

ENVIRONMENTAL COVENANT¹

This Environmental Covenant is entered into by [*name all Owners of the Property and any Holders of the Property*] 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 in section 2 herein (“the Property”) to the activity and use limitations set forth herein.

WHEREAS, [*name of Volunteer*] has undertaken a voluntary action with respect to the Property under Ohio’s Voluntary Action Program (“VAP”), pursuant to ORC Chapter 3746 and Ohio Administrative Code (“OAC”) Chapter 3745-300.

WHEREAS, the Property is owned by [*name of Owner*]; [*name of Volunteer*] is not an owner of the Property.

WHEREAS, the voluntary action remedy for the Property includes the activity and use limitations set forth in this Environmental Covenant. Certified Professional [*CP name, CP No.*] issued a no further action letter (“NFA Letter”) for the Property on [*date of CP’s affidavit*] and submitted the NFA Letter to Ohio EPA (“No. [*NFA*]”) with a request for a covenant not to sue.

1 Ohio EPA designed this “VAP EC template” (**November 2011 update**), for use by the owner’s representatives to prepare a “proposed environmental covenant” for the property for which a certified professional will submit a NFA letter and request for a covenant not to sue under Ohio’s Voluntary Action Program (VAP). See ORC 3746.10(C)(3) and OAC 3745-300-13(B)(4).

Ohio EPA guidance on drafting the VAP activity and use limitations for inclusion in the proposed environmental covenant may be found on the Ohio EPA, Division of Emergency and Remedial Response website.

Before its submission to Ohio EPA, legal counsel representing the interests of the owner and any holder (volunteer, facility operator, etc.) in NFA letter property matters should first review the proposed environmental covenant.

Please leave a 2- to 3-inch top margin on first page for the county recorder’s seal, and delete these footnotes, prior to submitting the proposed environmental covenant.

WHEREAS, the activity and use limitations support the issuance of the NFA Letter and a covenant not to sue for the Property; the 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 NFA Letter's executive summary contains an overview of the voluntary action. The executive summary may be reviewed as an exhibit to the covenant not to sue issued for the Property, recorded in the deed records for the Property in the [name of county] County Recorder's Office. The covenant not to sue and the NFA Letter (No. [NFA]) may also be reviewed by contacting the Records Management Officer for the Division of Environmental Response and Revitalization, at Ohio EPA's Central Office, 50 West Town Street, Columbus, OH 43216, 614-644-2924, or at Ohio EPA's [name] District Office at [address and phone], or by contacting [CP's or Volunteer's business name, business address and phone].

Now therefore, [name all "Owners" and "Holders," 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 property]; [parcels currently numbered] owned by [Owner], located at [Address of Owner], in [County], Ohio, and more particularly described in [Attachment #] attached hereto and hereby incorporated by reference herein ("Property").

3. Owner. This Property is owned by [Owner Name] ("Owner"), who resides or is 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, [Holder Name], who resides or is located at [Address of Holder]].

5. Activity and Use Limitations. As part of the voluntary action remedy described in the NFA Letter, Owner hereby imposes and agrees to comply with the following activity and use limitations:²

² Insert the limitations appropriate for the Property. Each type of limitation must be considered on a Property-specific basis to determine which limitation or combination of limitations is suitable for the particular circumstances, based on the applicable standards, the affected media and the potential exposures. See Ohio EPA's guidance on VAP activity and

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. 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. Pursuant to ORC § 3746.05, if the Property or any portion thereof is put to a use that does not comply with this Environmental Covenant, the covenant not to sue issued for the Property by the Director of Ohio EPA under ORC § 3746.12 is void on and after the date of the commencement of the noncompliant use.

8. Rights of Access. Owner hereby grants to Ohio EPA's authorized representatives [*and any "Holders;" the local government, 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, upon request by Ohio EPA, submit to Ohio EPA [*include, as applicable, name of local government, "Holders" [other than Owner]*] written documentation verifying that the activity and use limitations set forth herein remain in place and are being complied with.

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:

use limitations. The types of limitations include, but are not limited to: (a) **land use limitation** (e.g., to limit human exposure to contaminated surface soils), (b) **ground water prohibition** (e.g., to prevent exposure to contaminated ground water by prohibiting extraction or use of ground water) and (c) **construction limitation** (e.g., to prevent exposure to volatile emissions to indoor air from contaminated soil or ground water).

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE _____ COUNTY RECORDER ON _____, 201__, IN [DOCUMENT ____, or BOOK ____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:³

Owner or Transferee, if applicable, shall notify Ohio EPA [*and any "Holders" other than the Owner*] 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;
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- 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;

3 List under this subparagraph the activity and use limitations in Paragraph 5 of the property environmental covenant (e.g., limitations to commercial and industrial land uses; prohibitions on ground water extraction and use prohibition, etc.), or copy and paste the limitation paragraphs in full.

4 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 hereto as [*Attachment #*]; [*or*] recorded at County Recorder's Office).

- 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; [other "Holders," 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, [and other "Holders" or their assignees, if any] of the Property or any portion thereof, as applicable. 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 County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to Ohio EPA [and other "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 upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the 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 County Recorder's Office.

17. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA, any other signatories to the Environmental Covenant; and the [*include 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:

Division of Environmental Response and Revitalization
Ohio EPA – Central Office
50 West Town Street
Columbus, Ohio 43216
Attn.: DERR Records Management Officer, regarding [NFA]

Or, send electronically to: records@epa.state.oh.us

And

Ohio EPA - [*applicable district office*]
[*District office address*]
Attn.: DERR Site Coordinator for [NFA]

As to Owner [*include an entry for each Owner*]:

[*Name, title, or position*]
[*Address*]

As to Holder [*include an entry for each holder that is not an owner*]:

[*Name, title, or position*]
[*Address*]

OHIO ENVIRONMENTAL PROTECTION AGENCY

Scott J. Nally, Director

State of Ohio)
) ss:
County of Franklin)

Before me, a notary public, in and for Franklin County, Ohio, personally appeared Scott J. Nally, 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

This instrument was prepared by:⁵

[Placeholder for Attachment cover pages]

5 As required by ORC § 317.111, list the name and address of the person who prepared this Environmental Covenant.