

DOCUMENT COVER SHEET

TITLE OF DOCUMENT: **EASEMENT, COVENANT TO RESTRICT USE AND ACCESS AGREEMENT**

DATE OF DOCUMENT: _____

GRANTOR: Rally Stores Incorporated
MAILING ADDRESS: 2865 Executive Drive
Clearwater, Florida 33762-3316

GRANTEE: United States Department of Energy
MAILING ADDRESS: Office of Legacy Management
ATTN: Dr. Laura E. Kilpatrick
Senior Realty Officer, Asset Management Team
11025 Dover Street, Suite 1000
Westminster, CO 80021

LOCATION: See Exhibit A

REFERENCE BOOK AND PAGE (if any): _____

EASEMENT, COVENANT TO RESTRICT USE, AND ACCESS AGREEMENT

Rally Stores Incorporated
2865 Executive Drive
Clearwater, Florida 33762-3316

Rally Stores Inc., a Florida Corporation, hereinafter referred to as (Grantor), for the sum of \$10 and other valuable consideration, receipt of which is hereby acknowledged does hereby grant perpetual access, subject to the terms and conditions herein set forth, to the easement area defined below (Property) to the **UNITED STATES OF AMERICA** (Grantee), represented by the U.S. Department of Energy, Office of Legacy Management (DOE) in, upon, over, under and across the Property located in the County of Pinellas, State of Florida, as shown on the accompanying Map, Exhibit A.

A. Description of Facts:

A.1. The Pinellas County Site (Site) is north of the Grantor's Property (Property). The Site was once owned by Grantee, under the jurisdictional control of the Department of Energy (DOE). The Site ceased operations in 1997, and the Pinellas County government jointly redeveloped the facility, which is called the Young-Rainey Science, Technology and Research Center. On December 14, 1987, the Grantee reported discharges of chlorinated solvents at the Site to the United States Environmental Protection Agency.

A.2. The Grantee discovered subsurface contamination originating from the Site (Site related ground water contamination) under Grantor's Property in 2011. The subsurface contamination consists of the aforementioned chlorinated solvents. The highest concentration of contamination occurs between 24 and 32 feet below the surface of Grantor's Property. It is the belief of the Grantee, that the controls and requirements of this agreement will significantly limit any threat to the health, safety and welfare of the general public. Through hydrogeological characterization on Grantor's Property, Grantee has determined the current extent of the plume, is believed to be stable, but additional groundwater monitoring will confirm if the plume is stable and is not migrating.

A.3. Grantor and Grantee are entering into this Easement, Covenant to Restrict Use, and Access Agreement (Agreement) to require the Grantor to provide notice to Grantee prior to excavation, digging, drilling, or dewatering of the shallow aquifer (between 15 and 40 feet below the Property) and to grant perpetual access to Grantee to the Property for monitoring, and well installation/maintenance. The Grantor and Grantee (Parties) are also entering into this Agreement as a corollary to Grantor's Declaration of Restrictive Covenant (DRC) with the Florida Department of Environmental Protection (FDEP) regarding the same property. FDEP is the regulatory agency that has ultimate authority with regard to the management of media and use of the groundwater on the site pursuant to the DRC which will be recorded with this agreement. DOE has no authority over FDEP to act in these matters and no obligation regarding obtaining or granting FDEP approvals. Nonetheless DOE will participate with Grantor in obtaining from FDEP a "comfort letter" related to Site related ground water contamination.

A.4. Grantor's Property is currently vacant, but because it is proposed to be developed, it is intended that this Easement will have minimal to no impact on the current or future development of Grantor's Property.

A. 5. Grantor's Property also contains petroleum contamination which is in no way related to the chlorinated solvent plume that is the subject of this Agreement. A "No Further Action Proposal" was accepted by Pinellas County Health Department personnel acting on behalf of FDEP on June 21, 2013.

