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AUG 01 2011

OHIO EPA/CDO

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July 27, 2011

Ohio Environmental Protection Agency
Central District Office, DERR
50 West Town Street, Suite 700
Columbus, OH 43215
Attn: B&E Landfill Site Coordinator

Re: Environmental Covenant for B&E
Landfill Site, Wayne Township, Ohio

File No. 043372-0000

Dear B&E Landfill Site Coordinator,

We represent the B&E Site Group with respect to matters involving the B&E Landfill Site, located in Wayne Township, Pickaway County, Ohio. For your records, we are enclosing a copy of the executed environmental covenant, dated December 15, 2010, for the Site.

Kind regards,



Davon M. Collins
of LATHAM & WATKINS LLP

Enclosure

TRANSFER
NOT NECESSARY

RECEIVED

DEC 28 2010

AUG 01 2011

MILLENIA A. BETZ
AUDITOR
PICKAWAY CO OHIO

OHIO EPA/CDO

201000006954
Filed for Record in
PICKAWAY COUNTY, OHIO
JOYCE R. GIFFORD, COUNTY RECORDER
12-28-2010 At 03:39 PM.
EPA LIEN 228.00
OR Volume 648 Page 2209 - 2234To be recorded with Deed
Records - ORC § 317.08

ENVIRONMENTAL COVENANT

This Environmental Covenant is made as of the 15th day of December 2010, by Owner and Holder Steven J. Barthelmas pursuant to Ohio Revised Code (ORC) §§ 5301.80 to 5301.92 for the purpose of subjecting the Site (described below) to the Activity and Use Limitations and to the rights of access described below.

Whereas, in 1991 and 1994, the United States Environmental Protection Agency (U.S. EPA) conducted Expanded Site Inspections (ESI) at the B&B Landfill Site (Site), located in Wayne Township, Pickaway County, Ohio, and found in the sediment, soil and groundwater the following hazardous substances: mercury, toluene, 4-methylphenol, cyanide, arsenic, multiple semi-volatile compounds, acetone, toluene, bis(2-thylhexyl)phthalate, multiple semi-volatile compounds; numerous pesticide compounds, numerous PCBs, barium, cadmium, copper, lead, magnesium, silver, zinc, antimony, and thallium; and

Whereas, in 1994, the U.S. EPA conducted a qualitative risk assessment, health consultation and ecological assessment at the Site and assigned the Site a Hazard Ranking Score of 49.04; and

Whereas, on April 3, 1997, U.S. EPA issued an Engineering Evaluation/Cost Analysis for the Site which recommended the presumptive remedy for CERCLA municipal landfills to be the appropriate remedy for the Site; and

Whereas, on February 18, 1998, U.S. EPA issued an Enforcement Action Memorandum (EAM) for the Site which determined the appropriate remedy at the Site to include drum removal, contaminated soil removal, construction of a multi-layer landfill cap over waste and fill materials, implementation of institutional controls including deed restrictions, implementation of a landfill and groundwater monitoring program, and consideration of future actions if the remedy does not adequately control leachate, landfill gas or sediment contamination; and

Whereas on November 2, 1998, U.S. EPA issued a Unilateral Administrative Order (UAO) to various potentially responsible parties (Respondents) which ordered the implementation of the remedy set forth in the EAM; and

Whereas, the Owner has agreed: 1) to grant a permanent right of access over the Site to the Access Parties (as hereafter defined) for purposes of implementing, facilitating and monitoring the response action, and 2) to impose on the Site Activity and Use Limitations as covenants that will run with the land for the purpose of protecting human health and the environment; and

Now therefore, Owner and U.S. EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant executed and delivered pursuant to ORC §§ 5301.80 to 5301.92.

2. Site. The Site is approximately 35 acres in size, and is situated on parts of 2 parcels of real property, each of which is partially subject to the environmental covenants set forth herein. The legal descriptions for the subject parcels are set forth in Exhibit A and are outlined by heavy orange and red lines as depicted in Exhibit B. The Site, which is subject to certain Activity and Use Limitations in Paragraph 7 below, is outlined by heavy purple lines as depicted in Exhibit B. Exhibits A and B are incorporated here by reference.

3. Owner. Steven J. Barthelmas, who resides at 26450 State Route 104, Circleville, Ohio 43113, is the owner of the Site.

4. Holder. Owner, whose address appears in Paragraph 3 above, is the Holder of this Environmental Covenant.

5. Agency. U.S. EPA is the environmental agency pursuant to ORC § 5301.80(B) which determined or approved the Environmental Response Project at the Site.

6. Respondents. Respondents are those parties listed in Exhibit C (Appendix C of U.S. EPA's November 2, 1988, Unilateral Administrative Order).

