

3400  
12

## Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 25 day of October, 2014 by Pleasant Street Property, LLC, 104 Harbour Trees Lane, Noblesville, Indiana 46062 ("Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Hamilton, Indiana, which is located at 1345 Pleasant Street, Noblesville, Indiana, 46060 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 9/19/2005, and recorded on 9/19/2005, as Deed Record 2005-61508, in the Office of the Recorder of Hamilton County, Indiana. The Real Estate consists of approximately 9.61 acres and has also been identified by the county as parcel identification number 2911-06-000-026.000-013. The Real Estate, to which the restrictions in this Covenant apply, is depicted on a map attached hereto as Exhibit B.

WHEREAS: An environmental site investigation was conducted in accordance with IC 13-25 and/or other applicable Indiana law as a result of a release of hazardous substances relating to the Noblesville Self Storage site. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is 45930.

WHEREAS: Certain contaminants of concern ("COCs") remain in the groundwater of the Real Estate as identified in the site investigation. 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 COC is vinyl chloride. Soil boring locations are depicted on a map attached hereto as Exhibit C.

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/](http://www.in.gov/idem/)).

NOW THEREFORE, Pleasant Street Property, 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 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 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.
  - (c) Shall not use the Real Estate for any agricultural use.
  - (d) Shall prohibit any activity at the Real Estate that may interfere with future well installations or groundwater monitoring.

## 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 Oct 25 2014, RECORDED IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY ON \_\_\_\_\_, 2014, INSTRUMENT NUMBER (for 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 Hamilton 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:  
Pleasant Street Property, LLC  
104 Harbour Trees Lane  
Noblesville, IN 46062

To Department:  
IDEM, Office of Land Quality  
100 N. Senate Avenue  
IGCN 1101  
Indianapolis, IN 46204-2251  
Attn: Section Chief, State Cleanup Program

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, *Pleasant Street Property, LLC*, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 25 day of October, 2014.

*David R. Cox*  
\_\_\_\_\_  
*Pleasant Street Property, LLC*  
*DAVID R. COX*

STATE OF ~~INDIANA~~ <sup>Florida</sup> )  
                  *Collier* ) SS:  
COUNTY OF ~~HAMILTON~~ )

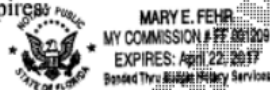
Before me, the undersigned, a Notary Public in and for said County and State, personally appeared David Cox, the sole member of the Owner, Pleasant Street Properties, LLC, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 25 day of October, 2014.

*Mary E. Fehr*  
\_\_\_\_\_  
Notary Public

Residing in Collier County, ~~Indiana~~ <sup>Florida</sup>

My Commission Expires



This instrument prepared by: CHURCH, CHURCH, HITTLE & ANTRIM, Two North Ninth Street, Noblesville, Indiana 46060. *ERIC DOUTHITT*

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. Eric M. Douthitt, Attorney at Law, CHURCH, CHURCH, HITTLE & ANTRIM, Two North Ninth Street, Noblesville, Indiana 46060.

