: _____
(Seal, if any)

My commission expires: _____

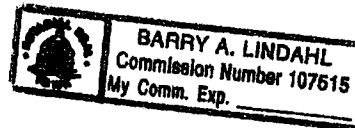
Diamond Jo, LLC

Wendy Runde Signed this 26 day of March, 2024
Wendy Runde

State of Iowa)
County of Dubuque) ss.

On this 26th day of MARCH, 2024, before me personally appeared WENDY RUNDE, known to me to be VP AND GENERAL MANAGER of Diamond Jo, LLC, who executed the foregoing instrument, and acknowledge that this person executed the same as his/her/their voluntary act and deed.

[Signature]
Notary Public for State of Iowa



Print Name: BARRY LINDAHL
(Seal, if any)

My commission expires: 11/04/2024

AGENCY:

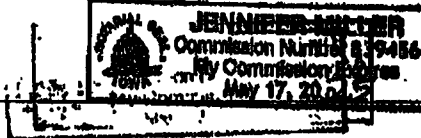
Kayla Lyon Signed this 7 day of Jan, 2024
Kayla Lyon, Director
Iowa Department of Natural Resources

State of Iowa)
County of Dubuque) ss.

On this 17th day of January, 2024, before me personally appeared Kayla Lyon, known to me to be the Director of the Iowa Department of Natural Resources or the lawful designee of the Director who executed the foregoing instrument, and acknowledge that this person executed the same as his/her/their voluntary act and deed.

Jennifer Miller
Notary Public for State of Iowa

Print Name:
(Seal, if any)



My commission expires: MAY 17, 2025

[illegible]

Doc # 12868-95

109-1-60

✓

LOT 10

Lot 5

11

01052024bal

RESOLUTION NO. 91 - 24

APPROVING AN IOWA LAND RECYCLING PROGRAM ENVIRONMENTAL COVENANT ON PROPERTY IN THE NORTH PORT OF THE PORT OF DUBUQUE IN THE CITY OF DUBUQUE, IOWA

Whereas, the City of Dubuque is the owner of the following described real property located in the North Port of the City of Dubuque, Iowa;

Part of Lot 2 of Riverwalk 4th Addition in the City of Dubuque, Iowa, and part of Lots 6, 11 and B of Ice Harbor Development in the City of Dubuque, Iowa, more particularly described as follows:

Commencing at the Southeastly corner of Lot B of Ice Harbor Development in the City of Dubuque, Iowa;

Thence North 58 Degrees 58 Minutes 55 Seconds West along the Southerly line of said Lot B a distance of approximately 230.00 feet to a line on the back of an existing sidewalk and the Point of Beginning;

Thence North 31 Degrees 01 Minutes 05 Seconds East along said back of sidewalk and its northerly extension a distance of approximately 175.00 feet to a line on the south edge of an existing driveway and its westerly extension;

Thence South 58 Degrees 58 Minutes 55 Seconds East along said south edge and westerly extension a distance of approximately 350.00 feet to a line on the easterly edge of an existing parking lot and its northerly extension;

Thence South 31 Degrees 01 Minutes 05 Seconds West along said easterly edge and northerly extension a distance of approximately 425.00 feet to a point on the southerly edge of an existing parking lot;

Thence North 58 Degrees 58 Minutes 55 Seconds West along said southerly edge a distance of approximately 195.00 feet;

Thence North 27 Degrees 28 Minutes 40 Seconds West a distance of approximately 181.80 feet to a point on the back of an existing sidewalk and its southerly extension;

Thence North 31 Degrees 01 Minutes 05 Second East along said back of sidewalk and southerly extension a distance of approximately 155.00 feet to the point of beginning, containing 3.25 acres, more or less

as shown on the attached exhibits; and

Whereas, the Iowa Department of Natural Resources has requested the City of Dubuque approve the attached Iowa Land Recycling Program Environmental Covenant shown on the attached exhibit; and

Whereas, the City Council finds that it is in the best interests of the City of Dubuque to approve the Iowa Land Recycling Program Environmental Covenant.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DUBUQUE, IOWA AS FOLLOWS:

Section 1. The Iowa Land Recycling Program Environmental Covenant is hereby approved.

Section 2. The City Manager is authorized and directed to sign the Iowa Land Recycling Program Environmental Covenant on behalf of the City of Dubuque and to take such actions as are necessary to carry out the terms of the Iowa Land Recycling Program Environmental Covenant.

Section 3. The City Clerk is directed to record Iowa Land Recycling Program Environmental Covenant in the Office of the Dubuque County Recorder.

Passed, approved and adopted this 15th day of April, 2024.


Brad M. Cavanaugh, Mayor

Attest:


Adrienne N. Breielfelder, City Clerk