

APPENDIX D TO CONSENT DECREE -
OWNER SETTLING DEFENDANT ENVIRONMENTAL COVENANT

IN THE MATTER OF UNITED STATES V. MIDAMERICAN ENERGY COMPANY AND
IOWA-ILLINOIS MANOR, L.L.C.
RELATING TO THE IOWA CITY FORMER MANUFACTURED GAS PLANT SUPERFUND
SITE

Type/Title of Document: Environmental Covenant

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Taxpayer Information: Iowa-Illinois Manor, L.L.C.
2871 Heinz Road, Suite B
Iowa City, IA 52240
(319) 354-1961

Grantor: Iowa-Illinois Manor, L.L.C.
2871 Heinz Road, Suite B
Iowa City, IA 52240
(319) 354-1961

Holder/Grantee: MidAmerican Energy Company
Urbandale Business Center
4299 NW Urbandale Drive
Urbandale, IA 50322-7916
(515) 281-2970

Legal Description: Commencing at the southwest corner of Out Lot 26 of the Original Town of Iowa City, Iowa; thence N 0°00' along the west line of said Out Lot 26 for a distance of 363.89 feet; thence N 89°50'E, 171.49 feet along the north line of said Out Lot 26; thence S 0°00', 363.04 feet; thence S 89°33' W, 171.50 feet along the south line of said Out Lot 26 to the point of beginning, And, Beginning at the intersection of the south line of Section 10, Township 79 North, Range 6 West, of the 5th P.M. with the east line of Van Buren Street, Iowa City, Johnson County, Iowa; thence N 89°33'E, 171.50 feet; thence S 0°00', 30.00 feet; thence S 89°33' W, 171.50 feet; thence N 0°00', 30.00 feet to the point of beginning.

ENVIRONMENTAL COVENANT

This Environmental Covenant is made this ____ day of _____, 200__, by and between Iowa-Illinois Manor, L.L.C. ("Grantor"), having an address of 2871 Heinz Road, Suite B, Iowa City, Iowa 52240, and MidAmerican Energy Company ("Holder"), having an address of Urbandale Business Center, 4299 NW Urbandale Drive, Urbandale, Iowa 50322-7916. This environmental covenant is established for the purpose of subjecting the affected property described below to certain activity and use limitations in accordance with the terms and conditions specified below and the provisions of Iowa's Uniform Environmental Covenants Act, Iowa Code Chapter 455I. The Iowa Department of Natural Resources ("IDNR") and the Environmental Protection Agency ("EPA") are entering into this covenant in their capacity as "agencies" as provided in Iowa Code sections 455I.2 and 455I.3.

1. **The Property.** Iowa-Illinois Manor, L.L.C. is the fee simple title owner of that real property (the "Property") located in Johnson County, Iowa and legally described as: Commencing at the southwest corner of Out Lot 26 of the Original Town of Iowa City, Iowa; thence N 0°00' along the west line of said Out Lot 26 for a distance of 363.89 feet; thence N 89°50'E, 171.49 feet along the north line of said Out Lot 26; thence S 0°00', 363.04 feet; thence S 89°33' W, 171.50 feet along the south line of said Out Lot 26 to the point of beginning. And, Beginning at the intersection of the south line of Section 10, Township 79 North, Range 6 West, of the 5th P.M. with the east line of Van Buren Street, Iowa City, Johnson County, Iowa; thence N 89°33'E, 171.50 feet; thence S 0°00', 30.00 feet; thence S 89°33' W, 171.50 feet; thence N 0°00', 30.00 feet to the point of beginning.

2. **Purpose.** Because contamination remains on the Property at levels above those appropriate for unlimited use and unrestricted exposure, this Environmental Covenant is being placed on the Property for the purposes of protecting public health and the environment, and to prevent interference with the performance, and the operation and maintenance, of any environmental response project required under the terms of the below-referenced Consent Decree.

