



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

September 29, 2009

RECEIVED

CERTIFIED MAIL

Aaron Morrissey
Menard, Inc.
4777 Menard Dr,
Eau Claire, WI 54703

SEP 30 2009

OHIO EPA/CDO

**Re: Issuance of Covenant Not To Sue for the Menard Property
1649 Morse Road, Columbus, Ohio 43229 (09NFA354)
Project #125-002632-002**

Dear Mr. Morrissey:

I am pleased to inform you that on September 29, 2009, the Director of the Ohio Environmental Protection Agency (Ohio EPA) issued a covenant not to sue (Covenant) to Menard, Inc. for the Menard's property located at 1649 Morse Road, Columbus, Franklin County, Ohio. The Covenant was issued as final findings and orders pursuant to Ohio Revised Code (ORC) Chapter 3746 and Ohio Administrative Code (OAC) Chapter 3745-300.

Based on the no further action (NFA) letter and subject to all conditions set forth in these findings and orders, Ohio EPA hereby covenants not to sue and releases Menard, Inc., and its agents, employees, shareholders, officers, directors, successors and assigns, and successors and assigns of the property, from all civil liability to the State of Ohio to perform additional investigational and remedial activities at the property for the releases of hazardous substances or petroleum identified and addressed in the Phase I property assessment or Phase II property assessment conducted in compliance with ORC Chapter 3746 and OAC Chapter 3745-300.

You will find the certified copy of the Covenant enclosed. When filing the Covenant and its exhibits at the Franklin County Recorder's Office, please use the enclosed affidavit from Ohio EPA to guide the recording of the documents in the county's deed records.

As stated under the "Conditions and Limitations" of the Covenant, the environmental covenant for the property - attached as Covenant Exhibit 4 - must be recorded with the Franklin County Recorder's Office within 30 days of the Covenant issuance date, as a separate document from the required recording of the Covenant and its remaining exhibits. The Covenant becomes effective on the recording date of the environmental covenant. The Covenant also requires Menard, Inc. to submit to Ohio EPA a copy of the environmental covenant showing the filing date stamp of the Franklin County Recorder's Office.

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

Menard, Inc.
Menard Property at 1649 Morse Rd., Columbus
09NFA354
Page 2

The issuance of the Covenant is a final action of the Director and will be public noticed in accordance with OAC 3745-47-07. The action may be appealed to the Environmental Review Appeals Commission (Commission) pursuant to ORC 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within 30 days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00, which the Commission, in its discretion, may reduce if by affidavit it is demonstrated that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be served on the Director within three days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Commission at the following address: Environmental Review Appeals Commission, 309 South Fourth Street, Room 222, Columbus, Ohio 43215.

Many persons within the agency, Menard, Inc., and Lawhon & Associates, Inc. among others, worked hard to remove the environmental barriers associated with redeveloping this property. Congratulations on the issuance of this Covenant. If you have any questions or concerns, please feel free to contact me at (614) 644-3538 or tiffani.kavalec@epa.state.oh.us.

Sincerely,



Tiffani Kavalec, Manager
Division of Emergency and Remedial Response
Assessment, Clean up and Reuse Section

Enclosure

- c: Nichole Lashley, Certified Professional, Lawhon & Associates, Inc.
CDO-DERR Files #125002632002
- ec: Shannon Landrum, Department Manager, Lawhon & Associates, Inc.
slandrum@lawhon-assoc.com
Robin Roth, DERR-CDO
Deborah Strayton, DERR-CDO
Mark Navarre, Legal Office
Debi.tavizon@epa.state.oh.us

TO BE RECORDED IN DEED
RECORDS, PURSUANT TO R.C. 317.08(A)

RECEIVED

SEP 30 2009

OHIO EPA/CDO

AFFIDAVIT

STATE OF OHIO)
)
COUNTY OF FRANKLIN) ss:

Before me, the subscriber, a Notary Public in and for the State of Ohio, personally appeared Tonya R. Lassiter, who, being duly sworn according to law, deposes and says that: (i) she is employed as a records management officer in the Legal Office of the Ohio Environmental Protection Agency ("Ohio EPA") and, as such, is authorized to sign this Affidavit on behalf of Ohio EPA; and (ii) the attached document is a true and correct copy of the Covenant Not to Sue/Director's Final Findings and Orders issued by the Director and entered in the Ohio EPA Director's Journal on September 29, 2009 regarding the property known as Menard, Inc. Property, located at 1649 Morse Road in Columbus, Franklin County, Ohio, and further described in Exhibit 1 of the attached Covenant Not to Sue.

