



March 4, 2022

Mr. Cliff Rice
Indiana Department of Environmental Management
Office of Land Quality
Petroleum Remediation Section
100 North Senate Avenue, Room 1101
Indianapolis, Indiana 46204

Re: **Draft Environmental Restrictive Covenant Response Letter**
Circle K #65
10080 US Highway 31
Columbus, IN 47201
IDEM FID #9
IDEM Incident #202103504
American Environmental Project 411058

Dear Mr. Rice:

American Environmental is providing the Draft Environmental Restrictive Covenant, as requested in the IDEM "Request for Ground Water Monitoring and Draft Institutional Control" letter dated December 7, 2021.

The revised Draft Environmental Restrictive Covenant is provided in **Attachment A**.

We trust that this submittal is responsive to your needs and if you have any questions please contact us at (317) 871-4090.

Sincerely,

American Environmental Corporation

A handwritten signature in black ink, appearing to read "James E. Madding".

James E. Madding
Project Manager

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

Audrey S. Kortz, L.P.G. 619, C.H.M.M. 2011
Vice President, Technical Services

Corporate Office

8500 Georgetown Road
Indianapolis, IN 46268
317-871-4090
317-871-4094 Fax

Regional Office

9127 Galene Drive, Suite D
Louisville, KY 40299
502-491-0144
502-491-9271 Fax

Regional Office

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

Regional Office

4305 Muhlhauser Rd, Suite 3
Fairfield, OH 45014
513-874-7740
513-874-7756 Fax

ATTACHMENT A

DRAFT ENVIRONMENTAL RESTRICTIVE COVENANT

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this ____ day of _____, 2022, by MAC'S CONVENIENCE STORES, LLC, P.O. Box 347, Columbus, IN 47202 (together with all successors and assignees, collectively "Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Bartholomew, Indiana, which is located at 10080 N. US 31, Columbus, IN 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 December 23, 2020, and recorded on February 1, 2021, as Deed Record 2021001232, in the Office of the Recorder of Bartholomew County, Indiana. The Real Estate consists of approximately 1.33 acres and has also been identified by the county as parcel identification numbers 03-05-22-000-000.800-009.

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 Circle K #65. The incident numbers assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is 202103504, and the relevant facility identification number is 9.

WHEREAS: Certain contaminants of concern ("COCs") remain in the 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. The known COC's remaining are petroleum compounds relating to gasoline.

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, MAC'S CONVENIENCE STORES, LLC subjects the Real Estate to the following restrictions and provisions, which shall be binding on the current Owner and all future Owners:

I. RESTRICTIONS

1. Restrictions. The Owner:

- (a) Shall not use or allow the use or extraction of groundwater at the Real Estate for any purpose, including, but not limited to human or animal consumption, gardening, industrial processes, or agriculture, except that groundwater may be extracted in conjunction with environmental investigation and/or remediation activities.

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. 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.
- 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 any instrument 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 _____, 2022, RECORDED IN THE OFFICE OF THE RECORDER OF BARTHOLOMEW COUNTY ON _____, 2022, INSTRUMENT NUMBER (or other identifying reference) _____ 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 agrees 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 contaminants of concern 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 without the Department's prior written approval. 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 Bartholomew 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.
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 strictest 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, guidance, 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, addressed as follows:

To Owner:

Mac's Convenience Stores, LLC
P.O. Box 347
Columbus, IN 47202

To Department:

IDEM, Office of Land Quality
100 N. Senate Avenue
IGCN 1101
Indianapolis, IN 46204-2251
Attn: Section Chief, Petroleum Remediation Group

An Owner may change its address or the individual to whose attention a notice is to be sent by giving written notice via certified mail.

15. Severability. If any portion of this Covenant or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions or terms of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.
16. Authority to Execute and Record. The undersigned person executing this Covenant represents that he or she is the current fee Owner of the Real Estate or is the authorized representative of the Owner, and further represents and certifies that he or she is duly authorized and fully empowered to execute and record, or have recorded, this Covenant.

