

Hazardous Waste Section  
File Room Document Transmittal Sheet

Your Name: Mary Siedlecki  
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Document Group: Corrective Action (CA)  
Document Type: Other (O)  
Description: Environmental Covenant for 1415 South Bloodworth Street, Raleigh,  
North Carolina  
Date of Doc: 4/28/2006  
Author of Doc: Ashland, Inc.

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NCD088560032

Date Recieved by File Room:

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WAKE COUNTY, NC 595  
LAURA M RIDDICK  
REGISTER OF DEEDS  
PRESENTED & RECORDED ON  
04/28/2006 AT 12:49:59  
PRESENTED & RECORDED ON  
04/28/2006 AT 12:49:59

BOOK:011930 PAGE:00944 - 00954

**THIS DOCUMENT TO BE RECORDED IN THE RECORDS OF THE CLERK AND  
COUNTY RECORDER FOR THE COUNTY OF WAKE, NORTH CAROLINA**

### **ENVIRONMENTAL COVENANT**

Memorandum of Covenants Regarding Property located at 1415 South Bloodworth Street, Raleigh, Wake County, North Carolina 27610, and being more particularly described on Exhibit A attached hereto ("Property"), made and entered into this 28<sup>th</sup> day of April, 2006.

WHEREAS, **SELECT COMMERCIAL, LLC**, a North Carolina limited liability company with a mailing address of 6300A Westgate Road, Raleigh, North Carolina 27617 Attention: Paul E. Schubert ("Purchaser") and **ASHLAND INC.**, a Kentucky corporation with a mailing address of P.O. Box 14000, Lexington, KY 40512, Attention: Real Estate Department ("Owner") entered into a Purchase Offer dated February 22, 2006;

WHEREAS, a condition to Closing in said Purchase Offer was the negotiation and execution of a mutually acceptable Memorandum of Covenants respecting certain environmental matters and containing general terms and conditions as outlined in Exhibit C to said Purchase Offer;

WHEREAS, this Environmental Covenant is the negotiated document, has been agreed to and executed by Owner and Purchaser concurrently with the Closing of the sale transaction contemplated in the Purchase Offer, and is intended by both parties to be binding and to supersede Exhibit C to the Purchase Offer;

WHEREAS, this Environmental Covenant does not modify or supersede any of the other terms and conditions set forth in the Purchase Offer;

NOW, THEREFORE, intending to be fully bound, Owner and Purchaser agree as follows:

#### **I. Defined terms:**

All defined terms in this Environmental Covenant shall have the same meaning as those same defined terms in the Purchase Offer unless they are specifically defined herein.

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**Environmental Condition:** means the existence on, under or emanating from the Property of a Hazardous Material in soils, groundwater or surface water at levels or in amounts that must be Remediated (as defined hereinafter) in accordance with applicable Environmental Laws existing on the Closing Date.

**Existing Environmental Condition:** means any Environmental Condition described in the documents listed in Schedule 1 to the Purchase Offer.

**Environmental Laws:** All federal, state and local statutes, ordinances, regulations and rules relating to environmental quality, health, safety, contamination and clean-up, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq. and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. Section 136 et seq.; the Marine Protection, Research and Sanctuaries Act, 33 U.S.C. Section 1401 et seq.; the National Environmental Policy Act, 42 U.S.C. Section 4321 et seq.; the Noise Control Act, 42 U.S.C. Section 4901 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act, and Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. Section 2601 et seq.; the Atomic Energy Act, 42 U.S.C. Section 2011 et seq., and the Nuclear Waste Policy act of 1982, 42 U.S.C. Section 10101 et seq., and state lien or super lien and environmental cleanup statutes, with implementing regulations and guidelines. Environmental Laws shall also include all state, regional, county, municipal, and other local laws, regulations, and ordinances insofar as they are equivalent or similar to the federal and state laws recited above or purport to regulate Hazardous Materials.

**Release or Released:** As defined in CERCLA.

**Remediate or Remediation:** Shall mean any containment, clean up, response, treatment, removal, mitigation, abatement, elimination, monitoring or control of any Release of Hazardous Material, including but not limited to sampling, investigation, engineering, excavation, clean up and other remediation activities, installation of monitoring or production wells and equipment, inspection and monitoring of such wells and equipment, and other related activities.