Tonya R. Lassiter
Records Management Officer
Ohio EPA Legal Office

Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, this 29th day of September, 2009.

Notary Public
State of Ohio

Permanent Commission
No expiration, R.C. 147.03

This instrument prepared by:
Mark J. Navarre, Supervising Attorney
Ohio EPA Legal Office
P.O. Box 1049
Columbus, Ohio 43216-1049



SUSAN C. KROEGER
Attorney at Law
Notary Public
State of Ohio
Lifetime Commission

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

OHIO E.P.A.

SEP 29 2009

ENTERED DIRECTOR'S JOURNAL

By: Danya Lassiter Date: 9-29-09

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

Menard, Inc.
4777 Menard Dr.
Eau Claire, WI 54703

Covenant Not to Sue

Director's Final Findings
and Orders

Regarding property known as:

Menard Property
1649 Morse Road
Columbus, Ohio 43224

Pursuant to Ohio Revised Code ("ORC") Chapter 3746 and Ohio Administrative Code ("OAC") Chapter 3745-300, the Director of the Ohio Environmental Protection Agency (the "Director") hereby makes the following Findings and issues the following Orders ("Findings and Orders").

FINDINGS

1. A No Further Action Letter, No. 09 NFA 354 (the "NFA Letter"), was submitted on March 6, 2009 to the Director under the Voluntary Action Program on behalf of Menard, Inc. (the "Volunteer"), by Nichole Lashley, a certified professional, No. CP 302, as defined in ORC 3746.01(E) and OAC 3745-300-01(A)(8) (the "Certified Professional").
2. The Certified Professional submitted to the Director addenda to the NFA Letter, dated July 24, 2009 and August 27, 2009. For the purposes of these Findings and Orders, the term "NFA Letter" includes the addenda.
3. The NFA Letter describes the investigational activities undertaken at the approximately 16.07-acre Property, formerly known as Sears Roebuck Department Store and parking areas of the former Northland Mall, located at

1649 Morse Road, Columbus, Franklin County, Ohio (the "Property"). The Property was historically known as 1811 Morse Road. An exact legal description of the Property is attached hereto as Exhibit 1. A property location map is attached hereto as Exhibit 2. Based on information in the NFA Letter and the Certified Professional's affidavit, the current owner of the Property is Menard, Inc.

4. The Certified Professional prepared pursuant to OAC 3745-300-13(I) an Executive Summary of the NFA Letter, which is attached hereto as Exhibit 3.
5. Based upon the information contained in the NFA Letter, the Volunteer undertook or completed the following investigational and remedial activities regarding the Property:
 - a. A Phase I Property Assessment, in accordance with OAC 3745-300-06, to determine whether there is any reason to believe that a release of hazardous substances or petroleum has or may have occurred on, underlying or is emanating from the Property.
 - b. A Phase II Property Assessment, in accordance with OAC 3745-300-07, including but not limited to investigations of identified areas and affected media, to assess environmental conditions related to releases of hazardous substances and petroleum.
 - c. Identification, in the Phase II Property Assessment, of one or more releases of hazardous substances or petroleum with chemicals of concern ("COCs") that include but are not limited to volatile organic compounds ("VOCs") including acetone, methylene chloride, carbon disulfide, 2-butanone and toluene; semi-volatile organic compounds ("SVOCs") including bis(2-ethylhexyl)phthalate, 1,4-dichlorobenzene (in ground water only), phenanthrene, pyrene, chrysene, benzo(b)fluoranthene, benzo(a)pyrene, benzo(ghi)perylene, and fluoranthene; and total petroleum hydrocarbon – gasoline range organics C6-C12 ("TPH-GRO") (in ground water only), for which the Volunteer determined the applicable standards.
 - d. Activity and use limitations contained in a proposed Environmental Covenant prepared pursuant to ORC 5301.80 to 5301.92, subject to execution by the Director and recording as described in these Findings and Orders.