7. Activity and Use Limitations at the Site. As part of the response action required under the EAM for the Site, Owner imposes and agrees to comply with the following Activity and Use Limitations:

(a) There shall be no consumptive or other use of the groundwater underlying the Site that could cause exposure of humans or animals to the groundwater underlying the Site, provided that nothing in this paragraph shall prevent the parties from sampling the groundwater underlying the Site for purposes of monitoring the groundwater;

(b) There shall be no use of, or activity at, the Site that may interfere with, damage, or otherwise impair the effectiveness of any response action (or any component thereof, including, without limitation, operation and maintenance of such response action) selected and/or undertaken by U.S. EPA, or any party acting under the oversight of U.S. EPA and/or the Ohio Environmental Protection Agency (Ohio EPA), pursuant to Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), except with the written approval of U.S. EPA, in consultation with Ohio EPA, and consistent with all statutory and regulatory requirements;

(c) There shall be no residential, commercial, agricultural or recreational use of the Site, including, but not limited to, any construction of residences, excavation, grading, filling, drilling, mining or other construction or development,

farming, placing of any waste material at any portion of the Site or any other activity, except that the land may be used for the limited agricultural purpose of cattle grazing. Upon written request, U.S. EPA, in its unreviewable discretion, may provide written permission to Owner or a Transferee (as hereafter defined) for recreational use of the Site, subject to any limitations established by U.S. EPA;

(d) There shall be no use of the Site that would allow the continued presence of humans at the Site, other than any presence necessary for implementation of any response actions selected and/or undertaken by U.S. EPA, or any party acting under the oversight of U.S. EPA and/or Ohio EPA, pursuant to Section 104 of CERCLA, including such response actions taken by other responsible parties under a judicial or administrative order, except for the limited agricultural purpose of cattle grazing mentioned in the previous paragraph, and to the extent that U.S. EPA may authorize recreational uses;

(e) There shall be no installation, removal, construction or use of any buildings, wells, pipes, roads, ditches or any other structures or materials at the Site except as approved, in writing, by U.S. EPA, in consultation with Ohio EPA; and

(f) There shall be no tampering with, or removal of, the containment or monitoring systems that remain on the Site as a result of the performance of any response action that is selected and/or undertaken by U.S. EPA, or any party acting under the oversight of U.S. EPA and/or Ohio EPA, pursuant to Section 104 of CERCLA.

8. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Site or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

9. Requirements for Notice to U.S. EPA Prior to Transfer of a Specified Interest in, or Concerning Proposed Changes in the Use of, Applications for Building Permits for, or Proposals for any Site Work Affecting Contamination on, the Site. Neither Owner nor any Holder shall transfer any interest in the Site or make proposed changes in the use of the Site, or make applications for building permits for, or proposals for any work in the Site without first providing at least sixty (60) days notice to U.S. EPA.

10. Access to the Site. Owner agrees that U.S. EPA, Ohio EPA, the Respondents, their successors and assigns, and their respective officers, employees, agents, contractors and other invitees (collectively, Access Parties) shall have and hereby agrees that all of them may have an unrestricted right of access to the Site to undertake the Permitted Uses described in Paragraph 11 below and, in connection therewith, to use all roads, drives and paths,

paved or unpaved, located on the Site and off the Site and rightfully used by Owner and Owner's invitees for ingress to or egress from portions of the Site (collectively, Access Roads).

11. Permitted Uses. The right of access agreed to under Paragraph 10 of this Environmental Covenant shall provide Access Parties with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to the response action at the Site, including, but not limited to, the following activities:

- a) Monitoring the Environmental Response Project;
- b) Verifying any data or information submitted to the United States or the State;
- c) Conducting investigations relating to contamination at or near the Site;
- d) Obtaining samples;
- e) Assessing the need for, planning, or implementing response actions at or near the Site;
- f) Implementing response actions pursuant to the UAO;
- g) Assessing compliance with the UAO;
- i) Determining whether the Site or other property is being used in a manner that is prohibited or restricted; and
- j) Surveying and making soil tests of the Site, locating utility lines, and assessing the obligations which may be required of a Prospective Purchaser.

12. Environmental Response Project. The EAM and UAO constitute an environmental response project as defined by ORC § 5301.80(E) and authorize and require certain response actions to be taken by the Respondents.

13. Administrative Record. The EAM was based upon an administrative record. Copies of the U.S. EPA administrative record for the B&E Landfill Site is maintained at the Pickaway County District Public Library, 165 E. Main Street, Circleville, Ohio 43113 and the U.S. EPA Region 5, Superfund Records Center (7th Floor), 77 W. Jackson, Chicago, Illinois 60604.

14. Notice Upon Conveyance. Each instrument hereafter conveying any interest in the Site, or any portion of the Site, shall contain a notice of the Activity and Use Limitations, and access agreements set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. For instruments conveying any interest in the

Site, or any portion thereof, the notice shall be substantially in the form set forth in Exhibit D which is incorporated here by reference.

15. Amendments; Early Termination. This Environmental Covenant may be modified or amended or terminated while Owner owns the property only by a writing signed by Owner and U.S. EPA with the formalities required for the execution of a deed in Ohio which is recorded in the Pickaway County Recorder's Office. Upon transfer of all or any portion of the Site, Owner waives any rights that he might otherwise have under ORC § 5301.90 to withhold his consent to any amendments, modifications, or termination of this Environmental Covenant, to the extent that he has transferred his interest in that portion of the Site affected by said modification, amendment or termination. The rights of Owner's successors in interest as to a modification, amendment or termination of this Environmental Covenant are governed by the provisions of ORC § 5301.90.

