



Joan B. Sasine
Direct: 404.572-6647
Fax: 404.572-6999
joan.sasine@bryancave.com

November 13, 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
ARTICLE NO. 7012 2210 0000 5267 9486

David Reuland
Response & Remediation
Georgia Environmental Protection Division
2 Martin Luther King Jr. Drive
Suite 1462 East
Atlanta, Georgia 30334-9000

Re: BMW Automotive Site
Decatur, Georgia
HSI Site #10847

Dear Mr. Reuland:

Enclosed is a file stamped copy of the environmental covenant containing activity and use limitations for the above referenced HSI Site. The entities listed in O.C.G.A. 44-16-7(a) 1 through 6 were also sent a file stamped copy. Copies of the letters are attached.

If you have any questions, please do not hesitate to contact me.

Very truly yours, *by Carla [unclear],
Joan B. Sasine w/expressed permission*
Joan B. Sasine

JBS/cl
Enclosures

cc: Bill Williams

Bryan Cave LLP
One Atlantic Center
Fourteenth Floor
1201 W. Peachtree St., NW
Atlanta, GA 30309
Phone (404) 572-6600
Fax (404) 572-6999
www.bryancave.com

- Bryan Cave Offices**
- Atlanta
 - Boulder
 - Charlotte
 - Chicago
 - Colorado Springs
 - Dallas
 - Denver
 - Frankfurt
 - Hamburg
 - Hong Kong
 - Irvine
 - Jefferson City
 - Kansas City
 - London
 - Los Angeles
 - New York
 - Paris
 - Phoenix
 - San Francisco
 - Shanghai
 - Singapore
 - St. Louis
 - Washington, DC

Bryan Cave International Consulting
A TRADE AND CUSTOMS CONSULTANCY
www.bryancaveconsulting.com

- Bangkok
- Beijing
- Jakarta
- Kuala Lumpur
- Manila
- Shanghai
- Singapore
- Tokyo

2013179125

DEED BOOK

24116 Pg 19



Filed and Recorded:

11/4/2013 4:24:22 PM

Debra DeBerry

Clerk of Superior Court
DeKalb County, Georgia

After Recording Return to:

Joan B. Sasine, Esq.
Bryan Caye LLP
1201 West Peachtree Street, NW
Fourteenth Floor
Atlanta, Georgia 30309

Environmental Covenant

This instrument is an Environmental Covenant executed pursuant to the Georgia Uniform Environmental Covenants Act, OCGA § 44-16-1, *et seq.* This Environmental Covenant subjects the Property identified below to the activity and/or use limitations specified in this document. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded in accordance with OCGA § 44-16-8(a).

Fee Owner of Property/Grantor:

Asbury Atlanta BM L.L.C.
2905 Premiere Parkway
Suite 300
Duluth, Georgia 30097

Grantee/Holder:

Chris Associates of Georgia, LLLP
c/o Neil Christman
5995 W. Andechs Summit
Duluth, Georgia 30097

**Grantee/Entity with
express power to enforce:**

State of Georgia
Department of Natural Resources
Environmental Protection Division
2 Martin Luther King Jr. Drive, SE
Suite 1152 East Tower
Atlanta, Georgia 30334

Other Parties with interest in the Property:

BMW Financial Services, Inc. (mortgage holder)

Property:

The property subject to this Environmental Covenant is the BMW Automotive Site property (hereinafter "Property"), located in Decatur, DeKalb County, Georgia. The following tax parcels are subject to this Environmental Covenant:

<u>Parcel Number</u>	<u>Address</u>	<u>Acreage</u>
18-049-12-030	1628 Church Street	0.24
18-049-12-019	1626 Church Street	0.91
18-049-12-018	1612 Church Street	1.46
18-049-12-029	1606 Church Street	1.931
18-049-12-026	1586 Church Street	2.32

A complete legal description of the above parcels is attached as Exhibit A and a tax parcel map is attached as Exhibit B.

Tax Parcel Number(s):

18-049-12-030; 18-049-12-019; 18-049-12-018; 18-049-12-029; and 18-049-12-026 of DeKalb County, Georgia

Name and Location of Administrative Records:

The corrective action at the Property that is the subject of this Environmental Covenant is described in the following document[s]:

- Corrective Action Plan dated March, 2009
- Revised Corrective Action Plan dated February, 2013
- Compliance Status Report ("CSR") dated May, 2013

These documents are available at the following locations:

Georgia Environmental Protection Division
Response and Remediation Program
2 MLK Jr. Drive, SE, Suite 1462 East Tower
Atlanta, Georgia 30334
M-F 8:00 AM to 4:30 PM excluding state holidays

Description of Contamination and Corrective Action:

This Property has been listed on the state's hazardous site inventory and has been designated as needing corrective action due to the presence of hazardous wastes, hazardous constituents, or hazardous substances regulated under state law. Contact the property owner or the Georgia Environmental Protection Division for further information concerning this Property. This notice is provided in compliance with the Georgia Hazardous Site Response Act.

