

To be recorded with Deed Records -O.R.C. § 317.08

### **Environmental Covenant**

This Environmental Covenant is entered into pursuant to Ohio Revised Code (“O.R.C.”) § 5301.80 through 5301.92 by (the Owner), having an address of () and the Ohio Department of Natural Resources (“ODNR”) (the Holder and Enforcing Agency) for the purpose of subjecting certain property (“the Covenant Area”) to the activity and use limitations set forth herein.

WHEREAS, the Owner in fee of certain real property, which contains the Covenant Area and is situated in County, Ohio, which is more particularly described on **Exhibit A**, attached hereto and made a part hereof and;

WHEREAS, pursuant to Exhibit A,

WHEREAS, the Owner proposes to ensure the Covenant Area and Covenant Area’s nutrient reduction benefits are protected in perpetuity by this Environmental Covenant.

Now therefore, the Owner and ODNR agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to O.R.C. § 5301.80 to 5301.92.
2. Covenant Area. The Covenant Area is more particularly described on **Exhibit A**, attached hereto and made a part hereof;
3. Activity and Use Limitations. The Owner hereby agrees to comply with the following activity and use limitations on the Covenant Area:

Division: Any division or subdivision of the Covenant Area is prohibited;

Commercial Activities: Commercial development or industrial activity on the Covenant Area is prohibited;

Construction: The placement or construction of any man-made modifications such as buildings, structures, roads and parking lots on the Covenant Area is prohibited except as indicated below.

Permitted man made modifications include temporary and permanent wildlife viewing /hunting blinds, feeders, pump structure modifications, pump structure housing. Access roads/lanes and dike tops can be improved with stone as part of normal property/marsh management and access improvements.

Cutting and Other Control of Vegetation: Mowing and cutting of trees and brush as part of dike maintenance is normal and allowed under this covenant. Dike infrastructure will be maintained and removal of problem trees/brush whether it be disease, safety, management or for water integrity and/or wetland management is permitted. Herbicide usage for wetland vegetation control and modification is a normal marsh management technique. Herbicide usage for AIS is acceptable and required.

Land Surface Alteration: No land surface alterations are permitted with the exception of the following to facilitate wetland levee infrastructure maintenance: grading of dikes; earthmoving as part of maintenance and repair; dredging of siltation from pump structure and dike channels; adding rip rap for erosion control and stone for erosion protection of dike tops; and borrow areas for dike repair material. All activities are subject to permitting requirements.

Dumping: Waste, garbage and unsightly or offensive materials are not permitted and may not be accumulated on the Covenant Area.

Water Courses: Natural water courses and streams and adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered on the Covenant Area, subject to Federal and State Law which might require such activities.

Adjacent riparian buffers can be altered and managed to maintain the water integrity of the dikes and pumping system as necessary for marsh management activities. This management may include burning/disking/reseeding and mowing.

Recreational Trails and Vehicles: Recreational uses that disturb or compact the soils or destroy or inhibit growth of vegetation are prohibited on the Covenant Area; provided, however, that the operation of motor vehicles shall be permitted to the extent reasonably necessary for activities related to the maintenance, restoration, enhancement, or preservation of the Property.

Disturbance of vegetation and soils for marsh management purposes, food plots covering no more than 5% of the Covenant Areas, invasive species control, water drainage, vegetation enhancement, wildlife benefit and recreational access are permitted. Prescribed fire for wetland management and upland areas maintenance is approved with proper permits. Mowing, disking, or cutting of vegetation within the wetland is allowed as long as at least 50% of the wetland basin contains undisturbed emergent vegetation. If the basin is becoming dominated by AIS, then this 50% requirement is waived until the AIS presence has been reduced.

Utilities: The Owner shall not grant any easements or rights-of-way after the recording of this Environmental Covenant that would permit construction of utilities within the Covenant Areas.

Other Activities: Each and every other activity or construction project which might endanger the natural, scenic, biological, ecological integrity of the Property shall be

prohibited on the Covenant Area without written permission of a private land's biologist or other representative from the ODNR, Division of Wildlife.