16. Other Matters.

- (a) Representations and Warranties of Owner. Owner represents and warrants that Owner is the sole owner of the Site; that Owner has the power and authority to make and enter into this Agreement as Owner and Holder, to grant the rights and privileges herein provided and to carry out all obligations of Owner and Holder; that this Agreement has been executed and delivered pursuant to the UAO; that the only encumbrances on the Site are those set forth in Exhibit E; and, that this Agreement will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.
- (b) Right to Enforce Agreement Against Owner: Equitable Remedies. In the event that Owner or any other person should attempt to deny the rights of access specified under Paragraph 10 or should violate the Activity and Use Limitations at the Site set forth in Paragraph 7, then, in addition to any rights which U.S. EPA may have under the UAO, U.S. EPA or any Respondent that is adversely affected by each denial (for example, any Respondent that is prevented from conducting its response obligations under the UAO) or by such violation shall have the right to immediately seek an appropriate equitable remedy and any court having jurisdiction is hereby granted the right to issue a temporary restraining order and/or preliminary injunction prohibiting such denial of access or use in violation of restrictions upon application by U.S. EPA or by such adversely affected Respondent without notice or posting bond.
- (c) Future Cooperation; Execution of Supplemental Instruments. Owner agrees to cooperate fully with U.S. EPA and/or the Respondents and to assist them in implementing the rights granted them under this Environmental Covenant and, in furtherance thereof, agrees to execute and deliver such further documents as may be requested by U.S. EPA to

supplement or confirm the rights agreed to hereunder. Where U.S. EPA authorization or approval is required, U.S. EPA agrees to use its best efforts to respond to a request by Owner within sixty (60) days of such request.

- (d) Cumulative Remedies; No Waiver. All of the rights and remedies set forth in this Environmental Covenant or otherwise available at law or in equity are cumulative and may be exercised without regard to the adequacy of, or exclusion of, any other right, remedy or option available hereunder or under the UAO or at law. The failure to exercise any right granted hereunder, to take action to remedy any violation by Owner of the terms hereof or to exercise any remedy provided herein shall not be deemed to be a waiver of any such right or remedy and no forbearance on the part of U.S. EPA and no extension of the time for performance of any obligations of Owner hereunder shall operate to release or in any manner affect U.S. EPA's rights hereunder.
- (e) Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
- (f) Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the subject parcels, with the Pickaway County Recorder's Office.
- (g) Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the subject parcels with the Pickaway County Recorder's Office.
- (h) Distribution of Environmental Covenant/Other Notices. The Owner shall distribute a file-stamped and date-stamped copy of the recorded Environmental Covenant to: U.S. EPA, Ohio EPA, Wayne Township, and each person holding a recorded interest in the Site.
- (i) Notices. All notices, requests, demands or other communications required or permitted under this Environmental Covenant shall be submitted to:

Steven J. Barthelmas
26450 State Route 104
Circleville, Ohio 43113

United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard

Chicago, IL 60604
Attn: Superfund Remedial Project Manager
B&E Landfill Site, Circleville, Ohio

Ohio Environmental Protection Agency
Central District Office, DERR
50 West Town Street, Suite 700
Columbus, OH 43215
Attn: B&E Landfill Site Coordinator

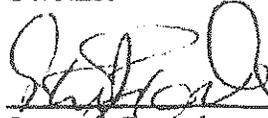
Respondents listed in Exhibit C

- (g) Governing Law. Except as provided herein, the laws of the State of Ohio shall be the governing law. Federal law shall govern issues related to environmental remediation, the Environmental Response Project, the adequacy of the institutional controls to protect human health and the environment, and issues involving or relating to the authority of U.S. EPA. The federal court for the appropriate judicial district shall have jurisdiction of any action involving the U.S. EPA.
- (h) Captions. All paragraph captions are for convenience of reference only and shall not affect the construction of any provision of this Environmental Covenant.
- (i) Time of the Essence. Time is of the essence of each and every performance obligation of Owner under this Environmental Covenant.

[SIGNATURE PAGES AND EXHIBITS FOLLOW]

IN WITNESS WHEREOF, Owner, and U.S. EPA have executed and delivered this Environmental Covenant as of the date first above written.

OWNER



Steven J. Barthelmas

STATE OF OHIO)
) SS.
COUNTY OF PICKAWAY)

The foregoing instrument was acknowledged before me this 29 day of OCTOBER, 2010, by Steven J. Barthelmas.



Notary Public

Notary Public, State of Ohio
Adalynn James
My Commission Expires 9/7/11



UNITED STATES OF AMERICA
On behalf of the Administrator of the
United States Environmental Protection Agency

By: *Richard C. Karl*
Richard C. Karl, Director,
Superfund Division, Region 5

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 15th day of DECEMBER, 2010, by Richard C. Karl, Director, Superfund Division, Region 5 of the United States Environmental Protection Agency, on behalf of the United States of America.