This Environmental Covenant is made pursuant to the Georgia Uniform Environmental Covenants Act, O.C.G.A. § 44-16-1 *et seq.* by Asbury Atlanta BM L.L.C., its successors and assigns, Chris Associates of Georgia, LLLP and the State of Georgia, Department of Natural Resources, Environmental Protection Division (hereinafter "EPD"), its successors and assigns. This Environmental Covenant is required because a release of chromium, lead, tetrachloroethylene and its degradation

products occurred on the Property prior to the ownership of Asbury. Chromium, lead, tetrachloroethylene and its degradation products are "regulated substances" as defined under the Georgia Hazardous Site Response Act, O.C.G.A. § 12-8-90 *et seq.*, and the rules promulgated thereunder (hereinafter "HSRA" and "Rules", respectively). The Corrective Action consists of institutional controls (limitation on use of the property to non-residential activities) to protect human health and the environment.

Grantor, Asbury Atlanta BM L.L.C. (hereinafter "Asbury"), hereby binds Grantor, its successors and assigns to the activity and use restriction(s) for the Property identified herein and grants such other rights under this Environmental Covenant in favor Chris Associates of Georgia, LLLP (hereinafter "Chris Associates") and EPD. EPD shall have full right of enforcement of the rights conveyed under this Environmental Covenant pursuant to HSRA, O.C.G.A. § 12-8-90 *et seq.*, and the rules promulgated thereunder. Failure to timely enforce compliance with this Environmental Covenant or the use or activity limitations contained herein by any person shall not bar subsequent enforcement by such person and shall not be deemed a waiver of the person's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict EPD from exercising any authority under applicable law.

Asbury makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, pursuant to O.C.G.A. § 44-16-5(a); is perpetual, unless modified or terminated pursuant to the terms of this Covenant pursuant to O.C.G.A. § 44-16-9; and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereinafter "Owner"). Should a transfer or sale of the Property occur before such time as this Environmental Covenant has been amended or revoked then said Environmental Covenant shall be binding on the transferee(s) or purchaser(s).

The Environmental Covenant shall inure to the benefit of Chris Associates, EPD, Asbury and its respective successors and assigns and shall be enforceable by the Director or his agents or assigns, its successors and assigns, Chris Associates or its successors and assigns, and other party(ies) as provided for in O.C.G.A. § 44-16-11 in a court of competent jurisdiction.

Activity and/or Use Limitation(s)

1. **Registry.** Pursuant to O.C.G.A. § 44-16-12, this Environmental Covenant and any amendment or termination thereof, may be contained in EPD's registry for environmental covenants.
2. **Notice.** The Owner of the Property must give thirty (30) day advance written notice to EPD of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Corrective Action. The Owner of the Property must also give thirty (30) day advance written notice to EPD of the Owner's intent to change the use of the Property, apply for building permit(s), or propose any site work that would affect the Property.
3. **Notice of Limitation in Future Conveyances.** Each instrument hereafter conveying an interest in the Property subject to this Environmental Covenant shall contain a notice of the activity and use limitations set forth in this Environmental Covenant and shall provide the recorded location of the Environmental Covenant.