3. **Background.** The Property is part of the Iowa City Former Manufactured Gas Plant Site ("Site"), at which the EPA has performed response actions pursuant to 40 C.F.R. Section 300 of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). Iowa-Illinois Manor provided access and MidAmerican Energy Company conducted a Remedial Investigation ("RI"), which was approved by United States Environmental Protection Agency (EPA) on August 11, 2004, and a Feasibility Study ("FS"), which was approved by EPA in July 25, 2006, to address contamination related to former manufactured gas plant operations at the Property. On September 26, 2006, the EPA issued a Record of Decision ("ROD") which selected the remedial action to address contamination at the Site. The ROD was modified in a Memorandum of Record dated June 17, 2008. The ROD included institutional controls as part of this remedial action. MidAmerican Energy Company and the Iowa-Illinois Manor, L.L.C. have entered into a Consent Decree, Civil Action No. _____, with the United States which requires the imposition of the activity and use limitations herein. The ROD,

Consent Decree, and other documents contained in the administrative record may be reviewed at the EPA offices at the address specified in Paragraph 17 below.

4. **Identity of Grantor, Grantee/Holder, and Agency, as each is defined in this Environmental Covenant and as provided in Iowa's Uniform Environmental Covenants Act (Iowa Code Chapter 455I).**

Grantor: Iowa-Illinois Manor, L.L.C. is the current owner of the Property and the Grantor of this Environmental Covenant.

Grantee/Holder: MidAmerican Energy Company is the Grantee/Holder of this Environmental Covenant.

Agency: IDNR and EPA are each an Agency under this Environmental Covenant.

5. **Representations and Warranties.** The Grantor warrants to the other signatories to this Environmental Covenant the following:

- A. that it is the sole fee simple title owner of the Property;
- B. that it holds sufficient fee simple title to the Property to grant the rights and interests described in this Environmental Covenant free of any conflicting legal and equitable claims; and
- C. that it has identified all other persons holding legal or equitable interests to the Property, including, but not limited to, contract buyers, mortgagees, other consensual lien holders, and lessees (other than residential apartment tenants).

6. **Running with the Property.** This Environmental Covenant is perpetual and runs with the Property as provided in Iowa Code Chapter 455I until modified or terminated as provided below in Section 11. This Environmental Covenant is binding on Grantor and all of its successors, 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.

7. **Activity and Use Limitations and Terms.** The following activity and use limitations apply to the use of the Property:

- A. Other than as provided in Paragraph 9 below, no wells for any purpose may be placed on the Property.
- B. Excavation or other subsurface work at a depth greater than 6 feet below grade shall be prohibited on the Property without prior notification and approval of EPA, except in cases of emergency utility repair activities or other subsurface work necessary for human health and safety. EPA shall be notified within 7 calendar days of the initiation of emergency subsurface work on the Property.

C. EPA shall be notified a minimum of 60 calendar days prior to any transfer of title to the Property or change in the use of the Property from its current use as an apartment complex.

8. **Notice of Non-Compliance.** Grantor and any subsequent transferee of title to the Property shall notify IDNR and EPA as soon as possible of any conditions that would constitute a breach of the activity and use limitations specified above in Paragraph 7.

9. **Access.** Grantor grants to the Holder and its authorized representatives and to IDNR, an Agency, and its authorized representatives, an irrevocable, permanent and continuing right of access at all reasonable times to the Property, and also hereby assures the access of EPA, an Agency, and its authorized representatives, to the Property for the purposes of:

- A. Implementing the remedial action in the ROD and Consent Decree;
- B. Verifying any data or information submitted to EPA or IDNR;
- C. Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
- D. Monitoring response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitations, sampling of soil, air, and groundwater, and specifically, without limitation, obtaining split or duplicate samples;
- E. Drilling and construction of groundwater monitoring wells authorized or otherwise directed by EPA or IDNR;
- F. Conducting periodic reviews of the Grantor's response actions, including but not limited to reviews required by the Consent Decree and applicable statutes and/or regulations; and
- G. Implementing additional or new response actions if EPA or IDNR, in their sole discretion, determine i) that such actions are necessary to protect the environment because either the original response actions performed have proven to be ineffective or because new technology has been developed which will accomplish the purposes of the response action in a significantly more efficient or cost effective manner; and ii) that the additional or new response actions will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.

