

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 9th day of July, 2021, by McCullough Sales and Service, Inc., an Indiana corporation located at 331 Williams Road, Evansville, Indiana 47712 ("Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Vanderburgh, Indiana, which is located at 3416 West Virginia Street, Evansville, Indiana and 413 N. Tekoppel Avenue, Evansville, Indiana and more particularly described in the attached Exhibit "A" ("Real Estate"), which is hereby incorporated and made a part hereof. This Real Estate was acquired by deed on January 15, 1996 and recorded on January 17, 1996, as Instrument No. 96-01255, in the Office of the Recorder of Vanderburgh County, Indiana. A copy of the deed is attached as Exhibit "B", which is hereby incorporated and made a part hereof. The Real Estate has also been identified by Vanderburgh County as parcel identification number 82-05-23-018-068.010-025.

WHEREAS: Corrective action was implemented in accordance with IC 13-23 and other applicable Indiana law as a result of a release of petroleum relating to the former operations at the Real Estate. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") Leaking Underground Storage Tank Branch ("LUST") for the release is 201706511 and Facility Identification Number is 5583.

WHEREAS: Certain contaminants of concern ("COCs") remain in the soil and groundwater of the Real Estate following completion of corrective action. The Department has determined that the COCs will not pose an unacceptable risk to human health at the remaining concentrations, provided that the land use restrictions contained herein are implemented to protect human health and the environment. These COCs are benzene, 1-methylnaphthalene, and naphthalene as more particularly described in the environmental documents made of record for this matter under release number 201706511.

WHEREAS: Environmental investigation reports and other related documents are hereby incorporated by reference and may be examined at the offices of the Department, which is located in the Indiana Government Center North building at 100 N. Senate Avenue, Indianapolis, Indiana. The documents may also be viewed electronically in the Department's Virtual File Cabinet by accessing the Department's Web Site (currently www.in.gov/idem/).

NOW THEREFORE, Owner hereby subjects the Real Estate, unless otherwise stated herein, to the following restrictions and provisions, which shall be binding on the current Owner and all future owners:

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I. RESTRICTIONS

1. Restrictions. The Owner:

- (a) Shall not use or allow the use of the Real Estate for residential purposes, including, but not limited to, daily child care facilities or educational facilities for children (e.g., daycare centers or K-12 schools).
- (b) Shall not use or allow the use or extraction of groundwater from the Real Estate for human or animal consumption, gardening, or agriculture. Notwithstanding, the groundwater may be extracted in conjunction with environmental investigation and/or remediation activities.
- (c) Prior to the construction of a basement during the construction of new structures to be occupied by persons at the Real Estate, the current Owner of the Real Estate shall confirm there is no unacceptable exposure risk due to vapor migration in accordance with then-applicable agency guidance, regulation, or law. This may include conducting groundwater, soil, and/or soil-gas sampling for the volatile organic compounds ("VOCs") or semi-volatile organic compounds ("SVOCs") of concern. The results and analyses of such sampling shall be presented to IDEM in support of the Owner's determination whether an unacceptable vapor exposure risk exists. If the results demonstrate that no such risk currently exists, IDEM will provide its concurrence in writing and grant the Owner a waiver of this restriction for the proposed change in site use and/or new construction. If the results demonstrate that an unacceptable risk to human health exists, then the Owner must submit plans for mitigation for approval by IDEM and must conduct adequate indoor sampling to demonstrate the effectiveness of the approved remedy.

II. GENERAL PROVISIONS

- 2. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon, and inure to the benefit of the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees and their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control (hereinafter "Related Parties") and shall continue as a servitude running in perpetuity with the Real Estate unless the conditions have been rectified. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in or right to occupancy in all or any part of the Real Estate by any person shall affect the restrictions set forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof.
- 3. Binding upon Future Owners. By taking title to an interest in or occupancy of the Real Estate, any subsequent owner or Related Party agrees to comply with all of the restrictions set forth in paragraph 1 above and with all other terms of this Covenant. An Owner's rights and obligations under this Covenant terminate upon transfer of the Owner's interest in the Real Estate and shall be borne by the subsequent owner, except that liability for acts or omissions occurring prior to the transfer of the Real Estate shall survive such transfer.
- 4. Access for Department. 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 monitoring compliance with this Covenant and ensuring its protectiveness; this right includes the right to take samples and inspect records.