4. Periodic Reporting. Annually, by no later than December 31st following the effective date of this Environmental Covenant, the Owner shall submit to EPD an Annual Report with a certification of non-residential use of the Property, and documentation stating whether or not the activity and use limitations in this Environmental Covenant are being abided by.
5. Activity and Use Limitation. The Property shall be used only for non-residential uses, as defined in Section 391-3-19-.02 of the Rules and defined in and allowed under DeKalb County's zoning regulations as of the date of this Environmental Covenant. Any residential use on the Property shall be prohibited. Any activity on the Property that may result in the release or exposure to the regulated substances that were contained as part of the Corrective Action, or create a new exposure pathway, is prohibited.
6. Groundwater Limitation. The use or extraction of groundwater beneath the Property for drinking water or for any other use shall be prohibited until HSRA regulated substances are treated to below the applicable RRS for groundwater. Any extracted groundwater from construction or utility work dewatering activities should be managed and disposed of in accordance with applicable rules and regulations. Should any dewatering of groundwater construction or utility work purposes be necessary, a sanitary sewer system discharge permit should be acquired from DeKalb County. The extracted water should be pretreated to DeKalb County requirements prior to discharge into the sanitary sewer system. Extracted groundwater should not be discharged into the storm water system or surface waters. All management of impacted groundwater should be done in accordance with all applicable local, state and federal rules and regulations governing the management of such material. Prior to conducting construction or subsurface utility work that may result in exposure to groundwater, a worker must have appropriate HAZWOPER training per OSHA's Hazardous Waste Operations and Emergency Response Standard 29 CFR 1910.120, and perform the work in accordance with a Health and Safety Plan prepared by a qualified safety professional. All management of impacted soil or groundwater performed in the execution of work should be done in accordance with this section.
7. Groundwater Monitoring. The Holder shall sample and analyze the following wells annually: MW-1, MW-2, B-5A, and SB-17 for five (5) years or a lesser period if approved by EPD unless the Director determines that further monitoring is necessary to protect human health and the environment. Test results shall be submitted to EPD on December 31 of each year.
8. Permanent Markers. Permanent markers on each side of the Property shall be installed and maintained that delineate the restricted area as specified in Section 391-3-19-.07(10) of the Rules. Disturbance or removal of such markers is prohibited. See Exhibit C.
9. Right of Access. In addition to any rights already possessed by EPD and/or Chris Associates, the Owner shall allow authorized representatives of EPD and/or Chris Associates the right to enter the Property at reasonable times for the purpose of evaluating the Corrective Action; to take samples, to inspect the Corrective Action conducted at the Property, to determine compliance with this Environmental Covenant, and to inspect records that are related to the Corrective Action.
10. Recording of Environmental Covenant and Proof of Notification. Within thirty (30) days after the date of the Director's signature, the Owner shall file this Environmental Covenant with the Recorders of Deeds for each County in which the Property is located, and send a file stamped copy of this Environmental Covenant to EPD within thirty (30) days of recording. Within that time period, the Owner shall also send a file-stamped copy to each of the following: (1) Chris Associates, (2) each person holding a recorded interest in the Property subject to the covenant, (3) each person in possession of the real property subject to the covenant, (4) each municipality, county, consolidated government, or other unit of local government in which real property subject to the covenant is located, and (5) each owner in fee simple whose property abuts the property subject to the Environmental Covenant.

11. Termination or Modification. The Environmental Covenant shall remain in full force and effect in accordance with O.C.G.A. § 44-5-60, unless and until the Director determines that the Property is in compliance with the applicable Risk Reduction Standards, as defined in Georgia Rules of Hazardous Site Response (Rules) Section 391-3-19-.07 whereupon the Environmental Covenant may be amended or revoked in accordance with Section 391-3-19-08(7) of the Rules and O.C.G.A. § 44-16-1 *et seq.*
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. No Property Interest Created in EPD. This Environmental Covenant does not in any way create any interest by EPD in the Property that is subject to the Environmental Covenant. Furthermore, the act of approving this Environmental Covenant does not in any way create any interest by EPD in the Property in accordance with O.C.G.A. § 44-16-3(b).

Representations and Warranties.

Grantor hereby represents and warrants to the other signatories hereto:

- a) That the Grantor 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;
- b) That the Grantor is the sole owner of the Property and holds fee simple title which is free, clear and unencumbered except as provided herein;
- c) That the Grantor has identified all other parties that hold any interest (e.g., encumbrance) in the Property and notified such parties of the Grantor's intention to enter into this Environmental Covenant;
- d) That this Environmental Covenant will not materially violate, contravene, or constitute a material default under any other agreement, document or instrument to which Grantor is a party, by which Grantor may be bound or affected;
- e) That the Grantor has served each of the people or entities referenced in paragraph 10 above with an identical copy of this Environmental Covenant in accordance with O.C.G.A. § 44-16-4(d).
- f) That this Environmental Covenant will not materially violate or contravene any zoning law or other law regulating use of the Property; and
- g) That this Environmental Covenant does not authorize a use of the Property that is otherwise prohibited by a recorded instrument that has priority over the Environmental Covenant.
- h) That Grantor did not cause or contribute to any of the contamination on the Property that has caused the filing of this Environmental Covenant.

Notices.