## **II. Indemnities and Covenants:**

As between Owner and Purchaser, obligations pertaining to Remediation of or Response to Hazardous Material or to Environmental Conditions on, under or emanating from the Real Property shall be in accordance with this Environmental Covenant. No other provisions of the Purchase Offer or any other regulations, laws, documents shall apply with respect to these matters, and enforcement of this Environmental Covenant shall be Purchaser's sole remedy with respect to the matters addressed herein.

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**A. Owner's Indemnity; Purchaser's Release:** Owner shall be responsible for the Remediation of the Existing Environmental Conditions and shall indemnify, defend and hold Purchaser harmless against any and all losses, liabilities, expenses, fines, penalties, and damages, actions or claims (including, without limitation, amounts paid in settlement, reasonable costs of investigation, environmental studies and tests, reasonable attorneys' fees and other legal expenses) suffered or incurred by Purchaser or any of its officers, shareholders, directors or employees arising out of or with respect to the Existing Environmental Conditions. Owner shall further indemnify Purchaser against any and all liabilities, liens, losses, obligations, causes of action, judgments, damages, cost and expenses of any nature that Purchaser may suffer or incur as a result of any Remediation activity conducted on the Property after the Closing by Owner or its authorized employees, agents, representatives, consultants contractors and attorneys except to the extent that same are caused by the negligence or willful misconduct of Purchaser.

In consideration for this obligation and indemnity, Purchaser releases Owner from any other claim or cause of action of any nature whatsoever relating to or arising from such Existing Environmental Conditions which Purchaser may now or in the future have. Owner reserves the right to pursue any third parties who may be responsible for any Existing Environmental Conditions.

**B. Termination of Owner's Indemnity and Obligations:** Owner's obligations pursuant to this Environmental Covenant shall terminate upon the occurrence of one of the following events:

- (i) The issuance of a "no further action" letter or equivalent document from the United States Environmental Protection Agency ("EPA"), the North Carolina Department of Environment and Natural Resources ("DENR"), or such other governmental authority which has the power and authority to issue such a document; or
- (ii) Remediation of the Property to concentrations at or below applicable published standards or, if no such standards are published, to levels acceptable to DENR (or other governmental agency having jurisdiction) under sound environmental engineering and risk management practices for the Existing Environmental Conditions, such Remediation to be demonstrated and confirmed by soil sampling or, in the case of groundwater, by quarterly monitoring for the time period required by DENR or Environmental Laws, or, if no such requirement is in place, for a minimum period of one (1) year or such other time period as may be mutually agreed upon by the parties and generally acceptable under sound environmental engineering and risk management practices; or
- (iii) Purchaser's failure to comply in all material respects with the obligations and covenants set forth in Section D below.

**C. Right of Access to Property; Termination:** Upon Closing, Purchaser will be deemed to have granted to Owner and its authorized employees, agents, representatives, consultants, contractors, attorneys, successors and assigns, and authorized employees of EPA and DENR an irrevocable license to enter upon the Property during reasonable hours for purposes of performing Remediation on the Property. In consideration for such irrevocable license, Owner hereby covenants and agrees that all of Owner's activities performed in connection with Remediation of

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Existing Environmental Conditions on the Property will be conducted in a prudent and reasonable manner and in accordance with all applicable laws. Owner further covenants and agrees that Remediation will be undertaken in a manner to minimize any interference with Purchaser's conduct of its business on the Property. Subsequent to the Closing, and for so long as Owner has any obligations pursuant to this Environmental Covenant, Owner shall provide Purchaser with copies of all final reports, test results and other correspondence from and to EPA, DENR, or other governmental authorities concerning Remediation activities at the Real Property. The irrevocable license granted herein will terminate at such time as Owner's obligation to perform Remediation activities on the Property terminates in accordance with Section B above.

**D. Purchaser's Obligations, Indemnity and Covenants.** As a material inducement to Owner's sale of the Property to Purchaser, Purchaser agrees:

- (i) That the Property will be used for industrial and certain commercial purposes only, commercial purposes not to include any residential or quasi-residential uses such as hospitals, nursing homes, schools, day care centers and the like;
- (ii) That groundwater under the Property shall not be used for any purpose;
- (iii) That any structures to be built on the Property will not be constructed with any subsurface structures other than minimal building footings;
- (iv) That any structures to be built on the Property will include vapor intrusion controls, and any structures currently existing on the Property which Purchaser intends to keep shall be retrofitted with such vapor intrusion controls, to the extent such controls are required or agreed upon by the appropriate environmental governmental authority or Environmental Law in order to achieve a risk-based Remediation and/or a "no further action" determination as described in Section (b)(i) or (ii) above;
- (v) That Owner will have no less than sixty (60) days prior to construction to review and reasonably approve building plans with respect to location and general construction techniques in order to ensure that they are compatible with Remediation activities and use restrictions;
- (vi) That, as between Purchaser and Owner, Owner is in full control of Remediation activities at the Property as respects Existing Environmental Conditions (including with respect to timing, nature, cost, evaluation, and pace of such activities) and will be the sole contact with EPA, DENR or such other governmental environmental authorities as may have jurisdiction over the Remediation. Nothing in the foregoing is intended to prohibit Purchaser from taking any actions necessary to comply with applicable laws;
- (vii) That Owner will be seeking to implement a risk-based Remediation at the Property. Purchaser acknowledges that the performance and completion of such a Remediation may require that the use of the Property continue to be restricted as set forth in subparagraphs a. through e. above via methods including but not limited to a deed restriction approved and recorded in accordance with Section 143B-279.9 of the North Carolina General Statutes. Purchaser agrees that it will cooperate in this endeavor, will consent to such use restrictions,

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will expeditiously perform all acts reasonably necessary to effectuate such restrictions, and will not interfere in any way with Owner's endeavors to achieve a risk-based Remediation approved by EPA, DENR, or other governmental agency having jurisdiction; will not interfere in any way with Owner's endeavors to achieve a risk-based Remediation approved by EPA, DENR, or other governmental agency having jurisdiction;

- (viii) That subsequent to the Closing, and so long as Owner has any obligations pursuant to this Environmental Covenant, Purchaser will provide Owner with copies of any notices or will notify Owner of any oral notices it has provided to any government agency regarding any Release of Hazardous Materials at the Property. Except as provided in Section A above respecting the Existing Environmental Conditions, Purchaser shall forever and without limitation release, indemnify, defend and hold Owner and its officers, directors, employees, successors and assigns harmless against any and all losses, injuries, liabilities, expenses, fines, penalties, and damages, actions or claims (including, without limitation, amounts paid in settlement, reasonable costs of investigation, environmental studies and tests, reasonable attorneys' fees and other legal expenses) suffered or incurred by Owner or any of its officers, shareholders, directors or employees arising out of or with respect to: a) any Release of Hazardous Materials or any Environmental Conditions on, under or emanating from the Property; b) possession or use of the Property by Purchaser or any third party after the Closing; c) handling, transportation and disposal of contaminated media, including but not limited to native soil, fill material, and groundwater, which has been excavated, removed, or disturbed by the activities of Purchaser or any third party on the Property after the Closing. This indemnity shall include, but not be limited to, any costs and expenses arising out of damage to Owner's monitoring wells, subsurface piping, and/or other environmental remediation equipment of any kind located on the Property. Owner understands that Purchaser may need for certain monitoring and other well structures to be flush with ground level in order to allow for vehicles to pass. To the extent that this is the case and such modifications are necessary, Purchaser will notify Owner no less than thirty (30) days in advance in order that Owner's environmental consultant can approve the plans and be present when the modifications are done. Any such work shall be done at Purchaser's expense and shall further be covered by the foregoing indemnity. Under no circumstances shall any wells be relocated or moved without Owner's express written permission and approval; and
- (ix) Purchaser shall not assign this Environmental Covenant to any third party without the written consent of Owner and a specific written undertaking on the part of the proposed assignee that it will be bound by the obligations of Purchaser hereunder. Assignment of this Environmental Covenant shall not relieve Purchaser of its obligations hereunder without the express written consent of Owner. So long as the foregoing conditions are fulfilled, Owner will not unreasonably withhold its written consent to an assignment.

**E. Purchaser's Covenants To Run with Land; Duty to Enforce.** All of Purchaser's foregoing covenants in Section D hereof shall run with the land and be binding upon Purchaser and Purchaser's heirs, personal representatives, successors and assigns. Purchaser further covenants and agrees that it will take all steps necessary to ensure that any conveyance or lease of the Property, or any portion thereof, regardless of the manner in which title, interest or ownership is transferred, is subject to Purchaser's covenants under this Section D.