5. Written Notice of the Presence of Contamination. Owner agrees to include in the following instruments conveying any interest in any portion of the Real Estate, including but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances), the following notice provision (with blanks to be filled in):

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED July 9, 2021, RECORDED IN THE OFFICE OF THE RECORDER OF VANDERBURGH COUNTY ON July 9, 2021, AS INSTRUMENT NUMBER 2021R00019250, IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

6. Notice to Department of the Conveyance of Property. Owner agrees to provide notice to the Department of any conveyance (voluntary or involuntary) of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide the Department with the notice within thirty (30) days of the conveyance and: (a) include a certified copy of the instrument conveying any interest in any portion of the Real Estate, and (b) if it has been recorded, its recording reference, and (c) the name and business address of the transferee.
7. Indiana Law. This Covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Indiana.

III. ENFORCEMENT

8. Enforcement. Pursuant to IC 13-14-2-6 and other applicable law, the Department may proceed in court by appropriate action to enforce this Covenant. Damages alone are insufficient to compensate IDEM if any owner of the Real Estate or its Related Parties breach this Covenant or otherwise default hereunder. As a result, if any owner of the Real Estate, or any owner's Related Parties, breach this Covenant or otherwise default hereunder, IDEM shall have the right to request specific performance and/or immediate injunctive relief to enforce this Covenant in addition to any other remedies it may have at law or at equity. Owner agrees that the provisions of this Covenant are enforceable and agree not to challenge the provisions or the appropriate court's jurisdiction.

IV. TERM, MODIFICATION AND TERMINATION

9. Term. The restrictions shall apply until the Department determines that the COCs no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment.
10. Modification and Termination. This Covenant shall not be amended, modified, or terminated by the Owner or the Department without the prior written approval of the other party. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant,

Owner shall record such amendment, modification, or termination with the Office of the Recorder of Vanderburgh County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department.

V. MISCELLANEOUS

11. Waiver. 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. Nothing herein shall be construed as a waiver or admission by the Owner as to any liability with regard to the COCs, and by entering into this Covenant the Owner has not waived any defense it may possess in law or equity with respect to IDEM or any third party claim, known or unknown.
12. Conflict of and Compliance with Laws. If any provision of this Covenant is also the subject of any law or regulation established by any federal, state, or local government, the applicable standard or requirement shall apply. Compliance with this Covenant does not relieve the Owner of its obligation to comply with any other applicable laws.
13. Change in Law, Policy or Regulation. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, guidelines, or remediation policies (including those concerning environmental restrictive covenants, or institutional or engineering controls) change as to form or content. All statutory references include any successor provisions.
14. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other pursuant to this Covenant shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, and/or by overnight courier addressed as follows:

To Owner:
McCullough Sales and Service, Inc.
331 Williams Road
Evansville, Indiana 47712
Attn: Steven McCullough

Copy to:
Kahn, Dees, Donovan & Kahn, LLP
501 Main Street
Suite 305
P.O. Box 3646
Evansville, Indiana 47708
Attn: Ashley R. Hollen, Esq.

This instrument was prepared by: Ashley R. Hollen

Name and Address: Kahn, Dees, Donovan & Kahn, LLP, Ashley R. Hollen, 501 Main Street,
Suite 305, P.O. Box 3646, Evansville, IN 47735 [KDDK:491516.3]

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social
Security number in this document, unless required by law:

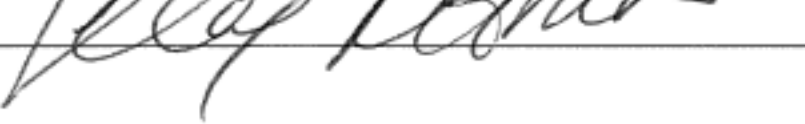
Name: 

EXHIBIT A
LEGAL DESCRIPTION OF REAL ESTATE

Lots One (1), Two (2), and Six (6) in Mary Mount, an Addition to the City of Evansville, according to the recorded plat thereof as recorded in Plat Record "H." pages 26 and 27, in the office of the Recorder of Vanderburgh County, Indiana, together with a vacated alley described as follows:

Beginning at the Northwest corner of said Lot 6 and running thence East along the North line of said Lot 6 a distance of 125 feet, more or less; thence in a Southeasterly direction a distance of 7.07 feet, more or less, to the East line of said Lot 6; thence North across said alley a distance of 20 feet, more or less, to the South line of said Lot 2; thence West along the South lines of said Lots 2 and 1 a distance of 120 feet, more or less, to the Southwest corner of said Lot 1; thence in a Southwesterly direction to the point of beginning.

EXHIBIT B
DEED

OFFICIAL COPY

RECEIVED FOR RECORDS *Jan 17 1996 10:47 AM*
CTRL # *0024* BETTY J. HERMANN RECORDER
VANDERBURGH CO.

96-01255

WARRANTY DEED

DEED DRAWER

9 CARD 9505

THIS INDENTURE WITNESSETH THAT, RUTH E. McCULLOUGH, of Vanderburgh County, Indiana, ("Grantor"), CONVEYS AND WARRANTS to McCULLOUGH SALES AND SERVICE, INC. ("Grantee"), an Indiana corporation, the following described real estate in Vanderburgh County, in the State of Indiana:

Lots One (1), Two (2), and Six (6) in Mary Mount, an Addition to the City of Evansville, according to the recorded plat thereof as recorded in Plat Record "H," pages 26 and 27, in the office of the Recorder of Vanderburgh County, Indiana, together with a vacated alley described as follows:

Beginning at the Northwest corner of said Lot 6 and running thence East along the North line of said Lot 6 a distance of 125 feet, more or less; thence in a Southeasterly direction a distance of 7.07 feet, more or less, to the East line of said Lot 6; thence North across said alley a distance of 20 feet, more or less, to the South line of said Lot 2; thence West along the South lines of said Lots 2 and 1 a distance of 120 feet, more or less, to the Southwest corner of said Lot 1; thence in a Southwesterly direction to the point of beginning.

Subject to all legal highways, easements, rights-of-way, reservations and restrictions of record.

Subject also to the first installment of real estate taxes for the year 1995 due and payable in May, 1996, and all subsequent taxes and assessments which Grantee assumes and agrees to pay.

IN WITNESS WHEREOF, RUTH E. McCULLOUGH has caused this deed to be executed this 15/5 day of January, 1996.

Ruth E. McCullough
RUTH E. McCULLOUGH

STATE OF INDIANA)
)
COUNTY OF VANDERBURGH)

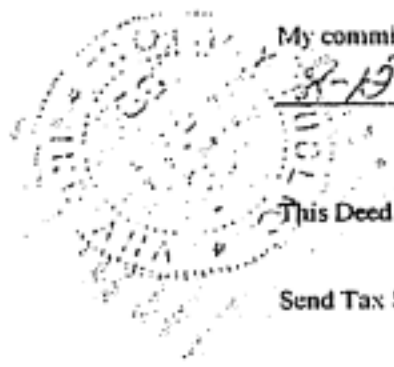
Before me, the undersigned, a Notary Public, in and for the above County and State, personally appeared RUTH E. McCULLOUGH who acknowledged the execution of the foregoing Warranty Deed as her free and voluntary act for the uses and purposes therein set

forth.

WITNESS my hand and notarial seal, at Evansville, Indiana, this 15th day of January, 1996.

My commission expires:

8-15-97



Joseph A. Diefelbach
Notary Public
Residing in Adams County, State of Indiana

Printed Name: JOSEPH A. DIEFELBACH

This Deed prepared by: Daniel F. Hewins, Attorney at Law, 303 Union Federal Building, 501 Main Street, Evansville, IN 47708

Send Tax Statements to: McCullough Sales and Service, Inc., 413 N. Tekoppel Ave., Evansville, In 47712

DULY ENTERED FOR TAXATION SUBJECT TO FINAL ACCEPTANCE FOR TRANSFER.

277 *Bmw* JAN 17 1996

Suzanne M. Couch
AUDITOR