John V Fagiolo
Notary Public



*This instrument prepared by US Environmental
Protection Agency - Region 5 Chicago, IL.*

Remarks:

*Corrected description
12/23/10*

Pickaway County Engineer

EXHIBIT A

*775P 12/23/10*Legal Descriptions of Subject Parcels**PARCEL II**

Situating in the Township of Wayne, County of Pickaway and State of Ohio:

Being a part of of John Jordan's Survey No. 449, and beginning at the middle of the Ohio Canal (his lower corner); thence N 72-1/4° W 152-1/2 poles to a stone, Henry Gearhart's corner; thence with his line N 17° E 137-1/2 poles to a stone; thence S 72-1/2° E 34 poles and 2 links to a stone; thence N 54° E 137 poles and 10 links to a stone in the road; thence S 65-1/2° E 66 poles crossing Plum Run; thence S 39° E 29 poles and 8 links to a stone in said road; thence S 36-1/2° E 52 poles to the middle of Ohio Canal, corner to Wood's land; thence with the meanders of Ohio Canal, the following courses and distances: S 82° W 26 poles, S 74° W 12 poles, S 65-1/2° W 17 poles, S 50° W 11 poles, S 44-1/2° W 60 poles, S 38-1/2° W 28 poles and S 15° W 52 poles to the beginning, containing 229-1/4 acres of land, EXCEPTING therefrom Five (5) acres and fourteen (14) poles of land, more or less, sold to George Barthelmas, Sr., by deed dated September 2nd, 1868. Being the same premises conveyed to George Barthelmas, Sr. by Robert and Rebecca Campbell by their deed dated February 17th 1877, recorded in Volume No. 45, Page 619 of the Pickaway County Deed Records.

EXCEPTING THEREFROM and being a part of V.M.S. No. 449 and of Tract No. 2 (224 acres) conveyed to William J. Barthelmas by Sheriff's deed in Deed Book 130, Page 435. Beginning at a point where the center line of State Route No. 104 intersects the center line of the Sisk-Westfall Road No. 103; thence with the center of State Route No. 104 the following five (5) courses: S 19° 45' W 89.59 ft. to a nail; S 31° 19' W 213.81 ft. to a nail; S 43° 43' W 137.47 ft. to a nail; S 44° 18' W 207.80 ft. to a nail; S 71° 45' W 148.48 ft. to a nail; thence with a new line through the tract of which this is a part, N 6° 28' W 1,211.51 ft. to a nail in the center of the said Sisk-Westfall Road No. 103; thence with the center of said road No. 103 the following three (3) courses: S 63° 09' E 318.25 ft. to a nail; S 45° 30' E 258.37 ft. to a nail; S 31° 00' E 370.30 ft. to the beginning, containing 10.391 acres, more or less, but subject to all legal highways.

Tax ID No.: P33-0-001-00-095-00 *25963 SR 104*
OR 272 Pg. 478

PARCEL IV

Situating in the County of Pickaway in the State of Ohio and in the Township of Wayne:

Being Lot No. 5 of the lands of John Kirkendall, deceased, Beginning at a Sweet Oak on the west bank of the Ohio Canal, and corner to lands of L.C. Dungan; thence with the line of said Dungan N. 82° W. 54.12 chains to a stone in the center of the Frankfort Road; thence with said road N. 41 3/4° E. 32.77 chains to a stone in the center of the Williamsport Road; thence S. 70 3/4° E. 37.27 chains to the West bank of the Ohio Canal; thence S. 10 1/4° W. 19.88 chains to the Beginning, Containing 110. acres and 20 poles of land, more or less, being a part of John Jordan's Original Survey No. 449, and being the same premises conveyed by Jerome P. Blacker

and Wife to Barbara Barthelmas by deed dated December 4th, 1904, recorded in Deed Book No. 66, Page 68 of the Pickaway County Deed Records. And being the same premises that were Quit-claimed to said George Barthelmas, deceased by William Barthelmas and others by deed dated September 12, 1912, recorded in Deed Book No. 90, at page 90 of the Pickaway County Deed Records, EXCEPTING therefrom a tract beginning at a nail in the center line of State Route No. 104, said nail bears S 26° W. 1,029.25 ft from a point where the center line of said State Route No. 104 intersects the center line of the Westfall-Kinderbook Road No. 101; thence S 71° 58' E 280.35 ft. (passing an iron pin at 33.35 ft) to an iron pin; thence S 14° 15' W 439.76 ft. to an iron pin; thence N 82° 03' W 280.00 ft to 4 point in the center line of State Route No. 104; thence with the center of said road N 10° 38' E 285.25 ft to a nail; thence N 18° 54' E 204.99 ft. to the beginning and containing 3.07 acres, more or less, but subject to thirty foot road along the southend thereof providing ingress and egress for the real estate lying to the east thereof, and also subject to all legal highways.