- e. A demonstration that the Property complies with applicable standards for the identified COCs in the identified areas and affected media at the Property through the use of generic numerical standards for commercial and industrial land use categories and for construction workers, in accordance with OAC 3745-300-08, or applicable risk-based criteria for the two-foot point of compliance requirements for commercial and industrial land use categories and six-foot point of compliance for construction workers, in accordance with OAC 3745-300-07.
6. The Certified Professional has verified by affidavit that the investigational and remedial activities undertaken at the Property comply with the applicable standards established in ORC Chapter 3746 and OAC Chapter 3745-300, that the Property is eligible to receive a covenant not to sue under the Voluntary Action Program, and that the voluntary action was conducted in compliance with all applicable federal, state and local laws and regulations.
7. At the time that analyses were performed, TestAmerica of North Canton, Ohio was a certified laboratory, No. CL 0024, as defined in ORC 3746.01(D) and OAC 3745-300-01(A), whose services were used in support of the NFA Letter (the "Certified Laboratory").
8. The Certified Laboratory has declared in affidavits contained in the NFA Letter that it performed analyses for which it was certified and qualified, pursuant to ORC Chapter 3746 and OAC 3745-300-04, that formed the basis for the issuance of the NFA Letter by the Certified Professional.
9. The Environmental Covenant will be recorded in the Franklin County Recorder's Office as described in the Environmental Covenant and Order No. 2 herein. A copy of the executed Environmental Covenant is attached hereto as Exhibit 4. The Environmental Covenant upon recording will restrict the use of the Property to commercial land uses only.

Applicable Standards

10. Based on the information contained in the NFA Letter and all conditions set forth in these Findings and Orders, the Property meets the applicable standards contained in ORC Chapter 3746 and OAC Chapter 3745-300 for commercial and industrial land use. The applicable standards, the methods of achieving compliance with the standards, and the associated points of compliance for the standards for each complete exposure pathway, are identified in the NFA Letter,

which contains a summary table titled "Table 10 – Applicable Standards and Remedial Activities for Each Exposure Pathway" in the NFA Letter at Section D. The applicable standards include but are not limited to:

- a. Commercial and industrial land use standards for direct contact to COCs related to hazardous substances in soil. The standards consist of generic numerical standards from Table II of OAC 3745-300-08, and apply at a point of compliance from the ground surface to a depth of 2 feet.
 - b. Soil standards based on volatilization of COCs to indoor air for commercial/industrial receptors. The standards were derived using property specific risk assessment procedures in accordance with OAC 3745-300-09.
 - c. Commercial and industrial land use standards for direct contact to COCs related to petroleum in soil. The standards consist of generic numerical standards in accordance with OAC 3745-300-08 at a point of compliance from the ground surface to a depth of two feet for commercial and industrial purposes and six feet for construction/excavation activities.
 - d. Soil standards and ground water standards for direct contact by construction or excavation workers to COCs in soil or ground water. The standards consist of generic numerical standards from Tables V or VI of OAC 3745-300-08, and apply at a point of compliance from the ground surface to a depth of six feet.
 - e. Unrestricted potable use standards for COCs in ground water in the uppermost ground water zone, a saturated unconsolidated zone starting at a depth of 8 feet below the ground surface, including an evaluation in accordance with OAC 3745-300-07(F)(3) ensuring the protection of potable use standards in the ground water zone. The standards consist of generic numerical standards from Tables V and VI of OAC 3745-300-08 or generic numerical standards for petroleum in accordance with ORC 3746.04(B)(1) at all points underlying the Property.
11. Based on the NFA Letter and subject to all conditions set forth in these Findings and Orders, a covenant not to sue may be issued for the Property in accordance with ORC 3746.12(A), and the voluntary action for the Property is protective of public health and safety and the environment.

ORDERS

Covenant

1. Based on the NFA Letter and subject to all conditions set forth in these Findings and Orders, Ohio EPA hereby covenants not to sue and releases Menard, Inc., and its agents, employees, shareholders, officers, directors, successors and assigns, and successors and assigns of the Property, from all civil liability to the State of Ohio (the "State") to perform additional investigational and remedial activities at the Property for the releases of hazardous substances or petroleum identified and addressed in the Phase I Property Assessment or Phase II Property Assessment conducted in compliance with ORC Chapter 3746 and OAC Chapter 3745-300.