Any document or communication required to be sent pursuant to the terms of this Environmental Covenant shall be sent to the following persons:

Georgia Environmental Protection Division
 Branch Chief
 Land Protection Branch
 2 Martin Luther King Jr. Drive SE
 Suite 1154 East Tower
 Atlanta, Georgia 30334

Asbury Atlanta BM L.L.C.
2905 Premier Parkway, Suite 300
Duluth, Georgia 30097
Attn: General Counsel and V.P. of Real Estate

Chris Associates of Georgia, LLLP
c/o Joan B. Sasine, Esq.
Bryan Cave LLP
1201 West Peachtree Street, NW
Fourteenth Floor
Atlanta, Georgia 30309

Grantor has caused this Environmental Covenant to be executed pursuant to The Georgia Uniform Environmental Covenants Act, on the 22nd day of October, 2013.

GRANTOR:

ASBURY ATLANTA BM L.L.C.

Signed, sealed and delivered
in the presence of:

Maggie G
Unofficial Witness

By: [Signature]
Name: George Kardis
Title: Vice President

SHARON REDMOND
Notary Public



ATTEST:

My Commission Expires: 2/27/17

By: Wendi Pierce
Name: Wendi Pierce
Title: Purchasing manager
Dated: 8/30/13

GRANTEE/HOLDER:

CHRIS ASSOCIATES OF GEORGIA, LLLP

Signed, sealed and delivered
in the presence of:

[Signature]
Unofficial Witness

[Signature]
Notary Public

By: [Signature]
Name: Neil Christman
Title: Mgr

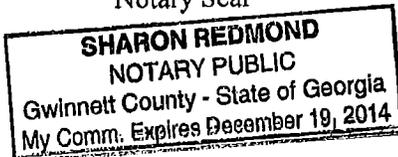
ATTEST:

My Commission Expires:

Notary Seal

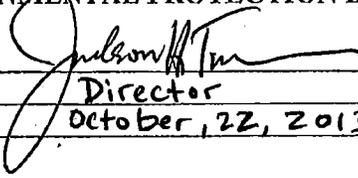
By: AUCA DIAZ
Name: [Signature]
Title: Witness

Dated: 9/16/13



GRANTEE/ENTITY WITH
EXPRESS POWER TO ENFORCE:

STATE OF GEORGIA,
DEPARTMENT OF RESOURCES,
ENVIRONMENTAL PROTECTION DIVISION

By: 
Its: Director
Dated: October, 22, 2013

Environmental Covenant
BMW Automotive, Site No 10847

EXHIBIT A**LEGAL DESCRIPTION**

All that tract or parcel of land lying and being in Land Lot 49 of the 18th District DeKalb County, Georgia and being more particularly described as follows:

Beginning at an iron pin on the Northwesternly right-of-way of Church Street (82' R/W), said point being located 496.84 feet, as measured along said Northwesternly right-of-way, from the intersection of said right-of-way and the North right-of-way of North Decatur Road; Thence proceed North 60°42'01" West for 484.72 feet to an iron pin found (1 inch crimp top); Thence proceed North 06° 35'14" East for 205.94 feet to an iron pin found (5/8 inch rebar); Thence proceed North 06°42'23" East for 120.90 feet to an iron pin found (1 inch open top pipe); Thence proceed South 85°39'51" East for 218.20 feet to a point; Thence proceed South 85°29'50" East for 602.88 feet to an iron pin set on the Northwesternly right-of-way of Church Street; Thence proceed along said Northwesternly right-of-way 101.51 feet following the arc of a curve to the right (said arc having a radius of 1076.97 feet and being subtended by a chord line running South 32°26'59" West for 101.47 feet) to a point; Thence continue along said Northwesternly right-of-way 163.89 feet following the arc of a curve to the right (said arc having a radius of 1076.97 feet and being subtended by a chord line running South 39°30'33" West for 163.73 feet) to a point, thence continuing along said right-of-way South 43°52'07" West for 64.19 feet to an iron pin found (1/2 inch rebar); Thence continuing along said right-of-way South 43°52'07" West for 332.65 feet to an iron pin found (5/8 inch rebar) on to a point and the point being the Point of Beginning.

Said tract contains 6.861 acres of land, more or less.

As shown on ALTA/ACSM Land Title Survey for Atlanta Real Estate Holdings L.L.C., prepared by Patterson & Dewar Engineers, Inc., bearing the seal and certification of Tony G. Kirby, Georgia Registered Land Surveyor No. 2988, dated February 26, 2013.

EXHIBIT B

Tax Parcel Map

EXHIBIT C
RESTRICTED AREA

SUBJECT TO ENVIRONMENTAL COVENANT

CALL PROPERTY OWNER

OR

**THE GEORGIA ENVIRONMENTAL
PROTECTION DIVISION PRIOR
TO COMMENCING ANY LAND DISTURBING
ACTIVITY COMING INTO CONTACT WITH
GROUNDWATER.**