Tax ID No.: P33-0-001-00-096-00 *SR 104*

DB 252 Pg. 102

EXHIBIT B

Map Depicting Site and Subject Parcels

Institutional Control (IC) Overview

Environmental Covenant - Map
Depicting Site and Subject Parcels

Superfund
U.S. Environmental Protection Agency



B & E Landfill Site
Pickaway County, OH

EPA ID #OHD980794648



Legend

-  Site Boundary
-  Parcel II
-  Parcel IV



Produced by Angela Rozinski
U.S. EPA Region 5 on April 15, 2010
Image Date: 2009



EPA Disclaimer: Please be advised that areas depicted in the map have been estimated. The map does not create any rights enforceable by any party. EPA may refine or change this data and map at any time.

EXHIBIT C

List of Respondents

1. American Electric Power Service Corporation

Kevin D. Mack, Esq.
American Electric Power Service Corporation
One Riverside Plaza
Columbus, OH 43215

2. Circle Plastic Products, Inc.

Ben L. Pfefferle III, Esq.
Thompson Hine & Flory, LLP
One Columbus
10 West Broad Street
Columbus, OH 43215

3. GTE North, Inc.

Joseph R. Stewart, Esq.
Associate General Counsel
GTE Telephone Operations
OHODALA
100 Executive Drive
Marion, OH 43302

4. LDM Technologies, Inc

Richard A. Barr, Esq.
Dean & Fulkerson, P.C.
801 W. Big Beaver, Suite 500
Troy, MI 48084

5. Manna Pro Corporation

George M. Von Stamwitz, Esq.
Armstrong, Teasdale, Schlafly & Davis
One Metropolitan Square, Suite 2600
St. Louis, MO 63102-2740

6. South Central Power Company
Ben L. Pfefferle III, Esq.
Thompson Hine & Flory, LLP
One Columbus
10 West Broad Street
Columbus, OH 43215
7. Van Camp Materials Company
Mr. Ronald Dwyer
Andersen Concrete
P.O. Box 398
Columbus, OH 43216
8. Mike Vallery Automotive Group
Mr. John Emerine
P.O. Box 271
24001 U.S. Route 23 South
Circleville, OH 43113
9. General Electric Company
Paul Klein
GE Corporate Environmental Programs
640 Freedom Business Center
King of Prussia, PA 19406
10. Georgia-Pacific Corporation
Mr. Andrew F. Hodges
Chief Counsel
Law Department
Georgia-Pacific Corporation
133 Peachtree Street
Atlanta, GA 30303
11. E.I. DuPont de Nemours & Company
Maria S. Angelo, Esq.
Wilmington Office Building - D7086
1007 Market Street
Wilmington, Delaware 19898

12. PPG Industries, Inc.

Ms. Anne E. Foulkes
PPG Industries, Inc.
39 East
Law Department
One PPG Place
Pittsburg, PA 15272

13. Purina Mills, Inc.

Cheryl A. Foerstner, Esq.
Law Department
BP America
200 Public Square
11-3454-C
Cleveland, OH 44114-2375

14. Borden, Inc.

Richard D. Danec
Borden, Inc.
180 E. Broad Street
Columbus, OH 43215-3799

15. Steve & Marguerite Barthelmas

Frank L. Merrill
Bricker & Eckler
100 South Third Street
Columbus, OH 43215

16. Circleville Fast Freeze, Inc.

Harold Nagel
Circleville Fast Freeze
161 Edison Avenue
Circleville, OH 43113

EXHIBIT D

Notice upon Conveyance of Site or any Portion thereof

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 20__, RECORDED IN THE OFFICIAL RECORDS OF THE PICKAWAY COUNTY RECORDER'S OFFICE ON _____, 20__ in BOOK _____, Page _____, THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS AND ACCESS RIGHTS:

Activity and Use Limitations on the Site.

- (a) There shall be no consumptive or other use of the groundwater underlying the Site that could cause exposure of humans or animals to the groundwater underlying the Site, provided that nothing in this paragraph shall prevent the parties from sampling the groundwater underlying the Site for purposes of monitoring the groundwater;
- (b) There shall be no use of, or activity at, the Site that may interfere with, damage, or otherwise impair the effectiveness of any response action (or any component thereof, including, without limitation, operation and maintenance of such response action) selected and/or undertaken by U.S. EPA, or any party acting under the oversight of U.S. EPA and/or Ohio EPA, pursuant to Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), except with the written approval of U.S. EPA, in consultation with Ohio EPA, and consistent with all statutory and regulatory requirements;
- (c) There shall be no residential, commercial, agricultural or recreational use of the Site, including, but not limited to, any construction of residences, excavation, grading, filling, drilling, mining or other construction or development, farming, placing of any waste material at any portion of the Site or any other activity, except that the land may be used for the limited agricultural purpose of cattle grazing. Upon written request, U.S. EPA, in its unreviewable discretion, may provide written permission to Owner or a Transferee for recreational use of the Site, subject to any limitations established by U.S. EPA;
- (d) There shall be no use of the Site that would allow the continued presence of humans at the Site, other than any presence necessary for implementation of any response actions selected and/or undertaken by U.S. EPA, or any party acting under the oversight of U.S. EPA and/or Ohio EPA, pursuant to Section 104 of CERCLA, including such response actions taken by other responsible parties under a judicial or administrative order, except for the limited agricultural purpose of cattle grazing mentioned in the previous paragraph, and to the extent that U.S. EPA may authorize recreational uses;

(e) There shall be no installation, removal, construction or use of any buildings, wells, pipes, roads, ditches or any other structures or materials at the Site except as approved, in writing, by U.S. EPA, in consultation with Ohio EPA; and

(f) There shall be no tampering with, or removal of, the containment or monitoring systems that remain on the Site as a result of the performance of any response action that is selected and/or undertaken by U.S. EPA, or any party acting under the oversight of U.S. EPA and/or Ohio EPA, pursuant to Section 104 of CERCLA.