Conditions and Limitations

Effectiveness of the Covenant Not to Sue – Recording of the Environmental Covenant

2. The Covenant Not to Sue (the "Covenant") provided in Order No. 1 herein shall become effective upon the date the Environmental Covenant is recorded in accordance with this Order. The Environmental Covenant shall be filed as a document separate from the filing required by Order No. 3 herein. Within thirty (30) days after the issuance of these Findings and Orders, Menard, Inc. shall:
 - a. File with the Franklin County Recorder's Office for recording, in the same manner as a deed to the Property pursuant to ORC 3746.14 and 5301.88, the Environmental Covenant as executed and attached hereto as Exhibit 4. The document for recording may be an executed original or a copy of the same authenticated by Ohio EPA.
 - b. Submit to Ohio EPA a copy of the recorded Environmental Covenant that shows the filing date stamp of the Franklin County Recorder's Office or other reliable information that verifies the recording of the document in accordance with this Order. The submission shall include a cover letter that identifies "*Recorded - Environmental Covenant for NFA Letter No. 09 NFA 354.*" The submission shall be addressed and delivered by regular U.S. mail or by other reliable means to: Ohio EPA, 50 West Town Street, Suite 700, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer, and Ohio EPA, Central District Office, 50 West Town Street, Suite 700, P.O. Box 1049, Columbus, Ohio 43216-

1049, Attention: DERR Site Coordinator for Menard Property.

Requirement to Record These Findings and Orders / Covenant Not to Sue

3. Within thirty (30) days after the issuance of these Findings and Orders, Menard, Inc. shall:
 - a. File with the Franklin County Recorder's Office, for recording in the same manner as a deed to the Property pursuant to ORC 3746.14, a copy of these Findings and Orders, including Exhibits 1 (Legal Description), 2 (Property Location Map), and 3 (Executive Summary).
 - b. Submit to Ohio EPA a copy of the Findings and Orders that shows the filing date stamp of the Franklin County Recorder's Office or other reliable information that verifies the recording of the Findings and Orders in accordance with this Order. The submission shall include a cover letter that identifies "*Recorded - Covenant Not to Sue for NFA Letter No. 09 NFA 354.*" The submission shall be addressed and delivered by regular U.S. mail or by other reliable means to:

Ohio EPA, 50 West Town Street Suite 700, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer, and Ohio EPA, Central District Office, 50 West Town Street, Suite 700, P.O. Box 1049, Columbus, Ohio 43216-1049, Attention: DERR Site Coordinator for Menard's Property.

Requirement to Include Notice of Activity and Use Limitations upon Property
Conveyance

4. Each instrument Menard, Inc. uses to convey the Property or any portion of the Property shall include a notice of the activity and use limitations for the Property in accordance with paragraph 9 of the Environmental Covenant attached hereto as Exhibit 4. The submission to Ohio EPA required by the Environmental Covenant shall include a cover letter that identifies "*Conveyance of Property Subject to Activity and Use Limitations - NFA Letter No. 09 NFA 354.*" The submission shall be addressed and delivered by regular U.S. mail or by other reliable means to: Ohio EPA, 50 West Town Street, Suite 700, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer, and Ohio EPA, Central District Office, 50 West Town Street, Suite 700, Columbus, Ohio 43216-1049, Attention: DERR Site Coordinator for Menard's Property.

Scope of Covenant

5. The Covenant provided in Order No. 1 shall only apply to the approximately 16.07- acre Property described in the NFA Letter, these Findings and Orders, and the Exhibits attached hereto, upon which the investigational and remedial activities specified in the NFA Letter were conducted.
6. Pursuant to ORC 3746.12(B), the Covenant shall remain in effect for as long as the Property continues to comply with the applicable standards upon which the Covenant is based, as referenced in these Findings and Orders.
7. Pursuant to ORC 3746.05, any use of the Property that does not comply with the institutional controls identified herein (i.e., the activity and use limitations contained in the Environmental Covenant), voids the Covenant on and after the date of the commencement of the noncomplying use.
8. The Covenant shall not apply to releases of hazardous substances or petroleum:
 - a. That occur after the issuance of the NFA Letter to the Volunteer.
 - b. On or emanating from the Property, that are not identified and addressed in the Phase I Property Assessment or the Phase II Property Assessment of the NFA Letter.
 - c. For which investigational or remedial activities were conducted that were not in compliance with ORC Chapter 3746 or OAC Chapter 3745-300.
9. The Covenant shall not apply:
 - a. To claims for natural resource damages the State may have pursuant to Sections 107 or 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9607 and 9613, as amended
 - b. To claims the State may have pursuant to Section 107 of CERCLA, 42 U.S.C. 9607, as amended, for costs other than those for damages to natural resources, provided that the State incurs those other costs as a result of an action by the United States Environmental Protection Agency.