## EXHIBIT A

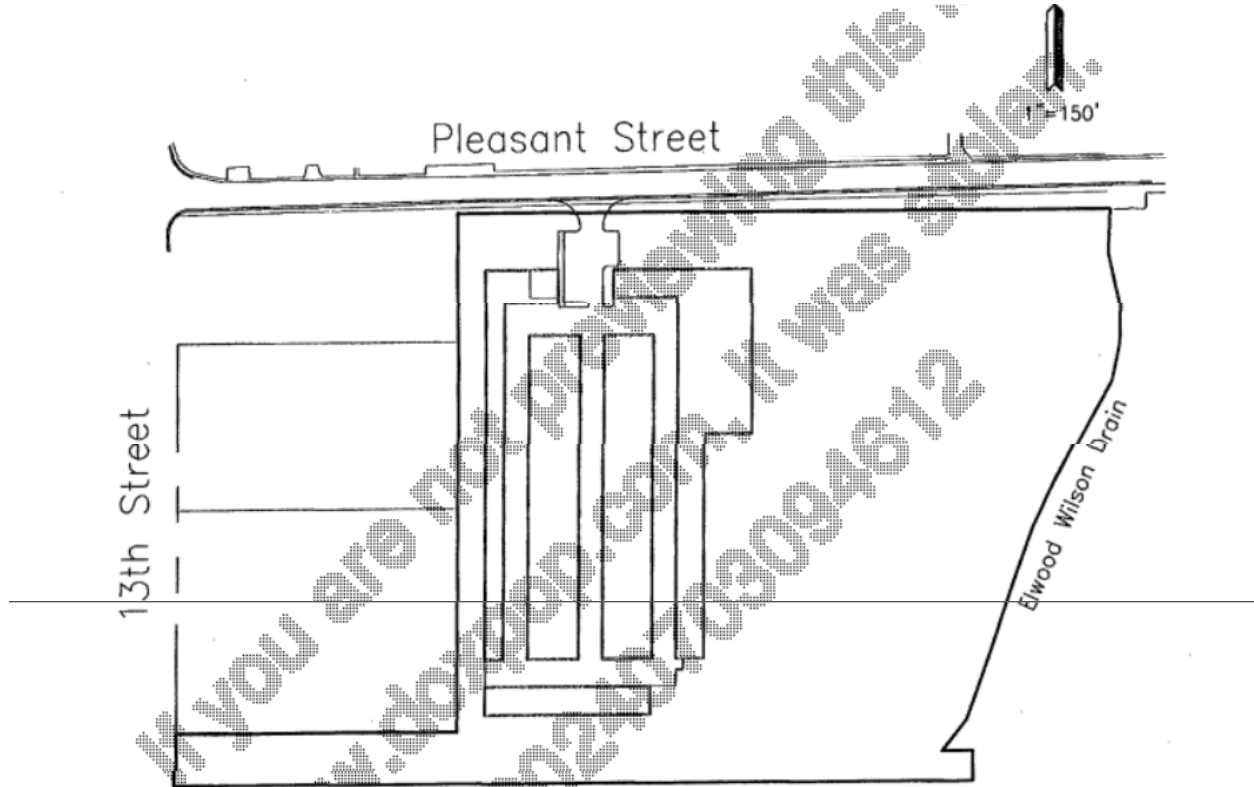
### LEGAL DESCRIPTION OF REAL ESTATE

**Noblesville Self Storage Site  
Legal Description**

A part of the Northwest Quarter of Section 6, Township 18 North, Range 5 East, in Hamilton County, Indiana, described as follows:  
Beginning 382.8 feet West of the Southeast corner of said Northwest Quarter at a point 16.5 feet East of the center of a ditch;  
thence run West 867.95 feet to the East line of 13<sup>th</sup> Street in the City of Noblesville, Indiana;  
thence North along the East line of said Street 56.54 feet;  
thence East 306.76 feet;  
thence North parallel with the East line of said 13<sup>th</sup> Street 563.20 feet to the South line of Pleasant Street;  
thence East 707.88 feet to within 16.5 feet of the center of said ditch;  
thence Southerly with the meanderings and 16.5 feet distant from the center of the said ditch to within 33 feet of the South line of said Quarter Section;  
thence East 33 feet;  
thence South 33 feet to the Place of Beginning 9.614 acres more or less.

**EXHIBIT B**

**SITE LOCATION MAP**



**Noblesville Self Storage  
Site Location Map**

City of Noblesville, Hamilton County, Indiana



**Evergreen**

Planners, L.L.C.

234 SOUTH FRANKLIN RD., INDIANAPOLIS, INDIANA 46219

317/353-6161

# EXHIBIT C

## SOIL BORING LOCATION MAP