10. **Groundwater Hazard Statement.** Grantor and all subsequent transferees required to submit a groundwater hazard statement under Iowa Code section 558.69 for the Property shall make reference to this Environmental Covenant in any instrument conveying an interest in the Property. Such reference shall be in substantially the following form:

THE INTEREST CONVEYED IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 200__, RECORDED IN THE JOHNSON COUNTY RECORDER/REGISTRAR OFFICE ON _____, 200__, AS [DOCUMENT ____, BOOK ____, PAGE ____, OR BY PARCEL NUMBER ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: (1) OTHER THAN AS DIRECTED BY EPA OR IDNR, NO WELLS FOR ANY PURPOSE MAY BE PLACED ON THE PROPERTY; (2) EXCAVATION OR OTHER SUBSURFACE WORK AT A DEPTH GREATER THAN 6 FEET BELOW GRADE SHALL BE PROHIBITED ON THE PROPERTY WITHOUT PRIOR NOTIFICATION AND APPROVAL OF EPA, EXCEPT IN CASES OF EMERGENCY UTILITY REPAIR ACTIVITIES OR OTHER SUBSURFACE WORK NECESSARY FOR HUMAN HEALTH AND SAFETY. EPA SHALL BE NOTIFIED WITHIN 7 CALENDAR DAYS OF THE INITIATION OF EMERGENCY SUBSURFACE WORK ON THE PROPERTY; (3) EPA SHALL BE NOTIFIED A MINIMUM OF 60 CALENDAR DAYS PRIOR TO ANY TRANSFER OF TITLE TO THE PROPERTY OR CHANGE IN USE OF THE PROPERTY FROM ITS CURRENT USE AS AN APARTMENT COMPLEX.

11. **Modification and Termination.** This Environmental Covenant may be modified or terminated in accordance with and subject to the provisions of Iowa Code Chapter 455I. The termination or modification of this Environmental Covenant is not effective until the document evidencing consent of all necessary persons is properly recorded.

12. **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 Iowa Code Chapter 455I.

13. **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.

14. **Governing Law.** This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the state of Iowa.

15. **Recordation.** Within thirty (30) days following execution of this Environmental Covenant by all parties hereto, Grantor shall properly record this Environmental Covenant with the Johnson County, Iowa, Recorder/Registrar Office.

16. **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 Johnson County, Iowa, Recorder/Registrar Office.

17. **Notice.** Unless otherwise notified in writing by an Agency, any document or notice required by this Environmental Covenant shall be submitted to:

To Grantor:

Iowa-Illinois Manor, L.L.C.

2871 Heinz Road, Suite B
Iowa City, Iowa 52240

To Holder:

MidAmerican Energy Company
Urbandale Business Center
4299 NW Urbandale Drive
Urbandale, Iowa 50322-7916

To Agencies:

Director
Iowa Department of Natural Resources
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319

and

Director, Superfund Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

ACKNOWLEDGMENTS

GRANTOR:

IOWA-ILLINOIS MANOR, L.L.C.

By: _____
Title: _____
Date: _____

State of _____)
) ss.
County of _____)

On this ___ day of _____, 200_, before me personally appeared _____, who being duly sworn, did say that they are the Iowa-Illinois Manor, L.L.C., that [the seal affixed to said instrument is the seal of said Iowa-Illinois Manor, L.L.C. or no seal has been procured by said Iowa-Illinois Manor, L.L.C.] and that the instrument was signed and sealed on behalf of said Iowa-Illinois Manor, L.L.C. by authority of its members and that the said members acknowledge the execution of said instrument to be the voluntary act and deed of said Iowa-Illinois Manor, L.L.C. by them voluntarily executed.

Notary Public, State of Iowa

AGENCY:

IOWA DEPARTMENT OF NATURAL RESOURCES

_____, 200_

Richard Leopold
Director, Iowa Department of Natural Resources

State of _____)
County of _____) ss.

On this _____ day of _____, 200_, before me personally appeared _____, 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.

Notary Public, State of Iowa

AGENCY:

U.S. ENVIRONMENTAL PROTECTION AGENCY

_____, 200_

By: _____
Cecilia Tapia, Director
Superfund Division

State of _____)
County of _____) ss.

On this ____ day of _____, 200_, before me personally appeared Cecilia Tapia, the Director of the Superfund Division of Region VII of the U.S. Environmental Protection Agency, who being duly sworn, did sign this Environmental Covenant.

Notary Public, State of Kansas