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

IN WITNESS WHEREOF, MAC'S CONVENIENCE STORES, LLC, the said Owners of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this ____ day of _____, 2022.

MAC'S CONVENIENCE STORES, LLC

STATE OF _____)
) SS:
COUNTY OF _____)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, the _____ of the Owner, Mac's Convenience Stores LLC, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this _____ day of _____, 2022.

_____, Notary Public

Residing in _____ County, _____

My Commission Expires:

This instrument prepared by:
James E. Madding
Project Manager
American Environmental Corp.
8500 Georgetown Road
Indianapolis, Indiana 46268

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:

James E. Madding
Project Manager
American Environmental Corp.
8500 Georgetown Road
Indianapolis, Indiana 46268

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

2021001232 CWD \$25.00
02/01/2021 02:38:22PM 8 PGS
Tami L. Hines
Bartholomew County Recorder IN
Recorded as Presented



Page 1 of 8

CORPORATE SPECIAL WARRANTY DEED

THIS INDENTURE WITNESSETH, that KOOSHTARD PROPERTY III, LLC, Delaware limited liability company, as to a fee interest and COUTAR REMAINDER III, LLC a Delaware limited liability company, as to a remainder interest, both having an address at c/o The Mack Company, One Bridge Plaza, Suite 260, Fort Lee, New Jersey 07024 ("Grantor"), BARGAINS, SELLS and CONVEYS to MAC'S CONVENIENCE STORES LLC, a Delaware limited liability company ("Grantee"), whose address is 4080 W. Jonathan Moore Pike, Columbus, IN 47201 for the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt of which is hereby acknowledged, the following described real estate located in Bartholomew County, in the State of Indiana, together with all improvements thereon and all privileges and appurtenances thereunto belonging (hereinafter called the "Real Estate"):

The Land referred to herein below is situated in the County of Bartholomew, State of Indiana, and is described as follows: Parcel No. 103-05-22-000-000.800-009

See attached EXHIBIT A, which is made a part of this Corporate Special Warranty Deed.

Prior Instrument Reference: Instrument No.: 200100011232 and 200100011233.

Subject to (i) all easements, highways, rights-of-way, covenants, conditions, restrictions and other limitations of record; (ii) all real estate taxes and assessments, both general and special, not yet due and payable; and (iii) all matters which would be disclosed by an accurate survey and physical inspection of the Real Estate.

Grantor, as its sole warranty herein, specially warrants to Grantee, and to Grantee's successors and assigns, that Grantor will forever defend title to the Real Estate against those claims, and only those claims, of all persons who shall claim title to or assert claims affecting the title to the Real Estate, or any part thereof, by, through, under, or based upon the acts of, Grantor, but against none other.

The undersigned person executing this deed on behalf of Grantor represents and certifies that he is a duly elected officer of Grantor and has been fully empowered, by proper resolution of the Members of Grantor, to execute and deliver this deed; that Grantor has full corporate capacity to convey the real estate described herein; and that all necessary corporate action for the making of such conveyance has been taken and done.

[Signatures on following page]

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IN WITNESS WHEREOF, Grantor has caused the execution of this Deed this 23 day of December, 2020 and is made to be effective this 30 day of Dec. of 2020.