Requirements for Notice to U.S. EPA Following Transfer of a Specified Interest in, or Concerning Proposed Changes in the Use of, Applications for Building Permits for, or Proposals for any Site Work Affecting Contamination on, the Site. Neither Owner nor any Holder shall transfer any interest in the Site or make proposed changes in the use of the Site, or make applications for building permits for, or proposals for any work in the Site without first providing at least sixty (60) days notice to U.S. EPA

Access to the Site. Owner agrees that U.S. EPA, Ohio EPA, the Respondents, their successors and assigns, and their respective officers, employees, agents, contractors and other invitees (collectively, Access Parties) shall have an unrestricted right of access to the Site to undertake the Permitted Uses described in Paragraph 11 of this Environmental Covenant and, in connection therewith, to use all roads, drives and paths, paved or unpaved, located on the Site and off the Site and rightfully used by Owner and Owner's invitees for ingress to or egress from portions of the Site (collectively, Access Roads).

Permitted Uses. The right of access agreed to under Paragraph 10 of this Environmental Covenant shall provide Access Parties with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to the response action at the Site, including, but not limited to, the following activities:

- a) Monitoring the Environmental Response Project;
- b) Verifying any data or information submitted to the United States or the State;
- c) Conducting investigations relating to contamination at or near the Site;
- d) Obtaining samples;
- e) Assessing the need for, planning, or implementing response actions at or near the Site;
- f) Implementing response actions pursuant to the UAO;
- g) Assessing compliance with the UAO;

- i) Determining whether the Site or other property is being used in a manner that is prohibited or restricted; and
- j) Surveying and making soil tests of the Site, locating utility lines, and assessing the obligations which may be required of a Prospective Purchaser.

EXHIBIT E

Encumbrances on the Site

Lawyers Title Insurance Corporation
4555 Laka Forest Drive, Suite 200
Cincinnati, Ohio 45242
Order Number: 11813577
Reference Number:

**SCHEDULE B - SECTION 2
EXCEPTIONS**

The Policy or Policies to be issued will contain exception to the following unless the same are disposed of to the satisfaction of the Company.

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Assessments, if any, not yet certified to the County Auditor.
3. Rights or claims of parties other than Insured in actual possession of any or all of the property.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
5. Unfiled mechanic's or materialmen's liens.
6. No liability is assumed for tax increases occasioned by retroactive revaluation change in land usage, or loss of any homestead exemption status for insured premises.
7. Taxes and assessments for the second half of tax year 2009, and thereafter are a lien, which are not yet due and payable. The County Treasurer's General Tax Records for the tax year 2009 are as follows:

PPN: P33-0-001-00-094-00 (as to Parcel I)

Taxes for the first half are UNPAID, due and payable on or before February 19, 2010.
Taxes for the second half are UNPAID, not yet due and payable.

Per half amount \$16.53

NOTE: Attention is directed to the fact that current real estate taxes are undeveloped land values.

PPN: P33-0-001-00-095-00 (as to Parcel II)

Taxes for the first half are UNPAID, due and payable on or before February 19, 2010.
Taxes for the second half are UNPAID, not yet due and payable.

Per half amount \$2,109.76

PPN: P33-0-001-00-095-01 (as to Parcel III)

Taxes for the first half are UNPAID, due and payable on or before February 19, 2010.
Taxes for the second half are UNPAID, not yet due and payable.

Per half amount \$212.12

NOTE: Attention is directed to the fact that current real estate taxes are undeveloped land values.

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PPN P33-0-001-00-096-00 (as to Parcel IV)
 Taxes for the first half are UNPAID, due and payable on or before February 19, 2010.
 Taxes for the second half are UNPAID, not yet due and payable.
 Per half amount \$272.63