B. Deed Restriction Requirement and Perpetual Access:

B. 1. The purpose of this restriction is to monitor and maintain stability and isolation of the plume and to ensure the protection of human health and the environment. The restrictions include the obligation of the Grantor to notify DOE prior to proposed well installation, or other (shallow) ground water uses such as dewatering, and the right of perpetual access by the Grantee, or Grantee's representatives, to conduct monitoring as is more fully set forth herein. The restrictions will apply to the Grantor, future owners, tenants, agents or interested parties. The limitation of this paragraph regarding dewatering activities, is not intended to involve Grantee in the process of approval of construction, design engineering or otherwise with respect to the intended development on the property, but only as to the limited nature of removal of ground water, an event that Grantor does not expect to occur.

B. 2. Grantee will evaluate Grantor's proposal(s) for potential to impact plume and make all necessary arrangements at Grantee's expense to ensure intent of work is met while protecting human health and the environment. Any approvals or consents required by Grantee shall be provided to Grantor, within ten (10) days of submittal. Approvals shall be in writing, absent receipt of timely written approval, Grantor may proceed without further consent.

ARTICLE I
GENERAL PROVISIONS

1.1 This Agreement establishes Rights, Conditions, and Restrictions upon the subject Property. Each and all of the Rights, Conditions, and Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest.

1.2 By granting and accepting the terms and conditions of this Agreement, Parties, their successors and assigns, agree to be bound by said terms. Parties also agree that either Party shall be entitled to specific performance of any of the provisions or conditions thereof in any court of competent jurisdiction, provided the curing of any violation has not occurred within thirty (30) days after the Party has provided written notice pursuant to Article 4.1 below, to the violating Party of said violations or deficiencies. In addition to specific performance, the Party would be entitled to any penalties associated with obtaining such performance. Grantor agrees to notify Grantee prior to the conveyance of the property to another party and to assign the requirements of this agreement to any subsequent holders of any interest in this property.

1.3 All purchasers, lessees, or possessors of any relevant portion of the Property shall be deemed by their purchase, leasing, or possession of such Property to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assigns, that Rights, Conditions, and Restrictions, as herein established, must be adhered to for the benefit of future owners and occupants and that their interest in the Property shall be subject to the Rights, Conditions, and Restrictions contained herein.

1.4 The Grantor agrees that the entire Agreement set out herein shall be recorded and incorporated by reference in each and all deeds and leases of any portion of the Property. This Agreement shall be recorded by the Grantee in the Pinellas County Clerk of the Circuit Court.

ARTICLE II

RIGHTS, CONDITIONS, AND RESTRICTIONS

2.1 Said Rights, Conditions, and Restrictions are conveyed subject to existing easements for public roads and highways, public utilities, and pipelines.

2.2 The Grantee, and their authorized representatives, contractors, and subcontractors are granted the right of perpetual access in, upon, over, under and across Grantor's Property, described above, to perform inspection, surveillance, monitoring, characterization, and assessment of any potential contamination of the Property resulting from activities of the Pinellas County Site. Grantee, its successors and assigns agree that Grantee shall notify Grantor within seventy-two (72) hours of required access to the Property. Grantee will coordinate access with Grantor, its successors or assigns, to minimize interference of their use and enjoyment of the Property. No future development of the Property will be impaired by Grantee's activities. Grantee's access will be limited to external locations shown in Exhibit A. Any future buildings will not be subject to Grantee access.

2.3 There shall be no digging, drilling or excavation on the (15 to 40 feet below the Property) into the ground water aquifer, if any, without prior, Grantee written approval and Grantor securing appropriate permits as per state and local law. Grantor must submit drilling plans to the Grantee before conducting any such drilling on the Property, and Grantee must approve said plans in writing, approval shall be provided within ten (10) days of submittal of plans or be deemed waived. Grantee reserves the right to construct monitoring wells on the Property.

2.4 Grantor shall consult with Grantee, its successors, or assigns, to ensure monitoring system equipment does not interfere with current or future uses of the property.

2.5 Prior to any dewatering activities on the Property, the Grantor shall develop a dewatering plan, and submit it to the Grantee for review and written approval. The dewatering plan must include the appropriate handling, treatment and disposal of any extracted contaminated groundwater at Grantee's expense. Grantee will provide necessary personnel, personal protective equipment (PPE) and conduct training of Grantor's personnel in the use of such equipment. Grantee will provide and operate at its cost, additional equipment/systems to ensure appropriate handling, treatment and disposal of any extracted, contaminated groundwater. (All subject to the terms and conditions set forth in paragraph B. 1 above.)