GRANTOR:

KOOSHARD PROPERTY III, LLC,
a Delaware limited liability company

By: Kooshard Equity III, LLC
a Delaware limited liability company,
its member manager

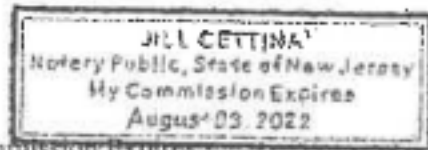
By: M-Cootar, LLC,
a New Jersey limited liability
company, its member manager

By: Richard C. Biletta
Richard C. Biletta
Authorized Signatory

ACKNOWLEDGEMENT

STATE OF NEW JERSEY)
) ss.
COUNTY OF BERGEN)

On the 23rd day of December, in the year 2020, before me, the undersigned, a Notary Public in and for said state, personally appeared Richard C. Biletta personally known to be or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



My Commission Expires: _____

Jill Cettina
Notary Public

Proof Form with Witness Signature Area and Related Notarial Certificate

EXECUTED AND DELIVERED in my presence:

[Signature] [Witness' Signature]

Witness: Debra Ciccone [Witness' Printed Name]

ACKNOWLEDGEMENT

STATE OF NEW JERSEY

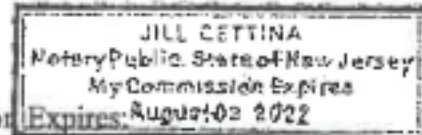
)

ss.

COUNTY OF BERGEN

)

On the 23rd day of December, in the year 2020, before me, the undersigned, a Notary Public in and for said state, personally appeared Debra Ciccone personally known to be or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed as a witness to the foregoing instrument, who being duly sworn by me, deposes and says that the foregoing instrument was executed and delivered by the Grantors in the foregoing subscribing witness' presence.



My Commission

[Signature]
Notary Public

IN WITNESS WHEREOF, Grantor has caused the execution of this Deed this 23
day of December, 2020 and is made to be effective this 30 day of Dec. of 2020.

GRANTOR:

COUTAR REMAINDER III, LLC,
a Delaware limited liability company

By: Kooshtard Equity III, LLC
a Delaware limited liability company,
its member manager

By: M-Cootar, LLC,
a New Jersey limited liability
company, its member manager

By: Richard C. Bileta
Richard C. Bileta
Authorized Signatory

ACKNOWLEDGEMENT

STATE OF NEW JERSEY)
) ss.
COUNTY OF BERGEN)

On the 23rd day of December, in the year 2020, before me, the undersigned, a Notary Public in and for said state, personally appeared Richard C. Biletta personally known to be or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

JILL DETTINA
Notary Public, State of New Jersey
My Commission Expires
August 03, 2022

My Commission Expires

[Signature]
Notary Public

Proof Form with Witness Signature Area and Related Notarial Certificate

EXECUTED AND DELIVERED in my presence:

[Signature] [Witness' Signature]

Witness: Debra Ciccone [Witness' Printed Name]

ACKNOWLEDGEMENT

STATE OF NEW JERSEY

COUNTY OF BERGEN

ss.

On the 23rd day of December, in the year 2020, before me, the undersigned, a Notary Public in and for said state, personally appeared Debra Ciccone personally known to be or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed as a witness to the foregoing instrument, who being duly sworn by me, deposes and says that the foregoing instrument was executed and delivered by the Grantors in the foregoing subscribing witness' presence.



My Commission Expires:

[Signature]
Notary Public

Send tax statements to and
Grantee's mailing address is:

Mac's Convenience Stores LLC
P.O. Box 347
Columbus, IN 47202

This instrument was prepared by George E. Hinchey, Haynes and Boone, LLP, 112 E. Pecan, Suite 1200, San Antonio, Texas 78205.

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. George E. Hinchey.

Return deed to:

Haynes & Boone, LLP
Attn: George E. Hinchey
112 E. Pecan, Suite 1200
San Antonio, Texas 78205

EXHIBIT A
SEE ATTACHED SCHEDULE A

Store 65

SCHEDULE A

LEGAL DESCRIPTION

Lot Numbered One (1) in Crippen Minor Plat as recorded in Plat Book "L", page 8, in the Office of the recorder of Bartholomew County, Indiana.

Parcel No: 103-05-22-000-000.800-009

DULY ENTERED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER
Feb 01 2021 RAJ
BARTHOLOMEW COUNTY
AUDITOR'S OFFICE