

**To be recorded with Deed  
Records - ORC § 317.08**

### **ENVIRONMENTAL COVENANT**

This Environmental Covenant is entered into by MAT Enterprises, LLC, an Ohio limited liability company ("Owner") 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 ("Property") to the activity and use limitations set forth herein.

WHEREAS, a previous owner formerly used a portion of the Property for the storage of hazardous waste containers that required closure per Ohio Administrative Code (OAC) rules 3745-55-11 and 3745-55-12.

WHEREAS, on February 13, 2013, the Owner and Tice Enterprises, Inc. submitted a closure plan to the Ohio EPA for the container storage areas at the Property, which was approved by Ohio EPA on May 9, 2013, with a modification requiring the Property to be limited to commercial and industrial land use.

WHEREAS, the Owner, Tice Enterprises, Inc. and the City of Kenton ("Volunteers") have also 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, which includes the activity and use limitations set forth in this Environmental Covenant.

WHEREAS, the activity and use limitations will fulfill the requirements of the closure plan and support the issuance of an NFA Letter for the Property; the limitations protect against exposure to the hazardous substances and petroleum in soil and groundwater on or underlying the Property.

WHEREAS, the Administrative record of the closure activities is maintained as the file entitled "Former King Ohio Forge, Inc. OHD004558383" at the Ohio EPA Northwest District Office, 347 North Dunbridge Road, Bowling Green, Ohio 45402.

Now therefore, Owner 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 11.940 acre tract of real property, which includes four parcels: 06150049, 06150050, 06150051, and 06150053, all owned by MAT Enterprises, LLC, located at 13822 N. Vision Dr., Kenton, Hardin County, Ohio, and more particularly described in Attachment #1 attached hereto and hereby incorporated by reference herein ("Property").

3. Owner. The Property is owned by MAT Enterprises, LLC ("Owner"), which is located at 13822 N. Vision Dr., P.O. Box 37, Kenton, OH 43326.

4. Holder. Pursuant to ORC § 5301.81, the holder of this Environmental Covenant ("Holder") is the Owner listed above.

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

***Limitation for Commercial and/or Industrial Land Uses.*** The Property is hereby limited to commercial or industrial land use only, as defined in OAC 3745-300-08(C)(2)(c)(ii) and (C)(2)(c)(iii) (effective March 1, 2009).

OAC 3745-300-08(C)(2)(c)(ii) defines *commercial land use* as "land use with potential exposure of adult workers during a business day and potential exposures of adults and children who are customers, patrons, or visitors to commercial facilities during the business day. Commercial land use has potential exposure of adults to dermal contact with soil, inhalation of vapors and particles from soil and ingestion of soil. Examples of commercial land uses include, but are not limited to warehouses; retail gasoline stations; retail establishments; professional offices; hospitals and clinics; religious institutions; hotels; motels; and parking facilities."

OAC 3745-300-08(C)(2)(c)(iii) defines *industrial land use* as "land use with potential exposure of adult workers during a business day and potential exposures of adults and children who are visitors to industrial facilities during the business day. Industrial land use has potential exposure of adults to dermal contact with soil, inhalation of vapors

and particles from soil and ingestion of soil. Examples of industrial land uses include, but are not limited to: lumberyards; power plants; manufacturing facilities such as metalworking shops, plating shops, blast furnaces, coke plants, oil refineries, brick factories, chemical plants and plastics plants; assembly plants; non-public airport areas; limited access highways; railroad switching yards; and marine port facilities.”

***Prohibition on the Extraction or Use of Ground Water.*** No person shall extract or use ground water at or underlying the Property for any purpose, potable or otherwise, except for investigation or remediation thereof or in conjunction with construction or excavation activities or maintenance of subsurface utilities.

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 or 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. 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 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 and "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:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE HARDIN COUNTY RECORDER ON \_\_\_\_\_, 2014, IN [DOCUMENT \_\_\_\_, or BOOK \_\_\_\_, PAGE \_\_\_\_]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

***Limitation for Commercial and/or Industrial Land Uses.***

***Prohibition on the Extraction or Use of Ground Water.***

Owner or Transferee, if applicable, shall notify Ohio EPA within ten (10) days after each conveyance of an interest in the Property or any portion thereof, except for leases entered into by Owner with tenants in the normal course of business. 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 is not subject to any interests or encumbrances that conflict with the activity and use limitations set forth in this Environmental Covenant;

- 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; 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 Harden 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 Hardin 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 Hardin 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 the Ohio EPA, Tice Enterprises, Inc. and the City of Kenton.

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  
P.O. Box 1049  
Columbus, OH 43216-1049  
Attn: DERR Compliance Officer, Former King Ohio Forge Property  
Electronic filings: [records@epa.ohio.gov](mailto:records@epa.ohio.gov)

and

Ohio EPA-Northwest District Office  
Division of Environmental Response and Revitalization  
347 North Dunbridge Road, Bowling Green, Ohio 45402  
Attn: Project Coordinator for Former King Ohio Forge Property

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Former King Ohio Forge  
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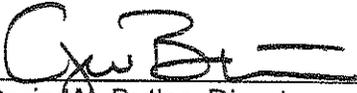
As to Owner:

MAT Enterprises, LLC  
13822 N. Vision Dr., P.O. Box 37  
Kenton, OH 43326  
Attn: Virginia Tice

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**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 18<sup>th</sup> day of July, 2014.



  
Notary Public

**CHARMA DIANE CASTEEL**  
NOTARY PUBLIC  
STATE OF OHIO  
MY COMMISSION EXPIRES  
May 10, 2019

This instrument was prepared by:

Joseph M. Reidy, Esq.  
Frost Brown Todd LLC  
10 West Broad Street  
Columbus, OH 43215

**Attachment 1 – Legal Description**

0128382.0614398 4847-1737-5772v1

**LEGAL  
DESCRIPTION**

Being a part of Outlots 43-45 of Gilbert & Sullivants Subd., City of Kenton, Hardin County, Ohio and being the King Ohio Forge Inc. lands as described in Vol. 134, Pg. 219 of the Hardin County Deed records being further described as follows:

Beginning at a 5/8" iron pin set for the southeast corner of said Outlot 45 and on the west line of Steiner Ave.

- (1) Thence from said point of beginning N.67°-21'-29"W., 886.19 feet to an iron pipe found-
- (2) Thence N.21°-12'-06"E., for 762.74 feet to an iron pin found-
- (3) Thence S.66°-49'-55"E., for 147.28 feet to a 5/8" iron pin set-
- (4) Thence N.84°-25'-05"E., for 246.25 feet to a chiseled "x" set in the concrete base of a post on the west line of Steiner Ave.-
- (5) Thence S.09°-00'-55"E., along said west line, for 1031.01 feet to the point of beginning.

Containing in all 11.940 acres, subject to all legal easements and rights of ways.  
Note: This plat and description was prepared from an actual field survey performed by Perry Surveying in October of 2010. All bearings are based on an assumed bearing of S.09°-00'-55"E. for the west line of Steiner Ave.

Craig C. Perry  
P.S. # 7839