- c. As otherwise specifically provided in ORC Chapter 3746, including but not limited to obligations arising under other applicable laws and hazardous waste generator closure obligations of the Volunteer for the accumulation areas at the Property under the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq., as amended, or ORC Chapter 3734, or the regulations adopted thereunder.
10. Nothing in ORC Chapter 3746 limits the authority of the Director to act under ORC 3734.13 and 3734.20 to 3734.23, or 3745.12 or to request that a civil action be brought pursuant to the ORC or common law of the State to recover the costs incurred by Ohio EPA for investigating or remediating a release or threatened release of hazardous substances or petroleum at or from the Property, when the Director determines that the release or threatened release poses an imminent and substantial threat to public health or safety or the environment.
11. Nothing in the Covenant shall be construed to limit or waive the Director's authority to revoke the Covenant in response to any of the circumstances for revocation of a covenant not to sue, as provided in ORC Chapter 3746 and OAC Chapter 3745-300.

Ohio EPA Access to Property

12. Pursuant to ORC 3746.21 or 3746.171 or the Environmental Covenant, authorized representatives of the Director shall be granted access to the Property for inspection or investigation purposes, including but not limited to determining whether the Property is being used in compliance with the activity and use limitations contained in the Environmental Covenant.

Transfer

13. Pursuant to ORC 3746.14 and OAC 3745-300-13(K), the NFA Letter and the Covenant/Findings and Orders may be transferred to any person by assignment or in conjunction with the acquisition of title to the Property.

IT IS SO ORDERED:



Chris Korleski, Director
Ohio Environmental Protection Agency

SEP 29 2009

Date

Menard Property
Director's Final Findings and Orders / Covenant Not to Sue
Exhibit pages

Exhibit 1
Legal Description

Menard Property
Director's Final Findings and Orders / Covenant Not to Sue
Exhibit pages

Exhibit 2
Property Location Map



Site Name: <u>Menards</u> Address: <u>1649 Morse Road</u> <u>Columbus, Oh 43229</u> Lat/ Long: <u>40.0588222/ -82.9701528</u> Scale: <u>1.0 in:581 ft</u>	Target Quad Name: <u>Northeast Columbus</u> Map Year: <u>1964</u> Photorevised: <u>1982</u> Series: <u>7.5</u>
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Environmental Technical Services
975 Eastwind Drive, Suite 190
Westerville, OH 43081
Office: (614) 818 - 5200 Fax: (614) 818 - 5219

Menard Property
Director's Final Findings and Orders / Covenant Not to Sue
Exhibit pages

Exhibit 3
Executive Summary

1.0 EXECUTIVE SUMMARY

The Menards property was historically a part of the Northland Mall, a multi-tenant retail shopping plaza situated on the southeast corner of Morse Road and Karl Road. The Mall was developed in 1960 by the Federated Department Stores (currently bankrupt).

The Mall site currently consists of an approximate 173,000 square foot two-story vacant department store (former JCPenney), a 32,000 square foot cinema building (future site of the Franklin County Dog Shelter), concrete sidewalks, asphalt parking areas and streets, graded areas, mowed and maintained grassy areas, overgrown areas, a retention basin, and landscaped areas.

The west side of the Mall site (former Lazarus building) has been redeveloped which currently houses the State of Ohio Department of Taxation. The former JCPenney building is undergoing renovations to be utilized by Vaud-Villities, a theater production company. Future plans for the Mall site include mix-use buildings, including retail, office, and restaurants with possible retirement housing on the second floor of select buildings.

Menard, Inc., the current property owner, purchased an approximate 16.07 acre parcel out of the original approximate 80 acre Mall property in 2008. Menard, Inc. intends on constructing a home improvement store on the property. The Menards property is located in the vicinity of the former Northland Mall southern parking lot (~3.71 acres), the footprint of the former Sears Department Store and associated parking areas, and an area once utilized as the Mall's detention basin (~12.36 acres). The Menards property excludes the former Sears Auto Center, which was located adjacent to the north of the subject property.

