**To be recorded with Deed**

**Records -** **ORC § 317.08**

 **ENVIRONMENTAL COVENANT**

This Environmental Covenant is entered into by [*name all Owners of the* *Property and Holders*] 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 described herein (“the Property”) to the activity and use limitations set forth herein.

This Environmental Covenant requires current and future Property owners to meet certain requirements, including, but not limited to:

* Comply with the activity and use limitations given by paragraph 5 that: [*Plain language summary of the activity and use limitations in paragraph 5*].
* Provide an annual compliance report to Ohio EPA by [*enter Day Month*] of each year, as required by paragraph 9, describing that the Property continues to be used in compliance with the activity and use limitations.
* Give notice to new property owners (also known as “transferees”) upon conveyance, as required by paragraph 10, of the activity and use limitations and the recorded location of this Environmental Covenant.
* Notify Ohio EPA within 10 days of each conveyance, as required by paragraph 10, of the property that was conveyed and new owner’s contact information.

WHEREAS, the Property is owned by [*name of Owner*], who resides or is located at [*address or location of owner*].

WHEREAS, the remedy for the Property includes the activity and use limitations set forth in this Environmental Covenant.

WHEREAS, the activity and use limitations protect against exposure to the [*hazardous substances / petroleum / hazardous substances and petroleum*] in [*soil / ground water / soil and ground water, or describe other affected media*] on or underlying the Property.

*[WHEREAS, the Property is the subject to an operation and maintenance (O&M) agreement that provides for a central management entity to oversee engineering controls to maintain site protectiveness.]*

 Now therefore, [*name of each Owner and Holder other than Owner, if any*] 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 an approximately \_\_\_\_\_\_-acre tract of real propertylocated at [*Address of Property*], in [*County*], Ohio, and more particularly described in [*Attachment #*] attached hereto and incorporated by reference herein (“Property”).

3. Owner. This Property is owned by [*Owner Name*] (“Owner”), [*with a place of business located*] at [*Address of Owner*].

4. Holder. Pursuant to ORC § 5301.81, the holder of this Environmental Covenant (“Holder”) is the Owner listed above [*and if applicable [Name of other Holder not the Owner], [with place of business located]* at *[Address of other Holder]*].

5. Activity and Use Limitations. As part of the remedial action described in the Decision Document, Owner[*s*] hereby impose[*s*] and agree[*s*] to comply with the following activity and use limitations: [*Determine the activity and use limitations appropriate for the Property. Several types of restrictions may be appropriate as part of a remedial action, interim action, or closure plan where cleanup to an unrestricted land use is infeasible. These include: land use restrictions; ground water restrictions; disturbance restrictions; and construction restrictions. Each type of restriction must be considered on a site-specific basis to determine which restriction or combination of restrictions is suitable for the particular circumstances of the site or facility. Evaluate the possible use restrictions based on the nature of contamination, the type of affected media and the potential exposures. The restriction categories include: land use, ground water, disturbance and construction.*

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner, during the time that the Owner owns the Property or any portion thereof, and upon 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 and other applicable law. 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 against any non-compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law.

8. Rights of Access. Owner hereby grants to Ohio EPA’s authorized representatives [*include, as applicable,* *name of local government and any Holders other than Owner, etc.; see ORC §§ 5301.82(A)(6) and 5301.91(A)*] the right of access to the Property for implementation or enforcement of this Environmental Covenant and shall require such access as a condition of any transfer of the Property or any portion thereof.

9. Compliance Reporting. Owner or Transferee, if applicable, shall annually submit to Ohio EPA [*include, as applicable, name of* *local government, any “Holders” other than Owner*] written documentation verifying that the activity and use limitations set forth herein remain in place and are being complied with. Documentation shall be due to Ohio EPA on July 1st of each year beginning the year after the effective date of this Environmental Covenant, unless otherwise directed by Ohio EPA.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion thereof 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, RECORDED IN THE DEED OR OFFICIAL RECORDS OF [name of County Recorder’s Office] ON \_\_\_\_\_\_\_\_\_\_\_, 201\_\_, IN [DOCUMENT \_\_\_\_, or BOOK\_\_\_, PAGE \_\_\_\_]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

 *[List or summarize the**type of**activity and use limitations in Paragraph 5 of the environmental covenant (i.e., a limitation to commercial or industrial land uses, a prohibition on ground water extraction and use, and a limitation on building occupancy – remedy or demonstration obligation).]*

 Owner or Transferee, if applicable, shall notify Ohio EPA [*and “Holders” other than the Owner, if any*] within [*ten (10)*] days after each conveyance of an interest in the Property or any portion thereof. The 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.

11. Representations and Warranties. 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 and that the Owner conducted a current title search that shows that the Property [*choose one: is subject to [or] is not subject to any*]interests or encumbrances that conflict with the activity and use limitations set forth in this Environmental Covenant;

*[If other interests or encumbrances on the Property conflict with the activity and use limitations set forth in this Environmental Covenant, add the following provision as a separate subparagraph:*

 *To the extent that any other interests in or encumbrances on the Property conflict with the activity and use limitations set forth in this Environmental Covenant, the persons who own such interests or hold such encumbrances have agreed to subordinate such interests or encumbrances to the Environmental Covenant, pursuant to ORC § 5301.86, and the subordination agreement(s) (attached as [Attachment #] to this Environmental Covenant; [or] recorded at [name of County Recorder’s Office].)]*

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 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;

E. that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property, and, if applicable, notified such persons of the Owner’s intention to enter into this Environmental Covenant.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner, or a Transferee, if applicable; [*“Holders” other than Owner, if any;*] and the Director of the Ohio EPA, pursuant to ORC §§ 5301.82 and 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 so long as 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 by the Owner or Transferee, if applicable, of the Property or any portion thereof [, *and “Holders” or their assignees, if any]*. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee, if applicable, shall file such instrument for recording with the [*name of County Recorder’s Office*], and shall provide a file- and date-stamped copy of the recorded instrument to Ohio EPA [*and “Holders” or their assignees, if any*].

13. 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.

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

15. Recordation. Within [*thirty (30)*] days after the date of the final required signature, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the [*name of County Recorder’s Office*].

16. 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 [*name of County Recorder’s Office*].

17. Distribution of Environmental Covenant. Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA [, *include* *name other parties to the Environmental Covenant, if any*] and [*include the* *appropriate governmental entity applicable to property: City / County / Township*].

18. Notice. Unless otherwise notified in writing by any party hereto or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

As to Ohio EPA:

Ohio EPA – Central Office

Division of Environmental Response and Revitalization

50 West Town Street

Columbus, Ohio 43216

Attn.: DERR Records Management Officer

 Or, send electronically to: records@epa.ohio.gov

And

Ohio EPA - [applicable district office]

[District office address]

Attn.: DERR Site Coordinator for [*Site Name*]

As to Owner:

[Name, title, or position]

[Address]

[As to Holder:]

[Name, title, or position]

[Address]

 The undersigned represents and certifies that the undersigned is authorized to execute this Environmental Covenant.

**IT IS SO AGREED:**

**[OWNER NAME]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Owner

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name and Title

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 Owner, who acknowledged to me the execution of the foregoing instrument on behalf of the Owner.

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

**[HOLDER NAME]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Holder

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name and Title

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 Holder, who acknowledged to me the execution of the foregoing instrument on behalf of the Holder.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

**OHIO ENVIRONMENTAL PROTECTION AGENCY**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Craig W. Butler, Director

State of Ohio )

) ss:

County of Franklin )

Before me, a notary public, in and for Franklin County, Ohio, personally appeared Craig W. Butler, the Director of Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public