2.6 Previously said enforcement right was that of specific performance.

2.7 Grantor, its successors or assigns, shall notify the Grantee and the FDEP by certified mail, at least thirty (30) days prior to any conveyance, or intent to convey any interest in the Property.

2.8 Grantee, its successors and assigns, agrees that it shall obtain all necessary permits, licenses, and approvals in connection with the activities to be conducted by the Grantee on the Property

ARTICLE III
REMOVAL OF RESTRICTIONS

3.1 The Rights, Conditions, and Restrictions detailed in this Agreement, or any portion of them, may, from time to time, be removed from the Property or portions thereof, at the sole discretion of the Grantee, when the Grantee has determined that the Property meets regulatory standards, as approved by the FDEP; otherwise the Rights, Conditions, and Restrictions of this Agreement shall continue in effect in perpetuity.

ARTICLE IV
MISCELLANEOUS

4.1 Whenever any Party to this Agreement seeks to give or serve notice, demand, or other communication with respect to this Agreement, such notice, demand, or communication shall be in writing and shall be sent simultaneously to an authorized representative of Grantor and to the Grantee, in certified mail with return receipt requested.

- a) If to Grantor, such notice, demand or other communication shall be sent to Rally Stores Incorporated ATTN: Shale Gladfelter, Rally Stores Inc., 2865 Executive Drive, Clearwater, Florida 33762-3316.
- b) If to the Grantee, such notice, demand or other communication shall be sent to the U.S. Department of Energy, Office of Legacy Management, ATTN: Realty Officer, 2597 Legacy Way, Grand Junction, CO 81503-1789 and U.S. Department of Energy, Office of Legacy Management, ATTN: Pinellas Site Manager, 11025 Dover Street, Suite 1000, Westminster, CO 80021-5573.

4.2 If any portion of this Agreement is determined to be invalid or unenforceable for any reason, the remaining portion of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

THIS AGREEMENT, together with all the conditions thereof, is executed by Grantor this 1 day of July, 2013.

GRANTOR:

Rally Stores Incorporated

By: B.M. Mitchell
Bruce Mitchell
President
Rally Stores Incorporated, a Florida Corporation

State of Florida)
) ss.
COUNTY OF Pinellas)

The foregoing instrument was acknowledged before me this 1st day of July 2013,
by Bruce Mitchell the President of
Rally Stores, Inc.

Notary Seal



Jacquelyn Copperwheat
(Signature of Notary)

My Commission Expires: _____

THIS AGREEMENT, together with all the conditions thereof, is executed by Grantee this 26th day of June, 2013.

GRANTEE:

**United States of America
Department of Energy, Office of Legacy
Management**

BY: Dr. Laura E. Kilpatrick
**Dr. Laura E. Kilpatrick
Senior Realty Officer**

State of Colorado)
) ss.
COUNTY OF Jefferson)

The foregoing instrument was acknowledged before me this 26 day of June 2013,
by Dr. Laura E. Kilpatrick the Senior Realty Officer of
DOE.