According to the Phase I Property Assessment (PA) conducted by L&A and information provided through government agencies and the property owner, the following three areas of concern were identified: 1) utilization of fill soil from off property sources; 2) potential contaminated soil migration from the Sears Auto Center onto the Menards property, and; 3) the potential for contaminated groundwater underlying the Sears Auto Center to migrate onto the Menards property.

It should be recognized that the aforementioned Phase I PA was completed for the entire Mall property. Subsequent to L&A's Phase II sampling activities of the entire Mall property, L&A was informed that an Ohio EPA No Further Action/Covenant Not to Sue will only be pursued for the Menards property at this time.

To determine whether applicable standards are met in all identified areas and affected media within those areas, or to determine if remedial activities conducted in accordance with OAC 3745-300-15 at the property meet or will achieve applicable standards based on future commercial use of the property, L&A advanced eleven (11) soil borings on the Menards property, three (3) of which were converted to monitoring wells. A total of seventeen (17) soil samples and six (6) groundwater samples were collected.

Five (5) soil borings (MW-6, MW-7, B-6, B-7, and B-8) were advanced on the northern portion of the property, two (2) of which were converted to monitoring wells (MW-6 and MW-7), to determine if contamination from the former Sears Auto Center migrated onto the Menards property. A third soil boring was converted to a monitoring well (MW-8) on the southwestern portion of the property as the down gradient monitoring well. Soil borings (B-1 through B-5) were advanced at various areas on the property to determine if soil deposited onto the site was clean fill.

This investigation was a part of a larger investigation of the entire Mall site. The investigation of the entire Mall site included the advancement of twenty-one (21) soil borings, ten (10) of which were converted to monitoring wells. The larger investigation yielded thirty-two (32) soil samples and twenty (20) groundwater samples. Eight (8) of the aforementioned borings were advanced on the adjacent property to the north (former Sears Auto Center), three (3) of which were converted into monitoring wells. The analytical results of the soil and groundwater samples collected throughout the entire Mall site are consistent with the findings of the Menards property.

All seventeen (17) soil samples collected on the Menards property contained minute amounts of chemicals of concern (CoC). Analytical results indicate that CoC's detected, do not exceed the values listed in OAC 3745-300-08 Table II: Generic Direct-Contact Soil Standards for Carcinogenic and Noncarcinogenic Chemicals of Concern – Commercial and Industrial Land Use Categories. Further analysis of the analytical results, indicate a homogeneous distribution of the detected CoC's throughout the soil profile. Additionally, the Cumulative Cancer and Non-Cancer Risk Ratios calculated for the detected CoC's do not exceed 1. By pooling the analytical data and selecting the highest detected concentration of each CoC in the 0-2 foot and 0-6 foot point of compliance zones to calculate the Cancer and Non-Cancer Risk Ratios, L&A has demonstrated that the risk based criteria is not exceeded.

Minute amounts of TPH (0.031 to 0.040ppm) were detected in the soils on the Menards property. Since no TPH source was found on site, the potential for TPH to leach from the soil to the groundwater interface is not an applicable pathway on the Menards property.

Under OAC 3745-300-07(I)(a)(i)(b) and (c), the two foot point of compliance was assessed as well as depths which are reasonably anticipated to be disturbed during construction activities. In order to evaluate the construction/excavation point of compliance, soil samples were collected from depths where anticipated construction activities would likely occur (6 feet Bgs).

The CoC's detected in the groundwater do not exceed the values in OAC 3745-300-08 Table V or VI: Unrestricted Potable Use Standards (UPUS). Additionally, the Cumulative Non-Cancer Risk Ratios calculated for the detected CoC's do not exceed 1. Again, L&A pooled the analytical data and selected the highest detected concentration for each CoC to calculate the Non-Cancer Hazard Ratio. Additionally, L&A compared the highest concentration of the each CoC detected in the soil to Soil Screening Levels (SSLs) listed in the U.S. EPA *Soil Screening Guidance: Technical Background Document*, July 1996 to demonstrate that CoC's in the soil will not leach to ground water in sufficient mass to cause UPUS values to be exceeded. Through comparison of property soil concentrations to SSLs (using a DAF of 1) and a weight of evidence demonstration, it is reasonable to assume that concentrations of CoC's in the soils will not cause UPUS values to be exceeded.