8. Attention is directed to the fact that the premises described herein is currently listed on the Auditor's Agricultural Land Tax List and is currently taxed at this agricultural use under the provisions of Section 5713.32 of the Ohio Revised Code. If the land is removed from the Agricultural Land Tax List a charge may be levied against said land. Under Section 5713.34 of the Ohio Revised Code the charge shall constitute a lien upon the property as of the first day of January of the tax year in which the charge is levied. No liability is assumed under this policy for any lien arising under the provisions of Section 5713.34 of the Ohio Revised Code. (As to all Parcels)
 9. Right-of-Way to The Ohio Utilities Company, filed for record October 5, 1927 in Volume 108, Page 141, of the Pickaway County Records. (as to all Parcels)
 10. Right-of-Way to The Ohio Utilities Company, filed for record October 19, 1927 in Volume 108, Page 130, of the Pickaway County Records. (as to Parcels I-III)
 11. Right-of-Way to The Ohio Utilities Company, filed for record October 20, 1927 in Volume 108, Page 131, of the Pickaway County Records. (as to all Parcels)
- Supplemental Deed of Easement filed for record September 22, 2000 in Volume 185, Page 784, of the Pickaway County Records.
12. Easement to Columbus and Southern Ohio Electric Company, filed for record January 2, 1963 in Volume 176, Page 74, of the Pickaway County Records. (as to all Parcels)
 13. Oil and Gas Lease by and between Marguerite Luccile Barthelmas (lessor) and The Lion Oil Company (lessee), filed for record December 31, 1980 in Volume 22, Page 539, of the Pickaway County Records. (as to Parcels I-III)
 NOTE: This Company makes no representation as to the present ownership of this lease.

 Release of Oil and Gas Leases filed for record June 23, 1986 in Volume 26, Page 40, of the Pickaway County Records.
 14. Oil and Gas Lease by and between Steven J. Barthelmas and Laura May Barthelmas (lessor) and The Lion Oil Company (lessee), filed for record December 31, 1980 in Volume 22, Page 541, of the Pickaway County Records. (as to Parcels I-III)
 NOTE: This Company makes no representation as to the present ownership of this lease.

 Release of Oil and Gas Leases filed for record June 23, 1986 in Volume 26, Page 40, of the Pickaway County Records.
- Affidavit of Nondevelopment and Nonpayment of Rental filed for record September 1, 1993 in Volume 28, Page 773, of the Pickaway County Records.
- Affidavit of Nondevelopment and Nonpayment of Rental filed for record September 1, 1993 in Volume 28, Page 775, of the Pickaway County Records.

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15. Oil and Gas Lease by and between Steven J. Barthelmas and Laura M. Barthelmas (lessor) and Energex Corp. (lessee), filed for record May 29, 1991 in Volume 27, Page 123, of the Pickaway County Records. (as to all Parcels)
NOTE: This Company makes no representation as to the present ownership of this lease.
Affidavit of Interest filed for record September 9, 1991 in Volume 27, Page 494, of the Pickaway County Records.
Assignment of Oil and Gas Leases filed for record May 11, 1993 in Volume 28, Page 458, of the Pickaway County Records.
Affidavit of Nondevelopment and Nonpayment of Rental, filed for record September 1, 1993 in Volume 28, Page 775, of the Pickaway County Records.
16. Oil and Gas Lease by and between Marguerite L. Barthelmas (lessor) and Energex Corp. (lessee), filed for record May 29, 1991 in Volume 27, Page 125, of the Pickaway County Records. (as to Parcels I-III)
NOTE: This Company makes no representation as to the present ownership of this lease.
Affidavit of Interest filed for record September 9, 1991 in Volume 27, Page 494, of the Pickaway County Records.
Assignment of Oil and Gas Leases filed for record May 11, 1993 in Volume 28, Page 458, of the Pickaway County Records.
17. INTENTIONALLY DELETED.
18. Oil and Gas Lease by and between Marguerite Barthelmas, Steven J. Barthelmas (lessor) and Ohio Energy Assets, Inc. (lessee), filed for record September 1, 1993 in Volume 28, Page 777, of the Pickaway County Records. (as to Parcels I-III)
NOTE: This Company makes no representation as to the present ownership of this lease.
Assignment of Working Interest filed for record July 26, 1995 in Volume 33, Page 226, of the Pickaway County Records.
Assignment of Working Interest filed for record August 2, 1995 in Volume 33, Page 243, of the Pickaway County Records.
Assignment of Working Interest filed for record September 26, 1995 in Volume 33, Page 348, of the Pickaway County Records.
Assignment of Working Interest filed for record December 26, 1995 in Volume 33, Page 471, of the Pickaway County Records.
Assignment of Working Interest filed for record May 8, 1996 in Volume 3, Page 779, of the Pickaway County Records.
Assignment of Working Interest in Oil and Gas Well filed for record April 2, 2004 in OR Volume 545, Page 102, of the Pickaway County Records.

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Assignment of Working Interest in Oil and Gas Well filed for record April 6, 2004 in OR Volume 545, Page 811, of the Pickaway County Records.

19. Right-of-Way to Energex Corporation, filed for record November 5, 1993 in Volume 341, Page 756, of the Pickaway County Records. (as to all Parcels)

Partial Assignment of Right to Use of Right-of-Way, filed for record January 18, 1994 in Volume 343, Page 337, of the Pickaway County Records.

20. Oil and Gas Lease by and between Steven J. Barthelmas (lessor) and Ohio Energy Assets, Inc. (lessee), filed for record September 1, 1993 in Volume 28, Page 779, of the Pickaway County Records. (as to all Parcels)
NOTE: This Company makes no representation as to the present ownership of this lease.

