

200600005553  
Filed for Record in  
BARTHOLOMEW COUNTY, IN  
BETTY JEAN BESHEAR  
05-19-2006 At 11:18 am.  
COVENANT 32.00

### Environmental Restrictive Covenant

THIS COVENANT is made this 6th day of March, 2006, by M & E Properties, 15693 S. State Road 58, Columbus, Indiana (together with his/her/its/their successors and assignees, collectively "Owner").

WHEREAS: Owner owns certain real estate in the County of Bartholomew, Indiana, which is more particularly described in the attached Exhibit "A" and made a part hereof ("Real Estate"), which Real Estate, Parcel I, Lot numbered 17 in the Original Plat of the Waymansville, as recorded in Plat Book A, page 111 (copy) and Plat Book A, page 66 (original) in the Office of the Recorder of Bartholomew County, Indiana and Parcel II Lots numbered 18 and 31, except twelve feet by parallel lines off the north sides thereof in the Original Plat Book A, page 111 (copy) and Plat Book A, page 66 (original) in the Office of the Recorder of Bartholomew County, Indiana.

WHEREAS: A voluntary remediation work plan was prepared, approved, and implemented in accordance with Indiana law as a result of a release of hazardous waste, petroleum, regulated substances, or hazardous substances (collectively, "chemicals of concern") relating to The Store, Inc., Site No. 6011201.

WHEREAS: The voluntary remediation work 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 property described in the voluntary remediation work plan, which includes 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. Constituents of concern (COCs) include lead, benzene, toluene, ethylbenzene, xylenes (BTEX), methyl-t-butyl-ether (MTBE), and polynuclear aromatic hydrocarbons (PAHs). A map showing the location of the chemicals of concern is attached hereto as Exhibit "B." The voluntary remediation work plan, a description 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 contained herein 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 voluntary remediation work 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 voluntary remediation work plan, including, but not limited to, the right to take samples, inspect the operation of the work performed, and inspect records provided, however, in the performance of such activities, the Department and its designated


representatives will not unreasonably interfere with operations on the Real Estate.

3. The Owner shall:
  - a. Prevent the installation of water wells on the Real Estate.
  - b. Evaluate the indoor air pathway prior to the site being developed as a residential property to insure no risk to human health and safety.
4. By taking title to the Real Estate, any subsequent owner agrees to comply with these restrictions and the terms of this Covenant.
5. The restrictions and other requirements described in this Covenant shall run with the land and be binding on the Owner and the Owner's successors, assignees, and lessees or their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in all or any part of the Real Estate by any person shall limit the restrictions set forth herein.
6. The restrictions shall apply until the Department determines that the chemicals of concern no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment. This Covenant shall not be amended, modified, or terminated except by written instrument executed between the Department and the owner of the Real Estate at the time of the proposed amendment, modification, or termination. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant, such amendment, modification, or termination shall be recorded with the Office of the Recorder of Bartholomew County and within thirty (30) days after recording, a true copy of the recorded amendment, modification, or termination shall be presented to the Department.
7. If any provision of this Covenant is also the subject of any law or regulation established by any federal, state, or local government, the strictest standard shall prevail.
8. In the event of any change in applicable law or rules, this Covenant shall be interpreted so as to ensure the continuing validity and enforceability of the restrictions listed in item 3, above. In no event shall this Covenant be rendered unenforceable if Indiana's laws, rules, policies, or guidelines for environmental restrictive covenants or institutional or engineering controls change as to form or content.
9. The Department may enforce this restrictive covenant under Ind. Code § 13-14-2-6(5), in addition to any other remedies it may have at law or at equity.
10. No failure on the part of the Department at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's right to enforce such term, and no waiver on the part of the Department of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.

11. The undersigned persons executing this Covenant on behalf of the Owner represent and certify that they are duly authorized and have been fully empowered to execute, record, and deliver this Covenant.

Owner hereby attests to the accuracy of the statements in this document and all attachments.

IN WITNESS WHEREOF, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 6th day of March, 2006.

Ernest R. Wilkerson  
M & E Properties, Inc.  
  
M & E Properties, Inc.

STATE OF Indiana  
COUNTY OF Bartholomew ) SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Ernest R. Wilkerson the \_\_\_\_\_ of the Owner, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 6 day of March, 2006.

Deborah J. Burbrink  
Deborah J. Burbrink, Notary Public  
Residing in Bartholomew County, Indiana

My Commission Expires:  
3/14/08

This instrument prepared by:

Lisa McKinney Goldner  
Bose McKinney & Evans LLP  
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135 N. Pennsylvania  
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