Low carbon fraction TPH (C6 – C12) was detected in all six (6) groundwater samples collected beneath the Menards property. No individual constituents of BTEX, or its surrogate associated with

its corresponding carbon fraction, exceed the values listed in OAC 3745-300-08 Table V: Generic Unrestricted Potable Uses Standards.

The Menards property will implement activity and use limitation, in the form of a commercial land use restriction with a two-foot point of compliance.

L&A has determined that the Menards property complies with applicable standards pursuant to the Ohio EPA Voluntary Action Program.

Menard Property
Director's Final Findings and Orders / Covenant Not to Sue
Exhibit pages

Exhibit 4
Environmental Covenant

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Menard, Inc., a Wisconsin Corporation and the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Ohio Revised Code ("ORC") §§5301.80 to 5301.92 for the purpose of subjecting the Property to the activity and use limitations set forth herein.

Whereas, Menard, Inc., having offices at 4777 Menard Drive, Eau Claire, Wisconsin 54703, has undertaken a voluntary action with respect to the Property described herein under Ohio's Voluntary Action Program ("VAP"), pursuant to ORC Chapter 3746 and Ohio Administrative Code ("OAC") Chapter 3745-300;

Whereas, the Property is owned by Menard, Inc. ("Owner");

Whereas, the voluntary action remedy for the Property includes the activity and use limitations set forth in this Environmental Covenant; Certified Professional, Nichole Lashley, Certified Professional #302, issued a revised no further action letter for the Property on July 24, 2009 ("NFA Letter") and submitted the NFA Letter to Ohio EPA on July 24, 2009, in support of a request for a covenant not to sue (NFA Letter No. 09 NFA 354);

Whereas, the activity and use limitations support the issuance of the NFA Letter and a covenant not to sue for the Property. The activity and use limitations protect against exposure to the hazardous substances in soil on the Property;

Whereas, the 16-acre site is located at 1649 Morse Road in Columbus, Franklin County, Ohio. The Property was part of the Northland Mall retail shopping center. Environmental investigations of the site have been completed under the Ohio VAP. Phase I and II Property Assessments have been completed. Chemicals of concern based on the environmental investigations include primarily volatile organic compounds, semi-volatile organic compounds, and total petroleum hydrocarbons. Based on the findings of the Phase II Property Assessment, no unacceptable risks are associated with the use of the Property for commercial purposes, with the limitations of activities described in this Environmental Covenant;

Whereas, an overview of the voluntary action is contained in the NFA Letter Executive Summary. The Executive Summary may be reviewed as an exhibit to the Covenant Not to Sue ("CNS") issued for the Property and recorded with the Franklin County Recorder's Office. The CNS, Executive Summary, or complete NFA Letter for the Property may also be reviewed by contacting the Records Management Officer, Ohio EPA, Division of Emergency and Remedial Response, Voluntary Action Program, P.O. Box 1049, Columbus, Ohio 43216-1049, or by telephone at (614) 644-2924, or the Central District Office at 50 West Town Street, Columbus, Ohio 43215, or by telephone at (614) 728-3778, or Menard, Inc. at 4777 Menard Drive, Eau Claire, Wisconsin 54703, or by telephone at (715) 876-5911.

Now therefore, Menard, Inc. and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§5301.80 to 5301.92.
2. Property. This Environmental Covenant concerns *Franklin County Tax Parcel 010-286106* owned by Menard, Inc. located at 1649 Morse Road, Columbus, in Franklin County, Ohio, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein ("Property").
3. Owner. Menard, Inc, a Wisconsin Corporation ("Owner"), which is located at 4777 Menard Drive, Eau Claire, Wisconsin 54703, is the owner of the Property.
4. Holder. Owner, whose address is listed above, is the holder of this Environmental Covenant.
5. Activity and Use Limitations. As part of the voluntary action described in the NFA Letter, the Owner hereby imposes and agrees to comply with the following activity and use limitation:

Commercial Land Use Restriction. The Property is hereby restricted to "commercial" land use, as defined in OAC 3745-300-08(C)(2)(c)(ii) (effective March 1, 2009).