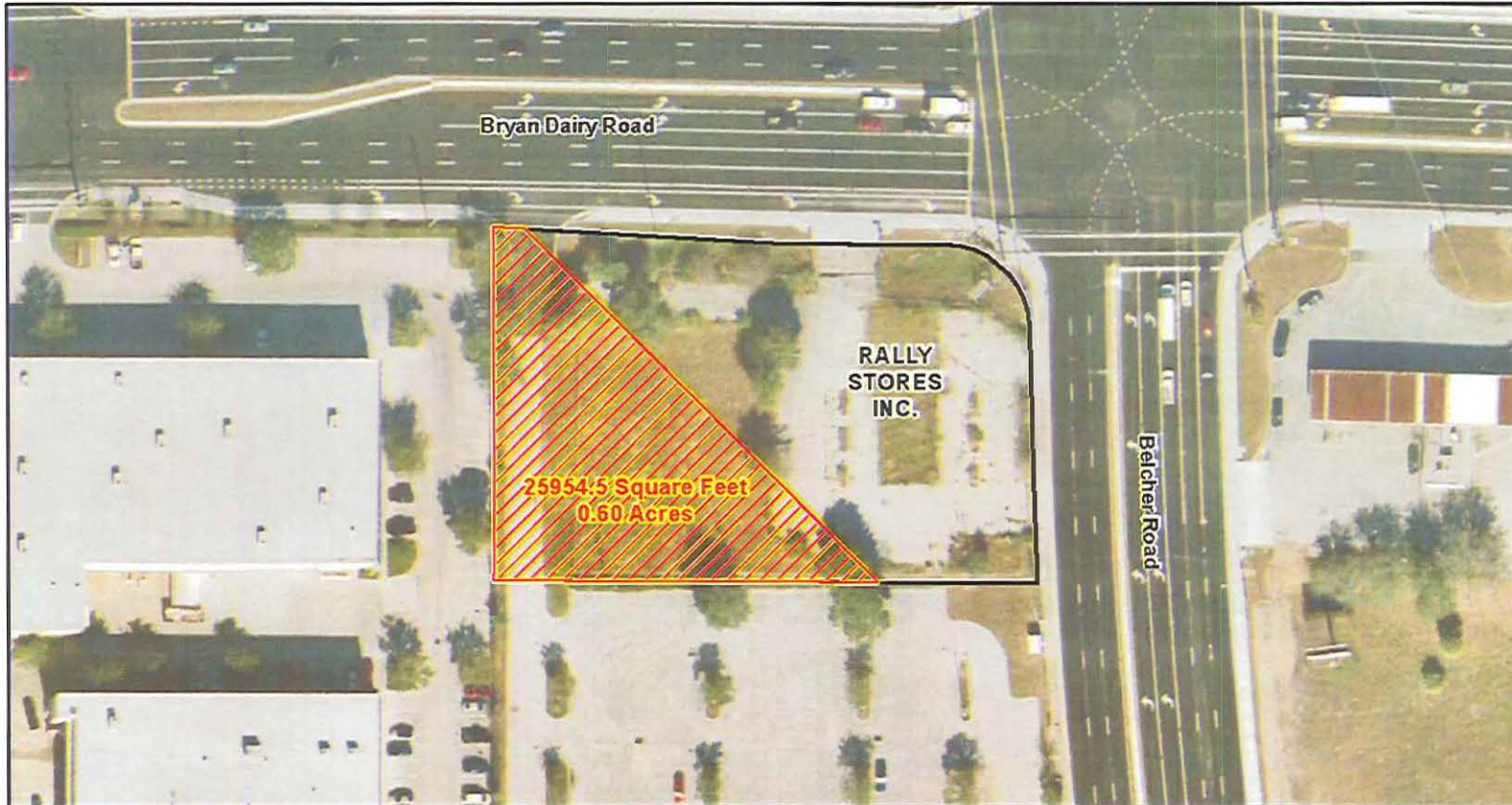
Notary Seal




**Kerri M. Blaes
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20024028478
MY COMMISSION EXPIRES 09-17-2014**

Kerri M Blaes
(Signature of Notary)

My Commission Expires: 9-17-2014

EXHIBIT A
MAP OF EASEMENT AREA



<p>Legend</p> <p> Easement Option Boundary</p> <p> Property Boundary</p>	<p align="center">N</p>  <p align="center">0 100 200</p> <p align="center">Feet</p>	<p>U.S. DEPARTMENT OF ENERGY GRAND JUNCTION, COLO RADO</p>	<p><small>Work performed by</small> S.M. Stoller Corporation <small>Under DOE Contract No. DE-NA01-01-LH0060</small></p>
<p align="center">Exhibit A Owner: Rally Stores Inc. 10980 South Belcher Rd., Pinellas Park, FL 33777 Pinellas County Assessor #13-30-15-70560-400-0101</p>			
<p><small>DATE PREPARED:</small> May 8, 2013</p>		<p><small>FILENAME:</small> N0181000</p>	

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