Oil and Gas Unit Declaration filed for record February 22, 1994 in Volume 30, Page 283, of the Pickaway County Records.

Assignment of Working Interest filed for record May 31, 1994 in Volume 31, Page 438, of the Pickaway County Records.

Assignment of Working Interest in Oil and Gas Well, filed for record December 13, 1994 in Volume 32, Page 589, of the Pickaway County Records.

Assignment of Working Interest filed for record June 12, 1995 in Volume 33, Page 119, of the Pickaway County Records.

Oil and Gas Unit Declaration filed for record June 29, 1995 in Volume 33, Page 187, of the Pickaway County Records.

Assignment of Working Interest filed for record July 26, 1995 in Volume 33, Page 226, of the Pickaway County Records.

Assignment of Working Interest filed for record August 2, 1995 in Volume 33, Page 243, of the Pickaway County Records.

Assignment of Working Interest filed for record September 26, 1995 in Volume 33, Page 348, of the Pickaway County Records.

Assignment of Working Interest filed for record November 1, 1995 in Volume 33, Page 407, of the Pickaway County Records.

Assignment of Working Interest filed for record December 26, 1995 in Volume 33, Page 471, of the Pickaway County Records.

Assignment of Working Interest filed for record May 8, 1996 in Volume 3, Page 779, of the Pickaway County Records.

Assignment of Working Interest filed for record December 21, 2001 in Volume 258, Page 684, of the Pickaway County Records.

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Assignment of Working Interest in Oil and Gas Well filed for record April 2, 2004 in OR Volume 545, Page 102, of the Pickaway County Records.

Assignment of Working Interest in Oil and Gas Well filed for record April 6, 2004 in OR Volume 545, Page 811, of the Pickaway County Records.

21. INTENTIONALLY DELETED.
22. INTENTIONALLY DELETED.
23. INTENTIONALLY DELETED.
24. Oil and Gas Unit Declaration filed for record June 29, 1995 in Volume 33, Page 187, of the Pickaway County Records. (as to Parcels I-III)
NOTE: This Company makes no representation as to the present ownership of this lease.
25. Reservations, restrictions, covenants, limitations, easements, and/or conditions, as established in instrument, filed for record March 16, 1929, in Volume 109, Page 572, of the Pickaway County Records. (as to Parcel IV)
26. Easement to Ohio-Midland Light and Power Company, filed for record September 17, 1935, in Volume 119, Page 108, of the Pickaway County Records. (as to Parcel IV)
27. Easement to Ohio-Midland Light and Power Company, filed for record November 7, 1945, in Volume 133, Page 460B, of the Pickaway County Records. (as to Parcel IV)
28. Easement to Ohio-Midland Light and Power Company, filed for record December 3, 1946, in Volume 137, Page 4, of the Pickaway County Records. (as to Parcel IV)
29. Easement to Ohio-Midland Light and Power Company, filed for record September 4, 1951, in Volume 143, Page 104, of the Pickaway County Records. (as to Parcel IV)
30. Easement to Ohio-Midland Light and Power Company, filed for record December 5, 1958, in Volume 161, Page 310, of the Pickaway County Records. (as to Parcel IV)
31. Reservations, restrictions, covenants, limitations, easements, and/or conditions, as established in instrument, filed for record November 28, 1959, in Volume 164, Page 437, of the Pickaway County Records. (as to Parcel IV)
32. Easement to South-Central Rural Electric Cooperative, filed for record November 30, 1959, in Volume 164, Page 439, of the Pickaway County Records. (as to Parcel IV)
33. Easement to Columbus and Southern Ohio Electric Company, filed for record May 10, 1961, in Volume 169, Page 216, of the Pickaway County Records. (as to Parcel IV)
34. Right-of-Way and Easement to The Cincinnati Gas & Electric Company (Cincinnati), Columbus and Southern Ohio Electric Company (Columbus) and The Dayton Power and Light Company (Dayton), filed for record February 27, 1968, in Volume 199, Page 555, of the Pickaway County Records. (as to Parcel IV)

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35. Easement for Highway Purposes, filed for record March 31, 1988, in Volume 306, Page 278, of the Pickaway County Records. (as to parcel IV)
36. Easement for Drainage to Wayne L. Garrison, filed for record June 30, 1989, in Volume 313, Page 561, of the Pickaway County Records. (as to Parcel IV)
37. Any inaccuracy in the specific quantity of acreage or square footage of land contained on any survey, if any, or contained within the legal description of premises insured herein.
38. Rights of the Public and others entitled thereto in and to the use of that portion of the property within the bounds of any road or highways.

NOTE: The Policy(s) of Insurance may contain a clause permitting arbitration of claims at the request of either the Insured or the Company. Upon request, the Company will provide a copy of this clause and the accompanying arbitration rules prior to the closing of the transaction.

RECORDED AND INDEXED
RECORDS DEPARTMENT
CINCINNATI, OHIO
JAN 20 1990

201000006954
THOMAS CONSTRUCTION INC
ATTN: BILL SMITH
310 DIAMOND ROAD
GROVE CITY PA 16127

