

November 16, 2009

636  
Jeff

Indiana Department of Environmental Management  
Office of Land Quality-ELTF Technical Section  
100 North Senate Avenue- Room 1101  
Indianapolis, Indiana 46204-2241  
Attn: Mr. Jeff Turley

**RECEIVED**

NOV 18 2009

DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT  
OFFICE OF LAND QUALITY

Re: **Copy of the Original Environmental Restrictive Covenant**  
Speedway SuperAmerica Store #5154  
1301 West Jefferson Street  
Kokomo, Indiana 46901  
IDEM Incident Number: 200204503  
Facility ID Number: 636

Dear Mr. Turley:

Speedway SuperAmerica LLC is submitting a copy of the original Environmental Restrictive Covenant dated January 7, 2005 as you requested.

If you have any questions or comments regarding this matter, please feel free to contact me at your convenience at (937) 863-6624.

Sincerely,

SPEEDWAY SUPERAMERICA LLC



Jeff Keifer  
Environmental Representative



November 10, 2009

Indiana Department of Environmental Management  
Office of Land Quality-ELTF Technical Section  
100 North Senate Avenue- Room 1101  
Indianapolis, Indiana 46204-2241  
Attn: Mr. Jeff Turley

Re: **Copy of the Original Environmental Restrictive Covenant**  
Speedway SuperAmerica Store #5154  
1301 West Jefferson Street  
Kokomo, Indiana 46901  
IDEM Incident Number: 200204503  
Facility ID Number: 636  
American Environmental Project Number: 221057

Dear Mr. Turley:

On behalf of Speedway SuperAmerica, LLC, American Environmental Corporation (American Environmental) is submitting the attached copy of the original Environmental Restrictive Covenant (ERC) that was filed on January 7, 2005. A copy of the ERC was requested by IDEM in their letter dated October 27, 2009.

We trust this information meets your needs. If you have any questions or require further information, please do not hesitate to contact us at 317-871-4090.

Sincerely,

AMERICAN ENVIRONMENTAL CORPORATION

A handwritten signature in black ink, appearing to read "K. Strobel".

Kyle Strobel  
Project Manager

A handwritten signature in black ink, appearing to read "Audrey S. Kortz".

Audrey S. Kortz, LPG IN # 619, CHMM # 2011  
Vice President, Technical Services

Corporate Office

8500 Georgetown Road  
Indianapolis, IN 46268  
Phone: (317) 871-4090  
Fax: (317) 871-4094

Regional Office

3700 W Grand Ave. Ste. A  
Springfield, IL 62711  
217-585-9517  
217-585-9518 Fax

Regional Office

410 Production Court  
Louisville, KY 40299  
502-491-0144  
502-491-9271 Fax

Regional Office

4305 Muhlauser Road, Suite 3  
Cincinnati, OH 45014  
513-874-7740  
513-874-7756 Fax

LINDA J. KOONTZ  
HOWARD COUNTY RECORDER  
RECORDED ON  
01/07/2005 03:42:31PM

REC FEE: \$22.00  
PAGES: 5 TRANS# 7758  
AMERICAN ENVIRO

### Environmental Restrictive Covenant

THIS COVENANT is made this 5<sup>th</sup> day of November 2004, by Speedway SuperAmerica LLC, 500 Speedway Drive, Enon, Ohio 45323 (together with his/her/its/their successors and assignees, collectively "Owner").

WHEREAS: Owner owns certain real estate in the County of Howard, Indiana, which is more particularly described in the attached Exhibit "A" and made a part hereof ("Real Estate"), which Real Estate was acquired by deed on November 29, 1989 and recorded on December 19, 1989, as Deed Record 253-3646, in the Office of the Recorder of Howard County, Indiana.

WHEREAS: A corrective action plan was prepared and implemented in accordance with Indiana law as a result of a release of petroleum (collectively, "chemicals of concern") relating to the Speedway # 5154, Facility ID Number 000636.

WHEREAS: The corrective action plan, as approved by the Indiana Department of Environmental Management ("the Department"), provides that the chemicals of concern will remain on or beneath the surface of the Real Estate and provides for institutional controls, which must be maintained to ensure the protection of public health, safety, or welfare, and the environment. The corrective action plan, a survey of the affected areas of the Real Estate, and a list of the chemicals of concern left on the Real Estate are incorporated herein by reference and may be examined at the offices of the Department.