4. 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 O.R.C. § 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 Covenant Area or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.
5. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to O.R.C. § 5301.91 or other applicable law. Failure to timely enforce compliance with the Environmental Covenant or the 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 provision of this Covenant. Nothing in this Environmental Covenant shall permit ODNR to be removed and replaced without the express, written consent of ODNR.
6. Rights of Access. The Owner hereby grants to ODNR, its agents, contractors, and employees the right of access to the Covenant Area in connection with the implementation or enforcement of the Environmental Covenant.
7. Compliance Reporting. The Owner and any Transferee shall submit to ODNR, upon request, written documentation verifying that the activity and use limitations remain in place and are being complied with.
8. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Covenant Area, or any portion of the Covenant Area, shall contain a notice of the activity and use limitations 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 \_\_\_\_\_, 20\_\_\_\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE \_\_\_\_\_ COUNTY RECORDER ON \_\_\_\_\_, 20\_\_\_\_, IN [DOCUMENT \_\_\_\_\_, OR BOOK \_\_\_\_\_, PAGE \_\_\_\_\_,]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

[In the notices, restate restrictions from Paragraph 3 of this Covenant]

At least 60 days prior to any proposed conveyance, the Owner shall notify ODNR of such proposed conveyance. The Owners notice shall include the name, address and telephone number of the Transferee, and a copy of the original document that imposed restrictions on the Covenant Area.

9. Representations. The Owner hereby represents:
  - a. That the Owner is the sole owner of the Covenant Area;
  - b. That the Owner holds fee simple title to the Covenant Area that is free, clear and unencumbered and, for example, is not subject to any utility, road or other easement;
  - c. That the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interest herein provided and to carry out all obligations hereunder; and
  - d. That this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which the Owner is a party or by which the Owner may be bound or affected.
  
10. Amendment or Termination. This Environmental Covenant may be amended or terminated only by consent of all the following: The Owner or a Transferee and ODNR, pursuant to O.R.C. § 5301.89 or 5301.90 and other applicable law. “Amendment” means any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the eliminations of one or more activity and use limitations when there is at least one limitation remaining. “Termination” means 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 ODNR and the City or Transferee of the Covenant Area or portion thereof, as applicable. Within thirty (30) days of signature by all required parties on any amendment or termination of this Environmental Covenant, the City or Transferee shall file such instrument for recording with the Ottawa County Recorder’s Office and shall provide a true copy of the recorded instrument to ODNR.
  
11. 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.

12. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.
13. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, the Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the property, with the Ottawa County Recorder's Office.
14. 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 Covenant Area with the Ottawa County Recorder's Office.
15. Distribution of Environmental Covenant. The Owner shall distribute a file- and date- stamped copy of the recorded Environmental Covenant to ODNR and each person holding a recorded interest in the Property.
16. Notice. Unless otherwise notified in writing by or on behalf of the Owner ODNR, any document or communication required by this Environmental Covenant shall be submitted to:  
  
[INSERT]
17. Counterparts. The Covenant may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Covenant.

The undersigned representatives of the Owner and ODNR represent and certify that they are authorized to execute this Environmental Covenant.

**IT IS SO AGREED:**

**(Owner)**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

State of \_\_\_\_\_ )

)      ss:

County of \_\_\_\_\_ )

Before me, a notary public, in and for said county and state, personally appeared \_\_\_\_\_  
\_\_\_\_\_, a duly authorized representative of Michael J. Bohling, who acknowledged to me  
that \_\_\_ did execute the foregoing instrument on behalf of Michael J. bohling.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

**Ohio Department of Natural Resources (Holder)**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

State of \_\_\_\_\_ )

) ss:

County of \_\_\_\_\_ )

Before me, a notary public, in and for said county and state, personally appeared \_\_\_\_\_, a duly authorized representative of The Ohio Department of Natural Resources, who acknowledged to me that \_\_\_\_\_ did execute the foregoing instrument on behalf of The Ohio Department of Natural Resources.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public