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**F. General Provisions.**

- (i) Governing Law. This Environmental Covenant shall be governed by and construed in accordance with, the laws of the State of North Carolina without reference to its principles of conflicts of law.
- (ii) Consultation with Counsel. Purchaser hereby acknowledges and agrees that it has fully and adequately reviewed the terms and provisions of this Environmental Covenant. Purchaser represents and warrants to Owner that it has furnished copies of this Environmental Covenant to its own independent legal counsel and has discussed with said counsel its provisions and legal effects, or that it has determined not to consult with legal counsel concerning the terms and conditions of this Contract or its legal effects.
- (iii) Counterparts. This Environmental Covenant may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement.
- (iv) Entire Agreement and Waiver. This Environmental Covenant constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, representations and understandings of the parties. No supplement, modification or amendment of this Environmental Covenant shall be binding unless executed in writing by a duly authorized officer of each of the parties. No waiver of any provision of this Environmental Covenant shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- (v) Captions. Titles and captions used in this Environmental Covenant are for convenience only and shall not be used in the interpretation of any of the provisions of this Environmental Covenant except as a general indication of the subject matter the clause is intended to address in the event of any ambiguity. As used in this Environmental Covenant, the neuter gender shall include the masculine and the feminine, the masculine and feminine genders shall be interchangeable, the singular number shall include the plural, and the plural the singular.
- (vi) Severability. In the event any section, or any part or portion of any section of this Environmental Covenant, shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that section, or any other section hereof.
- (vii) Waiver. Owner's failure to insist on performance of any term, condition, or instruction, or to exercise any right or privilege included in this Environmental Covenant, or its waiver of any breach, shall not thereafter waive any such term, condition, instruction, and/or any right or privilege.

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- (vii) **Notice.** Any notice provided for under this Environmental Covenant shall be in writing, and given either personally or by facsimile, and shall be deemed sufficiently given if and when received by the party to be notified at its address first set forth above or if and when mailed received by the party to be notified at its address first set forth above or if and when mailed by certified mail, postage prepaid, or by private courier service, addressed to such party at such address. Either party may, by notice to the other, change its address for receiving such notices.

IN WITNESS WHEREOF, the parties hereto have executed this Environmental Covenant under seal on the day and year first above written.

ASHLAND INC.

By: Kimberly Humphrey Czirr  
Title: Attorney-in-Fact

SELECT COMMERCIAL, LLC

By: [Signature]  
Title: Managing Partner

COMMONWEALTH OF KENTUCKY, FAYETTE COUNTY

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that Kimberly Humphrey Czirr personally appeared before me this day, and being first duly sworn, deposes that she executed the foregoing annexed instrument for and on behalf of ASHLAND INC., a Kentucky corporation, and that her authority to execute and acknowledge the said instrument is contained in a duly executed, acknowledged and recorded Power of Attorney in the Office of the Register of Deeds of Wake County, recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, Wake County Registry, and the said instrument was executed under and by virtue of the authority given by said instrument granting her Power of Attorney; and the said Kimberly Humphrey Czirr acknowledged the due execution of the foregoing instrument for the purposes expressed therein for and/or on behalf of Ashland Inc., a Kentucky corporation.

WITNESS my hand and official stamp or seal, this the 27<sup>th</sup> day of April, 2006.



Shelly A. Hutchison Hoover  
Notary Public

Shelly A. Hutchison Hoover  
Print Name

My commission expires: Shelly A. Hutchison Hoover  
**My Commission Expires August 20, 2009**

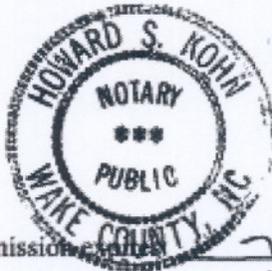
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STATE OF NORTH CAROLINA, COUNTY OF Wake

STATE OF NORTH CAROLINA, COUNTY OF Wake

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that Paul E. Schuyt personally appeared before me this day and acknowledged the he is the Managing Member of SELECT COMMERCIAL, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed.

WITNESS my hand and official stamp or seal, this the 28<sup>th</sup> day of April, 2006.