NOW THEREFORE, Owner, hereby, in consideration for the promises herein contained and other good and valuable consideration, imposes restrictions on the Real Estate and covenants and agrees that:

1. The Owner shall prevent any conveyance of title, easement, or other interest in the Real Estate from being consummated without adequate and complete provision for compliance with the corrective action plan and prevention of exposure to chemicals of concern as described in item 3 below.
2. 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 determining and monitoring compliance with the corrective action plan, including, but not limited to, the right to take samples, inspect the operation of the corrective action measures, and inspect records.
3. The Owner shall neither engage in nor allow:
  - a. The extraction of the groundwater located at or underlying the Property or any portion for any purpose, potable or otherwise, except for groundwater investigation or remediation.
  - b. The use of the Property or any portion thereof for any purpose except for commercial purposes, and the Property is hereby restricted to commercial use only.
  - c. The construction of any subsurface basement structures on the Property is prohibited.
4. By taking title to the Real Estate, any subsequent owner agrees to comply with these restrictions and the terms of this Covenant.



This instrument prepared by:

Scott Zink, Environmental Rep.  
Speedway SuperAmerica LLC  
5000 W. 86<sup>th</sup> Street  
Indianapolis, IN 46268

**AFFIDAVIT**

I, the undersigned, being duly sworn upon my oath, have personal knowledge of the facts stated herein:

- The enclosed copy of the Environmental Restrictive Covenant and its Attachments were recorded in the Howard County Recorder's Miscellaneous Book and were cross-referenced to the recorded deed that concerns the property subject to industrial closure requirements; and
- The enclosed copy represents the Environmental Restrictive Covenant and its Attachments in their entirety as agreed to by the Indiana Department of Environmental Management and the property owner.

County Recorder's Book and Page or Instrument Number: \_\_\_\_\_

Number of Pages Recorded: \_\_\_\_\_

I swear or affirm under the penalties for perjury that the foregoing representations are true and accurate to the best of my knowledge and belief.

  
\_\_\_\_\_  
Signature of Property Owner

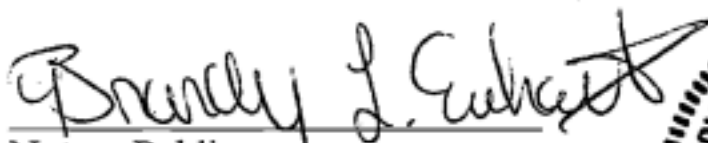
Scott Hiser  
Print or type name

11/9/04  
Date



Corporate Environmental Manager  
Position

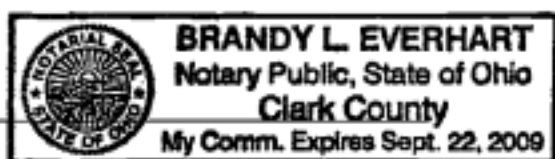
Signed before me the 9<sup>th</sup> day of November, 2004.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:



County and State of Residence:



Clark, Ohio

SSA #5154  
1301 West Jefferson  
Kokomo, IN  
Howard County

Said parcel being situated in the City of Kokomo, County of Howard, State of Indiana, and being a part of the Sunset Addition to said city and as recorded in Plat Book 3, Page 104 of the Howard County, Indiana Recorder's office and being more particularly described as follows:

Being a part of Lots 13, 14, and 15 of said subdivision and commencing at the centerline intersection of Jefferson Street (40.00 feet wide) and Phillips Street (40.00 feet wide) said point also being the northeast corner of the northwest  $\frac{1}{4}$  of Section 35, Township 24 North, Range 3 East;

Then South  $88^{\circ} 52' 00''$  West, 154.00 feet upon the centerline of Jefferson (also being the north line of the said northeast  $\frac{1}{4}$ );

Then south  $00^{\circ} 18' 00''$  West, 25.00 feet to the "True Point of Beginning" for the land herein described;

Thence continuing South  $00^{\circ} 18' 00''$  West, 97.50 feet upon the west line of and to the southwest corner of Lot 13;

Thence North  $88^{\circ} 52' 00''$  East, 129.00 feet upon the south line of Lots 13, 14, and 15 to a point 5.00 feet west of the southeast corner of Lot 15;

Thence North  $00^{\circ} 18' 00''$  East, 87.60 feet upon a line parallel with and 5.00 feet west of the East line of Lot 15;

Thence North  $45^{\circ} 25' 00''$  West, 13.80 feet;

Thence South  $88^{\circ} 52' 00''$  West, 119.10 feet upon a line parallel with and 5.00 feet south of the north line of Lots 13, 14, and 15 to the point of beginning.

Containing 0.2875 acres more or less.

PRIOR INSTRUMENT REFERENCE: Record No. 227, Pages 1136, 1137, 1138 and 1139.