OAC 3745-300-08(B)(2)(c)(ii) defines commercial land use as "land use with potential exposure of adult workers during a business day and potential exposures of adults and children who are customers, patrons or visitors to commercial facilities during the business day. Commercial land use has potential exposure of adults to dermal contact with soil, inhalation of vapors and particles from soil and ingestion of soil. Examples of commercial land uses include but are not limited to warehouses; retail gasoline stations; retail establishments; professional offices; hospitals and clinics; religious institutions; hotels; motels; and parking facilities.
6. 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 Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.
7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC §5301.91. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law. Pursuant to ORC §3746.05, if the Property or any portion thereof is put to a use that does not comply with this Environmental Covenant, the CNS issued for the Property by the Director of Ohio EPA under ORC

§3746.12 is void on and after the date of the commencement of the noncomplying use.

8. Rights of Access. The Owner hereby grants to Ohio EPA, its agents, contractors, and employees and the city of Columbus and Franklin County the right of access to the Property for implementation or enforcement of this Environmental Covenant.

9. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitation set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 2009, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE FRANKLIN COUNTY RECORDER ON _____, 2009, IN [DOCUMENT _____, or BOOK ____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATION: A COMMERCIAL LAND USE RESTRICTION.

The Owner shall notify Ohio EPA within ten (10) days after each conveyance of an interest in any portion of the Property. Owner's notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

10. Representations and Warranties. The Owner hereby represents and warrants to the other signatories hereto:

A. That the Owner is the sole owner of the Property;

B. That the Owner holds fee simple title to the Property, which is subject to the interests or encumbrances identified in Exhibit B attached hereto and incorporated by reference herein;

C. That the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;

D. That the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property and notified such persons of the Owner's intention to enter into this Environmental Covenant; and

E. That this Environmental Covenant 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.

11. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a Transferee; and the Ohio EPA, pursuant to ORC §5301.90 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA and the Owner or Transferee of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee shall file such instrument for recording with the Franklin County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to Ohio EPA.

12. 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.

13. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

14. 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 Property, with the Franklin County Recorder's Office.

15. 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 Property with the Franklin County Recorder.

16. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA; the City of Columbus, and Franklin County.

17. Notice. Unless otherwise notified in writing by or on behalf of the current owner or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

Manager
Division of Emergency and Remedial Response
Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal
this 24th day of September, 2009.



Charma Diane Casteel
Notary Public

CHARMA DIANE CASTEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES

May 10, 2014

This instrument prepared by:

Mark J. Navarre, Esq.
Ohio EPA Legal Office
50 West Town Street
Columbus, Ohio 43216



State of Ohio Environmental Protection Agency

RECEIVED

SEP 30 2009

Interoffice Memorandum

OHIO EPA/CDO

To: Shelley Wilson, Executive Administrator for Real Property, Tax Equalization Division, Dept. of Taxation

From: Amy Alduino, Office of Urban Development, Dept. of Development
Chris Korleski, Director, Ohio Environmental Protection Agency

Date: SEP 29 2009

Subject: Covenant Not to Sue Issued to Menard, Inc. for the Menard's Property

As Director of the Ohio Environmental Protection Agency, I certify that Menard, Inc. has performed investigational and remedial activities at the property listed below and has been issued a covenant not to sue under the authority of Ohio Revised Code (ORC) Chapter 3746. This information is being provided in satisfaction of ORC 5709.87(B).

Property name: Menard Property

Property address: 1649 Morse Road, Columbus, Ohio 43224

Property owner: Menard, Inc.

Property owner address: 4777 Menard Dr., Eau Claire, WI 54703

Parcel number(s): 010-286106

County: Franklin

Taxing District: Columbus City school district

SEP 29 2009

Date Covenant Not to Sue Issued: _____

Attached, for your information, is a copy of the legal description of the property.

Menard, Inc.
Menard Property 1649 Morse Rd., Columbus
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If additional information regarding the property or the voluntary action is required, I suggest you first contact Nichole Lashley, the certified professional for the property, at (614) 818-5200 or (937) 224-0164. In the alternative, you can contact Robin Roth with the Ohio Environmental Protection Agency at (614) 466-2476.

c: Aaron Morissey, Menard, Inc.
Nichole Lashley, Certified Professional, Lawhon & Associates, Inc.
Clarence E. Mingo, II, Franklin County Auditor

ec: Shannon Landrum, Department Manager, Lawhon & Associates, Inc.
slandrum@lawhon-assoc.com
Tiffani Kavalec, ACRE Manager, Ohio EPA
Robin Roth, DERR-CDO
Mark Navarre, Legal Office
CO DERR-VAP Files #125002632002
CDO-DERR Files #125002632002