[Signature]  
Notary Public  
Howard S Kohn  
Print Name

My commission expires 7/13/09

The foregoing certificate of \_\_\_\_\_  
Notary Public is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

\_\_\_\_\_, Register of Deeds for Wake County

By \_\_\_\_\_ Deputy/Assistant Register of Deeds

This Instrument Prepared by:

Kristina Woods, Attorney  
c/o Ashland Inc., Law Department  
5200 Blazer Parkway  
Dublin, Ohio 43017

Record and Mail to:

Howard S. Kohn, Attorney  
4515 Falls of Neuse Road, Suite 175  
Raleigh, North Carolina 27609

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**EXHIBIT A  
TO  
TO  
ENVIRONMENTAL COVENANT**

**Legal Description of the Property:**

**PARCEL 1**

A certain tract or parcel of land containing 16,366 square feet, lying and being in the City of Raleigh, Wake County, North Carolina, approximately 272 feet south of the southeast right-of-way intersection of Hoke Street with South Bloodworth Street. Bounded on the south by Victor Lee Utter, on the west by South Bloodworth Street, on the north by Alexander Realty Co., and on the east by Southern Railway Spur Track, and being more particularly described as follows:

Commencing for reference at an existing iron pipe being the northwest intersection of the western right-of-way of Southern Railway Spur Track, said spur track having a right-of-way of 46 feet, with the northern right-of-way of Farmer Street, said street having a right-of-way of 50 feet, said iron pipe having North Carolina State Plane Coordinates  $N(y) = 732,117.32$  feet and  $E(x) = 2,108,673.19$  feet, and being located North  $06^{\circ}54'36''$  West 3146.91 feet (horizontal ground distance) from an existing North Carolina Geodetic Survey Monument "SCRAP"; thence with the western right-of-way of Southern Railway Spur Track North  $01^{\circ}30'03''$  East 393.77 feet to a P.K. Nail set in a fence post footing at the northeast corner of the lands conveyed to Victor Lee Utter by deed recorded in Deed Book 2338, Page 415, said P.K. Nail being the point of beginning of this description; thence with Utter's northern line North  $88^{\circ}31'08''$  West 199.94 feet to an existing P.K. Nail on the eastern right-of-way of South Bloodworth Street, said street having a right-of-way of 55 feet; thence with said right-of-way line North  $01^{\circ}30'58''$  East 81.86 feet to an existing P.K. Nail being the southwest corner of the lands conveyed to Alexander Realty Co. by deed recorded in Deed Book 2939, Page 772, and also being located South  $01^{\circ}30'58''$  West 122.01 feet from an existing iron pipe being the northwest corner of Alexander Realty Co.; thence from said P.K. Nail with the southern line of Alexander Realty Co., South  $88^{\circ}31'08''$  East 199.92 feet to a new iron pipe in the western right-of-way of Southern Railway Spur Track, said iron pipe being the southeast corner of Alexander Realty Co. and also being located South  $01^{\circ}30'03''$  West 121.84 feet from an existing iron pipe being the northeast corner of Alexander Realty Co.; thence with said western right-of-way, South  $01^{\circ}30'03''$  West 81.86 feet to the point of beginning, containing 16,366 square feet, more or less, as shown on a map by Derward W. Baker and Associates, P.A. as revised March 16, 1988, bearings based on North Carolina Grid Meridian, and being all the lands conveyed to Ross Realty Company by deed recorded in Deed Book 1337, Page 110, Wake County Registry.

**PARCEL 2**

BEGINNING at a stake marking the intersection of the North line of Farmers Street with the East line of South Bloodworth Street; runs thence North 05 degrees 00 minutes East 394 feet to a stake, the southwest corner of the property conveyed to Frank Howard Ross, Jr., et al, by deed recorded in Book 1096, Page 467, Wake County Registry; runs thence South 85 degrees 00

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minutes East 200 feet with the line of said Ross, et al, to a stake in the western line of the right of way of the spur track; runs thence with the western line of the right of way of said spur track line South 05 degrees 00 minutes West 394 feet to the North line of Farmers Street; runs thence North 85 degrees 00 minutes West 200 feet with the North line of Farmers Street to the point and place of Beginning, and being the greater portion of Lot 8 as shown on the plat of the property of Raleigh Tractor and Equipment Company (now Raleigh Tractor and Truck Company) by Fred W. Habel recorded in Book of Maps 1946, Page 87, Wake County Registry.

The property hereinabove described was acquired by Owner by instruments recorded in Book 4697, Page 0048 and Book 8069, Page 2433.

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**Yellow probate sheet is a vital part of your recorded document.  
Please retain with original document and submit for rerecording.**

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**Wake County Register of Deeds  
Laura M. Riddick  
Register of Deeds**

**This Customer Group**  
\_\_\_\_\_ # of Time Stamps Needed

**This Document**  
\_\_\_\_\_ New Time Stamp  
\_\_\_\_\_ # of Pages